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Clerk, Supreme Court of Appeals
Richmond, Va.

214 Va. 13

In The

SUPREME COURT OF VIRGINIA

At Richmond

Record No. 8169

STATE HIGHWAY COMMISSIONER OF VIRGINIA — Appellant

vs.

HOOKER FURNITURE CORPORATION — Appellee

APPELLANT'S APPENDIX

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Attorney General of Virginia
Supreme Court Building
1101 East Broad Street
Richmond, Virginia

WALTER A. McFARLANE
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Richmond, Virginia

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46 W. Main Street
Martinsville, Virginia

Counsel for Appellant

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VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

STATE HIGHWAY COMMISSIONER OF VIRGINIA	)	
	)	
vs.	)	AMENDED PETITION
	)	
HOOKER FURNITURE CORPORATION c/o Mr. J. C. Hooker, Jr. Chatmoss, Martinsville, Va.	)	

TO THE HONORABLE FRANK I. RICHARDSON, JR., JUDGE OF SAID COURT:

Your Petitioner, State Highway Commissioner of Virginia, files this petition in accordance with Title 33.1, Chapter 1, Article 7 of the Code of Virginia (1950), as amended, and such general laws as are applicable for the purpose of condemning the land hereinafter described and alleges as follows:

1. That M. Harrison Joyce is the duly authorized agent and attorney for the State Highway Commissioner of Virginia, for the purpose of instituting this condemnation proceeding as is shown by a signed declaration hereto attached, marked Exhibit "A", and asked to be read as a part of the petition, and M. Harrison Joyce is authorized to file this proceeding in the name of and on behalf of the State Highway Commissioner of Virginia.

2. "The land, or interest therein, taken lies in the City of Martinsville, and is described as follows:

PARCEL 055 - Being as shown on Sheets 11 and 12 of the plans for Route 57, State Highway Project 0057-120-103, RW-201, and lying on both sides of and adjacent to the survey centerline

from the lands of Martinsville Elks B. P. O. E. Lodge #1752 at approximate Station 120+86 to the lands of Lester Lumber Company, Inc. at approximate Station 127+17, and containing 1.28 acres, more or less, land; together with the right and easement to use the additional areas shown for cut and/or fill slopes as being required for the proper execution and maintenance of the work, containing 0.485 acre, more or less. Said easement will terminate when the landowner, its assigns or successors, grades the property so that there no longer exists cut and/or fill slopes, thus eliminating the necessity for maintenance of said slopes; together with the permanent right and easement to use the additional areas shown as being required for the proper construction and maintenance of a drain ditch right of approximate Station 121+68 and left of approximate Station 122+25.

PARCEL 057 - the right and easement to use the areas shown on Sheet 11B of the plans for said Route and project, for cut and/or fill slopes as being required for the proper execution and maintenance of the work. Said easement being described as follows: Lying on the north (left) side of the office revised Northside Drive centerline and adjacent to the north existing right of way line of present Northside Drive, from the lands of Lester Lumber Co., Inc., opposite approximate Station 121+40 to a point in the lands of the landowner opposite approximate Station 122+00, and containing 0.0075 acre, more or less. Said easement sill terminate when the landowner, its assigns or successors, grades the property so that there no longer exists cut and/or fill slopes, thus eliminating the necessity for maintenance of said slopes; together

with the permanent right and easement to use the additional area shown as being required for the proper construction and maintenance of a drain ditch left of approximate Station 121+35.

PARCEL 063 - Being as shown on Sheets 13,14 and 14B of the plans for said Route and Project, and lying on both sides of and adjacent to the revised "C" centerline from the lands of Lester Lumber Company, Inc. at approximate Station 131+71 to a point in the lands of the landowner at Station 135+71.90; thence lying on both sides of and adjacent to the revised "D" centerline from the last said Station to the northwest existing right of way line of present Bethel Lane at approximate Station 141+87, and including connection with Bethel Lane, and containing 2.31 acres, more or less, land together with the right and easement to use the additional areas shown for cut and/or fill slopes as being required for the proper execution and maintenance of the work, containing 0.468 acre, more or less. Said easement will terminate when the landowner, its assigns or successors, grades the property to that there no longer exists cut and/or fill slopes, thus eliminating the necessity for maintenance of said slopes; together with the permanent right and easement to use the additional areas shown as being required for the proper construction and maintenance of a drain ditch left of approximate Station 135+37.

