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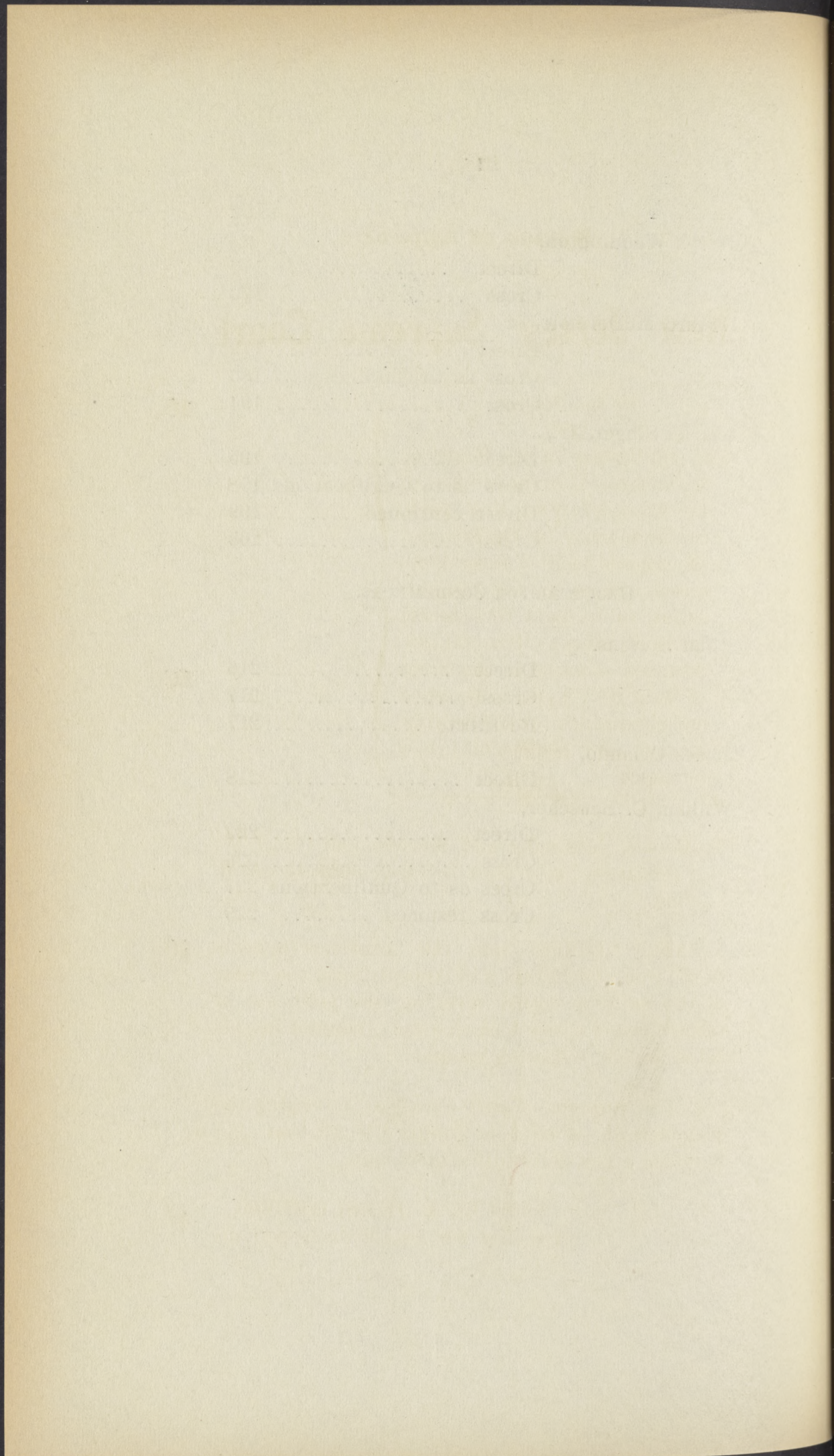
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**Notice of Appeal.**

(Filed September 19th, 1924.)

## HUDSON COUNTY CIRCUIT COURT.

In the Matter  
of

10 The Application of the BOARD OF  
RECREATION COMMISSIONERS, of  
the Town of West New York,  
in the County of Hudson, for  
the appointment of three Com-  
missioners to fix the compen-  
sation to be paid for certain  
lands of STEFFEN DIECKMANN,  
deceased, situate in the Town  
20 of West New York, to be taken  
and condemned for public play-  
ground and recreation pur-  
poses.

To Samuel Hirschberg, Esquire, attorney for  
Board of Recreation Commissioners of West New  
York:

30 TAKE NOTICE that the defendants appeal to  
the New Jersey Supreme Court from the whole of  
the judgment entered in this cause on the follow-  
ing grounds:

1. The Court admitted in evidence a photograph  
(Condemnors' Exhibit No. 8) of the condition of  
property 275 feet from the premises under con-  
sideration and sought to be condemned in this  
cause.

40 2. The Court admitted in evidence a photograph  
(Condemnors' Exhibit No. 9).

*Order Reversing Judgment of Circuit Court.*

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3. The Court admitted in evidence photograph (Condemnors' Exhibit No. 10).

4. The Court admitted the evidence of the witness William C. Beuscher in regard to conditions on Ninth Street, a full block from the property under consideration and sought to be condemned in this cause. 10

5. The verdict of the jury is contrary to the weight of the evidence.

Dated, Jersey City, New Jersey,  
September 2, 1924.

BESSON, ALEXANDER & STEVENS,  
Attorneys for Appellants.

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**Order Reversing Judgment of Circuit Court.** 20

(Filed Feb. 23, 1924)

NEW JERSEY SUPREME COURT,  
No. 35, MARCH TERM, 1925.

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|  |   |    |
|--|---|----|
| <p>In the Matter<br/>of<br/>The Application of the BOARD OF<br/>RECREATION COMMISSIONERS of<br/>West New York for the taking<br/>of lands of DIECKMANN, et al.</p> | } | 30 |
|--|---|----|

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Argued March 3, 1925; decided February 23rd, 1926.

Appeal from Hudson Circuit Court, in an eminent domain matter. 40

*Order Reversing Judgment of Circuit Court.*

---

Before—Justices PARKER and KATZENBACH.

For the appellant Dieckmann, BESSON, ALEXANDER  
& STEVENS and ELMER W. DEMEREST.

For the Respondents, SAMUEL L. HIRSCHBERG, Esq.

Per CURIAM. There are five grounds of appeal.

10 One is that the verdict was against the weight of evidence. This is not a subject of appellate review in a civil case. Another is that certain testimony of one Buescher was erroneously admitted. There was no exception to the ruling, and hence it is not now reviewable.

The other three grounds may be discussed together, as they relate to the admission of three separate photographs in evidence, to each of which there was objection, overruled and exception taken.

20 These photographs showed a condition of certain land not part of that sought to be taken, in fact several hundred feet from the nearest corner of the tract in question, and seem to have been admitted on the theory, for which there was some support in the testimony, that the tract under condemnation was part of a large bog which was more or less homogeneous in character; the inference sought to be drawn being that because the conditions shown in the pictures obtained in another

30 part of the boggy area, similar conditions were to be expected from similar causes in the part under condemnation, and a lower value should be assessed because of this. All three pictures exhibited the same object; a sidewalk previously laid over piling previously driven, and forced upward some inches into the air by what was claimed to have been the settlement of the boggy surface and the non-settlement of the piling. The bearing of these pictures, according to the trend of the testimony

40 for the Recreation Commissioners at the trial, was this: that this boggy land could not be improved

Order Reversing Judgment of Circuit Court.

as building lots by the erection of dwellings, etc., thereon, without driving a great many piles to support the weight of the buildings, and that to pile each 25 x 100 foot lot to the extent of 40 feet of its depth, leaving the remaining 60 feet of back yard unpiled, plus expense of improving the streets, would cost an average of \$1,300 per lot, and that these lots in the bog should be appraised at a greatly reduced value in consequence. The jury appear to have been somewhat influenced by this, as they fixed a value some \$300 per lot less than that fixed by the commissioners in condemnation. 10

We think there was error in the admission of these photographs. Conceding for present purposes, but not deciding, that photographs of the general conditions existing on adjacent lands (which the jury were not permitted by the court to view directly), may be evidential, these pictures were not offered to show general conditions but avowedly to show a special condition at a particular spot, due in part to alleged artificial interference not contemplated as to the lands in question. These lands in question are desired not as building lots fronting on streets, but as a public playground, fairly comparable with the unpiled back yards, and the cost of fitting them for house building was therefore quite irrelevant and misleading to the jury. If the lands required expensive piling for building purposes and none for open air recreation, their value for the latter use would naturally be greater. 20 30

There was another objection to the admission of these pictures. They showed conditions not on the property to be taken, but on other property, which, while claimed to be due to natural tendencies of the terrain, may well have been due in large part, if not principally, to faulty engineering and construction. Where it is sought to gauge the value 40

Notice of Appeal from Award of Commissioners.

of lands by alleged similar conditions on other lands, the parallelism should be clear and complete; otherwise, the test fails and the admission of such evidence is erroneous. *Hepburn v. Water*  
*Commissioners* 196 Atl. 421

**Formal Rule of Reversal.**

(Filed March 23rd, 1926.)

**Notice of Appeal from Award of Commissioners.**

(Filed January 15th, 1924.)

HUDSON COUNTY CIRCUIT COURT.

|    |  |   |                     |
|----|--|---|---------------------|
| 20 | In the Matter<br>of  | } |                     |
| 30 | The Application of the BOARD OF<br>RECREATION COMMISSIONERS, of<br>the Town of West New York,<br>in the County of Hudson, for<br>the appointment of three Com-<br>missioners to fix the compen-<br>sation to be paid for certain<br>lands of STEFFEN DIECKMANN,<br>deceased, situated in the Town<br>of West New York, to be taken<br>and condemned for public play-<br>ground and recreation place<br>purposes. |   | In<br>Condemnation. |

40 The Board of Recreation Commissioners of the Town of West New York, the petitioner in the above entitled condemnation proceedings, hereby appeals from the award of the Commissioners in the above entitled matter, filed on the fifth day of January, nineteen hundred and twenty-four.

SAMUEL L. HIRSCHBERG,  
Attorney for Petitioner and Appellant.

Notice of Appeal from Award of Commissioners.

of lands by alleged similar conditions on other lands, the parallelism should be clear and complete; otherwise, the test fails and the admission of such evidence is erroneous. *Hepburn v. Water Supply Commission*, 126 Atl., 421.

The judgment of the Circuit Court will be reversed, and the cause remanded to the end that a venire de novo issue.

**Notice of Appeal from Award of  
Commissioners.**

(Filed January 15th, 1924.)

HUDSON COUNTY CIRCUIT COURT.

|    |   |                     |
|----|---|---------------------|
| 20 | In the Matter<br>of<br>The Application of the BOARD OF<br>RECREATION COMMISSIONERS, of<br>the Town of West New York,<br>in the County of Hudson, for<br>the appointment of three Com-<br>missioners to fix the compen-<br>sation to be paid for certain<br>lands of STEFFEN DIECKMANN,<br>deceased, situated in the Town<br>of West New York, to be taken<br>and condemned for public play-<br>ground and recreation place<br>purposes. | In<br>Condemnation. |
| 30 |   |                     |

40 The Board of Recreation Commissioners of the Town of West New York, the petitioner in the above entitled condemnation proceedings, hereby appeals from the award of the Commissioners in the above entitled matter, filed on the fifth day of January, nineteen hundred and twenty-four.

SAMUEL L. HIRSCHBERG,  
Attorney for Petitioner and Appellant.

**Notice of Appeal and Application for  
Order Framing Issues.**

HUDSON COUNTY CIRCUIT COURT.

|  |                             |                     |
|--|-----------------------------|---------------------|
| <p>In the Matter<br/>of<br/>The Application of the BOARD OF<br/>RECREATION COMMISSIONERS, of<br/>the Town of West New York,<br/>in the County of Hudson, for<br/>the appointment of three Com-<br/>missioners to fix the compen-<br/>sation to be paid for certain<br/>lands of STEFFEN DIECKMANN,<br/>deceased, situated in the Town<br/>of West New York, to be taken<br/>and condemned for public play-<br/>ground and recreation place<br/>purposes.</p> | <p>In<br/>Condemnation.</p> | <p>10</p> <p>20</p> |
|--|-----------------------------|---------------------|

To Elmer W. Demarest, Esquire, attorney for  
Stephanie Muller, formerly Stephanie D.  
Botzow:

TAKE NOTICE, that an appeal has been taken  
from the award of the Commissioners in the above  
entitled matter, made on the fifth day of January,  
Nineteen hundred and twenty-four, and

TAKE FURTHER NOTICE that as attorney  
for the Board of Recreation Commissioners of the  
Town of West New York, I will apply to the Hon-  
orable James F. Minturn, to frame the issue and  
fix the day for striking a jury and the day for the  
trial of the appeal on the twenty-sixth day of Jan-  
uary, 1924, at ten o'clock in the forenoon, at the  
Court House in Jersey City, or as soon thereafter  
as counsel can be heard.

SAMUEL L. HIRSCHBERG, 40  
Attorney for Petitioner and Appellant.

**Order.**

(Filed February 2nd, 1924.)

In the Matter  
of  
The Application of the BOARD OF  
RECREATION COMMISSIONERS, of  
10 the Town of West New York,  
in the County of Hudson, for  
the appointment of three Com-  
missioners to fix the compen-  
sation to be paid for certain  
lands of STEFFEN DIECKMANN,  
deceased, situated in the Town  
of West New York, to be taken  
and condemned for public play-  
ground and recreation place  
20 purposes.

In  
Condemnation.

The Board of Recreation Commissioners of the  
Town of West New York, having given notice of  
appeal from the award of William G. Hille, Wil-  
liam C. Asper and William Boss, Commissioners  
appointed by the Honorable James F. Minturn,  
Justice of the Supreme Court, on application of  
the Board of Recreation Commissioners of the  
Town of West New York, and the appellants hav-  
30 ing given notice of motion to be heard at the Court  
House in Jersey City, on the twenty-sixth day of  
January, Nineteen hundred and twenty-four, to  
frame the issue of said appeal and to fix the day  
for striking a jury, and the day for the trial of the  
appeal, and counsel appearing for the respective  
parties, Samuel L. Hirschberg appearing for the  
Board of Recreation Commissioners of the Town  
of West New York and J. W. Rufus Besson appear-  
ing for Marie D. Ludwig, Fred J. H. Ludwig, her  
40 husband; Wilhelmena Stephanie Schwartzbach

Zenner and Robert Fritz Zenner, her husband; John Dieckmann and Edna W. Dieckmann, his wife; Stephanie D. Muller; Herman Steffen Botzow and William George Frederick Botzow, infant sons of Stephanie D. Muller, formerly Stephanie D. Botzow; Anna Louise Ludwig, Elizabeth Emmie Ludwig and Marie Oillie Stephanie Ludwig, infant daughters of Marie D. Ludwig. 10

It is, on this twenty-sixth day of January, 1924, on motion of Samuel L. Hirschberg, attorney for the Board of Recreation Commissioners of the Town of West New York,

ORDERED, that the 3rd day of March, Nineteen hundred and twenty-four, at ten o'clock in the forenoon, be and the same is hereby fixed as the time for hearing of the said appeal at the Court House in Jersey City, New Jersey. 20

And it is further ORDERED, that the issue for the trial of the controversy between the parties is hereby framed, and the issue is, what is the amount which the Board of Recreation Commissioners of the Town of West New York, or the Town of West New York, a municipal corporation should pay to the said Marie D. Ludwig, Fred J. H. Ludwig, her husband; Wilhelmena Stephanie Schwartzbach Zenner and Robert Fritz Zenner, her husband; John Dieckmann and Edna W. Dieckmann, his wife, Stephanie D. Muller; Herman Steffen Botzow and William Georger Frederick Botzow infant sons of Stephanie D. Muller, formerly Stephanie D. Botzow; Anna Louise Ludwig, Elizabeth Emmie Ludwig and Marie Oillie Stephanie Ludwig, infant daughters of Marie D. Ludwig, the owners and persons interested in the lands described in the petition before the Commissioners in condemnation and annexed to and filed with their report; and for 30 40

*Rule for Judgment.*

whatever else is required by law to be assessed and paid for by the Town of West New York or Board of Recreation Commissioners.

10 And it is further ORDERED that a jury be struck for the trial of said appeal on the 16th day of February, Nineteen hundred and twenty-four at ten o'clock in the forenoon before the Court, at the Court House aforesaid.

And it is further ORDERED, that a view of the premises and property be had.

JAMES F. MINTURN,  
J. S. C.

**Rule for Judgment.**

20 (Entered March 19th, 1924.)

## HUDSON COUNTY CIRCUIT COURT.

In the Matter  
of  
The Application of the BOARD OF  
RECREATION COMMISSIONERS, of  
the Town of West New York,  
in the County of Hudson, for  
the appointment of three Com-  
missioners to fix the compen-  
sation to be paid for certain  
lands of STEFFEN DIECKMANN,  
deceased, situated in the Town  
of West New York, to be taken  
and condemned for public play-  
ground and recreation place  
purposes.

40 The above entitled matter having been tried before Hon. Henry E. Ackerson, Judge of the Cir-

*Rule for Judgment.*

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cuit Court and a struck jury, duly struck pursuant to statute in such case made and provided, and the said jury having viewed the premises and the owners of the said premises having been represented at the said trial by J. W. Rufus Besson and Elmer W. Demarest, and Samuel L. Hirschberg representing the Board of Recreation Commissioners of the Town of West. New York and the jury having on the 13th day of March, 1924, rendered a verdict of \$86,400 as the amount to be paid to the owners of the premises as of October 26, 1923; 10

It is thereupon ORDERED on this 19th day of March, 1924, that judgment final be entered in favor of the said owners of said premises in the sum of \$86,400 as the amount to be paid by the said Board of Recreation Commissioners of the Town of West New York to the owners of the said premises. 20

HENRY E. ACKERSON, JR.,  
Judge.

On motion of

Samuel L. Hirschberg,  
Attorney for Board of Recreation Commissioners of the  
Town of West New York. 30

Rule entered on the 19th day of March, 1924.

**Report of Commissioners.**

(Filed January 5th, 1924.)

In the Matter  
of  
The Application of the BOARD OF  
RECREATION COMMISSIONERS, of  
10 the Town of West New York,  
in the County of Hudson, for  
the appointment of three Com-  
missioners to fix the compen-  
sation to be paid for certain  
lands of STEFFEN DIECKMANN,  
deceased, situated in the Town  
of West New York, to be taken  
and condemned for public play-  
ground and recreation place  
20 purposes.

We, William G. Hille, William C. Asper and  
William Boss, Commissioners appointed by his  
Honor, James F. Minturn, Justice of the Supreme  
Court of the State of New Jersey, on the appli-  
cation of the Board of Recreation Commissioners,  
of the Town of West New York, made in writing  
by petition to the said Justice to examine and  
appraise the lands and real estate and assess the  
30 damages which the owners of said lands and real  
estate, which said owners are hereinafter named,  
and which lands as condemned is hereinafter de-  
scribed, have sustained, or will sustain, by reason  
of the taking of said lands and real estate and  
occupancy thereof by said petitioner for the pur-  
poses of a public playground and recreation place  
and whatever we, as said Commissioners, are by  
law authorized and required to do under said  
order, having first taken and subscribed an oath  
40 according to law, faithfully and impartially to  
the sum of One hundred and eight thousand Dol-  
lars, as the value of the said lands and damages

*Report of Commissioners.*

---

examine the matter in question and to make a true report according to the best of our skill and understanding.

And it having been duly proved to our satisfaction, that the estate of Steffen Dieckmann is the owner of said lands, having been duly notified by at least six days' notice in writing in the manner directed by order of the said Justice bearing date the twenty-first (21st) day of December, 1923, that said Commissioners had fixed the twenty-eighth (28th) day of December, 1923, at ten o'clock in the forenoon at the Municipal Building, of the Town of West New York, State of New Jersey, to appraise the said lands and real estate and to make an impartial estimate and assessment of the damages to be sustained by the taking and occupancy by the said Board of Recreation Commissioners for the purposes aforesaid. 10  
20

And the said Board of Recreation Commissioners, the petitioner, and the owners of said lands, having been represented before us at the time and place aforesaid, we did meet and examine said lands, a description of which is contained in the said petition and is hereafter embodied in this report; and having heard the said owners of said lands, as well as the Petitioner, and having fully examined and appraised said lands and fully considered all that was offered before us by the respective parties, we continued the hearing to Wednesday, January 2nd, 1924, at the Municipal Building of the Town of West New York, in the County of Hudson and State of New Jersey, at which time and place we heard further testimony given on the part of both the petitioner and the owners of said premises and having duly considered the same and the Justice of the Supreme Court aforesaid having in said Order appointing said Commissioners fixed the fifth day of January, 1924, as the time in which said Commissioners should make their report, 30  
40

10 Now, after a full hearing in all said matters pertaining thereto, we have made a just and equitable appraisal of all said lands and an estimate and assessment of the damages the owners thereof will respectively sustain by the taking of said land and real estate; and we do appraise the said lands and assess the damages to which the owner is entitled, and which they have sustained by reason of the taking and occupancy of the same by the Board of Recreation Commissioners of the Town of West New York.

We do award that the said Board of Recreation Commissioners pay to the said Estate of Steffen Dieckmann for the lands taken and described as follows:

20 All that certain tract or parcel of land and premises, situate, lying and being in the Town of West New York, in the County of Hudson and State of New Jersey, which is bounded and described as follows:

30 Beginning at a point formed by the intersection of the northerly line of Tenth Street, and the westerly line of Broadway, as laid down on a certain map entitled "Map A and B of property belonging to Steffen Dieckmann, Town of West New York, Hudson County, N. J., George W. Bond, Jr., Civil Engineer, Weehawken, N. J., August 20th, 1906," and running thence northerly and along the westerly line of Broadway seven hundred (700) feet to the southerly line of Thirteenth Street; thence westerly and along the southerly line of Thirteenth Street, two hundred and eighty (280) feet to the easterly line of the right of way of Palisade Railroad, thence southerly and along the easterly line of Palisade Railroad seven hundred (700) feet to the northerly line of Tenth Street, and thence easterly along the northerly line of Tenth Street, two  
40 hundred and eighty (280) feet to the point or place of beginning,

*Testimony.*

thereto as aforesaid, everything having been taken into consideration as the Statute provides in arriving at such sum.

Dated, January 4, 1924.

WM. G. HILLE,  
WM. C. ASPER, 10  
WM. BOSS,  
Commissioners.

**Testimony.**

## HUDSON COUNTY CIRCUIT COURT.

|  |   |
|--|---|
| <p style="text-align: center;">In the Matter<br/>of<br/>The Application of the BOARD OF<br/>RECREATION COMMISSIONERS, of<br/>the Town of West New York,<br/>in the County of Hudson, for<br/>the appointment of three Com-<br/>missioners to fix the compen-<br/>sation to be paid for certain<br/>lands of STEFFEN DIECKMANN,<br/>deceased, situated in the Town<br/>of West New York, to be taken<br/>and condemned for public play-<br/>ground and recreation pur-<br/>poses.</p> | <p style="text-align: right;">20</p> <p style="text-align: right;">30</p> |
|--|---|

Before—Hon. HENRY E. ACKERSON, Jr.,  
and a Struck Jury.

Jersey City, N. J., March 3, 1924.

## APPEARANCES :

SAMUEL L. HIRSCHBERG, Esq., for the Board of  
Recreation Commissioners of the Town of  
West New York. 40

Hon. RUFUS BESSON and Hon. ELMER W. DEMAR-  
EST, for Estate of Steffen Dieckmann.

*Opening for the Board of Recreation  
Commissioners.*

---

The jury being then empanelled and found satisfactory, they were sworn.

Mr. Hirschberg then opens for the Board of Recreation Commissioners, as follows:

10

Mr. Hirschberg: May it please the Court and gentlemen of the jury: This is a condemnation proceeding as a result of an appeal that was taken from the determination of three condemnation commissioners appointed by the Supreme Court in connection with the condemnation of a tract of land located in West New York running from Tenth of Thirteenth Streets from Palisades Avenue to the car line to Broadway.

20

Under the law it is the duty of the jury to view the property, and we have conveyances outside ready to transfer you men to the property which the Town of West New York seeks to condemn.

30

This property was the subject of condemnation proceedings, and it seems that the Board of Recreation Commissioners of the Town of West New York who had jurisdiction over acquiring this land for playground purposes were dissatisfied with the result, or rather with the report, of the condemnation commissioners insofar as the price is concerned, and an appeal has been taken from their award to this court before a struck jury.

40

Now, we intend to show to you, Gentlemen of the jury, that this tract of ground which consists particularly of seventy-two lots, and many of them not being full lots, are of an unusual kind of lots, that is, the

*Opening for the Board of Recreation  
Commissioners.*

---

soil is of such nature that in order to build anything on it our engineers say it will be necessary to pile all the lots, and according to the borings that we have made and the borings that we intend to make we will show you that in order to strike any resistance, in order to strike anything half way solid, without striking rock, just striking a hard substance, you have to go down about twenty-seven to thirty-five feet. 10

The section there is wholly unimproved. There are no streets, and we maintain that a fair price for those lots will run not higher than, on the average, a thousand dollars a lot. We will show to you by reason of sales of normal lots, of lots that do not require any filling in, of lots in front of which the street has been improved and gone over, that the price in West New York ranges from two to three thousand dollars, and on account of the peculiar condition of this soil—we will show you that it is a marshy and boggy land—these lands, unimproved, should be worth a thousand dollars, and, we expect to prove that they are worth less than a thousand dollars. When I say a thousand dollars, gentlemen, from our point of view we are giving the benefit of the doubt to the owners of the land. 20 30

But, in case we should prove to your satisfaction that each of these lots is worth less than a thousand dollars, considering the nature of the ground, considering what has got to be done to the land in order to put it in proper shape, we will ask you to award to the owners of this land such amount so 40

*Opening for the Property Owner.*

---

that the Town of West New York will not have to pay more than it should pay, a price consistent with what the evidence has shown to you, by our real estate experts, and as shown to you by our engineers, will convince you of what I say.

10

Mr. Besson then opens for the property owner, as follows:

Mr. Besson: Gentlemen of the jury, as Mr. Hirschberg says, the question for you to determine is the value of this property. You will have an opportunity to look at it as soon as we have finished here. The property is a part of a tract around which buildings have been erected of a certain nature which established the value of land around that neighborhood.

20

These lots are capable of being used for the same purpose as those lots were used on this land across the trolley tracks. The land is of a soft ground nature, the borings of engineers which will be produced before you will show what the cost of putting these lots in condition to be used for the same purposes in the neighborhood will be.

30

The value of the lots adjacent to this property is in the neighborhood—instead of being two to three thousand dollars—I think we can show they are worth at least between four and five thousand dollars.

The cost of preparing these lots for that use, of course, will be produced before you, and the amount that you find the value to be less the cost of the preparation for that use we will ask you to find as the value of the property.

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*Opening for the Property Owner.*

As Mr. Hirschberg says, there are seventy-two lots, naturally, there are inside lots, corner lots, a few of them are twenty feet frontage instead of twenty-five, I think there are about eight of them with twenty feet frontage, as laid out on the scheme for the best development of this land.

10

Our difference in value is that we feel that these lots, as they are today, with developments that exist around there, are fairly worth a hundred and sixty or hundred and seventy thousand dollars, and that that will be the determination of the value of the lots you want to make in all fairness to the owners, and to the town.

This plot has been owned by the Dieckmann Estate who are the present owners, for a number of years, and the development has come up to these lots and these lots are practically the only available land in that neighborhood for this kind of development.

20

So that we will ask for a fair determination at your hands of the value of this property on behalf of the Dieckmann estate.

The Court: Gentlemen of the jury, the court is now going to direct, pursuant to the statute, that you view the property which is involved in these condemnation proceedings, in order that you may appraise the property with a knowledge of its character and situation. And in order that you may arrive at a proper conception of it I read to you a description of the property which is sought to be taken, as follows:

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"All that certain tract or parcel of land and premises, situate, lying and being in the Town of West New York, in the County of

40

*Opening for the Property Owner.*

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Hudson and State of New Jersey, which is bounded and described as follows:

10 "BEGINNING at a point formed by the intersection of the northerly line of Tenth Street, and the westerly line of Broadway as laid down on a certain map entitled 'Maps A and B of property belonging to Steffen Dieckmann, Town of West New York, Hudson County, N. J., George W. Bond, Jr., Civil Engineer, Weehawken, N. J., August 20th, 1906, and running thence northerly and along the westerly line of Broadway, seven hundred (700) feet to the southerly line of Thirteenth Street; thence westerly and along the southerly line of Thirteenth Street two hundred and eighty (280) feet to the easterly line of the Right of Way of Palisade Railroad; thence southerly and along the easterly line of Palisade Railroad seven hundred (700) feet to the northerly line of Tenth Street; and thence easterly along the northerly line of Tenth Street, two hundred and eighty (280) feet to the point or place of beginning."

20 That is the property which you are now going to view and you will be accompanied in that view by the counsel on both sides and also by a constable of this court, and by consent of all parties the court now sets the case down for Tuesday next, the 11th day of March, at 10 o'clock A. M., for the further trial of this matter, and upon that day, Tuesday, next March 11th, at ten o'clock in the morning you will be present here in the court room. The view of the premises, however, will take place now, immediately, and then you may disperse, and return here Tuesday morning, March 11th.

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*Opening for the Property Owner.*

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Let me say to you, in viewing the property, you will confine your attention to the property I have described to you just now, and the situation as observed from this property, you are not to go and view other properties, but you are to view this particular property and the situation of this property itself. 10

The court thereupon adjourned until Tuesday, March 11, at 10 A. M.

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Jersey City, N. J.

Tuesday, March 11, 1924, 10 A. M.

SECOND DAY—TRIAL RESUMED. 20

PRESENT :

Of Counsel :

MR. HIRSCHBERG,  
MR. BESSON,  
MR. DEMAREST.

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IT IS STIPULATED that the defendants represented in this matter are: 30

John Dieckmann,  
Stephanie B. Moeller (formerly Stephanie B. Boetzow),  
Marie Ludwig,  
Executors and Trustees under the Last Will and Testament of Steffen Dieckmann, deceased. 40

*Frank J. Oleri—Direct Examination.*

- John Dieckmann,  
 Stephanie B. Moeller (formerly Stephanie B.  
 Boetzow),  
 Marie Ludwig,  
 Wilhelmina Zeuner (beneficiary under the  
 will of Steffen Dieckmann),  
 10 Anna Louise Ludwig,  
 Maria Otilia Ludwig, and  
 Elizabeth Ludwig,  
 Children of Maria Ludwig,  
 Herman Steffen Dieckmann Boetzow,  
 William George Frederick Boetzow,  
 Children of Stephanie Moeller,  
 Steffen Frederick Dieckmann,  
 Son of John Dieckmann,  
 Edna May Dieckmann,  
 20 Wife of John Dieckmann,  
 Robert Fritz Zeuner,  
 Husband of Wilhelmina Schwartzbach  
 Zeuner,  
 Frederick J. H. Ludwig,  
 Husband of Maria D. Ludwig,

The respective infants named above appearing by their parents as next friend in each instance.

- 30 IT IS AGREED that the Petition and Order in this case were filed October 26, 1923.

FRANK J. OLERI, sworn for the condemnors.

Direct Examination by Mr. Hirschberg:

- Q. You are the engineer of the town of West  
 New York? A. Yes, sir.  
 40 Q. Did you make borings of this particular plot?  
 A. Yes, sir.

Q. What did you find? A. Why, I have got that tabulated on the map over there.

Q. Is it tabulated on this map? A. Yes, sir. I have made borings of each block, three blocks of property on the north side of Tenth Avenue, corner of Palisade Railway, assuming that the ground elevation and the curb level is 101.1, the ground level there 91.2 feet, or ten feet below the surface of the curb, and the borings taken there showed a depth below the surface of 30 feet—

10

Q. When you say depth below the surface, what did you strike? A. Well, we struck a sandy gravel.

The Court: At that depth, a distance of 30 feet below the surface?

The Witness: 30 feet below the surface at this point.

20

Q. What point is that? A. The north corner of Tenth Street east of Palisade Railway.

The Court: The north corner.

The Witness: Yes, sir.

Q. Would that be right here (indicating on the map in evidence)? A. Yes, sir, right about there.

Q. Go ahead. A. Midway between 11th Street and 12th Street, east of the Palisade Railway, the ground level was 93.5, the depth of boring below the surface was 22 feet, and depth below the curb, if the street was run through, would have been 32 feet below the curb.

30

Q. What did you find there? A. The same thing.

Q. When you say 11th and 12th Streets are there streets cut through there? A. The streets are not cut through, I am assuming a line where the street would run if it was cut through.

Q. So that when this map says 11th Street and

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12th Street, those are simply imaginary streets?

A. Yes, sir.

Q. In other words, the plot is one continuation from 10th to 13th Street? A. Just one single plot without streets cut through at all.

10 The Court: Right there, can you by this map define any natural boundaries surrounding this property that you have taken, or is it simply a matter of survey?

Mr. Hirschberg: If your Honor means whether there are other lands forming the plot adjoining? All that the town seeks to condemn is between 10th and 13th Streets, if that is the court's idea.

20 The Court: What I wanted to get on the record is, first, if it can be shown, the property to be taken, and, secondly, the whole tract that you claim would be affected in the way of damage or otherwise by the taking of the land.

Mr. Besson: We are not asking for damages for the adjacent property.

30 The Court: Let it appear on the record then, that by consent it is stated there is no claim for damages to the surrounding property of these same parties, so that the issue is now limited to the question of the valuation of the land taken. That is by consent.

Q. Go ahead. A. On the south corner of 13th Street east of the Palisade Railway the depth of boring below surface was 15 feet and the depth of the same boring would be 25.3 below curb.

Q. What did you find? A. The same condition.

40 Q. What is that again? A. A sandy gravel at the bottom.

Q. (By the Court) At what point? A. At the south side of 13th Street east of the Palisade Railway.

Q. Go on. A. On the south side of 13th Street west of Broadway the depth of boring was 18 feet, or 25.2 feet below the level of the curb.

Q. What did you find there? A. The same condition. 10

Q. Go ahead. A. North of 12th Street and west of Broadway the depth of boring was 20 feet; the depth below the curb was 24.5 feet.

Q. And what did you find there? A. The same sandy gravel.

Q. Go ahead. A. Midway between 11th and 12th Streets, west of Broadway, depth of boring was 18 feet, which brought it to a depth below curb of 23.5 feet. 20

Q. And what was the condition there? A. The same sandy gravel.

Q. Go ahead. A. South of 11th Street and west of Broadway the depth of boring was 17 feet, depth below curb 25 feet and .9.

Q. Go on. A. On the north side of 10th Street west of Broadway the depth of boring was 23 feet, depth below curb 27.9 feet.

Q. And what was the condition there? A. The same condition. Now, going up at 12th Street, midway between Palisade Railway and Broadway, the north side of 12th Street, the depth of boring was 22.5 feet, and the depth below curb was 30.2 feet. 30

Q. What was the condition there? A. The same sandy gravel.

Q. Go ahead. A. That is all.

Q. Now you made these soundings together with Mr. Dunham? A. Yes, sir, at the same time.

Q. At the same time? A. Yes, at the same time. 40

Q. And Mr. Dunham and you agreed on those borings, on those figures? A. Yes.

Q. When you made these soundings, you and Mr. Dunham, who represents the other side as the engineer, agreed that those were the soundings necessary to determine the nature of the ground for the purpose of striking a substance? A. Yes, we did.

The Court: The character of sub-soil?

The Witness: Yes.

The Court: What was the character between this sandy gravel and the surface?

The Witness: For a depth of apparently three feet below the surface of the ground there was a boggy material with a considerable amount of vegetable matter, and below that, from that depth to the point where we struck that sandy gravel it was a blue clay, a very moist condition.

Q. In building or in using piles, if you would go down the distance you described in the various parts, what would be the resistance of those piles?

A. At that distance you would not have the proper lateral support; you would have to get through that sandy gravel for a distance of several feet before you could afford any lateral support. You would have clay on all sides and the pile would not have any substantial support at the bottom.

Q. So that in order to maintain a surface on these lots you would have to go beyond the depth you found this sandy gravel? A. Anywhere from three to five feet.

Q. You did not obtain any evidences of where the rock was located? A. There was no rock found on any part of the site from the borings.

The Court: That is, as far as you went down?

The Witness: Yes, sir, from the borings.

Q. Would you say there would be any question about the surface being properly maintained even if you did go three to five feet beyond the point where you struck sandy gravel? A. From the appearance of the borings, they showed the soil was firm, but of course there is a question as to whether that was simply a stratum of that kind of solid material. It was a question if you penetrated through that you would find the same conditions that existed above. From all appearances the material seemed to be of good, firm ground. 10

Q. But you are not certain as to that? In going still further down you might still have struck the same sandy gravel?

Mr. Besson: I object as being speculative. 20

The Court: I think you should confine yourself to probabilities. In other words, to what the conditions that he found probably indicate. I will sustain the objection.

Q. Why would it be necessary to go down three to five feet further? A. In order to accord a lateral support for the piles.

Q. And that is because of the nature of the ground that you found at the distance you went, is that right? A. Yes. 30

Q. You said before that even going down three to five feet you might still find the same ground, is that right?

Mr. Besson: I object.

A. As a possibility, yes, sir.

The Court: Wait a minute. That is speculative. 40

Mr. Hirschberg: I am asking whether he did not say that even going down three to five feet there may still have been the same ground.

The Court: It calls for a speculative answer.

10

Q. Then you are not sure what kind of stuff you would find three to five feet below the depth that you sounded? A. No, sir.

Cross Examination by Mr. Besson:

Q. Well, it might be rock down further, might it not? A. Possibility, yes.

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ELIHU STEVENS, called and sworn as a witness on behalf of the Condemnors, testified as follows:

Direct Examination by Mr. Hirschberg:

Q. Mr. Stevens, what is your business? A. Engineer and contractor.

Q. Whom are you connected with, Stillman, 30 Delehanty & Ferris & Company? A. I am.

Q. How long have you been connected with that firm? A. I have been connected with that firm about seven years.

Q. How long have you been an engineer and contractor? A. About 20 years.

Q. Are you acquainted with the plot of ground from 10th to 13th Streets? A. Yes, I have looked it over.

Q. And in the course of your profession, have 40 you superintended any part of the work? A. Yes, sir.

Q. What has been your experience in that direction in piling lots; how long had you done that kind of work? A. The last ten or twelve years.

Q. And in considering this particular plot, considering them as lots, what kind of piling would you say would be necessary, having regard to the fact that the engineer has determined the depth as he described it this morning on the witness stand? A. What kind of piling? 10

Q. Yes, what quantity and what quality of piling; just describe what would be necessary to pile each lot. A. I should use piles about 30 feet long, 30 to 35 feet, according to what I have heard, a yellow pine pile or oak, driven in accordance with the building code.

Q. And how many piles would be necessary for a lot 25 by 90—that is, for the purpose of constructing a building on the lot 25 by 90? 20

Mr. Besson: What kind of building?

Mr. Hirschberg: That is a two-family structure.

Mr. Besson: Objected to as too indefinite.

The Court: You see buildings are of various characters.

Mr. Hirschberg: I just say a two-family structure, a two-family brick house of the normal and usual construction; that is, the length— 30

Q. You say you have been a building contractor also; is that right? A. I did not say that, but I have been, I have done some of that work, yes.

Q. What part of a lot does a two family house usually occupy? A. I would like to ask you the width of your lot.

Q. 25 by 90. A. I should say it would occupy 40

the entire width of the lot if it was only a 25 foot lot.

Q. How about the depth? A. It would depend upon the design of the building.

Q. Well, a depth of 40 feet. A. And you want to know how many piles for a building 40 feet  
10 deep?

Q. Yes, 25 by 40, how many piles and what the cost of the piles would be on this particular plot.

The Court: Having in mind the reasonable construction adaptable to a two-family house.

A. Having in mind the building code, I should say 50 piles.

Q. What would be the cost of that? A. About  
20 twelve hundred dollars.

Q. What would be the cost of that work on a lot having a width of 20 feet—20 by 40? A. The difference would be very slight, because the only difference there would be the difference in the saving of a very few piles, and in that case the saving would only be on the material, the great expense would be to get there to do the work.

30 The Court: About how much?

The Witness: I should say \$100.

Q. Mr. Stevens, what would you say as to wood piling for a permanent foundation for such a structure, after the section was built up?

Mr. Besson: That is objected to.

