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John T. Bondurant
University of Kentucky

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Notes

EVIDENCE OF MARKET VALUE OF REAL PROPERTY IN EMINENT DOMAIN PROCEEDINGS

Due to increased governmental activity in the construction of highways and hydroelectric power projects, and to the extension of public utility transmission facilities, condemnation proceedings may come to occupy a substantial portion of the trial docket in many circuit courts throughout the Commonwealth. In almost all of these cases, the only issue between the condemnor and the property owner will be the amount which will fairly and adequately compensate the latter for the loss he has sustained.¹ Where an entire tract is taken, the measure of compensation is the fair market value of the property when condemned.² Generally speaking, when less than an entire tract is condemned, the landowner is entitled to recover the difference between the fair market value of the entire property immediately before the taking and the fair market value of the remainder immediately thereafter.³

The purpose of this note will be to indicate by reference to Kentucky decisions what evidence may be introduced for consideration by the jury in determining the fair market value of real property. This may be divided into three broad categories: (1) factors relating to the property condemned; (2) values and sales of comparable property; and (3) opinion evidence.

FACTORS PERTAINING TO THE PROPERTY CONDEMNED

There are certain factors relating to the property condemned which may be entered as direct evidence of its market value or used

¹ Disputes as to authority to condemn and necessity of the taking seldom reach the circuit court level. The reason for this is well illustrated by Ky. Rev. Stat. § 177.081 (1) (1959) (hereinafter referred to as KRS) which provides in part:

The official order of the Department of Highways shall be conclusive of the public use of the condemned property and the condemnor's decision as to the necessity for taking the property will not be disturbed in the absence of fraud, bad faith, or abuse of discretion.

² Madisonville, H. & E. R.R. v. Ross, 126 Ky. 138, 103 S.W. 330 (1907).

³ See Gulf Interstate Gas Co. v. Garvin, 303 S.W. 2d 260, 262 (Ky. 1957); Commonwealth v. Baldwin, 312 Ky. 782, 229 S.W. 2d 744 (1950). It should be noted that there are several accepted formulas for ascertaining the amount of compensation in partial taking cases, none of which has been exclusively relied upon by the Kentucky courts. For a discussion of these rules and an analysis of the Kentucky cases, see Note, 48 Ky. L.J. 124, 127-32 (1959).

to support opinion testimony thereto. Among these are the description and location of the property; its adaptability to uses other than that to which it is presently being put; its assessed evaluation for tax purposes; and the gross receipts therefrom. On the other side there are some factors, such as offers which have been made for the property condemned, that cannot be considered in determining its market value.

Description and Location of Property

In condemnation proceedings, either party may offer in evidence a description of the property involved, its physical characteristics, its location and surroundings, etc.⁴ For example, where the land condemned contains valuable mineral deposits, this fact may be introduced and its effect on the market value be considered, without separation of the surface value from that of the minerals.⁵

Demonstrative evidence may be used by either party to convey to the jury the description and location of the property. In this regard, colored pictures which fairly and accurately represent the appearance of the property have been admitted the same as black-and-white photographs.⁶

Adaptability

In establishing the value of the property, the owner is not limited to its market value for the use to which it was applied at the time of condemnation. He may show its value for the highest and best use to which it may reasonably be adapted at present or within the foreseeable future.⁷ For example, though the property is now vacant or devoted to general farming, if its location and topography is such that in the near future it could have been sub-divided and sold for commercial or residential lots, such evidence may be considered in determining its market value.⁸ Again, the owner of residential property may show its adaptability for commercial purposes,⁹ provided such use does not conflict with zoning or building restriction.

⁴ East Ky. Rural Electric Co-op. Corp. v. Smith, 310 S.W. 2d 535 (Ky. 1958).

⁵ Gulf Interstate Gas Co. v. Garvin, 303 S.W. 2d 260 (Ky. 1957).

⁶ Commonwealth v. Williams, 317 S.W. 2d 482 (Ky. 1958).

⁷ East Ky. Rural Electric Co-op. v. Smith, 310 S.W. 2d 535 (Ky. 1958); Kentucky Nat'l Park Comm'n. *ex rel.* Commonwealth v. Russell, 301 Ky. 187, 191 S.W. 2d 214 (1945); West Virginia P. & T. R.R. v. Gibson, 94 Ky. 234, 21 S.W. 1055 (1893).