PARCELS 055, and 063 together contain 3.79 acres, more or less, land.

For a more particular description of the land, or interest

therein, taken, reference is made to photo copy of said Sheets 11, 11B, 12, 13, 14 and 14B, showing outlined in RED the land taken in fee simple, in GREEN, permanent drain ditch easements, and in ORANGE, temporary construction easements."

3. The right and property taken and intended to be compensated for in this proceeding is the fee simple title to the land shown within red lines on the aforesaid plans, all of which is described and set forth in Exhibit "B" and described in detail in Paragraph 2 of this Petition.

4. The aforesaid land and easements are necessary for the construction, reconstruction, alteration, maintenances and repair of a portion or portions of a public highway embraced in the Virginia Highway System, known as Route 57, in the City of Martinsville, Virginia.

5. Your Petitioner has made a bona fide but ineffectual effort to purchase said real estate from the owner thereof and has been unable to do so because of inability to agree upon the purchase price.

6. Your Petitioner is of the opinion that the only landowner who is entitled to an interest in the compensation to be ascertained by this proceeding is Hooker Furniture Corporation.

WHEREFORE, Your Petitioner respectfully prays to this Honorable Court in accordance with the provisions of Article 7, of Chapter 1 of Title 33.1 of the Code of Virginia (1950), as amended, that Commissioners may be appointed to ascertain and report what will be a just compensation for the land herein proposed to be condemned; and, to fix the value of the land taken and damages, if any, which may accrue to the residue beyond the enhancement in

value, if any, to such residue by reason of the taking; that pursuant to the provisions of Chapter 1 of Title 33.1 of the Code of Virginia (1950), as amended, any and all defendants hereto shall be required to file in writing in this cause any grounds of defense which they may have hereto; that this Court be directed to confirm the vesting of title in the Commonwealth of Virginia as aforesaid and take all such other steps to carry out the intents of Article 7 of Chapter 1 of Title 33.1 of the Code of Virginia (1950), as amended, as may be necessary; and that your Petitioner may have such other further and general relief as the nature of the case may require.

And your Petitioner will ever pray, etc.

STATE HIGHWAY COMMISSIONER OF VIRGINIA

By s/ M. Harrison Joyce
Agent and Attorney

STATE OF VIRGINIA,

CITY OF MARTINSVILLE, TO-WIT:

M. Harrison Joyce, agent and attorney for the State Highway Commissioner of Virginia, being duly sworn, says that the facts and allegations contained in the foregoing petition are true, except so far as they are therein stated to be upon information, he believes them to be true.

s/ M. Harrison Joyce

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

STATE HIGHWAY COMMISSIONER OF VIRGINIA	)	
	)	
	)	
vs.	)	AMENDED NOTICE OF
	)	PETITIONER TO APPOINT
	)	COMMISSIONERS AND TO
HOOKER FURNITURE CORPORATION	)	REQUIREGROUNDS OF
c/o Mr. J. C. Hooker, Jr.	)	DEFENSE
Chatmoss, Martinsville, Va.	)	

You are hereby notified that the State Highway Commissioner of Virginia will on the 8th day of April, 1971, at 9:00 o'clock a.m., or as soon thereafter as the same may be heard, move and petition the Judge of the Corporation Court of the City of Martinsville, Virginia, for an appointment of Commissioners to ascertain what will be just compensation for certain lands of interest therein, which the State Highway Commissioner of Virginia proposes to condemn for Highway 57, Project 0057-120-103, RW-201, as is shown by plat and blueprint attached to petition this day filed in the above styled cause, and to award damages, if any, which may accrue to the residue, by reason of the taking. The ownership, location and description of the land and property which is proposed to be condemned, and the particular nature of the construction and location of the said proposed Highway will fully appear by reference to the petition and exhibits filed in this cause with the Clerk of this Court this 15th day of March, 1971.

