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NOTICE OF APPEAL FROM JUDGMENT OF THE SUPREME COURT.

(Filed Nov. 2, 1917)

NEW JERSEY SUPREME COURT.

TRENTON AND MERCER COUNTY TRACTION CORPORATION, *Prosecutor,* vs. RALPH W. E. DONGES, JOHN J. TREACY AND JOHN W. SLOCUM, constituting the the BOARD OF PUBLIC UTILITY COMMISSIONERS of the State of New Jersey, and the Inhabitants of the City of Trenton, *Defendants.*	ON CERTIORARI.

To Charles E. Bird and George L. Record, Esquires, Attorneys for the Inhabitants of the City of Trenton, and Frank H. Sommer, Esquire, Attorney for Ralph W. E. Donges, et al., constituting the Board of Public Utility Commissioners of the State of New Jersey:

Take notice, that the prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause, on the following grounds:

1. Because the Board of Public Utility Commissioners of the state of New Jersey had no jurisdiction to make the order of August 17, 1915.

2. Because the statute of New Jersey, entitled "An act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," (P. L. 1911, Chapter 195), conferred no power upon the board to make the order of August 17, 1915, without notice to the prosecutor or without an opportunity being afforded it to be heard.

3. Because the board had no jurisdiction under said act to make either of the orders of August 17, 1915, and January 11, 1916, for the reason that the said orders of August 17, 1915, and January 11, 1916, impair the obligations of the contracts theretofore made by the lessors of the prosecutor or their predecessors, by which it was agreed that the fare for the transportation of each passenger over the age of five years within the limits of the city of Trenton should be five cents, contrary to the Constitution of the United States of America and the state of New Jersey.

4. Because the board had no jurisdiction or power under said act to make the orders of August 17, 1915, and January 11, 1916, because the withdrawal of the sale of six tickets for twenty-five cents was not an increase in the existing individual rates, joint rates, tolls, charges or schedules thereof, or commutation, mileage or other special rate, or a change or alteration in any existing classification.

5. Because the board held that the burden was upon the prosecutor to prove that the proposed withdrawal of the sale of six tickets for twenty-five cents was just and reasonable, against the protest of the prosecutor.

6. Because the board overruled the protest and contention of the prosecutor that the said board had no jurisdiction of the matter in controversy by

reason of the various charters and ordinances of the lessor companies of the prosecutor and their predecessors, by which the fare within the limits of the city of Trenton was agreed upon and fixed at five cents, and for the further reason that the proposed withdrawal of the sale of six tickets for twenty-five cents was not a change or alteration of any existing classification or any individual rate or special rate made by your petitioner, as contained in the formal protest filed with the board at the commencement of said hearing.

7. Because the lessor companies of the prosecutor were not made parties to said hearing and had no opportunity to be heard on matters which affected their several street railways, and the franchises under which the same were being operated.

8. Because the board held that the prosecutor must sustain the burden of proving the justness and reasonableness of a fare of five cents, rather than to assume the burden of proof that the increase (if it were an increase) from four and one-sixth cents to five cents was just and reasonable.

9. Because the board failed to hold that the sale of six tickets for twenty-five cents was a discrimination within the said Public Utility Act and illegal and void.

10. Because the board fixed the value of the property operated by the prosecutor at $3,212,000, a sum far below the reasonable and fair value of said property devoted to public service and actually employed in the transportation of passengers, and that the said sum of $3,212,000, so fixed by said board is much below the reasonable and fair value taken by and submitted to the said board.

11. Because the evidence before the said board does not reasonably support said order of January 11, 1916, but on the contrary shows that the said order is unreasonable and unjust.

12. Because there was no evidence before the said board to support reasonably the said order of January 11, 1916.

13. Because the evidence before the said board shows that the said order of January 11, 1916, is unreasonable and unjust and is not reasonably supported by the evidence before said board.

14. Because the evidence taken by and submitted to said board shows that the value of said property is far in excess of said sum of $3,212,000.

15. Because in estimating the cost of reproducing said property, and in valuing said property of the prosecutor, the said board ignored, rejected and disregarded reliable and uncontradicted proof of its value and accepted and based the said order upon incomplete, unreliable an inaccurate evidence of such value.

16. Because the said board in estimating the value of said property of the prosecutor disregarded important elements of such value, particularly value created by uniting in a common ownership, operation and use the property of several similar corporations, previously engaged in the business of conveying and transporting passengers upon street railways within the city of Trenton.

17. Because the board in estimating the value of said property of the prosecutor rejected and disregarded the value of the charter rights, franchises and special franchises of the prosecutor and its rights for the location, maintenance and operation

of its system of street railways in the streets, highways and other public places in the city of Trenton and elsewhere, which had been granted to the lessors of the prosecutor and their predecessors in title by the state of New Jersey and the city of Trenton and other municipalities, and by virtue of which the lessors of the prosecutor and their predecessors in title were enabled to and did establish, maintain, operate and extend their said systems of street railway and by virtue of which charters, franchises and rights the business of the prosecutor is being created.

18. Because the board in estimating the value of said property employed in street railway transportation and upon which the prosecutor is entitled to earn a reasonable return disregarded in making said order of January 11, 1916, (1) the cost of said property, (2) the bonds and stock representing the cost and value thereof, issued and outstanding when said order was made.

19. Because the board in estimating the value of said property actually employed in street railway transportation, disregarded the value of the intangible elements of said property.

20. Because the board failed to estimate the cost of procuring the business carried on by the prosecutor and failed to value the cost of procuring said business.

21. Because in estimating the cost of reproduction of the street railway properties operated by the prosecutor the board disregarded reliable and uncontradicted evidence as to the value of said properties and based its valuation on an inaccurate and unreliable evidence, and the finding of the board resulting in the said order of January 11, 1916, is against the weight of the evidence submitted to said board.

22. Because the fare of five cents charged and received by the prosecutor for one ride within the limits of the city of Trenton, with transfer privileges, was just and reasonable and is the fare charged by street railway companies in like cities in the state of New Jersey under substantially similar circumstances.

23. Because as the rate of fare of five cents for the transportation of each passenger over five years of age within the limits of the city of Trenton was just and reasonable, a rate of four and one-sixth cents (assuming four and one-sixth cents to be a rate of fare), could not likewise be just and reasonable compensation to the prosecutor for the same ride.

24. Because the services furnished by the prosecutor to each rider upon the system of street railways operated by it at the time the said order of January 11, 1916, was made was reasonably worth to each rider at least the sum of five cents.

25. Because the order of January 11, 1916, prohibiting the withdrawal of the sale of six tickets for twenty-five cents within the city of Trenton prevents the prosecutor from earning a fair return on the reasonable value of the property actually employed in the transportation of passengers.

26. Because the effect of said order of January 11, 1916, of said board is to take the property of the prosecutor and its lessors, employed by them for public use, without just compensation, violation of Paragraph 16 of Article 1 of the Constitution of the state of New Jersey.

27. Because the order of January 11, 1916, deprives the prosecutor and its lessors of their property without due process of law and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

28. Because the order of January 11, 1916, takes the property of the prosecutor and its lessors for public use without just compensation and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

29. Because the order of January 11, 1916, denies to the prosecutor and its lessors, which are corporations of the state of New Jersey, and within its jurisdiction, the equal protection of the laws of this state, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

30. Because the said order of January 11, 1916, is unauthorized and unsupported by the laws of the state of New Jersey, or by proof taken by and submitted to the board at said hearing, and is in violation of the laws of the state of New Jersey.

31. Because the order of January 11, 1916, does not and will not permit the prosecutor to earn the rate of income on the value of its property and the property of its lessors, actually employed for public use in the transportation of passengers, to which the prosecutor is reasonably entitled.

32. Because the board in determining the net revenue of the prosecutor from the operation of its said system of street railway did not take into account the revenue of the prosecutor for the first nine months of the year 1915, in making its report which was the basis of said order of January 11, 1916, and which revenue was submitted to said board.

33. Because in determining the net revenue of the prosecutor from the operation of its said system of street railways for the purpose of determining the rate of return upon the capital employed in public service for the transportation of passengers, the board averaged the net income for the four years of

1911, 1912, 1913 and 1914, instead of taking the present net revenue of said property for the first nine months of the year 1915.

34. Because the board in making said report and the said order of January 11, 1916, did not take into consideration the increased expenditures of the prosecutor for the year 1915, which said expenditures were offered in evidence by the prosecutor.

35. Because the board in making its report and in making the said order of January 11, 1916, did not allow to the prosecutor as capital the sum of $252,693, or thereabouts, as part of the sum of $821,000 expended for betterments and improvements upon the said property.

36. Because the board in making its report and in making the said order of January 11, 1916, did not allow to the prosecutor as operating expenses the said sum of $252,693 expended upon said property during the years 1911, 1912, 1913, 1914 and 1915, which said board disallowed as capital.

37. Because the board disregarded evidence tending to show early operating expenses and early inadequate return on investment.

38. Because the board disregarded uncontradicted evidence showing inadequate returns represented by operating results for the year 1915, including increase in taxes levied.

39. Because the board based its findings on average operating expenses and receipts for the past four years, disregarding the evidence that expenses of operation had increased much more than receipts.

40. Because the inhabitants of the city of Trenton had no power and authority to pass the ordinance

entitled, "An ordinance to provide for the sale of tickets by the Trenton Street Railway Company," approved October 22, 1909, by which the Trenton Street Railway Company was required to sell six tickets for twenty-five cents, which should be good and valid in lieu of the fare or toll of five cents authorized to be charged and collected for the carrying of passengers within the corporate limits of the city of Trenton.

41. Because the Trenton Street Railway Company did not make an agreement or contract with the inhabitants of the city of Trenton to sell six tickets for twenty-five cents as held by the Supreme Court of Judicature of the state of New Jersey.

42. Because if an agreement were made between the Trenton Street Railway Company and the inhabitants of the city of Trenton to sell six tickets for twenty-five cents the said agreement was void for want of consideration.

43. Because if an agreement to sell six tickets for twenty-five cents were made between the Trenton Street Railway Company and the inhabitants of the city of Trenton, the same was voidable because of the misrepresentations made by the inhabitants of the city of Trenton as to the terms of prior ordinances, to induce the making of said agreement.

44. Because if an agreement were made between the Trenton Street Railway Company and the inhabitants of the city of Trenton by which the Trenton Street Railway Company was required to sell six tickets for twenty-five cents, it was not a perpetual agreement to sell six tickets for twenty-five cents, but was only to continue for a reasonable time.

45. Because the evidence produced before the Board of Public Utility Commissoners shows that it is unreasonable that the said agreement to sell six tickets for twenty-five cents, if made, should be applied to the prosecutor at the time of the making of the order of the Board of Public Utility Commissioners, namely, January 11, 1916.

46. Because if the inhabitants of the city of Trenton had power and authority to enact the provisions of the said ordinance approved October 22, 1909, requiring the Trenton Street Railway Company to sell six tickets for twenty-five cents, the prosecutor, the Trenton and Mercer County Traction Corporation, is not bound by the provisions of said ordinance.

47. Because if an agreement were made between the Trenton Street Railway Company and the inhabitants of the city of Trenton by which the Trenton Street Railway Company was required to sell six tickets for twenty-five cents, the prosecutor, the Trenton and Mercer County Traction Corporation, is not bound by the provisions of said agreement.

48. Because the said ordinance approved October 22, 1909, does not obligate the prosecutor, the Trenton and Mercer County Traction Corporation, to sell six tickets for twenty-five cents on the cars operated by it.

49. Because the said agreement to sell six tickets for twenty-five cents, if made, does not obligate the prosecutor, the Trenton and Mercer County Traction Corporation, to sell six tickets for twenty-five cents on the cars operated by it.

50. Because the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company could not be affected by the ordinance because no official action was taken by either of said

companies with reference to the alleged agreement to sell six tickets for twenty-five cents.

51. Because the sale of six tickets for a quarter, if a rate, was not a reasonable rate under the facts of the case, and the Supreme Court, notwithstanding the ordinance approved October 22, 1909, should have reviewed the said order of the board and set aside said order because it clearly appeared that there was no evidence before the board to support reasonably said order of the board requiring the prosecutor to sell six tickets for twenty-five cents, or that said order was without the jurisdiction of the board.

FRANK S. KATZENBACH, JR.,
EDWARD M. HUNT,
Attorneys for and of Counsel with Prosecutor.

Service acknowledged this 18th day of October.

Chas. E. Bird,
Atty. of City of Trenton.

RULE AFFIRMING ORDER.

NEW JERSEY SUPREME COURT.

TRENTON AND MERCER COUNTY TRACTION CORPORATION, *Prosecutor,* vs. INHABITANTS OF THE CITY OF TRENTON, AND BOARD OF PUBLIC UTILITY COMMISSIONERS, *Defendants.*		ON CERTIORARI.

This matter coming on to be heard before the Court at the November Term, 1916, and the Court having inspected the return to the writ of certiorari allowed in the above cause, and considered the reasons filed and having heard the arguments of counsel for the respective parties hereto, and duly considered the same.

It is ordered that the order of the Board of Public Utility Commissioners removed by the writ of certiorari in this cause, be and the same is hereby affirmed, with costs.

Entered August 23, 1917.

On motion of

CHARLES E. BIRD,
Attorney for Defendant City of Trenton.

I, William C. Gebhardt, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the Court in the above-stated cause.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this twenty-fifth day of October, A. D. nineteen hundred and seventeen.

WM. C. GEBHARDT,
Clerk.

(Seal)

OPINION.

(Filed Aug. 2, 1917)

NEW JERSEY SUPREME COURT

10

TRENTON AND MERCER COUNTY TRACTION CORPORATION, vs. INHABITANTS OF THE CITY OF TRENTON, AND BOARD OF PUBLIC UTILITY COMMISSIONERS.	NOV. TERM, 1916.

20

Argued November 9th, 1916; decided August 1, 1917.

Certiorari.

30 Before JUSTICES SWAYZE, MINTURN AND KALISCH.

FRANK S. KATZENBACH, JR., (Edward M. Hunt on the brief), for prosecutor.

GEORGE L. RECORD, (Charles E. Bird on the brief) for the City of Trenton.

FRANK H. SOMMER, for Board of Public Utility Commissioners.

The opinion of the Court was delivered by SWAYZE, J.

Although the voluminous record in this case has necessarily required a long time to examine, the decision may well be rested on a single point and that within narrow compass. The prosecutor seeks to set aside an order forbidding it to put into effect a proposed withdrawal of the sale of six tickets for twenty-five cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company, and the Trenton, Hamilton and Ewing Traction Company. They were operated under leases and agreements of October 15th, 1910. The two latter had been leased prior to 1909, to the first named for 999 years.

We think it clear that the Public Utility Commission had jurisdiction under Section 17, Par. h of the act (P. L. 1911, 380). The withdrawal of the sale of six tickets for a quarter was an increase of an existing rate under which eighty-two per cent. of the passengers carried paid a fare of only 4 1/6 cents; by the proposed withdrawal they would be forced to pay a fare of five cents.

We find it unnecessary to pass upon the question whether the original ordinances and their acceptance amounted to a contract by which the companies were authorized to charge as much as five cents, or whether they amounted only to a limitation by which the companies were forbidden to charge more than five cents. It is likewise unnecessary in our view to consider whether a fare of 4 1/6 cents is reasonable in view of present conditions and the situation of the company. We find that in 1909, a new contract was made between the city and the company which requires the company to sell six tickets for twenty-five cents upon all cars operated in the city of Trenton. The facts are as follows. For many years tickets had been sold at that rate. In 1909, the street railway company proposed to stop

the sale. Naturally great public interest was aroused, threats were made of attacks upon the franchises of the company and the city authorities were preparing for such an attack and for amendments of the ordinances. An agreement was reached by negotiation and on October 4th, 1909, the Trenton Street Railway Company adopted a resolution waiving its right to notice of alterations in the ordinances, and directing its officers to execute an agreement already prepared (a copy of which was set forth), immediately after the passage of a new ordinance, a draft of which had been submitted by the city counsel to the railway company. This ordinance provided for the sale of tickets at the old rate by the company upon all cars operated in the city of Trenton. The ordinance was passed by the common council on October 19th, and approved by the mayor on October 22nd, eighteen days after the resolution of the railway company. Had the agreement been signed by the officers of the company as directed by the resolution of October 4th on the faith of which the city passed the ordinance, no question could have arisen. Instead of that, the company, after the passage of the ordinance, rescinded the resolution because, as the rescinding resolution states, it was falsely recited therein that the city had reserved the right to alter the ordinances whenever in the judgment of the common council it became necessary for the public good. It is a little difficult to understand upon what theory it is supposed the false recital vitiates the action of the company. It is not charged that the city did anything to mislead the company in this respect; it could not have done so since the ordinances were necessarily as well known to the company as to the city; and the proposed written form of contract submitted by the city council recited what was the exact truth that the right of alteration or amendment was reversed "by the several ordinances aforesaid or some of them." The addition of the qualifying words was enough to call the attention of the company to the existence

of a question as to the extent of the city's right. With this draft before them, the directors chose to put a broader statement in the recitals of their own resolution. Manifestly they ought not to be permitted for their own mistake to withdraw from the agreement after the city had acted thereon.

It is argued that the parties did not intend that there should be a complete contract until the written agreement was executed. The case it is said is within the rule of Water Commissioners of Jersey City vs. Brown, 32 N. J. L., 504, decided by the Court of Errors and Appeals in 1866, and applied by the Supreme Court in Donnelly vs. Currie Hardware Co., 66 N. J. Law, 388. These cases are not applicable. In the first the water commissioners directed that their engineer and attorney should prepare a contract and submit the same for approval by the board before being executed. The Court said that several particulars as to the time of finishing the work, as to the manner of doing it, and as to the guarantee of its permanence remained to be settled. The second case was decided upon the ground that there had been no agreement as to the time allowed for beginning and completing the work and the mode of payment. Matters which are generally provided for in such arrangements, as Lord Cranworth said in Ridgway vs. Wharton, 6 H. of L. Cases, 238, at 268, the fact that the parties intend a subsequent agreement to be made is strong evidence to show that they did not intend the previous negotiations to amount to an agreement; but at the same time he protested against its being supposed because persons wish to have a formal agreement drawn up that therefore they cannot be bound by a previous agreement if it is clear that such an agreement had been made; and he expressed his approval of Sir William Grant's decision in the leading case of Fowle vs. Freeman, 9 Vesey, 351. In Wharton vs. Stoutenburgh, 35 N. J. Equity, 266, it was held that a final agreement had been reached although the parties intended that a lease embodying the agreement

should be executed. The applicability of that case to the present is not weakened by the fact that a written memorandum would have been there necessary to satisfy the statute of frauds, if the vendee had not taken possession. The taking possession did not supply the terms of the lease, and before decreeing that the lease should be executed, it was necessary for the Court to find that a final agreement had been previously reached, and that the execution of the lease was necessary only by way of part performance of the agreement, and not as a condition precedent to the existence of a final agreement. The facts of the present case bring it within the rule of Wharton vs. Stoutenburgh. The draft agreement had been submitted by the city to the company; the company had assented to its terms; all that remained was for the executive officers to execute the written instrument in which the terms of the agreement were set forth; but the officers had no power to vary the terms, and it was not contemplated that the directors should again pass on the matter. The case is as if in Water Commissioners of Jersey City vs. Brown, the agreement had been already prepared and adopted by the water commissioners.

There was sufficient legal consideration for the agreement by the company. It is true the ordinance did not affirmatively concede any benefit to the company; on its face it was rather a detriment; but that is too narrow a view to take. The situation was that the company was liable to attack and the ordinances might be altered or amended in such a way as to be very harmful or at least productive of long and expensive litigation. What the company secured was the adoption of an ordinance which contained no such drastic changes; the benefit to the company was in what the ordinance omitted, not in what it contained. In saying this, we are not to be understood as suggesting that the mere act of passing the ordinance in pursuance of the agreement would not be a sufficient consideration in a legal sense.

We think there was a valid contract requiring the company to sell six tickets for a quarter, and hence the Public Utility Commissioners might well conclude that such a rate was just and reasonable under the circumstances of the case.

It is said, however, that the Mercer County Traction Company and the Trenton and Hamilton and Ewing Traction Company could not be affected by the ordinance because no official action was taken by either with reference to its terms. This argument overlooks the fact that both those companies were at the time under lease to the Trenton Street Railway Company for a term of which more than 990 years were still to come. The probability of the two lessor companies being affected prejudicially by the ordinance is negligible.

The order is affirmed with costs.

PETITION FOR WRIT.

NEW JERSEY SUPREME COURT.

TRENTON & MERCER COUNTY TRACTION CORPORATION, *Prosecutor,*	
VS.	
RALPH W. E. DONGES, JOHN J. TREACY and JOHN W. SLOCUM, constituting the Board of Public Utility Commissioners of the State of New Jersey, and the Inhabitants of the City of Trenton, *Defendants.*	PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Judicature of the State of New Jersey:

The petition of the Trenton and Mercer County Traction Corporation, a corporation created by and existing under and by virtue of the laws of the State of New Jersey, respectfully shows:

1. That your petitioner is the lessee of the street railways in the City of Trenton, New Jersey, owned by the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton,

Hamilton and Ewing Traction Company under leases bearing date the fifteenth day of October, 1910, and duly approved by the Board of Public Utility Commissioners of the State of New Jersey, and under said leases operates said system of street railways.

2. That your petitioner and its predecessors have for many years past sold to patrons applying for the same six tickets for twenty-five cents, each ticket being the equivalent of one fare of five cents on said system of street railways.

3. That under the charters and ordinances granted to said lessor companies and their predecessors the agreed rate of fare for each passenger over five years of age was the sum of five cents.

4. That on August 13, 1915, your petitioner notified its patrons that after August 20, 1915, the sale of six tickets for twenty-five cents would be withdrawn by it; that on August 13, 1915, your petitioner also notified the Board of Public Utility Commissioners of the State of New Jersey that under the charters and ordinances of the lessor companies and their predecessors the rate of fare was agreed to be five cents; that the privilege of purchasing six tickets for twenty-five cents which had been extended to patrons would be withdrawn owing to decreased revenues and increased expenditures; that in the opinion of your petitioner the withdrawal of the sale of said tickets was not a change or increase in the rate of fare.

5. That on August 17, 1915, the inhabitants of the City of Trenton, through its counsel, appeared before the said Board of Public Utility Commissioners, without notice to your petitioner or an opportunity being offorded your petitioner to be heard, and the said Board of Public Utility Commissioners made

an order suspending the proposed withdrawal of the sale of six tickets for twenty-five cents until November 16, 1915, and fixed the twenty-first day of September, 1915, as the time for a hearing upon said matter.

6. That on various days between the said twenty-first day of September and the twenty-third day of November, 1915, the said Board of Public Utility Commissioners conducted a hearing on the proposed withdrawal of the sale of six tickets for twenty-five cents by your petitioner.

7. That on December 13, 1915, the said Board of Public Utility Commissioners filed a report in which it found that the proposed withdrawal of the sale of six tickets for twenty-five cents by your petitioner was not just and reasonable and that the same was disapproved.

8. That on January 11, 1916, the said Board of Public Utility Commissioners made an order that your petitioner was not to put into effect the proposed withdrawal of the sale of six tickets for twenty-five cents on the street railways operated by it.

9. That your petitioner insists that the said orders of the Board of Public Utility Commissioners (hereinafter called the Board), of August 17, 1915, and January 11, 1916, are unjust, unreasonable, erroneous and illegal and should be set aside for the following reasons:

A. That the Board had no jurisdiction to make the order of August 17, 1915.

B. That the statute of New Jersey, entitled "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," (P. L. 1911, chapter 195), conferred no power upon the Board to make the order of August 17, 1915, without notice to your petitioner

or without an opportunity being afforded it to be heard.

C. That the Board had no jurisdiction under said Act to make either of the orders of August 17, 1915, and January 11, 1916, for the reason that the said orders of August 17, 1915, and January 11, 1916, impaired the obligations of the contracts theretofore made by the lessors of your petitioner or their predecessors, by which it was agreed that the fare for the transportation of each passenger over the age of five years within the limits of the City of Trenton should be five cents, contrary to the Constitutions of the United States of America and the State of New Jersey.

D. That the Board had no jurisdiction or power under said Act to make the orders of August 17, 1915, and January 11, 1916, because the withdrawal of the sale of six tickets for twenty-five cents was not an increase in the existing individual rates, joint rates,tolls, charges or schedules thereof,or commutation, mileage or other special rates, or a change or alteration in any existing classification.

E. That the Board held that the burden was upon your petitioner to prove that the proposed withdrawal of the sale of six tickets for twenty-five cents was just and reasonable, against the protest of your petitioner.

F. That the Board overruled the protest and contention of your petitioner that the said Board had no jurisdiction of the matter in controversy by reason of the various charters and ordinances of the lessor companies of your petitioner and their predecessors, by which the fare within the limits of the City of Trenton was agreed upon and fixed at five cents, and for the further reason that the proposed withdrawal of the sale of six tickets for twenty-five cents was not a change or alteration of any existing classification or any individual rate or special rate made by your petitioner, as contained in the formal protest filed with the Board at the commencement of said hearing.

G. That the lessor companies of your petitioner were not made parties to said hearing and had no opportunity to be heard on matters which affected their several street railways, and the franchises under which the same were being operated.

H. That the Board held that your petitioner must sustain the burden of proving the justness and reasonableness of a fare of five cents, rather than to assume the burden of proof that the increase (if it were an increase), from four and one-sixth cents to five cents was just and reasonable.

I. That the Board failed to hold that the sale of six tickets for twenty-five cents was a discrimination within the said Public Utility Act and illegal and void.

J. That the Board fixed the value of the property operated by your petitioner at $3,212,000, a sum far below the reasonable and fair value of said property devoted to public service and actually employed in the transportation of passengers, and that the said sum of $3,212,000, so fixed by said Board is much below the reasonable and fair value of said property as shown by the evidence of such value taken by and submitted to the said Board.

K. That the evidence before the said Board does not reasonably support said order of January 11, 1916, but on the contrary shows that the said order is unreasonable and unjust.

L. That there was no evidence before said Board to support reasonably the said order of January 11, 1916.

M. That the evidence before the said Board shows that the said order of January 11, 1916, is unreasonable and unjust and is not reasonably supported by the evidence before said Board.

N. That the evidence taken by and submitted to said Board shows that the value of said property is far in excess of said sum of $3,212,000.

O. That in estimating the cost of reproducing said property, and that in valuing said property of your petitioner the said Board ignored, rejected and dis-

regarded reliable and uncontradicted proof of its value and accepted and based the said order upon incomplete, unreliable and inaccurate evidence of such value.

P. That the said Board in estimating the value of said property of your petitioner disregarded important elements of such value, particularly value created by uniting in a common ownership, operation and use the property of several similar corporations, previously engaged in the business of conveying and transporting passengers upon street railways within the City of Trenton.

Q. That the Board in estimating the value of said property of your petitioner rejected and disregarded the value of the charter rights, franchises and special franchises of your petitioner and its rights for the location, maintenance and operation of its system of street railways in the streets, highways and other public places in the City of Trenton and elsewhere, which had been granted to the lessors of your petitioner and their predecessors in title by the State of New Jersey and the City of Trenton and other municipalities, and by virtue of which the lessors of your petitioner and their predecessors in title were enabled to and did establish, maintain, operate and extend their said systems of street railway and by virtue of which charters, franchises and rights the said business of your petitioner is being created.

R. That the Board in estimating the value of said property employed in street railway transportation and upon which your petitioner is entitled to earn a reasonable return disregarded in making said order of January 11, 1916, (1) the cost of said property, (2) the bonds and stock representing the cost and value thereof, issued and outstanding when said order was made.

S. That the Board in estimating the value of said property actually employed in street railway transportation, disregarded the value of the intangible elements of said property.

T. That the Board failed to estimate the cost of

procuring the business carried on by your petitioner and failed to value the cost of procuring said business.

U. That in estimating the cost of reproducing the street railway properties operated by your petitioner the Board disregarded reliable and uncontradicted evidence as to the value of said properties and based its valuation on inaccurate and unreliable evidence and the finding of the Board resulting in the said order of January 11, 1916, is against the weight of the evidence submitted to said Board.

V. That the fare of five cents charged and received by your petitioner for one ride within the limits of the City of Trenton with transfer privileges, was just and reasonable and is the fare charged by street railway companies in like cities in the State of New Jersey under substantially similar circumstances.

W. That as the rate of five cents for the transportation of each passenger over five years of age within the limits of the City of Trenton was just and reasonable, a rate of four and one-sixth cents (assuming four and one-sixth cents to be a rate of fare), could not likewise be a just and reasonable compensation to your petitioner for the same ride.

X. That the services furnished by your petitioner to each rider upon the system of street railways operated by it at the time the said order of January 11, 1916, was made was reasonably worth to each rider at least the sum of five cents.

Y. That the order of January 11, 1916, prohibiting the withdrawal of the sale of six tickets for twenty-five cents within the City of Trenton prevents your petitioner from earning a fair return on the reasonable value of the property actually employed in the transportation of passengers.

Z. That the effect of said order of January 11, 1916, of said Board is to take the property of your petitioner and its lessors, employed by them for public use, without just compensation, in violation of

paragraph 16 of Article I of the Constitution of the State of New Jersey.

AA. That the order of January 11, 1916, deprives your petitioner and its lessors of their property without due process of law and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

BB. That the order of January 11, 1916, takes the property of your petitioner and its lessors for public use without just compensation and in violation of Section one of the Fourteenth Amendment of the Constitution of the United States.

CC. That the order of January 11, 1916, denies to your petitioner and its lessors, which are corporations of the State of New Jersey, and within its jurisdiction, the equal protection of the laws of this State in violation of Section one of the Fourteenth Amendment of the Constitution of the United States.

DD. That said order of January 11, 1916, is unauthorized and unsupported by the laws of the State of New Jersey, or by proof taken by and submitted to the Board at said hearing, and is in violation of the laws of the State of New Jersey.

EE. That the order of January 11, 1916, does not and will not permit your petitioner to earn the rate of income on the value of its property and the property of its lessors, actually employed for public use in the transportation of passengers, to which your petitioner is reasonably entitled.

FF. That the Board in determining the net revenue of your petitioner from the operation of its said systems of street railway did not take into account the revenue of your petitioner for the first nine months of the year 1915 in making its report which was the basis of said order of January 11, 1916, and which revenue was submitted to said Board.

GG. That in determining the net revenue of your petitioner from the operation of its said system of street railways for the purpose of determining the rate of return upon the capital employed in public service for the transportation of passengers, the

Board averaged the net revenue for the four years of 1911, 1912, 1913 and 1914, instead of taking the present net revenue of said property for the first nine months of the year 1915.

HH. That the Board in making said report and the said order of January 11, 1916, did not take into consideration the increased expenditures of your petitioner for the year 1915 which said expenditures were offered in evidence by your petitioner.

II. That the Board in making its report and in making the said order of January 11, 1916, did not allow to your petitioner as capital the sum of $252,693, or thereabouts, as part of the sum of $821,000, expended for betterments and improvements upon the said property.

JJ. That the Board in making its report and in making the said order of January 11, 1916, did not allow to your petitioner as operating expenses the said sum of $252,693 expended upon said property during the years 1911, 1912, 1913, 1914 and 1915, which said Board disallowed as capital.

Your petitioner therefore prays that a writ of certiorari may be issued to review and determine the legality of the action of the Board of Public Utility Commissioners of the State of New Jersey in the making of said orders of August 17, 1915, and January 11, 1916, and the proceedings resulting in the making of said orders.

TRENTON AND MERCER COUNTY TRACTION CORPORATION,

By RANKIN JOHNSON,
President.

STATE OF NEW JERSEY,
COUNTY OF MERCER, } *ss.*

RANKIN JOHNSON, being duly sworn according to law, on his oath says that he is the president of the Trenton and Mercer County Traction Corporation,

a corporation under the laws of the State of New Jersey, and the petitioner in the foregoing petition; that the said Trenton and Mercer County Traction Corporation is the lessee of the street railways in the City of Trenton, New Jersey, and the County of Mercer, owned by the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company; that the leases of said properties dated October 15, 1910, were approved by the Board of Public Utility Commissioners of the State of New Jersey; that under said leases the Trenton and Mercer County Traction Corporation operates said systems of street railway.

And this deponent further says that the Trenton and Mercer County Traction Corporation and its predecessors for many years past have sold to patrons applying for the same six tickets for twenty-five cents, each ticket being the equivalent of one fare of five cents and entitling the holder thereof to one ride with privileges of transfer on said lines of street railway; that under the charters and ordinances granted to said lessor companies and their predecessors by the State of New Jersey and the City of Trenton, the agreed rate of fare for each passenger over five years of age is fixed at the sum of five cents; that on August 13, 1915, the Trenton and Mercer County Traction Corporation notified its patrons that on August 20, 1915, the sale of six tickets for twenty-five cents would be withdrawn; that on August 13, 1915, the Trenton and Mercer County Traction Corporation wrote to the Board of Public Utility Commissioners of the State of New Jersey that under the charters and ordinances of the lessor companies and their predecessors the rate of fare was agreed to be five cents, that the privilege of purchasing six tickets for twenty-five cents would be withdrawn, owing to decreased revenues and increased expenditures, and that in the opinion of said petitioner the withdrawal of the sale of said tickets was not a change or increase in the rate of fare.

And this deponent further says that on August 17, 1915, the inhabitants of the City of Trenton, through its counsel, appeared before the said Board without notice to your petitioner or an opportunity being afforded your petitioner to be heard, and that the said Board made an order suspending the proposed withdrawal of the sale of six tickets for twenty-five cents until November 16, 1915, and fixed September 21, 1915, as the time for a hearing upon said matter; that on various days between September 21, 1915, and November 23, 1915, the said Board conducted a hearing on the proposed withdrawal of the sale of said tickets by said petitioner; that on December 13, 1915, the said Board filed a report in which it found that the proposed withdrawal of the sale of said tickets by said petitioner was not just and reasonable, and that the same was disapproved; and that on January 11, 1916, said Board made an order that said petitioner was not to put into effect the proposed withdrawal of the sale of said tickets on the street railways operated by it.

And this deponent further says that he has been advised by counsel that in their opinion the said orders of the said Board dated August 17, 1915, and January 11, 1916, are unjust, unreasonable, erroneous and illegal and should be set aside for the reasons particularly set forth in the foregoing petition.

And this deponent further says that he has read the foregoing petition and that the facts therein stated are true and that he believes the said orders of said Board are unjust, unreasonable, unlawful, erroneous and illegal and should be set aside and declared null and void for the reasons set forth in the foregoing petition.

Sworn and subscribed before
me this 10th day of February, A. D. 1916.

RANKIN JOHNSON.

SARAH R. HARVEY,
Notary Public, New Jersey.

REASONS.

NEW JERSEY SUPREME COURT.

TRENTON & MERCER COUNTY TRACTION CORPORATION, *Prosecutor,* vs. RALPH W. E. DONGES, JOHN J. TREACY, and JOHN W. SLOCUM, constituting the Board of Public Utility Commissioners of the State of New Jersey, and the Inhabitants of the City of Trenton, *Defendants.*	ON CERTIORARI. REASONS.

The said prosecutor, by Frank S. Katzenbach, Jr., its attorney, comes and prays that the order of the Board of Public Utility Commissioners of the State of New Jersey dated August 17th, 1915, suspending the proposed withdrawal of the sale of six tickets for twenty-five cents upon the lines of street railway operated by the prosecutor, and the order of the said Board of Public Utility Commissioners dated January 11th, 1916, ordering that the prosecutor not put into effect the proposed withdrawal of the sale of six tickets for twenty-five cents on the lines of street railway operated by it, as the said proposed withdrawal was not just and reasonable, and the

proceedings relating to the making of said orders, may be set aside and for nothing holden, for the following reasons:

A. That the Board had no jurisdiction to make the order of August 17, 1915.

B. That the statute of New Jersey, entitled "An Act concerning public utilities; to create a Board of Public Utility Commissioners and to prescribe its duties and powers," (P. L. 1911, Chapter 195), conferred no power upon the Board to make the order of August 17, 1915, without notice to the prosecutor or without an opportunity being afforded it to be heard.

C. That the Board had no jurisdiction under said Act to make either of the orders of August 17, 1915, and January 11, 1916, for the reason that the said orders of August 17, 1915, and January 11, 1916, impaired the obligations of the contracts theretofore made by the lessors of the prosecutor or their predecessors, by which it was agreed that the fare for the transportation of each passenger over the age of five years within the limits of the City of Trenton should be five cents, contrary to the Constitutions of the United States of America and the State of New Jersey.

D. That the Board had no jurisdiction or power under said Act to make the orders of August 17, 1915, and January 11, 1916, because the withdrawal of the sale of six tickets for twenty-five cents was not an increase in the existing individual rates, joint rates, tolls, charges or schedules thereof, or commutation, mileage or other special rate, or a change or alteration in any existing classification.

E. That the Board held that the burden was upon the prosecutor to prove that the proposed withdrawal of the sale of six tickets for twenty-five

cents was just and reasonable, against the protest of the prosecutor.

F. That the Board overruled the protest and contention of the prosecutor that the said Board had no jurisdiction of the matter in controversy by reason of the various charters and ordinances of the lessor companies of the prosecutor and their predecessors, by which the fare within the limits of the City of Trenton was agreed upon and fixed at five cents, and for the further reason that the proposed withdrawal of the sale of six tickets for twenty-five cents was not a change or alteration of any existing classification or any individual rate or special rate made by your petitioner, as contained in the formal protest filed with the Board at the commencement of said hearing.

G. That the lessor companies of the prosecutor were not made parties to said hearing and had no opportunity to be heard on matters which affected their several street railways, and the franchises under which the same were being operated.

H. That the Board held that the prosecutor must sustain the burden of proving the justness and reasonableness of a fare of five cents, rather than to assume the burden of proof that the increase (if it were an increase), from four and one-sixth cents to five cents was just and reasonable.

I. That the Board failed to hold that the sale of six tickets for twenty-five cents was a discrimination within the said Public Utility Act and illegal and void.

J. That the Board fixed the value of the property operated by the prosecutor at $3,212,000, a sum far below the reasonable and fair value of said property devoted to public service and actually employed in the transportation of passengers, and that the said sum of $3,212,000, so fixed by said Board is

much below the reasonable and fair value of said property as shown by the evidence of such value taken by and submitted to the said Board.

K. That the evidence before the said Board does not reasonably support said order of January 11, 1916, but on the contrary shows that the said order is unreasonable and unjust.

L. That there was no evidence before the said Board to support reasonably the said order of January 11, 1916.

M. That the evidence before the said Board shows that the said order of January 11, 1916, is unreasonable and unjust and is not reasonably supported by the evidence before said Board.

N. That the evidence taken by and submitted to said Board shows that the value of said property is far in excess of said sum of $3,212,000.

O. That in estimating the cost of reproducing said property, and that in valuing said property of the prosecutor the said Board ignored, rejected and disregarded reliable and uncontradicted proof of its value and accepted and based the said order upon incomplete, unreliable and inaccurate evidence of such value.

P. That the said Board in estimating the value of said property of the prosecutor disregarded important elements of such value, particularly value created by uniting in a common ownership, operation and use the property of several similar corporations, previously engaged in the business of conveying and transporting passengers upon street railways within the City of Trenton.

Q. That the Board in estimating the value of said property of the prosecutor rejected and disregarded the value of the charter rights, franchises and spe-

cial franchises of the prosecutor and its rights for the location, maintenance and operation of its system of street railways in the streets, highways and other public places in the City of Trenton and elsewhere, which had been granted to the lessors of the prosecutor and their predecessors in title by the State of New Jersey and the City of Trenton and other municipalities, and by virtue of which the lessors of the prosecutor and their predecessors in title were enabled to and did establish, maintain, operate and extend their said systems of street railway and by virtue of which charters, franchises and rights the said business of the prosecutor is being created.

R. That the Board in estimating the value of said property employed in street railway transportation and upon which the prosecutor is entitled to earn a reasonable return disregarded in making said order of January 11, 1916, (1) the cost of said property, (2) the bonds and stock representing the cost and value thereof, issued and outstanding when said order was made.

S. That the Board in estimating the value of said property actually employed in street railway transportation, disregarded the value of the intangible elements of said property.

T. That the Board failed to estimate the cost of procuring the business carried on by the prosecutor and failed to value the cost of procuring said business.

U. That in estimating the cost of reproducing the street railway properties operated by the prosecutor the Board disregarded reliable and uncontradicted evidence as to the value of said properties and based its valuation on inaccurate and unreliable evidence and the finding of the Board resulting in the said order of January 11, 1916, is against the weight of the evidence submitted to said Board.

V. That the fare of five cents charged and received by the prosecutor for one ride within the limits of the City of Trenton with transfer privileges, was just and reasonable and is the fare charged by street railway companies in like cities in the State of New Jersey under substantially similar circumstances.

W. That as the rate of five cents for the transportation of each passenger over five years of age within the limits of the City of Trenton was just and reasonable, a rate of four and one-sixth cents (assuming four and one-sixth cents to be a rate of fare), could not likewise be a just and reasonable compensation to the prosecutor for the same ride.

X. That the services furnished by the prosecutor to each rider upon the system of street railways operated by it at the time the said order of January 11, 1916, was made was reasonably worth to each rider at least the sum of five cents.

Y. That the order of January 11, 1916, prohibiting the withdrawal of the sale of six tickets for twenty-five cents within the City of Trenton prevents the prosecutor from earning a fair return on the reasonable value of the property actually employed in the transportation of passengers.

Z. That the effect of said order of January 11, 1916, of said Board is to take the property of the prosecutor and its lessors, employed by them for public use, without just compensation, in violation of paragraph 16 of Article I of the Constitution of the State of New Jersey.

AA. That the order of January 11, 1916, deprives the prosecutor and its lessors of their property without due process of land and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

BB. That the order of January 11, 1916, takes the property of the prosecutor and its lessors for public use without just compensation and in violation of Section one of the Fourteenth Amendment of the Constitution of the United States.

CC. That the order of January 11, 1916, denies to the prosecutor and its lessors, which are corporations of the State of New Jersey, and within its jurisdiction, the equal protection of the laws of this State, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States.

DD. That said order of January 11, 1916, is unauthorized and unsupported by the laws of the State of New Jersey, or by proof taken by and submitted to the Board at said hearing, and is in violation of the laws of the State of New Jersey.

EE. That the order of January 11, 1916, does not and will not permit the prosecutor to earn the rate of income on the value of its property and the property of its lessors, actually employed for public use in the transportation of passengers, to which the prosecutor is reasonably entitled.

FF. That the Board in determining the net revenue of the prosecutor from the operation of its said systems of street railway did not take into account the revenue of the prosecutor for the first nine months of the year 1915 in making its report which was the basis of said order of January 11, 1916, and which revenue was submitted to said Board.

GG. That in determining the net revenue of the prosecutor from the operation of its said system of street railways for the purpose of determining the rate of return upon the capital employed in public service for the transportation of passengers, the Board averaged the net income for the four years of 1911, 1912, 1913 and 1914, instead of taking the pres-

ent net revenue of said property for the first nine months of the year 1915.

HH. That the Board in making said report and the said order of January 11, 1916, did not take into consideration the increased expenditures of the prosecutor for the year 1915 which said expenditures were offered in evidence by the prosecutor.

II. That the Board in making its report and in making the said order of January 11, 1916, did not allow to the prosecutor as capital the sum of $252,-693, or thereabouts, as part of the sum of $821,000 expended for betterments and improvements upon the said property.

JJ. That the Board in making its report and in making the said order of January 11, 1916, did not allow to the prosecutor as operating expenses the said sum of $252,693 expended upon said property during the years 1911, 1912, 1913, 1914 and 1915, which said Board disallowed as capital.

KK. That the Board disregarded evidence tending to show early operating expenses and early inadequate return on investment.

LL. That the Board disregarded uncontradicted evidence showing inadequate returns represented by operating results for the year 1915 including increase in taxes levied.

MM. That the Board based its findings on average operating expenses and receipts for the past four years, disregarding the evidence that expenses of operation had increased much more than receipts.

FRANK S. KATZENBACH, JR.,
Attorney for Prosecutor.

WRIT OF CERTIORARI.

NEW JERSEY SUPREME COURT.

TRENTON AND MERCER COUNTY TRACTION CORPORATION, *Prosecutor,* vs. RALPH W. E. DONGES, JOHN J. TREACY and JOHN W. SLOCUM, Constituting the Board of Public Utility Commissioners of the State of New Jersey, and the Inhabitants of the City of Trenton, *Defendants.*	ON CERTIORARI. WRIT OF CERTIORARI.

NEW JERSEY, *ss.*

[SEAL] *The State of New Jersey to Ralph W. E. Donges, John J. Treacy and John W. Slocum, constituting the Board of Public Utility Commissioners of the State of New Jersey;*

GREETING:

We being willing for certain reasons to be certified of and concerning a certain order of the Board of Public Utility Commissioners made on the seventeenth day of August, 1915, and a certain other order of the Board of Public Utility Commissioners made on the eleventh day of January, 1916, in the matter

of the proposed withdrawal from sale of six tickets for twenty-five cents by the Trenton and Mercer County Traction Corporation on street railways operated by it within the City of Trenton, and all things touching and concerning the same, do command you and each of you that the said orders, together with all proceedings had and taken by the Board of Public Utility Commissioners upon which the same are founded, together with all the testimony of witnesses and other evidence taken thereon, with all things touching and concerning the same, as fully as before you they appear and remain, you do certify and send over your seal to our Justices of our Supreme Court at Trenton, on the second day of March, next, that we may cause to be done thereon what according to law and to the Constitution of New Jersey ought to be done.

Witness, the Honorable William S. Gummere, Chief Justice of our Supreme Court, at Trenton, the eleventh day of February, in the year of our Lord one thousand nine hundred and sixteen.

(Signed) Wm. C. Gebhardt,
Clerk.

(Signed) Frank S. Katzenbach,
Attorney.

[ENDORSED]

I allow this writ. Let it be sealed.
February 11, 1916.
(Signed) Thomas W. Trenchard,
J. S. C.

RETURN OF WRIT.

NEW JERSEY SUPREME COURT.

TRENTON AND MERCER COUNTY TRACTION CORPORATION, *Prosecutor,* vs. RALPH W. E. DONGES, JOHN J. TREACY and JOHN W. SLOCUM, Constituting the Board of Public Utility Commissioners of the State of New Jersey, and the Inhabitants of the City of Trenton, *Defendants.*	ON CERTIORARI. RETURN OF WRIT.

To the Honorable the Justices of the Supreme Court of Judicature of New Jersey:

The Board of Public Utility Commissioners herewith sends to the Supreme Court of Judicature of the State of New Jersey, a certain order made by said Board the seventeenth day of August, one thousand nine hundred and fifteen, and a certain other order made by said Board the eleventh day of January, one thousand nine hundred and sixteen, together with the record and proceedings before said Board, and all things touching and concerning the same, as fully and entirely as before said Board they remain, as it is within commanded.

In Witness Whereof the seal of said Board is hereto affixed and certified by the subscriber.

Secretary of the Board of Public Utility Commissioners of New Jersey.

ORDER OF AUGUST 17, 1915, OF PUBLIC UTILITY COMMISSIONERS.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the matter of the proposed discontinuance by the Trenton and Mercer County Traction Corporation of the sale of tickets for transportation on street railways operated by it at the rate of six tickets for twenty-five cents.

ORDER CALLING HEARING AND SUSPENDING INCREASE.

The Trenton and Mercer County Traction Corporation operates as lessee the street railways of the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company. It appears that, beginning on the twentieth day of August, 1915, the said Trenton and Mercer County Traction Corporation proposes to discontinue the sale, for transpor-

tation, over the street railways operated by it, of tickets at the rate of six tickets for twenty-five cents. It further appears that from the time the Trenton and Mercer County Traction Corporation discontinues the sale of tickets, as above noted, the said company proposes to charge passengers traveling on its leased lines a fare of five cents for each trip of each passenger so traveling. An Act concerning public utilities, to create a Board of Public Utility Commissioners, and to prescribe its duties and powers (Chap. 195, N. J., P. L. 1911) provides:

> "When any public utility as herein defined shall increase any existing individual rates, joint rates, tolls, charges or schedules thereof, as well as commutation, mileage and other special rates, or change or alter any existing classification, the Board shall have power either upon written complaint or upon its own initiative to hear and determine whether the said increase, change, or alteration is just and reasonable. The burden of proof to show that the said increase, change or alteration is just and reasonable shall be upon the public utility making the same. The Board shall have power pending such hearing and determination to order the suspension of the said increase, change or alteration until the said Board shall have approved said increase, change or alteration, not exceeding three months. It shall be the duty of the said Board to approve any such increase, change or alteration upon being satisfied that the same is just and reasonable." (h, Sec. 17.)

It appearing that the discontinuance of the sale of six tickets for twenty-five cents as intended by the Trenton and Mercer County Traction Corporation will result in an increase, change or alteration, within the contemplation of the statute as quoted above, the Board of Public Utility Commissioners hereby calls a hearing on the question whether the said increase, change or alteration is just and reasonable,

and the Board hereby fixes Tuesday, the twenty-first day of September, 1915, eleven o'clock in the morning, as the time, and the State House, in the City of Trenton, as the place of said hearing.

The Board Hereby Orders the suspension of the increase in the existing individual and special rate, and the change or alteration of the existing classification, as set forth in a letter to this Board dated August 13th, 1915, signed Trenton and Mercer County Traction Corporation, Rankin Johnson, President, by the said Trenton and Mercer County Traction Corporation for the transportation of passengers over lines operated by it until the sixteenth day of November, 1915, unless this Board prior to said date shall determine that the said increase, change or alteration is just and reasonable and shall approve the same.

The secretary of the Board is directed to mail a copy of this order to the Trenton and Mercer County Traction Corporation, which copy so mailed shall constitute notice to the said corporation of this order of suspension and of the hearing hereby called.

Dated August 17th, 1915.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
By
(Signed) RALPH W. E. DONGES,
President.

(SEAL)

Attest:
(Signed) ALFRED N. BARBER,
Secretary.

I Hereby Certify the foregoing to be a true copy of Order, adopted by the Board of Public Utility Commissioners, at a meeting held on Tuesday, August 17th, 1915, and recorded in the minutes of said meeting.

(Signed) ALFRED N. BARBER,
Secretary.

(SEAL)

PRELIMINARY HEARING.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

TRENTON, N. J., Tuesday, August 17th, 1915.

IN RE PROPOSED DISCONTINUANCE OF SALE OF SIX TICKETS FOR TWENTY-FIVE CENTS BY TRENTON & MERCER TRACTION CORPORATION.

Before the following Commissioners:

R. W. E. DONGES, ESQ.,
J. J. TREACY, ESQ.

For the City of Trenton appear C. E. BIRD, ESQ., and HENRY M. HARTMANN, ESQ.

For Lawrence Township appears H. T. SATTERTHWAITE.

For the Central Labor Union of Mercer County appears GEORGE L. RECORD, ESQ.

For Ewing Township appears W. P. BAINBRIDGE, ESQ.

Commissioner Donges: Mr. Bird, I understand the City of Trenton desires to be heard this morning.

Mr. Bird: We have a communication under the hand of the Mayor, setting forth our position in this matter.

Commissioner Donges: In the trolley matter?

Mr. Bird: In the trolley matter, yes.

Mr. Record: If the Board please, I would like to have it entered on the minutes that I appear for the Central Labor Union of Mercer County and I would like to be heard on this after the city has been heard.

Commissioner Donges: Mr. Bird, I do not understand—it seems to be the impression of the city officials that the communication of the Traction Company of this Board was an application for an order permitting the discontinuance of the sale of six tickets for a quarter.

Mr. Bird: We did not assume that in our communication. We simply took the ground that the practice of the company should ——

Commissioner Donges: The statement is made, that if it is the intention of the company to ask for an order; but the Board does not understand the company makes any application or contemplates making any application to this Board. On the contrary the communication of the company would indicate that the judgment of the company is that the Board has no jurisdiction over the subject-matter.

Mr. Bird: That was our thought when we read the communication but we state there that we are at a loss to understand why the communication was ever made to this Board, unless it were to be followed by some kind of application to this Board and of course our position is in the matter that the Board

should, in view of the communication of the Traction Company and the assertions by it that it intended to discontinue the sale of these strip tickets, the Board should make an order prohibiting them from discontinuing the sale. That was the position we assumed. The matter is formally before the Board, because the Traction Company has advised the Board that they propose to do this particular thing.

Commissioner Treacy: Yes, this Board is going to take cognizance of that particular thing.

Commissioner Donges: Of course, the Board notified the city of the receipt of the communication and advised the city that an opportunity would be afforded today for any application which the Mayor or City Commissioners might desire to make and the Board felt that in a matter of such public consequence the city probably would desire to be heard.

Mr. Bird: Our formal application would be for an order then to prohibit the company from discontinuing the sale.

Commissioner Treacy: You have stated that in your letter.

Mr. Bird: Yes, in my letter.

Mr. Record: I have this morning been retained by the Central Labor Union of this county, the members of which are perhaps more extensively interested in this procedure than anybody else. They are the workingmen of this section and if they are deprived of the present rate it means something like five dollars a head to each of the workingmen, girls and children that avail themselves of this privilege.

Commissioner Donges: Per annum?

Mr. Record: Per annum. It would probably

amount to something like $100,000 a year above and upon the community of which these morning and evening patrons of the line would be the bulk. I wish, on behalf of my clients, to endorse the application of the city. I think there should be some facts laid before this Board upon this preliminary application in support of that order or that application for an order. There ought to be, when we appear before the Board, there ought to be something in the nature of reason and evidence in support of whatever we ask.

The history of this company is the usual stock watering performance of the Public Utility corporation. We have seen it everywhere in the State of New Jersey. Your Board has run into it whenever you have considered any rate in a large place. This concern about six or eight years ago in 1909 was known by its local name and had about thirty-three hundred thousand dollars of bonds outstanding and it had about a million dollars of stock outstanding and it was paying on an average, a little over five per cent. upon those bonds. Now, I am satisfied from what I know of the cost of building these plants that this whole Trenton proposition can be duplicated for about half what the securities were upon it then.

Commissioner Treacy: Mr. Record, those are all matters that would properly be brought out in evidence at a hearing, by witnesses.

Mr. Record: I think so.

Commissioner Treacy: The question now is whether or not the Board has jurisdiction over the situation here involved, the Traction Company denying that the Board has jurisdiction. If we have jurisdiction then we have the right to suspend.

Mr. Sommer: For a period not exceeding three months.

Commissioner Treacy: If it be an increase.

Mr. Record: I am coming to that. I want to lay the foundation for it.

Commissioner Treacy: The question now is, shall we suspend or not,-and have we the right to do so?

Mr. Record: I am not missing that point by a good deal. I am coming directly to that. I say, in 1909, with a capitalization then two times what they had ever put into the property or what it would cost to duplicate, they execute one of the familiar "phoney" leases in order to further increase the capitalization, and then they agree, one company agrees with the other they will take over this load of already watered securities of at least twice the value of the plant and in addition to that guarantee $80,000 the first year in a rental and running up to $150,000; in $5,000 a year, until it reaches $150,000. My first point is, and this is where your jurisdiction comes in; when those are facts before this Board, which indicate the watering of the stock, which in turn indicates not only a watering of the stock but putting a charge upon this business irrespective of the cost of doing it, because that five thousand dollars a year and that eighty thousand dollars had no relation whatsoever to the situation; that was just a stock watering game that was to go on indefinitely ——

Commissioner Donges: Assume that all you say is true; how does that affect the question of whether contemplated procedure on the part of the company is an increase in fare?

Mr. Record: Irrespective of whether it is an increase in fare ——

Commissioner Donges: I think the present proposition—Judge Treacy and I agree that we need go no further than discuss the question of whether the

contemplated action results in an increase of fare and whether the Board ought to suspend.

Mr. Record: That is true, but if I present to this Board an argument to show that you could interfere if it were not an increase of fare, certainly I am within the lines of the argument, because that cinches the question as your Honor states it. You say the question is, whether this is an increase in fare. I say, first, if it is not an increase in fare, nevertheless you have the right to put your oar in whenever you please.

Commissioner Donges: And suspend?

Mr. Record: And suspend any action this company is about to take. That is your jurisdiction, that is what you are here for. You cannot do it whimsically; you cannot do it because you don't like the company, but you can do it upon a statement of fact.

Let us go to the question of whether it is an increase of fare. What is it for? Is it possible that we have come to the time when we have to seriously debate the question as to whether, when you pay five cents and you are compelled—when you pay four cents and are compelled to pay five that more money is extracted out of your pocket by that process? Is there any doubt about that? Where is the arithmetic taught in the schools? What are they doing it for? For fun? What are we here objecting to it for? Because they are going to take more money out of the pockets of our people.

Commissioner Treacy: I guess there is no question about that.

Mr. Record: It is an increase in fare if anything is an increase in fare.

Commissioner Treacy: The question, I take it, is principally whether or not they have the right to

charge five cents, whether under the ordinance granting them permission to operate in Trenton originally they have the right to charge five cents and whether the subsequent ordinance fixing the rate of twenty-five cents for six tickets is invalid and in derogation of the former ordinance.

Mr. Record: That is another question. The first question was, is it an increase in fare? It is an increase in fare in fact. There is no question about that.

Commissioner Donges: If that is true then the Board has power to suspend. Now, the question is whether the order ought to be suspended.

Mr. Record: I understand the company's position to be, and that is where all of my argument will be founded upon; this company's position is going to be, as near as I can get it, they have the guaranteed right to charge five cents and that the other was a privilege, the other was privileged. The City Attorney says he has seen nobody here in behalf of the company and I am not familiar with the local representatives. They assumed this Board has nothing to do with it. All they have got to do is to withdraw these privileges which they have been giving as the city communication says, for twenty years.

Commissioner Donges: Pardon me, just a minute. The Board is of the opinion that we do not probably require any further argument from counsel, that in view of the situation we are satisfied that the proposed action of the company will result in an increase in fare. The Board has jurisdiction and that pending an investigation of the merits of the controversy, there ought to be an order of suspension. All questions as to the effect of the various ordinances or whether the increase is justified for other reasons and all matters of that kind will come up on merits in the inquiry.

Mr. Satterthwaite: If the Commission please, I represent Lawrence Township, one of the municipalities concerned in this matter, and I assume the same order will be made as to Lawrence Township.

Commissioner Donges: Of course, it will be made generally. Mr. Barber suggests that the six for a quarter tickets are sold only within the City of Trenton.

Mr. Satterthwaite: As a matter of fact they are used over the entire system.

Commissioner Donges: That is to say, a journey begun in the City of Trenton ——

Mr. Satterthwaite: Yes, and I am quite sure you can buy them outside the city.

Commissioner Donges: Wherever the practice obtains the order will apply.

Mr. Satterthwaite: All we ask is that the status quo will be maintained.

Commissioner Donges: Wherever the practice obtains the status will be maintained.

Mr. Record: There is an ordinance, a Hopewell ordinance where they contracted to deliver six tickets at the rate of six for a quarter.

Commissioner Donges: The order will apply wherever the practice obtains.

Mr. Bainbridge: I represent Ewing Township. I received notice this morning and I would like to have my appearance entered. They have two companies in Ewing Township, one running to Trenton Junction and the other to Hopewell.

Commissioner Donges: The Board will enter an order of suspension covering the period of three months, which is the maximum period allowed by the statute, and will set the matter for hearing at Trenton, Tuesday, September 21st.

TESTIMONY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

Trenton, N. J., Monday, October 25, 1915.

TRENTON TROLLEY TICKETS.

Before the following Commissioners:
R. W. E. DONGES, ESQ.
J. W. SLOCUM, ESQ.

For the City of Trenton appears C. E. BIRD, ESQ., and GEORGE L. RECORD, ESQ.

For the Trenton & Mercer County Traction Corporation appears FRANK KATZENBACH, ESQ.

Mr. Katzenbach: I believe this was the morning that two matters were set for hearing, and the first matter was with reference to the withdrawal of the sale of six tickets for twenty-five cents on the lines of the Trenton & Mercer County Traction Corporation. While we have a general knowledge of that situation, we don't know just exactly the form of the complaint. We do not seek to take advantage that we have never been served with a complaint, but we would like to have an inspection of it, just for a moment or two, so we may be apprised as to the form of it.

Commissioner Donges: I don't know, Mr. Katzenbach, of any formal complaint which is the basis of this proceeding.

Mr. Katzenbach: We didn't know of any formal complaint.

Commissioner Donges: It came on in this way, that upon receipt of information informally from some residents of Trenton, as I recall it, and formal notice from the operating company that it proposed on a certain date to put into effect a change in the rate, the Board apprised the city and the company of its intention to sit in Trenton on a given day to hear any application that might be made on behalf of the city or any person with respect to that rate. The result of that sitting was an order suspending temporarily under the statute the putting into effect of that proposed increase or change, and calling a hearing to determine whether or not the proposed change or alteration and alleged increase was just and reasonable. In that way the matter comes now before the Board.

Mr. Katzenbach: The reason I spoke of that was this, that, of course, the notice, as I recall it, that was given by the Traction Company to the Board of Public Utility Commission was in effect that it was not a change of rate.

Commissioner Donges: Upon application of the city on the day fixed, the city appeared, through its legal department, and one or more associations through counsel appeared and applied for an order, and asked that a proceeding be initiated by the Board to determine whether the proposed change resulted in an increase, and whether such increase was just and reasonable. The Board at that time determined that prima facie the discontinuance of the sale of six tickets for twenty-five cents, and the demand for a fare of five cents for each ride was prima facie an increase.

Mr. Katzenbach: Then we wanted to submit authorities after this hearing upon such a memorandum or brief as we will file to the effect that, as a matter of law, it is not an increase in rate, and therefore that, of course, would be a question to have then determined, whether the burden of proof was upon us or whether it was upon the city or the Board, the city being the complaining party.

Commissioner Donges: It was upon the application of the city really that the order was made, but the Board made the order and the form of the order is such as usually obtains when the Board initiates on its own motion a hearing.

Mr. Katzenbach: The purpose of this inquiry was as to whether the burden of proof in this instance was upon the company, in the opinion of the Board, or whether it is upon the city.

Commissioner Donges: The Board at the hearing at the time the order was made determined that prima facie an alteration and change in the schedule of the company, which involved the withdrawal of tickets, six of which could be purchased for twenty-five cents, which was an average rate of four and one-sixth cents per ride, to a flat five-cent rate, was prima facie an increase, and that it put the burden upon the company to justify, under the statute, such increase.

Mr. Katzenbach: Then if we may be permitted to enter our protest or exception to that ruling, so our rights may be preserved on this record, then we will offer now our evidence.

Commissioner Donges: The Board does not determine any question except that prima facie the alteration imposed upon the rider, the duty of paying five cents, where before he may have ridden for four and one-sixth cents.

Mr. Katzenbach: Yes.

Mr. Sommer: That ruling, I take it, however, in order that there may be no misunderstanding, does not preclude the company from now raising any question as to the burden of proof.

Commissioner Donges: No question of fact was determined. It was prima facie; we determined, prima facie it was determined to be an increase. It was not determined whether such rate was just and reasonable, or whether it was in fact a departure from the rates of the company. It was a departure in practice which called, in the judgment of the Board, upon the company to justify.

Mr. Katzenbach: I understand there is no objection, of course, to our entering our protest?

Commissioner Donges: No, you may do that.

Mr. Katzenbach: So we may have any benefit hereafter upon that question.

BEFORE THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY.

In the matter of the hearing upon the withdrawal by the Trenton and Mercer County Traction Corporation of the sale of six tickets for twenty-five cents.	Protest against the assumption of jurisdiction of the questions involved by the Board of Public Utility Commissioners, and a plea to the jurisdiction of the said Board.

The Trenton and Mercer County Traction Corpo-

ration, a New Jersey corporation, operating the lines of street railway within the City of Trenton under leases made by the Trenton Street Railway Company, Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company, dated October 15, 1910, and approved by order of the Board of Public Utility Commissioners dated March 24, 1911, hereby specially appears for the purpose of entering a protest against the Board of Public Utility Commissioners of the State of New Jersey having assumed jurisdiction of the question of the withdrawal by the Trenton and Mercer County Traction Corporation of the sale of six tickets for twenty-five cents upon the cars operated by it over its leased lines of railway within the limits of the City of Trenton, and against the further assumption of jurisdiction for the purpose of determining whether the withdrawal of the said sale of six tickets for twenty-five cents is just and reasonable, and from making any order whatsoever in the premises.

The contention of the Trenton and Mercer County Traction Corporation is that the rate of fare for a single passenger over five years of age over any of the lines operated by it within the limits of the City of Trenton is five cents, and that the right to charge and demand the said rate of fare of five cents is secured to the Trenton and Mercer County Traction Corporation under and by virtue of the following charters, certificates of incorporation and the provisions of statutes under which certain corporations hereinafter mentioned were incorporated, and ordinances of the City of Trenton and other municipalities now forming parts of the City of Trenton which in the past granted ordinances to the said lessor companies of the Trenton and Mercer County Traction Corporation and their predecessors, to wit:

Charter of the Trenton Horse Railroad Company (P. L. 1859, page 66), and its amendments; charter of the City Railway Company; ordinances of the City of Trenton to the Trenton Horse Railroad Company passed July 28, 1863, September 4, 1883, February 1, 1886, February 7, 1887, December 5,

1887, April 2, 1888, August 19, 1891 (the ordinances of February 1st, 1886, February 7, 1887, December 5, 1887, and April 2, 1888, being ordinances of the Borough of Chambersburg now a part of the City of Trenton); ordinances granted by the Borough of Chambersburg to the City Railway Company passed January 24, 1876; ordinance of the City of Trenton to the City Railway Company, passed February 1, 1876, ordinance of the City of Trenton to the City Railway Company passed October 9, 1876; ordinance of the City of Trenton to the City Railway Company passed October 6, 1885; ordinance of the City of Trenton to the City Railway Company passed September 10, 1886; ordinance of the Borough of Chambersburg to the City Railway Company passed June 19, 1883; certificate of incorporation of the Hamilton Township Street Railway Company; certificate of incorporation of the South Clinton Avenue and Broad Street Railway Company; consolidation agreement under which the Trenton Horse Railroad Company, the Hamilton Township Street Railway Company and the South Clinton Avenue and Broad Street Railway Company were merged and consolidated into the Trenton Passenger Railway Company, Consolidated; ordinance granted to the Trenton Passenger Railway Company, Consolidated, by the City of Trenton, approved September 18, 1891; ordinance of the Borough of Wilbur (now a part of the City of Trenton), to the Trenton Passenger Railway Company, Consolidated, approved August 31, 1892; ordinance of the City of Trenton to the Trenton Passenger Railway Company, Consolidated, approved February 12, 1894; agreement of acceptance of said ordinance; certificate of incorporation of the Mulberry Street Passenger Railway Company; ordinance of the City of Trenton to the Mulberry Street Passenger Railway Company, approved October 23, 1897; certificate of incorporation of the Pennington Avenue Passenger Railway Company; ordinance City of Trenton to the Pennington Avenue Passenger Company, approved December 22, 1897; certificate of incorporation of the Ewing

Passenger Railway Company; agreement of merger and consolidation under which the Trenton Passenger Railway Company, Consolidated, the Mulberry Street Passenger Railway Company, the Pennington Avenue Passenger Railway Company and the Ewing Passenger Railway Company were consolidated, forming the Trenton Street Railway Company; ordinance of the City of Trenton to the Trenton Street Railway Company, approved February 10, 1899; agreement accepting said ordinance; ordinance of the City of Trenton to the Trenton Street Railway Company, passed December 5, 1905; agreement accepting said ordinance; certificate of incorporation of the Mercer County Traction Company; ordinance of the City of Trenton to the Mercer County Traction Company, approved October 11, 1901, agreement accepting said ordinance; ordinance of the City of Trenton to the Mercer County Traction Company, approved October 11, 1901; agreement accepting said ordinance; ordinance of the City of Trenton to the Mercer County Traction Company, approved January 13, 1902; agreement accepting said ordinance; ordinance of the City of Trenton to the Mercer County Traction Company approved July 2, 1904; agreement accepting said ordinance; certificate of incorporation of the Trenton, Hamilton and Ewing Traction Company; ordinance of the City of Trenton to the Trenton, Hamilton and Ewing Traction Company, approved December 5, 1905; agreement accepting the same; ordinance of the City of Trenton to the Trenton, Hamilton and Ewing Traction Company, approved March 1, 1906.

Copies of the said charters, certificates of incorporation, provisions of statutes under which said companies were incorporated and ordinances of the City of Trenton and of the municipalities now forming parts of the City of Trenton are herewith submitted.

That under and by virtue of the charters, certificates of incorporation and the laws of the State of New Jersey under which the same were incorpor-

ated and the ordinances and agreements above referred to, the lessor companies of the Trenton and Mercer County Traction Corporation have a contractual right which cannot be impaired by any order of the Board of Public Utility Commissioners or any other agency of the State of New Jersey, to charge and receive a fare of five cents for each passenger over the age of five years; that the said Trenton and Mercer County Traction Corporation as the lessee of the said Trenton Street Railway Company, Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company, has the right to charge and receive from each passenger over the age of five years said fare of five cents, and that the same cannot be decreased or diminshed in any manner whatsoever.

The said Trenton and Mercer County Traction Corporation further contends that the said Board of Public Utility Commissioners has no jurisdiction over the question involved for the reason that the sale of tickets for twenty-five cents is not an individual and special rate and that the proposed withdrawal of the sale of six tickets for twenty-five cents within the limits of the City of Trenton is not a change or alteration of any existing classification made by the Trenton and Mercer County Traction Corporation or its predecessors.

There is now pending in the United States District Court for the District of New Jersey a suit instituted by the Trenton and Mercer County Traction Corporation, the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company, as complainants, and the Inhabitants of the City of Trenton, Frederick W. Donnelly, Mayor, and Ralph W. E. Donges, John J. Treacy and John W. Slocum, constituting the Board of Public Utility Commissioners of the State of New Jersey, defendants, which is for the purpose of determining the question as to whether the Board of Public Utility Commis-

sioners can assume jurisdiction of the question involved in the present proceeding.

TRENTON AND MERCER COUNTY TRACTION COMPANY,
By
EDWARD M. HUNT,
Solicitor.

Mr. Record: Before we start, I understand Mr. Bird served upon the company a request for certain data and documents, and under the ruling of this Board I imagine this is more or less informal, but we have stated here what we want. What is your disposition with reference to that?

Mr. Katzenbach: Of course, we want you to have everything that there is there, but the things you ask for are the complete records of the company and those are all in the office of the company and open to your inspection, and anything specifically that you want we will have them brought here, but it would have taken three or four wagonloads, and there is not room enough around here to store these things, so we are at your behest, any particular thing you want.

Mr. Record: We can have any of these things?

Mr. Katzenbach: Anything we have.

Commissioner Donges: It would be desirable to have an inspection made at your company's office rather than produce the records here.

Mr. Katzenbach: Any time that is agreeable to you.

Mr. Record: That is satisfactory.

Mr. Katzenbach: Of course, there might be some records of predecessor companies that we haven't and don't know anything about. Anything relating to the Trenton & Mercer County Traction Corporation the last five years are all there, and anything we have belonging to the predecessor companies is at your service.

RANKIN JOHNSON, sworn on behalf of Trenton & Mercer County Traction Corporation.

Direct examination.

By Mr. Katzenbach:

Q. What is your full name, Mr. Johnson?
A. Rankin Johnson.
Q. Where do you reside?
A. Princeton.
Q. What is your occupation?
A. President of the Trenton & Mercer County Traction Corporation.
Q. What business is the Trenton & Mercer County Traction Corporation engaged in?
A. Operating the traction properties, certain traction properties in the City of Trenton and vicinity.

Q. Does your corporation operate as owner or lessee?

A. As lessee.

Q. And of what companies is your company the lessee?

A. Of the Trenton Street Railway Company, the Trenton, Hamilton & Ewing Traction Company, the Mercer County Traction Company, and the Trenton, Pennington & Hopewell Street Railway Company.

Q. How long has your company been the lessee of the four companies that you have mentioned?

A. Since October, 1910.

Q. In October, 1910, or shortly thereafter was the leases of these four respective companies to the Trenton & Mercer County Traction Corporation submitted to this Board for approval?

A. Yes.

Q. What action was taken by the Board?

A. They were approved.

Q. Since October, 1910, has any other corporation, to your knowledge, operated these properties?

A. No.

Q. Where were you educated, Mr. Johnson?

A. Yale University.

Q. In what department?

A. Scientific Department, engineering, civil engineering.

Q. What year did you graduate?

A. 1895.

Q. You are a civil engineer then by profession?

A. Yes.

Q. During the time since your graduation how much time have you spent in the following of your profession as civil engineer?

A. All of the time, if my present occupation can be said to be following it.

Q. With what concerns identified with street railway properties have you been engaged with?

A. During the first years after graduation I was connected with steam railroad properties. During about three years prior to my connection with this company I was connected in a consulting way with

electrification of railroad properties and traction properties.

Q. Have you had experience in the building of street railway properties?

A. Yes.

Q. Have you had experience in the operation of street railway properties?

A. Yes.

Q. Are you familiar with the properties of which the Trenton & Mercer County Traction Corporation is lessee?

A. I am.

Q. How long have you been familiar with those properties?

A. Since early in 1910.

By Commissioner Donges:

Q. Since when?

A. Since early in 1910, that is my first acquaintance with them.

By Mr. Katzenbach:

Q. About what month of 1910?

A. I should say April, about April or May, 1910, was my first acquaintance with the property.

Q. That was prior to the making of these leases that you have mentioned?

A. Yes, not in an official capacity prior to the leases, you understand.

Q. Yes, but you had inspected and examined the properties?

A. Yes.

Q. Have you continued to devote practically your entire time from the making of these leases on down to the present time in the operation and management of these properties?

A. More in the last two years than the first two years. It was a large proportion of my time during the first two years, and practically all of my time during the last year especially.

Q. Are you familiar with the changes and improvements, if any, that have been made in this street railway system since the leasing of it?

A. I am.

Q. What rate of fare has been charged upon the street railway system within the limits of the City of Trenton?

A. Five cents.

Q. Has there been, since your company has been the lessee of this property, any other method than the paying of five cents by which a person could obtain a ride, except by pass?

A. Yes, those who cared to invest twenty-five cents could buy six tickets for it, each one of which was usable for a ride on the street railway car.

By Commissioner Donges:

Q. And the equivalent of a five-cent fare?

A. Yes, was accepted as a ride.

By Mr. Katzenbach:

Q. Will you state whether your company determined or not to withdraw the sale of six tickets for twenty-five cents during the past summer?

A. Yes.

Q. Will you give your reason—state first, whether you think that the withdrawal of the sale of six tickets for twenty-five cents was just and reasonable?

A. I do.

Q. Will you just state your reasons for that opinion?

A. They are included under four headings. First, because it is the customary rate of fare both in the State of New Jersey and elsewhere throughout the country, that is, the flat five-cent rate of fare. Secondly, because our franchises provide for a five-cent rate of fare; in the principal franchise passed in the year 1894 the company, the Trenton Street Railway Company, assumed certain additional obli-

gations not previously existing, including the agreement to construct and maintain certain portions of the city pavement, now amounting to about 200,000 square yards, also the inauguration of a transfer system between lines not previously giving transfers, also the carrying of children under the age of five years free, who previously had had to pay the regular fare. The consideration for these additional requirements was the five-cent fare, although previously on some of the lines the company had the charter right to charge a six-cent fare. That contract right to charge the five-cent fare is the second reason for considering this discontinuance of the sale of six tickets for twenty-five cents as just and reasonable. The third reason is based on the assumption that gross receipts should be sufficient to meet the requirements of operation, maintenance, replacement, taxes, return on capital, and leave a surplus sufficient to induce the investment of additional capital for extensions which may become necessary to provide adequate service, as the community grows, that is, particularly maintenance and replacement requirements are increasing as the years go by from a number of causes. One is the great increase in the cost of constantly improving standards of service. Track construction now, according to the best modern practice, is very much more costly than track construction a few years ago. The same is true of the best type of pavement, the same is true of cars, the modern best-practice cars are very much more expensive than cars of the best modern practice a few years ago. This is also true of electric equipment, other details of construction. We are confronted by constantly increasing pressure to not only maintain the property, but to replace structures, including track, pavement, cars, other things, which were the standards of construction when they were placed, by the greatly improved types of construction, which are the best modern practice today, even before the old types had served their life. We are confronted by requests to extend to parts of the community which are growing to a

point where sometime undoubtedly extensions would be justified, where possibly the time has come when an extension should be justified, but without the adequate receipts which will justify the investment of capital for such extensions and additions to the property. This third reason might be enlarged on considerably as to the adequacy—the expenses which the properties are asked to go to today to provide adequacy of service, this adequacy constantly increasing in cost. The fourth reason is based on—rather, branches out from the third reason and is based on the statement supported by figures, that our gross receipts are not sufficient to meet operating expenses, including maintenance, replacement and taxes and a return on capital. I will now read the figures.

Q. Just state generally, just finish your fourth reason, unless you have finished it in a general way, Mr. Johnson.

Commissioner Donges: How does that differ from the third?

Witness: The third bears more particularly on the consideration of the requirements for replacement by these new types of construction, these best modern practices, a subject which, to be appreciated, must be considered, and the cost of those, what is the company required to do to meet these replacements, with best modern standards, of standards which were the practice when they were constructed? The fourth is just a statement of fact as to what the replacements, gross receipts, and so forth, are.

Q. At the time of the consideration of the approval or disapproval of the leases of the four companies to the Trenton & Mercer County Traction Corporation in October, 1910, did, at that time or subsequently thereto, prior to the approval of these leases, did this Board make a valuation of the physical property of the system which it was contemplated that your company should lease?

