

June 1953

## Eminent Domain--Particularity of Description of an Easement

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### Recommended Citation

G. M. S., *Eminent Domain--Particularity of Description of an Easement*, 55 W. Va. L. Rev. (1953).

Available at: <https://researchrepository.wvu.edu/wvlr/vol55/iss2/8>

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of facts which involve risks too great to be insured against for the premium charged. They are using it as ordinary people use it. Economic considerations, not technical niceties, should be determinative. *New York Life Ins. Co. v. Bennion, supra*.

It would seem, therefore, that the Pennsylvania court has erred in refusing to face economic realities. The interests of public policy militate strongly against its decision. Such a holding will tend to expose insurance companies to liabilities arising from increased hazards for which they have not received commensurate compensation.

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EMINENT DOMAIN—PARTICULARITY OF DESCRIPTION OF AN EASEMENT.—Petitioner, electric company described the easement sought to be condemned by defining the center line thereof. The question was, should the easement be limited to a certain width? *Held*, that the petition must describe the land or easement sought to be appropriated with such particularity as to enable the court to determine that no more property is being appropriated than reasonably necessary for the purpose for which it is being acquired. *Monongahela Power Co. v. Shackelford*, 73 S.E.2d 809 (W. Va. 1952).

The court relied upon W. VA. CODE c. 54, art. 1, § 6 (Michie, 1949). This statute provides that the quantity of land acquired by a condemning agency "shall be limited to such quantity as is necessary for the purpose or purposes for which it is appropriated." This section, it would seem, has little relevance to a question concerning the particularity with which the petition must describe the land sought to be condemned. It would appear that the questions of quantity and description should remain separate and distinct. In other words, after the petitioner has described the land it wants, then the question should arise as to whether it wants too much.

In a consideration of the question of particularity of description, W. VA. CODE c. 54, art. 2, § 2 (Michie, 1949) is of immediate assistance. It is there prescribed that the "petition shall describe with reasonable certainty the property proposed to be taken, . . ." The sole difficulty encountered in an interpretation of this section emanates from the generality "reasonable certainty". All will concede that the phrase, although meaningless for practical purposes, contemplates at least a modicum of certainty. And, it is

submitted, none is to be found in the designation of an area by the center line alone, as in the petition in the instant case. The court, therefore, in holding the petition bad, arrived at a quite supportable conclusion; but, it is suggested, it did so in a somewhat oblique manner.

The decision, however, does serve to clarify the law concerning the requirement of particularity of description. It was held in one case that designation of the area by width or depth was not necessary. *Carnegie Natural Gas Co. v. Swiger*, 72 W. Va. 557, 79 S.E. 3 (1913). The court there was interpreting a statute, since repealed, which was exclusively applicable to gas companies and which provided simply that the plan should show "the route of the proposed line over said land." W. VA. CODE c. 42, § 20 (Supp. 1909). It was held that designation by the center line was sufficient to satisfy the above statute.

The *Carnegie* case has been cited frequently in subsequent cases, apparently with approval; by way of dictum, however, since it is the sole case on the point, prior to the principal case, in which the petition did not describe the easement by width and in which the question of sufficiency of description was directly resolved. See *United Fuel Gas Co. v. DeBerry*, 130 W. Va. 418, 43 S.E.2d 408 (1947); *United Fuel Gas Co. v. DeBerry*, 130 W. Va. 481, 43 S.E.2d 415 (1947); *W. Va. & Md. Power Co. v. Racoon Valley Coal Co.*, 93 W. Va. 505, 117 S.E. 891 (1923).

The court, in the instant case, by requiring a more detailed description in the petition, has taken a position not difficult to justify. Statutes which authorize the appropriation of private property through the exercise of the power of eminent domain must be stringently followed. *State v. Bouchelle*, 73 S.E.2d 432 (W. Va. 1952). Without certainty and particularity in the description of the land sought to be condemned, the owner of the land cannot know what portion of his land is required; nor the commissioners, nor the jury, what damages to appraise; nor the petitioner the precise boundaries of the land after the same is acquired. *Bell Telephone Co. v. Parker*, 187 N.Y. 299, 79 N.E. 1008 (1907). Thus, there are multiple considerations which indicate the desirability of such a requirement from a public-policy viewpoint.

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