INDEX.

REBUTTAL.

EXHIBITS.

Appeal and Grounds of Appeal.

Hudson County Circuit Court

LOUIS MEYER, *et al.*, Appellants, *vs.* MAYOR AND ALDERMEN OF JERSEY CITY, Appellee.	In Condemnation. Appeal and Grounds of Appeal.

To Thomas J. Brogan, Esq., attorney for Mayor and Aldermen of Jersey City:

TAKE NOTICE that the appellant, Louis Meyer, appeals to the Court of Errors and Appeals in the last resort in all causes in New Jersey from the whole of the judgment entered in this cause on the following grounds:

1. The following question was overruled by the trial Court: To witness James F. Gannon, Jr. Q. What was the rental of 108 Newark Avenue at the time of the sale in 1926?

2. The Trial Court admitted in evidence Exhibit D-1 over the objection of Appellant.

3. The Trial Court admitted in evidence Exhibit D-2 over the objection of Appellant.

4. The Trial Court admitted in evidence Exhibit D-3 over the objection of Appellant.

5. The Trial Court admitted in evidence Exhibit D-4 over the objection of Appellant.

6. The Trial Court admitted in evidence Exhibit D-5 over the objection of Appellant.

7. The Trial Court admitted in evidence Exhibit D-6 over the objection of Appellant.

8. The Trial Court admitted in evidence Exhibit D-7 over the objection of Appellant.

9. The Trial Court admitted in evidence Exhibit D-8 over the objection of Appellant.

10. The Trial Court admitted in evidence Exhibit D-9 over the objection of Appellant.

11. The Trial Court admitted in evidence Exhibit D-10 over the objection of Appellant.

12. The Trial Court admitted in evidence Exhibit D-11 over the objection of Appellant.

13. The Trial Court admitted in evidence Exhibit 12 over the objection of Appellant.

14. The Trial Court admitted in evidence Exhibit 13 over the objection of Appellant.

15. The Trial Court allowed the following question: To the witness Thomas A. Ryer—Q. How much?

16. The Court charged the Jury: "I have also been requested to charge you as follows: Income in this case means what it says, money coming in from property, not what some expert in the case says he thinks it ought to bring as rent. I so charge you".

17. The Trial Court denied costs to Appellants on their verdict in the Hudson County Circuit Court.

MARK A. SULLIVAN,
Attorney of Appellants.

Service ack. July 11, 1929
T. J. BROGAN

(Filed Clerk's Office, July 15, 1929, Hudson County, N. J.)

Notice of Appeal of Louis Meyer, Minnie Meyer and Morris Meyer.

HUDSON COUNTY CIRCUIT COURT.

In the Matter *of* Application of The Mayor and Aldermen of Jersey City to acquire lands of Louis Meyer and others for securing a public plaza in the City of Jersey City.	Notice of Appeal of Louis Meyer, Minnie Meyer and Morris Meyer.

To The Mayor and Aldermen of the City of Jersey City, in the County of Hudson, or Thomas J. Brogan, Esq., its attorney:

Take notice that Louis Meyer, Minnie Meyer and Morris Meyer of Jersey City, County of Hudson and State of New Jersey, appeal to the Circuit Court of Hudson County from an award of Jerome O'Keefe, Hugh J. Burns and William C. Asper Commissioners heretofore appointed by the Honorable James F. Minturn, Justice of the New Jersey Supreme Court by order of March 10, 1928, to condemn among other properties, the property, hereinafter specified, assessing as compensation for the taking of lots 5 and 6, block 204, the sum of $50,000.

Take further notice that on Tuesday, 21st day of August, 1928, at the Circuit Court Room, at the Court House in the City of Jersey City, at 10 o'clock in the forenoon, or as soon thereafter

as the matter may be heard, appellants will apply to the Hudson County Circuit Court, or such judge thereof as may then be sitting, to frame the issue and to fix a day for striking a jury and a day for the trial of said appeal.

EDWARD SCHWARTZ,
EGAN & ARMSTRONG,
Attorneys for Appellants, Louis Meyer, Minnie Meyer and Morris Meyer.

(Filed Clerk's Office, October 15, 1928.)

Order.

HUDSON COUNTY CIRCUIT COURT.

IN THE MATTER *of* Application of THE MAYOR AND ALDERMEN OF JERSEY CITY to acquire lands of LOUIS MEYER and others for securing a public plaza in the City of Jersey City.	Order.

This cause coming on to be heard before the Court and the jury and good cause being shown therefore,

It is on this twenty-third day of October, 1928, on motion of Frank J. Reardon, attorney for appellee and in the presence of Edward Schwartz, attorney for appellants, ORDERED, that the hearing on the above entitled cause be continued,

Order.

And it is therefore ORDERED, that the 13 day of November, 1928, be and is hereby fixed as the day for the trial of the said appeal; and that the issue to be tried upon said appeal is whether or not the aforesaid award made by the said commissioners as compensation for the taking of said properties, represent the values of the said properties so taken, and if less, how much less, and if more, how much more; and that the 5th day of November, 1928, be and the same is hereby fixed as the time, and the Court Room of this Court at the Hudson County Court House, as the place for striking a jury for the trial of the said issue, and that November 13, 1928, at 10 A. M. is hereby fixed as the time for selecting the jury of twelve to try said cause and said date of November 13, 1928, be and the same is hereby fixed as the day for the viewing of the said premises and property by the said jury.

FRANK L. CLEARY,
Circuit Court Judge.

Order.

HUDSON COUNTY CIRCUIT COURT.

In the Matter *of* Application of The Mayor and Aldermen of Jersey City to acquire lands of Louis Meyer and others for securing a public plaza in the City of Jersey City.	Order.

This cause being opened to the Court by Edward Schwartz, attorney for the appellants Louis Meyer, Minnie Meyer and Morris Meyer, and it appearing that due notice of this motion was given to the Mayor and Aldermen of Jersey City; and it appearing by notice of appeal duly filed in this Court, that the said appellants have appealed to this Court from an award of Jerome O'Keefe, Hugh J. Burns and William C. Asper, commissioners heretofore appointed by the Honorable James F. Minturn, Justice of the New Jersey Supreme Court by an order of March 10, 1928, to condemn, among other properties, the property hereinafter specified, assessing as compensation for the taking by the Mayor and Aldermen of Jersey City by condemnation of lots 5 and 6, Block 204, the sum of $50,000.00.

It is on this 19th day of September, 1928, on motion of Edward Schwartz, attorney for appellants, ordered, that the 23rd day of October, 1928, be and is hereby fixed as the day for the trial of the said appeal; and that the issue to be tried upon said appeal is whether or not the aforesaid award made by the said commissioners as compensation for the taking of said properties, represent the values of the said properties so taken, and

if less, how much less, and if more, how much more; and that the 8th day of October, 1929, be and the same is hereby fixed as the time, and the Court Room of this Court at the Hudson County Court House, as the place for striking a jury for the trial of the said issue, and that October 22nd, 1928, at 10 A. M. is hereby fixed as the time for selecting the jury of twelve men to try said cause and said date of October 22nd, 1928, be and the same is hereby fixed as the day for the viewing of the said premises and property by the said jury.

FRANK L. CLEARY,
Circuit Court Judge.

(Filed Clerk's Office, September 19, 1928, Hudson County, N. J.)

Stipulation.

HUDSON COUNTY CIRCUIT COURT.

IN THE MATTER *of* The application of THE MAYOR AND ALDERMEN OF JERSEY CITY to acquire lands of LOUIS MEYER and others for securing a public plaza in the City of Jersey City.	In Condemnation. Stipulation.

It is hereby stipulated and agreed that the appellants at the time of applying for a rule for judgment requested the Court to award costs to be taxed against the respondent and in favor of the appellants, the jury in the Circuit Court having found a verdict for the said appellants in the same

amount as was heretofore awarded by the Condemnation Commissioners, and the respondent opposed said application on the ground that the statute contemplated that the appellants should receive a sum in excess of the amount awarded by the Condemnation Commissioners in order to be entitled to costs. Said application for taxed costs was denied by the Honorable Frank L. Cleary, Judge of the Hudson County Circuit Court.

EDWARD SCHWARTZ,
Attorney for Appellants.

THOMAS J. BROGAN,
Attorney for Respondent.

Filed Clerk's Office
June 28, 1929
Hudson County, N. J.

JOHN J. McGOVERN,
Clerk.

Rule for Judgment.

HUDSON COUNTY CIRCUIT COURT.

IN THE MATTER *of* Application of THE MAYOR AND ALDERMEN OF JERSEY CITY to acquire lands of LOUIS MEYER and others for securing a public plaza in the City of Jersey City.	In Condemnation. Rule for Judgment.

Whereas, it appears that the condemnation commission heretofore appointed by the New Jersey

Rule for Judgment.

Supreme Court in the above entitled matter, did assess as compensation for the taking by the Mayor and Aldermen of Jersey City by condemnation of lots five and six, block 204, the sum of fifty thousand ($50,000.00) dollars.

And it appearing that the said Morris Meyer, Louis Meyer, and Minnie Meyer were dissatisfied with the said award and have taken an appeal therefrom.

And whereas, the jurors, having been summoned and chosen as jury by law to try the above entitled appeal, and jury having viewed the premises and property involved in said appeal and the issue framed herein having been tried before the Honorable Frank L. Cleary with said jury at the Hudson County Circuit Court on November 13, 1928, and the jury having assessed the value of the lands to be taken as of February 9, 1928, for the sum of fifty thousand ($50,000.00) dollars.

Wherefore, it is on this 10th day of June, 1929, ordered, that judgment be entered in favor of Louis Meyer, Minnie Meyer, his wife, and Morris Meyer, appellants, and against the Mayor and Aldermen of Jersey City, respondent, in the sum of fifty thousand ($50,000.00) dollars.

Rule actually entered June 28, 1929, by Edward Schwartz, Book 78, page 33, Circuit Court Minutes.

Filed Clerk's Office,
June 28, 1929,
Hudson County, N. J.

JOHN J. McGOVERN,
Clerk.

Testimony.

HUDSON COUNTY CIRCUIT COURT.

LOUIS MEYER, and others, Appellants, *vs.* THE MAYOR AND ALDERMEN OF JERSEY CITY, Appellees.	On Appeal from Award of Condemnation Commissioners. Before Hon. Frank L. Cleary, J., and a struck Jury.

Jersey City, N. J., November 20, 1928.

Appearances:

THOMAS R. ARMSTRONG, Esq., EDWARD SCHWARTZ, Esq., for the Appellants.

FRANK J. REARDON, Esq., for the Appellees.

A jury was duly empanelled; being found satisfactory, they were sworn.

The jury viewed the *locus-in-quo,* and returned to the Court room.

By consent, map attached to blackboard, and marked as Appellant's Exhibit P-1 of this date.

Counsel opened to the jury.

PERCY A. GADDIS, sworn for the Appellants.

Direct examination by Mr. Armstrong:

Q. Mr. Gaddis, what is your business? A. Real estate and appraiser.

Q. How long have you been in that business? A. About thirty-five years past.

Mr. Reardon: Mr. Gaddis' qualifications are admitted.

Mr. Armstrong: I would like to have the qualifications on the record.

Q. Have you appraised property in Jersey City? A. I have, several thousand parcels.

Q. And elsewhere? A. All over the eastern States, from Maine to Carolina, aggregating some seventy-five millions.

Q. Are you a member of any Real Estate Boards? A. I am a member of the local, State, and national Real Estate Associations, and Chairman of the Appraisal Committee of the State Association for the past three years.

Q. Have you had any experience at all in the appraisal of property in condemnation proceedings and other proceedings that require court testimony? A. I have probably appeared in Court in excess of five hundred times.

Q. Have you represented Jersey City, the County, or State——

Mr. Reardon: I object to that.

Mr. Armstrong: I didn't finish.

Q. Have you represented the City, County and State in the matter of appraisals of property? A. I have.

Mr. Reardon: I object; on the ground that the qualifications of the witness as an expert have been admitted by the appellee; that being so, the recital of the various appraisals and parties he may have represented is immaterial for that purpose. He is offered as an expert. We concede he is an expert, competent to testify in this proceeding, and therefore, I submit asking him

who he has represented beyond that is unnecessary.

The Court: All right; go ahead.

Q. What cities have you represented? A. I have represented the City of Jersey City; the City of Bayonne; Hoboken, North Bergen, Kearney; all but two municipalities in Hudson County I have represented in condemnations, and I have represented all of them in an expert capacity. I have represented the State of New Jersey, the Federal Government, and various private owners, running into hundreds.

Q. Represented them in what capacity? A. Any capacity, in condemnations, and in appraisals and as adviser in the adjudication of difficulties, and trades between themselves, and in tax matters.

Q. Where is your office located? A. Diagonally opposite this building, at the corner of Newark and Baldwin Avenues, which I built in 1900, and have been there continuously ever since.

Q. Are you personally acquainted with the vicinty of the property now under condemnation? A. Yes, sir.

Q. The downtown business section of Newark Avenue? A. Yes, have been since I was sixteen years old, forty years ago. Up to twenty years ago, the most valuable portion was that section between Warren Street and the railroad, and since then, it has shifted to between the railroad, and probably Jersey Avenue, extending westward——

Mr. Reardon: I move to strike out the answer on the ground it is not responsive. He is asked whether he is familiar with the property in a certain vicinity and the an-

swer is either yes or no. He proceeds to give the history of his life.

Mr. Armstrong: I will consent that it be stricken out.

Q. Now, Mr. Gaddis, have you examined the premises 97 to 105 Newark Avenue, belonging to Louis and Morris Meyer, for the purpose of testifying in this case? A. Yes, sir.

The Court: Is all of the property being taken?

Mr. Schwartz: Yes, your Honor.

Q. Will you kindly describe it? A. It is a triangular piece of property, fronting 83½ feet on Newark Avenue, and 88 feet on Railroad Avenue, and 39.33 at the deep end, the westerly end, in width, tapering to a point. It contains 1610 square feet, and is known as lots 5 and 6 in the City Block 204.

Q. Now, will you describe the improvements on the property? A. There is a one story frame building about sixteen feet high on the easterly part of the property; a two story and cellar brick building on the westerly part of the property.

Q. For what purpose are these buildings used? A. Used for store purposes. That is, the easterly part, fronting 39 feet on Newark Avenue, is leased to one Ralph Stengel for three years at $2,100 a year.

Mr. Reardon: I object and ask that that be stricken out. Nobody asked him anything about the lease of the property. He is asked about the character of the building, what the building was used for.

Q. Yes; just describe the building? A. Used for store purposes. There is no dwelling in it.

There is a cellar for storage beneath the brick building. The upper part of the brick building is used in connection with the first floor, which happens to be a provision and butcher shop. The point is used as a fruit store, and is now vacant.

Q. What is the value that you place upon that property, as of February 9th, 1928? A. $82,300 or $51.13 a square foot.

Q. How do you arrive at that figure? A. I arrived at the value of the property primarily by an analysis of the return that they received from the property. The easterly end, leased to Ralph Stengel, a fruit and vegetable store, at $2,100 per annum; $2,100 capitalized at 9 per cent would show——

Mr. Reardon: I object to this line of testimony. He is now attempting to go into the valuation of the property on the basis of leaseholds, which is not competent testimony, inasmuch as the rule is the price of property as a whole, in an open market, from a ready, willing, able purchaser not obliged to buy and a ready, willing seller, not obliged to sell. He is now capitalizing the revenue and attempting to base the value upon the revenue capitalized.

The Court: If this testimony is the basis upon which he is estimating future leaseholds it is not competent testimony, because it is purely speculative, too much of a speculation to be of any benefit to the jury.

Mr. Armstrong: He is not taking the future value. He is taking the value as of February, 1928.

The Court: Let us continue.

Q. In determining the value of commercial property, Mr. Gaddis, what is the prime factor in

consideration? A. The prime factor is the earning capacity, or the return that you could get for it. Where you can get at that value, as in this case, from having been in existence previous to the condemnation for several years, a lease between people ready and willing to make it, it is entirely relevant in my judgment.

Mr. Reardon: He is not testifying as to a condition that existed at the time of the taking; he is talking about years previously.

Q. You understand you are fixing this value as of February 9th, 1928? A. Yes, and the lease covers that period; terminates shortly after it.

Q. So that the lease you are referring to is the actual lease the tenant was in possession of on February 9th, 1928; is that so? A. That is so.

Q. Your testimony is predicated upon that fact, isn't it? A. Yes, sir; it is.

Q. What is the ratio of fair return on property as to the rental?

Mr. Reardon: I object to that on the ground that the question does not contain the proper elements to enable this witness to make up his mind as to the fair ratio of return on the property.

Mr. Armstrong: Of commercial property?

Mr. Reardon: Of commercial property.

A. In my judgment, nine percent, being six percent legal return on the money and three percent to cover taxes.

Q. And applying that rule, Mr. Gaddis, will you kindly proceed to tell us how you figure the valuation of this property? A. Yes.

Mr. Reardon: I object to that on the ground there is no evidence that this is the proper rule or standard.

The Court: He says, as an expert, nine percent is a fair return.

Mr. Reardon: He says six percent, the legal return.

(Answer read as follows: In my judgment, nine percent, being six percent legal return on the money and three percent to cover taxes.)

Mr. Reardon: I ask that that be stricken out.

The Court: The designation as to whether or not it is a legal return may be stricken out.

The Witness: Capitalizing the income, $2,100 at nine percent shows the value of that property on that basis to be $23,333, and that property I allude to is that portion with 37.17 feet front, with an average depth of 9 feet. Nine feet contains twenty percent of the unit foot; therefore represents $2,827 per unit foot. Therefore the entire frontage of the land owned by Meyer, the plaintiff, would be worth, in that location, 83½ times—that is the frontage of the entire piece, the whole thing under condemnation—83.5 times 2,827, or $236,000, if it were 100 feet deep. As it has only an average depth, that is, the entire parcel of 19.281 feet, the actual value therefore is only 34.86 percent, or $82,300, as testified to here before.

The Court: Did you say how much the building was worth in that?

The Witness: That includes the entire property in analyzing it; this and the adjacent property and such support as I will give, will absorb the building. The building is being taken as part of the parcel; I include the entire thing. In using that percentage, I have used in the analysis, the Davies rule, which is used and recognized as a standard for property in this section.

Mr. Reardon: I object and move that the testimony of the witness as to the Davies Rule be stricken out. The Davies rule is not applicable to the valuation of property of this kind.

The Court (After argument): Objection overruled. (To the witness) You say the Davies rule does apply?

The Witness: It certainly does. It is made particularly for that purpose. I have got a copy of it here, a personal copy Mr. William E. Davies gave me before his death.

Q. I will ask you about the Davies book; what is that book? A. It is a little book on real estate rules, compliments of William E. Davies, real estate agent and broker, Borough of Manhattan, New York City, and it contains the rule showing the ratio and value of various depths to the standard of 100 foot depth, and several other things. Among the other things, triangular lots. He has listed it in the book on page 19; there is an illustration there showing that applies to triangular lots, tapering down. Another, on page 23 goes into another type of triangular lot. Another illustration on page 15 shows the same thing, and anyone looking at that can readily see the continuation of that will carry down to a point. I had to take

the property, the portion of the property, using the lease. That was not under the influence of the owner or anything like that, merely the rental to a party under lease.

Q. Is this book considered an authority on the subject? A. It is; it is so recognized.

Q. And used by practically all real estate men in matters of this kind? A. It is.

Q. And this particular property that we are now fixing the value of is a triangular piece of property? A. It is a triangular piece of property.

Q. And does the rule apply here? A. Well, that rule shows that you should take the average depth of a lot where it has different widths on both sides.

Mr. Reardon: May I see the book, please.

Mr. Armstrong: I offer it in evidence.

Accepted and marked as Plaintiff's Exhibit P-2 of this date.

Q. Now, Mr. Gaddis, did you make any other investigation in regard to supporting your value of this property? A. I did.

Q. What did you do; just tell the Jury what you did? A. I analyzed the situation of the property itself as to adjacent property on the same block, and also the property known as 108 Newark Avenue, directly opposite the property in question, all of which support and are in harmony with the unit used here.

Q. You say you used 108 Newark Avenue for what purpose? A. For the purpose of supporting conditions here.

Q. Did you compare the value of 108 Newark Avenue with the property in question? A. I did compare it.

Q. What comparison did you make? A. The first one I made was of a small shallow store at 108 Newark Avenue, which was rented for ten years by the Regal Shoe Company to Kimbel the jeweller at $250. per month, or $3,000. a year. I capitalized that on the same basis as I did this property in question. I found it pays a return of 333.33 or at the rate of $33.33 a front foot, and the available depth is approximately the same as the Meyer property, although the actual depth is 30 feet of the store, and it shows a rate of $111. a square foot; that has eight years to run. It was made just before this condemnation.

Mr. Reardon: I object to his endeavoring to apply the value of this property to some other property—I object to the whole process here.

(After argument, question withdrawn.)

Mr. Armstrong: I will lead up to it and show the comparison.

Q. Did you examine the premises at 108 Newark Avenue? A. I did.

Q. Will you describe what kind of property this is? A. The property is a piece of property fronting 28 feet on Newark Avenue, swelling out a little in the rear, with a depth in the neighborhood of 90 feet. It was, at the time it was sold—I haven't testified to the sale yet. If I can put it this way, describe it, it was an old frame building in front——

Mr. Reardon: I object to that. We don't want to know anything about what it was. We want to know what it is now.

Mr. Armstrong: On February 9th, 1928.

The Witness: It is, and was on February

9th, 1928, the same old building as described, but dressed up with an ornate front.

Mr. Reardon: I object to that and ask that it be stricken from the record.

The Court: I don't know why the witness can't describe the property as it was on February 9th, 1928. It doesn't make any difference whether it was good, bad or indifferent prior to that. If it is to be used as a comparison, the property should be described as it was on February 9th, 1928.

The Witness: It was a two-story frame building in front, and the rear part of it, behind, thirty feet depth was a brick building. The front was then leased to the Regal Shoe Company, the whole 28 feet front, who in turn sublet to this jeweler, Kimbel I testified to a moment ago.

Q. What portion? A. The Regal Shoe Co. made alterations in front, made it in the style they usually do their store fronts; what they do in all cities for their shoe stores.

Mr. Reardon: Were you asked that?

The Court: He was asked what the condition of it was on February 9th, 1928; he said that the Regal Shoe Company had put it in such and such a shape.

The Witness: Do you want to go on with the sale; that practically describes it.

Q. Do you know anything about the sale of the property? A. I do.

Q. Can you tell us about the sale of that property? A. Why, the sale and resales. It was sold in 1924 on May 14, 1924, at the rate of $10. a

square foot. In 1926, it advanced and was resold at $18.40 a foot, at which time the property was leased for $7,000. to the Regal Shoe, which shows a return on $77,000. The changes and alterations made by the tenant makes the property easily worth $100,000. today.

Mr. Reardon: I object to that; he says the property is easily worth so much; there is no evidence upon which to base that.

Mr. Armstrong: I will consent to striking out the last part of the answer.

The Court: He is testifying to a sale; whatever that sale was is what he is testifying to.

Q. The Regal Shoe Company have leased out a portion of the store, haven't they?

The Court: Yes; he says they have sublet a portion.

Q. Do you know at what rental? A. Is that stricken out? That was at 108 Newark Avenue, for ten years to Kimbel, the jeweler. Do you want that all over again? $250 a month, or $3,000 a year.

Q. Do you know the dimensions of the rented portion to Kimbel? A. About ten feet wide in front and 30 feet deep.

Q. Thirty feet deep by ten feet wide? A. That is right.

Q. You are sure it runs back 30 feet? A. Yes, runs back the limit of the frame building.

Q. Do you know that is 30 feet? A. Yes, sir.

Q. Was the store occupied by the lessee there when you made your examination? A. Are you alluding to the Kimbel store?

Q. Yes? A. He is paying rent; he is a responsible party, and for that, as well as the other store, he is a tenant in both places.

Q. Can you tell me, Mr. Gaddis, how the rent of the Kimbel store compares with the rental of the property in question?

Mr. Reardon: I object to that comparison. We are condemning the whole of this property.