A. Yes.

Q. That was a valuation made by what expert for this Board?

A. By the chief engineer, or the engineering department of the Board.

By Commissioner Donges:

Q. Under whose direction as chief engineer?

A. Dr. Betts', I believe.

By Mr. Katzenbach:

Q. The report or estimate was made by Dr. Betts, who is in the employ or an officer of this Board?

A. Yes.

Q. Were you familiar with that report of Dr. Betts?

A. Yes.

Q. And about when was that report made?

A. Between, I should say between October 16th, 1910, and the date of the approval of the leases, which was March, 1911, if I remember correctly.

Q. March, 1911?

A. Yes.

Q. So that between those periods Mr. Betts had prepared this report?

A. Yes.

Q. It was seen by you prior to the actual approval by the Board of these leases?

A. Yes.

Q. Mr. Johnson, you are familiar with the methods that are arrived at, or at least that are followed, in determining such a question as is before this Board at present, are you not?

A. Yes.

Q. Will you state whether or not it is the recognized principle that the cost of reproduction or the actual amount invested is taken as a basis for determining a rate?

A. It seems to be the custom that the cost of reproduction, with reasonable allowances for invest-

ments made, which do not appear in the cost of a given article, such as interest during construction, engineering, various contingencies, of course, they also, in the broad sense, are represented in the cost of reproduction, and then also the going concern value.

By Commissioner Donges:

Q. Do I understand, Mr. Johnson, that you say the universal practice is, take the cost of reproduction new plus the development cost, interest during construction, and so on, and take that as the basis for the fixation of rates?

A. I don't say the universal practice, I say the practice in a number of cases, and as I understand it, the practice which has been adopted by this Board.

Q. I don't know that practice has been adopted in any case. What case do you refer to?

A. The Passaic Gas case.

Q. I think that was not the basis for reaching a value.

A. The cost of reproduction was figured.

Q. Was one of the methods used in arriving at what the Board regarded as a fair value of the property?

A. Yes.

Q. But depreciation was also deducted?

A. Yes. I add the depreciation; I subtract the depreciation.

Mr. Katzenbach: You want to subtract the depreciation rather than add it.

Witness: Yes, add the item, subtract the depreciation.

Q. There are three well-recognized methods, aren't there, in determining fair value, which after all is the basis upon which to fix rates, isn't it? The Courts and public bodies at various times, who have had jurisdiction over the fixation of rates, endeav-

ored to arrive at the fair value of property, as you understand it?

A. Yes.

Q. And in determining the fair value three methods are generally adopted, aren't they? One the cost, the actual cost as determined from the company's books, if there be records to ascertain such cost?

A. Yes.

Q. Secondly, a reproduction cost, a reproduction new under original conditions?

A. Yes.

Q. And third, the reproduction new under present conditions or conditions obtaining at the time the inventory is made?

A. Yes.

Q. And from those methods the desire of the Board is to arrive at a fair value?

A. Yes.

Q. Without adopting perhaps anyone as being standard?

A. Yes.

By Mr. Katzenbach:

Q. Will you state what Mr. Betts in his report stated that the cost of reproduction of the properties was?

Mr. Record: If the Board please, I don't wish to be technical, while there is a report like that, ought not that to be put in evidence?

Commissioner Donges: Yes, the report itself ought to be put in.

Mr. Katzenbach: Yes, we will put in the report, of course. This is simply a statement of certain figures from the report that the witness seems to me to be warranted in making, for the reason of giving additional figures subsequent to the date of that report, of expenditures.

Commissioner Donges: If the report of Dr. Betts is to be the basis of any conclusion of the witness, it seems the report ought to be put in evidence first.

Mr. Katzenbach: We desire to put the report in.

Commissioner Donges: I think the objection of Mr. Record is well taken and it ought to go in now.

Mr. Katzenbach: Very well, we have no objection.

Commissioner Donges: If it is to be used.

Mr. Katzenbach: Yes; we want to use these figures, as we feel they are probably the fairest figures that can be obtained. I will have to ask for the original report.

Mr. Barber: I will have to see if it is in our files. It might be in Mr. Betts' office in Newark.

Mr. Katzenbach: You might ask Mr. Betts if that is a copy of his report.

Mr. Record: If you say that is a copy, that is all right.

Mr. Sommer: They can use it, but the original ought to go in.

Commissioner Donges: It sometimes happens that the reports of the engineers are changed afterwards for some reason. I have no doubt Mr. Katzenbach's copy is accurate, but it would be better to have that report which appears from the records of the Board to be the final report. Dr. Betts, does this appear to be a complete report under date of February 20th, 1911, in the matter of the application to this Board for the approval of certain leases?

Mr. Betts: Yes.

Commissioner Donges: Do you recall whether or not there were any changes in that report?

Mr. Betts: There were no changes made in this report. What action the Board took was not based entirely on this report, but there were no changes made in this report.

Commissioner Donges: This report is in the form in which you submitted it finally?

Mr. Betts: Yes.

Mr. Katzenbach: Of course, this report deals with many other matters that are now of no consequence. We don't want to offer the entire report, we only want to offer it on those matters, upon which the witness is to testify. If the other side want to offer it, and the Board considers it pertinent, that is all right.

Commissioner Donges: Are you able to say what parts of the report you desire to offer?

Mr. Katzenbach: Yes, the question of valuation.

Commissioner Donges: Are you able to state what pages?

Mr. Record: If the Board please, we might as well consider an objection. I don't care how he offers it, whether in whole or in part. I judge from bringing this in that the probable intent of the Mayor is to undertake to extract from this the value of the property in 1910 and then to show from this witness expenditures since then. I object to the report going in either in whole or in part. This question must be determined upon the facts as to what is the present value of the property, not in 1910. The value of 1910 may be pertinent as a method of proof, but if so then people must be produced here. We must have a chance to cross-examine them, we must find what they did, they went and measured the

rails, or to what extent they went over it. A written report submitted by an officer of this Board to the Board as a mere incident of determining whether a new lease shall be made is not evidence to determine the reasonableness of the rate. You were simply determining whether you would let one company merge with another. This report was made, and whatever its contents, I object to the report being put in at all. If he wishes to prove that the value of this property was so many hundred thousand dollars in 1910, that must be proved by somebody who knew the facts then, testifying there were so many rails, there was so much, and allow us to cross-examine.

Commissioner Donges: I think that is so.

Mr. Katzenbach: If it please the Board, here is a report made by an engineer of the Board which fixes the valuation of this property. This witness is merely stating his opinion, or at least this is a foundation for an opinion upon certain questions and, of course, the very fairest estimate, it seems to me, that could be made, as a starting point, is what this Board considered this property worth.

Commissioner Donges: You must distinguish between what an inspector of the Board recommends to the Board as his judgment of value and what the Board determines. I, of course, was not a member of the Board at that time and don't know what considerations may have moved the Board to the approval of these leases, but I have no doubt that the Board did not determine, in passing upon that question, the value of the property. I don't know, of course, to what extent the inventory of the property was made by Dr. Betts or his staff to determine, but it is only fair to you to say that the Board would not take as conclusive, upon the question of value, the appraisement made at that time by Dr. Betts, but would require in any case that supporting data be put in and that a complete inventory be made. It is only fair to you to say that the Board does not

regard the report in the form it appears to be as sufficient in itself to fix the value of the property for the purposes of fixing a rate.

Mr. Katzenbach: It is utterly impossible for people to have valued this property, made a valuation of this property within the length of time this question has been up for consideration. Of course, it is a foundation that the expert of the Board himself has laid in this case, and the report shows a detailed valuation of this property, and of course I could show in arriving at what the present value of the property is, what the value of the property was in 1911 as a starting point.

Commissioner Donges: Mr. Katzenbach, the Board will permit the report to be introduced into evidence, with the statement, however, that it is received as being nothing more than the conclusion of Dr. Betts as to his judgment of the value, and it is not conclusive either upon the Board or the residents of Trenton.

Mr. Katzenbach: We don't offer it as a conclusive document at all.

Commissioner Donges: We take it as nothing more than the conclusion of Dr. Betts, his judgment, as of the time it was made.

Mr. Sommer: In that situation then I assume the municipality would have the right to call Dr. Betts for cross-examination.

Commissioner Donges: Yes.

Mr. Katzenbach: Yes, and if you would like, we can put Dr. Betts on the stand now and ask him about that.

Commissioner Donges: I think the municipality would have that right.

Mr. Katzenbach: Yes.

Commissioner Donges: If they desire, at this time. The point I want to make clear is, that the Board does not take as being determined by the Board in any sense that the valuation given by Dr. Betts is to be accepted, and certainly in the absence of supporting data the parties complaining would not be precluded.

Mr. Katzenbach: I did not offer it for that purpose.

Commissioner Donges: It is accepted as the judgment of a competent engineer as to his opinion.

Mr. Record: I would like to have my exception noted to that ruling.

Commissioner Donges: Yes. Do you desire now to examine Dr. Betts at all on his report?

Mr. Record: I don't wish to do anything, except to say, here is a written document, here sits the man who made it, I protest against that document going in this case for any purpose.

Q. Mr. Johnson, will you state what the valuation of the physical property is, according to this report of Mr. Betts?

A. $2,604,470.

Q. Will you state in your opinion whether that is ——

Mr. Record: I would like to make an objection again. That brings out the inherent weakness of putting this paper in. This man testifies to a conclusion from that paper, certainly he hasn't any right to do that.

Commissioner Donges: He simply stated what appeared ——

Mr. Record: I understand; the paper may say that and may not say that. I don't wish to deprive the Mayor of any theory of valuation he chooses to set up. This witness can say, properly, since a certain date, which is the date of that paper, there has been spent on the property so much, but it certainly is pushing things very far to allow a record to be made of it in which this witness is allowed to testify what the document says. The document itself ought not to be in evidence, and on that he bases a conclusion. All the Mayor can do is to offer that in evidence and then say to this witness, since the date of that report how much has been spent on this property. He can argue at the end of the case and we can argue what that says.

Commissioner Donges: The paper is the best evidence.

Mr. Katzenbach: I will ultimately call Dr. Betts.

Mr. Record: I object to having on this record any statement by this witness as to what that report says.

Commissioner Donges: I think the objection is well taken; it may be stricken out, it may be expunged from the record.

Mr. Katzenbach: Dr. Betts, will you take the stand?

Mr. Betts: I want to look over some notes.

Commissioner Donges: If you are in doubt about anything, you may inform yourself.

P. Betts, sworn on behalf of Trenton & Mercer County Traction Corporation.

Direct examination.

By Mr. Katzenbach:

Q. Mr. Betts, were you connected as engineer with the Board of Public Utility Commissioners of this State in February, 1911?

A. Yes, sir.

Q. And prior thereto had you made an examination of the property of the four companies whose properties were to be leased to the Trenton & Mercer County Traction Corporation?

A. I had.

Q. Did you submit to the Board your opinion as to the valuation of that property?

A. I did.

Q. Is that contained in a report which you have in your hand taken from the files of this Board?

A. It is, yes.

Q. That is the report you made at that time?

A. It is.

Q. Will you state what you found the valuation of the property to be at that time?

Mr. Record: Please don't state any conclusions from that. I wish to cross-examine him. He simply says he made up a report; he says the same as the other witness. The report is the evidence.

Commissioner Donges: Yes, I think the report contains his conclusions. The report purports to state his conclusions, Mr. Katzenbach; his statement cannot add anything to what the report contains, I take it.

Mr. Katzenbach: No, not at all, as far as that goes.

Commissioner Donges: And the objection is that the report is the best evidence of what at that time was submitted to the Board.

Mr. Katzenbach: Yes, but then, of course, I take it a witness can read from his own report for the enlightment of those that do not care to go over the entire report and haven't the time to do it. That is frequently in courts of law permitted, and I see no objection to it.

Commissioner Donges: The objection is that the witness ought not to be permitted to state a conclusion which appears in a report, in the absence of his examination as to how he arrived at that conclusion.

Q. Did you arrive at this conclusion stated in your report after an examination of the entire property?

A. Yes, sir.

Q. Will you state whether or not that was a thorough examination of the property?

A. It was what I considered at the time to be a very thorough examination. I obtained maps of the City of Trenton and marked off on those maps, from the best information obtainable, the portions of the lines that were constructed by the different companies, that is, the Trenton Street Railway Company, the Trenton, Hamilton & Ewing Traction Company, the Mercer County Traction Company, and the Trenton, Pennington & Hopewell Street Railway Company. In doing this I first obtained a copy of the charter of the City of Trenton, together with the ordinances, which are all published in one volume complete up to a certain date, and from that date on to the present the ordinances of the City of Trenton have been published in pamphlet form, that is, have been gathered together in two pamphlets, and a bound volume, and the two pamphlets included all the charters and ordinances of the City of Trenton up to some date in 1908 or 1909 or 1910 perhaps, and with the data filed in that compilation of

charters of the City of Trenton and the companies operating here, I was able to lay out the original lines. I had only one assistant at that time working on this matter. We very carefully mapped out the location of every pole in the system, counted up the poles, the number of span wires, the number of insulators, the number of hangers, ears, strain ears, anchor ears, all that sort of thing, checked off the feeders and mapped them partly, and partly described them in our notes, running those feeders back to the power station. The power station was inventoried and the value of the building, or the cost to reproduce the building was estimated on a cubic foot basis. It was not done in the great detail we now do in valuing buildings. The car barn was examined, together with the old shed at that time housing old cars. The cars were first checked up from the list and inventory, which was made by the Trenton Street Railway Company in connection with the lease. This inventory included a list of all properties, the cars, the snow plows, sweepers, machinery in the shop, and all that sort of thing. That sort of thing was pretty carefully checked up—when I say pretty carefully, we did not go into the detail of counting all the small tools in the shop, but we counted all the large tools and checked up all the cars, and affixed to these various items prices that were very largely prices from my own knowledge at that time, that is, as to values and cost of cars, sweepers, machine shop tools, and so on. I did not mention the trolley wire. The trolley wire was measured up also, that is, measured up by the map, not measured up by any street measurements. I did my best to keep these properties separate in making this inventory. I was not absolutely certain that I had been able fully to do that for the reason that the values, the separate values for the separate roads did not bear the same relation to the capitalization of the separate roads, that is to say, just for the sake of example, I cannot give the exact data now, I may have found that the Mercer County Traction Company had a high cost in comparison to

the capitalization that was issued for it, while on the other hand, the Trenton, Hamilton & Ewing may have had a very low valuation as compared with the capitalization. In other words, it was probable that one of these companies had constructed some little piece that I credited to the other company. These companies did not do their work at the same time, but at the same time it was a little difficult to absolutely identify the property of each of those subsidiary companies, and for that reason the valuation of the Mercer County Traction Company, and the Trenton, Hamilton & Ewing do not bear exactly the same relation to the capitalization, but the property was all included under those four headings as near as I was able to do it, and in my opinion the estimate made corresponded to the cost to reproduce those properties in good order, practically new, new, in other words, at the time the estimate was made. There was no careful estimate made of the accrued depreciation, and there was, however, a fairly careful examination made to determine the general condition of the property, but no estimate was made of the accrued depreciation, so that the estimates which I made and which I stated in this report, were my estimates of the cost to reproduce the physical property new.

By Commissioner Donges:

Q. And was for the purposes of the proceeding which was then pending?

A. Yes, sir.

Q. Only?

A. Yes, sir. I would not—at that time, I would not have placed any different value on the property for any purpose, for any other purpose.

Q. That is, reproduction?

A. In estimating the cost of reproducing the physical property, I would not have used any other units of value for any other purpose.

Q. Would you have pursued any different method in determining accrued depreciation?

A. As I say, I did not determine it at all at that time. I would have, of course ——

Mr. Record: Doesn't that put this all out of evidence? We want to know, you have got to know the value of this property sometime.

Commissioner Donges: The Board endeavored to limit the purpose for which this was introduced very plainly, or intended to plainly say it was not to be taken by the Board as the value of the property at that time.

Mr. Record: The difficulty with that is, I am not apprehensive of the Board being misled at all, I am apprehensive of the record going up to the Court, and I have been through this experience once or twice before, so I am anxious about the state of the record. So you have got to proceed upon some theory. As the president of the Board stated in talking to Mr. Johnson, there were different theories. The Mayor evidently is starting on the theory of fixing the value of this property in 1910, by a piece of paper. That is his theory. Upon that Mr. Johnson is to say what the paper shows and upon that they are to produce the expenses since then. I am attacking that theory, and here comes Mr. Betts who testified flat-footed that he could not co-ordinate between the companies and their capitalization, and was not sure accurately as to some of the property, when he was valuing, what company it belonged to, and then caps the climax by saying all he did was to take this property and consider it brand new, whereas the point is, to what extent was it depreciated on that day? The brand new valuation on that day amounts to nothing. What was its condition? Had it run all to pieces? Had it run down or was it kept up? All that sort of thing. He said he put on no depreciation. Then what value is a report made to this Board for the purposes of allowing a merger and not for a rate case, what evidential value has it got? All it shows is one fact. It might just as

well have said there were fifty-eight cars and stop there. It hasn't anything to do with the case. Fifty-eight cars, brand new, $4,000 apiece. What has that got to do with the case? What we want to know is how many cars on the date in 1910, and to what extent had they been run down, were they old, flat-wheeled, tumble-down cars?

Commissioner Donges: What you want to know is what the value of the property at this time is, and in determining that, whatever may be helpful may be used.

Mr. Record: That is just the point, Mr. Chairman, you come right to the point every time. That is exactly what we want to know, and this witness says he valued it new.

Commissioner Donges: Very well, that may be a step in the proceeding which is necessary to determine what the present value of the property is.

Mr. Record: I grant that. The point I am making is as to this witness and this particular paper that is introduced as evidence of value, and the witness testifies that he did not value.

Commissioner Donges: If it does not support a conclusion as to what the value was at that time then its evidential value is impaired to that extent.

Mr. Record: Unless it does show value at that time my point is ——

Commissioner Donges: It may be worthless.

Mr. Record: —— it is inadmissible, if it does not show value.

Commissioner Donges: The Board will permit it to stand under the qualifications which have been stated.

Mr. Record: I would like an exception to that ruling.

Commissioner Donges: Very well, it may be noted.

Q. In saying, Mr. Betts, that you might not have exactly distinguished between the lines of the various lessor companies, that does not mean that you valued any of the property twice in your examination?

A. I did not duplicate any of the property. I could explain a little further just what that means. In inspecting the property we found that certain generating units were marked as the property of the Trenton, Hamilton & Ewing or perhaps a certain unit. The entire power plant, however, was valued as if it were the property of the Trenton Street Railway, and in that way there is no lapover. The attempt was made to have no omissions of anything, but as to whether the particular items were credited to the particular company or not is, of course, a question. Another point was that practically all rights of way or real estate owned by the company was classed under Trenton Street Railway Company, while, not having full access to the books, it is not my knowledge, nor was it then, as to whether that real estate was purchased by the Trenton Street Railway itself or by someone of the companies from their funds. It is in those ways that the value for each particular road may not be the amount of money that was spent by that company in doing this work.

By Commissioner Donges:

Q. Or represent the actual property of that company?

A. Yes.

Q. Did you include anything in your valuation except tangible property?

A. Only tangible property is included in this.

By Mr. Katzenbach:

Q. But that was a correct valuation of the system as a whole, Mr. Betts?

A. Of the physical system as a whole, yes. There was an allowance in each one of these four—not in each one—there was an allowance in the Trenton, Pennington & Hopewell of twelve per cent. to take care of all overhead charges, errors and omissions, contingencies, and so on. In the Mercer County Traction Company, which was a smaller matter, fifteen per cent. was allowed.

By Commissioner Donges:

Q. Just what does that include?

A. That was to take care of engineering, surveying layout, all that sort of thing, preparation of plans.

Q. Organization?

A. No, not the organization of the company, but the errors and omissions.

Q. Errors and omissions of physical structures?

A. Physical structures, all that sort of thing.

Q. How about contractor's profit?

A. That was intended to include anything of that kind.

Q. Was any contractor's profit included in your unit prices?

A. It is probable that contractor's profit to some extent, and perhaps to the full extent, is included in the unit prices, because in the unit prices a good deal of the property was priced on the mileage basis, so much overhead construction of a certain character, of a span construction, using iron poles, and with a single track, was priced at a certain rate per mile for that class of construction.

Q. At an estimated price per mile?

A. At an estimated price per mile, made up, of course, from the amount of material to construct a mile of line of that character. The different prices per mile are taken for construction of iron poles with

span construction and two tracks over what there was with one track and a different unit where wooden poles were used, and still a different unit where a single pole with a side bracket construction was employed.

By Mr. Katzenbach:

Q. Mr. Betts, at that time you only then estimated the allowance for engineering and contingencies in the physical valuation. Let me call your attention to page 13 of the report.

Commissioner Donges: Won't you wait until he answers that, unless this is part of the same question?

Mr. Katzenbach: Yes, this is part of the same question.

Q. Let me call your attention to page 13 of the report.

A. If I may read this, with the exception of the allowance for engineering and contingencies, no attempt has been made to estimate the cost of organization, experimentation, due to changes in the methods of operation, good will, franchise value, or expenditures during construction for interest, taxes, insurance, and casualties. The items enumerated above are represented in—that is something else.

Q. That correctly states then what you did include in the valuation of the physical property at that time?

A. Yes.

Q. The valuation you placed upon that property. Will you state what it was?

Mr. Record: I would like to cross-examine the witness a little bit before he states his valuation.

Commissioner Donges: On what point?

Mr. Record: On several points. It does not appear he did this work himself.

Mr. Katzenbach: I think he testified to that, with an assistant.

Commissioner Donges: I think that is proper cross-examination at the conclusion of his direct.

Q. What was the physical property valued at by you at this time, Mr. Betts?
A. $2,604,470.

By Commissioner Donges:

Q. That would be your estimate of the cost to reproduce as of February, 1911?

Mr. Sommer: New.

A. Reproduce new as of that time, yes, sir.

By Mr. Katzenbach:

Q. Mr. Betts, you are now the chief engineer of this board, are you not?
A. Something of that kind.
Q. How long have you been in the business of valuing street railway properties or public utility properties generally?
A. In the work of valuation, the work of valuation, of course, has been mixed up with other matters, but my first experience in street railway construction work commences with the summer of 1890, when I was employed by the Field Engineering Company, who a little later constructed the first line here in Trenton. I was not employed in Trenton. My work at that time was in Newark, the Oranges, the South Orange line, and the first electric road in Philadelphia, the Catherine & Bainbridge.
Q. You were fitted by education for that work, were you not?

A. Yes, sir; I was a graduate of Rutgers College in 1891. I said my first work was in 1890—I spent the entire summer of 1890 as a foreman on construction work of the Newark & Irvington Electric Railway, which was the first electric road in Newark, and then I returned to college, and in the summer of 1891 again went to work for the Field Engineering Company on the Orange line, leading from the outskirts of Newark up through the Oranges.

Mr. Record: What part of this is offered?

Mr. Katzenbach: The report as to the valuation.

Mr. Record: Is that the whole report? We haven't seen it, you know. Are you offering the whole report?

Mr. Katzenbach: No, only the report as to the value.

Commissioner Donges: It will be well, if you can, to say what pages.

Mr. Record: I would like to get some issue here. I objected to the report, and I understood that was overruled. Now, I understand he is going to offer a part of it. I wish to renew the objection to that. We don't know what is in this report, and obviously it is all pertaining to one job and the portion the Mayor thinks is not necessary we may think is very necessary.

Commissioner Donges: Is it your objection, if any is to go in, that all should go in?

Mr. Record: I don't think we have had a ruling on that, and I would like to object to that, if this is the proper time.

Commissioner Donges: The objection is that if any part goes in, that all ought to go in, that it is all part of the same matter.

Mr. Katzenbach: I will simply take a little bit more time. I will ask Mr. Betts to refresh his memory from his report and testify as to the value of this property.

Commissioner Donges: You don't desire to offer all of the report?

Mr. Katzenbach: I think there is a great deal of the report that has no bearing on this matter at all, and it will simply be encumbering the record to put it in.

Mr. Record: That may very readily be so. I wish to make my objection, and when I study it over perhaps we can agree upon the portions that go in.

Commissioner Donges: Suppose we recess at this time and perhaps Mr. Record's inspection of the document during recess may satisfy him, otherwise he may renew his objection.

Recess from 12.45 to 1.45 o'clock P. M.

(After Recess)

(Case now being heard before entire Commission.)

P. Betts resumes the stand.

Direct examination.

By Mr. Katzenbach (continued):

Q. Mr. Betts, I believe you stated that you and one assistant made the valuation of the property of these companies in 1911, is that correct?

A. Yes, I had one man help me at that time on practically all the work.

Q. And this valuation was made by you after personal inspection of this property?

A. It was, yes, sir.

Q. Annexed to your report there is an Exhibit C. Will you state, or not, whether that Exhibit C gives the detailed valuations by you of the properties of these four lessor companies?

A. This gives as much detail as I included in the report, based on my original lead pencil notes, and so on.

Q. On your original lead pencil notes then there was more detail?

A. Much more detail, and there were sketches showing the construction and almost all of the curves. At first I intended to count up the actual number of insulators at each particular curve. The final numbering or final enumeration of all the items was not made up quite as closely as that, because I found it appeared to me at the time to serve the purpose well enough to work out the amount of material per mile, and then taking the number of miles of that character of construction, and working it out in that way, so that my notes on which this is made do not include the total number of insulators of each particular class; they include the detailed number of miles, and include the estimates of the amount of material required, and so on, in each mile, and from which this is all summarized.

Mr. Katzenbach: I presume the witness could, by refreshing his memory from this paper, give that detailed valuation, but I thought of saving the time of the Board by just submitting that valuation. Would you prefer, Dr. Betts, to testify to it, Mr. Record, after his refreshing his recollection from this paper?

Mr. Record: I don't quite understand what you are doing. If you are going to put Mr. Betts on as testifying to the value of this property new in 1910—

Mr. Katzenbach: 1911.

Mr. Record: 1911, he made this document up from

a lot of detailed data, this document is a summary from that, and if he is put on as a witness on value he ought to produce his data, and we ought to have opportunity to inspect it and ought to have opportunity to get after him like an expert valuer.

Q. This is the result. I will ask you to refresh your recollection, Mr. Betts, from this report, and state just what the different items making up this valuation that you have testified to were?

A. I think the only way to do that will be to go right through this Exhibit C in detail and explain how I got these items.

Commissioner Donges: How many pages are there? What you are really doing, Mr. Katzenbach, is taking this report of Dr. Betts, which deals with the subject then before the Board, and it would appear that if the report is to go in and be used at all, it ought to go in in the entirety, it ought to show just what Dr. Betts' report was.

Mr. Katzenbach: This is all there is on the subject of valuation. I will then, in order to expedite the time of the Board, offer all in this report with reference to the valuation. It is contained in Exhibit C annexed to the report.

Mr. Record: We insist if any part is admitted, all should be admitted, for two reasons: First, because Mr. Betts was asked by this Board obviously to make a report for the purpose before the Board, and therefore all of his report with relation to the purpose before the Board ought to be here, so that we can argue about that purpose. Next, Mr. Katzenbach has introduced here in his formal proof today the certificate of the Board approving of this lease. That certificate was made up of a lot of information before this Board, including this report, including a lot of other written documents, and either now or at the appropriate time I want all of the facts that led to that approval that are on file in the Commission's

office to be introduced, and here that comes in, because the whole first part of that report is a portion of the information upon which your Board acted. Certainly if he has introduced one document, namely, we hereby approve of the lease, we are entitled to bring in and have put before the Board all of the documents upon which that certificate was based, so that portion of my objection is applicable here. This part of the report which he does not offer is a part upon which you act, and it is all material to Dr. Betts' testimony, because this is the study he made up, and in the preliminary part he states the situation.

Mr. Katzenbach: Would the Board hear me in reply to Mr. Record?

Commissioner Donges: Yes.

Mr. Katzenbach: It seems to me that this report was made up with reference to the approval of these leases. It would seem to me that whether these leases were or were not approved upon this report has very little bearing, in fact, none at all, upon this controversy. I have merely used Dr. Betts and this report for the purpose of establishing what the value of these properties was in 1911 and I am simply seeking to save the time of the Commission by offering this detailed estimate made by Dr. Betts at that time rather than to have him refresh his memory from it and then put it down upon the record, which would probably take twenty or thirty minutes.

Commissioner Donges: Mr. Katzenbach, you first offered a report to this Board by one of its engineers for the purpose of establishing value of producing to the Board some information which might support the conclusion you sought. Now, the Board is of the opinion that if that report is to be used in evidence at all, that a part of its files ought to go in as an entirety with all the explanation and all the reports on the related matters which was made then to the

Board, and the Board would be unwilling that Dr. Betts should be called at this time to report only the question of value, but if the report is to be used and the inspector to testify as to the report, he then made to this Board in 1911, the entire report, the whole record, ought to be in evidence in this case.

Mr. Katzenbach: Although it does not relate to value?

Commissioner Donges: It relates to the subject-matter which was then before the Board and concerning which the entire report was made, and the report ought to stand in its entirety, for whatever it may show was done at that time.

Mr. Katzenbach: Of course, if that is the ruling of the Commission, then the entire report is admitted in evidence, and of course there is no need of going into this valuation as expressed in the report.

Commissioner Donges: On direct examination, I take it the report speaks for itself and is subject, of course, to cross-examination. If you desire to offer it the Board will receive the entire record.

Mr. Katzenbach: Of course, I am only just offering part of the record. I see myself no reason, outside of the fact that it does not appear to me to be pertinent to this inquiry, of offering the entire report, except I do not intend to offer a thing by which we might be bound by some statement made by Mr. Betts that was apart from this controversy entirely.

Commissioner Donges: I don't know how far you are bound by what is contained in the report. Of course, that is a matter for you to determine.

Mr. Sommer: Is Mr. Katzenbach's chief difficulty that he does not want to be put in the position of making the offer of the report as a whole?

Mr. Katzenbach: Yes.

Mr. Sommer: Suppose we solve that difficulty in this way: It is true there is before the Board now in the record as offered by Mr. Katzenbach a certificate of the Board approving the lease.

Mr. Katzenbach: No, I think not.

Commissioner Donges: I have no recollection of its having been offered.

Mr. Sommer: You referred to it this morning, didn't you offer it?

Mr. Katzenbach: No, Mr. Johnson testified the leases had been approved by an order of the Board.

Commissioner Donges: There was no formal offer.

Mr. Sommer: What was in the other day?

Mr. Katzenbach: Do you mean on the other question? Yes, those are.

Mr. Sommer: It is in there.

Mr. Katzenbach: I thought you meant this morning on this question.

Mr. Sommer: Preliminarily, as I understood it, Mr. Katzenbach offered all the documents that were referred to in the bill of complaint.

Mr. Katzenbach: Yes.

Mr. Sommer: And among those documents is a certificate of the Board approving the lease?

Mr. Katzenbach: Yes.

Mr. Sommer: In that situation, of course, acting on behalf of the Board, I would offer in this proceeding all of the file of the Board which resulted in the issuance of that certificate. That file would include, of course, this report that is now the subject-matter of controversy, and I make the offer now, although it is out of order, of the entire file of the Board in the proceeding which resulted in the issuance by the Board of the certificate approving the lease. That means the whole of the file.

Commissioner Donges: Certain leases?

Mr. Sommer: Whatever they are.

Mr. Katzenbach: That is all right then.

Commissioner Donges: Which resulted in the order of March, 1911?

Mr. Katzenbach: Yes, the order of March, 1911.

Commissioner Donges: Very well, the entire record is received in evidence.

(Entire record of the Board relating to the approval in March, 1911, of the leases of the underlying companies to the Trenton & Mercer County Traction Corporation, received and marked Ex. C1.)

Mr. Record: While we are on these formalities, I want to arrive at an understanding with the Board and the Mayor as to some of this information. He very kindly said, as to the request we have made, they would offer their office to us, but you see by this report this was a merger in 1910 or thereabouts.

Commissioner Donges: No, it was a lease.

Mr. Record: They were leases, the same thing. The point is, he said to the Board that they may not have much before that. Each one of these com-

panies which they leased have their own entity preserved, they report to the State Board of Assessors every year and they are corporate entities and they have got the records, and all I am anxious about now is that our experts—that we should have an understanding. Do you represent the constituent companies? And if we find we cannot find the documents prior to the lease, have we then got to begin over again or can you speak for any of these companies and assure us we will have access to their records if we want to go beyond?

Mr. Katzenbach: I think there is only one company in this proceeding, and that is the Trenton & Mercer County Traction Corporation, and besides that, the records of these lessor companies are not in our possession.

Mr. Record: I know how to get at them well enough if I had to.

Mr. Katzenbach: I said anything we had in our office belonging to them, of course, you were welcome to.

Commissioner Donges: Any papers in the custody or control of the respondent company.

Mr. Katzenbach: Yes.

Mr. Record: I am going to apply to the Board later for a subpoena for these other companies.

Mr. Katzenbach: We are willing to give you everything that we have.

Mr. Record: I have only one or two questions to ask at this time, because I want to study that report.

Cross-examination.

By Mr. Record:

Q. How did you value the land, did you know anything about the value of the land?

A. With regard to the land, I visited the City Hall in Trenton, and also the Court House, in order to obtain the assessed valuation from the records, and obtained from Mr. Dullard, then in charge of taxation in Trenton, obtained from him copies on their own blank forms of the assessments on land belonging to any of these companies. To those figures—I assumed myself that those figures represented about eighty per cent. of the real value, as I found in looking around other parts of the State on some other valuations, that seemed to be a sort of a basis on which taxation was made, and added twenty-five per cent. to the assessed value as I obtained it from the records here in Trenton.

Q. You did not get any local real estate man's assessments here?

A. I did not, no, sir.

Q. Who was your assistant?

A. Mr. Irving, G. A. E. Irving.

Q. How much time was put on it?

A. I think he spent about three weeks in the field.

Q. Alone?

A. Alone in the field, and of that three weeks I was with him about four or five days, then most of the work after that was done in the office, but after we got most of our field work done, worked out generally, I went over all the lines with him to, in a way, check up what we had taken down in our field notes to start with.

Q. Take his case first. He spent about three weeks, what did he do?

A. He walked over all of these lines and made notes as to the type of construction, the kind of rail, the character of pavement, the type of construction as to whether wooden poles or iron poles were used, or as to whether there were two poles, a pole each

side with span construction, or a pole on one side with bracket construction; he also, in going over the lines in that way, which was all done on foot, he made a note as to where the feeders started, the individual feeders, where they started, where they ended, and the measurement of the length of those feeders was made up from the map after having placed on it the points of beginning and end of those feeders. In view of the fact, too, that the feeders from the power house to the lines do not all follow the tracks, those lines were traced out.

Q. By him?

A. By him, and placed upon the map.

Q. Were they measured by him?

A. Measured from the map, yes. I want to make it plain we made no survey on the ground. We took the regular city map and placed upon that our marks as to where the poles were located, and so on.

Q. Did he count the poles?

A. Yes, they were all counted in that way, too.

Q. Did he fix upon the character of the rail in each instance or each street or each system?

A. Partly, and partly by—well, I don't know I can say this—I was going to say partly by conference with the company as to just what the rails were at different points.

Q. Conference by him?

A. Conference by him and also with myself, but I am not quite certain now.

Q. Let us hang to him, I am asking about him for the moment. Can you say he conferred with the company, or can't you say?

A. I am not sure. I know, so far as he could, he inspected every foot of the track, but as to whether that track was six or seven inches deep, I think, to a large extent we relied upon the company for full information with regard to that. Just how much he conferred with the company I cannot say now.

Q. Did he turn that in to you? When you sat down with him to make up your figures, he had that information down on his notes, is that right?

A. That is the idea.

Q. And upon that information, by this unit method of yours per mile you put figures, is that right?

A. Yes, that is right.

Q. In taking your valuation and putting your figures of valuation on that you took the price of rails and of wires and of all the different materials which you used, which you think were the market prices at that time?

A. Yes.

Q. Using your judgment?

A. Yes. I cannot say definitely they were market prices at that time, because in going over this report I find with regard to the power plant, the value I have fixed on the power plant is a value which, in my opinion, is approximate of what the machinery cost, and annexed to that I have placed a statement that, at the time it could probably be reproduced for very much less money.

Q. That appears on your statement?

A. That appears on my statement, so this estimate of value was not strictly an estimate of cost to reproduce it at exactly that time, but in general was an estimate of the cost to reproduce it probably at the time the work was done, commencing, however, not back of 1891 at about which time the electrification commenced.

Q. Does that all appear in the report?

A. That does not appear, no. I mean the fact that the prices relate to that time, that does not appear.

Q. But you do say that in fixing the price on this, you did not fix the price it could be reproduced at, that is, this portion of it, but you took the cost price of it, original cost?

A. Generally speaking, I tried to put the cost price down.

Q. Where did you get that?

A. I got that entirely from my own experience.

Q. You didn't get that from the company's books?

A. Not at all.

Q. But you found out the time in which it was bought, the year, and figured the price of similar materials in that year?

A. Not exactly, no. I did not know in just what years each section of these lines were electrified, and at the time, not having very much access to the company's records, I did not make any very great effort to find out just what particular year the work was done.

Q. How could you tell what was the cost if you did not know the year?

A. What I took was—for instance, the cost of this machinery, I know that power plant was commenced about the year 1891.

Q. How did you know that?

A. I was employed by the company who did this work, although I was not engaged here in Trenton at that time.

Q. Do you know, as a matter of fact, or did somebody tell you, that that property, the power house, was started in 1891; didn't somebody give you that information?

A. No one gave me that information, no, not then. I was with the company at the time the company was working here on the electrification of the first lines, just which lines they were I don't know, and I don't know just which lines were done in each year.

Q. How could you tell anything about the cost for that year?

A. I am saying that I did not place a cost as of that particular year. These figures of cost, my estimates of those costs relate to the period, they would range from 1891 to say 1898 or 1900 at the latest, and those costs, in my opinion, will very fairly represent the cost of machinery, poles, wires, and so forth, during that period of years.

Q. Did they vary?

A. They varied, yes.

Q. How much?

A. That is a little hard to say. Rails—it is going back into history a little bit—rails varied from something like twenty-one dollars and a half, if I am not mistaken, to about twenty-five dollars and a half per ton. I could not say either just what years any of those prices were the correct prices.

Q. But nevertheless you used those prices, or the prices arrived at from your recollection in that way, in making up your report?

A. That is correct, yes, sir.

Q. You did not try to locate the market prices by any official record of one year, and then figure that so many of the rails were put in that year and attach that value to them?

A. I did not, no, sir, not at that time.

Q. When you went over the lines with your assistant you could not, of course, in the rapid way you went over it, verify all of the measurements and details he had painfully gathered together in three weeks, that is to say, you could not do in three or four days what he did in three or four weeks?

A. The first two days I was with him we worked together on making sketches of the exact conditions at curves, and it was my intention to have him complete that as we went along. It did not appear that great accuracy with regard to the total number of individual insulators, and so on, or individual items of the overhead construction, it did not appear that great accuracy in that would help very much when we came to the total, because an error there of perhaps ten per cent. in the total number of items of overhead construction might, in the total amount, be not more than an inaccuracy on the whole of two or three per cent. Therefore, I say, we changed this plan of not counting the individual items of overhead construction, or change the plan to make an estimate of the number of items per mile, and then taking the number of miles. I worked with him right on the street during the first two days and perhaps the third day, in mking those sketches and showing him just how I wanted that done.

Q. But later on you took the product of his three weeks' work in the office and put values to that, is that right?

A. Yes, sir, that is right.

Q. To what extent did you examine the condition of the structure that did not appear to the naked eye, the underneath part?

A. The ties, and so on?

Q. Yes.

A. I don't think any examination was made of any part of that within the city where the streets were paved. The lines outside, the suburban lines, were all walked over from one end to the other, but there the ties were all in sight, rails, ties and ballast.

Q. Walked over by your assistant?

A. Yes, and partly by myself.

Q. To what extent by your assistant and to what extent by yourself?

A. I walked over the entire length of the State Street line, the entire length of the line up Prospect Avenue and around Stuyvesant, and the entire length of the line at Hamilton that goes around into Olden Avenue, and back to East State, and the entire length of the line that runs down past the Court House and down to the Liberty Street barn, but not the one that runs clear down to White Horse Pike. I did, however, walk over the portion of the line from White Horse down to Crosswicks.

Q. As you walked over this line outside of the city where it is exposed, did you make notes of the condition of the ties?

A. Outside of the city, yes, sir.

Q. Make notes of the condition of the ties in what way, what kind of a note did you put on?

A. In general, as to the general condition as to age, and rottenness, and so on.

Q. Did your assistant make notes also?

A. Yes, generally speaking, I think so.

Q. Separately from you?

A. I am not sure.

Q. Didn't you say a few moments ago he went over these lines and you did too?

A. Yes.

Q. And you don't know whether he returned to you any memorandum showing the condition of the ties and foundation outside of the city limits upon which you acted, or whether you applied that by yourself; is that your testimony, you don't know which?

A. Yes, I don't remember at this moment.

Q. Would there be any way of finding out?

A. I think so, yes, because at that time there was a complaint before the Board with regard to the condition of this system and the result of the complaint was a report and recommendation that certain things be done.

Q. That could be found out as to how much of that you did and how much he did?

A. I think so, yes, sir.

Mr. Record: That is all.

Re-direct examination.

By Mr. Katzenbach:

Q. Mr. Betts, you then took the price of the rail as of the date that you thought the construction had been made, do I understand?

A. Not exactly so. As I say, this work was all done between the year 1891 and perhaps 1898 or 1897. I did not make any great effort to find out exactly. It was all done within a period of five or six years, and my best knowledge of the cost of railway material, and so forth, refers to that period, was indiscriminately without attempting to place any particular item of construction in any particular year or without any attempt to place any of these prices, I had in mind as applicable to any particular year. I applied those prices, generally speaking, to all these items of plant.

Q. But in 1911 there had been a very great increase, had there not, in the cost of these materials, as compared with the years which you have stated?

A. Well, there had been increases in some things, some other things there had been decreases.

Q. Take rails, for instance. What did rails sell for per ton?

A. Rails had increased in price.

Q. About how much?

A. Rails have sold as high as thirty, $32.40, and

in 1893 I think we purchased rails, in 1894 we purchased rails for a road in Pennsylvania at $22.40.

Q. So that was a difference of at least ten dollars a ton?

A. Yes.

Q. Girder rails sold as high as $38, $39 a ton, did they not?

A. Yes, they did.

Q. That was so in 1911?

A. Yes.

Q. But these costs that you made this report from dealt at a period anterior to 1911?

A. Generally speaking, that is true, but the prices per mile, where these prices per mile are used for track construction a general figure was used, which ought to have taken into account costs as they were along about 1910 to 1911.

Q. Mr. Betts, in taking up the valuation of the land which you were interrogated about by Mr. Record, did you add anything for the plottage value?

A. No, I did not. In fact, I knew very little about those elements at that time. I don't know they are especially applicable either to any of these properties, specially.

Q. As a matter of fact, you did not take that element into consideration, did you?

A. I did not. I took the assessed values as given to me by Mr. Dullard and added twenty-five per cent. on the assumption that they were assessed at about eighty per cent. of their general value. I made no other inquiry as to the value of the land.

Q. Did you add anything for what is known as the contiguity value of the right of way?

A. No, I have explained how I got my value.

Commissioner Donges: Why did you add twenty-five per cent. to the eighty per cent. assessment?

Witness: On the basis that the property was assessed at about eighty per cent. of its real value.

By Commissioner Treacy:

Q. Twenty-five per cent. would make one hundred and five per cent.?

A. Twenty-five per cent. of eighty would just make about one hundred, twenty-five per cent. of the assessed value.

Re-cross examination.

By Mr. Record:

Q. Does it appear in your report, Mr. Betts, to what extent you added a percentage? In testifying this morning you said on one line you added twelve and a half per cent., does that appear in all of them?

A. On the Trenton Street Railway there is fifteen per cent. added.

Q. That appears in the report, that is all I want.

A. Yes, sir.

Q. It appears whether it was added or whether it was not added, doesn't it?

A. Yes, sir.

By Mr. Katzenbach:

Q. I think your testimony was that that was added to cover the incidental expenses and engineering?

Commissioner Donges: Omissions and contingencies.

Q. Incidental expenses and engineering?

A. On page 13 I will read this again. With the exception of the allowance for engineering and contingencies no attempt has been made to estimate the cost of organization, experimentation due to the changes in method of operating, good will, franchise value, or expenditures during construction for interest, taxes, insurance, and casualties. Under the word "contingencies" I had in mind errors and

omissions and all those allowances that a contractor makes in figuring out the amount of material needed.

Q. Dr. Betts, there was nothing in this for working capital?

A. I don't think so.

By Commissioner Donges:

Q. If there was it appears in the summary, doesn't it?

A. The summary is made up of the items, so if it is not there ——

By Mr. Katzenbach:

Q. I did not find it there.

A. Nothing of that kind in there.

Q. It is not there, is it?

A. It is not there, no, sir.

RANKIN JOHNSON, recalled on behalf of Trenton & Mercer County Traction Corporation.

Direct examination (continued).

By Mr. Katzenbach:

Q. In the fall of 1910, in the summer and spring of 1910 and winter of 1910 and 1911, did you make yourself any examination of the physical condition of this property, and appraisement of it?

A. Yes.

Q. What, in your opinion, was the value of the physical property?

A. My valuation was one of a study of the property from almost continuous visits, and then general approximate estimation of the cost of replacement and for the physical value, which I estimated about three million dollars.

Mr. Record: It seems to me that is not a proper question at this moment. He is asked to put a value on this. He ought to state what he did, how he got his information, what was his general line, not simply testify out of hand.

Commissioner Donges: Do you challenge his competency as an expert?

Mr. Record: Yes, certainly.

Commissioner Donges: You may cross-examine as to that, if you desire.

Mr. Record: It seems to me nothing has appeared here yet.

Commissioner Donges: Mr. Katzenbach took him over some ground which I took to be a qualification of the witness as an expert.

Cross-examination.

By Mr. Record:

Q. Did you make any physical examination of this property yourself?

A. Yes.

Q. How did you do that?

A. I have frequently walked and ridden, driven, been in the cars, over all the property, frequently examined the car houses and the plant in the car houses and in the power plant. I have studied the reports, I have studied many times the inventories and reports of plant, I have examined the existing items of plant and property with a view to possible replacement at a future time when they might wear out, or if such time were approaching within the immediate future I have made careful examinations of them with a view to that. I have examined the records of the company of the cost of the items of plant and property, I have asked for frequent estimates,

many estimates for cost of replacement from the manufacturers who would replace the particular detail.

Q. Did you ever do that in any continuous way, did you ever start in on a certain day and make notes of what you saw and of its condition and of the price, and of all that, did you make a set of notes at any one time?

A. Yes, I have made notes for a certain part of a property at one time, another part of the property another time. I have made notes of the cost of replacement.

Q. Where are those notes?

A. They are in my office, but they are notes for my own use in reports. From the time I first came in, early in 1910, until the application to the public Utility Commission, and during the hearing before the Public Utility Commission, and since that time, it has been a continuous estimation and study of the value and cost of replacement of the property.

Q. I don't doubt that. I am tryng to get you to say to the Board where your detail is, such and such street, so many rails, double or single, such and such engine of such and such a year. Have you ever made a valuation from start to finish as you would go to value a property, keeping your notes from start to finish and counting up all of the property and have you such notes?

A. I said this was a general approximate estimate of the cost of replacement, not taking every detail, and it was not intended to be perfectly exact, but to be reasonably exact.

Q. Yes, but the question I am trying to find out is, how far was it reasonably exact and how far was it generally exact, that is the very point I am driving at.

A. It was both reasonably and generally exact.

Q. Tell us a street, what you do, how you arrive at the value of any mile of this track.

A. I did not hear the first part.

Q. Tell us any particular day's experience, what

you did that day, what the notes were and where they are.

A. I cannot give dates, what I did any particular date back in 1910, but I have walked—if what you mean is, do you want me to tell you what lines I have walked over, been over?

Q. I want to know a day's work of this appraisement that you are going to testify to. You must have made up an appraisement of this property the same as everybody else does, must have inspected it, had a memorandum on a piece of paper of the condition of the property, the size of it and make of it, and over against it you must have put against it sometime, either then or later, the value. Tell us a day's work and tell us where the notes are.

A. As I understand, there are two ways of making a valuation. One of them is the effort to take every smallest item of material that can be counted and written down and valued, and another way is to make an approximate cost of reproduction where you do not take each item, but where you do it on a mileage basis for track after examining the track, knowing the weight of rail, knowing the ties that were used, knowing the type of construction of that particular piece of track. Take the car barns, car houses, take the number of the car houses, knowing the area, knowing the buildings, knowing the cars, knowing the type of cars, the number of each car, and then in those details put opposite them the prices that we have in our office, and that was what I did, but I don't want you to misunderstand me, it is not the cost of each smallest item of plant, which would take months of continuous work. It is a general estimate which I consider reasonably accurate.

Q. Let us get an item; we will arrive at any item. I understand you to say that this last part, this general way, is the way you have made it up. How did you get the item of the machinery in the power house?

A. I took each machine in the power house, with the cost of that machine, the value of that machine.

Q. Did you have that cost?

A. Yes.

Q. Where did you get it?

A. From our office records, or from applying to the manufacturers for the cost of replacement.

Q. Do you remember which you did?

A. I did one thing in one case and one thing in another, and knowing the relation between the two costs ——

Q. Have you a record in your office of the cost?

A. Yes.

Q. Have you a record of the cost of every item in the power house?

A. Yes, sir.

Q. Have you a record of the cost of the poles?

A. Yes.

Q. Have you a record of the number of the poles?

A. The number, taking the average number per mile and the number of miles ——

Q. I mean the actual number.

A. Very probably we have, but in my estimate I took the number per mile and number of miles over different sections of the city.

Q. Have you a record of the rails and different weights?

A. Yes, sir.

Q. And of the times they were put in?

A. Yes, sir.

Q. And of the cost that they cost?

A. When they were put in?

Q. Yes.

A. No, that gives the cost at the present time.

Q. How is that?

A. The cost at the present time, that is, cost during the past few years of those rails. I don't know what the cost of those rails were when they were put in.

Q. I asked you if you had a record in your office of the cost of the rails.

A. At the present time?

Q. No, the cost of the rails when they were purchased.

A. No, I have not.

Q. Did you say you have or have not?
A. I have not.
Q. You don't know what they actually cost?
A. When they were put in, no.
Q. Have you got a record in your office of the paving cost?
A. Of the paving cost, when it was done? No.
Q. Have you a record in your office of the power plant when it was installed and the cost then?
A. The actual bills, you mean?
Q. Yes.
A. No.
Q. Of what part of this property have you or had you in the office any records at all of cost or of size, cost first?
A. I have a record of the cost of everything that has been done since 1910, I have a record of some of the costs previous to 1910.
Q. How much is roughly grouped in each, in your valuation, how much of it?

Commissioner Donges: Mr. Record, aren't you going a little outside of the scope of preliminary examination? Aren't you really going into the cross-examination of the detail of his appraisal?

Mr. Record: Yes, I am. My thought was, he is an office man ——

Commissioner Donges: Yes, I know. Isn't this rather a cross-examination at the conclusion of his direct examination when he may have submitted his judgment or his conclusion rather than a preliminary examination as to his competency?

Mr. Record: I am trying to get at —— Perhaps it is, perhaps I am open to that objection. I did not think so. My point was to show, to try to find out upon what he made this valuation. If he did not make that upon anything it goes to his competency, if he just took something in the office.

Commissioner Donges: The question is whether or not as an engineer he has experience and training to qualify him to express an opinion.

Mr. Record: I haven't a doubt of that.

Commissioner Donges: And then as to whether that opinion has any value, whether it would be entirely rejected by the Board, both by reason of the method of its making as well as the conclusion, goes to the real competency of the report.

Mr. Record: I am with the president on that. I don't question his competency, I am trying to find out whether he did anything or not.

Commissioner Donges: Isn't that a matter of cross-examination in testing the accuracy of his conclusion?

Mr. Record: It is, but here is a witness produced on the stand, nowhere does it transpire from the Mayor's questions as to whether he ever made a valuation of this in any proper way or not.

Commissioner Donges: Very well, that would go as to the probative force of his testimony.

Mr. Record: That was what I was driving at. If you think that properly belongs at the end, it does not matter to me. I do not deny his capacity to make a valuation. I just question he has ever made any.

By Mr. Katzenbach:

Q. Mr. Johnson, with reference to the value of this property in February, 1911, are you familiar with the reported value given by Dr. Betts?

A. Yes.

Q. What was that valuation?

A. $2,604,470.

Mr. Record: I would like to look over these records. I would like to object to that question and that answer. Here is the report in here; here is the testimony of Mr. Betts. I insist that is not a valuation at all, and on the record that goes up to the Court, this man interprets Mr. Betts' testimony in Mr. Betts' report, and I say that I have a right to have Mr. Betts' testimony stand and his report stand, and certainly this man is no expert upon what Mr. Betts said or wrote. Let him testify what his value is, then the Mayor can argue what Mr. Betts said. I deny that Mr. Betts has made any valuation. I object to getting upon the record any witness saying that Mr. Betts' valuation was so much. That seems to me obviously so.

Commissioner Donges: The report stands for itself.

Mr. Katzenbach: I was asking the witness whether he was familiar with what Mr. Betts said was his valuation of it.

Mr. Record: Let him say yes, let him stop there. I move to strike out everything except yes.

Commissioner Donges: I think Mr. Record's objection must be sustained, because under well-known rules the report speaks for itself, it is in writing.

Mr. Katzenbach: I am not questioning the report of Mr. Betts. I only want to know if this witness knows the valuation Mr. Betts placed upon it.

Q. Do you know?
A. Yes.

Commissioner Donges: The previous answer, to which Mr. Record objected, as to the amount, may be stricken out.

Mr. Katzenbach: Certainly I can be permitted to

use Mr. Betts' amount for the purpose of deducing certain figures from this witness.

Commissioner Donges: We will let each question stand on its merits.

Q. Will you state, Mr. Johnson, whether or not there is any depreciation for the purpose of fixing a rate, that you are aware of, that is made from the valuation of the cost of reproduction?

Mr. Record: I object to that question. That is a thing the United States Supreme Court and this body and a dozen others in this country are grappling with at this moment. He certainly cannot answer about that.

Commissioner Donges: Why can't he, if he is competent as an engineer, dealing with an engineering question, express his opinion?

Mr. Record: Fixing a rate is not an engineering question. He can say such and such property ought to have such and such depreciation in order to compare with the cost of reproduction, but when he is asked to say whether for the purpose of fixing a rate depreciation ought to be put on, he is no expert and none of us are.

Commissioner Donges: We think the objection is well taken.

Mr. Katzenbach: May I enter an exception?

Commissioner Donges: Yes.

Q. Mr. Johnson, have you given special study to the question of rates upon street railway companies?

A. Yes.

Q. Are you familiar with the actions of various Commissions upon the subject of any allowance or

any deduction for depreciation upon the cost of reproduction?

A. That is a subject which is discussed a good deal, but the opinion has often been given that for purposes of rate-making ——

Mr. Record: I object.

Commissioner Donges: You are asked whether or not you know; you are not asked to give your judgment as to what Commissions may have held. Read the question.

(Question read.)

Commissioner Donges: Are you familiar, is the form of the question.

Witness: May I give an answer first, because I have to explain my answer?

Commissioner Donges: You may give a categorical answer to that question, you either are or are not familiar with the rulings of Commissions.

Witness: I have read the discussions in connection with the rulings of Commissions in these matters.

Mr. Katzenbach: That is equivalent, I suppose, to an answer, yes.

Commissioner Donges: I don't know whether it is or not.

Mr. Record: That is not an answer, yes.

Commissioner Donges: I don't know whether the witness intends by the answer, whether he intends to so qualify his answer so it is to be taken in the negative, or whether he means he is familiar.

Witness: I have read discussions on such questions.

Q. Have you made any special study of the question of street railway valuation for the purpose of making rates?

A. Yes.

Q. Have you read the discussions of the valuation of other public utilities for the purpose of making rates?

A. Yes.

Mr. Record: I object to that; that has nothing to do with this case.

Commissioner Donges: He is asked whether he has made certain studies.

Mr. Record: Even if he has, it is immaterial.

Commissioner Donges: It may or may not be.

Q. Have you studied the reports and decisions, for instance, of this Board and of the Supreme Court and of the Court of Errors of this State with reference to the Passaic Gas case?

A. I have, yes.

Mr. Record: I again renew my objection to this line. Here we have the Supreme Court decide one way, the Court of Errors decide one way, reverse itself, upon two important points, muddling this whole question up; here is a civil engineer and he is asked if he knows about this great rate-making question; it is absurd, whether he does or does not, nobody else on earth does. It is perfectly absurd he should ask that question.

Commissioner Donges: He is simply asked whether he has studied these questions. We will permit the answers thus far.

Mr. Katzenbach: I take it all expert testimony must be for the purpose of enlightening the Board.

Commissioner Treacy: You asked him what we have decided; we are familiar with that, what we have decided.

Commissioner Donges: The best evidence of what other Commissions and Courts have decided are the printed reports of such decisions.

Mr. Katzenbach: That might be the best evidence, but I am qualifying him for the purpose of expressing an opinion.

Commissioner Donges: As to what some Commission has held or what the Court of Errors in New Jersey has held?

Mr. Katzenbach: As to what the general view of railroad men is about a certain subject.

Commissioner Donges: If that is based, Mr. Katzenbach, upon the reported opinions of Commissions and Courts, this Board would require the evidence to come from the reports.

Mr. Katzenbach: It is not based solely on that. It would probably be based upon conversations with other people engaged in the business, from his own observation, from other reports he has made, and things of that kind. All of those things go into making up elements which qualify.

Commissioner Donges: Ultimately it is your purpose to ask him whether or not depreciation must be considered in fixing a rate?

Mr. Katzenbach: Yes.

Commissioner Donges: There is no question pending.

Mr. Katzenbach: I will put the question then. There is no use of taking up the time of the Commission.

Q. Have you made a special study of the question of depreciation of railway properties as affecting the fixing of rates of street railway properties?

A. Yes.

Q. Will you state whether or not in your opinion the item of depreciation should enter into the fixing of the rate?

Mr. Record: I object to that.

Commissioner Donges: What is the character of your objection?

Mr. Record: My objection is, he shows no capacity as an expert to have any opinion upon that at all. He says he has made a special study of these cases; he don't state what cases, don't state when, or don't state the results of his study, don't state what anybody has held.

Commissioner Donges: He is now asked to state the results of his study.

Mr. Record: No, he is not. He is asked what is his opinion as to whether any deduction should be made in a rate case. He hasn't any ability to pass upon that. He may say, I think in 1910 the proper depreciation for the purposes of bookkeeping, for the purposes of keeping the property up-to-date, or for any other purpose—he may state the relation to his business, not the relation to yours—let him say there should have been a deduction made of fifteen per cent., or there should have been a deduction made of two per cent. in order to keep that up-to-date, but he is now asked to tell this Board as an expert in rate-making whether or not any deduction should be made in a rate case. That is your function. There isn't an expert alive on that. All an

expert can do is to simply say, in order to keep the property up-to-date, so much should be deducted, or he can say that property in 1911 was in perfect shape, it had been installed within a year, there wasn't a thing in it that had depreciated.

Commissioner Donges: Is that true, if as a rate expert he is endeavoring to proceed upon some line of thought as to what element should be considered by a public body in fixing a rate. Depreciation is merely an element in rate-making, and this witness may say it is not an element which ought to be considered in rate-making, it does not enter into the problem one way or another. If he is qualified as a rate expert, may he not express a view as to what in his judgment ought to be considered, not the conclusion which the Board ought to reach?

Mr. Record: I answer that for two reasons: In the first place, we are inquiring about the condition of a particular piece of property on a particular day. He is set up here, undertaking to be made in one question an expert upon rate-making, and asked a general question without any reference to this case as to what should be the depreciation in rate-making. If the question is in 1911 or today should there be any depreciation allowed from the valuation which he makes, or which Mr. Betts has made, let him state yes or no, and his reasons why. I have no objection to that, but I do most earnestly protest against the man stating merely that he studied rate-making without stating what cases he has considered, and confessing he is not a lawyer.

Commissioner Donges: Is your objection chiefly to his competency to testify?

Mr. Record: Surely, absolutely, and it is irrelevant anyway. He has not qualified as an expert upon rate-making at all. If the Board thinks there is any doubt about that, let me ask him questions. We will find out all he has done is read the Passaic Gas case and some other things.

New Jersey State Library

Commissioner Donges: I think you have offered this witness now in a somewhat different capacity than that which he was originally qualified to testify about, and if you desire to use him as a rate expert there ought to be qualifications along that line. If you have finished along that line, counsel may cross-examine.

Mr. Katzenbach: I have no objections to qualification. My purpose in this is, in order to get certain figures before the Board for their consideration, the aspect in which this corporation looks at this question, and certainly they are entitled to the benefit of the opinion of their president insofar as there may be certain elements which ought to be added or deducted, or something of that kind. In that connection he is an expert as to their figures, where they have been arrived at by their actual expenditures, or by actual valuations made by him. Of course, he is an expert to the extent that he is qualified to make those examinations.

Commissioner Donges: I understand there is no objection to his competency as an engineer. Now, you offer him to give an expert opinion upon the question of rate-making.

Mr. Katzenbach: Not the general subject, upon whether in rate-making there is any account taken of depreciation, where you have fixed the cost of reproduction of your property.

Commissioner Donges: Mr. Record's objection is that he has not shown his competency as a rate expert.

Mr. Katzenbach: I ask permission to have Mr. Record cross-examine.

Commissioner Treacy: I don't see it is necessary, he has not shown his competency, you have not shown his competency as a rate expert.

Mr. Katzenbach: If the Court rules his competency has not been shown, I will put certain other questions.

Commissioner Donges: You may pursue your examination.

Q. Mr. Johnson, will you state what study you have made from every source whatsoever, to express an opinion as to whether there should or should not be any depreciation made upon the cost of reproduction of property where the question under consideration is that of fixing a rate?

Mr. Record: I object to that question, that has nothing to do with this case.

Commissioner Donges: He is asked whether he has made a study merely to inform himself in order that he may pass judgment, not what his judgment is.

Mr. Record: Grant that. What is the distance of the sun from the earth? It is not relevant to this case. He is now asked to advise this Board as to whether or not, in rate-making generally, there should or should not be depreciation.

Commissioner Donges: No, he is not in this question at all, he is not asked that.

(Question read.)

Commissioner Donges: The question seems to be unobjectionable; we will allow it.

Mr. Record: I would like an exception to that.

A. I have read every article that came before me, that was called to my attention, or that I found on the subject of this discussion, particularly the argument as to the point that if deduction from cost of

reproduction now is made for depreciation, it is in effect lowering a rate for a depreciated property, where a new property would be permitted to charge a higher rate. Carried to a conclusion, it would mean that a property which was very much depreciated, would carry passengers for very little, while a property which was new would carry them for the highest allowable rate, while, as a matter of fact, the depreciated property would, if anything, be more in need of revenue than the property which was in first-class condition.

Q. You have read articles on this subject; what other articles, and with whom have you conversed and informed yourself on these matters?

A. I have conversed with engineers, J. G. White & Co., engineers, Mr. Ford, of Ford, Bacon & Davis, I have discussed them with engineers at the Electric Railway Association convention as such subjects come up, in which we are all interested.

Mr. Katzenbach: We submit he is qualified; he is an engineer, been engaged in street railway work, the actual operation of it, and has made a special study of these matters.

Commissioner Donges: The Board is of the opinion he has not qualified as a rate expert, Mr. Katzenbach.

Mr. Katzenbach: I did not want it as a rate expert, as a question on the subject of depreciation as affecting the rate.

Commissioner Donges: We think he has not qualified to express an expert opinion on that subject.

Mr. Katzenbach: May I have an exception?

Commissioner Donges: Yes, you may.

Q. When your company took hold of this property in the year 1910, will you state whether or not

in your opinion the property required certain additions and betterments?

A. Yes.

Q. From the time of the making of this lease on down to the first of August of this year, or we might say the seventeenth of August of this year, will you state whether or not you have a record of the moneys that have been expended by this company in the shape of additions and betterments to this property?

A. I have.

Q. Have you that record by years?

A. I have with me only the total.

Q. You have with you the total?

A. Yes.

Q. Will you state what the total amount is that has been expended?

A. $821,833.31.

By Commissioner Donges:

Q. Between what years?

A. Since October 16th, 1910.

Mr. Record: I don't wish to delay you, but do you intend to offer the items of that?

Mr. Katzenbach: If you want them.

Mr. Record: Certainly, we want them.

Mr. Katzenbach: We will be glad to offer them.

Mr. Record: If you don't mean to do it, it seems to me the objection is open that we are entitled to the items.

Commissioner Donges: Do you want them in detail, in what detail do you ask for them?

Mr. Record: He gives us a total; I don't know what it is about; he has to give the items so I can cross-examine.

Witness: The items can be provided for the Board from our office.

Q. Have you the items here, Mr. Johnson?

A. I have not.

Q. You have not?

A. No; the total was prepared from the items by our auditing department, by our auditor, I just have the total with me.

Q. But as those moneys were expended from day to day and week to week, did you keep in touch with the expenditures and can you state whether or not those moneys were actually expended?

A. They were. Nothing was done in the way of this without my previous approval and previous examination, and a study of the particular project or item of expenditure. I take the responsibility for the approval of all of it, and for knowledge of all of it.

Q. Will you state in detail exactly, without reference to the items now, just generally, what your company has done with this property since it acquired possession under these leases?

Mr. Record: There appears upon this record now a statement that a total expenditure of some $800,000 has been spent. This witness says that total was made up by his auditing department and handed to him. Obviously, therefore, he does not know whether that is a true total or not. I don't wish to embarrass the other side by producing original testimony, I only want to keep the record straight. This witness is not the man to testify to that total. The man who made up the total is the man to testify, so we can ask him what the items were, how they were made up on the books, who directed him to make them under that heading, so we can determine what each item would be, whether it is entered upon the books. On the record it appears he does not know anything about this total.

Commissioner Donges: I understood you would

be content for the present if you received the statement in detail of expenditures so that you might check up on that and make further examination, perhaps call for the submission of the witness who is familiar at first hand with the expenditures.

Mr. Record: I think we can arrange that. I don't want that record to appear that way, let that total go in evidence. I don't wish to embarrass the Mayor. I will consent that is so much when we come to it. I don't want the record made up wrong. He has testified to a total, and in the next breath says it was handed to him by the auditing department. I object to that standing there as a bit of testimony.

Commissioner Donges: We will let it stand. You may, if it appears it is not supported, you may renew your motion at the proper time. In the present state of the record we will permit it to stand.

Mr. Record: I would like an exception to that answer upon the record.

Commissioner Donges: Very well.

(Question read.)

Witness: At the power house we put in a new enlarged improved modern switchboard. We doubled the capacity, more than doubled the capacity of the generating machinery in the power house by the installation of turbine, turbo generators. We installed motor generator sets for two of our suburban, of our longest suburban lines. In this connection I might say that our power house is a direct current plant, and when we came here there was some difficulty in transmitting this current to the farthest half of the two longest suburban lines, which are thirteen miles long each, and these motor generator sets improved the current conditions and the service on those lines. We built quite an addition to our power house for this additional machinery. We added to the boiler

room of the power house and installed three additional boilers, two of five hundred horse power capacity each and one of nine hundred horse power capacity, the previous boiler capacity having been two five hundreds and two four hundreds. Those are still there and still in service. We erected two additional stacks, there having been one stack previously. There had been trouble in the past causing interruption to service, due to floods in the creek passing by the power house, from which water for the condensers is supplied. These floods would enter the power house and put out the fires in the boilers and stop service. We built a retaining wall at a cost of over fifteen thousand dollars to keep out from the power house in the future high water. We built an additional—at the car barn we have built an additional brick car barn 350 feet long and 50 feet wide, with a second story on part of it for the use of the men. We erected a steel structure, corrugated iron car barn for the storage of cars, summer cars in winter and winter cars in summer. At the rear of our car barn property we bought an additional piece of car barn property. We added several pieces of machinery for use in rehabilitating our cars, in order to enable us to completely reconstruct a car. On our track we have completely reconstructed eight miles of track and partially reconstructed about two miles of track. We have welded and ground smooth about 2300 battered joints, track joints. As track has been used a few years' time, often the receiving rail at the rail joint becomes battered because of the pounding. These joints were all opened, raised slightly, welded together, and ground to a smooth surface. We have greatly improved, rehabilitated our suburban track, having replaced about 55,000 ties. We constructed a piece of second track on Hamilton Avenue. We have done a good deal of new paving of a greatly improved type. In cars, in 1910, there were ten double truck cars and forty-nine or fifty single truck cars. We have added forty more double truck cars, so that now we have—and we have rebuilt the ten double truck cars, which were on the property in 1910, so

that we now have fifty double truck cars. We have largely rebuilt the overhead wire work and added a large amount of feeder wire. We engaged an electrolysis expert to come and examine our return feeder system and to report whether, with the recently increased service requirements on the return feeder system, we had adequate provision for the return of electric current to the power house. His report was made and all his recommendations were carried out, which would, according to his report, make the property commercially intact so far as the return current was concerned.

I don't think of any other item. I haven't any notes covering those, that is from knowledge of the situation.

Q. Mr. Johnson, you are familiar with the gross receipts of the company, are you not?

A. I am.

Q. Do you also know of all of the expenditures made by the company for operation, maintenance, taxes, interest on bonds, and so forth?

A. I do.

Q. State between what periods you make a complete record of the year's operation.

A. Our fiscal year and the calendar year are the same.

Q. At the end of every fiscal year do you file with this Board a detailed account of your gross receipts and all of the expenditures of your company?

A. We do.

Q. Out of the earnings?

A. Yes.

Q. When was the last one of those reports filed?

A. Covering the period ending December 31st, last, 1914, I don't remember the date it was filed.

Q. What year would it cover then?

A. The calendar year, 1914.

Q. Have you a copy of that record with you?

A. I have not with me.

Q. Are you familiar, have you the data from the record?

A. Yes, to a certain extent. It is quite an elaborate record and is filed with the Board.

Commissioner Donges: It is probably in the statistical department of the Board at Newark; it is available, if you desire.

Mr. Katzenbach: We have here figures that can be easily verified. I thought you had a copy of that.

Witness: I can send for it if you wish.

Commissioner Donges: We are almost down to the time of adjournment.

Mr. Katzenbach: I think I can get along very well without it, and it would seem as if this inquiry would have to continue longer.

Q. Mr. Johnson, will you state what the receipts of the Trenton & Mercer County Traction Corporation, as lessee of these properties was during the year ending December 31st, 1914?

A. $776,548.48.

Q. Will you state from those gross receipts what items are deducted in order to ascertain the net receipts?

A. The operating expenses, including maintenance, replacement, and taxes, amounting to $523,-861.78.

By Commissioner Donges:

Q. That includes replacement?

A. Yes, maintenance, replacement and taxes, leaving ——

By Mr. Katzenbach:

Q. Pardon me just a minute. Will you state what items you include in operating expenses, in order

that there may be no misunderstanding as to these figures?

A. Operating expenses cover all the pay rolls, the expenses connected with operating the property, including the maintenance and replacements. Maintenance and replacements are provided for from a depreciation fund, to which is appropriated a certain yearly amount, and which is supposed to replace the different items of property as they become worn out, provided the depreciation is sufficiently large, due to the gross receipts being large enough to appropriate a sufficient fund to depreciation.

Q. Will you state, under that definition, what your operating expenses were for the year 1914?

A. I have just given our operating expenses including maintenance, replacements, and taxes.

Q. I want you to separate them. You did not include taxes in your last definition of operating expenses.

A. Our taxes, in round numbers, were $50,000. I haven't the exact amount.

Q. I would like to have the exact amount, can't you find it there?

Commissioner Donges: Mr. Katzenbach, we will recess at this time. We cannot finish the examination of this witness.

Adjourned until Tuesday, October 26, 1915, at the State House, Trenton, N. J., at 2.00 o'clock P. M.

SECOND HEARING.

Trenton, N. J., Tuesday, October 26, 1915.

Before the following Commissioners:
R. W. E. DONGES, ESQ.,
J. J. TREACY, ESQ.,
J. W. SLOCUM, ESQ.,
F. H. SOMMER, ESQ., Gen. Counsel.

For City of Trenton appears GEORGE L. RECORD, ESQ., and C. S. BIRD, ESQ.
For Trenton & Mercer County Traction Corporation appears FRANK S. KATZENBACH, ESQ.

Mr. Record: I would like to call attention—I don't know how the record stands, but as we closed the other day Mr. Sommer made a motion to put in the record the entire record leading up to the approval of that lease, which carried, of course, this whole report. And I had previously, as the Board will remember, objected to the receiving of the report at all. I want to make sure that objection stands. As we closed here rather hurriedly and Mr. Sommer put the thing in from that end, I don't want to be stopped from renewing my motion if I need to. I don't know that I need to; I want the record right.

Commissioner Donges: If it wasn't put in at the conclusion of the day's session, you may have on the record you desire to object.

Mr. Record: I had objected to the admission.

Commissioner Donges: It may appear it is subject to your objection.

RANKIN JOHNSON resumes the stand on behalf of Trenton & Mercer County Traction Corporation.

Direct examination.

By Mr. Katzenbach:

Q. Mr. Johnson, in your examination yesterday you were asked by Mr. Record if you had made any data from which you formed your opinion as to the cost of reproduction of this system of railways in the year 1911, or at about the date of the approval of the lease by the Board to the Trenton & Mercer County Traction Corporation. Have you examined your papers since you gave your testimony yesterday?

A. I have.

Q. Have you found the reports made by you at that time?

A. Yes, to a certain extent.

Q. Will you submit those reports?

Mr. Record: Those reports were written to whom?

Mr. Katzenbach: They are not made to anyone. They are reports of his examination and the data from which he bases his opinion as to the value of the property. They are what you asked for yesterday, if he had made any effort to ascertain them, but I didn't know whether he could put his hands on them, but during the recess he has made an examination of his papers and he finds that he has those papers.

Q. Have you that memoranda with you, Mr. Johnson?

A. I have, yes.

Q. I will ask you first whether these papers were prepared by you?

A. Yes.

Q. And at what time?

A. The last part of 1910 in September, August, and from studies going over the property commencing about April, 1910.

Mr. Katzenbach: I will have this marked Number 1 for identification.

(Statement showing track and paving in detail received and marked Ex. T. & M. 1, for iden.)

Q. Now, will you state what this paper is?

A. That is a statement showing the track in detail and the paving in detail. By that I mean the length of the track, the type of the rail, on which street, and division of the properties now operated by the company.

Q. Did you make a valuation at that time?

A. I did.

Q. Of the different methods set forth on that sheet marked Number One?

A. I did.

Q. And what was that?

A. That total value?

Q. Yes; I mean the valuation on this sheet.

A. It was $2,100,000.

Q. Now, did you at that time prepare any estimate from your personal inspection of the value of the machinery at the power house?

A. I did.

Mr. Katzenbach: I will ask to have this marked Number Two, for identification.

Commissioner Donges: It may be so marked.

(Statement of machinery and equipment value at power house received and marked Ex. T. & M. 2, for iden.)

Q. I show you Number 2 for identification and ask you whether at that time this was the paper, marked 2 for identification, that you prepared?

A. Yes.

Q. What does that embody?

A. The machinery and equipment in the power house, including the building and adjacent real estate.

Q. What was the value placed upon that?

A. $300,000.

Q. Now, I show you a paper that I will have marked Number 3 for identification.

(Statement of value of trolley wire and feeder poles and so forth, received and marked Ex. T. & M., 3, for iden.)

Q. (Continuing) And ask you when this was made?

A. In September, 1910.

Q. And what does it contain, generally speaking?

A. The trolley wires and feeder poles and attachments on the system.

Q. And what was the value placed by you on that part of the property?

A. $320,000.

Q. I show you a paper marked Number 4 for identification.

(Statement of value of car equipment received and marked Ex. T. & M. 4, for iden.)

Q. (Continuing) And ask you what that paper is, generally speaking?

A. That is a list of the car equipment, including the cars, trucks and motors.

Q. And what was the value placed by you at that time?

A. $350,000.

Q. Was there any separate valuation made by you of the car house?

A. Yes.

Q. What was that value?

A. The car house, repair shops, tools and adjacent real estate.

Q. That was how much?

A. $140,000.

Q. And what is the total of the valuation made by you at that time?

A. $3,210,000.

Q. Now, then, what was the valuation which you stated that you had made altogether of that property at that time?

A. $3,210,000.

Q. Will you state whether or not the estimates that you gave included anything else except the tangible physical property of the system?

A. No, it did not. It included the allowances for engineering and contractor's profit. While they weren't taken into consideration separately, the prices used were supposed to include the cost of the work in construction, but they did not include any items or omissions, contingencies, interest during construction, working capital, or intangibles.

Q. Or intangible value. Now, then, yesterday, I think, prior to the production of these papers, you stated approximately you had estimated the property at what amount?

A. Three million dollars.

Q. Now, Mr. Johnson, you stated yesterday that subsequent to the leasing of these properties by your company that you had expended sums of money for the rehabilitation and the additions to this property. Will you state again what sum it was that has been paid by your company for this purpose since the lease has gone into effect?

A. $821,833.31.

Q. Now, of that sum, $821,833.31, was any portion of that sum capitalized with the consent and approval of the Board of Public Utility Commissioners and under orders by this Board?

A. Yes.

Q. Now, state of that sum what amount has been capitalized during the past four years and six months, or up to the present time.

Mr. Record: What do you mean there by "capitalized"?

Mr. Katzenbach: Well, I mean to say that the additions to this property were of such a character that they could in no sense be called maintenance, and that the Board, at the time of the approval of this lease, stated that there were certain things that should be done. There were certain other things that had been done, some were at the suggestion of the Board, or upon the suggestion of the city, or upon the suggestion of the citizens of the city, which is in the nature of additions to the property. And that these matters have been presented to this Board from time to time the Board has ordered securities issued for these respective items.

