pomuceno, not being reduced to a judgment, should not be entitled to any preference binding against the Federal Films, Inc., which is not a party hereto, because article 1924 of the Civil Code as a matter of fact distinguishes credits evidenced by a public document from those evidenced by a judgment. At any rate, in so far as the absence in this case of the common debtor is concerned, all the defendants are on equal footing.

The next in preference, in our opinion, is the credit of appellant Domingo Leonor because, although he caused a notice of garnishment to be served upon the plaintiff on February 17, 1947, or subsequent to the notice of garnishment of appellant Marciano de la Paz on February 5, 1947, the former's credit is none the less evidenced by a public instrument dated July 19, 1946, duly presented as exhibit. Preference claimed under a public document is not lost by the mere fact that the credit is made the subject of a subsequent judicial action and judgment. Even appellee Pablo Roman admits this proposition.

The next preferred credit is that of defendant-appellee Pablo Roman, evidenced by a judgment which became final on September 26, 1946. It is contended on the part of appellant Domingo Leonor that said judgment was not yet final then, because an appeal was taken therefrom to the Supreme Court which resolved it in favor of appellee Pablo Roman only on May 27, 1947. However, as correctly observed by counsel for the latter, the judgment of September 26, 1946, was not appealed, and the petition filed before the Supreme Court was one for certiorari against order of the trial court dismissing the appeal; and, indeed, two writs of execution had been issued during the pendency of the certiorari proceeding, one on December 24, 1946, and another on January 9, 1947. In McMicking vs. Lichauco, 27 Phil. 386, it was held that "a judgment upon which execution has not been stayed, under the provisions of section 144 of Act No. 190, is entitled to the preference provided for in article 1924 of the Civil Code."

The remaining credit to be paid is that of appellant Marciano de la Paz, whose notice of garnishment was served on the plaintiff of February 5, 1947, the appealed decision being correct on this phase of the case. Serapion D. Iñigo failed to present any evidence in support of his claim.

It being understood that the various claimants should be paid in the order indicated in this decision, and that none of them is entitled to receive any interest (as the plaintiff-appellee cannot be deemed as having defaulted in paying out the insurance proceeds in question), the appealed judgment, as thus modified, is hereby affirmed. So ordered without costs.

Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador and *Concepcion, J.J.*, concur.

II

Republic of the Philippines, Plaintiff-Appellant, vs. Jose Leon Gonzales, et al., Defendant-Appellants, G. R. No. L-4918, *May* 14, 1954, *Bengzon, J.*

1. CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION, HOW DETERMINED. — In determining just compensation or the fair market value of the property subject of expropriation proceedings, evidence is competent of bona fide sales of other nearby parcels at times sufficiently near to the proceedings to exclude general changes of values due to new conditions in the vicinity.

2. ID.; ID.; ID.; RESALE TO INDIVIDUALS. — Whether, in expropriations for resale to individuals, a more liberal interpretation of "just compensation" should be adopted, *quaere.*

3. ID.; ID.; ENTRY OF PLAINTIFF UPON DEPOSITING VALUE; OWNER ENTITLED TO INTEREST. — In condemnation proceedings the owner of the land is entitled to interest, on the amount awarded, from the time the plaintiff takes possession of the property.

Angel M. Tesoro, Ramirez & Ortigas, Alberto V. Cruz, Guillermo B. Ilagan, Filemon I. Almazan and *Fortunato de Leon* for defendants and appellants.

Solicitor General Pompeyo Diaz and *Solicitor Antonio A. Torres* for the plaintiff and appellant.

DECISION

BENGZON, *J.*:

In January 1947, in the Court of First Instance of Rizal, the Republic started this proceedings under Com. Act No. 539 for the purpose of expropriating an extensive tract of land — over 87 hectares — for resale to the tenants thereof. Situated within the Maysilo Estate, Caloocan, and originally covered by Transfer Certificate of Title No. 35486 the property is now represented by seven Transfer Certificates of Title, numbered and owned respectivley: 1373 by Jose Leon Gonzalez; 1378 by Juan F. Gonzalez; 1369 by Maria C. Gonzalez-Hilario; 1372 by Concepcion A. Gonzalez-Virata; 1370 by Consuelo Gonzalez-Precilla; 1371 by Francisco Felipe Gonzalez; and 1374 by Jose Leon Gonzalez, et al.