⁸ East Kentucky Rural Electric Co-op. v. Smith, *supra* note 7; David v. Louisville & I. R.R., 158 Ky. 721, 166 S.W. 230 (1914); Chicago, St. L. & N. O. R.R. v. Rottgering, 26 Ky. L. Rep. 1167, 83 S.W. 584 (1904); West Virginia P. & T. R.R. v. Gibson, *supra* note 7.

⁹ Commonwealth v. Gilbert, 253 S.W. 2d 264 (Ky. 1952); Kentucky Util. Co. v. Barnett, 252 S.W. 2d 12 (Ky. 1952).

In *Louisville & Nashville Ry. v. Cornelius*.¹⁰ the Kentucky court stated in dicta that, although the owner may introduce evidence of the adaptability of land to various uses, he may not state for what particular purpose he intended to use the property nor what plans he had for its future development. However, in *Miller v. King*,¹¹ the *Cornelius* case was distinguished and the strength of this statement considerably weakened. In this case, the property owner was allowed to testify that he intended to build his home on the land taken and that the remaining land did not contain another suitable site.

Since the value of the property for the purpose to which it is allegedly adaptable is invariably greater than the value for its present use, condemnees may seek to invoke the adaptability doctrine where the facts do not justify its application. Therefore, care should be exercised by the court to require definite proof that the land is suitable or adaptable for a particular use and that there is a market or demand therefor in the vicinity where the property is located, before admitting evidence of its value for such use.¹²

Assessed Valuation for Tax Purposes

The value at which the land condemned has been listed by the owner for tax purposes is admissible,¹³ presumably as an admission against interest.^{13a} Furthermore, in *Commonwealth v. Salyers*¹⁴ the court went so far as to allow evidence of the assessed valuation of a tract owned by the condemnees which adjoined the land taken. However, in no event is such valuation conclusive on the question of market value.¹⁵ Even though the owner has listed the property for taxation so far below its true value as to perpetrate a fraud on the taxing authorities, this will not prevent him from receiving the fair market value for his property.¹⁶

The value at which the property is assessed by the Tax Commis-

¹⁰ 232 Ky. 282, 22 S.W. 2d 1033 (1929).

¹¹ 278 Ky. 151, 128 S.W. 2d 621 (1939).

¹² See *Tennessee Gas Transmission Co. v. Million*, 314 Ky. 137, 234 S.W. 2d 152 (1950); *Hoskins v. Commonwealth*, 290 Ky. 400, 161 S.W. 2d 169 (1943).

¹³ *Johnson County v. Boyd*, 293 Ky. 337, 168 S.W. 2d 1019 (1943); *Crittenden County v. Towery*, 264 Ky. 606, 95 S.W. 2d 233 (1936); *Davidson v. Commonwealth*, 249 Ky. 568, 61 S.W. 2d 34 (1933); *Commonwealth v. Combs*, 229 Ky. 627, 17 S.W. 2d 748 (1929); *Louisville & N. Ry. v. White Villa Co.*, 155 Ky. 452, 159 S.W. 983 (1913).

^{13a} *Commonwealth v. Gilbert*, 253 S.W. 2d 264 (Ky. 1952); *cf. Franklin County v. Bailey*, 250 Ky. 523, 63 S.W. 2d 622 (1933).

¹⁴ 258 Ky. 837, 81 S.W. 2d 859 (1935).

¹⁵ *Johnson County v. Boyd*, *supra* note 13; *Franklin County v. Bailey*, *supra* note 13a.

¹⁶ *Johnson County v. Boyd*, *supra* note 13.

sioner without the concurrence of the owner is not competent evidence.¹⁷

Gross Receipts

In *Kentucky Water Service v. Bird*,¹⁸ testimony of the property owner as to the gross receipts from his farm for a five-year period was approved as one of the elements to consider in fixing fair market value. The court commented:

[W]e know of no better way to ascertain the fair market value of land than to learn of its gross production—but not the profits made on it. The first thing a prospective purchaser . . . wants to know is what the land will produce. . . . [P]roduction may as well be measured in dollars as in crops grown, since they are reduced to dollars.¹⁹

Along this line, it would logically follow that the owner of rental property should be able to show the actual rents received for a reasonable period prior to the taking. These figures could then be capitalized to arrive at the fair market value of the property. There is no Kentucky authority for or against admission of such evidence, although it is common practice in many other jurisdictions.²⁰ Further by analogy, it would seem where a commercial establishment is condemned, the owner should be allowed to introduce evidence of the volume of business which he had done during a reasonable period preceding condemnation. Again there is no Kentucky authority, favorable or otherwise.²¹

Replacement Cost

As a general rule the cost of replacing a structure located on the property taken may not be introduced in evidence. This proposition is well illustrated by *Commonwealth v. Begley*,²² where testimony of carpenters as to the cost of constructing a new building similar to one situated on the land condemned was held inadmissible. The court there reasoned that the owner was entitled to compensation only to the extent of the depreciated value of the property when it was appropriated.