Mr. Record: Wouldn't that all appear by the Board's action? That is like our trouble yesterday. I dislike this gentleman characterizing anything this Board has done.

Mr. Katzenbach: We don't desire to characterize anything at all. This witness, of course, is the one who is the most familiar with this property. I am just showing what he has actually put in time and money, that has actually been expended, what part of it was capitalized, and whether or not it was capitalized with the approval of the Board.

Mr. Record: All right.

Mr. Katzenbach: And I expect to submit the certificates of the Board of the approval of this capitalization.

Commissioner Donges: Those expenditures you might ordinarily regard as rehabilitation together with other expenditures.

Mr. Katzenbach: No, perhaps I better have the witness go more fully into that, because some of these are classified as additions, some as rehabilitation, and I want to show that none of these are in the sense of maintenance of the property, that that main-

tenance was taken out of the operating expenses, and this has been added value of the company under the direct approval of this Board. I think there is a question pending.

(Question read.)

A. About $600,000.

Q. Now, you are speaking in round figures, are you?

A. Yes.

Q. Now, I would like you to go into the details of those amounts. That is to say, will you state, in the first place, whether there was an additional bond issue which was submitted to this Board, and if so, for what amount?

A. Yes, there was an additional bond issue for $500,000.

Mr. Record: Over and above this $800,000?

Mr. Katzenbach: No, I am just explaining this $800,000. I am showing what amount of that has been capitalized with the approval of the Board.

Q. There was a bond issue of $500,000, and those were the bonds of what company, Mr. Johnson?

A. Trenton Street Railway Company.

Q. Now, then, in addition to those bonds, have there been bonds of any other company that have been issued, the proceeds of which has gone to additions to the property?

A. Yes. There were some bonds of the Trenton, Hamilton & Ewing Traction Company, of which the issue of $55,000 was authorized. There have been $88,000 car trust certificates issued, of which $68,000 are still outstanding. There was issued an obligation amounting to six thousand dollars for construction of additional track and structures at the Fair Grounds for the purpose of handling patrons of the road at the time of the Fair, to go to and come from the Fair Grounds.

Q. Of how much?

A. Of six thousand dollars.

Q. Were each of these issues of bonds and car trust certificates and these additions to the State Fair Grounds the subject of orders of this Board?

A. Yes.

Mr. Katzenbach: I will just submit certified copies of the orders of the Board made in reference to those.

Q. Mr. Johnson, will you state ——

Commissioner Donges: You better offer each one separately.

Mr. Katzenbach: I will offer, as exhibit, the certificate for the approval of $500,000 of bonds.

(Same is marked Ex. T. & M. 5.)

Mr. Katzenbach: Now, the certificate for the approval of $43,000 of notes.

(Same is marked Ex. T. & M. 6.)

Mr. Katzenbach: The certificate for the approval of $45,000 of notes.

(Same is marked Ex. T. & M. 7.)

Mr. Katzenbach: The certificate for the approval of bonds of the Trenton, Hamilton & Ewing Traction Company for $110,000, of which, I think, $55,000 have been issued.

Witness: Yes.

(Same is marked Ex. T. & M. 8.)

Mr. Katzenbach: I will put in two certificates of $100,000 each, Exhibits 9 and 10, for additional certificates in relation to the $500,000 issue; they were

not all issued at one time, although there was one certificate for the issue, the original issue.

(Certificate dated March 25th marked Ex. T. & M. 9.)

(Certificate dated April 12th marked Ex. T. & M. 10.)

Q. Mr. Johnson, will you explain the difference between maintenance and rehabilitation and additions to property?

A. For all expenditures to a property, of whatever nature, there are only two sources of supply of revenue or funds, from a capital account and from the receipts of the company. Maintenance and replacements are generally supposed to be provided for from the revenue, from the receipts of the company derived from its fares. Additions, known as road and equipment, are supposed to be provided for from the capital account generally. There are two types of expenditures which are clearly recognized, then there are other types of expenditures not so clearly distinguished, some of which might under some conditions be changed or provided for out of receipts and under other conditions or other interpretation be provided for from capital.

The reason why sometimes certain expenditures are provided for—certain of these of this latter type of expenditures are provided for from capital rather than from receipts of the company, are where a replacement is made which is an improvement, is an addition although a replacement. Where, for example, a certain item of the property is replaced with an improved item of the same general kind, but of a more modern standard, although the one replaced has not served its life. There is a justified charge there of a certain amount, a certain proportion of the cost, to capitalization. It would take—it varies greatly, in my judgment, with the particular case.

By Commissioner Donges:

Q. The proportion?
A. Yes.

By Mr. Katzenbach:

Q. Take, for the benefit of the Board, some concrete instance in connection with this property that would illustrate the statement you have just made, Mr. Johnson.

Mr. Record: May I have just a word? The Chairman's suggestion put this in my mind, which was there before: What aid is it to anybody, this general lecture, anyhow?

Mr. Katzenbach: We are trying to find the valuation of this particular property.

Commissioner Donges: We will permit Mr. Johnson, as an engineer, to express his views of this subject of expenditure by the company.

Witness: As an example of this last point: We are constructing a piece of track on Hamilton Avenue where the rail replaced had not served its life. It might have been the track—it might have been reconstructed without replacing the rail, although the new rail was placed there. That rail was scrapped and had a certain element which was wasted.

Q. What did you do in the instance of Hamilton Avenue? Just state concretely how you would adjust a matter of that kind in your account.

A. On Hamilton Avenue I think it would be fair to charge say fifteen per cent. of that rail renewed to capital, in addition to the certain other items of that particular piece of construction which were properly charged to capital, they being distinctly additions. For instance, we replaced 90 pound with 103 pound, 13 pounds of that rail would properly be capitalized.

By Commissioner Donges:

Q. In each instance is it the difference between the cost of the property in place and the gross cost of the property which replaces it?

A. Yes.

Q. And the difference is an addition and, in your judgment, should be capitalized?

A. Yes. That is one point; and the other is, if the property replaced has not served its life, is replaced by another item of the same kind, there is, I think, a charge there which, in my opinion, is properly capitalized.

Q. You mean over and above the difference in cost of the two?

A. Yes.

Q. How would you arrive at that?

A. It is a matter of judgment which would have to be determined by the powers having the last word. There is another consideration which has been taken into account where receipts are not sufficient to meet approaching replacements, due to the fact possibly that a large number of replacements must necessarily on this particular property take place within a period, the receipts of the company are not sufficient to meet those replacements, they are permitted to capitalize them. There are cases where the receipts of the company are not sufficient in any case to meet replacements as they come due; there have been such cases where such replacements, or certain parts of them, have been permitted to be capitalized.

By Mr. Katzenbach:

Q. Then of this $821,000 there has been actually captilized $500,000, $88,000, $55,000 and $6,000?

A. Yes.

Q. Making a total of $649,000?

A. Yes.

Q. State first whether there is any portion of this $821,000 that is, in your judgment, properly charge-

able to maintenance, or whether that whole amount is that which is chargeable to additions and rehabilitation, and ultimately should be capitalized in one form or another.

A. I think that this whole $821,000 should be capitalized in one form or another.

By Commissioner Donges:

Q. Let me ask this question: These expenditures cover what period of time?

A. From October 16th, 1910, to September, 1915.

Q. And were made by the Trenton & Mercer County Traction Corporation?

A. Yes, sir.

Q. During that time were any dividends paid by the corporation?

A. No, sir.

Q. None at all?

A. None at all.

Q. None by any of its subsidiaries?

A. Only as to the rental.

Q. The rental was based upon the amount of stock outstanding?

A. That may have been taken into consideration, but not ——

Q. It is the gross rental?

A. Yes.

Q. Which allows what rate of return?

A. About six per cent. on the stock of the subsidiary companies at the present time.

By Mr. Katzenbach:

Q. Now, Mr. Johnson, have you data there with reference to this expenditure of $821,000 or any part thereof?

A. I had.

Q. I have papers or documents which may have some relation to that.

A. Let me see it.

Q. Will you produce that data?

A. This is the data of the expenditures in detail, covering the $500,000—the proceeds of the $500,000, not only the proceeds from those bonds, but these expenditures cover the amount of discount also. That is that total, $500,000.

By Commissioner Donges:

Q. How much of that would you say was for rehabilitation, as distinguished from additions and betterments?

Mr. Record: Has there been any definition of rehabilitation?

Witness: No.

By Mr. Katzenbach:

Q. Will you state, Mr. Johnson, what you mean by rehabilitation?

A. Rehabilitation is a replacement in an approved —improved form of an existing piece of property, item of property, I should say.

By Commissioner Donges:

Q. Isn't rehabilitation ordinarily taken to be what is necessary in the maintenance of the property to keep it in good condition, and which is ordinarily paid out of operating expenses?

A. No, sir. I should say in addition to rehabilitation there are maintenance charges.

Q. Your view then of rehabilitation is, it does not cover any of those items which are ordinarily regarded as maintenance?

A. There are, in addition to rehabilitation, the normal maintenance charges. There are some items of rehabilitation which approach the line separating maintenance from rehabilitation ——

Q. No; isn't rehabilitation, general speaking, that which is necessary because of a failure to maintain,

as distinguished from improvements to property which are in the nature of additions and betterments?

A. I would say there is a distinction, that there are additions, and there is maintenance and there is a construction along improved lines, which on a large scale, in my mind, is rehabilitation.

By Commissioner Treacy:

Q. Isn't that improvement, rather that rehabilitation?

A. It is, rehabilitation and improvements to my mind are the same, but to my mind there is a distinction between improvements, rehabilitation and additions.

Q. Isn't rehabilitation the putting back of the property in the same condition it was when the property was up to a normal condition?

A. No. I regard that as replacement, not rehabilitation.

By Commissioner Donges:

Q. I see we differ, and you differ from others who have used the term rehabilitation. I understand you take it to express the replacement of property which has in operation become out of repair, as distinguished from additions and betterments which are ordinarily, of course, made from fixed capital account; whereas the rehabilitation is that which is necessary by reason of the operators permitting the property to get out of repair.

A. I understand that is deferred maintenance.

Q. It may be deferred maintenance or extraordinary maintenance; it may be expenditures made necessary by the condition of the property, but it is not additions and betterments to the property in the accepted sense.

By Commissioner Treacy:

Q. Do you claim you have a right to capitalize these moneys which you pay for rehabilitation?

A. I do, if the right is given us.

Q. What?

A. If the right is given us, and it has been done in other places.

By Commissioner Donges:

Q. There have been instances in the records of this Board where property has become so out of repair, when it changed hands on reorganization the only way new capital to put the property in condition could be found was on capital expenditures; but there certainly is a very marked distinction between additions and betterments and replacements and rehabilitation?

A. I think there is, but I think that each have their definition.

Q. I understand there is no distinction in your mind between additions and betterments to be paid for from capital account under ordinary conditions, and rehabilitation which you say is more than replacements?

A. I think rehabilitation is more than replacements.

By Mr. Katzenbach:

Q. Now, Mr. Johnson, in the expenditures of this $821,000, was any part of that $821,000 in any sense maintenance of this property, or has any maintenance been provided in other ways out of the revenues of the company and shown in operating expenses?

A. Maintenance was provided out of the revenue of the company.

Q. And is in addition to this $821,000?

A. Yes.

Q. So that when you use "rehabilitation" you use it in the sense of additions or betterments. That is something by which added capital value has been put in the property, do you not?

A. I use it in the sense of improvements, not as an addition.

Q. I mean an improvement in the property?

A. Yes.

By Commissioner Donges:

Q. Let me understand; I am trying to get Mr. Johnson's views. Are you confining your discussion, Mr. Johnson, to the particular property that you are dealing with, the Trenton property, and is it in your views that the property, when taken over by the Trenton & Mercer County Traction Corporation, the property was in such condition it was necessary to make expenditures in order to bring that property to a normal or good operating condition and that such expenditures not in the nature of additions and betterments were rehabilitation and should be capitalized?

A. I think ——

Q. Is that your view?

A. Yes, and more. I think, if I may be permitted to say, that this particular property there were several factors to be considered. One was that many items of the property were approaching their end or term of life at the same time.

Q. Because they were not renewed, or because maintenance was not kept up?

A. No; they were constructed at the same time, so their life would terminate at about the same time. There were many items of this property which when constructed were according to the standard of the time, but which at this period of improved standards, modern standards having taken their place, it was desired by the people of Trenton, by individuals, by the Board in certain cases, that more modern standards be substituted for existing standards. This situation of requiring improvements, replacements, additions, and there was the existing situation of a certain amount of gross receipts with which to provide for these, and the necessity of issuing capital for additions ——

Q. Do you claim that every time it becomes necessary to renew property, when property of any kind has approached the end of its usefulness, that new capital should be found and charged to the fixed capital account?

A. I do not.

Q. I gathered that from your statement.

A. During the past five years we have expended a good deal for replacement out of maintenance.

Q. Ordinarily, isn't your judgment that a property should be maintained in substantially the condition in which it is when new, and that is maintenance?

A. It is; an ideal situation would provide replacements and the constant improvement of the property out of operating expenses.

Q. Certainly the maintaining of the property in good order and the setting aside of a sum of money each year out of operating revenue corresponding to the depreciation in the value of the property worn out, so that the additions and betterments made would correspond to the depreciation in the value of the property?

A. Yes, sir.

Q. If that is not done the property runs down?

A. Yes, sir.

Q. Taking over the property it is found to be in that run-down condition; I understand your view to be that then the period for rehabilitation has arrived and that rehabilitation should take place out of capital.

A. No. I think each situation should be faced as it exists and it isn't—applying it to this particular property, it wasn't due to the fact that the property— that there was a good deal of deferred maintenance—as it was the fact there were many parts of the property which were approaching the end of their life at the same time, and in addition to that that there were these past few years a period of great improvements in the standard of construction and types of construction. There have been increases in the cost and improvements of parts of

track construction, cars, car house machinery and all the details. I think each situation has to be faced by itself; if the revenues are not sufficient to provide for it, it has to be done, the only other source from which the expenditures can be made is the capital account.

By Mr. Katzenbach:

Q. Mr. Johnson, during this period of approximately 5 years that $821,000 has been expended for additions, betterments and rehabilitation, has the company likewise each year expended moneys for the maintenance of the property?

A. It has.

Q. And if so what amount has been expended for maintenance?

A. About $270,000.

Q. During that 5 years, $270,000 has been expended for the maintenance of the property?

A. Yes; less than five years.

Q. Less than five years, and none of that $270,000 is included in this $821,000?

A. No.

By Commissioner Donges:

Q. How much is the annual depreciation of this property?

A. It varies. This year it will be about $76,000. That is the depreciation fund.

Q. Annual depreciation?

A. We set out from gross receipts to depreciation fund this year about $76,000.

By Mr. Katzenbach:

Q. Then approximately how much each year has been expended for the maintenance of the property and not included in the $821,000?

A. Well, about—average about $60,000 a year; it would be between $55,000 and $60,000.

Q. Now, Mr. Johnson, have you made any estimate, or else have you taken from the books that which had been charged to road and equipment and that which has been charged to rehabilitation in each one of these companies?

A. Yes.

Q. And if so, will you give those figures; that is of the $821,000?

A. Of the $500,000 par value, which includes the discount on the bonds, $319,671.40 was road and equipment; $180,328.60 was rehabilitation.

By Mr. Record:

Q. Won't you give us those again?

A. Road and equipment, $319,671.40; rehabilitation, $180,328.60; total $500,000; those two added together. The Trenton & Mercer County Traction Corporation account of road and equipment, $128,562.38; Trenton Street Railway, account road and equipment, $17,026.84; account rehabilitation, $56,841.61. Mercer County Traction Company, account road and equipment, $25,791.75; rehabilitation, $8,445.50; Trenton, Pennington and Hopewell Street Railway Company, road and equipment, $2,688.26; rehabilitation, $9,236.84; Trenton, Hamilton and Ewing Traction Company, road and equipment, $55,898.78; rehabilitation, $192.96; total, $804,684.92.

Then for 1915, to be added to that, West State Street reconstruction from Calhoun Street to Prospect Street $10,997.71, which will be the proportion chargeable to road and equipment.

Suspension account, Interstate Fair Terminal, $3,171.11.

Crosswick extension, $2,351.81.

Pay-within-car feature for large cars $627.76.

Total $821,833.31.

Q. Mr. Johnson, you spoke yesterday of a completed report for each fiscal that you filed with the Board of Public Utility Commissioners but the report for 1914 was not here yesterday; is that a copy

of a report filed by you with this Board? (Handing witness paper.)

A. Yes.

Commissioner Donges: Well, Mr. Katzenbach, the original is in the files of the Board and may be offered and put in, if it is not physically here you may offer as part of the record a report which is in the files of the Board.

Mr. Katzenbach: I thought they were figures which this witness could testify from.

Commissioner Donges: That is all right, you may put in the report and the witness may use the copy for the purposes of the record.

Mr. Katzenbach: Yes; I thought at the last hearing it was stated it was at Newark.

Commissioner Donges: Had it been known you desired to offer it today or use it it would have been procured.

Mr. Katzenbach: Yes. I supposed it was here.

Commissioner Donges: The Statistical Department is in Newark and those reports were sent Mr. Lyon and were examined by the statistician and are returned to Trenton afterward with the statistical report.

Mr. Record: He has been reading from this statement and he has given his definition of rehabilitation.

Commissioner Donges: Which statement?

Mr. Record: The one he has been just reading.

Commissioner Donges: What is it designated?

Mr. Record: Expenses and disbursements on Trenton property since November 15, 1910, Trenton and Mercer County Traction. He has just read it into the record then he read 1915 separately, and used this word West State Street reconstruction, Calhoun Street to Prospect. He has defined rehabilitation, hadn't we better have a definition of what he means by reconstruction?

Mr. Katzenbach: Certainly.

Q. Mr. Johnson, referring to the statement from which you have just been reading under date of 1915, will you state what you meant by construction work in progress on the West State Street line from Calhoun and Prospect Streets and why that should be charged to capital account?

A. As I read into the record there when I gave those figures that this construction work was in progress and this represents the proportion chargeable to road and equipment. We have reconstruction on West State Street, using more expensive and a much more durable type of ties. We had put ballast underneath the ties and we had used granite blocks, the most expensive type of pavement; and the rail is heavier rail than was there before. Altogether the work which we are doing on that reconstruction this year will exceed, for account of road and equipment, this sum; that would be approximately it.

Mr. Record: What I mean is how much of that is what you call rehabilitation?

Witness: None of it.

Mr. Record: None of it?

Witness: None of it, when this account is finally charged out. There will be some reconstruction chargeable to operation and maintenance; there would also be some chargeable to road and equip-

ment. The amount of this reconstruction which is chargeable to maintenance—to replacement, does not appear there.

Mr. Record: What is the difference between rehabilitation and reconstruction?

Witness: Rehabilitation is a part of reconstruction.

Q. Just make a full explanation, taking this as a concrete instance, Mr. Johnson. That is, in other words, does this figure that you have given here represent the total value or the total amount expended?

A. No. We will ——

Q. That doesn't represent the total amount expended?

A. No.

Q. Now, then, what total amount expended is the portion of it which is chargeable to maintenance; you must use maintenance funds?

A. None of this.

Q. I don't mean of that, but I mean of the whole completed work.

A. Yes; there will be—for this work which I have in mind, there will be about $18,000 to maintenance, in addition to this $10,977.71, chargeable to road and equipment.

Q. Then why do you not charge the full amount to maintenance?

A. Because the rest of it is a replacement—I mean—I thought your question was the other way, "Why do you not charge the whole capital?" because the rest is maintenance. Put it the other way, "Why do you not charge all maintenance?" because the other is simply additions and improvements.

Q. Why is it distinctly additions or improvements? What are the factors which go to make that a distinct addition or improvement?

A. Because the rail is a heavier rail, there is additional ballast under the ties; the ties are a more expensive, much longer-lifed tie; the rail joints in

this case are welded, rather than the old type of bolted joint, and one of the most expensive items is the granite block pavement substituted for the brick pavement. And this includes, to my mind, all the work we are doing on this track reconstruction this year, for which all our purchases have been made and work done, as West State Street and South Clinton Avenue sections.

Q. Now, in West State Street what kind of rail was taken up on West State Street?

A. Ninety-pound rail.

Q. Had that rail outlived its usefulness?

A. No.

Q. There was still life in the rail that was taken out?

A. Yes; the joints were battered, but they might have been repaired.

Q. What weight rail replaced it?

A. 103 pounds.

Q. What was the type of rail you took out?

A. The old type girder rail.

Q. What type did you put in?

A. Grooved rail, so-called trilby rail.

Q. Is the trilby rail more expensive than the old type girder rail?

A. No, not that; I should say they are about the same price per ton; they are the same price per ton.

Q. But the addition is in the heavier weight rail?

A. Yes.

Q. The heavier weight rail is more expensive than the type rail you took out?

A. Only it has more tons.

Q. Per ton?

A. Yes.

Q. I mean to say, per ton it is more expensive?

A. No; there are more tons in the same section.

Q. Then I will put it this way: Is the rail per rail more expensive?

A. Yes.

By Commissioner Donges:

Q. Because of its greater weight?

A. Because of its greater weight.

Q. The difference between the value of the property taken out and the value of the new property in place you put in as capital?

A. Yes.

Q. How do you distinguish between this reconstruction and rehabilitation; what is the difference; what is the distinction you make?

A. This word "reconstruction" is used here without any significance. This was typed by ——

Q. Might you, under your theory, might you just as well have put rehabilitation on West State Street?

A. No. Regarding that thoughtfully I would say that that is road and equipment as distinguished from rehabilitation, or as distinguished from replacement. Reconstruction can be stretched out, so I shall not use a new word requiring a definition.

Q. So the work you are doing on West State Street would not be rehabilitation, in your judgment?

A. That shouldn't prove West State Street and Clinton Avenue, which are being carried together, the same character of work, and will cost about $29,500, of which this amount we charged to road and equipment.

Q. Yes, but I am trying to get your idea whether that would fall under your designation of rehabilitation or whether rehabilitation means something other than taking out of property and the substitution of other and more improved, and heavier, and better types of property. I haven't yet clearly grasped your definition of rehabilitation as distinguished from ——

A. Rehabilitation distinguished from road and equipment—my idea of road and equipment is a distinct addition in a narrow sense, nothing more. My understanding of road and equipment, embracing a larger field, it may be improvement, it may cost the same.

Q. There may be maintenance in road and equipment, in that account? When you say road and equipment you are speaking of the kind of tangible property?

A. I am speaking of the name of an account, in my mind, which has been provided in the distribution of accounts by the Public Utility Commission; that is, in my mind only a distinct addition in a narrow sense. Rehabilitation would embrace the question of replacing a piece of property which has not outlived its life.

Q. Then would not the taking out of 90-pound rail on West State Street, which had not lived its life, and which had battered joints, and the substitution of 103-pound rail with welded joints, be a rehabilitation under your theory?

A. The part of it—the first part that you mention, the replacing of the 90-pound rail before it had served its life, is in my mind, rehabilitation, involves one of the elements. The additional weight of 103-pound rail over 90-pound rail is a distinct addition in the narrower sense.

By Mr. Katzenbach:

Q. Then there is no significance in the use of the word "reconstruction"?

A. No.

By Commissioner Donges:

Q. As applied to this?

A. As applied to this. We can scratch off the word reconstruction.

By Mr. Katzenbach:

Q. It is not used in an accounting sense at all?

A. Yes.

Q. Just merely a description of the work that is done?

A. Yes.

By Commissioner Donges:

Q. When you say "road and equipment," you refer to the classification of accounts?
A. I do.
Q. And everything that is embraced within that classification?
A. Yes.

By Mr. Record:

Q. Do I understand that road and equipment means just what you call betterments or additions?
A. Additions, as I should call it, as I carry it in my mind. When I speak of road and equipment I mean additions.
Q. Extending additional miles?
A. Additional miles, additional pieces of machinery.
Q. Additional cars?
A. Or additional cars, or additional car equipment.
Q. Then it is equivalent to additions?
A. Yes.

By Commissioner Donges:

Q. And is a fixed capital account?
A. Yes.

Mr. Record: I am not so much concerned about that. Is it an addition?

By Commissioner Donges:

Q. It is a capital account and not an operating account?
A. Yes.

By Mr. Katzenbach:

Q. And rehabilitation is a capital account and not an operating account?

A. To my mind.

Q. Now, Mr. Johnson, will you state in the last fiscal year, that is, the year ending December 31, 1914, what were the gross revenues of the system?

A. They were $776,548.48.

Q. Now, will you state what items go into the operating expenses in accordance with your system of accounting?

A. Operating expenses include maintenance and transportation, power, traffic expenses, that makes up operating expenses.

Q. Now, are you classifying taxes under a separate head or do you include those under operating expenses?

A. I would say operating expenses and taxes, is the way I express.

Q. Operating expenses and taxes. Will you state during the year 1914 what the operating expenses were?

A. $446,826.37, plus $26,171.83 rehabilitation, plus $50,836.58 taxes; total $523,861.78.

Q. Then can you state in your percentages what the operating expenses of the system were in the year 1914?

A. These operating expenses and taxes were 67 per cent. of the gross receipts.

Q. And what percentage did that leave for return on capital?

A. 33 per cent.

Q. Now, Mr. Johnson, will you state in what way the operating expenses of your road has increased, we will say during the years 1914 and 1915; just generally first, without figures?

A. They have increased by an increase in wages which will—made on July 1, 1915, under the terms of our agreement with our men, which will amount to about $1,000 a month increase. There will be a further increase, if we are able, to a depreciation fund of $40,000. There will be an increase in taxes for the year of 1915, the amount of which we do not know. There will be a decrease in gross receipts for the year 1915 under that of the year 1914,

the amount of which we do not yet know but probably about $20,000.

Q. Now, will you state whether or not there are —

Mr. Record: I would just like formally to object to his answer. It seems to me that is a prediction about the future.

Commissioner Donges: Make your objection before it is in.

Mr. Record: I don't want it to get by without my objection, that is all.

Q. Will you state what the actual decrease in gross receipts, say up to August 17th of the present year, had actually been ——

Commissioner Donges: As compared with last year?

Q. (Continuing) As compared with the year 1914.

Commissioner Donges: To what date have you the receipts, October 1st?

Witness: Yes. I have, but I made a statement sometime ago showing the monthly decrease reached its maximum of $4500 in August, for August alone our decrease was $4500 under last year; and it ran from about $1500 up to $4500, back in the months of February and April. We are now about $12,000 under last year.

Commissioner Donges: As of what date?

Witness: As of August 31st, I think it was ——

Mr. Record: I don't like to object to this method of testifying; I suppose it is all right. At some stage of the game—or rather we have got to have some figures; this generalized statement that this

was so much—there has to be sufficient for cross-examination. Isn't it possible as you go along to give the figures from which you make that deduction, month by month?

Witness: I can give those.

Mr. Katzenbach: We always get down to the figures, Mr. Record, but as a source of general survey, it seems to me it ought to precede the giving of the figures.

Mr. Record: I don't like this survey business because it is general and may not be true.

Mr. Katzenbach: I regret I can't see my way clear to conduct this examination just along the lines you would like to have it conducted.

Commissioner Donges: It does seem desirable to have the figures.

Mr. Katzenbach: Yes, we have a statement, and we have so many statements in a property of this size it is just a little difficult to put our hands on them. We have a statement and it is to be forthcoming.

Q. Mr. Johnson, will you state what in your opinion, with reference to this company, what amount should be set aside approximately for maintenance or depreciation and your reasons for it?

A. In my opinion a sufficient sum should be set aside for the depreciation fund, so-called, to provide for replacement of each item of property as it is worn out, as well as maintenance of those items up to the time they are worn out.

By Commissioner Donges:

Q. Would you put that in the depreciation fund?

A. Yes.

Q. The maintenance?

A. From the depreciation fund I would draw amounts used, expended for maintenance and replacements, if I were able, from the receipts at hand.

Commissioner Donges: I think Mr. Katzenbach's question was, what sum should be set aside.

By Mr. Katzenbach:

Q. Yes; what percentage, say, of the gross receipts?

A. I would put aside a sum to meet the maintenance and replacement charges, and such a sum I believe should be for such a purpose as this about 15 per cent. of the gross receipts.

Q. Now, will you state during the year 1914 what amount was set aside as a depreciation fund and whether or not that amount was exhausted?

A. $69,710.09.

By Commissioner Donges:

Q. What percentage of the gross receipts was that?

A. 9 per cent.

Q. How do you arrive at 15 per cent. of the gross receipts as being the proper allowance?

A. I arrived at it for this property by having considered all the types of plant and property making up the general situation, their probable term of life, which can't be exact, and about how much would be required to replace them if this inaccurate item (necessarily inaccurate item) would require such replacement. That would require a certain sum per year and that ——

Q. What you get is a sum?

A. A sum that is a certain percentage.

Q. Of the present proceeds?

A. No, it would be a little more than a percentage of the present proceeds. Again in that case you meet an existing situation; I think that it is possible

to take a certain percentage one year and a little greater percentage next year—if you took, say 15 per cent., next year with the expectation of increasing the gross receipts the same and approximately the depreciation fund on the same percentage would be greater for the next year, and so on. So while you start at the lower sum you arrive perhaps at the higher sum on the average you want for the number of years.

Q. Would you, in that way, secure the aggregate sum you wanted in any one year?

A. No, but you would secure the average sum, and it is the average sum you need over a long period of years.

Q. That would be based on the probability of the gross revenues, increasing year by year, that is your idea?

A. Yes.

Q. But what is desired is really a sum each year, or the value of the property spread over a number of years corresponding to the life of the property?

A. Yes.

By Mr. Katzenbach:

Q. Now, will you state whether or not in the year 1914 there was a deficit?

A. There was.

Q. Will you state what that deficit was and how it was arrived at, giving the figures by which you arrived at that deficit?

A. Our gross receipts amount to $776,548.48, our operating expenses and rehabilitation amount to $523,861.78, our amount expended for interest, rentals, amortization, amounted to $288,448.77, which left a deficit of about $36,000.

By Commissioner Donges:

Q. What was amortized?

A. The discount on the bonds.

Q. What?

A. The Trenton Street Railway Company.
Q. The Trenton Street Railway Company?
A. Yes, and included in amortization were taken payments of car trust certificates.
Q. Of which company?
A. Trenton & Mercer County Traction Company.
Q. How much did that fund amount to?
A. $10,000.
Q. On the car trust certificates?
A. Yes.
Q. And how much was set aside for the amortization of the Trenton Street Railway; bond discount, was it?
A. $404.86.
Q. How much?
A. $404.86.
Q. And what did that represent?
A. That represented the amortization, the discount on the $500,000 bonds.
Q. Issued when?
A. In 1911; I think the years 1910, 1911, or 1912.
Q. As the lessee?
A. Yes.
Q. And under the terms of the lease to the Traction Corporation, was it to set aside this sum?
A. No; that was a requirement by the Public Utility Commission that the bonds be amortized over the life of the bonds.
Q. By the lessee?
A. By the lessee.

By Mr. Katzenbach:

Q. Mr. Johnson, in your opinion what will be the deficit of the present year, 1915?

Mr. Record: I object to that question.

Mr. Katzenbach: It seems to me ——

Commissioner Donges: I suppose what Mr. Katzenbach is asking is based on ——

Mr. Katzenbach: Present conditions. These, of course, I think we have all but completed, we will say less than three months of the present year, and the purpose of the question is largely to show that the situation of the year 1914 has been continued and exaggerated in the year 1915.

Commissioner Donges: We will permit the question. You may cross-examine on it.

Mr. Record: I just wish my objection noted, that is all.

A. There will be a deficit of twenty to say $23,000 in addition to the deficit of last year.

Q. You have stated that the amount expended for additions and betterments since your company has been lessee of these properties, as approximately $821,000, there has been capitalized $649,000; will you state generally from what source the difference has been paid, or whether or not it is in suspension, or whether it has been paid?

A. Some of it has been paid, some of it is in suspension, and some has been provided—well, some of it is an obligation still on the company. That would be suspension then ——

Q. Then it has not all been paid?

A. No; not all been paid.

Q. Will you give your reasons for the amount that you say in your opinion should be set aside for depreciation?

A. Take the track, cars, car house, machinery, equipment, other items of property have a certain life which can't be known exactly, but can be estimated. In addition to maintaining those items of the property they may sometime be replaced. My idea of a proper depreciation fund is one which will adequately maintain the property and replace the various details of it as they reach the end of their life.

Q. Now, do you know, of your own knowledge, how many miles of track there are in the system operated

by the Trenton & Mercer County Traction Corporation?

A. I do.

Q. Will you give me those miles of track?

A. Totals for each of the lessor companies?

Q. Yes; that will answer the purpose.

A. The Trenton Street Railway total of all track, 39.94 miles; the Mercer County Traction Company, 9.35 miles; the Trenton, Pennington & Hopewell Street Railway Company, 12.86 miles; the Trenton, Hamilton & Ewing Traction Company, 8.80 miles; total, 71.95.

Q. Mr. Johnson, are you familiar with the capitalization of the lessor companies?

A. I am.

Q. Do you know the amount of capital stock outstanding of each of the lessor companies?

A. I do.

Q. Will you give it?

A. Trenton Street Railway Company bonds, $2,000,000.

Q. Just give the capital stock, please, first.

A. Trenton Street Railway Company, $1,000,000; Mercer County Traction Company, $100,000; Trenton, Pennington & Hopewell Street Railway, $250,000; Trenton, Hamilton & Ewing Traction Company, $200,000; total, $1,550,000.

Q. Now, are you familiar with the bonds that have been issued by each of the four lessor companies?

A. I am.

Q. Will you give the amount of bonds outstanding by each of the companies?

A. Prior to what date?

Q. That is as at the time you took the leases of these properties.

A. Trenton Street Railway Company, $2,000,000.

Q. Do you know what the rate of interest was?

A. The $2,000,000 Trenton Street Railway Company bond issue, $1,000,000 of it was designed for additions and improvements and $1,000,000 to refund an existing issue of the same amount, the existing outstanding issue of the same amount was a 6

per cent. issue; the $2,000,000 Trenton Street Railway issue was a 5 per cent. bond, so there is now outstanding slightly over $1,000,000 of 5 per cent. Trenton Street Railway Company bonds and releases the $1,000,000 six per cent.; that is, there were outstanding in 1910. Mercer County Traction Company, $300,000 five per cent.; Trenton, Pennington & Hopewell, $350,000 five per cent.; Trenton, Hamilton & Ewing Traction Company, $350,000 five per cent.

Q. Then, at the time you took this property as a lessee, what was the amount of bonds outstanding upon it?

A. $3,000,000 par value.

Q. And what is the total capital stock issued?

A. $1,550,000.

Q. What was the total issue of bonds and stock?

A. $4,550,000 outstanding.

Q. What has been issued subsequent to the lease?

A. Trenton Street Railway, $500,000 six per cent. bonds.

Q. Six per cent. bonds of the Trenton, Hamilton & Ewing Traction Company?

A. Yes. Trenton, Hamilton & Ewing Traction Company, $55,000, issued out of an authorization of $110,000, but the $55,000 of that authorization has not been issued because the purpose ——

Q. I mean outstanding and upon which interest has to be paid.

A. Then, only $34,000 interest has to be paid.

By Mr. Record:

Q. By the whole of them, $500,000?

A. The whole $500,000 are six per cent. bonds, and the $34,000 five per cent. of the Trenton, Hamilton & Ewing bonds.

By Mr. Katzenbach:

Q. Although $55,000 had been issued?

A. Yes. You might say they are in the process of being issued.

Q. The certificates have been issued for the bonds?

A. Yes.

Q. Now, Mr. Johnson ——

Mr. Record: Haven't you left out one of the items; the stocks and bonds of the underlying companies?

Mr. Katzenbach: There are stocks and bonds of the underlying companies, yes.

Mr. Record: Of the lessee company?

Q. Are there any bonds of the lessee company?

A. No. There are—yes, there are these obligations of the car trust certificates, amounting to $68,000; the Fair ground tract extension, originally $6,000, and amounting at the present time—on December 31, 1914, to $4500, I think.

Q. In speaking of the addition at the Interstate Fair ground, I would ask you whether or not this is a certified copy of the order under which that $6,000 improvement was made (handing witness paper)?

A. Yes.

Mr. Katzenbach: I ask that this be marked as an exhibit.

(Certified copy of order for Fair ground extension, marked Ex. T. & M., 11.)

Mr. Katzenbach: I will offer certificates of the approval of the leases and ask that they be marked Exhibits 12, 13, 14 and 15.

Commissioner Donges: If there is no objection they will be admitted.

Mr. Record: I thought you offered those before.

Mr. Katzenbach: No.

Commissioner Donges: These are other certificates?

Mr. Katzenbach: Yes, they are offered along with the ordinances, and are certified copies.

(Certified copy of lease, Trenton Street Railway Company, Ex. T. & M. 12.)

(Certified copy of lease, Mercer County Traction Company, marked Ex. T. & M. 13.)

(Certified copy of lease, Trenton, Pennington & Hopewell Street Railway, marked Ex. T. & M. 14.)

(Certified copy of lease, Trenton, Hamilton & Ewing Traction Company, marked Ex. T. & M. 15.)

Mr. Record: Wasn't there a stock issue of this lessor company?

Mr. Katzenbach: Yes, there was a stock issue of the lessor company. Those have all been given.

Mr. Record: My idea was at this point to get the total of this capitalization business.

Mr. Katzenbach: I have given all the bonds and stock of all the companies.

Mr. Record: Not the lessee companies.

Mr. Katzenbach: No, I don't object to giving it; I don't think that enters into it.

Mr. Record: I don't think it enters into it myself. I thought as long as you started rolling in capital stock you might toss in what you have.

Mr. Katzenbach: You might have an idea it was large; I just wanted to show you how low it was.

Commissioner Donges: We will take a recess until Friday morning at eleven o'clock.

Witness: May I answer your question? The outstanding Fair ground extension, it is $2500 now, was $6000, that is December 31, 1914, it was $4500.

Adjourned until Friday, October 29th, 1915, at the State House, Trenton, N. J., at 11.00 o'clock A. M.

THIRD HEARING.

Trenton, N. J., Friday, October 29, 1915.

Before the following Commissioners:
R. W. E. Donges, Esq.,
J. W. Slocum, Esq.

For the Mercer County Traction Corporation appears F. S. Katzenbach, Esq., and Edward Hunt, Esq.
For the City of Trenton appears George L. Record, Esq.

Rankin Johnson, recalled on behalf of Trenton & Mercer County Traction Corporation.

Direct examination (continued).

By Mr. Katzenbach:

Q. Mr. Johnson, has your company, since it became lessee of this road, kept accounts as to the gross receipts and the operating expenses and taxes for each of the years 1911, 1912, 1913 and 1914?

A. We have.

Q. Will you state what the gross receipts of the road were for the year ending December 31st, 1911?

A. $691,947.80.

Q. During that year what were the operating expenses?

A. $331,011.83.

Q. What were the taxes upon the property?

A. $36,712.88.

Q. What net earnings, what were the net earnings that were applicable to bond interest and rentals for the year ending December 31st, 1911?

A. $324,223.09.

Q. Have you the statement of the gross earnings for the year ending December 31st, 1912?

A. I have.

Q. Will you give that amount?

A. $715,685.70.

Q. What were the operating expenses that year, exclusive of taxes?

A. $337,029.19.

Q. What were the taxes paid out during the year ending December 31st, 1912?

A. $44,997.57.

Q. What were the net earnings applicable to bond interest and rentals for the year ending December 31st, 1912?

A. $297,658.94.

Mr. Record: Do you mind my asking him at that point for those figures of the gross earnings, 1912? I have a statement here which don't seem to be just exactly the same.

Mr. Katzenbach: Not at all.

Q. Will you repeat again the gross earnings for the year ending December 31st, 1912?

A. $715,685.70.

Mr. Record: While we are on that, Mayor, I have taken this from your return to the State and it

is substantially the same amount, but it is different by a few thousand dollars.

Witness: I think I can explain that by saying there are various kinds of gross receipts. There are gross receipts from fares, there are gross receipts from operating revenue, gross receipts from operating and non-operating revenues.

Mr. Record: Your 1911 one is exactly the same as the return to the State, 1912, you differ a little.

Mr. Katzenbach: What is the difference?

Mr. Record: Two or three thousand dollars.

Witness: It is due to that.

By Commissioner Donges:

Q. Non-operating income?
A. Yes, those are small items. The statement to the State must have called for certain gross receipts specified, and in our reports the three different kinds of gross receipts are shown.

By Mr. Katzenbach:

Q. Do these gross receipts you have testified to include your receipts from other than operation of road?
A. I can answer that question as applied to 1914 particularly.

Commissioner Donges: I think Mr. Record's inquiry was 1912.

Mr. Record: 1911 fits in exactly with his return to the State. 1912 differs a couple of thousand dollars, and I thought we might as well clear that up now.

Witness: You want 1911?

Mr. Record: 1911 is all right.

By Mr. Katzenbach:

Q. The year ending December 31st, 1912.

A. Shall I read from the year 1912, the different kinds of gross revenue?

Q. Yes, if you will.

A. Heading, revenue from transportation; passenger revenue, $706,662.25; parlor chair and special car revenue, $581; mail revenue, $985.74; freight revenue, $515.73; miscellaneous transportation revenue, $25. Total revenue from transportation, $708,769.72. Station and car privileges, $4,212.54; rents and buildings and other property, $347.50; power, $233.61. Total revenue from operations other than transportation, $4,793.65. Total operating revenue, $713,563.37.

Mr. Record: That is exactly our figure.

Witness: That is operating revenue, as it is called in the distribution of accounts of the Public Utility Commission. Then there are non-operating revenues which make the grand total which I have been quoting.

By Mr. Record:

Q. Have you got those non-operating revenues there?

A. They are somewhere in this report.

Mr. Record: That explains the difference, that is all I want to know.

Mr. Katzenbach: It is a couple of thousand dollars that came from car advertising ——

Witness: No, I have car advertising. It in-

cludes such an item as interest on funds in the bank. That is one that occurs to me now.

By Mr. Record:

Q. Do you get any revenue for carrying anybody else's wires on your poles?

A. We do have that. That is something that we have recently started, the joint pole agreement and mutual payments, that is, payments by us for wires on other people's poles, and payments by them, but that is only a very slight amount. Non-operating revenues account for the difference.

Mr. Record: I am satisfied to have that that way.

Mr. Katzenbach: It operates in favor of your contention. We are giving a larger amount for gross revenue by a couple of thousand dollars than would appear from the report to the State Board, but we can find it in just a minute.

Witness: Interest on deposits, another item of income, $2,429.96; income from securities owned, $263.75; total, $2,693.71.

By Mr. Katzenbach:

Q. Mr. Johnson, for the year ending December 31st, 1913, will you state what your gross earnings were?

A. $770,954.57.

Q. What were your operating expenses for the same period?

A. $408,825.97.

Q. What were the taxes for the year ending December 31st, 1913?

A. $47,810.69.

Q. What amount did you have as net earnings?

A. $314,317.91.

Q. Does that include bond interest and rental?

A. No.

Q. That was the amount applicable to bond interest and rental?

A. It was.

Q. While you have given these figures I think before, in order to have them in this portion of the testimony, will you give gross earnings for the year ending December 31st, 1914?

A. $776,548.48.

Q. What were your taxes for the year ending December 31st, 1914?

A. $50,863.58.

Q. What was the total amount of the net earnings for the year ending December 31st, 1914?

A. $252,686.70.

Q. What were your operating expenses for that period?

A. They were $523,861.78.

Q. Including taxes?

A. No, without taxes, including all replacements.

Q. Are you certain your taxes are not included?

A. Yes, they are included in that.

Q. Included in the $523,861.78?

A. That includes taxes.

Q. Will you state what was the depreciation fund, that is, the amount actually expended upon a depreciation of the property for the year ending December 31st, 1911?

A. $38,208.68.

Q. For the year ending December 31st, 1912?

A. $42,813.80.

Q. For the year ending December 31st, 1913?

A. $61,480.47.

Q. For the year ending December 31st, 1914?

A. $69,710.09.

Q. Those amounts for depreciation, I think you have already testified to, had no relation whatsoever to the additions and betterments and rehabilitation of the property?

A. No, they have not.

Q. Mr. Johnson, I notice that during these four years of which you have complete records of the operation of this road, that the operating expenses

have increased during the year ending 1914 over the year ending 1911, by how much?

A. Operating expenses?

Q. Yes. That may take a moment to calculate but I think we should have it.

A. This is not including taxes; the operating expenses increased in 1914 over 1911 $141,986.37, for the year.

Q. Does that include or exclude taxes?

A. Excludes taxes.

Q. What has been the increase in taxes from the year ending December 31st, 1911, as compared with the year ending December 31st, 1914?

A. $14,150.70 for the year.

Q. How much?

A. $14,150.70.

Q. What has been the increase in operation and taxes between the first year of your operation of this property and the last year?

A. $156,137.07.

By Commissioner Donges:

Q. What does that operating include?

A. Operating expenses and taxes.

Q. Strictly operating expenses?

A. Yes, and replacements in 1914. Yes, strictly operating expenses and taxes.

Q. Including replacements and all maintenance?

A. Yes.

Mr. Record: I would like to enter a formal objection to the increase on the ground that by reason of the witness' previous definition of rehabilitation, maintenance, and so forth, this is a conclusion on his part; the items ought to be shown.

Commissioner Donges: You may cross-examine as to that.

Mr. Record: I would like that objection entered.

Commissioner Donges: We will permit it to stand, objection overruled.

Q. Will you state what has been the increase, if any, in the gross receipts from the first year of operation of your company, that is, for the year ending December 31st, 1911, compared with the year ending December 31st, 1914?

A. Increase in gross receipts?

Q. Yes.

Commissioner Donges: You don't mean gross income from all sources?

Mr. Katzenbach: From all sources, yes.

A. $84,600.68.

Q. Mr. Johnson, will you go into some detail as to the reasons for the increased cost of operation between the first year of your operating the properties and the last year of operating the properties?

A. One of the greatest items was due to increase in wages. In 1910, or when we commenced, the motormen and conductors' wages were twenty-three cents an hour. They have since been raised to twenty-seven an hour. That is a flat rate, not a rate increasing with length of service. Another item of increase in operating expenses is due to increase in service rendered, we gave more service. Another item ——

By Commissioner Donges:

Q. By that you mean increased the headway of cars?

A. Yes, reduced the headway, gave more cars, more car hours. Another item was the fact of replacing single truck cars with double truck cars, which cost more to operate.

By Mr. Katzenbach:

Q. Can you give some approximate idea of the

increased cost of operating a double truck car over a single truck car?

A. It affects directly the amount of current necessary to operate the cars. In the year 1911 we delivered to the feeders 6,914,200 kilowatt hours, in the year 1914 we delivered to the feeders 9,087,150.

By Commissioner Donges:

Q. An increase approximating fifty per cent.?

A. Yes, an increase approximating fifty per cent.

By Mr. Katzenbach:

Q. In that connection, will you state whether or not you are familiar with the cost of producing your current ready for delivering to the feeders?

A. I am.

Q. What is the cost of the production of that current?

A. It is costing us now about—well, it is costing between seven mills and one cent, seven mills being the cost of generating the current and maintaining the machines, one cent being about the probable cost if you include a sum sufficient to replace all the plant as it reaches the end of its life.

By Commissioner Donges:

Q. You mean generating station?

A. Yes.

By Mr. Katzenbach:

Q. Will you state how that compares with the cost of the production of current in other street railway systems?

A. I think it compares very favorably. Another item indicating that is the coal used per kilowatt hour generating. We have gotten our coal down to between three and 3.3 pounds of coal per kw. h., which is a very reasonable cost.

Q. During this period, that is, from the first year of your operation to the last completed year of your operation, has there been any increase in the cost of the labor necessary to be employed in and about the maintenance of the property?

A. Yes, there has been this increase in wages I spoke of.

Q. I mean the ordinary labor.

A. There is another item. We put the power house on an eight-hour day about three years ago, where before it had been operated in two shifts, now it is operated in three. We have also increased the number of men in the boiler room for each shift, over what it was before, on account of the increased current output and the increased coal handling. The rate of wages—did I understand you to ask, was the rate of wages for track labor?

Q. Ordinary labor that is employed in the maintenance of the property, whether that has or has not increased?

A. That has increased in the same proportion about that the platform wages have been increased.

Q. By platform you mean motormen and conductors?

A. Yes, our agreement with our employees includes track laborers, power house laborers, car barn laborers, as well as motormen and conductors.

Q. Has the cost of fuel increased during that period?

A. Yes.

Q. Give us an idea of that.

A. It has increased about thirty cents a ton.

Q. Is that an appreciable item?

A. It is an increase of about ten per cent. in the cost of fuel, per ton.

Q. How many tons of fuel do you use a year for the generation of your power?

A. We used in 1914, 16,567.63 tons.

Q. During this period, I suppose you have some acquaintance with damage suits, have you not?

A. Yes.

Q. Is the amount paid out per year increasing or decreasing in that respect?

A. The amount paid is increasing. It was about six thousand dollars the first year and it has gone up to about thirteen thousand dollars the last year.

By Commissioner Donges:

Q. Less than two per cent. of your gross revenue?

A. Yes.

By Mr. Katzenbach:

Q. Tell some of the causes, if you know, of that increase; is there any difference in the traffic upon the streets in the last few years, or are juries more favorable to plaintiffs, or what goes up to make this increase?

A. I should say it was a growing tendency on the part of communities to hold traction companies, among others, responsible in case an accident occurs, and possibly, well, surely a tendency to give higher damages now than years ago.

By Commissioner Donges:

Q. You don't think it is in any measure due to the fact you are operating more cars?

A. No.

Q. Isn't the hazard increased by the operation of more cars?

A. Yes, but I think we are constantly endeavoring to reduce the hazard and to eliminate the causes of accident.

Q. Are you transporting more passengers?

A. More, yes, in 1914 over 1911, yes.

Q. Don't you think they are both contributing factors?

A. Yes, there is a balance; there are a great many forces working together. As an illustration we are applying to all our double truck cars the pay-within features, as they are called, which involves or in-

cludes closing the door before the car starts and not opening the door until the car is stopped. Many accidents in the past have been due to passengers trying to get off before it stopped, or get on after it started, so in those ways many of those possible accidents must have been eliminated. Of course, it is only a very small portion of accidents that actually cost the company, because many of them are not injuries to those having the accident. They may fall off a car but not be injured in any way, and no suit follows.

By Mr. Katzenbach:

Q. With reference to office employees, have the salaries of those increased with the general tendency?

A. Yes.

Q. To what proportion?

A. Fully as large a proportion as the platform wages.

Q. As to the number of trips daily that the car can make, has there been any noticeable slowness in the operation of cars by the congestion in the city or not?

A. Yes, there has.

Q. Has that had any effect upon the increase of operating expenses, and if so, what?

A. It made it necessary for us a year or two ago to put on an additional car to make the same time on the Hamilton Avenue run. For instance, on a Saturday or in the afternoons the congestion in the streets, or the number of stops, make it difficult to maintain a scheduled speed, and a few years ago we went over the schedules, having to reduce the average scheduled speed for that reason.

Q. Regarding the length of the ride for a single fare, has there been any tendency, has there been any increase in the length of rides, and about what length of ride do you give for a single fare?

A. There has been a tendency to increase, in fact we have increased the length of ride for a single

fare on a number of roads during the past four years. It is a tendency which is common to all situations, traction companies, I should say. One reason is, as the city boundaries are enlarged, the five cents is assumed generally to be applied to the city boundaries. In this particular case we have six short suburban lines and on each one of those lines we carry passengers considerably beyond the city limits for one fare, that is, our first fare zone line falls outside the city limits on each one of these suburban lines. We have extended them in a number of cases.

Q. Will you state what is the length of ride you give for a single fare upon these different lines?

A. That statement was being typed.

Q. You have prepared a statement that is being typed?

A. And was to be here this morning.

Q. I will pass on them; I thought it was in relation to this. Mr. Johnson, will you state, with reference to your operating expenses, what they were per car mile during the year 1914?

A. They were 13.9 cents.

Q. Will you state whether that is, in your opinion, a low or high cost of operation?

A. I think it is low.

By Commissioner Donges:

Q. It is pretty nearly what you would term the normal average?

A. No, sir, I should say it is quite low.

Q. Isn't from fourteen to fifteen cents regarded as about normal?

A. For operating expenses per car mile?

Q. Yes.

A. I should say fifteen and possibly a little more. I think 13.9 is quite low to be compared with other places. Of course, those figures are available for other properties.

By Mr. Katzenbach:

Q. You are familiar with the general layout of the City of Trenton and its vicinity over which you operate your system, are you not?

A. Yes.

Q. Will you state whether or not there are certain elements which tend to make a low gross receipts of the operation of a street railway system in Trenton?

A. Yes. The fact is that the gross receipts in Trenton are lower per inhabitant served than is usual. They are lower per car mile.

By Commissioner Donges:

Q. What are they per care mile?

A. They have run from about twenty-three to twenty-five cents average.

Q. Your figure of 13.9 does not include depreciation, I take it?

A. It includes depreciation. During the year 1914, very early in the year I secured the reports of eight properties somewhat similar to this Trenton situation and about the same size and somewhat larger, and at that time our annual gross receipts amounted to about $6.40 per head of population served, while these others varied from $8.40 to $14.08 per head of population served.

By Commissioner Donges:

Q. What were the other communities?

A. I can submit the list of them; I haven't it here with me.

Mr. Record: I should like my objection entered to that statement on the ground it is too general. It does not give us anything to go on.

Witness: I can submit it this afternoon.

Commissioner Donges: We will permit it to stand. Mr. Johnson says he will submit a list of the cities with which the comparison is made.

By Mr. Katzenbach:

Q. Give your reasons, or the reasons which you think control as to the low per capita in the City of Trenton, based upon your observations and study of the workings of this system and of the layout of the City of Trenton.

A. I think it is due to the particular layout of the City of Trenton and to the number of grade steam railroad crossings and canal crossings.

Q. State in your opinion each of those elements, what bearing it has on the situation.

A. There is only one way of getting across the city from the corner of State and Broad Street region to say Clinton Avenue, the steam railroad, Pennsylvania Railroad station region, by trolley. If a person wanted to reach the region in the neighborhood of the Pennsylvania station from North Broad Street, to go by trolley, he would have to go down to the corner of State and Broad and transfer and go out to South Clinton Avenue. There are many points where he might walk across instead of taking that roundabout trip, and there are canal bridges that he might go across. The map of the traction layout and the City of Trenton illustrates instances which would indicate why the average number of rides per inhabitant in the City of Trenton might be lower. Again, the South Clinton Avenue region, there is some travel between there and the East Trenton region, while there is no car or no trolley tracks across, they would have to make quite a roundabout trip to reach there.

By Commissioner Donges:

Q. You think that discourages travel?

A. Yes, I think those three reasons. I might say the railroad crossings and the canal crossings ——

Q. You suggest that as a possible obstruction to rapid transit?

A. Yes, so people will walk rather than have delay at those points, people have told me so. As an illustration, I walked today with a man from the Clinton Avenue station. He said, on account of the delay at East State Street bridge he usually walked from the station to the office.

By Mr. Katzenbach:

Q. State whether you have ever observed or not as to whether, in certain sections of the City of Trenton, the people employed in factories usually live at a distance or live within walking distance of their employment.

A. So far as I can find out, the people who work in the Roebling factories live in the immediate vicinity, very few of them would ride in a trolley car, therefore, to reach the work, they walk to and from their houses. That also applies to many of the factories in the East Trenton district, as it is called, up in North Clinton Avenue, where many of the workers live near the factories and many who do not live near the factories go across the canal rather than take the roundabout traction route. That also applies to some—the fact that they live near the factories applies to the workers out East State Street to quite an extent. The Pennsylvania shops operate their own train from the South Clinton Street station to the shops. A number of times, twice, I have taken that up with the Pennsylvania Railroad officials, as to whether they would discontinue their train if we would provide enough cars at their shops to move their men back and forth, and they have answered that as the train provides a free ride for the men and as it has become a custom, they could not very well discontinue the train and make the men use the traction cars, where they would have to pay for the ride.

Q. Mr. Johnson, do you know what proportion of the riding population ride upon a ticket which have

been sold at the rate of six for twenty-five cents, and what proportion pay a straight five-cent fare?

A. As a definite answer to that question I have here the total number of cash fares received, the total number of transfers received, and the total tickets received for 1914.

Q. Give the period in which those fares were received.

A. For the year ending December 31st, 1914, we received 3,197,012 cash fares, that is, five-cent pieces.

Q. Three million and how many?

A. 3,197,012. We received 14,413,498 tickets, we received 4,478,508 transfers.

Q. How many transfers?

A. 4,478,508.

Q. Can you just give the percentage approximately, state how many of the riders ride upon a ticket?

Mr. Record: Won't those figures tell the story?

Mr. Katzenbach: They do tell it. I thought in percentages it is a little easier to handle than to go into millions.

A. It would be a little over eighty per cent.

Q. Quite a little over eighty per cent. I make it.

A. About eighty-two per cent. of the passengers, that is, of the pay passengers, use tickets, not including transfer passengers. About eighty-two per cent. of the pay passengers use tickets.

Q. During the year ending December 31st, 1914, can you state how many of the 14,413,498 tickets that were delivered to the company, each for a single ride, were delivered within the City of Trenton, used within the City of Trenton, or within the limit of the first fare zone upon each of the six suburban lines that you have mentioned.

Commissioner Donges: That is to say, what might be called the Trenton zone?

Mr. Katzenbach: The Trenton zone, that probably would be the better way to speak of it.

Witness: I am afraid I haven't it with my papers.

Commissioner Donges: It is about time to recess; suppose we recess now until 1.45.

Recess from 12.30 to 1.45 o'clock P. M.

AFTER RECESS.

RANKIN JOHNSON, resumes the stand.

Direct examination (continued).

By Mr. Katzenbach:

Q. Just prior to the noon recess I asked you if you would give the number of tickets that were offered for a ride within the Trenton zone, so-called, during the year 1914?

A. Within the first fare zone 12,887,958.

Q. How many tickets were offered in the second fare zone?

A. 1,172,963.

Q. Upon any of the lines have you a third fare zone?

A. Yes.

Q. On what line have you, or lines?

A. The line running to Princeton and the line running to Hopewell.

Q. How many tickets were tendered in payment of fare on the third fare zone?

A. 351,900.

Q. By the first fare zone you mean the portion of your system within the city limits and immediately adjacent to the city limits, do you not?

A. I do.

Q. Will you state in dollars and cents what would be the increased revenue to the company had each person who offered a ticket within this first fare zone paid a single fare or straight fare of five cents?

A. $107,399.65.

Q. That is based upon the assumption that there would be as many persons ride and pay a single fare of five cents as rode and tendered a ticket?

Q. Would, in your opinion, the number of persons riding be decreased if the single fare of five cents was required?

A. I think there ——

Mr. Record: It would seem to me this witness is not qualified to answer that. He hasn't shown any experience anywhere, except here.

Mr. Katzenbach: It only can be a matter of opinion; it is something you could not have any exact knowledge on.

Mr. Record: It may be in other centers they have had exact knowledge.

Commissioner Donges: We will permit the question.

Witness: I think there would be a very slight difference for two or three months. I did make some study of that in inquiries in some places where tickets had been eliminated, including Reading, Wilmington, Philadelphia, and a place in New York State.

Q. Then your opinion is based upon information which you obtained from conversing with those who were familiar with the withdrawal of the sale of six tickets for twenty-five cents in the Cities of Philadelphia, Wilmington and Reading at least?

A. Yes.

Q. And one other place you have forgotten the name of?

A. Yes, also a pamphlet entitled "Riding Habit," which I could submit if so desired.

Mr. Record: Doesn't that fact, that he got his information from talking to some other people and a pamphlet, invalidate any opinion of his? Why should that go in? We cannot combat that sort of thing. If he states his information and that was hearsay, it seems to me it should be produced.

Commissioner Donges: You may demand it on cross-examination if you think it material.

Mr. Record: He says he bases the opinion on talks with people and on a book.

Commissioner Donges: I understood him to say further he had made a study, and part of his study included these things. It may be if his study is tested his knowledge and judgment may or may not be of value, but as a practical railroad operator the Board will take his testimony.

Mr. Record: I will just except to that.

Commissioner Donges: Yes.

Witness: That place in New York was Schenectady.

Q. In the printing and counting of tickets are there additional costs, including clerk hire?

A. Yes. The cost of the ticket in the first place, the cost of taking care of the tickets, of distributing them and of counting for the distribution, they have to be regarded just as cash, and the cost of collection and counting, and verifying them very carefully in the office before they are issued and after they are returned, and the destruction of the tickets finally.

Q. What cost is the company put to annually by reason of that?

A. I am having a statement made in detail which is coming this afternoon.

Q. Is the statement there before you on the desk?

A. Cost per annum for clerks employed in handling tickets, $1,651; rental of ticket counting machine, $300; tickets purchased during 1914, $1,512. Those are the definite costs. Of course, they do not include—all these tickets have to be handled between the station and the office and then delivered to the conductors at the car barn, and at the corner of State and Broad Street they have to be kept supplied with them, and those many items which cannot be figured definitely would add to this sum.

By Commissioner Donges:

Q. Do I understand your answer to the question as to what effect the withdrawal of tickets is likely to have on the revenue of the company, that for a few months there would be a falling off in the travel, which would probably be renewed after a short time?

A. Yes.

Q. So that the company might reasonably expect, after a few months, the increase of $107,000 a year?

A. Yes.

By Mr. Katzenbach:

Q. Mr. Johnson, in the operation of any street railway system is there a normal increase, as a rule, in the gross receipts of the company, or not?

A. There is, over a period of years; there is, of course, an increase and that has been averaged in various ways for an assumed normal increase for the future.

Q. What is that in percentage?

A. I believe it is about seven per cent. annually.

Q. Seven per cent. annually?

A. Yes.

Mr. Record: Seven per cent. on revenue, increase of revenue?

Witness: Increase of gross revenue.

Mr. Katzenbach: Normal increase about seven per cent.?

Mr. Record: That would be the gross?

Witness: Yes.

Q. Take this system and compare the increase in the year 1914 with the revenues obtained in the year ending December 31st, 1913, and what, if any, was the increase in this system in gross revenues, what percentage?

Commissioner Donges: Between 1913 and 1914?

Mr. Katzenbach: Yes.

A. There was an increase for the year 1914 over 1913 of $5,593.71.

Q. What percentage would that be?

A. Less than one per cent.

Mr. Record: Haven't you made a mistake in that calculation, 776 ——

Witness: $776,548.48.

Mr. Record: And 768, according to my figures, it would be a little more than that.

Q. The gross earnings, the year ending December 31st, 1914, were $776,548.48?

A. Yes.

Q. And for the year ending December 31st, 1913, $770,954.57?

A. They were.

Q. You say that is a little less than one per cent.?

A. Yes, one per cent. would be $7,700, and this is $5,590 something.

Q. Have you the figures of the gross receipts dur-

ing the month of August, 1915, as compared with the month of August, 1914?

A. I have.

Q. Will you state what those are?

A. August, 1915, gross receipts decreased under August——

Commissioner Donges: You are asked to give the figures.

Q. Just give the figures. What were the gross receipts in August, 1914?

A. These gross receipts I have been giving are our total gross receipts. In our reports there are gross receipts from transportation, gross receipts from operation, and there are gross receipts from non-operating, and I will have to add them together in order to make the same kind of gross receipts that I have been using, that is, total gross receipts.

Q. That will only take a moment; please make the additions so we can get the comparison.

A. The gross receipts for August, 1914, were $69,415.94.

Q. What were they for August, 1915?

A. $65,268.08.

Q. How much did they decrease then in August, 1915, over August, 1914?

A. $4,147.86.

Q. Will you prepare a comparative statement for the months preceding August, 1915, as compared with the months preceding August, 1914, and submit it to the Board?

A. I will.

Mr. Record: Can't that be brought down further than August?

Witness: This presentation has taken so much of our office time they have not yet the September report, but I will include September.

Mr. Katzenbach: The reason I only gave August

was because the proceeding commenced in August, the status would be as of August, but if you want September we will prepare September.

Witness: There is a further reduction in September.

Q. Will you please also prepare a similar statement for September, 1915, as compared with September, 1914?

A. Yes.

Q. Mr. Johnson, has or has there not been a decrease in the gross receipts of 1915, as compared with 1914?

A. Yes.

Q. Will you state what, in your opinion, the decrease in gross receipts for the last two years has been due to?

A. The increasing use of automobiles for travel and the development of the commercial automobile called the "jitney," also general depression. I should say those three items can be named.

Q. Will you state, Mr. Johnson, what was the amount applicable to bond interest and rentals during the year ending December 31st, 1914?

A. May I ask about the question, the amount which we paid, which left a deficit, or the amount available for such payment?

Q. The amount available for such payments.

A. $252,686.70.

Q. Mr. Johnson, the terms under which your company operates these properties provide for the payment of interest upon bonds outstanding, do they not?

A. Yes, sir.

Q. What amount of bond interest during the year 1914 did your company have to pay?

A. $189,172.69.

Q. Under the lease, what was the amount of rental you had to pay for these respective properties that is, gross rental for all four properties?

A. $92,041.67.

Q. What was the total amount for bond interest and rental during the year 1914?

A. There were other items. You want just those two added together? There are other items of return on capital, such as interest on mortgages, amortization of bond discount, and interest on funded debt. These two items which you have asked me to give the sum of do not include all return on capital.

Q. I want first for you to give me the sum of these two items?

A. $281,214.36.

Q. What was the amount of deficit in the year 1914?

A. $35,870.05.

Q. During the year 1914 did you set aside for depreciation the amount which, in your opinion, or under the rules of this Board, and in the operation of street railway companies generally, should be set aside?

A. No.

Q. State what that additional amount for maintenance of property should, in your opinion, have been.

A. In my opinion the amount of depreciation fund for this property should be between $120,000 and $150,000 and I have taken $135,000 as being the mean between $150,000 and $120,000 as what I believe should be the depreciation fund annually set aside.

Q. How much did you actually set aside for depreciation fund in 1914?

Mr. Record: I thought he said he did not set aside.

Q. Including all current maintenance and operation of your road?

A. I did not say I did not set it aside; I said I did not set a sufficient sum aside.

Q. I mean that was expended and included in your operating expenses?

A. The amount set aside was $69,710.09.

By Mr. Record: You mean by that, that was spent?

A. I mean it was appropriated to the depreciation fund and used for purposes of the depreciation fund.

By Mr. Katzenbach:

Q. Was there a deficit in that fund, and what deficit was there?

Commissioner Donges: That would be the difference between $69,000 and $139,000?

Witness: Yes.

Q. That would be $65,289.91?

A. That difference, yes.

Q. If that amount had been available for the maintenance, what would have been the total—I will put it that way, without that amount available for maintenance, what is the total deficit?

A. For the year 1914?

Q. Yes.

A. $35,870.05.

Q. Plus what additional amount that ought to have gone back into the property, according to your opinion?

A. What that additional depreciation fund the deficit would have been $75,870.05. Your difficulty in your addition there is due to the fact that some of the expenditures for maintenance were in addition to that depreciation fund.

Q. That was how much?

A. Twenty-six thousand——

Q. $26,171.83, was it not?

A. Yes. In other words, we spent, of that depreciation fund, $26,171.83.

Q. So you would have had a deficit of $75,000?

A. Yes.

Q. During the year 1914, out of the rentals of the property, what dividends approximately were available if they were used, upon capital stock, what was the percentage of dividends that could have been paid upon the capitalization of this company?

A. Of the underlying companies?

Q. Of the underlying companies, yes, of the Trenton Street Railway Company, the Trenton, Pennington & Hopewell, the Mercer County Traction Company, and the Trenton, Hamilton & Ewing Traction Company.

Mr. Record: What is the point of that, if you are obliged to pay a rental? Are you now stepping off from the rental and going on the theory of a dividend?

Mr. Katzenbach: No, I just want to show—it is easier for someone to calculate that and have it in the evidence than to calculate it ourselves.

Mr. Record: On the theory that there is no rental what would be the dividend?

Mr. Katzenbach: Yes.

(Question read.)

Commissioner Donges: If no rental was paid, what dividend could be paid?

Mr. Katzenbach: What dividends could be paid out of the rentals on the capital stocks of these underlying or lessor companies?

Commissioner Donges: The colloquy between counsel left me in some doubt as to what was meant.

Mr. Katzenbach: I will withdraw that question and put it this way.

Q. What dividends upon the stock of the lessor companies could have been paid out of the rentals for the year 1914?

A. Six per cent.

By Commissioner Donges:

Q. That is to say, the rental paid to each company was equivalent to a six per cent. dividend on the stock of that company after paying interest charges, fixed charges?

A. That is it.

Mr. Record: I don't understand that.

By Mr. Katzenbach:

Q. Will you explain just what you mean by your answer?

Mr. Record: He uses the word "rental" which confuses me, the sum paid as a rental, but he says there was a deficit.

Mr. Katzenbach: Sometimes you have to pay rent, even if you have no money to pay it. They had to raise it from some source to pay the rentals.

Commissioner Donges: I understand Mr. Katzenbach's question to be this: A certain sum is reserved as rental in the leases.

Mr. Katzenbach: Yes.

Commissioner Donges: What percentage upon the stock does that rental, so reserved, amount to, and the witness says six per cent., but in each case the rental is based upon a six per cent. return on the capital stock outstanding of each of the lessor companies.

Mr. Record: Your Honor is mistaken about that; that is true as to some of the companies.

Commissioner Donges: I don't know whether it be the fact, but that is what the witness' answer is to the question.

Witness: That is my answer.

Commissioner Donges: I don't know whether that is the fact, but that I understood to be the answer to the question.

Mr. Record: Let me put one question.

Mr. Katzenbach: All right.

By Mr. Record:

Q. You mean that if you take the amount of rentals that were due under the leases, that those rentals added together would be six per cent. upon the stock issues of the leased companies, is that right?

A. That conveys the same question, to my mind.

Mr. Record: If that is what you mean, then I understand.

Witness: I don't see any difference between the two.

Commissioner Donges: He stated the rental to each company amounted to six per cent. upon the stock of each of the lessor companies.

Mr. Record: That is not true.

Witness: Yes, it is my understanding that is true.

Mr. Record: I thought the main company started with eighty thousand dollars and ran up to $150,000.

Witness: No, that covers all the companies.

Mr. Record: There isn't an increasing amount?

Witness: You say the main company and you give the total amount of the rentals for all the companies.

Mr. Record: I understood all the companies were on a six per cent. basis, were paid a certain amount except one company, and that had a continually increasing annual return.

Witness: You are mistaken.

By Commissioner Donges:

Q. The same percentage of rental as to the capital stock obtains with respect to all of the companies?

A. Yes.

By Mr. Katzenbach:

Q. Mr. Johnson, before the noon recess there was a question submitted to you which involved some eight or nine cities, the names of the cities you did not have at that time. Have you among your papers found that memorandum?

A. I have.

Q. Will you give the cities and the per capita or per head amount expended in those cities for street railway service?

Mr. Record: I would like my objection entered to that; I cannot cross-examine on that.

Commissioner Donges: It may be entered.

A. Columbus, Ohio, $9.81; Denver City, $14.80; Des Moines, $11.39; Duluth, $8.47; Grand Rapids,

$10.97; Omaha and Council Bluffs, $11.95; Springfield, Mass., $11.21; New York State railways, Syracuse lines, $11.10.

By Commissioner Donges:

Q. I understand this to be the gross revenue per capita?

A. That is it.

Mr. Katzenbach:

Q. If a single fare of five cents was charged to each passenger upon your system of roads, what would the per capita be in Trenton?

A. This was taken, as I said, about March, April, 1914. These figures refer to the 1913 figures.

By Commissioner Donges:

Q. What was the per capita, the revenue per capita?

A. In Trenton?

Q. In Trenton.

A. $6.40 per head of population in Trenton. I figured then the amount we would have received had those buying tickets paid a five-cent fare.

By Mr. Record:

Q. How is that?

A. That $6.40 for Trenton was the amount actually received per head of population served. Then I figured in case all of those buying tickets had paid a flat five-cent fare the amount per head of population would have been——

By Commissioner Donges:

Q. It would be an increase of approximately fifteen per cent.?

A. I have figured it here, our receipts per capita served would have been $7.04.

Commissioner Donges: That is what it would have been if each passenger paid five cents?

Mr. Record: Yes, I understand that.

By Mr. Katzenbach:

Q. About what is the population of the territory served by your street railway system?

A. About 120,000.

Q. That includes, generally speaking, what places?

A. The city of Trenton, Pennington, Hopewell, Ewingville, Princeton, Lawrenceville, Hamilton Square, Mercerville, Yardville, Trenton Junction, and those in the district immediately outside of the city and between these points mentioned along our lines, which constitutes quite a community.

Q. So the total population is about 120,000?

A. Estimated, of which 100,000 live in the City of Trenton.

Q. You stated this morning that you had dictated and were having written off the different mileages that were given for either a single fare or a ticket. Will you give the length of miles traveled and the number of passengers of the principal routes of this system?

A. Hamilton Avenue and West State Street, these are all within the first zone, 5.05 miles. If I read the name of the route and the length of it, that is sufficient?

Q. Yes, that is sufficient.

A. Center Street and East Trenton——

Q. I want to know how many trips.

A. Hamilton Avenue and West State Street 5.05 miles, 124,606 single trips.

By Mr. Record:

Q. What does that mean?

A. Trips of the car. Center Street and East Trenton, 3.8 miles, 90,320 single trips. Broad Street and East Trenton, 5.43 miles, 105,380 single trips. Prospect Street and South Clinton Avenue, 6.42 miles, 123,898 single trips. Market Street, .88 of a mile, 38,604 single trips. Pennington Avenue and East State Street, 4.74 miles, 133,938 single trips. Lawrenceville and Princeton, first zone, 4.29 miles, 49,444 single trips. Pennington and Hopewell, first zone, 5.17 miles, 16,814 single trips.

Q. Mr. Johnson, you have a transfer system, have you not, in operation, so it is possible for a passenger to go from one line to another for the continuation of his journey without the payment of any extra fare?

A. We have.

Q. How many number of transfer points are there in the city of Trenton?

A. Fifteen.

Q. Do you know the average length of a trip, the average of all those trips you have given?

A. Yes, the weighted average length of trip was 4.8 miles.

Q. Is it possible for a passenger, by means of a transfer, to go for a ticket more than 4.8 miles?

A. Yes.

Q. How far, for instance, could he go?

A. He can go on one trip, one route, and get a transfer and go out to the end of another.

Q. Just what number of miles could he travel by the use of the transfer system for a single ticket?

A. He can go between eight and nine miles in some cases.

Q. During the year 1914 how many transfers of this character did you take up where passengers started on one line, and then by a free transfer, went to another line on the road?

Mr. Record: I think that figure was given this morning.

Commissioner Donges: I think Mr. Johnson

gave the number of cash fares, number of ticket fares, and number of transfers.

Mr. Katzenbach: There is one little explanation, that is the reason I ask the question again.

A. The number of transfers collected was 4,181,191, plus 297,317. That 297,317 represents transfers collected at the East State Bridge which was under construction where we transferred passengers, so it would be an unusual transfer point.

Q. That is not a part of the 4,181,191 transfers in the year 1914?

A. No.

Q. Of all your riders upon your lines, what percentage of those riders exercised this privilege or right of transfer?

A. The transfers, per cent. of cash fares and tickets, was 23.7 for the year 1914.

Q. That was on ticket, was it?

A. That was percentage of transfers to the number of tickets and cash fares.

Q. If you eliminated the East State Street bridge transfers that were given out during the year 1914, what percentage would there be of riders that actually exercised the right of transfer? Do you have to make that calculation?

A. I do.

Q. Then we will pass that for a minute. Do you know the number of fare passengers there were passing over the lines in the year 1914?

A. Yes, cash fares, 3,197.012.

Q. That was cash fares?

A. Yes.

Q. Have you the total amount of tickets and cash fares there?

Mr. Record: That was all put in.

Mr. Katzenbach: I will withdraw the question.

Q. Mr. Johnson, do you know from study about

what year this street railway system was first started?

A. About 1859, as I remember.

Q. That will do. Have you been able to get any records of the companies showing the actual cash investment in this property through all of its changes from horse railroads to electric railroads?

A. I have not.

Q. Have you endeavored to find that out?

A. I have.

Q. Are there any records in existence that you have been able to ascertain?

A. None that I can find.

Q. Do you know the market value of some of these securities, that is, of this street railway system?

A. There is no quoted market value. I have been instrumental in selling some of the securities and in trying to sell some, so I know during the past two years something about the market value.

By Commissioner Donges:

Q. Aren't the securities of none of these companies quoted?

A. Not as I know of.

By Mr. Katzenbach:

Q. Will you state who holds the stock of the Trenton Street Railway Company?

A. It is held by the United Power & Transportation Company.

Q. In a single block?

A. I think so.

By Commissioner Donges:

Q. It holds all the qualifying shares?

A. I believe so.

By Mr. Katzenbach:

Q. Has there been any sale of any share of that stock, to your knowledge, within five years?

A. No.

Q. Within ten years?

A. No, not within ten years.

By Commissioner Donges:

Q. It has been closely held for ten years or more?

A. Yes, as near as I know, and I think I know.

By Mr. Katzenbach:

Q. The stock of the Mercer County Traction Company, is that closely held, and if so, by whom?

A. By the United Power and Transportation Company—the Trenton Street Railway Company holds the stock of the Mercer County Traction Company.

Q. Is that held practically in a single block of stock, except qualifying shares?

A. Yes.

Q. Has there been any market value of that stock?

A. None I have ever heard of.

Q. Have you known of any shares being bought or sold within five years?

A. I have not.

Q. The stock of the Trenton, Hamilton & Ewing Traction Company, who holds that stock?

A. Trenton Street Railway Company.

Q. Is that held in one single block, except qualifying shares?

A. It is.

Q. Do you know of any shares that have been sold in the open market during the past five years?

A. I do not.

Q. The stock of the Trenton, Pennington & Hopewell Street Railway Company, by whom is that held?

A. By the Trenton Street Railway Company.

By Commissioner Donges:

Q. Pardon me. The situation then is that the Trenton Street Railway Company holds the stock of all the other underlying companies?