Eight kilometers north of Plaza Santa Cruz, 1.7 kilometers east of Rizal avenue, and 2 kilometers above Highway 54, the estate is bounded by the Araneta Institute property, the Victoneta Inc., the Balintawak Estate Subdivision, the Seventh Day Adventists' land, and the Piedad Estate. It lies within the sites of the University of the Philippines and the Capitol and within the field of expansion of the City of Manila.

All the defendants at first opposed the compulsory sale; but subsequently they waived the objection, recognizing the social-justice aims of the Government, (there were about two-hundred tenants) and agreed to the designation of commissioner to determine the reasonable market value of the property to be taken. Wherefore, in June 1948, the court appointed the following commissioners: Atty. Erasmo R. Cruz, recommended by defendants, Assistant Fiscal Sugueco, suggested by plaintiff, and Deputy Clerk Benito Macrohon, selected by the judge.

In the performance of their duties, the Commissioners received oral and documentary evidence, inspected the premises, and thereafter submitted one majority report, plus one minority report by Commissioner Sugueco. The first divided the property into two parts: one portion previously occupied by the U. S. Army with roads, playground, water and sewerage system, and valued at 5 pesos per sq.m.; and another consisting of rolling lands and rice fields priced at fifteen centavos per sq.m. The report thereby fixed ₱1.75 per sq.m. as the average compensation for the entire estate. On the other hand Sugueco's minority opinion rated the whole parcel at ten centavos per square meter only.

The two reports provoked objections from both sides, whose oppositions were seasonably filed in writing. On May 6, 1949, obeying orders of the trial judge, Clerk of Court Severo Abellera repaired to the premises, made inquiries, and reported afterwards that the realty was fairly worth ₱1.90 per square meter.

Then on March 29, 1950, the Hon. Gabino Abaya, Judge, rendered his decision appraising the estate at ₱1.50 per square meter. It should be explained, in this connection, that all defendants agreed the entire property should be evaluated as a whole, for the purpose of facilitating the award.

The parties petitioned for reconsideration. Denial thereof motivated this appeal both by the plaintiff and by the defendants.

The plaintiff, in a series of assignments reaches the conclusion, and submits the proposition, that "there is no reliable standard for determining the reasonable worth of the defendants' land except the tax declaration Exh. B which puts its value at ₱28,850.00 x x x. Taking into account, however, that the assessed value is usually lower by 1/3 of 1/2 of the real market value, the defendants should be given an additional 30% of ₱28,850 or ₱8,655.00."

Such position is clearly untenable. The declaration was made

in 1927; and this Court can take judicial notice of the upward trend of values, particularly of lands in or near Manila. As a matter of fact, the revised assessment in 1948 valued the entire property at ₱366,150 i.e., 0.42 per sq.m.—which is more than ten times the 1947 assessment. And in its motion for reconsideration submitted to the lower court, plaintiff invoked, as "index of value" of the land, the sale made to Francisco R. Aguinaldo, one month before the expropriation, at one peso per sq.m. — thus giving the lot in question a total value of ₱871,982.00.

Another piece of evidence, indicative of prices in the vicinity, is Exh. M showing the Seventh Day Adventists purchased in 1927, at the rate of ₱0.25 per sq.m., a big lot adjoining the land to be expropriated. After twenty years the prices should be much higher. Yet the Government insists in compensating herein defendants at the rate of 0.04 per sq.m. Obviously unmeritorious contention.