You are hereby further notified that on the date and time above mentioned, the State Highway Commissioner will move the Court

to require the filing of grounds of defense as provided in Section 33.1-103 of the Code of Virginia of 1950, as amended.

STATE HIGHWAY COMMISSIONER OF VIRGINIA

By s/ M. Harrison Joyce

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

STATE HIGHWAY COMMISSIONER OF VIRGINIA	)	
	)	
vs.	)	ORDER APPOINTING COMMISSIONERS 271 - 1954
HOOKER FURNITURE CORPORATION c/o Mr. J. C. Hooker, Jr. Chatmoss Martinsville, Virginia	)	

It appearing to the Court that the State Highway Commissioner of Virginia has duly filed his petition in this Court seeking to condemn the land, or interest therein, described in said petition; that due notice has been given to the defendant that said Petitioner would on the 8th day of April, 1971, or as soon thereafter as the same may be heard, apply to this Court for the appointment of Commissioners in this cause.

NOW, THEREFORE, the Court doth ADJUDGE, ORDER AND DECREE that C. K. Sparrow, Tom W. Turner, Ben W. Via, Dudley Walker, George C. Salmons, William C. Beeler, G. S. Fitzhugh, Jr., N. R. Burroughs and R. M. Simmons, Jr., nine disinterested freeholders and residents of the said City be and they are hereby appointed Commissioners, any three or more of whom may act, whose duty it shall be to go upon and view said lands and ascertain what will be just compensation for the land, or interest therein, and to ascertain what damages, if any, may result to the adjacent or other property of the owner from the

construction and operation of the highway.

The Clerk of the Court is hereby directed to summons such Commissioners to appear before this Court on March 16, 1972, at 9:00 o'clock a.m., for the purposes aforesaid.

ENTER: This 6th day of December, 1971.

s/ Frank I. Richardson, Jr.
Judge

PROOF OF SERVICE

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

STATE HIGHWAY COMMISSIONER OF VIRGINIA	)	
	)	
vs.	)	CHANCERY NO. 271 - 1954
	)	
O. B. HENSLEY .... GEORGE NEASE	)	
TOM W. TURNER .... N. R. BURROUGHS	)	
BEN W. VIA .... and	)	
DUDLEY WALKER .... R. M. SIMMONS, JR.	)	
FRANK G. LAPRADE	)	
RALPH LESTER	)	

Returns shall be made hereon, showing service of ORDER APPOINTING COMMISSIONERS in Chancery issued December 6, 1971, filed _____, 19 _____, attached:

Executed on the _____ day of _____, 19 _____, in the City of Martinsville, Virginia, by delivering a true copy of the above mentioned papers attached to each other, to O. B. Hensley, Ben W. Via, Frank G. LaPrade, George Nease, N. R. Burroughs, R. M. Simmons, Jr.

s/ James L. Carter
Sergeant, City of Martinsville

Returned and filed the 4th day of January 1972

s/ Jesse D. Clift

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

STATE HIGHWAY COMMISSIONER OF VIRGINIA	)	
	)	
	)	OATH OF COMMISSIONERS
vs.	)	
	)	
	)	
HOOKER FURNITURE CORPORATION	)	

STATE OF VIRGINIA,

CITY OF MARTINSVILLE, TO-WIT:

I, Judy H. McNeely, Deputy Clerk of the Corporation Court of the City of Martinsville, Virginia, do hereby certify that Tom W. Turner, Dudley Walker, George C. Salmons, G. S. Fitshugh, Jr. this day made oath before me that they will faithfully and impartially ascertain what will be the value of the land taken herein and the damages, if any, which may accrue to the residue beyond the enhancement in value, if any, to such residue by reason of the taking, and will truly certify the same.

