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Richmond, Va.

Record No. 4981

In the Supreme Court of Appeals of Virginia at Richmond

FANNIE LOU HARMAN COLLINS

v.

PULASKI COUNTY, ET AL.

FROM THE CIRCUIT COURT OF PULASKI COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4981

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 21st day of January, 1959.

FANNIE LOU HARMAN COLLINS, Plaintiff in Error,

against

PULASKI COUNTY, ET AL., Defendants in Error.

From the Circuit Court of Pulaski County

Upon the petition of Fannie Lou Harman Collins a writ of error and *supersedeas* is awarded her to a final order entered by the Circuit Court of Pulaski County on the 4th day of August, 1958, in a certain proceeding then therein depending wherein Pulaski County and others were plaintiffs and the petitioner and others were defendants; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three thousand dollars, with condition as the law directs.

RECORD

* * * * *

PETITION FOR APPOINTMENT OF COMMISSIONERS.

(Tract of 76.60 acres; fee simple owner, Fannie Lou Harman Collins).

Filed in the Clerk's Office the 12th day of February, 1958.

Teste:

MARION G. GRAHAM, Clerk.

To: The Honorable Jack M. Matthews, Judge of said Court:

Your petitioners, Pulaski County, Giles County, Montgomery County, Town of Christiansburg, Town of
page 2 } Dublin, Town of Pearisburg, Town of Pulaski, and City of Radford, respectfully represent to the court as follows:

(1) The petitioners are authorized, pursuant to the laws of Virginia in such cases made and provided, to condemn land and other property, or any interest or estate therein, which are necessary for airport purposes.

(2) The petitioners have caused to be surveyed and have located a proposed airport and landing field to be known as the New River Valley Airport in Dublin Magisterial District, Pulaski County, Virginia. Pulaski County, one of the petitioners herein, has, by duly enacted resolution of its Board of Supervisors, given its permission for the location of the proposed airport and landing field within its boundaries; a copy of this resolution is attached hereto as "Exhibit A" and expressly made a part hereof. The proposed location of the New River Valley Airport is more fully shown on the map entitled "Property Map" dated September 30, 1957, a copy of which is attached hereto as "Exhibit B" and expressly made a part hereof. Profiles for the proposed airport are more fully shown on the plat entitled "Runways, Taxiways and Access Road Profiles," dated February 1, 1958, a copy of which it attached hereto as "Exhibit C" and expressly made a part hereof.

(3) In order to construct, operate and maintain this airport, it is necessary that the petitioners shall take and condemn the estate in fee simple in the following described

tract or parcel of land of which the present owner in fee simple and tenant in possession of the freehold is the defendant, Fannie Lou Harman Collins, a widow:

"Beginning at a point on the right-of-way line of State Route 100 25.0 ft. left of Virginia Department of Highways Station 222+31.77 at a corner of Tract E of the property of the New River Valley Airport Commission and running along Tract E, S 26° 15′ E 2,070.28 ft. to an iron pin at a corner of Tract E and properties of Mrs. J. B. Collins; thence, along the property of Mrs. J. B. Collins, S 54° 45′ W 963.30 ft. to an iron pin; thence continuing along the property of Mrs. J. B. Collins, N 35° 15′ W 250.0 ft. to an iron pin; thence, continuing along the property of Mrs. J. B. Collins, S 54° 45′ W 733.26 ft. to an iron pin at a corner of Tract B of the New River Valley Airport Commission and the properties of Mrs. J. B. Collins, and Dr. W. N. Mebane; thence, along Tract B, N 41° 45′ W 660.10 ft. to a
page 3 } corner of Tract B and Tract C of the property of the New River Valley Airport Commission; thence, along Tract C. N 41° 45′ W 400.0 ft. to an iron pin on the right-of-way line of State Route 100, 25.0 ft. left of Virginia Department of Highways Station 245+41.31; thence along the eastern right-of-way line of State Route 100 to the point of beginning, containing 60.26 acres."

(4) The parcel of land proposed to be taken is the same parcel described as "Tract D" on the plat filed herein as "Exhibit B." The plat of the survey of Tract D, dated September 30, 1957, is attached hereto as "Exhibit D" and expressly made a part hereof. A copy of this plat was furnished the owner during the negotiations for purchase described in Paragraph 7 below. The profile of this parcel is shown upon a revision of the plat of 'Runways, Taxiways and Access Road Profiles" attached hereto as "Exhibit E" and expressly made a part hereof.

(5) The above described tract or parcel of land is a part of that certain tract of 76.60 acres assigned to Fannie Lou (Harman) Collins as Tract No. 1 in a deed of partition among D. K. Harman et al., dated May 14, 1945, and recorded in the Clerk's Office of the Circuit Court of Pulaski County, Virginia, in Deed Book 109, page 326. A plat of this partition is recorded in the same Clerk's Office in Plat Book 1, page 142, and a copy thereof is attached hereto as 'Exhibit F" and expressly made a part hereof.

(6) The petitioners aver that, in addition to Fannie Lou

Harman Collins, the following parties have or may have an interest in the property proposed to be taken:

a. The defendants, Jesse Benjamin Collins, Jr. and Sally Cloyd Collins Evans "or their heirs," have an interest in an easement for purposes of ingress and egress exercised over the existing farm road crossing the property proposed to be taken (the defendants, Darlene F. Collins and Richard L. Evans are the spouses of Jesse Benjamin Collins, Jr. and Sally Cloyd Collins Evans).

The above described deed of partition among D. K. Harman et al. provided that Tract No. 1 therein assigned to Fannie Lou Harman Collins should be subject to an easement 20 feet in width "over the roadway already estab-
page 4 } lished" for the purpose of ingress to and egress from a tract therein described as containing 200 acres and also subject to a similiar easement appurtenant to three tracts described as Tracts Nos. 2, 3, and 4; all of these tracts are more fully shown on the plat filed herewith as "Exhibit F." The 200-acre tract was conveyed by Sallie C. Harman et al. to J. B. and R. L. Collins by deed dated February 2, 1946, and recorded in Deed Book 113, page 145. By deed dated July 28, 1955, and recorded in Deed Book 169, page 65, R. L. Collins et ux. conveyed his undivided one-half interest in the 200-acre tract and also Tracts 2, 3, and 4 to J. B. and Fannie (Lou) Harman Collins. Upon the death of J. B. Collins, his widow, Fannie Lou Harman Collins, and his two children, Jesse Benjamin Collins, Jr., and Darlene F. Collins, his wife, Sally Cloyd Collins Evans and Richard L. Evans, her husband, entered into an agreement dated August 31, 1955, and recorded in Deed Book 169, page 198, a certified copy of which is attached hereto as "Exhibit G" and expressly made a part hereof. This agreement may be briefly described as vesting in Fannie Lou Harman Collins a life estate in the real estate of which J. B. Collins died seised, with the remainder upon her death to Jesse Benjamin Collins, Jr., Sally Cloyd Collins Evans "or their heirs." These heirs are made parties to this proceeding and their status is described in the caption hereof under the style of "persons unknown or persons yet to be born or created." Jesse Benjamin Collins, III, an infant four years of age, is the only living child of Jesse Benjamin Collins, Jr.; Sally Cloyd Evans, an infant thirteen years of age, and Richard L. Evans, Jr., an infant nine years of age, are the only living children of Sally Cloyd Collins Evans. In the interest of certainty these persons are made parties

to this proceeding, and their status as infants is set forth in the caption hereof.

The petitioners aver that they will replace the roadway herein described by an all-weather access road, equal to or better than the present road, running through the page 5 } lands of W. Nelson Mebane, Jr., et al. to State Route 100, which proposed road shall be for the benefit of the present users of the existing road.

b. The defendant, John N. Dalton, may have an interest by virtue of certain water rights which may affect the property proposed to be taken(the defendant, Edwina Dalton, is the wife of John N. Dalton).

By deed dated July 2, 1940, and recorded in Deed Book 88, page 284, C. W. Harman, a predecessor in title to Fannie Lou Harman Collins, conveyed to The Maple Shade Inn Company, Incorporated, a tract of 625 acres lying to the east of the property herein proposed to be taken, including in this deed the following grant:

"The party of the first part doth further grant unto the said party of the second part and its successors in title, the right to dam and use the overflow from the spring at or near the home now occupied by C. W. Harman, Jr., and to pipe the water from said spring to any portion of the lands hereby conveyed, the party of the first part hereby granting unto the party of the second part the privilege of laying, operating and maintaining pumps and pipe lines leading from said spring across the lands retained by the party of the first part and the right to the party of the second part to enter upon said lands for the purpose of cleaning and repairing said pipe lines whenever necessary."

The residue of the 625-acre tract was conveyed by Garrett Dalton et al. to John N. Dalton, by deed dated January 1, 1950, and recorded in Deed Book 139, page 114. It is improbable that any exercise of the water rights granted as above set forth affects or will affect the property proposed to be taken herein, and it is therefore improbable that the defendants, Dalton, have any interest in this tract; however, in the interest of certainty, they are made parties to the proceeding.

c. Insofar as the petitioners are advised, there are no further liens or encumbrances upon the property proposed to be taken, with the exception of 1958 taxes, not yet due and payable.

(7) The petitioners herein have negotiated with the owner and have made a *bona fide* effort to acquire by purchase the property herein proposed to be taken. This effort was ineffectual, and petitioners' offer was rejected by the
page 6 } owner.

Your petitioners thereby pray that:

1. The court will appoint commissioners to ascertain what will be a just compensation for the land and other rights proposed to be condemned for their uses and to award the damages, if any, resulting to the adjacent or other property of the owner, and to the property of any other person, beyond the peculiar benefits that will accrue to such properties, respectively, from the construction and operation of the works of the petitioners;

2. The court will further appoint a guardian *ad litem* to defend the interests of the infant defendants, Jesse Benjamin Collins, III, Sally Cloyd Evans, and Richard L. Evans, Jr., and of the heirs of Jesse Benjamin Collins, Jr., and of Sally Cloyd Collins Evans, who are made parties to the proceeding under the style of "persons unknown or persons yet to be born or created;"

3. The court will confirm the report of the commissioners appointed as above set forth, and, upon payment by the petitioners of the sum so ascertained to be a just compensation and the measure of damages, if any, the fee simple title to the property herein proposed to be condemned shall become absolutely vested in the petitioners;

4. Such other proceedings may be had as shall be necessary and proper in accord with the laws of Virginia in such cases made and provided.

Witness the following signatures this 11th day of February, 1958:

PULASKI COUNTY,
By FRED N. COLE
Its duly authorized representative.

GILES COUNTY,
By A. E. SHUMATE, JR.
Its duly authorized representative.

MONTGOMERY COUNTY,
By M. H. CLEMENS
Its duly authorized representative.

TOWN OF CHRISTIANSBURG,
By E. G. HIGGINS
Its duly authorized representative.

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TOWN OF DUBLIN,
By FRANK H. FLANAGAN
Its duly authorized representative.

TOWN OF PEARISBURG,
By C. HENRY TOLER
Its duly authorized representative.

TOWN OF PULASKI,
By C. V. JACKSON
Its duly authorized representative.

CITY OF RADFORD,
By W. P. BULLARD
Its duly authorized representative.

GOLDSMITH & IRONS, p. q.
By JOHN M. GOLDSMITH
Goldsmith Building
Radford, Virginia.

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Received and filed, this the 24th day of March, 1958.

MARVIN G. GRAHAM, Clerk.

ORDER.

(For Tract No. 1 of 76.60 Acres).

This cause came on this the 22nd day of March, 1958, to be heard upon the petition for appointment of commissioners to condemn the land set forth in said petition, after notice to the defendants, and the exhibits and other pleadings had herein, and the orders heretofore entered and the motion on behalf of the defendants to dismiss the proceedings on the grounds that the petitioners are without authority to condemn said land and the responsive pleadings of the defendants, the parties to the proceedings being present in person and by counsel and guardian *ad litem;* counsel for the petitioners, after notice to the defendants, having moved the court to

determine the matters of law and fact as set forth in the responsive pleadings, and was argued by counsel.

In consideration of the foregoing and the court having heard the evidence and the argument of counsel, the court doth ADJUDGE, ORDER AND DECREE, as follows:

1. That the petitioners have the authority, as provided by law, to condemn the land as set forth and fully described in the petition for airport purposes, and the court doth ADJUDGE, ORDER AND DECREE that the defendants' motion to dismiss be and hereby is overruled.

2. That the petitioners have complied with the statutory requirements for the filing of exhibits as alleged in the petition for appointment of commissioners and the court doth sustain, as based upon the evidence, the petitioners' allegations as therein set forth.

3. It further appearing to the court that a certifi-
page 41 } cate of title has been filed in this cause by order of this court showing the ownership and interest in said property, and there being no exceptions thereto, and it further appearing to the court that after publication in the Radford News Journal, The Southwest Times, the Giles County Virginian, and The Montgomery News Messenger, as required by law, a license was granted the petitioners by the State Corporation Commission of Virginia to establish, operate, and conduct an airport at the site set forth in said petition and it further appearing to the court, from the evidence, that said airport is of a public convenience and necessity, the court doth ADJUDGE, ORDER AND DECREE that the land involved in this petition is needed for the establishment, construction and operation of the New River Valley Airport and that the petitioners are not acting arbitrarily and are not exceeding the authority of law in the amount of land to be taken for said airport purposes and that there exists the necessity for the condemnation of said land.

4. It appearing to the court from the evidence that the petitioners made a *bona fide,* but ineffectual, effort to acquire the property from the owners by purchase, including a *bona fide* offer to purchase, the court doth ADJUDGE, ORDER AND DECREE that the petitioners have complied with the statutory requirements to acquire said property by purchase prior to condemnation proceedings.

5. The court doth further take under advisement the appointment of commissioners to ascertain what will be a just compensation for the inttrest to be taken and doth set this cause for hearing on the 22nd day of March, 1958.

Enter this order:

JACK M. MATTHEW, Judge.

Date: March 22, 1958.

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Received and filed, this the 24th day of March, 1958.

MARVIN G. GRAHAM, Clerk.

ORDER.

This cause came on to be heard on March 22, 1958, upon the papers formerly read and upon the motion of the petitioners in each of the above styled condemnation proceedings for the appointment of commissioners therein and in the presence of all parties by counsel and of Philip M. Sadler, duly appointed guardian *ad litem* in the two proceedings of *Pulaski County et al.* v. *Fannie Lou Harman Collins et al.;* and was argued by counsel.