The Court: Qualify him on this question of the building to be erected on the piles.

40 Mr. Hirschenberg: What is that, your Honor?

The Court: He says he has driven piles of every kind for a period of 12 years.

Q. In connection with the kind of work you have done, you have had regard to the nature of the structure that was to go on those piles, the form of foundation, isn't that correct? A. Yes, sir. 10

The Court: And in driving the piling of which you speak now, has it been necessary for you to take into consideration the weight and character of the superstructure that was going on the piles?

Q. Now, having regard, Mr. Stevens, for the structure you described here, and which you had in mind in giving your testimony, would the piling form a permanent foundation? A. Wooden piling? 20

Q. Yes. A. In that particular locality?

Q. Yes. A. I should say not.

Q. Why not, and what would be the consequences? A. Because I saw no evidence of a water level there that would keep the piles submerged in water all the while.

Q. And what would be the consequences to the structure itself? A. I think they would decay in time. 30

Mr. Besson: If your Honor please, as I understood the testimony of the engineer, it was very wet there, and I think the evidence may be based on that fact.

The Court: I understood this witness to say he was testifying from his own observation and not from what the engineer has testified.

Mr. Besson: If your Honor please, he simply made a superficial view of it. 40

Mr. Hirschberg: He did not say a superficial view.

Mr. Besson: Well, he saw the place but did not make any boring.

10 The Court: Of course, your objection comes too late, but in order that there may be no question about this, the witness can say whether he is testifying from what he heard from the engineer on the stand or from his own observation.

Q. You examined the site with the idea of testifying on the subject of piling, didn't you? A. Yes.

Q. What was the nature of your examination? A. I looked over the surface of the ground, went around the tract of land, considered it from all angles as a contractor who was coming in there to drive piles.

20 The Court: Now, when you spoke of there being no indication of a water level, to what did you refer in making that statement; the engineer testified to the effect that there was some evidence; was there any evidence that you saw there yourself?

30 The Witness: My reason was, I saw a great many deep holes in the lots, and I thought that at this particular time of the year if there was any water around there it ought to show in those holes at this time.

Cross Examination by Mr. Besson:

Q. At what rate per foot would your cost on piling be? A. I would not figure by the foot. Of course, you can deduce it to the price per foot, but I figured it by the pile.

40 Q. That is about 80 cents a foot? A. That is about \$25 a pile, and 50 piles would be about \$1200 I think.

Q. That is about 80 cents a foot? A. About that.

Q. Have you done any piling in that neighborhood? A. Not in that particular neighborhood; I have done piling further up than that, I have done piling up at Cliffside.

Q. You are not familiar, then, with the charges of the local men for driving piles? 10

Mr. Hirschberg: I object. I do not think it makes any difference what the charges of the local men are. The witness has given his experience here on the subject and qualified as an expert, and what somebody else would charge would not make any difference.

The Court: I will allow the question.

Mr. Hirschberg: I take an exception. 20

A. Yes, I think I am.

Q. Well, your charge includes moving your plant to that locality? A. It certainly does.

Q. From Jersey City? A. It certainly does.

The Court: From a point in or around Jersey City?

The Witness: Yes.

Q. From Jersey City, and moving it back again? A. Yes, sir. 30

Q. And for one lot? A. Yes.

Q. If you had other lots to do in that locality, would you charge the same price? A. It would depend on how much I had to do.

Q. At the same time you had your plant there? A. Yes.

Q. Would it be the same price?

Mr. Hirschberg: I object to the question.

Mr. Besson: This is cross-examination. 40

Mr. Hirschberg: Yes, but I think we ought to deal with these particular lots.

10 The Court: The trouble with that is that your own question specified one lot; now on cross examination they are entitled to bring out the difference that might develop in case there were any general developments.

Mr. Hirschberg: There are two lots, one being 20 feet and the other 25 feet. The witness was directed to answer with respect to the 20 feet and 25 feet, as to each lot.

The Court: It seems to me he is entitled to bring out the fact to the jury that in fixing his price he is limiting it to a lot, to a particular lot, and not to other lots.

20 Mr. Hirschberg: Only this, if it please the court, the reason of my objection is that it is probably misleading to the jury. It may be a charge for the entire job, but we don't know whether somebody is going to come along and buy the entire plot. I think it is more probable that this piece of property would be developed by the way of the sale of particular lots, and, sold that way, than it would be by somebody coming along and buying the whole property, and since a moment ago the court intimated that we ought to deal with probabilities instead of possibilities, that is the basis of my objection.

30 The Court: That is a possibility, not a probability. It seems to me so, and I will allow the question.

(Condemnors except.)

40 Q. (Question read as follows: Would it be the same price, that is, if you had other lots to do in that locality would you charge the same price provided you had your plant there?)

The Court: I will have to sustain the objection to that question "other lots in the same locality." You will have to confine it to lots on the same property of the same character, the same character of soil. I will sustain the objection to that question.

Q. Would you charge the same price for piling a lot on this same tract provided you had your plant there?

10

Mr. Hirschberg: I object to the question on the ground that it does not contain a statement of how many lots would be necessary to be piled under Mr. Besson's hypothetical question.

Q. More than one?

20

Mr. Hirschberg: I object to that.

The Court: I think the objection is well founded in this respect, it seems to me the way to put it would be—assuming you had other lots of the same dimensions upon the same property having the same character of sub-soil which you have spoken about before, would the cost be the same for the one lot or more? You will have to frame the question.

30

Q. Assuming that you had your plant upon this tract, would you make the same charge for the piling of more than one lot of the same general character and dimensions as you would for one?

A. Yes, I would charge the same price for another lot, the second lot, provided the second lot was not adjacent to the one I was working on.

Q. In making up your price, how much do you

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allow for moving the plant from Jersey City to the property and back? A. About \$200.

Q. Then if your plant was on the ground you could pile another lot for \$1,000? A. No, not necessarily.

10 Mr. Hirschberg: We object to that. That is not the testimony. He says it would cost \$1,500, and he would not charge any less for another lot, and it would cost \$200 to take the machinery up and back.

The Court: I will allow the question.  
(Condemnor excepts.)

20 JAMES ORLANDO, sworn for Condemnors:

Direct Examination by Mr. Hirschberg:

Q. Where do you live? A. 522 Bergenline Avenue, West New York.

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

Q. How long have you been in the real estate business? A. Seven years.

Q. In West New York? A. Yes.

30 Q. Have you bought and sold lots in the vicinity of this plot? A. Yes, sir.

Q. Either personally or as agent? A. Yes.

Q. Are you acquainted with the value of lots as of October, 1923, in the Town of West New York, in the vicinity of this plot? A. Yes.

Q. What was the value of a lot 25 x 90, or 20 x 90, in the month of October, 1923, which did not require any rock removal and which was improved as to street improvement?

40 Mr. Besson: I object because there are no 20 x 90 plots.

*James Orlando—Cross Examination.*

Mr. Hirschberg: 20 x 100 or 25 x 90.

Mr. Besson: I would like to have an opportunity to cross examine.

The Court: You may.

A. \$2,500.

The Court: Strike that out. The jury will pay no attention to it.

10

Cross Examination by Mr. Besson:

Q. Are you familiar with the development in this neighborhood? A. Yes.

Q. Do you know the value of lots in that neighborhood on Hudson Avenue? A. Yes.

Q. Has there been any recent sales of lots in that neighborhood that you are familiar with? A. Not exactly in that neighborhood.

20

Q. Well, Hudson Avenue adjoins this property, does it not? A. Hudson Avenue is a long avenue.

Q. Between 10th and 13th? A. No.

Q. Do you know the sale of the northeast corner of Hudson Avenue and 9th Street? A. No, sir.

Q. Do you know the sale of the northeast corner of Hudson Avenue and 6th Street? A. No, sir.

Q. Do you know of any sales on Palisade Avenue between 9th and 10th Streets within the past year? A. Within the past year to my knowledge there has no property been sold there—buildings erected on there.

30

Mr. Besson: I object to this man's qualifications to show values in this neighborhood.

Re-direct Examination by Mr. Hirschberg:

Q. What property—

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The Court: Do you know of sales, are you familiar with sales within that radius.

Q. With what sales have you been connected or have you been interested, or do you know of, in the vicinity of this land within the past year? A. Park Avenue near 12th Street.

The Court: How far is that from this plot?

The Witness: One block.

Q. And what was the price of that particular lot? A. 36 feet for \$4,000.

Q. 36 by what? A. 36 x 95 feet.

Q. What kind of a lot was it, was it an improved lot? A. No rock.

Q. It did not require removal of rock? A. It did not require removal of rock.

Q. Was it improved as far as street is concerned? A. Yes.

Q. All assessments paid? A. Yes.

Q. What other sales are you familiar with? A. 15th Street between Buchanan and Broadway.

Q. How far is that from this location? A. Two blocks.

Q. And what was the price of that lot? A. \$2,500.

Q. And what kind of a lot was it? A. Required no excavation.

Q. And were all assessments paid? A. Yes.

Q. What other sales of lots are you acquainted with? A. 15th Street between the trolley tracks and Buchanan Place.

Q. How far is that from this plot? A. Two blocks.

Q. What was the sale price of that lot? A. \$2,500.

Q. What kind of a lot was it? A. Required no rock excavation.

Q. Was the street improved? A. Yes.

Q. All assessments paid? A. Yes.

Q. What other sales are you familiar with in this territory? A. That I am familiar with or had knowledge of? 10

Q. Yes; on either side running down to Bergenline Avenue, in the neighborhood, that you know of, either that you directly participated in as agent or purchaser or else that you know of? A. I know of sales on Park Avenue between 9th and 10th Streets.

Q. How far is that from this location? A. One block.

Q. How much was that sale? A. If I can recollect a little less than \$2,500 a lot. 20

Q. What kind of a lot was it? A. Required no rock excavation.

Q. Were all assessments paid? A. Yes.

Q. Streets put in? A. Yes.

Mr. Hirschberg: I think I have qualified the witness, and I ask that his testimony be received.

Re-cross Examination by Mr. Besson: 30

Q. To whom were these Park Avenue lots sold? A. The 15th Street, between Broadway and 10th? My knowledge of that lot is that it of Dohrbeck.

Q. You bought those yourself? A. Yes.

Q. And the Park Avenue lots between 9th and 10th? A. My knowledge of that lot is that it was bought by a friend of mine, and I appraised it for this friend of mine. I believe it was bought from the Dieckmann Estate. That is between 9th and 10th Streets. It was bought by a man of the name of Rinaldi; he is connected with the firm. 40

The Court: Proceed. I consider him qualified.

Re-direct Examination by Mr. Hirschberg:

10 Q. You are acquainted with the particular tract in question? A. Yes.

The Court: Do you know how many lots there are in it?

The Witness: To my knowledge there are 72 lots.

Q. What would you say is the value of the lots 25 x 90? A. On what street?

20 Q. Let us take the lots from 10th to 11th Streets on Broadway, lots 9, 10, 11, 12, 13, 14 15 and 16—these lots here (indicating on map) being 25 x 90.

A. The valuation at the present time, or with improvement?

Q. As of October, 1923? A. As to improvements, or as they are today?

Q. As they stand? A. As they are—

The Court: As they were in October, 1923.

A. From 10th to 11th on Broadway?

Q. Yes. A. \$1,000 a lot.

30 Q. Why do you say \$1,000 a lot? A. Well, I figure that an improved lot with sewer, improvements and ready for construction, would be worth \$2,500; and to my estimation with these improvements off, the lot is worth about \$1,000.

Q. If it would cost \$1,500 to pile such a lot would you take that off the price of \$2,500? A. Yes.

Q. That would leave \$1,000? A. Yes.

Q. Now, what is the usual assessment per lot?

40 Mr. Besson: I object to that; I do not think he is qualified.

The Court: He is a real estate agent. If you know.

A. From the assessment records we have in our office, the assessment bills, the recent assessments, we have from \$700 to \$800.

Q. That would be \$700 less; that would be \$2,200? A. Yes. 10

The Court: How do you figure that? Well, never mind. Proceed.

Q. Would you apply the same reasons to lots 17, 18, 19, 20 and 24, running along 10th Street?

A. No; I would put them \$1,500 more, \$1,500 per lot on 10th Street being the street is improved.

Q. That is an improved street? A. Yes. Being it is improved, I would make that lot \$1,500 apiece.

Q. Do you come to your conclusion of \$1,500 because you value the normal lot at \$2,500? A. Yes. 20

Q. If it would cost \$1,500 to pile the lot, what would you say the value of those lots is?

Mr. Besson: I object as argumentative.

The Court: You may ask him the basis on which he forms his opinion. I will allow it.

Q. That would make it \$1,500 less? A. Yes.

Q. If it would cost \$1,500 to pile? A. Yes.

Q. The lots facing on 11th Street, lots 1, 2, 3, 4, and so forth. What would you say the value of those lots was? A. \$1,000. 30

Q. You know this street is not improved? A. That is why I am giving \$1,000.

Q. Didn't you allow something before for lack of improvement because of prospective assessment; you allowed \$500 or \$700, as you said? A. Yes.

Q. Well, \$700 for the assessment and \$1,500 to pile that would bring the price down from \$2,500, wouldn't it? A. Yes. 40

Q. So the difference would be the value of the lot? A. Yes.

Q. And the same applies in your opinion in the block from 11th to 12th, and from 12th to 13th? A. Yes.

10 Re-cross Examination by Mr. Besson:

Q. That would leave the value of the lot \$300, wouldn't it? A. I don't exactly know the value of—I estimated \$1,000 as to the piling, and about \$700 to \$800 for the assessment of it—that is, the bills we received of this assessment. Now, I am not an expert on piling, and just take an estimated value. The average lot is worth \$2,500.

20 The Court: With street improvements?  
The Witness: All improvements.

Mr. Hirschberg: And no excavation required?

The Witness: And no excavation required.

The Court: And that is a lot of what size?

The Witness: 25 x 90.

A Juror: May I ask a question of the court? When they say "no excavation required", what does that mean, just for an ordinary foundation?

30 Mr. Hirschberg: Yes, it does not require rock removal either above or below. The foundation is set.

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FRANK J. OLERI, recalled:

Direct Examination by Mr. Hirschberg:

40 Q. You are the town engineer, as you have testified? A. Yes.

Q. What would the assessment per lot amount to on 11th and 12th Streets if those streets were cut through—about?

Mr. Besson: I object as purely speculative.

Mr. Hirschberg: As a result of his experience as engineer. 10

The Court: It has not been shown he has had any experience with assessments.

Q. As engineer of the Town of West New York, what have you to do with the placing of assessments? A. I make out the assessment maps—prepare them for the assessment Commissioners.

Mr. Besson: You have actually prepared those? 20

The Witness: Yes.

The Court: How many have you prepared?

The Witness: At least a dozen.

The Court: And within what period?

The Witness: Within the last three years.

Q. What would these assessments probably amount to? A. Anywhere between \$700 and \$1,000.

Q. On these particular streets, if they were cut through? A. Yes. 30

The Court: That is based upon a lot of what dimensions?

The Witness: 25 x 100.

The Court: It would be what?

The Witness: Between \$700 and \$1,000.

Cross Examination by Mr. Besson:

Q. Is this estimate on streets or avenues? A. 40  
On streets.

Q. 40 foot streets? A. 50 foot streets, with 10 foot sidewalks; 30 feet between curbs.

Q. Will you analyze those assessments? What elements would they be made up of? How much per sidewalk? A. I am basing that figure of \$700 to \$1,000 on the figures previously made on assessments for 9th and 10th Streets, where the original assessment was \$716; and that was pre-war, 1916, and I am assuming the prices now have not changed materially as far as going down is concerned since 1916.

Q. Were not those assessments reduced? A. Yes. I am talking about actual assessment—actual cost.

Mr. Besson: I object to this evidence as being not an evidence of value by reason of the fact if these lots are worth \$1,000 apiece, to pay a thousand dollar assessment would be practical confiscation.

Mr. Hirschberg: He did not say it would be \$1,000; he said from \$700 to \$1,000. We cannot tell exactly what an assessment will amount to unless it is actually completed. For the purpose of this case, in order to determine about what the assessment will be, in order to arrive at a price of these particular lots, I think the best testimony we can get on the subject is the testimony that has been given by this witness.

The Court: As a comparison.

Mr. Hirschberg: Yes; and it is up to the jury to decide whether it is more or less. It is impossible for us at this time to give exact figures, because the improvement has not been made, but we bring an expert on the subject who gives a statement of what has happened in the past, and his opinion of what may happen in the future.

By the Court:

Q. What streets within this vicinity are improved in the manner in which you have stated this other improvement is? A. 10th Street and 9th Street.

Q. Does that bound this property? A. 10th Street is the south boundary of this property to be taken. 10

Q. What is the other nearest street? A. 13th Street has been improved, but the assessment has not yet been issued.

Q. But it has been improved? A. Yes.

By Mr. Besson:

Q. All of that charge would not go on the abutting lot? A. No, sir. 20

Q. Part of it would be assumed by the town, would it not? A. Yes.

Q. What part?

Mr. Hirschberg: How much of it?

The Court: If you know.

A. About 20 to 30 per cent.

Q. Would be assessed against the lot? A. Against the town at large. It would be about 70 to 80 per cent. that would be assessed against the lot. 30

Q. That, then, would be about \$500? A. That is what the assessment would probably amount to.

By Mr. Hirschberg:

Q. If you said from \$700 to \$1,000— A. I am assuming the minimum figure of \$700.

Q. I will withdraw the question. It would not be less than \$500. A. I am assuming the minimum figure of \$700. It would not be less than \$500. 40

*Joseph Stilz—Direct Examination.*

The Court: So when you gave this figure of \$700 you included the entire cost?

The Witness: Yes.

The Court: Everything?

The Witness: Yes.

10

JOSEPH STILZ, sworn for the Condemnors:

Direct Examination by Mr. Hirschberg:

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

Q. How long have you been in the real estate business? A. 17 years.

Q. In the town of West New York? A. Yes.

20

Mr. Hirschberg: Do you question the Mayor's qualifications?

Q. Have you bought and sold lots in your experience in West New York? A. During all those years.

Q. And have you been interested in the sale of lots east of Bergenline Avenue, running through this particular section? A. All through the town.

30 Q. Including this particular section? A. Yes. I want to correct that, I never bought any in this particular section.

Q. But you are familiar with sales that have gone on? A. Yes.

Q. And have been interested either as purchaser or agent in sales in that section? A. Yes.

Mr. Hirschberg: Do you wish to examine as to his qualifications?

Mr. Demarest: I can reserve that.

40

Mr. Hirschberg: Then you admit he is qualified?

By Mr. Demarest:

Q. Have you been in the real estate business as agent for 17 years in that section? A. About 17, yes.

Q. You have lived in this town during all that period? A. For about 40 years. 10

Q. And you have been the Mayor of that town quite recently, haven't you? A. Well, two or three years ago my term ended.

Q. About the time the suggestion was made that this property be taken for recreation purposes; is that right? A. I don't understand the question.

Q. You were mayor at the time it was suggested that this property be taken for that purpose? A. Part of the time.

Q. And you have been leader of the opposition to the purchase and acquiring of these lots, have you not? A. No, I have not. 20

Q. Have you been favorable to the taking over of these lots? A. I have, at all times.

Q. What sales in connection with these lands have you negotiated? A. I have not negotiated any in that particular vicinity, but I know of some.

Q. Where is the property located nearest to the lands in question, as to which you made sales and have actual personal knowledge? A. I have personal knowledge of the Record and Guide. 30

Q. I mean with knowledge of the transaction itself and not from hearsay.

Mr. Hirschberg: I object to the question, when Mr. Demarest says "not from hearsay." I think the witness has a right to testify to what he knows about a particular sale. 40

Mr. Demarest: I think I have a right to inquire both as to the actual sales he has made and on which he has actual knowledge, and as to those which are hearsay.

The Court: I think you have a right to test his qualifications.

10 Mr. Hirschberg: I object to the question as too general; there are particular ways of having knowledge of a transaction.

The Court: The trouble is this is not cross-examination it is testing his qualifications to testify as an expert.

Mr. Hirschberg: Even so, your Honor, I say it is not a fair question to be asked in that respect.

The Court: I will allow it.

20 Mr. Hirschberg: I take an exception.

30 A. I have never been the agent for any of the Dieckmann property, and for that reason I have not been able to negotiate sales in his particular tract, but I have sold for other people in other parts of the town, and I have purchased for myself as well as for others, sold to others, and have appraised for the bank many years, property in that vicinity, including part of the Dieckmann properties. Further than that, I have a record here of sales—

Q. Do not go into that yet. I want to know how near this property you have made sales of land, either by purchase and sale of your own, on your account, or as agent for another. A. I told you none right there.

Q. Well, how far away? A. Within a few blocks, 14th Street and Palisade Avenue.

40 Q. How many blocks is that? A. From 13th to 14th is one block, north, and then three blocks west, it is four blocks.

Q. Were those sales made for residences or business purposes? A. Why, that particular sale was first made—

Mr. Hirschberg: I object to the question because we are not dealing with property for business or residence purposes, but with lots. 10

The Court: He is your witness and his qualification as an expert is being tested.

Mr. Hirschberg: I object to the form of the question, your Honor. Mr. Demarest is now undertaking to test the witness's ability to testify as an expert in this proceeding. I say the question whether business or residence property was sold has no bearing on this issue.

The Court: Proceed. 20

A. (Continued) I sold other property held for future rise and sale, and on that particular lot a church has now been erected.

By the Court:

Q. How far was that away? A. That is between three and four lots away.

Q. That was a vacant lot? A. Yes.

Q. What size? A. 90 by 100. 30

Q. Sold when? A. About a year or 15 or 16 months ago.

By Mr. Demarest:

Q. Are those instances you have described, all the actual experience you have had? A. Oh, no.

Q. What other actual experience have you had which you think fits you to qualify as a witness in this case? A. I have sold several hundred lots in West New York, in different locations. 40

Q. In the neighborhood of this particular property? A. Four blocks to the north—that is, a few blocks to the north.

Q. Different character of lands? A. Yes.

Q. Improved streets? A. Some improved and others unimproved.

10 Q. Have you had any experience in dealing with land in West New York in the improved portions? A. Yes.

Q. And have you developed any? A. I have developed some, cut streets through.

Q. And on land similar to this? A. Some similar, some better.

Q. And land as high as this? A. Some high ground, some low.

20 By the Court:

Q. Within what period? A. In the last ten years.

Q. How far from this property? A. Some on 18th Street, about six blocks west.

By Mr. Demarest:

30 Q. That is an entirely different character of land to this, isn't it? A. Yes and no; it is low land.

Q. Your experience has been mainly confined to sections where the development has taken place and not to lots of this character, where the development has gone up to it? A. Both.

Q. What price did you get for the lots you have mentioned? A. On Palisade Avenue?

Q. Yes. A. I don't think it is fair to consider it.

40 Q. I would like the answer; what price did you get for the lots that you mentioned? A. On Palisade Avenue?

Q. Yes. A. I don't think it is fair to consider.

Q. I would like to know the answer. A. Palisade Avenue is built up and this property is all vacant.

Q. Listen to the question and give me the answer. A. I know, but it makes a difference whether you are going to ask for the price of lots on streets where there are very few vacant lots, or on a street where they are all vacant lots, that is not a comparison at all, and that is not fair. 10

Q. Answer the question. A. The price was \$10,000 for the four lots including the corner.

Q. How long ago? A. About a year and a half ago; something like that.

Q. What experience have you had in regard to the various properties that you yourself have not sold, what means of learning those values have you had? What people told you? A. No. Prices that I put on property, what I paid for it, and what I have sold it at for myself and for others. 20

Q. I am not talking about cases of actual experience. I am talking about cases such as you referred to a few moments ago when you said you had some sort of knowledge or report. I want to know what you have had to base your experience on and your ideas of values on, lots that you yourself did not sell. A. What experience I have had? Better read that question again, please. 30

Q. Well, it is rather involved.

The Court: You say you sold property of your own and for others as agent?

The Witness: Yes, sir.

The Court: You say you also know of other property and prices it brought where you did not sell or where you did not own it? 40

The Witness: That is true.

The Court: How do you know that?

10 The Witness: Oh, that property? Why, through the newspapers, the recording of it, the Record and Guide, the record of the deed, where estates for instance, would sell the property and they would put the consideration in the deed. Also real estate men would speak to one another and tell each other what different pieces of property were bringing, general experience among agents who deal in property.

20 Q. That depends entirely upon hearsay? A. No, that is record. If a piece of property is sold and it is recorded here and the consideration given, and it is advertised in the press and in the Record and Guide, and a copy of it sent to the Town Assessor of the town to make the transfer, and the consideration given, why I don't see where that is hearsay. That is a record right here in the court house.

Q. In at least 75 per cent of the sales of real estate made today the consideration expressed in the deed is one dollar, is it not? A. Practically, yes.

30 Q. In fact, in almost 90 per cent of the sales the consideration expressed in the deed is one dollar, is it not? A. It may run to that percentage.

Q. Is it not the fact that very seldom deeds contain the true consideration, very seldom is the real true consideration of the conveyance expressed in the deed itself? A. I have mentioned that, as a rule you find it only by estates.

40 Q. Please answer the question. A. I say estates is practically the only ones you find the true consideration given, otherwise it is one dollar, yes.

Q. That is taken from the stamps that appear upon the deed, is it not? A. What?

Q. The selling price. A. No, not the consideration where it is mentioned by estates.

Q. Did you form any opinion at all upon these one dollar considerations? A. No, I did not.

Q. You are confining your testimony to the cases where the consideration is expressed in the deed? 10  
A. Either that, or from knowledge that I have. I am not taking it from the one dollar consideration, although it could be checked up fairly well from that.

Q. The hearsay or gossip from the real estate agent who makes a sale is finally placed in the Record and Guide, is it not? A. No, sir.

Q. Where does it come? A. They make a copy from the records in the court-house. 20

Q. Does the Record and Guide report only those cases where the true consideration is expressed in the deed? A. No, they report all of them; they report one dollar consideration just as well as the other.

Q. The \$1 consideration cannot be checked? A. Well, it can. I have not.

Q. How would you check it? A. I say, I have not. You can by the stamps, but it would not be accurate, it would be near it. 30

Q. If there were a mortgage upon the property the stamps would be for one amount and if it were not sold subject to a mortgage but for the real value and all cash was paid, the stamps would be another amount, wouldn't they? A. Yes, but that does not hold good so much as a rule in vacant land as it does where there are buildings erected. There is a distinction there, because the land value is not high enough to show the comparison of a piece of land sold subject to a mortgage. 40

Mr. Demarest: All right, go ahead.

By Mr. Hirschberg:

Q. The Dieckmann people to your knowledge own quite a lot of land in this section, or did own it; isn't that so? A. Yes, sir, large tracts.

10 Q. And besides this tract between 10th and 13th Streets, what land did they own last year, to your knowledge? A. They owned to the south of it and to the east of it, including parts between Park Avenue and Boulevard East.

Q. In your experience in a hundred per cent of the sales of property by estates the exact amount of the consideration is placed in the deed; isn't that right? A. It has to be, yes, sir.

20 Q. What in your opinion is a lot 25 x 90 and 20 x 100 worth in that vicinity which does not require any rock removal and in front of which lots, streets have been put in and assessments have been paid? A. You have got two different lots there, one 25 x 90 and the other 20 x 100.

Q. Answer as to the one 25 x 90. A. 25 x 90, those lots are on Broadway.

Q. Yes. A. If the soil is good, there is no money required for preparing the particular lot for building operations; by that, I mean no rock to be taken out and very little outlay—

30 The Court: Or no filling to be put in?

The Witness: Or no filling to be put in, the land is like other property in the vicinity where no expense would be required for preparing to build, to prepare the lot for building purposes, the lot would be worth from \$2,000 to \$2,500 with the improvements in and the assessment paid.

40 Q. Do you know of any sales of lots by the Dieckmann people in this territory? A. Yes, very close to it upon a better street.

Q. Where? You are using a paper now to refresh your recollection? A. Yes.

Mr. Demarest: What is he using?

Mr. Hirschberg: Figures of sales, the location, and also the amount of the sale.

Mr. Demarest: I consent that he use that if it is understood that witnesses on both sides may do the same. If that is understood I will not object. 10

Mr. Hirschberg: Yes. If you have the papers there, when your witnesses come I won't object.

A. I find the Dieckmann Estate sold to Manetti a lot on the east side of Broadway, that is on the same street, only it is a hundred feet north of Sixteenth Street. 20

Q. Speak so the jury can hear you. A. On the east side of Broadway about 150 feet north of Sixteenth Street, this sale was made, October, 1921, this street has all improvements and the assessments had been paid at that time, for \$1,200. On November 5th this record is, it may vary a few days, this is the record we have.

Mr. Demarest: 1921?

The Witness: Yes, 1921, the estate of Dieckmann sold to Mr. Conradi two lots, all improvements were there and the assessments had been confirmed some years before, on the south side of Tenth Street, about 300 feet east of Hudson Avenue, which is opposite to this very land in question, for \$1,200 a lot, for \$2,400. 30

Q. You mean right here on 10th Street? A. Right opposite, yes. 40

Q. Right opposite this land? A. Yes, right opposite the land the town would like to have as a playground.

10 Q. How much was that sold for? A. \$1,200, \$2,400 for the two lots, and the improvements had been there a long time before. In January, 1923, the Dieckmann Estate sold to Max J. Conradi lot 54, this lot is 20 feet by a hundred, 225 feet east of Hudson Avenue, adjoins the two that I just spoke about, was sold a little over two years ago for \$1,200, they were 25 foot lots, this is a 20 foot lot, this was sold for a thousand dollars. That is about a year ago, but at the rate of \$50 a foot with the improvements and assessments paid. Now, on February 3rd, Mr. Dieckmann sold, the Dieckmann Estate, sold to Roush, lot 97, Map A, on Hudson Boulevard East, 100 feet south of Tenth Street, that is an 80 foot street, I believe, Hudson Boulevard East, all improvements along there, \$2,500.

20

Mr. Demarest: What size was that lot?

The Witness: The size of that is not given here. I could not tell you exactly what it is. In July, 1923, Dieckmann sold to Batali, 33½ foot x 95 foot, which is the northwest corner of Park Avenue and 14th Street, for \$3,000.

30

Q. This particular property at Park Avenue and 4th Street, is that a fully developed section?

A. Yes, that is a good section and a good location, corner of Park Avenue. Park Avenue is a through street, with all improvements, and quite a number of apartment houses have been erected there. Park Avenue is a mighty fine street but there is still a lot of vacant lots left. In July, 1922, Dieckmann again sold to Annie Kunz on the east side of Park Avenue north of Tenth Street, 135 feet north of Tenth Street, one lot for \$1,900.

40

Mr. Demarest: How large is that lot?

The Witness: I have not got the dimensions of that lot; to my mind, though, that lot must have been a little smaller, because it sold for \$1,900. Lots there that are full size have been selling for \$2,400 and \$2,500 in that section. Again in July, 1922, to Subello, lots 19 and 20, they are on the east side of Park Avenue and a hundred feet south of Tenth Street, \$4,000. Those lots were a little short, on the east side of Park Avenue. 10

Mr. Demarest: How many lots?

The Witness: Two lots, lots 19 and 20. There is a record of \$2,000. August, 1922, the Dieckmann people sold to Guiseppi Nite, lot 19, block B, county block 2610, Park Avenue, between Ninth and Tenth on the west side of First Avenue, between 9th and 10th, 75 feet south of 10th Street, \$2,000. In all of these that I have mentioned the streets are improved and assessments paid. In August, 1923, Dieckmann sold to Subello on the west side of First Avenue to Boulevard East, this is 26 x 150, 100 feet north of 13th Street, that faces Hudson Boulevard on one side and faces Park Avenue on the other, and runs through from street to street, \$4,500. July, 1923, Dieckmann sold to John Batali, 100 x 120, the north side of 12th Street, west of Park Avenue, for \$13,750. 20 30

Mr. Demarest: How many lots?

The Witness: That would practically be five, 100 x 120. In June, 1922, they sold to Glaskert, J. G., west side of Boulevard, 175 feet north of 13th Street, 25 x 130, \$4,300, again on two streets. July 7th, 1923, they sold to Mr. Rayfield Rinaldi lots 18, 67, 68, 69, 25 feet north of Ninth Street on the west 40

10 side of Park Avenue, for \$9,000, which includes a corner. The corner lot is 25 x 83; then two lots, one 25 x 105, and the other one 25 x 101, and another one 25 x 99, four lots, including a corner, for \$9,000, on Park Avenue. That is all that have so far as the Dieckmann property is concerned. But I have some of the Niles property which are in that vicinity, which is also an estate, and land that can be compared, where the streets are improved, and that are only a few blocks away from this particular plot.

20 Q. In your opinion are those prices that you have just given to us fair prices for those parcels? A. In fact, to be frank about it, I would say Mr. Dieckmann sold some of this property cheap in my mind, because Park Avenue from the Boulevard east is all improved, good land, and worth a great deal more than any of this particular land in question, if it was as good a bottom and had the same improvements. Park Avenue runs through, it is a good street, there are a number of apartment houses, the surroundings are very good, the view is good. You have everything there that goes to make value.

30 Q. What particular plots there do you claim were sold cheap? A. Well, on the west side of Park Avenue, for instance, that land is low, with a good bottom. You sell those lots for \$2,000 or \$2,500 because you need not excavate, just put up your building on the street—

Q. What particular parcel of those that you just read off do you claim sold cheap? A. One that would be classed as cheap is the first one that I read off.

40 Q. What was that? A. \$1,200 for the lot on Broadway near Sixteenth Street. Sixteenth Street

is the best cross street we have in West New York.

Q. What would be the fair value for that lot?

A. Today?

Q. In October, 1923. A. \$2,000, \$2,200.

Q. I show you this photograph and ask you whether this shows the location of the Conradi houses? A. Yes, sir, to this plot.

10

Mr. Demarest: What is that?

Mr. Hirschberg: To show the location of the lots on 10th Street sold by the Dieckmann people which is opposite the 10th Street beginning of this plot.

Q. Will you point out on that photograph showing the lots sold by the Dieckmann people on 10th Street, and if there are any houses built on this lot just point out with this pencil. (The witness marks on the photograph with an X.) A. These are the houses right here.

20

The Court: You have indicated on this photograph houses erected on this plot opposite the property in question?

The Witness: Yes, these houses are right opposite the property that we are now considering.

30

Q. What were those lots sold for by the Dieckmann people? A. \$1,200, 25 foot lot, and \$1,000, 20 foot lot.

The Court: When?

The Witness: 25 foot lots a little over two years ago and 20 foot lot was last year.

The Court: Has there been any fluctuation in the value of that property in that immediate vicinity?

40

10 The Witness: No, the only reason for fluctuation would be the erection of buildings which would bring about a scarcity of land and thereby an increase in value. There have been no buildings erected there outside of Conradi's in some time, so that the property is the same now as it has been.

Q. Are there any other sales that you know of?

A. Yes, many of them, some that I made and others that I know of.

Q. Let us have them.

20 The Court: Right here let it be understood that in referring to memoranda it is done by consent, with the understanding that all other witnesses, experts as to real estate, may refer to memoranda in the same way.

Mr. Demarest: That was the understanding.

The Court: That is what you agreed to.

Mr. Hirschberg: For the purpose of refreshing their recollection.

The Court: For the purpose of refreshing their recollection and made by themselves.

30 Q. What other sales have you got? A. I sold the southwest corner of Hudson Boulevard East and 23rd Street last December to Michael Bolfi, five lots, with all improvements, for \$13,000.

I happened to buy last December from Mr. Singer, who was the auctioneer at the time, five plots of the best residence—

40 Mr. Demarest: We object to that. That is an auction sale and does not come within the rule.

The Court: Was that an auction sale?

The Witness: Yes, Mr. Singer was the auctioneer.

The Court: You better exclude the auction sale and only give those where it was a seller who did not have to sell and a purchaser who did not have to buy.

10

The Witness: Mr. Merkel bought a lot on the west side of Hudson Avenue between 17th and 18th Streets from Mr. Winkler last year for \$1,500, all improvements, all assessments paid. Mr. Edelman sold quite a number of lots, I think about 12 or 15 of them, on the east side of Highland Place, between Eastern Boulevard and 18th Street, in the best living section of West New York, lots 25 x 100, with all improvements, and a private street, with the privilege of garages for the people who built there with a 15 foot strip in the back of those lots for \$2100 each.

20

Q. Is that all? A. Do you want some of these that I referred to on the Niles Estate, the 17th Street lots?

Q. Let us have a few of the Niles Estate sales and their amounts.

The Court: How far are they from this particular property in question?

30

The Witness: From 13th to 17th Street, four short blocks.

The east side of Park Avenue about 200 feet north of Sixteenth Street there is 75 x 109, Estate of Niles, to Scharlam, three lots a little over, all improvements, \$10,000. Niles to Bernard Dunn, lots 5, 6, 7, 8, 9, five lots on Hudson Boulevard East, on the west side of Hudson Boulevard East and 16th Street, that is the corner included, \$13,000.

40

Q. How far is that from this section? A. 16th to 13th, three blocks, and then it is  $11\frac{1}{2}$  blocks, about  $4\frac{1}{2}$  blocks.

Q. Is that improved land? A. Yes, 16th Street, as I said before, is the best cross street in the town, it is a wide street with a fine type of buildings.

10

Mr. Demarest: How many lots in that \$13,000?

The Witness: Five lots.

Niles to Megivon, this is on 17th Street between Buchanan Place and Park Avenue, there was two lots, 3 and 4, \$3100, all improvements, Niles to Julia Lear, Hudson Boulevard East, north of 16th Street, 25 x 100, \$2,000. Another one on Hudson Boulevard I think at 16th Street, the same amount, \$2,000. There are a number of other people, other than Niles, and I could go on and mention a very long number of them.

20

Mr. Hirschberg: That is enough.

Cross Examination by Mr. Demarest:

Q. Just retain those memoranda you have there, I will ask you about the last sales first. You have given there five or six sales made by the Niles Estate. How far were the lands of the Niles Estate distant from the lands in this suit? A. About four or five blocks.

30

Q. In a built-up portion? A. Yes, except the Boulevard east, at the time some of these sales were made it was not built up, just beginning.

Q. Residential or business section? A. Why, residential.

Q. Isn't it a fact, Mayor, that the entire tract comprising the Niles Estate is rocky? A. No, it is not.

40

Q. The greater part of it is rocky, is it not? A. No, I would not say the greater part of it.

Q. Now, are not the lots on the east side of Park Avenue, which you say were sold for \$10,000, very rocky—in fact, is not the rock five or six feet above the sidewalk? A. East side of Park Avenue?

Q. Yes. A. No, sir. 10

Q. You gave a plot 75 x 109 that sold for \$10,000, I did not take the person's name? A. \$10,000, yes, 75 x 109, east side of Park Avenue, north of 16th Street. Oh, no, that wasn't high there.

Q. Is not that land all rock? A. There may be some rock there, but it was not high.

Q. Now, take the Dunn sale, is that the name you gave? A. Dunn?

Q. Five lots for \$13,000, which is also part of the Niles Estate, is it not? A. Yes. 20

Q. Is not that extremely rocky? A. Part; it was part excavated and part rock.

Q. And is not the street distance a considerable distance between the top surface of the rock? A. Yes.

Q. And those lots would require rock excavation in order to build buildings there? A. Yes.

Q. Do you know what it has cost to excavate the rock on some of those lots on the Niles Estate; have you heard it cost \$3,000? A. How many lots? 30

Q. For one lot? A. Where?

Q. Some of the rocky lots of the Niles Estate that have been sold, have you heard it cost \$3,000 for excavation? A. No.

Q. Now, the two lots sold to Megapo, I think you said, on 17th Street and Park Avenue, those are lots that required excavation or require excavation? A. No; you don't know the soil, it is similar to the soil of this particular property right there.

Q. How are you comparing for the purpose of 40

fixing values on this property the lots belonging to the Niles Estate, on which rock excavation is required, how are you comparing that with the property here? A. I was not—

10           Mr. Hirshberg: I object to the question on the ground I think one of my first questions related to the character of lots to be testified to by the witness, where the lots did not require any excavation either above or below.

The Court: Didn't he testify concerning the value of these particular lots as to which you are now asking him the question?

20           Mr. Demarest: Our testimony only deals with those lots which do not require excavation either above or below.

The Court: I think you can ask him with regard to those lots, whether it is rocky or muddy.

A. 17th Street—

The Court: Just a minute.

30           Q. The lots which were sold to Dunn, have you any idea what it would cost to make the rock excavation there necessary to build upon those lots?