Given under my hand this 16th day of March, 1972.

s/ Judy H. McNeely, Deputy
Clerk of the Corporation Court of
the City of Martinsville, Virginia

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

STATE HIGHWAY COMMISSIONER OF VIRGINIA vs. 271-1954 HOOKER FURNITURE CORPORATION c/o M. J. C. Hooker, Jr. Chatmoss, Martinsville, Virginia	REPORT OF COMMISSIONERS

TO THE HONORABLE FRANK I. RICHARDSON, JR., JUDGE OF SAID COURT:

We the undersigned Commissioners appointed by the above named Court on December 6, 1971 to fix the value of the land taken herein and damages, if any, which may accrue to the residue, beyond the enhancement in value, if any, to such residue by reason of the taking, do hereby certify that on March 16, 1972 we were duly sworn and went upon said land in the custody of the City Sergeant of the City of Martinsville, Virginia, or one of his assistants, to view the same as directed by the order of said Court, said land being briefly described as follows, to-wit:

"The land, or interest therein, taken lies in the City of Martinsville, and is described as follows:

PARCEL 055 - Being as shown on Sheets 11 and 12 of the plans for Route 57, State Highway Project 0057-120-103, RW-201, and lying on both sides of and adjacent to the survey centerline from the lands of Martinsville Elks B. P. O. E. Lodge #1752 at approximate Station 120+86 to the lands of Lester Lumber Company, Inc. at approximate Station 127+17, and containing 1.28 acre, more or less, land; together with the right and easement to use the additional areas shown for cut and/or fill slopes as being required for the proper execution and maintenance of the work, containing 0.485 acre, more or less. Said easement will terminate when the landowner, its assigns or successors, grades the property so that there no longer exists cut and/or fill slopes, thus eliminating the necessity for maintenance of said slopes; together with the

LAW OFFICES
STONE,
JOYCE & WORTHY
46 W. MAIN ST.
MARTINSVILLE, VIRGINIA

permanent right and easement to use the additional areas shown as being required for the proper construction and maintenance of a drain ditch right of approximate Station 121+68 and left of approximate Station 122+25.

PARCEL 057 - The right and easement to use the areas shown on Sheet 11B of the plans for said Route and project, for cut and/or fill slopes as being required for the proper execution and maintenance of the work. Said easement being described as follows: Lying on the north (left) side of the office revised Northside Drive centerline and adjacent to the north existing right of way line of present Northside Drive, from the lands of Lester Lumber Co., Inc., opposite approximate Station 121+40 to a point in the lands of the landowner opposite approximate Station 122+00, and containing 0.0075 acre, more or less. Said easement will terminate when the landowner, its assigns or successors, grades the property so that there no longer exists cut and/or fill slopes, thus eliminating the necessity for maintenance of said slopes; together with the permanent right and easement to use the additional area shown as being required for the proper construction and maintenance of a drain ditch left of approximate Station 121+35.

PARCEL 063 - Being as shown on Sheets 13, 14 and 14B of the plans for said Route and Project, and lying on both sides of and adjacent to the revised "C" centerline from the lands of Lester Lumber Company, Inc. at approximate Station 131+71 to a point in the lands of the landowner at Station 135+71.90; thence lying on both sides of and adjacent to the revised "D" centerline from the last said Station to the northwest existing right of way line of present Bethel Lane at approximate Station 141+87, and including connection with Bethel Lane, and containing 2.51 acres, more or less, land together with the right and easement to use the additional areas

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STONE,
JOYCE & WORTHY
46 W. MAIN ST.
MARTINSVILLE, VIRGINIA

shown for cut and/or fill slopes as being required for the proper execution and maintenance of the work, containing 0.468 acre, more or less. Said easement will terminate when the landowner, its assigns or successors, grades the property so that there no longer exists cut and/or fill slopes, thus eliminating the necessity for maintenance of said slopes; together with the permanent right and easement to use the additional areas shown as being required for the proper construction and maintenance of drain ditches right and left of approximate Station 135+37.

PARCELS 055, and 063 together contain 3.79 acres, more or less, land.

For a more particular description of the land, or interest therein, taken, reference is made to photo copy of said Sheets 11, 11B, 12, 13, 14 and 14B, showing outlined in RED the land taken in fee simple, in GREEN, permanent drain ditch easements, and in ORANGE, temporary construction easements."

Upon a view of the property and upon such evidence as was before us, we did fix the value of the aforesaid land taken by the State Highway Commissioner (including any easements taken) at $ 85,740.00, and we do further fix the damages which may accrue to the residue, beyond the enhancement in value to such residue, by reason of the taking at $ 174,124.50.

