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case in justifying the issuance of a writ of mandate to compel the union to permit inspection of its financial records. Unions have more of the attributes of corporations than of fraternal organizations, states the court. It would appear that such provisions of the codes applicable to corporate organizations should be enforced with regard to labor unions, a species of unincorporated association, whenever justice requires it.

The decision of the Supreme Court of California in the *Mooney* case is both monumental and highly commendable in enforcing the right of a member of a labor union to inspect its financial records; the same right as accrues to a shareholder of a corporation.[33] The decision should also be viewed in light of the recent and continued congressional investigations into the labor movement. Indictments have issued on the grounds of theft, abuse of welfare funds and other criminal offenses.[34] It appears that the trade union should be subjected to more stringent regulation.

The members of labor organizations are the first line of defense against graft and corruption within their ranks, and as such, they must have the right to inspect the records of such unions in order to protect both themselves and society from harmful consequences. The inspection of records is merely a preliminary step, and, if the manner, time, and place are reasonable, the examination cannot harm any proper union activity. Only after examination of the records can it be determined whether or not conditions exist which require correction. The trade union can then police itself more effectively and make recourse to judicial tribunals less frequent, and thereby promote its best interests and those of society at large.

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EVIDENCE: ADMISSIBILITY OF SALES OF SIMILAR PROPERTY IN EVIDENCE TO PROVE THE VALUE OF REAL PROPERTY

When property is condemned under the state's right of eminent domain it is necessary that the condemnee receive an award which represents "just compensation" for the property involved.[1] Thus, when litigated, a condemnation proceeding becomes devoted primarily to finding an elusive market value,[2] and the applicable rules of evidence must necessarily be of paramount importance. The question of how to prove land value is one which has frequently arisen with varying results and conclusions as to the proper method. It has been uniformly held that the value of land may be shown by proving its market value, but the courts have divided on the question as to what evidence is admissible to prove this. Some jurisdictions have allowed only expert opinion testimony,[3] while the majority have

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[33] *Supra* note 11.

[34] U.S. News, Sept. 7, 1956, p. 8.

[1] CAL. CONST. art. I, § 14.

[2] "Since market value is the figure at which the property would sell if a series of conditions . . . were present, only approximation by inference is possible." WALLSTEIN, REPORT ON LAW AND PROCEDURE IN CONDEMNATION PROCEEDINGS 85 (1932).

[3] DeFreitas v. Town of Suisun, 170 Cal. 263, 149 Pac. 553 (1915); Gorgas v. Philadelphia R.R., 215 Pa. 501, 63 Atl. 680 (1906); Richardson v. Webster City, 111 Iowa 427, 82 N.W. 920 (1900); Matter of Thompson, 127 N.Y. 463, 28 N.E. 389 (1877); Central Pac. R.R. v. Pearson, 35 Cal. 247 (1868).

also admitted evidence of sales of other land similarly situated to prove the value of the land in controversy.[4]

When the issue is the value of personal property or labor and services the California courts readily admit evidence of the sales values of similar items as having a direct bearing on the market value.[5] However, they have, with the minority of jurisdictions, made a distinction when the controversy was in regard to the market value of real estate. In a consistent line of decisions starting in 1868 with *Central Pacific R.R. Co. v. Pearson*[6] up to June, 1957, the California courts have refused to admit evidence of sales of other lands to prove land value, no matter how such evidence was introduced.

Remarkably enough this distinction has been maintained for the past twenty years notwithstanding the possible applicability of a statute which embodies a modified form of the general rule by admitting evidence of sales of similar property when they form the basis for an expert's opinion as to the value of the property in question. The statute makes no distinction as to whether real property, personal property, labor or services are being evaluated. This statute, section 1872 of the California Code of Civil Procedure, passed in 1937, states:

> "Whenever an expert witness gives his opinion, he may, upon direct examination, be asked to state the reasons for such opinion . . . ."

Section 1872 embodied matter never before stated in California statutory law, without reference to any difference in application with respect to type of case or subject matter. In view of the past distinctions made it seems apparent, therefore, that the legislature intended not only to codify the existing rule as applied to personalty, labor and services, but to make the rule uniform, and hence applicable to real property also, insofar as testimony by expert witnesses was concerned. Section 1872 makes no mention of the admission of evidence of sales of similar property other than as a basis for the expert's opinion, thereby retaining some differences between the procedures in realty and personalty cases. Jurists and legal scholars have thus viewed section 1872 as a legislative modification of the earlier rule of law, established by the courts, that sales of substantially similar lands are *in no way* admissible on the issue of the value of real property.