The Court: I understand he says it is comparable property. I have allowed it on that understanding.

Q. Is it comparable? A. I said so. I intended that when I started out, to give comparable transactions.

Q. This is comparable property, is it, Mr. Gaddis? A. It certainly is.

Cross-examination by Mr. Reardon:

Q. Mr. Gaddis, will you look at this photograph, and tell me if you recognize the property? A. I do. That is a very good picture of it.

Q. Of what? A. I am alluding to the Regal Shoe and the other store. It shows the 28-foot front opposite the property in question, and the "For Rent" sign on there. I have testified to that; that store was rented——

Q. I didn't ask you that. I asked you the one question, whether you recognized that property? A. Yes, sir.

Q. What is it; tell us the street address? A. 108 Newark Avenue.

Mr. Reardon: I ask that it be marked for identification.

Marked D-1 for identification of this date.

Q. Will you tell me what that photograph is (handing witness)? A. 107 Newark Avenue; the adjoining property to the property under condemnation; the adjoining property to the west.

Q. Can you identify this property (handing witness)? A. This is the property under condemnation, and also shows the property, 107, adjoining, even the corners of the street; includes the whole 83½ feet that is under condemnation.

Q. You identify that now as the property under condemnation? A. Yes, sir.

Mr. Reardon: I ask that that be marked for identification.

Marked D-2 for identification of this date.

Q. You say 108 Newark Avenue is comparable property to the property under condemnation? A. I certainly do.

Q. When did you first see the property under condemnation? A. About 44 years ago, as near as I can say; I can recollect it when I was a boy.

Q. You didn't anticipate being an expert and testifying then? A. No, sir.

Q. Now, when did you first see this property under condemnation, since you were retained as an expert in this case? A. About a week ago.

Q. That is the first time you saw it? A. The first time I saw it since I was retained in this case.

Q. As an expert? A. Yes, sir.

Q. Will you tell me where you found any justification for your assertion that there is a nine per cent capitalization of this property under condemnation? A. I didn't say that there is a nine per cent capitalization. I said, in my judgment that was a proper capitalization and return. That was merely a conservative figure.

Q. So that that is your opinion only? A. My opinion and the general practice that I have used in many cases.

Q. That you have used? A. And lots of others.

Q. Is there any justification for it that you know legally? A. Any justification legally? Well, I am not a lawyer; that is rather hard to say. Practically I would say, yes.

Q. Practically? A. Legally? I can't argue that with you.

Q. As I understand you, this property if it were 100 feet deep, would be worth $236,000? A. To put an exact appraisal, in the location, in the particular instance, in that particular location. Of course, this property is not that deep. In order to apply the rules and to arrive at an analysis of the property, you get a base, and I got a base on a hundred feet, and then shaded the relation of value to that base. The base I drew was from same actual tangible evidence of that value, and then applied it to the other property.

Q. In other words, you took conditions that did not exist? A. That absolutely existed as a starting out line.

Q. Assuming a hundred feet depth? A. I said for the purpose of analysis. You will find that I used that; and in order to compare it, or apply it to the entire property.

Q. When you used that analysis, you gave it arbitrarily as a hundred feet depth? A. No, I didn't. I said that the property would be worth in that location, extended to that depth, with the existing conditions, which was tangible evidence. From that point, I applied the proportion, taking the average depth of the property, instead of just taking it to the point, because I had to deal with the entire property; that was the most conserva-

tive way. Had I graded it upwards, it would have made a higher figure in my judgment than seemed to be fair.

Q. Isn't it a fact that you gave the hundred feet depth in order to bring it in the Davies rule class? A. No.

Q. Isn't it a fact that you could not apply the Davies rule unless you took a basis of 100 feet depth, to find out what percentage your property actually was? A. Of course the rule is predicated upon a standard.

Q. Then you proceeded to consider this lot as a standard lot? A. Only for the purpose of analysis. I didn't say it was the present value.

Q. And for the purpose of an analysis, you did say that if it had been 100 feet deep, it would be worth $236,000? A. I thought I was right therein.

Q. So that, in your opinion, if this property had a depth of 100 feet, as it stands, it would be worth $236,000? I don't wonder you smile. A. I smile because you are taking a triangular plot and planting it on a 100 foot plot, and then trying to ask me to answer in relation to it. It is the ridiculous way you put the question.

Q. You see, I am not an expert; you will make me ask ridiculous things. Could you tell me, without a building, in this location, a plot 100 feet deep, would still be, in your opinion, worth $236,000? A. Surely would.

Q. What part of the present value did you allocate to the buildings? A. Nothing at all. I took the property as it was. The buildings are mere nominal value; they add very little to the land.

Q. You regard the buildings as nominal values? A. I certainly do.

Q. What is your definition of nominal value? A. Having a likelihood to be worth something,

and practically worth nothing. That is not the dictionary definition, but that is mine.

Q. So that, for your opinion, these buildings are practically worth nothing? A. Right.

Q. And therefore, the value of $82,300 that you have appraised for the parcel lies entirely in the land, as represented by your showing? A. It does.

Q. What does that make it per square foot? A. $51.13. You are now talking about Meyer now?

Q. Yes. A. $51.13.

Q. Now, when you say you capitalized this property at nine per cent, did you include the buildings in your capitalization? A. I included the property, everything as it stands upon that land, that goes with the real estate and conveyed by the title.

Q. At nine per cent? A. Surely.

Q. Now, you say the buildings have only nominal value, and practically are worth nothing? A. True.

Q. Yet it is the building upon which you capitalized the income? A. That capitalization is of the income the man actually received from the conditions that existed there at the present time.

Q. Did you state that the buildings were practically nothing? A. That is very true.

Q. And yet you capitalized the buildings in your nine per cent? A. I capitalized the property on there, just as it existed, as I found it on that day.

Q. That includes the buildings? A. Included everything that was there.

Q. If the buildings were worth nothing, why should you include them in your capitalization? A. I could take it out and still figure the income.

Q. If the buildings were razed, demolished, what would the property bring in? A. It would bring in nothing.

Q. And could not be capitalized? A. You would take that as you find it; vacant land.

Q. You have attempted to give virtually

Q. You said the buildings are worth nothing? A. Yes, sir.

Q. If they are not worth anything, why aren't they renting for practically nothing? A. The facts show, for this point, that there is a very good, profitable business going on.

Q. I didn't ask you that? A. I say they show that for themselves, and I can——

Q. So that, Mr. Gaddis, when you are appraising property for a particular purpose, you capitalize the buildings and everything as you find it, on the nine percent ratio, and then, when you are talking about the allocation of the amount of your appraisement to the buildings, you cannot allocate any part to the buildings, because they are worth nothing? A. When the building is a proper building for the location, and not antiquated, entirely unsuitable——

Q. Is that a proper building for that location? A. If it were better built.

Q. If it were better built, the building, it would bring more than nine percent? A. No; it would bring a return on a higher value.

Q. Well, when you allocated to the plot nine percent, didn't you take this building in as a proper, adequate building for the plot? A. The inference from it is entirely untrue.

Q. I didn't ask you for the inference; I asked you for the fact. What is the fact? A. The fact is that the capitalization is on the property, as I have said, as I found it.

Q. The type of property is antiquated? A. Absolutely.

Q. The nine percent that you capitalized it at, is in excess of the proper capitalization, consider-

ing that it is an antiquated building? A. That is entirely untrue. If it were worth more, every figure would be higher, if it were a proper building for the location. If the property were properly improved, the value of the entire property would greatly improve, and the income would be greater.

Q. But you say you would not capitalize the building if it were on there? A. Why, of course I would capitalize the building.

Q. You said you would not capitalize the building on there, if it were of the adequate type, at more than nine percent? A. That is true, yes, sir.

Q. Now, then, if the building that was put on there were of adequate type, yet you would not capitalize it at more than nine percent, and you say that this building is an antiquated type? A. Right.

Q. How do you justify the nine percent? A. I justify that as being a conservative estimate of the return the injured man sustained, if it were taken away from him; what the piece is worth to him. If he had to invest his money in any other way, if he invested that same capital in any other way, why, he would get approximately the same income. He would have some expenses to maintain it, which would approximate three percent, and he would have six percent left on his money.

Q. If that is true, what did you allocate of the cost, or percentage of cost, for the repair of the property as it stands today? A. I would apply the terms under which it is leased. I found in the lease the man had to make the interior repairs himself; the lessee was responsible for the interior, and the owner for the exterior. The lease is here and speaks for itself.

Q. Have you your original? A. I have a signed copy.

Q. Have you the one that was in operation before this? A. I have not. Do you want the history of it? I know approximately what is was.

Q. This is the Stengel lease you are referring to? Is that in operation? A. Cancelled under the terms of it, by reason of this condemnation. It has a clause in there to that effect.

Q. May I see that lease? A. (Reading): It being understood that in the event said premises be purchased under condemnation proceedings, then from the time of such taking by said City, and so forth, this lease shall cease and come to an end, and the deposit under said lease shall be returned.

Q. What is your idea of that clause in the lease? A. My idea of it?

Mr. Schwartz: I object to that. He is testifying to it.

Mr. Reardon: He is testifying and reading the lease.

Mr. Schwartz: Well, it speaks for itself.

Q. Did you ever see a clause like that before? A. I have, and used it.

Q. Drew them yourself? A. Yes, sir.

Q. What was it for? A. To prevent the owner losing what he is justly entitled to. Not to allow a man to be in the position that he is possibly selling a piece of property with a lease on it, and owe money from selling it. That prevents him from getting caught in such a position.

Q. Also the possibility of the tenant getting any part of the award? A. If the tenant was to get some part of it, it would certainly be worth more.

Q. You have testified concerning the Davies rule, which, although it has not been offered in evidence, you have referred to page 19. Will you

kindly turn to page 19 of that book? A. Yes, sir.

Mr. Schwartz: I want to offer that book in evidence, if you have no objection.

Mr. Reardon: Well, I don't know what is in the book.

The Witness: I will give you it, if it comes back to me. I don't want to lose that copy.

Accepted and marked as Appellant's Exhibit P-2 of this date.

Q. Will you show me the page, page 19, in that book and tell me where the diagram you referred to is, applying to this situation here? A. The diagram shows there, the following depth lots, with street lines on both front and rear, and they are absolutely comparable, as far as the picture goes, to anything except the point of this property in question, and you continue that down and that would give you this rule that would cover it if it went down to a point.

Q. Will you show the jury the page and demonstrate it to the jury? A. The illustration here deals with a very complicated——

Q. Show it to the jury. A. Surely; that illustration is made for the purposes of a lease, but the principle is the same.

Q. Now, will you describe the analogy of comparison as set down in the Davies book, with this plot of ground as illustrated on the map; show where they are similar? A. There are three lots there, two variable depths, at least there are four variable depths. Then turn that the other way, assuming that is the Newark Avenue front. This happens to go towards the east, tapers towards the east, whereas the other goes towards the west;

that is easy enough, that covers it. All the illustrations I have picked out, this one, this happens to be one showing comparable depths, to show an analysis of leasehold—there are several illustrations and possibly the other page may be a little clearer. You have only picked out one of them, in referring directly to the value of the land alone. It is foolish to take that, for me to take that one.

Q. You say it is foolish? A. For me to take that one, picked at random.

Q. Did you observe the fact that this property has two frontages on it? A. I did, but I didn't put any additional value by reason of that.

Q. Did you observe that this property as indicated in red, has not got two frontages? A. I did.

Q. Still you say it is comparable? A. Certainly.

Q. Now, will you tell me why this sale to the Regal Shoe Company at $18 a square foot—what was that made for? A. It was not made to the Regal Shoe Company. That was December 10th, 1926, when the property was sold by the Packard Realty to Morris and Fruhman; then Fruhman bought out the interest of Morris.

Q. I am asking about the sale price; the question was what was that? A. $64,250.

Q. How much is that per square foot, considering area? A. $18.40.

Q. Did you include in that figure you say, $64,250 any element other than the actual consideration price between the original parties? A. I considered the consideration in the sale, the full consideration. I included $3,000, which Fruhman paid for the interest.

Q. So, Mr. Gaddis, notwithstanding my objection, and your knowing my purpose, you have deliberately included that element in another way,

in your answer, didn't you? A. No, I can't explain any misinterpretation you wanted to put on my testimony.

Q. I asked you the purchase price and you gave me the purchase price, plus the purchase of the interest? A. Well, that is the purchase price; that is what it cost the man that got it.

Q. You understood that what I objected to was the interest? A. Yes, you wanted to misinterpret my testimony.

Q. I wanted to keep out the price of the interest; you knew that? A. No, I don't say I knew you wanted to keep out the interest.

Q. You know I don't want you to testify about the interest that was purchased from one partner by another? A. I thought you wanted the jury to get the true consideration for the property.

Q. True consideration according to the contract? A. I can give you that; $61,250.

Q. That is not $64,250. How did the other $3,000 get in there? A. Through the purchase of an interest, an agreement between the two who were parties to the contract.

Q. In other words, one partner bought the other parties' interest in the contract? A. In order to get title to the property himself.

Q. Notwithstanding he had a half interest in the contract by purchasing with his partner? A. That is true.

Q. You considered that part of the contract price? A. I considered that part of the consideration and I so testified.

Q. Can you capitalize that at nine percent and tell me what the rent would be? A. Surely, $71,300 odd dollars.

Q. What was the actual rent received a year? A. Excuse me, I am mixed up.

Q. (Question read as follows: Can you capitalize that at nine percent and tell me what the rent would be?) A. Capitalize, well that is capitalized.

Q. Capitalize the contract price that was paid for that property? A. Capitalize; I don't want to capitalize the contract price.

Q. $61,000? A. Why, it is capital already.

Q. What is the rent return, nine percent; what is the nine percent return? A. $7140. actual rent; the actual rent return.

Q. Capitalized? A. Pardon me, $5,782.50.

Q. So that the actual lease was more than nine percent of the property? A. It was, surely.

Q. And notwithstanding the fact, you said it was comparable property and that you used the same basis of comparison across the street? A. One moment; this is 1926. We are now talking of 1928. We are taking the condition of the property at the time the repairs had been made and many improvements added thereto, and another lease. You see the condition entirely changed.

Q. The condition of yourself, your own testimony has changed? A. Not a bit; I may have gotten wrong but my intentions were not wrong.

Re-direct examination by Mr. Armstrong:

Q. Do you consider the property at 108 Newark Avenue different from the other property? A. Yes, sir.

Q. In what respect? A. Why, the improvements are in better shape on it.

Q. I mean in respect to frontages? A. They have only a 28-foot frontage; but that is immaterial, if you allow the same unit, in all fairness, along the particular frontages.

Q. What were these improvements made on this property 108 Newark Avenue?

Mr. Reardon: I object; he said the first time he saw the store was a week ago.

Mr. Armstrong: He has testified he has been familiar with the neighborhood for thirty or forty years.

Q. (Question read as follows: What were these improvements made on this property 108 Newark Avenue.) At the time of the sale by the Packard Realty Company? A. By alteration, dressing up the front as illustrated in the photograph which the owners have in evidence.

The Court: You were asked what was the nature of the improvements at the time of the sale by the Packard Realty Company. You say that the picture shows the improvements, substantially what the improvements were?

The Witness: Then I didn't understand the question. These were made by the tenant after the sale.

The Court: Then that does not show them?

The Witness: The improvements before were a dilapidated frame property.

Q. Now, Mr. Gaddis, what was the rent of the store at the time of the sale, do you recollect? A. $3,000. a year.

Q. Will you figure that out at nine percent; you figured that out before? A. $33,333.

Q. How does that rental compare with the purchase price of $64,250. the gross basis? A. About five percent; a little less than five percent. Four and three quarters; something like that.

Re-cross-examination by Mr. Reardon:

Q. Mr. Gaddis, what was the date of the lease of the Kemmel store? A. I don't know; I haven't the date.

Q. Do you know whether Kemmel occupied that property before the sale by the Packard Realty Company? A. He did not.

Q. Isn't it a fact that he was in there two years? A. Yes, pardon me; the alteration was made—yes.

Q. Were the alterations made before the sale or before the new lease for $7,000 that you testified to? A. Yes, they were, surely.

Q. Do you know the size of the Kemmel store? A. Ten by thirty, with a glass front on the stairway that goes up in the back.

Q. In other words, 300 square feet? A. Yes, sir.

Q. Did you measure it, by the way? A. I did not.

Q. Would you be surprised to know that it approximately contained 860 square feet? A. I certainly would be very much surprised. My eyes deceived me, or I was blind.

(Recess to 2 p. m.).

After recess, 2 p. m.

James F. Gannon Jr., sworn for the Appellant:

Direct examination by Mr. Schwartz:

Q. What is your business? A. Real estate.

Q. Where are you located? A. We have an uptown office at 36 Veteran's Square; downtown at 359 Grove Street.

Q. How far is this downtown office, 359 Grove Street, from the premises in question? A. About a block and a half from the property and has been established for forty years.

Q. How long have you been in the real estate business? A. Twenty-five years.

Q. Have you negotiated leases and sales in the vicinity of the premises in question? A. I have and our firm has.

Q. How many of them? A. I should say about twenty-five.

Q. Can you tell us what they are; do you know? A. Yes, we sold 201-203 Newark Avenue, from the Vanderbrook Estate to Schneider. We sold 140 Newark Avenue to Haas Brothers. We sold 156 Newark Avenue.

Mr. Reardon: Will you give us the dates of the sales?

The Witness: I could not do that. These are sales in our business career, leases and management of properties on Newark Avenue. Some are old and some are new.

Mr. Reardon: Then I desire to object to this testimony.

The Court: I see no objection to this part of it. When he begins to state prices, all right; but he is just qualifying.

The Witness: Well, 156 Newark Avenue, sale from Sperry to Hotchkinson; 151 Newark Avenue, Wolfson Brothers; 125, Lande Piano Company; 132 for the Estate of Mary C. McBride; 133 Newark Avenue, to Charley Furst; sold 213 Newark Avenue for the Coyle Estate to the New Jersey OutfittingCompany. We had charge of the leasing and management of 132 Newark Avenue for the McBride Estate; 136 New-

ark Avenue, Hemingway Estate; 140 Newark Avenue for the Haas Estate; 156 Newark Avenue for Mr. Sperry; 171 Newark Avenue for A. L. B. Smith; 152 Newark Avenue for the Dorman Estate; 150 Newark Avenue, Isaac Schachter; 201-203 Newark Avenue for the Vanderbrook Estate; 213 Newark Avenue for the Coyle Estate. We also sold 321-323 Grove Street, across the street, about half a block from this property, for the Carroll Estate; and we had charge of the management of 325, across the street for Mary G. McBride.

Q. Where is 321 Grove Street? A. Just as you come out of the Hudson and Manhattan tube, Grove Street entrance, the corner of Grove Street and Railroad Avenue.

Q. That would be on this map, in here (indicating)? A. That is the corner.

Q. This corner? A. Yes, sir.

Q. And 325? A. Right next door to it.

Q. Did you know the premises in question on February 9th, 1928? A. I did.

Q. Have you examined them for the purpose of arriving at their value? A. I have.

Q. The premises in question are substantially as described by Mr. Gaddis? A. I would not say that.

Q. Just describe them please? A. I have estimated what I considered to be——

Q. No; what are the premises?

The Court: The premises themselves are substantially the same as described by Mr. Gaddis?

The Witness: The premises are, yes, sir.

Q. Have you formed an opinion as a result of your examination, as to the market value of these premises? A. From an examination of the property and an examination of the sales and leases on Newark Avenue, and having in mind twenty-five years' of experience on that street, and a comparison of values there, and the relationship of the one thing to another, I have come to a conclusion of what I think this property is worth.

Q. What is that conclusion?

Mr. Reardon: Just a moment. I object to that, on the ground the answer of the witness contains elements not material to the issue in this case, considering certain elements, among which he includes leases, as well as sales of property, but particularly does he include sales of leases and one thing and another. I submit that is not sufficiently definite to enlighten this jury as to how he bases his calculation.

The Court: Well, "one thing and another" I suppose might be left out.

Mr. Reardon: Sales of leases are not evidence of market value; they are as leaseholds, but not the marketability of the real estate itself.

Mr. Schwartz: I feel that the witness may take anything into consideration.

The Court: I think twenty-five years' experience in that location might qualify him prima facially at least. If he attempts to describe or attempts to do that to make comparisons, then the next time we will try to tie him down to comparable property.

Q. In your opinion, what was the property worth on the date of the consideration? A. $99,000.

Q. Upon what do you base this estimate? A. On what do I base my valuation? Essentially on what I consider the proper and just commercial yield of this property.

Q. What is that?

Mr. Reardon: I object to that, because the witness bases it upon a yield, indicating that it is purely upon a yield basis income.

The Witness: I might say gross rental.

Mr. Schwartz: I withdraw that question.

Q. Mr. Gannon, in the sale and purchase of real estate what are the prime factors, in real estate such as this, commercial property? A. The prime factors in the buyer's mind, or in determining value——

The Court: Do you mean the value?

The Witness: The prime factors in determining the value of this kind of property, rent; the rent you can get out of it.

Q. Have you used that as your basis for arriving at this figure? A. I have.

Q. Will you just explain to us the process that you have used; how you arrived at that? A. Yes, I will explain the process.

Mr. Reardon: I object to that; he has admitted that that is the basis and the only basis upon which he has arrived at this figure. If that be true, he is not giving us the marketable value.

The Court: I don't know that he said that was the only one. Did you say that was?

The Witness: No; that is a very large factor of value. In endeavoring to make a determination of the value of this property, I made a study of Newark Avenue from the junction of Railroad Avenue all the way up to Jersey Avenue. I examined all transactions, recent transactions, sales and leases. I examined the different properties that were involved in these sales and leaseholds. I examined the property under condemnation and tried to fix in my mind what I considered the proper commercial value that each piece of property had. I came to the conclusion, after having examined some ten or twenty leases, fifteen sales, that these properties are being sold or bought on a ten percent gross basis, having been unable to find——

Mr. Reardon: Your Honor, isn't this just the kind of testimony I have been objecting to, as getting into the minds of the jurors—that is the only reason I am so persistent in my objections.

The Court: My theory again, as it was with the other witness: there are certain legal limitations which the Court will take as a law question, when a definite comparable basis is attempted to be used and to illustrate that it is comparable; but the method by which an expert arrives at his testimony is not a legal question. It is a subject of argument; it is a subject of cross-examination. But the expert can, when he is qualified as an expert, base his opinion

upon experience, sales and many other things. Until he attempts to make some comparison between that and some other definite piece of property, he has a wide latitude, which is not a legal question but which is argumentative, and for the jury to determine whether or not his method of arriving at his estimate is the correct one.

(After further argument.)

The Court: You may proceed.

(Last part of answer read.)

The Witness: Having been unable to find one single sale on Newark Avenue in the last five years, all the way from Railroad Avenue up to Jersey Avenue, which I considered comparable territory, that has sold at less than ten times the rent. Taking into consideration this property, its limitations and advantages, I considered that should sell on a basis of ten times the rent. I considered that a fair rental of the property was $9,000 per year, based on an examination of the rental and leases in that neighborhood, to which I add ten percent for corner influence, making $9,000 plus $900 and on the ten percent basis, that brings me to $99,000 for the property. I figured the corner $175 a month, that is the rent the tenant was paying up to a few months ago when he moved out. The next, the butter and egg store, I figured at $125 a month.

Mr. Reardon: You figured it in your actual rental?

The Witness: That is my idea of its actual rental value.

Mr. Reardon: I object to it. As I say, it is no criterion for this jury. I submit that should be stricken out.

Mr. Schwartz: I think the witness is only testifying as to his opinion, and that is certainly a matter of argument more than anything else.

Mr. Reardon: My objection is to his method of operation.

The Court: Go ahead.