All parties having so agreed and stipulated and there being no exceptions by any party to the following actions of the court, it is adjudged, ordered and decreed that:

1. All commissioners herein appointed shall serve as commissioners in each of the six condemnation proceedings the short styles of which are set forth in the caption hereof, and all matters set forth herein shall apply equally to each of the six proceedings;

2. Foy Aust, R. W. Brown, R. G. Fizer, W. B. R. Horton, T. E. Tabor, III, and E. P. Whitman, six disinterested freeholders residing in Pulaski County, be, and they hereby are, appointed commissioners for the purpose of as-
page 44 } certaining a just compensation for the land or other property, or the interest or estate therein sought to be condemned, as is more fully described in the petitions filed by Pulaski County et al. in the proceedings herein, and for the purpose of awarding the damages, if any, resulting to the adjacent or other property of the owners or to the property of any other person, beyond the peculiar benefits that will accrue to such properties, respectively, from the

construction and operation of the works of the petitioners;

3. The Sheriff of Pulaski County shall serve a certified copy of this order upon each of the six commissioners above appointed, and this service shall constitute notice to each of them of the matters set forth herein;

4. The six commissioners shall be present in the courtroom of the Circuit Court of Pulaski County at 9:00 A. M., Friday, April 4, 1958, at which time, after *voir dire* examination, the court will strike from the list one of the number so appointed and the five remaining commissioners shall serve as such in accord with the laws of Virginia in such cases made and provided;

This cause is continued until the 4th day of April, 1958.
Enter this 24th day of March, 1958.

JACK M. MATTHEWS, Judge.

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Received and filed, this the 17 day of April, 1958.

MARVIN G. GRAHAM, Clerk.

REPORT OF COMMISSIONERS.

We, Foy Aust, R. G. Fizer, T. E. Tabor, III, and E. P. Whitman, commissioners appointed by the Circuit Court of Pulaski County, Virginia, to ascertain what will be a just compensation for such part of the land(or for such interest or estate in the land), whereof Fannie Lou Harman Collins is the owner in fee simple and tenant in possession of the freehold, and for such other property as is proposed to be taken by the petitioners, Pulaski County et al., and to assess the damages, if any, resulting to the adjacent or other property of such tenant or owner, or to the property of any other person, beyond the peculiar benefits that will accrue to such properties, respectively, from the construction and operation of the works of the petitioners, do certify that on the 4th day of April, 1958, the day designated in the order, we met together on the part of the land, the limits of which part were then and there described to us as follows, to-wit:

"Beginning at a point on the right-of-way line of State Route 100 25.0 ft. left of Virginia Department of Highways Station 222+31.77 at a corner of Tract E of the property of the New River Valley Airport Commission and running along Tract E, S 26° 15′ E 2,070.28 ft. to an iron pin at a corner of Tract E and properties of Fannie Lou Harman Collins; thence, along the property of Fannie Lou Harman Collins, S 54° 45′ W 963.30 ft. to an iron pin; thence continuing along the property of Fannie Lou Harman Collins, N 35° 15′ W 250.0 ft. to an iron pin; thence, continuing along the property of Fannie Lou Harman Collins, S 54° 45′ W 733.26 ft. to an iron pin at a corner of Tract B of the New River Valley Airport Commission and the properties of Fannie Lou Harman Collins, and W. N. Mebane, Jr. et al.; thence, along Tract B, N 41° 45′ W 660.10 ft. to a corner of Tract B and Tract C of the property of the New River Valley Airport Commission; thence, along Tract C N 41° 45′ W 400.0 ft. to an iron pin on the right-of-way line of State Route 100, 25.0 ft. left of Virginia Department of Highways Station 245+41.31; thence along the eastern right-of-way line of State Route 100 to the point of beginning, containing 60.26 acres."

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and, after being duly sworn, upon a view of the part aforesaid, and of the adjacent and other property of such owner, and of the property of other persons who will be damaged in their property by the construction and operation of the works of the petitioners and upon such evidence as was before us, we are of the opinion, and do ascertain, that for such part (or for the interest or estate in the part), and for the other property so taken $13,558.50 will be a just compensation, and that the damages to the adjacent and other property of such tenant or owner, and to the property of other persons, who will be damaged in their property by reason of the construction and operation of the works of the petitioners, beyond the peculiar benefits that will accrue to such properties, respectively, from the construction and operation of such works are $6,000.00.

Given under our hands this 17 day of April, 1958.

R. G. FIZER
T. E. TABOR, III
FOY AUST
E. P. WHITMAN, Chairman.

Virginia:

In the office of the Clerk of the Circuit Court of Pulaski County, April 26, 1958 at 11:20 A. M. The foregoing instrument was this day presented in said office and, with certificate annexed, admitted to record.

Teste:

MARVIN G. GRAHAM, Clerk.

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Received and filed, this the 15th day of May, 1958.

MARVIN G. GRAHAM, Clerk.

EXCEPTIONS TO REPORT OF COMMISSIONERS.

Fannie Lou Harman Collins excepts to the report of Commissioners filed in this cause on April 17, 1958, and for grounds of exceptions assign the following:

(1) That the above named defendant denies the right of petitioners to acquire by *eminent domain* the lands described in the petition.

(2) That the Court erred in striking from the list of Commissioners appointed by the Court the name of W. R. B. Horton on the ground that said Horton is a distant relative of Ted Dalton, Attorney.

Further it developed in the hearing that Commissioner E. P. Whitman had been selected by petitioners as an appraiser of the property, which fact was unknown to exceptor; and this defendant has later been informed that said Whitman, prior to his appointment as Commissioner and without knowledge to this defendant, had received instructions from the Airport Commission in connection with such appraisement.

(3) That the award made to exceptor was grossly inadequate, is not based on the evidence and shows prejudice on the part of the Commissioners. For example, the award to other condemnees showed a total allowance of $509.09 per acre to Clarence H. Hanks; a total allowance of $404.80 per

acre to W. Nelson Mebane and George S. Mebane; a total allowance of $535.00 per acre to William Guthrie and Richard Guthrie (which included no frontage on a primary highway); whereas, considering the road frontage owned by exceptor, as well as the topography and condition of the land owned by exceptor proves it to be more desirable and page 122 } valuable than that of the other condemnees above named. Pointing up this is the fact that practically the entire runway of the proposed airport of 4200 feet by 75 feet is to be located on the Collins' lands. The award for land taken and damages to residue in this proceeding amounted to $324.57 per acre.

(4) The Court admitted, over the objection of counsel for exceptor, improper evidence for petitioners and failed to admit proper evidence on behalf of exceptor.

One example is, the Court admitted evidence of Richard L. Evans on behalf of petitioners and over the objection of exceptor, relating to an offer of $95,960.00 made by the Airport Commission to the owners for the entire Collins farm of approximately 506 acres, which offer and response was in the nature of negotiations and an attempt to compromise, and clearly could not be proved. This was highly prejudicial to the rights of exceptor; it was improper evidence in rebuttal or to be considered in any way by the Commissioners, and was hearsay insofar as the witness undertook to speak for Mrs. Evans.

(5) Not only was the award as to the land taken grossly inadequate, but the award for damages to the residue was also grossly inadequate. Exceptor's remaining lands are cut off from the public highway, and exceptor is forced by an indefinite and uncertain stipulation to obtain ingress and egress over a gated private road which results in a damage to the residue far beyond the award, ond is in violation of the Constitution and Statutes of the State of Virginia which guarantees that private property shall not be taken without just compensation.

(6) For other reasons to be assigned at bar.

Respectfully,

FANNIE LOU HARMAN COLLINS
By TED DALTON.

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Received and filed, this the 29th day of May, 1958.

MARVIN G. GRAHAM, Clerk.

MOTION TO OVERRULE EXCEPTIONS AND CONFIRM COMMISSIONERS' REPORT.

(Tract No. 1—76.60 Acres).

To the Honorable Jack M. Matthews, Judge of said Court:

The petitioners, Pulaski County, Giles County, Montgomery County, Town of Christiansburg, Town of Dublin, Town of Pearisburg, Town of Pulaski, and City of Radford, respectfully move the court to overrule the exceptions of the defendants to the report of commissioners filed in this cause on April 17, 1958, and to confirm the said report in all respects and particulars. In support of this motion the petitioners submit the following grounds for the overruling of the specific exceptions alleged by the defendants.

(1) Exception No. 1 should be overruled upon the ground that the right of the petitioners to acquire by *eminent domain* the lands in question has been established and confirmed by order of this court entered March 22, 1958, after the pretrial hearing held at Hillsville, Virginia. The defendants and their counsel were present and made the same argument but offered no evidence and took no exception to the order of the court then entered deciding this issue in favor of the petitioners.

(2) Exception No. 2 should be overruled on the ground that the exclusion of W. B. R. Horton and the inclusion of E. P. Whitman on the panel of commissioners were matters resting in the sole discretion of the trial court. The defendants are wrong in stating that Horton "is a distant relative of Ted Dalton, Attorney." The record shows clearly that Horton is related to John N. Dalton, defendant and landowner. There is no evidence of the closeness or distance of this relationship, and the defendants made no effort at any time to introduce evidence on the degree of kin-
page 125 } ship. The court therefore had ample justification in the exercise of its discretion to strike Horton from the panel.

Prior to negotiating for the acquisition of the land the petitioners considered having Whitman as an appraiser of the property to be taken. However Whitman was then in the hospital and could not so serve. In open court he testified specifically that he had not discussed the case with any

landowner nor with any official of the petitioning political subdivisions. All of these facts were known to all parties when the court retained Whitman on the panel, and no exception was taken on this ground to Whitman's service as a commissioner. There is no evidence whatever that Whitman's qualifications to serve as a commissioner were in any manner affected or that his retention as a commissioner in any way prejudiced any rights of the defendants.

(3) Exception No. 3 should be overruled on the ground that the award of the commissioners is entirely justified by their view of the lands and by the evidence which was offered. The award was entirely adequate, it was based upon the evidence, and it shows no scintilla of prejudice on the part of the commissioners. The spread in the value per acre of the lands of the various defendants is entirely justified by the view and the evidence, and the fact that a substantial part of the runway of the proposed airport is to be located upon the lands of these defendants is of no probative value whatever with respect to its present fair market value.

Moreover the defendants' evidence of the value of the land was based upon remote and speculative profits and advantages without regard to the business demands of the community, existing or reasonably expected in the immediate future. The petitioners deliberately refrained from objecting to the introduction of this improper evidence, feeling that the commissioners, after the view, the introduction of other evidence and the instructions of the court, page 126 } would determine for themselves that the defendants' estimates of value were inflated, conjectural and without foundation in reason. This belief was confirmed by the patent fact that the commissioners based their award upon the view which they had taken and upon the other evidence of value.

(4) Exception No. 4 should be overruled on the ground that rulings of the court on the admissibility of evidence were entirely correct.

The defendants have restricted themselves to one incident, the admission of the evidence of Richard L. Evans. The defendant, Fannie Lou Harman Collins, took the stand on her own behalf where she asked the astronomically extravagant sum of $103,800.00 for the taking of 174 acres of unimproved farm land by the petitioners. Mr. Evans and his wife, parties defendant to this suit, had admitted in their responsive pleadings that they accepted the offer of the petitioners to pay $95,960.00 for the entire Collins farm of 506.4 acres, including a valuable residence, barns, outbuildings and other improvements. Evans was called by the petitioners as a

rebuttal witness simply to testify to the fact that he and his wife accepted the amount offered as a fair and reasonable value for the entire farm, in contrast and rebuttal to Mrs. Collins' extravagant evaluation of a part. This is absolutely proper rebuttal evidence of the clearest and most convincing nature.

(5) Exception No. 5 should be overruled on the ground that, as pointed out in Paragraph 3 above, the award of the commissioners was entirely adequate and fully justified by the view and the evidence. With respect to the defendants' ingress to and egress from the public highway, defendants' counsel expressly refused to enter into a stipulation concerning an alternate right-of-way. However, the petitioners bound themselves by a written specification to the owners of the Collins and the Mebane properties to grant an easement for ingress and egress in lieu of that part of the existing right-of-way included in the lands proposed to be taken. This road specification was offered in evidence as an exhibit and was necessarily considered by the commissioners in the making of their awards. Furthermore the specification will be incorporated in the order of the court confirming the commissioners' report and vesting title in the petitioners.

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(6) Exception No. 6 should be overruled on the ground that the law of Virginia is mandatory that the exceptions to the report should be made within thirty days from the date thereof and the defendants should not be permitted at some later date to assign further grounds of exception.

Respectfully submitted this 28th day of May, 1958.

PULASKI COUNTY, GILES COUNTY, MONTGOMERY COUNTY, TOWN OF CHRISTIANSBURG, TOWN OF DUBLIN, TOWN OF PEARISBURG, TOWN OF PULASKI AND CITY OF RADFORD
By Counsel.

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Received and filed, this the 2 day of June, 1958.

MARVIN G. GRAHAM, Clerk.

ORDER.

(Tract No. 1—76.60 Acres).

This cause came on to be heard upon the papers formerly read, upon the oath of the commissioners dated April 15, 1958, upon the report of the commissioners dated April 17, 1958, upon the exceptions to the report of the commissioners filed by the defendants, and upon the petition of Pulaski County et al., the petitioners, to pay money into court; and was argued by counsel.

It appearing to the court as follows:

(1) That by order of this court entered March 24, 1958, Foy Aust, R. W. Brown, R. G. Fizer, W. B. R. Horton, T. E. Tabor, III, and E. P. Whitman were appointed commissioners in this cause and were directed to be present in the courtroom of this court on April 4, 1958, that the matter was duly continued by agreement of all parties until April 15, 1958, that at the *voir dire* examination R. W. Brown and W. B. R. Horton were stricken by the court from the list of commissioners, and that the remaining four commissioners, Foy Aust, R. G. Fizer, T. E. Tabor, III, and E. P. Whitman, were duly sworn and qualified as commissioners in this cause, as is evidenced by their signed oath, with certificate of the Clerk of this court attached, filed herein;

(2) That, after a view of the property proposed to be taken by the petitioners and a view of the adjacent and other property of the owners and other person who will or may be damaged in their property by the construction and operation of the works of the petitioners, and after having adjourned to the courtroom of this court for a hearing of the evidence and arguments of the petitioners and the defendants, the commissioners returned their report as follows:

page 131 } "We are of the opinion, and do ascertain, that for such part (or for the interest or estate in the part), and for the other property so taken $13,558.50 will be a just compensation, and that the damages to the adjacent and other property of such tenant or owner, and to the property of other persons, who will be damaged in their property by reason of the construction and operation of the works of the petitioners, beyond the peculiar benefits that

will accrue to such properties respectively, from the construction and operation of such works are $6,000.00."