Given under our hands this 17th day of March, 1972.

VIRGINIA
In City of Martinsville Corporation Court
Clerk's Office.
Received and Filed this the
12th Day of March 1972
at 1:30 M
Teste [signature] Clerk

LAW OFFICES
STONE,
JOYCE & WORTHY
40 W. MAIN ST.
MARTINSVILLE, VIRGINIA

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

STATE HIGHWAY COMMISSIONER OF VIRGINIA vs. Petitioner	)	EXCEPTIONS TO COMMISSIONERS' REPORT
HOOKER FURNITURE CORPORATION Respondent	)	CIVIL ACTION NO. 271-1954

The State Highway Commissioner, by his attorney, and in conformity and in compliance with Title 33.1-108 under the Code of Virginia (1950), as amended, does hereby file the following written exceptions to the report of the Commissioners which was returned on the 17th day of March, 1972, and asks the Court to set aside the Report and appoint new Commissioners to rehear the case.

The exceptions are as follows:

1. The State Highway Commissioner excepts to the Report of the Commissioners on the ground that the Court is without jurisdiction in this case since said case was tried with four Commissioners and therefore said Report by Commissioners is void and of no effect.

2. The State Highway Commissioner excepts to the report of the Commissioners on the ground that the award is excessive and shocks the conscience of the Court.

3. The State Highway Commissioner excepts to the action

of the Court in allowing evidence to be presented which touched on the future damages of this property on the ground that the evidence with regard to said damages was remote, speculative and the subject of conjecture and should not have been considered or presented to the Commissioners.

4. The State Highway Commissioner excepts to the evidence of land value submitted to the Commissioners by the Landowner in that the land was not comparable in kind or location,

5. The State Highway Commissioner excepts to the ruling of the Court in permitting the landowner to introduce instructions 1, 2, 3 and 4 in regard to the damages to the residue arrived at by consideration which evidence was remote and speculative.

6. The State Highway Commissioner objects to the action of the Court in over-ruling all motions, exceptions to the evidence, the introduction of all exhibits and all adverse rulings of the Court and does hereby ask the Court to set aside the award of the Commissioners and grant a new trial.

This 24th day of March, 1972.

STATE HIGHWAY COMMISSIONER OF VIRGINIA

By s/ M. Harrison Joyce
Counsel

M. Harrison Joyce

Stone, Joyce, Worthy & Stone
Attorneys at Law
Martinsville, Virginia

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

STATE HIGHWAY COMMISSIONER OF VIRGINIA	)	
	)	
	)	
VS.	)	ORDER CONFIRMING
	)	COMMISSIONERS' REPORT
	)	
HOOKER FURNITURE CORPORATION	)	
c/o Mr. J. C. Hooker, Jr.	)	
Chatmoss, Martinsville, Virginia	)	
	)	

This day came the State Highway Commissioner, by his counsel, and it appearing to the Court that the report of the Commissioners hereinbefore appointed with the certificate of the Judge of this Court administering the oath to the Commissioners, was on the 16th day of March, 1972, duly returned to and filed by the Court herein, and that exceptions were filed to said report, within the ten (10) day period as provided by law, that the hearing upon the Exceptions filed, which are as follows:

"1. The State Highway Commissioner excepts to the Report of the Commissioners on the ground that the Court is without jurisdiction in this case since said case was tried with four Commissioners and therefore said Report by Commissioners is void and of no effect.

2. The State Highway Commissioner excepts to the report of the Commissioners on the ground that the award is excessive and shocks the conscience of the Court.

3. The State Highway Commissioner excepts to the action

of the Court in allowing evidence to be presented which touched on the future damages of this property on the ground that the evidence with regard to said damages was remote, speculative and the subject of conjecture and should not have been considered or presented to the Commissioners.

4. The State Highway Commissioner excepts to the evidence of land submitted to the Commissioners by the Landowner in that the land value was not comparable in kind or location.

5. The State Highway Commissioner excepts to the ruling of the Court in permitting the landowner to introduce instructions 1, 2, 3 and 4 in regard to the damages to the residue arrived at by considering evidence which was remote and speculative.