The Witness: Incidentally, since the question has been raised, the building was one hundred percent occupied as of the date of this condemnation, with the exception of the advertising privilege on the roof, which I value at $50. Giving my opinion of the rental value, instead of the actual rental, because the Corporation is rather closely related to the store tenants, I am not talking of the rents; I am giving my opinion of what they are worth. I value the Meyer store at $300 per month. It has a frontage of 28½ feet on Newark Avenue, double plate glass front, runs back into Railroad Avenue. I value the second floor of the building at $100 a month. It is used as an egg candling establishment. And I value the space on top of that little point, where you can get a full sized de luxe bill poster showing on the Pennsylvania Railroad, at $50 per month for advertising purposes. That brings the gross rental value, in my opinion, to $750 a month, or $9,000 per year. In connection with the rentals down here, I want to point out on this property, one fact. Mr. Meyer's store is now this side of the dotted line. Up to about

two years ago, the tenant that up to two months ago occupied this point, the fruit man, had all this property to this dotted line at $175 a month. Mr. Meyer then went into possession of half of that property about two years ago, in the egg business, and the tenant continued to pay $175 a month for the point, giving up half the area, or, in other words, 100 per cent of the rental right on that corner within two years.

Q. Are you familiar with the sales of property on Newark Avenue, between Railroad Avenue and Jersey Avenue, which have been consummated within the last five or ten years?

Mr. Reardon: I object to that as too remote to the time of this condemnation, within five or ten years.

Q. Are you familiar with the sales of pieces of property on Newark Avenue, between Railroad Avenue and Jersey Avenue since 1922? A. I have; I am familiar with almost all the sales and the leases within that territory from 1922 to date.

Q. Will you name them?

Mr. Reardon: The witness should only give us those that are comparable.

The Witness: Maybe some I don't know about.

(Argued.)

The Court: Have you testified as to the area to which this question is directed, that any property in that area is comparable?

The Witness: All of the land, in my opinion, is comparable.

Mr. Reardon: I object to all the land; that is not what we are condemning. We are condemning the land and buildings.

The Witness: No two buildings are alike on the whole street.

Mr. Reardon: That totally excludes the value of the improvements, and if that is so, it is not comparable.

The Court: Go on with the question. Give us all the sales you have that you say are comparable.

The Witness: First, then, I will take 108 Newark Avenue. Sold first May, 1924.

The Court: The last sale?

The Witness: Sold last in 1926; there are three transactions on this in three years, if I may give them.

The Court: It is the last one that is most important.

The Witness: From the first to the last, it shows an increased value on a period of two years down here.

Mr. Reardon: I object to that.

Q. We are satisfied with just the last sales? A. This property sold December, 1926, for $67,000, right across the street from the property in question, having a frontage of 28 feet and a fraction on Newark Avenue, with an irregular depth averaging around 80 feet. At the time that property was sold for $67,000 it rented for $300 per month, or $3,600 per year. After its sale, the last sale, it was leased to the Regal Shoe Company, the last sale being in 1926, in 1927 it was leased to the Regal Shoe Company——

Mr. Reardon: I object to that. He was giving us the last sale, and now he is going

into a question of leases entirely immaterial to this issue.

The Court: I think that is so.

Q. Just proceed with the sales, please? A. $67,000 December 17, 1926, a piece of property renting for $300 a month, across the street from the property being condemned.

Mr. Reardon: I ask that the part of the witness's answer that is not responsive be stricken from the record.

The Court: Yes; it may be stricken from the record.

Q. What other sales do you know, Mr. Gannon? A. 321 and 323 Grove Street from the Mullens Estate to Scale, in 1926, for $42,000 at which time the property brought $310 a month or——

Mr. Reardon: I am going to ask the Court to caution the witness. The only purpose of his injecting that kind of testimony is to make me continually object and appear to this Jury too bothersome. He is a member of the Bar, and he understands that this Court has said the rent question is not to be dealt with, and he then proceeds to inject into this case this kind of testimony. I ask the Court to admonish the witness.

The Court: You have been asked now to testify to sales of comparable property within the period of the last three or four years. If there is anything in reference to rents that may be asked, it will come at a later time. Just confine yourself to sales of comparable property.

The Witness: 134 Newark Avenue, February, 1927, Mengh Estate to Jason Realty Company for $80,000. 143 Newark Avenue, sold November, 1927, by Mullens Estate to Specht for $125,000. 176 Newark Avenue, sold in November, 1928, by Jason Realty to Whitehill Realty for $72,000. 178 Newark Avenue sold 1926, by Woods, that is the first sale, sold 1926 for $75,000. 153 Newark Avenue. Do you want the last sales of these, Judge?

The Court: Yes, just the last sales.

The Witness: November, 1925, $100,000 building and land, 25 by 89. 160 Newark Avenue, sold in December, 1927, for $115,000. 163 Newark Avenue, sold in February, 1926, for $150,000. 127 Newark Avenue, sold in November, 1926, for $390,000.

Q. What was the rental of 108 Newark Avenue, at the time of the sale in 1926?

Mr. Reardon: I object to that. How can the rental be in any way considered, unless it is an integral part of the sale?

The Court: (After argument) I will sustain the objection.

Mr. Schwartz: Exception.

Q. Do you know the dimensions of the property 153 Newark Avenue, which brought $100,000 in 1925? A. 25 by 89.

Q. Do you know the dimensions of this property 108 Newark Avenue? A. About 83 feet on Newark Avenue and about 88 feet on Railroad Avenue, runs to a point at the junction of these streets.

Q. No; 108 Newark Avenue? A. A frontage of a little over 28 feet, and irregular depth averaging around 90 feet.

Q. Is that comparable with the property in question as of the date of the condemnation? A. It is on the same business street as the property under condemnation and I consider it highly comparable.

Q. The property 321-325 Grove Street, which you testified was sold in 1926, that price was $42,000 in 1926? A. $42,000.

Q. Do you know what the rentals were of that same piece of property as of the date of this condemnation proceeding?

Mr. Reardon: The same question was objected to and the Court ruled upon it.

The Witness: I would like to ask this question. I have examined all these leases and all these sales. I have made an examination of the rental of these properties, that the various properties were bringing at the time they were sold. Then I compared that with the kind of improvement that was on the property, trying to determine the relationship of the rental to the price at the time of the sale, for the different kinds of improvement, always having the propetry in question in mind. While I have given the Jury what may seem an arbitrary figure, it is on a calculation of leases in connection with these sales, and a comparison of the rental with the selling prices, and I have given my conclusion on the ten percent gross figure.

The Court: I have no objection to that, if you want to go into all these details, but I don't see the necessity of it until your

estimates are attacked in cross-examination.

Q. Take 108 Newark Avenue, what was its rental at the time of the sale? A. The rental at the time of the sale at $67,000 was $3,600 per year.

The Court: Mr. Gannon, with all the changes in localities, and the possibility of a resale at some future time at a higher price, wouldn't anybody buy a piece of property and pay higher values, based on the customary increase in value or for some other reason other than just what it will rent for?

The Witness: Yes, but the prime factor in the buyer's mind is what he will ultimately get out of the property. A man will say, "I think I will buy this property at eight times what it rents for", the available rental which it has, taking the leases, "Is it worth what he is paying? Will they pay $15,000 rent all the time"? That is all considered by the buyer. Now, I am out selling all the time. I know. They ask, "What is it renting for? If I put up a new front after I have bought it, what will the prospective customer pay? Is it better as it is?" Might I instance the Woolworth store, and other nationally known stores along there, which spend $35,000 a year on advertising, and all those things are factors in the man's mind.

The Court: And if a man pays $65 or $67,000 for it, he is taking all these things into consideration?

The Witness: He has taken them into

consideration; the customer's rent for a store on Newark Avenue.

Q. The property 108 Newark Avenue, which sold for $67,000 when the rental was $300 a month, in December, 1926; what was the rent of these premises as of the date of this condemnation?

Mr. Reardon: I object to that; he has testified to the rental at the time of the sale. He is now asked what the rental was at the time of the condemnation.

The Court: That goes to show where he got his judgment from, whether he knows what other places around there rent for.

(Argued.)

The Witness: At the time of the sale it was an old frame shack and did not look a bit better at the time of the sale, and the time the lease was made, than the property of ours does today.

Q. How was it as to size? A. It had a frontage of 28 feet on Newark Avenue, and an average depth about 80 feet. After it was sold, there was a substantial improvement made.

Mr. Reardon: The tenant paid for the improvement?

The Witness: Made it at his own expense.

Q. What rental was the tenant paying on the date of the condemnation proceedings? A. On the date of this condemnation $7,000 per year, and an option of five years further at $7,000 a year net.

Q. This rental he was paying was in addition to the money he had expended for this improve-

ment? A. Yes, a substantial of remodeling was done.

Q. The premises 321-323 Grove Street, about which you have testified were sold in 1926 for $42,000, do you know the rental? A. $310 a month, when it sold for $42,000.

Q. What was its condition at that time? A. It was in need of repair. It had possibilities which had not been taken advantage of.

Q. Was it afterwards repaired? A. After that sale in 1926, the man who bought it, leased it in 1928 to D. A. Loeb, or the real estate company which he controlled, for $7,000 a year net for the first five years, and $7,500 a year net for the next fifteen years, with an option to purchase at $85,000.

Q. When you say $7,000 net, what do you mean? A. Well, I mean when I say $7,000 net, that that is net to the owner, that the tenant pays the taxes and all the expenses.

Mr. Reardon: Mr. Gannon has put in the record the question of an option. May I have that stricken out?

The Court: Strike it out.

The Witness: After Mr. Loeb got this lease in 1927 at $7,000 net for the first five years and $7,500 for the next fifteen, he made alterations there which cost about $25,000 which increased the rental value, as evidenced by the rental he is getting. And this very same piece of property, which has a frontage on Grove Street, with a depth of 69 feet, which, when it was sold for $42,000 was only bringing $310 a month, since this man came along, and improved it, he leased the corner, nine feet by fourteen feet, out of the 43 feet by 69 feet to

the Nedick Orangeade people for $3,600 for the first five years, and $4,200 for the next five years, whereas the whole rental at the time of the sale was only $310 a month.

Q. That is the Nedick store? A. The Nedick Orangeade shack.

Q. Now, the property at 134 Newark Avenue, sold for $80,000 in February, 1927? A. That was sold February, 1927, for $80,000 when it was renting for $6,000 a year. It was remodelled and leased to the Long Hat Company for $9,700 a year. They are the present tenants.

Q. Do you know the rental of 143 Newark Avenue? A. 143 Newark Avenue was sold November, 1927, for $125,000 when Mr. O'Keefe occupied it and paid a rental of $3,000 a year. After the sale, it was leased to the Lerner Company at a rental of $13,000 a year. They then sublet about a quarter of that to the Loft Candy Company for $7,000 a year.

Q. Do you know the rental of 176 Newark Avenue? A. Yes, sir.

Q. Sold in 1928; what was its rental? A. At the time it sold for $72,000 it rented for $6,900 a year.

Q. The property 178 Newark Avenue, sold in 1928 for $75,000? A. $5,200 a year at the time of the sale.

Q. 153 Newark Avenue, sold in November, 1925, for $100,000? A. Well, that is a long story. That is one of the most spectacular things that ever happened in Jersey City real estate.

The Court: No, not its being spectacular. Do you think it comparable?

The Witness: I think so. This piece of property is a little piece of property 25

by 89, which forms part of a plot 50 by 150, just off Barrow Street and Newark Avenue. A man by the name of Sugarman occupied that building for a furniture store, and he had an option to buy the building at $30,000. His option expired in the latter part of 1923. He did not exercise his option and a man by the name of Rosenblum, another merchant on the street, came over there and bought the property, after the expiration of the option, for $41,500. That was in February, 1924. In 1925 a man named Thomford, a merchant across the street, bought the property for $45,000. Later, in February, 1925, he makes a contract with Brunton for $55,000. Brunton did not take title but sold his contract to the Service Mortgage Company of Hoboken. In April, 1925, the Service Mortgage Company sold the property for $73,500 to the Retzen Realty Company. They then sold the property in that November to Morris Fisher for $90,000 and $10,000 for a lease, a total of $100,000. When the Retzen bought the property they started to look for a buyer and they got in touch with the Howard shops, and they rented the store for $10,000 to them. In the meantime there was a deal going on with Fisher, to buy the property, and the old lease had been renewed to the Howard Shoe Company, in anticipation of the expiration of the old lease. The Retzen Realty sold the property to Morris Fisher for $90,000 and, finally, Fisher goes ahead, pays the Howard Shoe Company $10,000 for the surrender of the lease, and then sells it back

to Sugarman for $100,000. Before that contract was signed the Fisher-Bier Company leased the property for $37,000, putting up $7,000 as cash security.

Q. You haven't given us the dimensions of that piece of property? A. 25 by 89. Well, on that one piece of real estate it shows an increase of 140 percent in one year, and the lease was for $37,000 for a piece of property that was offered for sale at $30,000.

Q. What did that lease cover? A. That lease covered this property and the adjoining property, 151 Newark Avenue, giving an outlet to Railroad Avenue.

Q. How large was it? A. The building, all told, I believe 50 by 150.

Q. Do you know the property 160 Newark Avenue, which was sold in 1927 for $115,000? A. Yes, that is a triangular piece of property fronting on Newark Avenue, Bay Street and Erie Street. That property was sold by Dr. Perlberg to the Jason Realty Company in December, 1927, for $115,000. At that time it was renting for $12,850 a year.

Q. Now, the property at 163 Newark Avenue sold in 1926 for $150,000? A. At the time it was sold it was renting for $6,000 a year. It now rents for $22,000 a year, after alterations.

Q. Who made the alterations? A. The alterations on the side street, Barrow Street, were made by the owner of the property. The alterations on Newark Avenue were made by the tenant. At the time of the sale the tenant on the corner was paying $3,000 a year. He now pays $6,000 a year, and he has made his own alteration to the premises.

Q. That is the Davidson store? A. Yes, sir.

Q. The property 127-131 Newark Avenue. That was sold in 1925 for $390,000. Will you describe that property and give us the rental at the time of the sale? A. Yes, I can give you the rental at the time of the sale. It was sold for $390,000, with about fifteen different angles in it. I don't know whether the Court wants me to give you that.

Q. Just give us the bare facts? A. In 1923, the Ross Stores purchased 127 Newark Avenue for $67,000. Mr. Bernstein owned the property next door, 129 and 131. In 1926, Ross Stores purchased from Mr. Bernstein 129 and 131 for $175,000. making a total of $242,000. for the property. Next month, November, 1926, they sold the property to Dr. Perlberg for $390,000. or a profit of $148,000. As part of this sale to Dr. Perlberg, the Ross Stores leased the whole property for $30,000. a year net, giving a $30,000. second mortgage as security. That is the reason I base my opinion on the rental value, in my opinion as to the value of this property. In arriving at the value, we have got to consider the property and I believe that ten percent gross is a fair calculation. If we had a better building on our property, I would give 8 percent for the property.

Q. In making your appraisal of this property, did you take into consideration the conditions as existing at the time of this condemnation proceeding? A. Yes, sir; I did.

Q. Have you recited all of the leases of which you have knowledge? A. No, I have knowledge of three or four more leases in that neighborhood.

Q. What are they? A. 325 Grove Street, which is just on the corner from this piece of property, lot 5, the west side of Grove Street and Railroad Avenue. It is a three story and cellar build-

ing. I have described the other corner. 325 Grove Street is a property we had to do with for twenty years, for the Estate of Mary G. McBride. In 1927, it was leased by Margaret Sulliva, Trustee of the McBride Estate to the Plaza Restaurant for $2,700 a year, plus taxes of $300 a year which makes the tenant paying $3,000 a year.

Mr. Reardon: Is this lease predicated on a sale?

The Witness: No, no sale of this property.

Mr. Reardon: Then I object.

The Witness: I am trying to justify the figures of my appraisal.

Mr. Reardon: If you can't justify them by a contract or deed, you are now trying to do it by leases.

Mr. Schwartz: I don't think Mr. Reardon should be permitted to make that kind of a statement.

The Witness: This was a lease to the Plaza Restaurant Company. Six months later, the Plaza Restaurant Company sold their lease to the Industrial Realty Co. for $11,700. Mr. Kleinhaus then bought that lease for $12,700. Kleinhaus then having the property free and clear——

Mr. Reardon: How much was in that property?

The Witness: The whole property 25 by 69 depth, the whole thing.

Mr. Reardon: Now, we are now considering the basis of rents in this locality during the last five or six years, as much as what they were on February 9th, 1928; whether they are comparable property is the only thing we have to worry about.

The Court: Yes.

The Witness: Well, this property was leased, then, in 1927 for $6,000 a year.

Mr. Reardon: Where is that?

The Witness: 325 Grove Street, by Kleinhaus to Stein.

Q. Was there anything in addition to that that the tenant was forced to expend or pay? A. The tenant that took the lease at $6,000 a year, spent considerable money in remodeling the whole front, making two stores out of one.

Q. Now, is there any other lease your want to mention? A. In 1925, Brunton leased from Bowman 30 feet about——

Q. Where is that? A. Right opposite this property, on the corner of Newark Avenue and Grove Street. He leased that for approximately $7,500 a year. Then in August of the year 1926, he sublet about half of that space for the same amount of money, $7,500 a year.

Q. Are you familiar with the Daly lease 144 Newark Avenue? A. Yes, but I can't go into that. It would not be competent evidence. I was asked to omit that before the Condemnation Commission.

Q. It is not comparable? A. I would like to give you that, but I can't.

Cross-examination by Mr. Reardon:

Q. Mr. Gannon, your resume of sales and leases has taken in an area from where to where on Newark Avenue? A. What I have recited has taken in from the junction of Railroad and Newark Avenue, all the way up to Jersey Avenue.

Q. That is all? A. No, Barrow Street.

Q. From the point here under condemnation all the way up here to Barrow Street? A. Yes, sir.

Q. And including the Flatiron Building, so-called, at Erie and Newark Avenue? A. Yes, sir. One I forgot there. I will tell you about that afterwards.

Q. All right; don't forget anything. And you have examined all these sales in that area have you? A. I have.

Q. You have told us about all of them? A. All that I know of.

Q. Then you don't know anything about the sales of the very property under condemnation, do you? A. Yes, sir.

Q. Did you tell us of all of the sales of this property, Lots 1, 2, 3, 4, 5 and 6? A. No, I didn't, because Judge Cleary said they were too remote, being back in 1920.

Q. They are too remote? A. 1920; that is the last sale of the property under condemnation.

Q. The property under condemnation was sold in 1920 for how much?

Mr. Schwartz: I object, as absolutely too remote at this time.

The Court: I think it is immaterial; objection sustained.

Q. When was the property next door to this property sold, Mr. Gannon?

Mr. Schwartz: The last sale, if you know.

A. About six years ago.

Q. What was the price paid for that?

Mr. Schwartz: I object to that on the ground it is too remote, six years ago.

The Court: It is pretty close to the border line.

Q. Six years ago? A. Yes, 1922 or 1923.

Q. That is your knowledge of the sale? A. Yes, sir.

Q. Did you know it was sold in 1926? A. No, sir; it was not sold in 1926.

Q. Was there a transfer in 1926? A. Not a sale, a transfer from individuals in a corporation to a corporation. That I did not take into consideration because I didn't think it bona fide.

Q. Didn't think what was bona fide? A. I know there is no bona fide sale; there is just a transfer on the record.

Q. You knew there was not a bona fide sale, but there was a transfer on the record? A. Yes, sir.

Q. Was it at an increased price?

Mr. Schwartz: I object to that. If there is no sale, this witness cannot testify to it.

Mr. Reardon: If there has been maneuvering in this transaction?

The Witness: There is no sale.

Q. I am asking you, Mr. Gannon, why you didn't tell us of that sale? A. Because there was no sale. There is a transfer on the record for the purpose of forming a corporation. You know all about that.

Q. That is what I want you to tell the Jury. I know all about that; that is why I am anxious to let them know? A. I will, if I am permitted.

Mr. Schwartz: No objection.

The Witness: I will tell you as much as I know about it. The property next door to this property was owned by a number of

individuals, who formed the Square Realty or Square Holding Company, and they transferred this property to their corporation for a stated consideration in the deed of $50,000. It did not represent the transfer of five cents. It was a transaction which I understand from them was for their incorporation purposes, and I did not give it any consideration at all in coming to my conclusion on the value of this property here.

Q. So that you knew there was a wash sale? A. There was no wash sale. There was no sale. Don't call it a wash sale.

Mr. Schwartz: I don't think the Jury are interested at all in the maneuvers or bona fides of any other property transfer than the property in question. We will never get anywhere if we do that.

The Court: Except it appears on the record. You may say it is not a sale. He has a right to say why he did not use it. Was there a record?

The Witness: Yes, a deed recorded.

Q. Does it show a consideration of $50,000? A. Yes, I think it does.

Q. The sale was by themselves individually to themselves as a corporation? A. Yes, sir.

Q. There was a difference between $36,500 and $50,000 between that and the previous sale; that was the only difference in these two things? A. Can I answer that?

Mr. Schwartz: I think Mr. Reardon should be limited to the last sale.

The Witness: I will tell you what they really paid for it, if you think it will be of any value.

Q. I am talking about this sale between Fruhman and Morris to Fruhman and Morris under the name of the Square Realty? A. I am telling you there was no sale. I told you that three times.

Q. That gesture, just in that act of jest, created a difference in price on the record between $36,500 and $50,000?

Mr. Schwartz: I object to that; there is no testimony here at all of any price being paid for that property of $36,000. Nothing to lay the foundation.

Q. Do you know what they paid for it? A. Yes, sir.

Q. When? A. About five years ago. Do you want that consideration?

Mr. Schwartz: Too remote.

The Witness: $36,500.

Q. Are you sure it was five years ago? A. My recollection is it was in 1923.

Q. Would it refresh your memory if I told you it was in August, 1926, from Fruhman to Fruhman and Morris? A. I think you had better refresh your memory on that.

Q. August, 1926? A. No, you are wrong.

Q. Am I wrong about it? A. Yes, sir.

Q. Do you remember the testimony in the condemnation hearing before the Condemnation Commissioners appointed by the Supreme Court? A. I remember having testified.

Mr. Schwartz: I object to any testimony at the Condemnation proceeding, because this is a trial *de novo.*

Mr. Reardon: The question is not objectionable up to this point.

Q. You were present at the hearing? A. Yes, sir.

Q. You represented at that time the Square Real Estate and Holding Company? A. I was their alleged expert.

Q. You didn't represent them as attorney, you appeared as an expert witness at that time for them? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. I ask you if you recall this testimony:

Mr. Schwartz: I object at this time, before Mr. Reardon proceeds to read from any testimony.

The Court: Unless it is something contradictory.

Mr. Reardon: I will just read that portion of the testimony which related to the dates of the transaction, since Mr. Gannon has intimated that I ought to refresh my memory. Perhaps the record will help him.

The Court: Is it his testimony?

Mr. Reardon: No, it is the testimony of the owner of the property.

Mr. Schwartz: Then it is not in our case, and I object, if the Court please.

The Court: No; objection sustained.

Q. Do you recall during the trial of that proceeding, with reference to Frohman, that there

was some talk about an eight months period elapsing between the two transactions?

Mr. Schwartz: I object to any testimony in any Fruhman case, or any hearing held any time with reference to adjacent property.

Q. Will you take the notes of Mr. Rier, and these people here as to the date of this sale? A. Mr. Reardon, if I am mistaken on one date, let us see my testimony. I will take your word for it. I didn't regard the deed as of any great consequence; I didn't take the sale into consideration; that is the first sale $36,500. There is the man right down there that owns it; let him tell you.

Q. Will you tell me? A. 1926; I may be mistaken.

The Court: Go on.

Mr. Schwartz: I will admit Mr. Gannon is mistaken, if you want.

Q. You have put a value of $99,000 upon this property, and you have created it, as I understand, upon the gross income which you believe the property would yield; the worth of its actual yield, is that correct? A. Yes, sir.

Q. And in addition to that you have capitalized that by ten times the gross rent, and arrived at the conclusion that the property is worth $90,000? A. Plus ten percent for corner influence.

Q. For the property *per se?* A. On a strictly rental basis.

Q. Then you have added 10 percent of the $90,000 for what you call corner influence? A. Yes, sir.

Q. And added $9,000 for the corner? A. That is right. $9,000 on the whole plot.

Q. How much of that corner influenced the whole plot? A. A matter of opinion.

Q. I would like yours? A. My opinion is that the whole 84 feet influenced the plot, 83 feet on one street and 88 feet on another.

