

This is the Law



By ROBERT E. LEE
(For the N. C. Bar Association)

EMINENT DOMAIN

The private property of a landowner is taken for a highway, street, or some other public purpose. What is the measurement of the compensation which he will receive?

Private property may be taken for a public purpose upon the payment of a just compensation. This right is known as the "power of eminent domain." It may be exercised by the sovereign state or by those to whom the power has been delegated.

The market value of the property is the yardstick by which compensation is measured. The landowner is entitled to receive a just equivalent of that which is taken from him. The citizen landowner should suffer no financial loss which may be prevented by awarding him damages.

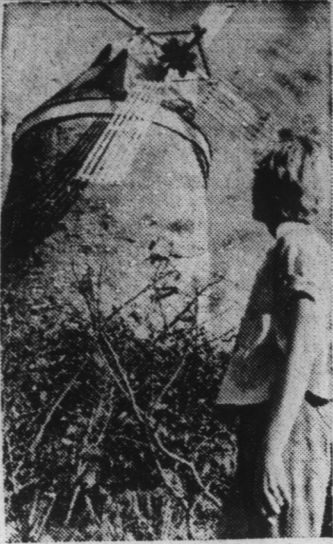
The landowner is entitled to recover the present market value of the property taken from him as of the date that the condemnation proceeding is instituted or the property is taken. No subsequent change of value, upward or downward, can be considered.

In determining the "market value" of property, it is said to be that sum which probably would be arrived at as the result of fair negotiations between an owner willing to sell and a purchaser willing to buy after due consideration of all elements reasonably affecting the value of the property.

A new highway is constructed for a long distance through the farm lands of a large landowner. Is it possible that he will not receive anything from the State Highway Commission for the land used for this purpose? Yes. This will frequently occur where only a small part of a total tract of rural property has been taken.

If the building of the highway has increased the value of the remaining portion of the land in excess of what the whole of the farm was worth before the road was constructed, the State Highway Commission is entitled to offset any increase in the value of the farm by reason of the construction of the road.

Where only a portion of tract of land is taken by eminent domain, the measurement of compensation is the balance struck between the damages and benefits conferred. The landowner is



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entitled to receive the difference between the fair market value of the entire tract immediately before the taking and the fair market value of what is left immediately after the taking.

The landowner is entitled to be indemnified only to the extent that he has suffered a pecuniary loss by reason of the taking of his land for a public highway. The value of the land to the State Highway Commission is not to be considered.

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