40           A. I have not figured that up, because it is a large apartment house and he has excavated and built on the entire plot, and a part of that plot required very little excavation, and as the Boulevard in that section is lower than Park Avenue and 16th Street runs at a grade and the land runs at somewhat similar grade, it forced him in order to bring the rear down to the level of the bottom of the cellar on the Boulevard front, to excavate considerably in the rear on that particular lot.

Q. You recognize the fact that rock excavation is a great deal more expensive than piling, don't you? A. That all depends on the kind of piling and how much of it must be done.

Q. Do you know anything about piling and construction work? A. I would not say I am an expert on it, although I have put up a few buildings, but I would not consider myself an expert in that line, no. 10

Q. You know it would cost vastly more to excavate a lot where there is rock than to drive piles for the class of building that Mr. Hirschberg in his direct examination suggested should be built upon these lots, don't you? A. It depends on the amount of rock that would have to be taken out. For the ordinary two family house that you people have spoken about here, you would not go down very far, you would not excavate far, because most people in these days have a two family house and they have a garage in front and under the entrance there, the porch. If they did not fill that out they would only go down two or three feet and have it three or four or five feet over the sidewalk. So the excavating for a two family house is not such a big proposition unless you have the rock sticking way up; then of course it would be. 20

Q. As an expert how do you figure out any relationship in value between the property in the Niles Estate which you have described sales in, and which you admit is rocky, and the property in question in this suit, which is an entirely different character of soil? A. The one place I have mentioned that was rocky was the Dunn place. Now 17th Street is not rocky. Park Avenue, the east side there, north of 16th Street, there is very little rock there. Now, on the Dunn property there was. On some of the others I have mentioned there was. 30 40

Q. Now pass to the sale to Ailman, 15 lots on the east side of Park Place, \$2,100 each. Is that property similar to the property in this suit? A. No, but it is a better residential section.

Q. How far is it removed from this property?

A. About six or seven blocks.

10 Q. And there is a high bank around it, is there not? A. Yes, but you have some of the best, highest priced two family houses in the town of West New York erected right there.

Q. The surface of the ground there is about seven feet in some places above the sidewalk? A. Yes. It is all terraced there.

Q. And the lots you have described as having been sold for \$2,100 each, are lots of that character where the surface of the soil is far above the level of the street? A. In that particular case there.

Q. That is true, isn't it? A. Yes.

Q. Now take the Merkle sale. These were sold at \$1,500, how many lots? A. One.

Q. What size? A. 25 x 100.

Q. How far way from this Dieckmann property is that? A. Between 16th and 17th Streets, about four and a half or five blocks.

30 Q. And the soil is of an entirely different character? A. Very good soil there—the bottom.

Q. How do you connect that relatively in value with the Dieckmann property, on that theory? A. The only reason I would show that is that land has every improvement, in the built-up section, with good bottom—what the prices are that have been paid for such property—and then I must consider that the Dieckmann property requires first money to improve the streets, make the assessments, and then to fit the land for building purposes.

Q. Did you buy this \$1,500 lot, this one lot? A. No, a friend of mine, Sylvester Merkle, did.

Q. The property you bought from Mr. Singer, you considered you got a bargain? A. Yes, I did.

Q. And that the value of that land was considerably higher than what you paid for it? A. I believe so, yes. 10

Q. Then how do you relate the purchase price of that land with the actual value of the Dieckmann property? A. That land has every improvement—

Q. I am not asking you the character of the land; I am asking you by what theory you assimilate those values? A. That land is in the best residential section of the town. The houses are one family and two family houses, and the highest class of apartments you have in West New York are constructed in that immediate vicinity; and for one or two family houses or apartment houses there is no better land in the town than this particular section where I purchased this. 20

Q. And you think you bought that very cheap? A. I do.

Q. What I want to know is, how do you assimilate the value of this wonderful property that you purchased, and purchased cheaply, and which is in a different neighborhood and far removed from the Dieckmann property, and with soil of different character, as a basis to fix the value of our property? A. I said the property is in the best section for residential purposes, because this particular land is four to six feet below the sidewalk, with good bottom, does not require any cost for fitting or preparing for building operations, and then the price that I bought it at, which runs to 71 cents a square foot, with every improvement. 30

Q. And that is the best theory of relative val- 40

ues that you can get, is it? A. It is one of them; I do not say it is the best.

Q. Which is the best? A. I think Mr. Dieckmann's is the very best. What he sold at I think is one proof—when he put his own value, his own price in the property.

10 Q. Just confine yourself to the one purchase you made that I am talking about at the present time. Have you given us the best basis of the relative value between the Dieckmann property and that property that you bought? A. I have given you the best way, when I gave you Dieckmann's own figures.

Q. I am not asking you about the other property. Just confine yourself to the question. I am asking you about this property you bought from  
20 Singer. I ask you whether the reasons you have given to this jury are the best you can give them for your idea of the relative value of that property that you say you bought cheaply and the Dieckmann property which is in question in this suit, which is very far away and of an entirely different character.

Mr. Hirschberg: I object to the "very far away."

30

Q. Seven blocks?

The Court: Change the question and make it read "seven blocks."

A. I have shown or tried to show that the property that I bought was of a very high class, could be used for any purpose the Dieckmann property could be used for, and for many purposes that the  
40 Dieckmann property could not be used for without a great deal of expense; I have tried to show that

I bought that at a value of about 71 cents a square foot, with every improvement and the assessments paid.

Q. Now I call your attention to the five lots you sold at the southwest corner of Hudson Boulevard and 23rd Street for \$13,000. How far away from the Dieckmann property are those lots located? 10

A. It is about 12 blocks.

Q. An entirely different part of the town, is it not? A. Yes.

Q. And in an entirely different section as to the character of the buildings? A. No; I won't say that. They are building some apartment houses in that vicinity as well as other residential properties. The place is building up near there—around it.

Q. How long ago did you make a sale? A. Last December, title was passed last January. 20

Q. Now let me call your attention to the Dieckmann sale that you mentioned, that on the Record slip 1921, January, Dieckmann sold to Conradi two lots on 10th Street with all improvements for \$10,000 each; how do you know that was the price on that property? A. From the records that we received in the Town Hall from the Register, and from reading it in the conveyances as reported of sales from Mr. Dieckmann's own estate.

Q. And it is from that information and on that information that you have based this value that you have given to this jury as an expert opinion of your value of these lots? A. I have not based any value on these lots yet, I have not been asked to. I have simply told the court what the prices were on property near there that was sold. 30

Q. Don't you know John Dieckmann himself conveyed these two lots to this man, who is a builder, for development purposes, and that there was no sale whatever? A. The records show that 40

there was a conveyance, which is a matter of record, and the price was given; whether Mr. Conradi paid it or not I don't know.

Q. You took the record then as the basis of truth in fixing the value? A. Outside of those cases in which we are personally interested or see the money passed, that is all we have.

Q. Aside from all these records that you base your value on, you know and you have heard from Dieckmann say there was no sale there, that this property was merely turned over by him to this builder for development purposes, to see what the character of the soil was? A. Not exactly that.

Q. What did he say then? A. If I remember right, and I think the testimony if you refer to it will correct me if I am wrong, as I recall, Mr. Dieckmann's statement was that he had turned these two lots over to Mr. Conradi for \$1,200 each, and he financed Mr. Conradi to develop and put up the buildings, and I believe Mr. Dieckmann now owns the buildings, he had to take them from Mr. Conradi, I believe; I believe that is Mr. Dieckmann's statement.

Q. You have heard aside from this record that there was never an intent to be any sale there at all, and that the conveyance was made by Mr. Dieckmann to Mr. Conradi for the purpose of development merely.

Mr. Hirschberg: I object to the question on the ground that the witness has stated that the \$1,200 he referred to was taken from the deed from Dieckmann to Conradi, and, as he explains, there is nothing in the deed to explain the matter.

The Court: He has already explained that. I will allow the question.

Mr. Hirschberg: I will take an exception.

A. No, I would not say that.

Q. What did you understand to be the truth about that transaction, aside from the record then?

A. Mr. Dieckmann sold these lots to Mr. Conradi, and financed him, as I understood it, and after Mr. Conradi got through, whatever the reason may have been, according to Mr. Dieckmann, he has had to take these houses back, or did take them back, and since that time, however, he sold to Mr. Conradi the adjoining lots—the lot which adjoins these two particular buildings. 10

Q. You know that was all for experimental purposes, don't you? A. I assumed it was, and the result would indicate to me as a real estate man that the experiment was not very successful, because operations ceased.

Q. And that lot you say which was sold for \$1,200, you say that was worth \$2,200? A. No. 20

Q. Isn't that the one you said was too low a sale? A. Oh, no.

Q. That is my mistake then, pardon me. What lot did you say was sold for \$1,200 by Dieckmann that in your opinion was worth \$2,200. A. That was a lot on the east side of Broadway, about 150 feet north of 16th Street; that is a very good section of the town.

The Court: How far away from this land. 30

The Witness: That would be a little over three blocks.

Q. The lot you said Dieckmann sold on July 19th, 1922, to Vitalli on 14th Street and Park Avenue, how far was that from this property? A. Two blocks.

Q. What is the character of the soil there? A. Good. 40

Q. Rocky, isn't it? A. 14th Street and Park Avenue?

Q. Yes, sold to Vitalli for \$2,000 in July, 1922?

A. I believe there is a little rock there.

10 Q. So the character of the soil is nothing like this property? A. No, the soil is good even with the rock; there is no danger of putting up any kind of a building where there is rock.

Q. Now, take the sale of August, 1923, from Dieckmann to someone whose name I did not get at Park Avenue, 26 x 150, for \$4,000, do you know the property I mean? A. Yes, that is north of 13th Street.

Q. \$4,500, that was; do you consider \$4,500 a fair value for that lot? A. I do.

20 Q. Did you know that property was sold subject to a very large assessment, which was paid by the purchaser in addition to the \$4,500? A. A very large assessment for what?

Q. For improvements? A. What improvements, if I may ask?

Q. Street and sewer? A. That is not clear, because—

Q. I asked you whether you knew it? A. I don't know it.

Q. Did you ever hear that was the fact? A. No, I did not.

30 Q. So you took the information from your Record & Guide, or whatever the publication is, in preference to the real facts in regard to that section? A. I know as a matter of fact that the Park Avenue improvement has been confirmed some years ago.

40 Q. I ask you do you know the \$4,500 sale was one made subject to the assessment so that the purchaser paid the amount of the assessment and all accrued interest in addition to the \$4,500? A. I do not, because I do know Mr. Dieckmann had not paid his assessment.

Q. Has there been much building in West New York in the last two or three years? A. Yes.

Q. The town has been building up very fast, has it not? A. Fair.

Q. And with the increased building there has been increased land value? A. In some sections.

Q. Is not that true as to the whole of West New York? A. No. 10

Q. Have not all your land values increased in West New York in comparison with the land values of the other sections? A. No.

Q. So you are an exception to the general rule? A. I have quite a little of it that has not increased.

Q. So you are not much of a rooter for West New York, are you? A. Oh, yes, I am, but not to the extent of paying more than the property is worth; in other words, I do not believe in taking away from the town more than necessary. 20

Q. The Dieckmann Estate embraced a great deal of property surrounding this property in question, did it not? A. Yes.

Q. And the situation in West New York now is that there are few, if any, large undeveloped tracts, are there not—or is it not, rather? A. Yes.

Q. This is practically the only tract of vacant land that can be used for a large development purpose, is it not? A. No. 30

Q. Where is there anything else nearly its size? A. You have on the east side of Hudson Boulevard, so-called some vacant property.

Q. But that is on the slope of a hill, going downhill, is it not? A. Some of it; on 16th Street the slope is not bad.

Q. Suppose a man wanted to locate for industrial purposes in West New York on this tract, how many tracts have you there in addition to the Dieckmann tract that could be sold for the purpose? A. It depends on the size. 40

Q. Well, taking this size? A. I don't know of another one, because east of the Boulevard is not in the market.

10 Q. Do you recognize the fact that when lands are needed for industrial purposes, a large tract, it is worth more without buildings than with buildings? A. Yes, but this property is owned and can't be used for industrial purposes.

Q. You do not think the town of West New York, if you were Mayor, if a very high class concern wanted to come there to put up an industrial plant, would consider the adding to the value of other adjoining property?

20 Mr. Hirschberg: Objected to on the ground that there is a local law against such construction.

The Court: It is speculative anyhow. Objection sustained.

Q. Now, the Dieckmann property around this property has been for a number of years building up for development? A. The good lands, yes.

Q. The good lands was developed first? A. Well, there is still some to be developed.

Q. I say the first development occurred on the best land? A. Oh, yes.

30 Q. And then as it developed, the poorer land was taken in, was it not? A. Well, very slowly; there was an odd house built now and then, and then there would be a lull.

Q. But the land adjoining to the Dieckmann property was pretty well built up? A. No, there is still quite a deal of vacant land adjoining.

40 Q. You recognize the fact, do you not, that as this outside development increases, the value of the vacant land there increases also, all around? A. Very little. The real increase comes as the lot be-

comes scarce on any particular street, but in this particular case there is no scarcity because the land in its entirety is there.

Q. Do you confine that value to the street on which the lot is located? A. Chiefly the street; it has some little bearing on the outskirts, but that is very small. Take any particular street, take Hudson Avenue, for example, the reason for bringing the high prices there, or Palisade Avenue at present, is because of the limited number of vacant lots; it does not reflect the value on adjoining property; if it did, Park Avenue is as good as Hudson Avenue, and yet the lots on Park Avenue sell for about three-fifths of what they sell for on Hudson Avenue, the only difference being that Park Avenue is not all built up and only the vacant land is on the market. 10

Q. What is the highest price at which lots in West New York has been sold? A. I don't believe that that has anything to do with this particular property; \$30,000 for a single lot. 20

Q. For a single lot? A. Yes.

Q. On what street? A. 17th Street.

Q. How far from this land? A. 17th Street—

Mr. Hirschberg: I object on the ground I have stated, and to further questions along this line; I think we ought to get lots, for example, as nearly similar to these lots as possible. I think there is a large variance in a lot with a value of \$30,000 and these. But I withdraw the objection. 30

A. (Continued) About eight or nine blocks.

Q. And what size of lots? A. 29 x 100.

Q. Corner or interior? A. Corner.

Q. Used for what purpose? A. Business.

Q. Now what sort of buildings are erected there, frame or brick? A. Brick. 40

Q. How many stories? A. Two stories, four stores.

Q. Stores below and apartments upstairs? A. Yes.

10 Q. What are the interior lots in the locality of this \$30,000 lot worth? A. I don't see where there is any comparison.

Q. I can't help that, I would like an answer to the question? A. About twenty.

Q. Now, what is the average price of lots along that street that you have just mentioned? A. They vary—

20 Mr. Hirschberg: I object to the question on the ground that using these particular lots or this particular lot as a basis or as an illustration for the purpose of comparison is not relevant, and as too remote.

30 Mr. Demarest: The purpose of the question is two-fold, first he has testified, and it has been admitted that some of the values he has given on his direct examination were on properties seven to twelve blocks away; the second is this, I want to show by this witness, and I think it is perfectly proper to give the jury a proper conception of values there, what the value of lots in that town used for business purposes is, and what the value of lots in that town used for residences is. Then the jury can determine from a comparison of the character of the buildings of the character of this \$30,000 building, which seems to be about the same as that described, as the building on this land.

40 The Court: How far is the land you have mentioned away from the property to be condemned?

The Witness: About eight blocks.

The Court: And that is within the same distance that you have given for others?

The Witness: No, for some but not for all of them.

The Court: But some were a greater distance away? 10

The Witness: Oh, yes.

Mr. Hirschberg: Distance—the mere fact that the lands referred to by the witness were some distance away from the lots in question and the lots that Mr. Demarest refers to, does not determine the value; I contend that distance is not the only element in determining the value of lots.

The Court: You are right.

Mr. Hirschberg: The lots to which the witness has testified as costing \$30,000 have a different character entirely, and therefore I object to the question on the ground that the illustration attempted to be used by Mr. Demarest does not show sufficient similarity in other respects. 20

The Court: I think that is so. You will have to show some measure of similarity to the property in question with the property to which he is giving values. 30

Q. You say the \$30,000 lot has a two story brick building on it? A. The lower story, yes, used for stores.

Q. The lower story used for stores and above used for apartments? A. Offices.

Q. About the same sized building as was described by Mr. Hirschberg to the engineer? A. Oh, no.

Q. What is the difference between the buildings? A. This building is the entire width and 40

length of the plot, and it is used as a demand for stores, for all kinds of business in that very section. I might add that while that land is as close to the Dieckmann property as other lands that I have referred to, this land, however, is used chiefly for business purposes, whereas other lands which  
10 might be further away from the Dieckmann property was used for residences, and the kind of buildings, that, as I understand, were the likely type to be erected.

The Court: So they were not similar to the land in question?

The Witness: No, no comparison between them.

20 A. Now, Mr. Mayor, you recognize the fact, do you not, that if the building placed upon the Dieckmann tract or the buildings placed upon the Dieckmann tract are used for like purposes, or if a factory concern, an industrial company, may want to come into West New York and establish its plant on the Dieckmann plot, that the value of this property will compare with the \$30,000 property just as it will compare with the value of the other property which you tried to put in  
30 at \$100 a lot? A. No; there is one place in West New York where we are getting such prices.

Q. Let me take you into the residence section; what is the highest price at which lands in West New York have been sold for residence purposes?

A. Inside lots?

Q. Both corners and inside? A. Inside lots—\$4,500, corners about \$6,000, Hudson and Palisade Avenue, but that is due to the fact that there are very few vacant lots there.

40 Q. Now, how far away are those lots, how far

distant from the Dieckmann Estate? A. About three blocks.

Q. So the \$6,000 lots are much nearer to the Dieckmann Estate than some of the lots you testified to in answer to Mr. Hirschberg's question?

A. I think they are about the same distance as the Park Avenue lots from the Dieckmann Estate, the only difference being that Hudson Avenue is built up and Park Avenue is not. 10

The Court: What is the character of the sub-soil there?

The Witness: Park Avenue, broken land.

Q. Take the photograph which I show you—it is not marked as an exhibit, but is the one on which you placed pencil marks; do you observe the houses on the right side of this photograph? A. Yes, that is good land. 20

Q. In the rear, apparently facing the Dieckmann tract, with the car track on it, what are those—apartment houses? A. Yes.

Q. And they are located in relation to the Dieckmann tract as is shown upon this photograph? A. Yes.

Q. And those are the lots that have been sold at \$6,000 apiece? A. No; those apartment houses were built before. 30

Q. How near to those apartment houses are those \$6,000 lots? A. A couple of blocks.

Q. In which direction? A. South.

Q. Which direction is south? A. From south down; the Dieckmann property would be north.

Q. Where are these \$6,000 lots?

The Court: Off the bottom of the picture, aren't they.

The Witness: Yes. 40

Q. The Dieckmann lots can be used for the same purposes as those \$6,000 lots, and as the lots shown in that photograph, can't they? A. And so can be, and so will be the Park Avenue lots being used for the same purpose as the Hudson Avenue lots, due to the great number of vacancies there.

10 Q. But they are naturally susceptible to the same use? A. Oh, yes, but these could be made better if a great deal of money was spent; they could be much improved with the expenditure of a good deal of money.

The Court: They require more to be done on the Dieckmann than on these others?

The Witness: Yes; on the others it requires practically nothing.

20 Q. You do not see any objection whatever to the Dieckmann property lots being condemned in this proceeding being used for the same construction of the same class of buildings used on this photograph, do you? A. No.

30 Q. Where? A. I say, the objection in preparing the soil for it; that is a question that is problematical, as to what it is going to cost, as to how long it is going to stand up; we do not know; but we do know this, that the various buildings that have been erected on this soil, they have had trouble with; they have sort of sank on one side or the other. We know that the buildings have sunk, given way, that they did not stand up.

40 Q. If buildings of exactly the same character as are shown upon this photograph are erected around the Dieckmann property with a proper foundation that is piling and everything that is necessary to make as good construction as though the buildings were built upon solid land, wouldn't your lots be worth exactly the same price as these Hudson

Avenue lots—or Park Avenue— A. These buildings here are Hudson Avenue.

Q. Wouldn't the Dieckmann property be worth exactly as much as the Hudson Avenue property after deducting the cost of that piling and the repartation of the soil? A. After that property is built up to the same extent as Hudson Avenue and only a few lots remain like in the case of Hudson Avenue, then it would, provided the same improvements were there and as good bottoms; otherwise not. 10

Q. Don't you recognize this, that property which is incapable of development or a uniformity—that is an undeveloped plot of land where you can erect an apartment or other buildings of the same general architectural style, is worth more than an isolated lot in a neighborhood where one building on one side has one sort of architecture and that on the other side has another sort, and the buildings all vary in looks; isn't that true? A. That is provided that plot is not too big so that the average operator could handle the proposition. 20

Q. These buildings on Hudson Avenue are all of such a vast proposition, otherwise not, because they are not uniform, aren't they? A. Yes.

Q. And you appreciate that where there is a plot of land where that would afford a uniformity of buildings, it is worth more money, don't you? A. Only on condition that someone would own and be in a position to finance the operation of such a vast proposition; otherwise not, because you do not know what is going to be opposite or next door to you. If you operated one block, then you cross the street and that is vacant and then a vacant property on either side of you, and you do not know what you are going to have near you—whereas, if you buy in a built-up section you see exactly what you are going to go into. That is why 30 40

built-up sections are always worth considerable more.

The Court: This photograph which has been referred to should be marked so that its identity may be established. Mr. Hirschberg does not object.

10 (Marked P-1.)

Re-direct Examination by Mr. Hirschberg:

Q. You say this lot on Palisade Avenue is worth \$6,000. You mentioned something about a lot being worth \$6,000. A. No; I said at Hudson Avenue some corners are worth as much as \$6,000.

Q. And that is because of the development there?

20 Mr. Demarest: No.

Q. That is what you said. Because they are only a lot or two vacant.

Q. And Hudson Avenue is generally an apartment house street is it not? A. Yes.

Mr. Demarest: I object as leading.

The Court: Do not lead him.

30 Q. What kinds of structures are there on Hudson Avenue? A. Mostly apartment houses—four stories.

Q. And the ground in Hudson Avenue, you were acquainted with that ground before the apartment houses went up? A. Yes.

Q. How can you compare that ground with the ground on the Dieckmann Estate that is now being considered? A. There is no comparison. The bottom of that land on Hudson Avenue is all good.

40 Q. You said you bought some lots from Mr. Singer which you considered very cheap? A. Yes.

Q. Where did you buy them? A. On the Hudson Boulevard, about seven or eight hundred—about 1000 feet east of Park Avenue.

Q. How much did you pay a lot? A. They were plots 50 x 175.

Q. How much did they stand you a lot? A. If you figure 25 x 100 lots, they would stand about \$1800. 10

Q. You say that is very cheap. Now what is a fair price if that is very cheap? A. I have not put them in the market as yet, so I haven't any price.

Q. But you are testifying as an expert for the Town and you are being asked an opinion. You said that is cheap at \$1800 a lot. Now what is a fair price, in your opinion, as a result of your experience in these transactions—because if you do not tell us a fair price and you tell us it is \$5,000 cheap. A. Do you mean the lots I they are very cheap, the jury don't know whether purchased from Mr. Singer? 20

Q. Yes. A. I think \$2,000 each—\$2,200, for 25 foot lot.

Q. These lots you said were worth \$30,000 apiece how much is a lot worth directly in the rear of that land—using Bergenline Avenue and Madison Street directly in the rear? A. About \$1500 to \$1800. 30

Q. How far is Madison Street from Bergenline Avenue where these \$30,000 lots are located? A. 200 feet.

Q. What is the value of the lots 200 feet from this point? A. \$1500 to \$1800.

Q. Have you been interested in sales right at that point? A. Yes.

Q. At those prices within the past year? A. Yes.

Q. Where is Van Buren Place with respect to 40

the location of these \$30,000 lots? A. This \$30,000 lot faces Van Buren Place in the rear and Bergenline Avenue in the front—three streets.

Q. How much were lots worth on Van Buren Place during the last year? A. About \$2,000 right across the street.

10 Q. Good soil, no rock excavation? A. In some places there is rock, in some not.

Q. Those lots that have no rock, how much are they worth? A. About \$2,000.

Q. All improved? A. Yes.

Re-cross Examination by Mr. Demarest:

20 Q. In fixing these values do you base that upon location or character of soil—which theory are you proceeding upon? A. I take everything into consideration; location one; the surroundings, another; the soil, still a third; the improvements, a fourth. There are a lot of things which must be considered in trying to establish values on a piece of property—what it can be used for; the zoning—there are possibly half a dozen things. Proximity to schools, stores and lines of conveyances. There are a lot of things we must consider in determining values.

30 Q. You recognize the fact in fixing values, do you not, that where there are two lots in the same location with different soil, one solid soil and the other soil of the character we have to deal with here, that the value of the latter lot is equal to the first lot provided you allow and deduct from that value the amount necessary to place the soil in condition to carry the same class of building as the other lot? A. Oh, yes.

40 Q. It is merely a matter of deduction? A. There is this, however: We are not sure of our deduction there; we allow enough.

Q. You mean the only difference between the two lots is the cost of placing the one in a condition to do the same work as the other? A. Yes.

Q. You know what plottage is? A. Yes.

Q. Just explain it to the jury, won't you? A. Plottage?

Q. Yes. A. Plottage is where any one who wants to develop has an opportunity of getting more than one lot, because any kind of a building we might want to erect, if you have but one or two lots and it would require a greater space on which to erect this, you could not do it if you did not have the land, and for that reason plottage means you can get as many lots together as you would need for the purpose you were going to require it for. 10

Q. And you recognize the fact that a tract susceptible of this so-called plottage is worth more than isolated lots? A. Why ordinarily I would say yes, but not in this particular case. However, I have allowed it because of the purpose for which this is to be used. 20

Q. There is usually a rule of adding about 25 per cent. to the value for plottage, isn't there? A. No.

Q. What is your rule so far as you know? A. I allow 15 per cent. However, I will say this, that that is only allowed on the smaller plottage, not on a plottage that is exceptionally large in size. Where a plot is exceptionally large in size, I would be inclined to even cut in order to sell the entire plot; and I have such a case right now, I have 20 lots I would like to sell, and if anybody bought the 20, I would cut the price rather than to add on for plottage, because you would require that for certain types of building; but it does not require a plot of 24 to 70 lots for any type of building that is likely to be erected in West New York. 30 40

Q. The usual rule is to add at least 15 per cent for plottage? A. Fifteen per cent, yes.

Q. And sometimes more? A. It would depend where it would be. In some properties, like this Bergen Avenue that I mentioned, yes, but not in the ordinary property.

10 Re-direct Examination by Mr. Hirschberg:

Q. You said the section on Hudson Avenue is altogether different from the section now being considered; is that right? A. Yes.

Q. That is, the section itself is of a greater value because it is built up property, and so forth? A. Because there are only a few vacant lots remaining.

Q. Just a minute; do not give your reasons. Is that so—because it is built up? A. Yes.

20 Q. Then if that is so would you say the only difference in price of lots on Hudson Avenue and these lots is what it would cost to put these lots in shape to put a two-family house on them? A. No.

Q. The other difference is the fact that Hudson Avenue is built up? A. Yes; and the type of buildings.

Adjourned to 2 P. M.

30

After Recess.

FRANK J. OLERI, recalled on behalf of the condemnors.

Direct Examination by Mr. Hirschberg:

40 Q. I show you this photograph and ask you what that represents. A. This is a view of 13th Street improvement from Broadway looking west.

Q. What is there about that improvement that is peculiar? A. This shows that the sidewalk and the curb has sunk down considerable and the curb has sunk down even further than the sidewalk itself.

Mr. Hirschberg: We offer the photograph in evidence.

10

Admitted and marked "Condemnor's Exhibit No. 2" of this date.

Q. I show you another photograph and ask you what that represents. A. This is a photograph taken of 10th Street opposite the church in question and this shows the sidewalk where it has lowered or has sunk down considerably from the curb to the house line.

The Court: Is that across the street from this property now in question?

20

The Witness: Directly across the street, it takes in both sides.

Mr. Besson: Is that across the street?

The Witness: It takes in both sides.

Mr. Hirschberg: We offer the photograph in evidence.

(Admitted and marked Condemnor's Exhibit No. 3 of this date.)

30

Q. I show you another photograph; what does that represent? A. This represents a view taken at Broadway, slightly west of Broadway, of 10th Street, looking west from Broadway.

Q. What does that photograph show? A. That also shows you the condition of the sidewalk; it is sunk at the house line and at the curb also.

Mr. Hirschberg: We offer the photograph in evidence.

40

(Admitted and marked Condemnor's Exhibit No. 4 of this date.)

10 Q. I show you another photograph and ask you what that represents. A. This represents a basement, the basement having raised, the corner section of Broadway and 10th Street.

Mr. Hirschberg: We offer the photograph in evidence.

(Admitted and marked Condemnor's Exhibit No. 5 of this date.)

20 Q. I show you another photograph and ask you what that represents. A. This is a view of the site taken at 13th Street looking southwest, showing the surrounding buildings.

Mr. Hirschberg: We offer the photograph in evidence.

(Admitted and marked Condemnor's Exhibit No. 6 of this date.)

30 Q. I show another photograph and ask you what that represents. A. This is a photograph taken at 10th Street looking north, showing also the buildings surrounding the property and also the condition of the ground and, here, the condition of the sidewalk.

Mr. Hirschberg: We offer it in evidence.

(Admitted and marked Condemnor's Exhibit No. 7.)

40 Q. What does this tract of land consist of, where does it start, where does it end? A. This tract of land consists of a plot of ground beginning at the northwest corner of 10th Street and Broadway.

Q. I mean the Dieckmann Estate, the entire estate there. A. Tenth to 13th Street, it is bounded by 10th and 13th Streets and the Palisade Railway and Broadway.

Q. What is south of Tenth Street?

Mr. Besson: Objected to. I don't know 10  
the object of this. We are limited to this  
property and we are not interested in the  
question of what development has taken  
place.

The Court: As I understand it, the issue  
now is the value of this property, that is  
the issue as consented to this morning.  
There is no question as to the value of the  
surrounding property, and that I under-  
stood at the beginning of the case was taken 20  
out of the case by consent.

Mr. Hirschberg: Well, yes, of course the  
condemnation proceedings have only to do  
with 10th to 13th Streets, but now he is  
asked what is one block south of 10th and  
also one block north of 13th.

The Court: It might be admissible for  
the purpose of showing the location of the  
houses and I will admit it for that purpose.

Q. What is to the south of 10th Street? A. I  
do not understand the question. 30

Q. Are there buildings south of 10th Street?  
What is the nature of the property, there? A.  
This tract extends through, further down than  
Tenth Street. There is just a few buildings built  
on Tenth Street which come up to approximately  
the edge of that swampy area.

Q. How far does this Dieckmann tract extend  
south from Tenth Street? 40

Mr. Besson: If your Honor please, what difference does it make?

10 The Court: I don't see that it makes any difference how far the Dieckmann tract extends down, but for the purpose of showing the general character of the property surrounding this property it may have a bearing upon the character of the property in question.

Q. Will you please answer the question, what is south of 10th Street? A. The continuation of this Dieckmann property.

Q. Meaning the same tract as is between 10th and 11th Streets, is that it? And between 11th and 12th and 12th and 13th Streets? A. Yes.

20

The Court: There are no buildings upon it.

The Witness: South of 10th Street there are just a few buildings, near Avenue.

Q. From 10th to 9th Street is it all vacant land? A. Practically all vacant land.

Q. From 13th to 14th Streets is it all vacant land? A. All vacant land; yes, sir.

30

Q. I show you this photograph—

Mr. Besson: Are you going to prove that?

40 Mr. Hirschberg: May it please the court, I have a photograph here which shows the condition of 9th Street. I showed it to Mr. Besson before I asked the question because he objected to that, if your Honor will recall, and we conferred with you. My purpose in showing the condition of 9th Street by this photograph is because it is only a block away from their land which we intend

to condemn. It forms one continuous part, and the jury by seeing the condition of 9th Street, it can be shown that 9th Street is of the same kind of land as Tenth Street or has some reference to or connection with it, that something having been built upon it, the result of that being built upon will be shown by this photograph. 10

The Court: You will satisfy me that it is the same character of land.

Q. What is the character of the land on 9th Street with respect to 10th Street? A. They are the same boggy condition, and boggy area exists clear up to 14th Street.

Q. From where to where? A. From Seventh Street. 20

The Court: All up to 14th Street?

The Witness: All up to 14th Street.

The Court: And throughout that tract the same general conditions exist with reference to the surface and the sub-surface?

The Witness: Yes, sir.

The Court: How long have you known this tract?

The Witness: About 15 years.

The Court: Have you seen it frequently? 30

The Witness: Yes, sir.

The Court: And the property to which your attention has been directed in the neighborhood of 9th Street is a part of this old Dieckmann tract?

The Witness: Yes, sir.

Q. I now ask you what this photograph represents?

Mr. Demarest: We will object to that. 40

A. It represents the condition of the 9th Street improvement.

The Court: How far is that in point of feet from the place that is being condemned?

The Witness: Approximately 275 feet.

10 The Court: And you say the same condition of soil exists at that point that does at the point of the land that is being condemned?

The Witness: Yes, sir.

The Court: All right, proceed.

Mr. Demarest: Your Honor allows it?

The Court: You made an objection?

Mr. Demarest: Yes, I made an objection.

20 The Court: Do you wish to examine on the question before it is admitted, I mean upon the qualifications of the witness to state?

Mr. Demarest: I don't think it is admissible at this time. There are no borings shown by this man. There is nothing to base what would probably be his testimony upon, except visual observation and that particular situation shown by that photograph I do not think is one that can be assumed to exist as to our land, and it is different pile, too.

30

The Court: Different pile?

Mr. Demarest: Yes, I understand there is piling under that.

The Witness: Yes, there is piling used in here.

Mr. Demarest: A different length of pile. That is not an actual picture, I mean, if I may make myself plain, that I understand is a situation created by a pile that is

40

driven underneath this object, and an entirely different length, 60 feet.

Mr. Hirschberg: That is just what we want to show, the effect of piling on that particular property. If this shows that that is the result of a pile shooting out, whatever the effect is, that is just why we want to introduce the photograph and it is all connected with one plot. 10

Mr. Demarest: That is a different condition of piling. The engineers have agreed upon their soundings and they do not pile up anything like that length testified to.

Mr. Hirschberg: Assuming this was properly piled, with 60 feet or 30 feet or a hundred feet, we want to show by this photograph the result of the piling because we do not contend in this case by piling it, going down as many feet as the engineer testified it would be necessary to go down, that you have got a perfect foundation there. We say that even despite that it is not as good as a normal lot, and this is one of the effects. 20

Mr. Besson: As I understand it, this 10th Street has been there longer than 9th Street. We have 10th Street now. What happens at 9th Street is immaterial. 30

The Court: You are an engineer?

The Witness: Yes, sir.

The Court: Did you have charge of the work of putting in the sidewalks at this point?

The Witness: No, sir.

The Court: Did you see it done?

The Witness: I passed by there when the work was in progress.

The Court: Do you know the character of construction and what piling was used? 40

The Witness: The length of the piling?

The Court: Yes.

The Witness: I do not believe I do, no.

The Court: I will not admit it.

10 Mr. Hirschberg: I am taking this statement of the other side, I am willing to rely on the statement of Mr. Demarest. He said it was piled at that point. My point is to show the effect of piling in that particular territory. It is only 220 feet away, it is not a half mile away, it is not even three blocks away.

The Court: Let me ask you, this you say is 220 feet away from the land in question?

The Witness: I said approximately 275 feet.

20 The Court: And is it a continuation of the sidewalk running in front of this property that is being condemned?

The Witness: No, there is no sidewalk in front of this property.

The Court: This is one of the cross streets?

The Witness: This is one of the cross streets.

30 The Court: You said a moment ago that it was of the same general character of soil. How did you form your opinion on that, what did you base your opinion on?

The Witness: Upon the appearance and an examination of the site.

The Court: Have you made borings there?

40 The Witness: I have made no borings there, but I base that upon borings I have made from 13th to 10th Street, and the condition remains the same throughout that section, and in view of the fact, 9th Street

was piled, and in view of the condition of 9th Street, and in comparing 9th and 10th Streets, I judge the condition to be the same throughout.

The Court: From physical observation on the ground?

The Witness: Yes, sir. 10

The Court: I will allow it.

(The owners except.)

Q. What does this photograph which has been marked No. 8 represent? A. It represents a condition of 9th Street, east of Broadway.

Mr. Hirschberg: We will have the photograph marked in evidence.

(Admitted and marked Condemnor's Exhibit 8 of this date.) 20

The Court: When?

The Witness: Saturday of last week.

Q. And was that condition there last October?

Mr. Besson: I object.

A. Yes.

The Court: Does that photograph show exactly the same conditions now as existed in October of 1923? 30

The Witness: There has been no change in the condition here for the last two years.

The Court: I will allow it.

Mr. Besson: Is this the same picture?

Mr. Hirschberg: Yes.

Mr. Besson: That is the one we have an exception to.

The Court: That photograph shown you, 40

marked Exhibit No. 8, represents the condition that existed there in October of last year?

The Witness: Yes.

Mr. Besson: At Ninth Street?

The Witness: Yes.

10

Q. I show you this photograph and ask you what that represents? A. It is a view of 9th Street looking east from Dewey Avenue, showing both sides of the street and the sidewalks and the street itself.

Q. Does that represent the condition that existed there in October, 1923? A. It does.

20

Mr. Hirschberg: I ask that this be marked.

Mr. Besson: This is 9th Street?

The Witness: Yes.

Mr. Besson: I object to the admission of this photograph upon the ground it is a photograph of an entirely different plot of ground; it has not been shown that the same conditions existed on 10th Street. 10th Street appears in the picture, and the picture shows exactly what conditions exist at 10th Street. This is a full block south.

30

The Court: You should qualify this picture in the same way the other one was, with reference to conditions, and so on. I will sustain the objection unless it is shown to be the same type of lots.

Q. The last photograph you testified to showed 9th Street? A. Yes.

Q. And this photograph shows the same street?  
40 A. 9th Street, the same street, except taken at a different point.

The Court: Oh. It is the same street?

The Witness: The same street.

The Court: I will allow it.

Mr. Besson: Exception.

(Admitted and marked Condemnors' Exhibit No. 9.)

10

Q. I show you this photograph. What does that represent? A. This is a view of 9th Street taken at about Broadway looking east.

Mr. Hirschberg: I offer this.

Mr. Besson: We object to it.

The Court: At the time you were making borings respecting this property, you went over this land with reference to 9th and 10th Streets, to ascertain the condition of that land?

20

The Witness: I am always in that section, my work calls me in that section frequently as Town Engineer.

The Court: I will allow it.

(Admitted and marked Condemnors' Exhibit No. 10.)

Q. What is this (handing witness another photograph)? A. A view of 10th Street showing the tract of land in question.

30

The Court: How far is that view you are now showing from the land involved in this suit?

The Witness: Immediately in front of it. 10th Street is the boundary of this land, and that is taken from 10th Street looking north into the property.

Mr. Hirschberg: I offer that.

Mr. Besson: No objection to that.

40

(Admitted and marked Condemnors' Exhibit No. 11.)

The Court: This property that is being condemned lies between 10th and 13th?

The Witness: Yes.

10 Q. I show you this photograph and ask you what it represents? A. It is a photograph of 10th and Broadway looking east.

The Court: That adjoins this property, as I take it?

The Witness: This shows where the sidewalk and basinhead and curb has receded—settled.

20 The Court: It seems to me that upon those two photographs upon which objection was taken and which showed 9th Street, it should be indicated on there which is 9th Street.

Mr. Hirschberg: I offer this last photograph.

(Admitted and marked Condemnors' Exhibit No. 12.)

The Court: On these photographs of 9th Street what size piling were used, if any?

30 The Witness: I cannot say from actual knowledge, but I understand they ranged anywhere from 40 to 80 feet.

The Court: You passed by there and saw them?

The Witness: I saw them, but did not take any special notice to lengths; I did not measure them.

40 The Court: You spoke of the sidewalk in 10th Street along this property in question being of the same type of construction there as on 9th Street?

The Witness: No, sir.

Q. What does this photograph represent? A. This was a photograph taken, a close-up view of the Conradi house directly opposite the site.

Q. What does this show?

Mr. Besson: I think the picture will speak for itself. 10

The Court: Unless he knows what causes the difference on the picture, which he has not yet testified to.