Q. I am talking about the corner? A. I am talking about the corner; it goes down to a point. I considered everything, from the point up the westerly line of the property, both the frontage on Newark Avenue and Railroad Avenue, I considered as having corner influence.

Q. In other words, you considered the point, along Railroad Avenue as represented by this heavy black line, and that point, along Newark Avenue, indicated by the heavy black line, as repsenting $9,000 worth of influence? A. Absolutely.

Q. Do you know anything about the sale of property from Carroll to Koshner & Root?

Mr. Schwartz: Is that the last sale?

A. Yes, sir.

Q. Do you know when it was sold? A. There were two sales of it; the last sale was what the City paid for it.

Q. Just before that one; what was paid for it? A. You want me to state the award.

Q. No that wasn't the award; before that, the last sale? A. The last sale was $80,000 plus $18,000 for cancellation of lease, or $98,000.

Q. The last sale was $80,000 plus cancellation of the lease; who paid for the cancellation of the lease? A. The buyer.

Q. Who? A. The man that bought it.

Q. What is his name? A. Root.

Q. Root? A. Yes, sir.

Q. Still there, isn't he? A. Yes, I believe he is.

Q. And he paid $18,000 to cancel a lease? A. Yes, sir.

Q. And he is still doing business there? A. No, to cancel leases that were on the property there at the time.

Q. Does this represent the building that Root occupies? A. I don't know. I didn't represent Root. I never examined the property.

Q. You are familiar with it for twenty-five years? A. Oh, fairly well. You might have a sign on the wrong building. I don't know.

Q. I didn't put the sign there? A. I didn't take the photograph.

Q. Does it look like it to you, from your twenty-five years experience?

Mr. Schwartz: I think that is immaterial, what the premises looked like at the time, or at any time that photograph was taken.

The Court: On February 9th, 1928, did that look like it?

Q. Does it look like it? A. It bears a great resemblance to it.

Mr. Reardon: I ask that it be marked for identification.

Marked for Identification as Appellant's Exhibit D-3 for identification of this date.

Q. Where is this property located with reference to the property under condemnation belonging to Mr. Meyer? A. It is about twenty-eight feet from it, west of it.

Q. And part of the whole triangle? A. Yes, sir.

Q. Mr. Gannon, how did you come to omit the sale of the Root property in 1926; and how did

you come to omit the sale of the Meyer property in 1926, since you combed all of Newark Avenue for these sales?

Mr. Schwartz: The Meyer property was not sold in 1928.

Mr. Reardon: I beg pardon. I mean the Fruhman property, right next to it.

The Witness: How I happened to omit them. Because that property is under condemnation too, and because I didn't think you wanted anything about this condemnation, including the award or anything else; that is why I omitted them.

Q. Did I tell you that? A. No, you didn't tell me that. I didn't give you that sale.

Q. How do you know I didn't want it in? A. Because I felt, that if I deal with one piece of property, I think I have the right to tell you all, including the award.

Q. You know very well that if you tell me the award, I will ask for a mistrial? A. I do; that is why I don't think you have the right to go into this property at all.

Q. I don't care what you think. I am asking the questions and the Court can determine whether I am right or wrong. I am asking, why didn't you? A. I didn't tell you because I didn't take them into consideration as fully as I did other sales in making up my opinion as to the value of this property.

Q. Yet they are the very parcels being condemned? A. They are not under this condemnation. They are being condemned in another proceeding, and I told you the last time I testified in this case that I didn't take into consideration the sale of any of this property here, because it was

all owned by people who were running it under a corporation controlled by themselves, and it was all under condemnation. I went entirely outside of this block in my valuation of both sales and leases, to form my opinion.

Q. But if this property sold as recently as two years ago, as a real estate man, wouldn't you regard that as a criterion of value? A. Yes, it has some influence on its value, without doubt.

Q. If it has some influence on its value, isn't that competent testimony for this Court and jury to know? A. I think so.

Q. Why didn't you tell us about it? A. Because I wasn't asked.

Q. Because you were not asked? A. Yes, sir.

Q. You testified about 108 Newark Avenue, didn't you? A. Yes, sir.

Q. Does that photograph represent that property as of the date of the condemnation? A. Yes, sir.

Q. Now, 321 Grove Street, does that represent the property in question? A. As of the date of the condemnation?

Q. Yes. A. It does, yes, that is right.

Mr. Reardon: I will have that marked for identification.

Marked for identification as Appellee's Exhibit D-4 for identification of this date.

Q. Is that 134 Newark Avenue (handing witness)? A. When was this taken?

Q. That was taken the 18th of November, 1928? A. Yes, that represents about the condition, as of the date of the condemnation; not when the building was sold.

Mr. Reardon: I will have that marked for identification.

James F. Gannon, Jr., for Appellants—Re-direct.

Marked for identification as Appellee's Exhibit D-5 of this date for identification.

Q. Does that represent 143 Newark Avenue, as of the date of the condemnation (handing witness)? A. Yes, sir.

Mr. Reardon: I will have that marked for identification.

Marked for identification as Appellee's Exhibit D-6 of this date for identification.

Q. Does that photograph represent the premises 176-178 as of the date of the condemnation? A. Just a minute; I don't think I testified regarding 176-178.

Q. Didn't you say that 176 was sold for $172,000? A. Yes, sir.

Q. And 178 for $75,000? A. That is right, the Rosenblum sale, yes. That appears to be a good picture.

Re-direct examination by Mr. Armstrong:

Q. Looking at these pictures, Mr. Gannon, and testifying as to their looking like certain property. I want you to take particular notice as to the vacancies there are in the pictures, and as to whether there were vacancies at the time you testified regarding the sale of the properties? A. As of the date, he is talking of the date of this condemnation?

Q. Yes. A. February 9th. The store was occupied as of the date of this condemnation. It is empty today.

Mr. Reardon: I will state, in the presence of the Court and jury, that these photographs, so far as any of them are con-

cerned, are not to be considered by the jury as indicating the "to-let" signs or "for-sale" signs, but they are only offered to indicate the class and character of the building.

*Re-cross-examination by Mr. Reardon*s

Q. Is this a photograph of 178-178 Newark Avenue? A. That is it.

Mr. Reardon: I will have that marked for identification.

Marked for identification as Appellee's Exhibit D-7 for identification of this date.

Q. Is this a photograph of 151-153 Newark Avenue? A. Yes, sir.

Mr. Reardon: I will have that marked for identification.

Marked for identification as Appellee's Exhibit D-8 for identification of this date.

Q. Is that 160 Newark Avenue, that is, the triangle of Newark and Erie Street? A. That is 160-168.

Mr. Reardon: I will have that marked for identification.

Marked for identification as Appellee's Exhibit D-9 for identification of this date.

Q. Is that 127, 129 and 131 Newark Avenue? A. Yes, sir.

Mr. Reardon: I will have that marked for identification.

Marked for identification as Appellee's Exhibit D-10 of this date, for identification.

Q. Is that 138 Newark Avenue? A. That is not in the picture today.

Q. What do you mean? A. No testimony is introduced of it so far.

Q. 168 and 170 are in the picture? A. You identified that previously. That is not in the picture today.

Q. How is it not in the picture? A. No, that is the Fisher building on the corner of Barrow Street.

Q. 156 is in the picture? A. Yes—well, no—I don't know. That is one of the pieces that I sold for Sperry about fifteen years ago.

Q. That is one of the ones you said you sold? A. Yes, in qualifying as an expert, yes, sir.

Q. This is the Fruhman property next door (handing witness)? A. It was.

Q. That is the sale that I asked you about, the sale from Morris to Fruhman? A. That is the one you scolded me about.

Mr. Reardon: I will have that marked for identification.

Marked for identification as Appellee's Exhibit D-11 of this date, for identification.

Q. All these photographs that I have shown you are comparable property to Exhibit D-2, being the property under condemnation? A. As to the land, they are absolutely all comparable. As to the buildings, they are all different.

Q. So that when you have testified to these sales, as to what in your opinion were called comparable sales, you only meant to testify that they were comparable with respect to the land? A. That is correct. There is not any comparable sale of a Newark Avenue building, but the land is comparable, all part of one business street.

Q. Wherever you have testified as to the increase in values in these properties, and sales, have you not included in the total price that you considered, or said that the property was sold or additional payments made by the owners or purchasers for the cancellation of leases——

Mr. Armstrong: I object to this question on the ground it calls for a conclusion that he has testified to increases in values. This witness has only taken certain pieces of property and testified to various sales.

The Court: All right; let's change the question.

Mr. Reardon: I will reframe it.

Q. In all of these sales that you have testified to, have you included the cost of abrogating or cancellation of leases as part of the consideration? A. In only two of the sales about which I testified were leases involved which had to be purchased in order to give a free and clear title, and possession. They were, in the Carroll property on this block, which sold for $80,000, $18,000 being paid for the cancellation of the lease; and $10,000 in addition to a $90,000 purchase price of the property bought by Mr. Fisher and the cancellation of the Howard lease. The consideration was $90,000 and $10,000 was paid in addition to unencumber the property from the lease and I therefore treated the sale as being $100,000. If that wasn't correct, the consideration was $90,000.

Q. Did you apply the same method with reference to the ten per cent gross corner influence? A. There is only one other corner that was sold and that sale was—no there are two other corners. We have the triangle on Newark Avenue, running on three streets and we had the corner of Railroad

Avenue. The triangle brought in $12,800 and it sold for $115,000. $12,800 rent and it sold for $115,000.

Q. Is that a ten per cent gross sale? A. That is just a little bit over it.

Q. Wasn't there a cancellation of a lease? A. That is about 11 per cent. There was no cancellation of a lease there. The other sale was gross $150,000 bringing in $6,000 a year rental.

Q. That is the Davidson property? A. That is, and about four per cent gross basis.

Q. What was the rental of the Davidson property before alteration? A. $6,000 a year

Q. You are sure of that? A. Yes, sir.

Q. Do you know how that was allocated to the building? A. Davidson paid $3,000 for the corner building. I think Galvin paid $1,000 for the corner of Railroad Avenue.

Q. You are running that down to Railroad Avenue? A. That runs from Newark to Railroad Avenue.

Q. Right straight through the block? A. Yes, sir.

Q. Go on? A. And the rest of the rent was gotten from the shacks on Barrow Street.

Q. Do you know what Ritter paid on Newark Avenue, next to Davidson? A. No, I do not; if I am not mistaken, I think he sublet from Davidson.

Q. Did you get that from Davidson? A. I think Ritter sublet from Davidson.

Q. Do you know what Davidson paid for rent before the alteration? A. $3,000 a year.

Q. Do you know whether it wasn't $3,720? A. No, $3,000.

Q. Do you know what S & Z paid? A. No, I do not.

Q. Do you know what the second and third floors of the corner building brought, on Barrow Street?

A. No, I do not. They were all sub tenants of Mr. Davidson who had a lease on the building, of the entire building.

Q. Subtenants of Davidson? A. Yes, sir.

Q. Did Davidson only have a lease on there for two years? A. I don't know the terms of his lease.

Q. Part of it? A. You are talking about the length of his lease, or what he leased?

Q. What he leased? A. He leased the corner building.

Q. The whole corner building? A. Yes, sir.

Q. All of the building? A. So I understood; that store on Newark Avenue, the corner, and the floor upstairs.

Q. Did you say he paid $3,000 a year for that? A. Under the old lease, yes, sir.

Q. And all the stores and premises on Barrow Street, how much did they bring in? A. I don't know what they rented for individually.

Q. Do you know what they brought in in the aggregate per annum? A. I don't; I do know the entire rental was $6,000 a year at the time of the sale for $150,000.

Q. You say $6,000 a year for all? A. For what he paid $150,000 for.

Q. In other words, the whole block? A. Absolutely.

Q. Would you be surprised to know the rental was $12,372? A. I would. Even then, it would not be 10 per cent. He paid $150,000. If you are correct, I would be very much surprised to learn it.

Q. Do you know when the lease expired? A. Nineteen hundred——

Q. You are talking about Davidson now? A. I am talking about the lease on that corner property, that was at least two years ago.

Q. Do you know when it expired? A. Yes, the sale was in February, 1926. The lease expired around the time of the sale.

Q. And Mr. Davidson was increased to what? A. $6,000.

Q. To $6,000 a year; or was the increase to $10,000? A. No, I think he was increased to $6,000.

Q. You said he was paying $6,000 before the improvement? A. No, $3,000. The whole property brought $6,000 before the improvement.

Q. You don't know he paid $10,000 a year after? A. I don't know the individual rents after. I know the gross rental of what formerly brought $6,000 is now bringing $22,000 a year.

Q. Who did you obtain that information from? A. I got that about three months ago.

Q. From whom? A. An investigator I sent down to find out.

Q. What you are testifying to now is what somebody else told you? A. Somebody in my employ found out.

Q. Now, you say there was a $50 monthly allocation by you, or allowance for bill poster advertising rent? A. Yes, I considered that the roof was worth $50 for advertising purposes.

Q. How long have you known that locality, did you say? A. I have known it 25 years.

Q. How long have you known, in the 25 years, bill posters to be on the property? A. On and off during that period?

Q. Mostly off? A. I can't say that with certainty.

Q. How long have you known bill board advertising to be on the roof of this property? A. I can't say.

Q. Did you ever see it there, on the roof of

this building that you are testifying about? A. I don't recall that I did.

Q. And yet you have put $50 a month on a possibility of a signal signboard being there, now that it is going to be condemned? A. Yes, because I am still selling sign board locations to the O'Meara people that have never been used for signboards before.

Q. You never sold him this for these 25 years? A. I haven't got charge of it. I haven't got it for sale.

Q. You think it is worth $50 a month for the potential value? A. Yes, I did.

Q. What is that $50, a month capitalized at ten per cent? A. $6,000.

Q. You have added $6,000 for billboard privilege? A. Capitalized it equals a valuation of $6,000, if my $50 a month is the correct rental.

Q. So that $6,000 is the worth of the bill poster capitalization at that price? A. Yes, sir.

Q. Of the $90,000? A. It might not be a billboard; it might be an electric sign.

Q. It might be an elevator. In any event, you have got it now. It wasn't there before? A. Yes, sir.

Q. You have got $9,000 for corner influence? A. That is usual always.

Q. That was capitalized on a basis of $90,000 for the land value? A. $90,000 on the rental value, 10 per cent corner influence.

Q. Plus ten per cent for corner influence? A. Yes, sir.

Q. And the rental value is predicated, not upon what it is paying but what you believe it ought to pay? A. I believe they are paying the figures I gave you, but I didn't take those into consideration. Meyer told me he is paying $300 a month.

Q. Because he tells you that, you are testifying to it? A. You are getting a little twisted.

Q. I think you are? A. Well—I didn't take what Mr. Meyer pays himself. I don't know whether he does pay it himself. I assume the value based upon comparable property. A cellar and double plate glass front, figured at $300 a month; the tenant on the corner was paying $175 a month, or was a few months ago when he got out.

Q. Did you believe that was a fair price? A. Yes, sir.

Q. You didn't increase that tenant in your valuation, over $175? A. No.

Q. Just right? A. Yes, sir.

Q. Now, you fixed Meyer's at $300 a month? A. Yes, sir.

Q. Did you know he has a lease at $2400 a year? A. No, I do not.

Q. So that $3600, and $300, you included the $50 a month, you increased—— A. Increased what? I figured the store and that there was a cellar; he has a frontage on Newark, and it is worth $300.

Q. If it calls for $2,400 under his own lease? A. I don't know what the lease is.

Q. You don't care? A. I don't care. If he has got $6,000 under his own lease, I would not care. It would not make any difference.

Q. So that if you had premises or other property belonging to you under lease, or rather which you had leased at a certain rental, you would not consider that the value of the property; the value of the property, in your opinion, would be what somebody else ought to pay? A. I don't understand that question.

Q. I don't wonder either, because it took me a long time to find out what you were doing. Now,

as I get to see it, you have given a potential value to the rent of this property, rather than the actual value? A. I have given what in my opinion is a fair valuation for this space in that location.

Q. Is your opinion predicated upon knowledge or mere opinion? A. I think I will leave that to you. I have given you fifteen leases, and fifteen sales; predicated on that, plus 25 years experience.

Q. In spite of the fact that you disregard the lease for $2,400? A. Because Mr. Meyer owns the property.

Q. All right, Mr. Meyer is paying himself $2,400? A. That is the same situation next door, if you put it that way, with your so-called wash sale. I didn't consider any of these things at all.

Q. Where a man is actually paying $2,400 under a lease nobody can take away from him but the right of eminent domain, you still say the value is $300? A. I valued it, regardless of what you are referring to, or what you are talking about at $300 a month.

Q. The same thing you did with regard to the bill board on the roof, even though in your experience nobody else wants one put there? A. Yes, I considered that worth $50 a month.

Q. That $50 a month capitalized represents $6,000 of the value which is injected into the value of that building? A. It is the apparent intrinsic worth of this building.

Q. Plus $9,000 more for corner influence? A. That is right.

Q. When you have included the rental value of this corner, haven't you included the corner influence by including the rental value? A. No, I have not, because the character of building it was, the

property at the present time, does not represent the potentiality of that land. The virtue that is inherent in the land itself, but it has not brought owing to the construction you have.

Q. We are amending for potentialities? A. I didn't say that. You heard my answer.

Q. You brought that in? A. I am talking about the corner influence on the character of construction you have got on the land.

Q. So that, although you considered the character of the construction upon that land to be worth a yield of $9,000 per annum—— A. As is.

Q. Still you say that that $9,000 per annum, as is, does not begin to represent it? A. Could be augmented by at least ten percent with corner influence, due to the poor construction which it does not bring; proper rentals; if you had a nice store, and bettered the building, you would get much better.

Q. Will you tell me what you think we are condemning, the thing as is, or the thing with the billboard on it, or the thing with the virtue in it? A. That is exactly what you are condemning. That is what you are going to pay them for. The inherent value of the building you have got to pay for.

Q. And the virtue you are talking about? A. Every bit of virtue.

Q. We are going to pay Meyer for the billboard advertising scheme? A. If this jury finds out it is worth $50 per month, you have got to pay for it.

Q. I know that as well as you, but you are an expert and they are not. They are looking to you for light; all they are getting is heat. Can you give them some light? A. I will answer any question you ask me.

Q. Well, I am asking you whether or not you consider the rent of $9,000 a year for that prop-

erty, includes the corner influence? A. I do not.

Q. And if not, why not? A. Because of the fact that the property is not properly improved.

Q. Whose fault is that? A. The City's fault.

Q. The City, when it owns it? A. No, the City condemning it. You can't go and put an improvement on it.

Q. How long has it been there? A. Since before you were born.

Q. How long has Meyer owned it? A. Eight years. This condemnation has been talked of for about six years.

Q. You know, before even that. You were not in this case six years ago, nor talking about it? A. Nobody was in this case six years ago.

Q. What do you mean, it was talking about? A. Why, it has been in the public press; it has been talked about since the City Commission was created.

Q. How long is it since you were in the City Commission? A. 1923.

Q. That is less than six years? A. I resigned January first, 1923.

Q. That is less than six years ago? A. Yes, sir.

Q. Did you ever hear of it in the Commission? A. Every time Bob Hoos came to make a speech, he talking about the condemnation, practically.

Q. You are sure you heard about it? A. Yes, it has been advocated.

Q. Did you ever know of any proceeding or ordinance introduced in your term? A. I don't want to embarrass the City Commission; between you and I, it has been promised for a long while, Mr. Reardon.

Q. Would that account for Mr. Meyer not improving it? A. Why, certainly.

Q. Don't you know if he had improved it, he could have gotten anything he improved it out of it? A. Yes, sir.

Q. He could not have abstracted more virtue? A. By giving a long term lease, he could have had that without the Condemnation closing them out.

Q. And if he had put it on a long term lease? A. He would have to pay the tenant; the tenant would have been paid out of the award when he got into this proceeding.

Q. Mr. Meyer's award would include the value of the lease? A. No.

Q. Yes? A. The value of the fee simple of the property.

Q. Plus? A. The value of the tenant's lease.

Q. Secondly, damages? A. No, never in a million years.

Q. Were you in the Sinisi case? A. I was.

Q. Did you ever hear of any value for the leases? A. In other words, you pay the value of the fee; if there is a lease worth more than the value of the fee, you pay 100 per cent more for that, too.

Q. Did you ever hear of the Gilardeau case? A. Yes, sir.

Q. Did you ever hear of them getting $15,000 for a lease? A. I don't know what the award was. I know you only pay once for the land when you condemn it.

(Recess to 10 a. m., November 21, 1928.)

Argument.

10 a. m., November 21, 1928.

MET PURSUANT TO ADJOURNMENT.

Mr. Reardon: I desire to offer in evidence the photographs which have been marked for identification, D-1 to D-11, inclusive. Mr. Armstrong has agreed with me that it will not be necessary to produce the photographer, but to save time he has agreed that these photographs were taken by an official photographer, and that they represent the facts as of November 11th, 1928.

Mr. Armstrong: I object to the offer of these photographs for the reason they are taken as of November 11th, and they do not represent the situation that existed on February 9th, 1928, the date of the condemnation.

I think therefore they are very incompetent evidence at this time.

Mr. Reardon: That would be true, but Mr. Gannon on the stand yesterday examined each one of these photographs and admitted they represent the facts.

Mr. Armstrong: Mr. Gannon did not so testify. After he went on the stand, he corrected himself by saying there were changes, in regard to store being rented and not rented.

Mr. Reardon: I am willing, in fact I stated yesterday, that so far as any advertising signs to rent or to let were on the premises, that the jury disregard such signs.

Mr. Armstrong: I still object. We don't know whether they represent the situation as of February 9th, 1928.

Mr. Reardon: It is only to show the character of the building.

The Court: You will have to prove that they do represent pictures as of the time when this question is at issue.

Mr. Reardon: I think I have already done that through Mr. Gannon.

Mr. Armstrong: We still object to their introduction.

(After reading of Mr. Gannon's testimony, regarding the photographs, and further discussion, the offer to place them in evidence temporarily withdrawn by Mr. Reardon.)

BEN SCHLOSSBERG, sworn for the Appellee.

Direct examination by Mr. Reardon:

Q. What is your business? A. Real estate and insurance.

Q. How long have you been in that business? A. About ten years.

Q. Have you been engaged in making appraisals of real property? A. I have.

Q. Condemnation proceedings? A. I have.

Mr. Reardon: Do you want me to go into his qualifications, or do you admit them?

Mr. Armstrong: No, I don't admit anything.

Q. What experience have you had in appraising real estate? A. Representing property owners at

the Lackawanna Condemnation; representing the County of Hudson on the Maternity Hospital several months ago; representing property owners when the city condemned Summit Avenue about six months ago; representing property owners on the State Highway on lower Newark Avenue.

Q. Have you bought and sold real estate in Jersey City? A. I have, as agent.

Q. Can you give us some idea how many parcels a year, about? A. I don't know. This year was not so heavy. Prior to this year about twenty-five to fifty, running into millions. I would rather give you dollars and cents.

Mr. Reardon: I submit he is qualified.

Q. I show you exhibit D-1 and ask you if that photograph, so far as the character of the building is concerned, represents the true condition as of February 1928? A. It does.

Q. Is the same true of D-2? A. It is.

Q. D-3? A. It is.

Q. D-4? A. It is.

Q. D-5? A. It is.

Q. D-6? A. It is.

Q. D-7? A. It is.

Q. D-8? A. It is.

Q. D-9? A. It is.

Q. D-10? A. Yes, sir.

Q. D-11? A. Yes, sir.

Q. I show you also photographs of property 138 Newark Avenue, which has not yet been marked for identification, and I ask you whether or not that represents the true character of the building as of February, 1928? A. It does.

Q. I also show you photograph of property 156 Newark Avenue, which has not been marked for identification, and ask you whether or not that

also represents the true character of the building as of February, 1928? A. It does.

Mr. Reardon: I offer all these exhibits in evidence.

