

the automatic saving of exceptions, appellate review of many acts of trial courts will continue to be refused. At the same time it is very desirable for the sake of convenience that trial courts should adopt a rule dispensing with the formality of the saving of exceptions. The confusion which results when such a rule is in force seems to be caused by the exceptional character of this procedure. The Illinois statute universalizes this practice and does away with the difficulty.

J. D. F., '32.

**APPEAL AND ERROR—JURISDICTION—EMINENT DOMAIN AS INVOLVING TITLE TO REAL ESTATE.**—In a condemnation suit where the only issue before the St. Louis Court of Appeals was the propriety of the award of damages in the trial court, the case was transferred to the Supreme Court of Missouri on the ground that it involved title to real estate. Const. Mo. art. 6 sec. 12. *Held*, if the only question in a condemnation proceeding is the right to condemn and determine damages, title is not involved. It is neither "in dispute" nor "in issue." It is merely "affected." *Missouri Power and Light Co. v. Creed* (1930) 30 S. W. (2d) 605.

Most of the older cases have determined that title is involved even where damages or the right of condemnation is the main issue. *Hayes v. Ellison* (Mo. 1916) 191 S. W. 49; *Kansas City v. Railroad* (1905) 187 Mo. 146, 86 S. W. 190; *State ex rel. v. Rombauer* (1894) 124 Mo. 598, 28 S. W. 75; *City of Tarkio v. Clark* (1905) 186 Mo. 294, 85 S. W. 329. But these cases fail to explain how or why the title is involved so as to be in issue, a subject of controversy. The *Rombauer* case, in coming to its conclusion, reasons that in condemning land for railroad tracks the rights of exclusive use and possession, essential elements of perfect title, are taken from the landowner and vested in the corporation. The title, however, is not "in issue" directly as opposed to collaterally. It is rather "affected," and the only question is whether the defendant's land should be subjected to an easement.

The court previously reasoned that in condemning for a sewer only the easement and not the fee is affected; but while the fee remains in the owners, their right to sue is either lessened or taken away, and as a consequence the title is affected to the extent of the injury inflicted. *City of Moberly v. Totter* (1915) 266 Mo. 457, 181 S. W. 991. See also *Prairie Pipe Line Co. v. Shipp* (Mo. App. 1923) 240 S. W. 473. The instant case, however, demands that title be more than affected, possibly to the extent that the condemnation issues be incidental to the question of ownership.

The basic issue is whether courts should accept the *Moberly* case rule that title is involved if there is a question whether or not the title should be or is going to be lessened, or the new rule that title is involved only where there is the actual question of wherein the title or any portion thereof is vested. This latter view, that of the instant case, would seem to narrow the scope of cases which could be appealed on the constitutional ground to those where the real and central issue is to whom the title belongs. This result is commendable in that it will help to relieve the Missouri Supreme Court of an overflow of litigation.

H. R. S., '32.