¹⁷ *Commonwealth v. Wilson*, 317 S.W. 2d 490 (Ky. 1958); *Commonwealth v. Williams*, 317 S.W. 2d 482 (Ky. 1958); *Commonwealth v. Gilbert*, 253 S.W. 2d 264 (Ky. 1952).

¹⁸ 239 S.W. 2d 66 (1951).

¹⁹ *Id.* at 67-68. Compare *Tennessee Gas Transmission Co. v. Million*, *supra* note 12, where testimony that good tobacco land was worth one thousand dollars per acre based on the return received on investment was held inadmissible.

²⁰ See 5 *Nichols*, *Eminent Domain* § 19.2, at 215 n. 15 (3d ed. 1952).

²¹ For an illustration of admission of such evidence see *St. Louis Housing Authority v. Bainter*, 297 S.W. 2d 529, 534-35 (Mo. 1957).

²² 261 Ky. 812, 88 S.W. 2d 920 (1936).

In certain partial taking situations, however, replacement cost of a particular improvement may be allowed in evidence as bearing on the market value of the property remaining. For example, in a recent case, a strip of land condemned for a highway contained a septic tank and lateral lines belonging to a nearby dwelling. The court approved admission of the estimated replacement cost of these items as a means of determining the decline in value of the remaining property which resulted from the reduction in use of its kitchen and bathroom facilities.²³

Offers for Land Condemned

Evidence relative to offers made to the owner for the condemned property has been consistently held inadmissible to establish market value.²⁴ When first confronted with this situation the Kentucky court decided that, in view of the fact that the offer might not have been genuine or might have been made by one financially unable to perform, its probative value was so remote as to render it incompetent.²⁵ However, the policy behind exclusion of such evidence was best revealed in *Brock v. Harlan County*²⁶ where the court observed:

Among the reasons for the incompetency of such evidence are that it is too uncertain, shadowy and speculative to form any solid basis for determining the value of the land; the offer may not have been made in good faith; it is a species of indirect evidence of the opinion of the person making the offer as to value [i.e., hearsay]; there is no opportunity to cross-examine the offeror; he may have wanted the land for a particular purpose disconnected with its value; or he may have been willing to engage in a speculation and take chances that some new use of the land might prove profitable in the end.²⁷

VALUES AND SALES OF COMPARABLE PROPERTY

Proof of the average market value of other property of like character in the same locality as the property condemned, and of the prices at which such property has been sold within a reasonable time, is admissible on two theories: (1) as independent substantive evidence of the value of the property taken to which the comparison relates, and

²³ *Commonwealth v. Conatser*, 329 S.W. 2d 48 (Ky. 1959). See also *Commonwealth v. Means & Russell Iron Co.*, 299 Ky. 465, 185 S.W. 2d 960 (1945), where the court upheld a peremptory instruction to award the cost of relocation of a water pipe which was necessitated by widening of the roadway.

²⁴ See *Tennessee Gas Transmission Co. v. Million*, *supra* note 12 (unnamed persons had told witness they would give \$400 @ acre for defendant's land); *Warfield Natural Gas Co. v. Wright*, 233 Ky. 378, 25 S.W. 2d 1036 (1930).

²⁵ *Commonwealth v. Combs*, 229 Ky. 627, 17 S.W. 2d 748 (1929).

²⁶ 297 Ky. 113, 179 S.W. 2d 202 (1944).

²⁷ *Id.* at 116, 179 S.W. 2d at 204.