A. That is my understanding.

Q. Is there any doubt about it?

A. No.

Q. And the stock of the Trenton Street Railway Company is held by the United Railway & Transportation Company?

A. United Power and Transportation Company.

By Mr. Katzenbach:

Q. Is that stock of the Trenton, Pennington & Hopewell Street Railway Company likewise held in a single block, except qualifying shares?

A. Yes.

Q. Do you know of any shares of that stock within five years last past?

A. I do not.

Q. The Trenton Passenger Railway Company Consolidated six per cent. bonds, are they dealt in occasionally?

A. They are.

Q. Do you know whether there is any difference between the value of some of those bonds secured by the same mortgage as compared with others, and if so, what makes it?

A. Are you referring now to the Trenton Passenger Railway Consolidated bonds?

Q. Sixes, yes.

A. I didn't understand the last question.

(Question read.)

Witness: Yes, these bonds are being refunded.

By Commissioner Donges:

Q. Which bonds?

A. The Trenton Passenger Railway Consolidated first mortgage six per cent. bonds, under the mortgage, by a provision of which ten thousand dollars are refunded annually to the end of 1915 and fifteen thousand dollars refunded annually from 1916 to 1925, and twenty thousand dollars annually from 1926 to 1930, and the remainder, amounting to $650,000 par value fall due in 1931. The market value of these bonds would, therefore, vary in accordance with the date on which they are due.

Mr. Katzenbach: I will just suspend the examination of Mr. Johnson at this point, because these are rather formal matters, the market value of these securities and there will be some testimony of a broker upon the subject, and ask that Mr. Ford be called in order that we may carry out our arrangement.

FRANK R. FORD, sworn on behalf of Trenton & Mercer County Traction Corporation.

Direct examination.

By Mr. Katzenbach.

Q. Mr. Ford, will you kindly give your full name?

A. Frank R. Ford.

Q. In what business are you engaged?

A. I am a member of the firm of Ford, Bacon & Davis, consulting engineers.

Q. Upon what lines of work are you and your firm consulting engineers?

A. We have made a specialty of electric railway construction and operation, and also of electric lighting, power and gas properties.

Q. Are you a graduate of any universities?

A. I am a graduate of the University of Pennsylvania in 1890.

Q. What degree did you take in that year?

A. The degree of B. S. and in 1891 the degree of mechanical engineer.

Q. When was the firm of Ford, Bacon & Davis established?

A. About twenty-one years ago.

Q. In the year 1894?

A. 1894, yes.

Q. Have you been engaged in any other line of work since the year 1890?

A. I have been engaged exclusively in electric engineering work.

Q. Will you state what pieces of engineering work you have been engaged in, that is, large pieces of engineering work, some of them?

A. Some of the principal street railway construction work that my firm has been engaged in, and I have been connected with more or less intimately, have been in the cities of New Orleans, Birmingham, Knoxville, Nashville, Little Rock, Kansas City, San Francisco, Pittsburg, Atlanta, Washington, Brooklyn, New York City, Philadelphia.

Q. Are you engaged in any extensive pieces of work in the City of Philadelphia today, and if so, what?

A. For about three years and a half my firm has been employed by the City of Philadelphia in the projection, design and construction of a system of municipal subways and elevated railroads, which involves a large expenditure.

Q. An expenditure of what sum, approximately?

A. About sixty million dollars.

Q. During this time have you and your firm been engaged in looking after the operation of street railways as well as of their construction?

A. Yes, we have been connected with the operation of various street railways in most of the places which I have mentioned.

Q. Have you made any special study of the matter of rates upon electric street railways?

A. Yes, I have. I have made, or have been connected with appraisals and rate reports on the public utilities of various places, including Toledo, Ohio,

Baltimore, St. Louis, New York City, Brooklyn, San Francisco, Chicago, Philadelphia and others. I have also, for several years, been Chairman of the Rates and Fares Committee of the American Electric Railway Association.

Q. State what the American Electric Railway Association is.

A. It is an Association comprising most of the Street Railways of the United States.

Q. As Chairman of the Rates and Fares Committee were you obliged to submit reports and to make examinations upon the subject of fares?

A. We made annual reports to the Association, which were published.

Q. Were, in instances, those reports written by you?

A. As Chairman, I think I wrote, prepared all of the reports, the collaborations of the other members.

Q. Have you ever, in any case, upon the consideration of the reasonableness of the rate of fare, or upon the subject of fare provisions generally, acted as an expert?

A. Yes.

Q. Before what Commission or bodies or courts have you so acted?

A. The Public Service Commission of New York City.

Q. In what cases?

A. The Coney Island fare case, the fare case of the three-cent Manhattan Bridge line, and in connection with some of the Metropolitan Street Railway Company's cases. In regard to the Metropolitan Street Railway Company's cases I might say there were more in the nature of franchise valuations than of rate cases.

Q. In what other courts, or before what other bodies, have you been a witness in fare cases?

A. Before Judge Taylor, of Cleveland, in connection with the Cleveland appraisal of the Cleveland Street Railway property. I might say that was not exactly a fare case, it was a question of ap-

praisal of the principal value of the property, although upon that has been based the present rate of fare. I have been connected also with the appraisal of the Chicago Street Railway systems in 1906 and also in connection with some of the appraisals and rate cases of the Toledo Street Railway property. I have also made a study of the rate of fare in Philadelphia involving the three-cent exchange ticket in that city.

Q. Have you, in addition to the consideration of fare or rate provisions on electric street railways, actually been engaged in the matter of street railway appraisals of the value of street railway properties?

A. Yes.

Q. Mr. Ford, will you state what, in your opinion, makes a proper or reasonable rate for a street railway, what elements enter into it?

A. From the broad standpoint, I think the question comes down to whether the company is receiving a reasonable income, and my own opinion on that subject is that there are two grounds that question can be considered on, two grounds on which that question can be considered; one, what is the value of the service rendered, and two, what is the return to the owners of the property? I think very often the first ground is and has been overlooked.

By Commissioner Donges:

Q. Would you say that was controlling, regardless of the second?

A. No, I would want to consider both. I have heard the previous witness testify as to the length of ride for one fare on the various lines, the average length of the single trips being nearly five miles, also as to the number of transfers given and the permissible maximum length of ride, and from my own study of the fare question of American street railways I believe that a five-cent rate of fare is one of the cheapest things we all pay today. I think if we would compare the street railway, the cost of the street railway ride with other means of transit, for

instance, we take the cost, if we take the saving which is made by a street car fare in time. In that connection I would say that the estimates which we made on the cost of construction and the amount of business of the proposed system of Philadelphia subways, we estimated the return on that proposed investment largely by the amount of time saved to the street car or subway riders by the new system over the old. In regard to this question in Trenton, from my general knowledge of the Trenton property and city in comparison with other places, I should judge that the average length of ride here was between two and three miles. If we call it two miles, it would require to walk two miles about forty minutes, based on an average rate of walking of three miles per hour. The street car operates at about ten miles per hour, exclusive of layovers, so that two miles on a street car in Trenton would take about twelve minutes, or there would be a saving of twenty-eight minutes on a two-mile ride. Based on the value of time of say twenty cents an hour, that would mean a saving of over nine cents, by the use of the street car. If time is only worth fifteen cents an hour, it would mean exactly seven cents, so that from that standard of comparison I believe the five-cent rate of fare is a reasonable rate of fare. If you take the other mode of transportation, the taxicab, the two-mile ride would cost ninety cents for one passenger, forty-five cents for two passengers, forty-three cents for three passengers, thirty-two cents for four passengers. As an actual instance of this, the last time I was in Trenton the ride from the Pennsylvania station to the office of the street railway company cost me forty cents in a taxicab, and today it costs me five cents on the street car.

Q. Will you consider this question from your second viewpoint, as to the return to the owners of the property?

A. From that standpoint I believe that a reasonable rate of fare should provide a reasonable return on the fair value, and I think we would all put the fair value at the cash investment if that could

be obtained. In this case I understand that is not obtainable.

By Commissioner Donges:

Q. You regard that as the better method where it is possible to obtain?

A. I think that is the best evidence of the value on which a rate of return should be figured.

Q. That would be the best, if it could be determined?

A. If it could be determined. If this property had been built five years ago, and the records were available, and vouched for, I don't believe this Commission would consider the cost of reproduction new. I certainly would not personally, if I could get the figures of cash investment. Inasmuch as these figures are not available in this case, the next method is the cost of reproduction of the property as an entirety. I think the reason, aside from the fact that the cash investment is usually not obtainable, I think the principal reason for taking the cost of reproduction new of the property is that the rate of fare, based on a reasonable return on the cost of reproduction new, would present what rate of fare a new industry would have to charge. It would also represent the rate of fare that a competing company would have to charge.

Q. You would not figure depreciation?

A. In a rate case I would not figure depreciation in applying—I would not figure depreciation in arriving at the capital value on which a rate of return was applied to obtain the proper rate of fare.

By Mr. Katzenbach:

Q. What would be your reasons, what are the reasons why, in your opinion, you would not figure depreciation in taking into consideration a reasonable rate?

A. I think, if the property of the street railway company is properly maintained and if it is ade-

quate for the purpose, that the value of the service rendered, the street car ride, is just as much whether the property is brand new or whether it is twenty-five per cent. worn out or any reasonable percentage of depreciation. I think it is the same question which would arise in the case of a water company; the water is worth just as much to the consumer whether the pipe is a new pipe or twenty-five years old.

By Commissioner Donges:

Q. Then you would take the value of the service rather than the return upon the investment?

A. No. I think I would not depreciate the capital value represented by the cost of reproduction new in a rate case, because I think the rate of return has to be applied to the cost new, which is the real investment or the capitalization, assuming that that is represented by the investment, that represents the investment. I think that if you apply a rate of return to a depreciated value you do not get the correct result for ascertaining the rate of fare, for the reasons which I started to say. The first reason was the question of the value of the service. You might take another illustration, the question of electric energy. These lights will burn just the same and are worth just as much whether the wire is new or depreciated. The same thing, another illustration, would be the taxicab, assuming that the taxicab is properly repaired and maintained, they charge just the same rate of fare, and it is worth just the same to travel from the Pennsylvania station here, whether the taxicab is new or twenty-five per cent. depreciated. In order to get the point of view we take the taxicab, if you are about to buy that taxicab, you would then want to take off the depreciation, but if you are fixing a rate of fare for that taxicab, you would not do it, you should not do it. In the street railway company the reason that you—in a street railway company, if you are

buying this street railway company, you would want to take off the depreciation.

Q. If you are permitted to earn rates upon it, if you were buying it with a view to operating, and were permitted to earn rates on depreciation, why would you take it off in that case?

A. Because the stockholders or security holders of this company are responsible for providing the funds necessary to repair that depreciation, so that if I am going to buy this street railway company, I would want to know the depreciation, because I am assuming a liability when I buy that company.

Q. That comes out of rates. doesn't it, the maintenance which is taken care of by the rate paid by the users?

A. That is a different question, Mr. President, I think. The question of annual depreciation, of course, must be provided for.

Q. Upon the theory that the property is maintained at a standard as nearly comparable with you as is possible?

A. The property has to be maintained to a proper standard, and that means an annual expenditure which has to be provided for from the annual income, but I am speaking of the depreciation, the capital depreciation, you might say.

Q. What the property would be worth for sale is what you are dealing with?

A. Yes.

Q. And in that case you say you would compute depreciation and would deduct that from the sale price?

A. I would, because if I purchased that property in a depreciated condition I am responsible for providing for that depreciation when it accrues.

Q. My question was directed to getting your thought about why you would do that if you were entitled to earn upon the depreciation, upon the value of the property without taking depreciation from it, and if the maintenance is to be taken out of the rate earned. Do I make my thought clear to you?

A. I don't quite understand the connection between the two in your mind.

Q. If I got your idea, it was that if you were buying a property with a view to operating, you would not pay to the seller the full value to reproduce new, but would pay the value new less depreciation, is that your idea?

A. That is correct, leaving out the question of earning power, and any value over the physical value. There might be some reason why you would pay more than the physical value, but leaving that out of the question, I would pay the cost new less the depreciation.

Q. My query was why you would do that if you were entitled to earn upon the value new, and if the maintenance which is to offset depreciation so far as is possible, comes out of rates. In other words, does depreciation make any difference to the purchaser in that view?

A. It does not, if the company has accumulated a fund to represent the depreciation. That is the point. If the company has accumulated a fund to represent the depreciation it does not make any difference. If they have not accumulated that fund then as the depreciation accrues, it is necessary for the security owners, and it would be myself if I bought the property, it would be necessary then for me to provide that out of my pocket rather than out of the fund.

Q. You are taking into account accrued depreciation in excess of what is ordinarily anticipated?

A. I am taking into account the accrued depreciation, which is, as I understand it, the thing that would be deducted in case you deduct any depreciation from the value new.

Q. I thought you had in mind and that you inject a further element, namely, that the property had not been maintained, and that no depreciation fund had been set aside which had been put back into the property.

A. No matter how well a property is maintained you can never maintain it to one hundred per cent. of new value. Your rails, for instance, may be half

worn out, but are good rails yet and you would not think of renewing them until they wear entirely out, so there is always a certain percentage of depreciation present. If the company has not accumulated a fund to provide for that depreciation when it comes due, when the various parts wear out, then the security owners at that time have to reach into their pockets and provide the amount necessary.

Q. That would not be true in normal operation, what might be called normal, of course, there is no ideal condition, but a normal condition where the depreciation had been taken care of each year?

A. I think it is true with every property, because there is a certain time for instance when the power house is going to be discarded, that is, some of the large units in the power house, and at that time if there is no depreciation fund the securities owners will have to pay for that renewal.

Q. In normal operation the depreciation would be set apart every year, wouldn't it, and be put back into the property, find its way back into the property, so that at any given time if you took value new you would have the original tangible property, plus tangible property added to take the place of the depreciated value in the original property, isn't that true?

A. I think the condition would arise at certain times of the property's life where you would have to dip into your fund or dip into your pocket to replace some of the physical property.

By Mr. Katzenbach:

Q. Go on with your other reasons, Mr. Ford.

A. Another viewpoint on this question, that is, another method of looking at this method of deducting depreciation in a rate case, deducting principal depreciation in a rate case, would be the situation which would arise in case the cash investment were available. I think in that case the depreciation would not be deducted under almost any theory that has been already set up.

Q. In some rate cases do you know or not whether courts have taken a view opposite to that which you held as to taking into account depreciation in fixing a rate?

Mr. Record: It seems to me that is far afield, if the Board please.

Mr. Katzenbach: I think the witness might have his own personal view, and I think as an expert witness he is familiar with what has been done in other cases. This is for the enlightenment of everyone.

Commissioner Donges: We will permit it. Your objection will appear on the record.

(Question read.)

A. I know of several such cases, including the Consolidated Gas Case of New York City.

Q. When depreciation has been taken into account in the fixing of a rate, what elements have gone in to fixing a percentage of that depreciation. In other words, is it a depreciation purely for wear and tear or is it a depreciation for obsolescence and things of that character?

Mr. Record: Seems to me—I don't wish to interrupt this witness, as I want to get whatever value comes from his expert knowledge—we ought to have a case. There is no general rule. We ought to get somewhere with what he is testifying about.

Commissioner Donges: I take it what Mr. Katzenbach is asking is what the Courts held in Wilcox against the Consolidated Gas.

Mr. Katzenbach: Not necessarily that. I just want to know whether there are other views. He says that is one of them.

Commissioner Donges: We will permit the witness to state.

A. In some cases, I believe, where depreciation has been deducted from the cost of reproduction new, the depreciation has included that due to wear and tear and that due to what is called obsolescence or inadequacy or by some other name of the same character. In other cases, however, the amount of depreciation has been simply that due to wear and tear. My personal view of depreciation is that depreciation due to wear and tear is something definite, which practically all engineers can agree upon. Depreciation, due to what is called obsolescence, is largely in the nature of a guess or a prophesy, and very few engineers agree on the amount of such depreciation. My personal view is that a thing cannot be fifty per cent. obsolete, it is either obsolete or it is good for service. If it is obsolete it is one hundred per cent. obsolete, if it is good for service it is zero per cent. obsolete. Consequently I do not believe in taking from capital values depreciation from so-called obsolescence.

Q. In cases where depreciation has been deducted from capital values due to wear and tear, what is the percentage of depreciation among engineers, and what, in your opinion, should it be if you proceeded on that theory?

A. I think the percentage would vary with every property.

Q. From your knowledge of this property in question what, in your opinion, should it be?

Mr. Record: There hasn't anything appeared from this witness yet as to any knowledge in Trenton, except he went up one day on a taxi and another day on a car.

Commissioner Donges: He said he made a study.

A. I would answer that question by saying I would not be able to fix any percentage of depreciation for this property without making careful study of it.

Q. In making up the value of a property for fixing a rate of fare, do you consider alone the tangible,

physical property, or are there other elements of consideration in a sense of value of property intangible or as a going concern, or as working capital, which should be taken into consideration?

A. I think there are other elements besides the physical construction and equipment which have to be taken into consideration.

Q. You heard the testimony of Mr. Betts in this case, did you not, as to the valuation which he made of the physical property?

A. Yes.

Q. Do you recall or not whether he said his valuation took only into account contingencies of construction and engineering and contractor's profit? Are there any other elements that, in your opinion, should go into that value? Or put it in this way: Is there a going concern value to a property such as this street railway system?

A. I think that to Mr. Betts' estimate should be added certain percentages which go to make up what is usually called the overhead percentage on construction. For instance, he omitted, as he so stated, interest and taxes during construction, which would amount to somewhere between five and ten per cent. of the physical value. I should also judge that the percentage which he testified as having allowed for incidentals, engineering, and contractor's profit, of from twelve to fifteen per cent. would be too small. The estimate which he made was evidently from his testimony a very approximate estimate and not made in sufficient detail to warrant such a small charge for those parts of the overhead percentage. From my experience in construction work I would say that we estimate anywhere from five to twenty-five per cent. for incidentals in our construction estimates, and I have known in several cases the construction, cost of work, to equal double the estimated cost, not with our own work particularly, but in other work.

By Commissioner Donges:

Q. Upon the original plans and specifications with

such changes as were made necessary by unforeseen conditions?

A. Yes. I might say I have in mind two cases, neither of which is a straight railway company, but I mention those simply to show that there are occasionally unforeseen conditions which arise which very largely increase the cost of such construction. I know, for instance, that some of the subway work which has been done in New York and Boston has very largely exceeded the estimates.

By Commissioner Donges:

Q. Not due to any change in the plans?

A. Various causes.

Q. Not due to changes in the plans, not caused by unforeseen conditions, but by reason of the situation which was presented from time to time?

A. Yes. In regard to the question of engineering and contractor's profit, I would say that in my own experience in a number of cases throughout the country, would be that the usual charge for engineering for the construction of a system of this character would amount to between five and ten per cent., and the contractor's overhead charges and profits would usually amount to as much more. In addition to that there would be the administration cost of the company itself during the construction period, which might amount to as much as five per cent. If, however, you group those three things in an engineering contracting organization, you might reduce the total to say fifteen per cent. To that amount you should add the item of contingencies or incidentals, the size of which percentage would depend largely, in the case of a valuation, to how carefully that valuation is made. In the case of an approximate valuation, such as Mr. Betts' has testified to, I think that percentage would have to be larger than what he has testified to. In other words, it would be more than say five per cent. If you add the interest and taxes during the construction, I should think the total of those overhead charges in the case of an approxi-

mate estimate such as this one was testified to be, would run to probably thirty per cent.

Q. What do you take to be the period of construction?

A. I should think the construction period would be from two to three years.

Q. And you have assumed construction new at one time and not piecemeal?

A. Yes.

By Mr. Katzenbach:

Q. Mr. Ford, is there a going concern value that you also have to take into consideration in estimating the value of the property under this theory of cost of reproduction?

A. I think there is an element of value which is sometimes called going concern value, sometimes called intangible value, and sometimes called cost of development, which has to be added to the cost of producing the physical property.

Q. In the ascertainment of a going concern value of that kind, do you take into consideration any or all of the elements you have just mentioned, like interest on the moneys expended, during the course of construction, the administration charges, or things of that kind, or is that in addition?

A. I would call those things part of the overhead percentage on construction and thus really part of the construction cost.

Q. Part of the construction?

A. I think this intangible cost or value in this case is in addition to the construction cost.

Q. You estimate that intangible value at about thiry per cent. of the cost ——

Mr. Record: He has not said any such thing.

Mr. Katzenbach: I understood him to say so.

Mr. Record: I did not understand him so.

Q. What would you estimate that cost at, that is,

what percentage of the physical property would you estimate this intangible value?

A. The way I would arrive at it; I would consider the various items that make up the intangible cost, or in this case the intangible value in the estimated cost of reproduction new.

Q. Please state those elements.

A. Some of the principal elements are first, the cost of developing the cost of the business. If we assume that the streets of Trenton are free of tracks, and that this system is developed as a new system —

By Commissioner Donges:

Q. In its entirety?

A. In its entirety—it would take several years to develop the traffic which would be the normal traffic per capita of the property. It takes time, in other words, to educate the people to travel on any system of transportation. Then the organization of the company, the personal organization, and the physical property has to be broken in, all of which involves expense. I think those are some of the elements which enter into the going concern value or the cost of development. In addition, however, there is the cost, the original cost of securing the rights and capital which are necessary to produce the physical property. I have, in a number of these other cases, made an inventory of what transpires from the original inception of the idea of building a street railway to the time when the street railway is built, and by taking that list and giving values, estimated values to each item on the list in several of these other cases of appraisal, I have developed an idea or opinion of what that would cost in the ordinary street railway property. I have also in a number of these cases been familiar with the value which has been applied to the intangible part of the value of the property, such, for instance, as was allowed by the City of Chicago in the traction settlement of 1906, where this intangible value amounted to about forty-three per cent. of the cost of construction.

By Commissioner Donges:

Q. Upon what basis was the cost of construction ascertained?

A. The cost of construction in that case was the value of the property in its present condition.

Q. Depreciated condition?

A. In that case the electric properties had deducted from their cost new the item of depreciation, but the city allowed the going value of the cable system, which more than offset the amount of depreciation on the electric system.

Mr. Record: If the Board please, I wish to get on the record this objection as to the Chicago business, because he has stated it was a settlement, I can see how, upon some theory of the case, he could say that the Court passed upon a certain principle. It was a row, as we all know, which finally eventuated in a settlement.

Commissioner Donges: The witness is giving his experience as to what has been allowed under varying conditions.

Mr. Record: Not that has been allowed by anybody like this; that is a dicker between two private people.

Commissioner Donges: We will permit it to stand. I think we will recess now. You probably won't be able to finish Mr. Ford's examination in the few moments left.

Mr. Katzenbach: We will continue on Monday at 11.00 o'clock?

Commissioner Donges: Yes, on Monday at 11.00 o'clock.

Mr. Katzenbach: Mr. Ford will be here after the noon recess.

Commissioner Donges: It is understood we continue on Monday at 11.00 o'clock.

Adjourned until Monday, November 1, 1915, at the State House, Trenton, N. J., at 11.00 o'clock A. M.

FOURTH HEARING.

Trenton, N. J., Monday, November 1, 1915.

Before the following Commissioners:
R. W. E. Donges, Esq.,
J. J. Treacy, Esq.,
J. W. Slocum, Esq.

For Trenton & Mercer County Traction Corporation appears F. S. Katzenbach, Esq., and Edward Hunt, Esq.
For City of Trenton appears George L. Record, Esq.
For Mr. F. W. Roebling appears G. W. Macpherson, Esq.

Mr. Katzenbach: I will ask to have Mr. Barber sworn.

James R. Barber, sworn on behalf of Trenton & Mercer County Traction Corporation.

Direct examination.

By Mr. Katzenbach:

Q. What is your business?
A. Dealer in investment securities, representing Graham & Company, Philadelphia.

Q. How long have you been a dealer in investment securities?

A. Between six and seven years.

Q. During that time have you made any market for the securities of the Trenton Street Railway Company's properties?

A. Yes, sir, I have.

Q. Are you familiar with the values of the bonds that have been issued upon that property?

A. Yes, sir.

Q. Do you know what the character of the bonds, the underlying bonds are, upon the property?

A. Trenton passenger railway six per cent. bonds you refer to?

Q. Yes.

A. It is considered a very high grade bond.

Q. Now, have you dealt in those bonds?

A. Yes, sir.

Q. Bought and sold them?

A. Yes, sir.

Q. Will you state whether or not the maturity of all of those bonds is as of the same date?

A. No, sir, it is not.

Q. Does that have any effect upon the market value of those securities?

A. Yes, sir, it has the effect in the amount of money you would have to pay for the bond. The income basis is practically the same.

Q. Do you know what year the bulk of those bonds mature?

A. 1931.

Q. Do you know what the present market value of the bonds maturing is?

A. $111 would be paid for them.

Q. That is $111 for each one hundred dollars of par value of the bonds?

A. Yes, sir.

Q. Where the bonds mature within a year or so what is the market value of those securities?

A. Bonds maturing next year, about a hundred and one and a half would be paid for them.

Q. Does that increase with the years, by about what percentage?

A. Increases each year in the neighborhood of one per cent., less than one.

Q. Do you know the bonds known as the Trenton Street Railway Company fives?

A. Yes, sir.

Q. Have you bought and sold those bonds?

A. I have, on orders.

Q. Then you have bought and sold them?

A. Yes, sir.

Q. What is the present market value of those bonds?

A. I had bonds offered me recently at ninety-five.

Q. At ninety-five?

A. Yes, sir.

Q. Are you familiar with the market value of the divisional bonds, that is, the Trenton, Pennington & Hopewell; the Mercer County Traction Company, the Trenton, Hamilton & Ewing Traction Company?

A. There have been so few sales of those bonds, no market really for them, but my recollection is some time ago there were bonds changed hands at private sale between individuals, not dealers, at a price around ninety-eight.

Q. Ninety-eight?

A. Yes.

Q. Do you know whether or not those bonds are secured or guaranteed by the Trenton Street Railway Company?

A. I understand they are.

Q. Are you familiar with the issue of bonds of the Trenton Street Railway Company known as the general mortgage sixes?

A. Yes, sir.

Q. Which were put upon this property just a few years ago?

A. Yes, sir.

Q. Have you bought and sold those securities?

A. No, I have not.

Q. Are you familiar with the market value?

A. Yes.

Q. What is the present market value?

A. The last sale was a little over 101. I know a banker that paid that price for them.

Q. Do you know or not, whether there have been any sales of the capital stock of the Trenton Street Railway Company or of its subsidiaries or divisional companies?

A. I know of no sale.

Q. During the time that you have been engaged in business?

A. No.

Q. Do you know or not, that stock is held in one lump or bulk?

A. I have always understood it was held by one interest as security for issued bonds, or part security for issued bonds.

Mr. Katzenbach: Cross-examine?

Cross-examination.

By Mr. Record:

Q. Do you know anything about who holds that stock?

A. I have always been under the impression it was held ——

Q. Do you know anything about it?

A. Only from the manuals of the investment securities. I looked up the record for it. They gave it as being held by one concern.

Q. That is the basis of your knowledge?

A. Yes, sir.

Mr. Record: That is all.

Mr. Macpherson: On Saturday, between ten and twelve o'clock, there was served on F. W. Roebling a subpoena in this matter. I have the subpoena in my possession. Mr. Roebling made an affidavit to the effect he did not have in his possession any of the matters and things called for by the subpoena

nor did he have any information concerning them, and further, that he, on receipt of that subpoena, forwarded it to the president of the Trenton Street Railway Company, and that it was sent by special messenger to the company on Saturday afternoon, on the first train after the subpoena was served on us. The Trenton Street Railway Company have sent here their secretary and treasurer. I only wanted to show that while the subpoena, as far as its form is concerned, did not indicate where this witness was to appear, nevertheless when this paper was served I saw Mr. Roebling and took the affidavit; I then saw Mr. Bird and said that Mr. Roebling, before this subpoena had been served, had made his arrangements for leaving Trenton, which would keep him out of town today and for part of tomorrow, and that we wanted to do our—he said that was perfectly satisfactory.

Commissioner Donges: It may be that the secretary and treasurer will serve every purpose that is desired.

Mr. Record: Of course, we want the papers. If the secretary and treasurer hasn't got them, we want to know that.

Mr. Macpherson: This paper was served on Saturday, and didn't reach the office of the Trenton Street Railway Company until Saturday night or late Saturday afternoon.

Commissioner Donges: They are in possession of the papers and are ready to produce them?

Mr. Macpherson: I don't know what they will produce. I know he is here and ready to give the information that is needed.

Mr. Record: We will have one of our men sit down with him and see what he has got and take it up later.

Mr. Macpherson: The bulk of the papers has made it physically impossible to produce those papers here.

Mr. Record: As a matter of fact—your suggestion is all right; you can't do it in a day. We want to know can we have those papers?

Mr. Macpherson: You can have anything we have got.

Commissioner Donges: You will afford access to them?

Mr. Macpherson: Apparently so. I know of no reason why we shouldn't.

Mr. Record: Where do we have to go to get such papers, Philadelphia?

Mr. Macpherson: Some are in Philadelphia, some in Camden, and some in Trenton.

Commissioner Donges: It might be well for you to have someone take it up with Judge Macpherson and ascertain what the situation is.

Mr. Record: That is what we will do.

Commissioner Donges: Perhaps it is not necessary to produce the books and papers here.

Mr. Record: Can you have your man here when the Board adjourns at one o'clock, or a little before, half-past twelve?

Commissioner Donges: We will adjourn in the neighborhood of half-past twelve.

Mr. Macpherson: Yes.

Mr. Record: We will try to take it up at recess and straighten it out.

RANKIN JOHNSON resumes the stand on behalf of Trenton & Mercer County Traction Corporation.

Further direct examination.

By Mr. Katzenbach:

Q. Mr. Johnson, on Friday last, I was asking you with reference to the securities of the Trenton Street Railway Company system. Are you familiar with the market value of the Trenton Street Railway Company's fives?

A. I have sold Trenton Street Railway Company fives, yes.

Q. What is the present market value?

A. I think a year, a little over a year ago (we have made no sales of them since); at that time they were from ninety-eight to—a maximum price of about a hundred and one.

Q. Are you familiar with the issue known as the Trenton Street Railway Company general mortgage bonds?

A. I am.

Q. They were issued for the purpose of rehabilitation and additions to this property?

A. I am.

Q. And have you bought and sold those bonds?

A. I have sold them.

Q. Are you familiar with the market value?

A. Yes, sir, at the time of sale. We have sold them at prices ranging from about ninety-eight to—maximum price, I think, was 102. Those sales were made within the last two or three years, and I have made no sale within the past year.

Q. Do you know anything about the value of the divisional bonds of the Trenton, Pennington & Hopewell Company, the Mercer County Traction Company, and the Trenton, Hamilton & Ewing Traction Company?

A. I have made no sales of those bonds.

Q. Then you have no knowledge of the market value?

A. No, I have no definite knowledge from sales.

Q. Are you trying to sell any of the Trenton, Hamilton & Ewing Traction Company bonds?

A. I am.

Q. What do you know about the market for those bonds?

A. I have been able to get no offer for them. I have made efforts. We have authority to sell some of those bonds at a minimum of ninety and I have endeavored to find a market—or find a buyer, but have found no buyer; no price being specified.

Q. Now, will you state whether or not there has been a growing inability to finance electric street railway securities?

A. Yes, there is an increasing ——

Mr. Record: I object to that as too general. He can testify to what he knows about this company. He has laid no foundation.

Q. Can you state this: About what percentage, in respect to the financing of this company, has it been necessary to pay for money used for capital purposes?

A. We have paid seven per cent. for money, and it is very much more difficult to secure any money now than it was a year or two years ago.

Q. What is the causes or reasons for that difficulty?

A. A number of causes. Depression, the decreased standing—yes, the decreased standing in the investment market of traction companies has been given to me as one of the reasons.

Q. Any other reason you have in mind at present?

A. One cause for the low standing of the securities of traction companies has been the increasing competition of automobiles.

Q. State whether or not in your opinion it is possible to further finance with bond issues the

amount necessary for capital to be invested in the Trenton Street Railway Company properties?

A. It is going to be very increasingly difficult, because of the fact there are practically no more underlying bonds authorized. The underlying mortgages, with the exception of a very small sum of the Trenton, Hamilton & Ewing Traction Company mortgage, have all been closed. So that any future financing would have to be by the sale of securities on the surface, that is, not underlying securities.

Q. There isn't much demand for surface securities?

A. No, no demand.

Q. Now, then, from what sources must the revenues for the maintenance of this property to a high state of efficiency be obtained?

A. It must come from gross receipts of the company, or in case the operating results could leave a surplus, after payment of obligations, sufficiently large to justify or induce investors to purchase further security issues.

Q. The latter part, however, of your statement depends on the ability to secure further revenues?

A. Yes.

Q. And rather hinges and hangs on that?

A. Yes, because we have a deficit on existing revenues.

Q. Mr. Johnson, you were asked last Friday to prepare a detailed statement of the increases or decreases of gross receipts in the several months of the year 1915, taking as a standard of comparison the same months of the year 1914. Have you prepared such a statement?

A. I have.

Q. Will you state just what the gross receipts for each of the months of the present year have been, and the corresponding gross receipts for the year 1914, and then the increase or decrease of gross receipts?

A. January, 1915, $61,063.87; January, 1914, $62,415.40; decrease, $1,351.53. February, 1915, $56,-

388.48; February, 1914, $53,832.20; increase, $2,-556.28.

Mr. Record: What is that ——

Mr. Katzenbach: I am going to have a copy of this statement and give it to you right after lunch.

A. (Continuing) March, 1915, $61,179.53; March, 1914, $57,085.15; increase, $4,094.38.

Q. Mr. Johnson, just at that point will you let me ask you: Whether there were any unusual conditions in 1914 as compared with 1915 by which that increase resulted?

A. Yes. We had a series of very hard storms, very severe blizzard in February, 1914, and March, 1914, which reduced our receipts very materially. There were two or three days—two days the system was not in operation, the cars were stopped because of the danger of live wires, by order of the city authorities, and the ice and snow drifts as well stopped traffic.

By Commissioner Donges:

Q. How does the month of February compare with 1913?

A. I haven't that figure with me.

By Mr. Katzenbach:

Q. Will you get that, and also March, 1913?

A. Yes. April, 1915, $59,633.10; April, 1914, $62,-753.81; decrease, $3,120.71.

Q. That is in the month of April of the present year?

A. Yes, a decrease of $3,120.71. May, 1915, $66,-337.80; May, 1914, $70,820.00; decrease, $4,482.20. June, 1915, $64,731.56; June, 1914, $69,029.44; decrease, $4,297.88. July, 1915, $66,077.70; July, 1914, $68,650.64; decrease, $2,572.94; August, 1915, $65,-268.08; August, 1914, $69,415.94; decrease, $4,147.86.

In that case that decrease of $4,147.86 for the month of August should be increased by $1,396.05 to represent the decrease in gross receipts due to passenger revenues. That item of $1,396.05 was added to our gross receipts from about the year 1911, in adjustment of accounts on account of interest and notes for car bodies bought in 1911, a bookkeeping account. In order to explain the difference of the—$4,147.86 doesn't represent the decrease in gross receipts from passengers.

Q. What figure would represent the total decrease from gross receipts from passenger traffic?

A. $5,543.91. September, 1915, $67,970.18; September, 1914, $68,238.58; a decrease of $268.40.

Q. Were there any different conditions in the year 1915, with reference to the September receipts, than there were in the year 1914, with reference to the September receipts?

A. Why, in the year 1914, Big Thursday of the Interstate Fair came in October, in the year 1915, Big Thursday of the Interstate Fair came in September. The increase due to Big Thursday amounts to about $2,000 above the normal Thursday, which would be increasing that deficit about two thousand dollars in case Big Thursday had come in October, 1915, as it did in 1914.

Q. And as it usually does, does it not?

A. Yes. Well, each year it varies a little. It has for the past number of years.

By Commissioner Donges:

Q. You say that the 1914 receipts in February and March were affected by snow storms?

A. Yes.

Q. Were there any snow storms in 1915 in any month?

A. Yes, but they were slight.

Q. What month?

A. January, February and March possibly.

Q. So that the January receipts in 1915 might be affected by snow storms?

A. I don't think any snow storms that we had compare with the similar situation in the year before. The 1914 blizzard was an extremely unusual affair, might be termed a disaster, in that it was so unusual.

Q. Nothing comparable to it occurred in 1915, here?

A. No. That can be illustrated by figures I can give showing the cost of snow removal in 1914 above 1915. If I remember, the snow removal costs for 1914 were about $14,000, against 1915 account of a few hundred dollars.

By Mr. Katzenbach:

Q. Then your entire street railway system was stopped by order of the commission of the City of Trenton, was it not?

A. Yes.

Q. During the year 1914?

A. Yes.

Q. Mr. Johnson, in your testimony on Friday with reference to the per cent. of transfers to fares collected there appears to be some little confusion. In order that that matter might be exactly placed on the record will you state just what the total fares collected in the year 1914 were and the transfers were, and then what the per cent. of transfers were in the first fare zone, which is the only fare zone, I believe, in which there are any transfers?

A. Yes. The total fares collected on the entire system do you want, or on the first fare zone?

Q. Well, give it so—give it both ways so there will be no ——

A. The total fares collected during the year 1914 on the entire system was 17,610,510. The total fares collected in the first zone during the year 1914 were 15,913,966. The total fares collected for the year 1914, all of which were in the first zone, were 4,181,-191, plus transfers collected on account of the reconstruction of East State Street bridge given separately, because it was an unusual condition, 297,317.

The per cent. of transfers collected to total fares, total revenue fares in the first zone, 26.27 per cent. The percentage of transfers to the fares collected on the entire system was 23.7 per cent., and in getting those percentages we used the figure of 4,181,191 transfers and did not include the transfers collected at this East State Street bridge construction, because that was an unusual situation.

Mr. Katzenbach: That will conclude the direct examination of this witness.

Mr. Record: Do you want him to take up now ——

Commissioner Donges: You may cross-examine.

Mr. Katzenbach: Mr. Ford was to be here at the afternoon recess.

Mr. Record: What became of those statements you had him identify that hadn't been offered in evidence?

Mr. Katzenbach: I would ask that all of those statements be offered in evidence at this time.

Commissioner Donges: What are they?

Mr. Katzenbach: I take it they are statements—or rather, that they are the documents from which this witness has testified, and having particularly in mind certain sheets he made in 1910 when he valued that property.

Mr. Record: Have you a record of what they were?

Mr. Katzenbach: They were marked and they were left with the stenographer. Have you those sheets?

Witness: They were left with the stenographer.

Cross-examination.

By Mr. Record:

Q. Mr. Johnson, you stated that there was a company which owned the capital stock of some of these underlying companies, that was a new name to me, I can't name it off-hand; what was that company?

A. The United Power & Transportation Company.

Q. Who owns the stock of that?

A. I don't know.

Q. Do you know of any way to find out?

A. No, I don't know. I can't say off-hand. I can't find out.

Q. Does that power company own the stock of your company?

A. No.

Q. Who owns the stock of your company?

Commissioner Donges: When you say your company, you mean the corporation?

Mr. Record: The company that employs him.

A. That stock is owned by various individuals.

Q. Have you a list of them?

A. Yes.

Q. Will you produce it?

A. I haven't it here.

Q. Will you produce it this afternoon?

A. Yes.

Q. Have you such a thing as an inventory of your property?

A. We have the—you mean ——

Q. The physical property.

A. The plant, tools and—if you make the question a little more in detail ——

Q. Put it the other way: Have you any of your property inventoried?

A. Yes, we make an inventory each year.

Q. When was the last one made?

A. In 1914, the tools, supplies, stock on hand.

By Commissioner Donges:

Q. As of what date?
A. December 31st, 1914.

By Mr. Record:

Q. Will you produce that of last year?
A. Yes.
Q. Have you got an inventory of the cars?
A. Yes.
Q. And of the track, rails, anything in relation to that?
A. Yes.
Q. What have you not an inventory of?
A. We have—December 31st, 1914, inventory is of—it is the customary inventory of stock and supplies. We have an inventory of plant, movable plant, taken in the year 1910. We have a complete list of rail, track, what might be called non-movable plant, taken in the year 1910.
Q. And none since then?
A. No, we have not made ——
Q. Can we have that?
A. For 1910?
Q. Yes. Can you produce that this afternoon?
A. Yes. That is on the statement which was submitted, which Mr. Betts produced.
Q. Have you no inventory of what you have replaced, new plant, since that time?
A. We have taken no complete inventory since that time. We have certain additions that we have made.
Q. Have you made a list of the additions and betterments that have been made to your property since that time?
A. Only those that I have stated here, or that would appear from such an investigation of our accounts as you are making, or such as have appeared in the Public Utility reports which we have made.
Q. Of course, that don't answer what I am driv-

ing at. Have you got accessible, which you can produce here for our inspection and analysis, a list of such betterments and additions which you have actually made since 1910?

A. Yes. They have been shown, they are part of the evidence.

Q. I haven't seen those. In these exhibits marked for identification?

A. The statements of our additions which have that $821,000, is that what you have in mind?

Q. Take your rebuilding of your track on South Broad Street, where does that appear in your statement?

A. That appears on the detailed statement which was produced, and a copy of which was given you.

By Commissioner Donges:

Q. That was the one that contained the $800,000 odd of expenditures?

A. Yes.

By Mr. Record:

Q. That appears in that statement?

A. Yes.

Q. Do you know who are the principal bondholders of these different issues of bonds you have stated?

A. I do not.

Q. To whom do you pay the interest?

A. To the trustees for the various bonds under the mortgages.

Q. Have you given the total number of passengers carried in any one year? I think you did in that seventeen million.

A. Yes.

Q. Can you give us the total number of passengers for each of the years from 1909 on?

A. I can give it to you commencing the year 1911, the calendar year each time.

Q. You don't know what it was for 1909 and 1910?

A. No. I wouldn't know of my own knowledge.
Q. Have you got any records that would show?
A. I might have for the year 1910.
Q. Will you produce what you have?
A. I will give you what I have for the year 1910.

Mr. Katzenbach: Mr. Johnson, you better just take time to make a note of each one of these things.

Mr. Record: We must have a record of the facts here.

Q. Are you going to give me the stockholders of your company?
A. Yes.
Q. Did you say you couldn't give the stockholders of that power company?
A. No; I have no idea who they are and I don't know how you are going about getting them.
Q. The power company does not own your stock?
A. No, it does not.
Q. You are a stockholder of this company simply as leaseholder?
A. Yes.
Q. Of these companies?
A. Yes.

Mr. Record: Is there in evidence a copy of that lease?

Mr. Katzenbach: Yes; four leases there. They are all in.

Commissioner Donges: Mr. Johnson, in making a list you better make a complete list.

Q. Now, I want the number of passengers carried during each year since 1909, if you have them, and if not, to what extent you have them. You put in a statement, or gave testimony to the fact of the cost of power per kilowatt hour (or whatever that lingo is) for one year?

A. Yes. The question would show just what I answered.

Q. My recollection is it was one year.

A. My recollection is, I was asked what our power cost, yes.

Q. Can you make me a statement showing the cost of exactly the same items for the other years?

A. Yes. Will you put that question as to just what you want?

Q. I want the total cost for power and kilowatts produced for each year, the year 1909, 1910 and so forth, and the average peak load for half an hour during the rush hour, for each year.

A. Yes. Can you give me a list of these questions that you want me to fill in? I can tell you as you ask them, if I can give them and you can hand me a list afterwards.

Q. Suppose you take these as I go.

A. The cost of power for the year 1910 ——

Q. 1909, if you can. I will take 1909 in each instance, if you can give it.

A. The cost of the peak is often given in various ways, including various things. You want the cost of the peak, including depreciation of the plant or—

Q. I want it on the same basis as you gave that other, the average peak load for half hour during the rush hours.

A. You want the average peak load and not the maximum?

Q. That is what I am asked to get here, the average.

A. We have a record of the maximum peak load during the rush hour. To get the daily average peak load is a figure that we haven't got. We can give it to you from our tables. But the maximum peak load for each year or any month, if it would be satisfactory, it would be much more easily given. The average peak load during every day during the year—

Q. Give us the maximum then.

A. The maximum peak load for each day during the year?

Q. We want it in half hours at least.

A. Yes, we can give you the average for each month if you want to have it. That would go over more material.

Q. Have you made any statement here of the average headways of the cars in the city limits?

A. No.

Q. Can you make such a statement?

A. Average headways? I can give you the headway on each route.

Q. Yes. Can you do that for a series of years?

A. For the period during which we have operated the property.

Q. Year by year?

A. Yes. It might change two or three times in a year on some routes. I can give you the minimum number each year on each route, or the maximum number each year on each route.

Q. Give us both; if you can't make the average we will have to assume the average; for each year within the city limits. Do you understand that would include your rush hours?

A. Yes.

Q. These you didn't include that?

A. No; that is the maximum and minimum headway on each route during each year.

Q. In connection with that, will you give me the number and the type of cars in daily service each year?

A. Yes.

Q. Will you make a memoranda of that?

A. Yes.

Q. And then give me the car miles operated in each year?

A. We will show the number and type of cars maintained in operation each year.

Q. In daily service?

A. Yes.

Q. In daily service?

A. You understand that we maintain more cars in operation than our daily schedule.

Q. What we are after is the cars in service, the average. If you have reserve cars, that is another

proposition. We want to find out what the service rendered is.

A. I see.

Q. We want you to give us the same thing for your suburban lines. I suppose you make a different headway there. What do you figure the seating capacity in a single truck car?

A. Those seating capacities are given on the Public Utility report for each of our cars, and that would be very much more accurate than my memory would give.

Q. Can you tell us about that? Do you know enough to testify about that?

A. Yes. They run from about twenty-eight or thirty to forty-eight.

Q. Twenty-eight or thirty is your seating capacity for the single truck cars?

A. For the minimum-sized cars we have, and forty-eight is the seating capacity for the cars seating the greatest number.

Q. Those are double trucks?

A. Yes. The largest cars we have.

Q. Forty-eight is the double truck?

A. Yes.

Q. What is the standing capacity of each of those?

A. It is difficult to say what the standing capacity is. I should say a good normal standing capacity, not particularly crowded, would be say sixty per cent. of the seating capacity.

Q. That applies to each type of car?

A. I should say so.

Q. What would you say as to the same question for these pay-as-you-enter cars, for instance, the seating capacity first? In the pay-as-you-enter cars, what is the seating capacity?

A. The largest size are forty-eight.

Q. Just the same?

A. Yes. The forty-eight I referred to before was a pay-as-you-enter car.

Q. Have you any of those big cars that are not pay-as-you-enter?

A. Yes, we have some that we haven't yet equip-

ped with the pay-within features, but we are doing that to all our large cars.

Q. Does this equipment, the pay-as-you-enter feature, deprive you of any seating capacity or standing capacity?

A. No.

Q. What proportion of your cars are now pay-as-you-enter?

A. We have thirty-four cars with the pay-within features, and sixteen to which we have planned to add the pay-within features, out of 110 total passenger cars.

Q. Why do you instal those features?

A. Because we consider it the best type of traction car for a system similar to our own. In other words, it is an effort to bring all our equipment to the latest modern standards, most approved modern standards in our opinion.

Q. Do you find any difference in receipts?

A. Due to that?

Q. Yes.

A. No. I think, if anything—I think it reduces accidents. I think it possibly delays the operation of the car a little, because the doors—the car is stopped before opening the door, and the door is closed before the car is started.

Q. I didn't mean that. I mean the possible effect on checking up the money received by the conductor.

A. No; I don't think it affects receipts at all.

Q. Is the ton mile cost of a single truck car the same as a double truck car?

A. Ton mile cost?

Q. Yes.

A. No. I should say the ton mile cost for the double truck car is more than the ton mile cost for a single truck car.

Q. Wherein is the difference?

A. Why, it is our experience that every improved unit is a more expensive one. The four-wheeled car, there is more friction, it takes more current to move it in proportion to its weight.

Q. Does it take more to operate it?

A. More cost to operate it?

Q. Yes.

A. I think it takes more. You are asking me now an opinion which I can't give you from mathematical figures. I think it takes more.

Q. You have no figures to support that?

A. No exact——

Q. You have never made an investigation?

A. I have considered it and studied it, but I haven't reduced it to figures. I think one item in that charge makes the cost a good deal more is, in operating double truck cars you carry much greater weight around during the entire day, while the car is operating seventy per cent. of the time with very few passengers. We don't operate—we put on double truck cars in place of single truck cars, but we don't reduce the headway of the number of cars operated, because of the existence of the double truck cars. And we are carrying a good many more empty seats around during the times when the seats are not occupied.

Q. Then why do you put on the new cars?

A. Because—one of the chief reasons is that they are considered more attractive, the public wants them, and if we didn't have them we would be considered as a backward company; many things——

Q. Isn't it a fact—— Beg pardon?

A. (Continuing) Many things are added to properties which are non-revenue producers, cost a good deal of expense, because they are adopted in other places, because the community and the company wants its property to appear well in comparison with others.

Q. You testify that is the reason why it is done?

A. I say it is one.

Q. Isn't the main reason because you carry more people in the cars and therefore find it cheaper to do it? Isn't that the reason that would move you to do it?

A. It is that in a long outlook; but the time is coming in any city when you won't have to add

cars so fast, the operation of the double track cars, the larger cars, each day you operate the single cars; and looking ahead five or ten years with the probability that in a growing community additional cars would have to be added, the additional platform expense would not have to be added so early.

Q. You are getting away from my question. I am asking you the blunt question, isn't it a fact you put on these double truck large-sized cars because you can make more money operating them than the small cars, isn't that a fact?

A. No, I think you attain the contrary fact.

Q. You didn't put them on in anticipation of making more money?

A. In anticipation in a certain degree, as I just explained, we did. The immediate effect of the large cars increased consumption of power, no reduced platform expenses on account of adding those cars; probably greatest wear and tear on the track, much more power house consumption, and more expensive to maintain them.

Q. You state that as a result of your experience for a trolley company to operate a long car is more expensive than to operate a short car?

A. Yes. We have added a unit in the power house because of the substitution of double truck for single truck, our power consumption has gone up so much.

Q. Make a memoranda to give me a statement of the number of men employed on track work during each year.

A. Yes.

Q. Each year you have any record of, as far back as you can get, back to 1909 if you can get it; the number of men employed on track work.

A. To answer that question I want to understand the question. You want the number of track men days or maximum employed in any month?

Q. Track men days will do.

A. For each year?

Q. Yes; and the wages paid.

A. There is quite a variety of wages paid. Just name the different wages.

Q. You can give me the total amount of wages paid.

A. All right.

Q. What I am trying to get at is the men employed on your regular maintenance work and not the men employed on what you would call reconstruction or new work, additions and betterments?

A. Yes; I see.

Q. You have a regular gang, say, to maintenance?

A. We increase and decrease that gang in different periods, different seasons.

Q. Give us those years so we can see the trend of the track work.

A. Yes.

Q. And we want the amount and the kind and cost of the materials that you used in that track work.

A. Consisting of what?

Q. Ties and rails and the ballast and the material that you use; what your section gang uses, what material do they put in place, if they do?

A. Go into details, as spikes?

Q. If you can give them.

A. Ties, rails, spikes and ballast.

Q. Yes. I would like to see each year what you do on that. Will you give me also the total amount of coal, oil, waste, or other power house supplies? The amounts paid for each during each year?

A. Yes.

Q. Has there been one of the canal feeders abandoned recently that will be——

A. There has been discussion of it; I don't know to just what extent it has progressed.

Q. It hasn't been done yet?

A. It hasn't been done yet. We are expecting quite an expense in connection with it when it is done.

Q. That has existed all along, ever since you have been there?

A. The feeder?

Q. Yes.

A. Yes.

Q. You were speaking about the conditions in this town in relation to the employees of Roebling's and other factories and the Pennsylvania Railroad getting to and from their work. That has been a condition that has been permanent, here always, as far as you know?

A. As far as I know.

Q. You put in, in response to the Mayor's question, a statement of these strip tickets and single fares, and transfers for one year, this morning?

A. Yes.

Q. Can you give us that for each year?

A. Yes. Will you say just what it is you want?

Q. I want to see the thing you gave this morning to the Mayor for last year, whatever time that was, I want the corresponding information for each year.

A. All right.

Q. That only applied to the number in the first zone, as I remember?

A. I think I gave it for both.

Q. Not according to my memoranda here. That only applied to the first zone.

Commissioner Donges: I think there were two statements, one applied to the City of Trenton, the first zone, and the other to the zone outside the City of Trenton.

Q. Your transfers, according to my notes, are all in zone Number One?

A. Yes.

Q. Can you give me the same thing for each year?

A. The number of these reports—some of them we have got to work out and type and present them, it will take some time. For instance, in this item we have cash fares, tickets and transfers on the statement of our own for the entire system. We had to make the particular calculation for the year 1914 for the first zone; the proportion, as far as I know, would

be about the same. I can give you the cash fares, tickets and transfers for the entire system——

Q. You gave a statement for one year, we want each year to see how that works out. One year is not enough.

A. The entire system will not be satisfactory. You want the——

Q. I want it just exactly the way you gave the proportion to the Mayor, so I can compare it.

A. All right.

Q. You mentioned as one of the causes of the decrease in your earnings, jitneys and automobiles. Is there a jitney service in this town?

A. Yes. I don't know exactly what you mean by service. There are jitneys operating in town.

Q. How many men run jitneys in the town, you know about?

A. There have been probably as many as ten.

Q. When?

A. During the year 1915. I don't remember just when.

Q. Isn't it a fact something like that number started, and quite a number dropped out, only remained a month or two?

A. They seemed to start and drop out, and commenced again. And that has repeated itself quite a number of times; quite a number operating them have stopped. They have stopped, they have been unable to make a financial success probably, but others have started.

Q. Do you know how many jitneys were running last week; have you any information about it?

A. I haven't any about last week.

Q. You don't know how many are running now?

A. No, there are a few.

Q. What is the point of the automobiles? People carried in their own automobile?

A. And they take their friends. The increasing use of automobiles, the increasing number owned in this community, as well as others, and the apparent increase in the custom of taking their friends back

and forth; people who formerly used the trolley cars.

Q. You made an estimate here that what you need is $135,000 a year for depreciation?

A. Yes.

Q. Have you spent that amount of money in any year?

A. No.

Q. Why not?

A. Because we haven't had sufficient receipts.

Q. You mean after you had paid your rentals?

A. Yes.

Q. But if you had not paid your rentals you would have had that amount of money?

A. I suppose so.

Q. In other words, you have devoted rental—to rentals money that, in your judgment, ought to have gone into the depreciation account and maintenance account?

A. No, I think the rentals are just as justifiable a payment as depreciation account.

Q. Granting that. I didn't put the question right——

A. I didn't put money that belonged to one account into the other.

Q. The point that I want to bring out is that you say that amount was needed to keep the property up to a proper maintenance level?

A. I think that amount is the annual average of the total amount needed over a long period of years to provide maintenance and depreciation.

Q. Try it again. How much money, in your judgment, was needed last year for repairs and betterments to keep your property up to standard?

Commissioner Donges: Let me suggest, aren't you using a term that might be somewhat confusing when you say repairs and betterments, because they indicate entirely different things? A betterment is not in the way of a renewal.

Mr. Record: I think the Chairman is right about that; my question isn't accurate.

Q. Just take what you term your depreciation fund, which you have placed on an average at $135,000. I am asking you what, for that purpose, do you think ought to have been put into that plant last year?

A. I can only answer that in this way, by defining the term depreciation fund. That is a fund which, if annually appropriated, would provide for maintenance; it is expected to provide for maintenance and replacements of the property of the system over a long period, for example, forty years——

Q. I don't want to interrupt you——

A. I am coming to your question.

Mr. Katzenbach: Let the witness finish——

Commissioner Donges: Read the question.

(Question read.)

Commissioner Donges: If you will answer that directly.

A. I can't just say what should be put in one year. I say so much should be put in, on an average, over a long period.

Q. I want to bring out, you don't know as a fact what has gone into depreciation fund, what you call depreciation, on this particular property, last year? You don't know, is that so?

A. In order to do what?

Q. Getting back to the point: You say you have undertaken to put up here a proposition your company ought to be allowed a certain sum of money for a thing you call depreciation—whatever your definition is; I am asking you how much on that account ought to have been spent on this property last year, if you know?

A. $135,000.

Q. $135,000 was actually needed, in your judgment, to be put on that property last year?

A. Some of it might have been for account of a

depreciating unit, which wouldn't be necessary to replace for two or three years afterward, but last year the proportion of the depreciating units, that should have been appropriated last year if it was available.

Q. Then you were not short of any moneys last year?

A. Yes.

Q. To apply on account of depreciation, were you?

A. Yes.

Q. How much?

A. I can give it in dollars and cents.

Q. You can give it in dollars and cents?

A. Only round numbers; nobody can give it exact.

Q. How about every other year?

A. I think the average should be $135,000.

Q. No, I am not asking for any average. I want to know if any one of those years you have been operating here there has been, in your judgment, something that needed to be done to the property, (not in cents or actually) something that needed to be done to the property of the company to keep it up to a standard that they haven't had the money for?

A. Yes. Always want to do something with the property, we always have to give up doing things because we haven't the money each year.

Q. How much was needed to be done last year to that property, in your judgment, for which you had no funds?

A. I should say last year we should have had seventy thousand dollars more than we did have last year.

Q. You ought to have had last year seventy thousand dollars?

A. Yes.

Q. What would you have done with it if you had it?

A. I would have spent $35,000 of it for the purposes that we actually spent it; we had that deficit.

I would have spent the remaining thirty thousand dollars for various expenditures, at the power house, car barns, track, which we have postponed.

Q. Those items then needed that money put upon them to keep them up to standard?

A. Yes, I should say they did.

Q. Now, the $35,000 which you say is a deficit, that was actually spent?

A. That was spent.

Q. Then the deficit isn't on that account, the actual deficit is not $70,000; it is thirty thousand dollars?

A. Thirty-five thousand dollars.

Q. Thirty-five thousand dollars. That is, if you had thirty-five thousand dollars more than you did have you would have spent it on these items you spoke of?

A. Yes.

Q. What is the effect on that property by virtue of your not applying to it those repairs, or depreciation, whatever you call it, that you didn't have the money to put on it?

A. It is a diversion of this money, the expenditures.

By Commissioner Donges:

Q. Are these expenditures you spoke of out of depreciation fund, if you have it, in the nature of repairs and replacements or in the nature of extensions and betterments?

A. They would be a combination of replacements and betterments, I should say. They are made up——

Q. A combination, you mean, by taking out old plant in the power plant and installing new?

A. Some of that.

Q. Any of it maintenance strictly so-called?

A. No maintenance, I should call it more in the nature of replacements. We are constantly considering——

Q. And would be regarded in the nature of fixed capital expenditures, wouldn't it?

A. Some of it would be fixed capital and some replacements. We are constantly considering replacements, improvements and additions, and there are constantly things we would like to do to improve the property and maintain its service, we are constantly deciding to do one thing in place of another and then to sit down and say things we didn't do would cost so much in dollars and cents is practically impossible. It has hard to answer that question.

Q. The point I had in mind is, your depreciation fund would be used not for repairs entirely, but would be used to make extensions and betterments to the property?

A. No; my idea of a depreciation fund is it would all be required over this long period during which any particular detail of the property would reach the end of its life. All of this average $135,000 per year, for forty years, we will say, would be needed for replacements.

Q. So that at the end of the forty years your idea is there would be no greater quantity of property or greater value of property out of this fund, added to the original property, than you had at the beginning?

A. That is true; that is my idea.

By Mr. Record:

Q. Didn't you say a moment ago that this fund was blended and overlapped and that it went into betterments and additions?

A. There are expenditures going on each year where there is a combination of replacements, improvements and additions.

Q. Isn't that going on all the time?

A. That is what I say.

Q. How much of that is depreciation and how much additions and increasing the total value of the property?

A. No one is going to give an exact percentage, no one can give figures.

Q. It does increase the value of the property to

the extent of substantial additions and betterments, an increase in the value of the property of how much?

A. To the extent the addition is put in, the value in the property is put in.

Q. You said a moment ago, in answer to the Chairman's question, that the property at the end of a series of years isn't increased in value?

A. It would increase in value, as he asked the question. I said if you replace the various details so that right at the end of their life at the end of a certain period, the property isn't increased.

Q. You put in similar material?

A. Yes.

Q. Your judgment is, as a matter of fact, newer material costs more and is of superior efficiency and what not, and does increase the value of the property, isn't that so?

A. The exact fact is, you usually replace a standard put in a number of years back by a standard adopted since, a new standard is usually an improvement on the old one. It involves various details of improvement, such as larger size, greater weight, and improvement——

Q. When that is put in your property is increased in value by some margin?

A. Yes.

Q. No doubt about that?

A. Yes.

Q. And that item still goes in what you call your depreciation fund?

A. No, my idea of depreciation is replacing——

Q. Of the same character as the one replaced?

A. Yes. While you wouldn't as a practical proposition, replace a property ten years from now as it was ten years ago, a certain portion of that is properly chargeable to replacement and a certain portion is properly chargeable to improvements. My idea of replacement is what is called depreciation fund.

Q. Have you any way of fixing that as regards other elements?

A. I have worked over it in connection with this property and my knowledge is that the average annual appropriation to depreciation fund to be used for replacements and betterments is likely to be between $120,000 and $150,000, so I say I average it at $135,000. It is impossible to name exact figures; that is why it is necessary to say between the two figures.

By Commissioner Donges:

Q. Isn't your idea of depreciation fund this, Mr. Johnson: That you assume the cost new of your property as representing investment, that in addition to the expenditures required each year to keep the property in operating condition, which would be, we will say, the best condition that would be possible, that there is a decrease in the value of the property, notwithstanding that you set a certain sum, a certain part of your earnings representing the difference in the cost new and the present cost, or the cost each year rather (between the cost in 1914, for example, and 1915,) which sum is put back into new property, rendering the property new as of greater value? Isn't that a depreciation fund? Isn't that your idea of depreciation fund?

A. No, sir. I should say that the depreciation fund is a fund appropriated, which will meet requirements to maintain the property and to replace each item as it reaches the end of its life. As I understood your definition, it didn't include maintenance?

Q. No.

A. And your definition spoke of applying funds from the depreciation fund to additions, which would be equivalent to the depreciation in existing property. I believe a very good use of surplus depreciation fund is to apply it, but that is aside from the purpose for which the depreciation fund is created.

Q. Your idea of depreciation fund includes maintenance, perfect maintenance?

A. It covers an ideal maintenance and replace-

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ments, if you maintain the property as well as it could be maintained, there is still—each item in it is approaching the end of its life. The annual appropriation for maintenance will not prevent that item from reaching the end of its life, when a new item must be added. Assuming it would be an exact duplicate, the depreciation fund must maintain that to the end of its life in working condition and then must put a new item exactly similar to the old one in its place.

Q. But until it becomes worn out, what is the situation of your capital account, until it becomes necessary to actually replace it? There is a constant addition to property, isn't there, if the fund is being invested in the property?

A. There is an addition to the fund.

Q. And what represents the fund?

A. Yes. There may be cash in the fund and it representing certain depreciation, rather than leave that cash in the fund, it is sometimes put into some extension or addition.

Q. And isn't that customary in sound financing?

A. Yes; I think that is the best financing, but I think that is aside from the purpose for which the fund is created.

Q. So in any case then if it is a depreciation fund and it is put back in the property, invested in new property, there is a time when, if you take the old property at the value new and invested some of the depreciation fund, you would have used out of the depreciation fund a very substantial proportion of increase to the value of the property?

A. Yes, that may be a fact.

By Mr. Record:

Q. Let us take the value of this property in January, 1915; let us take the condition of the physical property (leaving out profits and income and everything), there was a physical property on January 1st, 1915; had that depreciated from its condition in

January 1st, 1914, for the lack of money to put upon it to keep it up?

Recess from 12.30 to 1.30 o'clock.

AFTER RECESS.

RANKIN JOHNSON resumes the stand.

Cross-examination.

By Mr. Record:

Q. (Previous question read.)

A. I think it was maintained, I think it was in even better condition for service. We were rendering better service, I believe, but I think there is a sort of hidden depreciation which had accumulated further.

Q. Give us some items of that.

A. The hidden depreciation?

Q. Yes.

A. I mean the approach by one year in this case from January 1st, 1914, to January 1st, 1915, toward the end of its life of each individual item of property making up the property.

Q. That does not conform with any theory. I am asking you if that property as a whole on January 1st, 1915, as a physical property was in as good condition as one year previous.

A. That conforms with my theory that I stated of a depreciation fund, which has two functions, one to maintain the property and one to replace each item as it reaches the end of its life. I consider that we have maintained the property during the year 1914, or whatever period it is there, but there is this, what might be called hidden depreciation in the approach toward the end of its life of each item of property by a certain proportion which, from that point of view, had depreciated further.

Q. You also put a lot of money on it to head off that hidden depreciation or tendency to depreciate, didn't you, in that year 1914?

A. We put some money in, yes.

Q. You say that property January 1st, 1915, was as good a physical property as it was January 1st, 1914, or was it depreciated?

A. I can only repeat my answer, that it was maintained, but that there was some of this depreciation not covered by the fund.

Q. That isn't according to my notion, that is not an answer.

Commissioner Donges: The witness says that is the only answer he can make; he says that is all he can answer.

Mr. Record: It is quite obvious that as an expert, it is not, in my judgment, giving the answer he can make.

Commissioner Donges: You may interrogate him further.

Q. Give me an item of depreciation that was allowed to go during the year 1914 that ought to have been repaired or replaced.

A. Our newest car, for example, had a one year depreciation accumulation, not necessarily expended from maintenance that year, but it was that year's proportion of the cost of the car toward its life.

Q. It is very hard for me to think you do not understand the question. I will repeat it again. Will you give me an item upon which there should have been expended money, an item of property upon which in your judgment there should have actually been physical work done to improve its condition, prolong its life, or that would come under the head of depreciation that was not actually done during the year 1914?

It hasn't anything to do with theory, that is fact.

Can you name such an item? Was there a car that ought to have been repaired that was not repaired?

A. You cannot do things perfectly, so there were some such items, I should say there were a number of such cases. There were some ties undoubtedly which might have been renewed which were not renewed.

Q. Which ought to have been renewed?

A. Which might have been. We renewed a portion of ties, which is sufficient, during the last year.

Q. Were there any ties that ought to have been renewed, but which you did not renew because of the lack of money?

A. Yes.

Q. How many?

A. I suppose—these figures cannot be given exactly—approximately perhaps two thousand ties.

Q. Two thousand ties, what does that represent in money?

A. I suppose at the outside, $1500.

Q. That is exactly what I want to get at; that answers my question perfectly. Take up rails; were there any rails that ought to have been taken up and renewed during 1914 which were left there because you had not the money to make the renewal that your judgment demanded in order to keep the property up to standard?

A. No, I don't think of any rails that should have been replaced in 1914 which were not replaced.

Q. Was there anything in the power house that, in your judgment, should have been replaced last year, but which was continued because you did not have the money to replace it or repair it?

A. No, there was nothing necessary to replace that was not replaced last year.

Q. Were there any of the overhead construction that was worn out and needed to be either repaired or replaced during that year for which you did not have the money?

A. No, there was nothing that was not replaced that should have been replaced last year.

Q. Or repaired?

A. There were some which must be replaced sometime, which are one year nearer.

Q. I am trying to get you down to the point what went last year unrepaired or unreplaced because you had no money?

A. The overhead system, I should say nothing.

Q. Is there any part of the system to which you can make answer as to that, which I have omitted?

A. I should say no, I think we maintained the property last year.

Q. With the exception of the ties then the only items that you say were not replaced, because of the lack of money available, is that right?

A. If we had had the money available there is very little that would have been replaced that was not replaced, but there is a time coming very soon when many of them must be replaced.

Q. I don't know why that should be repeated each time.

Commissioner Donges: That may be stricken out.

Q. I am trying to get some facts separate from that point; I am not trying to upset you on that point. Let us take the period of 1913; was there any item of repair or replacement in that year that ought to have been made in order to keep this property up to standard, which was not made because of the lack of money?

A. I should say no, that we maintained for that year its proportion of the maintenance. I cannot give exact answers to the questions.

Q. I don't want you to; I want you to give whatever answer you can. What do you say to the same question as to 1912?

A. I should say the same thing; we have maintained each year its proportion.

Q. And you have not lacked for money for that?

A. For maintenance, no.

Q. Nor for the replacement of worn-out material?

A. It is hard to give an answer. I should say no,

because we have got along, we have replaced the things which reached the end of their lives.

Q. Is the same thing true in 1911?

A. I should say yes, the same is true.

Q. Each year that you have had charge of it?

A. Yes.

Q. How much, in your judgment, of the eight hundred odd thousand dollars, has been spent for things that should be charged to depreciation, that is to say, for renewing worn-out material or repairing material that by repair would have a longer life.

A. That, in my opinion, should have been charged to what, replacements, to repairs? I don't think any of it should be charged to repairs.

Q. When the $812,000, or eight hundred odd thousand dollars, whatever it is, that you realized from the new money was not needed to repair or replace worn-out property so as to bring it up to date?

A. I should say it was replacements in an improved condition, not to bring it up to date, but to improve the property, and because of the large amount done in any of those years ——

Q. We will take the illustration you made, a certain street where you say you took up a rail that was ninety pounds, and put down 113-pound rail, the theoretical depreciation or method of applying it would be to put down another ninety-pound rail, assuming the one you took up was used up, wouldn't it?

A. Yes.

Q. You would charge that ninety-pound rail that you put in, you would charge that to depreciation account and not to capital account, wouldn't you?

A. I would under some conditions.

Q. If a ninety-pound rail is worn out, and you put another one down the same size and shape, that is a depreciation charge, isn't it?

A. If the ninety-pound rail is worn out, yes.

Q. If it is worn out?

A. Yes.

Q. If you put down 113-pound rail, then ninety-

one hundred and thirteenths of that expense should go to depreciation account, shouldn't it?

A. If the rail is worn out.

Q. Then if the rail was not worn out, you work out another percentage?

A. Yes.

Q. But if the rail is worn out, then my statement of your attitude is correct?

A. Yes.

Q. How much of the $800,000 that was put into this property after you took charge of it, is represented by replacement of material exceeding in quantity, quality or cost the old material replaced?

A. I cannot state the figures.

Q. I am asked to get from you the car miles run on each of the routes named on Friday for each year, with the total miles of the system for the same years. Will you make a memorandum of that for me?

A. The car miles run on each route?

Q. Yes, that you named on Friday. You named some routes or lines. I want it for each year you have a record of, with the total miles of the system for the same years. Did you in your testimony undertake to state the average length of the ride of each single ticket?

A. No, I stated the weighted average length of miles for which a person could ride on a ticket.

Q. There isn't any way of telling what the average distance each man does actually ride?

A. No, there is not.

Q. Mr. Johnson, is there any practice in your company during the Fair to issue transfers on the same line from one car to another?

A. During the Fair?

Q. Yes.

A. On the same route?

Q. Yes, one car stops and you send the people ahead to another car on the same line.

A. Not unless the car is broken down, something of that sort.

Q. Don't you make a special route for that Fair

different from your other routes, from State to Broad?

A. Yes, there are sometimes special routes, so occasionally a car will be sent from the Fair up to another destination in order to get the people home without a transfer, provided the situation can be handled better that way. That is done in the judgment of the general manager when he orders it done.

Q. Mr. Swan suggests that every car that comes in from the State Fair goes to State and Broad Streets, and then there is a transfer given, is that right?

A. That is the normal run of each of the Interstate Fair cars, yes.

Q. When you get into State and Broad you give a transfer right straight along, don't you?

A. Yes.

Q. Isn't that unusual?

A. Yes.

Q. Have such transfers as have been made that way been included in your method of computation?

A. Yes.

Q. You have not treated that as the interruption at the bridge?

A. No.

Q. You don't know how many those were?

A. No.

Q. Does that happen at any other time than the Fair, any other season of the year for any special reason?

A. No, not usually, but this at the Fair applies, what we have just said applies to the extra cars provided for the Fair, extra cars provided for any great occasion possibly such as Decoration Day when the travel is heavier, might be routed on particular routes which would care for the travel.

Mr. Katzenbach: I see Mr. Ford is here now, and the understanding was he should go on.

Mr. Record: Yes. Have you finished with Mr. Ford?

Mr. Katzenbach: No, I have not finished with Mr. Ford.

FRANK R. FORD resumes the stand on behalf of Trenton & Mercer Traction Corporation.

Direct examination (continued).

By Mr. Katzenbach:

Q. Mr. Ford, on Friday last, as the Board recessed, you were going into the subject of the intangible property, or going concern value of a street railway company. Will you continue your statement as to the elements that enter into the going concern value and in your opinion, as to the percentage upon the physical property, that that going concern value would represent?

A. I believe I testified as to the method of valuing going concern value or intangible property by making as far as possible a list of the intangible items and placing values upon them, which I have done in a number of cases in other street railway companies. In addition to that I mentioned the Chicago valuation, where approximately forty-three per cent. was allowed for the intangible value, and another appraisal that I was familiar with is the Cleveland appraisal, made under the supervision of Judge Taylor. In that case the intangible value which he allowed represented between twenty-five and thirty-eight per cent. of the physical value, dependent on which column you placed certain items in. In one case if you placed certain items in intangible value, it would make it a little larger, and if you place them in physical value, it would make them smaller. It was rather difficult to subdivide the two classes in some of his items, but it would not be less than twenty-five per cent. nor more than thirty-eight per cent. of the physical value. From these cases and from my experience, I should say that I think somewhere from

twenty-five to fifty per cent. of the physical value would be a reasonable allowance for intangible value or going concern value, or whatever name you might give it. I might say in addition, that if we could arrive at the cash investment in this property, there would be little, if any, going concern value to be added, because the cash investment would reflect the cost of producing a going concern. In the early years of operation the company probably did not get a fair return on its capital invested, and if, in arriving at the cash investment, you allow for that insufficient return, which, of course, the security holders originally had to provide, you would get the present cash investment, which would include such going concern value.

By Commissioner Donges:

Q. Would it make any difference, in your judgment, whether the property you were dealing with was one that was constructed new in its entirety or whether it was constructed piecemeal, and a proportion of the investment came after it was in operation?

A. I think the principle would be the same.

Q. You think the percentage allowed would be the same?

A. Are you referring now to the estimate of cost of reproduction new or to cash investment?

Q. On either basis—no, cost of reproduction new. If you knew the actual cash investment you would not add, as I understood you to say, anything for going concern value?

A. Probably not.

Q. So it would be only on the theory of reproduction new as a whole that you would add?

A. Yes.

Q. But in any given case, if you knew that the property had been constructed piecemeal and that during a part of such construction it was in operation, would that affect the percentage which ought to be allowed?

A. It would increase considerably the cost of construction by making the work more difficult to perform, and being of a smaller amount, it would naturally have larger overhead charges and cost more to construct.

Q. But as to going concern value, what would be your answer?

A. I think the same principle would apply, only in lesser amount.

Q. The percentage would be somewhat smaller, you think?

A. I don't know about that; I think the percentage might be the same per cent., but it would be smaller in amount, because the item would be smaller.

Q. You would allow it only on the original construction?

A. I should allow something on the piecemeal construction, I think.

Q. For development?

A. For development, yes. Of course, the question of the development cost of capital might not be so much for piecemeal construction.

By Mr. Katzenbach:

Q. Then for this intangible value or going concern value, from twenty-five per cent. to fifty per cent. is, in your opinion, fair and reasonable?

A. Yes.

Q. What do you think it should be in the case of a property having the history of the Trenton Street Railway property?

A. I am not very familiar with that history. I am just thinking in a general way regarding a property of this size and general character.

Q. Let me put it in the form of a hypothetical question. Assuming that a charter was granted for a street railway company in the year 1859, and that road was in operation by the year 1862, of an approximate length of one mile, and that between 1862 and 1875 that road had extended to a system of ap-

proximately three miles in length, and that in 1875 another street railway company was incorporated and obtained franchises, that built roads approximately three miles in length with a double track, and that between 1876 when that road was completed on down to the year 1894 that system had been extended to a system of approximately twenty miles in length, and that the road was then electrified and that between 1894 and the year 1910 that road had been by extensions extended to a system of seventy miles in length, and that the physical value of the property was approximately three million dollars, the cost of reproduction in the year 1910, and having in that year gross receipts of about $625,000 and serving a population of $120,000, what in your opinion would be the going concern value?

Mr. Record: I should object to that as too vague.

Mr. Katzenbach: That is a history of the property as contained in the ordinances.

Mr. Record: A partial history of the property, but by no means anything except a mere fragmentary one.

Commissioner Donges: We will permit the witness to answer if he can.

A. I don't believe I have made a sufficient study of this property, even with such an outline of the history, to justify me in putting any percentage, any definite percentage value on the intangible, going concern value. I think I would prefer simply to give it within limits, say from twenty-five to fifty per cent., that would be my general idea of it. I would say, however, from my knowledge of appraisals of street railway properties, that I think a cost to reproduce new of this property, including intangible value, of in the neighborhood of four million dollars would be a reasonable amount, or about sixty thousand dollars per mile. That would make the

seventy miles $4,200,000. I might say in that connection my firm has recently made a valuation of a similar property, almost the same mileage and gross earnings, which I am not at liberty to state the name of the company, but it amounted to approximately that sum, sixty thousand dollars per mile.

Mr. Record: It seems to me there ought not anything to be put in the record that we cannot cross-examine about.

Mr. Katzenbach: I think the latter part ——

Commissioner Donges: It seems to me that ought to be stricken out; it isn't subject to cross-examination.

