

reasonable access to the street upon which his property abutted. There was no right to have traffic flow pass the property, so in a case where the road was closed beyond the land, there had been no interference with a property right. The Snow case approach had been limited to rural property.

In the instant case, the court abolished the distinction between urban and rural property by overruling *Hiatt v. City of Greensboro*, and holding that the abutting owners had only the right of reasonable access to the street and that any inconvenience suffered because of the cul-de-sac was greater in degree but not in kind than that suffered by the public in general.

The court noted that if recovery was permitted for reduction of the flow of traffic or for circuitry of travel practically every property owner in a town could recover when the highway commission constructed a by-pass to expedite traffic. (*Wofford v. North Carolina State Highway Commission*, 140 S.E. 2d 376, February 1965)

173-3 HIGHEST COURT OF MASSACHUSETTS RULES OWNER NOT ENTITLED TO COMPENSATION FOR CIRCUITY OF TRAVEL WHERE HIS ACCESS TO AN EXISTING ROAD WAS NOT IMPAIRED

In 1959, the Commonwealth of Massachusetts took a small triangular parcel of an owner's land for construction of a limited access highway. This small area did not abut on an existing road. Prior to the taking, all of the owner's land had access to Howard Road which was used to reach King Street. After the taking, Howard Road was dead ended at the new limited access highway - about 300 feet south of the most southerly point of the owner's land abutting on Howard Road. The consequence of the closing of this road was that the condemnee, who formerly had reached King Street from his land by a short 1,250 foot drive south on Howard Road, now could reach that street only by means of traversing substantially the whole length of Howard Road, a long stretch of Concord Road, and a longer distance on Littleton Road, a total of several miles of circuitous travel.

The trial court refused to give the instructions requested by the Commonwealth to the effect that the condemnee was not entitled to any compensation for the closing of Howard Road because he still had the same access thereto as he had had prior to the taking and construction of the limited access highway, unless his injury was special or peculiar to his land as distinguished from common injury to other land abutting Howard Road. The Commonwealth appealed to the supreme judicial court which decided that the instructions should have been given. It pointed out that apart from a certain statutory provision, a landowner was not entitled to compensation merely because his access to the public highway system was rendered less convenient, if he still had reasonable and appropriate access to that system after the taking. The statute provided that if a limited access way was laid out in the location of an existing public way, the owners of land abutting upon such existing public way were entitled to recover damages for the taking of or injury to their easements of access to such public way.

In the case at bar, however, although a piece of the owner's land was

actually taken for the limited access highway, neither that taking nor the project itself had any effect whatsoever upon the owner's easement of access to Howard Road, the only highway upon which, prior to the taking, his land abutted. His damage was caused by the closing of a part of Howard Road at a point some 300 feet from his land. That closing itself involved no taking of any land belonging to the condemnee. He had the same convenient access to Howard Road from all parts of his land, except the small condemned parcel (which did not abut on any road) as he had before, and could use that road as freely in a northerly direction.

The appellate court noted that the injury to the owner was substantial if, as a matter of law, he was entitled to recover the amount of any reduction in the value of his remaining land by reason of the closing of Howard Road and the loss of a short, convenient approach to King Street. It ruled, however, that because there was no taking of any access from the condemnee and there was no showing of special and peculiar damage to his remaining land which was different in kind than that suffered by the general public, the compensable damage to the remaining land from taking of the small area had to be limited to the diminution, if any, in the value of that remaining land caused by the separation of that area. (*La Croix v. Commonwealth*, 205 N.E.2d 228, March 1965)

173-4 COURT OF APPEALS OF ARIZONA RULES SANITARY DISTRICT MUST PAY FOR
RELOCATING SEWER LINE

The right-of-way in which the subject sewer line was located had been obtained by the State sometime prior to 1949. In that year the sanitary district was given permission to place a sewer line in the right-of-way. The permission provided that the district would have to remove the line if the portion of the right-of-way which it occupied was needed by the State. The relocation of a 30-inch interceptor sewer line constructed by the sanitary district in 1949-1950 had to be relocated because of the construction in 1960-61 of an underpass under State Highway 84 for the passage of Grant Road, a public street in the City of Tucson.

The State brought action against the sanitary district and the city to determine which of these public agencies should pay for the cost of relocating the sewer line. The trial court rendered judgment in favor of the State against both of the agencies and they appealed.

The appellate court disposed of the case against the city summarily by holding that although the city obligated itself to "maintain" the sewer line in the exercise of its governmental function, there arose no obligation to remove same. (However, the appellate court indicated that which of the public agencies should pay for the relocation would presumably be determined when the pending cross claim filed by the sanitary district against the city was determined. The trial of this claim had been severed from the issues between the State and the two public agencies and would be determined separately.)

As to the sanitary district, the appellate court first decided that the permission granted to it to lay its sewer line which contained the words: "Expiration date: 9/1/50." did not actually expire on that date. Those words were interpreted to mean that the construction of the sewer line was to be completed