Mr. Armstrong: I wish to enter an objection to them. First, I would like to cross-examine on these photographs.

Cross-examination by Mr. Armstrong:

Q. Mr. Schlossberg, you looked over these photographs rather hurriedly when they were presented to you there? A. Oh, no, I did not.

Q. You seemed to pass them over very quickly? A. I have seen them quite often.

Q. You understand what the question was, that these photographs represent the buildings as of February 9, 1928?

Mr. Reardon: The character of the building?

Q. Yes, the character of the building? A. Yes, sir.

Q. I show the photograph known as D-11, and ask you to look at that picture? A. Yes, sir.

Q. Is that the present condition of the property?

Mr. Reardon: I object to that.

The Witness: I don't know. I was not down there.

Q. When were you down there? A. About two months ago.

Q. Do you know when this photograph was taken? A. I do not.

Q. If I told you it was taken November 11, 1928, would you accept it as of that time? A. I don't know.

Q. Well, do you know, as of February 9, 1928, that that store was vacant? A. I don't know.

Q. You testified that the picture represents the condition of the property as to character and location, as of February 9, 1928? A. We are not taking into consideration vacant stores, but the physical structure of the building.

Q. You are not testifying as to the way that photograph looked as to the vacant store? A. No.

Q. Only the physical structure? A. Only the physical structure of the building, absolutely.

Q. I show you this photograph known as D-1, and ask you to look at that. A. Yes, sir.

Q. Is that the same condition of that property on February 8, 1928? A. It is.

Q. Exactly the same? A. Yes, sir.

Q. With the exception of course, of the vacant stores? A. Yes, I think the store was empty then too. I don't know. I don't remember.

Q. Do you know whether or not this place up here on the second floor, do you know whether there are any changes, or were there any changes as of February 9, 1928? A. If my memory serves me, I think it was occupied, but that is the physical structure of the building irrespective of who occupies it.

Q. There has been no change down here in the front? A. No.

Q. I show you this Exhibit D-3, and ask you where that property is located? A. It is just above the property that is now being condemned.

Q. Where does it front, what street does it front on? A. On Newark Avenue.

Q. That fronts on Newark Avenue? A. Yes, sir.

Q. Near what street is it? A. Near Grove.

Q. How far away from Grove Street is it? A. About thirty-five feet.

Q. Is that next to the property that we are condemning here to-day? A. No, sir.

Q. How far away is it? A. Twenty-five feet away.

Q. I show you here Exhibit D-5, and ask you if you know what that building is? A. Yes, sir.

Q. What building is that? A. That adjoins the Charley Singer ice cream store.

Q. What number Newark Avenue is it? A. You will have to show it to me.

Q. I have shown you the picture? A. I don't know every piece of property.

Q. You have testified you recognized it? A. I recognized that building, of course.

Q. Whereabouts in Newark Avenue is it? A. Above Grove Street.

Q. Can you tell us the number of it? A. I cannot.

Q. Can you tell us how far it is from Grove Street; is that east or west? A. It is east of Grove Street—no, west of Grove Street, going up towards the heights.

Q. What side is it on? A. On the right side going up towards Jersey City Heights.

Q. How far away from Grove Street is it? A. Probably——

Mr. Reardon: I think this is prolonging the agony, that's all. I think the question should be limited to the condition of the building, not whether or not it is so many feet.

Mr. Armstrong: He has testified that he knows this property, knows the character and location by having glanced through

them. I think I have a perfect right to ask him.

A. It is about 150 feet.

Q. What property is that? A. Who owns it?

Q. Yes. A. No, sir, I don't know.

Q. Do you know who did own it? A. No, sir, unless you give me the block and lot number, and I will get it from my record.

Q. Did you ever see it before? A. Absolutely.

Q. Are you familiar with downtown real estate? A. Absolutely.

Q. Do you know anything about the name of who owns it or did own it? A. No, I do not.

The Court: The photographs may be admitted.

Mr. Armstrong: I would like to object to their introduction, and if your Honor admits them I would like an exception.

The Court: Exception allowed.

Exhibits D-1 to 11, marked for identification, respectively, now marked in evidence.

Further pictures offered, not previously marked for identification now accepted and marked Appellee's Exhibits 12 to 13, in evidence of this date.

Re-direct examination by Mr. Reardon:

Q. Mr. Schlossberg, have you examined the property of Louis Meyer and others, known as lots 5 and 6? A. I have.

Q. Have you formed any opinion as to the value of that property? A. I have.

Q. What in your opinion is the value of the property? A. $43,000.

Q. Upon what have you based that opinion? A.

Upon my experience and knowledge of sales in that immediate neighborhood.

Re-cross-examination by Mr. Armstrong:

Q. You said as one of your qualifications that you conducted or represented the condemnation commissioners in the condemnation of property on lower Newark Avenue. Did you testify to that? A. West Newark Avenue.

Q. You said lower Newark Avenue. A. I mean West Newark Avenue. I said the Lincoln Highway on lower Newark Avenue, and the Lincoln Highway is not on this end of Newark Avenue.

Q. You have never negotiated any sales on lower Newark Avenue? A. No, I have not.

Q. Or leases? A. No, I have not.

Q. You have had no experience at all in downtown real estate, have you?

Mr. Reardon: Just what do you mean by experience?

Mr. Armstrong: Either selling or leasing.

Q. Have you any experience at all in the leasing or management or sale of downtown real estate, particularly in the locality of the present property, business property? A. I have negotiated no sales on lower Newark Avenue.

Q. No leases either? A. No.

Q. What is the class of property that you ever had any dealings with in lower Jersey City? A. About six blocks from this section.

Q. What property? A. That was Henry Kohl to the National Grocery, warehouse and stores on Newark Avenue.

Q. What did you have to do with that? A. I negotiated the sale.

Q. About how long ago? A. About five years ago.

Q. Is there any other piece of property? A. No, that is the closest to this one.

Q. That is only about three blocks away from this property? A. No, it is about five blocks.

Q. Have you any knowledge of rental values on Newark Avenue? A. No, sir.

Q. You haven't any? A. I have some.

Q. Have you any knowledge of values on Newark Avenue? A. I have.

Q. From where did you gain that knowledge? A. From the record of sales.

Q. Where? A. From actual sales.

Q. Where did you obtain the record—you said you obtained a record? A. From the Court House and from knowledge of what others bought property for.

Q. What records did you ever obtain from the Court House showing any sales? Will you let us have them? A. Twelve pieces of property. Do you want me to give them to you? Block 204, lots 1, 2 and 3.

Q. Do you know the street number of that property? A. 109, 111 and 113 Newark Avenue.

Block 204, lot 4, 107 Newark Avenue.

Block 205, lot 5, 108 Newark Avenue.

Those are three pieces of property, two adjoining and one just across the street from this property under condemnation.

Block 240, lots 5 and D, 127 Newark Avenue, and 129 to 131 Newark Avenue.

Block 240, lot J, 143 Newark Avenue.

Block 240, lot C, 121 to 125 Newark Avenue.

Block 240, lot A, Railroad and Grove Street.

Block 241, lots 11 and 12, 138 Newark Avenue.

Block 241, lot 2, 156 Newark Avenue.

Block 241, lot 21, 134 Newark Avenue.

Q. That is all? A. From the record.

Q. You obtained all of these transfers from the record? A. Yes, sir.

Q. Was there anything in that record to indicate to you the value of that property? A. I guess.

Q. What? A. Such as mortgages stipulated, and revenue stamps, and then I personally checked up with——

Q. I am asking you about the record. So that you obtained from the revenue stamps of deeds and the mortgages what you thought was the consideration prices for the property? A. Yes, sir.

Q. In other words you were guided by the mortgages that were given, plus the revenue stamps that were placed on the deeds? A. I was guided by information that was given me.

Q. I am asking you about the records. A. I want to correct that. I mean my searches. I certainly did not go through the files.

Q. You personally did not examine the records? A. No.

Q. You had somebody else do that? A. Always do.

Q. That information was brought to you by somebody else? A. Yes, sir.

Q. Taken from the records? A. Yes, sir.

Mr. Armstrong: Then I object to this testimony and ask that it be stricken from the records.

The Court: That was in the regular course of business?

The Witness: Absolutely. We pay the searchers to do it, and then I check off to substantiate it.

Q. How did you check it up? A. In one particular sale, why, Ben Hyman, a local lawyer, sold it. I called him up. I called up Mr. Bernstein.

The Court: Is that the regular way of real estate men, to keep track of sales in the community outside of when they make sales?

The Witness: Absolutely.

Q. For instance, let us take 134 Newark Avenue. Where did you get the information from about that property, what information did you get and where did you get it? A. On April 29, 1927, Jesse C. Mengh, sold to Jacob B. Hyman, for $85,000.

Q. Is that all the information you have about it? A. Well, that is where the Long Hat store is, and this Tom, Dick and Harry shoe store, and there are four floors above that. The improvement was a brick building having a frontage of 28 feet on Newark Avenue by 122 feet in depth. Then on July 13, 1927, Hyman sold to Jason Realty Corporation, the same piece of property, but that was a corporation that Mr. Hyman controlled.

Q. Is there any other information about it? A. I don't know what information you want. If you will be good enough to ask me.

Q. Do you know anything about the condition of the building at the time of this sale, or who occupied it? A. At the time of the sale, no.

Q. You don't know anything at all about that? A. No sir.

Q. Do you know anything about the rental at the time of the sale? A. No sir.

Q. You don't know what the rent was at the

time? A. It did not interest me. The buyer must have taken that into consideration.

Q. You did not take it into consideration? A. No sir.

Q. Do you regard the price of $85,000 for that property as a fair price?

Mr. Reardon: I object to that question on the ground that this witness is not called upon to characterize the sale. It is on record.

The Court: That is other properties than the one in question.

Mr. Armstrong: I am going into the examination of the witness. He has been qualified and he has testified that he based his value on the sales. Why isn't that relevant as to how the building was, or how he estimated the value of the property?

The Court: I don't think it makes any difference what he thought of the sale. Using that price as a criterion, he estimates what some other property is worth. I think it is immaterial whether he thought the sale was good or bad.

Q. When did you appraise the property under condemnation? A. I don't understand the question.

Q. On what date did you make an appraisement of the property now in question? A. I think it was the early part of February, somewhere around that time, February or March.

Q. Of this year? A. Yes, sir.

Q. Did you go down and look at the property? A. I did.

Q. Who was with you, anybody? A. No, sir.

Q. Went by yourself? A. Yes, sir.

Q. Will you just tell us what you did when you went down there? A. The first time I just looked at it very casually from the outside and just looked inside. Then about a month or two later I went down there for a more thorough examination, I mean such as cellars, what the make-up of the rooms was, and at that time I met Mr.—this gentleman sitting in front of Mr. Meyer, I don't remember his name.

Mr. Armstrong: Mr. Fruhman.

The Witness: Mr. Fruhman. We went through some of the rooms upstairs. I met Mr. Meyers, the owner of the piece of property now under condemnation and I went through the part of one cellar with him. Does that meet your question?

Q. Is that all you did? A. Yes, sir.

Q. Did you go into the different stores? A. Yes, sir.

Q. Sure of that? A. Absolutely.

Q. Did you go upstairs? A. Not in this property, but the one next door I did.

Q. Speaking now of the property we are taking, 199?. A. Yes, I went upstairs in that one, too.

Q. Did you go upstairs there and look around? A. Yes, sir.

Q. Now, upon what basis do you estimate your value? A. First, the record of sales in the immediate section, and then I allowed so much for land and so much for buildings. I allowed twenty dollars a square foot for the land and allowed $11,200 for the buildings.

Q. For the buildings? A. Yes, sir.

Q. Now, taking the land value, upon what basis did you proceed to arrive at so much a square foot,

twenty dollars a square foot as you testified to? A. I took into consideration the most recent sales in this block, the old Clements property, that is the stone house, that is just 25 feet above this property. That sold on May 17, 1926, land and buildings, sold for $21.74 a square foot. I do not think property has advanced in that particular block. Even at that I allowed them twenty dollars a square foot for just the land without the buildings.

Now, that is my immediate comparison.

Then the next door, the property next door, I eliminated that. I did not figure that up. That is my best comparison, that is the one with the corner.

The one across the street, where the Regal Shoe store has its place of business, sold for $17.60 a square foot, which included land and building, and at that time I allowed this present property twenty dollars a square foot just for the land itself.

Q. Is that all, Mr. Schlossberg? A. For the present, yes, sir.

Q. So that your value of this property is based upon two comparisons, one that corner property and one that property across the street? A. Well, that is the most immediate comparison. Then I can go into comparisons of ten sales or so of the best property——

Q. You say you can go into that? A. I will.

Q. Did you, when you arrived at this value, did you go into a comparison of these other sales? A. I did.

Q. All right, let us have them? A. Seven other sales in the so-called heart of Newark Avenue that I consider one hundred per cent location were large brick buildings and large plots of ground. The average per foot sale of that stuff was $34.29

a square foot, which includes buildings and land, and so I thought I was very fair in allowing them twenty dollars a square foot for the land itself.

Q. Now then, tell us the others that you have not mentioned, and that you say number about nine or ten. A. Ten altogether.

Q. What were the dimensions of these various pieces of property that you allowed $34.29 a square foot for? A. You want them in square feet?

Q. I say what were the dimensions of these various properties? A. 205, just across the street, which was 28 feet by 80 on one side, and 92 feet on the other side in depth. Now that is just across the street. That sold for $17.60, buildings and land.

Q. That is 108? A. Newark Avenue.

Q. That 108 Newark Avenue, that was sold at $17.60 a square foot before any alterations were made on the buildings, wasn't it? A. Yes, sir.

Q. Since that time you know there have been considerable alterations made? A. I don't know; what do you mean by considerable?

Q. Do you know that there has been any change made to this property since it was sold by the Regal Shoe Company? A. Yes sir.

Q. I asked you the price and you are now quoting the sale of the Regal Shoe store? A. Yes sir.

Q. Do you know what it rented for at the time of the sale, the Regal Shoe Store? A. No.

Q. Do you know what it rented for on February 9, 1928? A. No.

Q. Now, Mr. Schlossberg, your whole estimate of this property is based on square foot value? A. Yes sir, to a great extent.

Q. In fact, it is practically the whole extent, isn't it? A. No sir.

Q. What other element did you take into consideration? A. Location.

Q. Well, of course that is included in your square foot determination? A. That is how I arrived at a value.

Q. Did you give any attention at all to the rental value of the property? A. Not very much because it did not have much rental value.

Q. Do you consider that the improvements, in the determination or appraisement of commercial property, do you think that the rent is any factor at all? A. It all depends. You can't very well judge a piece of property by the rent it brings in. Nobody knows the circumstances of the lease. Nobody knows what prompted the man to probably overpay. It is very difficult to take a lease into consideration on the sale of any property.

Q. If you went down to purchase this property, would you give any consideration at all as to what the rental value of it is? A. No.

Q. You would not? A. I would know the section I was in. I would know whether it was a hundred per cent location. I would know what business it was good for, what rent I could afford to pay and what rent the next man could afford to pay.

Q. Suppose you were buying for investment purposes, would you give any consideration to the rental value there? A. I would have to then.

Q. Don't you think that in the procurement of investment property that rent is a very important factor? A. Depending on how the leases were made, under what circumstances, what its potential value will be.

Q. And its present value, what the property is then bringing in, wouldn't that interest you? A. Business property is bought mostly on its potential value.

Q. What do you mean? A. According to the neighborhood and what it may bring five years from now, or three years.

Q. In rent or price? A. In price.

Q. What does price depend on? A. What a merchant will pay for this location.

Q. Doesn't it have any dependence at all upon what that property will bring in, in rent? A. Business property brings in very little return on rent.

Q. We are speaking of store business? A. Well, that is business property.

Q. What would you consider fair capitalization of Newark Avenue property? A. I don't know. You cannot go into that.

Q. You cannot consider that at all? A. No.

Q. In your determination of the appraisement of the property, you give that absolutely no consideration whatever? A. My best guides were the sales, the actual sales.

Q. And that is all you depended on? A. That is the record. I must depend on it.

Q. Do you know whether or not when you went to appraise this the most easterly part of the building was occupied? A. The fruit store was there, yes sir.

Q. Did you make any inquiry as to what the tenants were paying, did you ask the tenants what rent they were paying? A. I asked the fruit store man what he was paying.

Q. What did you learn? A. I asked how he was doing in his business. After he told me what kind of a headache he had I didn't want to burden him any more.

Q. Did you ask what rent he paid? A. No.

Q. Did you question him about what rent he paid? A. Yes sir.

Q. You expected to come and testify in a con-

demnation? A. I didn't believe the rents were as stipulated, as the owner told me.

Q. Why, if you did not believe that, didn't you check up with the tenant? A. I did not take rents into consideration.

Q. You did not give them any consideration at all? A. Absolutely not.

Q. You didn't, in arriving at your estimate, pay any attention to the income of the property? A. Absolutely not.

Q. Now, on your square foot estimate, I suppose, 108 Newark Avenue was divided in your imagination in half, that is the length, depth of the property——

Mr. Reardon: Before you finish I object to that; that is now creating a hypothetical question and no proper foundation is laid.

Mr. Armstrong: He has already testified he based his estimate of the value of the property, the square foot value, he has said how he based it, and I have a right to go into cross-examination of this witness and compare the property which he has already says he made a comparison of, 108 Newark Avenue.

The Court: If I understand, the question is to show whether it makes any difference as to the size of the lot, whether it be large or small. You want to show whether the depth of the lot would make any difference in the judgment of this man?

Mr. Armstrong: Exactly.

The Court: All right, ask him again.

Q. Were you influenced at all when you say you allowed $17.60 a square foot for 108 Newark Avenue? A. I did not allow it.

Mr. Reardon: I understood him to say that is what it was.

The Court: He said that is what it brought.

Mr. Reardon: Yes, the price brought that.

Q. This property under condemnation, you say you allowed twenty dollars a square foot there?

The Court: The property in question?

A. I had to arrive at a figure to work on.

Q. A key figure? A. No key figure.

Q. How did you arrive at twenty dollars a square foot? A. This piece across the street brought $17.60. The piece right next to it or adjoining it, just 25 feet away, $24.74; for building and land, I would say the figure of twenty dollars for the land—and in my figuring for the building and land, that brings it up to $27.33, which is higher than any sale in the immediate neighborhood. Now, my land value, that I worked out at twenty dollars. My building and land value brings that property under condemnation to the high figure of $27.33 per square foot.

Q. For every square foot? A. Yes, it includes the present building and the land.

Q. Now, if this property had a greater depth, would it be worth more or less in that section? A. I don't know, it all depends on the location.

Q. In this location, we are speaking about. I am asking if this property was deeper? A. If this property was deeper and there was no Railroad Avenue, you mean?

Q. Suppose it ran one hundred feet back? A. You mean on Railroad Avenue?

Q. Would it be any more valuable or less valuable? A. No.

Q. You don't think it would make any difference on the square foot basis? A. Absolutely.

Q. So that, in determining the square foot value, the depth does not make any practical difference? A. Not in this particular location.

Q. If it was a thousand feet? A. Then you would probably put a theatre up there.

Q. I am not asking you what you could put up there. A. I am talking about what this land is worth.

Q. You are speaking of land value? A. We are talking about this lot.

Q. This vacant land, if it was a thousand feet in depth, wouldn't that be any different in your mind about the square foot value of the property? A. I object to that. That embraces facts in the question that don't exist in this case. It is predicated upon an unwarranted assumption of fact.

The Witness: It would be the same thing.

Q. So that you paid no attention to the frontage of the property? A. The frontage?

Q. You didn't consider that in the square foot value? A. You were talking about depth.

Q. Regardless of what the depth of the lot is? A. You had better change your question.

Q. I say you paid no attention in your estimation to the value of the property, what the frontage involved in it is. Did you give that any consideration? A. That is why I appraised it at that, because you have a very good frontage there.

Q. On both streets? A. Yes, sir. If you didn't have that frontage I wouldn't give you twenty dollars.

Q. How much would you give? A. I don't know.

The Court: If that frontage was two or three times as much, would it make the square value bigger?

The Witness: It may; yes, sir. It would mean you have more show room, more show room, and it would bear different stores.

The Court: You would use it for different purposes?

The Witness: Absolutely.

Q. Did you have any trouble making this appraisement?

Mr. Reardon: I object to that as highly improper.

(Question withdrawn.)

Q. Did you have any difficulty, Mr. Schlossberg, in making this appraisement? A. I don't know what you mean.

Q. Was it an easy piece of property to appraise? A. Absolutely.

Q. No difficulty at all? A. No.

Q. Is it a common piece of property? A. Very common, yes, sir.

Q. I mean it is regularly shaped? A. It is.

Q. Is there any other piece of property in lower Jersey City like it that you know of? A. Offhand, no.

A. Offhand, no.

Q. Would you think there is another piece of property in lower Jersey City just like it? A. No.

Q. Didn't you experience some difficulty in finding something to guide you in appraising a piece of property of this kind? A. No sir, it was very simple on account of the recent sale of property right next door to it.

Q. You say there is no other piece of property in Jersey City just like that that you remember?

Mr. Reardon: He didn't say that.

The Witness: Not that I know of. I am not going to make any definite statement, there may be some.

Q. I am asking you whether you know of any? A. It would not influence me, either.

Q. Did you, in making that appraisement, consult with Mr. Ryer and Mr. Dunham? A. Yes sir.

Q. Did you go over the figures with them? A. Yes sir.

Q. Before or after you made it? A. Why, we had a number of discussions. I don't want to deny anything about it.

Q. Did you have any talk with Mr. Ryer or Mr. Dunham before you went down to appraise this property? A. No.

Q. Did you get any information from them about your figures? A. Absolutely.

Q. You made an independent appraisal? A. I said I got figures from them.

Q. You did get figures from them? A. Yes sir.

Q. You were guided by what they told you? A. No sir. We had a general conference on it.

Q. Before you went down to the property? A. No sir, when I came back.

Q. After you all saw it? A. After I saw it alone.

Q. Had they seen it when you spoke to them? A. I think they did.

Q. You all talked over the figures? A. A number of times, yes sir.

Q. You all agreed? A. Of course we did.

Q. Within five hundred dollars of each other? A. Of course we did.

Q. You don't always agree with Mr. Ryer on his valuations?

Mr. Reardon: I object to that as incompetent.

The Court: Sustained.

Q. You testified that you didn't know the rentals of this building when you made this appraisal? A. It had no effect on my appraisement.

Q. So you paid no attention to it? A. Absolutely not.

Q. Do you know of any piece of property on Newark Avenue that was sold at less than ten times its rental value? A. I don't know.

Frederic Dunham, sworn for the appellee.

Direct examination by Mr. Reardon:

Mr. Reardon: By consent, survey made by Frederic Dunham may be admitted in evidence, showing the dimensions of the property in question, as well as of other property included within the proposed improvement, the property under condemnation in this case being known on said survey as lots number 5 and 6.

Accepted and marked as Appellee's Exhibit D-14 of this date.

Q. I show you exhibit D-14 and ask you if you made that map? A. I did.

Q. What is your business? A. Civil engineer and real estate appraiser.

Q. How long have you been a civil engineer? A. About forty years.

Q. Licensed as such engineer by the State of New Jersey? A. Yes sir.

Q. And how long have you been engaged in the appraisement of property if at all, appraising property? A. About forty years.

Q. Forty years appraising property. Will you tell us what property you have appraised in the City of Jersey City, with some of the condemnations, if any, that you have been employed on? A. I have appraised all of the property in Jersey City.

Q. When did you do that? A. Why, at various times, principally in 1924, 25 and 26.

Q. Do you mean that at that time you appraised all of the property for appraisal in Jersey City? A. Yes sir.

Q. What other experience have you had with relation to appraisals? A. I have appraised all the railroad property in Jersey City for the State of New Jersey. I have appraised various properties for the State Highway Commission, extending from Jersey Avenue across the city to the Hackensack River, and I have appraised for various corporations and for banks.