(3) That more than thirty days have elapsed since the said report and the oath of commissioners have been returned to the Clerk's Office of this court, but that within the thirty day period the defendants filed certain exceptions to the report of the commissioners;

(4) That the petitioners have in their petition prayed for leave to pay into court the sum awarded by the commissioners to the defendants and thereupon to enter into and construct their works upon the lands of the defendants;

In consideration of all of the foregoing matters, it is therefore adjudged, ordered and decreed that, good cause having been shown therefor, the petitioners, Pulaski County et al., be, and they hereby are, granted leave to pay into court forthwith the sum of $19,558.50, the total sum awarded by the commissioners to Fannie Lou Harman Collins et al., the defendants herein, and thereupon to enter into and construct their works upon the lands of the defendants as described in the said report of commissioners of April 17, 1958.

This cause is continued.

We ask for this order:

GOLDSMITH & IRONS
By ROBERT S. IRONS
Counsel for the Petitioners.

We have seen and object to this order:

DALTON, POFF & TURK
By TED DALTON
Counsel for Fannie Lou Harman Collins, Jesse Benjamin Collins, Darlene F. Collins, John N. Dalton and Edwina Dalton, defendants.

page 132 }

GILMER HARMAN & SADLER
By PHILIP M. SADLER
Counsel for Sallie Cloyd Collins
Evans and Richard L. Evans, defendants.

PHILIP M. SADLER
Guardian *ad litem* for infant defendants
and persons unknown or persons yet to
be born or created, defendants.

Enter this 2nd day of June, 1958.

JACK M. MATTHEWS, Judge.

* * * * *

page 133 }

* * * * *

Received and filed, this the 11th day of July, 1958.

MARVIN G. GRAHAM, Clerk.

EVIDENCE.

The evidence of witnesses heard before the Honorable Jack M. Matthews in the Circuit Court of Pulaski County at Pulaski, Virginia on June 30, 1958.

Present: The defendants, Fannie Lou Harman Collins, Jesse Benjamin Collins, Jr. and George Steedman Mebane in proper person.

John M. Goldsmith and Robert S. Irons, attorneys for Pulaski County et al.; Ted Dalton and James C. Turk, attorneys for John N. Dalton et al. and Fannie Lou Harman Collins et al., Philip M. Sadler, attorney for Sallie Cloyd Collins Evans et al. and guardian *ad litem* for infant and unknown defendants, Eugene L. Nuckols, attorney for William Nelson Mebane, Jr. et al. and Clarence H. Hanks et al.

Mr. C. V. Jackson and Mr. E. P. Whitman, witnesses testifying at this time were duly sworn, after which upon motion of counsel for defendants, the witnesses were separated.

page 134 } C. V. JACKSON,
first witness:

DIRECT EXAMINATION.

By Mr. Goldsmith:

Q. Will you please state your name, sir.

A. C. V. Jackson.

Q. Mr. Jackson, what position do you hold in the New River Valley Airport Commission?

A. I am President of the New River Valley Airport Commission.

Q. Mr. Jackson, when the Commission was preparing to get independent appraisals of the property prior to negotiations with the land owners, I will ask you to please state whether or not you notified Mr. E. P. Whitman with regard to serving as one of your appraisers.

A. I did sir.

Q. Is this the letter that you sent Mr. Whitman?

A. It is the letter sent September 25, 1957.

Q. There is attached to that a sheet showing the names of the landowners and the acreage and the participating political subdivisions, did you attach that to your letter?

A. Yes, sir.

Q. Subsequent to that Mr. Jackson, did I as attorney mail a letter on October 4, 1957, to Mr. Whitman and setting forth the forms upon which we asked them to make their appraisal?

A. Yes, sir, you gave me a copy of that letter.

Q. And were those forms attached to the letter for each tract of land?

A. Yes, sir, this is a copy which I received—similar to the copy. (Looking at the copy which Mr. Goldsmith has).

page 135 } Mr. Goldsmith: Your Honor, I do not want to testify but I do want to state to the Court that these—or rather I would like to offer these as exhibits in the hearing as exhibits at this time. (Copy of letter of September 25, 1957, from C. V. Jackson to E. P. Whitman and others, with list of acreage to be acquired attached, and copy of letter of October 4, 1957, from John M. Goldsmith to E. P. Whitman, with forms for valuation of tracts attached, filed as Exhibit No. 1 and attached hereto).

Q. Mr. Jackson, where was Mr. Whitman at the time that these documents were mailed to him?

A. As I recall, at the time, within a day or two after, Mr.

Whitman went to the hospital in Roanoke. I don't recall which hospital, I do not know the exact day relative to this, but it was just about the same time.

Q. Did you at any time discuss the matter with Mr. Whitman?

A. I did not.

Q. How were you notified that Mr. Whitman could not serve?

A. Through contacts with Mrs. Whitman, that is Mr. Whitman's wife. I went to their home and after Mr. Whitman had been in the hospital several days and she gave me the letter and other documents.

Q. Do you know whether Mr. Whitman at any time considered serving?

A. I do not recall, sir, that we had any contact or any commitment from Mr. Whitman.

Q. His wife relayed the message she had to you?

A. That is right.

Q. How did you happen to go to the home, did she call you?

A. I do not recall. There were some exchanges of telephone conversations while Mr. Whitman was in the hospital and I asked through personal friendship about
page 136 } him and that is perhaps how it came about, I don't recall.

Q. Mr. Whitman previously stated that he had not—

(Mr. Dalton objected to this question and the objection was sustained.)

Q. Do you know whether any other members of the Commission discussed the matter in any manner with Mr. Whitman?

A. I do not, sir, not to my knowledge.

CROSS EXAMINATION.

By Mr. Nuckols:

Q. Mr. Jackson, I believe you wrote this letter on September 25. Do you recall exactly when it was that Mr. Whitman went to the hospital?

A. No, I do not know exactly when it was, sir, because I was not in contact with Mr. Whitman and I learned through his wife that he was in the hospital.

Q. I notice that another letter was written to him almost

ten days later when it was still assumed that he was going to be a commissioner of this commission.

A. I do not recall as of the dates, but I have a copy of the letter.

Q. Is not the second one dated October 4th, which is approximately ten days later?

A. Yes, sir.

Q. So he had your letter asking him to serve as chairman, isn't that correct?

A. That is right, sir.

Q. So you asked him to serve as chairman of this commission on the 25th?

A. That is the date of the letter, sir, and it was mailed promptly, I am sure.

page 137 } Q. As far as the Airport Commission knew, he had this letter and so far as you knew he was going to serve as chairman as late as October 4th?

A. I did not have any contact with him that I recall.

Q. Between those dates none of you on the commission knew anything about his declining to serve, did you?

A. I did not know it until I had contact with his wife.

Q. Mr. Jackson, I believe you and Mr. Whitman are fairly close neighbors, aren't you?

A. I live in town and he lives in the country, but I have a farm near his.

Q. You and Mr. Whitman are close friends?

A. Yes, for many years.

Q. And you are president of the New River Valley Airport?

A. President of the commission, yes, sir.

Q. While Mr. Whitman was sick, did you have any occasion to visit him?

A. No, sir, I did not.

Q. When he returned from the hospital, did you visit him?

A. I did not.

Q. After Mr. Whitman got up and was about, probably in November or latter part of October, did you have any contact with him at all before this hearing came up?

A. Sure, possibly see him on the street or where I might meet him but was not at his home.

Q. And on none of these occasions did you discuss the fact that he was asked to be chairman and was sick and on none of these occasions that you never even mentioned it

to him?

page 138 } A. I possibly discussed it with him afterwards but not in detail. He said that through his wife that he could not serve, but I had no reason to go into detail with him, but I have talked to many people about it but I do not recall any conversation with him in relation to the land.

Q. I realize that, Mr. Jackson, we have all been discussing it for years but the point that I am trying to get is that you had apparently selected Mr. Whitman to be Chairman of the Appraisal Committee. After you found out that he could not serve when you ran into him five or six months before this hearing came up, isn't it quite possible that you discussed the fact with him that he could not serve?

A. Sir, I want to get it straight that his selection was made by the commission and not by an individual and as far as the conversation which I had afterwards, I am sure that I talked to him and told him I regretted that he could not serve but I don't recall any contact which had any bearing on the airport or that part of it. Nevertheless when I see Mr. Whitman I have a conversation like I would with you or any of the people here but I do not recall any with the airport.

CROSS EXAMINATION.

By Mr. Dalton:

Q. Mr. Jackson, did this airport meet in solemn conclave and select this gentleman?

A. I don't recall it was solemn, I don't understand—

Q. How did you meet?

A. We met at a regular meeting of the com-

page 139 } mission and included integrity, property values, farmers, businessmen and those like that.

Q. And in the letter it reads, "The Commission desires to be as fair as possible with the landowners and the participating political subdivisions in the amount paid for the land. Therefore, you gentlemen have been chosen to perform this important service."

A. That is in the letter sir.

Q. (Mr. Dalton proceeds from letter) "You were selected because of your knowledge of land values in the area and your standing in your community."

A. That is correct, sir.

C. V. Jackson.

Q. In the next paragraph you offer to pay all their expenses in making the appraisals.

A. That is true, sir.

Q. Mr. Whitman knew that he was chosen as chairman, didn't he?

A. I suppose he did but I did not tell him that. He got the letter.

Q. Didn't he know that he was selected chairman of this important handpicked committee?

A. The letter with the other documents were returned to me. I assume Mr. Whitman saw it.

Q. After your discussions, did he indicate that he would have knowledge of this fact?

A. I do not recall sir, since that Mrs. Whitman had returned the papers to me.

Q. You admit that on how many occasions you discussed the matter with Mr. Whitman?

page 140 } A. Mr. Dalton, I would not appear to—

Q. You went to Hillsville when these Commissioners were selected and did not you all insist that Mr. Whitman be made a member of your committee? Did not you suggest him?

A. We certainly did.

Q. And you insisted on him all along, didn't you?

A. Yes, we had the opportunity of selecting, I do not remember how many, but Whitman was one of the members which we selected.

Q. W. B. R. Horton stood aside because of the fact that his mother was the first cousin of my mother.

A. He was struck off for some reason, I don't recall what it was.

Q. When you agreed on commissioners you all were very insistent that Mr. Whitman be on that committee, weren't you?

A. I would say that we were insistent on Mr. Whitman then and the others.

Q. You tell me someone else that you suggested more strongly than he.

A. I will have to look at my records but the group we selected I do not think that Mr. Whitman—

Q. Did you discuss it with us?

A. I do not remember whether we did or not.

Q. Do you have any recollection?

A. No I don't see any reasons why we should.

C. V. Jackson.

RE-DIRECT EXAMINATION.

By Mr. Goldsmith:

Mr. Goldsmith: Of the five men who were finally submitted, both sides recommended very strongly Mr. Aust, didn't they?

A. That is right, Mr. Aust was the first man

page 141 } who was suggested.

Q. They also agreed that Mr. Whitman go on as part of that first group, didn't they?

A. That is right, sir.

Q. And Mr. Graham Fizer?

A. That is right.

Q. And they were the parties that suggested Mr. Tabor, didn't they?

A. Yes, sir.

Q. And they suggested Horton who was later released by the court.

A. Yes, sir.

Q. And we agreed to recommend all of these people to the court and the selection then was left to the court and not to us, wasn't it?

A. That is right.

CROSS EXAMINATION.

By Mr. Nuckols:

Q. Mr. Jackson, your group came to Hillsville with a list of 10 or 15 men, isn't that correct?

A. Yes, sir.

Q. And on that list of the ones which were finally chosen was Mr. Aust, Mr. Whitman and Mr. Fizer.

A. I believe it was agreed to between both sides that Mr. Aust was finally—

Q. Mr. Aust was the first one we had on the list.

Q. And we agreed on Mr. Brown.

A. Yes, sir, as I recall.

Q. Didn't we both take our prepared list and

page 142 } go in there and say, "we are going to select the three which we want on there and you are going to select the three," isn't that correct?

A. Well, we had so many meetings, I cannot remember what transpired, but it boiled down to three on each side.

Q. Then the defendants never actually agreed to Mr. Whitman because he was on your list which you submitted, at

least that they were going to be your three and we would have three.

(Mr. Goldsmith objected because both were selected on both sides and agreed to.)

Judge Matthews: I believe the records were disclosed, after considerable time and conference you did give me a list that you said you had agreed to which saved me a lot of trouble.

(Mr. Nuckols withdrew the question).

Judge Matthews: So far as the court is concerned you each agreed to these names so far as I understand. I don't think there is any question.

Mr. Dalton: I don't think there is, sir, but we agreed without the knowledge of knowing all the facts.

E. P. WHITMAN,

second witness:

DIRECT EXAMINATION.

By Mr. Goldsmith:

Q. You are Mr. E. P. Whitman.

A. Yes, sir.

Q. Mr. Whitman, in the fall of 1957, when did you first go to the hospital?

A. I think it was around the first week in October.

Q. How long were you sick?

A. Five weeks.

page 143 } Q. How long were you sick prior to going to the hospital?

A. About three or four days.

Q. Mr. Whitman, when did you first learn that you had been asked by the Airport Commission to act as one of the appraisers of the land?

A. I don't remember exactly, I don't know whether I saw it in the paper or the contacts when I was in the hospital. I know there was a letter came to me with some maps and data and the doctor told me I might as well send it on home.

Q. Did you receive a letter on the 25th from Mr. Jackson prior or after going to the hospital?

E. P. Whitman.

A. I guess I received it prior to going to the hospital.

Q. And the letter with the maps dated October 4th before or after going to the hospital?

A. In the hospital.

Q. Now what did you do about these letters, Mr. Whitman?

A. I gave them to my wife and she brought them back home. Mr. Jackson came out and got them.

Q. Did you at any time discuss this with Mr. Jackson or any other members of the commission?

A. No, sir, I did not.

Q. And did you discuss the letter with any of the other men who acted as appraisers?

A. I don't ever remember discussing it with anybody.

Q. Please state whether or not to the fact that your having received this communication had any influence whatsoever after qualifying to serve as one of the commissioners appointed by the court.

page 144 } (Mr. Turk objected, said for the court rather than for him to answer.)

Mr. Goldsmith: The problem is that there is some prejudice and the law is very general that any one alleging some matter has to prove it.

Judge Matthews: He says he doesn't remember discussing it so will sustain objection.

RE-DIRECT EXAMINATION.

By Mr. Goldsmith:

Q. After you returned from the hospital and prior to the appointment as commissioner by the court, did you at any time discuss this matter with Mr. Jackson or any other member of the commission?

A. No, I did not discuss it with Mr. Jackson or I don't remember discussing it with Mr. Jackson.

CROSS EXAMINATION.