Q. What is there on that picture, what does it represent? A. It is a picture of the end house of the Conradi group.

Q. What does it represent; what does it show?

A. It shows a crack running across the step below the top step, and a systematic crack running clear down to the edge of the house alongside this stoop. 20

The Court: Where is this with reference to the property in question?

The Witness: Across the street.

Mr. Besson: On the south side of 10th Street.

Mr. Hirschberg: And we start from the north side of 10th Street and go north.

Q. What is that due to? A. Unequal settlement. 30

Mr. Besson: Does he know.

Q. Do you know what it is due to? A. Yes.

Q. What is it due to? A. To the condition of the ground at that particular place.

Mr. Hirschberg: I offer this picture.

(Admitted and marked Condemnors' Exhibit No. 13.) 40

Cross Examination by Mr. Demarest:

Q. At what street does this boggy, marshy flat begin on the south? A. That I know of particularly, from 7th Street up; I know that.

10 Q. And it extends how far north? A. That I know of, on the undeveloped property, it is 14th Street.

The Court: Up to 14th Street?

The Witness: Of this particular tract, yes.

Q. East and west what avenue is it between? A. Palisade Railway and Broadway.

20 Q. And Palisade Avenue is how many blocks west from this tract? A. I said Palisade Railway, not Palisade Avenue.

Q. Oh, Palisade Railway; and Palisade Railway adjoins this property? A. Yes.

Q. And is immediately in the rear of the Hudson Street apartment houses that were shown on the first photograph offered this morning? A. Yes, sir.

Q. How far does it extend east? A. I do not believe it extends further than from the Palisade Railway.

30 Mr. Besson: That is west.

Q. That is west. I asked you east? A. To a point east of Park Avenue.

Q. How far is Park Avenue distant from the Dieckmann land? A. That is a block away from Broadway.

Q. How many feet would you say approximately? A. I do not know the distance.

40 Q. Do you know the Hopkins map—plot book of Hudson County? A. Yes.

Q. It is an authority? A. To an extent, yes.

Q. And it is considered so? A. (No answer.)

Q. I show you page 17 of this map. Does that show the location of the Dieckmann lands? A. Yes.

Q. Will you point out on the map the three blocks that comprise the Dieckmann property, indicating them by number? A. No. 83, 86 and 87. 10

Q. Extending from 10th to 13th Streets? A. Yes.

Mr. Hirschberg: Do you mean the Dieckmann property under condemnation, or all of the Dieckmann property?

Mr. Demarest: The Dieckmann property under condemnation.

Q. Between 10th and 13th Streets? A. Yes. 20

Q. And between the trolley line, marked "Public Service"— A. Palisade Railway.

Q. —and Broadway? A. Yes.

Q. Will you tell me what those red marks on that map mean? A. Buildings.

Q. Of what sort of construction? A. Brick buildings.

Q. Will you tell me what the yellow marks on that map mean? A. Frame buildings.

Q. From your knowledge of that neighborhood, does this map, at page 17, correctly show the brick and frame buildings that are erected in the locality shown on that map? 30

Mr. Hirschberg: I object to that. I think it is a question that cannot be answered by the witness. He was not present when the map was prepared; he did not compare the measurements.

The Court: I will allow the question.

A. I cannot say that I can tell. 40

Q. Isn't that map taken as an authority of that location? A. But the map changes.

Q. You mean from time to time when a building is constructed a new pink or yellow slip is pasted on the map? A. Yes.

10 Q. So this map will not show any less number of buildings than exist, will it? A. I cannot say that; I have not verified the number of buildings there. I have not checked them up to find out.

Q. Is that generally a fair representation, without the checking up? A. Generally, it is.

Q. And you recognize it? A. I certainly do.

Q. Take these buildings on Hudson Avenue; they are approximately how far away from the Dieckmann property? A. About 60 feet, I should judge; 60 or 60 feet.

20 Q. Take them on the westerly side of blocks 83, 86 and 87. You will observe that all of the buildings in those three blocks facing on Hudson Avenue and backing up against the railroad, are red? A. Yes.

Q. And there are two that are yellow. Now, they are all brick buildings except the two marked yellow, are they not? A. According to that map, yes.

30 Q. And there are no vacant lots in those three blocks, are there? A. Yes; there is one here—No. 5.

Q. That has a building on the rear, hasn't it? A. That is only a small shed, probably.

Q. So that in those three blocks, with the exception of one block, all the rest are built up? A. Yes.

Q. What character of buildings? A. Mostly apartment buildings.

40 Q. How many stories? A. They range from four to five—four stories, approximately.

Q. And brick, with two exceptions? A. Yes.

Q. I point to five buildings on the south side of 10th Street, between Hudson Avenue and Broadway. How many stories high are those buildings?

A. Two stories.

Q. Brick? A. Yes.

Q. And they are directly opposite the lands under condemnation? A. Yes. 10

Q. Have you made any soundings down here around 7th and 8th Streets and Park Avenue? A. No, sir; I did not.

Q. Never did? A. No.

Q. Isn't the land down there where it is shown now covered by brick and frame buildings, of the same character and worse for building purposes than the Dieckmann tract under condemnation? A. I would not say that it is. 20

Q. It is as bad, isn't it? A. I would not say that. I haven't personal knowledge.

Q. You do not know anything about it? All right.

Mr. Demarest: I would like to have this map marked for identification.

(Designated Respondents' No. 1, for identification.)

Q. What properties contiguous to this Dieckmann tract which is under condemnation in this case have you ever made soundings on? A. Right at Dieckmann Tract, do you mean surrounding this property? 30

Q. Yes. A. I have not made any.

Q. Have you made any soundings of the property shown by the photograph which you identified a few moments ago?

Mr. Hirschberg: I object; the witness has testified that he made no soundings on that 40

particular parcel, but being so near 10th Street, a few hundred feet away, I think he understood them to be about the same.

The Court: I will allow the question.

Mr. Hirschberg: I take an exception.

10 A. The soundings I have made according to this map—

Q. Just answer my question; it is that you have made no soundings of the lands shown by those photographs? A. I have of land extending from 10th to 13th Streets.

Q. Where did you make soundings outside of the lots under condemnation here? A. I have not made any.

20 Q. I mean on contiguous, outside plots, have you made any soundings? A. No, sir.

Q. So you do not know the condition of the soil? A. Not outside of the land in question.

30 Q. Then how do you know the situation except as shown by this photograph, such as the crack in that brick house, for instance? A. Well, that extends throughout. We find from 10th to 13th Streets there has been no change in conditions as to the borings, the character of the ground, the character of the ground found from the borings. I also found the same physical condition of the surface extending right down to the street I have mentioned, 7th Street, and judging by that I have formed my conclusions.

Q. Let me refer you to the photographs, one the brick porch and the other that upheaved itself, concrete apparently, did you make those borings at this place, at the points shown on those photographs? A. No, sir, I did not.

40 Q. Then the reason that you gave for those conditions is one of speculation? A. I did not give any reasons for conditions.

Mr. Hirschberg: Objected to; it is not a case of speculation. I think his testimony was it was so near he understood the general character of the ground to be the same.

Mr. Demarest: He said it was due to the nature of the soil, Mr. Hirschberg, and the general character of the ground, as the result of his examination of the ground right contiguous with it. 10

The Court: What is the question?

Q. (Last question repeated by stenographer.)

The Court: He may answer.

A. I have already answered, I did not give any reasons for conditions.

Q. I think you are wrong about that and you did give reasons for conditions; now those reasons are speculative, are they not? 20

Mr. Hirschberg: Objected to as a conclusion, and I think the court has already determined and ruled on that question.

The Court: Overruled.

Mr. Hirschberg: Exception.

A. I would not consider those speculative. 30

Q. You would not? A. No, sir.

Mr. Demarest: I think before I cross examine on this photograph I will renew the motion I previously made, in view of the witness's testimony as developed on cross-examination, to withdraw those photographs from the record. I do not think there is testimony now to support them.

The Court: He has not changed his 40

testimony; therefore I will have to allow them to stand.

Q. I show you photograph marked Exhibit 8, just describe that; is that a piece of concrete? A. Yes, this is concrete.

10 Q. Do you know whether there are piles under that? A. Yes, there are.

Q. How many? A. I don't know how many.

Q. How deep? A. I don't know how deep.

Q. Is there a difference in effect in the use of one pile or in the use of a number of piles that are cribbed, is one stronger than the other? A. Piles have the same bearing power.

20 Q. You mean to say there would be no more strength in a number of piles lashed together than if there was only one pile standing alone? A. It depends. You simply use additional piles to distribute your weight.

Q. And for lateral support as well? A. You are speaking of bearing now, not lateral support.

30 Q. I am asking you if there would be any difference if you have a dozen piles lashed together under that piece of concrete than if there were simply a single pile there? A. Yes, there would be a difference, because each pile would have its own weight to carry, and the weight of a hundred piles would be distributed.

Q. While the construction is entirely different from the setting of a single pile to hold a sidewalk, isn't it? A. No, sir.

Q. I mean pile construction for foundation work. A. No, sir.

40 Q. Are not the piles lashed at all to carry a foundation? A. Concrete is rammed around the heads of the piles in order to keep them together and keep them from spreading out.

Q. And is anything else done to support them, aren't they driven down two or three feet into the foundation? A. You are speaking of the top now, aren't you?

Q. Of the bottom. A. The bottom must be driven into the solid material.

Q. And you think a single pile standing alone without lateral support will shift sideways if left alone, do you? A. I would not say that. If you haven't got the lateral support at the bottom you have not got the strength the piles should have. 10

Q. But you don't know what the condition at this point as to piling is? A. As to what?

Q. How many piles are underneath, how deep they are, and how they are set. A. No, sir, I do not.

20

JAMES ORLANDO, recalled for further examination, testified as follows:

By Mr. Hirschberg:

Q. Mr. Orlando, are you handling property as agent adjoining the Dieckmann Estate in West New York? A. In the past year?

Q. Yes.

30

Mr. Demarest: I see what is coming; the question of an asking price is not proper evidence in this proceeding, and I want to get the objection in in time.

Q. Well, where are the lots located? A. On the Boulevard East.

Q. And how far from this particular location? A. Two blocks.

Q. What kind of blocks are they? A. They are lots without excavation. 40

Q. That is, it does not require excavation above or below? A. No, sir.

Q. What would you say the value of those lots was? A. \$2,500.

Q. Where are they? A. They are on the south side of Tenth Street, along the Boulevard, facing  
10 the river.

Q. Are the streets improved? A. Yes, sir.

Q. Did you get a figure from the people who owned the land or who represented the owners, as to what price they wanted?

Mr. Demarest: I object.

The Court: Your reason for your objection?

Mr. Demarest: Why, the mere asking  
20 price, which I presume is proceeding to be brought out by this question, as a declaration against interest, is no fact herein of value at all, and my recollection of years ago, when I was trying cases against the city, is that it goes by sale price, actual sale price, not by asking price, and of what the market has actually afforded to base an idea of value on.

Mr. Hirschberg: I will say this in answer to that, that this evidence is to show  
30 the very people who owned the land which is the subject of this proceeding have placed a value on land in the immediate vicinity.

The Court: As I understand it, they did not, though somebody representing them may have done so.

Mr. Hirschberg: I can say that that  
40 somebody, your Honor, was in charge of the sales and in charge of this land—and if I can show that other people that owned this

land, under other circumstances, have placed a value on that land, that should be some criterion for the guidance of the jurors.

The Court: Objection sustained.

Mr. Hirschberg: Exception.

Q. Mr. Orlando, in the section surrounding the property in question are lots scarce there at this time? A. Yes, sir. 10

Q. It is all built up around it? A. Yes, sir.

JOSEPH STILZ, recalled for further examination, testified as follows:

Direct Examination by Mr. Hirschberg:

20

Q. You testified before about the sale or about a lot on Bergenline Avenue being worth \$30,000, and lots in the rear being worth \$1,500 and \$2,000. Will you point out on this map their relative positions; please point to the map where this lot is located, this section. A. Northwest corner of 17th Street and Bergenline Avenue.

Q. And where is the locality we are concerned with? Where you say the property is valued at \$1,500 to \$2,000, where is that property located with reference to our property? A. Right across the street. 30

Q. And that shows vacant land, white? A. Yes.

Cross Examination by Mr. Demarest:

Q. You are on page 19 now? A. Yes.

Q. Where does our property show here? A. It does not show here.

Q. It does not show on this? A. No; this particular property that sold for \$30,000. 40

Q. Let me bring you over to page 17 on this map; is not that property shown on that page?

A. No, I don't think so.

Q. Look it over; I think it is. A. There is no Bergenline Avenue there.

10 Q. How far is it off the left hand edge of this map, how many blocks? A. That is one block west, Palisade, and the next is Bergenline.

Q. Did the jury see where you pointed out on this page the location of that \$30,000 lot? A. The northwest corner of Bergenline Avenue.

Q. Where does our property lie in relation to this map? A. Southeast.

Q. Which direction? A. The lower right hand corner of the map shown on page 19.

20 Q. Now, will you point out these other properties which you said were 10 and 12 lots away from the Dieckmann land, on which you based your value; do they show on this page? A. No.

Q. Farther away, are they? A. No, nearer.

Q. What page would they be on? A. 17th Street between Buchanan Place and Park Avenue.

Q. They do not show on page 17, do they? A. Park Avenue, 17th Street (indicates).

Q. Is that the farthest you went away from the Dieckmann land in giving sale values? A. No.

30 Q. That is what I want, the farthest point you gave in comparing our property. A. 33rd Street.

Q. That would be ten blocks north, I suppose, from 13th Street, the northern boundary? A. Yes, and two or three blocks east, but used for the same purpose we feel the other could be used for.

Q. For building apartment houses? A. Well, one or two family houses and possibly the land could be used for apartment houses.

40 Q. Why should not the Dieckmann property be used for the same purpose as the property on

Hudson Avenue opposite us? A. Because we are safe for our foundations on Hudson Avenue, and the evidence of this boggy land is problematical with regard to foundation.

Q. So if the foundation for a six story or seven story apartment house can be obtained from the Dieckmann land, they are worth every dollar the Hudson Avenue lots are, are they not? A. After you have the same improvements and that particular property is built up similar to the Hudson Avenue property, then it is. 10

Q. Well, is there any reason or can you give any expert opinion why six and seven story apartment houses should not be build on this Dieckmann land the same as they have been on the other property half a block away? A. We don't have six and seven story apartments in town yet, mostly four and some fives. 20

Q. And the Dieckmann property has better transportation by being nearer to the trolley line, hasn't it? A. No, the rear of the Hudson Avenue property on the easterly side of Hudson Avenue butts up against the trolley track the same as the nearest property of the Dieckmanns which adjoins.

Q. There is no trolley line on your \$30,000 lot, is there? A. Oh, yes.

Q. Isn't it a block away? A. No. 30

Q. There is a trolley line there? A. Indeed there is.

Mr. Hirschberg: There is a witness that we hoped would be here by this time, and we desire to put him on the stand. He has not come. I ask the court's permission to have him testify when the other side is through, whenever he comes.

Mr. Besson: What is he? 40

Mr. Hirschberg: He is an engineer who examined the tract between 9th and 10th Street, simply to corroborate Mr. O'Leary.

The Court: Is there any objection to his being allowed to testify? All right, you may have that privilege.

10

Plaintiff rests.

FRANK J. WEISBERG, sworn for the property owners.

Direct Examination by Mr. Besson:

20 Q. Where do you live? A. 501 Palisade Avenue, West New York.

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

Q. How long have you been in that business? A. 20 years.

Q. To what extent has that business, or what does that business of yours include, buying and selling? A. Buying, building and selling.

30 Q. Do you hold any other position in the town of West New York besides your real estate business, have you any other business?

Mr. Hirschberg: Objected to. It makes no difference, I don't think here, what position he holds.

The Court: Unless it bears upon his qualifications as an expert, then it may be evidential.

Mr. Besson: I think it does bear on that, it has connection with his making loans, etc.

40

The Court: I will allow it.

Mr. Hirschberg: Is that a municipal office?

Mr. Besson: No, it is not a municipal office.

A. I am president of the West New York Trust Company.

Q. As such you pass on the value of real estate?

A. Yes, sir.

10

Q. How much building have you done in West New York? A. Three million dollars worth.

Q. In all different sections? A. In all different sections, yes.

Q. Have you done any work in the immediate section of the property in question? A. I did some.

Q. Where is that? A. On Hudson Avenue between 11th and 13th Streets, the east side of Hudson Avenue.

20

Q. How far away is that from the property in question? A. That is just lining out in the rear of it.

Q. The houses abutting the railroad? A. Yes, sir.

Mr. Besson: We offer Mr. Weisberg as an expert.

Mr. Hirschberg: I should like to cross examine him.

The Court: You may do so.

30

By Mr. Hirschberg:

Q. How long do you say you have been in the real estate business? A. 20 years.

Q. How long have you been in West New York? A. 10 years.

Q. What business did you engage in when you came to West New York 10 years ago? A. Plumbing and building.

40

Q. How long were you in the plumbing business? A. Where?

Q. In West New York? A. How long was I in the plumbing business in West New York?

Q. Yes; when you first came there 10 years ago? A. You mean before I came?

10 Q. No, when you came to West New York how long were you in the plumbing business?

The Court: After that, how long did you continue in business?

The Witness: Oh, I continued about six years.

Q. Then after you dropped the plumbing business what was your business? A. Real estate.

20 Q. Did you maintain an office? A. I did.

Q. Where? A. At 234 11th Street, and then from there I moved to 501 Palisade Avenue.

Q. 11th Street was that a real estate office? A. Both.

Q. Were you in business for yourself that six years after you came to West New York, in the plumbing business? A. Was I what?

30 Q. Were you in business for yourself in the plumbing business for the period of six years after you came to West New York? A. No, with some one else.

Q. With a partner? A. Yes, sir.

Q. How long did that partnership continue? A. For about six years.

Q. And then, did you go into partnership with somebody else? A. No, sir.

Q. Didn't you go into partnership with a nephew of yours? A. No, sir, I turned over the business to him.

40 Q. What name was the business known under?  
A. Weisberg & Weisberg.

*Frank J. Weisberg—Direct Examination.*

Q. His name is Weisberg, is it not? A. That is right.

Q. Who was the other Weisberg? A. You mean when?

Q. When you dropped your other partner at the end of six years? A. Immediately?

Q. You say your nephew was one Weisberg, who was the other Weisberg? A. I was the other Weisberg. 10

Q. And that was the plumbing business, wasn't it? A. That is right.

Q. How long did you continue as Weisberg & Weisberg? A. I did not continue. The firm is still under Weisberg & Weisberg, and my nephew owns it.

Q. And what business was he engaged in when it became Weisberg & Weisberg? A. The plumbing business. 20

The Court: How is all this material?

Mr. Hirschberg: On the question of this man's ability as a real estate expert.

The Court: I don't think his ability as a plumber has anything to do with it.

Q. You say you dropped the plumbing business at the end of six years, is that right? A. I dropped what? 30

Q. At the end of six years you dropped the plumbing business? A. At the end of six years?

Q. Yes. A. That I was in West New York?

Q. Yes. A. Yes.

Q. And when it became Weisberg & Weisberg he simply used your name? A. That is right, I loaned him my name.

Q. And after that you conducted a real estate business? A. That is right. 40

Q. Where did you say you conducted it? A. 501 Palisade Avenue, as well as 234 11th Street.

Q. Was that a real estate office, or was that your home? A. Where?

Q. At Palisade Avenue and 11th Street? A. Office and home. Home upstairs, and office down  
10 below.

Q. The 11th Street office is the office of Weisberg & Weisberg, isn't that so; the 11th Street office? A. Was Frank J. Weisberg, as well as Weisberg, that is what I said.

Q. How many lots have you sold since you dropped the plumbing business? A. None.

Mr. Hirschberg: I ask that the witness be not permitted to testify, as he is not qualified.

20 The Court: You have not gone far enough yet to qualify him. He says he has sold none. He made no values.

Q. There were many lots being sold, weren't there, on the east side of Bergenline Avenue, running from Bergenline Avenue to the Boulevard, during the last four years; many lots have changed hands, isn't that so? A. That is so.

Q. In the four years you were in the real estate  
30 business were you interested as agent in the sale of any property, that is, in building? A. Yes, sir.

Q. As agent? A. No.

Q. Not as agent? A. Not as agent.

Q. So that in the past four years, after you left the plumbing business, you neither as agent were instrumental in bringing the buyer and seller together of a lot or a building, is that so? A. For someone else, no.

40 Mr. Hirschberg: I ask your Honor at this time that the witness is not qualified.

The Court: Why are you on the stand then as an expert?

The Witness: I am here to show how many lots I have bought and built and sold.

The Court: Then why don't somebody develop that?

10

By Mr. Besson:

Q. You have bought lots yourself in this neighborhood? A. Yes, sir.

Q. And sold them yourself? A. Yes; and had somebody else sell them for me.

Q. You have erected buildings on the lots that you bought? A. I did.

Q. Are you familiar with the values of property in this neighborhood? A. I am, sir.

20

Q. Have you made any appraisements for any banks? A. I did.

Q. And you have a knowledge then of the values in this locality? A. I have.

Mr. Hirschberg: I object to this witness testifying.

The Court: How many properties have you bought and sold within the last four years, of the same character or involving the same type of land as involved in this condemnation suit?

30

The Witness: As I stated before, three million dollars' worth. There are all kinds, three-story, four-story buildings—blocks of it.

The Court: You do not qualify him yet, Mr. Besson. You want to show what volume of business he has done in the capacity of appraiser coupled up with land that was

40

similar in character and in the general vicinity.

Q. Will you designate on that map what lots you are familiar with in regard to the sale value?

10

The Court: That presupposes that he did something to get familiar with it. I do not think that is the question. I think you ought to find out what he sold, either for himself or for others.

Q. What pieces have you bought and sold either for yourself or some other person? A. I have sold a block located on the east side of Hudson Avenue between 12th and 13th Streets.

20

The Court: How far is that from the property in question?

The Witness: Right adjacent to it.

The Court: When?

The Witness: 1920.

The Court: All right.

The Witness: I have sold the corner of 11th Street, the northeast corner of 11th Street and Hudson Avenue.

30

The Court: When?

The Witness: Also in the latter part of 1919. I have sold a block on the west side of Park Avenue between 10th and 11th Street, in 1920. I have sold two houses on the west side of Hudson Avenue between 7th and 8th Streets, about three months ago. I bought a corner, the northwest corner of 6th Street and Hudson Avenue only three days ago.

40

Q. Are you posted on the values of sales that

have taken place in that neighborhood? A. I am, sir.

The Court: Have the sales you have made included vacant land as well as the land with buildings on it?

The Witness: I bought it and developed it, and then we sold with the building on it. 10

The Court: That would be how far from the property in question?

The Witness: Within a block, some of it right adjacent to it.

The Court: Within what time?

The Witness: One I believe was two days ago, four blocks south of it.

The Court: How many applications for loans have you investigated during the past three or four years within the general vicinity of this property in question, in number—about? 20

The Witness: Investigated and placed for myself and others?

The Court: Yes.

The Witness: Some 25.

The Court: Does that include both vacant and built-up land?

The Witness: Not vacant—land built upon. 30

Mr. Hirschberg: I might say at this point, I do not think there is anything in Mr. Weisberg's testimony to show that he is acquainted with the sales or values of vacant land other than the specific ones that he purchased.

The Court: All I know is what he has said. He said he has bought vacant land within the past four or five years in the same vicinity. 40

By Mr. Besson:

10 Q. You are familiar with the property involved in this condemnation proceeding beginning at the north side of 10th Street and running to the south side of 13th, and from the easterly line of Palisade Railroad to the westerly line of Broadway? A. Yes.

Q. What in your opinion is the value of that plot? A. That plot contains 72 lots, and according to my figures it is worth, the market value as of October, 1923, \$149,000.

Q. How did you arrive at that price? A. I have got a memorandum here, if I may use it.

20 Q. You may use your memorandum. A. The memorandum begins: On the west side of Broadway, beginning from the northwest corner of 10th Street, there are 18 inside lots which are 25 x 100. The value of those lots if they were all improved, I understand that is a 60 foot street—if that was all improved, and sewers and sidewalks down, they would be worth \$4,500 each. Deducting \$800 for improvement, \$750 for piling, it leaves a net price on each of these lots of \$2,950, which totals \$53,100. Following along, you have—

30 Q. Just a minute. Where is that located, again? A. On the west side of Broadway, beginning north of the northwest corner of 10th Street—omitting the corner—figuring all the inside lots in between the three blocks. Now you have six inside lots in each of these blocks.

40 Q. You have seven. A. No; you leave out the corner. You have six there. Then you have six between 11th and 12th, and six between 12th and 13th. That is 18 lots. If they were all improved, sewer and water connections, and gas and sidewalks, you would have \$4,500 a lot, judging by

the prices I have paid adjoining this land. I have deducted \$1,000 for improvements, \$750 for piles, getting it \$2,950. 18 lots, that would give you the figure \$53,100.

Mr. Demarest: You said first \$800 for improvements. The last time you said \$1,000. 10

The Witness: That is right. I stand corrected. \$800 is right.

Q. What have you there? A. \$800 for improvement; \$750 for piles, netting \$2,950 each, times 18, is \$53,100. Now you have five corners unimproved. You have the southwest corner of 13th Street; you have the northwest corner of 12th; southwest corner of 12th; northwest corner of 11th; southwest corner of 11th; five corners, at \$5,000 each. Deducting \$1,000 for improvement, \$750 for piling, it leaves a net value of \$3,250; multiplied by five gives you \$16,250. Now the northwest corner of 10th Street is improved; \$5,000. Deducting \$750 for piling, \$4,250 for that, making a total of \$73,600, that Broadway plot from 10th to 13th Street. Deducting five per cent for the depth of it, because they are only 90 feet deep, and that five per cent is according to the Hoffman Rule as well as Jersey City and Newark—deducting that five per cent, amounting to \$3,680, it leaves a net worth of \$69,920—fronting Broadway. I then go on the north side of 10th Street. There lots are improved. You have six lots on 10th Street at \$3,000 apiece, if they were all all right. They are improved. Deducting \$750 for piling it leaves a net worth of \$2,250, which, multiplied by six, gives \$13,500. You have two lots on 10th Street 20 feet wide at \$2,400, \$750 for piling being deducted, leaves a net value of \$1,650 each, which is \$3,300. 20  
30  
40

You take the other lots that are not improved, 30 lots from 11th Street to 13th Street, at \$3,000 each, and deducting \$500 for improvement and \$750 for piling, it leaves a net value each of \$1,750; total sum \$52,500. Then you have 10 lots 20 feet by 100, lying between 11th and 13th Street, at 10 \$2,400 each. \$400 for improvement, and \$750 for piling, leaves a net value of \$1,250 each; total \$12,500. The total of that plot is \$81,800; less 15 per cent on six lots for sewer easements, because there are six lots there that a public sewer runs through; and, taking that according to the allowance of the Pennsylvania Tunnel that went through Weehawken and West Hoboken, that was 15 per cent allowance for easement, amounting to \$2,700, leaving the net value of those unimproved lots 20 between 10th and 13th Streets, \$79,100, totalling \$149,020. That is how I arrived at the figures.

The Court: What do you place as the value of the least valuable lot on the premises?

The Witness: Not figuring the improvements or the piles, \$1,250.

The Court: And the value of the most valuable lot?

30 The Witness: \$4,250.

Cross Examination by Mr. Hirschberg:

Q. Did you buy property on 9th and 10th Street between Bergenline Avenue and Palisade Avenue?

A. I did, sir.

Q. When did you buy it? A. I bought that in the latter part of 1921, I think it was.

Q. Is it possible it was 1922? A. If it is, then it is the beginning of the year.

40 Q. Who did you buy it from? A. From a man named Morris Newberger.

Q. What did you buy from him, what quantity?

A. That was quite a plot; I could not exactly tell you how many lots there were.

Q. What distance; from what point to what point? A. From 9th to 10th Street, and running about 350 feet west of Palisade Avenue.

Q. And on 9th and 10th Street you bought the same amount, that is, running a distance of 350 feet? A. It runs from 9th to 10th Street fronting both streets, and about 350 or 360 feet west from Palisade Avenue. 10

Q. What was the size of each lot? A. The depth between 9th and 10th Street, the depth was 155 feet.

Q. That is running from 9th to 10th Street? A. Yes.

Q. And what was the width of each lot? A. Of course, if you figure them 25 feet, there was an odd lot there between. I told you there was 350 or 360 feet, that whole plot there at the time. 20

Q. What did you pay for the land? A. I could not tell you just now; I would have to refer to the books.

Q. What did you pay for each lot? A. I could not tell; I bought the plot.

Q. You remember all the other lots that you bought, don't you? A. I didn't. I didn't tell you the prices I paid for them. 30

Q. Don't you remember the prices you paid for any of the lots you have spoken to us about? A. If I referred to the books I would.

Q. So you do not remember the price of any lot you have testified to here? A. Some I do. Recently, I do.

Q. Would you call the early part of 1922 such a long time that you cannot remember what you paid for 350 feet of land? A. That is right, I could not remember exactly what I paid. 40

Q. And you came here prepared to testify, didn't you, on the subject of these sales? A. Came here to testify to the best of my knowledge.

10 Mr. Hirschberg: I submit that this witness is not qualified to testify, on the ground that he does not know the prices of the different sales.

The Court: It is a matter of argument.

Mr. Hirschberg: I think it has been developed that he was not an agent during his ten years in bringing people together, either for the sale of lots or buildings, and it is further developed that the only thing he can rely on is what sales he made and the prices they brought. He comes and says \$149,000, and he doesn't remember one single price. I ask that his testimony be rejected.

20

The Court: In fixing your valuations on these properties in question, did you base it upon your knowledge of the sales that have to your knowledge taken place in that vicinity—sales around the property that you bought?

The Witness: Right at that particular time.

30 The Court: Do you know the values of the property which you did buy yourself?

The Witness: Yes.

The Court: And which you sold?

The Witness: Yes.

The Court: You can state the value of the properties you sold?

The Witness: Yes; but in recent sales—I have sold on the Hudson Boulevard—but in the last six months I can't tell what I sold them for.

40 The Court: All right, proceed.

Q. You say you can tell us what you had paid and what you sold lots for within the past six months? A. Yes.

Q. But you can't remember what you paid for 350 feet in the early part of 1922? A. No; I could not tell just exactly what I paid.

Mr. Hirschberg: Your Honor is permitting this witness to act? 10

The Court: Yes.

Mr. Hirschberg: Your Honor will allow me an exception?

The Court: Yes.

Q. Do you know the prices of any sales outside of the property that you bought? A. Recently, I do, yes.

Q. Within what time? A. Oh, within a month. 20

Q. Do you know it within six months? A. I do within six months.

Q. Do you know it within eight months? A. I know it within eight months.

Q. Do you know it within a year? A. If I can just refresh my memory and think of certain sales that were made, I could.

Q. Do you know any property that you bought within the past year; do you know the price of it? A. Yes; I told you within the past six months I could. 30

Q. Do you know it within the past year? A. The past year I can't because I have been developing that big plot; I was working on the land that I owned at the time, and therefore I did not buy any.

Q. What big plot were you developing? A. Palisade Avenue between 9th and 10th Streets.

Q. The very plot I am asking you about and asking you to give us the price you paid for it in 1922? A. That is right. 40

Q. And your mind was on that plot? A. My mind was on that plot, yes.

Q. How long were you developing that plot? A. A year and a half.

Q. Quite a big thing, wasn't it? A. It was.

10 The Court: Selling lots continually on there, weren't you?

The Witness: I was building on them. I bought them and built on them.

The Court: And sold them?

The Witness: And sold the buildings.

The Court: Was your valuation placed upon the sale price of your buildings including the valuation of the lots?

The Witness: Yes.

20 The Court: Did you have in mind the value of the lots as distinguished from the buildings?

The Witness: That is right.

The Court: And you knew about what valuation was placed upon the lots as distinguished from the buildings, when you sold them?

The Witness: About, sure.

30 The Court: The mere fact that you cannot remember specific prices of that particular property, does that have any effect upon the opinion you formed or the valuations that you have given of the properties in that neighborhood?

The Witness: No, sir; it has not. I am buying today; buying every day.

By Mr. Hirschberg:

40 Q. You just say you are buying land every day?  
A. That is right.

Q. How long has that continued? Has that been going on for the past year or so? A. Has that been?

Q. Yes. A. Yes; wherever I can get a piece of land that I think I can develop.

Q. You don't mean every day? A. Well, I mean I am in the market every day if I can get something where I think it is worth while I will buy it every day. 10

Q. You mean something cheap? A. I didn't say that; I said anything worth while; I did not say something cheap.

Q. You would not buy a piece of property that was dear, would you? A. If there was a piece of property I thought was worth \$30,000 I would buy it for that, if I thought it was worth it, if it was one lot. 20

Q. But if you could get it for 25 you would buy for 25? A. If it was on Bergenline Avenue I would be willing to pay the thirty.

Q. Do you own any parcels on Bergenline Avenue? A. No, sir.

Q. And you have been buying in West New York every day? A. Yes; I have been in the market for buying every day.

Q. And you never touched a piece on Bergenline Avenue? A. No, sir. 30

Q. You never took a chance on Bergenline Avenue? A. No; I was never smart enough for that.

Q. You mean you were conservative enough to keep away? A. Well, no; not when it is worth \$30,000 there, I could have bought it for less than that.

Q. Recently have you been interested in the sale of lots on 17th Street, West New York? A. Yes; I have been interested in buying and selling on 17th Street. 40

Q. Where on 17th Street recently? A. On the north side of 17th Street east of Palisade Avenue.

Q. Do you remember the price you got for those lots? A. I do.

Q. How long ago were they bought? A. How long ago did I buy them?

Q. Yes. A. Oh, it was around October of last year.

10 Q. What price did you pay for them? A. I paid \$7,000 for the two, for fifty by a hundred.

The Court: How far away is that from this property being condemned—about?

The Witness: That is about four and one-half to five blocks from 13th to 17th, then it is one block west.

Q. And it is right in the built-up section, is it not? A. Well, there is some houses across the street.

20

Q. And would you say by that answer that the rest was woods? A. I answered the question.

Q. When you said there were some houses across the street, what did you mean by that, the rest of the land surrounding was empty? A. I said there were some houses across the street; there could not be any houses on the lots that I bought, could there?

Q. How far is this property from Bergenline Avenue? A. How far it is?

30

Q. Yes. A. Oh, I should judge four to five hundred feet.

Q. Four to five hundred feet from Bergenline Avenue on 17th Street? A. Yes. I think more than that.

Q. And the section of Bergenline Avenue would you say that is the best part of Bergenline Avenue? A. You mean, as far as the values are concerned?

40

Q. The values; yes. A. Between 18th and 12th Streets?

Q. Between 12th and 18th Streets? A. Yes, sir.

Q. Then 400 feet from 17th and Bergenline Avenue this is? A. Four to five hundred feet.

Q. How many lots did this block consist of? A. Two; that is, \$7,000, I told you, then I bought another one; I paid \$4,800 for it, that was 25 x 100, right alongside of it.

Q. Isn't there one lot in the rear of the two that you bought, with the two? A. No; not for the \$7,000. No. We paid \$9,000 for that.

Q. Then you did not pay \$7,000, as you told us before, but paid \$9,000? A. Yes; but at the same time we paid \$7,000 and we have gotten the other lots adjoining these two for \$4,800, which allowed \$2,000 for the other lot.

Q. Did you buy the back lot before you bought the adjoining lot? A. We bought the two lots first, the two lots on 17th Street first.

Q. Will you say positively now that on 17th Street, the property that you referred to, that it did not consist of three lots? A. I will say positively that the two lots on 17th Street we paid \$7,000 for.

Q. I did not ask that question. I ask you, will you say now positively that on 17th Street the property that you referred to did not consist of three lots? A. I will say positively that the two lots that I refer to bought from a man by the name of Levin I paid \$7,000 for the two lots.

Q. You mentioned the name Levin? A. Yes, sir.

Q. Is Levin in partnership with you? A. On the building, yes.

Q. Weren't those lots bought by you and Levin from a party in New York City? A. No, sir.

Q. Then the man that you say you bought them from is now a partner of yours on the building; is that it? A. That is right.

Q. And do you know who owned them before Levin bought them? A. I do not know.

Q. You don't know? A. No, sir.

Q. Do you know how long before you bought the lots from Levin that Levin bought them from the previous owner? A. Do I know how long before?

10

Q. Yes. A. No; I could not say that.

Q. Levin never told you? A. No; he did not tell me how long it was.

Q. And he is partner of yours in this construction? A. Yes, sir.

Q. And he never talked with you about how much he paid for the lots or when he got them? A. \$7,000 is what I took them in for.

Q. You paid to Levin? A. That is right.

20 Q. When you say you took them in for, what do you mean by that? A. To Levin, the value of the lots was figured at \$7,000.

Q. Did you pay that \$7,000 in cash to Levin for those lots? A. How could I pay that \$7,000 when he was a partner of mine?

Q. So that he became a partner of yours when these lots were bought; is that right? A. Not when I bought them, when I took them in the share.

30 Q. Then when you said before that you paid \$7,000 to Levin for those two lots, that is not so, is it? A. Yes; it is so. Why isn't it so?

Q. You say you did not pay to Levin, but the lots became a part and Levin became a half owner with you in the lots? A. What difference does it make, the lots were \$7,000.

Q. If the lots were valued at \$7,000, then your share would only be \$3,500, wouldn't it? A. Yes; half of it.

40 Q. Did you say before you paid \$7,000? A. If

I was to appraise a piece of property and I had half of it, it does not make any difference what I pay in money or what somebody else pays in money as long as we know that the value is \$7,000.

Q. Now you tell us that the lots were valued at \$7,000. You did not say that before. You said you paid \$7,000 to Levin. A. That is right. 10

Q. Is it right that you paid \$7,000 to Levin? A. Yes. Levine took half of it; now, what difference does it make?

Q. Levin took half? A. Yes, sir.

Q. You also said that you took in the lots for \$7,000? A. Yes, sir.

Q. Now, what did you mean by taking in the lots? A. I meant that the two lots, the price of the two lots was \$7,000, that is what I meant, and whether I built the buildings myself or whether I built them with Levin, or Levin built them with me, that has nothing to do with it; the fact of the matter is that those two lots were purchased for \$7,000. 20

Q. By you and Levin from Levin?

The Court: Doesn't that explain it?

A. It don't make any difference how you put it. You might be a better orator than I am, but I said it, and that is the best explanation I can give you. 30

Q. What other lots did you buy within the past year the prices of which you are now acquainted with, or do you remember? A. I bought three lots—I am going to make it we now. We bought. And I will have Levin in there, so that we do not lose so much time. We bought three lots on the west side of Hudson Avenue between 7th and 8th Streets, 75 x 100, and we paid \$10,500.

Q. You did not buy those lots from Levin, now? A. Levin is in partnership with me. 40

Q. Now, Levin is in partnership with you, I mean, you are now speaking of you and Levin together? A. I am speaking now with reference to the same thing, it don't make any difference; Levin is one and I am the other; what difference does it make?

10 Q. Did you go there when you bought them? A. Yes; I was there when the contract was signed.

Q. But you were not there when the contract was signed for the 17th Street lots? A. No, not when Levin bought them.

Q. Where is this property located? A. On the west side of Hudson Avenue between 7th and 8th Streets.

Q. Whom did you buy it from? A. A man named Ulmer.

20 Q. What did you pay for them? A. \$10,500.

Q. Was that in exchange? A. No; we bought them.

Q. You paid cash for them? A. We paid \$10,500 for them.

Q. That is in a highly built up section? A. There are some houses around there.

Q. On Hudson Avenue? A. Yes, sir.

Q. Between 7th and 8th Streets? A. That is right.

30 Q. When you say some, what do you mean by some? A. There was only one house was on that block, the corner, and a little house next to it.

Q. What about the other side of the street? A. Opposite?

Q. Yes. A. There are houses opposite.

Q. All along? A. All along, yes. No. Not all along; there are some corners vacant there.

40 Q. When did you buy those lots? A. We bought them in July; I think it was about the 1st or 2nd of July, or a little later.

Q. And you are going to erect an apartment house on these lots? A. We have erected an apartment house; it is already sold.

Q. It is already finished and sold? A. Yes, sir.

Q. Where else did you buy any piece of property in the past year or year and a half or two?

A. Well, we bought some, we bought two lots recently on Seventh Street, east of Park Avenue, but that is out of the town, that is in Weehawken. Would that interest you? 10

Q. When did you buy the others? A. We bought that two weeks ago, 50 x 100, and we paid \$7,000 for it, and we sold them three days after for \$7,300.