Q. Now, Mr. Dunham, did you examine the property known as lots 5 and 6 in Block 204? A. Yes sir.

Q. Did you arrive at an opinion as to the value of that property? A. I did.

Q. What in your opinion is that property worth? A. Forty-two thousand dollars.

Q. Upon what procedure did you go to arrive at that figure? A. Upon my knowledge of values in the vicinity.

Q. Anything else? A. Well, my general experience in appraising.

Q. When you say your knowledge of values in

that vicinity, do you mean that you have personal knowledge, or that you have acquired that knowledge through investigation? A. Through investigation.

Cross-examination by Mr. Armstrong:

Q. Your profession is that of civil engineer, isn't it, Mr. Dunham? A. I am a civil engineer.

Q. You are not in the real estate business? A. I do not buy and sell. I appraise.

Q. Have you ever negotiated any sales or made any sales at all? A. No, only on my own account.

Q. You have never negotiated any lease of property in the downtown section of Jersey City? A. No.

Q. You say that you have appraised all the property in Jersey City. For what purpose did you appraise it? A. For the purpose of taxation.

Q. That is for taxation assessment values? A. Taxation assessment values, basis of assessment.

Q. That was really what you had appraised the property in Jersey City for, nothing else? A. To arrive at a basis of assessment and for equalization of value.

Q. Now, when you made that appraisement of this property in question, were you by yourself when you went down there? A. I went by myself. I later went with Mr. Ryer.

Q. Did you take into consideration at all the rental value of these buildings? A. No.

Q. Paid no attention to that? A. I knew it, but I did not take it into consideration.

Q. And didn't you consider an important element of appraising the real estate of a commercial value, to take the rental value into consideration? A. Sometimes.

Q. Well, don't you think it is prime factor? A. Not necessarily.

Q. In determining the commercial value? A. Not necessarily.

Q. Or the market value? A. It depends altogether on the property.

Q. This particular class of property? A. No. It depends on what the purchaser has in mind.

Q. You knew that the City of Jersey City was to take this man's property? A. Yes sir.

Q. Didn't it enter at all into your mind what the loss would be to him in respect to rentals?

Mr. Reardon: I object to that. That is not part of his duty, what the loss would be to him in rentals. He went down there for the purpose of appraising the property, to value the property.

Mr. Armstrong: I withdraw that question.

Q. Did you go through the buildings? A. Yes sir.

Q. Did you talk to any of the tenants in the building? A. Yes, sir.

Q. Why did you talk to them? A. To determine what the rentals were.

Q. Then you did take them into consideration? A. I knew them but I didn't take them into consideration.

Q. Why did you ask for the rent? A. Because I wanted all the information. It would not be a complete investigation unless you got it.

Q. So that it was of some importance to take into consideration the rental values? A. It is well to know it.

Q. Did it influence you at all in making this appraisement? A. It did not in this case.

Q. So that there was no need for you to go and make any inquiry of these tenants as to what the rental value was? A. Absolutely there was, to get all the information I could get. I always do. The investigation is not complete unless you get all the factors.

Q. Do you consider that rental value is of any prime importance at all in the appraisement of this property? A. Not in this particular property.

Q. Didn't you consider it; why didn't you consider it? A. Because I didn't think it was indicative of the value of the property.

Q. So that the income derived from that property was of no importance at all in respect to estimating value? A. Not as to its market vallue.

Q. You say you did inquire from all the tenants? A. I told you so.

Q. Did you inquire from the man at the most easterly corner, Mr. Stengel, the fruit man? A. Yes sir.

Q. Did you ask him what rent he was paying there? A. Yes sir.

Q. What did he tell you? A. He did not tell me. He told me to ask Mr. Meyer.

Q. Did you find out subsequently from Mr. Meyer? A. Yes sir.

Q. How much rent? A. One hundred and seventy-five dollars a month, as Mr. Meyer informed me, but he said there had been some alteration in that, he had taken part of the store covered under the original lease.

Q. And that he had formerly paid one hundred and seventy-five dollars for the little strip here? A. With the use of the cellar under Mr. Meyer's store.

Q. Formerly he had had it up to this point? A. He had it up to the brick building.

Q. And paid one hundred and seventy-five dollars? A. Yes, with the cellar under Mr. Meyer's store. If my recollection is right, I think that Mr. Meyer said that the rent was reduced to something like ninety dollars after the change.

Q. It was increased, wasn't it? A. No, that is not my recollection of it.

Q. You said he formerly paid one hundred and seventy-five dollars up to the stone wall before he had it all. When he had it all, with the use of the cellar, then it was cut down.

Q. I say he really did have more and then it was cut down and he was getting less space? A. I didn't investigate that.

Q. Well, that is a fact, isn't it? A. I didn't investigate the rental so much. I am only trying to ascertain the facts, that's all.

Q. Are you familiar with rental values in that particular locality? A. I am, as disclosed by leases on record.

Q. Did you consider that Stengel was paying an exorbitant rent at a hundred and seventy-five dollars a month for that corner?

Mr. Reardon: I object to that.
The Court: Sustained.

Q. Did you take into consideration 108 Newark Avenue? A. Yes sir.

Q. Did you consider that property comparable with this? A. Yes sir.

Q. Did you consider any other pieces of property on lower Newark Avenue comparable to this? A. All properties in the immediate vicinity have a relative value, not exactly, because no two pieces are exactly alike, but there is some relationship between them.

Q. Do you consider them comparable? A. Yes, for the purpose of valuation, if you know how to use them.

Q. Well, this particular piece of property that we are speaking of now. A. This particular piece of property, these properties I have my own basis of appraisement, for property in the vicinity. I fixed base values for each plot, based on sales in my general experience.

Q. What do you mean by base values? A. Base values for inside lots upon which values are determined.

Q. These are not inside values are they? A. No, this particular lot is a corner lot, but there are a great many inside lots as well on Newark Avenue, some inside lot sales, then corner lot sales.

Q. Did you take the base on the one, on the inside lots? A. I took the inside lots and I used a certain multiple for corner lots; I also used a certain multiple for lots with two street frontages.

Q. You didn't follow the same procedure as Mr. Schlossberg? A. I don't know what the procedure of Mr. Schlossberg was.

Q. You heard him testify? A. He took into consideration those sales, which I think was very proper for him to do.

Q. Did you think it was proper for him to take the square foot value? A. Absolutely.

Q. You think that was the proper way? A. Absolutely.

Q. Why didn't you do it? A. I did it, with the base for the value in that particular neighborhood, base values.

Q. You took full lots and gave them a base square foot value to determine the value of this piece? A. Absolutely.

Q. That is the same method you used in determining values of the Newark property? A. Yes, Newark Avenue property values are fixed as—in other words, the square foot values are fixed on either side of Newark Avenue on the street lines as they are, and as to street frontages, Newark Avenue front, and the Railroad Avenue front, that's the way the basis is fixed.

Q. You don't agree with Mr. Gannon or Mr. Gaddis that an element of value is the return on the property, that that is a consideration in determining the value of commercial property? A. It is a consideration, absolutely.

Q. A big consideration? A. It depends on the purchaser's idea. He might purchase it for business purposes, he might purchase it and then tear down the buildings, putting up an entire new structure, or he might purchase it for the purpose of investment.

Q. Suppose he purchases it for investment? A. Then the return on the property is an element.

Q. It is all of the element, is it not? A. Not all of it.

Q. Ninety per cent. of the element? A. No, I wouldn't say that. It all depends upon how much potentiality there is in the proposition.

Q. You say if he was purchasing it for investment? A. For investment, leasing an old building, or for constructing a new building upon the revenue which he figures he can get for it.

Q. You say you did not give that any consideration at all in the appraisement of this particular piece of property? A. Not on this piece of property. I figured this property on what a willing seller would take, and what a willing purchaser would pay.

Q. And your figure was what? A. Forty-two thousand dollars.

Q. Do you know what Mr. Schlossberg's figure was? A. I think he said forty-three, if I am not mistaken.

Q. Do you know, Mr. Dunham, of any piece of property on Newark Avenue, that sold for less than ten times its rental value? A. I don't know anything about selling by rental value. I know what property sells for by the square foot.

Q. That is all? A. Yes, sir.

Q. You don't know anything about rentals? A. I don't care anything.

Q. The percentage of rental to the price of anything of that? A. I don't care anything about that. I have appraised too many properties on that basis and found out that is a very erroneous method of trying to figure out values of property.

Q. Now, in determining the square foot value of property, do you consider the square foot value the same of property 25 by 50 as property 25 by 100 feet? A. No.

Q. Why not? A. Why, because the shallow lot has a higher unit value than the deep one.

Q. The shallower lot has a greater value than the deeper? A. No, I didn't say a greater value. I said a higher unit value, a higher square foot value.

Q. What in this particular property is the square footage, of the one we are dealing with now? A. 1610 square feet.

Q. It has a very narrow depth, has it not? A. Yes sir.

Q. All the way along? A. Yes sir.

Q. What is its greatest depth? A. 39 feet 4 inches.

Q. It tapers down to a point? A. To a point, yes sir.

Q. Did you consider in estimating your value the depth of this lot? A. I did.

Q. What did you testify to a minute ago, did you give that consideration of having a greater value than if this lot was deeper than it is? A. Well, there is more than that to be taken into consideration.

Q. I am asking you to take that particular figure. A. I took that into consideration as one of the factors. Another factor was that the lot has two street frontages. I also took into consideration its shape, coming to a point which makes it very uneconomical.

Q. Do you know of any other property in the neighborhood shaped like that? A. Yes sir.

Q. Where? A. Every corner practically on Newark Avenue is the same way.

Q. Is almost the same? A. Every one from Erie to Coles, and Monmouth.

Q. That is a very productive piece of property at the corner of Erie and Newark? A. Very productive, that is about the high site in the section.

Q. I think we have a picture of it here? A. That is the high spot in that section.

Q. That is a pretty valuable piece of property? A. It depends on what you call very valuable. There is property in Journal Square that is more valuable.

Q. You say it is almost similar to our plot? A. It is, in shape. Not in location.

Q. I am speaking of the shape of it. You said a minute ago that it came to a point? A. Yes, it is triangular in shape.

Q. You took into consideration the fact that it came to a point, that it was triangular? A. Yes,

it is triangular. Where Newark Avenue cuts across the streets downtown, it leaves a triangle on several corners.

Q. This is a picture of it, isn't it? A. Yes sir.

Q. There is a pretty good building on it? A. A very good building.

Q. A very valuable piece of property is it not? A. It depends upon what you call very valuable.

Q. I mean as it stands there, it is a very valuable corner, a valuable piece of property, notwithstanding its shape? A. For business.

Q. Yes, of course for business? A. Well, I would not call it a howling success.

Q. Do you know the dimensions of this building at Erie Street and Newark? A. Yes sir.

Q. How does it compare with our building in square feet? A. Your plot, that is the plot under condemnation has 1610 square feet. This building has 1528 square feet.

Q. A smaller plot than our plot? A. Yes, a trifle smaller, yes sir.

Q. So that the square footage of that plot contains less square feet than the plot we are now speaking of under condemnation? A. Yes sir.

Q. Do you know what that property sold for, the last sale? A. One hundred and fifteen thousand dollars.

Q. Do you know what it rents for?

Mr. Reardon: I object to what it rents for.

Mr. Armstrong: As of the date of the condemnation, I mean, of course, Mr. Reardon.

Mr. Reardon: I withdraw the objection.

The Witness: I think it is about $12,850.

Q. When was that? A. That is about the present rental.

Q. You are sure of that? A. Yes, I went through the building.

Q. If I told you it was fifteen thousand dollars a year? A. I wouldn't believe you. Of course it may be $13,250 because I went through that building and got the rents. The pool parlor on the top floor, the man is starving to death.

Q. The present location of our property, is that susceptible to the same uses as that property? A. No.

Q. Why not? A. Railroad, noise, smoke.

Q. What interference would that have in the manner of the business? A. What interference? It interferes with Railroad Avenue, that is the reason that Railroad Avenue stores are so poor.

Q. How about the store across on the corner of Railroad Avenue and Grove Street? A. Well, he has a big frontage on Grove Street, that is his principal frontage.

Q. Haven't the owners of this property a big frontage on Newark Avenue? A. Yes, for shop purposes.

Q. So that makes no difference? A. It is all right for shop purposes; that is what all these shops use it for.

Q. Those are the business purposes we are speaking of? A. I am speaking of commercial retail businesses where people have to go.

Q. The railroad does not interfere there? A. People do not use Railroad Avenue, none of those properties; they won't go there.

Q. How about Woolworth's? A. Shipping end on Railroad Avenue.

Q. There is no interference with business there by reason of the railroad in the back of the rail-

road? A. People don't use that end. That is used for shipping.

Q. There is no interference with the business? A. I am talking about the business.

Q. Does it affect the stores, that the railroad runs through the rear of these properties, for their business purposes? A. They use the rear for shipping purposes.

Q. Do you think it makes any difference to the Woolworth store whether the railroad runs in back of it or not. Do you think it makes any difference with the railroad there? A. No; it makes a big difference in the value of the property, though.

Q. Take 334 Grove Street, that fronts right on the railroad, that is the northwest corner of Railroad Avenue and Grove, diagonally across from Greene's? A. Right next to the tube station.

Q. Do you know what the last sale of that property was? A. The last sale?

Q. Yes. A. You mean a sale now, or are you talking about an auction?

Q. A sale? A. There was a sale there in August, 1926, Mullins to Scale, for $43,000.

Q. Do you know now what the corner store of that rents for? A. $3,600 a year.

Mr. Reardon: I object to what the corner store rents for. He is testifying to the sale.

The Court: I will permit it.

Q. Do you know what it rents for? A. $3,600 a year.

Q. Do you think the railroad interferes there with the business? A. No, it doesn't interfere with that kind of business.

Q. The same railroad? A. The same railroad; different business. Business particularly adapted to that corner.

THOMAS A. RYER, duly sworn for the Appellee:

Direct examination by Mr. Reardon:

Q. What is your business, Mr. Ryer? A. Real estate.

Q. How long have you been in that business? A. Twenty-eight years.

Mr. Armstrong: We admit his qualifications.

Q. What is your experience in the appraisal of property? A. I have appraised every foot of property in Jersey City in the past twenty years.

Q. Just state some of the appraisals you have conducted? A. I have appraised the holdings of the Central Railroad of New Jersey in Hudson County, the property of the Pennsylvania Railroad Company, the Erie, the Delaware, Lackawanna & Western, the New York Central. I have appraised all the property of the Public Service Utility Company, I have appraised the property of the Hackensack Water Company running from Weehawken to the New York state line. I appraised the Plaza for the vehicular tunnels in Jersey City. I valued the highways, the site for the highways running from the vehicular tunnel plazas through the state. I valued for Jersey City in 1926 all of the land in Jersey City outside of the railroad and water front properties. I have made thousands of ap-

praisals for individuals and corporations. I have sold many thousands of parcels of property in the last twenty-eight years.

Q. And have you examined the property known as lots 5 and 6 in Block 204? A. I have.

Q. Have you formed an opinion as to what that property is worth? A. I have.

Q. What, in your opinion, is that property worth? A. $42,500.

Q. How did you arrive at that figure, upon what basis? A. From my knowledge and experience of twenty years of valuing property and analysis of the sales in the neighborhood.

Q. I show you the photograph of the property, Exhibit D-1, and ask you if you know what that property sold for last? A. I do.

Q. Do you know what the square foot value of that property was? A. Yes sir.

Q. How much—that is 108 Newark Avenue? A. The property was sold on December 10, 1926, for $61,250, which represented an average price per square foot of $17.60. It is occupied by the Regal shore store, and a vacant store rented to Kimmel.

Q. Do you know of the sale of property to Fruhman, known as 107 Newark Avenue? A. I do.

Q. Can you tell us what price that brought, and what price per square foot was represented by the purchase price? A. That property sold on August 2nd, 1926, for $36,500. That was at the rate of $42.47 a square foot. There was a subsequent sale of the property for $50,000 from Fruhman to a holding company, which I did not consider in any of the factors of the case.

Q. You didn't consider that for the same reason that Mr. Gannon had, you did not use it because of the bona fides——? A. I didn't question the bona fides. It was simply a question I didn't

think affected values. I don't question the honesty of people.

Q. Are you familiar with the sale of properties, lots 1, 2 and 3 in this very block, the corner property known as the Root property, the stone houses adjoining? A. I am.

Q. Do you know what that sold for? A. I do.

Q. How much?

Mr. Armstrong: I object to that if the Court please, because this property in under condemnation. If Mr. Reardon is going to the question of the value of property upon which there has been an award made now, then I think we ought to have the privilege of offering in evidence the amount of the award on that property since the last sale, as the award is really a sale.

(After argument.)

The Court: Objection overruled.

Mr. Armstrong: Your Honor will allow me an exception.

The Court: Yes, exception allowed.

Q. What was the price paid for lots 1, 2 and 3 in the same block? A. Eighty thousand dollars.

Q. Eighty thousand dollars, what does that represent per square foot? A. $21.74.

Q. Are you familiar with the sale of the Lowe property on Grove Street and Railroad Avenue, the northwest corner? A. I am.

Q. What did that property sell for?

Mr. Schwartz: I object to that, if the Court please, unless the time is fixed.

Q. As of August 3, 1926? A. $43,000.

Q. What does that represent per square foot? A. $21.53.

Q. Are you familiar with the sale of property known as 134 Newark Avenue, as of April 29, 1927? A. I am.

Q. What price was paid for that property? A. Eighty-five thousand dollars.

Q. What does that price represent per square foot? A. $29.43.

Q. That is 134 Newark Avenue, is it? A. It is, part of it is the Long hat store now.

Q. Now, with respect to these sales which I have just recited, were the buildings on the property in any way comparable with the buildings on this property? A. Why, in so far as the property to the west is, the property to the west, I think that the buildings were fairly comparable, the same class. Outside of those particular sales there were no buildings, possibly outside of one, a $69,000 sale that I gave you at 138 Newark Avenue—do you want that?

Q. Let's have them all. February, 1926, do you mean? A. Yes, sir.

Q. Outside of that, I don't think that the buildings were in any way comparable. They are all much better buildings. The only reason I say 138 Newark Avenue is comparable, is, it is a small two-story building. Of course the improvement on it, the store front is of a much better character than the property in question.

Cross-examination by Mr. Schwartz:

Q. Do you mean today, a much better character, this improvement on the property in question? A. Yes, and would bring a higher return. In other words, if you had the same improvement——

Q. Today? A. Today, or in April or in February, 1928, when this appraisal was made. If you have the same improvement——

Mr. Schwartz: Just a second.

Mr. Reardon: Let the witness answer the question.

Mr. Schwartz: He has answered the question. It may be answered by yes or no.

The Court: Let the witness say whether he thinks it can or not.

The Witness: I don't mean to do that.

Q. You said that your opinion is based upon your general experience and analysis of sales in the neighborhood? A. I did.

Q. Have you ever made any sales of property in this neighborhood? A. I don't know.

Q. Do you know if you have made any in the last five years? A. I don't think so.

Q. Have you made any in the last five years? A. I presume you mean on Newark Avenue. You are confining yourself to Newark Avenue.

Q. Newark Avenue from Railroad Avenue to First Street or Barrow, Erie Street, or Newark Avenue and Jersey Avenue? A. I don't think I have made any sales in there in a number of years.

Q. Have you leased any properties in there? A. No, not in a great many years. I have leased property there.

Q. In that neighborhood? A. Yes, right on Newark Avenue.

Q. In how many years? A. It is a good many years. It was at the time I was the manager of the Singer Company, something like, well, close to thirty years ago.

Q. You have not managed any property in there in that time? A. Oh, yes, I have managed property there ever since I was eighteen years old.

Q. On Newark Avenue? A. Yes, on Newark Avenue, and in fact——

Q. The last ten years? A. In fact, I am managing it today.

Q. What property is that? A. That is the property at the junction of Newark Avenue and First Street, where I lived for a great many years.

Q. That is west of Newark Avenue? A. I didn't get you on that; pardon me. That is west of Newark Avenue. I though anything on Newark Avenue.

Q. Nothing in the last ten years? A. No.

Q. What value did you place upon the property 99 Newark Avenue? A. 99 Newark Avenue?

Q. Yes. A. You mean what did I value it at?

Q. The premises in question? A. I did not value 99 Newark Avenue by itself.

Q. Did you value 99 Newark Avenue with 101? A. I did not.

Q. Did you value 103 then? A. Not separate. I have valued the entire property as it existed.

Q. You didn't place any separate value on 105? A. I didn't.

Q. Do you know what rent was being paid for 99 and 101 by the tenant on the date of the condemnation? A. I know what Mr. Meyer said the rent was. It was impossible to get it from the tenant. I personally didn't think the rent was as represented.

Q. Did you go in and ask the tenant? A. I did, and I also asked Mr. Meyer. The reason I asked Mr. Meyer was he answered in such a manner that led me to believe he would not tell me what it was. There was a lease upon the property for $175. a month, and when Mr. Meyer apparently had taken part of the property over his egg store away from that lease.

Q. Did Mr. Meyer tell you this? A. He did, in his office, Mr. Dunham and I interviewed him. He said that the man was paying $175. a month, and had a lease. I found no record of the lease.

Q. Did he show you the lease? A. He did not.

Q. Did he have the lease at that time? A. He did not.

Q. Did you ask him for it? A. No, I didn't. I was merely asking him for the information. I had turned up a lease from Louis and Morris Meyer to L. Meyer & Company.

Q. I assume that is the L. and M. lease? A. That is on the same property.

Q. On the fruit store? A. Pardon me.

Q. 99 to 101? A. Pardon me.

Q. Did you have any reason to doubt Mr. Meyer when he told you about the lease on 99 and 101, and the rent of 99 and 101 Newark Avenue? A. You mean the lease at $175. a month?

Q. Yes. A. No, I didn't doubt that. I doubted as to whether the tenant was paying as much for the smaller area as he had paid for the larger area. It didn't appear to me that the smaller area was worth $175. a month.

Q. If I said the tenant was paying $175. a month for the fruit store, if you knew that was true would you be surprised? A. No, I would not be surprised.

Q. You would be? A. I would not. The reason I say that is because that is indicated by the fact he has moved out.

Q. The effect of the condemnation proceedings would not influence him? A. I don't think they affected him, though of course, he might have known in 1926 that the condemnation proceedings were coming on, that the property was going to be taken, and also the properties around him.

Q. He knew in 1926? A. Yes sir.

Q. You knew in 1926 there were condemnation proceedings pending around this property? A. No, I don't say that he knew it was to be taken, that this property was talked about in 1926, that is, it was being talked about.

Q. It has been talked about in the last ten or twelve years? A. I don't think so.

Q. About it being taken for condemnation? A. It may have been talked about for the last forty years. It did not become active until 1926, that is when it first became active.

Re-direct examination by Mr. Reardon:

Q. You mean to say you turned up some lease of Louis Meyer and Morris Meyer, to L. Meyer & Company, of that property. What was that? A. That was a lease that the owners of the property made to L. Meyer & Company, of a portion of the property. It was a ten-year lease from May 1st, 1924, at least it was for five years, with a five-year renewal privilege, at $2,400 a year. That was for 103 and 105, the part occupied by Mr. Meyer as a butcher store, and that, together with the rental of the vegetable place at $2,100 a year, made the total rental of the property $4,500 a year.

Q. That was the total income of the property in February, 1928? A. That is as near as I can get it. That is what it looked to me, because part of the $175 a month store was then occupied by Mr. Meyer, which he said the vegetable store was still paying rent for, and would continue to pay rent for. It did not appear to me to be right. But that is what he said.

Q. Assuming that the vegetable store was paying $175 a month, assuming that to be true, with

the Meyer lease on the other two properties, the total income was then only $4,500 a year? A. Yes sir.

Q. Now, Mr. Ryer, how does this property compare as regards the location with the other property recited by you in the sales, from the standpoint of business property? A. Well, I think this particular block is probably less valuable than any other property on Newark Avenue from Railroad Avenue to Erie Street.