By Mr. Nuckols:

Q. You had received this letter from Mr. Jackson a few days before you went to the hospital.

A. Yes, I did, I am certain I did, at that time I was not taking much interest in any correspondence.

E. P. Whitman.

Q. And you saw your name with the other gentlemen listed in the newspaper?
A. Yes, I think I did.
Q. And then you went to the hospital and was told by the doctor that you couldn't, were you planning on serving as a commissioner?
A. Yes, sir, I just took it that I would.
Q. You had volunteered?
A. No, sir.

page 145 } There followed oral argument of counsel for all parties on the defendants' exceptions to the commissioners' reports and the petitioners' motions to overrule these exceptions and to confirm these reports.

I, B. Christine Saunders, hereby certify that the foregoing and annexed evidence was recorded by me in the Circuit Court of Pulaski County, on June 30, 1958, reduced to writing, and this is a copy thereof.

B. CHRISTINE SAUNDERS
Reporter.

JOHN M. GOLDSMITH
Of Counsel for Plaintiffs.

DALTON, POFF & TURK
JAMES C. TURK
Of Counsel for Defendants.

JACK M. MATTHEWS, Judge.

10/2/1958.

STENOGRAPHER'S FEE:

2 hours @ $2.00	$4.00
12 pages @ 0.60	7.20
3 complete copies at 0.20 per page	7.20
	$18.40

page 146 } JACKSON'S EXHIBIT NO. 1.

Office of the President
Pulaski, Virginia
September 25, 1957

Mr. W. P. Whitman, Chairman
Pulaski, Virginia

Mr. C. E. Richardson
Pulaski, Virginia

Mr. E. D. Spangler
Narrows, Virginia

Mr. Robert B. Harvey
Radford, Virginia

Mr. R. R. Harkrader
Christiansburg, Virginia

Gentlemen:

The New River Valley Airport Commission needs an independent appraisal of the lands to be acquired for the establishment of the New River Valley Airport. The Commission desires to be as fair as possible with the landowners and the participating political subdivision in the amount paid for the land.

Therefore, you gentlemen have been chosen to perform this important service. You were selected because of your knowledge of land values in the area and your standing in your community.

You will be asked to meet upon the call of your chairman, go upon the lands and make you own independent appraisal. You will be furnished the services of an engineer, maps and all other necessary data with which to expedite your work. Also, the Commission will pay all expenses involved in making the appraisal.

There is attached a list of the landowners, acreage and the participating political subdivisions.

Respectfully yours,

NEW RIVER VALLEY AIRPORT COMMISSION
By /s/ C. V. JACKSON
President.

Enclosure

page 147 } JACKSON'S EXHIBIT NO. 1.

APPROXIMATE ACRES OF VARIOUS PARCELS OF LAND TO BE ACQUIRED BY THE NEW RIVER VALLEY AIRPORT AUTHORITY

Mrs. J. B. Collins, et als. Dublin, Virginia	(Portion of Tract No. 4—19 ac.) (Portion of Tract No. 3—33 ac.) (Portion of Tract No. 2—62 ac.) (Portion of Tract No. 1—60 ac.)	174 Acres
Joe Graham Dublin, Virginia	.....	78 Acres
Ted Dalton, Att'y. John N. Dalton, Att'y. Radford, Virginia	..... (41 Acres for airport, 23 Acres because cuts off from other land)	41 + 23
Nelson Mebane George Mebane Dublin, Virginia	.....	39 Acres
Guthrie Brothers—William Dublin, Va. Richard)	Portion of Parcel No. 4—26 ac.) (Portion of Parcel No. 3— 5 ac.)	31 Acres
Tom Dobyns Estate Dublin, Virginia	.....	4 Acres
C. H. Hanks Dublin, Virginia	.....	2.7 Acres
		369.7—23

PARTICIPATING POLITICAL SUBDIVISIONS:

Town of Christiansburg
Town of Dublin
Town of Pearisburg
Town of Pulaski

County of Giles
County of Montgomery
County of Pulaski
City of Radford

page 148 } JACKSON'S EXHIBIT NO. 1.

COPY.

Office of the Attorney
Box 892
Radford, Virginia
October 4, 1957

Mr. E. P. Whitman
Pulaski, Virginia

Dear Mr. Whitman:

I am enclosing herewith a metes and bounds description showing the ownership and the total acreage of each tract of land involved in the New River Valley Airport.

By letter from President Jackson you and each member of the Committee were furnished with the number of acres to be taken from each tract of land.

There is not enclosed in these descriptions the number of acres included in the Dobyns' farm. The descriptions of these two tracts will be furnished you later by Mayor Jackson.

I am enclosing a map of the W. A. Guthrie farm showing a partition of same into various tracts.

There is also enclosed a copy of the J. K. and S. C. Harman farm, known as the division of the C. W. Harman Estate Farm. This shows the four tracts from which land will be taken and the farm road which will have to be moved to furnish ingress and egress from the farm.

The original party line fences surrounding the airport will be built by the New River Valley Airport Commission. Thereafter the party line fences will be maintained in accordance with Virginia law.

If any information or assistance can be rendered at any time by me to expedite your work, please do not hesitate to call upon me.

I wish to thank you and the other members of your Appraisal Committee for undertaking this work.

Sincerely yours,

/s/ JOHN M. GOLDSMITH
Attorney for the New River
Valley Airport Commission.

JMG:mc
Encl.
cc: Mr. C. V. Jackson
Mr. Fred N. Cole

page 149 } JACKSON'S EXHIBIT NO. 1.

MEBANE, W. NELSON, JR., & GEORGE S.

Total Acres—177.154, more or less
Airport Acres—39 acres.

As this tract of land will be a part of the clear zone the appraisal of this tract of land (39 acres) should be as follows:

If purchased	
Value of land (39 acres)	$_____
Value of buildings, if any	_____
Damage to residue	_____
Total Value:	$_____

If Perpetual Basement

The owner (Mebane) would retain title to the land but would not be permitted to have any obstruction upon same. Farming and gardening would be permitted.

Value of perpetual easement	$_____
Value of buildings, if any	_____
Damage to residue	_____
Total Value:	$_____

We, the undersigned, are of the opinion that the amounts set forth above represent a fair and equitable value for the land and other rights to be acquired from the Mebanes for the establishment of the New River Valley Airport.

Dated this ——— day of ————, 1957.

_____ _____

Chairman

_____ _____

_____ _____

page 150 } JACKSON'S EXHIBIT NO. 1.

GUTHRIE BROTHERS—31 acres

See Map of W. A. Guthrie Farm.

Total acres Tract No. 4 62.27
Acres required for airport—26.00

Value of 26.00 acres	$_____
Value of improvements, if any	_____
Damages to residue	_____
Total value	$_____

Total acres Tract No. 3—76.62
Acres required for airport—5.00

Value of 5 acres	$_____
Value of improvements, if any	_____
Damage to residue	_____
Total value	$_____

We, the undersigned, are of the opinion that the amounts set forth above represent a fair and equitable value for the land and other rights to be acquired from William and Richard Guthrie for the establishment of the New River Valley Airport.

Dated this —— day of _____, 1957.

_____ _____

Chairman

_____ _____

_____

page 151 } JACKSON'S EXHIBIT NO. 1.

DALTON, JOHN N.
Total acres in farm—619.6
Acres required for airport—41
Acres to be acquired
because cut-off without
ingress or agress —23

Total acres to be purchased—64

Value of 41 acres	$_____
Value of 23 acres	_____
Value of improvements, if any	_____
Damage to residue	_____
Total	$_____

We, the undersigned, are of the opinion that the amounts set forth above represent a fair and equitable value for the

land and other rights to be acquired from John N. Dalton for the establishment of the New River Valley Airport.

Dated this —— day of ——————, 1957.

—————— ——————

Chairman

—————— ——————

——————

page 152 } JACKSON'S EXHIBIT NO. 1.

THE COLLINS FARM—506.40 Acres

Owned by Mrs. Collins, et als.—See metes and bounds description. See Harman Estate Farm Map.

Due to the acreage to be taken for the airport an appraisal of the whole Collins farm is desired. This farm includes Tract No. 1, Tract No. 2, Tract No. 3, Tract No. 4, each tract containing 76.60 acres, plus 200 acres upon which the home is located.

Total acreage in farm—506.40
Value of land $——————
Value of buildings and improvements ——————
Total value $——————

We, the undersigned, are of the opinion that the amounts set forth above represent a fair and equitable evaluation and fair market value of the above property.

Dated this —— day of ——————, 1957.

—————— ——————

Chairman

—————— ——————

——————

page 153 } JACKSON'S EXHIBIT NO. 1.

COLLINS, FANNIE LOU HARMAN—76.60 Acres
Tract No. 1—See Map, C. W. Harman Estate Farm
Total acres in Tract No. 1—76.6
Acres required for airport—60.00

Value of 60.0 acres	$_____
Value of improvements, if any	_____
Damage to residue	_____
Damage from change in farm road	_____
Total value	$_____

Due to the acreage to be taken for the airport an appraisal of the whole of this tract, No. 1, is desired, as follows:

Value of 76.60 acres	$_____
Value of improvements, if any	_____
Damage to residue of farm	_____
Damage from change in farm road	_____
Total Value	$_____

The farm road shown on Tract No. 1 will be eliminated. The Airport Commission will build, at no expense to the owner, another farm road for ingress and egress for the owner.

We, the undersigned, are of the opinion that the amounts set forth above represent a fair and equitable value for the land and other rights to be acquired from Fannie Lou Harman Collins for (Tract No. 1) for the establishment of the New River Valley Airport.

Dated this —— day of _____, 1957.

_____ _____

Chairman

page 154 } JACKSON'S EXHIBIT NO. 1.

MRS. FANNIE LOU HARMAN COLLINS, et als.

Tract No. 2—For ownership see metes and bounds description. See Harman Estate Map.

Total acreage in Tract No. 2—76.60
Acres required for airport—62.00

Value of 62.00 acres	$_____
Value of improvements, if any	_____
Damage to residue	_____
Total value	$_____

Due to the acreage to be taken for the airport an appraisal of the whole of this Tract, No. 2, is desired, as follows.

Value of 76.60 acres	$_____
Value of improvements, if any	_____
Damage to residue of farm	_____
Total value	_____
	_____

See farm road, Tract No. 1. If there is any damage to Tract No. 2 from a change in this road it should be included as an element of damages.

We, the undersigned, are of the opinion that the amounts set forth above represent a fair and equitable value for the land and other rights to be acquired from Mrs. Collins et als. in Tract No. 2 for the establishment of the New River Valley Airport.

Dated this —— day of _____, 1957.

_____ _____

Chairman

_____ _____

_____

page 155 } JACKSON'S EXHIBIT NO. 1.

MRS. FANNIE LOU HARMAN COLLINS ET ALS.

Tract No. 3—For ownership see metes and bounds description. See Harman Estate Farm Map.

Total acreage in Tract No. 3—76.60
Acres required for airport—33.00

Value of 33 acres	$_____
Value of Improvements, if any	_____
Damage to residue	_____
Total value	$_____

Due to the acreage to be taken for the airport an appraisal of the whole of this tract, No. 3, is desired, as follows:

Value of 76.60 acres	$_____
Value of Improvements, if any	_____
Damage to residue of farm	_____
Total value	$_____

See Farm Road Tract No. 1. If there is any damage to Tract No. 3 from a change in this road it should be included as an element of damages.

We, the undersigned, are of the opinion that the amounts set forth above represent a fair and equitable value for the land and other rights to be acquired from Mrs. Collins, et als. in Tract No. 3 for the establishment of the New River Valley Airport.

Dated this —— day of ——————, 1957.

_____ _____

Chairman

_____ _____

_____

page 156 } JACKSON'S EXHIBIT NO. 1.

MRS. FANNIE LOU HARMAN COLLINS, et als.

Tract No. 4—For ownership see metes and bounds description. See Harman Estate Farm Map.

Total acreage in Tract No. 4—76.60
Acres required for airport—19.00

Value of 19 acres	$_____
Value of improvements, if any	_____
Damage to residue	_____
Total value	$_____

Due to the acreage to be taken for the airport an appraisal of the whole of this Tract, No. 4, is desired, as follows:

Value of 76.60 acres	$_____
Value of improvements, if any	_____
Damage to residue of farm	_____
Total value	$_____

See Farm Road Tract No. 1. If there is any damage to Tract No. 4 from a change of this road it should be included as an element of damages.

We, the undersigned, are of the opinion that the amounts set forth above represent a fair and equitable value for the land and other rights to be acquired from Mrs. Collins et als. in Tract No. 4 for the establishment of the New River Valley Airport.

Dated this —— day of ——————, 1957.

—————— ——————

Chairman

—————— ——————

——————

page 157 } JACKSON'S EXHIBIT NO. 1.

GRAHAM, JOE J.—74.74 Acres

Due to the large acreage to be needed for the airport this entire farm will be acquired.

It is therefore appraised as follows:

Value of land	$——————
Value of buildings and improvements	——————
Total value	$——————

We, the undersigned, are of the opinion that the amounts set forth above represent a fair and equitable value for the land and other rights to be acquired from Joe Graham, Jr., for the establishment of the New River Valley Airport.

Dated this —— day of ——————, 1957.

—————— ——————

Chairman

—————— ——————

——————

page 158 } JACKSON'S EXHIBIT NO. 1.

HANKS, CLARENCE H.—2.75 Acres

This entire tract will be acquired. It is, therefore, appraised as follows:

Value of land	$——————
Value of improvements, if any	——————
Total	$——————

We, the undersigned, are of the opinion that the amount set forth above represents a fair and equitable value for the land and other rights to be acquired from Clarence H.

Hanks for the establishment of the New River Valley Airport.

Dated this —— day of ——————, 1957.

—————— ——————

Chairman ——————

—————— ——————

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* * * * *

Received and filed, this the 4th day of August, 1958.

MARVIN G. GRAHAM, Clerk.

ORDER.

(Tract No. 1—76.60 Acres).

This cause came on to be heard upon the papers formerly read, upon the defendants' exceptions to the report of commissioners and upon the motion of the petitioners to overrule the exceptions and to confirm said report, all of which pleadings are expressly filed herein by leave of court; and was argued by counsel.

In consideration of the foregoing matters, the court having heard the arguments of counsel and having maturely considered the exceptions of the defendants and the motion of the petitioners, it is ADJUDGED, ORDERED AND DECREED that the exceptions of the defendants to the report of commissioners dated April 17, 1958, be, and they hereby are, overruled and that, no good cause having been shown against the report, said report be, and the same hereby is, confirmed and ratified in all respects and particulars.