6. The State Highway Commissioner objects to the action of the Court in over-ruling all motions, exceptions to the evidence, the introduction of all exhibits and all adverse rulings of the Court and does hereby ask the Court to set aside the award of the Commissioners and grant a new trial," as held on May 1, 1972, at which time the Court overruled the Exceptions filed by the State Highway Commissioner, to which the State Highway Commissioner, by his attorney, duly noted his exception.

And it appearing to the Court that the said Commissioners ascertained that the value of the land taken herein was $85,740.00 and that the damages to the residue, beyond the enhancement in value to the residue by reason of the taking, was $174,124.50, and it appearing to the Court that the said report should be confirmed;

therefore the Court doth approve, ratify and confirm the said report in all particulars, and doth confirm unto the Commonwealth of Virginia the fee simple title to the following property:

"The land, or interest therein, taken lies in the City of Martinsville, and is described as follows:

PARCEL 055 - Being as shown on Sheets 11 and 12 of the plans for Route 57, State Highway Project 0057-120-103, RW-201, and lying on both sides of and adjacent to the survey centerline from the lands of Martinsville Elks B. P. O. E. Lodge #1752 at approximate Station 120+86 to the lands of Lester Lumber Company, Inc. at approximate Station 127+17, and containing 1.28 acre, more or less, land; together with the right and easement to use the additional areas shown for cut and/or fill slopes as being required for the proper execution and maintenance of the work, containing 0.485 acre, more or less. Said easement will terminate when the landowner, its assigns or successors, grades the property so that there no longer exists cut and/or fill slopes, thus eliminating the necessity for maintenance of said slopes; together with the permanent right and easement to use the additional areas shown as being required for the proper construction and maintenance of a drain ditch left of approximate Station 121+35.

PARCEL 063 - Being as shown on Sheets 13, 14 and 14B of the plans for said Route and Project, and lying on both sides of and adjacent to the revised "C" centerline from the lands of Lester Lumber Company, Inc. at approximate Station 131+71 to a point in

the lands of the landowner at Station 135+71.90; thence lying on both sides of and adjacent to the revised "D" centerline from the last said Station to the northwest existing right of way line of present Bethel Lane at approximate Station 141+87, and including connection with Bethel Lane, and containing 2.51 acres, more or less, land together with the right and easement to use the additional areas shown for cut and/or fill slopes as being required for the proper execution and maintenance of the work, containing 0.468 acre, more or less. Said easement will terminate when the landowner, its assigns or successors, grades the property so that there no longer exists cut and/or fill slopes, thus eliminating the necessity for maintenance of said slopes; together with the permanent right and easement to use the additional areas shown as being required for the proper construction and maintenance of drain ditches right and left of approximate Station 135+37.

PARCELS 055, and 063 together contain 3.79 acres, more or less, land.

For a more particular description of the land, or interest therein, taken reference is made to photo copy of said Sheets 11, 11B 12, 13, 14 and 14B, showing outlined in RED the land taken in fee simple, in GREEN, permanent drain ditch easements, and in ORANGE, temporary construction easements."

And it appearing to the Court that the State Highway Commissioner has heretofore caused to be recorded in the Clerk's Office of this Court Certificate No. C-19159 for $38,517.00, and that the title to the aforesaid real estate thereby vested in the

Commonwealth of Virginia, in accordance with the provisions of Sections 33.1-120 and 33.1-122 of the Code of Virginia (1950), as amended, the Court doth ADJUDGE, ORDER and DECREE that the State Highway Commissioner of Virginia is not to pay to the Clerk of the said Court on behalf of the said Hooker Furniture Corporation the sum of $259,864.50, which is the amount of the award, but does not include interest, until such time as the appellant processes have been completed or until such time as Notice has been given by the State Highway Commissioner that no further action will be taken, then an Order will be entered directing the payment of said sum plus interest as follows:

Hooker Furniture Corporation and Jackson L. Kiser, its Attorney; and the Court doth further ORDER that the Commonwealth of Virginia be released from any liability by virtue of the recordation of the certificate aforesaid; and that the proceedings herein be recorded and indexed as provided by Section 33.1-114 of the Code of Virginia (1950), as amended, with reference to be made showing the book and page number of such recordation on the margin of the page where the Certificate of Deposit No. C-19159 is spread.

