

The dissent also challenged the third-person approach to valuing the improvements. Since most of the improvements were largely portable, and were in fact transported to the new location, their value should be based on those diminishment incurred through relocation--i.e., their value to the same parties at the new site--rather than salvage value at the old site. As Judge Herlihy noted, "There is affirmative evidence that these items continued to have their prior utility in the testimony that many of them were put into operation at the new location and therefore were not 'salvaged'."

The case indicates the extreme disparity in result which can occur when different initial theories of damages are adopted. The conclusions of both the majority and the dissent follow logically from their threshold premise. For the majority, the claimants' damage was occasioned by appropriation of the riparian rights and the consequent relocation and diminished value of the property were therefore compensable damages. For the dissent, computation of the claimants' losses should be confined to the property and parties involved and relocation value should give way to the altered highest and best use of the property. It is suggested that the solution lies somewhere between. Relocation is a proper subject for damages since it was directly and solely caused by the appropriation of the riparian rights. This does not, however, warrant ignoring the fact that the appropriation has conferred an economic benefit on the property which the State has a right to have offset against any losses caused by the appropriation. Similarly, valuation of the improvements should correspond to the realities of their actual use. Where salvage is the future of the item, then it should also be its valuation. But where the item, in fact, will have a useful future employment by claimant, the loss should be measured on the basis of cost involved in preserving use. To this extent such property cannot be considered a specialty and consequently the reproduction cost approach would be inappropriate. Rather, the specialties are those improvements which prove to be nontransferrable, that is, they prove their specialty by their very uniqueness to the original property.

198-2 TRIAL COURT'S REFUSAL TO RECEIVE TESTIMONY CONCERNING MACHINERY ON  
CONDEMNED PROPERTY CONSTITUTED SUFFICIENT GROUNDS FOR NEW TRIAL.  
State v. Northeast Building Co., 421 S.W.2d 297 (Mo. 1967).

This is an appeal from a lower court grant of a new trial. The case involves condemnation of a single plot of land in Kansas City which contained three main buildings and a fourth structure containing boilers and other machinery used in the operation of the other three buildings. At trial, one witness was produced by the condemnee solely to testify as to the value of the machinery and boiler without any reference to the total valuation of the property. All other witnesses had made estimates of the total value of the property and some had included in their estimates a reference to the fact that they were including the machinery in their considerations. Other witnesses made no mention of the machinery. The testimony of the witness concerning valuation of the machinery was precluded upon objection by the State that such evidence constituted a piecemeal approach to valuation. Upon later consideration, the trial judge concluded that exclusion of this testimony was erroneous and a new trial was in order.

In affirming the trial court's determination, the Supreme Court noted that it was far more liberal in upholding a trial court's grant of a new trial than it would be in reversing and remanding a judgment on the same grounds. In line with this attitude, the court examined the exclusion of the testimony on the machinery to see if it might possibly sustain the granting of a new trial.

The court refused to accept the State's argument that testimony directed only to the valuation of the machinery would constitute a piecemeal approach which is not permitted under Missouri law. The State urged that the only pertinent issue of valuation was the overall value of the land and that any approach which contemplated adding up the several values of the component parts of the property would not reflect an accurate assessment of the condemnee's loss. Thus, the State maintained, the value of the machinery was only relevant insofar as it contributed to the total value of the property taken. In line with this reasoning, the State further argued that valuation of an improvement such as boilers or machinery is presumed to be calculated in the overall assessment of the land value where there is no separate valuation of that item.

The Supreme Court observed that the arguments proposed by the State constitute an accurate reflection of the general law regarding piecemeal valuation, but the instant case presented a not infrequent exception to those general rules. Where there is a great diversity in the nature of the property to be valued, so that it is extremely unlikely that one person would have sufficient familiarity with the value of all the component parts of the condemned premises, it becomes necessary to employ witnesses to testify as to the value of individual items. Here, the boilers and machinery constituted an item of property far different from the realty itself and the structures located thereon. It is not unreasonable to expect that one witness would be incapable of expertly valuing all of those diverse items. Consequently, it becomes necessary to engage in a limited amount of piecemeal valuation in order to obtain an accurate appraisal of the value of the machinery. The testimony of the witness offered by the condemnee was eminently suited to this end and the trial judge was fully warranted in concluding that exclusion of his testimony necessitated a new trial.

Furthermore, the court noted that valuation of improvements is only presumed to be included in the overall valuation of the property in those cases where no effort has been made to obtain a separate valuation of the improvements. Here, the very testimony objected to was directed at establishing a separate valuation for the improvements and the State could not then assert that such valuation is presumed to be contained in the overall valuation of the property.

Missouri courts are ordinarily loathe to permit piecemeal valuation and the present case presents an interesting and equitable exception to that attitude. Where, as here, one of the condemned items differs considerably from the balance of the property so that it is highly unlikely that a real estate expert could competently value both, separate testimony should be permitted on the exceptional item even though it does not otherwise qualify as a specialty.

The case is an excellent example of the flexibility which should be available to a trial court in all valuation proceedings in order to avoid having improvements undervalued through the requirement of total valuation. It is unfortunately still speculative where the Supreme Court would have reversed the same case on appeal had the trial judge not granted the new trial. The arguments supporting such appellate posture are compelling, but the court's statement regarding its increased liberality in sustaining lower court grants of new trial leaves the issue in considerable doubt.

198-3 TRIAL JUDGE IS NOT WARRANTED IN APPLYING HIS OWN ESTIMATES TO A PROFFERED METHOD OF VALUATION WHERE EVIDENCE PRESENTED DIFFERENT ESTIMATES. Rockaway Peninsula Corp. v. State, 289 N.Y.S.2d 566 (Sup. Ct. App. Div. 1968).

As part of a programmed improvement of the Rockaway Turnpike, the State of New York appropriated lands on both sides of that thoroughfare on which the claimant operated a discount store complex known as Bargaintown U.S.A. The complex consisted of several structures of varying size, age, and composition ranging from a two-year-old cement block structure to a four-year-old corrugated metal car port. The one universal characteristic of the complex was that "it does not yet bear the stamp of stability attached to the more conservative type of successful business establishment." The appropriation effectively eliminated the entire business enterprise. The chief question on appeal was the method of valuation to be employed in assessing the damage to the portion of land containing the discount store complex.

The evidence offered at trial suggested two methods of valuation. The State's expert, noting the speculative nature of the business, employed replacement cost less depreciation. The claimants' appraiser advocated a capitalization method whereby lease value was capitalized at an expected income rate resulting in a figure \$69,500 higher than that of the State appraiser. Because the State challenged the comparable lease values and capitalization rates employed by claimant, the lower court was unwilling to accept claimants' appraisal. The court did, however, agree with that method of valuation and, substituting its own figures, used the technique to reach a valuation roughly half way between that of the two parties.

The Appellate Division rejected the trial court's computations as "predicated solely and simply on his (trial judge's) own subjective judgment without any basis in the evidence." The use of capitalization rates reflected conclusions or opinions on evidence which was not introduced at the trial but rather represented the trial judge's "own" experience." While a trial judge does have broad discretion to disbelieve opinion evidence or to compromise disparate claims, his eventual conclusions must have factual foundation in evidence available at the trial.

In this case, the trial judge employed independently computed rental valuations and capitalization rates in arriving at the final figure. These rates and values represented no factual evidence at the trial and could only be a factual compromise or a subjective determination. Since either alternative is forbidden the trial judge, the judgment was reversed.