It further appearing to the court that the petitioners, pursuant to order of this court entered in this cause on June 2, 1958, have paid to Marvin G. Graham, Clerk of this court, the sum of $19,558.50, being the sum ascertained by the commissioners in their report, as set forth above, to be a just compensation for the property taken and the measure of damages to the residue, it is therefore ADJUDGED, ORDERED AND DECREED that title to the following described property taken from the defendants, as also described in the petition for the appointment of commissioners and the report

of *commissoners* filed herein, be, and the same hereby is, absolutely vested in the petitioners, Pulaski County, Giles County, Montgomery County, Town of Christiansburg, Town of Dublin, Town of Pearisburg, Town of Pulaski, and City of Radford, and that the interest and estate of the defendants,

page 160 } Fannie Lou Harman Collins, Jesse Benjamin Collins, Jr., Darlene F. Collins, his wife, Jesse Benjamin Collins III, an infant, Sallie Cloyd Collins Evans, Richard L. Evans, her husband, Sallie Cloyd Evans, an infant, Richard L. Evans, Jr., an infant, persons unknown or persons yet to be born or created, to-wit: the heirs of Jesse Benjamin Collins, Jr. and Sallie Cloyd Collins Evans, John N. Dalton, and Edwina Dalton, his wife, in the property taken be, and the same hereby is, absolutely terminated:

"Beginning at a point on the right-of-way line of State Route 100 25.0 ft. left of Virginia Department of Highways Station 222+31.77 at a corner of Tract E of the property of the New River Valley Airport Commission and running along Tract E, S 26° 15′ E 2,070.28 ft. to an iron pin at a corner of Tract E and properties of Fannie Lou Harman Collins; thence, along the property of Fannie Lou Harman Collins, S 54° 45′ W 963.30 ft. to an iron pin; thence continuing along the property of Fannie Lou Harman Collins, N 35° 15′ W 250.0 ft. to an iron pin; thence, continuing along the property of Fannie Lou Harman Collins, S 54° 45′ W 733.26 ft. to an iron pin at a corner of Tract B of the New River Valley Airport Commission and the properties of Fannie Lou Harman Collins, and W. N. Mebane, Jr. et al.; thence along Tract B, N 41° 45′ W 660.10 ft. to a corner of Tract B and Tract C of the property of the New River Valley Airport Commission; thence, along Tract C N 41° 45′ W 400.0 ft. to an iron pin on the right-of-way line of State Route 100, 25.0 ft. left of Virginia Department of Highways Station 245+41.31; thence along the eastern right-of-way line of State Route 100 to the point of beginning, containing 60.26 acres."

It is further ADJUDGED, ORDERED AND DECREED that the title to the hereinabove described property be, and the same hereby is, vested in the petitioners expressly subject to the terms and conditions of the following specification which was duly filed as an exhibit at the trial of this cause:

"It is proposed by the petitioning political subdivisions, Pulaski County, et al., to Fannie Lou Harman Collins, et al., and to W. N. Mebane, Jr., et al., as parties defendant:

1. The petitioners will grant a perpetual easement of right-of-way for purposes of ingress to and egress from the residue of the Collins and Mebane properties, said right-of-way to be 50 feet in width, commencing at the intersection of the southerly line of Route 100 and the westerly line of Tract B (to be taken from W. N. Mebane, Jr., et al.) thence running on Tract B immediately adjacent, on the northerly and easterly sides thereof, to the boundary line of the remaining Mebane property, and ending at the boundary line of Tracts B and D (the present Mebane-Collins boundary line).

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2. The petitioners will further grant a perpetual easement of right-of-way for purposes of ingress to and egress from the residue of the Collins properties, said right-of-way to be also 50 feet in width, commencing at the boundary line of Tract D (to be taken from Fannie Lou Harman Collins) and Tract B, at the termination of the easement described in Paragraph 1 above, thence running on Tract D immediately adjacent, on the northerly side thereof, to the boundary line of the remaining Collins property, and ending at the intersection of the southerly line of Tract D and the existing private road crossing the Collins land.

3. Jesse Benjamin Collins, et al., are the owners of a future interest in certain tracts of the Collins farm which have as an appurtenant easement, a right-of-way over the existing private road. It is understood and agreed that the easements herein granted shall be an appurtenance to these tracts as well as to the tract owned individually by Fannie Lou Harman Collins.

4. The petitioners will construct a stabilized all-weather road approximately 16 feet in width running the length of the above described rights-of-way across Tracts B and D.

5. That part of the road to be constructed on Tract D shall be maintained by Fannie Lou Harman Collins.

6. That part of the road to be constructed on Tract B shall be maintained by the petitioners so long as the present status of the residue of the Mebane and Collins properties as farm land remains unchanged. In the event that the status of these properties (or either of them) is changed to a different use, then the cost of maintaining the part of the road on Tract B shall be borne jointly by the parties in accord with the laws of Virginia respecting jointly owned private roads.

7. The petitioners shall construct a fence, as shown on the Wiley & Wilson plan of February 1, 1958, on the property line between Tracts B and D and the Mebane and Collins properties for the length of the rights-of-way herein described. The cost of maintenance of the fence shall be borne jointly

by the petitioners and the adjacent landowners in accord with the Virginia laws respecting line fences.

8. The petitioners shall construct a gate, in accord with specifications as above set forth, at the point where the present Collins private road crosses the boundary line of Tract D and the remaining Collins property. The landowners shall be granted the right to construct such further gates at such locations as they may desire, but these gates shall also be in accord with Wiley & Wilson specifications as above set forth.

9. This stipulation shall bind all successors in interest of all parties hereto with respect to any real property to which the easements herein described shall be appurtenant."

It appearing to the court from the certificate page 162 } of title filed by the petitioners as "Exhibit H," dated March 22, 1958, that it is not clearly shown by the record to whom and in what proportions the money paid into court by the petitioners is properly payable, it is ADJUDGED, ORDERED AND DECREED that the Clerk of this court shall pay to the Treasurer of Pulaski County from the money paid into court the pro rata portion of 1958 taxes upon the property herein taken and that the Clerk shall retain the balance thereof subject to further order of this court, with leave granted to any party in interest to move the court for the appointment of a commissioner as prescribed by Section 25-26 of the Code of Virginia to ascertain what persons are entitled to such money and in what proportions.

It is further ADJUDGED, ORDERED AND DECREED that the petitioners shall pay the costs incurred to date in this proceeding, including the sum of $30.00 to be paid to each commissioner and the sum of $50.00 to be paid to Philip M. Sadler, guardian *ad litem* for infant and unknown defendants, which is expressly adjudged to be a fair and reasonable fee for his services as such.

It is further ADJUDGED, ORDERED AND DECREED that, the purposes for which the petitioners instituted this proceeding having been accomplished, the said petitioners be, and they hereby are, dismissed herein and that this proceeding be, and the same hereby is, continued on the docket of this court for the sole purpose of distribution among the defendants of the money paid into court by the petitioners.

Defendants having expressed an intention of appealing this case to the Supreme Court of Apeals of Virginia upon motion of the defendants, the Court doth suspend execution of this order for a period of sixty days, provided the defend-

ants or someone for them, within twenty days enter into bond, with surety approved by the Clerk in the sum of $300.00 and conditioned according to law.

Entered: Aug. 4, 1958.
C. O. B. 20, pg. 422.

We ask for this order:

GOLDSMITH & IRONS
By JOHN M. GOLDSMITH
Counsel for Petitioners.

We have seen but object to the entry of this order:

DALTON, POFF & TURK
By J. C. TURK AND
TED DALTON
Counsel for Fannie Lou Harman Collins, Jesse Benjamin Collins, Darlene F. Collins, John N. Dalton, and Edwina Dalton, defendants.

GILMER, HARMAN & SADLER
By PHILIP M. SADLER
Counsel for Sallie Cloyd Collins Evans and Richard L. Evans, defendants.

page 163 } PHILIP M. SADLER
Guardian *ad litem* for infant defendants and persons unknown or persons yet to be born or created, defendants.

Enter this 4th day of August, 1958.

JACK M. MATTHEWS, Judge.

* * * * *

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* * * * *

Received and filed, this the 27 day of August, 1958.

MARVIN G. GRAHAM, Clerk.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

NOTICE OF APPEAL.

Counsel for Fannie Lou Harman Collins, Jesse Benjamin Collins, Jr., Darlene P. Collins, and Jesse B. Collins, III, four of the defendants in the above styled condemnation suit in the Circuit Court of Pulaski County, Virginia, hereby give notice of appeal from the final order entered in this case on August 4, 1958, and will apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas.*

ASSIGNMENTS OF ERROR.

The following are the errors assigned:

The Circuit Court erred:

(1) In not setting aside the report of the Commissioners as contrary to law, without evidence to support it, and plainly wrong.

(2) In not granting a new hearing, and in entering an order confirming and ratifying report of the Commissioners.

(3) In failing to sustain the exceptions filed by defendants in the report of the Commissioners.

(4) In confirming the report of the Commissioners after it learned that E. P. Whitman, one of the Commissioners appointed by the Court at the insistance of the Petitioners, had been selected by petitioners, prior to the commencement of the condemnation proceedings to put an appraised value on the property—the said E. P. Whitman, prior to his appointment as a Commissioner, and without knowledge to the defendants, having received instructions from the *Petitioners* in connection with such appraisement and conferred with Petitioners regarding appraisal of the land in question—all of which information was concealed by the Petitioners at the time of Whitman's appointment as a Commis-
page 166 } sioner.

(5) In not setting aside the report of the Commissioners on the grounds that E. P. Whitman was and should have been disqualified to serve as a commissioner.

(6) In admitting over the objection of counsel for defendant, improper evidence for petitioners, and particularly erred in admitting evidence of Richard L. Evans relating to an offer of compromise as to the Collins lands, which offer was in the nature of negotiation and an attempt to compromise.

(7) In striking from the list of commissioners, the name of

W. R. B. Horton, on the grounds that said Horton was distantly related to defendants' counsel of record.

(8) In confirming the award of the commissioners because said award was grossly inadequate both as to the land taken and damage to the residue.

Respectfully,

FANNIE LOU HARMAN COLLINS
By JAMES C. TURK
Of Counsel.

* * * * *

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* * * * *

Received and filed, this the 2 day of October, 1958.

MARVIN G. GRAHAM, Clerk.

NARRATIVE OF PROCEEDINGS.

On February 12, 1958, the political subdivisions of Pulaski County, Giles County, Montgomery County, Town of Christiansburg, Town of Dublin, Town of Pearisburg, Town of Pulaski, and City of Radford, filed six petitions in the Circuit Court of Pulaski County, asking for the appointment of commissioners for the purpose of condemning six certain tracts of land in Pulaski County, Virginia, on which the petitioners desired to construct a proposed airport and landing field. Prior to the filing of these petitions, these political subdivisions had organized the New River Valley Airport Commission, which Commission had appointed a board of appraisers sometime in September or October 1957, to place a value upon the lands allegedly required for the construction of the airport. This board of appraisers consisted of Mr. C. E. Richardson, Pulaski, Virginia, Mr. E. D. Spangler, Narrows, Virginia, Mr. Robert B. Harvey, Radford, Virginia, and Mr. R. R. Harkrader, Christiansburg, Virginia. On March 10, 1958, a motion to dismiss and responsive pleadings *was* filed on behalf of the defendants in the three cases in which an appeal is being sought. On March 22, 1958, a pretrial conference was held at Hillsville, Virginia, at which time, it was agreed among court and counsel to consolidate the six proceedings into one hearing. The proceedings of the con-

ference at Hillsville were taken down by a recorder, were later transcribed and filed as a part of the record. On March 24, 1958, an order was entered by the court appointing six commissioners for the purpose of determining a just compensation for the property sought to be condemned. This order stated that one of the commissioners would be struck by the Court after *voir dire* examination, and the five remaining commissioners would serve in the condemnation proceedings in accordance with the laws of Virginia for
page 171 } such cases made and provided. The condemnation proceedings were set for hearing on Monday, April 15, 1958, at the Courthouse in Pulaski, Virginia. When the six commissioners reported to the Court as directed by the order of March 24, 1958, Commissioner Brown informed the Court that he was related to the two Guthrie brothers who were the owners of one of the parcels of land to be taken. The Court then asked Commissioner Brown, because of his relationship to the Guthrie brothers, two of the property owners involved, to stand aside. Commissioner Horton then reported to the Court that his mother was a cousin of the mother of Ted Dalton, of counsel for some of the condemnees in these proceedings. Because of this relationship, the court struck off the name of Commissioner Horton, to which action of the court in removing Commissioner Horton, counsel for Fannie Lou Harman Collins, Jesse B. Collins, Jr., and John N. Dalton, duly objected and excepted. After the court struck the *name* of R. W. Brown and W. B. R. Horton, four persons were left to serve as commissioners in these proceedings, namely Foy Aust, R. G. Fizer, T. E. Tabor, III, and E. P. Whitman. These commissioners, it was agreed, were to hear and determine all six cases at the same time.

After the commissioners were duly sworn, the presiding judge, the commissioners, the attorneys involved, and all parties in interest who desired to do so went and viewed the lands proposed to be taken by the New River Valley Airport Commission. After viewing the lands in question, the court, the commissioners, counsel, and the parties in interest, returned to the Pulaski County courthouse at which time the petitioners began the introduction of their evidence as to the value of the six tracts of land to be taken and the damage to the residue.

C. E. Richardson, one of the members of the board of appraisers appointed by the New River Valley Airport Commission, was called to testify as to the value of the 60.26 acres of land to be taken belonging to Fannie Lou Harman Collins

and the damage to the residue. Mr. Richardson testified that the board of appraisers fixed the sum of $12,052.00 as the value of the land to be taken, and $5,000.00 as the damage to the residue, total $17,052.00. The evidence was
page 172 } objected to by the defendants on the grounds that the witness did not have the right to state the collective judgment of petitioners' appointed appraisal board, on which objection the court ruled that while the witness could relate that the appraisal group viewed the properties and reached a certain evaluation, yet the witness's opinion as to the value of the land taken and damage to the residue must be based upon his own judgment and not merely that of the appraisal group as a whole, to which action of the Court, the defendants duly excepted. As to the tract of land belonging to Mrs. Fannie Lou Harman Collins, her son, J. B. Collins, Jr., and her daughter, Sally Cloyd Collins Evans, C. E. Richardson was the only witness testifying as to the value of the land to be taken and the damage to the residue. Mr. Richardson stated that he fixed the sum of $17,088.50 as the value of this tract of land containing 113.73 acres and the sum of $11,000.00 as the damage to the residue. Objection was made to the introduction of this evidence on the grounds that it was hearsay and that the witness did not have the right to testify as to the joint and composite action of petitioners' appraisal board. Again, the Court ruled that the values placed by the witness must be his own and not that of the appraisal board, to which action of the Court, in allowing the witness to testify, the defendants by counsel duly excepted.

