

# **Bond Case Briefs**

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## **EMINENT DOMAIN - VIRGINIA**

### **Virginia Electric and Power Company v. Hylton**

**Supreme Court of Virginia - June 16, 2016 - S.E.2d - 2016 WL 3361731**

Electric utility filed petition for condemnation against property owner.

The Circuit Court granted owner's motion to dismiss and awarded costs and attorney's fees. Utility appealed.

The Supreme Court of Virginia held that:

- Owner waived his objection to trial court's jurisdiction;
- Separate value of coal reserves on the property was not admissible;
- Evidence related to potential surface mine was not admissible; and
- Whether there was unity of use between property and neighboring tracts was for jury to determine.

Property owner failed to timely raise objection to trial court's jurisdiction over electric utility's condemnation matter based on utility's alleged failure to make bona fide offer to purchase property, and therefore owner waived objection. Owner's answer and grounds of defense did not contain any mention of terms "object," "objection," or "jurisdiction," owner elected to proceed with empanelment of jury for determination of just compensation, and denials in owner's answer and grounds of defense were based on sufficiency of utility's offer, which could not be considered objection to bona fides of offer.

Separate value of coal reserves on property to be condemned was not admissible in electric utility's condemnation action against property owner. Even if modern techniques allowed for more accurate calculations related to coal reserves, such valuations invited speculation and conjecture, as they were based on conditions which did not, in fact, exist on condemned land at time of taking and future circumstances that may or may not have occurred, and there was no indication of when and if coal would actually be mined and, if it was, what price of coal would be at that time.

Evidence related to potential surface mine on property to be condemned was not admissible in electric utility's condemnation action against property owner. At time of taking, surface mine did not exist on property nor had one been contemplated, it was only in course of discovery that plans for surface mine were developed, and any award of damages based upon consideration of value created by hypothetical surface mine would necessarily have been speculative.

It is for the jury to determine the ultimate question of unity of lands, or its absence, and to determine whether that unity, and its loss by reason of the taking, ultimately affects the value of the remainder.