(2) as foundation evidence to support the opinion of an expert witness as to such value.²⁸

Before evidence of the values and sales of other property can be introduced, the party offering it must satisfy the court that the property condemned is similar in all essential features to the property with which it is to be compared.²⁹ For example, where the properties involved are farmland, they should have the same topography, soil type, improvements, degree of cultivation, etc. Where urban property is compared, the buildings should be of similar design and construction, and situated in the same relative location on lots of approximately equal size.³⁰ The preliminary determination by the trial court as to the comparability of the respective properties is, to the extent that it is based on undisputed testimony, a ruling of law, which the Court of Appeals may set aside on review even though it is not clearly erroneous.^{30a}

A witness whose qualifications include experience in appraising or dealing in real estate as a business may testify as to prices paid in comparable sales of which he has no first-hand knowledge, if his information was acquired through the customary trade channels or by methods recognized as standard by appraisers.^{30b}

Evidence of prior sales of a portion of the property affected by condemnation will be admitted only if they qualify as comparable sales under the above requirements. Thus, testimony regarding the amount received by the owner from the sale of lots off of a portion of his farm some eight years before trial under conditions entirely different from those existing when suit was brought was excluded.³¹

Prices Paid for Other Rights of Way

Testimony as to prices paid others in the neighborhood to obtain rights of way for construction of the same project is inadmissible,

²⁸ *Stewart v. Commonwealth*, 337 S.W. 2d 880 (Ky. 1960); *Miller v. King*, 278 Ky. 151, 128 S.W. 2d 621 (1939); *Commonwealth v. Begley*, 272 Ky. 289, 114 S.W. 2d 127 (1938); *Kentucky Hydroelectric Co. v. Woodard*, 216 Ky. 618, 287 S.W. 985 (1926); *Big Sandy & Ky. R. Ry. v. Stafford*, 207 Ky. 272, 268 S.W. 1071 (1925); *Music v. Big Sandy & Ky. R. Ry.*, 163 Ky. 628, 174 S.W. 44 (1915); *West Kentucky Coal Co. v. Dyer*, 161 Ky. 407, 170 S.W. 167 (1914). *Accord*: *Bishop v. Peoples Bank & Trust Co.*, 218 Ky. 508, 291 S.W. 718 (1927).

²⁹ *Kentucky Hydroelectric Co. v. Woodard*, *supra* note 28; *West Kentucky Coal Co. v. Dyer*, *supra* note 28.

³⁰ For a discussion of the factors to be considered in determining the comparability of urban property see *Stewart v. Commonwealth*, 337 S.W. 2d 880 (Ky. 1960).

^{30a} *Stewart v. Commonwealth*, 337 S.W. 2d 880 (Ky. 1960).

^{30b} *Ibid.*

³¹ *Commonwealth v. Combs*, 229 Ky. 627, 17 S.W. 2d 748 (1929); see also *Tennessee Gas Transmission Co. v. Million*, 314 Ky. 137, 234 S.W. 2d 152 (1951) (sale of land on west side of far end of defendant's farm).

even though a similarity of conditions between the tracts involved is established.³² Likewise, evidence of price paid for similar easements in the vicinity by other condemnors is also incompetent.³³ The court regards such transactions as forced sales (*i.e.*, not between a willing buyer and a willing seller) which do not represent the fair market value of the property.³⁴

OPINION EVIDENCE

Introduction of opinion testimony by both expert and lay witnesses as evidence of market value in condemnation proceedings is a well-established practice in Kentucky.³⁵ In areas where land infrequently changes hands such testimony is often the only method available by which real estate may be valued.³⁶ Even where property in the vicinity has been regularly bought and sold, what a particular tract is worth is often a matter of opinion.³⁷

Among those who qualify as expert witnesses are professional appraisers and real estate dealers. As with experts in other fields, the competency and strength of their testimony depends on the extent of their training and experience in addition to their knowledge of land values in the community and their personal observation of the property condemned.³⁸ For instance, where a witness testified that he was engaged in general engineering, architectural and appraisal work, but did not indicate the kind of appraisals or whether anyone had ever accepted them, and was unable to recall any other sales in the vicinity, his opinion was entitled to no consideration.³⁹

Non-experts who may testify include property owners who have lived for several years in the neighborhood and are acquainted with property values there.⁴⁰ Thus farmers may testify as to the value of

³² *Stewart v. Commonwealth*, 337 S.W. 2d 880 (Ky. 1960); *Adams v. Commonwealth*, 285 Ky. 38, 146 S.W. 2d 7 (1940); *Commonwealth v. Crutchfield*, 261 Ky. 272, 87 S.W. 2d 598 (1935); *Commonwealth v. Combs*, *supra* note 25; *Chicago, St. L. & N. O. Ry. v. Ware*, 220 Ky. 778, 295 S.W. 1000 (1927).