The petitioners called R. Lloyd Matthews, registered surveyor of Pulaski, Virginia, who gave testimony in each of the six proceedings showing the layout of the land to be taken. Mr. Devereaux, a witness called by the petitioners in each of the six proceedings, testified as to the type of soil and slope of the lands in question, but he did not offer to place any value on the lands to be taken or the damage to the residue. Mr. Johnson of the Architect-Engineering firm of Wiley & Wilson, Architects and Engineers for the planning of the Airport, testified as to the location of the airport runways, slope, proposed construction, drainage, fencing, and roads.

The defendants, Fannie Lou Harman Collins, Jesse B. Collins, Jr., and Sally Cloyd Collins Evans, then introduced the following witnesses and the substance of their testimony was as follows:

page 173 } Witness, David Cloyd, III, a nearby farmer and neighbor, testified that he cut 6,212 bales of

alfalfa hay from 40 acres of Mrs. Collins's individual tract of land in the year 1957. He further testified that it cost approximately $60.00 to $70.00 per acre to plant a crop of alfalfa. He stated that he placed an evaluation of $900.00 to $1,000.00 per acre on the Collins land fronting on State Route 100 as shown on the map and a value of $600.00 per acre for the entire Collins' tracts being taken. G. C. Hall, President of the Pulaski National Bank, an experienced land appraiser and farmer in Pulaski County, familiar with the lands in question, placed an overall evaluation of the Collins lands being taken at $600.00 per acre.

S. H. Bell, a nearby prominent land owner of Pulaski, stated that the state paid him $5,000.00 for five acres where the bridge is at Dublin, which is only about three miles from the Collins land, and in addition, this witness testified that he sold seven acres about a mile from the Collins land for $1,000.00 per acre.

Mrs. Fannie Lou Harman Collins testified that she placed a value of $600.00 per acre, average, on all of the Collins lands being taken, which included the damage to the residue. At the conclusion of defendant's testimony, petitioners, over the objection of the Collins defendants and John N. Dalton called as a witness R. L. Evans, husband of Sally Cloyd Collins Evans, to testify as to certain efforts made by the petitioners to purchase the entire Collins land of 506 acres, which was objected to by the Collins defendants and John N. Dalton in Chambers on the ground that such testimony related to efforts to compromise and was prejudicial to the defendants. A transcript of this part of the evidence is shown except for what transpired in the Judge's chambers, at which time the defendants argued strenuously that evidence relating to efforts to compromise was clearly inadmissable and would be prejudicial not only to the Collins defendants, but to the defendant John N. Dalton, as well.

The evidence given by Mr. Richard L. Evans is as follows:

page 174 } EXAMINATION.

By Mr. Goldsmith:

Q. Will you please state your name?

A. R. L. Evans.

Q. Mr. Evans, are you the husband of the daughter of Mrs. Collins?

Richard L. Evans.

A. Yes.
Q. What is her name?
A. Sally Cloyd Collins Evans.
Q. Your wife is now sick and cannot appear at this hearing?
A. Yes.
Q. I'll ask you if you weren't present with Mr. Cole, Chairman of the land Acquisition Committee, Mr. C. V. Jackson, Mr. Sadler, Mr. Irons, and myself when we offered to purchase the entire Collins' farm for $95,960.00.

Mr. Dalton: "I am objecting and wish to put in the record to any conference at which Mrs. Collins was not present. All he can do is ask this witness to place his value on the land. And if he wanted to produce Mr. Evans and cannot come in rebuttal and then put a witness who will say he places a different value. Not proper at this stage of the game."
Mr. Goldsmith: "Your Honor, Mr. and Mrs. Evans are parties to this suit and filed a pleading showing that they had accepted the offer for the entire farm of five hundred four acres of $95,960.00, and Mrs. Collins has testified that she wanted $103,800.00 for only one hundred seventy-four acres and it is proper for me to show this evidence in rebuttal."
Judge Matthews: "I am going to allow him to testify. He filed the pleadings, its part of the record, and I'm going to let him testify. He can place his value on the property. Cannot show any conference to reach agreement."

Q. Did you and your wife believe that $95,960.00 for the entire Collins' farm, lock, stock, and barrel was a fair and reasonable offer?

Mr. Dalton: "We further object, that involves hearsay evidence."
Judge Matthews: "Overruled."

A. We accepted it.
Q. You authorized your attorney to file pleadings to that effect on your behalf in this case?
A. Yes, sir.

Richard L. Evans.

page 175 } CROSS EXAMINATION.

By Mr. Dalton:

Mr. Dalton: "Not waiving our objection to the admission of the evidence, we proceed to cross examine."

Q. Were you present at that conference?
A. Yes.
Q. Who all was present?
A. Mr. Cole, Mr. Jackson, Mr. Sadler, Mr. Goldsmith, Mrs. Evans, and I, and seems to me one other person, don't recall.
Q. Then neither Mrs. Collins nor Mr. Collins were present?
A. No.

Mr. Dalton: "It's not proper to admit the evidence when neither were present."

Judge Matthews: "Overrule the objection."

By Mr. Sadler:

Q. Getting down to the land, the subject of this suit. Did you consider that appraisal for the land a reasonable and just offer for the land to be taken?
A. No, sir, I did not. I have no particular interest in this thing. The land belongs to my wife.

There being no further questions, the witness was excused.

As to the John N. Dalton land, the petitioners called H. B. Spangler, a member of the New River Valley Airport Appraisal Board from Giles County, to give testimony as to the value of the land to be taken and the damage to the residue. The defendants objected to this witness testifying as to the views of the appraisal board on the grounds that such testimony was hearsay, being based on the composite judgment of the Board of Appraisers, and also on the further ground that this witness was not a land owner or resident, of Pulaski County, and was not familiar with the land values in Pulaski County, and for this reason, was not qualified to testify as to the value of any of the land to be taken. The court ruled as before on these objections, to which action counsel for defendants duly excepted. Mr. H. B. Spangler testi-
page 176 } fied that he fixed the value of $5,942.75 on the 58.24 acres of land belonging to John N. Dalton to be taken, and fixed the sum of $2,020.50 as the damage to the residue of the lands of John N. Dalton. Mr. Spangler

further testified that the land was in a poor state of cultivation, but he stated in his testimony that in fixing the evaluation, he thought that the landowner would have the privilege of removing the timber. The petitioners put on the same witnesses as in the other proceedings. R. Lloyd Matthews, who testified in all six proceedings admitted on cross examination that the 17.83 acre tract of land belonging to John N. Dalton was not necessary for the construction of the proposed airport.

The following witnesses were then called by the defendant Dalton: David Harman testified that the land was of a high quality and that the crops produced on it were excellent, and he placed an evaluation of $600.00 per acre on this land. James Talbert, foreman on the farm testified that the corn on the land being taken was excellent and that the land sought to be taken was about one-third of all the land on the 600 acre farm suitable for crop purposes; that the corn crop of last year raised approximately 75 bushels per acre and it would be damaging to the entire farm to take this cropland away from the residue which is all high quality grazing lands. Jesse Bowman, a timber man, testified as to the value of approximately 20 acres of timberlands being taken and placed an evaluation of $400.00 per acre on the timber. Mr. Nige Sutphin testified about the value of timber similar to the testimony of Mr. Bowman. Mr. C. S. Thompson a real estate broker and land holder of Pulaski County, testified that he thought the value of the Dalton land to be approximately $600.00 per acre.

The instructions to be given by the court were worked out in chambers and agreed to by all parties concerned without objection. The instructions were read by the court to the commissioners and oral argument by counsel was waived by agreement. After approximately two or three hours of deliberation the commissioners returned to the court and turned in their reports, which are shown in the record.

Within the allowed time by law these defendants filed written exceptions to the reports of the commissioners. After it was learned that one of the commissioners, E. P. Whitman, had been asked to serve by the petitioners as chairman of its appraisal board for fixing a value on the lands to be taken the court heard evidence prior to oral argument from Mr. C. B. Jackson and Mr. E. P. Whitman relative to petitioners' request that E. P. Whitman serve as chairman
page 177 } of the board of appraisers. This evidence was taken down, has been transcribed and filed as part

of the record in these proceedings. After this evidence was heard by the court, counsel argued orally the exceptions to the reports of the commissioners laying particular stress on the fact that E. P. Whitman was disqualified to serve as a commissioner.

After the consideration by the court all exceptions were overruled and the reports of the commissioners were confirmed, to which action of the court, the defendants duly objected and excepted.

As to the Mebane, Hanks and Guthrie tracts, the land owners have accepted the award of the commissioners, and are not seeking an appeal.

page 178 } CERTIFICATE OF JUDGE.

This is to certify that the foregoing Narrative of Proceedings in the condemnation case of Pulaski County, et al., Petitioners *v.* Fannie Lou Harman Collins, et al., Defendants (Tract of 76.60 acres; fee simple owner, Fannie Lou Harman Collins) was tendered to me on October 2, 1958, at Pulaski, Virginia, (notice having been given to counsel of record for Petitioners of such tendering on September 24, 1958), and that said Narrative is authentic and is a correct statement of the proceedings to the best of my knowledge and belief.

Dated: October 10th, 1958.

JACK M. MATTHEWS, Judge.

Received and filed, this the 11 day of Oct., 1958.

MARVIN G. GRAHAM, Clerk.

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Received and filed, this the 2 day of October, 1958.

MARVIN G. GRAHAM, Clerk.

QUESTIONS AND OBJECTIONS TO DEFENDANTS' PROCEDURE.

The defendants' "tender" of a socalled "Narrative of Procedure" raises two important procedural questions:

1. May a Circuit Court certify a record, based upon a "narrative" of events, especially the evidence, when the entire record is available, including the evidence, to the appellant?

2. Will the Supreme Court of Appeals grant a writ of error, consider or reverse a lower court decision based upon such a record?

These three defendants, applicants for a writ of error, 3 out of 12 defendants (including Philip H. Sadler, Esq., Guardian *ad litem* in the two Collins cases), have been represented by counsel throughout, were put on notice in April, 1958, that a transcript of the evidence would be made by the Court Reporter upon request. The defendants were further notified, in writing, to the same effect on June 4, 1958.

The Supreme Court of Appeals, in answering No to both of the above questions, has made the compliance with the Rules of Court mandatory. "This failure to comply with the rules governing appeals on so vital an issue (Printing "germane evidence") is an invitation to dismiss the writ of error." *Farrow* v. *Com.,* 197 Va. 353 @ 357. Furthermore, a compliance with the rules governing appeals is jurisdictional. *Hyson* v. *Dodge,* 198 Va. 792 @ 801. *Claud* v. *Pulley,* 169 Va. 467.

The plaintiffs, therefore, respectively request this court not to certify the defendants' so-called "Narrative of Proceedings" as a part of the record in these cases. The Court, furthermore, is requested to certify only such parts of the record as are authentic.

page 180 } Respectfully submitted,

GOLDSMITH & IRONS
By JOHN M. GOLDSMITH
Attorneys for Pulaski County et als.
and New River Valley Airport
Commission, Plaintiffs.

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Received and filed, this the 2 day of October, 1958.

MARVIN G. GRAHAM, Clerk.

The Honorable Jack M. Matthews, Judge presiding:

The examination of the Commissioners and instructions to the Commissioners, prior to the view of the property, taken in the Circuit Court of Pulaski County, Virginia, on April 15, 1958, in the above styled condemnation suits for the land to be taken for the New River Valley Airport.

Present for the Petitioners: John M. Goldsmith and Robert S. Irons.

Present for the Defendants: Ted Dalton, John N. Dalton, Philip M. Sadler, Eugene Nuckols, John W. B. Deeds.

Commissioners to be qualified: E. P. Whitman, Graham Fizer, Foy Aust, T. E. Tabor, III, and W. B. R. Horton.

Judge Matthews: Lets proceed, gentlemen. Do you wish to examine the Commissioners?

Mr. Goldsmith: I'd like for the Court to examine them.

page 182 } Judge Matthews: You understand this is a condemnation proceeding. Style of suit, Pulaski County, Giles County, Montgomery County, Town of Christiansburg, Town of Dublin, Town of Pearisburg, Town of Pulaski, and City of Radford, *v.* Fannie Lou Harman Collins, Jesse Benjamin Collins, Jr. Darlene F. Collins, Jesse Benjamin Collins, III, an infant, Sally Cloyd Evans, Richard Evans, Richard L. Evans, Persons unknown or persons yet to be born or created, John N. Dalton, and Edwina Dalton. Are you or either of you related to any of these persons?

Mr. Whitman: My wife is second cousin to Mrs. Collins.

Judge Matthews: Have you talked to anyone about the airport?

Mr. Whitman: I have.

Judge Matthews: Stand aside.

Mr. Horton: I am related to John N. Dalton and Ted Dalton.

Judge Matthews: Have you talked to any of the land owners?

Mr. Horton: I have not.

Judge Matthews: Any questions you want to ask them about?

Mr. Goldsmith: Some kin that you—Who are you kin to?

Mr. Horton: Ted Dalton's son.

Mr. Goldsmith: I believe that would disqualify him. He is involved in three of these suits.

Judge Matthews: Stand aside.

Judge Matthews: Clarence H. Hanks, Frances Hanks, William N. Mebane, Jr., George S. Mebane. Are you related or connected in any way with any of these parties, page 183 } discussed it with any of them. Can you go view this property and make up your own mind about it?

(One of remaining Commissioners): My stepmother is a sister to Dave Harman.

Judge Matthews: That's too far for me.

Mr. Goldsmith: I'd like for you to re-direct the question to Mr. Whitman. You asked him if he had talked to anyone about it and you asked the others if they had talked to any landowner.

Judge Matthews: Have you talked to any landowner about this?

Mr. Whitman: No, sir, I haven't talked to any landowner.

Mr. Goldsmith: May we ask that he be put back.

Judge Matthews: This other is against John N. Dalton. This other is against William Mebane and George Steedman Mebane. Are these the same parties? William Meek Guthrie and Charles Richard Guthrie. Are you related to or connected in any way to these people?

The commissioners indicated that they were not.

Judge Matthews: Fannie Lou Harman Collins, Sally Cloyd Evans, Richard L. Evans, Jr., are these the same parties?

Mr. Goldsmith: The same parties but different tracts of land.

Judge Matthews: The questions would be identical.

Mr. Goldsmith: We need not less than three or more than five Commissioners.

page 184 } Judge Matthews: I'd like to ask one question, please. Do any of you know of any reason that you should not serve, that you could not make a fair *ward* to the landowners and to Pulaski County in this matter? You are not aware of any relationship or anything of that nature: that you could take a view and give a fair award both as to the counties and to the landowners?

There were no comments and Judge Matthews instructed the Clerk, Mr. Marvin Graham, to swear each Commissioner, which he did.