Now as to the defendants' appeal. Although they took the view — in the court below that the land value could be reasonably fixed at ₱1.75 per sq.m., (1) the defendants here maintain they should be compensated at the rate of ₱2.50 per sq.m. They quote with approval His Honor's summary of their own evidence as follows:

> "On November 28, 1945, Lorenzo Buenaventura bought and paid at ₱2 per square meter a lot which is almost adjoining the lands in question — it being separated only by a street called Sta. Quitoria (Exh. "2"); that on July 29, 1949, the Balintawak Estate Inc. sold to Narciso T. Reyes a parcel of land at the rate of ₱₱2.84 per square meter (Exh. "3-K"); that on December 29, 1946, Concepcion Andrea Gonzalez sold to Francisco R. Aguinaldo a portion of the property in question at ₱1 per square meter (Exh. "3-L"); that on November 13, 1947, Jose M. Rato sold to the Araneta Institute of Agriculture 373, 377 (3,730) square meters at the rate of ₱1 and ₱1.60 per square meter (Exh. "3-N"); that on May 14, 1948, Ambrosio Pablo and Sons sold to Cromwell Cosmetic Export Company 20,764 square meters at the rate of ₱2.50 per square meter (Exh. "3-O"); that on November 14, 1947, the Manila Golf Club sold to the Ayala & Company 367,817 square meters at the rate of ₱1.08 per square meter (Exh. "3-P"); that on April 26, 1948, Ayala & Company sold to J. M. Tuazon & Company the property described in Exh. "3-P" at the rate of ₱2.50 per square meter; Julian Encarnacion, secretary of the Balintawak Estate Inc. subdivision, which adjoins the property in question, declared that the lots of said subdivision, are sold from ₱6 to ₱12 per square meter in cash and from ₱9 to ₱15 per square meter by installment."

And they rely principally on the prices in Exhibits 3-K, 3-O and 3-Q because they "were sufficiently near in point of time with the date of condemnation proceedings" to reflect true land values in the locality.

However such Exhibits cannot be taken as conclusive valuation. In Exh. 3-K, the parcel was purchased from the Balintawak Estate Inc. a real estate subdivision corporation. Prices in realty subdivisions are necessarily higher, because of improvements therein, such as roads, bridges, curbs etc. The sale in Exh. 3-O, though exhibiting a higher valuation, cannot be literally followed because it refers to a much smaller lot on the provincial highway. The prices in 3-Q of the Manila Golf Club, refer to a lot nearer Manila by a kilometer. Hence defendants-appellants' demand for ₱2.50 per square meter may not be upheld.

Now having found plaintiff's proposition as unreasonable, and defendants' claim for ₱2.50 as unfounded, we may proceed to examine whether the trial court's determination of the market value should be modified, on the basis of the evidence of record. It is needless to repeat that the Government, in eminent domain proceedings, must pay just compensation or the fair market value, that such value represents the price which the property will bring when offered for sale by one who desires, but is not obliged, to sell and is bought by one who is under no imperative necessity of having it (2) and that in determining such value, evidence is competent of bona fide sales of other nearby parcels at times sufficiently near to the proceedings to exclude general changes of values due to new conditions in the vicinity (3).

Parenthetically, in expropriations like this — for the benefit of other individuals, not directly benefiting the public — it might be interesting to inquire whether a more liberal interpretation of "just compensation" should be adopted in favor *of the owner who is compelled* to part with his private property for the exclusive benefit of a few. Consider that like other eminent domain proceedings, this does not directly benefit him as a part of the "public."

However, this is unnecessary, for the record yields sufficient elements of decision to make a just and equitable award.

The majority commissioners (4), rejecting the plaintiff's evidence, took into account the bona fide sales of nearby parcels and, aided by personal knowledge they gained thru inspection, arrived at the conclusion that the reasonable market value of the entire property was ₱1.75 per square meter. The dissenting commissioner's report, based mainly on the 1927 assessment values, proved too conservative to be of any help.

The Clerk of Court was specially instructed to make a new assessment, in view of conflicting reports and the objections of the parties. This officer after conducting an ocular inspection of the place and gathering information from people residing in the vicinity recommended ₱1.90 per sq. m. after hearing the parties, the trial judge, in his discretion, estimated that under the circumstances, one peso and fifty centavos per square meter was reasonable compensation for the hacienda.