Q. What other property did you buy about six months ago or a year ago? A. Nothing in that vicinity. I bought some property I was interested in with other people but not in that vicinity. 20

Q. About a year ago? A. A year and a half ago.

Q. What property that you have testified to did you buy before October, 1923? A. Why, both properties we bought before, the Hudson Avenue as well as the 17th Street.

Q. That is the Hudson Avenue— A. Between 7th and 8th Streets, and 17th Street and the Palisades. 30

Q. The Hudson Avenue property, that is the property you paid \$7,000 for, you said? A. Yes.

Q. How long before October did you buy that? A. The first part of July.

Q. And the other property you bought was on 17th Street? A. Yes.

Q. And then the property before that was the property on Ninth and Tenth Streets running between Bergenline and Palisade? A. Yes.

Q. And those are the three parcels you dealt in during the past two years? A. Yes. 40

Q. That is all you bought? A. That is all I bought.

Q. About three or four years ago you built around this Dieckmann site, didn't you? A. Yes.

Q. And did you ever attempt to build on any property on the Dieckmann site? A. I built on  
10 the Dieckmann site.

The Court: You did?

The Witness: I did.

Q. Did you build on this particular Dieckmann site or near it? A. Near it.

Q. You did not build on any part of this site in question, did you? A. No, sir; I said near to it.

Q. Why wouldn't you touch that, Mr. Weisberg? A. I didn't say I didn't want to touch it.  
20

Q. Well, you didn't touch it, did you? A. No; I did not.

Q. You bought lots in other available plots, didn't you, if you could get them at your price, you bought them in every available spot? A. That is right.

Q. And is not this parcel immediately adjoining the lots that you bought? A. The parcel in question?

Q. Yes. A. Yes, sir.  
30

Q. And didn't you go over in this direction in building (indicating)? A. Yes, sir.

Q. And didn't you also build on Park Avenue in the opposite direction? A. Yes, sir.

Q. So you built to the east and you built to the west and you did not touch this center part at all, did you? A. No; that is right.

Q. Why didn't you touch that center part? A. Because I didn't like it at the time.

Q. Why didn't you like it? A. I can't tell you  
40 why I did not like it at the time.

Q. You say you did not like it at the time, so you know there was some reason why you did not touch it; what was the reason why you did not like it? A. I don't know.

Q. You have forgotten the reason, have you? A. I had no reason.

Q. You said you did not like it? A. That is right. 10

Q. Well, you must have considered it if you decided you did not like it? A. That is right.

Q. Now, can't you remember why you did not like it, having built big parcels to the right of it and to the left of it? A. I built these parcels because the streets were through, the streets were paved, and I did not go in here because those streets were not paved.

Q. And that was the only reason you did not build there at that time? A. That was the only reason. 20

The Court: We will now adjourn until tomorrow morning at 10 o'clock.

(Adjourned to Wednesday, March 12, 1924, 10 A. M.)

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THIRD DAY.

March 12th, 1924. 30

(The trial proceeded this day pursuant to adjournment.)

Present:

Of Counsel:

Mr. HIRSCHBERG,

Mr. BESSON,

Mr. DEMAREST. 40

FREDERICK DUNHAM, sworn for the Property Owners.

Direct Examination by Mr. Besson:

- 10 Q. What is your profession? A. Civil engineer.  
 Q. How long have you practiced that profession? A. It is 40 years.  
 Q. Are you familiar with the property under consideration in these condemnation proceedings? A. Yes; I have been for 40 years past.

The Court: How long did you say you had been an engineer?

The Witness: I first went with Frank H. Sherrill in 1882.

- 20 Q. Did you make soundings on this land? A. I did.  
 Q. When was that done? A. That was done in the latter part of January and the first part of February of this year.  
 Q. And those soundings were made together with Mr. Oleri? A. In conjunction with Mr. Oleri, the town engineer.  
 30 Q. What experience have you had with land of this character? A. I have had a great deal of experience. I make a specialty of borings, designing and superintending the foundations for buildings. I designed and superintended the foundation of the construction of the bulkhead piers and foundations for the Corn Products Refining Company at Edgewater, New Jersey, requiring some 12,000 piles; the designing, superintendent of construction of the bulkhead piers and foundations for the Perlene factory at Edgewater, Bergen County, requiring some 6,000 to 8,000 piles in that; the piers, bulk-  
 40 heads and foundations for the building of the

American Cotton Oil Company at Guttenberg, and for many other structures I have made borings, test borings, recommendations for the construction of the Atlantic & Pacific Tea Company in Jersey City, Merchants Refrigerating Company, Julian Cold Storage Company, First National Bank of Jersey City—oh, I don't know; there are so many of them, Swift & Co., Armour & Co., the City of Jersey City; I have been the Harbor Engineer of the City of Jersey City since 1912— 10

The Court: Don't you think he is qualified?

Mr. Demarest: We want to show how well he is qualified.

The Court: Go on.

The Witness: The Federal Shipbuilding Company, the Ford Motor Company, the Western Electric Company—well, I don't know; I cannot recall, there are so many of them that I cannot recall them all. 20

Q. The Commercial Trust Company? A. Yes, the Commercial Trust Company, yes; in fact, all of the large buildings in Jersey City—for the Board of Education of Jersey City on all of its schools.

Q. Is the Commercial Trust Company building of Jersey City built on piles? A. It is on piles; yes, sir. 30

Q. And the First National Bank? A. The old building was on piles, the new building is built on caissons from the rock.

The Court: Is there rock down there?

The Witness: Yes; the new First National Bank carried its foundations down to the rock, which is about 40 feet below the curb level. 40

Q. But the Commercial Trust Company building is built on piles? A. The Commercial Trust Company building is built entirely on piles.

10 Mr. Hirschberg: We object to that and ask that the testimony be stricken out. The answer is too indefinite. We don't know just how many piles there were, we don't know how deep, don't know the character of the soil, and this is an attempt now made to compare the piling that is put down there with the piling that may be put down in this particular plot—

Mr. Demarest: We don't object to the answer, it is our province to have it stricken out.

20 The Court: I don't see one way or the other how it is very material. You are qualifying this man as an expert.

Mr. Hirschberg: He mentions particular parcels and my idea was that I did not want the jury to get the impression that because a certain building was built on piles on that ground that this ground might be piled in the same way.

30 The Court: My understanding of the question was he was asked if there was piling under the building, and he was supposed to have an acquaintance with the doing of it, and that would establish his qualifications. I will admit the question, but I don't suppose we ought to go into a comparison of various other buildings for the purpose of showing that because it was done there it could be done here.

40 Q. Now, what do the borings that you made show, the borings made in the property in ques-

tion? A. The borings showed that from the original surface, which runs from six to eight feet below the curb level, there was three to five feet of black bog, known as peat. There was considerable vegetable matter mixed in with it; and beneath that there was a blue clay which ran down to a gravel stratum. This gravel stratum is from 27 to 30 feet below the curb level. 10

The Court: On an average.

The Witness: On an average.

Q. In your opinion what depth of pile would be necessary? A. From what would be the grade of the natural cellar floor level to the gravel stratum would require an average length of 20 feet. 20

Q. Why 20 feet? A. 20 feet is as deep as they could drive it. That would bring the pile to practical refusal in driving.

The Court: That means that would take you down to the gravel?

The Witness: Down to the gravel and into the gravel a foot or two, which I think is about as deep as we could drive into it.

Q. There would be excavated the cellar before the piles were driven? A. Yes, excavating your cellar down to the cellar floor and then driving the piles. 30

Q. And under those circumstances an average of 20 feet of pile in your opinion would be sufficient to sustain a building? A. Yes. Some places a little less than 20 feet. Some places a little more.

Q. But that would be a fair average? A. Yes.

Q. What type of building could be constructed 40

on the piling you have described? A. Practically any type of building, running to six or eight stories.

Q. Are you familiar with the buildings erected on Hudson Avenue adjacent to this property? A. Yes.

10 Q. To construct a building similar to those buildings, what number of piles would be required for each lot? A. Those buildings are mostly four story brick apartments built on two lots or more; but figuring a four story brick apartment to occupy two lots, would require about 180 piles.

Q. For the two lots? A. For the two lots. About ninety piles to the lot.

Q. Now, that takes care of approaches, and everything? A. That would take care of everything.

20 Q. What center would that be? A. That would be two and a half, approximately, with additional piles in the corners, of course.

Q. For a smaller type of building, what number of piles would be required? A. For the ordinary two family brick dwelling it would not require over fifty piles.

30 Q. Are you familiar with the cost of rock excavation? A. Yes; I have had to do with a lot of it here only recently, for the Mono Macaroni Company on Baldwin Avenue, Jersey City, where there was about 4,000 yards taken out.

Q. What is the difference in cost between the excavation of rock and a piling when necessary for the construction of a building, as in this case?

40 Mr. Hirschberg: I object to that question on the ground we are trying to reach some standard of comparison, and the testimony so far produced on our side shows that we have used a lot which does not require any excavation. Now, we want to reach some standard of comparison in order to show

some similarity. If we are to go off into a different kind of lots which require rock excavation and then try to compare with these lots I think we are getting away from the narrow compass that these illustrations should occupy. Now, there are enough lots in West New York in that vicinity, and there are many of them that we have shown in this court and which have been testified to, and which were ordinary lots, which require no excavation either above or below. 10

The Court: My recollection is that there were prices offered in evidence which covered property where there was rock excavation and property where there was not rock excavation. I assume the purpose is to show the difference between the two characters of construction. If that is the purpose, I will permit it. 20

Mr. Hirschberg: What is the use of taking a lot which contains rock as an illustration when we have plenty of lots which do not contain any rock which can be used as an illustration showing the price of that particular lot and compare it with these lots?

The Court: Only I suppose that you have yourself, through one of the witnesses shown a number of lots where there was rock excavation, and given the prices. 30

Mr. Hirschberg: If Mr. Besson will confine himself to those very lots which we brought out, which lots do contain a small quantity of rock, then it may be that I, having brought it out myself, the jury would have a right to hear what would be the cost of removing the rock in that particular lot. 40

The Court: How can it hurt you?

10 Mr. Hirschberg: Only in this way: They are laying the foundation for this argument before the jury. The purchase price of a lot containing rock will be so much and it will cost so much to remove that rock. They will then take the cost of removal and apply it to what it will cost to pile their lot, and they will show the cost of piling is the same as the cost of removal of the rock, thereby making both equal, so that a lot containing rock is in the same condition, so far as the eventual cost is concerned, as these lots which require piling.

The Court: Isn't that an argument in their favor from the testimony?

20 Mr. Hirschberg: It is an unfair argument because we have plenty of lots which do not require rock removal and we can use those lots for comparison. Of course, if they brought in lots in different sections with plenty of rock, the price would go higher, and they will tell the jury it will cost so much to remove rock from this lot, it costs so much to pile, and that makes both lots on the same basis. But we have plenty of illustrations. We are trying to get  
30 down to some basis of similarity. Why should we go into the cost of removal of rock when there are plenty of lots which require no rock removal? And we have their prices and they have an expert here who is supposed know the cost of lots in West New York that require no removal of rock.

The Court: Do you consider, Judge Besson, that it is necessary for your case to bring this out?

40 Mr. Besson: I do, yes, sir; for this

reason. The testimony yesterday showed, or tended to prove, that the formation west of this property is rock, and where these buildings in the immediate neighborhood are constructed, and the prices that were paid for those lots are in evidence.

The Court: I will admit the question. 10

Mr. Hirschberg: Exception.

(Question repeated.)

Mr. Hirschberg: I object to the question on the further ground it is too general and too indefinite. We have not a particular lot before us, we have not the quantity of rock it contains.

The Court: If you put it on that ground I suppose that is so, that you must have a type of excavation that fits in with the character of buildings that you have already shown the price of. 20

Q. (Repeated by the stenographer on request.)  
What is the difference in cost between the excavation of rock and the piling when necessary for the excavation of buildings as in this case?

Mr. Besson: Maybe I can relieve you somewhat as the question may not be answerable in that form. 30

Q. The rock formation coming to the surface of the rock and grade? A. I can best answer that—

Mr. Hirschberg: I object to that on the ground that it does not show what character of buildings would be constructed, thereby showing how deep would be the excavation. 40

Q. Are you familiar with the formation of land on Hudson Avenue? A. Yes.

Q. What is that formation? A. Well, it is in some places rock and in other places earth; there are some buildings built without rock excavation and other buildings have required rock excavation.  
10 The cost depends upon the quantity of rock to be removed, that is obvious. If you want the cost of removing rock I can tell you that.

Q. Which would cost more, rock excavation or piling? A. I can't answer the question that way.

Q. For a lot of the same size?

Mr. Hirschberg: I object to the question. If it was intended to qualify this witness as to his knowledge on rock formation on Hudson Avenue, I think I would like to cross  
20 examine him on that point.

The Court: You would have to apply the tests; if you say so much per cubic rock excavation and so much for piles used. Of course, I can see that it would depend on the size of the excavation and whether or not the rock was of a given character, is not that so?

The Witness: That is true. I can give  
30 you the difference between the cost of removal of rock from a lot for a two family house, and if the rock was to the curb level and was to be levelled down to the cellar floor level, the cost of the piling for the same house.

Q. Assuming a building 22 x 60, and an excavation of a depth of four feet?

The Court: Solid rock?

40 Mr. Besson: Solid rock.

Mr. Hirschberg: I object to that because the illustration used with respect to piling

I think was 20 x 40, and I further object to it on the ground that it has not been shown yet that the support afforded by piles will give the same result as the support by rock, thereby showing there is no comparison, they are not alike, a different quality of foundation. 10

The Court: I will sustain the objection.

Mr. Besson: I take an exception.

Q. What will be the difference in cost of preparing a lot for the erection of a house 22 feet wide by 60 feet deep, with a depth of four feet loose stone trap rock surface, and the preparing of the same lot on the premises in question by piling, for the erection of a similar house? 20

The Court: What type of house?

Mr. Besson: Two story brick.

Mr. Hirschberg: I object to the question on the ground that it is practically the same as the other question; it is the same question; there is no comparison.

Q. (Last question repeated by the stenographer by request.) 30

Mr. Hirschberg: The first question, if the court please, dealt with a space 20 x 40. There is more space in this question; and in the second place, piling has to go down a certain number of feet, and he does not strike rock in this particular case, and the witness has testified the piling does not even strike rock.

The Court: The seriousness of the objec- 40

10 tion, to my point of view, is that it is not shown here whether it is trap rock or what kind of rock has to be removed; in other words, I do not think it makes any difference what it would cost to remove rock over in Pennsylvania from a lot for a space big enough to correspond with the space required to drive piling on this lot. The materiality, if it is material, of what you are after, is to show that the value on these houses and lots that have been given where there was rock, have a direct bearing on the cost of the rock excavation. Now, that is the materiality, and to get it you must draw a parallel between the two, the cost of removal of the rock from this and putting piling in a similar house of the same construction.

20

Mr. Hirschberg: That was the basis of my original objection, your Honor. If Mr. Besson will confine himself to the testimony I have referred to—

Q. Are you familiar with the rock foundation of Hudson Avenue, what type of rock it is? A. It is trap rock.

30 Q. What would be the difference of cost between the excavation of trap rock on a lot on Hudson Avenue for a two story brick building 22 feet x 60 feet to a depth of four feet rock for the surface and preparing one of the lots in question for the same purpose by piling?

40

Mr. Hirschberg: I object to the question upon the ground that there has been no reference so far in any testimony to lots on Hudson Avenue by our witnesses. I think it was the purpose of the court to have

brought before the jury particular lots that have been testified to to verify where the values have been given, and then after having given the values the next question is then that they contain rock, and if so, what will it cost to remove that kind of rock. We are going into the same line of testimony, general stuff. 10

The Court: I do not recall Hudson Avenue houses being testified to, but if there were such you may ask the question.

Q. Are you familiar with the Hudson Boulevard and Sixteenth Street? A. Yes, sir.

The Court: Has that been testified to?

Mr. Besson: That has been testified to. 20

Q. Known as the Dunn property? A. Yes, sir.

Q. Do you tell us what the difference of cost would be for removal of the rock on that lot 22 feet by 60 feet, four feet deep, bluestone, trap rock, for the surface, and the preparation of a lot on the premises in question by pile construction?

The Court: Of the same kind.

Mr. Hirschberg: We object to the question upon the ground that it has not been shown yet that the witness examined this particular plot. 30

The Court: He says he knows about it.

Mr. Hirschberg: Yes, but he has not testified he ascertained how much rock there is there and how much should be removed. He says he knows about it generally but he has not examined it for the purpose of testifying now here with reference to this particular plot, how much rock there is now there that would have to be removed. 40

Q. Would it be solid rock that would have to be removed? A. Yes; I know this particular property because my office surveyed it.

10 The Court: Do you know how much rock would be necessary to be excavated for that size building, do you?

The Witness: Yes.

The Court: And the character of rock, approximately?

The Witness: Yes.

The Court: And you also know how much piling would have to be driven on the premises in question to put the same kind of a house there that your attention has been directed to; is that right?

20 The Witness: Yes, sir.

The Court: You may state.

The Witness: It would cost about \$2,400 to remove the rock.

Mr. Hirschberg: I think I have a right at this time to cross examine this man as to what he knows about this particular plot.

The Court: You may do so.

By Mr. Hirschberg:

30 Q. When did you examine the Dunn property located at 16th Street and Boulevard East? A. Before the houses went up and while they were going up and since they have been built.

Q. When was that? A. That is covering a period during the last six months.

Q. What brought you there? A. The inspection and survey for the New Jersey Title Guaranty Trust Company.

40 Q. How far is this land away from the Dieckmann Estate? A. It is three blocks, I think three blocks north and three blocks east.

Q. What kind of a building was erected on that plot? A. Brick.

Q. How high? A. I don't recall now.

Q. You saw it? A. Yes, I saw it; I see it practically every day.

Q. It is easier for you to remember, having seen it every day, how high a building is, than how much rock there is in the lot, is it not? A. No. We surveyed the property and got elevations on it before the building was constructed, and then we went back later while the building was under construction to test the lines. 10

Q. Did you see the completed building? A. I don't know that I did, it was in course of construction the last time I saw it.

Mr. Demarest: We object to that. What difference does it make so far as excavating for a cellar is concerned how high the building is? 20

The Court: Don't you think we will save time by permitting the examination? I don't say that to affect the cross examination, but you will have to meet it anyhow and we may save time by admitting it now.

The Witness: I did not examine it for the purpose of testifying in this suit, I had not that in mind at that time. 30

Q. Did you know what building was to go on that lot, how high? A. I do not recall that.

By the Court:

Q. You knew at the time, didn't you? A. Yes, sir.

Q. You saw the plans at the time? A. Yes, sir; we checked up the building for the purposes of a loan.

Q. And then you knew at that time? A. Yes. 40

By Mr. Hirschberg:

Q. Don't you know it was a five-story apartment for fifty families house going on that property?

A. I believe it was an apartment house.

10 Q. Will you not say that it was a five-story for fifty families? A. I don't know that; no.

Q. You won't deny that? A. No; I don't deny it.

Q. What did you see the condition of the lot to be when you got there? A. When we first went there of course the lot was in its natural condition; the next time we went there the lot had been excavated. The last time we went there the foundations were built.

20 Mr. Hirschberg: All right; go ahead.

Mr. Besson: Answer the question.

Mr. Hirschberg: May I ask another question?

The Court: Yes.

Q. How far above the curb is the rock that you saw there? A. I do not recall.

30 Q. You do not recall that? A. No; I know the general formation along Park Avenue and it is irregular, in some places the rock is a little below the curb and in some places it is above the curb. I should say the average elevation along there would be probably four feet, the average excavation for rock, probably four feet.

Q. We are talking about this particular plot; you don't know how high the rock was above the curb? A. Not at any particular point; no.

Q. You cannot tell us? A. No, sir.

Q. On that particular lot? A. No; I could not attempt it.

40

Q. And do you know how deep the rock was?

A. I do not recall that; no.

Mr. Hirschberg: Then we object to the witness.

The Court: Assuming that it was solid rock, what would be the cost. 10

Mr. Besson: Answer the question.

The Witness: It would cost \$2,400 to excavate the rock for a building such as you describe.

The Court: And considering that it was solid rock for the whole distance?

The Witness: Considering solid rock.

By Mr. Besson:

Q. What would be the cost for preparing the lot on the premises in question with pile construction? 20

A. A building of that character would require about 60 piles, which I would estimate to cost about \$600.

The Court: That is, taking into consideration the same type of building, the same kind of excavation, and the same depth and width of pile construction?

The Witness: Yes; that is everything; the preparation of the cellar floor level. 30

Mr. Hirschberg: Will your Honor permit me an exception to this line of testimony on the ground that the witness cannot assume any fact—

The Court: You did not ask for an exception before the answer was given.

Mr. Hirschberg: The witness was answering already and I asked for an exception before. 40

The Court: No; you did not ask for any exception.

Mr. Hirschberg: The reason for my exception is that the witness—

10 The Court: You cannot speculate upon an answer and then, if you do not like it, take an exception to it. You must except before the question is answered.

By Mr. Besson:

Q. What kind of soil did you find below the peat you describe? A. Only blue clay.

Q. What kind of soil below the clay? A. Red sand and gravel.

20 Q. What kind of foundation for piling will that make? A. Very good; it will support anything.

Q. Is it as good as a rock foundation? A. Just as good.

Q. Is there a water line on these premises? A. The water line is about two feet below the old surface, it is wet all the time. That is the bed of an old brook, that whole basin.

The Court: Do you mean two feet below the ground surface?

30 The Witness: Below the original ground surface, the natural ground surface.

Q. Then the water line is above the point where the foundation would be? A. About where the piles would be, yes, sir; the piles would be below the water line.

Q. What is the effect of the water line upon the piles? A. They will last indefinitely where they are sealed from the air.

40 Q. If there were no water line the tendency would be to deteriorate? A. If the air gets to them, yes, they would rot.

Q. Under the Commercial Trust Company building in Jersey City, is there a sand or rock foundation for the piles?

Mr. Hirschberg: I object to using the Commercial Trust Company building on the ground it is too remote.

10

The Court: I will sustain the objection.

Q. Are large buildings built on piles sunk in sand of this character to your knowledge? A. Yes.

Mr. Hirschberg: I object to the question because we have not got the buildings before us. It is too general.

The Court: He says large buildings.

Mr. Hirschberg: I object to the use of the word "large"; that is pretty relative.

20

Q. What buildings have you in mind?

The Court: No. What have you in mind.

Mr. Besson: I have nothing.

The Court: Characterize what you call large.

Q. Buildings similar to the construction on Hudson Avenue? A. Yes; there are many such buildings in Jersey City.

30

Q. How about Hoboken? A. I do not know so much about Hoboken. I know of several, in fact forty or fifty buildings of that character in Jersey City that are built on piles, the piles entering into the sand—

Mr. Hirschberg: I object to the answer on the ground it has not been shown the soil in Jersey City and Hoboken is the same as

40

the soil up here, or bears any resemblance to it.

Mr. Demarest: I object to counsel interrupting the answer of the witness.

10 Mr. Hirschberg: The court just admonished me that my objections were coming too late.

The Court: I do not think there was any question. The witness was merely making a speech.

Q. (Question repeated.)

20 The Court: I will sustain the objection as far as it attempts to compare Hoboken—without showing a similarity in the soil—with this place.

Cross Examination by Mr. Hirschberg:

30 Q. In making a test, making borings, what method did you employ? A. We put down an inch and a quarter cast iron pipe, and that is driven down by hand as far as possible, and the material through which it goes, enters the pipe and the pipe is withdrawn every few feet, and the material taken out of the end of the pipe and saved as a sample. The pipe is then put down again and when it is too hard to drive by lifting it and punching it down, then we use a block with a maul and drive it down with a maul or a sledge. We use an extra heavy pipe and that pipe is driven down practically to resistance.

The Court: What size pipe?

40 The Witness: Inch and a quarter pipe. We get what we call an extra heavy pipe. When it cannot be driven by hand we some-

times use a jet of water; but that is not so good in securing samples. The other way we get what we term a dry sample.

The Court: You did not have to use a jet here?

The Witness: No; we could get this pipe down to the gravel. 10

By Mr. Besson:

Q. Have you the samples of these borings? A. Yes.

Q. Will you produce those? A. There is the sample of the soft peat and clay.

The Court: You struck that first as you went down?

The Witness: Yes. 20

(Samples offered in evidence, admitted and marked D-1.)

The Witness: There is a sample of the black peat that is on the top.

The Court: That is the next after the first?

The Witness: That is the top.

(Sample offered in evidence and marked D-2.)

The Witness: That is running to six feet. 30  
There is a fine red sand which runs from about 20 feet to 25 feet (producing another sample).

(Sample offered in evidence and marked D-3.)

The Witness: Here is a sample of that so-called blue clay. It is dried out now and it is very stiff.

(Sample offered in evidence and marked D-4.) 40

The Witness: Here is another sample of the clay, which is moist.

Mr. Demarest: The same as this?

The Witness: Yes.

(Sample offered in evidence and marked D-5.)

10 The Witness: The clay is not all blue. As you get toward the bottom of it it gets more of a red cast, where it approaches the red sand. This is a mixture of sand and clay.

(Sample offered in evidence and marked D-6.)

Mr. Demarest: This last one you showed us is toward the bottom of the clay?

20 The Witness: Yes. Here is another sample with considerable sand in it.

(Sample offered in evidence and marked D-7.)

The Witness: There is the sample of the sand and gravel which is at the bottom. We did not bring up much of the gravel, but we brought up considerable of the sand. You can see large pieces of stone and gravel mixed in with it.

30 (Sample offered in evidence and marked D-8.)

The Witness: That last sample, we could not penetrate any further.

By Mr. Besson:

Q. Mr. Dunham, are you familiar with the conditions existing on 9th Street, West New York?

A. Do you mean as to the pavements?

40 Q. Yes. A. In a general way; I haven't made any special examination.

Q. You have seen it, haven't you? A. I have seen it, yes.

Q. I call your attention to Exhibit 8 (Photograph) and ask you what in your opinion is the cause of that condition. A. Settlement—for the reason that one point stands up, of course the pile at that point is holding, and the others have settled—a clear indication to my mind of improper pile driving. 10

Q. Can any inference be drawn from this picture of the condition that exists on the premises in question? A. No, but if the piles had all been driven home that condition would not have happened.

Q. I call your attention to Exhibit 2 (photograph) and ask you what that condition is due to, in your opinion? A. The cracking of the curb? 20

Q. Yes. A. That is settlement, that is likely to happen anywhere.

Q. Was that due to the construction? A. Yes; there is not a proper foundation under the curb, the sidewalk. That happens where the foundation is not properly prepared, especially in a clay soil.

Q. I call your attention to Exhibit 13 and also to the crack in the stoop in that picture; what is that condition caused by? A. Settlement. 30

Q. Was that due to the nature of the construction or what? A. It is due to the nature of the soil.

Q. Well, would proper construction prevent that? A. Not if there was not a proper foundation for the stoop; that is likely to happen anywhere; you will find that everywhere where foundations have not been properly prepared.

Q. Then in your opinion that condition is due to that fact, the reason of faulty construction? 40  
A. Yes.

By Mr. Hirschberg:

Q. Mr. Dunham, you say that this condition on Ninth Street was due to faulty construction? A. Yes.

10 Q. Were you present when the work was being done? A. No, sir.

Q. Did you examine into the nature of the work that was done? A. No.

Q. Did you go over the nature of the work that was done there with either the engineer covering the job or the contractor? A. No, sir.

Q. Then you do not know just what was done there? A. No, but I know what happened.

Q. You know what happened as a result of those photographs? A. Yes.

20 Q. You did not make soundings in this particular spot? A. No.

Q. You do not know how many piles were driven underneath here (indicating on exhibit)? A. No, I don't know that.

Q. And yet you say the condition was due to faulty construction? A. Absolutely.

Q. Yes. I show you this photograph of the 13th Street improvement and ask you whether the cracks there are due to faulty construction?

30

Mr. Besson: What exhibit is it, what is the exhibit number?

Mr. Hirschberg: Exhibit No. 2.

A. If that is pile it is due to faulty construction; if it is not pile it is what could have been expected.

40

The Court: That is, it would settle?

The Witness: It would settle.

Q. Now, this is the house (showing exhibit) opposite Tenth Street, isn't it, facing Tenth Street, on the south side of Tenth Street; is that correct?

A. Yes.

Q. And you see cracks there? A. Yes.

Q. And you said also that those cracks were due to faulty construction? A. Yes.

10

Q. Do you know whether the foundation of this was piles? A. I believe it was.

Q. You believe it was? A. I don't know but I am told it was.

Q. And is this land the same as the land across the way? A. I presume so.

Q. About the same? A. I think so.

Q. What kind of a house is this? A. A brick house.

Q. How many stories? A. Two stories, as I recall it. 20

Q. Would you say it was a high two story house or a low two story house? A. I did not examine that house particularly. I think it is the ordinary two story brick house.

Q. You know the contractor on this job? A. No, I do not.

Q. Don't you know that the Dieckmann people had an interest in the construction of this property? A. I don't know anything about it.

(30

Q. Were you present when the work was being done? A. No, sir.

Q. Did you examine the plans and specifications? A. No.

Q. Did you talk with the contractor who did the work? A. No.

Q. And yet you say it was due to faulty construction? A. Yes.

Q. And you eliminate the fact that this was built on soft ground with piles underneath, as being the cause? A. No, I don't say that. 40

Q. Would it be likely to come from that reason, do you say? A. It is due to settlement, that is what caused the crack.

Q. Would you attribute that condition to the fact that it was built on this particular land and the land had to be piled? A. Yes.

10 Q. And that is the only reason, you say? A. That is the reason.

Q. That was due to faulty construction? A. Yes.

Q. And saying this, with regard to the house itself, do you know whether piles were put under the stoop? A. I don't know.

Q. If piles were put under the stoop would it set for any other reason? A. If piles were put under the stoop, if properly driven, it would not settle.

20 Q. But properly driven, has that anything to do with the depth to which it is driven? A. Yes.

Q. So if they should be driven 75 feet and they only drove 35 feet, that is due to faulty construction?

Mr. Demarest: I object, that there is no evidence of that.

A. Under the stoop there is not much load to support, and a small pile would have held that stoop, a pile driven down to the sand.

30 Q. You made no soundings at this point? A. No; across the street, further out.

Q. Would you say it would not be necessary to drive a pile at that point deeper than thirty feet? A. Why, judging from conditions across the street, I should say that a pile driven about 30 feet on a level would be required.

Q. And would you say the pile beneath the stoop was not driven 30 feet? A. I don't know that  
40 there was any there.

Q. How did you know whether there was or not?

A. The indications are that there are not.

Q. If you were to know that the piling on Ninth Street was driven 60 feet, and this is what happened to 9th Street, what would you say the upheaval of Ninth Street was due to; the faulty piling?

A. There is no upheaval. There is no upheaval; it is a settlement. 10

Q. Would you say the settlement was due to faulty piling if the piles were driven 60 feet down?

A. Yes; if they should have been seventy feet it was due to faulty piling.

Q. And you don't know whether it should have been 70 feet instead of 60 feet, do you? A. To my mind they should have been longer.

Q. And you did not make soundings there? A. No. 20

Q. So despite the fact that you did not make soundings and despite the fact that you assume it went down sixty feet, yet you say it was due to faulty construction? A. Yes, sir.

Q. Now, in making your soundings let us point—will you kindly explain the contents of that specimen and where you found it (handing carton submitted by witness)? A. This is the sand gravel that was found on the easterly side of the railroad midway between Tenth and Eleventh Streets. 30

The Court: I understand the other markings of these cartons will be disregarded and the exhibits will be marked.

Mr. Hirschberg: Yes, this is now Exhibit 1.

Q. Where did you find that, what part of the depth? A. That was at a depth of 18 feet from the surface. 40

Q. What name do you give to that? A. Sand and gravel.

Q. Found 18 feet below the surface, and that is Exhibit 1? A. Yes.

Q. Now, what is the nature of this other specimen and where did you find it? A. This is the clay.

10 Q. Where did you find it? A. That clay was found on the southwest corner of Broadway and Eleventh Street.

Q. How deep? A. That ran down to a depth of 20 feet below the surface and overlies the sand and gravel.

Mr. Hirschberg: That is Exhibit 2 as now marked.

20 Q. Now, this specimen, where did you find it? A. That is a muddy bog which was found on the southwest corner of 11th Street and Broadway; it ran from the surface down to a depth of six feet.

Q. Would you consider that hard or soft? A. That is wet, in its natural state.

Q. Is it always wet? A. Yes.

Q. Always stays wet? A. Yes.

30 Q. Never dries? A. Yes, that is wet partially all the time; it may dry out a little on the top in summer.

Mr. Hirschberg: That is Exhibit 3.

Q. What does this specimen represent? A. This is the sample of the red clay and sand which runs from a depth of from 14 to 18 feet below the surface and was found on the west side of Broadway midway between 11th and 12th Streets.

40 Q. How many feet below the surface? A. 14 to 18 feet.

Q. And how many feet did you testify to before you went down to? A. From 25 to 30 feet below the curb level. The surface here is about 6 feet below the curb.

Q. Then you found this how many feet below the surface? A. That is about 24 feet below what would be the curb level.

10

Q. How many feet below the surface? A. This is 14 feet below the surface, and runs down 4 feet—18 feet.

Q. This is clay and sand? A. Clay and sand.

Q. This very hard stuff? A. Very hard.

Q. And you pushed through that, didn't you? A. We went through 4 feet of that, as far as we could go.

Q. After you went through 4 feet that was the last you struck? A. We got the gravel.

20

Q. What do you call this, just gravel? A. Gravel, very hard. We could not get through it, we could not drive the pipe through it.

(Specimen marked in evidence Ex. 4.)

Q. Now Exhibit 2, this is clay, isn't it? A. Yes.

Q. That is hard, isn't it? A. It is stiff. It is a little moist, but is a stiff clay.

Q. Below the surface where did you find the clay? A. This clay was very near the surface. There was very little peat or bog at that point; it was practically all clay.

30

Q. Clay is considered a hard substance? A. It was very dark and there was some foreign material mixed in with it. There has been considerable filling on this property, and it has squeezed out the peat; in some places it has squeezed the peat out altogether, and in other places squeezed it down into the clay.

40

Q. Clay is a pretty hard substance, isn't it? A.

Clay is good for foundation for ordinary building. If it is confined it is good for at least a ton to the square foot.

Q. You went through this clay in making your soundings? A. Yes.

Q. And you found gravel? A. Yes.

10 Q. Would you say gravel is stronger than clay? A. Yes; it is stronger than moist clay, wet clay. Wet clay is good for about a ton to the square foot, and the sand and gravel is good for at least four tons to the square foot.

Q. What does this represent? A. This represents a fine red sand.

Q. Where did you find that below the surface? A. And that has a little red clay mixed with it. That was found at the southwest corner of Broadway and 11th Street, and runs from 23 to 25 feet  
20 below the surface. Immediately under that is the sand and gravel; this is a red sand and clay mixed. I might explain: The strata do not run uniform through this basin. It is a deposit. It is not a natural formation; it is a deposit which has been carried down there by the water, and it is deposited in pockets and there is a great variation.

(Sample marked in evidence Ex. 5.)

30 Q. What does this represent? A. This is a clay with some sand mixed with it. When that is dry it is very hard.

Q. Where did you find this below the surface? A. That was found on the southwest corner of Broadway and 13th Street.

Q. How far below the surface? A. That was 18 to 20 feet below the surface.

40 Q. And this is very hard? A. Very hard. It was wet when it was brought up.

Q. And you went right through that, didn't you?  
A. Yes, went through it because it was wet.

(Sample marked in evidence Ex. 6.)

Q. What does this specimen represent and how far down did you find it? A. This is a clay, more of a gray clay. It is a mixture of the red and the blue. 10

Q. Where did you find that? A. On the east-erly side of the railroad, midway between 12th and 13th Streets, and that was found at a distance of 14 to 18 feet below the surface.

Q. Pretty hard, too, isn't it? A. Very hard when it is wet.

(Sample marked in evidence Ex. 7.) 20

Q. Where did you find this and what is it? A. This is blue clay; it has a blue appearance when it comes up—underneath the peat. This was found at the northwest corner of 11th Street and Broadway, and ran from 6 to 15 feet below the surface.

(Sample marked in evidence Ex. 8.)

Q. This is the gravel and this is the specimen which you struck, is that right? A. Yes. 30

Q. And you say that you could not go through it, you could not go any further, is that right? A. No, we could not drive through that.

Q. What is the difference between this stuff and some of the other specimens which apparently are just as hard? A. Why, there is clay in the others. This is below the clay; this is a different stratum entirely from the others.

The Court: Referring to what exhibit? 40  
Mr. Hirschberg: Exhibit 1.

The Witness: Exhibit No. 1, that was deposited before the clays. That is the bed of what we call a valley in there.

10 Q. Let me ask you this: How can you determine the difference in resistance between the two specimens; do you do that by boring too? A. We do that by driving—packing—you can tell by resistance.

Q. How do you determine it? A. Right here?

Q. Yes. A. I can find this material all over. This same material can be found anywhere in Hudson County. I can find it in Jersey City.

20 Q. I mean right here in this court room. Having these specimens before us, how would you—how can we determine which has stronger resistance, which specimen—which is harder—by feeling it? A. I can tell by experience, by looking at it, what that is good for. There have been several buildings built on that on my recommendation. I had a case here only a short time ago of a church on Montgomery Street.

Mr. Hirschberg: I object to that because that is not responsive to the question.

The Court: Strike that out.

30 Q. How could the jury tell? Could the jury tell the difference in the specimens by feeling each specimen? A. The jury can tell as much as you or any other layman can tell, the difference in the material, by looking at them and feeling them.

Q. And feeling them? A. Yes.

Q. And that is the test? A. It is not—the feeling is not the test in the case of the clays, because they are more or less dried out.

40 Q. But in the case of the others that would be a good test for the jury to determine, taking these

specimens and feeling them; is that correct? A. As much as a layman could do, not having had experience in working in that kind of soils.

Q. Would you say that in piling these lots they would hold an apartment house, a five story apartment house, 50 families or so, just as good as a lot or lots that would require no piling and no rock removal? A. Yes; I have designed and superintended the construction of an eleven story building which is standing on ground no better than this and on piles. It has never moved. 10

Mr. Hirschberg: I object to the answer as not responsive and ask that it be struck out.

Q. You say it would have no effect upon the cellar walls? A. (No answer.) 20

Q. Would it have any effect on the cellar walls of a big apartment house to put it on a few lots which are piled, right in this land? A. No.

Q. Not at all? A. No.

Q. Does that mean the ordinary piling, just driving piles into the ground without any reinforcement of any kind? A. We carry the foundation down to the piles. There might be a little reinforcement required possibly of concrete footings. 30

Q. Would you put the same piling in these lots for a two family house as you would for a five story 50 apartment tenement house? A. The same piling, only more of them.

Q. More of them; and would you add anything more to the piling? A. No.

Q. Wouldn't you surface it with concrete? A. You would have to put your concrete footings in and your foundation walls.

Q. So that you would have to do something more to pile lots for a tenement house than you 40

would for a two family house, is that right? A. No, no; you would go through the same procedure except that the heavier the building the more piles required.

Q. Would there be a difference in the expense?

10 A. The difference in the number of piles would increase the expense.

Q. Yes; and what would be the expense, what would be the difference—what proportion, what percentage? A. Well, an ordinary two-family brick house would require 50 piles, and a four-story brick tenement would require 90 piles.

Q. What would the concrete footings cost for a brick apartment house? A. Well, that would only be a very small expense for reinforcing rods; that would not amount to more than \$40 or \$50.

20 Q. Assuming that there was no faulty piling in connection with the work on 9th Street and assuming that the soil is the same on 9th as it is on 10th Street, would the result that is here shown (indicating to the witness the photograph Exhibit 8) change your opinion as to the effect upon a big apartment house being built on this plot? A. None whatever.

Q. It would not change your opinion? A. No, sir.

30 Q. Would the weight of the building have any effect upon holding it in proper shape without the walls cracking or the cellar cracking? A. If the piles are properly driven the walls won't crack.

Q. And will you say that the piles for a tenement house in these lots would only have to be driven to the same point where you drove your pipe in this case? A. Down to the sand and a foot or two into it.

40 Q. So that to hold a big tenement house the piles would have to go about two feet beyond the sand?

A. Yes, if it is possible to drive any further, do it, but I doubt if they could.

Q. Wouldn't it be necessary to drive it further?

A. No, sir.

Q. It would not? A. No, sir.

Q. So that these piles could hold a big tenement house if they rested upon the stuff that you have shown here in Exhibit 1? A. Yes, sir. 10

Q. Do you know whether there is any rock and gravel underneath that sand? A. There is rock under there, but just how far I don't know.