Witness: I can state as my general opinion, however, that a property of this kind would appraise at about sixty thousand dollars per mile.

Q. Mr. Ford, can you tell us from your study, what was considered a fair and reasonable rate of fare in street railway properties where the motive power was horse or mule power, and at a period just prior to the introduction of electricity as a motive power in the year 1892?

Mr. Record: It seems to me an objection would lie against that. This witness obviously has no experience to draw from on that, he was just getting out of college at that time.

Q. Have you made a study of the fares of street railways where motive power was horses?

A. I have made such a study, going back as far as the original construction of the horse car line.

Q. Were those studies made by you in reference to particular properties and with a view of fixing rates of fare?

A. Yes.

Q. What properties have you so examined the history and records of?

A. The New York City properties, the Brooklyn City properties, Philadelphia properties, I think some others.

Q. From that experience, will you state what was considered a fair and reasonable rate?

Mr. Record: I would like to enter an objection there. This is a study of something or other, must have been a study of books or papers or reports, we cannot cross-examine him on that.

Mr. Katzenbach: Suppose you cross-examine on his qualifications, or I will examine him.

Commissioner Donges: You may, if you desire.

Cross-examination.

By Mr. Record:

Q. What books did you read to find out your facts as to any New York City company?

A. The reports of the State Engineer running back to about 1850.

Q. Made by whom?

A. Made by the State Engineer.

Q. To whom?

A. To the State Assembly at Albany.

Q. Have you those reports here?

A. I have not. There are about fifty volumes of them, sixty volumes of them.

Q. Have you your notes here that you took off from those?

A. I have not.

Q. How many pages did you go over from those reports?

A. I would not like to guess as to that; a great number of them.

Q. Can you refer us to a book and page where there is a summary of rates or anything about rates in any of those reports, name the year and the page?

A. Those reports show the year of the corporation and the general history of the New York and Brooklyn properties.

Q. Can you tell me a page, refer me to a book and page where there is a discussion of the rates, in any of those reports?

A. I don't think there was any discussion of the rates in the reports. Simply a record of physical properties, cash investment, and various other features of the various companies reported on.

Q. Did you make any tabulation of those reports?

A. I made a study in connection, principally in connection with the reports of the Rates & Fares Committee of the American Electric Railway Association.

Q. I am trying to cross-examine about these New York reports; I have not got off that yet.

A. That is what I am talking about.

Q. You spoke of a report by the State Engineer, as I understood you?

A. You asked if I had any notes; I am telling where I put them down; I put them down as part of the report of that committee. If you care to refer to that report you will find the record of these companies as to what they charged in what years.

Q. That is the way you built up this study, as you call it, the same as to Brooklyn?

A. The same as to Brooklyn.

Q. Where else did you make any study?

A. I made a study of Philadelphia.

Q. What books did you study there?

A. There were several books on the subject. I don't remember the names now, but I can furnish you with a list of them.

Q. What companies did you examine in Philadelphia?

A. I examined the companies making up the present Philadelphia Rapid Transit Company.

Q. All you did was to look in a book and find they charged so much fare, was that all?

A. That is all, yes.

Q. What company did you examine in New York?

A. In New York?
Q. Yes.
A. The constituent properties of the Metropolitan Street Railway Company.
Q. What were they?
A. I don't remember the names of them.
Q. How many of them were there?
A. I think there are about twenty.
Q. Did you examine each one of them separately?
A. I examined the ones that went back the farthest.
Q. How far back did they go?
A. To the horse car, original horse car days.
Q. When was that?
A. Along in 1859, 1858, 1857.
Q. Weren't horse cars in New York before that?
A. I don't think so. If there were, there were none in these reports I could refer to. I went as far back as I could reach.

Mr. Record: I renew my objection. That is a good illustration. He says there were no horse cars in New York prior to 1859. He bases that upon a statement in a book; I haven't the book, can't get at it. It may show they were there twenty years before.

Commissioner Donges: We will permit him to testify.

Mr. Katzenbach: There are certain things we have to accept from generation to generation and they are reported in books.

Commissioner Donges: The witness says, as a man who has been dealing with transportation questions, he has made a study and he is testifying from his study. We will permit him to answer.

Witness: I found that the horse car companies were mostly incorporated with the plan of charging five-cent fare. That was the original charge on most of these lines. I also found that about the Civil

War times the expenses of operating the horse car lines became so much that they raised the rate of fare to six cents, and some as high as eight cents; six cents was the fare on many of the lines when the time of electrification came about in the early nineties. At that time the mechanical traction presented so many features of advantage, as to enlargening the business, extending the lines, and cheapening the cost of operation, that practically all of these lines reverted to the five-cent fare, and as the business developed, in order to, as managers of the lines thought at that time, in order to enlarge the business they instituted the present free transfer system. It was generally thought at the time that was done that it was a profitable thing to do. I think I might say that the question of strip tickets was regarded in the same way. Many of these companies thought that by slightly reducing the rate it would very much enlarge the business.

Direct examination (continued).

By Mr. Katzenbach:

Q. What has been the development with reference to street railway fares from this time of electrification on to the present time, with reference to the reasonableness of the rate of five cents?

A. I think prior to 1905 the street railway business at the five-cent fare with free transfers, universal free transfers, and in some cases with the reduced rate tickets, was thought generally to be a bonanza. I think, however, that about that time, due to increasing rates of wages and operating costs, some of the street railway operations became less profitable, and since that time practically the street railway business has been on the down grade, that is today, due to these increasing costs of operation and due to competition of the private automobiles and the jitneys, and possibly other reasons. The street railway industry, however, from the standpoint of investment has deteriorated very consider-

ably, so that today it is very difficult to finance any street railway development. I think that the present five-cent rate of fare with many street railway companies, is less than a reasonable rate, and I believe that some method will have to be devised, whether it is the zone system or some other method, will have to be put in force in order to give the street railway company a fair rate of return.

Q. Will you state whether or not in your opinion it has become more or less difficult to obtain capital for the financing of street railways and the financing of additions thereto?

A. It is becoming more difficult, and in some cases it is today impossible, impossible in some cases, and with others it is very difficult except at a high rate of interest.

Q. Will you state what are all the causes, to your mind, that have produced this result, that is, the difficulty of obtaining money for new properties or additions and betterments to old properties?

A. I think I have just stated that.

Q. Will you just please restate it, just tersely, the reasons?

A. The reasons which have rendered the street railway industry less profitable, and in many cases unprofitable, today are due: First, to the increased cost of operation.

Q. That increased cost of operation, in what departments has that increased cost of operation appeared?

A. The increased cost of labor, the increased cost of material, the increased taxes, the increased cost by the necessity of laying aside proper amortization funds for various purposes, including depreciation, damages, and other reserve funds.

Q. That was increased cost of operation; what other reasons do you assign for the difficulty of financing street railway operations?

A. The increased ride for a fixed fare. As year after year goes by the town extends in area and the average ride, the average length of the car trip is increased, all of which represents increased expense.

Q. So far as competition to street railways is concerned, has there anything arisen which has competed in many cities with the street railway system, and which is cheaper to operate?

A. The competition of private automobiles has been very severe. The number of private automobiles operated in Trenton, or any other American city, is increasing very rapidly, due to the production of an immense number of cheap cars. I know in the case of the Memphis Street Railway Company, in which I am interested, the company has had a count made of the number of seat miles of private automobiles going into and out of the central delivery business district, and they made a comparison of that number of seat miles, automobile seat miles, with the number of street car seat miles, and they found in twenty-four hours the number of automobile seat miles was almost as large as the number of street car seat miles operating in the City of Memphis.

Mr. Record: I would like my objection entered to this line of testimony. It is on some written document which ought to be produced.

Mr. Katzenbach: Not at all; he is merely showing the trend of the times.

Commissioner Donges: It may stand.

Q. Is there any other competition that enters in besides the privately owned automobile?

A. The second form of competition is the automobile bus, or jitney, as it is called. I understand that has not appeared to as large an extent in Trenton as in other places, but I know what the results have been in some other places. I know, for instance ——

Mr. Record: I object. We are dealing with Trenton.

Commissioner Donges: He has answered the question.

Q. Mr. Ford, in your opinion, what is a fair return on capital invested in the street railway enterprise, that is, a return which would prompt people to make investments?

Commissioner Donges: You mean the rate of return?

Q. Yes, the rate, the percentage of return on capital invested. What, in your opinion, is a fair and reasonable return?

A. I think the return has to be large enough not only to pay a fair amount of interest on the investment in the property, but also to provide some profit or bonus to attract new capital.

Q. What, in your opinion, is a fair rate of return that would accomplish those objects?

Mr. Record: I would like to enter an objection. That cannot be generalized. New York might be one place and a country town another.

Commissioner Donges: We will permit him to answer the question. You may cross-examine him, Mr. Record.

A. I know of some instances ——

Commissioner Donges: Just answer the question, if you can, Mr. Ford.

(Question read.)

Q. That is, bring in a fair interest return and also attract capital?

A. May I explain my answer?

Q. Give your answer and then explain it.

Commissioner Donges: Give your answer if you are able to answer it; if you are not you may say so.

A. I should say ten per cent. might be a fair return on capital invested.

Q. Make any explanation of that answer that you desire to make.

A. My reason for that being that I know of instances, recent instances, where over eight per cent. has been paid for borrowed money for the purpose of financing street railway enterprises, and I think, as I stated, that a larger return than the interest return is necessary in order to attract capital to any industry.

Q. Mr. Ford, when a company starts out, we will say, with a new property in a city of 100,000, and serving a population adjacent to the city of twenty thousand more making say 120,000 population served and having a property investment of between four and five millions of dollars, what would be a fair amount of working capital for that company to start business with?

A. I usually figure the working capital on the amount of business done, in other words, the gross revenue.

Q. Then, assuming the gross revenue was $692,000 ——

A. I have $776,000 here.

Q. Give it on $776,000 and then calculate it on $692,000.

A. I usually figure between fifteen and twenty per cent., that has been my experience as the amount of working capital which it is necessary to have on hand both for working cash, for materials and supplies, and for accounts receivable. My rule of thumb method of arriving at it is to take two months' gross receipts, which is one-sixth of the annual revenue. Applying that rule to the gross revenue of $776,548.48, which I understand is the revenue for 1914, we get $129,424 and I have roughly called that $130,000 as being a fair amount.

Q. If the gross revenue in the year 1911 was $692,000, about one-sixth of that sum would, in your opinion, be a fair and reasonable amount for working capital?

A. Yes, about $115,000 in that case.

By Commissioner Donges:

Q. In the working capital, you include materials and supplies and tools?

A. Not tools, tools would be part of the construction cost.

Q. No part of the tools?

A. No part of the tools.

By Mr. Katzenbach:

Q. Mr. Ford, have there been any cases, to your knowledge, recently where Public Service Commissions have held, in fixing the value of a property, where it has been fixed by the cost of reproduction, that depreciation should not enter into that value for the purpose of fixing a rate?

A. There have been several, yes.

Q. Can you refer us to those cases?

A. I believe there have been several cases of the New Jersey Commission, some of the early cases in 1911.

Mr. Record: I object to this line, because that is a good illustration.

Commissioner Donges: If the witness does not know, of course, his testimony must have no value.

Mr. Record: All he can know is to find a report —

Commissioner Donges: He is asked to refer to the reports.

Mr. Katzenbach: It is for the enlightenment of Mr. Record as much as myself; I want to have occasion to refer to those.

Commissioner Donges: He is asked simply to state the cases.

Mr. Record: I don't object to that.

Q. Can you give us any recent Commissions that have taken up for consideration that question?

A. I have a list beginning in 1910.

Q. Read that.

A. The New Jersey Commission, the Consolidated Gas Company of Long Branch, the Salem Gas Company, both in 1911. The Wisconsin Commission, the Washburn Water Company, the White Water Electric Light Company ——

Q. Is that a Wisconsin case also?

A. Wisconsin, both in 1910. The Massachusetts Validation Commission established by the Legislature, Professor Swayne's report on the valuation of the electric railways comprising the New York, New Haven & Hartford Railroad Commission in 1911. The New Hampshire Commission, the Manchester Street Railway case, 1914. The one in Idaho, Pocotello Water Company case, just decided by the Supreme Court, 1915. Then there is the St. Louis Public Service Commission, the Southwestern Telegraph & Telephone case in 1913. I think there are a number of others. Those are the ones I am fairly familiar with.

Q. Mr. Ford, in making up the value of the property is the franchises of the company taken into consideration?

A. It has been in a number of appraisals.

Mr. Record: I would like my objection entered to all this line of testimony.

Commissioner Donges: We will permit that to stand.

Q. By franchises I mean special franchises as, for instance, if the Trenton Street Railway Company had a franchise to charge five cents, for instance, would that be taken into consideration as an element of value in determining the property?

A. It would if it produced larger than a fair return on the value of the property exclusive of the franchise.

Q. So that then the special franchises are added or eliminated as to whether or not they produce something beyond what is considered to be a fair return, is that it?

A. I should think so.

Q. In the opinion as to values that you have given here you have made no estimate or have not included any estimate of any special franchise value that this Trenton Street Railway system might have by reason of its ordinances, have you?

A. No, I have not.

By Commissioner Donges:

Q. You only consider secondary franchises, the right to operate in the streets generally?

A. You might consider that as applying to going concern, I suppose.

Q. I asked whether or not you have considered them in your going concern?

A. I think so, yes.

By Mr. Katzenbach:

Q. That is the mere right to lay tracks and build the overhead construction ——

Commissioner Donges: Operate cars.

Q. —— but the question or not as to the rate of fare specified in the ordinances did not enter into your opinion upon any valuation that you have given here?

A. It did not.

Q. Mr. Ford, is there any method of determining the value of property by the market value of securities? Is that a well-recognized method?

A. That was another method which I would like to add to the two I have already mentioned, the first being the cash investment, the second cost to reproduce new, and the third, I think should have consideration, is the market value of securities. That was

the method which Professor H. C. Adams used in 1904 in his commercial value of the railroads of the United States.

Commissioner Donges: Isn't that the theory which was rejected by the Court of Errors in this State?

Mr. Katzenbach: I wanted to get it in as one of the methods.

Commissioner Donges: When I say rejected, I mean, wasn't it the theory upon which the majority in the Passaic Gas case, the majority at first put its decision, which was afterwards reversed, and the only opinion that was written was a disclaimer of that theory on the part of the majority, which finally prevailed.

Mr. Katzenbach: My purpose in putting it in was more to show, among experts, that it was looked upon as a method of determining value. I knew it had been sort of frowned upon, but I wanted Mr. Ford's answers to be complete and it seemed to me he had possibly overlooked that method. I could not recall whether he had given that or not in his testimony on Friday.

Q. Mr. Ford, in your estimate of twenty-five to fifty per cent. for the going concern, intangible property of a utility, did you, in making that calculation and in giving that estimate, include anything for the franchise value other than the mere right to put, as in a street railway company, rails in the street and overhead construction and operate the cars thereon? In other words, did you take into consideration any rate of fare that was prescribed by an ordinance which would bring in a return upon the capital invested of over ten per cent., which you said is the fair and reasonable return, in your opinion?

A. No. I would like to make a statement ——

By Commissioner Treacy:

Q. How much did you put in for franchise value in your valuation?

A. I did not put anything in.

By Commissioner Donges:

Q. It is one of the elements you consider in making going concern value?

A. I did not allow anything for that. I have never read the franchise of the company, did not know what it consisted of.

Q. You mean you did not consider at all in establishing going concern value, the fact that the companies are operating under privileges, so-called franchises, to use the streets and operate their cars?

A. I assumed, of course, it had the necessary power to operate its lines.

Q. But did not give that any value in arriving at the percentage?

A. No, I did not give it any value.

By Mr. Katzenbach:

Q. You did, however, include in this intangible value the cost of procuring rights of way and things of that kind that would all enter into intangible value, would it not?

A. Yes.

Q. Lawyer's fees and things of that character?

A. Yes.

By Commissioner Donges:

Q. Do you consider the cost of securing the secondary franchises, that is, franchises to lay tracks and erect poles and string wires and operate cars in the streets as being an intangible value?

A. That would be part of the cost of reproducing new the intangible property.

Q. You don't regard that then as part of the actual cost of physical property?

A. No, I would put that in the other class.

Q. You wanted to make a statement.

A. There were one or two things I would like to make a statement upon. I think in addition to the various points that have been brought out in an estimated valuation of the cost to reproduce new, in a rate case, there should be added an estimate of the additions and betterments necessary to produce an adequate modern street railway system. In other words, if you are fixing a rate of fare at say five cents as being a reasonable rate of fare that ought to produce sufficient revenue to enable the company to pay a fair return on not only the present property; but sufficient additional capital to bring that property up to an adequate modern system if it is not in such condition today. I would also like to say that if depreciation is deducted from the cost to reproduce new, in order to apply the rate return, to fix the rate of return, I think that the Commission would be defeating the object of the public, because it would be withdrawing from the company the ability to maintain and renew the property. In other words, as the property became more and more worn out there would be a less and less rate of fare allowed, which would result in the company never being able to properly renew and replace the property.

Q. Would that be true, Mr. Ford, if there was each year set aside a sum to represent the decreased value or depreciation?

A. I think the difficulty there, Mr. President, arises from this fact, that that annual sum set aside is not for past depreciation, but is for current depreciation. I think that is the same point you asked me about the other day. The annual depreciation is set aside to take care of the current amount, the current year's amount, but it does not do anything for the past depreciation.

Q. You are assuming that no depreciation, no fund has been established and nothing set apart to take care of past depreciation?

A. If there has been no fund set aside ——

Q. Aren't you assuming that?

A. In this case, yes, I am. In the case we were speaking about the other day I don't think it makes any difference whether the fund has been set aside or not, because I think the stockholders have that liability, the security holders have the liability to properly renew that property, and they ought, if they have the liability, they ought to be given a return on the principal amount rather than on the depreciated amount.

Q. Even though a sum has been set apart and put back in property or invested otherwise to represent the decrease in value by reason of depreciation?

A. Of course, if the sum has been set aside, that would present a different case, the liability would not be there.

Q. In that case, if there had been a sum set aside, representing depreciation, would you still say depreciation ought not to be deducted under the reproduction new theory?

A. It is as broad as it is long. If the sum has been set aside, you get the income from that sum, which would tend to reduce the current charge for depreciation ——

Q. I say, in that case you would deduct depreciation, wouldn't you?

A. No, I think I would fix the return on the face amount. Those securities are still outstanding. I would fix the rate of return on the face amount and then I would reduce the current charge to depreciation by the amount that the fund produces.

Q. But you would still consider in your estimate of value, in establishing a base, all of the fund which was represented in additions and betterments to property, would you?

A. I would, yes.

Q. So that what the company and stockholders would earn upon would be the property representing the original investment at its costs, at its now cost to reproduce, plus the extensions and betterments at the cost to reproduce new, which were built from the depreciation fund; do I get your idea?

A. If I understand you thoroughly, I think, yes.

I would like to say, on the basis of cash investment, which is really the thing we are all trying to arrive at, on the basis of cash investment the company starts out with a certain number of securities issued. Because of the fact that the property has depreciated in value those securities are not withdrawn from the public, the public still has them and still expects its return on them, and I think that even if the company has accumulated a fund, that it ought not in any way to discredit those securities. If it has not accumulated a fund, the stockholders themselves have that liability and want to get a return.

Q. You say in either event, whether they are accumulating a fund which is being reinvested, for example, in property, and the rendering the whole property more valuable, depreciation ought not to be deducted from the base upon which the company ought to earn?

A. I think it ought not.

Cross-examination.

By Mr. Record:

Q. Do you make any distinction between going concern, franchise and intangible values, or do you use them interchangeably?

A. In none of my answers have I given any attention to franchise value. I have not made a sufficient study of this property to know whether the franchise is valuable or whether it is not.

Q. When we interpret your testimony and read it, we are not to consider you have included anything which you label franchise value?

A. No.

Q. What is franchise value?

A. Franchise value is the principal value of a return larger than a reasonable return.

Q. How do you get at it?

A. If we would assume that four million dollars is a fair value of this property and ten per cent. is a fair rate of return, that would give us $400,000 re-

turn. If the net income of the property was $500,000, I should say the difference, or $100,000 capitalized, and with some consideration given to an increasing return, if the returns are increasing, would represent the value of the franchise, assuming that you have a perpetual length of franchise.

Q. Do you agree that the franchise value is the capitalized value of the income beyond a fair return?

A. I think that is the way you would figure.

Q. That is a good definition, is it? What do you call intangible value?

A. I would call the intangible value the cost of development of the physical property and the business of the street railway.

Q. You use intangible value and cost of development as interchangeable terms?

A. Yes.

Q. Those two things, as they occur in your testimony, are to be interchangeable, intangible value and development cost are the same thing?

A. Development cost is part of the intangible value. I think intangible value is a little more comprehensive than development cost.

Q. I ask you for a definition of intangible value so we can know how to examine you. What do you mean by intangible value? You have used it often.

A. My definition might be expanded in this particular: I would say, you take the total value of the property, from that you deduct the franchise value and the physical value and the balance would give you intangible value.

Q. I thought you just said a moment ago that your franchise value was the capitalized value of the income over and above a fair return.

A. That is correct.

Q. Then that must be the total, the income up to a fair return and the income over a fair return must be a total, you cannot have anything beyond that?

A. The income over a fair return is applied not only to physical value but to intangible value.

Q. But if you are going to buy one of these plants,

you cannot give it a value beyond the net receipts capitalized plus a reasonable expectation to increase from year to year, can you?

A. That was not my assumption.

By Commissioner Donges:

Q. Let me ask you how you would arrive at the full value you speak of, which includes, you say, the tangible and intangible value and franchises, how would you arrive at that figure on your theory?

A. I would arrive at the figure which includes tangible and physical value and intangible value and then if there was any franchise value I would add that to it.

Q. How would you arrive at that value of tangibles and intangibles?

A. I would value the physical property, including overhead charges, I would arrive at a percentage which I would add for the intangible property. When we reached that total, which I hypothetically assumed in this case was four million dollars, if you apply a ten per cent. return, assuming that as a fair return, to the four millions, you get $400,000, and if the net income of the property is $500,000 I would capitalize the other $100,000, based, of course, on the length of the franchise and the question whether the company's earnings were increasing or decreasing, and then I would have the total valuation.

Q. You call the $100,000 capitalized ——

A. Capitalized, franchise value.

Q. —— the value of the franchise?

A. That is right.

Q. In case of failure to earn the $400,000 how would you determine franchise value?

A. Franchise value in that case would probably be nil. There might be some other considerations other than the rate of return which would make the franchise value, but ordinarily those are not present in a street railway company.

By Mr. Record:

Q. The last question I was trying to get at was: What was the distinction, or whether intangible values mean development cost. I don't seem to get my answer to that.

A. They mean development cost.

Q. And nothing else?

A. They might include some other things besides development cost.

Q. What other things? I am after your definition, they cannot be that and not be that. What is your definition of intangibles?

A. My definition of intangibles is the cost or value of the property other than its physical and franchise value. That is a comprehensive definition. If you want details I can give them to you.

Q. Isn't intangible value always applied among you engineers to franchise value as well as other intangible elements of value?

A. I think it very often is used as expressing, as including franchise value.

Q. But you don't so use it?

A. I have not so used it in this case.

Q. What happens to your intangible value as rates go up or down, profits increase or decrease; does this intangible value that you speak of go up and down too?

A. I don't think that is based—I don't think my value of the intangible property is determined by the rate of return.

Q. You don't think the rate of return has anything to do with it?

A. No.

Q. Supposing a concern cost $100,000 and pays two per cent., how do you arrive at the value of the intangibles?

A. My testimony as to the value of the intangibles is based more on the cost of development of those intangibles. In other words, we are arriving at, we are assuming that the appraisal is going to be the cost of reproduction new. From that standpoint

the value of the intangible property is largely governed by what it would cost or has cost to develop.

Q. I am saying to you, if the property cost $100,000 and the net income available to capital is $2,000, that is obviously inadequate for capital, isn't it?

A. Yes.

Q. How do you arrive at the intangible element or developement in that case?

A. I would arrive at it by estimating what it would cost to develop the rights and capital of that property so that you could construct it physically, which would thus represent the cost of making a going concern.

Q. That thing cost $100,000 and only pays $2,000, and there is no immediate prospect of any more revenue; what is the thing worth, in your judgment?

A. That is a different standpoint, that is the standpoint of value rather than of cost.

Q. But I am after value, that is what this Board is after. I will give you a hypothetical case. The Long Branch Water Company over-expended, not over-capitalized by issuing securities, but it built a more expensive plant than the returns would justify; when they got to work doing business, that is where they found themselves; they had spent $100,000 we will say (that is not the figure), they spent $100,000, they got two per cent. net after paying operating expenses and whatever depreciation fund, any way you please to figure, two per cent. is left for capital, obviously insufficient; is there any development cost or value in that property; is there any intangible element of value in that property?

A. I think if there was a rate case in which those hypotheses existed, the Commission would give, would be justified in giving an intangible value upon which to base the rate. If the commercial features of the case did not provide business based on that rate, it would be the misfortune of the company and the shareholders.

Q. When you go and value a property, what you do is to go and look at its earnings first, don't you?

A. No, I don't think the earnings have anything to do ——

Q. With the value of the property?

A. ——with the value of the property, in a rate case except ——

Q. Never mind a rate case. Take the thing as I give it to you. You are an expert, you represent capital; you go and examine a piece of property to report on it for clients on the theory of purchase. As a matter of fact, don't you do two things: First, find what that will earn net, and then find whether the property is up-to-date, whether you will have to put in a lot of new capital, or won't have to, and when you have those two factors, namely, the amount of new capital to bring it up-to-date and the earnings that that will produce this year, and a judgment upon whether those are going to increase or decrease, haven't you got your elements of value right there?

A. You have some of them.

Q. What others haven't you got?

A. You haven't the question of rates; the company may be charging more or less than a fair rate.

Q. I put that in the proposition, that they are earning so much with the prospect in the future that they will go up or down; that includes all your fair rates.

A. If they are charging more than a fair rate, I would want to discount the values by a certain amount to allow for that. If you are charging less than that ——

Q. Are you going to determine a fair rate ——

Commissioner Donges: Let him answer.

A. —— if they are charging less than a fair rate, I think I might add something to their values for the purpose, that is, which would result in increasing to a fair return, which would be the result of increasing to a fair return. The difference between that case and this one, as I understand it, is, that is a question of purchase and not a rate case.

Q. I am talking about value. I am trying to find

out what you do when you, as an expert, go and buy and build and represent capitalists; I want to find out what intellectual motions you go through with when you act for clients or yourself, you find out what its earnings are.

A. I think the value of the earning power is the principal consideration.

Q. Provided the physical property is up-to-date?

A. Yes.

Q. If the physical property is very much run down, you would not buy it on the earning basis?

A. No.

Q. You would make an allowance for what is necessary to bring it up-to-date?

A. Yes.

Q. That is the rule of the market, isn't it, irrespective of rate-making?

A. That is the rule of the market, which has, however, to be modified by these rate questions.

Q. Since they have come before the Boards?

A. Since about 1905.

Q. Before that you went on just simply the condition of the property and the earnings, didn't you, in a purchase case?

A. Very largely.

Q. The change comes in when you have to discount what the State is likely to do, isn't that so?

A. Yes.

Q. Let us take up your definition a little further. If a property does not pay upon the cost of its physical property, either original cost or cost new, or isn't likely to, there isn't any element of franchise value in the market, is there?

A. None.

Q. If the property does not pay upon the cost of reproduction new of the property, and is not likely to, there is no intangible element of value in that property, is there, in the market?

A. There would not be, from a purchase standpoint.

Q. No, that is what I mean. Let us go a little further into going concern. You say that you mea-

sure the going concern value of any property by picturing to yourself what it would cost to reproduce that property. Now, taking into account the number of years, considering there is no such property, and what is would cost to bring it in, and you call that development cost, not only the money that would be necessary to build it, the money necessary to build up a business and to provide for getting the pieces so they work together, and all that, is that right?

A. That is reasonably correct.

Q. What is the largest community in your studies that you ever learned of that did not have a horse railroad or trolley railroad, or some method of transportation?

A. At what time?

Q. That don't mean any time. What is the largest community that you ever heard of in America that had no transportation facilities?

A. There are some towns in Mexico that haven't very much ——

Q. I am talking about this country.

A. You said America.

Q. I mean the United States of America.

A. Today you mean?

Q. Any time that you have ever known.

A. I think today most every town of ten or fifteen thousand population and above, has some sort of a street railway facility.

Q. Is that true, how far back is that true, according to your studies in this country?

A. I think about 1900 there were a good many town of about 25,000 people, there were several towns of 25,000 people that had no street railway facilities.

Q. Name them. 1900 you say?

A. Yes, 1900.

Q. Name a town in America, in the United States, that did not have any street railway facilities, 25,000 people, in 1900?

A. I don't recall at the moment. My general impression was that figure.

Q. I know as a boy in New England four thousand brought your omnibusses there; it did not bring street railways.

A. I might say the reason I put the figure 25,000 was: Because at that time my personal opinion was it was not worth building a street railway in a town of less than 25,000 people.

Q. Let us go back. In towns that are old in this country, that date back towards the Revolution, and beyond 1850, is it not a fact that in those towns the development of what is now the trolley system, started with a horse railway?

A. It is, yes.

Q. There is no exception to that that you know of, is there, a town that has grown big since then to 100,000, we will say?

A. It is very hard to generalize on these matters.

Q. You have been generalizing.

A. I don't mean generalizing. I mean without some consideration to fix on a town of 100,000 people that might—did you say 100,000?

Q. Yes. I say a town today of 100,000 people that existed as a city or village or town before 1850, wouldn't you say that as a rule, probably without any exception their existing street railway facilities grew from the horse railroad?

A. I should say yes.

Q. The horse railroad started small, didn't it, in every one of those cases?

A. Yes.

Q. You say that the development cost is the amount expended after you have built your plant and got it in running order, in getting, developing the business, and I suppose you mean, you did not say so, in making the property fit together, if there is any defect in it, and getting it in working shape, is that about what you mean?

A. Yes.

Q. That is development cost. The first year or two that development is likely not to come out of earnings; I mean earnings are likely not to be enough to include that, operating expenses, depre-

ciation, and a fair return upon capital, that is so, isn't it?

A. That is correct.

Q. How long, in the horse railroad era, did that condition continue, that the income was not sufficient to pay operating expenses, depreciation, actual or contemplated, and interest on a fair return upon the cash capital actually invested, how many years?

A. I think that would vary. I have made a very careful study of one company just in that particular and I think I have the record here, if you care to have it exact.

Q. How long did that take?

A. I can refer to the record.

Q. Can't you tell me what would be your general opinion, would it be five years? You are an expert; would it take five years to get it on an earning basis?

A. I think it varies very considerably.

Q. From how many to how many years?

A. May I refer to the record of this company?

Q. I would like to find out what you know.

Commissioner Donges: Mr. Record is now asking you generally, your judgment, not with respect to any company.

Witness: I might say, Mr. President, this is a thing that is very difficult to arrive at, to go back to the early fifties and to say how long it took for a horse street railway to become a profitable enterprise, whether it became profitable or unprofitable, or what happened to it. I have the exact record I took of a company back to its first inception, one of the old street car companies, just to see what effect these things did have.

Q. What city?

A. The City of Brooklyn, the Coney Island and Brooklyn Railroad Company.

Q. Have you the original of that?

A. I have the statement which I made up and sub-

mitted to the Public Service Commission in New York.

Q. You don't know how long it took them to get on their feet?

A. I can find out by referring to that statement. I don't carry these things in my mind, no.

Q. You may refer to the statement later and put it in. I want to get a definition out of you as to this going concern value. I think I have it. Do I define your going concern value correctly when I say that your conception of going concern value are the early deficits entailed in the getting of the company on a paying basis?

A. There are two hypotheses in this case. I think you confuse them. One is the cost to reproduce new. My hypothesis on that basis is what would be the cost today to reproduce the intangible elements of value in this property.

Q. That is, if you started new?

A. If I started new today.

Q. In a city of 100,000 with no trolley facilities?

A. That is right. That is one hypothesis. The other hypothesis is, what has it cost to bring this thing up-to-date?

Q. I would take either; I am not mixing them a bit.

A. You cannot mix them.

Q. I was trying to take the first, which you say is the probable way the thing grew up?

A. I beg your pardon. If you take the first one, that is, what is the cost of reproducing that property today, that hasn't any—there is no relation to the other proposition ——

Q. I agree with you.

A. —— of what it cost back in 1850.

Q. I am entirely with you on that, that is what I am trying to bring out, that is what I want. Let us take either hypothesis you please and hang to it for a minute; let us take the original game.

A. Which hypothesis are you taking?

Q. I am taking the hypothesis now of the way this property probably grew up, according to your judg-

ment, in this City of Trenton, which is a revolutionary city, which had its charter granted in 1859 and started a mile long in 1862, and then has slowly grown, according to your knowledge of horse railroad growth, because you made a study of it—I am putting up to you, first, isn't it probable that five years at least bridges over the days of deficiency?

A. You are not trying to find cost of reproduction, you are trying to find the cost of production.

Q. My questions are just as clear as a bell. When this company started, it started small, but there came a time when it paid, that is to say, when it paid operating expenses, return upon capital, actually put in, depreciation fund, and the expenses necessary to drum up business, there came such a me. I am asking you, isn't it probable from your udy of horse railroad that that time arrived within five years of starting?

A. I doubt if it ever paid.

Q. You don't think it ever paid?

A. I think if you allowed, if you charged a sufficient depreciation fund to provide for the amortization of the original capital as a horse railroad, which came along about 1893 or 1894, when the property was electrified, if you allowed sufficient amortization for that and other similar things, I doubt if the original horse car line ever did pay.

Q. These securities of the horse car line sold in the market, didn't they, for thirty or forty years?

A. There wasn't very much market for them, in larger cities ——

Q. Indeed there was, in Jersey City there was a bully market for them.

A. In larger cities there was a certain market for street railway securities, for horse railway securities, in small places I doubt if there was any market.

Q. Those were run year in and year out at a loss, in your judgment?

A. I think it is questionable whether they ever produced a real profit.

Q. Do you know of any horse railroad company in America whose securities in the market did not

pay dividends equal to the cash capital invested in them after a period of five years?

A. You mean a hundred per cent. dividends?

Q. No, a fair dividend, say six per cent.

A. You said equal to capital.

Q. I am not talking about capital. I am talking about six per cent. dividend or eight per cent. dividend upon the actual cash invested in the enterprise.

A. I know the Coney Island-Brooklyn Railroad Company did not pay a very large dividend.

Q. Was that a horse railroad?

A. Horse railroad, yes.

Q. Was that in the city?

A. In the City of Brooklyn.

Q. That ran from Coney Island up to the city, didn't it?

A. And in the City of Brooklyn.

Q. Where did it run from, to where; it started from Prospect Park, didn't it?

A. No, it started from the New York end of the Brooklyn Bridge and the New York end of the Williamsburg Bridge, consisted of three or four lines running through the older part of the city, with one line running down to Coney Island.

Q. Can you name any other horse railroads in a town whose securities did not return six or eight per cent. upon the cash capital invested after five years of operation?

A. I should think in a small place such as Trenton then was, that would be such a town.

Q. With only one mile of track running from the station to the tavern?

A. I should think that would be a very poor investment.

Q. You don't know whether it was or not?

A. I don't know.

Q. Do you know whether or not it was a poor investment in any town of similar size in those years?

A. I should think it would not be a good investment.

Q. Do you know of a town similar to Trenton, of

the same size, with a horse railroad a mile long that did not pay?

A. I should very much doubt if any of them paid.

Q. I am not asking about your doubts, I am asking what you know.

A. I don't know of any such case, no.

Q. If they pay within five years, operating expenses, depreciation, and a fair return upon capital, and thereafter the development cost was paid out of operating expenses, which still left a fair return and a fair actual depreciation anyway, would you then continue to charge up a theoretical development cost for thirty or forty years, even though everybody was paid their wages at the end of the month?

A. I think if the condition is such as you described, that it would be a past condition, and something that today we cannot take into consideration in fixing this value ——

Q. You would not. Let us take your own illustration ——

Commissioner Donges: Just a moment.

Witness: In other words, if this company has been producing larger than a fair return in the past, I would not mulct the public for that at the present time; I would reduce the rate to what would be a fair rate today, but I would not discount it for the past.

Q. And a fair return in the past, you mean, do you not, such a return as will afford operating expenses, a fair amount for depreciation, and taxes, and a fair return upon capital actually invested; that is what you mean?

A. Will you read the first part of the question?

(Question read as follows: And a fair return in the past, you mean, do you not ——)

Witness: Did you mean past or present?

Q. I mean past; I am assuming now in the past, if you assume in the past this property earned enough, one year with another, to pay operating expenses including the expense of what you call development, whatever you may choose to call that, and including such depreciation as was sufficient to keep it up-to-date, and including a fair return upon capital, then you would not charge anything up extra for going concern value, would you?

A. Yes, I would.

Q. If it had been paid for once?

A. Because I don't think, as I just stated in my last answer, I don't think that if the return in the past has been larger than a reasonable return, that as anything to do with the present return.

Q. Then if the cost of development has once been paid by the people of Trenton in excessive fares beyond a fair return, you would stick them with it over again?

A. I don't think that is the case.

Q. I am asking you now if the people of Trenton have paid for this development cost in excessive rates in the past, and that develop in this case would you then capitalize that development cost over again after they have paid it once?

A. I would not pay any attention to that.

Q. Would you put it in or leave it out?

A. I would put it in.

Q. Then you would put it in twice?

A. Put it in once.

Q. If the people have paid for the actual development cost in excessive fares?

A. I don't know anything about that.

Q. If they have?

A. I don't think it makes any difference.

Q. That is exactly the answer I want. To make sure I am right about that let us get that on paper, that it makes no difference to you in computing the going concern value upon this property whether or not that going concern value, the development cost, has actually been paid for by this company out of excessive earnings or not?

A. Not from the standpoint of reproduction new.

Q. I haven't talked about that. I am talking about the fact that you would not make any difference as a matter of fact.

A. I would not make any difference in either case.

Q. I think we have that on the record. Let us take on the other hand, you are measuring the cost of reproduction new by the supposition that this is a town of 100,000, and you are imagining they have no trolleys, and you are called upon to introduce the trolley and build it up in a city of 100,000 people, and you are putting a figure on what that will cost; is that right?

A. That is correct.

Q. Do you know of any city of 100,000 without a trolley in the United States?

A. No.

Q. Then you would measure this value, this going concern value, by conditions that never existed in the history of this country, wouldn't you?

A. There has been a time in the United States when there has been a city without rail transportation, a city of 100,000.

Q. Where and when?

A. Philadelphia and New York.

Q. When?

A. Prior to the construction of the first horse railway.

Q. They had a transportation system.

A. Not a rail transportation system.

Q. They had a transportation system.

A. I am speaking of a rail transportation system.

Q. I am talking about a city of 100,000 people in which you are going to inaugurate a trolley system of this date. You can take Philadelphia in Ben Franklin's time if you want to. I am willing to go into that. I am trying to get somewhere today. You are picturing Trenton as it is, not Philadelphia as it was a hundred years ago, picturing Trenton as it is and trying to reproduce an imaginary condition in which you would have to put a trolley in here with a hundred thousand people not used to it. I ask

you if there is any such locality in this country, has there been any such since the trolley era?

A. No.

Q. You know of no such town?

A. I know of none.

Q. Then you are measuring the going concern value by conditions of city life which have not had any existence since the trolley era; is that correct?

A. In this country, yes.

Q. Then you are measuring the value of this property by conditions that have never existed since the electric era applied to trolleys.

A. It is purely a hypothetical case.

Q. Will you name to me any article from a hairpin to a locomotive to which you apply any such principle in trying to arrive at value? Is there any value which is appraised in our market, any physical piece of property, not talking about franchises, physical property purchased by man, which is measured by conditions that have never been known in the trade, is there any such article?

A. I think if you apply some of these theories of rate regulation to other business they become ridiculous.

Q. I am not asking you that.

A. If that is what you mean.

Q. I am asking if you ever knew of a value put upon the appraisement of a suit of clothes by imagining the production of clothes under conditions that never existed; ever heard of that?

A. I never did.

Q. Did you ever hear of a country appraisal of the furniture in a house for sale that was based upon conditions of production of that furniture and those effects that never existed?

A. No.

Q. You never did?

A. No.

Q. Then you are applying to going concern value an imaginary condition that has never existed since the trolley era; that is a fact, isn't it?

A. I think that is the fact, as far as this country is concerned.

Q. Now, is that sense?

A. I would say that hypothetical case, I think, has been forced on the Commissions and the street railway companies by the building up of a theory of value, which when applied to homely articles like shoes and clothing, does not look sensible.

Q. Isn't it a fact that that theory has been built up in rate-making cases, simply because there isn't any way to get a value on any other theory approximating the outstanding capitalization of these companies; isn't that so?

A. I think that the endeavor of the Commissions and the Courts has been to give the industry a fair return, and it may be that they call these things intangible values or going concern because they wish to give the industry a fair return.

Q. What do you know about watered stock?

A. In just what connection?

Q. In connection with this business. You are an expert, you have bought and sold; what do you know about watered stock, anything?

A. I know something about it.

Q. What is watered stock?

A. I think it is popularly known as stock which is issued without consideration.

Q. For which there has been no cash payment?

A. For which there has been no cash or other property of value in payment.

Q. Isn't it a fact that when the trolley era struck us that in practically all of these cities, big cities, fifty thousand or over, the thing paid so enormously that they went to work and watered the stock in order that it might not appear to pay so high, isn't that the general rule?

A. I think that it appeared to be, but I believe that these various elements of expenses were not considered, and if they had been considered the watered stock might have been left out.

Q. As a matter of fact, those who issued the watered stock thought that the increase in value, in-

crease in business, rather, was going to pay an excessive return upon the actual money invested, and so they issued this watered stock in order to secure the excessive returns, that was their judgment, wasn't it?

A. I think that is the case, yes.

Q. Didn't, under that system, there grow up in the market and among promoters the plan of selling bonds at a discount on those enterprises, when the trolley era came in, and throwing the stock in as bonus?

A. I think in a good many cases that was necessary.

Q. I did not say it was not necessary; I am asking if that was not the practice?

A. Yes.

Q. Do you know anything about whether that was done in this case or not?

A. I do not.

Q. Would it make any difference to your judgment if you knew?

A. Not on what I have testified, no.

Q. You would give these people the same rate, irrespective of the facts in that matter?

A. I think that what I have testified upon was the question of value without regard to the amount of securities issued.

Q. I am talking you about the proposition that if you found out that great quantities of watered stock had been issued, would that make any difference in your valuation of this property?

A. It would not make any difference.

Q. Not at all?

A. It does not make any difference in regard to the theories which I have advanced.

Q. If you knew what it had cost these people in cash, you say you would limit the return to the fair return upon that plus depreciation account and operating expenses?

A. I think that is a fair way of arriving at a figure.

Q. And you then would not put in any going concern value?

A. I think that would include going concern value.

Q. That is, going concern value would then have been paid for?

A. Would have been paid for in cash.

Q. So if in any given case proof is forthcoming that the going concern value has been once paid for in cash, you would leave it out?

A. I would not draw that deduction, no.

Q. Would you put it in?

A. In the case of the cash investment, if that cash investment represented the entire cost of developing the property I would not include—I would not add anything to it for going concern value.

Q. If they had spent that money out of revenues beyond a reasonable return, you would; is that right?

A. No, from the standpoint of cost of reproduction new, I would not care anything whether the excessive return has paid for the cost of development or not.

Q. You have been asked here to give this Commission the benefit of your expert advice as to what ought to be done in this case, resulting from your study. I am asking you to say—do you say to this Commission that if they found this going concern value has been paid for by the public beyond a fair return, these people have had their fair return, that then it is your opinion that this Commission should charge that in again to capital account and all these people to have it the second time?

A. I don't think there would be any second time. I think, if you allow in your cash investment for everything that has gone into this property, you will probably get a good deal larger figure than anything talked about in this room.

Q. I am talking about a specific question and you don't answer. I am asking if your going concern value has been paid for by cash investment of capital by the owners of property, you would not charge it over again, would you?

A. Not if I was arriving at the cash investment in property.

Commissioner Donges: You mean, Mr. Record, if it was repaid to the stockholders in the form of a dividend somewhat larger than would ordinarily be paid, or if the development had been paid entirely out of earnings?

Mr. Record: No; this appeals to me to be sound. If people put their money in a piece of property and build it up, then they start to operate and they find it costs money to develop the business, as it does in a gas company much, in a trolley company small, they are entitled to have that go into capital account, unless the returns take care of it, because the development cost is not buying rails and cars, the development cost is hiring men, going out and canvassing business.

Commissioner Donges: Attaching the business?

Mr. Record: Yes. There comes a time when it falls into operating expenses by universal practice. I understand him to say that if the company had to go down in their jeans and put up that deficit or development cost, they are entitled to a return. I agree with him. Now, I am asking if it transpires in this case they got that out of the public in advance of a reasonable return, would he then say to you gentlemen, include it again, and I cannot get an answer to that question.

Commissioner Donges: I understood that whether it had been repaid to them in the form of increased dividends, or whether it had never come out of their pockets, but had been entirely paid out of operating expenses ——

Mr. Record: I don't care anything about dividends.

Commissioner Donges: They either did not pay it at all, because operating expenses brought it, or if they did pay it came back to them in the form of a dividend somewhat larger ——

Mr. Record: I would hold to the first; if they never paid it at all, but had earnings over ten per cent., out of which they footed all these bills, and we come now to value their property, would he say to you gentlemen, put that amount in again? I think I ought to have an answer yes or no to that.

Commissioner Donges: Mr. Ford's answer to that is, that in any event on the theory of reproduction new under present conditions, that development cost must be added to cost of tangible property.

Witness: That is correct.

Commissioner Donges: I understand he limits it to the theory of reproduction new under existing conditions. He says if he was building this thing up from the ground as a new enterprise, he would add it.

Mr. Record: That is not my question at all.

Commissioner Donges: I understand that to be his answer.

Mr. Record: I understand, but I think I am entitled to an answer.

Q. I am putting to you this hypothetical question: If it appears to this Commission in this case that development cost has been paid for out of excessive earnings beyond a fair return in the past, would you say to these people they ought to consider that thirty per cent., or whatever you call it, again in fixing a rate?

A. I think it ought to be added to the physical cost today.

Q. Whether it has been paid for out of excessive earnings or not?

A. Yes.

Adjourned until Wednesday, November 3, 1915, at Trenton, at 11.00 A. M.

FIFTH HEARING

Trenton, N. J., Wednesday, November 3, 1915.

Before the following Commissioners:
R. W. Donges, Esq.
J. W. Slocum, Esq.

For Trenton and Mercer County Traction Company appears F. L. Katzenbach, Esq., and Edward Hunt, Esq.

For City of Trenton appear George L. Record, Esq., and Charles E. Bird, Esq.

Rankin Johnson resumes the stand for further cross-examination.

By Mr. Katzenbach:

Q. Mr. Johnson, on Monday you were requested by the President of the Board to bring a comparative statement of the gross receipts of your company for the months of February and March, taking the year 1913 as compared with the year 1914. Have you prepared such a statement?

A. I have.

Q. I show you a paper, which I will have marked T. & M.-16, and ask you what that paper is?

A. The gross receipts for February, the year 1914, amounted to $53,832.20; for the year 1913, $55,-701.53; decrease, $1,869.33; I might say difference,

because it is a question of the decrease depending on which year——

Q. 1914?

A. Was lower than the year 1913.

Q. Was lower than the corresponding month in 1913?

A. Yes.

Q. By how much?

A. $1869.33. March, 1914, $57,085.15; March, 1913, $62,916.40. The month of March for the year 1914 was lower than the corresponding month for the year 1913 by $5831.25.

Mr. Katzenbach: I offer this.

Commissioner Donges: It will be admitted.

(Comparative statement of gross receipts, February and March, 1913 and 1914, marked Ex. T. & M.-16.)

Mr. Record: What became of your statements which you marked for identification? I didn't get that straight. Were they offered in evidence here?

Mr. Katzenbach: Yes, they were offered in evidence Monday and they were produced by Mr. Barber, the secretary of the Board, and they were on the table ——

Commissioner Donges: During the entire day, practically.

Mr. Katzenbach: During all of Monday afternoon.

Mr. Record: Have you them? Apparently, if they were offered, it slipped me, and I wish to make objection to their being put in, because it is not a detailed valuation, and because it was made in 1910 or thereabouts. I would like to have that entered.

Commissioner Donges: That may be. My impression was they were formally offered on Monday and admitted. At any rate, they will be received and the objection may be noted.

Mr. Record: That is as to all the exhibits that were marked for identification?

Commissioner Donges: One, two, three and four, as I recall.

Mr. Record: Yes, one, two, three and four. They haven't been marked as yet.

Commissioner Donges: They may be marked as Exhibits 1, 2, 3 and 4.

(Exhibits 1, 2, 3 and four marked for identification were then marked as Exhibits 1, 2, 3 and four.)

Further cross-examination.

By Mr. Record:

Q. I think I was asking you at the end about the amount of money that you actually put in on repairs and so forth, and whether anything was left unrepaired or unrenewed for lack of money. Wasn't that where it ended?

A. I am not sure. I remember that. I don't remember the last question.

Q. Did you make any attempt to show the average length of a ride?

A. No.

Q. In your power house have you certain machinery there that is unused?

A. At the present time?

Q. Yes.

A. Yes.

Q. About how much of the space of the power house does that occupy?

A. Why, I should say, that must be approximately between five and ten per cent.

Q. Isn't it a fact that this unused machinery occupies pretty nearly half the building?

A. Nowhere near half.

Q. Nowhere near half?

A. Not ten per cent. of the building.

Q. Not ten per cent.?

A. Yes.

Q. Of the floor space?

A. Yes.

Q. How much of the space in your power house is used? How much is unused?

A. I should say all of it is used. This particular machinery you mention was injured last year and is repaired, the machine you say is unused. There is only one machine.

Q. One of the engines?

A. That is the machine, the engine.

Q. It is a generator?

A. It is one of the units.

Q. It is one of the units?

A. Yes.

Q. Do you know how old these cars are that you have stored in the car barns now?

A. No. I know some of them are. I don't know how old all of them are.

Q. You mentioned twenty-three hundred joints were battered and welded, and grinding 2300 joints. That was repair business, wasn't it?

A. It was what?

Q. It was repairs?

A. I can't recall how that particular account was handled. I should say that it was largely an addition, because those joints were never welded previously, and that is a distinct improvement.

Q. The old rails were left there; the joints were simply making it more secure?

A. Yes.

Q. Closer?

A. But that is often done as to new track. For example, the track is often laid and then the joints

welded within a year. In this case the joints weren't welded until a good many years had passed.

Q. They were battered at the ends?

A. Battered at the ends, yes.

Q. You fixed up the battered part and did what ought to have been done in the beginning?

A. It was impossible to weld the rails in the beginning, because the process was unknown.

Q. What you did was to repair them and weld them?

A. And improve them over what they were in the beginning.

Q. You say that ought to go to capital account?

A. A large proportion.

Q. How much of it?

A. I should say about eighty per cent. It is an arbitrary figure.

Q. What per cent. of the twenty-three hundred joints are all the joints?

A. On the system?

Q. Yes.

A. You will have to give me time to investigate to answer that question. I can't answer it offhand.

Q. I wish you would make a memoranda to do that. You spoke of removing some fifty-five thousand cross-ties in your testimony?

A. Yes.

Q. What was the condition of those ties when you removed them?

A. Some of them were in very poor shape and some of them in very good shape and all stages between.

Q. What did you remove those in good shape for?

A. Because, for example, on Paul Avenue the city determined to pave the street and asked us to pave our portion of it. We didn't want to pave to go to the expense of laying this pavement and leave the existing ties in, because those ties would have reached the end of their life before the pavement had, so we took out those ties, although they hadn't

reached the end of their life and there were some good ties.

Q. How old were they?

A. I don't know. I would have to investigate that.

Q. Did you use them somewhere else?

A. Some of them.

Q. How many of those haven't reached the end of their life that were a part of this fifty-five thousand; how many of the fifty-five thousand?

A. Will you please repeat your question?

Q. How many of the fifty-five thousand cross-ties you say you took out were ties that were removed which had not reached the end of their life?

A. It is impossible to answer that question.

Q. How many of the ties that you removed were in poor shape and had substantially reached the end of their life?

A. The same would apply to that. I should say roughly that perhaps seventy per cent. of the ties we had removed had clearly reached the end of their life. That is clearly an approximation, no figures, but just——

Q. The total number of ties is somewhere near 200,000, isn't it?

A. Yes.

Q. That leaves 150,000 ties left in the system which you didn't take out and renew; what would you say as to those 150,000 ties, as to their condition; were they, on an average, in a similar condition to those removed or not?

A. No, some were in very much better shape; not all of them are. We naturally removed the ties first which were in the worst condition, except where some request by the city, as, for example, on Paul Avenue, neccessitated the changing over or removing of ties in that particular instance before we would otherwise have done so.

Q. Are there any of these 150,000 ties which you didn't remove that have been down as long as those you did remove?

A. Yes, I suppose there are some of them.

Q. Have you any idea what proportion?

A. We have removed ties of all ages; that is, ages varying from, I suppose, five or seven years up to twenty years, so when you say, are the ties in the track of the same ages—I suppose there are ties in the track that may have been in in some cases twenty years. We have all the way down to this year, ties we put in this year.

Q. Have you any idea what proportion of the twenty-year ties are in this 150,000?

A. I should say there were perhaps three or four per cent. I don't know but that may be high; that is a very approximate statement.

Q. Are there any considerable number of these 150,000 ties that have reached the end of their life and ought to be removed?

A. Well, there are some, yes. I figure that we had to remove between thirteen thousand and fourteen thousand ties a year in order to replace the ties as they reach the end of their life on this particular property.

Q. How near have you come to that figure in the years you have been in charge?

A. We have come very close to it.

Q. What do you take as the average life of your cars?

A. I think it depends very much on the question as to whether that type of car is to remain, if we can continue replacing, reconstructing an individual car as that type is—if we don't want to change the type due to improvements in standards adopted. We have rebuilt some cars that, in my opinion, are just as good as if they were new. I don't see why, if that type continues to be the adopted one, why we shouldn't extend that proposition indefinitely.

Q. Not replacing by an improved type, what is the average life of a car?

A. Not replacing?

Q. Yes.

A. I think you can continue the process of replacing indefinitely.

Q. A hundred years?

A. Yes, as far as the car body is concerned.

Q. Is that on the process of the old illustration of knitting the foot of a stocking first and then knitting the leg, you ought to keep the old stocking good?

A. Very much, except you can rebuild a car. A rebuilt stocking that way wouldn't look very much like the original stocking. The car can be rebuilt (I am referring now to the car body, truck); the electrical part would probably have to be replaced.

Q. How long, as a matter of fact, does a car last that isn't replaced by a new type? Isn't there some experience about that among you people? What do you say is the life of a car among engineers?

A. Without rebuilding you mean?

Q. I don't know; I am trying to get down to what you mean. Isn't there, among you engineers and trolley people, any estimate, concurrence of opinion as to the life of a car; that isn't required to be put into a new type, isn't discarded for a new type?

A. We have ten cars on this line——

Q. That isn't my question.

A. I am giving an illustration.

Q. I don't want an illustration. I want to know if, among you trolley people, there is any agreed or approximate agreement about the life of a car that isn't superseded by a new type. Is it twenty years or forty years or fifty years?

A. Twenty years. Such a question might be answered, for twenty years; but that is not a complete answer.

Q. What proportion of the expired or consumed life would you apply to all of your cars as a whole?

A. That is, regardless of—not taking into consideration whether the type is to be changed?

Q. Yes.

A. The individual car, to go on replacing exactly the same unit? If we could go on replacing exactly the same unit, we would not discard any of our cars.

Q. That isn't answering my question.

Commissioner Donges: Read the question.

Q. My question is, what is the assumed life remaining in these cars, taken as a whole?

A. I would like very much to answer your question.

Commissioner Donges: Read the question.

(Last two questions read.)

Q. Or what is the expired life?

A. Taking the average length of life of all cars and subtracting it from the assumed life of a type of car, not considering any change in type? That is your question?

Q. Yes.

A. That is a question to which an accurate answer can't be given. I should say thirteen years is perhaps the average; that is, taking twenty years as the length of life and seven years as the average length of life of the existing cars; but that is not accurate.

Q. Is seven years the expired life or remaining life?

A. The average life of existing cars assumed to be seven years and assume twenty years to be the life of a car, then there would be thirteen years as the average length of life left. But that is all it is, an assumption.

Mr. Record: I want to ask some questions and I don't want, if I can help, going through all this exhibit.

Q. You put in a statement—I thought this statement was in. You have testified as to this $800,000?

A. Yes.

Q. Raised for expenditures?

A. Yes.

Q. And we have a statement here which I thought had been put in evidence, in which you account for

$500,000 of it, and then you have a shorter statement, supplementing it, in which you account for $300,000, the balance?

A. Yes.

Mr. Record: Those statements are not offered in evidence.

Mr. Katzenbach: Yes, those were marked. I think that is a copy given you.

Mr. Record: I thought it wasn't evidence.

Q. Didn't you read that in the record?

A. Those are supporting documents, that is, some of the supporting—a list of the supporting documents. Those are backed by vouchers. That is the detailed statements which add up to the statement of the totals.

Q. The point is, am I reading from an exhibit?

Commissioner Donges: No, I think not. I think that was never offered.

Mr. Katzenbach: Then I offer it. It was marked and Mr. Record was given a copy of it at the time.

Commissioner Donges: You think it was marked?

Mr. Katzenbach: I thought it was.

Commissioner Donges: My impression is that these four papers marked Exhibits 1, 2, 3 and 4, and originally marked for identification, were followed by certain certificates of this Board, and copies of leases and orders or certificates of the Board with respect to some security issues, things of that kind, and I have no recollection of this paper being offered as an exhibit, although referred to by the witness.

Mr. Record: He held it in his hand and testified to it.

Mr. Katzenbach: It was referred to and a copy given Mr. Record, so if he desired to go over the vouchers, he could do it, but he didn't go into it in detail.

Witness: Those vouchers are being gone over.

Mr. Katzenbach: We will put it in so he can cross-examine; if Mr. Record wants to cross-examine, we will offer it in evidence.

Commissioner Donges: It will be admitted and marked as an exhibit, if it has not already been offered and admitted.

Mr. Record: Won't you enter my objection? The first part of this statement embodies detail of the expenditure of $500,000 bond issue. I object to that on the ground there is not sufficient details to guide the Board. The last part of that exhibit is an expenditure for what they call additions and betterments, and for construction work in progress, and what they call suspense account, no details whatsoever are given as to those. Therefore, the further objection, there are no details of any kind.

Commissioner Donges: That may be admitted without passing on the probative force of the exhibit at all.

(Statement, Trenton and Mercer County Traction Corporation expenditures, account Trenton Street Railway Company, $500,000 bond issue, of seven sheets, marked Ex. T. & M.-17.)

Mr. Katzenbach: I would also like to offer the report of the Board of Public Utility Commissioners, based upon these expenditures, and by reason of which securities were approved by the Board.

Commissioner Donges: The report to the Board?

Mr. Katzenbach: Yes.

Commissioner Donges: What report do you refer to?

Mr. Katzenbach: The reports on which these values of the Board were based.

Commissioner Donges: The reports of whom?

Mr. Katzenbach: The reports of the Trenton and Mercer County Traction Company, reported to the Board, these expenditures in detail.

Commissioner Donges: Under Conference Ruling Number 7?

Mr. Katzenbach: Yes, under Conference Ruling Number 7.

Mr. Record: You say upon that the Board's permission was granted?

Mr. Katzenbach: Yes.

Mr. Record: Mr. Sommer offered all the record on that.

Commissioner Donges: The report under Conference Ruling Number 7 follows the certificate of the Board and is a report to the Board on the manner of the expenditures of the proceeds on the securities allowed; it follows the certificate.

Mr. Katzenbach: I want to offer those.

Mr. Record: Can't we save time——

Mr. Katzenbach: We asked Mr. Barber to have those.

Commissioner Donges: They are in the files; they

may be in the vaults, they may not be in the current files.

Mr. Record: When I see them, if I desire, I would like the right to object, that is all.

Commissioner Donges: The offer will be made if wanted, of the files of this Board in each of these security issues.

Mr. Katzenbach: Yes, in each of the security issues. In connection with this matter Mr. Record is now taking up, the expenditure of upward of $800,000. These vouchers are being gone over by the officers or employees of the Board of Public Utility Commissioners and I think also by the representatives of the City of Trenton in this proceeding, and of course if any question should arise, we should at least want to reserve the right to offer those vouchers, but it may be by agreement we can agree on all of it after you complete your examination.

Mr. Record: Mayor, my suggestion is, one of your men and one of my men sit down and save the time of the Board.

Mr. Katzenbach: The men would put their work on it.

Commissioner Donges: I understand Mr. Sofmann is checking up on some of these details.

Mr. Betts: I have been over that $500,000 bond list and have checked over the items I know about and set Mr. Sofmann checking up those I don't know about, the details, where there is any question. First, as to this entire amount charged to road equipment, that is a question whether that is proper. If that charge is divided, part of it goes to road and equipment and part to rehabilitation; some of it I know of; as to those items I am willing and consider it proper to classify under those two

heads, and I think detailed discussion will lead to the same agreement on that point. There are stated further items I am not certain about. For instance, one of the items occurs twice, is down twice, in their installation of the automatic stokers in certain boilers, the total cost of the automatic stokers is charged up, at least appears to be charged up twice, putting in certain portions of the boilers and the old portions taken out. I am having that checked up.

In regard to the $321,000, there is not sufficient in that one paper, sufficient detail to check. Mr. Sofmann has been told to go ahead as far as he can. I was going to have this so-called conference this afternoon after the hearing.

Commissioner Donges: With the representatives of the city, the company and yourself?

Mr. Betts: Yes. I mentioned that matter the other day to Mr. Rand.

Mr. Katzenbach: We have no objection to that.

Commissioner Donges: It may be some agreement may be reached about the matter, so only the items in dispute will be taken up. It may be there are some items about which there is no disagreement.

Mr. Betts: Yes.

Q. The first item in the $500,000 exhibit, reconstruction of track, Princeton Avenue, Warren Street to Paul Avenue, 4345 feet of single track charged to road and equipment, when was that put in?

A. That was put in in 1910.

Q. Was it put in prior to August, 1910?

A. I think about that time.

Q. Then that was covered by the Betts valuation?

A. I don't know.

Q. You don't know whether that item was in the Betts valuation or not?

A. No, I do not.

Q. It was prior to the approval of the lease, wasn't it?

A. Yes.

Q. What did you do with that reconstruction?

A. What did we do with it——

Q. What was it? What was the reconstruction?

A. It was track, ballast, concrete between the ties, pavement, and what might be called at the time it was laid, standard construction.

Q. What that amounts to is rails and paving that were replaced, is that right?

A. I don't know as there was any paving on Princeton Avenue before that. I would have to refer to my notes to be sure. The paving laid was improved paving, and I don't know whether there was any paving at all on Princeton Avenue. My memory doesn't cover that.

Q. The ballast, was the ballast simply replaced, or was that made new?

A. I think the ballast was an addition.

Q. Do you know the condition of the rail?

A. At present?

Q. No, when they were taken up.

A. I do not.

Q. The presumption is they were worn out and the pavement too, isn't it?

A. I don't know.

Q. You don't know whether that then ought to be charged to capital account or depreciation account?

A. That particular item was charged to capital account because of the approval by the Board of the agreement of this company with the lessor companies that they should be carried and so carried to capital account.

Q. This item was made a matter of special agreement with this Board?

A. It was submitted for approval to this Board. There was a special agreement—the total amount

being, as I remember, about $100,000—and the covering of that amount by an issue of capital was approved.

By Commissioner Donges:

Q. When was that?
A. The year 1910 and 1911.

By Mr. Record:

Q. The fact remains the rails and pavings were replaced?
A. I said I didn't know whether there was any paving there prior—at the time this track was reconstructed.
Q. Assuming there were cobblestones before, there?
A. Then in the usual case the difference in the cost between cobblestone pavement and new pavement would be charged to road and equipment, and the cost of the cobblestone pavement would be charged to replacement.
Q. Did you do that in this instance?
A. Not in this instance. This was an item charged to capital account.
Q. I mean, did you find any difference between the——
A. Not in this instance.
Q. Didn't make an attempt to make any distinction?
A. No.
Q. Just charged it to capital account?
A. Because of this special agreement.
Q. What became of the items representing the old rails in your capital account? Just duplicated your capital account as to those rails?
A. We take rail which we sell as scrap, and we credit the scrap to our capital, that is, we spend that money for capital purposes; any amount received for the sale of those materials.

Q. When this rail originally went down, on your theory, it was charged up to capital acount?

A. Yes.

Q. When it was worn out and another one put in you just duplicated your capital account?

A. Not in the usual case; for instance, we are doing now—we charged the cost of the old system, that is the first cost of its being replaced, to repairs, and the increased cost of the replacements is charged to capital.

Q. Take this item, I mean this item: What happened? You say you got the approval of this as a new capital item. What became of your old capital account, was that subtracted from it?

A. I said this was a special arrangement of which these certain items amounting to about $100,000 were charged to capital account.

Q. Before it was submitted to the Board?

A. No, when it was submitted to the Board.

Q. I am asking you, did you do anything with your old capital account, did you subtract anything?

A. No.

Q. You simply replaced a lot of rails, and if paving was replaced, you replaced that, and those items you simply put as an additional charge to the capital account and took nothing off for your old rail, is that right?

A. That is right, insofar as we took nothing off for the old rail, and your statement is not correct in that it applies to new construction replacing former construction. The new construction undoubtedly cost more than the old.

Q. How much more?

A. The replacing of the ballast, as there was no ballast in the old.

Q. How much in dollars and cents?

A. I can't tell you how much more without my notes.

Mr. Record: If the Board please, here is an item of $22,772, no details except it is charged to capital account. Now, it transpires on cross-examination

right away, there is a lot of repairs here, we don't know how much.

Q. You haven't any detail?

A. Your representatives are going over all the supporting documents which you ask permission to do, in our office. I can't carry all the vouchers for all of these items in my mind.

Commissioner Donges: The argument is still open to you on the failure, as you assume, of the company to support their position.

Mr. Record: I am always trying to see if there is any way to save time. He says our accountants are there; I will suspend this criticism until I find out.

Q. Now, take the second one, reconstruction of track, East State Street, the details of that amount to $5159.01, of which $5124.67 is charged to road and equipment, and $34.34 is charged to rehabilitation. Let me get the definition straight: When the charge appears in this memoranda to road and equipment, that is a charge to capital account, on your theory?

A. Please repeat that.

Q. When the charge is put down as made to road and equipment on your memoranda, it means charged to capital account?

A. Yes.

Q. When it is charged to rehabilitation does that mean it is charged to the repair account?

A. No, it means in this case it was charged to capital account; that is, all this charge to capital account being distributed under two headings.

Q. But all went to capital account?

A. All went to capital account.

Q. Now, let us take this item: When was it done?

A. 1910.

Q. Before you took hold?

A. Yes; while we were negotiating, but before we took hold.

Q. Prior to August?

A. About that time.

Q. Was that covered in the Betts estimate?

A. I don't know.

Q. What were the facts with relation to that reconstruction, the rails and repaving?

A. The same as I stated to your previous question.

Q. And the ballast was new?

A. Yes.

Q. The third item is reconstruction of track on South Clinton Avenue, charged to road and equipment $6484.06. Do you make the same answer to that item?

A. Yes.

Q. The third item is reconstruction of track South Broad Street, $7989.58; do you make the same answer to that?

A. No.

Q. Wherein does that differ?

A. That is the fourth item; you stated the third.

Q. I should have said the third.

A. That was done in 1911, as I remember. There we replaced a track laid to the standards of the time when it was constructed, with a track laid to modern standards, and we show there the road and equipment charges of $1377.71 being the ballast added. The rehabilitation is the charge we have distributed, $6611.87, was the rest of the cost of the work. We put in a nine-inch rail in place of a six-inch rail in that case, and in the distribution to rehabilitation we didn't charge the increased cost of the new rail due to its increased weight per yard, to a road equipment account and various other items which were improvements, increases in cost of the new construction over the old, we didn't distribute to the road and equipment account as distinguished from the rehabilitation account. We commenced doing that later, but not at that time.

Q. Taking out the value of the old rail from the capital account, your answer is the same as it was to the others?

A. No, my answer is not the same. In this case we charged all of the rail and all of the ties and all the concrete between the ties and all of the pavement, including labor and material, to rehabilitation, although the rail was heavier than the old ——

Q. Rehabilitation means capital account, doesn't it?

A. I mean distinguishing between the charges to road and equipment and rehabilitation along the line of the questions which you are bringing out, trying to make it clear just what we did. Have I done so?

Q. Go ahead; you said you charged to rehabilitation; I thought you were just trying to state what.

A. You just asked what we did.

Q. As to the items in the old capital account, what became of them? They are just left; nothing charged off?

A. The total cost of doing that piece of work is included in these two items, some of which is distributed to road and equipment, and some to rehabilitation.

Q. You have explained that?

A. Yes.

Q. Do you make the same answer with reference to the old capital account to this item as to the other item?

A. Nothing was done to the old capital account.

Q. That is the same answer. The next item is track reconstruction on East State Street, charged to road and equipment, $1995; ballast charged to rehabilitation, $13,167.63. What answer do you make as to that?

A. My statements with regard to the fourth item apply to the fifth item.

Q. Isn't it a fact there was no improvement in the pavement there? You simply replaced a similar pavement; wasn't it asked for; wasn't that asked for, replace with asphalt?

A. Very probably, but we put ballast under the ties, we used creosoted ties in place of old oak ties, costing twice as much. I don't remember if there

was concrete between the ties, whether there was any.

Q. What about the rail?

A. We put in ninety-pound rail; I don't remember what the original rail was.

Q. As to the capital account, you make the same answer as to that item?

A. That nothing was done with the old capital account?

Q. Yes.

A. Yes.

Q. Reconstruction of track, South Broad Street, ballast charged to road and equipment, ballast, $1981.30; rehabilitation, $18,417.17.

A. Yes.

Q. Do you make the same answer to that?

A. Yes.

Q. The pavement was simply replaced, the same kind?

A. No, that wasn't the same kind of pavement.

Q. That was improved pavement?

A. Yes.

Q. Do you know whether it cost more than to put the old pavement?

A. Yes, probably did.

Q. Do you know how much?

A. Yes; of course, I don't know what it cost to put in the old pavement. I should say the difference in cost—that is, granite block pavement ——

Q. You don't know the cost of the improvement of that pavement over the laying of the old pavement?

A. No, I could figure.

Q. How about the rails?

A. The rails were Trilby rail, Trilby rail replaced the old girder rail.

Q. Do you know the difference in cost?

A. I should say so, if that old rail was nine-inch.

Q. Was it?

A. I can tell you in a minute. I can't tell you from here what it replaced. I could tell you from my notes in the office; I don't know whether it replaced nine-inch, seven or six-inch rail.

Q. You make the same answer to capital account?

A. Yes.

Q. Your answer as to capital account applies to every item?

A. Every item we have had so far.

Q. In this list, or must I ask you each time?

A. In order to get it accurately.

Q. The next item, reconstruction of track on South Clinton Avenue, amounting to $3,002; what is the character of rail replaced there?

A. That was a Trilby rail, 103 pounds to the yard.

Q. Replaced what rail?

A. The rail that it replaced I can't carry in my memory.

Q. How about the pavement?

A. No, I can't recall the pavement.

Q. The ballast was new?

A. The ballast was new; probably concrete between the ties was new.

Q. Do you know that?

A I don't know it.

Q. How about the capital account, the same answer?

A. Yes.

Q. New second track, Hamilton Avenue, $19,030.67; what about that item?

A. Absolutely new.

Q. Absolutely new; no replacement?

A. No, a complete addition.

Q. Any charge made——there wouldn't be any charge to capital account in that. The next item, reconstruction of first track, Hamilton Avenue, $16,678.38, what about that? Take the rails first.

A. In that case the nine-inch ninety-pound girder rail was replaced by 103-pound Trilby rail and the old girder rail was not worn out. The ties: Creosoted ties replaced old oak ties. The new construction was all ballast, with concrete between the ties, in addition to the regular laying of the track we have to remove the location in replacing, so the original track, as I remember, was a line down the

center of the street, and the new track, two lines each side of the center. The pavement was blocked, that is replaced with an asphalt type of pavement, bituminous concrete, something of that sort.

Q. What was the difference in cost between the new rail and the old rail?

A. Well, we will say the cost is the same price per ton. The new rail weighed thirteen pounds per yard more than the old rail.

Q. How much in dollars and cents? What part of that item in dollars and cents represents the new rail over the old rail of similar size?

A. I can't give you that from memory.

Q. What became of the old rail?

A. The old rail was sold as scrap.

Q. Do you know what it brought?

A. I do not. Our record will show.

Q. Any charge in capital account?

A. That scrap value was charged.

Q. That scrap value was charged to—taken off capital account?

A. Yes.

Q. Anything else?

A. Nothing else.

Q. Take the next item, reconstruction of track, Centre Street, $608.82, what about the track?

A. That was all six-inch rail, as I remember it, replaced by seven-inch Trilby rail, stone ballast, concrete between the ties, which were creosoted.

Q. How about the pavement?

A. Concrete block replacing cobblestone, as I remember it.

Q. Our information is, it is the same pavement replaced.

A. Is that so?

Q. Are you positive about that?

A. No.

Q. Make a note and look it up.

A. I will look it up.

Q. How about the difference in cost between the old rail and the new rail?

A. Well, it was in the proposition of thirteen

pounds per yard in the rail—no, that is six-inch rail. It was in the proportion of thirty-three pounds per yard.

Q. What in dollars and cents, in reference to the $6808; I want to know how much of that represented the improved quality of the rail bought over the similar size which you replaced?

A. I can't carry those differences in price.

Q. You can't answer that now?

A. I can't answer that now, it will be in the office record.

Q. Reconstruction of track; North Broad Street, $9417.70; take that up the same way; the track first.

A. That was a six-inch rail and replaced by a 103-pound Trilby rail on creosoted ties, concrete between ties, stone ballast under ties, granite block.

Q. What was the condition of the rail taken up?

A. That rail was pretty well worn out.

Q. What was the difference in dollars and cents on the rail?

A. I can't remember.

Q. This was improved pavement laid down?

A. Yes.

Q. What was the difference between the cost of laying the improved pavement and the cost of laying this pavement?

A. I can't carry that in my mind.

Q. The ballast was new?

A. Yes.

Q. Reconstruction, South Broad Street, $18,642.69, take the rail first; what rail was there and what rail was replaced?

A. That was a track that was replaced with 103 Trilby rail on creosoted ties, ballast——

Q. What was the old?

A. I am saying what the replacement was.

Q. I want to know what the old rail was.

A. May I go on? Replaced with 103-pound rail, creosoted ties, concrete between the ties, block stone ballast, granite block and concrete pavement, replacing either a six or nine-inch rail, I don't recollect which.

Q. What is the difference in cost? Of course, you don't know.

A. I can't carry that in my mind.

Q. If you don't know which it was, you couldn't tell. What was the condition of the rail, worn out?

A. Yes, that was pretty well worn out.

Q. The same answer as to capital account, I assume?

A. Yes.

Q. Take the next item, reconstruction of track, Stanton Street? $984.50; what does that mean?

A. We were asked in that case by the city to change the grade of the tracks on Stanton Street because a new grade was being laid on a street which crossed the center of Stanton Street and which the city was paving. That was the cost of replacing ties, changing the grade and ballast on Stanton Street.

Q. Isn't it a fact that in certain cases the road had sunk down and the city made you bring it up to grade?

A. No.

Q. Did the city change the grade of that street?

A. They changed the grade at Stanton Street from what it was.

Recess from 12.30 to 1.30 o'clock P. M.

AFTER RECESS.

RANKIN JOHNSON resumes the stand.

Further cross-examination.

By Mr. Record:

Q. The next item is reconstruction of track on Centre Street, $535.30; wasn't that a repair account?

A. That applies to the same—or the answers to the previous accounts apply to that also. The bal-

last to road and equipment, and as I remember, it was where the single track and double track combined, we replaced a section with an improved track construction.

Q. How was it improved?

A. Improved form of construction by ballast under the ties and put some concrete there.

Q. You didn't replace the rail?

A. Yes, we put in new rails.

Q. Reconstruction, South Broad Street, $14,257.02; as to the rail in that item, what was it?

A. That was Trilby, 103-pound Trilby rail.

Q. Replacing what rail?

A. I am not sure what rail that was.

Q. Therefore, you couldn't state the difference in cost?

A. That is in the records in the office which are being examined.

Q. How about the improved pavement?

A. That was granite block pavement.

Q. The improved pavement?

A. Yes.

Q. Do you know the difference in cost between the new and replacing the old?

A. I haven't that in mind.

Q. The ballast?

A. That is in the record in the office being examined.

Q. $4.25, reconstruction of track, Perry Street; that is hardly worth asking about; you charge that to capital account?

A. Yes. I don't recall that $4.25 item.

Q. Why do you charge it to capital account?

A. We have reconstruction of track on Perry Street; I don't remember that item of $4.25. That also would be shown in the vouchers in the office.

Q. The next one; Atlas joints and bonds, West State Street, $6737.07.

A. That was one of the items that was included in the order of the Board of Public Utility Commissioners in connection with the approval of the lease. That was a repair and improvement to the track

joints on West State Street. We bought these Atlas step joints and we put in new ties at each joint, and ballasted the ties and put concrete between them, and installed these Atlas joints.