We have not been shown wherein the trial judge abused his discretion in reducing the prices recommended by the court's referees. Two purchase-and-sale transactions in 1947, about neighboring realty may shed favorable light upon His Honor's valuation.

In Aug. 1947 Jose Ma. Rato sold to Victoneta Inc. 581,872 sq.m. of adjoining land at 0.85 sq.m. (Exh. 3-M).

In July 1947 Jose Ma. Rato sold to Araneta Institute of Agriculture four parcels of land totalling 373,377 sq.m. adjoining the land sold by Exh. 3-M at prices ranging from ₱1.00 to ₱1.60 per sq.m. No improvements were included in both sales.

These two parcels, being sufficiently large and located within the vicinity may afford some adequate bases of comparison. It is unimportant that the sales were consummated several months after these proceedings had begun, because unlike other eminent domain proceedings for public use — roads, bridges, canals, markets etc. — these do not tend to inflate prices of adjoining properties.

These two sales were made by a Spaniard residing in Madrid, thru a local agent. He was obviously anxious to liquidate his affairs here, as shown by the circumstance that in two months he disposed of two sizable parcels of real estate. Such disposition and such absence must have given him a natural disadvantage in the bargaining, so that a discount of 10 or 20 per cent was not improbable.

The topographical features of Rato's land do not appear. It probably is agricultural — sold to an agricultural institute. On the other hand, the defendants' hacienda is mostly high ground, rolling hills (p. 206 Record on Appeal) which, subdivided into residential lots, would command higher prices.

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(1) They said: "Wherefore, the herein defendants respectfully pray that the decision in question be reconsidered and amended by fixing the value for the purpose of compensation at an amount ranging from ₱1.75 to ₱2.50 per square meter. x x x" Such language means the property could be bought at ₱1.75 per sq.m. Some of defendants asserted ₱2.00 was just payment.

(2) Manila Railroad Co. v. Alan 36 Phil. 500; Manila Railroad Co. v. Caligrihan 49 Phil. 326.

(3) Manila Railroad Co. v. Velasquez 32 Phil. 286.

(4) One of them appointed by the court, and therefore presumably impartial.

Another thing: whereas defendants' land is served by Reparo Street, the Victoneta Inc. lot does not enjoy that advantage (Exh. 3).

But most significant is the admitted fact that one-third of defendants' land has permanent improvements, made by the U. S. Army, consisting of good paved roads, playgrounds, water system, sewerage, and general levelling of the land suitable for residential lots (p. 214 Record on Appeal) together with electric installations and buildings (p. 206 Record on Appeal).

Considering the above circumstances, in relation to the price of ₱2.50 paid for the Manila Golf Club by J. M. Tuason & Co., we do not feel justified to declare that the price of ₱1.50 is excessive. Neither is it too low. Two defendants, at least, admitted it was just and reasonable (p. 274 Record on Appeal).

Wherefore, on the question of just compensation, the trial judge's assessment has to be approved.

Yet there is one point on which defendants' appeal should be heeded. The Government deposited ₱20,850 and entered the premises by virtue of a court order, under Act No. 2826. The Rural Progress Administration took possession on or about Jan. 25, 1947. Defendants lost the control and use of their property as of that date. Their counsel now claim legal interest on the amount of compensation; and the plaintiff agrees, as it has to. In Philippine Railway v. Solon 13 Phil. 34 we held that in condemnation proceedings "the owner of the land is entitled to interest, on the amount awarded, from the time the plaintiff takes possession of the property."

Another assignment of error of the defendants is that the lower court failed to make the plaintiff pay the costs. The plaintiff appellee acknowledges this, in view of section 13, Rule 69. The last part of the section is not applicable, because the plaintiff appealed and lost.

Wherefore the decision of the court *a quo* will be affirmed as to the value to be paid by the plaintiff for the expropriated land. It is of course understood that the money already deposited and taken by defendants should be discounted. Said decision, however, will be modified by awarding interest to defendants at six per cent from Jan. 25, 1947 until the date of payment. Costs will be chargeable to the plaintiff. So ordered

Paras, Pablo, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador and *Concepcion, JJ.* concur.