Q. You don't know how far down, do you? A. No, sir.

Mr. Hirschberg: At this time I have some photographs here; I can produce the photographer to show that he took them, photographs taken at the time the 9th Street improvement was being made, showing just how the piling was being inserted, and showing just what was being done. 20

Mr. Demarest: We object to this statement going into the record now. Counsel could produce them on his own case, but that certainly has an effect upon the jury here.

Mr. Hirschberg: The reason is that I would like to ask the witness about them so as to let the jury know whether he thinks after seeing those photographs he still thinks that the construction of this improvement on 9th Street is faulty. It is a matter of cross examination. 30

The Court: Of course if the photographs are objected to I cannot very well admit them now.

Mr. Hirschberg: I will produce them then, as a part of my defense. My only idea was to cross examine the witness, and on 40

cross examination to bring them to his attention and to ask him whether it was faulty. He might if he sees how the work was being done change his answer. These photographs were taken in 1916.

10 The Court: There is nothing before the court to rule upon. I cannot prevent you from offering evidence but I can rule on it after it is offered.

Q. The building that is being put up by Dunn on Sixteenth Street and Boulevard East, would you say that that foundation as you have described it to be whatever it is, would be just as good—or rather would you say that the foundation created by piling these lots would be just as good as the foundation on the Dunn lots to hold that kind of property? A. If properly driven, yes.

20

Q. Just as good? A. Yes.

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JOSEPH WADDINGTON, sworn for the property owners.

Direct Examination by Mr. Besson:

30 Q. Where do you live? A. Hoboken.

Q. What is your business? A. General contractor, foundation work.

Q. Do you do pile driving? A. Yes, sir.

Q. How long have you been driving piles, what length of time? A. About 20 years.

Q. Where have you driven piling? A. I drove piles all down along the coast and up as far as Newburgh and back across over.

40 Q. In Hudson County? A. I drove piles all over Hudson County and then at Newark, Essex.

Q. Are you familiar with West New York? A. Yes, sir.

Q. Have you ever done any work there? A. Yes, sir.

Q. Are you familiar with the price of driving piles in West New York? A. Yes, sir.

Mr. Hirschberg: Objected to; it does not state any time.

Mr. Besson: At the present time.

The Witness: Yes. I am driving up there now on the upper end of West New York. Woodcliff, up in that section.

Q. Do you know the character of soil in the neighborhood of the premises in question? A. I do.

Q. Have you driven piles in there? A. Yes, sir.

Q. What is the cost of driving piles at the present day per foot? A. About 40 cents.

Q. Is that the price you are making now in the work you are doing? A. Yes, sir.

The Court: And that was the price prevailing in October of last year?

The Witness: Yes, sir.

Q. You are familiar, you say, with the soil in this locality? A. Yes, sir.

Q. And you have driven piles in other places in the same type of soil? A. Yes, sir.

Q. From your knowledge, what type of building would stand on piling in this type of soil, of the premises in question? A. Why, you could put any building on it.

Q. How large a building? A. Well, we have drove where they put on a 12 story concrete building on piling, right in Hoboken.

Q. Is that the same type of soil? A. Practically the same type of soil, it is all bog, right on the river front, all mud.

Q. What building do you refer to? A. The Hoboken Land Improvement Company on 15th Street.

10 Q. A 12 story front? A. There is 8 and 12 stories; the first building put up I believe is eight, and we drove that, and then the 12 story after that, we drove four buildings in that one.

Q. That is a concrete building? A. Yes, sir.

Q. Reenforced? A. Yes, sir, and was very heavily loaded during the war with ammunition and material, heavy material.

20 Q. In this locality, West New York, is there a water line there? A. Well, it varies. If we have a wet spell the water will run up pretty well; if we have a dry spell it will drain out during that time and go away. It is moist when you go down six feet or so, wet.

Q. Is there moisture there enough to preserve piles? A. Yes, sir.

Q. From your experience what number of piles would it take for the foundation of a three story brick building 22 x 60? A. Well, do you mean of brick?

30 Q. Brick, two family, two story building. A. 22 x 60?

Q. Yes. A. Around 40 to 45 piles is what they are putting in in that neighborhood. I am just after finishing eight or ten houses just above that of the same nature of soil.

The Court: Above this property?

The Witness: Yes, sir. And in the same soil.

40 Q. How deep did you drive those? A. The bot-

tom varies; some places you get ten, twelve, fourteen feet; some places you go thirty to forty feet.

The Court: Your borings here showed a variation.

Q. How many piles would be needed for a six story building? A. Six story? In that location? 10

Q. 70 feet deep, 25 feet wide. A. You would put them piles at about 2 foot 6, centers.

Q. Can you tell how many that would make? A. You ask on a building 70 feet?

Q. 70 feet by 25. A. About 75 piles, 70 to 75 piles.

Cross Examination by Mr. Hirschberg:

Q. Would not the number of piles in the depth of the piles depend upon the kind of building you are going to put on? A. Why, yes. If you was going to add an additional weight to load your building heavy with material inside, and equipped with machinery where there would be vibration you would have to add on to your footings. 20

Q. And would it require more piling or a different kind of piling for the erection of a five story house for fifty families than it would for a two family house? A. Well, certainly, you must have four or five times the size of building for a 50 family house than you would for a two family house. 30

Q. So that in order to determine what would go on these lots you would have to ascertain the nature of building that was to go on the lots, wouldn't you? A. Not necessarily.

Q. When would you find that out, after the building was built? A. The man who was going 40

to build the building or was erecting it, would come to me and ask me how much it would cost to drive forty or fifty piles for such a job; and I would give him a price on the 40 or 50 piles; I would not know what he was going to put on, maybe I would never see it.

10 Q. So that you don't know how many piles it would be necessary to put on to hold that kind of building? A. If you will give me the weight you are going to carry I will tell you how many piles you want.

Q. So that before inserting those piles you have got to ascertain the weight, isn't that right? A. Not necessarily; no, sir. They will ask me to give them the price of driving so many piles of such a size and I give them a price on that, I don't  
20 know what they are going to put on it; I don't know how many stories they have, or what it is; it is up to them to know what they are going to put on.

Q. So that if an architect asked you to put in 47 piles and he would go on and put on a building that required 55 piles that would not make any difference to you? A. I would give him a price on 47, as he asked me.

30 Q. But you do say that the heavier the building the more piles are required? A. Yes, sir, certainly.

Q. In piling do you concrete on top? A. I do not, no.

Q. But it is necessary, is it not? A. They do put concrete in.

Q. It is necessary? A. Certainly.

Q. Especially it is necessary for a two family house; is it not? A. Yes, sir.

40 Q. It is necessary for any kind of building? A. It is necessary if you are going to put a little garage on, to put concrete on to carry itself.

Q. And the heavier the house the more concrete?  
A. In proportion, yes.

Q. And that is added to the cost of piling, is it not, in erecting foundations? A. It is added to the cost of construction.

Q. That is, if you had rock which did not require piling you would not have to use that concrete base, would you? A. Yes. 10

Q. You would have to use it? A. Yes, the width of your foundation footings depends upon the height of the wall, the character of the building, and it would have to be put in just the same.

Q. You say you would have to put in a cement or concrete foundation when you have an established trap rock foundation, as heavy as you would if you put it on the piling? A. If you are going to go up five stories your footing is regulated according to the height of the building. 20

Q. Did you do the piling on the four story building at 8th Street and Broadway in West New York?  
A. Well, we have done a lot around there, possibly I did.

Q. Between Broadway and Park Avenue? A. We done a lot of them in there.

Q. Do you remember Koch Brothers engaging you to do this work? A. I know of the name; yes, sir. 30

Q. And do you remember that the building settled and it was found that it was 8 inches out of plumb after the piling was down and the building erected by you? A. We did not erect the building.

Q. I mean the piling. A. No, I do not.

Q. Don't you remember a complaint being made?  
A. I never heard of any.

Q. You remember doing business with Koch Brothers, don't you? A. I remember the name, yes. 40

Q. Do you remember now, having remembered the name, that you did piling for them? A. I can only say that we done piling for them I suppose.

Q. And do you remember the name, if you don't remember that you did piling for them, how is it you can remember the name? A. I heard the name  
10 in the trade, going around, as Koch Brothers.

Q. What trade are Koch Brothers in? A. They may be builders or they may be architects or they may be painters or roofers.

Q. Koch Brothers of West New York. North Hudson Avenue. A. I don't know what line they are in, how long ago is it.

Q. Is it not a fact that as you said you remembered Koch Brothers and did piling for them in West New York on 8th Street? A. I could not  
20 say I done piling for them.

Q. Do you say you did not? A. I would not say I did or not.

Q. Now, what was the cost of piling a foot in 1916? A. What job have you got reference to?

Q. You testified before that in October, 1923 the cost was 40 cents per foot; what was the cost in 1916? A. 20 to 22 cents.

Q. And she jumped from 22 cents in 1916 to 40 cents, is that correct? A. Yes.

30 Q. Do you recall doing a job on 9th Street in West New York for the town of West New York? A. I did not do the job for the town, I did the job for George Horning.

Q. And you did a very good job, as you always do? A. We did it according to our orders from the contractors in charge of the work, and we were working for him.

Q. Have you ever done piling since this 9th Street job, since you did piling there? A. Yes.

40 Q. Have you ever seen this 9th Street job since

you done the piling? A. Yes; I saw it the day before yesterday, drove through it.

Q. Do you remember Mr. Boucher, the engineer on that job? A. No, I do not.

Q. Well, there was an engineer on the job, wasn't there? A. That is so long ago, I presume there was.

10

Q. And in doing your work you got your instructions and directions from the engineer, didn't you?

A. Why, we send a crew with a machine, and they go on the job and they carry out the work, carry it through according to orders.

Q. And it is usually the engineer on the job or his men on the job who do the directing and supervise the work is not that so? A. Yes.

Q. And all you know about this job is that you did as directed? A. That is all.

20

Q. Do you remember how many feet you piled down? A. They went down?

Q. Yes. A. No, I could not recall that.

Q. You can't recall that? A. I know we drove so many lineal feet of piles, but just what it was I could not say.

Q. Now Mr. Waddington, you say that the cost of piling per foot was 20 to 22 cents in 1916? A. Yes, that is what we got for it.

Q. And that was the same price in 1917? A. Well, let me see—I think it was about 1917—after 1917 the prices began to go up.

30

Q. Do you know how much you charged the town of West New York per foot in doing this work?

A. I did not work for the town of West New York.

Q. Or how much you charged Mr. Horning? A. On 9th Street?

Q. Yes. A. It was either 20 or 22 cents a foot that I had from Horning.

Q. Now, do you know Mr. Stevens, of Stillman, Delahanty & Ferris? A. No, I do not.

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Q. Do you know the firm of Stillman, Delahanty & Ferris? A. Very well.

Q. Is it a reputable firm in the trade? A. A very good firm.

10 Mr. Besson: One moment. Do not answer so quickly when I want to object.

Q. If the engineer of that firm has stated that piling was worth 80 cents a foot, would you say he was wrong?

Mr. Besson: I object.

The Court: Yes. You can show what the facts are.

20 Mr. Hirschberg: The witness has testified that Stillman, Delahanty & Ferris is a reputable firm, and we have testimony here from their man that piling cost 80 cents a foot, and we would like to know the reason for the difference in that cost as stated by the two men.

The Court: All right.

30 Q. Can you explain the difference between the statement made by a representative of Stillman, Delahanty & Ferris, which you now say is a reputable firm, of 80 cents a foot, and your statement of 30 cents or 40 cents?

The Court: 40 cents.

Mr. Hirschberg: Yes.

A. Well, some people have more expenses in their office and in their plant than others, that is one thing to start with, they are top-heavy.

40 Q. If this engineer testified that that was the market value of piling, would you say the repre-

sentative of that firm was wrong? A. I would like to have it at that price.

Q. At 80 cents a foot? A. Yes.

Q. And you say this is a reputable firm? A. Yes.

Q. You know there is a lot of competition in your business, don't you? A. Very well aware of it. 10

Q. And it is very keen, isn't it? A. Yes.

Q. So if you charge 40 cents and Stillman, Delahanty & Ferris charge 80 cents, and that became known and spread about, you would be doing a land office business, wouldn't you? A. Oh, we don't get it all.

Q. But there is such a difference in the price that you would have to triple your force, wouldn't you? A. No. 20

Q. You could handle it by yourself if you charged 40 cents, and that got about, and this reputable firm was charging 80 cents? A. Oh, we don't get a chance to figure on all the work that goes out, you know.

Q. Don't you know the largest firm— A. The more it costs.

Q. And the more efficient the less costs, don't you know that? A. No. 30

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EDWARD McDERMOTT, called and sworn as a witness on the part of the owners, testified as follows:

Direct Examination by Mr. Besson:

Q. Mr. McDermott, where do you live? A. West Hoboken.

Q. What is your business? A. I am a practicing 40

architect, and also conduct a real estate and insurance business. I established an office in the year 1893, and still continue actively going.

Q. Are you familiar with the values in West New York in the immediate vicinity of the premises in question?

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Mr. Hirschberg: Objected to on the ground that the witness had not yet qualified as to his special knowledge of West New York property of the kind and character of the property in question.

The Court: Well, bring out how he obtained his knowledge.

Mr. Besson: That was a general question, and I was then going to ask him how he arrived at that information.

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The Court: So far as the present question is concerned I have not ruled.

Mr. Besson: It is a preliminary question.

The Court: You may answer that.

A. Yes.

30

Q. How have you become familiar with such values? A. I have been in active operation throughout North Hudson. The conditions in West Hoboken are similar to the other six municipalities constituting the district of North Hudson. I have acted as Assessor in the town of West Hoboken from the year 1892, to and including up to January 1st, 1909, except for one year, 1907, during which time I was again retained by the town of West Hoboken to straighten up matters for that year, so it was a term of 17 years of continuous work. I have specialized in the study of land value, particularly in North Hudson and Hudson County generally. I have specialized in

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tax and assessment matters. I represented the Pennsylvania Railroad Company from 1903 to 1907, in the acquisition of easements and property required for the construction of the tunnels through the Bergen Hills. I made the expert testimony in their condemnations and trials on appeal. I have acted as an expert in the acquisition of land for the County of West Hoboken, for the Park, and for Jersey City, and also in the northern section of North Hudson, near Woodcliff Park; also the purchase of a tract of 317 acres in North Hudson for an Insane Asylum. During the last two years I prepared the expert testimony in the condemnation of an addition for the water supply system of Jersey City, in Morris County. I have within the past two years been retained by the State Board of Health to make a sanitary survey of the township of North Bergen for the purpose of determining the effect on real estate and land values of the construction of a sewer system in North Bergen—that is just the North Hudson District; and during the past few weeks I have appraised a property in the immediate vicinity of this tract, for mortgage loan purposes; and I have also made appraisals of land values on the west slope, almost adjoining this property, for the New York Central, in matters of tax appeals. Acting for the New York Central, I made appraisals of uplands, of land values, to be used in tax appeal matters, before the State Board of Tax Appraisal, within 1500 to 2000 feet of this property in question. It is practically one district, because the conditions are identically the same throughout, although we have six municipalities. I have also appraised up here for the purpose of making the testimony before the State Board of Taxation of water front property immediately east of this property, and also in upland values in Gut-

10 tenberg, adjoining West New York, and also in Woodcliff, for the purpose of making cases before the State Board of Taxation. I have specialized in the purchase or sale of properties. I have been almost devoting my attention as a student of values, and I am engaged throughout North Hudson in building and appraisal work almost exclusively.

The Court: For what organization or person?

The Witness: For corporations and individuals investing money.

By the Court:

20 Q. In the course of making those appraisals in the Town of West New York for investment purposes have you had occasion to investigate the sales and purchase prices of other properties? A. I have. I have kept generally informed all the time. It is a continuous study. We never can stop. We must keep in mind the movement of values, the tendency and the growth at all times. We never can stop.

30 Q. Now, taking the Town of West New York, speaking now generally, how many properties would you say you have appraised in reference to their valuation for investment purposes during the past three years? A. There are many of them throughout North Hudson, but in this immediate vicinity within this year, during this year, I appraised the premises 328, 330 and 332 17th Street, not very far from this property, and I have also appraised the premises on the north side of 20th Street between Hudson and Dewey Avenues. That is within the past few weeks. And last year I made appraisals on the west side of the town—  
40 but it is continuous all the time throughout North

Hudson; we recognize no boundary lines when it comes to matters of appraisals.

Q. In making these appraisals—in the town of West New York—have you had knowledge yourself of the actual sales prices brought by the property sold? A. Yes; that is the way we keep informed. We follow sales. 10

Q. And where do you get your information? A. Generally we get it from publications, but mostly from discussion, inquiries around, talking it over with other real estate men, and in any way. It is a matter of general discussion; real estate board meetings and so on.

Q. Is that your business, or profession—appraisal work? A. Principally now I am doing appraisal work.

Q. Land values? A. Yes. 20

Q. And that includes the town of West New York? A. Yes. I am also under retainer on this Plaza development in Jersey City at the Tube Station. I am sent all over. I have appraised in Pennsylvania within the past few years.

The Court: Do you wish to ask some questions, Mr. Hirschberg?

Mr. Hirschberg: I would like to make my objection, based on— 30

The Court: I did not ask you that; I asked if you would like to ask some questions.

Cross Examination by Mr. Hirschberg:

Q. In your recital here you have gone everywhere except in West New York, haven't you? A. What?

Q. You have gone into every place except in West New York in reciting what you did? A. No. With- 40

in the past two months I have made two appraisals in this immediate vicinity.

Q. Did you make any appraisals prior to October, 1923, for a year or two back? A. Yes.

10 Q. Where? A. Last August I appraised the property on the north side of 7th Street about 160 feet east of Hudson Boulevard West.

Q. Were you acting as agent or as purchaser—were you as agent or as purchaser, or as seller interested in the sale of any vacant land in West New York prior to October, 1923, for a period of a year or two back? A. I have made no sales of land which required any effort. If a client calls on me, sends me out to buy land; but to make any effort to effect a sale, I have not done that ever since I have been in business. It has  
20 not been along my line of procedure.

Q. Have you negotiated sales for others? A. Yes, many.

Q. In West New York? A. In West New York.

Q. Of vacant land? A. Not for the past ten years.

Mr. Hirschberg: I submit that the witness has not qualified as to his special knowledge of vacant land in the town of West New York as of October, 1923.

30 The Court: What have you to say to that, Mr. Besson? The witness seems to be a first class expert for the purpose of looking up evidence to testify before committees, and so on, but have you brought him within the rule of special knowledge of land values in this locality or this immediate vicinity?

40 Mr. Besson: I think the witness has stated that all of North Hudson is of one type of development. His knowledge of real estate values is in the immediate vicinity of

West New York where the type of development is the same. He has had specific knowledge of properties right in this neighborhood, and he also testified that he has studied and kept posted on the values in the neighborhood of this property. I think that is the rule under which an expert qualifies.

10

Q. How far away is your office from this property? A. I should say about a mile and a half. That is offhand.

Mr. Besson: As I understand it—

The Court: Have you knowledge, actual knowledge yourself, of the sale prices of lots within the past year or two before October last—of vacant tracts of land within a radius of a mile of this property being condemned?

20

The Witness: Oh, yes, yes.

The Court: You have acquired that knowledge in what way and for what purpose?

The Witness: Well, I acquired it in the usual course of my office experience, and as architect I am erecting buildings. It is very often a matter of considerable finance, and it is invariably one of the steps that I take up—to see if the people have the money before I go ahead, and I will get the information direct from them.

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The Court: From the people who have taken title?

The Witness: Yes.

The Court: And you examine the records also in the County Clerk's office?

The Witness: Well, we have the published records—in the Register's office we

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have the record of deeds and mortgages published in the Observer.

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The Court: Taking a period of the past two years prior to October last, roughly speaking, how many sales have you had knowledge of and which you have had occasion to use in the course of your business within a radius of a mile, say, of this property in question?

The Witness: Just roughly, in two years there would be possibly two dozen specific instances of buildings erected or where I was concerned in financing of an operation.

20

The Court: Prior to October of this last year and within the period of a year prior to that, how many properties have you had the knowledge of the sale value, within seven or eight blocks of this property in question?

The Witness: I have, from inquiry and conversation with other real estate men, I have known two—let me see—within seven or eight blocks—yes, where I am arranging for a mortgage loan I do get the information direct from the owners.

The Court: In how many instances?

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The Witness: I only recall the one directly in West New York that I was engaged in the financing of, and that was last year, last August; but appraisals that I made this year I did not ask the owners what they paid at all; I was not interested in it, I was merely making an analytical report and it was of no interest to me what they paid or whether they got a bargain or paid too much. It was my business to fix the price that would be a fair basis.

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By Mr. Besson :

Q. You say it was your business to fix the price. What studies did you make to determine that price?

A. A general inquiry and knowledge that I derived from the other real estate men as to sales in the vicinity. I have the list of sales in the vicinity there that I used. I looked over property and checked that up with what my idea of value was, and I found that they agreed with my ideas.

10

The Court: You spoke a while ago about it being all one common community. You spoke of these appraisals within the north Hudson District. What radius in point of miles did that include; is it within a narrow compass? A. I think, between the southern boundary of West Hoboken and the northern boundary of the Town of Union, it strikes me it is between four and five miles.

20

The Court: And are these places here all within that radius?

The Witness: Yes; North Bergen starts at the boundary of Jersey City and runs all around like a shoestring, the extreme northern end of the County, and down to the river.

30

The Court: For whom have you made appraisals in this vicinity of the town of West New York?

The Witness: A large investor, Charles F. Rhue—mortgage loans; and then—I was thinking of another, right over the line—particularly Charles F. Rhue, a large investor.

The Court: You say you investigated for loans in West New York. For whom were they?

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The Witness: For Charles F. Rhue; also

for Abraham & Kerr in West New York, embroidery manufacturers. And I have investigated and reported and appraised property on the other side of the line, in the Woodcliff section.

10 The Court: Right adjoining this town of West New York?

The Witness: Yes.

The Court: All right; proceed.

By Mr. Hirschberg:

Q. How far is 10th Street, West New York, from the line dividing West New York and Union Hill?

A. That is a very short distance. The dividing line is 5th Street.

20 Q. So there is a difference of five blocks, and West New York ends there, and then Union Hill starts? A. Yes.

Q. And Union Hill is a very highly developed municipality, isn't it? A. No, West New York is the most highly developed and has got the best class of buildings.

Q. Are the values higher in Union Hill than they are in West New York? A. Do you refer to Bergenline Avenue property?

30 Q. Yes. A. The Bergenline Avenue property in the Town of Union is higher than any other part of North Hudson.

Q. Are there vacant lots in the town of West New York surrounding this particular plot? A. Oh, yes, many of them.

Q. Many of them? A. Yes.

40 Q. And aren't there enough vacant lots surrounding this property in the town of West New York for you to determine what the value of those lots is without going into Union Hill? A. Without going into Union Hill?

Q. Yes. I mean aren't there enough—

The Court: He has not said he has gone into Union Hill.

Mr. Hirschberg: He said he went about a mile.

The Court: No; he has given you the distance within which this investigation extended. 10

Mr. Hirschberg: I understood him to say on direct examination that he covered a mile from this place. That would bring it into Union Hill.

A Juror: He said his office was a mile and a half away.

Q. You said there were many lots in the vicinity of this particular plot in West New York? A. Yes. 20

Q. And as an expert appraiser don't you think there are enough lots there for you to use as a basis in determining value? A. I surely would, and my basis would be, what could I do with the lots?

Q. What did you have to do with those lots in that vicinity prior to October 23, for a year or two back? A. I have not operated in that immediate section for over ten years. I built eighteen houses along 13th Street. 30

The Court: Where?

The Witness: On 13th Street near Palisade Avenue.

The Court: Where?

The Witness: In West New York.

The Court: That is how far from this property in question?

The Witness: 13th Street bounds our property on the north, and this is to the west.

The Court: When did you do that? 40

10 The Witness: 1908. One three story brick with a store and four apartments on the two upper floors; and then there were four two-family frames; and on the other side of the street were 13 one-family bricks—I said frame—they were brick—and then there were 13 one-family bricks. I erected those for a firm of contractors and sold them all practically.

Mr. Hirschberg: I object to this testimony.

The Court: It will be received.

Mr. Hirschberg: Exception.

By Mr. Besson:

20 Q. You are familiar with the premises? A. I am.

The Court: How long have you known this property?

The Witness: I have known it all my life. I have been in that section all my life and nowhere else.

The Court: During what period of time?

30 The Witness: I am 57 years old, and have been in active business through there ever since my boyhood; I have never been anywhere else.

Q. What in your opinion is the value of this tract under consideration and examination?

The Court: Do you know the dimensions of this tract?

The Witness: I do.

40 A. The total value of this tract is, \$137,695.25.  
Q. Will you state to the court and jury how

you arrived at that valuation? A. The property in full consists of a tract of land comprising 72 lots bounded on the south by 10th Street, on the east by Broadway, on the north by 13th Street, and on the west by a right of way of the Public Service Railway Corporation. It is partially developed inasmuch as 10th and 13th Streets are improved and have a smooth pavement, and Broadway has a sewer installed throughout. In analyzing the value of this property I have taken into consideration that the streets would require improvement—finish up the smooth pavement—to make them available for present day use. I have determined that the cost of those street improvements would be \$30,400. I find further that the property in question is of a peculiar physical characteristic inasmuch as it is not adapted for the support of buildings in its present physical condition. It would require piling and looked up the—well, I am familiar with the Building Codes and also with the State Tenement House Law, and I find that on an interior lot we could build no more than 70 percent. of the plot.

Mr. Hirschberg: I object to witness's interpretation of the Tenement House Law. I think the law speaks for itself.

The Witness: Well, that is the law.

Mr. Hirschberg: I think that is not the way to prove it.

The Court: Don't refer to the law, if you know what the requirement is, you may state it that way.

The Witness: I have taken that as a basis, that is the fact.

The Court: You are assuming that fact.

The Witness: Yes, sir. To pile 70 percent. of these lots would require 90 piles a

lot, at a depth of 20 feet a pile, and 40 cents a foot, that piling would cost \$51,840, I would add to that the cost of street improvements, I will say further that in estimating the street improvements I have considered that a standard lot 25 x 100 feet, fronting 25 feet on the street, would cost \$500 to improve, and where it is a corner lot I have added \$800 for the additional cost of all the improvements on the side street, or \$1,300 for a corner lot, to the piling, the cost of piling, \$51,840, to which add the cost of the street improvement, \$30,400, and this property is underlaid through a portion of it by a public sewer for which an easement has been granted. I presume, I have deducted \$1,800 for that use, that easement, making a total deduction of \$84,040, as the cost of deduction of what would be a fair market value of the lots to improve. I have determined in my judgment that a standard lot, ready to accommodate a building such as is going up in that vicinity, a four story house, a lot on the side street fully improved, is a good buy at \$2,500 for a standard lot. In my judgment lots on Broadway are worth \$3,500 a standard lot 25 x 100 feet; these lots being only 90 feet in depth, I have applied the Hoffman rule, and figured them at 95 per cent. of the value of a full standard lot. For corner lots I have added 50 per cent., and in calculating my valuation that way the total value of the land would be \$203,775, deducting the cost of street improvements, piling and sewer easements, and adding 15 per cent for plottage value, makes the value \$137,695.25.

Q. Do you know the development on Hudson Avenue? A. I do.

Q. I understand you have had experience in building houses as an architect? A. I have been doing that for 35 years; I built public buildings, schools, I have built churches, and all sorts of buildings through North Hudson.

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Q. In your opinion could the lots on this plot be used for the same purposes as the Hudson Avenue lots? A. As the Hudson Avenue lots?

Q. Yes. A. Yes, and I have utilized lots of a similar character in the town of West Hoboken some time ago directly in back of my office, a building I now own four stories brick, is erected on similar land. It was formerly, I remember it as a boy, it was a part that received the drainage from the surrounding section—

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Mr. Hirschberg: I would like to object to the method this witness is using in testifying. He is going along in one steady strain. I have no opportunity to object to what he says, and I think he should be confined to questions and answers.

The Court: We will start over again and see if we can confine it as much as possible to questions and answers.

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Q. What do you think in regard to location of this land as compared with Hudson Avenue, is it as good or better? A. It is better, because of the fact that it is a large assembling of land and the character of the improvements can be controlled by the present owner. In other words, if he does not want to improve it himself, he can place restriction so as to make a better development than has been made on Hudson Avenue. Many big areas lack uniformity. While the houses are of a general

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type, four story apartments, still they have not made them as good as I think they might.

10 Q. What about accessibility. Are these lots any better than the Hudson Avenue lots for that reason? A. Well, they are comparable, the facilities for accessibility are very similar. They are somewhat nearer to the entrance of the 42nd Street Ferry, and in that way are slightly better. The nearer you get to that, within walking distance of the 42nd Street Ferry, the better it is.

Cross Examination by Mr. Hirschberg:

Q. Do you say the nearer you get to the 42nd Street Ferry for practical purposes the better it is? A. On the hilltop.

20 Q. Then 10th Street and Boulevard East is nearer to the 42nd Street Ferry than 10th Street and Broadway, is it not? A. Yes, sir.

Q. Do you know of any sales of lots located on 10th Street or near 10th Street and Boulevard East which required no filling and no rock removal? A. I have not that, the nearest I have is 2nd Street.

30 Q. Would it surprise you if you were to know that those lots within the past year or two at that location, requiring no rock removal, fully improved, brought \$2,500? A. At 10th Street?

Q. And Boulevard East? A. And Boulevard East?

Q. Near 10th Street? A. Yes. I should say the man bought a bargain.

Q. You say he bought a bargain? A. Yes, sir.

40 Q. Would it surprise you to know that ten of those transactions took place at Park Avenue and Boulevard East, and the streets round 10th Street East, would you say that each one of those ten bought a bargain? A. I would say that anybody who gets a lot anywheres in North Hudson on an

improved street at less than \$2,500 is getting a bargain, that is, a standard lot.

Q. I am speaking about West New York, Mr. McDermott? A. I am speaking of North Hudson.

Q. You say that of West New York also? A. Yes, land values are higher there.

Q. Don't you think, as a student of land values, in your studies of determining the values, you ought to have before you the values of various lots in the particular community? A. I have examined lots alongside Hudson and Palisade Avenue. 10

Q. I am speaking of West New York? A. So am I; I have examined immediately contiguous to the property.

Q. We are speaking of West New York, don't forget that, and I am asking you this, don't you think as a student of prices in a particular locality, it is necessary for you to know within a certain period of time the prices that several lots brought? A. I endeavor to know, and inform myself of all of the lots. 20

Q. Did you in the past year or two inform yourself of the prices of lots in this vicinity, within a radius of one to four blocks each way? A. Yes.

Q. What were the prices and where were the lots located? A. Specifically I have not made any notes on them. 30

CHARLES SINGER, JR., called and sworn as a witness on behalf of the respondent, testifies as follows:

Direct Examination by Mr. Besson:

Q. Mr. Singer, where do you live? A. Town of Union. 40

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

Q. Are you familiar with the sale values of property in West New York, in the neighborhood of these premises that are being condemned in this action? A. I am.

Q. How many years' experience have you had in the real estate business? A. 27.

10 Q. And during that time where has your work taken you? A. North Hudson generally, and this section particularly.

Q. Have you acted as agent in sales in this section particularly.

Q. Have you acted as agent in sales in this section? A. I have acted as owner, valuer and agent in this particular vicinity.

Q. Auction sales? A. I have conducted maybe half a dozen auction sales in the last few years in this vicinity, and I have had four of them in the last six months. I may say I am one of the heaviest owners in that section, directly or indirectly.

30 Q. Have you acted as appraiser for any organization? A. I have. I have acted for the State of New Jersey in our waterfront cases, all embraced in Hudson County; I have acted particularly for the cities of Jersey City, Bayonne, Hoboken, township of Weehawken, town of West New York, for West New York, Guttenberg, North Bergen, Borough of Fairview. I have acted for the State Board of Health in the examination of properties in North Bergen, to ascertain the effect of sewer construction on real estate values in North Bergen. I have acted for the United States on shore values in Hoboken. I can go on at some length if you want me to do so. I represent mostly all the banks up there, and particularly the largest banks; I mean to say the Trust Company of New Jersey, I am their appraiser in this section; for the Hudson  
40 County I am acting as trustee for the bank; the Weehawken Trust Company also. I have appraised

for the Public Service Company for their right of way, right up against this property. I have appraised for the Public Utility Commission within a year. I have appraised for the Hoboken Land & Improvement Company of Hoboken, appraised the land for those big buildings there. I have appeared for the Objectors of the land in Hoboken for sewer assessments before Judge McCarthy. 10

By the Court:

Q. Let me ask you, what is the nearest point of time and location of property with reference to this now being sought to be condemned, that you have ever sold or acted as agent for? A. That I have sold, acted as agent for, or appraised?

Q. Or bought? A. Well, 16th Street and Boulevard East, directly opposite the property which has been testified here has rock. That is for a corporation of which I am president, and it was purchased by me for this company at a public sale. 20

Q. When was that? A. About three years ago; and we purchased this land about a year and a half ago and developed it—that is, straightened out the surface to make it presentable.

Q. And you say you sold it, do you? A. Yes.

Q. You sold it when? A. Two months ago—about three months ago, for Mr. Stewart, the township attorney of Weehawken, I sold his land on 7th Street, but it is in Weehawken, and we have a peculiar formation up there, you would want a map to see it. 30

Q. How far from this property? A. About seven blocks. I sold that at public sale. I appraised the right of way of the Public Service, on all their right of way in Jersey City.

Q. Abutting this property? A. Immediately abutting. 40

Q. When was that? A. Four years ago.

Q. And you know the amount paid for it? A. That was not the test. The test we had to get for the Public Service was the fair market value of the land at the time we made the appraisal.

10 Q. Now, with reference to loans that you have had or been interested' in there in the last year; how many have you made within ten blocks? A. I make quite a number within two blocks.

Q. Well, just roughly speaking? A. About six or eight.

Q. Within the last year? A. Yes; I can give you the details.

The Court: You question his qualification further?

20 Mr. Hirschberg: I would like to ask a few questions.

By Mr. Hirschberg:

Q. There were plenty of vacant lots in the vicinity of this land, Mr. Singer, weren't there? A. Yes.

Q. And there were vacant lots east of the Boulevard on 10th Street, is that not so? A. Yes.

30 Q. Running up north and some south? A. When you are talking of Boulevard East, that is land of the railroad company, and they are under bonds, and it can't be used.

Q. You have not answered my question. A. You asked me if there was vacant land on Boulevard East; I say, yes, but it can't be used.

Q. On the west side of Boulevard East, is that owned by the railroad also? A. No.

Q. It is owned by private individuals? A. Yes.

Q. Is there vacant land there? A. Yes.

40 Q. Did you examine that land? A. I sold some within three months.

Q. Did you sell some as of October, 1923? A. Just about that time.

Q. And there is some land left there still? A. Yes, there is land there.

Q. And also in Park Avenue there is vacant land also, within a block or two of this? A. I just sold a property between 6th and 7th Street—

10

Q. All I want to know is, if there is still vacant land there, I don't care to know what you sold? A. You said if I did anything within recent years.

Q. I asked you if there was vacant land on Park Avenue? A. And if I was selling in that neighborhood.

Q. No, I did not ask that. To the north on 13th Street there is also vacant land—I mean on Boulevard and Park Avenue? A. Yes.

The Court: We will now take a recess until 2:00 o'clock. 20

Recess until 2:00 o'clock.

After Recess.

CHARLES SINGER resumes the stand.

Direct Examination (continued) by Mr. Besson:

Q. What in your opinion is the value of the plot involved in this condemnation proceeding? A. \$147,050. 30

Q. Will you tell the court and jury how you arrive at that figure? A. There are:

24 lots on Broadway, lot 236, Map C, property of Steffen Dieckmann, at \$3,000, if they were standard size, that is \$ 72,000. 40

|    |  |          |
|----|--|----------|
|    | I have deducted 5 per cent. because they are not standard size, they are 25 x 90 in depth, and I have deducted \$3,600 on that account, that leaves me   | 68,400.  |
| 10 | There are six corners on Broadway, and for each corner I have added \$500, which would be  | 3,000.   |
|    | I have added \$600 because of the improvement on 10th Street, 10th Street is an improved street, that would be \$3,600,  | 3,600.   |
|    | or   | 72,000.  |
|    | There are 40 lots on 11th Street and 12th Street at \$2,000 each, or   | 80,000.  |
| 20 | I have deducted from those 40 lots \$4,000 because 10 of the lots are 20 foot wide rather than 25 foot wide, by 100, they are not standard lots. That would give me  | 76,000.  |
|    | Then there are eight lots, excepting the corner, which I have included in the Broadway estimate, there are eight lots facing 10th Street at \$2,500 each,  | 20,000.  |
| 30 | 10th Street is an improved street; that is why I make the difference between \$2,000 and \$2,500. I have deducted \$1,000 from this amount because of the lots which are 20 foot wide, rather than 25 foot wide, by 100. |          |
|    | That gives me  | 19,000.  |
|    | I have added for plottage 15 per cent. on this valuation, giving me a total valuation of   | 192,050. |
| 40 | The above estimate is based on the theory that the land would not re-  |          |

quire piling, and that 13th Street is an unimproved street, the assessment for the improvement of 13th Street not having been levied or paid by the present owner.

I subtract from this amount 72 lots at \$600 each for 75 piles at \$8.00 each, or 43,200. 10

I subtract further the sum of 1,800.

because of an easement under six of the lots by the main outlet sewer built jointly by the Town of Union and the West Shore Railroad and other owners. That would be a deduction of \$45,000.

To give you a resume of it, the total was 192,050. 20

and I deducted \$45,000 45,000.

leaving 147,050.

Q. You were the auctioneer who sold some lots on December 8th, 1923, which Mayor Stilz bought, were you not? A. I am president of the company that held title to the land, and I was the auctioneer, yes, I sold the land.

Q. At the price he bought, what was the proper square foot price according to the depth of the lots? 30

A. Of course that would take an analysis. I had something to do with Mr. Oleri who has testified here, as engineer for West New York, he was our engineer, with others in the company, I had something to do with the laying out of that land and we figured that that class of land for its highest potentiality would have to be laid out as we did, 50 foot front, by 175 foot in depth. Now to analyze that you would have to take the price of a standard lot 25 x 100, and then get your value of that and then the land back of that, from the 100 to 175 of. 40

depth, is worth about one-third. You do not take it in the aggregate like 8700 feet of plot, you do not do that and divide it into the amount he paid. You could do that if you say that he had so many square feet, but that would not be a fair comparison to make with any other piece of land.

10 Q. He has testified that that land runs to 71 cents a square foot, is that the price? A. That is the arithmetical problem, but that is not the way you would value the land.

Q. Is that the proper theory according to that sale? A. That is the value of the land, what he paid for it. If you take 8700 square feet in the plot and divide it into \$6,700 that he paid for it, but that would not be the fair value to take, to take that price and compare it with any other lot that is 100 feet deep.

20 Q. What would be a proper price? A. As I understand the first value is the first 100 feet in depth, the land back of that, from 100 to 175 feet is worth one-third of the value of the land in the first 100 feet depth, that is recognized under the Hoffman Rule, or the Hoffman-Davis Rule, or any other rule. That is standard.

30 Q. What would be the standard lot price? A. Well, he bought them, to take those three lots, he bought them, as he testified he bought them for less than their value. He bought some five or six to close out the sale, and we had an argument as to whether we would let them go or not, and we let them go and he bought them cheap.

Q. How do the lots in question compare with the lots on Hudson Avenue in use and value? A. They have about the same potentiality, about the same best use.

40 Q. What about their location, are they as good or better? A. Well, there is very little difference, but I think if there is any difference it is in favor

of the Dieckmann property, being nearer to the ferry in walking distance, and a territorial area that is not yet developed and can be controlled by this owner.

Q. If the same class of house were put on this property as on Hudson Avenue, would it rent as readily as Hudson Avenue property? A. Practically identical. 10

Q. What other element of value is there here that makes it comparable with Hudson Avenue lots? A. Well, I don't know of any particular characteristic that the Dieckmann land possesses that is not possessed by Hudson Avenue, except that it is nearer to the ferry. The Hudson Avenue property of course, has a kind of promiscuous development there; it has four story buildings, it has factories, it has not been controlled by the owner. It is an ordinary apartment house location of four and five story buildings. 20

Q. Has this land come into the market at the present time by reason of the development around it? A. All of the land there is in the market now and will find ready buyers. The only difficulty we have is that there is a greater demand than we are able to finance. That is about the only drawback we have.