Q. Did that replace anything?

A. Yes, that is to a certain extent.

Q. To what extent?

A. Well, there were continuous joints, as they are called, at those rail joints, and there were ties, added ballast——

Q. I am talking about joints now. What was the old stuff that was replaced?

A. There was a continuous joint plate, as it is called.

Q. What was the cost over the replacement, the continuous joint by this improved mode?

A. I could not give you the figures for that.

Q. The next one, Atlas joints, South Clinton Avenue, $142.67; is that the same?

A. The same reply to that.

Q. The next one, joints welded by Lorain Steel Company, $81,188.63; does that same answer apply to that?

A. I notice the charge to rehabilitation there of $8161.97; in my opinion, a large part of that was strictly road and equipment.

Q. How much?

A. Those joints were battered and they were connected with continuous rail joints and the welding was an addition of the track as constructed—often the track is constructed, originally, since the welding process has been proved a success, and then is gone over for welding, so that would be probably a part of the complete welded construction. This Lorain welding system, under that system you cannot weld as you construct, because they weld a great many joints a day; sometimes as many as a hundred joints a day, and their outfit won't weld while the track is being constructed, because the construction gang moves so much slower than they do. They required the entire track to be constructed

with the continuous rail joint, whatever joint is used, and then they go over after and weld it.

Q. What I am after is, what is the amount of the difference?

A. It would be—their welding charge is $6.75 a joint; it ought to be something in excess of that; I don't know just how much.

Q. How much?

A. That I can't give exactly.

Q. How many joints were there?

A. There are 332 joints.

Q. What is the value of the old joints? Are they scrapped?

A. The plates? The plates are used again to some extent.

Q. Do you know to what extent?

A. No. It all depends ——

Q. I am talking about those particular joints.

A. I can't tell you exactly.

Q. You make the same answer to capital account as you have before as to this item?

A. Yes.

Q. The next item, North Clinton Avenue, $3254.-94; what was that?

A. That is welded joints.

Q. It don't say so here.

A. No, but those joints were welded in the year 1912.

Q. Isn't it a fact that the tracks were raised along there and you had some trouble with electrolysis along there and it had to be fixed up?

A. No. A number of years ago a sewer was constructed under one track, parallel to it, and we had a good deal of trouble with the track settling.

Q. You don't know the cause of that, this particular item?

A. That track was welded. This may not be that item, but I assume it is. That would also be included in the vouchers supporting these documents, which are now being investigated.

Q. You don't show here anything in that item to indicate whether you took up an old rail and put in

a new one that has since been thrown away; you don't give the details. What was done; you think there were some welded joints?

A. I know the joints were welded.

Q. How many joints were there?

A. There were 266.

Q. How many?

A. 266 joints.

Q. What is the rest of the work?

A. That would cover the amount ——

Q. If you don't know, say so.

A. That would cover the amount. You say what is the rest. The cost of welding is from twelve to fourteen dollars.

Q. You said $6.75 a minute ago.

A. I said $6.75 was the part of the work done by the Lorain Steel Company.

Q. What do you say now, 266 joints are how much?

A. I say the price of welding is $6.75, in addition to a good deal of work done on each joint.

Q. Would you say there were $3,254 expended at that point?

A. I assume that is the item covering that; I believe it is.

Q. If you cannot say, you don't know; if you don't know, say you don't know.

A. I am not sure this is that item.

Q. You can ascertain that from the vouchers?

A. I can ascertain that from the vouchers in the office.

Q. Will you do so; just make a note?

A. I will.

Q. The next item, Mulberry Street, $508.75; what was that?

A. That was partial reconstruction of the track from ——

Q. Wasn't that strictly a repair account?

A. No.

Q. What was it? Wherein did it differ from ordinary repairs, except this ballast of two dollars?

A. One thing, the ballast was added.

Q. You have two dollars for ballast. When was it done?

A. There were some joints welded on Mulberry Street, and for that also I will ask permission to report later as to just what that covers.

Q. You don't know now?

A. No.

Q. Do you know when it was done?

A. It was in the year 1913, I think those joints were welded.

Q. North Warren Street from Perry Street, $1561; what about that?

A. That was welding work.

Q. Who did the welding?

A. Lorain Steel Company; that is the Lorain Welding Company, there is an investigation of it —

Q. Why didn't you charge that welding the same as you did the other?

A. The total rehabilitation item is $1561.49; there were 138 joints welded on North Warren Street between Perry Street and Pennington Avenue in 1912; one of these is undoubtly the item covering it. A good deal of that $1561.49, is very properly a road and equipment charge.

Q. How much of it?

A. At least $6.75 per joint.

Q. That would be $900?

A. Something in addition to that.

Q. Yes, it would be a little more. The next item, East State Street from Clinton Avenue to Logan Avenue, $6372.34?

A. That is also welded.

Q. That is a welded joint?

A. Yes.

Q. In each of these cases where welding took place another joint was taken up?

A. Yes.

Q. What became of it?

A. I can't tell you exactly. Some were used elsewhere and some sold.

Q. You don't know how many were used last year or sold?

A. Yes.

Q. That applies to each item where welded joints come in?

A. Yes; but there is a rehabilitation charge at least—something over six dollars and seventy-five cents is a proper road and equipment charge.

Q. What is the point about road and equipment? If both accounts are charged to capital account, what difference does it make about names?

A. One of them is distinctly and narrowly under the head provided by the Public Utility account named road and equipment, and the remaining rehabilitation charge is a sum where the amount charged narrowly to road and equipment, or to replacements, is a matter of judgment.

Q. I am trying to bring out your judgment. How much of that do you say should go to road and equipment of the $6335?

A. Road and equipment charge, we will say, is $7 per joint.

Q. Won't you give me totals; I am poor at arithmetic, and it don't mean anything on the record. How much of the six thousand dollars should go to road and equipment?

Commissioner Donges: Under the classification?

Mr. Record: Yes, under that classification.

A. I would have to ask to give that figure; tomorrow I can have it, or next hearing.

Q. West State Street, from Prospect Street to Overbrook Avenue, $2510.30; what is that?

A. That was also welded—the joints are welded.

Q. How many?

A. That I would have to look up at a later date.

Q. The entire cost of $2477 charged to rehabilitation was not welding?

A. Yes, and work in connection with welding.

Q. What work?

A. In order to weld a joint you have to open the joint, you have to often replace the ties, if you re-

place the ties, to ballast them, concrete, and you have to replace the pavement, to weld joints.

Q. You don't know how much was done here?

A. That I have made a note of and will give next hearing.

Q. The next one, Paul Avenue, $262.59.

A. We rebuilt the track on Paul Avenue. That doesn't cover it. The $262.59, I will have to look up.

Q. Pennington Avenue and Frazer Street, $605.-37?

A. That is the cost of welding joints.

Q. Isn't that a case where you had to raise some track?

A. No; that item is for welding joints.

Q. How many joints?

A. Fifty.

Q. Fifty joints?

A. Yes.

Q. That is all that was?

A. That is all that was. Quite a little of that should be charged to road and equipment.

Q. Stanton Street at switch; that is only $18.90; isn't that a repair account?

A. I don't remember what that $18.90 was.

Q. But you charged that to capital account?

A. I will tell you what it was and it would be indicated by the vouchers now being investigated.

Q. Tracks lowered, Pennington Avenue, $1612.22; wasn't that a repair account?

A. Well, that was—I don't think so. That was a case where the tracks were laid at the grade indicated by the city authorities in the usual, when they were constructed. Then at the time the city asked us—they wanted to change the grade at that point, that was near the railroad crossing, and they asked us to lower our tracks in order to conform to these new grades, so there was additional expense, not replacement.

Q. Those tracks were originally laid when it was in Ewing Township?

A. Possibly.

Q. After it came in the city, the city took charge

of the street and fixing the grade, and you were required to conform to it?

A. They changed the grade from where it was placed and asked us to change the grade of the track to conform to their grade.

Q. That was all that work was?

A. Yes. I notice this is down to rehabilitation; I should think that would be road and equipment.

Q. New guard rail and joints, West State Street, $160.27, (there are a lot of small items, we should get over them quickly); what was that?

A. $160.27; I will have to refresh my memory on that.

Q. What about the next item; cross-overs renewed, Broad Street, $250.16?

A. That I will have to refresh my memory on.

Q. Renewal of curb, South Broad Street, and the canal, $838.35?

A. That track was reconstructed at South Broad Street and the canal.

Q. Didn't the canal company do any part of that work?

A. Not that I know of; no, they didn't.

Q. What was the work?

A. It was reconstructing the track at South Broad Street and the canal.

Q. What do you mean by reconstructing the track?

A. I mean the putting of the track at a new standard.

Q. What do you mean, putting in new rails, new ties?

A. Yes, new rails, new ties, with the standard modern type of construction.

Q. Were the old rails worn out?

A. Yes, fairly well worn out.

Q. You make the same answer as to the charge on capital account as you have to the others on that, do you?

A. Yes.

Q. The next item, renewal of special work, South Clinton and Hamilton Avenues, $3017.94.

A. Have you skipped one?

Q. I have. Renewal of special work, Centre Street and Lalor Street, $560.51?

A. Well, that was a reconstruction similarly of a very small section of track.

Q. You can't give any definite information?

A. Yes, just as definite as I have given in respect to the others, that it was reconstruction of the track involving a piece of special work of short length.

Q. And the old track was worn out?

A. Yes.

Q. You make the same answer as to capital account ——

A. The special work was greatly improved.

Q. How much?

A. It was a heavy piece of special work.

Q. How much in dollars and cents?

A. I can't tell you.

Q. The special work, South Clinton and Hamilton Avenues, $3017.94?

A. Well, that was where we—there had been a piece of special work at the junction of Hamilton and South Clinton, and we double tracked onto a single track, the single track running up Hamilton Avenue, reconstructed the double track on Hamilton Avenue, involving a complete change in the special work curves. That is, the new one being double tracked off the double track, the old one being double tracked onto a single track. Therefore, involved in the charge was quite an addition.

Q. Was it all new?

A. Yes.

Q. What did you do with the old?

A. We scrapped it. The old wasn't entirely worn out.

Q. The same answer as to capital account?

A. That is largely rehabilitation—there should be quite an increase, that is, to that rehabilitation account strictly a large part of it should be charged to road and equipment.

Q. Renewal of switch, State Street and Warren

Street, $203.74; what does that take up and what did you put down?

A. We took—I can't tell you just what the weight of the track was we took up. We put down a nine-inch girder rail switch.

Q. Was it worn out, the old track?

A. I can't tell you.

Q. Renewal of special work, South Broad Street and Market Street, $201, is that similar?

A. Yes, that was a renewal of special work.

Q. Was there any new work there?

A. Yes.

Q. Of different character?

A. Yes. I will have to refresh my memory on that.

Q. On the switch point?

A. Yes.

Q. Renewal of curve, Paul and Brunswick Avenues, $449.16?

A. That was involved by the fact that the city authorities asked us—they wanted to pave Paul Avenue—they asked us to pave our portion of the street and to move our track from its old franchise location a little to one side of the center of the street, to a new location in the center of the street. This naturally made necessary a change in the special work curves, running out of Paul Avenue onto Brunswick Avenue. That is a charge to rehabilitation. It wouldn't have been necessary to touch that curve, had not the city desired us to change the location of the track on Paul Avenue. That is one case where I think a part of it is properly road and equipment although it is all charged to rehabilitation.

Q. Have you got any other item anywhere that covers the cost of moving that, that Paul Avenue one?

A. In this statement or anywhere else?

Q. Yes.

A. I can't say. I can answer that later if you wish me to. We have the cost of work on Paul Avenue in another place.

Q. Doesn't the cost of work on Paul Avenue include this item?

A. No.

Q. It does not; positive of that?

A. Not all.

Q. Does any of it?

A. Yes.

Q. How much of it?

A. It includes as much as given under that ——

Q. It is not included in that way. How much of this item of $449.16 is charged up in another item in this statement, if any?

A. None of it is charged twice.

Q. None of it is charged twice?

A. No.

Q. What do you mean by saying it is included in another account?

A. I mean to say, at the same time we replaced the curve from Paul Avenue running on New Brunswick we replaced the track on Paul Avenue and that the rest of the cost of that job is in another place.

Q. Renewal of curve, Mulberry Street, $155, is that a similar situation?

A. No, that is not similar in that the city did not ask us to move our track there. The $155 was the replacement of one of the old type rails with new girder rail, not Trilby rail.

Q. Do you know the difference in cost?

A. Yes, the cost—no, I don't know the difference in cost.

Q. Do you know whether the rail was worn out?

A. Yes.

Q. Renewal of cross-over, $70.79?

A. Well, that is the cross-over between our own tracks, amounts to $70.79 and it is a reconstruction with some improvements.

Q. Well, you couldn't have done much of anything with seventy dollars?

A. No, that is very true.

Q. Renewal of steam railroad crossing, $818.44, that was new work?

A. Yes.

Q. North Warren Street. Wasn't that to replace other work?

A. That was the renewal of a steam railroad crossing on North Warren Street.

Q. How about the old one there, replacing a new one?

A. Yes.

Q. Was the old worn out?

A. Yes, worn out.

Q. You replaced a new one of the same character?

A. No, improved character.

Q. What was the difference?

A. The old railroad crossing was a ——

Q. What is the difference in dollars and cents in the item of the new, superior to ——

A. I can't tell you the difference in dollars and cents there. But the new crossing was ——

Q. Isn't that an old crossing now?

A. No, only a few years old.

Q. Has it been put in since you came?

A. No, it was just before. I will have to renew my recollection on that. It was put in in 1910, if I am not mistaken.

Q. Now, the next one. Renewal of railroad crossing, East State Street, $1124.06?

A. That was a crossing on East State Street, put in since I came, and it was an improved crossing over the one there before.

Q. What is the difference in money?

A. I can't tell you.

Q. The next one, renewal of steam railroad crossing, South Broad Street, $1701.89?

A. That is a steam railroad crossing renewed since I came here, with quite an improved crossing.

Q. What year did you put this in?

A. We have renewed the ties since I have been here.

Q. North Warren Street; you say you don't know about that $818?

A. That I will refresh my memory on.

Q. This $1701; what is the difference in dollars and cents of the new work, of the addition?

A. I can't tell you.

Q. The same answer as to capital account there?

A. Yes.

Q. Renewal of steam railroad crossing, Perry Street, $2957.42?

A. Yes.

Q. What was that; the same answer?

A. The same answer to the fact an improved crossing was put in since I came there.

Q. You don't know the difference in value?

A. No.

Q. Rebuilding Pennsylvania Railroad bridge, East State Street and Monmouth Street, $874.06?

A. The Pennsylvania Railroad have a bridge there by which the highway or public road crosses their track. They rebuilt that bridge, occupying quite a long period, during which we had to transfer passengers. We replaced an old girder rail with a Trilby rail, the Trilby rail being imbedded in the pavement. The cost to us during that reconstruction was very considerably more than $874.06, charged to rehabilitation. As I look over these I see there are quite considerable items that are chargeable to the narrow road and equipment definition.

Q. $874; is that chargeable to road and equipment?

A. Yes, I think so. I think that all of it should be charged to the narrow road and equipment account.

Q. What are the items of that $874?

A. I can't recollect them.

Q. How do you know they should be charged to that, if you don't know what the items are?

A. Because in that case the work—the cost of the portion of the work which we had to bear was largely in excess of any replacement cost; in my opinion at least; this $874.06.

Q. That $874.06 represents the excess cost of the new property over the old?

A. Yes.

Q. The new type?

A. Cost of putting in the new property over the old.

Q. Renewal of switch frog, Broad and Centre Streets, $124.94; was that an old frog that was worn out?

A. Yes.

Q. And a new one put in?

A. Yes.

Q. The same type?

A. The new one was probably a Manganese center, hard center.

Q. Repairs to ask for pavement, $10,647.80. Is that an item made up of numerous items around the city, where the pavements are worn out?

A. Yes. The situation in connection with that was this: this was a change right after we commenced operation. The company had, previous to that time, had a contract with the city by which it paid them certain sums to maintain the asphalt or the pavement, the cost of a portion of the pavement. That contract expired in December, after I came, after the Trenton & Mercer County Traction Corporation leases came into effect, and it was not renewed and we had to spend a great deal of money repairing the pavements.

Q. That is a miscellaneous repair around the city?

A. Yes.

Q. Paving West State Street, Overbrook Avenue, $298.31.

A. That was a piece of paving at the point mentioned.

Q. That paving was outside the city limits, wasn't it?

A. Yes.

Q. It was new, wasn't it?

A. Yes.

Q. And didn't replace any old pavement?

A. No.

Q. The plank crossing, repair account, South Broad Street, $60.48; isn't that just a repair?

A. No. There were a number of places where we were required to put in new crossings on South Broad, where our track is in the center of the street, and there are really two streets, one on each side of

it, the street is so wide, and we have center pole construction, that the travel, the vehicular travel goes parallel to our line each way, and there were a number of places we had crossings over our line.

Q. That is outside the city?

A. That is right near the city limits. I don't remember whether it is just outside or whether it is just inside.

Q. Were they new ones?

A. Yes; not replacing old ones; additional.

Q. New track, Lalor Street car house, $265.69; was that all new?

A. Yes.

Q. Didn't replace anything?

A. No.

Q. Installation derailing switch, South Broad Street crossing, $282.58?

A. That was new derail switch, not replacing an old one.

Q. Paving Lalor Street with Belgian Block, $180.-78; any old paving?

A. No. There was some cobblestone there, but it was sort of at intervals.

Q. A worn-out pavement?

A. I don't know whether it has ever been put in Lalor Street, not paved elsewhere. Since that time the city has paved it, their portion of it; ever since I have known anything about ——

Q. Isn't it a matter of your franchise requiring you to put that kind of paving alongside the track when you put it down?

A. It is possible. That is a point I will refresh my memory on.

Q. Renewal of brick pavement, West State Street, $22.20; wasn't that fixing that paving up?

A. Yes. I think that was replacement.

Q. A small piece of work?

A. Yes; $22.20.

Q. Rehabilitation of suburban lines, $5564.95. We have nothing here that gives us any idea about that; what is that?

A. The charges to road and equipment in that

were the ballast. We put in a great deal of ballast out there.

Q. How much, do you know?

A. We put six thousand tons in one year at a cost at the quarry of seventy-five cents a ton; not all on the Princeton line.

Q. That is more than your total item?

A. Yes; not all on the Princeton line.

Q. How much ballast went into this item?

A. $2252.08, is the amount. I will refresh my memory on that.

Q. What does the remaining $3300 represent?

A. Putting in new ties.

Q. In place of the old ones?

A. Yes.

Q. Were the old ones worn out?

A. Yes.

Q. New ties. Yardville line, $878.89.

A. The same thing applies.

Q. Was there any new work there?

A. Ballast?

Q. Any new line?

A. No.

Q. Where was your maintenance gang that they weren't put on that to keep it up, or don't you have a regular gang?

A. Yes, we have a gang; that is reduced and increased during the year.

Q. Isn't that the kind of work they are supposed to do?

A. They are employed on that kind of work in the city and outside since I have been here.

Q. Wouldn't they put that ballast in?

A. They do sometimes.

Q. Do you know whether they did on this work?

A. Some was put in by that gang.

Q. They are paid like the other gangs are paid?

A. Yes.

Q. Out of operation expense?

A. No. It depends on the work they do. The operating gang tends principally to maintenance work and the other principally to road and equip-

ment work. A great deal of the time it is divided; of course, the regular maintenance gangs do maintenance work more than anything else.

Q. You pay those men?

A. Yes.

Q. Just as you pay your other men?

A. Pay them all in the same way, payrolls.

Q. And the money to pay them comes out of operating expenses, since you have been there?

A. No.

Q. Where does it come out of, this special fund?

A. Yes. Some of it. I haven't the record here.

Q. The Princeton line, $5564; how much was paid in wages to your regular maintenance gang?

A. For work such as that we would increase the gang.

Q. Mr. Johnson, you can say no money, so much money, or I don't know; and we can get along.

A. I don't know, without refreshing my memory.

Q. Fair grounds line, $293.85; isn't that a repair account?

A. The same statements apply to that as I have applied to the previous Yardville line and Princeton line.

Q. When was it built?

A. When was it built?

Q. Yes; when were the exchanges made?

A. I don't know; during the last three or four years.

Q. How long since the line was built?

A. The present line was built after these changes —I will have to change that. The end of the line to the Fair grounds has been changed about a year ago, since this expenditure was made

Q. Wasn't that new ties?

A. Yes.

Q. Were the old ties worn out?

A. Yes.

Q. Larger, in place of the old one?

A. Yes.

Q. Portable cross-over, $772.49.

A. Absolutely new, not a replacement.

Q. Rail grinder, $1500.

A. New, not a replacement.

Q. Miscellaneous track tools, $210.60.

A. New, not a replacement.

Q. Overhauling bridges between Trenton and Lawrenceville, $288.

A. That was reconstruction, you might say strengthening.

Q. When you overhaul bridges, isn't that ordinarily repairs?

A. Unless the strengthening cost more than previously.

Q. Did you strengthen that particular bridge at that time?

A. That refers to several bridges.

Q. How many bridges does it refer to?

A. It refers particularly where the overhauling of the bridges on the line have needed overhauling, that is $288.41. I don't recall—call it just the repairs to the bridges.

Q. Now, you have at the bottom of this page 4, a list of things under the head of power plant. Name which one of those items replaced other items, superseded other items and which were entirely new and didn't supersede anything else. That question applies to everything down to rehabilitation charges on the top of page 5. If you can make a list of that, I am willing you make a memoranda and do that.

A. Well, suppose I do that; I can give it with a great deal of accuracy. That includes the total power plant?

Q. Down to rehabilitation, top of page 5.

A. I see. What, if anything, was replaced by new, of these items?

Q. Yes, or superseded, and what stuff was discarded and thrown out, sold or scrapped. You understand the point I am after in each case?

A. Yes.

Q. Now, you have under the head of rehabilitation charges some small figures and some sizeable ones. Overhauling car house machinery, $8379.08; what does that mean? That means you took the old

machinery and had it repaired and the life extended and the efficiency increased?

A. Yes.

Q. Can you name the machines to which that item applies?

A. Yes.

Q. Are those in this former list here?

A. That applies to two machines, what we call Number One and Number Four units.

Q. What did you do?

A. Those machines were somewhat worn out from operation; we completely overhauled them.

Q. When you say completely overhauled them, what did you do?

A. We engaged Underwood & Company to replace any parts that were worn and to put the machines in first-class shape.

Q. That is ordinary repair work that adds to the life and efficiency of the machine, isn't it?

A. Yes; although in this case it was quite expensive.

Q. Why wasn't that work done by your own men?

A. Because we didn't have the facilities, and to do it successfully, and with the assurance that you would be getting your money's worth, it is advisable, in my judgment, to employ companies whose business it is to do such things.

Q. You have your machine shops and your machinists, do you not?

A. But not for any such work as that.

Q. The rest of the items under that are of various sizes; does that same refer to them: electric instruments, circuit breakers, boilers, belts, booster, plumbing, lights, mechanical stokers, and building, were all those items all done, overhauled by your own men and repaired?

A. In every case not by our own men.

Q. They were overhauled or repaired by your own men or special men you had employed for that purpose?

A. Usually by special men; in some cases, such as plumbing, additions were made.

Q. Now, engine parts, that would be the same thing; those are renewing parts, parts put in to renew other parts?

A. I will have to refresh my memory on that item.

Q. A little further below you have rehabilitation under the head of car barns, you say rebuilding cars, $3,782; what does that mean; what did you do to them?

A. Why, we put the car body in first-class shape and added—we changed the wiring system.

Q. Did you extend the life of the car by that repair?

A. Yes. We changed the wiring system to conform with the new standards of the fire insurance people; we connected the wires to the trolley; we put the rod to ring up fares instead of the rope or cord.

Q. You have overhauling car bodies and overhauling motor equipment in 1910; was that general repairs that is done to those things to prolong their life?

A. That was an addition.

Q. In what respect?

A. In addition to that we spent our proportion, that is, we spent more of our depreciation fund for regular maintenance.

Q. Now, when you say overhauling car bodies, you mean by that what? You mean an ordinary repairs of overhauling cars?

A. I just explained we took certain cars and rebuilt them in addition to the regular maintenance.

Q. You have the item of rebuilding cars, which you explained at length; we come to the next item of overhauling car bodies in 1910; that can't be the same item, it must be something else. I am asking you if it is the ordinary overhauling of cars that is being ordinarily done?

A. No, in addition to that we spent our depreciation fund for maintenance.

Q. Now, will you tell me how you did that over-

hauling of the car bodies; I don't care what else you did out of depreciation account. I am talking about this item as it appears, overhauling car bodies; what does that indicate; having your workmen take the car bodies that are run down and whip them into shape? Does that item mean that or doesn't it?

A. It means rebuilding the parts of cars to which it refers, the definite expenditures are included in those vouchers and statements which are now being examined, available in our office. If you want that particular item and just what it refers to, I can bring it at the next hearing.

Q. That don't answer my question, except I gather from it, you don't know. That is your answer?

A. That represents money spent on certain cars in addition to the expenditure of all the depreciation fund.

Q. Of course, those are just words, Mr. Johnson. You have the item of rebuilding cars; you don't mean after you rebuild a car you then overhaul it again?

A. Not the same car, other cars.

Q. Now, overhauling car bodies in 1910; do you know what cars they were; what items of expense were expended in each car?

A. That is the distribution in our office. I can't remember it. I can bring it.

Q. I don't mean what you can bring. I am asking you what you now know.

A. I say I can't remember the details.

Q. Overhauling motor equipment, 1910; can you remember about that?

A. The same answer.

Q. The next, new International registers.

A. Yes. We bought International registers because we couldn't rely on the registers which we found in the cars.

Q. That replaced the ones you found?

A. Yes, there were excess in replacing; we bought more than we replaced.

Q. Your next set of items, car barn buildings and

equipment; looks as though it was all new, is that right, down as far as rehabilitation?

A. Yes.

Q. That is all new?

A. Yes.

Q. Do any of these items replace other items you threw away?

A. Not that I know of. If you want me I will make the same note as the previous one.

Q. I wish you would. Rehabilitation, roofs on car barns, $448.12; what does that mean? Isn't that repairing roofs ——

A. That is replacing the corrugated iron roof over the machine shop.

Q. Did you put on a new roof?

A. We put on a new surface roof, not entirely.

Q. You repaired the roof by making an addition that prolonged its life?

A. Yes.

Q. Enlarging the storeroom, that is a new piece of work?

A. That is an addition to the storeroom.

Q. Will you make a note under the head of road and equipment, bottom of page 5, and going down to miscellaneous, what of that is replacement? Just as a sample, new feeders, South Broad Street, that is a big item, would that represent replacement of old feeders?

A. No, a distinct addition.

Q. Nothing there replaced?

A. Nothing.

Q. New feeders, Lawrenceville line, $72.14.

A. A distinct addition.

Q. You go through the whole list that way and say distinct addition or replacement, as the case may be, down to the word "tabulation."

A. Do you want me to read the figures?

Q. Afterward. We will do it now, if you can recollect it right here.

A. Yes, I can recollect to a large extent. Overhead line, Hamilton Avenue, second track, a distinct addition. New signals, Princeton line, a distinct ad-

dition. Overhead line, Lalor Street car house, a distinct addition. New feeder cable at Mulberry Street and Delaware & Raritan Canal, distinct addition. New pole, South Clinton Avenue and Roebling Street; I don't know about that, I suppose that was.

Q. It is to small to talk about.

A. (Continuing) Installation Bond Opener, Mulberry Street, a distinct addition. New ground wire, Perry and Clinton Streets, that was an addition. New signal at White Horse, I don't recollect that. Cable boxes, Perry Street and Delaware & Raritan Canal, an addition. New feeder poles, Perry and Broad Street, I don't remember that, whether it replaced anything. Trolley guard at South Broad Street railroad crossing; that was a distinct crossing.

Q. Now, we come to rehabilitation. There are several items, overhauling signal system, overhauling feeder poles, overhauling poles and cables, power house, and so forth: aren't those all items of repair?

A. No. Take the cables under the canal at Mulberry Street, the cables under the canal at Perry Street; they were doubled in capacity.

Q. But they were overhauled also? They were repaired also?

A. Yes; there were some replacements there.

Q. Can you tell how much in dollars and cents?

A. I cannot.

Q. As to all of those items do you make the same answer?

A. I make the same answer.

Q. That miscellaneous was all new stuff?

A. That horse and carriage was a distinct addition. Horse for line wagon, a distinct addition. Dump wagon, a distinct addition. Office furniture, we have added from time to time office furniture. I would have to, if you want, investigate just what that was.

Q. I don't care anything about that. I want the principle on which you are working; I don't want to get too much detail of small things.

A. The account of plant stores, I would investigate that. Installation Western Union Clock, Broad Street and State Streets, a distinct addition. Account stations, waiting rooms and so forth; we made some distinct addition. New stop signs, distinct addition. Overhauling trolley wagon, replacement.

Q. Take your last sheet, Trenton & Mercer County Traction Corporation, $300,000 with no details; have you the details here?

A. No, I have no more than this.

Q. Trenton Street Railway Company, road and equipment, $17,026.84; what was that money spent for?

A. Trenton Street Railway road and equipment, $17,000; I will have to give the details from the record. I will have to get the details from the records in the office now being gone over.

Q. As to rehabilitation, $56,841.61; the same answer?

A. I will give the details from the records in the office now being gone over.

Q. Referring for a minute to your Exhibits 1, 2, 3 and 4, which accompanied your testimony as to valuations; you have a number of items in here, but no money, except at the end of a great number of items you give a diminution total. How did you get at that total without having any items run out?

A. I stated at the time these estimates were called for, that I considered an approximate estimate which I made in 1910, in connection with an investigation of the property to advise my own people, about what the cost of reconstruction would be, and the total amounted to $3,200,000.

By Commissioner Donges:

Q. By reconstruction, what do you mean?

A. I mean replacement.

Q. Reproduction?

A. Reproduction of the entire property.

By Mr. Record:

Q. How can you get the total if you have no items run out?

A. I am coming to that. I took the totals which I have in my notes, and I can go through each one of these main headings, namely, five main headings, track roadway, including right of way; overhead construction and feeders; rolling stock and equipment; car house, repair shop, tools and adjacent real estate; power station and equipment and adjacent real estate, showing how I arrived at the totals given.

Q. Yes, but you haven't put those in here.

A. I put the totals down.

Q. You didn't put the details down?

A. No. I was asked at the time whether I could support these with my notes. I said I had notes from which I could support them.

Q. How did you find out the value of and how did you estimate the value of the rails without knowing how long they had been down?

A. My estimate was the cost of replacement of the property new.

Q. You didn't attempt to value anything you found?

A. I didn't attempt to deduct a depreciated value. I attempted to estimate the cost of replacement new of the physical property.

Q. Without any respect to the conditions you found the property in at the time?

A. We didn't deal with it.

Q. Didn't you say you made this up to advise your client the cost of this thing?

A. Cost of the replacement of the physical property.

Q. What did you want to know that for?

A. They wanted to know it.

Q. Weren't they buying this property?

A. They wanted to know what the cost of the replacement of the property was, and they were the figures, which did not include administration, con-

tingencies, interest during construction, working capital, or intangibles.

Q. Nor did they include any appraisement of the value of the property as to its present condition?

A. Did not.

Q. No attempt anywhere to figure on the value of a single article with reference to whether it was worn half out or two-thirds out, but treating it as brand new, is that right?

A. There is another question; to estimate the cost to replace the various property new ——

Q. Can't you answer my question? I am asking you if it is not a fact you took each item, and instead of inquiring whether it had been partly worn out, or half worn out, or nine-tenths worn out, you valued it exactly as if it were brand new, is that right?

A. No. This is the distinct replacement with new, without reference to what there was there. In one way your statement is correct, but my estimate was for replacement of the property new, regardless of any depreciation.

Q. But you found some rails in the street, didn't you?

A. Yes.

Q. Did you value those as if they were put in yesterday and brand new?

A. I valued them as if replacing them the day I made the estimate.

Q. What is the difference between replacement value and the value as though the property is brand new?

A. It may be the same.

Q. Isn't it the same?

A. Yes, practically.

Q. Then, as a matter of fact, you took this property and you valued it as though it was brand, and then you go to the Commission and ask for the privilege of spending $8,000,000 to bring it up to date?

A. A great deal of that expenditure, almost all of it, was for improvements, addition, enlargements,

and there were some replacements of items which had reached the end of their life.

Q. Yes, you had already figured the items in that reached the end of their life as though they were brand new. Now, you add $800,000 to that. You just value your property so many dollars, three million dollars, on the theory the plant was new, on your theory of reproduction new; then that was up to date, or wasn't it? It didn't need any replacement? If it needed replacement then ——

A. A good many things were replaced because of the desire to put in their place a type which had become accepted as the best modern type, since it was put on the market.

Q. That is another way of saying that you had to bring the property up to date, isn't it?

A. That thing is going on all the time.

Q. And a lot of these things you replaced with this money were worn out; you admitted that as you went through the items?

A. Some of them were.

Q. A good many of them were?

A. Not a great many.

Q. What are your replacements then for?

A. Because in my judgment they should be replaced.

Q. Why do you say they needed replacement; they were answering the service; they were carrying the people.

A. What do you refer to? The cars ——

Q. Ties, rails, ballast, everything you had there was carrying the people, weren't they, unless they were worn out?

A. There are different reasons. In the case of Paul Avenue they were requested; we wouldn't have touched some of them if we weren't required, because of orders to repave the street.

Q. When your people took your valuation and then decided they must put eight hundred thousand dollars into the property, they went into an existing mainly, and it didn't go to building an extension out into the country, building a new line?

A. There are a great deal of additions. When you speak of additions, that refers only to track. An addition applies to the property, applies equally to an addition to buildings, additional power house machinery, additional cars.

Q. That additional power house machinery, all that additional business, that comes under that head, was needed, wasn't it?

A. Yes, I think it was.

Q. It was needed to bring the property up to modern standards, wasn't it?

A. Not in 1910.

Q. It wasn't needed in 1910?

A. No.

Q. Why was the money raised to do it?

A. A good deal of it has been needed since 1910.

Q. Wasn't permission of the Commission asked to raise $500,000 on the securities of one of the underlying companies?

A. Yes.

Q. That was asked for some purpose, wasn't it?

A. Yes.

Q. It was asked for the purpose of bringing the property up to date, wasn't it?

A. No. It is customary to anticipate needs by providing for financing future requirements. If any error was made, it was making the bond issue too small. A property should have means for financing future needs; there are always future requirements.

Q. If a property has been kept up-to-date and managed properly when a car wears out there is money in the treasury to buy a new car out of depreciation fund?

A. If it is fortunate enough to have sufficiently large receipts.

Q. It isn't customary, is it, to finance out of new capital, new cars in place of old cars, is it?

A. It is in some cases.

Q. It isn't generally, is it?

A. Not when the company can afford to do it

otherwise. I maintain in this case we have added to our cars, not replaced.

Q. I am not talking about additional equipment, unless there was additional equipment needed on the existing lines. If you produced additional cars, that was simply because you had to have more cars to give proper service?

A. Yes.

Q. To that extent the property was not up-to-date, had insufficient cars for the service it had contracted to do?

A. One of the reasons that induced us to provide additional cars has been what we deemed the necessity of providing for the excessive travel at such times as the Interstate Fair week, and Decoration Day, and the Fourth of July, various days when, with all the cars we have today, we operate them all.

Q. That simply means the property wasn't sufficiently equipped to do the business offered, doesn't it?

A. Possibly so. It has been getting them right along; it is hard to say when the time comes when you have just enough; not too few or too many.

Q. Haven't you cars standing idle?

A. We have some, but not more than enough to meet the demands at such times as I have mentioned.

Q. Haven't you more than enough now to answer the demands and obligations of the public?

A. At some times.

Q. Have you too many or not enough?

A. We have not too many, I should say.

Q. Today you have the number of cars that are necessary to answer the demands on you by the public which you serve, is that right?

A. Yes.

Q. Were there enough when you took over the property to answer the demands of the public which you serve, the reasonable demands?

A. I should say not.

Q. A lot of this money, as we see by these items, was for new rail replacing old rail. Then the property was run down to that extent, was it not, and

new capital had to be raised for replacing the old rail?

A. I consider two points affecting that; one was that a good deal of the replacement requirements occurred about the same time, have been constructed about the same time. Another was in rebuilding, in replacing we have endeavored to replace to the best modern standards, and the best modern standards which were in existence at the time the items we replaced were constructed, was quite different, less expensive.

Q. If the old companies which you leased had kept their property up-to-date, would you have needed any $500,000 for rehabilitation, as you termed it,—$800,000?

A. Wouldn't need that for rehabilitation.

Q. You have charged a lot of it up to rehabilitation?

A. No. I have only charged three hundred and something; $270,000 out of $820,000.

Q. That is a good lot of it. Answer my question: if the companies which you leased had kept their property up-to-date by providing a sufficient depreciation fund, or by making repairs necessary, would you have needed that $300,000 for rehabilitation?

A. It is possibly true they had the requirements for rehabilitation coming at once.

Q. You say very possibly. I am asking your judgment.

A. That is my judgment.

Q. If the old companies had kept that property up out of receipts, or creating sufficient depreciation fund, would you have had to go out to get $300,000 to put on it at any one time, new capital?

A. In the first place, that is less than $250,000 rehabilitation.

Q. Whatever sum it is; I want an answer.

A. In the second place my judgment is, not more than half of that is due to replacement, because of perhaps not making the replacements as they became due; the rest was needed because a great many of the

items reach or approach the end of their life about the same time.

Q. Isn't that so always with every company?

A. Probably.

Q. Many items approach the end of their life about the same time?

A. Probably.

Q. You spent $800,000 on this property; does it need another $800,000 to rehabilitate it?

A. No.

Q. Why not?

A. It needs a good deal of money to carry its ability to provide service.

Q. Does it need any money in rehabilitation?

A. It depends on whether the receipts are large enough to meet the expenditures. It needs a good deal of money.

Q. Isn't it a fact that the track here in front of the State House for a mile or so has got to be replaced very shortly?

A. It is my opinion that the track, after it has been given a smooth surface this year, it will have a satisfactory life for two or three years at least.

Q. It has been down twenty-one years, hasn't it?

A. Yes, that rail ought to last twenty-five to twenty-seven years.

Q. When that comes due it will cost $75,000 or $100,000 to replace it along there, that twenty-one year stretch including paving and everything?

A. No.

Q. What do you think it will cost?

A. Let us see, how long is it?

Q. About a mile and a half.

A. To reconstruct that section of track; I figure 444 feet of single track, 2200 feet of double track; I figure it will cost approximately $30,000.

By Commissioner Donges:

Q. Including paving?

A. Yes.

By Mr. Record:

Q. From what point to what point?

A. From Willow Street to Calhoun Street, I am assuming that is 2200 feet. I haven't got the divisions here; that is just my recollection, which may be wrong.

Q. How about from Prospect Street west, that would bring down that length?

A. Prospect Street west; Prospect Street we welded the track and joints and smoothed—well, I haven't the length of that section from Prospect Street west. At the end of the double track, do you mean?

Q. Mr. Swan mentioned a mile and a half that has been down twenty-one years.

A. That is a mile and a half of single track or double track?

Q. Willow Street to Calhoun; Prospect Street to Parkside.

A. Prospect Street to Parkside, I presume, about two thousand feet; I haven't got the length.

Q. Didn't the pavement cost pretty near your estimate alone?

A. No.

Q. You don't think it did?

A. No. If Prospect to Parkside is the same length, it would cost for the Willis Street to Calhoun and Prospect Street to Parkside, together, cost about $60,000 total.

Q. Mr. Swan estimates twelve thousand feet of single track.

A. I have estimated 8800 feet as the distance between those.

Q. Let us assume 60,000 feet or any other sum—make it 12,000 feet.

A. 12,000 feet I will make it. It will be about $80,000 if it is twelve thousand feet.

Q. Where is the money coming from to pay that? Are you going to go out and bond the road when that time comes?

A. I trust not.

Q. Why not?

A. Because I hope to have the receipts with which to do it.

Q. If you have the receipts with which to do it are you going to charge those to capital account?

A. No.

Q. You wouldn't charge those to capital account?

A. No.

Q. Take those out of earnings?

A. No, only to the extent as given by the distribution accounts provided by the Public Utility Commission.

Q. You hope to take the money out of earnings?

A. Yes.

Q. Why didn't the other people take the money out of earnings so you wouldn't have to raise this $800,000?

A. Because they didn't have the earnings.

Q. But if they had the earnings they should have done the work, under your theory?

A. I think, as a general rule, that is the proper thing to do.

Q. If they had, you wouldn't have had to raise that $800,000?

A. Yes.

Q. If they had done all the replacement work necessary as it became due, and paid it out of earnings, you would still have had to raise this amount of money?

A. No. Which amount of money?

Q. $800,000.

A. If they had sufficient receipts and everything to do all the replacements, and it had been done, we wouldn't have had to do it.

Q. Then the replacement work which they didn't do was replacements that ought to have been done in order to keep the property up to standard?

A. The replacement work——

Q. Say yes or no.

A. No.

Q. That isn't true?

A. No, it isn't true.

Q. Then why do you say if you had sufficient receipts, that you would have done it and ought to have done it?

A. I say that because a good deal of the replacement work that we have done is not replacement work that would have come on them in any place.

Q. Haven't you taken the position they ought to have done replacement work which they were unable to do because they didn't have sufficient receipts?

A. I think undoubtedly there were some replacements that would have been done if they had the receipts.

Q. Can you fix the amounts?

A. I cannot fix the amount.

Q. You wouldn't have any idea how much?

A. No.

Q. You said in this State Street line these rails had been down twenty-one years and you think you can get a life of twenty-seven years?

A. Yes. I don't know how much life.

Q. Why do you say twenty-five or twenty-seven years?

A. I think we ought to get that much anyway.

Q. It is your judgment you will get twenty-seven years of life?

A. Yes.

Q. Does that fairly represent the situation in this city? Do you get twenty-five or twenty-seven years life out of your rails?

A. They have had traffic which would enable us to get that life out of it. I think certain parts of the city we would get less than twenty years.

Q. What are those parts?

A. I should say near the corner of State and Broad Street, traffic increasing as it is.

Q. Can you state the percentage of the rail that will wear less than twenty, as against that which will wear more than twenty; that is, the percentage of the rail?

A. Under present traffic conditions?

Q. Yes, under present traffic conditions.

A. I should say that four miles, taking a mile each way from the corner of State and Broad Street, four ways, four miles we will get less than twenty years out of any rail that we might put down today.

Q. How about the life of the rails that are down there; if they have had fifteen years of life do you expect five years more, less than five years more?

A. We have put new rail everywhere except West State from the corner of State and Broad Street out in each direction except west.

Q. As the thing stands today your judgment is one mile each way from that corner, four miles all told, the life of those four miles is less than twenty years?

A. Yes, I think it would be very close to twenty years.

Q. The rest of the road would be more than twenty years?

A. Yes, that is my thought.

Q. The average conditions around the city of Trenton are twenty-five years, taking the average?

A. Yes, I think they would. That is of today's traffic.

By Commissioner Donges:

Q. What is that?

A. That is today's traffic, based on the traffic today over each section.

By Mr. Record:

Q. Are there any places in the city that there will have to be extensive repairs made in the track in the next few years, similar to the State Street track?

A. My idea is, there would be reconstruction of between a mile and a mile and a half of track a year on an average.

Q. I wasn't asking you that.

A. That is my reply ——

Q. I am asking you if there is any considerable

amount of this track that is in the condition that you testified to as to State Street?

A. No. I think if we could construct a mile to a mile and a half of track each year, we would always find a place where we had to reconstruct, there would be changes, but we would also be keeping the track in good condition.

Q. I don't doubt that is your theory; I am trying to get the facts. There are a number of places in this city where the track is similar to that we have been discussing here on West State Street that has been down twenty years or more; there are a number of such places; how about South Clinton Avenue?

A. South Clinton, the rails were welded, the track surface is in very good condition. I don't recall how long it has been down, but I can tell you in the morning. That was put down in 1902—No, it was put down in 1894; put down just twenty years.

Q. What is that?

A. Put down twenty years.

Q. How many?

A. Twenty.

Q. South Clinton Avenue?

A. Yes.

Q. How long a distance?

A. 4356 feet.

Q. Double track?

A. Yes.

Q. How about North Warren Street from State Street?

A. There was a section put down in 1894, the rest in 1903; that track was also welded in 1912.

Q. Have you got a statement there that we haven't seen that shows the life, the time each section of rail in the city was laid down?

A. It is only partially complete. I have some of it.

Q. Have you got it conveniently, so without taking the time of the Board we can give it to our experts?

A. Yes. I have only one copy; it is for my own use; I will be glad to let you have it.

Q. You will let us have it?

A. Yes.

Q. One question on this appraisal of yours: You stated you had not undertaken to fix the actual condition of any item. Take the first page and refer to Hamilton Township, the Crosswick Pike, Yardville, 11,400 feet. As a matter of fact, isn't that abandoned? It has never been occupied, never used?

A. What do you refer to?

Q. Hamilton Township, Crosswick Pike, from Yardville to Crosswick, 11,400 feet?

A. That is on what statement?

Q. That is on your statement here, Exhibit 1, first sheet, Exhibit 1.

A. That was constructed to quite an extent, not entirely completed, and it is not operated. I can't say it has been abandoned until——

Q. It has never been operated?

A. Never been operated.

Q. Haven't the rails been taken away from there?

A. Very few of them have been taken away. When we did more than enough to replace the rails taken away were put there.

Q. Are they there?

A. Most of them are.

Q. Aren't they scattered around all over?

A. No.

Q. Isn't it an abandoned track?

A. I can't say it is abandoned until the courts determine that. It is a matter which is——

Q. I am not talking about the legal terminology of it.

A. It is not under operation.

Q. It has never been under operation?

A. It has not.

Q. How long has that been?

A. Ever since I have been there; ever since it was built; it was never operated.

Q. You list that as a brand new road, aren't you?

A. I haven't included it.

Q. You have in the statement.

A. It is in the statement? I crossed out one statement I handed you; I didn't cross it out of the other.

It has been included in every statement we have had of the track of the company, but we have never included it in any estimates that we have submitted. I crossed it out and called the attention of your engineer to the fact.

Q. Now, Mr. Johnson, do you give your conductors any special instructions about the sale of these strip tickets?

A. No, except to sell them to anyone who wants to buy them.

Q. You don't urge them to offer the tickets or ask if they wish tickets?

A. They usually do. I think we haven't any instructions in that connection at all.

Q. Do they ask for them if they wish them?

A. I have heard them many times when I have been on the cars, and the passenger hands them money. It is usually, I suppose, when they hand them in excess of a quarter, ask them whether the passenger wants tickets.

Q. Do you know whether or not they are instructed to do that?

A. Not as far as I know.

Q. They are not instructed not to do it, are they?

A. No.

Q. Where did you come from when you came here?

A. New York.

Q. What was your employment in New York?

A. I was connected with Mr. Osgar C. Crosby and J. G. White & Co.

Q. How long had you been with them?

A. Three years before, about, I had come back from South America, where I was engaged by Squire & Co., the National City Bank, and Grayson & Co.

Q. What were you doing in South America?

A. I was chief engineer, general manager and government representative, as it was called, for them in connection with the location, construction and operation of one thousand miles of railroad, which they had arranged with the bankers to construct, to connect the systems of Peru, Chili, Argentine, and the navigable Amazon.

Q. That is a steam railroad?

A. Steam, but there was electrical development in connection with its operation.

Q. Was there any street railway construction in it?

A. No, except the capital of Bolivia there was a small street railway line.

Q. Did you ever appraise a street railway line before you came down here?

A. That and the electrical connections and machinery, plant for operating that, and then with Mr. Crosby in connection with his Washington situation, and Wilmington, and to a certain extent Reading, Pennsylvania.

Q. That is while you were connected with these New York people?

A. Yes.

Q. When did you first become connected with this company?

A. In 1910.

Q. When Mr. Hurley was connected with it?

A. Yes.

Q. Who hired you?

A. It was rather an arrangement with Mr. Crosby —perhaps I might say Mr. Crosby did, if anyone.

Q. Was Mr. Crosby president of the road?

A. He was at that time.

Q. Which road?

A. Trenton & Mercer County Traction Corporation.

Q. He hired you?

A. Yes.

Q. At what time?

A. 1910, I suppose.

Q. Was Mr. Hurley connected with it then?

A. Yes.

Q. How long was he connected with it?

A. He was there at that time and resigned in, I think, 1910. I can get you the exact date if you would like it.

Q. Have you stated the month that you came here?

A. I was here before the taking over of the prop-

erty by this company, so that I was here from the beginning of the company, which was August 16th, 1910.

Q. And you knew about the details of management prior to that time?

A. Nothing.

Q. What have you done each year with reference to taxes since you have been here, with reference to the city authorities?

A. Paid them.

Q. I mean with reference to rating your property for taxation?

A. Shortly before I came here there had been a detailed examination and study of the taxes—of the assessments and the amounts of the assessments were determined on by the authorities, and each year thereafter I was requested to advise the city the additions which we had made, and I wrote such letters to the city each year.

Q. Stating the additions?

A. To the tax assessors.

Q. Did you at any time represent to the city that the amount on which the city was levying taxes was the value of the property?

A. No, sir.

Q. Did you ever remember any such representation to have been made?

A. I don't remember that any such question ever arose.

By Commissioner Donges:

Q. Your answer is no, then?

A. No.

By Mr. Record:

Q. And you know of no such representation being made to the city?

A. No.

Q. Has your company made any sworn statement each year to the city of the value of the property?

A. No, not that I know of.

Q. Upon what amount are you paying taxes to the city?

A. I don't recall. I would have to—I have got some of the tax bills here now, but I don't think that is all of them.

Q. What are the total assessments on which you pay taxes on all of this property?

A. I would have to refresh my memory on that.

Q. Will you give us that sometime?

A. Yes.

Commissioner Donges: In the city, you mean, Trenton?

Mr. Record: No. I mean all told. I have some information on that I want to check up. I am not sure it is right. I think that is all I want to ask Mr. Johnson now.

Mr. Katzenbach: I suppose, about taking up the re-direct examination, a little bit later, it will depend on the use of some of these vouchers which are now being used by some of these gentlemen. I was going to ask whether the Board was going to sit tomorrow or not, for this reason: That sometime ago the State of New Jersey raised a question as to the right of the du Pont Powder Company to erect a pier out in the Delaware River at their plant at Warner Point, New Jersey, and that resulted in a request being made to the Board of Commerce & Navigation for certain riparian rights, and the Board of Commerce & Navigation have requested an examination of that property be made at once. There was, and I have been requested, as a representative of the du Pont Company, to go with the Board for the purpose of making an examination of this property and with a view of subsequently meeting the riparian committee of the Board of Commerce & Navigation to see if a price can be agreed on. So, of course, it is very essential I should go along with the Board. An examination should be made with

the members of the Board and myself, because otherwise we would have no way of having been over the ground together, and viewing the situation together. I have been trying to put this thing off, but I can't put it off any longer because they want the matter attended to for the reason that under the law of 1914, you can't build a pier out into the river until you get the riparian rights, and so it is a matter of some considerable importance. I spoke to Mr. Record today at noon about it and he said he would like a respite in this matter; it would be satisfactory to him. I think I am not stating it too strongly, am I?

Mr. Record: No, that is a fact.

Commissioner Donges: The only difficulty there is as to when we shall conclude the matter.

Mr. Katzenbach: I want to say in connection with that, that, of course, while this order suspending this matter of the company's withdrawal of tickets would expire on November 16th, that, of course, if the Board felt it needed longer time for the consideration of this question, we would agree that the status quo should remain the same. Of course, we would naturally—we naturally want the question decided as soon as possible, so if we took a day now that matter could be extended, of course.

Commissioner Donges: It might involve more than a day's extension.

Mr. Katzenbach: When I spoke of a day I don't mean literally a day, I mean a reasonable extension.

Commissioner Donges: After this week we run into——

Mr. Record: Might I say just a word there? I would like not only to help the Mayor, but I think it is going to help all hands. We are working under

pressure. Today's cross-examination, I suppose, has been tedious to the Board, but we have to get some information before we can rebut. Mr. Rand and my other witness, our two witnesses, they have been hurriedly looking into the case and have possibly other business, and so has the Mayor. We are all working under this pressure; if we have to go on, a day or two's delay won't delay this case. If you are trying to get through on the 16th—the Mayor says you are not required to stand on that statutory point.

Commissioner Donges: If the company is willing now to stipulate that the expiration date of the suspension will not affect the status, it will relieve the situation very much.

Mr. Katzenbach: Yes, with this understanding—yes, that is perfectly agreeable, by so stipulating we don't, of course, consent to the jurisdiction——

Commissioner Donges: No.

Mr. Katzenbach: We don't waive any rights that we have.

Commissioner Donges: The only point is, if the case be not concluded or determined by the date when the Board's order of suspension expires under the statute, that the situation will not be changed.

Mr. Katzenbach: Yes, that is agreeable.

Commissioner Donges: That is not stipulated?

Mr. Katzenbach: Yes.

Commissioner Donges: That imposes on everybody the same duty of expediting the matter and not unduly delaying it.

Mr. Record: If we could have two weeks after the

16th everybody would be relieved and we would get it done. What do you think is a reasonable time (addressing Mr. Katzenbach)?

Commissioner Donges: Gentlemen, don't lose sight of the fact when this week is over the Board's calendar is taken up with matters every day.

Mr. Katzenbach: I better not go to visit this pier. It puts me in an embarrassing situation. I am on the one hand shoved by the Board of Commerce and Navigation——

Mr. Record: I don't see why we can't let tomorrow go to advantage. We simply have to have a breathing spell somehow.

Commissioner Donges: Don't lose sight of the fact, beginning November 9th, 10th, 11th, 12th, 16th, 17th, 18th and 19th, and the following week every day (although the Hoboken case is one of the matters that is put down for the week beginning on the 6th; we gave them Friday, November 26th, and Monday, November 29th)——

Mr. Record: How does the Board propose to finish this case on the 16th if you have a calendar like that?

Commissioner Donges: Simply work Saturdays and Sundays and nights, as we have been doing, to get its work done.

Mr. Record: The 9th is when?

Commissioner Donges: Tuesday.

Mr. Record: Is it the Board's idea we can put our case in and have cross-examination on it and argument on it before Tuesday?

Commissioner Donges: No, my thought was—I

hope, by applying ourselves to this case every day this week and next Monday, at least we could conclude the testimony and time would be given counsel perhaps until the following—some day in that week —the following Monday for argument, put it down for argument.

Mr. Record: The following Monday is very close to the 16th.

Commissioner Donges: Yes, we are crowding very close to the 16th in any aspect.

Mr. Katzenbach: As long as the Board wishes I will come here tomorrow then.

Mr. Record: What can we do tomorrow? Have you witnesses tomorrow?

Mr. Katzenbach: No. My witness—there is a witness I think we can get here from Philadelphia tomorrow that will take probably ten minutes for my questions. I want to question Mr. Johnson, his redirect examination wouldn't take half an hour, so you can go on at noon, at any rate, tomorrow.

Mr. Record: We can't go on tomorrow.

Commissioner Donges: I see our Tuesday's calendar has been kept reasonably clear, because of this case largely; if counsel think that they desire tomorrow, both sides, and will be prepared to go on Friday, we can give you the following Monday and except possibly half an hour on Tuesday, but I don't imagine you can conclude in that time.

Mr. Katzenbach: Of course, if we can't, using every effort, what I said in reference to the matter, of course, holds good.

Commissioner Donges: It would ease the matter

very much if counsel could stipulate the status being maintained; there is a moral obligation on everyone.

Mr. Katzenbach: Yes.

Mr. Record: Mr. Rand says it is utterly impossible to go on tomorrow. We could go on—we start Monday morning; you try to present your case, then work the cross-examination and my cross-examination, and we will be ready Monday morning. If the Mayor wants us to do something Friday to finish up his case we will come down and do that.

Commissioner Donges: Are you prepared to conclude the cross-examination of Mr. Johnson and Mr. Ford on Friday?

Mr. Record: Yes.

Mr. Katzenbach: I can have Mr. Ford here, because he said he could come Friday.

Commissioner Donges: Suppose we put that Friday and make the adjournment to the first day when counsel will be prepared, with the understanding that if it should be impossible to conclude by the 16th or 17th, whichever date that the order of suspension would expire, that counsel agree that the status be maintained. I understand you accede to that?

Mr. Katzenbach: Yes; we accede to that, the understanding being, as the President says, we must all use our efforts.

Mr. Record: I want to point out that as the Board has concluded to give this case the right of way, it demands some attention from the Board, we will work as hard as we can.

Adjourned until Friday, November 5, 1915, at the State House, Trenton, N. J., at 10:30 o'clock A. M.

SIXTH HEARING.

Trenton, N. J., Friday, November 5, 1915.

Before the following Commissioners: R. W. E. DONGES, ESQ., J. W. SLOCUM, ESQ.

For City of Trenton appears GEORGE L. RECORD, ESQ.

For Trenton & Mercer County Traction Corporation appears FRANK S. KATZENBACH, ESQ.

FRANK R. FORD, resumes the stand.

Cross-examination, (Continued.)

By Mr. Record:

Q. Mr. Ford, you were explaining at the close the other day of your cross-examination with reference to this imaginary condition of a city of 100,000 people without any transportation facilities. I would like to ask you some details as to that imaginary condition. Do you consider that the people, when you start to put in your new plant, are ignorant of the use of trolley transportation, never have heard of it, never have seen it, or are they familiar with it and have been deprived of the use of it suddenly?

A. I think I would consider that they were used to trolley transportation in other places, but not in that particular place.

Q. Where did these people come from, other places, move in the day before, or how were they here?

A. In the case of Trenton they might have traveled on street railway lines in Philadelphia & New York.

Q. Don't you consider this place of 100,000 people to be a community that has grown gradually like other American communities?

A. Yes.

Q. Then the people who are here have been accustomed to trolley transportation here or have not been accustomed to it here, which do you say?

A. They had not been accustomed to it here.

Q. How had they been accustomed to go to their places of business here?

A. By other means of transportation.

Q. What means of transportation?

A. Walking, horse transportation, and at the present time they would have motor transportation.

Q. Which do you figure, what is the imaginary city, does it have motor transportation?

A. I would say yes.

Q. All these boys and girls going to places of employment go in limousines, walk, or how do they go there? How would you say the working class reach their places of employment?

A. I don't see what connection that has with the hypothetical case.

Q. You sat up an imaginary method of valuing by providing imaginary conditions; I want to know what those conditions are.

A. I have answered that question.

Q. The working class, how, in your imaginary city, in your judgment, do they reach their places of business?

A. I should say the same as the other classes, they would walk——

Q. The rich would be able to have their own carriages, wouldn't they?

A. They might.

Q. In your imaginary city, did they, or didn't they; did the rich and poor walk alike on your theory?

A. I think they would do the same as the other people, yes.

Q. There would be no difference between the rich and poor as to that?

A. No.

Q. Where would these people get their experience of trolley transportation, knowledge of it, out of books and newspapers?

A. I think they would get it in other places, if the tracks were not there.

Q. They would know about it then?

A. In a general way they would, yes.

Q. They wouldn't be afraid of a trolley car for fear it would blow up?

A. I think they might.

Q. You think they might?

A. Yes.

Q. That is, in your imaginary city, when you start your transportation, will people look upon the trolley as a strange, weird animal to be handled gingerly, and attended with personal danger?

A. I think they would look on the trolley the same, for instance, as the citizens of Philadelphia looked on the trolley when it was first introduced there. I am somewhat familiar with that situation.

Q. Were they afraid of it or did they use it?

A. I think they used it, some of them used it gingerly at the outset.

Q. How long, how many trips did it take an average Philadelphian to wake up to the fact that a trolley car would not blow up?

A. I know I attended a hearing in the Council Chambers there and several doctors appeared and thought the use of the electric trolley would interfere with pregnant women, interfere with their condition. I remember that statement was made at the time.

Q. You are an intelligent man, I did not ask anything about doctors and pregnant women; I asked you point blank, in your Philadelphia experience, how many trips it took the average patron of that car to get so he wasn't scared of it, that hasn't anything to do with women and doctors.

A. I have no statistics on that point.

Q. You remember when Jake Sharp put down his Broadway street railway?

A. I have heard of it.

Q. You don't remember the old lumbering Broadway busses?

A. No.

Q. Never rode in them?

A. No, I have never ridden in a Broadway bus.

Q. Did you ever see any of those busses in your years on the city streets?

A. I have seen Fifth Avenue busses but I have never seen the Broadway busses.

Q. Never seen one of those old horse-drawn busses?

A. I have seen the horse-drawn Fifth Avenue busses.

Q. If your imaginary city had horse transportation, that would be the type of it, wouldn't it?

A. It probably would have been.

Q. Don't you know as a matter of fact, the minute that Jake Sharp's Broadway road was laid it was jammed to the doors, the cars were, the minute they were put on?

A. I assume they were.

Q. Then there wasn't anybody accustomed to going up and down Broadway that had to be persuaded by drummers on the sidewalk to get on board a street car propelled by cable, were there? It took no time to develop that traffic, did it?

A. It always took a certain amount of time to develop the traffic of the population served.

Q. I am talking about this Broadway road.

A. So am I.

Q. In your judgment, from what you know, did it take time to persuade the people to patronize those cars?

A. I should say it would take several years.

Q. It would take several years?

A. Yes, sir.

Q. Didn't you say a moment ago that it was probably true that immediately those cars were jammed to the doors by people who wanted to go up and down Broadway?

A. Some of them, yes.

Q. Weren't all of them?

A. No.

Q. Isn't it a fact that more people patronize those cars from the start off than had patronized the busses before?

A. I think that is the case.

Q. You think that is the case. Where did those people come from?

A. They were drawn from the people that were walking before or had used some other methods of transportation.

Q. Do you mean to say that any of those people had to be persuaded by any efforts of the company to patronize those cars, by any advertising or soliciting?

A. They did not have to be persuaded by soliciting, but it is undoubtedly the case that the full amount of travel on that line did not use it until several years after it was started and in operation.

Q. Do you know anything about that?

A. I do, not as to that original Broadway line, but as to a number of others.

Q. You know nothing about that?

A. I am not familiar with the original Broadway line.

Q. As a matter of fact, if it took place on Broadway, wouldn't be due in part at least to the growth of New York and the surrounding country and the growth of the business in New York?

A. Somewhat.

Q. Can you distinguish between a growth in itself that comes from an increase in population and the growth that comes from some fellow taking two or three or four years to finally make up his mind that he better ride, can you distinguish between those two elements of growth?

A. You can make some estimates on that subject, yes.

Q. Do you mean to tell me that any citizen of New York or any business man or clerk wandered up and down Broadway upwards of three years before he decided to patronize the cable road?

A. That was undoubtedly the case.

Q. That is undoubtedly the case; what led him to change?

A. Habit.

Q. How many years does it take to get a man out of the habit of walking four or five miles into the habit of riding four or five miles?

A. I will estimate it takes about three years at the present time, assuming the persons are reasonably familiar with the electric trolley system of transportation. I think if you would build a new line in such a place where there was already electric trolley transportation, it would take you about three years to get the complete amount of traffic which would be on that line from the population it served.

Q. You mean to say if anybody was paying money to get to his place of business and the trolley is put down that carries him for one-half or for one-quarter of what he is paying, that such a man would take three years to make up his mind to shift over?

A. I am not referring to such a man, I am referring to the average condition.

Q. I am not talking about average conditions, I am talking about that man. What do you say about that man?

A. I think that man would probably use it from the outset.

Q. How far, would you say, in the City of Trenton the average ride is that the people take, how far does the average person ride?

A. I should say it would be between two and three miles.

Q. Is it your theory that your 100,000 city, in your 100,000 city, that the people, average people who now ride two or three miles were walking two or three miles to their places of work and two or three miles back every morning and every night, is that your assumption?

A. When was that?

Q. I don't know when it was; whenever your imaginary experiment takes place. Is your imaginary city composed of working people who walk two and

three miles to their place of business and who walk two and three miles home from their place of business?

A. I did not say that.

Q. Do you say that?

A. No. I think if there was no street transportation facilities, no street railway system here, that you would find the people living nearer their places of work. The factories would be surrounded by residences of the employees, the business men would live nearer their places of employment, and so forth.

Q. Then your 100,000 population is not the population of Trenton distributed as it is now distributed?

A. It would be distributed——

Q. Differently?

A. Not in my hypothetical case.

Q. I am taking your hypothetical case.

A. No, it would not; it would be the same distribution as today.

Q. In the City of Trenton today in the rush hours your business, the business of this road is the business of people going to their work in the morning and from their work in the evening, isn't that so, the bulk of the traffic in the rush hours?

A. I should not say that was the bulk of the traffic, no.

Q. What would you say the bulk of the traffic was?

A. The bulk of the traffic—by that I mean over fifty per cent. of the traffic—would be in the non-rush hours.

Q. I wasn't talking about that. I wish you would try to answer my questions. There is a traffic in the rush hours, isn't there?

A. Yes.

Q. Is it not a fact that the traffic in the rush hours is composed mainly of people going to their work and coming from their work?

A. Yes.

Q. Wage earners and clerks, or that class of people in the main; isn't that so?

A. Yes.

Q. Those people in your imaginary city are travelling from two to three miles on each ride; is that right?

A. Yes.

Q. Is it your supposition that those people in your imaginary city are walking two or three miles to their place in the morning, working ten hours a day, and then walking two or three miles to their distant home, is that your condition?

A. No.

Q. That is not your condition. How would they get to their places of business?

A. They would get to their places of business by the street railway system that we are assuming.

Q. It is very hard for me to feel that you do not follow my questions. I am talking to you about your own suppositious city, with no street railway at all; you say you would have this city just as it is now, start out and not congested, with the people living as far from their factory places of work as they now do, and a duplicate of this city except as to trolley transportation. Then I asked you how they do now, and you say they ride from two to three miles in the rush hours, working people to in the morning, from at night. I say, coming to your imaginary city, those people living in the same places as far from their places of work, how, in your imaginary city, were they getting to their places of work, walking that two or three miles or riding it?

A. I would say your assumption is impossible.

Q. So should I, but it is yours, it isn't mine.

A. You are assuming the people live as they do today. I say, if they had not trolley transportation they would not live in the same places, the city would be in a congested state.

Q. I asked you a few moments ago if that was so in your imaginary city and you said no.

A. I repeat that it is not the case.

Q. One minute you say yes, and no; which leg do you stand on? In your imaginary city that has no trolley, is that imaginary city the City of Trenton as

it stands today spread out, or is it a congested city needing no trolley?

A. It is the City of Trenton as it is today.

Q. Then as it is today, the working people you say in the rush hours ride in these cars from two to three miles a day, and in the rush hours, a two or three mile trip, and in the rush hours that constitutes the bulk of the traffic. Am I stating your position right on that?

A. Correct.

Q. Then the City of Trenton as it is today, you say you transform the city into your imaginary city, which differs in no respect as to the distance from the average working man's home to the average working man's factory. That being so, how, in your imaginary city, do these people reach their work two or three miles distant in rush hours, by walking or by some other means of transportation, in your imaginary city?

A. That is not part of my hypothesis.

Q. Will you try to state your hypothesis?

A. My hypothesis is, you have the City of Trenton as it is today without the street car tracks and street car property, you build that property and develop your business.

Q. The hundred thousand people are human beings, aren't they; they are not somebody like H. G. Wells, imaginary dwellers on the planet Mars, they are the average human beings, like those that live in Trenton today, except they are scared of a trolley car?

A. I didn't say they were scared of a trolley car.

Q. Don't even say that; then say they were familiar with trolley cars, but they haven't got them; is that your supposition?

A. That is right.

Q. They were the ordinary human beings otherwise?

A. Yes.

Q. When they are the ordinary human beings, they are going to their work in the morning and returning at night?

A. Yes.

Q. How far in the rush hours, that is to say, in the hours when people are going to their work in the morning or coming from it at night, how far are those people walking or flying or being transported in some other way to their places of business, two or three miles?

A. I don't think that is a fair hypothesis. It does not concern the problem.

Q. You put it, say one mile, a quarter, any other number, you put the city the same as now, and you say the people are the same as now, the same normal people earning their living, going to work in the morning and coming home at night, but without tranportation facilities in the way of a trolley. I am asking you now, how do they get to their work, walk or ride, in the rush hours in the morning and at night how do they get home?

A. I am assuming the trolley is built in such a place, I am not assuming the trolley is not built. I don't know what you are trying to get at, but it is simply a play on words, it seems to me.

Q. Is your trolley built now?

A. It would take several years to build it.

Q. There comes a day when they lay the first rail?

A. Yes.

Q. This city of 100,000, you lay the first rail; isn't that your hypothesis?

A. Yes.

Q. On the morning you lay the first rail how are the people going to their work?

A. If you assume the people are being transported by some other means, you would have an entirely different layout of your population.

Q. You have over and over again taken two positions when we got up to that point. Won't you take one or the other? What is your hypothesis, the hypothesis of a city like the City of Trenton, distributed as it is, on the morning you lay your first rail; or is it another layout that is in your hypothesis?

A. My hypothesis is the present City of Trenton.

Q. Why change it; I haven't changed it; why do

you want to change it? You lay your first rail in a community like Trenton, on the morning of the day, no trolley there, I ask you how are the thousands of working men and women going two to three miles to their places of business in the rush hours in the morning and coming home at night, under your hypothesis are they walking, flying or being transported by some other means of transportation?

A. I have made no hypothesis in regard to that.

Q. Necessarily they have to get there in your hypothetical city?

A. I have not considered that.

Q. You have not considered that?

A. No.

Q. If they are walking—if they are riding and paying fifteen cents to ride in the morning and fifteen cents to ride at night, that fact would have its influence upon the development of your trolley traffic, when it was ready, wouldn't it?

A. I think so, yes.

Q. Then that is a fact upon which the time to develop your trolley traffic depends, don't it?

A. In my hypothetical case I——

Q. Couldn't you answer me that question, that is a fact, if they pay fifteen cents——

Commissioner Donges: Read the question.

(Question read.)

Q. Isn't that so?

A. Not in my hypothesis.

Q. Under your hypothesis, it would not make any difference when you got a line running, whether the people were compelled to use other facilities costing three times as much or not, that would not make any difference?

A. No.

Q. No matter what they were paying it would not make any difference in the time it would take to develop your trolley traffic?

A. It would make a difference, yes.

Q. A few moments ago you said it made no difference.

A. I said, in my hypothesis I have not unduly weighted the matter, such as it would be if you made such an assumption.

Q. I am not unduly weighting or duly weighting, I am asking the fact. Let us get you right on the record. Would it not make a difference, in estimating the time it would take you to get a profitable traffic on your new trolley, if the people were now traveling along the line of it paying fifteen cents to go to work in the morning and fifteen cents back, wouldn't it make a difference if that was the fact?

A. I think it would make a difference because you would do less business on the competing system.

Q. That is to say, if a workingman is paying fifteen cents to go three miles to his work in an omnibus and you offer him a ride in a quarter of the time for five cents, that your trolley will do less because of the competition of the omnibus, is that your position?

A. I think you are assuming a competing system of omnibusses which I have not assumed.

Q. I know you have not, but the point I am trying to get at is, these people have to go to their business someway or other; you admit that fact, don't you?

A. I think the whole difficulty comes from the fact that you are assuming the building up of the business on the basis of the cost of production and I am assuming it on the basis of an entirely new system, on the basis of the cost of reproduction.

Q. Of course, you can repeat those words over and over again. I can't stop you.

By Commissioner Donges:

Q. Mr. Ford, on your theory of reproduction, don't you assume streets that are vacant of trolley equipment of all kinds?

A. Yes.

Q. In that assumption there must be some means of transportation, whether it is by busses or whether

it is by means of ordinary locomotion for a person, walking; haven't you got to assume that people move about by some method?

A. I think undoubtedly they would be moving about.

Q. As I understand Mr. Record is trying to get your thought as to what means of locomotion the people adopted in this city where no trolley equipment exists at all. You must assume some means of transportation in connection with your theory of building a trolley and developing the business.

A. I think there must be some system there.

By Mr. Record:

Q. What kind of a system?

A. I have already testified that it was a system of horse-drawn and motor-drawn vehicles here.

Q. Charging how much?

A. I don't know how much they are charging; they might be charging five cents if they are jitneys.

Q. Wouldn't it make an awful sight of difference in the development of your trolley, whether there was a shorter competitive mode in existence with a cheaper price, whether there was an expensive mode that took a longer time at a higher price; wouldn't that make a difference?

Commissioner Donges: Or whether there was none?

Q. Yes, or whether there was none. Wouldn't those elements enter into your problem?

A. I think they would make some difference, yes.

Q. They would make a decided difference, wouldn't they?

A. I would think they would make a difference in educating the people to means of transportation.

Q. If the new means of transportation are quicker and cheaper than the existing means, it would take a shorter time to get the traffic than if you had to

compete with an existing means that was equally as rapid and equally as cheap, isn't that so?

A. Yes, I think——

Q. Isn't that a fact?

A. It is a fact, and I said earlier in my testimony that I am assuming that the people here were familiar with street car transportation.

Q. So they are familiar with Mars through a telescope, they read about it. The point I am getting at is, it is not the point as to whether they have read about the trolley car or rode on one in Philadelphia and know it won't explode. The point is, is there an existing means of transportation, and is it more expensive than your new one to the patrons? Do you have any such thing in your imaginary city, in your imaginary illustration?

A. No.

Q. You have not taken that element into account?

A. I have taken it into account in that I have assumed that the people are fully familiar with street railway transportation.

Q. Have you taken into account whether there existed at the time that you laid your first rail, a cheap and expeditious method of transportation other than trolley, or a cumbersome, slow and expensive method of transportation other than trolley; have you taken that into account?

A. I have taken into account the fact that they are familiar with street railway transportation.

Commissioner Donges: Can you answer that question? I think he is entitled to an answer to his question.

(Question read.)

Commissioner Donges: You either have or have not, Mr. Ford.

Witness: Yes.

Q. Which method of transportation exists in your

imaginary city, the more expensive or less expensive?

A. The less expensive.

Q. You would have to compete against an existing system that is cheaper than the one you instal?

A. No, I did not say that. I said the less expensive of your two illustrations. You did not say, as I understand it, that the fare in the existing system was cheaper than in the proposed street railway system?

Q. I did. I said to you first, would it not make a difference in the time of developing your new system whether or not it had to compete with a system that was cheaper and more expeditious, or one that was slower and more costly, and you said finally yes, it would make a difference. Now I am asking you, in your imaginary city, when you drive your first spike, is the existing method of transportation more expeditious than your new trolley will be when you run your cars, and cheaper, or is it slower and more costly?

A. If it was less——

Q. No, which is your assumption, if either?

A. It must be less desirable than the proposed system, or the latter would not be built.

Q. Then as a matter of fact your new system starts in competition with one that is less desirable, you mean by that less desirable in price and in speed, don't you?

A. Yes.

Q. How much less desirable? In other words, what is the rate of fare and what is the rate of speed of the vehicle that exists in your imaginary city when you drive the first spike?

A. I have made no assumption.

Q. And yet you are forced to admit that an assumption on that point is germane to the question of how long it would take you to develop your property, aren't you; aren't you forced to admit that?

A. I would say that my assumption takes that into consideration.

Q. Wouldn't you say that now, that you are forced to admit or are not?

A. Yes.

Mr. Katzenbach: In a question of that kind there are so many things that enter into it——

Commissioner Donges: I think the witness said he did take that into consideration.

Witness: If I may explain the way I take it into consideration is, that I assume——

Mr. Record: This is not in answer to my question.

Commissioner Donges: I want the witness to put himself square upon the record.

Mr. Record: He can answer my question and then explain it, it seems to me.

Commissioner Donges: He may explain.

Witness: In my suppositious case I have assumed that the prospective electric railway riders are familiar with the electric railway system.

By Commissioner Donges:

Q. But are using some other means of transportation?

A. Naturally.

By Mr. Record:

Q. Are you assuming that those patrons of the other means would prefer your electric road as soon as it is laid?

A. Yes.

Q. That they would transfer their patronage to the new road as soon as it was opened for traffic?

A. Yes.

Q. How much of the traffic do you consider in your imaginary case is thus ready to transfer its patrons?

A. Our usual experience——

Q. No; you have never had any experience in a 100,000 city like this. I am asking you now how much of that patronage do you consider ready for instant transfer to the new and improved system; do you know?

A. Eighty per cent. of the traffic which could be expected to use a system of this character in the population to be served.

Q. You assume that eighty per cent. of the possible traffic of the town that you would ever get is ready for the instantaneous use of your property as soon as it is created?

A. Yes.

Q. Where is the other twenty per cent.; is it walking to its place of business or is it patronizing these other methods, where is it?

A. It is using some other method of transportation.

Q. Why would it, if that transportation method is more expensive than the one you offer?

A. I didn't quite finish the answer. It is using some other method of transportation or is not being moved or moving.

Q. That is, it is walking?

A. No, it is staying at home.

Q. Staying home?

A. Either staying home or using some other method of transportation.

Q. What other method?

A. Walking or horse-drawn vehicles or motor vehicles.

Q. You are assuming that the horse-drawn vehicles and motor vehicles are more expensive than your trolley, both in time and in money, are you not?

A. Yes.

Q. Why should anybody continue to take more time and pay more money riding in a horse-drawn

New Jersey State Library

vehicle when they could get into your cheap and expeditious trolley vehicle?

A. Habit.

Q. You think there are such people?

A. I know it.

Q. Tell us the man that you know that patronizes the horse-drawn vehicle taking the longer time to reach his place of business habitually and paying more money; tell me the man's name and his address.

A. That is not the case today, because we have passed the third year of the use of the new system. There are possibly such men, but ——

Q. Did you ever meet one of them?

A. I don't happen to know any at the moment.

Q. You cannot recall him now?

A. Not after the third or fourth year of the operation of the electric railway.

Q. I don't care anything about the third or fourth year. I am talking about immediately the new proposition becomes available; I want to know the name and address of the man in any city in this country who has patronized—not who rides in his limousine, one who is patronizing a more costly and more lengthy method in getting to his place of business daily, than the trolley.