And it is further ADJUDGED and ORDERED that the interest or estate of the owner and all claims, charges and liens of every kind, in or upon the said lands or interest in lands as set forth and described in said Commissioners' report, be and the same are hereby transferred to the Commonwealth of Virginia as set forth in Section 33.1-113 of the 1950 Code of Virginia, and that henceforth the said property described in this proceeding is vested in the Commonwealth of Virginia at the request of the State Highway

Commissioner, free and clear of all encumbrances and liens of every kind whatsoever.

The Clerk of the Court is further ORDERED and DIRECTED to send a copy of this Order to the Treasurer of City of Martinsville in order that he may adjust his tax records accordingly, and that the Clerk is further DIRECTED to record a copy of said report of Commissioners in this proceeding, together with a copy of this Order in the Current Deed Book and to index same in the names of the parties named as the owners of the said land, or as persons interested therein and as set forth in the Petition in this cause, and a certified copy of the report of the Commissioners and of this Order showing the date and place of recordation in said Deed Book shall be delivered to the Petitioner by the Clerk of this Court.

And the Court doth further ORDER and DIRECT that the costs herein, including $40.00 each to the Commissioners appointed herein, namely: Tom W. Turner, Dudley Walker, George C. Salmons, and J. S. Fitzhugh, shall be paid by the State Highway Commissioner of Virginia, and the same shall be charged and taxed by the Clerk of this Court as part of the costs herein, as provided by law.

All of which is hereby certified to the Clerk of the Corporation Court of the City of Martinsville who is hereby directed to enter forthwith the foregoing Order in the Chancery Order Book of his office as of the 16th day of May, 1972. Nothing further remaining to be done in this cause, same is dismissed.

s/ Frank I. Richardson, Jr.
Judge

ENTER: This 16th day of May, 1972.

I, M. Harrison Joyce, Attorney for the State Highway Commissioner of Virginia, object to the entry of this Order.

s/ M. Harrison Joyce

I have seen this Order.

s/ Jackson L. Kiser

A COPY,

Teste: s/ Jesse D. Clift
Clerk

VIRGINIA:

STATE HIGHWAY COMMISSION	)	
	)	
v.	)	NOTICE OF
	)	APPEAL AND
HOOKER FURNITURE CORPORATION	)	ASSIGNMENTS
	)	OF ERROR
	)	
	)	

NOTICE OF APPEAL

In accordance with Rule 5:6 of the Rules of the Supreme Court of Virginia, Notice is hereby given that the State Highway Commissioner of Virginia, the petitioner herein, will appeal to the Supreme Court of Virginia from the final order entered in this proceeding on May 16, 1972, by the Corporation Court of the City of Martinsville, and sets forth the following assignments of error.

ASSIGNMENTS OF ERROR

1. The Report of the Commissioners is invalid and void inasmuch as the Court was without Jurisdiction in this case because the case was tried with only four commissioners.

2. The trial court erred in allowing evidence to be presented which touched on the future damages to the property in question inasmuch as the evidence with regard to said damages was remote, speculative, and the subject of conjecture.

3. The trial court erred in allowing evidence to be introduced by the landowner as to the value of land inasmuch as it was not comparable in kind or location.

4. The trial court erred in permitting the landowner to introduce instructions numbered 1, 2, 3, and 4 in regard to the damages to the residue.

5. The trial court erred in refusing to set aside the award because it was excessive and shocked the conscience of the court.

TRANSCRIPT

A transcript of the evidence covering testimony and other incidents of the trial shall be hereafter filed.