Mr. Fizer: I'd like to ask a question. I'm not familiar with this property. The only thing I want to know in connection with it is that we are going to be given plenty of opportunity to view the property, or, are we going to have to decide this thing today?

Judge Matthews: You will go out and view the property. Then we will come back here and hear the evidence and if you want to go back, I'll see that you have an opportunity to go back. In general its this, if I owned this property and wanted to sell, selling to a man who desired to buy but didn't have to buy, what would the value be. Don't consider sentiment. Take what would be the value of that land to a man who wanted to sell to me but who was under no obligation to sell to a man who wanted to buy but was under no obligation to buy. There are certain things, a man wouldn't want anybody to go through your land and take part of it for any price. Give this man a reasonable figure. When the proper time comes, I will give you the instructions. We won't take any evidence on the property. Will point out the land and the boundaries.

page 185 } Mr. Goldsmith: Your Honor, we had agreed that we would take Mr. Lloyd Mathews and would familiarize these people with the maps. Each one of the three could have a map. If there was any question that anyone wanted to ask he could direct it to the Court and Mr. Mathews would be present.

Judge Matthews: I want the Sheriff to go with them. Any question anyone wants to ask will be directed to him (Mathews) purely to the boundary line.

Mr. Goldsmith: That's our understanding.

Judge Matthews: Solely and only to determine the property to be taken.

Mr. Goldsmith: I'll give each one a map now.

Mr. Nuckols: We feel that it would be appropriate for these people to know about viewing the residue of the land, too. The maps include the residue. They should know that when they go out also.

Mr. Goldsmith: In each file there is a property map of the airport, a profile map, a map of the tract to be taken and a map of the entire property on the farm. Gene, would you look at these so it can be stipulated without difficulty? (Mr. Goldsmith showed the maps to Mr. Nuckols, Mr. Deeds and Mr. Sadler and explained what they were. The maps were marked.)

Mr. Nuckols: We'll stipulate the maps.

Mr. Goldsmith: Here's Mebane and Hanks.

Mr. Nuckols: Except for this measurement.

Mr. Goldsmith: We'll get this corrected.

page 186 } Judge Matthews: Mr. Whitman, you probably misunderstood this. You have talked about this generally. Have you formed any opinion or talked to anybody that would prevent you from going out there, viewing that property and forming an opinion?

Mr. Whitman: No, sir. From my wife's relationship or my brother, I'd give my own opinion.

Judge Matthews: Nobody's saying that you could be influenced. We just don't want any criticism or anything that could influence—What did you say your relationship was?

Mr. Whitman: My wife is a second cousin of Mrs. Collins.

Judge Matthews reinstated Mr. Whitman as a member of the Commission and he was duly sworn by Mr. Graham, Clerk of the Court.

There was a short recess at this time.

Court reconvened and it was noted that Mr. Ted Dalton and Mr. John N. Dalton had arrived.

Judge Matthews: Mr. Dalton, in view of the little misunderstanding about the time the Commission was to meet we have examined these jurors. Asked Mr. Horton to stand aside because of some relationship to the Daltons. Examined and there is a little relationship and we struck him off. Have these four here. Be glad for you to ask them any

page 187 } questions.

Mr. Dalton: All right. I apologize to the Court and Commissioners for being late. I was under the impression, presumably mistaken, that the time was nine-thirty instead of nine o'clock. Will not take up much time in view of the importance of this proceeding. Have any of you gentlemen read newspaper articles relating to these proceedings?

One of Commissioners: I have. I imagine all of us have.

Mr. Dalton: Do you recall having read articles indicating that Ted Dalton, as attorney for the Collins and my son, John Dalton, was trying to block the airport.

Mr. Goldsmith: We are not going to object to asking them anything. Whether or not he was opposed to the airport is not important. The sole question is the value of this land.

Judge Matthews: —

One of Commissioners: I don't remember reading it but I heard it down at Radford.

Mr. Dalton: You don't remember seeing in the papers then

that, articles to effect that the progress of the suits was being delayed or impeded by me, as attorney for Mrs. Collins.

One of Commissioners: I didn't read it. I heard it.

Mr. Dalton: Did you also read in the way of a statement by Mr. Nuckols that—"Attorney Eugene L. Nuckols said today that a motion filed by Attorney Ted Dalton regarding the land comdemnation suits for the New River Valley Airport have given the impression that all of the land owners were resisting the acquisition of the needed land. Pleadings filed by Ted Dalton raised the question of the right to condemn the land in the cases against John Dalton and Fannie Lou Harman Collins—None of the other owners filed pleadings raising these questions. William N. Mebane,
page 188 } George S. Mebane, William Meek Guthrie, Charles R. Guthrie, Clarence H. Hanks, specifically, as they have no intention of standing in the way of airport development." Do you recall seeing that article?

The Commissioners indicated that they did not.

Mr. Dalton: Do you recall hearing anything regarding—when you all were selected as Commissioners?

The Commissioners indicated that they did not.

Mr. Dalton: Not mentioned in the article is the statement I made at Hillsville.

Mr. Goldsmith: I object to this. Like to point out that I think it is highly improper to make a speech here with regard to what happened at Hillsville.

Judge Matthews: Overruled.

Mr. Goldsmith: Take exception to the ruling.

Mr. Dalton: I stated to the Court that there was no effort on my part to impede or delay the progress of the airport. That I agreed to a hearing earlier than I was required to do as a member of the General Assembly. That I did not ask for a delay in the appointment of Commission but that they be appointed and that we go forward, none of which appeared in the press. What I am coming to is this, would any of this newspaper publicity to the effect that I, as attorney for Mrs. Collins and others, oppose the airport, would it influence you all in any way or any of you in your decision in this case.

Mr. Whitman: It wouldn't me. I'd go on and value the land.

page 189 } Mr. Dalton: Then the fact that I filed a formal motion to dismiss in representing my clients on the question of the public necessity, need, or upon whether or not a fair offer had been made. The fact that I did file

such a motion, you say, would not influence you all in any way in your verdict in this case?

The Commissioners indicated that it would not.

Mr. Dalton: Would you give to Mrs. Collins and her son, Ben, and to my son, John, whom I represent in this matter; the same fair treatment, the same that you would give to the other people here?

The Commissioners indicated yes.

Judge Matthews: When people are unable to agree on the value of their property, we are all human, the law sets up a course for which the land can be taken. Any position which Mr. Dalton, or any other person, takes cannot or should not have anything to do with your placing a value on this land. Can you go on this land and value it from your view?

The Commissioners indicated that they could.

Mr. Dalton: The Commissioner that was excused. I don't think the relationship is close enough.

Mr. Nuckols: I'd like to make the same point. That Mr. Horton is apparently the same distant relationship as Mr. Whitman. Like to move that he be put back on the Commission.

Judge Matthews: Overrule your motion. Mr. Whitman, who did you say you discussed it with?

Mr. Whitman: I don't know. Talked about it down at the Club.

page 190 } Judge Matthews: Have you discussed it with any officials of any subdivision?

Mr. Whitman: No, haven't talked to any landowner. Don't recall talking to any officials about it.

Judge Matthews: As much publicity as there has been. Couldn't be an intelligent man and not know you wanted to take this property. Hasn't done that, I wouldn't want him.

Mr. Goldsmith: Can it be stipulated that the map of the entire John Dalton farm showing the part to be taken be introduced?

Mr. Dalton: Yes.

Mr. Goldsmith: Then it was stipulated that the map of the Mebane farm showing the part to be taken in red. Also shows on it the Hanks property should be given to the Commissioners.

Judge Matthews: Mr. Horton, you are excused.

Mr. Goldsmith: Also stipulated in Mebane map that the exact distance of the line may not be accurate on this map but they will be when introduced. Here is the other three.

Judge Matthews: Show to each of the attorneys. Subject to whatever you gentlemen agree is my policy. Let these Commissioners go out there in the custody of the Sheriff and Mr. Mathews. Let him point out the *boundry* lines of this property and that's all and then come back here and hear the evidence.

Mr. Dalton: The only question is whether they can look and digest all of the property and the residue. Should we divide it up in two trips.

Judge Matthews: Discussed with these commissioners. We go out and look at it and come back and hear page 191 } the evidence. They can certainly go back and look at it again if they want to.

Mr. Nuckols: I wonder if they should be pointed out the general *boundry* of the residue of the land.

Judge Matthews: Be pointed out in a general way. This is important to the landowners and important to everybody else. I'm not rushing anybody. They can take all the time they need.

There was some discussion between the attorneys as to the marking of the maps and Mr. Goldsmith stated that it had already been done and the Commissioners copies of the maps were marked to correspond with the exhibits in each case.

Mr. Dalton: One other thing, is Your Honor going to accompany the Commissioiners?

Judge Matthews: Yes, sir, and the attorneys, too. I want them to. Recess until two p. m. while the Commissioners go out and view the land.

I, L. Marie Carper, hereby certify that the foregoing and annexed evidence was recorded by me in the Circuit Court of Pulaski County, Virginia, on April 15, 1958, was reduced to writing and this is a true copy thereof.

L. MARIE CARPER
Reporter.

JOHN M. GOLDSMITH
Counsel for Plaintiff.

DALTON POFF & TURK,
JAMES T. TURK
Attys. for Defendants.

JACK M. MATTHEWS, Judge.

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* * * * *

Received and filed, this the 2 day of Oct., 1958.

MARVIN G. GHAHAM, Clerk.

The Honorable Jack M. Matthews, Judge presiding:

The evidence of Mr. C. E. Richardson, taken in the Circuit Court of Pulaski County, Virginia, on April 16, 1958, in the above styled condemnation suit for the land to be taken for the New River Valley Airport.

Present for the Petitioners: John M. Goldsmith and Robert S. Irons.
Present for the Defendants: Ted Dalton, John N. Dalton and Philip M. Sadler.

EXAMINATION.

MR. C. E. RICHARDSON,
after being first duly sworn, testified and said:

By Mr. Goldsmith:
Q. May I avoid how he got to be here and just let him give the values?
A. (Mr. Dalton) That's all right.
Q. Mr. Richardson, did you with the other gentlemen as you explained yesterday appraise for the Airport Commission the 60.26 acres shown on the C. W. Harman Estate Farm Map as Tract 1 containing—

page 193 } Mr. Dalton: "Object, he can state what he thinks the value is. There was no duly authorized committee by Mrs. Collins or her son, Ben, or either of the other—"
Judge Matthews sustained the objection.

Q. At the request of the New River Valley Airport Commission did you together with Mr. R. R. Harkrader, Mr. R. B. Harvey, Mr. H. D. Spangler and Mr. J. H. Chapman go upon the land owned by Mrs. Collins known as Tract 1, containing 76.60 acres, 60.26 acres of which the Airport proposed to take and study that with regard to the value?

C. E. Richardson.

A. Yes, sir.

Q. Mr. Richardson, do you have a value which you placed upon this land after consultation with these other gentlemen?

A. I do.

Q. What value did you place upon this land?

A. $12,052.00. $200.00 an acre.

Q. Do you have a value that you placed upon the damage to the residue of this tract of land owned by Mrs. Collins?

A. Yes.

Q. What was that value?

A. Five thousand dollars.

Q. Were you also asked and did you take into consideration the damage in the change to the farm road?

A. That's included in the five thousand dol-
page 194 } lars.

Q. What else did you understand the Airport would do?

A. Build a new road.

Q. What was the total you placed on that?

A. $17,052.00.

Q. Mr. Richardson, did you in fixing your value take into consideration the road frontage Mrs. Collins owned on Route 100?

A. We considered that added to the value of the land, the convenience of entering and leaving.

Q. Did you put that on the damage to the land itself or damage to the residue?

A. The land itself.

CROSS EXAMINATION.

By Mr. Sadler:

Q. In Tract 1, what we call Tract 1, do you recall what road frontage was on Route 100?

A. No.

Q. Approximately two thousand feet. That field in there lies well, does it not? Fairly level?

A. Yes, nice land.

Q. You placed a value there of $200.00 per acre. Tell the Commission what basis you use for $200.00 an acre.

Q. Adapted to general farming, alfalfa. Good state of cultivation. Good state of alfalfa on it now.

Q. Did you not consider it to its other adaptability?

A. No.

Q. Just as farm land?

A. Yes, value of land for present usage.

page 195 } Q. As to the residue you attested to, you place damage of five thousand dollars to the residue of this one tract alone?

A. Yes, we were asked to give a value of the entire tract of 76.60 acres.

Q. That was from the taking of just this one tract, damage to the residue?

A. Yes, that was all that was involved.

Q. You made two separate appraisals as to Tract 1 and 2, 3, and 4?

A. Yes.

Q. Did you consider in that value of residue these ponds?

A. Yes, we did.

Q. Both of these were located on Tract 1, were they not?

A. One was, I think one was on Tract 2.

Q. Tract 1 goes on beyond that fence.

A. Both ponds are on Tract 1 but the Tract 2 is watered by one of the ponds.

Q. Believe that is the one that Mr. Joe Graham's, joins his land?

A. No.

Q. You did consider the loss of two ponds?

A. Yes.

Q. After the condemnation proceedings are completed do you know where the water supply for the remaining Collins' land will be?

A. Didn't look into that.

page 196 } Q. Do you know of any running stream?

A. Yes, there is water on the farm.

Q. Do you know where it is located in relation to the front part of the farm?

A. On the farm I do. Around the house and barns.

Q. Have to go to the expense of building additional ponds. The house is on the back side of the ridge.

A. On the south side.

Q. As far as you know after the airport is built there will be no water ponds or otherwise on the front side?

A. No, as far as I know.

Q. As far as you know they are just dug out ponds?

A. Would be drainage water.

Q. Please state whether or not you considered the water to go into the remaining Collins' farm after the airport was built part of the damage?

C. E. Richardson.

A. Yes.

Q. Did you have the distances that she would have to travel?

A. We didn't have the exact distance. Our first location at first were different from what you folks are talking now. I'd like to speak to Mr. Spangler about the location of the road.

Judge Matthews: Show the gentleman the map.

Mr. Goldsmith: Its clear on this map.

Q. I take it then you are not certain the distance of this roadway they are going to build?

page 197 } A. We figured that the additional distance they would be traveling would not be any longer.

Q. You heard Mr. Matthews testify it was 2150 feet further as he figured now?

A. Yes, but their entrance to Dublin were approximately the same.

Q. Is it also your recollection, Mr. Richardson, that you were told that the Airport Commission was going to build the road and maintain it?

A. I believe we were of this impression. Not sure I was told.

Q. If you had been under the impression that the maintenance of that road had been other than by the airport would it have made a difference in the appraisal?

A. I don't believe we gave any more attention to it than that.

Q. Did you also consider, believe, Mrs. Collins is going to have left three hundred acres with no highway frontage? Is that correct after this is built? The entire farm is about 706 acres.