Q. Would the activity in these sales along that area that you have just mentioned seem to indicate that? A. Not necessarily, because the activities in this block were about 75 per cent, in view of the fact that the two properties to the west were sold in 1916, and one property was sold in 1920, so that from 1920 to date the activities there were 100 per cent. That would not mean anything. There was great activity up at Grove Street and Bay Street——

Q. How would that property compare with property like the Woolworth stores? A. Well, I don't think there is any comparison, so far as value is concerned. In the first place, the improvements on that block are much better and demand higher rentals, and the land, in my opinion, is more valuable.

Re-cross-examination by Mr. Schwartz:

Q. How deep is the Woolworth Building? A. It runs from Newark Avenue to Railroad Avenue; I think a depth of about 143 feet at that point, as I remember it.

Q. The railroad passes how far away from the rear of that store, the same as it is from the rear of the premises in question, isn't it? A. Yes, but not as far from the front of the store; as the premises in question goes, it comes right on top

of the front of the store and the other is one hundred and forty odd feet back of the front of the Woolworth store, the entrance to the store.

Q. I didn't ask you about the front of the store. A. Pardon me.

Q. You said that the fruit store rented for $175. a month? A. I did not.

Q. You said you were told by Mr. Meyer? A. I did.

Q. You said something about L. Meyer and Company. By the way, do you know who controls L. Meyer and Company? A. I have an idea.

Q. Did you examine the record? A. I did not.

Q. Did you find the lease on record? A. I did.

Q. Did you see the lease? A. I saw the record of the lease.

Q. You saw a record of the lease. Did you look at the signatures? A. I may have at the time, but I don't remember.

Q. Do you know who signed that lease? A. I don't know.

Q. Do you know who the officers of the corporation are? A. I don't know. They may be the owners of the property for all I know. I presume they are.

Q. If I told you that Louis Meyer is president, and Morris Meyer secretary of the corporation, you will admit that? A. If you say that is so I will agree with you. I don't think that is material.

Q. This lease that they gave on this part of the premises for two hundred dollars, is that part of the premises used for a butcher store? A. Yes, and egg candling upstairs.

Q. That does not include the part used for a butter and egg business? A. No.

Q. You did not allow anything in your calculations for the rental for the butter and egg store?

A. The butter and egg store was under lease for $175.

Q. Mr. Meyer told you that the fruit man was paying him $175? A. According to the lease. If you will let me finish this answer.

Q. According to what Mr. Meyer told you; you have testified to a great many things. You never saw the lease, but you gave your answer according to Mr. Meyer's statement? A. That is correct.

Q. What did Mr. Meyer tell you, that the fruit man was paying him $175. a month? A. He did.

Q. And in your calculations you have not taken into consideration this butter and egg store at all? A. Yes, I have. I have valued the butter and egg store. I valued the fruit store, I valued the market.

Q. One hundred and seventy-five dollars a month for twelve months is twenty-one hundred dollars a year? A. That is what it was when I went to school.

Q. Does that total $4500? A. Yes sir.

Q. And where is the $4500 that you have taken into account for this butter and egg store? A. I didn't say that I had taken that into the calculation. You might let me answer the question. I didn't say into that calculation; I didn't say I had taken it into consideration at all. I haven't said that I have taken the rental and used it as a basis of valuation.

Q. You have led us to believe that the lease of these premises was $4500? A. That is my information. That is what I was given in my information, the gross rentals were $4500. a year.

Q. Will you look at this paper and tell me if you know what it is? (Handing witness). A. It is apparently a lease made without date.

Mr. Reardon: Don't recite that lease. I object to it, because it is an undated instrument; for another thing, it is not acknowledged, and the parties who signed it are in court.

Q. Will you examine it, look at it please? A. Do you want me to examine it carefully? It is apparently a lease without a date.

Q. See if you recognize any of the terms; see if that is familiar to you? A. Only familiar from having read it over here the other day in court. I never saw it before.

Q. Mr. Ryer, do you know of the existence of any sale on Newark Avenue, or any of those that you have testified to, which show that property was sold at less than ten times the rental value? A. I do.

Q. What is that? A. Can I use the testimony of Mr. Gannon? I made a record of Mr. Gannon's testimony. Mackenzie Estate property, sold May 1924 for $33,000.

Q. You will please answer the question, not tell me anything that I didn't ask you, Mr. Ryer; don't volunteer any information about any sale? A. I have not.

Q. That Mackenzie sale is not the last sale?

Mr. Schwartz: Will your Honor please instruct the witness to confine himself to the last sale. I have not asked him to testify to something Mr. Gannon testified to.

The Witness: I am not testifying to what Mr. Gannon said. I am merely saying the record I want to use is of Mr. Gannon's testimony.

Q. You have testified from your own records; will you please refresh your memory?

Mr. Reardon: You don't understand what the witness is trying to tell you.

Mr. Schwartz: He is trying to put in some testimony about 1924.

Q. Those you have testified to? A. Regal Shoe Company; that was 1926. That property sold for $61,250. and was immediately leased for $7,000 a year.

Q. Pardon me, at the time of the sale? A. I am answering the question.

Q. Do you know of any sale about which you have testified on direct examination, where the property sold for less than ten times the rental? A. Can I answer that? I testified to no sale on my direct examination.

Q. Didn't you answer Mr. Reardon's question about 321 Grove Street and testify to the sale from Scale? A. That was not on my direct.

Q. On cross-examination? A. Yes, sir.

Q. Or on your re-direct by Mr. Reardon, rather? A. Yes, on my re-direct. If you are going to confine me to what I said. If you want the different sales, give me the sales and I will take those up only. 107 Newark Avenue, we will take as the first case. That sold August 2, 1926 for $36,500. I don't know that I can give you the rents. I know of one store there renting for $2,400 a year at the time of the sale and one store was taken, on which Mr. Gannon——

Q. Do you know that, as a matter of fact, at the time of the sale? A. No, I am not talking about the sale. At the time of the sale, it was occupied by the Singer Company, but what they paid I don't know, but it would show a basis of less than ten percent.

Q. It would show a basis of less than ten percent? A. Certainly.

Q. How much? A. It all depends on the rent and the rent was at least about $4,500 a year and the property sold for $36,500.

Q. How can you account for the rental, if you don't know what the rental was at that time? A. There was a lease, Fruhman had a lease at $1,800 a year.

Q. You testified to the Singer lease at the time of the sale? A. No, sir; I didn't, because I didn't have the Singer lease. I have never had it; I have never been able to turn it up. I did have the Fruhman lease.

Q. Which was after the sale? A. Before the sale. Fruhman paid $1,800 a year. His lease is terminated when he bought the property. He made a new lease with himself for $2,400 a year after.

Q. At the time of the sale? A. Right after the sale was made.

Q. At the time of the sale? A. Fruhman was paying $1,800 a year. What is more, if you want it——

Q. That is all you know? A. No, I know there was tenants upstairs. There was four tenants upstairs probably paying about $720 a year.

Q. Do you know how much they were paying? A. Yes, I know they were paying $15 a floor.

Q. At the time of the sale? A. At the time of the sale and subsequent to the sale. The Singer Company, I don't know what they were paying, but that would give you a greater percentage than ten. You wanted to know any of these properties that sold at more than ten times; I am showing you one that sold at 15 percent. Regal Shoe, that was after the sale. Perlberg-Ross, was leased after the sale.

Q. What was the rental at the time of the sale, if you know? A. I don't know; there were various rentals there. There were some rentals at that time that were turned into one after Perlberg got it.

Q. Do you know the rent of 108 Newark Avenue at the time of the last sale? A. I think that the Regal Shoe Company were paying something like $3,600.

Q. And it sold for $61,000? A. I can't answer you definitely; yes, and immediately leased for $7,000 a year.

Q. But the sale price was $61,250, according to your testimony? A. Quite true.

Q. In addition to that price, one of the partners bought the other out, paid him $3,000 to release him from the contract? A. So Mr. Gannon testified. I have no record of that.

Q. Mr. Gannon testified $67,000? A. That is because he put both interests in. In other words, the fact that Morris bought Fruhman out, that made Morris's interest also worth $3,000, in his opinion.

Q. At the time of the sale, the property was only bringing $3,600? A. I didn't say that.

Q. What was it bringing? A. I told you I don't know what the rent was.

Q. How did you mention that rent of $3,600? A. I said I thought it was around $3,600 that the Regal Shoe were paying and then a new lease was made.

Q. $3,600 would be about five per cent. and not ten per cent? A. Yes, and there are lots of five per cent. bases that I can show you.

Q. Do you know the rentals of any one of the properties? A. Any one of what properties?

Q. At the time of the sale, any one of those you have testified to. Do you know of any of the rentals; if you don't know of any, we won't waste any time? A. This other I gave you. There is not any of them that will show up in the manner you are trying to assign, because they were all sold, and then re-rented to other people. Leases were bought, and new people bought the property and leased to somebody else at a higher price.

Q. The probabilities are that they will show that at the time of the last sales to which you have testified, they were all on smaller than ten per cent. basis? (Not answered.)

(Recess to 2 P. M.)

After recess, 2 P. M.

Mr. Reardon: That is our case.

Edward Schwartz, sworn in rebuttal by Appellants:

Direct examination by Mr. Armstrong:

Q. Mr. Schwartz, you are an attorney at law? A. Yes, sir.

Q. Of the State of New Jersey? A. Yes, sir.

Q. You were such on the 10th of May, 1920? A. I was.

Q. I show you a lease dated the blank day of May, 1925, made by Morris Meyer and Louis Meyer, both of Jersey City, to Ralph Stengel, and ask you if you drew that lease? A. I did.

Q. Did you have before you when you drew that lease the parties named in the lease? A. I did.

Q. Was it executed in your presence? A. It was.

Q. I ask you to turn to the signatures, the signatures of Ralph Stengle, Louis Meyer and M. Meyer, and ask you if those persons signed that lease in your presence? A. They did.

Q. Did you take the acknowledgment? A. I took the acknowledgment, but there is no form of acknowledgment on the instrument, but I asked them and I think there is included an acknowledgment on the other lease that the tenant had.

Q. That lease was executed and signed on what date, if you know?

Mr. Reardon: Objected to.

Q. In the lease there is mentioned the blank day of May 1925; was the lease drawn in the month of May? A. It was.

Q. Was it drawn during the year 1925? A. It was.

Q. Can you tell us the date that it was drawn? A. It was drawn in the early part of the month.

Q. What month? A. Of the month of May 1925.

Mr. Armstrong: I now offer this lease in evidence.

Mr. Reardon: I object to it; on the ground, first, that according to the witness's statement it is different from the one in the possession of somebody else. Therefore it apparently does not bear the same resemblance as the one somebody else had. He said there was an acknowledgment taken, but it is apparently in the possession

of the tenant. If that is true, it is not identical with the other lease as far as we know.

The second ground, is that the lease has been modified and altered by the owner himself, according to the testimony of Mr. Dunham, who testified that Mr. Meyer told him he had reduced the rent to $90. Therefore the terms of the lease are at variance with the true conditions.

The Court: The only difficulty is they dispute that. It may be marked for whatever it is worth.

Accepted and marked as Appellant's Exhibit P-3 of this date.

Q. I show you lease dated May 1920, made by Louis Meyer and Morris Meyer to L. Meyer & Co., a corporation, and which is acknowledged May 11, 1920 and ask you if you prepared that lease? A. I did.

Q. Were the persons mentioned therein present at your office at the time when you prepared that lease? A. They were present, yes sir.

Q. On the date mentioned there in the lease? A. No, on May 11, 1920.

Q. Did they execute that lease before you on that date? A. They did.

Q. And acknowledged it? A. They did.

Q. And the lease has been recorded at the Court House as of what date? A. Recorded on the 8th day of May 1920, according to the inscription on it.

Q. The signatures of the persons purporting to be signed there were signed in your presence by them? A. Yes, they were.

Mr. Armstrong: I now offer the lease in evidence.

Mr. Reardon: No objection.

Accepted and marked as Appellant's Exhibit P-4 of this date.

PERCY A. GADDIS recalled in rebuttal:

Direct examination by Mr. Schwartz:

Q. In determining the value of commercial property, isn't the rental or income a prime factor? A. It certainly is; practically the controlling factor.

The Court: Didn't you so testify yesterday?

The Witness: I don't remember clearly. I probably would have if I had been asked the question. I don't recall.

BOTH SIDES REST.

Counsel summed up to the Jury.

Court's Charge.

The Court then charged the jury as follows:

The Court: Gentlemen of the jury:

On February 9, 1928, parties by the name of Meyer owned a piece of property here in Jersey City. If I misquote the position of the property, you having seen it, you will understand it better than I do. I understand the property is at the intersection of Newark Avenue and Railroad Avenue, some place in lower Jersey City. As I say, the location is familiar to you because you have been down there. The dimensions of this land have been described to you, and, as I say, you have seen it and also saw on it the building or buildings, and I have not seen them. You know what you have seen there.

The City of Jersey City, desiring to take this property for the purpose of some improvement; I believe it has been stated, for the purpose of making a plaza here, but anyhow for some public improvement, the City of Jersey City desired to take this land and had the Supreme Court Justice appoint three commissioners whose duty it then was to make an appraisal of the property, for the condemnation commissioners to fix the price that they considered a fair sum to compensate the owners for their property.

Both sides are represented at the hearing, and after the commissioners have given their award, then one or both of the parties in interest, either the owners or the city, then have a right to appeal from the verdict of that commission and come here before the Circuit Court and a jury to have the case tried anew.

That process has been followed in this case and the commission has made an award.

If by chance any of you heard what that award was, either happened to have heard it prior to

the time when you were called as jurors, because I know that since you have been here you have heard nothing about it, because you would not let anyone talk to you. But that inadvertently, before being drawn as jurors, you might possibly have seen it in the local press or heard of it appearing in the local press, or might have heard what the amount was.

Now, the right which the city has to take this land is what is known in the law as the law of eminent domain. That is a right to take private property with an individual's consent or without an individual's consent. Authority is given by the statute to the State of New Jersey, and also by the statute given to certain others, certain municipalities, quasi-public corporations, like railroads, in some cases, or given to a department of the state like the State Highway Commission, delegated to different arms of the State of New Jersey, in order that public interests might be benefited.

So in this case the City of Jersey City, which is one of these municipalities, is given power under the state to take it, and when I say that I mean that they can take property from a private owner if the public good requires it, whether the owner consents or not.

But, of course, in doing that the statute provides, and indeed it would be unconstitutional to do otherwise, that it cannot be taken without just compensation being paid.

I mention that now to call to your attention that this is what is called in the law a trial *de novo*. It is a trial which is entirely new, standing entirely by itself, and has no connection whatever with what the award of the commissioners was.

It may be that some of you have noticed, that during the course of this trial that while reference was made to the fact that a commission sat upon this case, nevertheless no mention was made by either side of what verdict the commissioners found. The reason for that is that it would be irrelevant and immaterial what the amount was that was given in this case. You have no concern whatever, you are not to use that as a basis from which your verdict should be given, and therefore, if you know what the award was you should disregard it entirely and determine the case from what you have heard here, and from the testimony given here.

You should determine now, from the evidence that you have heard in this case and from your view of the property only, and on nothing that you may have heard heretofore of what the value of the property is.

So that, even though the City of Jersey City might take this property, and in this case have taken it, or will do it afterwards, whenever they think fit, they must pay what is a fair price for the property that is being taken. And so the law prescribes a remedy and a system whereby any municipality or department of the state, as I say, like the State Highway Commission or the State itself, or the quasi-public corporation like a railroad or some other corporation that is engaged in some public enterprise—whenever such municipality or otherwise takes property belonging to individuals, there is a remedy and a method whereby it is finally determined and that is what we are engaged in now, to determine what the fair price to be paid to this owner for the property which the city in the judgment has seen fit to take for some public enterprise.

So that, the question then for you to determine, is what is just compensation, what does the law determine to be just compensation which the jury has a right to give in these cases.

Now in this case,—it is within a comparatively small compass so far as you are concerned. It has taken quite some time, it is true, to try, but after all is said and done, from the evidence that is presented, there is only one question for you to determine: not whether the city can take or cannot take; not whether they had a right or not a right to take the property; that is all fixed by the statute. There is one question for you to determine: what is the value of this property, and what is fair compensation which the city must pay in order to take it? In cases of this kind the law requires that the court shall frame the issue and the issue in this case which you as jurors are to determine, is, what was the value of the property in question? When? On February 9, 1928. That is the issue that you are trying here.

One particular case in this state, speaking on the question of what compensation is as bearing upon this kind of a case:——

"In ascertaining what is just compensation for lands taken under the right of eminent domain, the law has established the legal rule, that if the whole property is to be taken, the market value of the property, as between an owner willing, but not compelled to sell, and a purchaser willing, but not compelled to buy, under circumstances likely to produce a fair sale, is the measure of compensation."

By that definition you can see that that eliminates entirely a forced sale, a sale by the sheriff, or property sold under a foreclosure sale, made by people forced to sell because of certain con-

ditions over which they have no control. But the law says that the measure of damages is such sale as is made by an owner willing but not compelled to sell, and a buyer willing but not compelled to buy; under such circumstances as would determine fair compensation.

So you see, what you will find is what is the fair market value of this property, applying the rule as I have tried to give it to you, as of February 9, 1928.

The courts have said, speaking of what a fair price and what a fair sale is, that that would mean for any use for which it has a commercial value of its own in the immediate present or in a reasonable anticipation in the near future.

So that now you have the definition which the courts have given as to what a fair sale and what a fair price is, which you have a right to apply to this particular case. A fair price is such price as you might give for any use for which it has a commercial value of its own in the immediate present or in reasonable anticipation in the future.

Well, gentlemen, that is practically all the issue there is for you to determine. You have heard quite a number of witnesses, five or six, in this case. Naturally they are in great conflict, at least they are in conflict or we would not be here, whether it be great or whether it be small, because if they had agreed, if the experts could have agreed upon a price they could have settled it outside, and we would not be here trying this case.

So it is your duty, whether it is pleasant or unpleasant, to decide this question; it is for you at least to determine, taking into consideration all the circumstances, and what the law says as to what a fair market value is, and then you have

to decide what that fair market value for this property is as of February 9, 1928, at the time when the condemnation proceedings were started.

You have heard the witnesses for the property owners, who have given an estimate of the value of the same; I think the one was eighty-three and one ninety-three thousand dollars, that is the value of the whole property.

Then the other experts have varied from forty-two or forty-three to forty-four thousand dollars; you will recall what the testimony was.

You are not to determine in this case, although you may use it in determining what the full value is, you are not to render a separate verdict for the land and buildings, but your verdict will be a lump sum because the land and the buildings thereon are to be taken.

If in the exercise of your judgment, it is of more benefit to you in determining what the whole property is worth to figure out how much the land is worth, and then say to yourselves: "Well now, it is worth, the land is worth so and so, and so and so for the buildings, and the total amount is worth so much"; of course that is within your province, but your verdict should be in a lump sum of how much you value the land and buildings at, the total sum, which will represent what in your judgment, from the evidence that you have heard in the case, is the fair market value of this property on the date in question.

That is practically all there is as to these condemnation cases. There is no other law involved that it is necessary for me to charge you on. It becomes after all merely an application of the rule as I have given it to you as to what constitutes a fair sale, and what constitutes fair market value, and then it is for you to determine, apply-

ing those rules to the evidence as you have heard it here, and then bring in such a verdict.

You see, in this case the city must buy, and the city is willing to pay for this land and buildings. What you have to determine in this case is purely a coldblooded commercial proposition. There is no need of, and there should not be any sentiment attached to it; you are not to take into consideration that here is an individual whose property is being taken by a municipal corporation, and therefore we will give him more than we would give for that property if being sold to another individual. You are not to allow sympathy of that sort to influence you, and by the same token you are not to take into consideration that the city is a municipality, and you are taking the money of the taxpayers of the city, and therefore you should give less to the owner than you would give if it was an individual.

But you are to determine this case just exactly the same as you would if you were selling from one individual to another, and you were the judges as to what its worth is, what the fair market value of this property in question is on the date in question when it was taken by the condemnation proceedings. If you do that, you will have accomplished your duty and will have done all that the law requires, and all that you should do under the circumstances.

I have been requested to charge three requests:

1. I charge you as follows:

"Any proceeding to condemn taken under this act may be abandoned at any time within twenty days after filing of the report of the Commissioners, or if the issue shall be tried

by a jury within twenty days after the rendering of the verdict of the jury."

I charge you that because that is the law as it appears in the statute.

I have also been requested to charge you as follows:

"Income in this case means what it says, money coming in from property, not what some expert in the case says he thinks it ought to bring as rent."

I so charge you.

The jury is to disregard any consideration paid for the cancellation of a lease by a purchaser of a piece of property, as such payment for the cancellation does not form a part of the true consideration paid for the land and building that represents a particular need of the individual pay for such cancellation.

I so charge you as a general proposition with this explanation, that if there is any evidence in the case, that at the time of the sale there was any amount deducted from the purchase price in order to secure the cancellation a then existing case, and this money so deducted was considered by the parties as part of the consideration, then the entire amount paid to the owner and to the lessee may be taken as the purchase price.

But if it is not taken into consideration by the parties to the sale, and somebody who buys the property with the lease or it should afterwards be decided that for his own benefit or for his own advantage, decides that he would like to buy up the lease, and does buy it so as to get rid of the lease, you should not take that into consideration as part of the purchase price. It is only where

the parties at the time of the sale take the lease into consideration and consider the amount necessary to cancel the lease as part of the purchase price, that you can take this amount into consideration. It depends on the circumstances of each transaction. You will then recall what the testimony was of each particular transaction in this case. I think that covers it, gentlemen of the jury.

Mr. Schwartz: I ask your Honor for an exception to the Court charging the appellee's request in relation to income.

The Court: You may have your exception.

Exhibit P-3.

THIS AGREEMENT made the day of May, in the year One Thousand Nine Hundred and twenty-five.

BETWEEN MORRIS MEYER and LOUIS MEYER, both of the City of Jersey City, in the County of Hudson and State of New Jersey, parties of the first part, and RAFFAELE STENGO of the said City of Jersey City, in the county and State aforesaid, party of the second part;

WITNESSETH, That the said parties of the first part have agreed to let, and hereby do let to the said party of the second part, and the said party of the second part has agreed to take, and hereby does take from the said parties of the first part, ALL that certain store premises known as Numbers 97-99 Newark Avenue, Jersey City, Hudson County, New Jersey, together with part of the cellar, being at the corner of Railroad Avenue, to be used in the conduct of a fruit and vegetable, or vegetable products business only and for no other purpose whatsoever, and upon the sale by the party of the second part, his agents or servants or employees, in said premises of any meat products, meat, butter, eggs or dairy products this lease shall determine, cease and from thenceforth be at an end, for the term of three (3) years, to commence on the first day of May, 1925, and to end on the thirtieth day of April, 1928.

AND the said party of the second part hereby covenants and agrees to pay unto the said parties of the first part, the annual rent or sum of Twenty-one hundred ($2,100) Dollars, payable in equal monthly instalments of One hundred and seventy-five dollars, in advance, on the first day of each and every month.

Exhibit P-3.

And to quit and surrender the premises, at the expiration of the said term, in as good state and condition as they were in at the commencement of the term, reasonable use and wear thereof and damages by the elements excepted.

And the said party of the second part further covenants that he will not assign this Lease, nor let or underlet the whole or any part of the said premises, nor make any alteration therein without the written consent of the said parties of the first part, under the penalty of forfeiture and damages; and that he will not occupy or use the said premises, nor permit the same to be occupied or used for any business deemed extra hazardous on account of fire or otherwise, without the like consent, under the like penalty. And the said party of the second part further covenants that he will permit the said parties of the first part, or their agent, to show the premises to persons wishing to hire or purchase, and on and after the first day of February next preceding the expiration of the term, will permit the usual notice of "to let" or "for sale" to be placed upon the walls or doors of said premises, and remain thereon without hindrance or molestation. And also, that if the said premises, or any part thereof, shall become vacant during the said term, the said parties of the first part, or their representative, may re-enter the same, either by force or otherwise, without being liable to any prosecution therefor, and re-let the said premises as the agent of the said party of the second part, and receive the rent thereof, applying the same first to the payment of such expenses as they may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance, if any, to be paid over to the said party of the second part, who shall remain liable for any deficiency.