The courts, however, took no notice of this new statute with respect to the valuation of real estate, and consistently refused to admit such evidence. Justices Carter and Schauer have continually pointed out, in their dissents with reference to this matter,[8] that the courts have been in direct conflict with section 1872 and were, in effect, rendering it meaningless in real property cases by refusing to admit testimonial evidence of the sales prices of other lands merely because the object of the litigation was land value. With reference to the admissibility of specific sales to support an expert's opinion-testimony Judge Carter has said:

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[4] Tennessee C. I. & R. v. State, 141 Ala. 103, 37 So. 433 (1904); Belding v. Archer, 131 N.C. 287, 42 S.E. 800 (1902); Paine v. Boston, 4 Allen 168 (1862).

[5] Tatone v. Chin Bing, 12 Cal.App.2d 543, 55 Pac. 993 (1936) (fruits and vegetables); Estate of Spitly, 125 Cal.App. 642, 13 P.2d 385 (1932) (shares of stock); Dewhirst v. Leopold, 194 Cal. 424, 299 Pac. 30 (1924) (medical services); Crusoe v. Clark, 127 Cal. 341, 59 Pac. 700 (1899) (work and labor as clerk, bookkeeper and salesman).

[6] 35 Cal. 247 (1868).

[7] Long Beach City H. S. Dist. v. Stewart, 30 Cal.2d 763, 185 P.2d 585 (1947).

[8] See dissenting opinions by Justice Carter in Heimann v. City of L.A., 30 Cal.2d 746, 185 P.2d 597 (1947) and in City of L.A. v. Cole, 28 Cal.2d 509, 170 P.2d 928 (1946), and by Justice Schauer in Long Beach City H. S. Dist. v. Stewart, note 7 *supra*.

> "If some of his reasons are in truth and in fact based upon sales of similar property in the neighborhood, how can he possibly be forbidden to give them under § 1872? . . . That section puts no limit on the scope, nature or character of his reasons."[9]

The applicability of section 1872 to cases regarding real property was also recognized by Dean William G. Hale of the School of Law of the University of Southern California. In reporting on the accomplishments of the 1937 session of the California legislature Dean Hale said:

> "A new section numbered 1872 was added to the Code of Civil Procedure, authorizing the interrogation of an expert witness as to reasons for his opinion on direct examination as well as on cross-examination. Unaccompanied by the reasons, the conclusions of an expert are essentially valueless, especially where conflicting opinions are to be weighed . . . ."[10]

But these reasoned protestations were of no avail in preventing the perpetuation of the "doomed . . . obsolescent rule"[11] refusing to admit testimony by an expert witness regarding sales of similar property as evidence to prove land value—until the recent case of *County of Los Angeles v. Faus, et al.*[12]

In the *Faus* case the plaintiff, County of Los Angeles, condemned a strip of defendant's land for the purpose of widening a public street. As was pointed out by Justice Spence in his dissent, neither party tendered evidence concerning prices paid for similar property on direct examination of the expert witnesses. Thus, it seems that this problem of the admissibility of evidence was not even presented on the appeal to the California Supreme Court. The court appears to have been so anxious to establish the new rule that they adapted the first available case which might admit of proper interpretation to do so. However weak a vehicle this case may have provided for this purpose, a majority of the California Supreme Court seized the opportunity to expressly overrule all cases which established and advocated the prior rule of inadmissibility, holding that such a rule was "contrary to logic, unrealistic, and followed in only a few other states." In writing the opinion for the majority, Justice McComb recognized not only the applicability of section 1872 as decreeing the admission into evidence of prior sales of land when they form the basis for an expert's opinion, but went beyond the provisions of section 1872 and held that proof of other sales can be received as evidence of land values, without limiting the avenues of its presentation to the expert witness. Under the broad ruling of the *Faus* case, prior sales may be admitted through documents and affidavits or through the testimony of any competent witness, even though not qualified as an expert on property values.

