The case constitutes an expansion of the doctrine of remnant condemnation no matter how narrowly it is read. The size of the remnant is not particularly novel, but the ratio to the public use property and the avowed intention of the State agency to speculate in resale are certainly unique factors. The leading case, cited by both the majority and the dissent, is Tennessee Valley Authority v. Welch, 327 U.S. 546 (1945), which involved an excess condemnation of 6,000 acres for the TVA project. While this case clearly indicated that no absolute size limit could be placed on remnants, it had the limiting factors of a much larger initial taking, a special authorization for large-scale remnant taking, and a dedication of the remnant to public use in the form of recreational facilities. In the instant case, the fact that the remnant is 83 times the size of the initial taking should not create particular problems if the majority's analysis of the value factor is accurate. The dissent, however, raises grave doubts that the remnant actually is "negligible in value." While the majority seemed satisfied that it was, future courts might consider the possibility of some sort of equity of redemption in a remnant, equal to the award, should the property, in fact, prove to have a market. This would prevent any administrative attempts at condemnation profiteering while still securing the fisc.

202-2 CONDEMNEE IS NOT ENTITLED TO BENEFIT FROM INCREASED LAND VALUES OCCASIONED BY THE CONDEMNATION PROJECT, BUT MAY BENEFIT FROM INCREASED VALUES CAUSED BY CITY'S LAND PURCHASING THROUGH PRIVATE CORPORATION. City of Houston v. Barshop, 431 S.W.2d 914 (Tex. Ct. Civ. App. 1968).

Sometime prior to November of 1957, the city of Houston privately resolved to construct an airport to service the city. Pursuant to this decision, a group of private citizens, operating through a private corporation, sought to acquire airport land with the intention of conveying this property to the city. Almost half the necessary property was obtained in this fashion. In April of 1960, defendant Barshop purchased 52.66 acres of land for $90,000, a $20,000 increase in the land's value from the preceding year. In October of 1960, an ordinance was passed authorizing an offer of $63,192 for the Barshop property as an alternative to condemnation proceedings. In October of 1961, the master plan for the airport was adopted, including the Barshop property. In June of 1963, the first offer to purchase was made by the city, and one year later the land was ultimately taken, a deposit of $80,000 being made by the city as compensation. In the subsequent trial of the issues, the jury found the value of the property as of the date of the taking (July 1964) to be $168,152. The city appealed.

It was the contention of the city on appeal that the trial court erred in permitting the jury to consider the increase in value to Barshop's property occasioned by the construction of the airport facility. The trial court had permitted testimony which presumed that the property was adjacent to the airport. This, the city claimed, erroneously permitted Barshop to benefit from the very subject of his condemnation.

Barshop contended that the condemnation of his property, being delayed some four years after the first authorization to purchase, and three years after approval of the master plan, was actually a subsequent appropriation entitling him to benefit from the construction of the airport. He further contended that the activities of the corporation in purchasing land and thereby stimulating real estate values, could not be considered part of the condemnation activity of the city and consequently Barshop could enjoy any enhanced value occasioned by this activity. The court of civil appeals reversed and remanded, sustaining the city as to valuation after October of 1960, but agreeing with Barshop as to the activities of the private corporation.

The essential problem facing the court was the body of law which holds that if a project is subsequently enlarged so as to embrace new property, that property is entitled to any enhanced value already occasioned by the earlier project. Prior Texas law had recognized a substantial delay in some aspect of a project as constituting a subsequent enlargement and this is what Barshop urged on the court in the instant case.

The court responded to these urgings by noting that Barshop's property was within the anticipated project from its inception and most certainly from the time of the October 1960 ordinance which specifically named his property. Given the scope of the intended project, the three-year delay from publication of the master plan was not considered unreasonably long and the court refused to treat it as a termination and subsequent enlargement of the project.

Under the court's reasoning, Barshop's property was within the contemplation of the project from October of 1960. As the court noted; "It is held generally, in cases presenting the appropriate facts, that, where a person's entire property is included in one general proceeding of condemnation for a particular purpose it is not permissible to consider that purpose, or the results thereof, in estimating the owner's compensation." Thus, the trial court erred in permitting the jury to consider Barshop's proximity to the airport project in valuing his property.

However, not all of Barshop's enhanced value derived from the construction of the airport facility. Much of it was a result of the land speculation conducted by the private corporation. This can be seen in the $20,000 one year appreciation the property experienced prior to any public announcement by the city. Since this speculation was short of official and public action by the city, Barshop was entitled to benefit from it. To this extent, the trial court was correct in permitting jury consideration of enhanced land values.

202-3 THE OWNER OF MINERAL RIGHTS IS NOT ENTITLED TO SEPARATE PROCEEDINGS FOR THE CONDEMNATION OF HIS INTERESTS AND SUCH MUST BE CONDEMNED IN AN ACTION AGAINST THE WHOLE FEE. State, Department of Natural Resources v. Cooper, 162 S.E.2d 281 (W.Va. Cir. Ct. 1968).

In 1931, Mr. Heironimus acquired fee simple interest in 85 acres of land in Tucker County, West Virginia. In 1946, 68 acres of that tract were conveyed to Mr. Cooper, with an oil and gas reservation remaining in Mr. Heironimus. In