Q. Is plottage especially advantageous at the present time? A. Yes, very advantageous for the class of dwellings being sought for today. The demand is very large for that class of dwelling, multi-family dwellings. The land is too poor to build a one-family house unless a man could afford it, his overhead would be a little high. There it is better for a two family house. A lot is worth, would take around when it is fully developed, and if a man were to build one-family houses there, they would have to take \$2,500 as a standard lot value, and 40

then take into consideration that you ought to have a little more than a lot today to build the dwelling house that is desirable today, so that you would get into maybe thirty some hundred dollars of ground value there. That is a little higher than the average man could pay, taking into consideration a  
10 two family house or one family house costing him today \$2,000 a room, you can readily see that his overhead would run to say, well, would cost him in the neighborhood of \$150 a month to live in it, and he cannot afford to give more than a quarter of his income to rent, so that the number that would pay that much is somewhat limited. The average man could not do it.

Q. What in your opinion would be the cost of the street improvement? You have deducted \$600 a  
20 lot. How is that made up? A. The \$600 I deducted was piling. I did make a difference of \$500 for the street improvement.

Q. The \$500, how is that made up? A. Well, by the improvement such as that particular neighborhood would warrant. In other words, you have not got to put down very heavy Belgian blocks or grouting or concrete base. The ordinary asphalt improvement, such as that around the dwelling neighborhood right in that vicinity, could be had  
30 for \$500 easily. Then again comes another element, that even if it did cost more, that is the situation we are having up there now, some of them are going, for some reasons, higher than the land itself can stand, the law on that being that you can only assess for whatever has been the benefit of the improvement.

Mr. Hirschberg: I object to the witness's interpretation of the law.

40 The Court: Yes, just state the fact.

The Witness: I am only saying my purpose is no matter what it would cost, you can only put a certain amount on it.

Cross Examination by Mr. Hirschberg:

Q. These lots that were sold at auction, what on your basis was the value of these lots, 25 x 100? 10  
A. Well, I should say \$3500.

Q. Was Mr. Stiltz right in his computation that he bought them at an average of \$1,800 a lot? A. I did not follow him close enough to get that, but if you say he said that, he is possibly giving you the result of dividing 8,750 square feet into \$6,525 and saying that would make it 71 or 72 cents a square foot—so much money for a stand-lot, 500 square feet. 20

Q. Does it make that amount? A. Well, I did not figure it. I will have to figure it for you. I do not know.

Q. Will you please figure it? A. (After figuring): \$1,850.

Q. And before these were exposed to an auction sale your company had these lots on the market for sale to private individuals? A. (No answer.)

Q. I say, before you auctioned off this property you had it for sale, didn't you? A. That is news to me. 30

Q. How long before you auctioned off the property did you buy it? A. I guess it was about a year and a quarter or a year and a half.

Q. What interest did you have in the ownership of that property? A. I had a tenth or an eleventh interest in it.

Q. And for that period of time you say you do not know whether or not the property was ever exposed for sale to private individuals? A. I did not say that. 40

Q. Did you ever try to sell it? A. I did not.

Q. Do you know of any other broker that tried to sell it? A. I will answer your question by saying it was not on the market.

Q. You are positive it was not on the market? A. Positive.

10 Q. And for a year and a half you held that property? A. We did. It was not ready for development. We had to develop it first, straighten it out, fill it in.

Q. How long before the auction sale did you do that? A. About three months before.

Q. Isn't it a fact that you started that development, getting ready for the auction sale? A. Do you mean development to put it on—

Q. How long did you advertise the auction sale before it was held? A. I guess two months.

Q. And it was three months before the sale you started to level off so that you could have it in shape for a sale? A. We were still leveling at the date of the sale.

Q. So that when purchasers came there on the day of the sale you had it in fairly good shape for sale? A. For sale but not for development.

Q. For sale? A. For sale.

30 Q. And you went to some expense, didn't you, in leveling it off? A. Yes.

Q. You remember selling these lots to Mr. Stiltz? A. I sure do.

Q. Did you have an easy job selling it to him? A. We had an easy job. It was a hard job keeping him away from them. He saw they were a bargain, and we had a meeting right on the property and he took advantage of a bid for land not quite as good as this and he said, "I will take the balance;" and it was a question of whether we could  
40 sell them all and get rid of the commission or

carry them, and I think we used good judgment, and said "They are yours."

Q. Isn't it a fact you as auctioneer of that plot took some time in persuading Mr. Stiltz to buy it at that price? A. Did not take any time for him. This fellow stuck to me to hold them and he disputed the fact that we were going to refuse him. 10

Q. Wasn't the adjoining land sold to other purchasers at a smaller price? A. No.

Q. Or a lower price? A. He took advantage of my announcement, "You can buy one or more." The man who made the bid did not take more than one, and he came and said, "I will take the balance at that figure." I put it up to the board and they said "Let it go."

Q. Did the people who bought the other land pay more than Mr. Stiltz? A. Further down— 20

Q. And these lots are located on Boulevard East? A. Boulevard East.

Q. Right opposite the Dunn property? A. No. You have got your locations wrong.

Q. They are opposite the two-family house of Ailman? A. No; Dunn purchased the property immediately opposite this property from us that day; but this is way to the east of it.

Q. It is the spot where the big West New York sign is to be? A. We did not sell that. 30

Q. It is right adjoining that? A. Right abutting that.

Q. Were there any assessments to be paid against those lots? A. No assessments to be paid.

Q. Were the lots all improved? A. What do you mean by improvement?

Q. Well, what do you know about lots being all improved? A. Well, I would say a lot is all improved if it has sewer and water and gas, a hard permanent surfaced street. 40

Q. Didn't you agree to put all of them in without any extra charge? A. No.

Q. You did not? A. Not all.

Q. How much of what you have said? A. The sewer.

10 Q. What else? A. That is all; and retained an easement in front of the property, to do it.

Q. Are you acquainted with any recent sales of lots on Park Avenue? A. Yes.

Q. You said before that the lots under consideration have the same advantage as lots on Hudson Avenue; is that right? A. I said that to my mind there was very little difference between lots located on Hudson Avenue and the property under review; if there was any difference it was in favor of that location because of the distance to the  
20 ferry.

Q. Are you acquainted with values on Bergenline Avenue between 16th and 17th Streets. A. West New York?

Q. Yes. A. Well, yes; I sold land there a long time ago at an auction sale up there where the Roth Building is on—the Bindernagel property near 16th Street, about ten years ago.

Q. You heard Mr. Stiltz testify about lots up there bringing from twenty to thirty thousand  
30 dollars? A. Some.

Q. That was on Bergenline Avenue between 15th and 16th Streets? A. Yes.

Q. Do you know where Van Buren Place is located between 16th and 17th with respect to Bergenline Avenue between 16th and 17th? A. Yes.

Q. How far away? A. If you will get the plat we will get it right. It is very close. What cross-street?

40 Q. Between Sixteenth and 17 Street on Van

Buren Place. How far is that from Bergenline Avenue between 16th and 17th? A. It is right here. What is the question?

Q. How far is Van Buren Place between 16th and 17th away from Bergenline Avenue between 16th and 17th? A. It looks to me to be about 150 feet. 10

Q. And do you know what the prices of lots without rock, without excavation, with no improvement, are 150 feet from Bergenline on Van Buren Place? A. What side of Van Buren Place?

Q. Van Buren Place, west side? A. 25 x 100?

Q. Yes. A. I am frank to tell you I don't know what they are bringing, but I will tell you what I think they are worth, because I had 11 houses on Madison Street, between 16th and 17th Streets—

Q. What do you think they are worth? A. 20  
About \$2,500.

Q. And that is 115 feet away from the section where these prices are obtainable? A. Yes, but that has nothing to do with it.

Q. How do you reconcile the relation between Van Buren Place and Bergenline Avenue, and Hudson Avenue and Broadway, as to values? A. Why, there is no comparison. You might as well compare a cat and a dog.

Q. Van Buren Place is developed, isn't it? A. 30  
Why, it is an ordinary sized street. Bergenline Avenue is a business Avenue in North Hudson. We have lots in my section as high as \$10,000 on Bergenline Avenue, and we have lots 200 feet from it, on the side streets, that sell for not over \$2,500 and \$3,000.

Q. But you said that the reason the lots now under discussion can compare favorably with lots on Hudson Avenue—by the way, how far is Hudson Avenue from these lots? A. 40  
200 feet, just perhaps a little more because of the right of way there.

Q. What you said was the reason these lots compared favorably with Hudson Avenue was because both locations are near the ferry, is not that so? A. I did not say that, I never testified that way at all. I said that the locations on Hudson Avenue and Broadway were very similar, that  
10 their potentiality for highest development was about the same, but I said if there was any benefit I would give, I would give to this property because it was nearer walking distance to the ferry.

Q. What do you mean by potentialities of the Broadway property? A. Because it has something for development, it merely wants someone to do it; in other words, you can put a five story building on this property and rent it or sell it, and it will be profitable; but you might put up a  
20 building on that property and it would not be profitable.

Q. Didn't you testify that this property was more available for two family houses than for five story buildings? A. I never did, I will refer you to my testimony on that point.

Q. And didn't you say that a five story house could be placed on these lots at the same expense as on the lots you sold to Mr. Stilz? A. I never testified to that.

30 Q. If that is so, would there be any more expense in preparing the lot and developing it there, than with the lot you sold to Mr. Stilz? A. You don't know the lots Mr. Stilz bought or you would not ask that question. The lots Mr. Stilz bought are naturally below grade four or five feet, they required little preparation or excavation, but they have to be filled in in the rear, they slope down and they will have to be brought up to the four foot grade, so that the land he bought cannot be  
40 compared in that way.

Q. How deep are the Stilz lots? A. 175 feet.

Q. How deep would a five story building be?

A. Tell me whether it is a corner or inside. You are governed by the Tenement House Law.

Q. Inside? A. 70 feet.

Q. And this has a depth of 175 feet? A. They are not comparable in the way you ask the question. 10

Q. You mean the Stilz lots are much better lots?

A. I did not say that.

Q. Did you own at one time or do you own now property located in the Monitor Park section? A. The only property I have any interest in in the Monitor Park section now is—I did own a four story flat in that section, but two or two and a half years ago I sold it—the only interest I had in the Monitor Park Section is that sold to the Monitor Park Realty Company. 20

Q. If you had an interest in that property, what did you pay for it? A. That has nothing to do with this, I don't know whether it is anybody's business or not, but is a matter of the corporation.

Q. Well, do you mind giving the price? A. \$65,000.

Q. How many lots? A. I don't know, but I can show you a map of it showing up to the fraction of an inch right here. There is the property (indicating on map). 20

Q. Mr. Singer, before you refer to the map or while you are referring to it, do you remember testifying that there were 42 lots there—or I might ask this question: Do you remember testifying for the Niles Estate in November, 1921, before the State Board of Taxation, when the Niles Estate appealed from the assessment of the town, do you remember testifying for the Niles Estate? A. I do. 40

Q. Do you remember saying in that proceeding that there were 42 lots in that section? A. Well, there never were 42 lots; it may have been my way of presenting it to the Board at that time, I don't know.

Q. But you won't deny you did say it, will you?

10 A. I simply say I don't know anything about that computation. Here is the map.

Q. What was the condition of the lots at that time? A. They were in a crude shape.

Q. Now, do you recall giving an opinion as to the value of each lot? A. I testified at that hearing.

Q. And do you recall saying each lot in your opinion was worth \$500? A. You are taking parts of that testimony, you are not taking that testi-  
20 mony complete.

Q. What did you say about \$500? A. I don't recall now.

Q. Do you remember being asked this question: "You would have 16 lots all graded, how much would they be worth?" And your answer: "\$500." "Q. \$500? A. Yes." A. I don't know what part of the property that is.

Q. "Q. On Hillside Avenue? A. Yes." A. Just a minute, that is unfair. This is a piece of land  
30 20 feet—do you mean now on the River Road?

Q. On Hillside Avenue, the property that you bought? A. I think I ought to have my testimony before you cross examine me on it, so that I can see what it is about.

The Court: You will have your opportunity at the proper time for your counsel to examine you further on it.

40 Q. What is your answer to that, Mr. Singer?

A. That would be truthful if it was Hillside Avenue. Do you mean the road to the ferry?

Q. You bought this property subsequently, or your company did? A. Yes.

Q. And you paid what? A. \$65,000 is my recollection.

Q. And you can't tell us now how many lots there were? A. It never was laid out in lots. 10

Q. About how many; didn't you divide it up into lots later? A. Here is a map as we laid it out.

Q. Didn't you lay it out in lots after you bought it? A. No.

Q. How did you sell it? A. In plots.

Q. And you can't give us a general idea of how many lots there were? A. No, I can't. I can show you a map here which shows it in detail.

20

The Court: How far is this property you are being questioned about now from the property in question?

The Witness: I should say about eight blocks. This is a different character of property.

Q. Mr. Singer, has real estate values in West New York gone up? A. Well, I think they have.

Q. When did they start to rise? A. Well, as the market was being developed on vacant land, of course the vacant land began to go up in value. 30

Q. What year did the rise start? A. I think since 1920.

Q. And don't you remember testifying in this proceeding, in November, 1921, when you were asked this question: "Don't you know real estate values have gone up continuously in the last three years despite even the war? A. No such thing." Do you remember that? A. That would be right. 40

Q. What is that answer? A. You say three years?

10 Q. In 1921, before the State Board of Taxation, do you remember being asked this question: "Don't you know real estate values have gone up continuously in the last three years despite even the war"? And your answer was, "No such thing."

A. I think I was right at that time.

Q. Didn't you just say the rise started in 1920?

A. That is what I say, that would not make it three years, that would make it a year.

Q. But this testimony was given in 1921. A. You asked about three years, wasn't that your question? That would make it 1918.

20 Q. "Don't you know real estate values have gone up continuously in the last three years, despite even the war"? Now, your answer was, "No such thing."

The next question was "And they are going up now? A. I don't know, I think the building conditions have just had a reverse effect." "Q. Vacant property is getting scarce in West New York? A. There is an abundance of it." Don't you remember testifying to that? A. That must be so if it is there.

Mr. Hirschberg: That is all.

30 By Mr. Besson:

Q. This testimony was given in connection with the assessment of 1920, wasn't it? A. October, 1919, I think, I think it was an appeal of the taxes of 1920.

Q. So the assessment would naturally be made the previous October? A. October 1st, 1919.

Q. These lots at the corner of Hillside Avenue and Hudson Boulevard, what condition are they in?

40 A. Why, 100 feet back from the Boulevard East there is a plot that is somewhat at grade, but it

rises in the rear, but from there on it has to go down; it rises to 35 or 40 feet perpendicularly, not available for use except at great expense; and that is the land he is referring to. It might be used for warehouses or something of that kind in the future, but you could not use them today.

10

By Mr. Hirschberg:

Q. Did you say in that proceeding that the property as a whole was worth \$40,000? A. I did not get you.

Q. Did you say in that proceeding before the Board that all the property, the property as a whole, was worth \$40,000? A. I can't say until I see the testimony. If you will show me the testimony I will tell you whether I gave it, but I want to know the circumstances surrounding that question.

20

Q. "Q. What in your opinion is the value taken of the plot? A. I should say \$40,000 would be a fair value." And do you recall this: "It would cost any one to develop that land anywhere from \$25,000 to \$30,000."

Mr. Besson: When was that assessment taken?

Mr. Hirschberg: It does not say for what year. It speaks of the valuation at that time.

30

The Witness: No, it was the time of the assessment.

Q. But when you said it would cost \$25,000 to develop, that had regard to some future development, hadn't it? A. You could not use it in the condition in which it was.

Mr. Hirschberg: That is all.

Mr. Besson: The property owners rest.

40

ELIHU STEVENS, recalled as a witness on behalf of the Condemnors, testifies as follows:

Direct Examination by Mr. Hirschberg:

10 Q. Mr. Stevens, after October, 1923, what has been, to your knowledge, on various piling jobs, according to bids submitted, the average price per foot?

Mr. Demarest: Objected to as not rebuttal. It is not in West New York, and he has already testified. This should be rebuttal and nothing else.

The Court: There can be no question about that.

20 Mr. Hirschberg: Well, in West New York and on property of this character. My reason in bringing this witness back, your Honor, is to rebut the testimony of Mr. Waddington to the effect that because one firm has a greater expense that is the reason for a price being fixed higher.

The Court: He has testified on that point.

30 Mr. Hirschberg: But I have a right now to ask him a question on what he bases the value or price of 80 cents per foot, by reason of Mr. Waddington's statement that they had more expense.

Mr. Demarest: We produced Mr. Waddington to rebut the testimony of this witness. This has all been gone into.

The Court: What other than you have already developed by this witness do you expect to get from him now?

40 Mr. Hirschberg: To rebut the statement made by Mr. Waddington, that because these people are, if they are, a bigger firm, and go to a greater expense, that is the reason for the 80 cents a foot, just on that point.

The Court: You mean to say how he arrived at that basis?

Mr. Hirschberg: Yes.

The Court: I will allow it for that purpose.

Q. Just how did you arrive at the figure of 80 cents? 10

The Court: Having in mind that you did give that figure to apply in West New York.

A. I did not figure the cost on the flat basis at all; I figured on the job, on its merits and conditions, and I can reduce it to a price per foot afterwards; but the price per foot has no bearing on my original cost. 20

Q. On this particular plot? A. Yes.

Cross Examination by Mr. Demarest:

Q. Did you drive any piles in West New York?

A. No, sir, not right in West New York.

Q. Where is your plant located where your machinery is kept? A. Our machinery is kept in Jersey City.

Q. You have no machinery in this section where this land is situated? A. We don't store up there, no, sir. 30

Re-direct Examination by Mr. Hirschberg:

Q. Do you know the Waddington firm? A. I know of them, yes.

Q. Do you know where their place is, their plant? A. Their office is in Hoboken; I think their plant is there. 40

JAMES ORLANDO, recalled for the condemnors in rebuttal:

Direct Examination by Mr. Hirschberg:

10 Q. Are you acquainted with the lots on 17th Street, West New York, which were purchased by Weisberg & Levine? A. Yes, sir.

Q. Did you ever have those lots for sale? A. Yes, sir.

Q. Did you study the lots for the purpose of determining their value? A. Yes, sir.

Q. When were they given to you for sale? A. At the same time that Levine & Weisberg, at the time when they bought them.

20 Q. When was that? A. Between August and September of the year 1923.

Q. Do you know the buildings that Weisberg and Levine put up on those lots? A. I do.

Q. How many lots were given to you for sale? A. Three lots.

Q. Have you studied the lots, and what is your opinion of the value of those three lots?

30 Mr. Demarest: We object to the testimony; the testimony which is attempted to be rebutted here is testimony of what the lots sold for, and now the opinion of this witness as to the value of the lots is not rebuttal. Mr. Weisberg testified yesterday as to the sale price.

The Court: Isn't that so?

Mr. Hirschberg: But that does not represent the value.

The Court: They may have sold for seven times their value.

40 Mr. Hirschberg: That is my point, just because the sale price was admitted from

Mr. Weisberg the jury might get the impression that the \$7,000 paid for the lots here represented the amount they were worth, and here is a man who has a special knowledge on that subject.

The Court: The point is that we are not testing out collateral issues. The point as to whether property on 17th Street or elsewhere sold for too little or too much is not in issue here. He was stating the sales price as showing his qualifications to testify as an expert. 10

Mr. Hirschberg: Then I think he followed that up and he said they were worth that sum.

The Court: If you can show me where that is, I will allow it; otherwise I will reject it. You may point it out if you can. 20

Mr. Hirschberg: Without referring to it I will say this. He made the general statement that he does not buy anything unless the property has that value. That was the general statement covering all purchases by him.

The Court: I will sustain the objection unless you show me he made the statement to which you refer. 30

Mr. Hirschberg: I think, your Honor, without going any further I may read something here that has a bearing on the question: "Q. You would not buy a piece of property that was dear, would you? A. If a piece of property I bought was worth \$30,000 I would buy it for that if I thought it was worth it, if it was one lot."

The Court: Now he is selling it.

Mr. Hirschberg: No, Weisberg & Levine 40

bought it and he placed that value, he said he thought it was worth that much money.

Mr. Demarest: My point is, this testimony can only be in rebuttal of our case, and our case was testimony as to the sale price, and the opinion of this witness cannot be rebuttal of that.

10

The Court: I will give Mr. Hirschberg his chance. He had no original opportunity. If you can show me where he said that the property is worth that much I will allow him to answer the question.

Mr. Hirschberg: He said generally that.

The Court: But this is particularly, not generally.

20

Mr. Hirschberg: He said that generally, and he bought this piece of property and he would buy this piece of property if he thought it was worth \$30,000 he would buy it for that, if he thought it was worth it.

The Court: How does that bear on this issue, to bring it all down I will sustain the objection.

30

Mr. Hirschberg: Will your Honor give me this opportunity, for this reason: The Court stated in determining the value the question of what price was paid for a piece of property is not controlling, it is some evidence. Now, if you eliminate this testimony and we are restricted from showing by somebody who is acquainted with these lots, showing the true value, then what have we got before the jury? All we have is what Mr. Weisberg paid for the lots. If that is the only thing we have got before the jury, then the jury might take that as the value of the lots.

40

The Court: You are referring back to

yesterday, to certain testimony. Now was the testimony which you seek to rebut offered for the purpose of showing this man's qualifications or was it as fixing a standard of valuation concerning these particular lots. If it was for the standard of comparison with this property in question then I will allow it. I assume from what has been said that it was merely testing his knowledge of land values for the purpose of making him an expert witness. Rather than have all this delay, is it so material, Mr. Demarest—

Mr. Demarest: No, to save time perhaps we had better withdraw the objection.

Q. What is the value of those lots? A. \$2,500 apiece. 10

Q. Was there any rock excavation necessary? A. No, sir. 20

Q. How many lots were there? A. There were two on 17th Street and one on Palisade Avenue.

Q. Are you acquainted with the lots purchased by Mr. Weisberg on 9th and 10th Streets and Palisade Avenue for \$35,000? A. I know them.

Q. And you knew those lots before he built on them? A. They were for sale.

Q. What is the value of those lots? 30

Mr. Demarest: Objected to on the same grounds as the objection to the former question.

The Court: Don't you see how you are raising these collateral issues here as to the value?

Mr. Hirschberg: Mr. Weisberg said he bought \$35,000 worth of land and said he didn't remember how much the lots cost, and he did not testify as to the value. 40

The Court: Now you want to show the value?

Mr. Hirschberg: Yes.

The Court: I do not see how I can permit you to do that at this stage of the case. Why?

10

Mr. Hirschberg: Simply because they are in a built up section and they are improved lots.

(Objection sustained; Condemnor excepts.)

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WILLIAM C. BEUSCHER, sworn for the Condemnors, in rebuttal.

20

Direct Examination by Mr. Hirschberg:

Q. What is your profession? A. Civil engineer.

Q. Have you been engineer for the town of West New York? A. I was.

Q. During what years? A. From, I believe it was, 1914, up to 1918.

Q. As town engineer did you have the supervision of the 9th Street job opposite Dieckmann Estate? A. I did.

30

Q. Will you tell us whether you made any soundings? A. I did.

Q. What was the nature of the soundings; what did you find? A. Where?

Q. On 9th Street?

Mr. Demarest: I object to 9th Street. That is not on our property, and if this is rebuttal I do not see what he is rebutting.

The Court: Is this the witness you asked leave to call at the close of your direct case?

40

Mr. Hirschberg: Yes.

The Court: All right.

Q. What was the nature of your soundings, what did you find on 9th Street?

Mr. Demarest: I object. I do not see that the soundings on 9th Street at a place which is not within the confines of this block—and where we have soundings made upon the lot—should be introduced at this time. 10

The Court: Had this been put in its regular order the purpose of it would have been to couple it up with exhibits here, pictures of 9th Street, to show the character of the sub-soil in that location, to show it was of the same character as further up where this property is being taken. I will allow it. Let it appear how far the soundings that you made in respect of the 9th Street are away from the property now being condemned. 20

The Witness: 200 feet; the next block south.

The Court: All right.

Q. What was the nature of your soundings? A. You mean the material that we found there?

Q. Yes. A. The outer layer is a layer of bog.

Mr. Demarest: I object to that. The samples are here before this jury that were taken out of this property. How can soundings 200 feet away have any bearing upon the condition of the soil on this property? 30

The Court: It is not rebuttal; it is part of his direct case, and he is coupling it up, I presume, with the picture that is in evidence, in order to show that the same type and character of property exists at 9th as at 10th Street. Is that right? 40

Mr. Hirschberg: Yes.

The Court: Proceed.

Mr. Demarest: All right.

10 A. (Continued) Of course we struck the bog of which there are samples here, and we went through the bog for about 22 feet, and at 22 feet we struck blue clay and sand. This particular boring I speak of was made right at Broadway and 9th Street. We got into this clay and sand and it seemed rather hard, and we forced our bore through it. It was about 2½ feet at that point and we again came to bog and went down 30 feet more before we came to hard-pan, or the glacial formation, which it is, at the bottom.

20 Q. At a distance of 30 feet you say what did you strike? A. I say 22 feet we went first. We went through 2½ feet approximately of blue clay and sand and then we again struck peat down for another thirty feet.

The Court: Is the type of the surface of the ground the same there at 9th Street as it is at 10th Street?

The Witness: Yes.

30 The Court: Is the sub-soil as far as you went down to this sand formation of the same character?

The Witness: Of the same general character, yes. I improved all the streets from—

The Court: Never mind. That is all.

Q. How many feet did these piles go down to sustain 9th Street?

The Court: All right.

40 A. They went varying depths up to 65 feet, the longest we drove.

Q. Who did the work? A. George Horning was the contractor.

Q. Did Mr. Waddington do the work? A. Mr. Waddington's concern did the work.

Q. And you supervised the work? A. I did.

Q. I show you this photograph and ask you if you took a photograph of the work being done at that time? A. I did, I took several during the course of the construction of the work. 10

Mr. Hirschberg: Do you object to the admission of this photograph?

Mr. Demarest: Yes.

Q. Does that photograph truly represent the work done?

Mr. Demarest: I object to the offer of those photographs. 20

The Court: I do not see the relevancy of the photographs at a time when they were putting sidewalks down two or three years ago.

Mr. Hirschberg: There was some testimony here by Mr. Dunham—and this part is in rebuttal—that the reason for the upheavel here, or the condition of this street, was due to the faulty construction of the piles. 30

The Court: The best evidence is the evidence of the man who superintended the construction, not pictures without the photographer being produced.

Mr. Hirschberg: He is the photographer. Mr. Beuscher took the photographs. This shows just how they did it and what was done.

The Court: You are liable to raise too many issues here. Ask him what the construction was and— 40

Q. I presume that work was properly directed and supervised by you?

Mr. Demarest: I object.

Mr. Hirschberg: Take the witness.

10 Cross Examination by Mr. Demarest:

Q. Were you with Mr. Dunham and the town engineer when they made the soundings on the Dieckmann property a few days ago and agreed?

A. I was not.

Q. The soundings you took were a couple of hundred feet away or more? A. I said 200 feet, one block south.

20 Q. And you do not dispute the accuracy of the soundings taken by Mr. Dunham and the town engineer, Mr. Oleri? A. I certainly do not.

The Court: When did you make your soundings?

The Witness: 1916.

Q. At the time this sidewalk was put in? A. Yes.

Q. Which is shown in the picture of 9th Street? A. Yes; shown in the picture of 9th Street.

30

Mr. Hirschberg: There was some testimony in rebuttal I would like to ask this witness, on the question of construction of apartment houses in this locality.

By Mr. Hirschberg:

Q. Do you recognize this picture and the location of that apartment house? A. I do.

40 Q. Where is it located? A. 100 feet east of Broadway and Eighth Street.

Mr. Demarest: Do you say this is rebuttal?

Mr. Hirschberg: Yes.

Mr. Besson: Rebuttal of what?

Mr. Hirschberg: Of your engineers and others, that if you put an apartment house on this kind of land it will stay there just as on land which does not require piling. Here is an apartment house on that location that settled and which caused litigation. 10

Mr. Besson: We object to that.

The Court: I will allow it.

Q. What did you have to do with an examination of this particular property for the purpose of determining whether it settled or not?

Mr. Demarest: I do not know that he is qualified. May I cross examine him. 20

The Court: I think that is proper.

Cross Examination by Mr. Demarest (as to qualifications):

Q. What was your engineering education? A. I went to the Chelsea School in New York for five years—night school.

Q. You are not a graduate of any university? A. No, sir; I went to night school; I could not afford to go to any university. 30

Q. Have you been a construction engineer during your experience? A. I have done a great deal of construction work, yes.

Q. Where is your office? A. Ninth Street and Hudson Avenue; West New York.

Q. How long have you maintained an office there? A. At Ninth and Hudson Avenue for about three years now, at that particular place. Previous to that I was at Bergenline Avenue and 16th Street. 40

Q. How long have you practiced construction engineering? A. I have been in business for myself since 1914.

Q. I ask you how long you have practiced construction engineering? A. At that time I was doing construction work. In 1915 I did the construction of an apartment house, a \$300,000 job, on the Boulevard East and Liberty Place.

Q. How many of those jobs have you had, how many large \$30,000 jobs? That is the only one, isn't it? A. No; I supervised a job for the County that ran over a million and a half.

Q. Did you have charge of the construction of this building? A. No, sir.

Q. Did you see the work done? A. Yes.

Q. Do you know what the construction is? A. Yes; I examined it myself, excavated under the buildings for the examination of the building for a case that came up in Judge Cutler's Court.

The Court: How far is the building shown on this photograph from the land being condemned?

The Witness: On Broadway 450 feet south from Tenth Street—at Eighth Street.

Q. Was there piling under these foundations? A. Yes.

Q. You found it there? A. Yes.

Q. How deep were they, about? A. I was working for Mr. Gore, an engineer, at that time, and they put 30 foot sticks in there.

Q. Do you know whether the piling under the foundation in that building shown on the photograph extended down to the sand? A. No; I do not.

Q. The Court: But you know how long they were?

*William C. Beuscher—Cross Examination.*

The Witness: Yes; we had charge of the job.

The Court: They were how long?

The Witness: Thirty feet.

Q. Did you make borings there? A. No, sir.

Q. Did you not determine the depth of the sand from the surface of the ground? A. No, sir. 10

Mr. Demarest: I object to it.

The Court: I will allow it.

Mr. Hirschberg: We do not need the picture.

By Mr. Hirschberg:

Q. How high was this building? A. A four story building. 20

Q. How many families, do you remember? A. I do not know how many families.

Q. What happened to the building?

The Court: Was this the same character of land as involved in this condemnation proceeding?

The Witness: Yes; the same kind.

The Court: Did you determine that from borings you had previously made in the same general locality? 30

The Witness: Yes; I had done borings on the street south of that and also on the street north of that.

The Court: Both sides of it?

The Witness: Yes.

Q. What happened to the building with respect to its settling? A. The front part of the building settled eight inches towards the west, that is, the 40

top of the building was eight inches out of plumb. We determined that by the transit.

Q. And what was done to the building later?

10 A. The building department—I believe it was the building department ordered the owner to repair the building. He told me they ordered him to repair it.

By Mr. Demarest:

Q. How did they repair it? A. They filled up the cracks in the brickwork in the sides and put some fill on the side of the building in order to attempt to hold it up.

20 Q. You do not know that the character of the soil was responsible for the settlement, do you? A. I would say that I believe it is.

Q. You recognize the fact, don't you, that if piles are properly driven and go down to a solid bottom that they are capable of carrying the largest buildings; isn't that a fact? A. That is true; they do not necessarily have to go down to a solid bottom; they have to have the right bearing capacity; that is all.

30 Q. If the piles were not driven down to the sand this building would be likely to settle? A. That is possible.

Q. And if there were not enough piles driven this building would be likely to settle? A. Yes.

Q. If there were faulty construction work, concrete over the top of the piles, that might cause a settlement? A. That might; yes.

40 Q. So you cannot tell whether it was the character of the soil or defective construction that caused that building to settle? A. The concrete work was good; you could see it at the time they put the fill in.

Q. You do not know whether those piles were long enough to reach the sand bottom? A. No.

Q. You do not know whether they were properly driven? A. I saw them. I know they were properly driven. They appeared to fetch up fairly well when driven.

10

The Court: What do you mean by "fetch up"?

The Witness: When the hammer strikes the pile the amount that the pile sinks, that is the way we determine the bearing power of the pile.

Q. If the piling had been properly done and the concrete work over the top of the piles properly laid and the construction work in the foundation was proper, that building would never have sagged, would it? A. I would say that it is impossible to say that the piling could be done properly; no one can tell what condition may exist underneath the soil.

20

Q. Aren't the very largest buildings in New York, for instance, the Woolworth Building on Broadway, on pilings? A. On caissons.

Q. Aren't many of the largest downtown buildings in New York on pilings? A. There are a great many of them on piles. A great many of them have settled, too.

30

Q. But they are built on piles, aren't they? A. Yes.

Mr. Hirschberg: I object to that on the ground we haven't got conditions surrounding the piling of those big buildings.

Mr. Demarest: I am asking him about construction work.

The Court: Objection sustained.

40

Mr. Damarest: We will come back to Jersey then.

The Court: Come back to Jersey.

10 Q. Isn't it a fact if the construction work is properly done that piling under the foundations bedded in a proper soil beneath, that there is no more reason for a building to settle than though it were built upon rock or soil? A. Not if it is bedded into proper soil, no; it should not.

The Court: What was your opinion as an expert engineer with respect to the settlement of this building, as to its cause—if you have any?

20 The Witness: The opinion that I have is that this sand seems to work underneath there occasionally and when you drive the pile you create an action in there and the quicksand commences to work—and there is quicksand in certain parts there—the pile starts to go down.

The Court: That does not exactly answer the question yet—whether your opinion was that the subsoil was responsible or the construction?

30 The Witness: Yes; my opinion is the subsoil is responsible; yes.

By Mr. Hirschberg:

Q. You said your opinion was that the subsoil was responsible? A. Yes.

Testimony Closed.

40 The court then charged the jury as follows:

**Charge.**

GENTLEMEN OF THE JURY:

Steffen Dieckmann died seized of a tract of land in the Town of West New York in Hudson County, and the present owners became seized of interests in this land as heirs or devisees through the death of Steffen Dieckmann. Some time in 1923 the Board of Recreation Commissioners of the Town of West New York, which, for the purpose of convenience, I will refer to hereafter as "the Board," required a portion of this tract of land for a playground, or for recreation purposes, and the land which they required for that purpose lies between Tenth and Thirteenth Streets and Palisade Railroad right of way and Broadway in the Town of West New York. At the opening of this case I read to you a description of that land, and you have been upon it and viewed it.

The Board and the Dieckmann Estate could not agree upon a price to be paid for the land which the Town, through its Board of Recreation Commissioners, required, and so the Board had to resort to what the law terms the right of eminent domain, that is, the right which the State has and which it has delegated under certain provisions to municipalities and to certain quasi public corporations, and the municipality in this case is one of those municipalities which has the right to exercise that right of domain, or their subsidiary body known as the Board of Recreation Commissioners. That right is the right to take private lands for a public use.

Now, I have mentioned, "without the consent of the owners," but, gentlemen of the jury, no land, or property can be taken by a municipality or any one without compensating the owners of the land so taken. The Constitution of our state says that

private property shall not be taken for public use without just compensation; and you can see that is eminently right under any well organized government because if the right is given to take private property for public use without just compensation it amounts to confiscation.

- 10 Now, what is just compensation? Our highest court has said that in condemnation proceedings the land owner is entitled to receive, and the party condemning is bound to pay, the fair market value of the property. That fair market value is what a willing purchaser would pay and a willing seller would take for the property under circumstances reasonably calculated to produce a fair sale. What is meant by a fair price and a fair sale? Again, our highest court has said, in considering what
- 20 uses you may consider this land may be put to, the rule is that the landowner is entitled to receive the fair price of any use for which it has a commercial value of its own in the immediate present or in reasonable anticipation in the near future. I think I should say to you you right here, that if either side have suggested to you a use to which this land may be put and there is a reasonable use made clear to you for which it has a commercial value of its own in the immediate present or in reasonable
- 30 anticipation in the near future, other than the use that has been suggested, that use may be taken into consideration by you in arriving at what would be a fair price for this property. So in this case, while the Board wanted this land and had the legal right to take it against the owners' consent, still the Board had to pay the owners for the land so required, just compensation. You are to gauge that just compensation under the rules which I have referred to, and which I may hereafter refer to.
- 40 Usually, gentlemen, in addition to paying for the

land required or taken, the condemnors, the persons condemning, have to pay the damages resulting to the contiguous lands remaining to the owner in the balance of the tract, if it be taken from a larger tract, and the damages resulting to the remainder of the tract by reason of the taking of the smaller part therefrom; but, unfortunately for you in this case, all parties in interest have agreed and stipulated at the opening of the case, that no claim is made for damages to the balance of the property of the Dieckmann Estate in this location not taken for the purposes of this playground, and the issue as framed in this case for the purposes of this appeal, is: What is the land which the Board of Recreation Commissioners of the Town of West New York, or the Town of West New York, a municipal corporation, should pay to the owners and persons interested in the lands described in the petition—what is the amount to be paid? That amount is arrived at under the rules respecting value that I have already stated to you. 10

So in this case when the Board would not agree with the owner as to the price of the land required for the playground and for these recreational purposes, it submitted its offer to three assessment commissioners appointed under the provisions of the General Condemnation Act of 1900, and they made an award fixing the amount to be paid by the board to the owners of this land. 20 30

Now, the owners were not obliged to accept that award, or that sum, for the statute provides that in every case either party may appeal from the award to the Circuit Court of the county where the land is situated, for a trial by jury of the question of the amount to be paid to the owners for such land, and the jury to whom the appeal is taken is not bound by anything that has happened before; and so in this case the board has appealed 40

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from the award of the Commissioners, and that award has not been offered in evidence before you, because it is immaterial what those Commissioners did, for the question is before you *de novo* to decide as though the commissioners had never passed upon the question.

- 10 Now, gentlemen, you have been upon the land which is required in this case; you have seen it, you know its location, its characteristics and situation, and can appreciate the evidence you have heard here upon the witness stand. The appellants, the Board of Recreation Commissioners, have produced witnesses and exhibits in an attempt to show you the true market value of the lands to be taken. Now, it would serve no useful purpose for me to attempt to analyze the testimony, but you are to consider it, you are to weigh it carefully, and of course on the other hand the owners have produced here witnesses and evidence tending to show you the true market value from their standpoint, and they, according to the trend of their testimony, fix it, or attempt to fix it at a much higher figure.

- 30 Now the question is for you to say from all of this evidence, what is the true value and the just compensation which our constitution says must be paid to these owners. After you have considered all this evidence and weighed it carefully, you are to decide the value of the land to be taken by the board, and which has been described to you, and which you have visited and viewed and its value is to be fixed as of October 26, 1923, the date of the filing of the petition and order in this cause; and as I have already indicated, you are not to consider whether the taking of this land will entail damage to the remaining contiguous land of the Dieckmann Estate out of which the land in question is to

be taken, because that question is not within the issue as framed in this case, and it has been especially waived by the parties in interest.

So gentlemen, you are to take this evidence and consider it with a view of arriving at the true value. You are the sole judges of the facts and the weight and credit you will give to the testimony and exhibits, and the question that you are asked to decide is the value of the land to be taken, which sum you are to express in your verdict. You are not to be influenced by sentiment or by the fact that the appellant—in this case the condemnor—is a municipal body, nor by prejudice; nor are you to speculate upon what the Commissioners may have done or what the owners ask you to give them or what counsel think you should award, but you, gentlemen, after having heard all the evidence and seen this property, are to fix the value of this land which has been described to you, and which you have visited and viewed, and that value is to be determined as of the date of October 26, 1923, when the original petition and order in this case were filed. 10

Now, the issue itself, the question to be decided, is in that very narrow compass; but there has been a vast amount of evidence here from expert witnesses, and from other testimony that has been produced, which it is your function to weigh and analyze, and then after your complete analysis, to state in figures in your verdict the amount which this municipal body is to pay to the owners of this property. 20

Now, gentlemen, with that you may take the case. 30

(Counsel and Court confer at side Bar.)

The Court: Gentlemen, through an inadvertence in my charge I have used language like this: "Now, 40

*Respondents' Exceptions.*

the owners were not obliged to accept that award of the Commissioners, for the statute provides that in every case either party may appeal." I wish to emphasize the fact that neither party, neither the owners nor the municipality, was obliged to accept the award of the Commissioners. The law provided that the course was open to either of them to appeal from the award of the Commissioners. I trust I have made myself clear on that point, and the fact that in this case the municipality may have appealed is not to weigh against the one side nor against the other because it was an absolute right that either side had, to take an appeal.