A. Yes.

Q. After the airport is built she is going to have three hundred some acres of farm land with no frontage?

A. Yes.

Q. In your opinion would the farm be as valuable if it did not have road frontage?

A. We took that into consideration in damage to the residue.

Q. Did you all figure how much damage per acre that would be or did you arrive at it that way?

page 198 } A. Have to look back at my figures. Believe that we did though. Don't see where I have that totaled up.

Q. The market value of highway frontage has higher value per acre than one that doesn't?

A. Yes.

Q. If you have to have an easement that does not increase the value?

A. We didn't consider that an easement. She would have a perfect right and her heirs forever to the use of the road.

Q. If you considered that as an easement, would that have the same value?

A. We just considered that she would have a road out. That's all. That she would have a road. To have an easement didn't enter into it.

Q. They pinned you down pretty closely as to the appraisal of this land for what it was now being used for?

A. That was the instruction.

Q. They didn't enlarge that to what it was reasonably adapted for?

A. Not beyond farming.

Q. Highway frontage of that type of land, level and suitable for dwelling units would be much higher than two hundred dollars an acre, would it not?

A. I think it depends entirely on the highway and development. Entirely speculative. If the entire country turned to subdivision—

Q. It would be reasonably adaptable to that type of development, would it not?

page 199 } A. No.

Q. You did not consider that in the appraisal?

A. No.

Q. Have you sold off any highway frontage in your lifetime?

A. Yes.

Q. Have you recently sold that?

A. No.

Q. You didn't own the Harman land when the State—Did the State buy some land from you?

A. Gave me damages for tearing down of residences and—

Q. Do you remember what they paid?

Mr. Goldsmith objected.

Judge Matthews overruled the objection.

Q. Do you recall what they paid you an acre for the land they took?

A. Paid for two houses, two dwellings, two cisterns, believe

they took two and one-half acres, if I recall for $17,500. Seems to me it was five hundred dollars an acre for the land.

Q. Did the break down stipulate for acreage?

A. Believe it did.

EXAMINATION.

By Mr. Goldsmith:

Q. Did you also place a value on Tract 2, which also contains 76.60 acres, known as Tract E on the map, 61.51 acres of that to be taken?

A. Yes.

Q. Will you please state whether or not you arrived at the value on the same basis?

page 200 } A. We did.

Q. What value did you place on 61.51 acres?

A. I believe $175.00 per acre. Total $10,774.00.

Q. Did you figure on this tract any damage to the residue?

A. Yes, same as the other tract, $5,000.00.

Q. In arriving at that did you take into consideration, with the exception of the road, the same factors as you did on Tract 1?

A. We did, yes.

Q. Did you also appraise the 32.35 acres to be taken in Tract 3 shown as Tract H on the Airport Map? This tract also contains 76.60 acres.

A. Yes.

Q. What did you value the 32.35 acres at, Mr. Richardson?

A. I believe $125.00 an acre.

Q. Mr. Richardson, why did you value this land at considerably less than you did Tracts 1 and 2?

A. It did not lie as well and is in a lower state of cultivation.

Q. Is that the tract that has a whole lot of broom sage on it?

A. Yes.

Q. What was the total you gave?

A. Three thousand damage to the residue.

Q. What was the total?

A. $7,043.75.

Q. Did you also appraise Tract Number 4? That total tract contains 76.60 acres. Known as Tract J on the Airport Map. We are taking 19.87 acres.

page 201 } A. Yes.

Q. What value did you place upon this land?

C. E. Richardson.

A. $125.00 per acre.
Q. What did you figure the damage to the residue?
A. We figured that three thousand dollars. Six thousand dollars for two tracts. More or less figured that together.
Q. Figured the damage for Tracts 3 and 4?
A. Yes, figured it overall and figured six thousand dollars for overall.
Q. Considering the factors and your view of the land, your experience with land in Pulaski County, I'll ask you to please state whether, in your opinion, you felt that is reasonable compensation to Mrs. Collins for her Tract No. 1 and the other three tracts including damage to the residue.
A. Felt that was reasonable for farming land, yes.

There was no further cross examination and the witness was excused.

I, L. Marie Carper, hereby certify that the foregoing and annexed evidence was recorded by me in the Circuit Court of Pulaski County, Virginia, on April 16, 1958, was reduced to writing and this is a true copy thereof.

L. MARIE CARPER
Reporter.

JOHN M. GOLDSMITH
Counsel for Plaintiff.

Shown to and copy furnished the defendants.

J. M. M., Judge.

JACK M. MATTHEWS, Judge.

10-2-1958.

page 202 }

* * * * *

Received and filed, this the 2 day of October, 1958.

MARVIN G. GRAHAM, Clerk.

The Honorable Jack M. Matthews, Judge presiding.

Fannie Lou Harman Collins.

The evidence of Mrs. Fannie Lou Harman Collins, taken during cross examination in the Circuit Court of Pulaski County, Virginia, on April 16, 1958, in the above styled condemnation suit for land to be taken for the New River Valley Airport.

Present for the Petitioners: John M. Goldsmith and Robert S. Irons.

Present for the Defendants: Ted Dalton, John N. Dalton and Philip M. Sadler.

CROSS EXAMINATION.

MRS. FANNIE LOU HARMAN COLLINS,

(Mrs. Fannie Lou Harman Collins was first duly sworn and questioned on direct examination by Mr. Ted Dalton.)

By Mr. Goldsmith:

Q. Mrs. Collins, I gather from what you say that this farm has never been used for anything but farming?

A. No. A few bricks were made on it at one time.

Q. That was a long time ago?

A. Seventy-five years.

There were no further questions and the witness was excused.

page 203 } I, L. Marie Carper, hereby certify that the foregoing and annexed evidence was recorded by me in the Circuit Court of Pulaski County, Virginia, on April 16, 1958, was reduced to writing and this is a true copy thereof.

L. MARIE CARPER
Reporter.

JOHN M. GOLDSMITH
Counsel for plaintiff.

DALTON, POFF & TURK
JAMES C. TURK

JACK M. MATTHEWS, Judge.

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* * * * *

Robert E. Devereux.

Received and filed, this the 2 day of Oct., 1958.

MARVIN G. GRAHAM, Clerk.

The Honorable Jack M. Matthews, Judge presiding:

The evidence of Mr. Robert E. Devereux, taken in the Circuit Court of Pulaski County, Virginia, on April 16, 1958, in the above styled condemnation suit for land to be taken for the New River Valley Airport.

Present for the Petitioners: John M. Goldsmith and Robert S. Irons.

Present for the Defendants: Ted Dalton, John N. Dalton and Philip M. Sadler.

MR. ROBERT E. DEVEREUX,
after being first duly sworn, testified and said:

EXAMINATION.

By Mr. Goldsmith:

Q. Mr. Devereux, will you start there with the Collins' tracts, these four tracts across there, starting at the southwest corner and describe the type of soil and land to the Commission there, please sir?

A. This is your Tract D on this map and this coming here and up to here is generally sloping land. You can see that it's a little better than half of the tract. This is slope, about one-half or a little less generally sloping. Good
page 205 } limestone land. Good water relation. What we consider one of the better limestones. Going down a little more erosion, little better soil. Breaks off just before you get to the bottom to a slope runs twenty to twenty-five per cent. Down here in bottom, very wet land. Under present conditions not suitable for cultivation. As you go over to other tract, gentle slope narrows down. Soil gloscose and frederick from limestone and shale. Frederick rated about the same. Gloscose, I would prefer. Moving to Tract H. Practically all of this tract is steep land. One exception here. Coming up from the creek bottom. Slope around fifty per cent. All of this other will run from fifteen to twenty-five per cent. I think you misunderstood yesterday the slope designation. I mean by that a foot fall a hundred feet. Moving on over to Tract J, next tract over here we have

Robert E. Devereux.

about two-thirds of this would run between fifteen and twenty-five per cent slope. Then area of—up here run seven per cent.

Q. What is the state of cultivation in each of these tracts of land?

A. Some of this, both of these tracts look sorta like idle land. Has been in cultivation certainly. First tract seems to be in better state of productivity.

CROSS EXAMINATION.

By Mr. Dalton:

Q. You talking about that soil. That soil is generally the same kind of soil in that Dublin area, north and east, all about the same type?

page 206 } A. No, sir, not by a big majority. You have three main soils in this area we are talking about. On the Collins' place of low die quite sandy. Also—shale not nearly as good as any of the limestone. You do have quite a variety.

Q. Beginning there at the Dr. Mebane land and when you get over the fence do you have about the same type?

A. A little more variety as you go near your place. Main difference I would say is slope and erosion.

Q. Did you have anything to do with helping select this place for the airport?

A. No.

Q. It lays mighty good for land in Southwest Virginia. Probably the best lying in this part of—?

A. That's taking in a lot of territory. Relatively speaking, it lies well.

Q. About enough overfill to fill in?

A. Yes.

Q. How was that in alfalfa on Mrs. Collins' land?

A. Very good soil.

Q. You have quite a bit of experience testing soil. Do you know what it costs to plant alfalfa?

A. I would rather not go into that. I'm a soil scientist. On the better, well on the first tract of land, several years ago about $40.00. Somewhere around fifty to seventy dollars an acre.

Q. Would you contract to put some in at that price?

A. No, sir.

Q. That land is well suited for alfalfa?

Robert E. Devereux.

A. On that first tract, yes. Not all of it.

page 207 } Q. But generally speaking you will admit it's good land. A fine piece of land. One of the few places that you can put a runway of forty-two hundred feet all on Mrs. Collins' land.

A. You run from four or five per cent to thirty per cent slope. I haven't looked for any of these large areas. I suspect I could find some.

Q. You know they were looking over this area?

A. I don't know anything about that.

There were no further questions and the witness was excused.

I, L. Marie Carper, hereby certify that the foregoing and annexed evidence was recorded by me in the Circuit Court of Pulaski County, Virginia, on April 16, 1958, was reduced to writing and this is a true copy thereof.

L. MARIE CARPER
Reporter.

JOHN M. GOLDSMITH
Counsel for plaintiff.

DALTON, POFF & TURK
JAMES C. TURK
Of Counsel for Defendants.

JACK M. MATTHEWS, Judge.

page 208 }

* * * * *

Received and filed, this the 2 day of October, 1958.

MARVIN G. GRAHAM, Clerk.

The Honorable Jack M. Matthews, Judge presiding:

The evidence of Richard L. Evans, taken in the Circuit Court of Pulaski County, Virginia, on April 17, 1958, in the above styled condemnation suit for the land to be taken for the New River Valley Airport.

Richard L. Evans.

Present for the Petitioners: John M. Goldsmith and Robert S. Irons.

Present for the Defendants: Ted Dalton, John N. Dalton, and Phillip M. Sadler.

At the conclusion of the evidence in the Collins Case on April 16, 1958, Mr. Goldsmith made the following motion: "Your Honor, I make a motion that Mrs. Evans, the daughter of Mrs. Collins and one of the owners and parties defendant be summoned to appear." Mr. Sadler made a statement, as follows: "I represent Mrs. Evans, who pursuant to doctor's orders is not able to be here. Also, as guardian *ad litem,* I represent the children of this suit." After this statement there was a conference between the attorneys and the Court in chambers. The court reporter did not attend the conference. Following the conference, Mr. Sadler stated that rather than have Mr. Evans summoned he would agree to have him present the next day.

page 209 } MR. RICHARD L. EVANS,

April 17, 1958, Mr. Richard L. Evans, after being first duly sworn, testified and said:

EXAMINATION.

By Mr. Goldsmith:

Q. Will you please state your name?

A. R. L. Evans.

Q. Mr. Evans, are you the husband of the daughter of Mrs. Collins?

A. Yes.

Q. What is her name?

A. Sally Collins Evans.

Q. Your wife is now sick and cannot appear at this hearing?

A. Yes.

Q. I'll ask you if you weren't present with Mr. Cole, Chairman of the Land Acquisition Committee, Mr. C. V. Jackson, Mr. Sadler, Mr. Irons, and myself when we offered to purchase the entire Collins' farm for $95,960.00.

Mr. Dalton: "I am objecting and wish to put in the record to any conference at which Mrs. Collins was not present. All he can do is ask this witness to place his value on the land. And if he wanted to produce Mr. Evans and

cannot come in rebuttal and then put a witness who will say he places a different value. Not proper at this stage of the game."

Mr. Goldsmith: "Your Honor, Mr. and Mrs. Evans are parties to this suit and filed a pleading showing that they had accepted the offer for the entire farm of five hundred four acres of $95,960.00, and Mrs. Collins has testified
page 210 } that she wanted $103,800.00 for only one hundred seventy-four acres and it is proper for me to show this evidence in rebuttal."

Judge Matthews: "I am going to allow him to testify. He filed the pleadings, its part of the record, and I'm going to let him testify. He can place his value on the property. Cannot show any conference to reach agreement."

Q. Did you and your wife believe that $95,960.00 for the entire Collins' farm, lock, stock and barrel was a fair and reasonable offer?

Mr. Dalton: "We further object, that involves hearsay evidence."

Judge Matthews: "Overruled."

A. We accepted it.

Q. You authorized your attorney to file pleadings to that effect on your behalf in this case?

A. Yes, sir.

CROSS EXAMINATION.

Mr. Dalton: "Not waiving our objection to the admission of the evidence, we proceed to cross examine."

By Mr. Dalton:

Q. Were you present at that conference?

A. Yes.

Q. Who all was present?

A. Mr. Cole, Mr. Jackson, Mr. Sadler, Mr. Goldsmith, Mrs. Evans, and I, and seems to me one other person. Don't recall.

Q. Then neither Mrs. Collins nor Mr. Collins were present?

A. No.

page 211 } Mr. Dalton: "It's not proper to admit the evidence when neither were present."

Richard L. Evans.

Judge Matthews: "Overrule the objection."

By Mr. Sadler:

Q. Getting down to the land, the subject of this suit. Did you consider that appraisal for the land a reasonable and just offer for the land to be taken?

A. No, sir. I did not. I have no particular interest in this thing. The land belongs to my wife.

There being no further questions, the witness was excused.

I, L. Marie Carper, hereby certify that the foregoing and annexed evidence was recorded by me in the Circuit Court of Pulaski County, Virginia, on April 16, 1958, and April 17, 1958, was reduced to writing, and this is a true copy thereof.

L. MARIE CARPER
Reporter.

JOHN M. GOLDSMITH
Of Counsel for Plaintiffs.

DALTON, POFF & TURK
JAMES C. TURK
Of Counsel for Defendants.

JACK M. MATTHEWS, Judge.

Oct. 2, 1958.

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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