Exhibit P-3.

And it is further agreed between the parties to these presents, that in case the building or buildings erected on the premises hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible at the expense of the said parties of the first part; that in case the damage shall be so extensive as to render the building untenantable, the rent shall cease until such time as the building shall be put in complete repair; but in case of the total destruction of the premises, by fire or otherwise, then rent shall be paid up to the time of such destruction, and then and from thenceforth, this lease shall cease and come to an end; provided, however, that such damage or destruction be not caused by the carelessness, negligence, or improper conduct of the party of the second part, his agents or servants.

It being further understood and agreed that in the event that said premises are taken by the City of Jersey City, or purchased under condemnation proceedings, then from the time of such taking by said city and from thenceforth, this lease shall cease and come to an end and the security deposited hereunder be returned to the said party of the second part.

It being understood and agreed that the parties of the first part shall make all exterior repairs and the party of the second part shall make all interior repairs at their own respective cost and expense.

Receipt is acknowledged by the said parties of the first part of the sum of Three hundred and fifty ($350) Dollars, as security paid by the party of the second part, that he will faithfully perform the covenants and agreements heretofore entered into by him, in this lease, and that said sum shall be used as the rent for the last two months of the

term herewith demised, or any extended term as hereinafter provided for.

It being understood and agreed between the parties hereto, that if at the expiration of the said three-year period the parties of the first part shall be the owners of the premises herewith leased, then this lease shall be extended for the further term of one year, upon the same terms and conditions as above set forth, provided a written notice of such intention to renew be served on said first parties on February 1, 1928.

And the said parties of the second part hereby further covenant that if any default be made in the payment of the said rent, or any part thereof, at the times above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said hiring, and the relation of landlord and tenant, at the option of the said parties of the first part, shall wholly cease and determine, and the said parties of the first part shall and may re-enter the said premises and remove all persons therefrom; and the said party of the second part hereby expressly waives the service of any notice in writing of intention to re-enter, as provided for by any law or statute.

In Witness Whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

L. Meyer L. S.
M. Meyer L. S.
Raffaele Stengo L. S.

Sealed and delivered in the presence of

Edward Schwartz.

Exhibit P-4.

THIS AGREEMENT, made the first day of May, in the year of our Lord, One Thousand Nine Hundred and Twenty,

BETWEEN Louis Meyer and Morris Meyer, both of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part;

AND L. Meyer & Company, a corporation, under and by virtue of the laws of the State of New Jersey, party of the second part;

WITNESSETH, That the said party of the first part has hereby let and rented to the said party of the second part, and the said party of the second part has hereby hired and taken from the said party of the first part.

All those certain buildings known as 103-105 Newark Avenue, Jersey City, Hudson County, New Jersey, consisting of two stores with the room or rooms above the same, the entrance thereto being situated on Railroad Avenue, aforesaid, for the term of five years, to commence on the first day of May, A. D., 1920, at the yearly rent of Twenty-four Hundred Dollars, payable in advance, in equal monthly installments.

And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to reenter the said premises, and to remove all persons therefrom.

And the said party of the second part covenants to pay to the said party of the first part, the said rent as herein specified, to wit: in advance, in equal monthly instalments.

Exhibit P-4.

And at the expiration of the said term, or the termination of this lease, the said party of the second part will quit and surrender the premises hereby demised, in as good a state and condition as reasonable use thereof will permit, damage by the elements excepted.

It being understood and agreed that the said party of the first part shall make and perform all exterior repairs and the party of the second part shall make and perform all interior repairs.

It being understood and agreed that the party of the second part shall have the privilege to renew the said indenture of lease for a further period of five years, from the expiration thereof, upon the same terms and conditions.

And the said party of the first part covenant, that the said party of the second part, on paying the said monthly rent, and performing the covenants, aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

In Witness Whereof, the said parties hereto have hereunto set their hands and seals the day and year first above written.

Louis Meyer.

Signed, sealed and delivered in the presence of

Louis Meyer,
President of L. Meyer & Co.
Morris Meyer.

Attest:

Morris Meyer,
Secretary.

Exhibit P-4.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

BE IT REMEMBERED, that on this 11th day of May, in the year of our Lord One Thousand Nine Hundred and Twenty, before me, the subscriber, an attorney at law of New Jersey, personally appeared Louis Meyer and Morris Meyer, who, I am satisfied are the lessors in the within Indenture of Lease named; and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, and for the uses and purposes therein expressed.

EDWARD SCHWARTZ,
Attorney at Law of New Jersey.

Received in the Register's Office of the County of Hudson on the 8th day of May, A. D., 1920, at 11:40 o'clock in the forenoon, and recorded in Book 1358 of Deeds for said County, on page 331.

JOHN J. McMAHON,
Register.

Indexed under County Block No. 961.

New Jersey Court of Errors and Appeals

MAYOR AND ALDERMEN OF JERSEY CITY, Appellee, *vs.* LOUIS MEYER, *et al.*, Appellants.	In Condemnation. On Appeal from Hudson County Circuit Court.

BRIEF FOR APPELLANTS.

Statement of Facts.

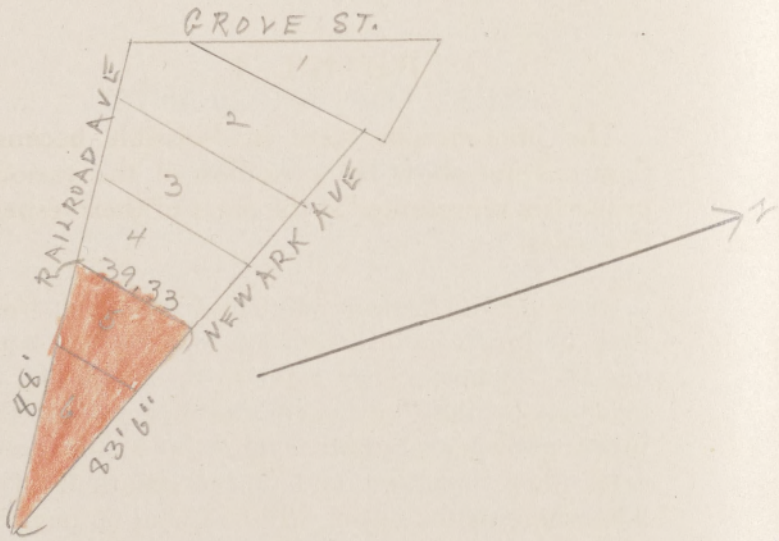
This is an appeal taken by Louis Meyer, and others, the property owners, from a judgment entered in the Hudson County Circuit Court on June 28th, 1929, on the verdict of a jury, awarding said property owners the sum of $50,000.00 for their property. The judgment in the Circuit Court was on an appeal from an award by Condemnation Commissioners appointed under the Eminent Domain Act.

The premises in question consist of a triangular piece of property, fronting 83½ feet on Newark Avenue and 88 feet on Railroad Avenue and 39.33 at the deep end, the westerly end. It contained 1610 square feet and was known as Lots 5 and 6 in City Block 204. There was a one story frame building about 16 feet high on the easterly end of the property and a two story and cellar brick building on the westerly end of the property. Both of these buildings were used exclusively for store purposes.

The premises in question, together with some three other parcels constituted an irregular shaped block in Jersey City, bounded on one side

by Newark Avenue, on another side by Railroad Avenue and on the third side by Grove Street. This whole block was condemned by the City of Jersey City for the purpose of providing an open plaza at this location.

Below is a diagram of said block as it appears on the city map. The premises affected by this appeal have been colored red.



The Condemnation Commission awarded the property owner in this case, the sum of $50,000.00 as the value of said property and on appeal to the Hudson County Circuit Court the jury awarded the same amount.

The Grounds of Appeal to this Court are set out on pages 1 and 2 of the State of the Case and

they will be taken up in the order in which they appear.

The first Ground of Appeal is abandoned because the question that was ruled out was subsequently allowed to be answered.

The third Ground of Appeal is abandoned because the exhibit is a photograph of the condemned premises and was undoubtedly admissible under the testimony.

POINT I.

The photographs were inadmissible because they did not show the condition of the various properties represented at the dates of their respective sales.

Grounds of Appeal numbered two and from four to fourteen inclusive all present the same question of law. They refer to the admission in evidence by the Court, over the objection of the property owner, of photographs of pieces of property other than that under condemnation. The admission and exception will be found on page 86 of the State of the Case. These photographs were testified to as being the true condition of the properties they represented as of February, 1928 (p. 82, lines 20-40).

Exhibit D-1 represented property known as 108 Newark Avenue (p. 22, lines 35-40). It was comparable to the property under condemnation (p. 23, lines 20-22). It was last sold December 17, 1926, for $67,000 (p. 44, lines 15-40; p. 45, lines 1-10).

How this property looked in February, 1928, was of no importance. If a photograph of it was admissible at all it should have shown how it looked at the time of the last sale testified to, viz,

December 17, 1926. After that a substantial improvement was made (p. 49, lines 5-40), so that a photograph of it in February, 1928, would include the improvement and mislead the jury as to its condition at the time of the sale.

Exhibit D-3 represented property known as the Root property (p. 64, lines 10-30). It was sold in 1926 (p. 64, line 40) for $98,000 (p. 63, lines 30-35). How it looked in February, 1928, was immaterial and would mislead the jury if a comparison between it and the property under condemnation were attempted.

Exhibit D-4 represented property known as 321 Grove Street (p. 66, lines 25-31). It was last sold in 1926 for $42,000 (p. 45, lines 18-22). At that time it was in need of repair and alterations were made costing $25,000 (p. 50, lines 5-40). The photograph in February, 1928, included the improvement and would mislead the jury as to its condition at the time of the sale.

Exhibit D-5 represented property known as 134 Newark Avenue (p. 66, lines 33-40; p. 67, lines 1, 2). It was sold February, 1927, for $80,000 (p. 46, lines 1-5). It was afterwards remodelled (p. 51, lines 11-15). The photograph in February, 1928, shows the remodelled building and would mislead the jury as to its condition at the time of the sale.

Exhibit D-6 represented property known as 143 Newark Avenue (p. 67, lines 5-15). It was sold November, 1927, for $125,000 (p. 46, lines 5-8). How it looked in February, 1928, was immaterial and would mislead the jury as to its condition at the time of the sale.

Exhibit D-7 represented property known as 176-178 Newark Avenue (p. 68, lines 10-18). No. 176 was sold November, 1928 for $72,000. No. 178 was sold in 1926 for $75,000 (p. 46, lines 8-13). How either of these parcels looked in February,

1928, was immaterial and would mislead the jury as to their condition at the time of their respective sales.

Exhibit D-8 represented property known as 151, 153 Newark Avenue (p. 68, lines 19-25). No. 153 was sold November, 1925, for $100,000 (p. 46, lines 13-18). How it looked in February, 1928, was immaterial and would mislead the jury as to its condition at the time of sale.

Exhibit D-9 represented property 160-168 Newark Avenue (p. 68, lines 25-33). It was sold December, 1927, for $115,000 (p. 46, lines 17-19). How it looked in February, 1928, was immaterial and would mislead the jury as to its condition at the time of sale.

Exhibit D-10 represented property 127, 129, 131 Newark Avenue (p. 68, lines 35-40). 127 sold November, 1926, for $390,000 (p. 46, lines 20, 21). How it looked in February, 1928, was immaterial and would mislead the jury as to its condition at the time of sale.

Exhibit D-11 represented property known as the Fruhman property (p. 69, lines 19-30).

Exhibit D-12 represented property 138 Newark Avenue (p. 82, lines 33-38).

Exhibit D-13 represented property 156 Newark Avenue (p. 82, lines 38-40; p. 83, lines 1, 2; p. 86, lines 25-30).

Why these last three exhibits were offered or received in evidence is not disclosed in the case. No sales of them were shown and the introduction of the photographs tended to further obscure the issue.

The only materiality of any of the photographs would be to show the jury what the respective properties looked like at the times of their respective sales which had already been testified to. This might have been of some assistance to the jury in determining the value of the property

under condemnation which they had personally viewed. But when the photographs were identified as representing the various properties at some other time than when they were sold, they lost all value as a comparison and raised false standards for the jury which could have no other effect than injury to the property owner, particularly in view of the fact that many of them had been remodeled and improved between the dates of such sales and the date of the photograph.

POINT II.

The property testified to was not shown to be substantially similar to that under condemnation and the admission of its sale price was error.

The fifteenth Ground of Appeal refers to the allowance by the Court, over the objection of the property owner, of a question as to the sale price of certain other property. The question, objection and ruling will be found on page 117 of State of Case.

There was no proof or attempt to prove that the property was substantially similar to that under condemnation. The question was therefore plainly incompetent and the answer showed a price per foot which was very low and would therefore influence the jury to the detriment of the property owner. It was harmful error to admit the answer.

POINT III.

The sixteenth Ground of Appeal is directed to a portion of the charge of the Court found on page 141, which reads as follows:

> "I have also been requested to charge you as follows:

'Income in this case means what it says, money coming in from property, not what some expert in the case says he thinks it ought to bring as rent.'

I so charge you."

The exception to this portion of the charge was taken at the end of the charge (p. 142). It is not clear just what the Court intended by this language, but I think the fair inference is that if the jury considered that the market value of the property under condemnation bore a definite relation to its income, then they were only to consider the actual income. This was erroneous and harmful to the property owner because a large portion of this property was actually occupied by the owners at the time of the condemnation (p. 42, lines 20-30), and by such instruction the jury was forbidden to use the estimate of the real estate expert as to what was a fair rental value of such portion. The jury was also precluded by this instruction from giving any rental value to the roof of the building for sign purposes. The instruction practically eliminated all consideration by the jury of the testimony of James F. Gannon, Jr., one of the experts for the property owner, for his valuation of the property was based not only upon the actual return in rent, but also upon what he considered a reasonable rental for the part occupied by the owners and also the rental value of the roof for sign purposes. The jury had viewed the property and the neighborhood, they had been permitted to receive Gannon's testimony and in the light of all the testimony it was for them to say as a matter of fact what the reasonable rental of these premises was and if they believed that was the best method of ascertaining its market value to apply that method. It is a matter of common knowledge that frequently actual rents are not the true rental value,

and in this very case the testimony showed two instances of this fact (p. 53, lines 10-15; p. 55, lines 1-40; p. 56, lines 1-10).

The seventeenth Ground of Appeal is abandoned.

It is respectfully submitted that the rulings of the Court above argued were erroneous and that they injured the property owner materially and that the judgment in this matter should therefore be set aside and a *venire de novo* issued.

Respectfully submitted,

MARK A. SULLIVAN,
Attorney of Appellants.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

(1367)

New Jersey Court of Errors and Appeals

THE MAYOR AND ALDERMEN OF JERSEY CITY, Appellee, *vs.* LOUIS MEYER, *et al.*, Appellants.	IN CONDEMNATION. ON APPEAL FROM HUDSON COUNTY CIRCUIT COURT.

BRIEF FOR APPELLEE.

Statement of Facts.

This is an appeal taken by Louis Meyer, *et al.*, owners of the property condemned by The Mayor and Aldermen of Jersey City and known as Lots 5 and 6 in City Block 204 on the Assessment Map of Jersey City. The Commissioners of Condemnation appointed under the Eminent Domain Act by a Justice of the Supreme Court awarded the appellants the sum of Fifty thousand ($50,000.) Dollars. Thereafter, they appealed to the Hudson County Circuit Court and the matters in dispute were tried before said Court and a jury, which jury returned a verdict on behalf of the appellants in the same amount as that awarded by the Condemnation Commissioners appointed by the Supreme Court Justice, viz., Fifty thousand ($50,000.) Dollars.

POINT I.

The photographs admitted in evidence were relevant to show the condition of the various properties represented by them, considered with relation to the testimony adduced by appellants' witnesses.

Exhibit D-2 constitutes the third ground of appeal but is abandoned because appellants admit that the photograph was properly admitted in evidence. The Court should examine D-2 in order to get a comprehensive view of the character of the structure under condemnation. It is a triangular piece of property beginning at a point and running on one side of the triangle eighty-three and one-half feet and on the other eighty-eight feet, and having a width of thirty-nine and thirty-three one-hundredths feet at its westerly end. This is the type of property to which the witness Gannon has added a ten per cent corner influence, extending it throughout the entire area of the triangle.

The sole basis of appellant's objections under Point I of his brief is that the photographs might mislead the jury and work prejudicial error to the property owner, inasmuch as the photographs show the condition of the property at the time of filing the petition in condemnation rather than at the time that the properties represented by the photographs were sold.

This objection might be valid if appellants' witnesses had limited their appraisal of the appellants' property to comparable sales, but an examination of the testimony of the witness, James F. Gannon, shows clearly that his reference to the properties represented by these exhibits was not

predicated upon sales but upon rental values. For instance:

> "Q. You have put a value of $99,000. upon this property and you have created it, as I understand, upon the gross income which you believe the property would yield; the worth of its actual yield, is that correct? A. Yes, sir.
>
> Q. And in addition to that you have capitalized that by ten times the gross rent, and arrived at the conclusion that the property is worth $90,000? A. Plus ten per cent for corner influence.
>
> Q. For the property per se? A. On a strictly rental basis.
>
> Q. Then you have added ten per cent of the $90,000. for what you call corner influence? A. Yes, sir.
>
> Q. And added $9,000. for the corner? A. That is right. $9,000 on the whole plot."
>
> See State of the Case, p. 62, lines 25-40.

The witness in arriving at the value of the property under condemnation totally disregarded the rule of a willing buyer and a willing seller, but arbitrarily allocated to the property under condemnation a rental value based in his opinion upon the rental values of the properties represented in the photographs D-3 to D-11 inclusive. Therefore, since the witness has created a value for appellants' property upon rental income which did not in fact exist but which was arrived at upon the rental income of other properties not similarly constructed or adorned (Exhibits D-3 to D-11 inclusive) it was fitting and proper evidence for the Court to admit the photographs in evidence in order that the jury might determine the character of buildings upon which the appellants' witness had predicated his opinion with respect to the value of the property under condemnation.

A reading of the testimony of appellants' witness, James F. Gannon, pp. 35-79 inclusive, State of the Case, will give to the Court the entire crux of this appeal, for the witness Gannon has totally abandoned the question of sales. Although some are recited, he adhered strictly to rental income as the basis of his computation of what the property under condemnation was worth. In fact, his method of arriving at the value of the property under condemnation clearly indicates this attitude. For instance:

> "Q. In your opinion, what was the property worth on the date of the condemnation (In the State of the Case misprinted 'consideration')? A. $99,000.
>
> Q. Upon what do you base this estimate? A. On what do I base my valuation? Essentially on what I consider the proper and just commercial yield of this property."

Lines 1 to 10, p. 39, State of the Case.

The following is a schedule of Exhibits D-1 to D-11, which appellants contend were erroneously admitted in evidence and opposite each exhibit number is mentioned the address of the property and in the last column reading from left to right is the reference to the page and lines in the State of the Case wherein the witness Gannon for the appellant specifically refers to each parcel with reference to its rental value.

Exh. No.	*Address of Property*	*Page & line in State of Case*
D-1	108 Newark Avenue	P. 48, lines 3-36
D-2	Appellants' property, subject matter of this appeal	P. 39, lines 1-10
D-3	Root property	P. 63, lines 20-30
D-4	321 Grove Street	P. 66, lines 25-31
D-5	134 Newark Ave.	P. 66, lines 33-40
D-6	143 Newark Ave.	P. 67, lines 5-15
D-7	176-178 Newark Ave.	P. 68, lines 10-16
D-8	151-153 Newark Ave.	P. 68, lines 20-25
D-9	160-168 Newark Ave.	P. 68, lines 25-33
D-10	127-129-131 Newark Ave.	P. 68, lines 35-40
D-11	Fruhman property immediately west of appellants' property	P. 69, lines 19-30

Appellee contends that the admission of the above exhibits was not only proper but necessary for the jury to have an enlightened view of the character of the buildings, the income of which formed the basis of the witness Gannon's computation of the rental value of appellants' property under condemnation, and upon which created rental value the witness Gannon based his value of the appellants' property.

The fallacy of the witness Gannon's theory in arriving at the value of appellants' property after the recital of all of the various properties represented by the exhibits D-1 to D-11 can best be understood by the following questions and answers:

> "Q. All of these photographs that I have shown you are comparable property to Exhibit D-2 (appellants' property), being the property under condemnation? A. As to the land, they are absolutely all comparable. As TO THE BUILDINGS, THEY ARE ALL DIFFERENT."

As to Exhibit D-11, this property is known as the Fruhman property and immediately adjoins the appellants' property on the west, and is referred to in the testimony of the witness Gannon. See p. 69, lines 20-30. As to Exhibits D-12 and D-13, they are referred to by the witness Gannon as part of his qualifications in dealing with downtown property. See lines 30-40 and 1-10, pp. 36 and 37 of the State of the Case.

POINT II.

The property testified to under objection is substantially similar to that under condemnation and the admission of its sale price was competent.

Appellants' fifteenth ground of appeal is predicated upon the following question:

> "Q. Are you familiar with the sales of properties, lots 1, 2 and 3 in this very block, the corner property known as the Root property, the stone houses adjoining? A. I am.
> Q. Do you know what that property sold for? A. I do.
> Q. How much?
> Mr. Armstrong: I object, etc."

See lines 3 to 30, p. 117, State of the Case.

Lots 1, 2 and 3 are the extreme westerly end of the triangle which constituted the whole block. It was on the same side of the street and formed part of a triangle with the property under condemnation. The fact that the total purchase price of the property was reduced to its actual square foot value could not prejudice appellants' rights, since it represented the actual purchase price of the property and was comparable property with the appellants' property.

POINT III.

That portion of the charge of the Court objected to by appellant was proper.

The sixteenth ground of appeal urged by appellants is to that portion of the charge of the Court which reads as follows:

> "I have also been requested to charge you as follows:
>
> > 'Income in this case means what it says, money coming in from property, not what some expert in the case says he thinks it ought to bring as rent.'.
>
> I so charge you."

Appellant contends that it is not just clear what the Court intended by this language, but appellee requested the charge for this reason: Appellants' witness Gannon had repeatedly talked about rental values of other properties, and when he referred to appellants' property he predicated his values upon what he believed the property should rent for rather than what the property was in fact renting for, and this charge was directed to that character of testimony so that it might be distinguished that income with relation to Meyer's property meant what he was receiving from the property rather than what the witness Gannon believed he should receive.

Appellants contend that such instructions precluded the jury from using the real estate expert's estimate of what the estimated fair rental value would be, and that is just what was meant to be done by that portion of the Judge's charge above referred to. And it is argued that this instruction precluded the jury from giving any rental

value to the roof on the building for sign purposes. There is no testimony that there ever was a sign on the building and in fact there is testimony that in the memory of the expert witness Gannon's twenty-five years experience in that section of Jersey City in which the appellants' property is located that he never saw a sign on the roof of the building. See lines 30-40, p. 73, State of the Case. Appellants admit:

> "It is a matter of common knowledge that frequently actual rents are not the true rental value."

It is for this very reason that all through the testimony of the witness Gannon objection was made by appellee as to the reception of testimony of rental values of other properties different in character, and upon which the witness Gannon based his estimated rental value of the property under condemnation, and in turn arrived at its alleged market value computed upon said alleged fair rental return.

It is respectfully submitted that the rulings of the Court in this case were proper and that the exhibits admitted under such rulings were material and relevant to the issues and worked no prejudice to the appellant, and accordingly under the rule laid down in the case of In re Board of Recreation Commissioners of the Town of West New York, Hudson County, 136 Atl., p. 176:

> "No judgment should be reversed for the improper admission of evidence (assuming but not admitting that the evidence in this case was improperly admitted) unless after an examination of the whole case it shall appear that the error injuriously affected the substantial rights of the party."

It is respectfully urged, therefore, that considering that the judgment of the Condemnation Commissioners appointed by the Supreme Court Justice, together with the determination of a jury in the Hudson County Circuit Court, were identical, and further considering that the admission of the exhibits complained of in this case were proper and did not substantially affect appellants' rights, that the judgment heretofore rendered in the Circuit Court should be affirmed with costs.

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