But it is not enough to state and apply the new rule. We must also understand the objections to it and prepare to overcome whatever weaknesses may be inherent in its application. In the *Pearson* case the primary reason given for excluding evidence as to particular transactions was that it would involve a confusion of issues and an expenditure of time disproportionate to the value received, although the court did not hesitate to concede the relevance and competence of such evidence. The court there maintained that allowing such evidence would give the opposing side the right to controvert each transaction instanced by the witness and investi-

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[9] Heimann v. City of L.A., note 8 *supra* at 755, 185 P.2d at 606.

[10] 111 So. CALIF. L. REV. 94 (1937).

[11] See dissent by Justice Traynor in People v. LaMacchia, 41 Cal.2d at 754, 264 P.2d at 26 (1953).

[12] 48 Cal.2d 717, 312 P.2d 680 (1957).

gate its merits, which would "lead to as many side issues as transactions, and render the investigation interminable." The earliest cases establishing the admissibility of evidence of the sales of similar property in proving land value recognized the same presence of disadvantage and advantage, but found the scales decidedly tipping in favor of the benefits derived. They admitted the validity of the objection that such evidence might raise collateral issues, but thought it was "more than compensated for by its value in aiding the jury to a correct conclusion."[13]

In *East Pennsylvania R. Co. v. Heister*,[14] the leading case on the minority view (often called the "Pennsylvania Rule"[15]) holding evidence of other sales inadmissible to prove land value, Judge Thompson presented, as an additional objection to admitting such evidence, the argument that the price one purchaser might have paid for his property is "certainly a collateral fact to an issue involving what another should receive, and, if in no way connected with it, proves nothing." There can be no rebuttal to this objection as it is stated, for surely if the sales offered in evidence are "in no way connected" with the property in controversy, there is no place for it as evidence under any circumstances.

However, issue can be taken with the portion of Judge Thompson's statement that refers to such sales as "collateral facts" in which he intimates that they have no bearing on the value of the land in question. When a parcel of land is taken by eminent domain, the measure of compensation to be awarded is the price which would be agreed upon at a voluntary sale between an owner willing to sell and a purchaser willing to buy. In other words, the condemnee must receive the fair market value of the land.[16] The value of other marketable articles possessing substantially similar qualities is strongly evidential in proving value, whether of chattels or real property, and is so treated in commercial life. All the argument and protestation conceivable cannot alter the fact that the commercial world perceives and acts on this relevancy.[17] Indeed, even the California courts have subscribed to this theory consistently when applied to personal property or labor and services.[18]

However, we must pay heed to Judge Thompson's veiled warning that the sales offered in evidence must be in some way connected with the property in controversy. The lack of similarity with the land in question may or may not exist in any given situation, but it is a constantly threatening possibility, and the rational and practical way to solve the problem seems to be to allow the trial court, in its discretion, to exclude such evidence when it might involve a confusion of issues and mislead the jury, but otherwise to receive it. The probative value of evidence as to sales prices of other land is derived from the light thrown on the value of the property in controversy. Therefore a substantial similarity between the different parcels of land is prerequisite to relevancy.[19] Moreover, it is incumbent upon the party desiring to present such evidence to lay a proper foundation for its admissibility by showing such similarity.[20] The proximity, quality and use of the property, and

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[13] St. Louis K. & N.W. R.R. v. Clark, 121 Mo. at 171, 25 S.W. at 196 (1894).

[14] 40 Pa. 53 (1861).

[15] 118 A.L.R. 870.

[16] San Diego Land & Town Co. v. Neale, 88 Cal. 50, 25 Pac. 977 (1891); Note, 1 U. OF DETROIT L.J. 147–49 (1932).

[17] WIGMORE, EVIDENCE § 463 (3d ed. 1940).

[18] See cases cited in note 5 *supra*.

[19] For a collection of cases illustrating the requirements of substantial similarity, see WIGMORE, EVIDENCE § 463 (3d ed. 1940).