A. You will find him in considerable numbers under such a hypothesis.

Q. Name a man you have ever met that did that fact.

A. I have never run across my hypothesis, because as you point out, it is a hypothetical case purely.

Q. And hypothetical people, isn't it? It wouldn't make any difference to your hypothesis whether the town was wet or dry on the morning you put down your first spike?

Mr. Katzenbach: What sense do you use wet and dry?

Mr. Record: I am using it in the popular sense.

A. I think all of those things have an effect on traffic, if that is what you mean.

Q. You haven't taken them into account, have you?

A. I have taken average conditions as far as I know them.

Q. My question was in joke. Yon don't mean to say you would take into account the question whether the town was wet or dry in figuring on patrons of the street railway, would you?

A. I have not.

Q. You wouldn't do it, would you?

A. I think it would have more effect on the lighting business than on the street railway business.

Q. Mr. Ford, if you were trying to find a fair rate of fare, would you consider it material one way or the other whether a lot of watered stock and bonds had been issued upon which the lessor company had pledged itself to pay dividends and interest, or would you consider that immaterial?

A. I think the amount of securities outstanding have some bearing on the question of the fair value for the property.

Q. If it should appear that there had been several consolidations in the Trenton Street Railway, in which stock was issued to the extent of at least one million dollars, without value in the sense of cash, without any cash coming into the company's treasury, or its equivalent in tangible property, and that million dollars of stock had afterwards been converted to the extent of a half million at least into bonds which were a lien upon the lessor company and the interest upon the rest of the stock was a lien in the sense that the lessor company had agreed to pay interest on it, would you consider that in such case earnings—these people ought to be allowed to increase their earnings so as to pay interest and dividends upon stock issued like that for no consideration?

A. I don't think that has any direct bearing on the question of the rate of fare.

Q. You would not care whether the stock was watered and the bonds were watered, or not?

A. Not in arriving at the valuation of the cost of reproduction new.

Q. That is all right. Then if you start with the City of Trenton to find what is the fair rate of fare, you would not, if you found that their physical property, on the basis of reproduction new plus your development cost theory, if you found that footed up to such a price that they still had fair earnings upon, and beyond that there was a lot of capitalization which they had pledged themselves to pay interest and dividends on, would you take that obligation into account and say they should be allowed to increase their charges, their fares, so as to pay those lease obligations, or would you discard that item altogether?

A. I would not usually take any account of the par value of securities issued, unless they had been issued under governmental sanction, such, for instance, as this Commission's approval. I think in that case they should have weight.

Q. If it appeared that under the Commission's approval some stocks and bonds had been issued for nothing, would you count that right in, say it ought to be counted?

A. I would, yes.

Q. Even if no value had ever been received for them by the company?

A. I assume the Commission would have valued them for some purpose in allowing them.

Q. But you would base your position on the assumption that the Commission had acted intelligently and properly?

A. Yes. May I amplify my answer a little bit? I think the question of market value of securities has more bearing than the par value.

Q. As a matter of fact, isn't it an ordinary fact that the market value depends upon earnings plus the expectation of the company continuance of the earnings, isn't that settled? Nothing else on earth?

A. I think very largely, yes.

Q. How can you take the market value of securities into account when you are trying to fix a rate; the market value is based on the existing rate and the expectation of its continuance or increase?

A. There are other considerations besides rate, in market value.

Q. What are they? I said to you they were the existing rate of return plus the expectation that it would continue, and you said yes to that. Do you now say differently?

A. I say that is part.

Q. Didn't you say that was practically all?

A. No.

Q. What is the other element?

A. There are other elements such, for instance, as proper policies and methods of conducting the business. I can conceive that a rate of fare, if charged by a company that is improperly managed, would be productive of very much less earnings, and hence the market value on the securities would be less than with a company that is properly conducted.

Q. That is to say that the earnings which is the foundation of the market value reflect the management, doesn't it always so; isn't it always so that the earnings reflect the management?

A. To a certain extent, yes.

Q. Don't earnings and market value reflect the market's opinion of the management and the likelihood of its continuance, in every important instance?

A. It is one consideration.

Q. I ask you if the market does not reflect those conditions or the market's opinion of those conditions?

A. It does, among others.

Q. If it does, among others, then the market reflects the management, doesn't it, absolutely?

A. Not absolutely, but partly.

Q. To what part?

A. You just have mentioned another consideration which is the question of rates. The market

value reflects rates; it also reflects good management, but it reflects neither absolutely.

Q. How does it distinguish good management from rates, from net earnings?

A. I didn't state it distinguished one from the other, but I said it considered both.

Q. It cannot consider both, unless it distinguishes one from the other; you know that, of course. It don't muddle them up like a piece of wood in a mud puddle; it says so much for one and so much for the other.

A. You asked me if the market value reflects good management absolutely, then you asked me whether it does not reflect rates absolutely. It does not reflect either one absolutely, but it reflects them partly. There are other considerations that may enter into the problem.

Q. What?

A. Such, for instance, as good location of a street railway line. I have heard Mr. Johnson state he did not think the location of this line was as good as it might have been, and on that account the earnings were less per capita than they would have been if the line had been properly located. That is another consideration.

Q. Isn't all the market asks is the earnings?

A. That is reflected in the earnings.

Q. So that when the market analyzes a security it says the earnings from that property are so much, and then it inquires, are they likely to continue, and if it says they are there and are likely to continue, isn't that all the market asks?

A. No, I think it would ask what the future would hold in store.

Q. That is what I mean when I say it was likely to continue.

A. Likely to continue in my mind would mean, likely to remain the same. I think the market would ask whether there is not some condition, whether it is going to improve earnings.

Q. Or decrease it?

A. Is the town increasing in population?

Q. Let me state it again. The market takes into account the earnings existing and the probable future increase or decrease of those earnings?

A. Yes.

Q. Isn't that right?

A. Yes.

Q. And the market stops there, the general market on exchange; isn't that so?

A. I think the other factors which I have mentioned have some effect.

Q. How much?

A. No matter how large the earnings were, I would not want to invest in such a property if the management had not a good reputation and was not known as being able to conduct the affairs of the company properly.

By Commissioner Donges:

Q. Would not that be necessarily involved in the second proposition, namely, the prospect of future earnings?

A. It would, yes.

By Mr. Record:

Q. Do you think it made any difference in the market value of the securities of the Broadway Road, what was the character of its management; if the earnings show so much, wouldn't the public say, if it earned so much, and that is likely to continue, Broadway is likely to grow in congestion, that that is all they ask?

A. I think they would want to know the character of the management.

Q. You think they would?

A. Yes.

Q. You think that would be reflected in the market?

A. To an extent, yes.

Q. What would you mean by the character, is it whether they were running it economically or not?

A. I think the integrity of the management and its efficiency would be the points considered.

Q. What do you mean by integrity?

A. Whether the management was honest or not.

Q. How has the market any way of knowing that?

A. By the past reputation of the people that are running the property.

Q. The market assumes they are going to continue to run it and has confidence in them?

A. As long as they are running it, I should think they would, yes.

Q. Can you give me an illustration of a road in this country where the management had injured the market value of the securities?

A. I think the New Haven Railroad is a good illustration of that.

Q. Did the management of that road do anything else than decrease its earnings?

A. It decreased the public, the general public opinion regarding the property.

Q. After it was exposed, it did?

A. I think it did over a number of years prior to that.

Q. That is, the market discounted the fact that the earnings eventually would have to be decreased?

Commissioner Donges: You mean during the continuance of the management public confidence was impaired?

Witness: Yes, I think so.

By Commissioner Donges:

Q. The confidence of the public in the stability of the securities was lessened?

A. In the policy of the management and the character of its ——

Q. How long before the crash would you say that was true? When I say crash, I mean the general public exposure of the management?

A. I think it was seen in the tendency both of a

decline in stock and in the decline of the earnings of the property.

Q. I say, how long before there was a change of management did you notice that decline?

A. I should say it was a matter of maybe a couple of years.

By Mr. Record:

Q. You spoke of Chicago and Cleveland as instances where they had put what you term a development cost theory at work, had put a price on the development cost item. Wasn't the Cleveland proposition in the nature of a settlement?

A. What do you mean by settlement?

Q. I am asking you if it was not in the nature of a settlement and not in the nature of the fixing of a rate like this body is trying to fix a rate?

A. It was in the nature of a settlement, but the rate of fare depended on the valuation that was adopted.

Q. The rate of fare in that instance was three cents, was it not?

A. It is a sliding scale, the minimum is three cents.

Q. It has eventuated in three cents?

A. It has varied somewhat from three cents.

Q. Isn't it a fact that that eventuated in an arrangement whereby a fund of money was put one side and they started at some figure, say four cents, and if that proved insufficient after this reserve fund was exhausted, they could go higher, and if it proved too much, then they must go lower; wasn't that the substance of the arrangement?

A. Yes.

Q. As a matter of fact, didn't it go lower?

A. It has been down to three cents and I think it is between three and four now.

Q. Do you know?

A. Yes.

Q. What is it, what is the rate of fare in Cleveland today?

A. Three cents, with one cent for a transfer.

Q. Has the one cent for a transfer ever been discontinued?

A. Yes.

Q. And then resumed?

A. Yes.

Q. Do you know what that works out on the average as a rate?

A. I have a record of it, I have here, if you would like me to look that up. It is between three and four cents.

By Commissioner Donges:

Q. Isn't there some practice in Cleveland to at times return the penny paid for a transfer?

A. I think that was adopted at one time.

Q. Hasn't it recently been the case?

A. I am not sure about that; I don't think so, however.

Q. My impression is, about a year ago in Cleveland it obtained, on the occasion of a visit there.

A. I know it was the case a year or two ago, but I don't think it is the case now.

By Mr. Record:

Q. You are not positive on that score?

A. I am not positive about that.

Q. Wasn't the Chicago case a settlement without a valuation the same as this Board is accustomed to make? Wasn't it a settlement between the city and the companies?

A. Yes.

Q. And it worked out as a process of bargaining in the settlement?

A. I suppose every one of these cases is more or less a matter of bargaining.

Q. Can't you answer a simple question about Chicago? You are talking about every one of these cases, there isn't going to be any bargain in this case; is the Commission going to sit and dicker with us?

A. If what you mean by bargaining, one party presents a certain figure and the other party presents another figure, and the result arrived at is somewhere between those two figures, I think most cases are developed along those lines, and that was the case in the Chicago settlement.

Q. Didn't, in Chicago, the city put forward its evidence to an impartial tribunal, the company put forward its evidence and the tribunal fixed a value the same as this tribunal will fix a value here?

A. That was essentially the method used.

Q. Didn't they strike a bargain between the city and the company, when that bargain was struck was it not taken to the tribunal and ratified?

A. The tribunal fixed, that is, the Board of Engineers in that case fixed the valuation which was accepted by the City Council.

Q. But it was an acceptance by the City Council, wasn't it?

A. Yes.

Q. And the settlement was negotiated by Walter Fisher on the part of the city, and Wickersham on the part of the company, and they agreed upon a bargain which was presented to each side and ratified?

A. I am referring to the engineer's valuation, which was substantially what was adopted by the City Council?

Q. It was adopted by the City Council?

A. Yes.

Q. Accepted?

A. Yes.

By Commissioner Donges:

Q. Was it the independent judgment of these engineers based on the testimony, or was it by the engineers of both sides, who met and compromised by yielding this point on one side and that point on the other side, and arriving at some conclusion?

A. There were engineers representing the company and the city, and a third man chosen as an umpire. It was an independent settlement, I should say.

Mr. Record: That is the way I understand it. I think that is all I want of Mr. Ford.

Re-direct examination.

By Mr. Katzenbach:

Q. Mr. Ford, in your estimate that the new electric railway in a city of 100,000 inhabitants would, if offering a cheaper method of transportation and a more expeditious method of transportation, be accepted and used by eighty per cent. of the riders in that community upon the opening of the system? I understand you to say that the other twenty per cent. would take about three—it would take the company three years to secure, is that correct?

A. Yes.

Q. Of course, in those twenty per cent. there would be those who would have used, and who would continue to use, horse-drawn vehicles, I understand?

A. Yes.

By Commissioner Donges:

Q. Just a moment; let me understand. You say, continue to use horse-drawn vehicles?

A. Yes.

Q. Then the company would not now secure their patronage?

A. My basis of estimating traffic for the new line is to take ——

Q. I understood you to say that the company would almost immediately acquire eighty per cent. of those who might, at the expiration of three years, for example, be induced to ride, and the other twenty per cent. would be added from time to time?

A. Yes.

Q. In response to Mr. Katzenbach's question I understood you to say part of that twenty per cent. would never be induced to ride?

A. I did not so understand the question.

Q. I understood you to say they would continue to use horse-drawn vehicles.

A. They would until they used the other method.

By Mr. Katzenbach:

Q. There might be men who would have gone to work upon bicycles and they would continue up to the time the bicycle became worn out, to go to their work, notwithstanding the introduction of street railway service?

A. Yes.

Q. There were others who had formed the habit of walking, and that habit would continue with them until bad weather or disability set in, and then they would fall over to the electric system, is that the idea?

A. Yes.

Q. So that the other twenty per cent. is gradually acquired by the street railway company, is it not?

A. Yes.

Q. The cost of operation of this road was testified to as 13.9 cents per car mile. Will you state whether in your opinion that is a low or high cost of operation per car mile as compared with other cities similarly situated to Trenton in the United States?

A. I think it is low.

Mr. Record: I would like to object to that line of questions in that each town differs from every other town.

Commissioner Donges: We will permit it to stand.

Q. Are you familiar with the cost of operation per car mile in cities in this country of about the size of the City of Trenton?

A. Yes.

Q. Will you give us some illustrations of what the cost of operation per car mile is in other cities, giving approximately the population of the other cities?

A. I have selected some cities in the same part of the country as this and operating a large proportion of double truck cars, such as the Trenton company does, whose population served would approximately be between one hundred and two hundred thousand. One of those lines is the Scranton Railway Company of Scranton, Pennsylvania, where the operating expenses were 21.2 cents. Another is the United Traction Company of Albany, New York, where the operating expenses is 17.6 cents. Another is the Worcester Consolidated Street Railway Company, Worcester, Massachusetts, 21.2 cents. The Des Moines City Railway Company, Des Moines, Iowa, 17.9 cents. Springfield Street Railway Company, Springfield, Massachusetts, 20.3 cents. Virginia Railway & Power Company, Richmond, Virginia, 13.8 cents. Those figures are for the year to June 30th, 1914, except the Des Moines Company, which was for the calendar year, 1914.

Q. In your examination the other day you stated ——

By Commissioner Donges:

Q. Let me ask at this point, what do these figures include in other cities?

A. They do not include taxes, but include current operating costs, and I assume the cost of renewals, if paid for out of the operating expenses.

Q. Depreciation?

A. I don't think so.

By Mr. Katzenbach:

Q. In your examination the other day you stated that the cost financing new securities for street railway companies was, as I recall it, somewhere between eight and ten per cent., or in the neighborhood of eight per cent. Will you give some concrete instances within a short time past, a year or two years, where street railway companies have been obliged to finance securities, and what rate of per cent. it has cost them to do so?

Mr. Record: I shall object to that. It seems to me that cannot guide us. Here is this company, for instance, loaded up with these obligations which it cannot meet, which the engineer of the Commission told them they never could meet when they started in. What has that got to do with the City of Philadelphia? What has that got to do with the well-managed company in another city that has prepared itself so if it needs new capital it can issue new securities? He is going to try to show how much some other city, or company in some other city, how much they pay for money.

Mr. Katzenbach: To show it is quite uniform, that is to say, in other words, the testimony here has been that to finance the securities that have been issued during five years with the approval of this Board, that it cost the company somewhere between seven and eight per cent. I want to show that is not an extraordinary condition, but that is the ordinary cost.

Commissioner Donges: That it compares favorably with other companies?

Mr. Katzenbach: That it compares favorably with other companies, and it is for that purpose it is used, and I think it is relevant for that purpose.

Commissioner Donges: We will take it.

A. I am familiar with several cases of the sale of securities which occurred in the year 1913, and also within the past few months, leaving out 1914, which was probably an extraordinary year, due to the European War conditions. The New Orleans Railway & Light Company in 1913 placed an issue of over two million dollars of three year notes at a cost of 8.7 per cent.

By Commissioner Donges:

Q. Did that include commissions?

A. That was the net return, that was the proportion the rate of interest and discount bore to the —

Q. During the life of the bonds?

A. During the life of the bonds—bore to the cash received by the company.

Q. That included everything?

A. Everything.

Q. And the life of the bonds was?

A. Three years.

Q. They were notes?

A. Notes. The Memphis Street Railway Company ——

Q. In New Orleans, was this issue part of the general plan of the city in dealing with its utilities, or was this a private company?

A. This was a private company, had nothing to do with the municipality.

Q. I thought the city was dealing in transportation in New Orleans, somewhat?

A. No, it never has. I might say that company was not only a street railway company, but an electric light and gas company. The Memphis Street Railway Company in 1913, placed an issue of one million dollars of two year notes which cost slightly over nine per cent., that is, cost the company that much. The Birmingham Railway Light & Power Company placed an issue of $350,000 of notes in 1913, which cost them 7.9 per cent.

Q. Notes for what length of time?

A. Two year notes. In 1915, September, the Memphis Street Railway Company took up its old notes, and also a maturing issue of bonds with an issue of $600,000 of one year notes and $1,500,000 of two year notes, the first costing 8.6 per cent., and the last 7.9 per cent., an average of a little over eight per cent.

Q. It is quite usual, isn't it, for short term notes to cost more than long term bonds or notes?

A. Yes, I think that is so, but in these cases it was impossible for the company to place long term bonds.

Q. Owing to the unusual conditions of the market?

A. Very little market for them.

Q. That was somewhat unusual, wasn't it?

A. I think it is usual as affecting the present time; it is unusual as compared with ten years ago or five years ago.

By Mr. Katzenbach:

Q. In your examination the other day, Mr. Record asked you if there was any case in which you had worked out the history of the returns upon capital invested from the era of the horse railway to the electric railway, and you said that there was such an instance in the Coney Island Road in Brooklyn, but you did not have the data with you. Have you the data with you today?

A. Yes.

Mr. Katzenbach: If there is any question you want to ask covering that ——

Mr. Record: It is very hard for me to carry all these details.

Mr. Katzenbach: All right; I just wanted to show we had it. We don't offer it, but it was a question you had asked and he said he would bring it, or something of that kind transpired.

Mr. Record: I did not ask him to bring it; he did did not have the information at hand to stand cross-examination.

Mr. Katzenbach: He said he did not have the information at hand but he could get it.

Re-direct examination.

By Mr. Record:

Q. Why does Richmond get an operating expense of 13.8 cents and Worcester pay 21.2 cents?

A. Richmond, I should say, was a very cheap operation, due to several conditions, one of those being the fact that the railway business is operated by the same general management as the electric lighting department.

Q. What difference would that make?

A. In that case the overhead charges of operation are shared by the two departments. In Richmond the cost of operation is very low, due to the water-power which they have from the James River. The rate of wages is also very low, compared with the northern cities.

Q. What would the water-power cost them in Richmond?

A. I don't recall the exact amount of cost, but it would be very much less than the power cost in Worcester, I should say, I know it costs less than steam power there, and coal, of course, is cheaper in Richmond than it is in Worcester.

Q. Then that cheapness is due to local conditions?

A. Yes.

Q. You could not fix a value of operating expenses, it would not be fair to the Worcester Company to hold them down to 13.8 cents for operating expenses.

A. No.

Q. And it would not be fair in Richmond to give them the operating expenses of Worcester?

A. No.

Q. Why does Albany get off with seventeen and a half cents as against Springfield's twenty?

A. Well, there must be some local conditions that are favorable.

Q. Isn't Albany up and down?

A. Yes, to an extent.

Q. Isn't Springfield pretty level?

A. Fairly so, yes.

Q. And the difference ought to be the other way on that item, shouldn't it?

A. That particular item, yes.

Q. Do you know what causes that difference?

A. I don't know exactly, no.

Q. Would it be fair, in your opinion, to compare Albany and Springfield, if you were sitting in Springfield fixing a value, that you would hold them down to the Albany return?

A. I don't think that would be fair.

Q. Nor vice versa?

A. No.

Q. You would say each individual case stood on its own bottom, wouldn't you?

A. Yes.

Q. You say you don't know in these operating expenses whether they include renewals or not, didn't you say that?

A. I assume they include renewals paid for, but not any fund accumulated for future renewals.

Q. You assume they mean renewals paid for out of earnings?

A. Out of earnings, current renewals.

Q. But you don't know, you don't know, do you?

A. I assume they do, because all of these companies are operating under the regulations of Public Service Commissions which usually require that method of charging operating expenses.

Q. You don't know anything except they are operating under that system?

A. That is correct.

Q. You mean that the Public Utility Commissions in every one of these cities actually require that method of bookkeeping?

A. They do in New York State and Massachusetts.

Q. Do you know whether they do in Virginia?

A. I don't think they have any requirement in Virginia.

Q. Do you know anything about Pennsylvania?

A. They do in Pennsylvania.

Q. How about Iowa?

A. I am not sure about that.

By Commissioner Donges:

Q. They did in Pennsylvania in 1913?

A. 1914.

Q. 1914?

A. Yes, as I understand it.

Q. They had a system of accounting?

A. They had a Public Service Commission that required such charges. I am not sure they made the requirement there at that time.

Mr. Betts: They had a railroad Commission in Pennsylvania that had jurisdiction over that for several years back.

Witness: They had jurisdiction over it, but I am not sure whether they had promulgated a system of accounts there. I know they had in Massachusetts and New York, however.

By Mr. Record:

Q. Why did you say you left out 1914 in the cost of financing these temporary notes, because it was an extraordinary year?

A. I think in the case of most street railways it was almost impossible to finance at any price.

Q. Wasn't in 1913 that situation foreseen in all these financial centers?

A. The war condition you mean?

Q. I don't mean the war condition; I mean wasn't money tightening up, and was it not foreseen in 1914 that we were coming to a period of depression independent of the war?

A. I think in the street railway business there was a considerable period of depression in 1913.

Q. Isn't it a fact in 1913, the financial people that handle and loan money foresaw a period of depression?

A. Yes, I think so.

Q. That made them cautious about investing in long-time securities?

A. I think that was an influence.

Q. That created a temporary condition of strain in the market?

A. Yes.

Q. That lasts to this day, doesn't it?

A. Yes.

Q. Then it started with the anticipation of the depression which comes in this country every fifteen or twenty years and culminated in the extraordinary condition of the war, is that right?

A. Yes, although I think the condition still exists.

Q. I don't deny that.

A. You said it culminated in the war conditions.

Q. The war conditions are now on; that is still the condition of the money market, is cautious and distrustful of new ventures at this moment, isn't that so?

A. Yes.

Q. At this particular time, 1913, 1914 and 1915, the money market is characterized by the same characteristics, is it not, that is, a desire to retrench and await developments, isn't that so?

A. I think that is the case.

Q. Then so far as 1913 and 1915 are concerned, they don't differ materially as to the money market as to 1914?

A. I think in parts of 1914 it was practically impossible to do any financing of this character.

Q. That was the acutest time?

A. Yes.

Q. Do you know anything about the New Orleans Lighting Company, do you know whether or not it is loaded up with obligations beyond the power of the ordinary earnings to meet?

A. I don't think that is the case.

Q. Do you know anything about it?

A. I know something about it.

Q. What is the capitalization?

A. I cannot give you that offhand.

Q. What is the net earnings?

A. I know it is paying dividends on its stock.

Q. Do you know what rate?

A. I think one or two per cent.

Q. You don't know whether it has a reserve bond issue that it could sell so that the new bonds could be on a par with the old, do you?

A. These notes were based on bonds as collateral.

Q. First mortgage or second mortgage bonds?

A. I think they were second mortgage bonds.

Q. Then you assume, do you, in those cases, that their first mortgage bond issue was exhausted, and they could not issue any more bonds, first mortgage bonds, and they did not earn enough to pay only one per cent. or so upon the stock; is that the assumed condition ——

A. Yes.

Q. —— under which they entered the market?

A. Yes.

Q. Wouldn't you expect them to have to pay, expect a company that runs that way to have to pay an excessive rate?

A. I think it was more the character of business than the question of the set up of the notes.

Q. In good times, would you expect a company that could not enlarge its bond issue, and could not earn only one per cent. upon the stock, to get new money at anything less than eight or ten per cent.?

A. I would, yes.

Q. What security would you offer?

A. The general security of the company.

Q. If the general security of the company is only sufficient to pay one per cent. interest on the stock, is that a credit that can be financed?

A. It depends on how much stock there is.

Q. One per cent., if it was a trifling stock interest, of course, would mean you are very close to the difficulty on your bond issue, but if it was an enormous stock issue, it would mean something of a revenue; do you know anything about the size of the stock issue of this company?

A. I think it is twenty million dollars; I am not sure.

Q. Those were two million dollars of three year notes secured by a second mortgage upon the property, is that right?

A. Yes.

Q. Isn't it a fact that the New York Central and the great railroads of the country in the last three

or four years, three years, have resorted extensively to the issue of notes?

A. Yes.

Q. Haven't they had to pay considerably in excess of the amount they usually pay on long-term bonds when the market is good?

A. I think somewhat in excess, yes.

Q. Quite noticeably in excess, isn't it?

A. I think they have paid about six per cent. for their money raised on notes.

Q. What do their bonds sell for?

A. I think their bond rate was about four and a half per cent.

Q. The railroads have felt this the same as other people, as trolleys?

A. They felt it to a less extent than the street railways.

Q. Do you know why that is?

A. I think I do, yes.

Q. Why?

A. I think the street railway business is generally understood to be a declining business, on account of the various matters which I testified to the other day.

Q. A declining business; you mean to say the number of people patronizing the street railways has grown less?

A. I mean, the rate of return on the invested capital is less.

Q. You mean on the capital represented by stocks and bonds, don't you?

A. Yes.

Q. You don't mean invested capital in the sense of money expended on the property?

A. I think the two are more or less similar terms.

Q. In this country, in relation to trolleys, do you say that?

A. Yes.

Q. That the capitalization represents actual money spent on the property?

Mr. Katzenbach: He didn't say that.

Commissioner Donges: Let the witness answer.

A. I don't think I said that.

Q. What did you say?

A. I said the cash investment. You may have misunderstood me in this way: I meant to say that the cash investment, I think, nowadays, is usually represented by the market value of the securities. I was not referring to the par value.

Q. But the market value of securities depends upon the earnings, don't it?

A. It depends on earnings to an extent, yes.

Q. The earnings have not been overhauled by any of these Commissions to any great extent as yet, have they?

A. The earnings have been reduced by a number of other causes, not so much by the reduction in rates.

Q. As a matter of fact, this bad odor you say the trolleys have fallen into is due to the fact that this watered stock era is now over with the coming in of Commissions, and you can no longer play ducks and drakes with this capitalization; isn't that the fundamental reason why the roads are in bad favor in the market?

A. I don't think so.

Q. What do you think is the reason?

A. I think the declining tendency was noted before Commissions were established.

Q. What was the declining tendency?

A. The declining tendency of net earnings is due to the increasing cost of conducting the business ——

Q. That was due to what?

A. —— and to the decreasing rate of return per passenger mile, which is in the last analysis, the unit of return.

Q. It was not due to the agitation in the States of this Union for ten years past for Public Utility regulation?

A. I think that had some effect on it.

Q. Take the Memphis proposition, do you know

anything about Memphis, do you know what they were paying on the stock?

A. There is preferred stock and common stock, the preferred stock was paying at the rate, I think, of six per cent., and the common stock at the rate of, in 1913, of one or two per cent., I think.

Q. What was the bond issue, was it elastic, could you add to it, issue new bonds that would be on a par with the old?

A. The old bond issue consisted of ten million dollars authorized issue, of which about six hundred thousand dollars was reserved to take up an issue of underlying bonds which came due in 1915, and all except about a million dollars of the remainder of the ten millions had been issued for construction purposes. The notes, as I recall it, were based on a new general mortgage which was gotten out for refunding purposes, under which was deposited the unissued bonds of the ten million dollars mortgage.

Q. Do you know what that amount was?

A. I think it was about a million dollars.

Q. In the Memphis case, do you know whether the outstanding bond issues represented more than the cost, money that had actually gone into the road to build it?

A. I think they represented less than the money that was invested in the road.

Q. How much less?

A. I think in that case the money raised by the preferred stock, or a large portion of it, had gone into property in addition to the bonds.

Q. Do you know how much?

A. I think several million dollars, maybe two million dollars.

Q. Preferred stock?

A. Yes.

Q. The Birmingham Railway Company, what do you know that, do you know anything about its capitalization, what it paid on its stock?

A. It had four million dollars of common stock, which it was paying, I think, six per cent. on, and three and a half million dollars of preferred stock

that was six per cent., and about ten million dollars of bonds.

Q. Were any bonds given as collateral security to that?

A. I don't think there were in that case.

Q. Those were two year notes?

A. Yes, two year notes.

Q. That was $350,000?

A. Yes, that is right.

Q. The other example was your same Memphis Company, only with a new deal, wasn't it?

A. Yes.

Q. The same company?

A. The same company.

Q. You say that these sums—in answer to the Chairman's question you said these rates were excessive, partly due to the times, but irrespective of the times they were excessive as compared to five or ten years ago. How much of that excess is due to the times, how much to something else?

A. I think the larger part of it is due to the disfavor in which street railway investments have fallen. I think that the larger rate which the Memphis Company paid than the Birmingham Company is somewhat due to the fact that the Memphis Company had no electric light and power business, which the Birmingham Company did, also a gas business. From my general knowledge I think it is very difficult at the present time to finance a purely street railway company as compared with other public utilities.

Q. That is, the more they consolidated the stronger their credit is?

A. I think the electric lighting and gas businesses are much more popular in the financial world than the street railway business.

Q. Why?

A. Due to the decreasing earnings of the street railway companies.

Q. Do you know any street railway company in an important city in this Union that shows a steady decrease in earnings for five years back?

A. Yes.

Q. Name one?

A. The Metropolitan Street Railway Company of New York.

Q. That shows a steady decrease in earnings?

A. Yes.

Q. What is that due to?

A. That is due to, I think, in that case to the competition of the rapid transit lines.

Q. Isn't the Metropolitan and the rapid transit lines all owned by the same interests?

A. The holding company owns both of them, yes, but the Metropolitan Street Railway Company as a company is showing a decrease.

Q. Due to the competition of these other lines?

A. Largely to that, yes.

Q. Do you know any street railway, electric railway company, in a city of 100,000 people in this country not open to competition by a subway or elevated that shows a steady decline in rates before the depression set in, for the five years prior to the 1914 depression?

A. I don't think I know of any that would show a decreasing tendency for five years.

Q. When did the decreasing tendency set in, in roads where there is no competition with a subway or elevated?

A. The large decrease has been during the past year from the private automobile and jitney competition.

Q. Hasn't it been due to bad business?

A. To some extent, yes, but the principal portion of the decrease—take this Memphis Company, for instance; the jitney competition there caused a loss of thirty per cent. of the gross earnings.

Q. Then wherever the jitney comes in, so far as we know of its history, it becomes a large element of competition and cuts in?

A. Yes.

Q. In Trenton, do you know anything about the cause of the decrease here in Trenton in the last two or three years; have you made a study of Trenton?

A. I have not made a special study in Trenton.

Q. You don't know anything about whether the factories have been running full or not?

A. I am not familiar with that. I assume they have not, however.

Q. That would have a bearing upon the matter, wouldn't it?

A. I think so, yes.

Q. If people were out of work, they don't patronize the cars as frequently as they do when they are employed, do they?

A. They haven't the financial ability to do it.

Q. That is an element to be considered, isn't it?

A. I think so.

Q. That is an element that is sporadic, that has to do with the hard times and comes back when the hard times are over?

A. It should, yes.

Q. You say then this unusual condition of the disfavor of trolley securities comes about within a year?

A. The jitney has come up within a year, the competition of the private automobile has been increasing for several years.

Q. How far back can you trace that?

A. I should think three or four years.

Q. Prior to that, was it a steadily increasing business?

A. The street railway business do you mean?

Q. Yes.

A. I think so, yes.

Q. Prior to three or four years ago the street railway securities were in good favor in the market?

A. You said, was the street railway business a continually increasing business?

Q. Yes.

A. My answer, in which I said I thought it was, referred to gross earnings, not to net earnings.

Q. As a business, when did it commence to be a declining business, that is to say, when did the earnings net, applicable to capital account, begin to fall off?

A. I think it was somewhere between 1903 and 1906, possibly around 1905, about that time.

Q. You spoke in your direct testimony about when they started the trolley era there was a time there when it expanded, the capitalization was expanded, and it was looked upon, I think your term was a bonanza for awhile; you used that expression, didn't you?

A. Yes.

Q. How long did that period continue?

A. I think until about 1905.

Q. Starting when?

A. Starting with the electrification of the lines about 1890, to 1893.

Q. The electrification of the lines almost immediately made a very attractive security, didn't they, almost immediately it was a success from the start, wasn't it?

A. It took four or five years to develop the mechanical, the electrical mechanical equipment, and after that time it was quite a success.

Q. Wasn't it a success before four or five years?

A. The first electric car was operated in Richmond in 1887, and I would say the apparatus was fairly well developed by 1892, about five years.

Q. And from that on it was a very successful business?

A. It was apparently a very successful business up to about 1905, when this equipment and lines were beginning to wear out. Then the question of depreciation came up, which had not been considered very much before.

Q. The question came up too of watered stock, didn't it?

A. I think that brought up all questions of the theory of street railway capitalization and operation, and not only the public, but the street railway managers themselves, looked into these things very carefully and made a more careful study of the business.

Q. Then the people, immediately as soon as you perfected your mechanical operation, so as to give

steady and swift service, then it became a profitable business very quickly after the mechanical apparatus was perfected?

A. It was apparently a very profitable business.

Q. Before the mechanical apparatus was perfected, you did not get the patronage that you got after it was perfected?

A. No.

Q. You could run swifter and make better time and with less disturbance?

A. Yes, the apparatus was not so widely used until it became standarized.

Q. That was the time the people began to use the trolley in large numbers?

A. Yes.

By Commissioner Donges:

Q. Was there much installation of trolleys before that time, with electrical equipment?

A. Not very much before 1890 to 1892, it began then.

Commissioner Donges: We will recess at this point.

Mr. Record: I think that is all I wanted of Mr. Ford.

Mr. Katzenbach: No further questions.

Commissioner Donges: Both sides are through. We will recess until three o'clock.

Recess from 1.00 to 2.00 o'clock P. M.

AFTER RECESS.

T. W. GROOKETT, JR., sworn on behalf of Trenton & Mercer County Traction Corporation.

Direct examination.

By Mr. Katzenbach:

Q. Mr. Grookett, where do you live?
A. Philadelphia.
Q. What is your occupation?
A. Secretary and treasurer of the Trenton Street Railway Company, Mercer County Traction Corporation, Trenton, Pennington & Hopewell Street Railway Company, Trenton, Hamilton & Ewing Traction Company.
Q. These companies are the companies that executed the leases of their lines of street railway to the Trenton & Mercer County Traction Corporation?
A. Yes, sir.
Q. Have you examined the records of the company for the purpose of ascertaining the amount of capital stock outstanding of these various companies from the year 1899 to the year 1910?
A. I have.
Q. Will you state also whether you have calculated the rate per cent. of dividends upon the capital stock that was paid between the years 1899 and 1910, upon the capital stocks of these companies?
A. I have.
Q. Will you state what the capitalization of the companies was in 1899 as to the capital stock and dividends paid during that year?

Commissioner Donges: 1899?

Mr. Katzenbach: Yes, 1899.

Q. And then continue with each year thereafter up to and including the year 1910?

A. In the lump sum, just the total?

Q. Just each year, give first the year and then the amount of capital stock outstanding, and then the rate per cent. of dividend, if any.

A. At the end of the year 1899 there was $1,030,000 of stock outstanding.

Q. Of what company?

A. One million of the Trenton Street Railway and thirty thousand dollars of the Mercer County Traction Company. 2.42 per cent.

Mr. Record: I will be afforded a copy of this?

Mr. Katzenbach: Yes, certainly.

Witness: 1900, one million Trenton Street Railway Company stock and thirty thousand Mercer County Traction stock; 2.42 per cent. 1901, one million Trenton Street Railway and one hundred thousand Mercer County Traction stock; 3.63 per cent. 1902, one million Trenton Street Railway Company stock, one hundred thousand Mercer County Traction stock, two hundred and fifty thousand dollars Trenton, Pennington & Hopewell Street Railway; 2.96 per cent. 1903, is the same stock outstanding, and the dividend, 2.96 per cent. 1904, the capital stock is the same, the dividend, 4.44 per cent. 1905, one million Trenton Street Railway Company stock, one hundred thousand Mercer County Traction Company stock, two hundred and fifty thousand Trenton, Pennington & Hopewell Street Railway stock, thirty thousand Trenton, Hamilton & Ewing Traction stock; 4.35 per cent.

By Commissioner Donges:

Q. Is that the dividend paid?

A. 4.35 per cent. is the dividend on that entire issue of stock.

Q. For that year?

A. For that year. 1906 is the same. 1907, one million Trenton Street Railway Company stock, one

hundred thousand Mercer County Traction Company stock, two hundred and fifty thousand Trenton, Pennington & Hopewell, two hundred thousand Trenton, Hamilton & Ewing; 3.87 per cent. 1908, 3.87 per cent. outstanding stock the same. 1909, outstanding stock the same, 2.58 per cent.

Q. The rate of dividend you better say.

A. 2.58 per cent. rate of dividend. 1910, stock the same, and no dividend.

Q. You have that in the form of a tabulation? Have you any objection to leaving that here with us?

A. No, sir.

Mr. Katzenbach: I will just offer this so it can be copied, and Mr. Record can have it.

Mr. Record: I would like a formal objection entered, that this is immaterial.

Commissioner Donges: Objection overruled.

(Statement showing issue of stock and rates of dividend paid for the various companies from 1899 to 1910 inclusive, received and marked Ex. T. & M.-18.)

Cross-examination.

By Mr. Record:

Q. How long have you been connected with these companies?

A. I was elected secretary and treasurer of the Trenton Street Railway Company, I think, in 1903.

Q. Trenton Street Railway Company?

A. Trenton Street Railway Company.

Q. What concerns did that own at that time?

A. Trenton Street?

Q. Yes.

A. I think the Trenton Street, at that time—what concerns? It owned the capital stock of the Mercer County Traction Company.

Q. And none other?

A. 1913, I cannot answer offhand.

Q. Take your statement and take your first dividend, 2.42 per cent., December 31st, 1899. You paid 2.42 per cent. on the $1,030,000 of stock of what you call the Trenton system, and that was the capital stock of what particular corporation?

A. One million Trenton Street Railway Company and thirty thousand Mercer County Traction Company.

Q. Then your statement here is not accurate; it don't give all the items?

A. No, it is in one lump sum there.

Q. You haven't got a statement of that in typewriting?

A. Not tabulated, no, sir.

Q. What company was that?

A. Trenton Street, in 1899, one million Trenton Street and thirty thousand Mercer County Traction.

Q. The Trenton Street Railway Company owned the stock of the Mercer County Traction Company?

A. If my memory serves me right; I am not sure whether it did in 1899.

Q. How did they come to be together, was there a separate dividend paid on the Mercer County Traction?

A. No, sir.

Q. What was the bonds outstanding at that time on these two systems?

A. I don't recall.

Q. Can you find out?

A. I can, from the records of the company, yes.

Q. Will you produce that information?

A. When?

Q. Any time next week that you can. You have stated here a dividend; I am entitled to know every circumstance under which that dividend was paid, if you know.

Mr. Katzenbach: That is not really proper cross-examination. We haven't any objection to it, but is

not the record in as to bonds outstanding in 1899, or Mr. Johnson has testified as to the bonds that are.

Mr. Record: Outstanding bonds on which they paid interest?

Commissioner Donges: Yes, that was in 1910 or 1911.

Mr. Record: They come in now ——

Commissioner Donges: I think it ought to be furnished.

Witness: I will have to take up with the executive head as to whether I can produce those papers here or not.

Q. You know perfectly well your company has got that information.
A. What information is that?
Q. That is the amount of bonds outstanding on the date you have that dividend?
A. Yes.

Mr. Katzenbach: We will give it to you, Mr. Record.

Commissioner Donges: I think it ought to be given, to make this statement complete, the outstanding securities at the dates given each year.

Mr. Katzenbach: Yes.

Q. The million dollars' worth of stock of the Trenton Street Railway Company, how did that go out?
A. I don't recall that.
Q. Weren't you there when it was received?
A. No, sir.
Q. How long before your time was it issued?
A. The Trenton Street stock, I think, was issued about the time of the consolidation of the company.

Q. When was that?

A. I think 1898 or 1899.

Q. 1898 or 1899?

A. 1898 or 1899.

Q. That is a few years before this, you have this 1899, that is about the same time?

A. But I did not go into the details of the issue of the capital stock.

Q. Have you the information accessible in the records of the company of which you are secretary and treasurer?

A. I presume they are there; I did not look them up.

Q. By which you can state for what that million dollars of stock was issued?

A. That I cannot say, because I haven't looked that up. I cannot say why, because I have not looked into that detail at all.

Q. Don't you know whether you can ascertain that detail or not?

A. If it is on record, I can, yes; that goes back fifteen years.

Q. I don't understand it. You say 1899 was about the time it was issued, according to you, and you started with December 31st, 1899.

A. I grant you, but I did not look into the details of the issue of that stock. I presume I can find it.

Q. That is on your books?

A. It should be. It is on the books, if I can find it.

Q. Is that on the books?

A. It should be there.

Q. It should be there on the books?

A. Yes; because that is the original book of the company.

Q. That ought to show for what that million dollars was issued?

A. It should show, yes.

Q. Will you undertake to give us that information?

A. You mean as to the issue, yes, I will undertake to get that information.

Q. Do you know whether the bonds which were issued and upon which you paid interest that year—for what they were issued?

A. I don't know.

Q. Can you find that out?

A. I presume the books show that.

Q. Will the books show whether they were issued at a discount?

A. That I don't know.

Q. Can you find out for what the bond issues, the proceeds were expended?

A. If the books show it, I can.

Q. What is your opinion as to the books showing it?

A. I think the books will show possibly that.

Q. Then I will ask you to produce that. I will ask you to produce the amount of bonds outstanding when this dividend was paid.

A. 1899?

Q. 1899, for what they have been issued and for what the proceeds were sold.

A. I will do that.

Q. And the discount, if any. Will you make a memorandum to do that?

A. I might say this is going to require some detail work to find out how this money was expended; it may go on a period of some time. I won't say how soon I can give you this information if I have to dig all this out.

Q. You can do this: You can show the bonds were issued and sold for so much money.

A. If they were issued that way, yes.

Q. How else would they be issued?

A. I don't know how they were issued. I don't know if there is some provision in the merger agreement by which they were issued; I don't know that.

Mr. Record: Are the merger agreements in here, or only your last lease?

Mr. Katzenbach: The merger agreements are in, yes; they are embodied in the record I submitted.

Commissioner Donges: Made up on the first day?

Mr. Katzenbach: Made up on the first day.

Commissioner Donges: The merger agreements were in that.

Mr. Katzenbach: Yes, they are printed and Mr. Record has a copy of it.

Q. I assume that your answer as to every one of those items would be the same?

A. Yes, as to the amount of the capital stock of the respective companies?

Q. And as to how much was spent and how much bonds were outstanding and how much was realized on them and for what the proceeds were spent.

A. I can only tell you what the records show.

Q. I don't want to ask you that ten times. Your answer would be the same as to each of those items?

A. With reference to the expenditure, the answer would be the same, if the records are at hand and I can locate it, yes.

Q. I don't want to ask you about each one of these years; I assume you would make the same character of answer as you have made to the first items?

A. Yes.

Q. I ask you to produce, with reference to each of the other items, the same information that I have asked as to Item Number 1.

A. How soon do I have to produce that?

Q. This case has to be concluded before the 16th of November.

A. I have to go before the Interstate Commerce Inspectors in Delaware next week.

Q. I ask you to do it; if you don't do it, I can't help you; I am entitled to that information. Do you know offhand as to whether any of those issues of stock upon which you have shown that dividends were paid were afterwards converted into bonds or exchanged for bonds?

A. To my knowledge they were not.

Q. None of them?

A. You mean of the Trenton system?

Q. You have got a list here, I just take your list as I find it. You have these millions of stock here, running up to a million and a half, and I ask you if any of those stock issues upon which dividends were paid were ever converted into bonds, that is, ever exchanged for bonds?

A. Exchanged for bonds of the Trenton companies?

Q. Yes, of anyone of these constituent companies?

A. The Trenton Street was, I think, exchanged for some bonds, yes.

Q. Do you know how much; bonds of what company?

A. Bonds of the United Power & Transportation Company.

Q. What is the United Power & Transportation Company; are you an officer of that?

A. Yes.

Q. When was that formed?

A. That was formed about 1899.

Q. As far back as that?

A. Yes.

Q. A New Jersey corporation?

A. Yes.

Q. What was it formed for?

A. I don't know just what it was formed for.

Q. What are its stock and bonds?

A. At that time, I don't know.

Q. Can you find out?

A. I presume I can.

Q. I ask you to find that out. Who was the owner of the stocks and bonds of that company, the principal owner, of that company?

A. What company?

Q. The company you have just been talking about.

A. The owners of the stocks and bonds of that company, the owner of the stocks and bonds of the holding company?

Q. The United Power & Traction Company.

A. The United Power & Transportation Company.

Q. Who were the original owners of the security issues of that company, the principal ones?

A. I don't know that.

Q. Did you ever know?

A. No, sir, I was not an officer of the company at that time. I was not made an officer of that company until just a few years ago.

Q. Were you in the employ of this system at that time?

A. In 1899?

Q. Yes.

A. No, sir.

Q. When was your first connection with any of these companies?

A. Trenton companies?

Q. Yes.

A. I think around possibly 1902 or 1903, somewhere around there.

Q. Where did you get the information about the dividend paid in 1899?

A. From the books of the Trenton Street Railway.

Q. And the same with each of those years up to 1902?

A. Yes.

Q. The United Power & Traction Company is the owner today of what securities of the Trenton system?

A. The majority of the Trenton Street Railway Company stock.

Q. Don't they own all of it?

A. Trenton Street? No, sir, a few shares they don't own.

Q. All except the qualifying shares of Directors?

A. Just a few other shares, I believe.

Q. They own practically all?

A. Practically all.

Q. What else do they own the stock of?

A. The power?

Q. Yes.

A. They own the stock of some other companies.

Q. I mean in Trenton.

A. None; not to my knowledge, none.

Q. They own the stock in Trenton of the Trenton Street Railway, and that in turn owns the stock of what?

A. Of the Mercer County Traction, the Trenton, Pennington & Hopewell, the Trenton, Hamilton & Ewing.

Q. That is all of the system?

A. That is all of the system.

Q. Then as we stand today on the stock issue, the United Power & Traction Company owns all of the stock practically of the Trenton Street Railway?

A. Yes.

Q. The Trenton Street Railway in turn owns all of the stock of every other company which is now subject to these leases?

A. Yes.

Q. Is that right?

A. That is right.

Q. Who owns the stock of the Trenton & Mercer County Traction Corporation?

A. I don't know.

Q. You are not an officer of that company?

A. No, sir.

Q. Did you ever know?

A. No, sir.

Q. You have not in your possession any books that would show that?

A. No, sir.

Q. Who was the owner of the stock of the Trenton Company before this United Power & Transportation Company was organized?

A. I don't know.

Q. Does the Trenton Street Railway Company own the bonds of any of the other companies?

A. No, sir.

Q. Does the United Power & Traction Company own the bonds of any of the other companies?

A. Not to my knowledge.

Q. Have they ever?

A. I can't recall.

Q. Isn't it a fact that at one time, or at some time,

the Trenton Street Railway owned $128,000 of the bonds of the Mercer County Traction Company?

A. I don't recall just how many they owned. They owned some of them.

Q. Can you find that out?

A. The books of the company, I presume, will show it.

Q. I will ask you to find that out and let us know. Then I ask you with reference to all these items, to produce for me the amount of bonds issued on each of these companies, let us name them to make sure what are the companies. The Trenton Street Railway, the Mercer County Traction, the Trenton, Hamilton & Ewing, and the Trenton, Pennington & Hopewell, and the amount of stock and what was received for each at the time they were issued.

Re-direct examination.

By Mr. Katzenbach:

Q. Mr. Grookett, you were asked about the $30,000 of stock in the year 1899 of the Mercer County Traction Company; do you know what the company received for that $30,000 of stock?

A. $30,000.

Q. In cash?

A. In cash.

Q. I see the next increase was in the year 1901, $1,100,000; the $100,000 was the capital stock of what company?

A. That was the capital stock of the Mercer County Traction.

Q. That was an increase of $70,000?

A. That was an increase of $70,000.

Q. What did the Mercer County Traction Company receive for that $70,000?

A. That was paid to the Trenton Street Railway Company on account of work done on the Mercer County system.

By Commissioner Donges:

Q. That represented cash then; the stock was sold for cash, was it?

A. The Trenton Street Railway Company did work on the Mercer County Traction, construction work, and the Mercer County Traction paid that over to the Trenton Street.

By Mr. Record:

Q. Was there no bond issue connected with that?

A. There were some bonds outstanding at that time.

Q. Were there no bonds issued in connection with that work?

A. Yes; I think so.

Mr. Katzenbach: I thought I better get this stock cleared up.

Commissioner Donges: The only point that occurs to me is whether you are going to accomplish anything, in view of the fact that the witness will, in amplification of this statement, furnish from the records information as to the issues and consideration for the issues and the bond issues as well. In other words, are you not taking him over ground which, from the records, he will cover?

Mr. Katzenbach: I might probably be taking him over ground that might be included in that question, but I thought if he knew it would save that much investigation. If the Commission think we will save time by not going on with it ——

Commissioner Donges: I understood he was going to include that all in his other statement.

Mr. Katzenbach: Then will you state, Mr. Grookett, in a statement you are going to submit, just what was received for the capital stock of the Trenton,

Pennington & Hopewell Street Railway Company, the Trenton, Hamilton & Ewing Street Railway Company, the Mercer County Traction Company, although you have testified already as to the Mercer County Traction Company?

These books that this witness would have to use are in the possession of Mr. Record, or of the City of Trenton. There is no objection to this witness taking those books.

Mr. Record: They are in the possession of Judge Macpherson, they are not in our possession.

Mr. Katzenbach: I don't know what arrangement you entered into. What was the arrangement made between Judge Macpherson and yourself?

Mr. Record: I asked the other day that those books be produced, and the day we adjourned here the Judge said he expected them next day. That was yesterday. Today Mr. Rand, who came down at one o'clock, when I left him at lunch, was going up to take a look at those books in Mr. Macpherson's office.

Mr. Katzenbach: Is there any objection to this witness, whose residence and employment is in Philadelphia, having those books to get the information from?

Mr. Record: No, I should think not.

Commissioner Donges: In other words, your inspection of the books will probably be completed?

Mr. Record: My idea is, very largely this is what we want to get out of them. He can save us a lot of time; he knows them and we don't.

Commissioner Donges: Very well; it is understood the books may be taken back to Philadelphia for the use of the witness.

Mr. Record: Yes, that is all right.

Mr. Katzenbach: After the statement is prepared I suppose he is to submit the statement, as I understand it.

Mr. Record: I want to know those facts, if I can get them.

Commissioner Donges: I should think the witness probably ought to be present to be examined on the statement which he submits.

Mr. Record: Yes.

Mr. Katzenbach: I thought we ought to have an exact understanding.

Commissioner Donges: I should think the witness ought to present the statement and subject himself to cross-examination.

RANKIN JOHNSON resumes the stand.

Mr. Katzenbach: I don't know whether you were through with the cross-examination of Mr. Johnson or not on Wednesday.

Mr. Record: My recollection is I was not.

Cross-examination (continued).

By Mr. Record:

Q. I want to ask some questions with reference to this statement, Exhibit 1 and 2; where did you get the details appearing on these statements?

A. I got the details in notes and by asking manufacturers for bids on certain items.

Q. You don't understand my question. There ap-

pears on one of these pages an item of 12,000 feet of first track, of wire, 2600 feet of second track, of wire, 550 feet of sidings, and so on, where did those figures come from?

A. From notes taken on the property during those few months of 1910.

Q. That is, you made the measurements?

A. There were some measurements and some scales from the map. The property has never been entirely measured with a tape since I have been here.

Q. I ask you as to those items; where did you get them?

A. I have answered.

Q. You went and measured those yourself?

A. I was present when they were measured; I did not measure all myself, but those and the men with me.

Q. How much of that item did you measure?

A. I might say I sealed it all on the map myself, and what measurements were taken by me or my assistants were checked with the scales on the map.

Q. Did you do the checking?

A. Yes.

Q. All of it?

A. Yes.

Q. As a matter of fact then there is no item here that was furnished you by somebody else which you have not individually checked up; is that right?

A. I have gone over all the various items that we had of measurement, and in making this up at that time, took the one which I thought the most nearly correct. We have had several statements made of, for instance, lengths of track on the property, and they all differ slightly.

Q. Who made those measurements?

A. Which measurements, the various statements we have?

Q. Yes.

A. They have been made in our office, by one time, our then engineer in charge of lines made a statement, Mr. Bechtel, and another time—in fact, I think

each year in connection with the public utility report, the records that we have concerning the length of lines, have been gone over by our accounting department, in order to, if we could, perfect, improve our records of length of lines in that report, we would do so.

Q. This was made at a time when you were taking hold of this company?

A. Yes.

Q. What I want to get you to state is, whether you did this with your own right hand, or whether you did as people usually do, send a lot of employees to go into the detail work, and then you put your intelligence upon the valuation?

A. I might say I did both. I did not measure it all. I have checked it all over on the map and I have taken the measurements of employees, so far as they existed. I might say that of all the different statements we have made of the length of all the tracks, while each year it has differed somewhat, the difference has been very slight.

Q. I am not talking about different measurements; I am talking about this time when you went on the premises, when you were new. I want to know whether you did it yourself. You have stated as to certain items, you had two or three different reports in front of you, and you took the average of them. Is that a correct statement or isn't it?

A. No. I might say that the correct statement is that I checked over by scaling on the Atlas and maps the lengths, and then numbered those with measurements which have been made by our employees, and measurements which I have made, so far as they existed, and then concluded my own—determined my own statement of the lengths of the line.

Q. Can you state as to every one of these items, if somebody else furnished you the measurements or dimensions, that you either measured it up yourself or checked it up yourself?

A. Yes. Let me say, I don't claim this is exact, but I claim it is exact within, I should think for the

entire system, within one mile, within say one and a half per cent.

Q. Then if you know it is in exact by one and a half per cent., why didn't you make it exact?

A. Because this was an approximate estimate, as I stated before.

Q. Do you mean to say you measured each item and checked it up to within one and a half per cent., and stopped?

A. When you make an approximate estimate, there is a certain probable error, and it may be, as nearly as you can estimate, a certain percentage.

Q. When you checked up on the scale, on the map, didn't you have in front of you a figure to be checked?

A. I did in some cases, not in all.

Q. In what proportion of the cases?

A. I suppose we have measured actually with a tape half the property, perhaps a little more.

Q. And the rest of it requiring measurement you did from maps?

A. Maps and records, compared with the scale on the map. We scaled it all on the map.

Q. You scaled it all on the map?

A. Yes.

Q. Then there was noted one and a half per cent. variation?

A. I think, in scaling it on the map, we might find there might be that error, more or less, that is the error being in excess or too small.

Q. When you disposed of any item—I think you answered pretty generally as to specific items. When I went over that case. If you disposed of any item in use you did not deduct it from the capital account; that you have stated as a general proposition, as I understand it?

A. I think I understand the point you are trying to make is that wherever we reconstructed a piece of track we did not deduct the old plant, the plant thereby abandoned from the capital; is that what you mean?

Q. Yes, that is what I mean.

A. In answer to that I will say that in many cases where we reconstructed an old item it was done entirely as a replacement out of revenue, not capitalized. In the other case there was some such, for example, all scrap, as I remember it, has been used as a fund from which purchases of only distinct additions are made, and then in some cases we have deducted from capital account, but there are other cases where we have not.

Q. Are you through with the answer?

A. I am through.

Q. Take your first item, machinery at the power house; compound and condensing Watts-Cantwell engine and five hundred volt short generator with a lot of letters after it. Take that item, where is that today; is that in use?

A. No, since 1910 that 100 kw. unit and 200 kw. unit immediately following, have been discarded.

Q. Was any deduction made from capital on that account?

A. I would say that we planned and have discussed it, the establishment of a property abandoned account to cover that item.

Q. What was the condition of that machine or machines, whatever it was, it seems to be an engine and generator?

A. That was a belted unit.

Q. What was its condition?

A. It was a belted unit coupled to two generators, one of 100 kw. and one of 200 kw.

Q. How long had it been in use?

A. I don't know. That unit was abandoned because of the thought that it was a small unit, and we had another of the same capacity with only one generator, which we overhauled completely.

Q. What value did you put on that when you valued it?

A. In this valuation?

Q. Yes.

A. I valued the units, including engines, generators, boilers, condensers, and other accessories and connections at a price per kwh.

Q. What was it?

A. It is about, not quite ninety dollars per kwh.

Q. Ninety dollars per kw.?

A. Yes.

Q. What does that amount to in dollars and cents?

A. For twenty-two hundred kw., $193,000 was what the total figure amounts to.

Q. One hundred and ninety-three dollars?

A. One hundred and ninety-three thousand dollars for 2200 kw. rated capacity.

Q. You valued that item at $193,000 at that time?

A. Not this particular unit you are speaking of, but all the units in the power house; that is, this particular unit you are speaking of was three hundred of that twenty-two hundred.

Q. I am trying to cross-examine for the very purpose of getting rid of all that. Here is a general statement, nobody knows anything about it, except at the bottom after thousands and thousands of items is the total. I want to find out what you know about it. I have called your attention to a specific item and asked how much you valued it for.

A. In my statement of this valuation I said it was an approximate valuation, and in valuing the units at the power house, I took the total rated capacity and the figure in my valuation amounts to just about ninety dollars per kw. That would be the average value on each of them. I did not take an individual three hundred kw. unit, but I took them altogether, I bunched them.

By Commissioner Donges:

Q. Is that about the price at which you thought the property could be replaced?

A. Yes.

By Mr. Record:

Q. Weren't those particular items out of commission at that time?

A. No; we operated that unit for some time after I came here.

Q. For how long?

A. Until I think it was last year that we abandoned it. We had one of them rehabilitated, fixed in good shape, and we might have had this one with the same reason which puts it in just as good condition as it was when new, except that we had these two 300 kw. units there, both belted units, and we kept the one which we have put in shape, because it is about the size we need to operate after the cars have stopped at night; our car barns still—the work is still going on at the car barn needing power, and occasional cars on the line, and we operate that at night, but we did not think it advisable to go to the expense of rehabilitating this other 300 kw. unit, rather than putting in larger units and different.

Q. You have valued it as though it was rehabilitated new when you did it.

A. I put the average value at ninety dollars for all units, including this one.

Q. That average value represented a condition just as though it was absolutely new?

A. Yes.

Q. And had no reference to its actual condition?

A. As a matter of fact it cost a great deal more than that when it was installed.

Q. Can you answer my question?

A. I said yes, but when it was new, it cost a good deal more.

Q. Of course, that is saying yes and no; I cannot translate that kind of an answer. When you valued that unit, did you value it on the principal that if it was brand new, it would be worth so much, but in its actual condition it was worth less, and you put the less amount down?

A. I put the amount down which, in my judgment would replace new, in 1910, that unit.

Q. Irrespective of its condition?

A. Yes.

Q. That is so as to all of the items?

A. That is so as to all.

Q. Irrespective of the condition that you actually found them in?

A. Yes.

Q. You referred to some storage batteries; are they in use? Are they in use?

A. Not now.

Q. When did they disappear?

A. One of them was practically out of use in 1910; the other we used for about two years; I don't remember just how long.

Q. Did you value both of those as though they were brand new?

A. No.

Q. There is a condition where you did not carry out your theory.

A. That is correct; I considered my estimate low for the cost of reproduction new.

Q. I don't care what you considered; I want to know what method you applied to each item; did you revalue it new or revalue it depreciated? You have said you valued it new; I said this item you apparently varied from that practice and you say yes; is that right?

A. Yes, I varied from it in quite a number of places, by putting a low price for the cost of reproduction.

Q. As a matter of fact in those instances you did not value it new?

A. I did not consider particularly the condition, but I put a low price on the cost of the unit. In fixing one for reproduction, for example, on certain cars, we get an estimated cost of $2,090 per car body, and I put in the estimate $1500 as the cost of reproduction.

Q. Then the cost of reproduction there was not the cost of reproduction new, but it was the cost of reproduction less depreciation.

A. I did not consider a definite item of depreciation new. I did not take into account in this the depreciated cost. I wanted to make an approximate estimate of the cost of reproduction new of the property on a very conservative basis.

Q. The cost of reproduction new is upon a basis that is either above or below the cost of reproduction

new, did you make your estimate above it or below the cost of reproduction new?

A. I don't believe the property could be reproduced new at my estimate.

Q. Then as a matter of fact you put your cost of reproduction below the cost of reproduction?

A. Yes.

Q. How much below?

A. I don't know.

Q. When you threw anything away or used it, if you realized from it, did you deduct anything from capital account?

A. You mean when we sold something?

Q. Yes.

A. We would deduct the money received from that and expend it for something which was a distinct addition, that is, something that would come under the head of road and equipment.

Q. Why were the storage batteries disposed of?

A. Why were they disposed of?

Q. Yes.

A. Because I considered that they were more expensive to maintain than was justified by what they accomplished, in comparison with motor generator sets which we might purchase for the same purpose.

Q. What is the depreciation, in your judgment and experience, on a storage battery per year?

A. It is very, very rapid.

Q. Fifty-two per cent. a year?

A. No.

Q. What would you say?

A. I should say perhaps twenty per cent., a year, twenty-five per cent., twenty to twenty-five per cent., not more than twenty per cent.

Q. Do you know whether these items in Exhibit 1 are in use or not?

A. I didn't get that question.

Q. Exhibit 1 is confined, as I understand it, to overhead construction. Do you know whether those items are still in use?

A. The overhead construction?

Q. Yes.

A. That includes feeder and trolley wire and poles; they are still in use, except where replacements have been made.

Q. Do you know to what extent they have been replaced?

A. We have done considerable replacement in maintaining our overhead system.

Q. You don't know the percentage?

A. No, I cannot say.

Q. How about track, can you make any general statement as to that percentage?

A. I don't believe I can, not without going into it a good deal.

Q. What is the horse power of these Babcock & Wilcox boilers, do you remember that?

A. The Babcock & Wilcox boilers, there are two 500 horse powers, and one 800, and then two 500 Edgemore and two 400 Altman & Taylor boilers.

Q. I would like to get, without wasting a lot of time, if I could, a principle to apply to these sheets. Here are great numbers of items, poles, trolley wires, span brackets and side brackets, running into big items like $76,000, $29,000, $28,000, and that sort of thing. Suppose I ask you what you valued each one of those items at; can you answer me?

A. No; those are the items. In making up my notes I had certain data concerning costs of the item, cost of doing work, cost at which similar work had been done. Are you now referring particularly—to what particular sheet?

Q. Any sheet. You have no items of cost at all; you have items of facts, but not of cost.

A. I show all the details of the items of which the property was made up, and my estimates of cost of reproduction under those five headings, with the thought that the details can be used in making up a similar statement.

Q. We will take, on your Exhibit 3, on the top of the page, you say Trenton Street Railway Company, in Trenton City, there is 135,000 feet of trolley wire. Did you value that?

A. No, I took the cost—in making my figures I

took the cost of trolley wire construction, taking into account the general situation as it existed, and then the feeder construction.

Q. How did you get at the value of that item?

A. From my knowledge.

Q. Did you ever get at the value of that work?

A. Yes, from my knowledge and notes and cost of materials and cost of labor, and cost of doing a similar work elsewhere as well as here.

Mr. Record: That is an answer to a question I have not asked.

Commissioner Donges: You asked that question.

Q. I asked did you fix a value on that 135,000 feet, did you or didn't you?

A. Not that particular 135,000 feet.

Commissioner Donges: I think that question was asked and it was followed by the other question how he arrived at any estimate of its value.

Mr. Record: I was after the point that he either did or did not put a value on that particular item.

Q. You never put any value on that item alone; I mean separately, as 135,000 feet, you never wrote down any figures opposite to that in your life, did you?

A. No, I put down prices per foot.

Q. Wait a minute. Can't I have a categorical answer? You did not?

A. No.

Q. Tell me the number of feet that you did put an item upon, which included that. You did put an actual figure down on paper which included that?

Commissioner Donges: Wire, you mean?

Mr. Record: I don't know where.

Commissioner Donges: I say wire.

Mr. Record: Yes.

A. I took the 375,670 feet.

Q. Where do you find—that is at the bottom?

A. That is the fourth column, bottom of the fourth column.

Q. You took that as the total?

A. Yes.

Q. And against that you multiplied it by what figure?

A. I took the trolley wires construction at an average of two thousand dollars a mile.

By Commissioner Donges:

Q. That included more than the wire?

A. Yes, the construction.

Q. Mr. Record's question was ——

A. I did not understand.

Q. His question was as to wire, where have you carried out the detail as to wire?

A. I took this whole statement, which covers the overhead work, and put a value of $140,000 on the trolley wire construction and $180,000 on the feeder construction, the totals from this for those two purposes being drawn from the statement.

By Mr. Record:

Q. Let me see if I can work your principle out. I will take this statement Number 1, machinery at power house; did you put a separate valuation upon any of those items?

A. I think that question has been answered. I think I said—one moment, I will tell you, I valued—may I go through this list in answer to this question ——

Commissioner Slocum: Why not answer the question?

Commissioner Donges: Are you applying a figure?

Mr. Record: I will tell what I am anxious to get at. We are perfectly helpless in front of a sheet like this; he has here a tremendous number of items; it does not appear how he got at the total he arrives at at the bottom of these papers.

Commissioner Donges: What you want to know is whether he took average figures?

Mr. Record: If he did, I want to know what average figures, and applied to what one of these items.

Commissioner Donges: Or whether he took each item measured, ascertained the quantity and applied a unit price for that particular quantity of material.

Witness: Perhaps I can help; take this power house you have stated, I took the power house real estate at six thousand dollars. I took the brick stack at sixteen thousand dollars.

By Commissioner Donges:

Q. How did you measure out those figures, by measurements and applying unit prices?

A. The real estate, by a knowledge of what the area was, and the prices generally in Trenton, in my opinion.

Q. As to the building?

A. The brick stack, sixteen thousand dollars. I took my knowledge of the cost of erecting such a brick stack and my knowledge of the fact that that piece of ground was very treacherous in that there are layers of quicksand and soft gravel, and it is very difficult to get a foundation.

By Mr. Record:

Q. Where does that appear?

A. Those are my notes. I have given you the total.

Q. Did you reach those conclusions from measurements?

A. The stack, yes—I did not measure the stack, but the records of the height of it in the office.

Q. Does that appear here in this exhibit?

A. Just the totals appear in those exhibits.

Q. Whereabouts?

A. The total is on the exhibit.

Q. Here is a sheet of paper, machinery at power house, with a dozen, fifteen items. I want to know whether you took those items and by some process arrived at the sum of $300,000, which you put down at the bottom of that page, or whether you took those items separately and put a value on each, and then added them up, and that figured $300,000. Can't you tell us that?

A. I can.

Q. Which process was used, what other, if neither of them?

A. I should say both. I took certain items, as I said, the real estate, the stack, the power house with foundation, and then I took the machinery in the power house, including the engines, generators, condensers, boilers, connections and appurtenances at so much per kw.

Q. Will you point me out the stack in that page one?

A. I told you that the totals are just given on that.

Q. Does the stack appear on page 1 as a stack? Can I find it there or am I blind? It is not there.

A. I don't see it there.

Q. I don't see it there. I am asking, not about a stack which is not there, I am asking about what is there. I am asking about those fifteen or twenty items. Did you take and put a value against any one of them or any combination of any of them less than the total of them?

A. Yes. Does there appear on your statement the real estate, adjacent real estate?

Q. Where is it?

A. The bottom of the page in pencil.

Q. Including building and west real estate?

A. And adjacent real estate.

Q. Yes, adjacent real estate, that item you added in pencil?

A. Yes.

Q. That item you say you have a separate sum for?

A. Power house, sixty thousand dollars; the real estate, six thousand dollars.

Q. That is, sixty-six thousand dollars. What other items have you separate values for on that page?

A. Storage battery at Lincoln Avenue, $10,000.

Mr. Record: Now, may it please the Board, what I want to get out of this witness—I can stay here and go through each of these items, or he can give us a separate valuation of every item that was separately valued and a lump valuation of any items that were lumped to which a unit price was put. I am entitled to that.

Witness: I can give that.

Commissioner Donges: Mr. Johnson says he will give you that supporting data. You reached a certain conclusion in that exhibit?

Witness: Yes.

Commissioner Donges: What Mr. Record asks is the supporting data, in order that he may ascertain what prices were placed opposite each item.

Witness: I can give him that.

Commissioner Donges: Very well; that will be furnished then by the next session.

Witness: Yes.

Mr. Record: That includes all these items, cars and everything, that appear here.

I would like to ask the stenographer to mark this

sketch for identification, because one of our witnesses will use it.

(Sketch marked Trenton-1, for iden.)

Q. I show you sketch marked for identification Trenton-1, I ask you if Number 5 and Number 6 do not indicate the power units which are now in use, generally speaking?

A. No, two and five and four and six are in use.

Q. Two, four, five, six are in use?

A. As well as Number seven and eight, which are motor generator sets; they are also in use.

Q. None of those are out of use?

A. No, none of these boilers are out of use.

Q. None of those units are out of use?

A. None of those I have mentioned.

Q. Are there any other that are out of use?

A. Number 3 is not now in use.

Q. Is it abandoned?

A. That is a question still before us.

Q. That is the only one not in use?

A. Yes.

Q. I show you a letter dated May 25th, 1910, which I ask to be marked for identification, Trenton-2.

(Letter dated May 25th, 1910, received and marked Ex. Trenton-2, for iden.)

Q. Did you write that letter?

A. I did not; it was before I came here.

Q. I beg your pardon; I thought that was your signature. I show you a letter dated June 28th, 1911, and marked for identification Trenton-3.

(Letter dated June 26th, 1911, from Trenton & Mercer County Traction Corp. to Tax Assessor, City of Trenton, received and marked Ex. Trenton-3, for iden.)

Q. Did you write that letter?

A. I did.

Q. You state, that on the other hand there has been an annual deterioration to the rolling stock, car barns, power house machinery, and track, probably amounting to five per cent. What did you mean by that statement; within one year?

A. Yes, I mean those ——

Q. I mean first, as to the time; you mean the deterioration within a year?

A. I assume so; I don't remember now.

Q. It is not clear?

A. This was in 1911; I assume that is the case.

Q. You meant since the last assessment?

A. I suppose so.

Q. You went from year to year on the basis of assessment, didn't you, taking it up each year?

A. Yes, since I have been here I have taken it up each year, that is, I have written them a letter.

Q. I show you a letter dated June 27th, 1912, and marked Trenton Exhibit-4 for identification, and ask you if you wrote that letter?

(Letter dated June 27th, 1912, from Trenton & Mercer County Traction Corp. to Tax Assessor, City of Trenton, received and marked Ex. Trenton-4, for iden.)

A. I did.

Q. In that letter you say that against such increases an allowance for deterioration of the rolling stock, car barns, power house, machinery and track, amounting to approximately five per cent., should be made. You make the same answer as to that five per cent., that it meant to cover for one year?

A. Yes; I don't remember exactly; I assume it is. I will say yes, it did. I don't remember just how it was expressed.

Commissioner Donges: Look at the letter.

Witness: May I see it again?

Mr. Record: You used the same language you

did in the other letter, and I just wanted to find out ——

Commissioner Donges: Whether the period referred to was one year?

Mr. Record: Yes.

Witness: Yes.

Q. In this letter you say, after saying that the five per cent. reduction should be made for deterioration, "And I suggested that the fair arrangement would probably be to consider the valuation of 1911 the same as that of 1910." The assessed valuation on which taxes were levied in 1910 amounted to $483,000. When you say you considered that to be a fair arrangement, do you mean by that that is what you consider was the fair value of the property represented or catalogued under the assessment of $483,025?

A. My point was, that in view of my statement as to what we had added and my statement as to what had been the probable deterioration, I believed that difference would be fair. I think the English of that shows the meaning.

Q. Then when you say a fair arrangement would probably be to consider the value of 1911 the same as that of 1910, you don't mean to say that you consider the assessed valuation for 1910 or 1911 as a fair measure of the value of the property?

A. I don't mean to express any opinion in that sentence on that subject.

Q. What opinion do you now express?

A. My understanding is, this ——

Q. That was June 27th, 1912.

A. I don't know as I have ever been asked to express an opinion on this subject, but as I understand it, it is this: We are taxed by personal property tax, real estate tax, and franchise tax, the franchise tax being five per cent. of the gross receipts and the other two being based on the road. The

city or the assessors determine the value for assessment purposes of real estate and buildings. Those are sometimes one hundred per cent. of the value, sometimes ninety or eighty per cent. in different communities. We are then taxed on the so-called personal property, which as I understand it, includes cars and machinery and the power house, moveable plant it might be called, and on property in the streets, our tracks. It is my understanding ——

By Commissioner Donges:

Q. And overhead construction?

A. Yes. It is my understanding that the intention is, that as to the property in the streets, and cars and machinery, that the assessment is on that as aside from the fact that we are operating the traction company, for example, take our tracks, our franchise tax is the tax because we are operating that track. We are also taxed on the value of that track aside from what its worth may be, because it is operated. In other words, we are taxed on it for whatever its value would be, if for some reason we ceased operation permanently, and there is a value, whatever it is, to that track. The same way with cars; we are taxed on the value of those cars, not as being operated, but as property aside from the fact that they are being operated, the franchise tax being the tax on the fact of operation. That, if I have expressed my understanding of it clearly, is —

By Mr. Record:

Q. I don't want to interrupt you, but that is not in answer to my question. You have got through with that answer?

A. Yes.

Q. You say the assessed valuation on which taxes were levied in 1910, amounting to $483,025, you say that that included items of property, tangible property, that you can show the names of, and which are included in your list; isn't that so?

A. Yes.

Q. The identical property that is valued for assessment purposes at $483,025 is property which you now compute, don't you?

A. Yes.

Q. You know of the property that is taxed?

A. Yes.

Q. The items of it?

A. Yes.

Q. What was the value in your appraisal that you put on those identical items? Can you figure that out for me sometime, if you don't know it at this minute?

A. I will figure it out for you.

Q. I show you a letter dated June 19th, 1913, which I will ask to be marked for identification 5.

(Letter dated June 19th, 1913, from Trenton & Mercer County Traction Corporation to Tax Assessor, City of Trenton, marked Trenton-5, for iden.)

Q. I don't wish to ask any questions on that; I assume you will say you wrote that. You need not wait to inspect it, I am not going to ask any questions, except to have you say that is your signature and you wrote that?

A. Yes.

Q. The last sentence there you say, I trust in making the assessment of property you will take into account depreciation. Did you mean substantially what you meant the year before?

A. Yes, the same thing.

(Letter of June 18th, 1914, from Trenton & Mercer County Traction Corporation to Tax Assessor, City of Trenton, marked Ex. Trenton-6, for iden.)

Q. In 1914, I ask if you wrote this letter marked for identification Trenton Exhibit 6?

A. I did.

(Letter dated June 30th, 1915, from Trenton &

Mercer County Traction Corporation to Tax Assessor, City of Trenton, marked Ex. Trenton-7, for iden.)

Q. I ask you if you wrote this letter dated June 7th, 1915, marked for identification seven?

A. I did.

Q. In that letter you say, we trust that in considering any addition to our assessment you will also take into account the yearly depreciation. You refer to the same point of the five per cent. depreciation that you presented to the Board before?

A. I do.

Q. In this letter you say, as has been customary about this date in the past, we are writing you to advise of the value of additions made to this property during the year ending May 20th, last; we purchased ——

A. You skipped something.

Q. Yes, I have skipped a lot, but I don't think it is material to my question. "We did, however, purchase ten additional new cars, having a present value of approximately $40,000." You purchased those cars in the year preceding May 20th, 1914, didn't you?

A. I think we purchased those.

Q. You say so.

A. That is the fact then.

Q. That is correct?

A. That is correct.

Q. What did you pay for those cars?

A. About fifty-five to fifty-six thousand dollars, approximately fifty-five thousand dollars.

Q. How did you arrive at that value of $40,000?

A. Applying my statement of my understanding of this, that the value of those was the value of the cars if we wanted to sell them at that time.

Q. That was a sale value of the cars?

A. Yes.

Q. That is, as between purchasers of cars?

A. If we wanted to take them off on the day I wrote that letter or at that time, and wanted to sell

them, I should say we could not expect to get more than that sum, if we found a buyer.

Q. That is, that they had depreciated in market value $16,000 in a year?

A. Yes. I think any car depreciates two or three days after it is put on; the fact that it is second-hand makes quite a depreciation.

Q. How much, two or three days afterwards?

A. I don't know.

Q. Yet you have a measure, sixteen as to fifty-six?

A. That is my judgment.

Q. I ask you to make me a statement of the items that will appear in that valuation of $483,025. That necessarily would be in the City of Trenton, would it not?

A. Yes. May I ask is that 1910?

Q. That apparently is 1910.

A. All right.

Q. No, that is not 1910.

A. May I take the one in 1910?

Q. Yes, you can take them all for all I care.

A. Take the assessment of 1910.

Commissioner Donges: That will cover practically the work he is going to do in the supporting data of the exhibit.