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Does that cover it, Mr. Demarest?

Mr. Demarest: Yes.

The Court: With that, gentlemen, you may retire.

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**Respondents' Exceptions.**

Mr. Demarest: I think that the charge should have been that the jury had the right to consider the best or most advantageous use to which that property might be put in order to fix the value. May we have an exception to your Honor's refusal to charge that?

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Mr. Besson: Having made our request too late, may we except to the fact of the court having referred to the right of appeal, charging that the finding of this Commission was not binding upon the municipality, but was binding upon the owners?

The Court: Let it appear that certain requests were submitted by the condemnors, after the attorney for the municipality had made his opening argument to the jury at the close of the testimony, and after the attorney for the owners had con-

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*Respondents' Requests to Charge.*

cluded his argument, and after the attorney for the municipality had begun his reply argument to the jury, and the court did not therefore have time in which to examine the requests, and for that reason, as well as for the reason that the court does not conceive the above proposition to be sound, no charge was made as now suggested to the court. 10

**Respondents' Requests to Charge.**

1. Just compensation under the provision of the Constitution of the United States, "Article I, Section 16", that private property shall not be taken for public use without just compensation. The word "just" means full compensation to the owner of the private property. 20

2. It is the burden of the petitioner, The Town of West New York, in this case, to establish its proof of value by preponderance of evidence.

3. Any sales by the executors of the Steffen Dieckmann Estate at low prices cannot be construed as declarations against interest on the part of the infant defendants.

4. Under the law, the Town of West New York may accept or reject the price fixed by the jury, but the defendants are bound by the finding of the jury. 30

5. For the jury to fix a value of less than that established by the preponderance of the evidence would be confiscation and prohibited by the Constitution of the United States.

1. The United States and State Constitutions provide for the payment of just compensation to the owner. 40

*Respondents' Requests to Charge.*

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2. Burden of establishing a just compensation is upon the party condemning.
3. All questions of doubt as to value are to be resolved in favor of owner.
- 10 4. The Town of West New York is not obliged to take the property at the price fixed by the verdict. It may reject it.
5. The owner is compelled to sell at the amount of the verdict.
6. Prospective benefits to the extent that they may be measured may be considered.
- 20 7. Declarations of the owner by statements do not bind him. The infant owners could not be bound.
8. The measure of value is the value of the use of the land less such sum required to fit it for that use.
9. Assessments for street improvements and so forth, are charged to the property only to the extent of the benefit. The balance is paid by the municipality.
- 30 10. Every element, *actual* or *potential*, which enters into fixing the present value of the property may be taken into consideration.
11. The owner is entitled to a valuation based upon the best possible use of the property. The jury need not be limited to comparison with the present use of adjoining property if there appears a better and more valuable one.
- 40 12. The owners' land can not be confiscated.

## New Jersey Court of Errors and Appeals

IN THE MATTER

of

The Application of the Board of Recreation Commissioners of the Town of West New York, in the County of Hudson, for the appointment of three Commissioners to fix the compensation to be paid for certain lands of STEFFEN DIECKMANN, deceased, situate in the Town of West New York to be taken and condemned for public playground and recreation purposes.

In  
Condemnation  
Appeal of the  
Board of Recreation Commissioners from judgment of Supreme Court reversing the Hudson Circuit.  
Sat in  
Supreme Court.  
Parker and Katzenbach,  
JJ.

### BRIEF OF RESPONDENT.

The appeal to this Court is from the order made in the New Jersey Supreme Court reversing the judgment of the Hudson County Circuit Court. The appeal to the Supreme Court was taken from the proceedings had at the trial of the cause before the Hudson County Circuit Court and a struck jury. The appeal to the Hudson County Circuit Court was taken by the condemnors from an award of commissioners setting the value of the lands to be condemned at \$108,000.00. The jury in the Circuit Court having brought in a verdict of \$86,400.00, an appeal was taken from this verdict by the land owners to the Supreme Court to set aside the judgment. The Supreme Court reversed the

judgment of the Circuit Court and ordered that a *venire de novo* issue.

The plot condemned consists of 72 City lots (some being less than full size City lots in area) extending from Tenth to Thirteenth Streets in the Town of West New York. The lots are of different character, some facing upon improved streets, others on unimproved streets. Eleventh and Twelfth Streets, which intersect the plot, are not cut through or improved. The commissioners' award was \$108,000.00, and the verdict upon appeal to the Hudson Circuit Court was \$86,400.00. This obviously was a quotient verdict and arrived at by the jury fixing a verdict price of exactly \$1200.00 per lot without regard to size, location or different characters of soil. The owner's witnesses appraised the land at \$147,050.00, Singer, p. 201, \$137,695.25, McDermott, p. 192, and \$149,202, Weisberg, p. 122. This testimony was based upon a consideration of all the conditions effecting the several portions of the tract and not upon a general average per lot basis.

Although the appellant here has submitted a lengthy brief discussing almost all the testimony submitted during the trial of the case and covering a great many different points to prove the Supreme Court was in error, the broad principal upon which your respondent here stood and which principal was upheld by the decision of the Supreme Court has not been changed nor is affected by any of the matter contained in his brief.

That such photographs as were introduced in this case of property and places other than those in dispute cannot fairly be admitted for the purpose of showing the value of the condemned land because they cannot provide a fair basis for determining the value of the land, was decided in the *Hepburn* case,

126 Atl. 421, and *is the law in this State*. The photographs in question show the sinking of a portion of the sidewalk at a single point and a depression of the street in the vicinity of the spot shown in the first photograph. These photographs marked, Condemnor's Exhibits Nos. 8, 9 and 10 were introduced over the objection of the land owners and exceptions were taken when they were admitted.

The first objection which your respondent raised in his appeal to the Supreme Court was that no proper foundation had been laid for the introduction of these photographs. He was expressly sustained in his view by the Supreme Court in its opinion.

One of the witnesses, on whose expert testimony the appellant here again tries to prove that the introduction of these photographs was correct, was an engineer and witness of the condemnors who testified that the same boggy condition of the soil existed at the point shown in the photographs as in the land to be condemned, p. 91 .

He based his expert opinion on nothing but a visual observation of the land. The spot shown in the photographs was more than 275 feet from the nearest part of the condemned land and was over 1,000 feet from other parts. This same witness referred to above admitted he had never made any borings except in the tract sought to be condemned and that he didn't know the character of construction or what piling was used at the location shown in the photographs. Yet he testified that he knew the same situation existed at the two points with reference not only to the surface but to the sub-surface of the ground as well. Oleri pp. 92, 93, 94, 95,

Again these photographs, the very object of which was "*to show the effect of piling in that particular territory*" <sup>was</sup> ~~was~~ admitted on the testimony of this same witness who testified that he did not know anything about the piling at the location

shown in the photographs ("he had merely passed by while the work was in progress") and whose opinion was based entirely on "physical observation of the ground" pp. 93, 95.

The appellant again cites such testimony to show that he has proved that the same conditions existed in the lands shown in the photographs and the lands sought to be condemned, not above the ground but *to depths extending to 30 feet below the ground*. In the briefs submitted by your respondent before the Supreme Court, the absolute worthlessness of such testimony and the unfairness of permitting these photographs to be admitted upon it was one of the points particularly pointed out by your respondent as error. The Supreme Court upheld this view. The allowing of these photographs and testimony concerning them to be admitted on such a foundation as was laid by these witnesses was not only unfair but was absolutely unjustifiable for it permitted an opinion, of the property sought to be condemned, to be formed *at that time* by the jury, based upon the character of an entirely different and remote piece of land and only connected with the piece in question by the testimony of a witness who practically admitted he knew nothing about it.

Even if an attempt was made to corroborate these photographs and the testimony, at the end of the case, the situation, as regards its unfairness to the owners would be the same. An impression was allowed to be formed in the minds of the jury *at this time* on evidence, the foundation of which was practically hearsay and which could not help but have an unfavorable effect on the owner's case. Even if it were admitted that such evidence were admissible, the way it was presented at this time was unfair and its effect upon the just trial of the case the same.

To substantiate the testimony of Oleri and to justify the admitting of the photographs in evidence, the appellant in his brief cites the testimony of one William C. Beuscher. Beuscher was called at the end of the case to provide the absolute link between the land shown in the photographs and the land to be condemned. Mr. Frederick Dunham, a thoroughly qualified expert, pp. 136, 137, and an engineer having the widest experience with borings and foundations, had testified that the reason for the conditions shown in the photographs in question was "a clear indication to my mind of improper pile driving" (p. 157). Beuscher was to show not only that the conditions in the two places were exactly the same, but also that he had absolute knowledge that the pilings underneath the sidewalks shown in the photographs was not faulty. Yet it is a strange fact that when we get to that part of his testimony where not the condemnors' counsel, nor the land owners' counsel, but the Court itself, suggested that he tell what was the construction in the location shown in the photographs, the suggestion went unanswered; and the question of the piling under the sidewalks and the manner in which the work was done was absolutely disregarded (pp. 225, 226). And nothing more was even touched upon thereafter by the appellant to prove the very things for which this witness was placed upon the stand, namely, that the reason for the upheaval and the condition of the street, shown in the photograph was due to the faulty construction of the piles underneath the portions shown.

That this very point was brought before the Supreme Court and that they saw, not only the worthlessness and unfairness of the admission of these photographs on such testimony, but also the rule which should have been applied, is clearly shown in that part of their opinion which states,

“They (the photographs) showed conditions not on the property to be taken, but on other property which, while claimed to be due to natural tendencies of the terrain, may well have been due in a large part, if not principally, to faulty engineering and construction. *Where it is sought to gauge the value of lands by alleged similar conditions on other lands, the parallelism should be clear and complete; otherwise the test fails and the admission of such evidence is erroneous.* Hepburn vs. Water Supply Commission, 126 Atl. 431. Order Reversing Judgment of Circuit Court, pp. 5, 6.

The injustice of admitting such evidence as these photographs is even more apparent, when we consider that the places shown in the photographs were far removed from the tract under condemnation, *and that the jury had been previously expressly instructed to disregard them.*

It has been testified by the condemnors witness that the photographs show lands not less than 275 feet from the nearest point of the tract sought to be condemned. This would mean that these lands are approximately 1000 feet from various other parts of the tract in question.

The tract of land to be condemned was the property the value of which the jury was to determine. They were to make up their minds on its value from the testimony presented during the trial, *and, as provided by statute in such case, by a visual observation of the land itself. They were not to determine the value of land in the neighborhood, nor were they to take any notice of anything but the tract involved.* Indeed, they were instructed by the trial judge in his direction to the jury before they viewed the land at the very beginning of the trial, that they should only concern themselves with the property the description of which he had read to them (pp. 20, 21). The trial judge par-

particularly emphasized this point for he said, "Let me say to you, in viewing the property, *you will confine your attention to the property I have described to you just now, and the situation as observed from this property; you are not to go and view other properties, but you are to view this particular property and the situation of this property itself*" (p. 21). Yet, we find that the jury is allowed to judge the property which they have viewed by pictures of alleged condition of distant property which they were expressly directed not to view.

In a Pennsylvania case it was decided:

"Where the jury has viewed the premises in a land damages case, it is ~~properly~~ to exclude photographs of parts of the street which was opened, the photographs at best being secondary evidence."

*Dobson vs. Philadelphia*, 7 Pa. Dist., 321.

The question presented in our case is entirely different from that involving the admission of evidence regarding sale of land in the vicinity. In the latter cases, we have evidence presented to the jury to show them the value of the land in the neighborhood of that which they are considering. This was done in this case and was not objected to, for indeed, as it is a question of value they are to determine, and as they have not been told to disregard the value of anything but that of the tract in question, it is perfectly proper that it should be done. *In our case it is not the question of showing relative values that is objected to, but the unfair methods of attempting to show alleged relative conditions; and the objection is not raised to the admission of evidence which the jury had a right to have, but to the admission of evidence as to conditions in places which they were expressly instructed by the court they were not to inspect.* Now,

when we consider that, though the jury followed the trial judge's instructions, they were allowed later on in the determination of the case to consider by pictures those very things which they had been told to disregard, the injustice of admitting these photographs is evident. The situation is even more aggravated when we consider the foundation upon which this evidence was admitted.

In an Illinois case it is plainly pointed out that evidence as to physical conditions must be confined to the tract sought to be condemned.

"Testimony as to the existence of coal on neighboring land is incompetent to show the existence of coal on land sought to be condemned."

*Eldorado, etc., R. Co. vs. Sims*, 278 Ill. 9.

In Massachusetts cases, the court held:

"The opinion of the expert must be confined to the land in question, his opinion as to other land in the neighborhood being irrelevant."

*Beale vs. Boston*, 166 Mass. 53, 43 N. E. 1029;

*Quincy vs. Boston*, 148 Mass. 349, 19 N. E. 519;

*Thomson vs. Boston*, 148 Mass. 387, 19 N. E. 406.

Your respondent avers that not only should these photographs and the testimony concerning them have been excluded on the ground that, being so far distant from the tract in question, it did not provide a fair basis of comparison for the whole tract, but also it should have been excluded *a fortiori* because it allowed the jury to be influenced by misleading and foundationless evidence on other properties which they had been expressly instructed to disregard.

Although it is apparent that the admissibility of the photographs in question is the only point involved in this case, the appellant in his brief has sought to escape from the principle and the laws of evidence governing the admission of the photographs by bringing in many irrelevant matters.

A large part of his brief is devoted to an attempt to prove erroneous that portion of the opinion of the Supreme Court which states that if the condemned land were to be used for recreation purpose, its value, piling being unnecessary, would be greatest. He forgets, however, in spending so much time on this point that the question involved in this appeal was whether certain photographs which were admitted at the trial in the Hudson County Circuit Court should have been admitted. The question of values was not raised in the appeal. Your respondent appealed to the Supreme Court because he said the photographs should not have been admitted and that Court on the appeal expressly sustained his contention. If your appellant now disagrees with the Court on other points which the Supreme Court saw fit to discuss in its opinion, he may do so, but his views on the subjects have nothing to do with this appeal. The Supreme Court decided the only question involved according to the established laws of evidence. The disagreement of the appellant with the Court's views on values has no bearing here.

Many other questions are raised in his brief. He discusses at great length what value the condemnors' witnesses placed upon the land and from it attempts to prove that \$86,400.00 was more than a fair price. It may be mentioned here that other expert witnesses appraised the land at \$147,500.00 (Singer, p. 201), \$137,605.25 (McDermott, p. 192), and \$149,020.00 (Weisberg, p. 122). The

real estate experts appointed as Commissioners by the Court, after a thorough investigation of the land, valued the property at \$108,000.00. In view of the facts, it would be much more likely that the jury's verdict was most inadequate, which last fact your respondent avers is true.

The appellant's brief takes up not only questions of all kinds of value, but he also discusses other buildings in the vicinity of the condemned land, the "undue prejudice rule," and the question of why certain pictures were admitted and others objected to. These matters, as your respondent has heretofore stated, have nothing to do with this appeal and will therefore not be discussed. Neither will such points as why, if they did not agree with it, a motion was not made by the land owners to strike out the testimony of Beuscher. It is sufficient to say the exceptions had already been taken to the admission of the photographs his testimony concerned.

Numerous cases are cited in the appellant's brief, but, like the subjects to which they apply, for the most they have no application at all to the questions involved in the case at bar. The *Hepburn* case establishes the law on the admissibility of such photographs as those which are the subject of this appeal. Cases referring to the values of different pieces of property, dealing with compensation, and discussing the availability of different lands have no bearing here and are consequently of no effect.

The appellant does ~~not~~ get down to the real question involved in that part of his brief in which he has tried to explain what the Supreme Court meant when it said "the parallelism should be clear and complete," but from his argument it would seem that he has missed the point. He has tried to show that the testimony of the witness he produced

to prove beyond a doubt that the exact same conditions existed in the place shown in the photographs and in the condemned land, should have been rebutted, and if not rebutted, the photographs should have been admitted. The error in such reasoning and what the Supreme Court did mean are obvious. His witnesses were put on the stand for one purpose—to prove by their knowledge and clear and absolutely complete testimony that conditions in the two places were exactly the same. If they had done this satisfactorily the photographs might have correctly been introduced (although in its opinion the Supreme Court still holds open this question), but under no circumstances is there any question of the necessity of rebuttal. The pictures either go in on their testimony or they don't. In the present case the Supreme Court following the *Hepburn* case decided the parallelism had not been made clear and complete and that therefore the introduction of these photographs was error.

The appellant has further tried to qualify the rule laid down in the *Hepburn* case by picking out various sentences. However, the principle in that case and the reason for it remain clear. It is well known what tricks can be accomplished by modern photography and our Courts have been particularly careful about this when photographs have been sought to be introduced. Knowing that a photograph of a skillfully picked spot can easily prejudice a jury and work in justice, they have tried to lay down rules which will allow the jury to have only that information which will help them to do justice and which will not have the opposite effect.

That the Court had this in mind is obvious from the *Hepburn* case. As applied to our own case, should the jury have been permitted to judge the value of condemned lands by photographs of selected sites showing unusual and unexplained condi-

tions of lands outside of the tract and which they had been directed to ignore? Photographs, when they show true and thoroughly explained conditions on the very properties which are in dispute have been cautiously admitted, but the Court never intended this dispensation to be construed so that photographs of entirely different lands should be permitted to influence the jury in fixing the value of the condemned lands. When we go further and consider that in these proceedings the jury had been expressly instructed to disregard anything but the land in question, the injustice of allowing their minds to be influenced by these photographs of carefully selected sites outside of the property they were instructed to confine their attention to, is manifest.

However, the appellant has endeavored to qualify and change the principal laid down in the *Hepburn* case and followed in their own opinion by the Supreme Court. Your respondent avers that the case at bar and the case attempted to be qualified by the appellant are based upon the same principle; that both cases, being decided upon the same question of fairness and in accordance with the established rules of evidence, the photographs in both cases should not have been admitted; and that the decision of the Supreme Court, in applying the above principle to our own case, was correct and its decision should be affirmed.

Respectfully submitted,

HUDSPETH & DEMAREST.

BESSON, ALEXANDER and STEVENS,  
Of Counsel with Respondent.

# New Jersey Court of Errors and Appeals

In the Matter

of

The application of the BOARD OF RECREATION COMMISSIONERS of the Town of West New York, in the County of Hudson, for the appointment of three Commissioners to fix the compensation to be paid for certain lands of Stefen Dieckmann, deceased, situated in the Town of West New York, to be taken and condemned for public playground and recreation purposes.

In Condemnation.

Appeal of the Board of Recreation Commissioners from judgment of Supreme Court reversing the Hudson Circuit. Ackerson, J., and a jury. Sat in the Supreme Court, Parker and Katzenbach, JJ.

(Italics, etc., except where otherwise noted, are mine.)

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## BRIEF OF APPELLANT.

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### Statement of the Case.

The Board of Recreation Commissioners of the Town of West New York instituted proceedings to condemn lands of Dieckman for public playground and recreation purposes. The Commissioners reported that the land owners were entitled to

\$108,000 as the value of the lands (p. 12). The Town appealed. The case was heard before the Honorable Henry E. Ackerson, Jr., Circuit Court Judge and a jury, and resulted in a verdict, fixing the value of the lands at \$86,400, and judgment was entered (p. 10). From that judgment the land owners appealed to the Supreme Court (p. 2) for alleged trial error in the admission of certain photographs and testimony with respect to physical conditions of property a block from that under condemnation.

The Supreme Court reversed the judgment. Opinion, 132 Atl., 244 (p. 3). It did not take into consideration the 4th ground of appeal which went to the admission of the testimony of the witness, Beuscher, page 3. There was no objection reserved by the land owners as ground of appeal.

See the testimony of Beuscher, page 222.

The Supreme Court held that the admission of the photographs, which were designed to show the effect of piling on land alleged to be of similar character in the neighborhood of, but some distance away from, the land under condemnation was erroneous.

The Supreme Court based its determination on two grounds:

FIRST.—That the cost of fitting the land under condemnation for house building was irrelevant and misleading to the jury, the court stating: "If the lands required expensive piling for building purposes and none for open air recreation, their value for the latter use would naturally be greater" (p. 5).

SECOND.—That the photographs showed conditions not on the property to be taken, but on other property "which, while claimed to be due to natu-

ral tendencies of the terrain, may well have been due in large part, if not principally, to faulty engineering and construction."

From that judgment this appeal is taken, the error assigned being that the Supreme Court erred in reversing the judgment of the Hudson Circuit.

### Argument.

The property under condemnation consists of one continuous plot running from 10th to 13th Street, north and south and from Broadway to Palisade car line, east and west. There are no streets cut through the plot from 10th to 13th Street (pp. 23, 24). Oleri, an engineer, testified that the sub-soil of the land is of boggy material with a considerable amount of vegetable matter, sand and gravel and blue clay (p. 26). Borings were made by an engineer, representing the Board of Recreation Commissioners, and the testimony shows that the borings went down between  $24 \frac{5}{10}$  to  $30 \frac{2}{10}$  feet below the curb at various points of the plot and that, after making the deepest boring it was  $30 \frac{2}{10}$  feet sand and gravel and did not strike rock (pp. 24, 25). The plot under condemnation is part of a larger plot running from 7th to 14th Street, north and south, between Broadway and Palisade car line, east and west. The engineer testified (p. 91) that the soil of the lots on 9th Street, which was the point at which the photographs were taken, *was of the same general character as the soil of the land under condemnation.* It was all part of one tract. There was a single tract of similar soil part only of which was being taken by the Board.

I excerpt a portion of the testimony of Oleri (p. 91) :

“Q. What is the character of the land on 9th Street with respect to 10th Street? A. They are the same boggy condition, and boggy area exists clear up to 14th Street.”

He testified (p. 91), that he had been familiar with the general conditions of the surface and sub-soil for upwards of fifteen years (p. 91). While the engineer had made no borings at the point in question on 9th Street (p. 94), he testified that he was able to judge the sub-soil conditions (p. 94), and that the sub-soil conditions at the point indicated by the photographs, which was approximately 275 feet from the land under condemnation (p. 94), was the same as that of the land under condemnation.

Although counsel for the land owners, before the photographs were admitted in evidence, was expressly given an opportunity to cross examine the witness with respect to his qualifications to testify, he did not avail himself of the opportunity (pp. 92, 93, 94).

After the photographs had been admitted in evidence, William C. Beuscher, Town Engineer, was called (p. 222) in the Board's direct case, without objection (pp. 223, 224). He testified that he had been Town Engineer from 1914 to 1918 and that he had the supervision of the 9th Street job at the point indicated by the photographs which had been admitted in evidence. At page 224 he testified with respect to the conditions he found. He says: “Of course, we struck the bog of which there are samples here” (the samples referred to being samples from the bog on the lands condemned) and, after describing, minutely, the conditions he found on 9th Street, he says (p. 224), that the sub-soil at 9th Street is the same as the sub-soil at 10th

Street, or, in other words, *that the condition of the soil at the point at which the photographs were taken is the same as that of the soil of the lands under condemnation.*

Beuscher was the man who had charge of the job of piling at the point at which the photographs were taken (p. 222), and he testified (p. 225) that he supervised the work and that it was properly performed. This particular testimony was to rebut that of Mr. Dunham, engineer for the land owners, to the effect that the condition at 9th Street, as shown by the photographs, *might* be due to defective piling (pp. 157-158).

Not only was there, therefore, prior to the admission of the photographs, competent evidence of similarity of conditions but, after the admission of the photographs, there was further evidence of similarity of the soil coming from an engineer who had been familiar with the property for years, who had supervised improvements over the entire neighborhood, and who had supervised the piling on 9th Street at the point shown by the photographs.

No objection was noted as ground of appeal by the land owners to any of the testimony of Beuscher, and, after his testimony had been concluded, no motion was made to strike the photographs from the case.

The lands under condemnation had to be piled to be available for building purposes. This is conceded by the engineer for the land owners (pp. 139, 140). The land owners went into the matter of the cost of piling, producing Waddington, a contractor, to testify with respect to it (p. 173).

The expert real estate witnesses, produced by the land owners, in fixing their values, testified that they recognized that the land was of peculiar

physical characteristic and would require piling. They also took into consideration cost of street improvements (pp. 191, 192, 200).

Prior to the admission of the photographs, Stilz, a real estate expert for the board, in testifying to what had to be taken into consideration in fixing the value of the land said (p. 66) that you had to take into consideration that, before the property could be made available for commercial use, it required money to improve streets and fit the land for building purposes (p. 67); that among the matters which went to the value of the property was (p. 80):

“A. I say, the objection in preparing the soil for it; that is a question that is problematical, as to what it is going to cost, as to how long it is going to stand up; we do not know; but we do know this, that the various buildings that have been erected on this soil, they have had trouble with; they have sort of sank on one side or the other. *We know that the buildings have sunk, given way, they did not stand up.*”

An attempt was made on the cross examination of this witness (p. 81) to get him to say that the property could be built up in the same way as the street known as Hudson Avenue and he had answered that it could “provided the same improvements were there and as good bottoms; otherwise not.”

On cross examination, he said (p. 84) “I take everything into consideration; location one; the surroundings, another; the soil, still a third; the improvements, a fourth. There are a lot of things which must be considered in trying to establish

values on a piece of property—what it can be used for; the zoning—there are possibly half a dozen things. Proximity to schools, stores and lines of conveyances. There are a lot of things we must consider in determining values.”

The first photograph, to the admission of which objection was noted, is Condemnor's Exhibit 8 (p. 95), showing the condition at 9th Street, within a block of the lands under condemnation, in the same tract and having a similar sub-soil. This shows a condition existing after piling.

The next photograph, to the admission of which objection was noted, was Condemnor's Exhibit 9 (p. 97), and shows practically the same thing at a little different point.

Without objection Condemnors' Exhibits 12 (p. 98), and 13 (p. 99) were admitted in evidence. These were photographs showing the conditions of buildings which had been erected upon property either adjoining (p. 99) or immediately opposite (p. 99) the tract under condemnation. They showed sinking of houses, etc., erected on land other than the land under condemnation but adjacent thereto. These photographs went in without objection and could not have been less harmful to the land owners than the photographs to which objection was made, C. 8 and C. 9, which represented conditions at a point not more than 275 feet from the land in question and testified to be of the same general character.

Photograph C. 10, which also showed a view of 9th Street, similar to C. 8 and 9, was objected to (p. 97) but, after it was admitted, there was no objection reserved as ground of appeal. This photograph, which went in without an available objection to the land owners, could not have been any less harmful than the two to the admission of which objection was properly noted.

**The judgment of the Supreme Court cannot be sustained upon the first ground stated by the court.**

The court apparently held that, because the lands were being taken for recreation purposes it needed no piling and therefore the photographs were irrelevant and misleading, which must have been based upon the ground that *all* the evidence with respect to piling was improper.

But this would make the test of compensation the value to the condemning party.

If the Supreme Court meant to say that, because, for recreation purposes, the land required no piling, it had its greatest value for that purpose, and, inasmuch as the land owner is entitled to compensation for the land at the highest value which it could have for a commercial use, that value should have been allowed, the difficulty is that there is *no evidence that the land has any commercial value whatever for recreation park purposes*. The case was not tried upon the theory that it had any such value. The land owners assumed that the highest value the land could have was for building purposes and they produced their evidence along that line. The board did likewise.

The law is settled that the value of the land to the condemning party, for the purpose for which it is to be condemned, is not the test of value.

20 Corpus Juris, 776, title "Eminent Domain," Sec. 232,

states the rule:

"Compensation must be reckoned from the standpoint of what the landowner loses by having his property taken, not by the benefit

which the property may be to the other party to the proceedings; therefore the value of a particular piece of land to a person or corporation exercising the right of eminent domain, or the necessities of that particular person or corporation to acquire that piece of property for the particular purpose, cannot be considered as an element of damage to the landowner."

In *Somerville and Easton Railroad Co. v. Doughty*, 22 N. J. L., 495, the headnote expresses the rule:

"The present value of lands taken must be awarded, and damages to adjoining lots must be assessed on the basis of their present value; but, to ascertain the present value of lands, it is right to regard their location, and to judge by the probable uses to which they will be put, and for which they can be sold, in the same manner *as their value would be fixed by a prudent seller or purchaser.*"

This court said in *Long Dock Co. v. State Board of Assessors*, 78 N. J. L., 44, at page 53:

"We are not intending to suggest that the availability of land for railroad purposes generally may not be shown and taken into account in the ascertainment of its market value. The reasoning of the opinion in *Currie v. Waverly Railroad Co.*, 23 Vroom, 381, although there applied to the condemnation of land, is equally pertinent to the question of its market value. The difference, however, between the market value of land by reason of its availability for railroad purposes generally,

and the value imparted to such land by its specific use under a railroad franchise, is so great as to be fundamental.”

This court again referred to the rule in *Herr v. Board of Education*, 82 N. J. L., 610.

The effect of the determination of the Supreme Court, on the first ground upon which it rested its judgment, would result in making the measure of compensation the value to the condemning party. Had there been evidence in the case that these lands had a *commercial value* for recreation purposes greater than any value which they could have for building purposes quite a different situation would have been created.

**The judgment of the Supreme Court cannot be sustained upon the second ground stated by the court.**

The second ground upon which the Supreme Court based its judgment was that there was not sufficient testimony of similarity of soil at the point where the photographs were taken with the soil of the lands under condemnation, and it cited *Hepburn v. Water Supply Commission*, 126 Atl., 421, in this court.

A statement from the opinion in that case I think will demonstrate that it has no application to the case at bar. Mr. Justice Katzenbach, said, delivering the opinion of this court:

“Permitting Mr. Leavitt to use as a comparison the right of way of the Croton aqueduct and to testify to its use as a walk, etc., was to permit the fortification by illustration of his opinion *that the taking of the land would advantage instead of damage*

*the remainder of the tracts of the land owners. There was no similarity shown as to the size of the aqueducts; no similarity shown as to the localities; and no similarity shown as to the conditions under which residences could be built. What was done along the Croton aqueduct might be impossible of attainment along the line of the proposed aqueduct."*

In the case at bar the lands shown by the photographs were all within 275 feet of the land under condemnation. There *was* testimony of similarity of soil, and that the general conditions are exactly the same as those of the lands under condemnation.

The weight of the evidence with respect to similarity was for the jury.

So with respect to the statement of the Supreme Court that conditions shown upon these photographs "while claimed to be due to natural tendencies of the terrain, may well have been due in large part, if not principally, to faulty engineering and construction."

The evidence on the part of the Board was from its engineer Oleri that *the condition was due to the terrain*, which was the same as the terrain of the lands under condemnation, and also from the witness Beuscher, that the construction was proper, the witness having supervised it.

Against this was the evidence of Dunham, that, if the construction had been proper, the conditions shown by the photographs could not have occurred.

There was a dispute upon this point which went to *the weight* of the photographs as evidence and presented a question for the jury.

I submit that the Supreme Court could not have meant, when it said that "the pallelism should be

clear and complete," that there must be *no* dispute in the evidence. If there is evidence from one side, which shows a condition of similarity, the photographs become evidential.

The rule is stated in the syllabus in the case of *W. A. Manda, Inc. v. City of Orange*, 82 N. J. L., 686, as follows:

"Whether similarity in fact exists, in order to make the comparison admissible is a preliminary question to be decided by the court, and, if there be any evidence to uphold the decision of the court, its ruling admitting such evidence in its discretion, will not be disturbed by a court of review."

To shake their force as evidence the other party may introduce testimony that there is no similarity, but, when the other party does so, it merely creates a situation for the jury to consider upon the weight to be given to the photographs. If this were not so, photographs could never be admitted wherever it was possible for the opposite party to raise a question of fact.

Each of the experts called by the Board, and by the land owners, conceded that it was necessary, in order to put this property in a commercial condition, that it be piled. Yet the Supreme Court said that the pictures were not offered to show general conditions "but avowedly to show a special condition at a particular spot, due in part to alleged artificial interference *not contemplated as to the lands in question.*" An artificial interference *was contemplated* by every witness called by each side.

Generally, the rule is that, inasmuch as the basis for the recovery of compensation for the land taken

is its market value, "any relevant and material evidence of such value is admissible, if competent under the general rules of evidence. Subject to this limitation, no evidence should be excluded *which an ordinarily prudent man would take into account before forming a judgment as to the market value of property which he is about to purchase.*" 20 Corpus Juris, title "Eminent Domain," sec. 388, page 985.

**In the case at bar there were two reasons why the conditions shown by the photographs were relevant.**

First: The evidence was, from both sides, that the land in question had to be piled to make it useful to the land owner, and it is its usefulness to the land owner which is important. *The effect of piling was a relevant fact.*

There had been no piling on the land in question. There had been piling on land within a couple of hundred feet of it. The proof was that the land within a couple of hundred feet was of similar character. I submit that it was relevant to show what the effect of piling had been upon the land within a couple of hundred feet.

Second: The proof was, and it must be conceded that, in determining what he will pay for land, a purchaser takes into consideration many elements.

As the witness Stiliz says some of the elements taken into consideration by a purchaser are: what it is going to cost to put the land in a condition to be used: "as to how long it is going to stand up; we do not know; but we do know this, that the various buildings that have been erected on this soil, they have had trouble with; they have sort of sank on one side or the other. We know that the buildings have sunk, given way, that they did not

stand up" (p. 80) : "location one; the surroundings, another; the soil, still a third; the improvements, a fourth" (p. 84).

The rule is that no evidence should be excluded which an ordinarily prudent man would take into account before forming a judgment as to the market value of property which he is about to purchase. 20 Corpus Juris, page 986.

The test of value is the price which willing, but not compelled, purchasers and sellers would agree upon. Evidence of sales in the neighborhood is admitted, not only because they indicate to a jury the prices which willing purchasers and sellers have agreed upon with respect to property in the neighborhood, but also because the price at which property in the neighborhood has been sold has its effect upon purchasers.

So it is inconceivable that, if a person should examine this land for the purpose of buying it, and were informed of its peculiar condition and necessity for piling and that land in the neighborhood, one block, or even two, three or five blocks away, had a similar type of soil, such person would not be influenced by objective conditions which he found to be the result of piling on the land in the neighborhood, although some distance from the tract under consideration.

If this would affect a prospective purchaser in determining upon the price he would pay for the land, it is an element which the jury is entitled to have before it *for the jury is all the time attempting to put itself in the position of willing, but not compelled, purchasers and sellers.*

How close the other land must be to the lands under condemnation before evidence of their condition may be admitted, or how remote they may be, must be left largely to the discretion of the trial judge.

There are extreme limitations. Counsel for the land owners apparently conceived that conditions of lots immediately opposite could certainly be shown for they did not object to Condemnor's Exhibits 12 (p. 98) 13 (p. 99). In the Hepburn case the lands were in another State and the conditions were not shown to be at all similar. It was error, therefore, to admit the evidence.

In *Hubbell v. Des Moines*, 166 Iowa, 581, American and English Anno. Cases, 1916 E., page 592, photographs and levels taken with respect to lands nearly a mile above the land under condemnation and of another tract eight or ten blocks below the land under condemnation were excluded. On appeal, the appellate court held that they were properly excluded, the ground of its decision being (p. 595) :

"These points were so remote and the tracts so dissimilar in character that we are of opinion the trial court correctly held them inadmissible."

There is no suggestion that they would have been inadmissible, although "so remote," if there had been testimony that they were similar. It was the combination of the two things, remoteness and dissimilarity, which induced the appellate court to sustain the trial court in refusing to admit the evidence.

We admit evidence with respect to sales in the neighborhood. The Iowa court in *Hubbell v. Des Moines*, at page 597 of Annotated Cases, 1916 E., said, with respect to the contention that the admission of such evidence may be claimed to be irrelevant or tend to a confusion of issues :

"It is enough to note: (1) In answer to the argument that relevancy that, since value is a

money estimate of a marketable article possessing certain definable qualities, the value of other marketable articles possessing substantially similar qualities is strongly evidential, and is so treated in commercial life. All the argument and protestation conceivable cannot alter the fact that the commercial world perceives and acts on this relevancy. (2) In answer to the argument from auxiliary policy, it may be noted that this objection may or may not exist in a given instance, and that the rational and practical way of meeting it is to allow the trial court in its discretion to exclude such evidence when it does involve a confusion of issues, but otherwise to receive it—\* \* \*.”

“In Massachusetts and in New Hampshire the principle of leaving the matter to the trial court’s discretion to determine *both the substantial similarity of condition and the confusion of issues is well carried out* \* \* \*.”

20 Corpus Juris, title “Eminent Domain” sec. 388, at page 986, states the rule:

“Evidence which does not tend to prove market value is inadmissible, although the range of inquiry to be allowed is to a considerable extent in the discretion of the trial court or presiding judge.”

The trial court in the case at bar determined that the evidence of similarity was sufficient and that the property was not too remote to prevent its condition having a bearing upon the market value of the lands under condemnation. It determined that the criticism of counsel for the land owners as to the testimony of similarity, etc., went to the weight of the testimony, and not to its competency, and I submit that it was right.

**There was no undue prejudice and the other evidence in the case justified the verdict. The admission of the photograph was harmless.**

Counsel for the land owners in the court below invoked what they term the "undue prejudice rule."

3 Wigmore on Evidence, 1904.

They say that this rule goes so far (quoting the brief in the court below) "as to exclude relevant facts where it appears they may excite a prejudice that will mislead the trier," and, again quoting the brief, that the "objection to Exhibit 8 is not as much to the substance as to the effect of admitting a photograph of that character \* \* \*. This photograph could not be instructive to the jury."

This is arguing that the jury must have been affected by something which would not have affected willing, but not compelled, purchasers and sellers in agreeing upon a price.

They pointed to the verdict as indicating that the jury was influenced by these photographs, and the land owners unduly prejudiced.

The Supreme Court in its opinion, after referring to the admission of the photographs in evidence, mentioned the testimony to the effect that the boggy land could not be improved without piling, and the deductions made by the experts because of this and because of the necessity for improving the streets, and then said—"The jury appears to have been somewhat influenced by this, as they fixed a value some \$300 per lot less than that fixed by the commissioners in condemnation."

If the Supreme Court meant by this that *all* of the evidence with respect to the cost of piling, etc., was improper I submit it erred.

If the Supreme Court meant that the jury had been unduly influenced by the photographs I submit that a consideration of the testimony will indicate that the verdict of the jury can be supported by the evidence, wholly aside from any influence which the photographs could possibly have had, and that the admission of the photographs was harmless.

The witnesses, both for the Board and the land owners, in reaching their values deducted the cost of piling and of improvements. They were alike in their methods but different as to amounts. If you take the testimony of Orlando (pp. 36, 37, 38); Stilz (pp. 54, 66); Stevens (p. 30); Oleri (p. 23), without considering the testimony of the respondents, the jury could properly have brought in a verdict of \$39,600 for that testimony showed that the value of lots requiring no preparation, with all improvements and assessments paid, based upon sales in the community, was between \$2,000 and \$2,500. The jury might have taken \$2,250 as the average market value price, and, deducted therefrom \$1,200 cost of piling one lot covering an area of 25 x 40, leaving a balance of \$1,050, and then deducted \$500 representing cost of local assessment against the owner only, leaving a balance of \$550, and multiplied this sum by the number of lots—72—obtaining a result of \$39,600.

The jury brought in a verdict of \$86,400.

It is apparent that the jury considered with care the testimony offered by the board and that offered by the land owners.

Upon the record, without considering the photographs in any manner, *a verdict in excess of that given to the land owners by the jury would have been unfair to the board.*

Again, Ex. C. 10, which was a view of the prop-

erty at 9th Street went in, and, although objection was made, it was not noted as a ground of appeal, and Exhibits C. 12 and 13 were admitted without objection. *These photographs showed conditions on adjoining property which might well have influenced the jury to a much greater extent than the photographs to which objection was made.*

### **Conclusion.**

It is submitted that the real basis of the decision of the Supreme Court was that that court did not think that *any* of the evidence, admitted without objection, as to the cost of piling was relevant, and that it thought that the jury should not have taken that evidence into consideration and, so thinking, considered that the verdict of the jury was too small because the jury had apparently deducted something for cost of piling.

I submit that this conclusion of the Supreme Court was based upon the theory that it was the value of the land, for recreation park purposes, which was to be determined whereas, in fact, it was the value of the land to the land owner, i. e., the market value of the land to him.

**It is respectfully submitted that the judgment of the Supreme Court should be reversed and the judgment of the Circuit Court affirmed.**

Respectfully submitted,

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