Here the court denied recovery for lost agricultural use since compensation was already made for lost industrial use. However, this should not have necessarily prevented compensation for the lost crop since the actual crop is distinct in worth from the use value of the property.

The result is somewhat inconsistent with general case law and prior Florida law concerning compensation for actual losses. Past decisions recognize the predictive element in determining highest and best use and do not attempt to apply such a determination to an actual loss situation such as destroyed crops.

197-4 OFFSET TO SEVERANCE DAMAGE BY BENEFIT TO PROPERTY ACROSS HIGHWAY WHERE UNITY OF OWNERSHIP AND USE EXIST. Di Virgilio v. State Road Department, 205 So.2d 317 (Fla. 1968).

The condemnee owned land on both sides of an existing highway. Additional land was expropriated from both plots in order to widen the existing highway. The effect of the taking was to drastically reduce the area of one plot while greatly increasing the frontage of the other. The smaller plot, losing approximately 65 percent of its area, was rendered virtually useless. The State sought to offset any severance damage to the smaller plot by asserting the benefit bestowed on the larger piece of property.

Controlling the court's discussion was a Florida statute providing for set-offs to the "remaining adjoining property." The defendant asserted that the statutory language established physical contiguity as the test for set-off and consequently the separation afforded by the pre-existing highway prevented application of the statute.

The court agreed that the statute would not apply if the test were solely physical contiguity but could not agree with such a restrictive interpretation of "remaining adjoining property." The court indicated that physical contiguity was only one of three factual indications of adjoining property, the remaining two being unity of ownership and unity of use.

Noting that defendant owned both pieces of property and had dedicated them to identical and integrated use, the court refused to permit the highway to constitute a sufficient separation to defeat set-off. In support of its conclusion the court observed that defendant's answer had treated the two parcels as one and had made no objection to their condemnation as one parcel.

Finally, the court relied on the fact that an easement, the underlying fee of which remains in the condemnee, will not disturb contiguity for purposes of classification as "adjoining property."

The case is noteworthyin its broad interpretation of the rather confusing standard of "remaining adjoining property." Previous cases have been willing to find contiguity where the condemnation creates a separation between parcels, but results have not always been as uniform where the separation

already exists and the condemnation only serves to widen it. Ordinarily, the set-off is against the remaining parcel which has been improved rather than another parcel in the condemnation, or against the remaining land owned by the condemnee and determined to be sufficiently contiguous. Where, as here, the set-off is between two partially condemned parcels it would seem appropriate to combine the law of set-off and severance to determine contiguity.

197-5 SEEDLING TREES INCAPABLE OF TRANSPLANT NOT A SPECIAL CROP, BUT MAY BE CONSIDERED FOR INCOME LOSS AND VALUATION OF LAND ON WHICH THEY ARE LOCATED. State, Department of Highways v. Black, 207 So.2d 583 (La. App. 1968).

Defendant landowner suffered expropriation of property containing 76 trees, including 46 pecan trees. She alleged that the pecan trees constituted a "special crop" for purposes of both harvesting and nursery resale, and compensation should be given for loss of both sources of income. The court determined that the trees were predominantly seedling, with only one being a planted or grafted specimen. The court further determined that the trial court was correct in concluding that the trees could not be economically removed and replanted.

In finding that the pecan grove did not constitute a nursery stock or a special stock, the court confined its speculation to the crop value of the trees themselves, rather than any fruit they might bear. To constitute a crop, the trees would have to be either capable of harvest from year to year, or be sufficiently small and replantable so as to constitute nursery stock. While clearly not harvestable for timber or other purposes, the nursery status would depend largely on their possible resale and the original purpose for their planting.

The fact that the trees were seedlings negated any conclusion that they were originally planted for nursery purposes. Further, the trees had attained a sufficient size that they were no longer easily dug from the soil and replanted. Relying on an earlier Louisiana decision on special nursery stock, State, Department of Highways v. Henderson, 138 So.2d 597 (La. App. 1962), the court concluded that since the trees were not "planted and cultivated on that property for the purpose of being dug from the soil, sold and replanted," they did not warrant treatment as a "special crop."

This adverse determination did not prevent valuation of the trees on the basis of income, shade value, and aesthetic and ornamental value. With regard to income, the court permitted consideration of the trees' crop, i.e., the pecans, despite their seedling nature because they were nonetheless fully capable of producing such income. All of these valuations, however, could only be considered as components of the total valuation of the land. They may not be compensated for independently. Further, the court held that where an expert does give a value to the land and does not separately assign a value to the trees he is presumed to have considered the various values of the trees in reaching his total valuation of the land.