[20] O'Hare v. Chicago, M. & N. R., 139 Ill. 151, 28 N.E. 923 (1891).

the recency of the sale are among the factors which have been considered by the courts in those jurisdictions where the general rule is to admit such evidence in determining whether the specific evidence offered should be admitted or excluded.[21] The degree of similarity required between the realty to be condemned and other parcels of realty offered in evidence to prove value cannot be governed by any fixed rule. The admissibility of such evidence must, in each instance, be determined by the trial judge. This requirement of substantial similarity, left to the discretion of the trial court,[22] thus serves as a proper safeguard to prevent the proceedings from becoming saturated and prolonged by introduction into evidence of sales of such character as to indicate that they could have no probative value in determining the value of the property in controversy, and as a barrier against confusing and irrelevant flights into remote subjects. Indeed, the records from those states which admit evidence of other sales abound with cases wherein the trial court refused to admit evidence due to an obvious lack of similarity with the realty in suit.[23]

From the very nature of land no two parcels can be exactly alike. However, if the similarity is near enough to afford some material assistance to the jury in determining the relative values, then, and only then, would such selling prices be admissible. It is readily agreed in all jurisdictions that if they are so dissimilar as to mislead or confuse the jury then the other sales would be inadmissible.[24] By adopting the majority rule at such a late date, California's courts have the opportunity to draw on the cases of other jurisdictions where it has been applied very successfully over the years, and can use those cases as a guide to determine when and where to draw the line of admissibility. Courts in those jurisdictions which follow the general rule allowing evidence of other sales[25] have held such evidence inadmissible when a lack of similarity in the following factors prevented the establishment of a proper basis for comparison of land values:

(1) *Distance*—The realty in question must not be so far distant from the land sold as to admit of geographical differences affecting the relative market values;[26]

(2) *Location*—The availability of and situation with respect to commercial and/or residential advantages and conveniences must be comparable;[27]

[21] Kankakee Park Dist. v. Heidenreich, 328 Ill. 198, 159 N.E. 289 (1927); Illinois Cent. R.R. v. Howard, 196 Ind. 323, 147 N.E. 142 (1925). The comparable provisions set down by the California Supreme Court in the *Faus* case are quoted from WIGMORE, EVIDENCE § 463 (3d ed. 1940): "The value or sale price of the other property is relevant only when the property is substantially similar in conditions."

[22] Aledo Terminal R.R. v. Butker, 246 Ill. 406, 92 N.E. 909 (1910); MCCORMICK, EVIDENCE, § 166 at 348 (1954).

[23] For a compilation of cases see 118 A.L.R. 876 (1939) and 174 A.L.R. 389 (1948).

[24] Wassenich v. Denver, 67 Colo. 456, 186 Pac. 533 (1919); Stolze v. Monitowac Terminal Co., 100 Wis. 208, 75 N.W. 987 (1898); O'Hare v. Chicago, M. & N. R., 139 Ill. 151, 28 N.E. 923 (1891).

[25] Those jurisdictions admitting evidence of other sales on the issue of the value of land include: Ala., Ark., Colo., Conn., D.C., Ill., Kan., Ky., La., Me., Md., Mass., Miss., Mo., N.H., N.J., Ohio, Ore., R.I., S.C., Tenn., Tex., Utah, Va., Wash., W.Va., Wis., Wyo.

[26] James Millar Co. v. Commonwealth, 251 Mass. 457, 146 N.E. 677 (1925) (in a different town 25 miles away; other factors); *Re* Graves, 182 Fed. 443, 25 Am. Bankr. R. 372 (1910) (timberland 16 miles away, no other factors); Ham v. Salem, 100 Mass. 350 (1868) (ice pond 7–8 miles away).

[27] Hazard v. Eversole, 237 Ky. 242, 35 S.W.2d 313 (1931) (land in controversy near a branch stream and lots sold were not; also located on different streets); Sanitary Dist. v. Baumbach, 270 Ill. 128, 110 N.E. 331 (1915) (residential tracts offered in evidence were only one mile away from land in issue, but were near a Negro settlement and ¾ m. closer to railroad

(3) *Improvements*—The presence of such improvements as structures, markers for subdivisions and other physical additions to one parcel which were not present on the other has been held to prevent a basis for comparison;[28]
(4) *Time*—The sales of the similar property cannot be so remote in time as to preclude a similarity in the market values;[29]
(5) *Mode or Character of Sale*—The sales offered in evidence must have been made voluntarily on a free and open market;[30]
(6) *Miscellaneous Matters*—The court will consider all aspects of the evidence offered and will exclude any which tend to mislead or confuse the jury.[31]