III

Ex-Meralco Employees Transportation Co., Inc., Petitioner-Appellant, vs. Republic of the Philippines, Respondent-Appellee, G. R. No. L-5953, *May* 26, 1954, *Jugo, J.*

MASTER AND SERVANT; MASTER'S LIABILITY FOR DAMAGES CAUSED BY HIS SERVANT IS DIRECT AND NOT SUBSIDIARY. — The liability of a master for damages caused by his employee or agent in a business enterprise is primary and direct and not subsidiary. Subsidiary liability of the employer takes place only when the action is brought under the provisions of the Revised Penal Code.

DECISION

JUGO, *J.*:

On July 26, 1951, the Republic of the Philippines, represented by the Solicitor General, filed in the Municipal Court of the City of Manila (Civil Case No. 16716 of said court), a complaint against the corporation, known as Ex-Meralco Employees Transportation Company, Inc., for the recovery of damages in the sum of ₱1,332.17, alleging that:

" x x x the plaintiff is the owner of a Ford Service Truck bearing Plate No. T.P.I.—875 assigned for the use of one of its instrumentalities, the Bureau of Telecommunications, Manila;

"That on January 10, 1951, while plaintiff's service truck was at full stop near a safety island in the middle of España Boulevard, it was bumped by a passenger truck bearing Plate No. T.P.U.—5112 belonging to and operated by the defendant corporation and driven by defendant's employee one 'Pakia Adona' who fled immediately after the collision."

The defendant corporation filed the following answer:

"What actually happened was that while the defendant's bus was heading toward Quiapo along the España Avenue, all of a sudden, the plaintiff's service truck, without making any sign on the part of its driver, unexpectedly, and instantly swerved to the left toward the front of defendant's bus for a U turn at the safety island at the intersection of España and Miguelin streets, without first taking necessary precaution, and violating thru street traffic rules and disregarding the stream of vehicles flowing along the thru España street or avenue, so sudden and swift and without clear distance that to evade the collision was physically and materially impossible on the part of the defendant's driver, although the latter tried to evade it, in vain, by immediately applying the brakes and at the same time swerving to the left as to swerve it to the right was impossible and fatal to the plaintiff's truck, so that the collision was absolutely due to the fault, recklessness, and omission of thru street traffic rules on the part solely of the plaintiff's driver, and without any fault on the part of the driver of the defendant; and defendant's driver fled due to threat of bodily harm shown by plaintiff's personnel on the spot."

On the date set for the trial, the defendant's (herein petitioner's) counsel objected to the trial because, as he alleged, there were sufficient ground for the dismissal of the complaint. On January 16, 1952, he filed a formal motion to dismiss on the ground that "the plaintiff's complaint was without any cause of action as the driver concerned had not as yet been adjudged liable for the damages, if any, complained of." The motion was denied.

The defendant (Petitioner herein) filed in the Court of First Instance of Manila a petition for certiorari and preliminary injunction, praying said court to annul the order of the municipal court denying the dismissal of the case for the reason that the latter acted in excess or abuse of discretion.

The Court of First Instance denied the petition for certiorari in the following language:

" x x x The facts alleged by the petitioner in its petition, and admitted by the respondents in their answer, cannot be the basis for the issuance of a writ of certiorari against the respondents, as prayed for by the petitioner, because it is within the power and jurisdiction of the respondent Judge to hear and decide Civil Case No. 16716 of the Municipal Court of the City of Manila, and that the said respondent Judge committed no abuse of discretion or excess of jurisdiction in denying petitioner's motion for the dismissal of said case."

The above order of the Court of First Instance is correct. The remedy of the petitioner should be a regular appeal filed in due time to the Court of First Instance. The ground that the complaint did not state facts sufficient to constitute a cause of action is not jurisdictional. The allegation that a criminal information should have been filed previously against the driver is, besides not being jurisdictional, untenable for the reason that the liability of a master for damages caused by his employee or agent in a business enterprise is primary and direct and not subsidiary. Subsidiary liability of the employer takes place only when the action