

200 ARK. STATE HIGHWAY COMMISSION *v.* UNION [232  
PLANTERS NATIONAL BANK.

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PLANTERS NATIONAL BANK.

5-2004

334 S. W. 2d 879

Opinion delivered May 9, 1960.

1. EMINENT DOMAIN — TAXING COSTS OF PROCEEDING AGAINST LANDOWNER.—When the only issue in an eminent domain proceeding is the value of the land, the owner should not be compelled to pay the costs of a proceeding brought for the purpose of taking his property, but the rule does not necessarily apply when there are other issues in the case.
2. EMINENT DOMAIN — TAXING APPEAL COSTS IN PROCEEDING AGAINST LANDOWNER. — Landowners wrongfully demanded and obtained a judgment for the amount of their expert witnesses fees. *HELD*: Since this involved an issue other than the value of the land and since the Highway Commission in obtaining a reversal obtained a substantial recovery, the appeal costs were properly taxed against the landowners.

Motion to retax costs denied.

*Bill Demmer and W. R. Thrasher*, for appellant.

*Hale & Fogleman*, for appellees.

GEORGE ROSE SMITH, J. The appellees have filed a motion asking us to modify our original holding to the extent of taxing the costs of appeal against the Highway Commission. It is contended that the assessment of any costs against the landowner in a condemnation proceeding would deprive him of his constitutional right to full compensation for his land.

It is true that when the only issue in a case of this kind is the value of the land the owner should not be

compelled to pay the costs of a proceeding brought for the purpose of taking his property. Nichols on Eminent Domain (3d Ed.), § 4.109. But this rule does not necessarily apply when there are other issues in the case. Nichols points out, for instance, that when the landowner unsuccessfully contests the validity of the taking he may be compelled to pay the costs. Here, in like manner, the landowners wrongfully demanded and obtained a judgment for the amount of their expert witnesses fees. The Commission was therefore compelled to appeal, and since it obtained a reversal and a substantial recovery upon this issue the case does not fall within the rule relied upon by the appellees.

The motion to retax the costs is denied.

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