Respectively submitted,

STATE HIGHWAY COMMISSIONER
OF VIRGINIA

_____
By Counsel

ANDREW P. MILLER
Attorney General of Virginia

WALTER A. McFARLANE
Assistant Attorney General

Supreme Court Building
Richmond, Virginia 23219

M. Harrison Joyce
Stone, Joyce, Worthy & Stone
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46 West Main Street
Martinsville, Virginia 24112

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

STATE HIGHWAY COMMISSIONER OF VIRGINIA, Petitioner,	)	
v.	)	STIPULATION OF PRE-TRIAL PROCEEDINGS NOT APPEARING IN THE TRANSCRIPT OF EVIDENCE
HOOKER FURNITURE CORPORATION, Respondent.	)	CIVIL ACTION NO. 271-1954

On December 6, 1971, the Corporation Court for the City of Martinsville, Virginia entered an order appointing a Commission of nine Commissioners, four of whom were selected from a list submitted by the Highway Department, four of whom were selected from a list submitted by Hooker Furniture Corporation and one of whom was chosen by the Court. On March 15, 1972, the day prior to the trial of this matter, the Court was advised by one of the Commissioners, Mr. O. B. Hensley, that his wife had suffered a stroke and was in serious condition. The Court advised counsel for the Highway Department and for Hooker Furniture Corporation of the development and with the consent of both parties, Mr. O. B. Hensley was excused and the Court directed counsel for the Highway Department to select another person to serve as Commissioner in the place of Mr. Hensley, inasmuch as Mr. Hensley's name had been on the list submitted to the Court by the Highway Department's attorney. Subsequent thereto, the attorney for the Highway Department chose Mr. C. K. Sparrow and communicated his selection to both the Court and counsel for Hooker Furniture Corporation. There was no objection by Hooker Furniture Corporation.

LAW OFFICES
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MARTINSVILLE, VA.

At 9:00 a.m. on March 16, 1972, nine Commissioners were assembled in the Courtroom of the Corporation Court of the City of Martinsville, Virginia, one of whom was Mr. Sparrow. At this time, the Court was advised by the City Sheriff that Mr. Sparrow did not in fact live in Martinsville, but that he resided about twenty feet beyond the corporate limits line of the City. Upon discovering this, it was agreed by counsel for the Highway Department and for Hooker Furniture Corporation and approved by the Court that Mr. Sparrow would be pre-emptorily challenged by the Highway Department's counsel and in addition thereto, he would continue to be free to exercise the two pre-emptory challenges provided for by the statutes with the end result being that the Commission would be finally composed of four rather than five members.

The Court proceeded to administer the oath to the nine persons in the Courtroom including Mr. Sparrow, and at that time charging them as to the necessary qualifications for a Commissioner. At the completion of the Court's charge to the panel, counsel for the State Highway Department exercised two challenges, one of which was Mr. Sparrow and the list was then passed to counsel for Hooker Furniture Company, who exercised one challenge. The list was then returned to counsel for the State Highway Department who exercised another challenge and the list was returned to counsel for Hooker Furniture Corporation who exercised its final pre-emptory challenge. The result was that a panel of four Commissioners was selected to consider the case and return its report.

This 8th day of May, 1972.

AGREED TO:

M. Harrison Joyce
M. Harrison Joyce
Counsel for Petitioner

Jackson L. Kiser
Jackson L. Kiser
Counsel for Respondent

APPROVED:

Frank S. Richardson Jr.
JUDGE

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VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF MARTINSVILLE

STATE HIGHWAY COMMISSIONER OF VIRGINIA Plaintiff	)	
vs.	)	TRANSCRIPT OF EVIDENCE
HOOKER FURNITURE CORPORATION Defendant	)	

A stenographic report of all evidence and other incidents of trial adduced in the trial of the above captioned case in the Corporation Court of the City of Martinsville, Virginia, on the 16th day of March 1972, before the Honorable Frank I. Richardson, Jr., Judge, and a jury of commissioners.

APPEARANCES:

HARRISON JOYCE, of Stone, Joyce & Worthy, Attorney for the Plaintiff

JACKSON L. KISER, of Young, Kiser & Haskins, Attorney for the Defendant

A jury of four commissioners was empaneled and duly sworn. All witnesses present were called and duly sworn and excluded from the courtroom.

Opening statements were offered by counsel and the following proceedings were taken:

The Court: Gentlemen, we will adjourn at this time to review the scene of this take. There will be no evidence taken on the scene. We want to acquaint you with what they have been talking about as to these photographs and maps and you can have more of an idea as to what is on the land.