³³ *United Fuel Gas Co. v. Mauk*, 272 S.W. 2d 810 (1954) (evidence concerning prices paid by railroad in acquisition of right of way incompetent in proceeding for condemnation of pipe-line easement); *Kentucky-West Virginia Gas Co. v. Hays*, 238 Ky. 189, 37 S.W. 2d 17 (1931).

³⁴ *Stewart v. Commonwealth*, *supra* note 32; *Chicago, St. L. & N. O. Ry. v. Ware*, *supra* note 32.

³⁵ *Commonwealth v. Crutcher*, 240 S.W. 2d 605 (Ky. 1951); *Kentucky & W. Va. Power Co. v. Saulsbury*, 231 Ky. 788, 22 S.W. 2d 281 (1929); *Kentucky-Tennessee Light & Power Co. v. Shanklin*, 219 Ky. 279, 292 S.W. 790 (1927).

³⁶ *Commonwealth v. Smith*, 229 Ky. 345, 17 S.W. 2d 203 (1929).

³⁷ *Commonwealth v. Crutcher*, *supra* note 35.

³⁸ *Commonwealth v. Begley*, 272 Ky. 289, 114 S.W. 2d 127 (1938).

³⁹ *Ibid.*

⁴⁰ *Himlar Coal Co. v. Kirk*, 224 Ky. 383, 6 S.W. 2d 480 (1928).

farm land, where they know how land is valued in the community.⁴¹ Generally, the owner himself is a competent witness as to the value of his own property.⁴² However, where he has no knowledge of its market value, he may not testify thereto.⁴³

Although the Kentucky court has warned that lay opinion evidence should be received with great caution,⁴⁴ it has generally viewed the qualifications of a particular witness as going to the weight of his testimony rather than its admissibility.⁴⁵ The strength of a non-expert's opinion as to property value depends not on his credibility nor his statement that he knows land values, but on his knowledge of pertinent facts and his capability to draw a sound conclusion from them.⁴⁶ Thus, where a witness is unable to give facts which support his estimate of the difference in market value before and after the taking,⁴⁷ or where his opinion is based on speculative facts,⁴⁸ his testimony is worthless and should be completely disregarded. This is true even where the witness is the owner of the property involved.⁴⁹ However, where a witness is familiar with the condition and price of land generally, and has viewed the property condemned, he may testify regarding its value, though he is unaware of any sales in the vicinity.⁵⁰

The liberal attitude of the Kentucky court toward admission of non-expert opinion evidence was best illustrated in *Tennessee Gas Transmission Company v. Million*.⁵¹ There a witness who had testified as to the value of the condemned realty admitted on cross-examination that he was not familiar with the property in question. Nevertheless the court held that his testimony still had meagre probative value and was not completely destroyed as a matter of law.

There is one pronouncement of the court which counsel who contemplate the use of non-expert opinion witnesses should keep in mind. Where the testimony of such witnesses is not supported by sufficient facts, a verdict based thereon will be more readily set aside

⁴¹ *Saulsberry v. Kentucky & W. Va. Power Co.*, 226 Ky. 75, 10 S.W. 2d 451 (1928).

⁴² *Barron v. Phelps*, 238 S.W. 2d 1016 (Ky. 1951).

⁴³ *Ibid.*

⁴⁴ *Commonwealth v. Begley*, *supra* note 38.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*; *Kentucky Hydro-electric Co. v. Reister*, 216 Ky. 303, 287 S.W. 357 (1926).

⁴⁷ *Ibid.*

⁴⁸ *City of Hazard v. Eversole*, 237 Ky. 242, 35 S.W. 2d 313 (1931).

⁴⁹ *Commonwealth v. Combs*, 244 Ky. 204, 50 S.W. 2d 497 (1932).

⁵⁰ *Damron v. Bartley*, 302 Ky. 83, 194 S.W. 2d 73 (1946); *Commonwealth v. Smith*, *supra* note 36.

⁵¹ 314 Ky. 137, 234 S.W. 2d 152 (1950).

on appeal as against the weight of the evidence.⁵² Counsel would therefore be well advised to lay the best foundation possible for the introduction of lay opinion evidence. Otherwise a favorable award, though hard-earned and otherwise well-deserved, may be overturned by the appellate court.