Although some means, such as expert opinion evidence, were available under the former procedure to provide the court with reliable proofs of land value, the admission of sales prices of similar property, under the new rule of procedure, is clearly based on reasonable necessity and common sense. It will give additional tools to aid the jury in arriving at a true market value. In following the growing tendency to allow the introduction of such evidence to elicit the truth, the doctrine set forth in *Los Angeles v. Faus* will doubtless not be limited in scope to condemnation proceedings. It inevitably must affect all litigation wherein the value of land is in issue, such as inheritance tax proceedings.[32]

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tracks); Sanitary Dist. v. Corneau, 257 Ill. 93, 100 N.E. 517 (1912) (stone quarries differently situated with reference to shipping facilities); Newbold v. International & G.N. R.R., 34 Tex. Civ. App. 525, 78 S.W. 1079 (1904) (lot offered in evidence directly across street from parcel in question but not as well situated with reference to railroad tracks).

[28] *Re* Housing Authority, 136 N.J. 60, 17 A.2d 812 (1941) (property sold was improved with buildings whereas the land in controversy was vacant); Ft. Worth v. Charbonneau, 166 S.W. 387 (1914) (land in controversy was bottom land susceptible to irrigation and under cultivation, while the evidence offered concerned a tract only 3 miles away, part of which was broken and not lending itself to either cultivation or irrigation); Martin v. Chicago & M.E. R.R., 220 Ill. 97, 77 N.E. 86 (1906) (selling price of subdivided land held inadmissible to prove value of acre property, not subdivided); Chicago & S.L. R.R. v. Kline, 200 Ill. 334, 77 N.E. 229 (1906) (prices paid for country estates owned by wealthy city residents held inadmissible to prove value of immediately adjacent farm lands); Concordia Cemetery Ass'n v. Minnesota & N.W. R.R., 121 Ill. 199, 12 N.E. 536 (1887) (evidence of sales of lots in other cemeteries inadmissible to prove value of land owned by cemetery but not used for cemetery purposes).

[29] Forest Preserve Dist. v. Collins, 348 Ill. 477, 181 N.E. 345 (1937) (sale in 1925 held inadmissible to prove land value in 1930 where there was a big decline in realty prices in the vicinity during that period); Dickey v. Houston Independent School Dist., 300 S.W. 250 (1927) (two years); Lanquist v. Chicago, 200 Ill. 69, 65 N.E. 681 (1902) (seven years); Shattuck v. Stoneham Branch R.R., 6 Allen 115 (1863) (seven years).

[30] Los Angeles v. Cole, 28 Cal.2d 509, 170 P.2d 928 (1946) (condemnation awards); West Skokie Drainage Dist. v. Dawson, 243 Ill. 175, 90 N.E. 377 (1909) (foreclosure sale); South Park v. Ayer, 237 Ill. 211, 86 N.E. 704 (1908) (price paid by condemner for other property purchased for use in same enterprise).

[31] Mt. Olive v. Braje, 366 Ill. 132, 7 N.E.2d 851 (1937) (other sale made in satisfaction of prior obligations of the seller to the buyer); Lewisburg & N. R.R. v. Hinds, 134 Tenn. 293, 183 S.W. 985 (1915) (sale presented in evidence held inadmissible because seller was in poor financial straits at time offer was made); Burley v. Old Colony R.R., 219 Mass. 483, 107 N.E. 365 (1914) (owner of property sold it to corporation of which he was both an officer and a director).

[32] Estate of Ross, 171 Cal. 64, 151 Pac. 1138 (1915), was a proceeding to establish the value of land for inheritance tax purposes. The court expressly relied on the *Pearson* case in holding that sales of other lands were inadmissible in evidence. Inasmuch as the *Faus* case overrules this doctrine as set down in the *Pearson* case, it seems that the new rule of procedure would be applicable to this fact situation also and, were it being tried today, would result in the admission of the sales of other similar lands in evidence to prove the valuation for inheritance tax.

There is no logical reason why the value of land should not be proved in court as it is proved to the satisfaction of the businessman out of court, and that is by establishing a market value based on the prices obtained for substantially similar property sold in a free and open market.

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