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.

In reversing, the court did not make any determination as to a proper valuation method except to observe that the replacement cost approach suggested by the State was improper since the items involved were clearly not specialties. This would seem to indicate an approval of the annuity technique advocated by claimant. Even this approach was somewhat curtailed by the Appellate Division. To the extent that the formula involves computation tables which are geared to conservative business ventures, it is inapplicable to the speculative enterprise of claimants and a more realistic tabulation must be used.

The case reiterates the outer limits of a trial judge's discretion in valuation situations. While he may compromise numerous valuations into some average, he may not reject proffered valuations and then substitute his own data to achieve a compromise figure. Here, the trial judge rejected the only evidentiary foundation for a valuation figure but nonetheless proceeded to compute one by inserting a compromise formula. Such an approach necessitated a remand for reconsideration of the available evidence on this subject.

198-4 WHERE APPROPRIATED LAND IS SUBJECT TO MULTIPLE INTERESTS IT IS VALUED AS BELONGING TO ONE PERSON AND THE SEVERAL INTERESTS ARE THEN ENTITLED TO LITIGATE THEIR PROPORTIONATE RIGHTS IN A SEPARATE PROCEEDING. City of St. Louis v. Wabash R.R. Co., 421 S.W.2d 302 (Mo. 1967).

Under Missouri procedures, valuations in condemnation proceedings are made by a Permanent Condemnation Commission composed of real estate experts particularly qualified in determining land valuations. In the instant case the Commission had made a determination concerning certain property held by a trustee in which several property interests were alleged. One such interest objected that the Commission had both undervalued certain of its interests and completely failed to value other interests. The Supreme Court of Missouri affirmed the lower court's acceptance of the valuations of the Commission.

The determinations of the Permanent Condemnation Commission with respect to property valuation are presumptively valid under Missouri law and any challenge to the findings of the Commission places the burden of introducing sufficient competent evidence on the objector. In this case, the objector's attempt to overturn the report of the Commission solely on the grounds that no evidence was introduced in support of the report was rejected by the court. The introduction of evidence in support of the report is an option on the part of the Commission which does not affect the validity of the report itself.

The major question on review concerned the Commission's failure to separately value an alleged easement in one parcel of appropriated land. The claimant sought to have the case remanded for an additional assessment of the easement over that already ascribed to the land. In rejecting this contention, the court elaborately explored the existing procedures for valuation of property having multiple interests and the policy considerations supporting such an approach.