Commissioners as Witnesses

In many instances, particularly in the less populous counties, the person or persons best qualified to serve as expert or lay opinion witnesses may have been previously appointed as commissioners by the county court to view the property condemned and to determine the amount of compensation to which the owner is entitled.⁵³ Such persons are not prohibited from testifying in the circuit court trial involving the same property. However, the Court of Appeals does not approve of the practice of using the county court commissioners as witnesses to the extent that on appointment they may anticipate being engaged by the party favored by their appraisal.⁵⁴

In no event should a witness be allowed to state the amount awarded by him as a commissioner, nor to undertake to explain the basis of such award.⁵⁵ Nor should counsel be permitted to mention this award in his opening statement or allude to it during cross-examination of a commissioner-witness.⁵⁶

Jury View

Previously, in all cases whether to send the jury to view the premises was within the discretion of the trial court, whose decision on this matter could be disturbed only where there was a clear abuse of such discretion.⁷⁵ This rule was based on KRS section 416.050, pertaining to the exercise of eminent domain by railroads and other public utilities, which provides: "Upon the request of either party, the jury

⁵² *Salt River Rural Electric Coop. Corp. v. Thurman*, 275 S.W. 2d 780 (1955); *Petroleum Exploration v. McGeorge*, 225 Ky. 131, 7 S.W. 2d 821 (1928); *Kentucky-Tennessee Light & Power Co. v. Shanklin*, 219 Ky. 279, 292 S.W. 790 (1927).

⁵³ For an outline of the qualifications and duties of county court commissioners see KRS §§ 177.083 (state and federal highways), 416.020 (railroads), 416.100 (county roads), 416.240 (oil or gas pipelines).

⁵⁴ *Tennessee Gas Transmission Co. v. Million*, *supra* note 51.

⁵⁵ *Akers v. Kentucky & W. Va. Power Co.*, 216 Ky. 326, 287 S.W. 889 (1926); *Webb v. Kentucky & W. Va. Power Co.*, 216 Ky. 64, 287 S.W. 232 (1926).

⁵⁶ *Commonwealth v. Crutcher*, 240 S.W. 2d 605 (Ky. 1951). However both in this case and in those cited in footnote 55, the error was held not prejudicial where the recovery substantially exceeded the amount fixed by the commissioners.

⁵⁷ *Commonwealth v. Crutcher*, *supra* note 56; *Kentucky Nat'l Park Comm'n ex rel. Commonwealth v. Russell*, 301 Ky. 187, 191 S.W. 2d 214 (1945).

may be sent by the court . . . to view the land. . . .”⁵⁸ [Emphasis added.] However, in 1952 KRS section 177.087 (1), covering condemnation for state and federal highways, was enacted. It provides in part: “[The] jury, upon the application of either party, *shall* be sent by the court . . . to view the land. . . .” [Emphasis added.] It is submitted that this provision constitutes a clear expression of legislative intent that a jury view be mandatory in highway condemnation cases upon motion of either party.

If this is the case, the condition of the property at the time of trial becomes of primary importance. Consequently, the condemnor will likely strive either to get the trial over with before work is begun or to delay it until after the project is completed and the appearance of the property is more favorable to its cause. The landowner, on the other hand, will try to have the trial during the course of construction when the property is in its worst condition.

Where the jury has visited the property condemned, it is entitled to form its own opinion as to the value of the land taken and the damages to the remainder.⁵⁹ Where the jury views the property after construction is begun, its estimate is said to be of more than persuasive influence.⁶⁰ Despite the fact that the jury has viewed the premises, and despite the general rule that assessment of damages is peculiarly within the province of the jury, where the verdict is excessive and has no reasonable basis in fact, it will be set aside on appeal.⁶¹

It is fitting that this discussion of the evidence considered in arriving at market value terminates with an examination of the view of the premises by the jury. Through this procedure, its members are given the opportunity to see first hand the conditions which have been described to them from the witness stand. No wonder it is considered to be one of the most decisive factors in determining the amount of compensation awarded.

John T. Bondurant

⁵⁸ KRS § 416.280 (1), which deals with an alternate procedure for condemnation by public utilities, provides: “[The] jury *may* be sent by the court . . . to view the land. . . .” [Emphasis added.]

^{58a} This was the interpretation recently given KRS § 177.087 by the Court of Appeals in *Commonwealth v. Farra*, 338 S.W. 2d 696 (Ky. 1960).

⁵⁹ *Bailey v. Harlan County*, 280 Ky. 247, 133 S.W. 2d 58 (1939).

⁶⁰ *City of Middlesboro v. Chasteen*, 285 Ky. 427, 148 S.W. 2d 295 (1941).

⁶¹ *Tennessee Gas Transmission Co. v. Teater*, 252 S.W. 2d 674 (Ky. 1952).