Q. You say the assessed valuation on which taxes were levied in 1910 amounting to $483,025, but this is dated 1912.

A. All right, but then that figure of 1910 covers the amount of the estimated cost of reproduction of 1910.

Q. In the City of Trenton?

A. I would have to take certain items of the cost—I understand.

Q. That refers only to the City of Trenton, as I take it?

A. Yes, undoubtedly.

Q. And you would have to segregate Trenton from your general lines?

A. Yes.

Q. Can you do that as to each of those townships?

A. It would be very difficult. If it would answer your purpose I could do it much quicker if I could group it say in Trenton and out, or the whole situation.

Q. Is it your judgment that the same relation as to assessment and as to your valuation prevails in the other municipalities?

A. Yes.

Q. Probably the same relation?

A. Yes.

Q. And that difference, if any, would probably be the same?

A. Yes, that is my judgment.

Q. Did you say you wanted this?

A. No, I can get the figure from the office as long as I understand it is 1910.

Q. Mr. Johnson, I understood you to say that this lease did not increase in rentals every year?

A. No. You must have been mistaken.

Q. That is not so, it is substantially as Mr. Betts says; the leases show that, don't they?

A. Yes, the lease shows that.

By Commissioner Donges:

Q. It is an increased rate?

A. Yes.

By Mr. Record:

Q. When your company took this over, were you asked your advice as to whether you could probably earn enough to pay these increasing rentals?

A. Yes.

Q. What did you say?

A. I thought we would be able to.

Q. You thought you would be able to?

A. Yes.

Q. What made you think so?

A. I thought we could expect an average increase of about seven per cent. in gross receipts, and I did

not anticipate such rapid increases in expenses as occurred; wages, and the rapidly growing desire for these improvements.

Q. Who consulted you and asked your advice on that subject?

A. Mr. Crosby.

Q. Who is Mr. Crosby?

A. Mr. Oscar T. Crosby, who is a director of J. G. White & Company, now chairman of the Belgian Relief Commission in Brussels.

Q. At that time was he here in Trenton?

A. Yes, he came to Trenton; yes, he was in Trenton occasionally.

Q. When you gave him your opinion was he here in Trenton?

A. Undoubtedly; he came before and after; I don't know whether I answered that question here or in New York, but for all purposes, yes.

Q. Do you say to this Commission that in 1910 you gave it as your opinion to people about to invest money in this town, in this enterprise, that these increasing rentals could be paid, and that you advised the investment of money on that basis?

A. I thought they could be paid.

Q. And you advised men to invest their money on that basis?

A. Yes. They could use their own judgment about it; I didn't take any responsibility of that.

Q. Did the men that you advise invest their own money on that basis?

A. Men have invested money; I don't know they have done it because of anything I have said.

Q. I am asking you if they invested any money?

A. Yes, they invested money; I don't know whether it was on anything I said.

Q. Did they invest any money on the faith of that lease?

A. I don't know what their reasons would be; I don't know; I cannot answer that question.

Q. The money they invested was the money represented by these bonds that were authorized to be issued?

A. Yes.

Q. Did anybody invest any money to procure that lease; did that lease cost anybody any money?

A. Yes.

Q. Who did it cost money, and how much?

A. Mr. Crosby.

Mr. Katzenbach: Is that material to this?

Commissioner Donges: I should think so; the rentals reserved in these leases are part of the operating expenses; that seems to be proper.

Witness: That was Mr. Crosby. I cannot answer that question definitely, that is, as to amounts or what or when. I can do it on Monday.

Q. All right, I would like to know whether anything was paid by anybody to anybody for that lease?

A. Yes, sir.

Q. You can answer that, can you?

A. Monday, yes.

Q. I asked you before. I think, to give me a list of your stockholders?

A. Yes.

Q. Have you that here?

A. I am preparing all those statements. We have been rushed with so many things at the office. All those statements you asked for are being prepared.

Q. At the time you advised the White Company, or whoever you did advise, that you could pay these leases, had you seen the Betts report?

A. I don't remember.

Q. Was it before or after the approval of the Commission that you gave that advice?

A. It was before the approval of the Commission.

By Commissioner Donges:

Q. Before the application was made?

A. I don't remember. It was before the approval by the Commission.

Q. You don't remember whether you saw the Betts report or not?

A. I don't remember when I first saw that report, I think very probably it was after the lease was approved. I don't think I saw it before; I am not sure.

Q. In this statement of your stockholders that you are preparing, did I ask you to state whether that stock was paid for?

A. You did not.

Q. Will you so state?

A. I will.

Q. And how much it was paid for.

Mr. Record: I think that is all I want to ask Mr. Johnson.

Commissioner Donges: Suppose we recess now until Monday morning here at eleven o'clock.

Adjourned until Monday, November 8th, 1915, at the State House, Trenton, N. J., at 11.00 o'clock A. M.

SEVENTH HEARING.

Trenton, N. J., Monday, November 8th, 1915.

Before the following Commissioners: R. W. E. DONGES, ESQ., J. W. SLOCUM, ESQ., P. BETTS, ESQ., Chief Inspector, F. H. SOMMER, ESQ., Gen. Counsel.

For Trenton & Mercer County Traction Corporation appears F. S. KATZENBACH, JR., ESQ.

For the City of Trenton appears G. L. RECORD, ESQ.

RANKIN JOHNSON resumes the stand.

Further cross-examination.

By Mr. Record:

Q. I want to clear up that $128,000 of bonds of the Mercer County Traction Company which is owned by the Trenton Street Railway Company. How did you treat that in paying your interest? Did you pay interest direct to the Trenton Street Railway Company?

A. We paid all interest to the trustee under the mortgage in each case.

Q. You make no distinction between that $128,000 and any of the rest of the bonds?

A. No.

Q. Do you know how those bonds were acquired?

A. I do not.

Q. Do you know how they happened to come into the possession of the Trenton Street Railway Company?

A. I do not.

Q. You don't know whether that is the exact amount or not, do you?

A. I do not.

Q. Do you know whether any of the subsidiary companies own any of the bonds of the other companies?

A. I do not.

Q. Beyond that?

A. I do not.

Q. You stated before, I think, that the Trenton Street Railway Company owns the stock of the Mercer Company Traction Company, Trenton, Pennington & Hopewell Company, and the Trenton, Hamilton & Ewing Company?

A. I did, yes.

Q. And the power company owns the stock of the Trenton Street Railway Company?

A. Yes.

Q. Do you know who is the agent of the power company?

A. I do not.

Q. According to the agreement there is $33,000 of rental has to be paid to the Mercer County Traction Company, the Trenton, Pennington & Hopewell Company, and the Trenton, Hamilton & Ewing Company; to whom do you actually pay that rental?

A. We pay it—I would have to see the vouchers—I think we pay it to the United Power Company; I am not sure, the United Power & Transportation Company.

Q. Will you let us know the next time you come?

A. Yes. I will have to see how the voucher is made out.

Mr. Record: That is all I want to ask.

Re-direct examination.

By Mr. Katzenbach:

Q. During the course of your examination by Mr. Record, Mr. Record asked you to prepare certain data sheets, various questions that he asked: have

you, since the last recess taken by the Board, prepared at least some of those statements?

A. I have.

Q. Now, will you take up those statements and tell exactly what they are so we can have them marked?

A. One of the statements asked for was the number of trackmen hours each year, 1911 to 1914, inclusive, and total wages paid. Also the operating expenses per car mile for each of those years.

Mr. Katzenbach: I will ask to have that marked.

Commissioner Donges: It will be admitted and marked.

(Statement number of trackmen hours, each year and total wages paid, received and marked Ex. T. & M. -18-1/2.)

Q. What is the next data that you have prepared and on what subject?

A. The maximum headway of cars on the ordinary daily schedule for the years 1911 to 1914, inclusive.

Mr. Katzenbach: I will have that marked Ex. 19, and offer it in evidence.

Commissioner Donges: It will be admitted and marked.

(Maximum headway, ordinary daily schedule, received and marked Ex. T. & M.-19.)

Witness: The minimum headway of cars operated during the years 1911 to 1914 inclusive, excepting holidays and Fair weeks. That is, we were asked to give the minimum headway of cars, but we assumed that the minimum headway of usual days was desired, and not a special headway, such as we might run during Fair week or holidays.

Q. Then your report or statement is the headway under the normal conditions?

A. Yes.

Mr. Katzenbach: I ask to have this marked Exhibit 20, and offer it in evidence.

(Statement of minimum headway, except holidays and Fair week, marked Ex. T. &. M.-20.)

Witness: I was asked to give the tax assessments in detail for the year 1910. That is here.

Q. Have you prepared such a statement?

A. I have. (Produces statement.)

Mr. Katzenbach: I will ask this be marked Ex. 21, and offer it in evidence.

(Statement of tax assessments, year 1910, received and marked Ex. T. & M.-21.)

Q. In connection with that I will ask you, is there anything else that you have not prepared, and if so, what would be the probable length of time for preparing it?

A. There are a few more statements ——

Q. Very well. We will take those up then.

A. The statement of tax assessments, 1914, was also asked for.

Q. What is this (handing witness paper)?

A. Tax assessment for 1914.

Mr. Katzenbach: I will offer this.

(Tax assessments for the year 1914, statement, received and marked Ex. T. & M.-22.)

Q. This was prepared at the request of Mr. Record, as I understand it, Mr. Johnson?

A. Yes. I was also asked for the detail of my estimate of the cost of reproduction of the physical property in the year 1910.

Q. This paper which you hand me, is that cost of reproduction?

A. Yes, the physical property.

Q. Does that include your estimate of intangibles or going concern value?

A. It does not.

Mr. Record: I will offer that.

(Estimated cost of reproduction of property in and adjacent to the City of Trenton, owned and leased by the Trenton Street Railway Company, made in 1910 by Mr. Rankin Johnson, received and marked Ex. T. & M.-23.)

Witness: Here is the tickets and cash fares received during each of the years, 1911 to 1914 inclusive, on each of the fare zones.

Mr. Katzenbach: I ask to have this marked Ex. 24, and offer it in evidence.

(Tickets and cash fares, 1911 to 1914 inclusive, on each of fare zones, received and marked Ex. T. & M.-24.)

Witness: I have not yet what was the original pavement on Centre Street and what percentage was 2300 joints to the total. That can be provided very shortly.

There were certain questions asked in connection with the statement which I believe was made, and what of the record ——

Q. Refer to it; statement of what, Mr. Johnson?

A. Of the items which make up the expenditures totalling $500,000 from which the bond issue, general mortgage bond issue, was made. There were certain questions asked concerning those items, which is going to take considerable time to prepare the answers, and the answers will be contained in the statements which I understand are to be made as

a result of the investigation by the accountants of the Public Utility Commission and Mr. Record, of our office records, which were placed at their disposal, and which they were investigating during the past week. If Mr. Record would like to have me take these answers up in addition, we can do so. It will take a few days longer ——

Mr. Record: I think we might wait until after we find what the gentlemen bring in from the books proper. We will know that today.

Witness: If you like, I will repeat the questions you asked in reference to that.

Mr. Record: I think that won't be necessary. I think we can set that aside for the moment.

Commissioner Donges: It may be answered ——

Mr. Record: Yes. We will dispense with as much trouble as we can.

Witness: Mr. Record asked me a question as to what, in my opinion, the assessments on which taxes were based for the year 1915, should have been ——

Q. 1915 or 1910?

A. 1910, should have been.

Q. That is my recollection, 1910.

A. Yes. That hasn't been written out yet, and I find it will take more time than I had expected to give any final figure which would necessarily be approximate. If you wish—I have studied it, worked over it, and I can ——

Q. Then I will ask you to just give the results of this study with reference to that question.

A. We are taxed under three headings. The franchise tax, the personal property tax, and the real property. In existing streets three headings; it is my understanding that the franchise tax is clearly levied on the gross receipts, five per cent. of the

gross receipts. The real property tax includes real estate and buildings, is levied in accordance with the opinion of the assessors as to the value of the real estate and buildings, and then whatever formula they have, whether it is one hundred per cent. of that value or eighty per cent., or ninety per cent., I don't know. The personal property tax, which I understand includes the cars, machinery, movable plant, and the property in the streets. Whether that is another heading or included in the personal property, I don't know. It is my understanding that that personal property tax is levied on a value of those items aside from the franchise, that is, aside from the fact that the property is in operation as applied, for example, to the tax item it would be the value which we could receive from the cars or for the machinery or for the track, if the operation of the property ceased ——

By Commissioner Donges:

Q. In other words, it would be practically scrap value?

A. Not necessarily scrap. A car might have been bought yesterday and the operation cease today. While we couldn't get quite as much as we received from the car if it had been operated today, we could get almost as much. In track it would be the salvage value; the value of the ties, rails, and poles, wire, those materials. On that basis ——

Mr. Record: May I interpose an objection to this line? I haven't asked any expression of opinion of this witness, or asked him to produce any theory on values.

Commissioner Donges: I don't understand this is in response to your inquiry at all. He produced certain papers and Mr. Katzenbach is on re-direct examination now.

Mr. Record: My point is the same. This is either

in response to my question or re-direct examination on my question; the point is the same. There is a question ought to be considered. I want to consider it very fairly—I suppose I have had as much experience as anybody in this State on this very abstruse question of taxes on extraordinary property. The Court lays down the comfortable rule when valuing houses you must consider what it would sell for if in the hands of a willing seller, not compelled to sell, and the purchaser willing to buy, but not compelled to buy, and that is a good definition as to the requirements of taxation. When you come to tax railroad terminals, which never have been sold and never will be purchased or have a willing buyer, you have to construct a new rule. When you come to the value of a car running in the street there is no willing purchaser or willing seller, it don't exist, except a corporation, that was a big one, would take it off because it had served its use and then sell it to a suburban company.

Commissioner Donges: The witness is not attempting to arrive at the value of this property, any property. He is simply explaining, if I follow his examination, the idea which he, as an executive officer of the railway, had in mind when he made certain suggestions to the taxing authorities.

Mr. Record: All I have asked him is to segregate from his total of three million dollars the proportion that is represented by the city tax, which I think is $483,000, whatever it is; that is all the question I asked him.

Mr. Katzenbach: That, of course, is merely an expression of opinion; it would necessarily have to be. The witness couldn't put himself in the position of the Board of Assessors and know what their ideas were. Now, if the answer to the question is improper, then the question itself must be improper.

Commissioner Donges: I think he ought to be

permitted to answer in response to the inquiry why he suggested certain figures; his idea in suggesting certain figures to the tax Board.

(Last answer of witness read.)

Witness: On that basis the tax assessment for the year 1910, I estimated that the property in the streets and the personal property as existed, were approximately the figures at which I had arrived. The other items, which total a very small proportion of the whole assessment, I would have to spend some more time in getting the amount at which I would assess them if I were an assessor, on my basis. And I think, after looking over the figures as I looked over them in the short time I had in the office to spend on this particular point, that that might be slightly increased. That is, my figures would slightly increase them, but that is a point concerning which, as I said, I would have to take more time to present a statement giving that.

By Commissioner Donges:

Q. What was your formula for arriving at the salvage value, on your theory?

A. On my theory I took the value of the ties and rails, that is, material entering into construction, the cost of them, and if they were bonded, at approximately $9,000 or $10,000 a mile new. Then taking the same approximation on the time such items probably had been in use, and considering the fact that our assessment for the year 1910 was $7500 a mile for track, as I remember it, I considered that was not an excessive deduction from the cost price new of this material, and that, therefore, the total value here was approximately what I would arrive at.

Q. Then what you did, as I understand you, was to take the cost of the material depreciated, and without considering labor or any of the cost of putting the material in place, you took only the bare

cost of the material depreciated by wear and tear and the length of time it had been used and took that to be the value of the property for taxation?

A. Yes.

Q. And as to rolling stock, power house, and so on, you pursued the same method?

A. Yes. That method doesn't apply to real estate or to buildings, only what is called on our assessment, track in the streets and personal property.

Q. The apparatus used in the power house?

A. Yes; all machinery, tools, cars and track.

Q. Everything except the land and immovable structures existing in the land?

A. Yes. It also did not include the franchise tax, which is five per cent. of the gross receipts, and which I consider in this estimate covers a tax on the fact of operation; that is, on the franchise which permits us to operate.

By Mr. Katzenbach:

Q. Now, were there any other statements which you were to prepare?

A. This is a statement of what actually existed in 1910.

Q. Have you offered those in evidence?

Commissioner Donges: These papers offered were each one what you regard as a response to Mr. Record's request?

Witness: Yes, sir. Here is another statement: the amount and cost of power house, coal and supplies, and cost of power generation during 1911 to 1914 inclusive. There are various other questions that were asked and our accounting department is working on those, and I hope by tomorrow to bring in the rest, the other papers I have mentioned that he said could go over for the present.

Mr. Katzenbach: I ask to have this marked Ex. 25, and offer it in evidence.

(Cost of power house coal and supplies and power generation, 1911 to 1914, received and marked Ex. T. & M.-25.)

By Mr. Katzenbach:

Q. Mr. Johnson, you testified that the operating expenses for the year 1914 per car mile were 13.9 cents; did that include the fund which you actually set aside for depreciation?

A. It did.

Q. Although it did not include the fund which you testified to, which you thought ought to be set aside for depreciation each year, did it?

A. It did not.

Q. In giving the amount of taxes imposed on this property, you did not have the figures for the year 1915, so as to determine what the increases in taxation were? Have you, since you testified on that subject, received for your company tax bills which would indicate what the increase this year was over the year 1914?

A. We have received some, I think all; I am not sure, of the tax bills for the City of Trenton.

Q. What is the increase in the taxes in dollars and cents for the year 1915 over the year 1914?

A. As far as the bills have yet been received, the increase amounts to $4,221.99.

Q. That is what actually, in dollars and cents, would be paid for taxes?

A. Yes.

Q. You were examined, Mr. Johnson, with reference to certain items of track, and asked your opinion as to whether, for example, on West State Street, it would be necessary to renew the track, and when, and what the cost thereof would be. Now, if your company had the fund, the amount you had testified to as being, in your opinion, the amount that should be set aside annually for depreciation, have you formulated any plan of improvement of this property?

A. I have.

Q. Will you state generally and specifically as to these improvements which you would make?

A. That would include the reconstruction of some mile to a mile and a half of track per year; that would include the addition of, or replacement of twenty modern double-truck cars for single truck cars. The plans include the installation of an addition unit to the power house, and certain appurtenances, including a motor generator set and certain minor details, amounting to a few thousand dollars in addition to the unit. That would include the welding of two thousand additional joints. Another car barn for shelter of cars. About two miles of second track where we are now operating single track within the city. About three miles of additional single track, and additional feeder to take care of the increasing current demand, electric current demand.

Q. Would these improvements give any additional return, or would they be the means of furnishing improved service?

A. They would be the means of furnishing improved service, except the single track, and that would—while it would increase the gross receipts, the expenses that it would involve would exceed, for the first year or two probably, the receipts.

Mr. Katzenbach: That is all. I have completed.

Re-cross examination.

By Mr. Record:

Q. Mr. Johnson, I understood you, in this statement you have got the tax values of the different towns and you stated the other day in a general way, the same proportion of your total valuation would be allotted to each town as the assessment, probably; that was a rule I could take. You haven't segregated the figures in these towns, to all the value?

A. I assume that would be correct.

Q. I assumed maybe it would be correct.

A. I haven't investigated it.
Q. You didn't get a chance to segregate them?
A. No, I didn't as yet.

Mr. Record: I think that is all I want to ask him.

Mr. Katzenbach: That is all. We have nothing further, except what Mr. Grookett was to determine, and there is one other witness we are trying to get; that is only one question; whether any dividends were paid on this property from the year, about 1904, the date of this franchise—1894 down to 1899. If we can procure that witness (we are endeavoring to procure that witness), we want to ask him that question; otherwise we will let Mr. Record go on with his case.

Commissioner Donges: Counsel may stipulate that can be put in without delaying progress?

Mr. Record: Yes. Mr. Katzenbach, could we save time on this proposition? Your man Grookett is an officer ——

Mr. Katzenbach: Don't call him my man Grookett. I never met him before he went on the stand. My witness, I will assume that.

Mr. Record: We will say your witness. He is an officer and director of the United Power & Transportation Company. I want a list of the stockholders. Now, the New Jersey Guarantee & Trust Company is the agent of that corporation here, down in Camden ——

Commissioner Donges: Is your statement correct, is he personally in charge of the United Power & Transportation Company?

Mr. Record: I didn't say that. I said he is an official and director of that company.

Commissioner Donges: A director.

Mr. Record: I say he is a director of it. My theory is, he can produce that list of stockholders; I don't have to dig it from someone in the New Jersey Guarantee & Trust Company, or call F. W. Roebling, who is also a director. I don't wish to worry anybody or burden the record, but I want that list of stockholders and Mr. Grookett can get it for us. I am asking you, won't you try to have him here when he comes to answer that question?

Mr. Katzenbach: I think that is asking a great deal ——

Mr. Record: I shall ask him.

Mr. Katzenbach: He is a director of the United Power & Transportation; who the stockholders of the United Power & Transportation Company are couldn't have any relevancy to this proceeding.

Mr. Record: Except if they are the same people that are your clients, it would have some relevancy, wouldn't it?

Mr. Katzenbach: I don't believe it will have any relevancy, but we will put Mr. Johnson on the stand.

Mr. Record: Mr. Johnson says he don't know.

Mr. Katzenbach: You asked him the stockholders in the United Power & Transportation Company.

Commissioner Donges: What Mr. Record wants is the list; if the list is one containing the names of other persons you say it is immaterial; then certainly no harm will be done. If it is the same, it may or may not be material. We can't tell at this time. The point Mr. Record is asking, not passing on the materiality of the testimony at this time, but working in the interest of saving time, is asking Mr. Grookett, or someone in possession of this information, to produce it, otherwise Mr. Record will be re-

quired by due process to secure its production before the Board. My understanding is that is as far as your present inquiry goes.

Mr. Record: Yes.

Mr. Katzenbach: If I thought I had any right to ask Mr. Grookett for that, I would cheerfully to do it. Now, I am a director in different concerns. Take an illustration, the Trenton Banking Company. Supposing I was on the witness stand in some other matter and questioned about something that had nothing to do with the Trenton Banking Company, and I was asked, was I a director of that concern? Yes. Then will you produce a list of stockholders?

Commissioner Donges: Then you can probably say, I haven't it in my possession; you will have to call upon me to produce it; if that is Mr. Grookett's answer and your response for him.

Mr. Katzenbach: I don't know whether it will be or not. I don't feel like saying yes, I will ask Mr. Grookett. He is an entire stranger to me; I never met him before the first time I saw him on Friday.

Commissioner Donges: Then I take it you decline to accede to the request to ask for that information from Mr. Grookett?

Mr. Katzenbach: I can't get the nerve to do it.

Commissioner Donges: Then you better take what steps are necessary to acquire it, Mr. Record.

Mr. Record: I call the attention of the Board that we are pressed for time. The United Power & Transportation Company is the other end of this lease; this lease was negotiated with them; they own all the stock; they are the people it had to be negotiated with. I have asked Mr. Johnson, who had the negotiations; he don't know. It was the firm of

J. G. White & Company, a company floating in the air; whether they had or not, he don't know; whether a dollar was paid or not. These people come and ask this Board for an increase. Here is the vital point: a new lease was negotiated by one corporation and another, are they the same? I think we are entitled to know. They know that.

Mr. Katzenbach: As far as that is concerned, if that is the purpose, we will help as much as possible. We have agreed to furnish a list of the stockholders of the Trenton & Mercer County Traction Corporation. I don't know how we could prove it, but I could prove through Mr. Johnson that no stockholder of the Trenton & Mercer County Traction Corporation is a stockholder of the United Power & Transportation Company. You can get that information from Mr. Johnson, whether they are or not.

Mr. Record: How?

Mr. Katzenbach: By the stockholders of the Trenton & Mercer County Traction Corporation.

Mr. Johnson: They are entirely separate.

Mr. Record: I know they are entirely separate on paper. I want to know the list of stockholders; I want to know whether one corporation—as in the United States Steel Company, where thousands of blocks of stocks were in clerks' names. There is a great mystery how this thing came out of the air.

Mr. Katzenbach: I will ask Mr. Grookett, write a letter and ask him if he can do it. I have no objection to it, but I hesitate to ask such a question as that, because I could see how it would lead to great embarrassment on his part; he, as director, has no right to ask for a list of the stockholders.

Commissioner Donges: The list of stockholders

is in the State of New Jersey, under the statute it must be.

Mr. Record: My only point is, I want to get it. If it is going to take a lot of time ——

Commissioner Donges: It is subjected to process, it is in the State of New Jersey.

Mr. Katzenbach: We will make every effort, but I don't think I should stipulate to produce it.

Commissioner Donges: Mr. Record asks you endeavor to ——

Mr. Katzenbach: We will endeavor to do it.

Mr. Record: Mr. Johnson, take the stand.

RANKIN JOHNSON resumes the stand.

Further cross-examination.

By Mr. Record:

Q. You said in the colloquy before the Board a moment ago that the stockholders of the United Power & Transportation Company were entirely separate from the stockholders of the Trenton & Mercer County Traction Corporation. How do you know that?

A. I know—I know that the lease of this property was made in the name of Mr. Crosby in the first place. I know ——

Q. Wait a minute. The lease of all of these companies was made to Mr. Crosby in the first instance?

A. Yes. This is the only difficulty—I know as I know anything, that there was—there was an entirely separate lease, it wasn't made by the company to itself, as you indicate; and you wish to make

clear to yourself in connection with this fare question, as I understand it, as to whether the Trenton & Mercer County Corporation is just a paper lease, if it were made by those interested in the lessor companies?

Q. Yes.

A. I know that is not the case.

Q. How do you know?

A. I know because ——

Q. Did you conduct the negotiations?

A. No.

Q. Were you present when they were conducted?

A. I was present sometimes, but I didn't conduct it.

Q. With whom did Mr. Crosby negotiate for the lease that came to him in his name?

A. With ——

Q. State with what persons.

A. The United Power & Transportation Company officials, with the Trenton Company officials.

Q. Who were they?

A. I wouldn't say the United Power & Transportation Company. The officers of the Trenton Street Railway Company, the Trenton, Pennington & Hopewell Company, and the Mercer County Traction Company, and the Trenton, Hamilton & Ewing Traction Company.

Q. They haven't any power to lease their roads, have they?

A. As to the regular requirements in connection with getting permission to make the lease, which might or might not involve the consent of the United Power & Transportation Company, I can't say, because I am not familiar with the legal questions involved.

Q. You are. You just said, as a matter of fact, they didn't legally lease one to the other. Now, I am asking you with what human being Mr. Crosby negotiated?

Mr. Katzenbach: I don't think he said they

didn't legally lease one to the other. He said they didn't actually, as a matter of fact.

Q. Of course, we know they didn't actually lease one to the other. They leased to the Trenton & Mercer County Traction Corporation. Who were the people Mr. Crosby negotiated with? What individuals; what were their names?

A. I can't say. They were officers of the company.

Q. How do you know that?

A. I just assumed that.

Q. You don't know that. Did you go with them and talk to any one of them?

A. I was present sometime—I was present at a meeting of the Board of Directors.

Q. Of what company?

A. I am not sure whether the Trenton Street Railway or the United Power & Transportation Company.

Q. Who were the people?

A. I don't remember.

Q. You don't remember one of them?

A. I remember that Mr. Rigg was there.

Q. Mr. Rigg was there?

A. Yes.

Q. Mr. Rigg is an official of the United Power & Transportation Company and a director, do you know that?

A. Yes. I couldn't say so positively, but I believe he is.

Q. Who were the other men?

A. I don't remember.

Q. How many of them?

A. I should say there must have been somewhere between five and ten were there.

Q. Where was this meeting?

A. Philadelphia.

Q. In whose office?

A. In the office of the United Power & Transportation Company, I think.

Q. Then presumably that was a meeting of the

directors of the United Power & Transportation Company?

A. Very probably.

Q. Don't you think so?

A. I don't know whether it was that or the Trenton Street Railway.

Q. Which do you think?

A. I am sure I don't know. My memory ——

Q. What transpired?

A. A discussion of the property, the earnings and the condition of the property, and the proposed lease terms.

Q. Was the proposed lease there on the table?

A. I don't remember. The terms were discussed; I don't know whether the document was there.

Q. Who discussed it?

A. Those present.

Q. What line did the discussion take? Did they make a demand on Mr. Crosby, and he say it was too high a demand, or anything like that?

A. There were the usual negotiations. Whether there was a discussion of high and low; I don't remember a statement it was too high; but I remember the details were discussed. This happened—it must be five years ago now. I just remember the meeting taking place and being there.

Q. How did you happen to get there?

A. I was asked to go there.

Q. By whom?

A. By Mr. Crosby.

Q. By Mr. Crosby?

A. Yes.

Q. Did Mr. Crosby tell you he was going to try to get it at any particular price?

A. His effort was to get it as low as he could, and I had been, during that general time had been in Trenton, sometimes alone and sometimes he was here with me seeing what the situation was.

Q. Did he ask you when you went over to that meeting to talk this property up or talk it down?

A. He didn't say either. He asked me what I thought could be done, at various times; whether

that particular day, I don't know but such conferences were going on between us frequently.

Q. Had you at that time made this valuation you testified to?

A. I don't remember whether that was made, but in the process of making it.

Q. Do you know whether you had finished or not?

A. I don't remember.

Q. What date was that made, as near as you can fix it?

A. I don't remember; it must have been sometime between April and October, or perhaps June and October, 1910.

Q. Did the other people demand any security for these rentals in that negotiation?

A. I don't remember.

Q. You don't know whether they asked Mr. Crosby, if we are going to turn this property over to you, what security can you give us; we are going to get our rental? You don't remember that?

A. No. As I remember, the discussion was of the Trenton situation, not—what the condition of the property was and what the earnings of the property, and the general tendency throughout the country of street railways.

Q. Anything come up in that conference in reference to a law taking place in reference to six tickets for a quarter?

A. No, I don't remember.

Q. It wasn't mentioned?

A. I don't remember; possibly there might have been discussion.

Q. Did you make any statement to that Board of Directors or render them any report?

A. No.

Q. Did you express any opinion as to the value of this property?

A. No; I don't remember—I didn't make any statement to the group. Whatever talking I did was to Mr. Crosby, or afterward, or after the meeting with any members who talked to me.

Q. Did this meeting come to any agreement with Mr. Crosby?

A. No. I don't remember. Nothing formal was done at the meeting, as I remember.

Q. Did it appear to you as the discussion went on, that an offer had been made to Mr. Crosby, or an offer by Mr. Crosby to the others, which offer in either event was under discussion?

A. I don't know whether an offer was made by one or the other; there were terms discussed.

Q. What is that?

A. There were terms discussed.

Q. What were the terms?

A. I don't remember just what they were, but the original discussion of terms was somewhat higher than the ones finally adopted.

Q. The original terms were higher than those adopted?

A. Yes.

Q. What do you mean by the original terms?

A. The terms discussed, discussion of which came to my knowledge.

Q. At this meeting?

A. Probably that meeting. I don't remember when I first heard any terms. I don't remember when; probably sometime before the meeting I would naturally have heard the first, and probably the discussion went on—I can't remember that point.

Q. Mr. Johnson, you know perfectly well whether that was a meeting of negotiation or not?

A. It was a meeting of negotiation. I don't know whether it was a meeting planned to come to any definite conclusion; I saw no correspondence or anything leading up to the meeting.

Q. Did the men act as though they were dickering with one another? Did Mr. Crosby say to these men, the road will never pay on the terms you demand, and they say, on the other hand, it will pay; was it a purchaser and seller negotiating over that table at that particular conference?

A. Yes; negotiations, I said.

Q. Did Crosby say the terms demanded were too much?

A. Yes.

Q. At that meeting?

A. The terms were reduced. I don't believe they were reduced at that meeting, but there was some such discussion.

Q. Do you remember a statement by Crosby that the terms then being considered were too high?

A. Yes; just the general impression.

Q. That is what he said?

A. Yes.

Q. What is your general impression they said?

A. My general impression is, they said they weren't too high. I don't remember the words.

Q. Do you remember the difference; how far apart they were then?

A. No. I remember there was an increase of ten thousand dollars in a year, which was reduced to five.

Q. As a matter of fact, in the discussion it appeared that the ten or twelve honorable gentlemen around this table had to pay themselves out of the increase earnings of this property?

A. I don't understand what you mean.

Q. They didn't demand of Mr. Crosby any security for the payment of these companies' rental from year to year, did they, in your presence?

A. I don't remember hearing any such discussion.

Q. They didn't make any such demands?

A. That didn't take place in my presence.

Q. It didn't take place?

A. Not that I remember.

Q. There was no discussion as to how these men were to be paid these rentals?

A. I don't know.

By Commissioner Donges:

Q. Was the negotiation one between two parties, one endeavoring to secure the best terms possible

for the rental and the other trying to secure the property on the most advantageous terms?

A. Yes; there was a good deal of that.

Q. There was a discussion of terms?

A. I have said that, yes.

By Mr. Record:

Q. During the discussion of terms did they talk on the existing revenues of the company and the prospective revenues?

A. Yes.

Q. Did you say to the company around the table, my judgment is that the gross revenue will increase so much per year?

A. I didn't say anything at the meeting. I didn't address the meeting at all.

Q. Did Mr. Crosby say to the Board, to the gentlemen, the probability is that the gross revenue will increase ten per cent., seven per cent., or five per cent, per year?

A. No; I don't think he called their attention to anything favorable. I don't think he called their attention to anything that would tend to make them —attempt to make a better bargain for them.

Q. No ——

A. (Continuing) His tendency would have been to say he didn't think the gross receipts would increase.

Q. Did he say so?

A. I don't remember any discussion.

Q. I agree with you as to his tendency; I want to find out whether he followed out his tendency.

A. In discussing where one man is to buy, or the other to sell, there was the usual attitude, as I say, that was followed out in general.

Q. Were they dealing with terms a long time?

A. Yes, some time the negotiations were going on; I should say from April—possibly commenced before April—to October. I know till October.

Q. Had you been present at any other meeting?

A. No, I think that was the only meeting I was present at of the directors.

Q. Did Crosby tell you what the result of other meetings had been?

A. No; only in the way of his trying to get the terms as low as he could; as he would see the officials of the leasing companies and then I would see them, he would say, give an indication of some accomplishment, and ask what other way we could reduce some point, or whether there was any other way of presenting it that would reduce it. Such discussion of possible terms.

Q. That indicates that Crosby saw the officials?

A. Yes.

Q. At one time, and then you saw the officials another time; were you with him or alone?

A. No; he would see the officials and then discuss with me.

Q. At the time you went over, these negotiations had been going on some time?

A. I don't know what period the negotiations took place.

Q. Why did he take you over?

A. I don't know why, except to be present perhaps in case he should want to ask me any question, as I spent more time than he did.

Q. He didn't ask you any question in the presence of these men?

A. No; we talked there—went over together on the train, and we sat and talked to each other there for a while, but I don't remember that during the meeting he turned and asked me any questions.

Q. Did he say on the train going over, "Now, Johnson, I want to get this just as low as I can, and in the discussion I want you to help bear down the value of this property so we can get it as cheap as we can"?

A. He many times ——

Q. Going over on the train did he say anything like that to you that day?

A. I can't say what was said that day; I don't remember.

Q. Did he tell you at any time when you met the officials of this company, you were to talk the property down so as to get as low a price as possible?

A. No.

Q. Never told you to do that?

A. No.

Q. Did you ever meet any of the officials of the company after or before, prior to the execution of the lease to Crosby?

A. Yes; but I didn't discuss with them, away from him, the terms of the lease. I only wanted to talk with him ——

Q. What was the occasion of your meeting the officials away from him?

A. I don't remember, except toward the last there was one in connection with an inventory I had to go to Philadelphia, and in making up the list as to what should be plant and what tools, I remember a discussion which made necessary a trip to Philadelphia to meet the officials, or the then officials.

Q. What did the officials tell you in Philadelphia?

A. What should be termed plant and what tools.

Q. You went for a definition?

A. Yes, a discussion so we could agree on the list that was finally prepared.

Q. Was there a list finally prepared?

A. Yes.

Q. Where is that list?

A. Somewhere in the office.

Q. Could you produce that list?

A. I don't know.

Q. Who made that list?

A. We made it in connection with ——

Q. Was Mr. Grookett present, one of those directors at that meeting?

A. No—it was my impression—I regarded him as the accountant or treasurer; I didn't know he was a director. That fact wouldn't have very much weight. I don't remember whether he was in the room at that time.

Q. You can't name anybody except Mr. Riggs who was?

A. No; I don't remember the names.

Mr. Record: I think that is all. I want to ask Mr. Betts one question.

P. Betts resumes the stand.

Further cross-examination.

By Mr. Record:

Q. This may have been covered, but I want to make sure: Mr. Betts, you testified to a valuation made for the Commission at the time of the application for the lease which is in evidence here?

A. Yes, sir.

Q. Was that valuation such a valuation as you would make if directed by this Board, if you had been directed then by the Commissioners to make a valuation as a basis of fixing a just and reasonable rate?

A. It was not in the careful detail that would have been made.

Q. It was not such an examination as you would have made if those had been your instructions?

A. It was not.

Mr. Katzenbach: I object.

Commissioner Donges: What is the objection? This is cross-examination.

Mr. Katzenbach: He has already cross-examined and he testified to this very thing.

Mr. Record: I think so too. My point is, I can't remember the record all the way back; before the thing passed I wanted to repeat it. It may be on the record, as far as I know. If he objects because it is already included in the record, his objection will be sound.

By Mr. Katzenbach:

Q. You would do whatever you were instructed to do?

A. Yes, I would endeavor to.

Q. You recall your testimony when you said that this valuation was a fair and reasonable valuation, in your opinion, for any purpose whatsoever? You so testified?

A. I did state that, making that valuation, aside from the matter of going into further details, that I tried to arrive at the same cost, no matter what the valuation was.

Q. That it was a fair and reasonable valuation for any purpose?

A. Yes, I would say that, yes.

Q. And you still think so?

Mr. Record: That is, so far as ——

Commissioner Donges: Just a moment.

A. Before I answered that question conclusively, I should want to make further study of the detail. It might not result in any great difference, but it would involve a study of the detail in order to answer that question conclusively.

Q. But it is the same principle, which is the same, is it not, no matter for what purpose you make the valuation?

A. Yes.

Commissioner Donges: As I understand you, Dr. Betts, it is, you would expect to find approximately the same quantities which you had fixed at that time, 1910, whenever it was made, the same unit prices were used?

Witness: Yes.

Commissioner Donges: Which you expect would bring you approximately the same prices on a theory

of reproduction new, without depreciation, which is the way I understood you made it up.

Witness: Yes, sir.

By Mr. Record:

Q. Would you, if you were instructed by the Board to find a valuation in reference to rate-making, would you have made a study of depreciation?

Mr. Katzenbach: That is what he did do, as instructed by the Board at that time. It seems to me that can't have any relevancy. He just testified that he would do anything, of course, that was honorable, that the Board asked him to do. That is the question; he is asked to do a certain thing, would he have done it?

Commissioner Donges: I suppose that is the effect of the question.

Mr. Record: I don't care. My point is if he had been directed by you to report in a rate-making case whether or not he would have some estimate of depreciation, he would have allowed for it or not allowed it; he would have gone into it or not.

Commissioner Donges: I think that appears in his former testimony. I think too, Dr. Betts, you said something in your testimony when you were on the stand before about some of the various difficulties you encountered through lack of assistance at that time.

Witness: Yes. I had only one assistant; at that time, for various reasons, which it is not necessary to go into, I assume it would not be easily possible to get any information from the books of the company, particularly due to the fact that the property was about twenty years old or so, and it would be difficult to place any fixed item, to analyze anything from the book accounts; so I made no effort.

Commissioner Donges: It is the practice of your department now in making valuations, whether it be applications for the issue of securities or rates, to study as far as seems desirable, the question of depreciation?

Witness: Yes, sir.

By Mr. Record:

Q. You made no such study in this case?

A. Not for the purpose of arriving at any value of the depreciation.

Q. You didn't make a careful detailed inspection in order to arrive at the degree of depreciation of this plant?

A. We made a very careful detailed study of the property, not for the purpose of arriving at the amount of depreciation, as to its cost, or loss, or placing any value on it, but for the purpose of determining at which point the company must commence reconstruction.

Q. Your report shows no depreciation account, or what part of the property was depreciated, or the extent of it, anything like that?

A. This report doesn't go into that. That took place before that; it was in connection with the complaint of the condition of the property.

Commissioner Donges: That was a service complaint?

Witness: Yes. And that was based on the prior approval of the lease.

Commissioner Donges: And independent?

Witness: And independent.

Commissioner Donges: I understand that the further examination of Mr. Grookett and the production of the statements he was to put in completes —

Mr. Katzenbach: Yes, and one other witness I may possibly get that knows about the conditions in 1894 and 1899, as Mr. Grookett's records commenced 1899. That would only take a minute or two, if we can get the witness.

Commissioner Donges: You may proceed, Mr. Record, subject to that reservation.

Mr. Record: I want to see if I can, by arrangement with the Mayor, make some saving in time by not calling witnesses: the first thing I want to do, however, is for the convenience of the Board I want to read into the record a portion of the testimony Mr. Crosby presented on the Trenton & Mercer County Traction Company, that was taken by or under the direction of this Board at the time of the application for confirmation of this lease.

Commissioner Donges: That record is in the testimony in this case.

Mr. Record: I don't think I am going to waste any time at all.

Mr. Katzenbach: That wasn't in.

Commissioner Donges: Yes. Mr. Sommer made the offer; neither side seemed willing to be bound by the offer.

Mr. Katzenbach: The report of Dr. Betts.

Commissioner Donges: No; he offered the entire record, offered the entire record including the testimony and all reports.

Mr. Katzenbach: Of course, we will refer back to that; I was under the impression Dr. Betts' ——

Commissioner Donges: No; he asked whether the entire record might not go in, and you seemed quite

properly perhaps unwilling to be bound by it, and Mr. Sommer said then he would offer the entire record. So I should say, Mr. Record, it is unnecessary to read it in.

Mr. Record: Let me see if I am wrong about that. Mr. Katzenbach said at the beginning of his opening that he proposed first, to proceed upon the theory and contend before this Board that he had a contract with the City of Trenton and that this Board ought to ratify it. The Chairman indicated that you might not, (I think that is the way you put it) conclude to pass on that at all, and that you might hold, (as you probably would hold) your duty was to determine this point, whether six for a quarter tickets were just and reasonable.

Commissioner Donges: Wouldn't pass on it in the preliminary case, but consider it in connection with this case.

Mr. Record: No matter how it was; I would like to take this stand and urge that. My recollection is that in all bills of complaint and all exhibits as part of his case, all proper enough ——

Commissioner Donges: Let me anticipate you; I think I do; you now desire to read in the record Mr. Crosby's testimony; all I suggest is, whether it is necessary to spread it at length in the testimony, because it is now in the case.

Mr. Record: I will answer that directly this way: Mr. Sommer has put in here a lot of evidence that took place as part of this investigation when this application was made. I have gone over some of it, Mr. Bird or I, or both of us have gone over it. I don't want to lumber the printed record with a mass of that stuff, but I want the Board to have before it, in typewritten shape, when it has to act quickly at the end, and when you, in the first instance, Mr. Chairman, may have to study at night

in Camden, and the Judge may study in his home, and Judge Treacy in Jersey City; I want it so that it is convenient for you.

Commissioner Donges: Very well.

Mr. Record: Otherwise you will wait until presentation, until I make my argument, and then you will never have heard of the point.

Commissioner Donges: All right.

Mr. Record: The first point I shall make, and I might as well outline my case a little bit so we can see how we can make time. I am going to urge, just like the Mayor, we don't need to go into any valuation at all, but this company is bound by a contract with the City of Trenton, but I am going to urge that it is bound by an obligation to this Commission, and that under the statement of its president, under oath, addressed to this Commission as an inducement for the approval of this lease, it is bound. That is my first point; it can't raise this question now. What I want to do is to read into the record, for convenience, this testimony, so when I come to argue that point, it won't be a surprise.

Commissioner Donges: Or equitable estoppel.

Mr. Record: Yes. I suppose nobody interprets for you the meaning of this statute; you have to do the original work, as was done in the gas case. Nobody knows; you have to fix the reasonable rate, as Mr. Sommer says. He takes the point everything comes back to the reasonableness of the rate. I want to get under that umbrella; I don't know whether I can, but I am going to try to.

Mr. Katzenbach: This umbrella is some five years old, I understand. Will you give me the date?

Mr. Record: I will. I read into the record, in

support of my first point, that these people have made an arrangement with this Board not to raise this question under the circumstances, a portion of the testimony under the title, given by Oscar T. Crosby, president, Trenton & Mercer County Traction Corporation, on Tuesday, November 22d, 1910; which testimony was under oath and submitted to the Board, and forms a portion of Exhibit Blank offered in evidence by Mr. Sommer in the progress of this case. The portion that I read is as follows: "There has been some contention in this particular case as to whether the tariff to be charged is fixed at five cents or a possible four and a sixth cents. I have not been able to find exactly what the legal status is as recognized by the company" (that is the lessor company) "I am under the impression they are practically committed to the six for a quarter ticket rule. I suppose we inherit that committal" ——

Mr. Katzenbach: That is, if they are.

Mr. Record: Yes. I have not got to the end of my point yet; you wait. "If not, I should not have the authority to commit them, but I am ready to say, if there is any doubt, so far as we are concerned, we are willing to submit to a friendly suit to settle the question." We; that is, this complainant company. "I think, however, there is some moral obligation in the past as to the acceptance of the six for a quarter rule. If the company is secure under its contract, and these are contracts, in such a tariff, it is fair to consider they would hold to that which their contracts give them. As far as the lessee company is concerned, it would be entirely willing to have any such question settled by a friendly suit if it is necessary. I looked at the matter when going over the estimates as to probable earnings, that we should never have more than six for a quarter tickets. If the ordinance has been passed and accepted, (referring to the six for a quarter tickets) that settles it. I thought the future could be worked out without raising the question of the right of five-

cent fare, as against the six for a quarter, and let that go in as one of the elements of doubt which you cannot exclude from any business. Some people think there is not as much loss as first calculation would indicate, in selling tickets at that rate as against the five-cent rate. It is hardly worth while to go into that here, the desire we had is to get these situations clarified; if there is any doubt, clarify them in the courts, unless there has already been the committal of them by our predecessors." There is one section. Now, Mr. Sommer asked this question: "Q. (By Mr. Sommer) In making the estimate, however, of whether the future, on the lines laid down by the lease, would be profitable, you use as a basis what; five-cent fare or the six for a quarter fare?" "A. We eliminated it in one sense. We took the increase made in the last few years, and then studied the increase of population as it has actually been reported, and got certain general rules obtained by results in cities elsewhere; have based it on the six for a quarter basis really. I should say in regard to the six for a quarter basis, there was no thought that the question would be raised for a change to five cents. Mr. Rigg told me they had made a spurt and had gone back. And he said they did not know just what the legal status was." I will have more to say about that spurt before we get through. I have read this into the record for the convenience of the Court.

Now, I would like to see how far I can agree with the Mayor by putting on the record several other things that pertain to my theory of the contract. My second point is going to be that we had the right at any time, have it now, unless this Board, in the Utility Act, has taken it away from us, to pass an ordinance for six tickets for a quarter. We have always had that, we consider, but that is principally a legal question; it may be argued on the ordinance and charter.

Commissioner Donges: You put that upon the power to regulate rates.

Mr. Record: Yes; under the power to make terms of this character, six for a quarter tickets, which will appear in this case partly by the ordinance that the Mayor put in and partly by the ones I will put in, if they were not put in by him. I think they are all in; I am not sure. My point will be, in 1909 they did exactly what they are trying to do now; they announced on a certain day they would discontinue six tickets for a quarter. They did so discontinue and that then a rumpus occurred in Trenton, the newspapers exclaimed; the Council got together in special session; the Mayor called upon the Council to direct the corporation attorney to bring suit to invalidate their franchise, and there was general trouble, and that after two days that resulted in a truce, and the details of that truce are that the representatives of the city met the representatives of the Trenton Street Railway Corporation, and with them agreed in this way: the ordinance provided that if you were going to alter or amend any ordinance, you must give thirty days' notice to the company, and they agreed in writing they would waive the thirty days' notice and that they would accept an ordinance, and they called a meeting of their Board of Directors in Philadelphia, and they recited these facts and they formally passed a resolution reciting them: that whereas they had discontinued these tickets, and whereas the city claimed the right to continue, and whereas the city had passed certain requests to them notifying them either to submit to the new ordinance and amend it, or they would pass a fresh one under the thirty-day clause, and reciting they had received from the city a draft of the proposed new ordinance, and they had received from the city a draft of a contract to be executed by them, excepting the proposed new ordinance, which their resolution recited are hereto annexed, they then go on to say we accept this proposition, we authorize our officers to consent to this resolution with the city, stating that we will waive all our rights as to notice, and as soon as they have passed this six for a quarter strip ticket ordinance,

the new one, we accept the agreement hereto annexed. I think most of these documents are in here, but this case is so voluminous I must not rely on my recollection.

It transpires now this final executory contract was not made and filed; that the officials sent a copy of this resolution to the city, and it was received and read in Council, and the ordinance recited in their Board of Directors' resolution was put upon its passage and under the charter it takes two weeks, I think, to lie on the table; word for word just as appeared in their resolution; it was laid over the customary time, and at the end of that time it was passed word for word; as I remember it now, word for word without the crossing of a T or the dotting of an I. Thereupon, and in the meantime, long before it was passed, the six tickets for a quarter were restored; whereupon public opinion, assuming they had gained great victory, subsided in repose. The Council passed the resolution and it was signed by the Mayor, and everybody supposed that the thing was over; they had agreed to submit this executory contract. My point is that it is immaterial whether they ever did or didn't. In the case in the Court they come forward and say they were imposed upon by these designing city officials and didn't know their own rights. Preposterous accusation anyway; and they say at some time, whether the other day or six years ago, they rescinded that resolution, but they never notified us of that. It was entered into.

Now, I have tried to state the facts about which there is no dispute. I don't think there is any dispute about those facts; if there are, it will appear. What I would like to know is, whether, instead of calling a lot of city officials and producing the records of the city, and taking the time to do that, producing the minutes of the Board of Aldermen, and all that, I would like to state in the record, I don't care to read into the record or refer to this somewhere else; I would like to get into the record all those documents, and to make sure there is no objection at the time. The first point, as I say, is, I

would like to start with such communications as were made by the Mayor to the City officials after these tickets were withdrawn ——

Commissioner Donges: From the Mayor?

Mr. Record: From the Mayor to the City Council upon this withdrawal. I would like to put that message in—I think there are two of them—put them in evidence without producing the city clerk and without reading from their records.

Mr. Katzenbach: You had, in the case before the United States District Court, the affidavits relating to that matter?

Mr. Record: Yes.

Mr. Katzenbach: I have no objection to your submitting that.

Commissioner Donges: Then it is agreed that copies of the Mayor's messages ——

Mr. Record: Wait a minute; I want to put up one thing at a time.

Commissioner Donges: That is it.

Mr. Record: I want one thing at a time.

Commissioner Donges: Therefore, I say it is agreed.

Mr. Katzenbach: Yes; I agree to put in the record ——

Mr. Record: Whatever was official.

Commissioner Donges: Let us know what it is.

Mr. Record: Yes. You agree to that.

Mr. Katzenbach: Wait a minute. What you want is really the affidavits you submitted in the other case, submitted to this Board?

Mr. Record: Yes.

Mr. Katzenbach: I agree to that.

Mr. Record: I don't want all of them; I want to pick parts out; I will put them all in if you want, but you don't want all that mass of newspaper comments I put in the evidence?

Mr. Katzenbach: No, I never wanted that.

Mr. Record: I know it, but I did.

Mr. Katzenbach: You want these in evidence?

Mr. Record: Yes.

Commissioner Donges: No; Mr. Record says he don't want all of them.

Mr. Katzenbach: You pick out any one of the documents you want and put in the whole document.

Mr. Record: For instance, they are all sworn affidavits in the case—I don't want that in. Put in the Mayor's message; I can mark those on this paper and the stenographer can copy them, and in that way we can make progress.

Commissioner Donges: What we want to do, Mr. Record, is mark each document as we go along so there will be no doubt about it.

Mr. Record: I am just as careful about that as I can be; that is what I propose to do. I want to state my general proposition, so if objection is to be made, you would have before you just that. I would sug-

gest at this point we take a recess, and I will start my case by putting those in after recess.

Commissioner Donges: Yes; till two o'clock.

Recess from 1.00 to 2.00 P. M.

After Recess.

Commissioner Donges: You may proceed, Mr. Record.

Mr. Record: I understood Mr. Betts had some of these young men he wanted to put on first. Then we will get rid of that.

Commissioner Donges: Mr. Sommer advises me Mr. Sofmann is not ready now to go on with his testimony, so you may proceed.

Mr. Record: I will start making that record. The first thing I would like to have read into the record is the affidavit of Walter Madden. I understand this is to go in just as though Mr. Madden was here and testified. This is simply a matter that is on record in the city—all the facts that he testified to; appearing on pages 1, 2 and top of page 3, and going from page 1 to the top of page 6 on the Trenton affidavit, my theory being that is now copied by the stenographer right out here. Is that agreed to?

Mr. Katzenbach: Yes; that is satisfactory.

Mr. Record: That will be the first. Starting with the words, "Walter Madden, of full age," and ends with, "Albert G. Howell, Notary Public."

Commissioner Donges: On page 6?

Mr. Record: Yes, of the book called the Trenton affidavits.

Commissioner Donges: Being all of the affidavit of Walter Madden?

Mr. Record: All of the affidavit of Walter Madden.

"Walter Madden, of full age, being duly sworn according to law, upon his oath deposes and says that he was the Mayor of the City of Trenton during the year 1909, and that he, as Mayor of said city, forwarded the following letter to Mr. John A. Rigg, then President of the Trenton Street Railway Company:

" 'Trenton, N. J., Sept. 14, 1909.

" 'John A. Rigg, Esq., President of the Trenton Street Railway Company.
Mariners and Merchants Building,
Philadelphia, Pa.

" 'Dear Sir:— The local management of the Trenton Street Railway Company has stated that it proposes to take away from the citizens of Trenton the time-honored privilege accorded so many years ago of selling tickets in strips, six for twenty-five cents. It states that it is doing so for the reason that it can't procure the conviction of certain of its employees for crimes which it alleges against them. In removing the privilege, upon which many of our people have relied in establishing their homes, the Trenton Street Railway Company has again outraged the citizens of Trenton.

" 'As Mayor of the city, I feel that my duty demands that I request from you, as the chief officer of this company, a recall of such order as may have been issued directing that this privilege be withdrawn. I understand that it is to be finally taken from the citizens tomorrow. My duty demands, therefore, that I request you to communicate with the local management, repealing this order, or that I invite a message to Common Council tomorrow (Wednesday) September 15th, at noon, calling upon them to do everything in their power to force the Trenton Street Railway Company to live up to the spirit of the ordinance whereby it utilizes the streets,

and directing Common Council to take immediate steps for the improvement of the service of the Trenton Street Railway Company and for the retention of the rights of the citizens of Trenton.

" 'I shall call up your local office at noon tomorrow to obtain news of the recall of your order, if such there be.

"Very truly yours
Walter Madden,
Mayor of the City of Trenton."

"Deponent further says that he received a reply to said letter from John A. Rigg, which read as follows:

"Philadelphia, Sept. 15, 1909.

"Hon. Walter Madden, Mayor of the City of Trenton:

"Dear Sir:— I have received your letter of yesterday concerning the discontinuance by the Trenton Street Railway Company of the sale of strip tickets, or six tickets for 25 cents, and regret that there should be a wrong impression as to the reason for this action.

"I hasten to say, therefore, that the officers of this company have the highest confidence in the administration of the City of Trenton, and would be very sorry for any disturbance of the agreeable and cordial relations that have always existed between the City and the Company, and I can assure you that the Railway Company will not be the conspicuous cause of anything that might mar these pleasant relations.

"The discontinuance of the sale of tickets at a discount was ordered by the Board of Directors at the last meeting as a matter of business necessity. The expenses of a street railway company are elastic and its income is rigid, and the necessity for collecting more closely what the law allows is not peculiar to this company, which is only following the example of other roads similarly situated. The tone of your letter indicates a possibly unfriendly attitude of the city government of Trenton, but I

hope this is only in appearance, and I am sure that no action will be taken without full consideration and deliberation, after hearing and weighing the facts and necessities of the cause.

"As I did not make this order, I cannot, of course, revoke or modify it, but at the first meeting of the Board I shall take pleasure in presenting your letter, which I know will be considered with all the respect that is due to yourself and to the important office you hold.

Very respectfully,
John A. Rigg,
President."

"Deponent further says that he wrote another letter to said John A. Rigg, under date of Sept. 16, 1909, which read as follows:

"Trenton, N. J., Sept 16, 1909.

"Mr. John A. Rigg,
President Trenton Street Railway Co.,
Mariner and Merchant Bldg.
Philadelphia, Pa.

"Dear Sir:—

"I am in receipt of your communication of Sept. 15 in answer to mine of Sept. 14 relative to the discontinuance by your company of the sale of tickets in Trenton in strips of six for twenty-five cents.

"I note that you say that you did not make the order and therefore cannot revoke or modify it, and that you will take pleasure in presenting my letter at the first meeting of the Company's Board of Directors. I note also that you say that the discontinuance of the sale of strip tickets was ordered by your Board of Directors as a matter of business necessity.

"I have no desire at this time to argue with you against the business necessity of such a move, further than to say that it is my firm conviction that the increased burden which your company proposed to place upon the people of Trenton is not justified as a business necessity, in view of the fact that the

Trenton Street Railway is one of the best paying street railway properties in the United States.

"I conceive it to be my duty as chief executive of the City of Trenton to exercise every possible effort for the purpose of securing the continuation of the sale of these strip tickets. I have adready communicated with Common Council on the subject by special message and have addressed a letter to our city counsel, Mr. Charles E. Bird, asking him to examine the ordinance under which your company operates and asking him to report to me whether under your franchise and the laws of this State the sale of strip tickets may not be restored through legal proceedings, if legal proceedings are necessary.

"I shall also further communicate with him asking him to make inquiry into the validity of your charter. I may as well be frank with you and say that I am thoroughly convinced that a great injustice has been done the people of our city by the action of your Board of Directors, and that it is my purpose as chief executive of the city to exercise any legal expedient that may be available for the purpose of bringing about the rescinding of this order in case your company does not do this of its own violation.

Very truly yours,
Walter Madden,
Mayor of the City of Trenton.
Walter Madden.

"Sworn and subscribed to before me this 27th day of September, 1915.
(Seal.) Albert G. Howell,
Notary Public, N. J."

Mr. Record: Next is affidavit of Frank Thompson, beginning on page 6, with the words, "Frank Thompson, being duly sworn," and ending on page 10, with the words "Albert G. Howell, Notary Public."

Commissioner Donges: Being all the affidavit of Frank Thompson?

Mr. Record: Being all the affidavit of Frank Thompson.

"Frank Thompson, being duly sworn according to law, upon his oath deposes and says that a resolution, in the words, letters and figures following, was adopted at a regular meeting of the Common Council of the City of Trenton held on the 21st day of September, Nineteen Hundred and Nine, to wit:

"Whereas, In and by the several ordinances of this city granting the Trenton Horse Railroad Company, the City Railway Company, the Trenton Passenger Railway Company, Consolidated, the Mulberry Street Railway Company, the Pennington Avenue Passenger Railway Company, the Trenton Street Railway Company, the Mercer County Traction Company, and the Trenton, Hamilton & Ewing Traction Company, the right to construct and operate street railway lines in and upon the public streets of the City of Trenton, the right was reserved to alter or amend such ordinances, at any future time whenever in the judgment of the Common Council, it should become necessary for the public good so to do; and——

"Whereas, In and by the ordinances aforesaid, or some of them, it is provided that no such alteration or amendments shall be made without giving to the railway company affected thereby one month's written notice of such proposed alterations or amendments, and——

"Whereas, In the judgment of the Common Council of the City of Trenton, it is necessary for the public good that each and every of the ordinances aforesaid should be altered or amended so as to provide for the uninterrupted sale by said railway companies or by their respective successors, of tickets at the rate of six tickets for twenty-five cents, good and valid over any or all of the lines of the company now operating the same within the corporate limits of the City of Trenton, or that, in lieu of such alterations or amendments, a new ordinance should be passed requiring the sale of such tickets by said Trenton

Street Railway Company upon the terms aforesaid, provided the said Trenton Street Railway Company, by its proper officers, shall first waive, in writing, one month's notice thereof, and signify its willingness to enter into a written contract or agreement with the inhabitants of the City of Trenton, accepting the terms of such proposed new ordinance and agreeing to comply with the requirements thereof; therefore, be it

"Resolved, That John D. Howell, Clinton J. Swartz, and William Mayers, Charles H. Reichert, Peter Backes, be and they hereby are, constituted a committee to forthwith confer with the proper officers of the Trenton Street Railway Company relative to the matter aforesaid, and in the event of failure of said Trenton Street Railway Company within ten days from the date hereof to give such written waiver and to signify its willingness to enter into a written agreement in manner aforesaid; be it further:

"Resolved, That the City Clerk be and he is hereby directed to forthwith give one month's written notice to the said the Trenton Street Railway Company, that it is the intention of the Common Council of the City of Trenton to alter and amend each and every of the ordinance aforesaid in the manner aforesaid; and be it further:

"Resolved, That in the event of the waiver of such notice and the agreement by said company to accept the terms of such proposed new ordinance, that the City Counsel be and he hereby is directed to prepare a draft of such proposed new ordinance for introduction at the meeting of this body to be held next thereafter.

"Deponent further says that at a regular meeting of said Common Council held on the 5th day of October, Nineteen Hundred and Nine, a communication from the Trenton Street Railway Company, under the hand and seal of W. A. Rosen, Vice-President, and T. W. Grookett, Jr., Secretary, in the words, letters and figures following, was received and read, to wit:

"Whereas, In and by the several ordinances of

the City of Trenton, granting the Trenton Horse Railroad Company, the City Railway Company, the Trenton Street Passenger Railway Company, Consolidated, the Mulberry Street Railway Company, the Pennington Avenue Passenger Railway Company, the Trenton Street Railway Company, the Mercer County Traction Company, and the Trenton, Hamilton & Ewing Traction Company, the right to construct and operate street railway lines in and upon the public streets of the City of Trenton, the right was reserved to alter such ordinances at any future time, whenever in the judgment of the Common Council it should be necessary for the public good so to do; and

"Whereas, In and by the ordinances aforesaid, or some of them, it is provided that no such alterations or amendments shall be made without giving to the railway company affected thereby one month's written notice of such proposed alterations or amendments; and

"Whereas, By a resolution of the Common Council of the City of Trenton, adopted at a meeting held on the 21st day of September, A. D., 1909, it appears that the said Common Council is desirous of amending the several ordinances aforesaid, or of passing a new ordinance providing for the uninterrupted sale of tickets on cars operated and to be operated by this company in said city at the rate of six tickets for twenty-five cents, which shall be good and valid over any and all of the lines operated by the company in said city; and.

"Whereas, the amendment of the several ordinances aforesaid would involve greater delay, and entail a larger expense on said municipality than would be necessitated by the passage of said proposed new ordinance; and

"Whereas, the City Council of the City of Trenton, on behalf of said city, has submitted to this Company a draft of said proposed new ordinance, and of a written form of agreement to be executed by this Company (copies of which said proposed new ordinance and agreement are hereunto at-

tached), and this Board having fully considered the premises, and being willing to aid in the more speedy passage of said proposed new ordinance; therefore, be it

"Resolved, That this Company, do and it hereby does, waive any and all right to which it may be entitled, whether by virtue of said ordinances aforesaid, or otherwise, however, to receive from said city any notice or notices relating to the introduction or passage of the ordinance aforesaid, and that the proper officers of this Company be and they hereby are authorized and directed to forthwith transmit to the proper authorities of said city a duly authenticated copy of this resolution; and be it further

"Resolved, That immediately after the passage of said ordinance by the Common Council of said city, and its approval by the Mayor thereof, in the form or substantially in the form embodied in the copy hereunto anneved that the proper officers of this company be and they hereby are authorized and directed to execute said agreement on behalf of this company, in manner and form substantially similar to the draft of said proposed agreement hereunto annexed.

Trenton Street Railway Company,
By (signed) W. A. Rosen,
Vice-President.

(Seal)

Attest:

(Signed) T. W. Grookett, Jr.,
Secty.

Frank Thompson, City Clerk.

Sworn and subscribed to before me this twenty-fourth day of September, 1915.

Albert G. Howell,
Notary Public of N. J.

(Seal)"

Mr. Record: It is stipulated that the form of the proposed new ordinance referred to in the last mentioned resolution in the foregoing affidavit of Frank

Thompson refers to the form ordinance which was passed on October 27th, 1909, by the City Council, except that while pending before the Council the words "at all times" were inserted in the first section after the word "sell" and before the word "upon."

It is further stipulated that the agreement referred to in the last mentioned resolution in the said affidavit of Frank Thompson reads as follows:

"This agreement, made this day of in the year of our Lord one thousand nine hundred and nine, between the Trenton Street Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, party of the first part, and 'The inhabitants of the City of Trenton a municipal corporation of the county and State aforesaid, party of the second part;

"Whereas, The said party of the first part is engaged in operating sundry lines of street railway lying wholly or partially within the limits of the City of Trenton aforesaid, which said lines of railway were constructed under and by virtue of the provisions of the several ordinances of said city granting to the Trenton Horse Railroad Company, the City Railway Company, the Trenton Passenger Railway Company, Consolidated, the Mulberry Street Railway Company, the Pennington Avenue Passenger Railway Company, the Trenton Street Railway Company (party of the first part hereto), the Mercer County Traction Company, and the Trenton, Hamilton & Ewing Traction, the right to construct and operate lines of street railway in, upon and through the several streets, avenues and highways of said city in said ordinances respectively mentioned and described; and

"Whereas, the said party of the first part, by lease, merger, consolidation or otherwise, has acquired control of, and is not actually engaged in operating, each and every line of street railway heretofore constructed by each of the companies aforesaid pursuant to the grant and authority con-

tained in the several and respective ordinances above referred to; and

"Whereas, in and by the said several ordinances it is provided that no greater fare shall be charged or received by said companies, respectively, as fare or toll for the carrying of passengers, and five cents for each passenger over five years of age, and that no sum shall be charged or received as fare or toll for the carrying of children under five years of age; and

"Whereas, in and by the several ordinances aforesaid, or some of them, the right was reserved by the said party of the second part to alter or amend said ordinances, at any future time, whenever, in the judgment of the Common Council of said city, it should become or be necessary for the public good so to do; and

"Whereas, in and by the several ordinances aforesaid, or some or one of them, it was further provided that no such alterations or amendments should be made without giving to the company or companies thereby affected, one month's written notice of such proposed alterations or amendments; and

"Whereas, at a meeting of the Common Council of the City of Trenton, held on the 21st day of September, in the year of our Lord one thousand nine hundred and nine, a resolution was introduced and regularly adopted reciting (among other things) that in the judgment of the Common Council of the City of Trenton, it is necessary for the public good that each and every of the ordinances aforesaid should be altered or amended so as to provide for the uninterrupted sale of said railway companies or their respective successors, of tickets, at the rate of six tickets for twenty-five cents, good and valid over any or all of the lines of the company now operating the same within the corporate limits of the City of Trenton, or that, in lieu of such alterations or amendments, a new ordinance should be passed requiring the sale of such tickets by the said party of the first part hereto upon the terms aforesaid; provided, the said party of the first part by its proper

officers, should first waive, in writing, one month's notice thereof, and should signify its willingness to enter into a written contract or agreement with the said party of the second part, accepting the terms of such proposed new ordinance, and agreeing to comply with the requirements thereof; and

"Whereas, at a meeting of the Board of Directors of said party of the first part, duly convened on the day of in the year of our Lord one thousand nine hundred and nine, it was

" 'Resolved, that this company do, and it hereby does, waive any and all right to which it may be entitled, whether by virtue of the ordinances aforesaid, or otherwise, however, to receive from said city any notice or notices relating to the introduction or passage of the ordinance aforesaid and the proper officers of this company be and they thereby are authorized and directed to forthwith transmit to the proper authorities of said city a duly authenticated copy of this resolution, and be it further

" 'Resolved, that immediately after the passage of said ordinance by the Common Council of said city, and its approval by the Mayor thereof, in the form, or substantially in the form, embodied in the copy hereunto annexed, that the proper officers of the company be, and they hereby are authorized and directed to execute said agreement on behalf of this company in the manner and form substantially similar to the draft of said proposed agreement hereunto annexed;' and.

"Whereas, in pursuance of said waiver an ordinance entitled 'An ordinance to provide for the sale of tickets by the Trenton Street Railway Company' has been duly passed by the Common Council of the City of Trenton, and was duly approved by the Mayor of said city on the day of instant;

"Now therefore, this agreement witnesseth, that the said party of the first part, for and in consideration of the premises aforesaid, and the sum of one dollar, lawful money of the United States of America to it in hand well and truly paid by the said

party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, for itself, its successors and assigns, hereby covenants, promises and agrees to and with the said party of the second part and its successors, that it shall and will at all times hereafter, comply with all and singular, the requirements of the ordinance above entitled, and shall not nor will, in any manner whatsoever, attack the validity thereof, or call into question the regularity or legality of the proceedings attending the passage thereof.

"In witness whereof the said party of the first part has hereunto caused its corporate seal to be hereunto affixed, duly attested by the signature of the secretary and hath caused this agreement to be signed by its president, the day and year first above written."

Mr. Record: Next is the affidavit of Harry B. Salter, beginning on page 11 of the Trenton affidavits with the words "Harry B. Salter, being duly sworn" and ending on page 13 with "Albert G. Howell, Notary Public," being all of that affidavit.

"Harry B. Salter, being duly sworn according to law, upon his oath, deposes and says that he was the city clerk of the City of Trenton during the year 1909, and that at a meeting of the Common Council of the City of Trenton held on the twenty-first day of September, nineteen hundred and nine, a communication was received from the Trenton Street Railway Company and read, which communication reads as follows:

" 'Hon. John D. Howell,
Pres. of Common Council,
Trenton, N. J.

" 'Dear Sir:— During the past few days numerous conferences have been held by officers of this company with Messrs. Swartz, Howell and Mayers, members of Common Council, at which they strongly urged a number of things for the improvement of the street railway service of this city. These matters have been carefully considered by the com-

pany which I represent, and I take this method of informing you that they will be put into actual effect with all reasonable diligence and promptness; namely,

" 'All cars which have become practically of little use, by reason of age, will be replaced with new ones.

" 'Old rails and roadbed, together with overhead construction, will be replaced. This matter has been under consideration for some months, we only awaiting final financial arrangements to commence this work of reconstruction.

" 'Every car on the line will be thoroughly fumigated and cleaned each night, as directed by the Board of Health.

" 'All cars with flat wheels and defective motors will be ordered from the tracks immediately and repaired.

"'Open or summer cars will be removed upon the day stipulated in the ordinance of council. Our winter or closed cars have all been thoroughly gone over and are now in excellent condition.

" 'The heating of our cars during the winter months will be maintained. Last winter we met with several serious accidents which reduced our capacity, but this occurrence has been prevented in the future by installing a duplicate system at the power house, at an expense of many thousands of dollars, and in the event of any accident of whatever nature, the system can be immediately switched to the idle plant without delay.

" 'Extra cars will be placed on all lines between the hours 6 and 8 A. M. and 5:30 and 8:00 P. M., to take care of the increased traffic.

" 'The sale of strip tickets has been resumed, as agreed upon. We have placed them on sale in a dozen or more places and will establish such other sales points as you or the Common Council may suggest.

" 'We are desirous of doing everything in our power to meet the demands of the citizens, realizing that their good will is our greatest asset.

"If, in your opinion, or that of the Common Council, other matters should arise which may be of benefit to the improvement of the system, I shall be pleased at any time to confer with yourself and a committee from council with the hope that we may arrive at some reasonable solution.

"Yours very truly,
"Trenton Street Railway Co.
"Peter E. Hurley,
"Gen'l. Mgr."

"Deponent further says that said communication is recorded in the minutes of said Common Council for the year 1909, on page 117.

"Harry B. Salter.

"Sworn and subscribed to before me this 27th day of September, 1915.

"Albert G. Howell,
"(Seal) Notary Public, N. J."

Mr. Record: The next is affidavit on page 13 of Harry B. Salter, beginning with the words "Harry B. Salter, being duly sworn" and ending on page 15 with the words "Albert G. Howell, Notary Public," being all the affidavit of Harry B. Salter.

"Harry B. Salter, being duly sworn according to law, upon his oath deposes and says that he was the City Clerk of the City of Trenton during the year 1909, and that at a meeting of the Common Council of said city held on the fifth day of October, nineteen hundred and nine, an ordinance was introduced and read providing for the sale of strip tickets by the Trenton Street Railway Company, which ordinance read as follows:

"An ordinance to provide for the sale of tickets by the Trenton Street Railway Company.

"The Inhabitants of the City of Trenton, do Ordain:

"Section 1. That form and after the passage of this ordinance the Trenton Street Railway Company be and it hereby is required to sell upon all of the cars operated by said company, in the City of Trenton, tickets, at the rate of six tickets for twenty-five

cents, which shall be good and valid (in lieu of the fare or toll which said company, by the several ordinances of this city, was heretofore authorized to charge or collect for the carrying of passengers) over any and all of the lines of the street railway operated by said company within the corporate limits of said city.

"Section 2. That no toll or fare shall be charged or received by the said company for the carrying of children under the age of five years, but that all children within the age aforesaid shall and may ride free of toll as heretofore.

"Section 3. That the Mayor of this city be and he hereby is authorized and empowered to revoke the license of any car operated by the said company upon which the requirements and provisions of this ordinance are wilfully violated or disregarded.

"Section 4. That all ordinances and parts of ordinances inconsistent with the terms of this ordinance be and they hereby are repealed, and that this ordinance shall take effect immediately.

"Deponent further says that at a meeting of said Common Council held on the eighth day of October, nineteen hundred and nine, said ordinance was read a second, and the following amendment adopted, to wit:

"Amend section one by inserting in line two, after the word 'sell' the following words 'at all times,' so that section one shall read as follows:

"Section 1. That from and after the passage of this ordinance the Trenton Street Railway Company be and it hereby is required to sell at all times upon all of the cars operated by said company, in the City of Trenton, tickets, at the rate of six tickets for twenty-five cents, which shall be good and valid (in lieu of the fare or toll which said company, by the several ordinances of this city, was heretofore authorized to charge or collect for the carrying of passengers) over any and all of the lines of the street railway operated by said company within the corporate limits of said city.

"Deponent further says that a record of said

amendment was made in the minutes of said Common Council for the year 1909 on page 131.

"Deponent further says that said ordinance as amended was read a third time and passed at a regular meeting of the Common Council held on the nineteenth day of October, nineteen hundred and nine, and that a record of the passage of said ordinance was entered in the minutes of said Common Council for said year on page 134.

"Harry B. Salter.

"Sworn and subscribed to before me this 27th day of September, 1915.

"Albert G. Howell,
Notary Public of N. J."

Mr. Record: The next is another affidavit of Harry B. Salter, starting on page 16, beginning with the words "Harry B. Salter" and ending on page 17 with the words "Albert G. Howell"

"Harry B. Salter, being duly sworn according to law, upon his oath deposes and says that he has read the resolution adopted by the Board of Directors of the Trenton Street Railway Company at a meeting held October 4, 1909, and marked 'Exhibit C-69,' and printed on page 322 of Complainant's Bill of Complaint.

"Deponent further says that he was the City Clerk of the City of Trenton during the year of 1909, and the custodian of all the records, communications and other papers of the Common Council of the City of Trenton by virtue of his office.

"Deponent further says that said Common Council was not notified, informed or advised in any manner whatsoever of the adoption by said Board of Directors of said resolution, either prior to or subsequently to the enactment of the ordinance of October 19, 1909, requiring said company to sell strip tickets at the rate of six for twenty-five cents on all of its cars.

"Harry B. Salter.

"Sworn to and subscribed to before me this twenty-seventh day of September, 1915.

"Albert G. Howell,
(Seal) Notary Public N. J."

Mr. Record: I would like, Mayor, I would like, for the benefit of the Commissioners right there to put this stipulation—this affidavit is meaningless unless you turn to that big record also—I would like to make this stipulation, see if you agree: It is stipulated that the paper marked Exhibit C69, referred to in the foregoing affidavit, is the resolution claimed to have been adopted by the Board of Directors of the Trenton Street Railway Company rescinding the resolution hereinafter referred to, agreeing to the proposed six tickets for a quarter ordinance.

Mr. Katzenbach: Well, there is no dispute at all, but what the resolution was passed.

Mr. Record: My only point there is, Exhibit C69, when you read it you don't know what it means.

Mr. Katzenbach: That is all right. Don't use the word "claimed." You have considered the resolution as having been passed.

Mr. Record: Why do we?

Mr. Katzenbach: The affidavits; in other words, if you are going to use an affidavit here we must use the affidavit in the record, which shows that the resolution was passed.

Mr. Record: There has been no proof ever submitted anywhere that the thing was passed in this case.

Mr. Katzenbach: Then if you are going to use this—suppose we just put in the affidavit showing it was passed; then it is all right.

Mr. Record: The difficulty I have there is, I would like to know—it has never yet appeared—I would like to know when it was passed. That is an essential point.

Mr. Katzenbach: It appears it was past.

Mr. Record: Yes, but suppose I held you to your proof. I am only asking you in these cases——

Mr. Katzenbach: I suppose that would simply mean that you would have to cross-examine our witnesses and we would have to cross-examine these witnesses to these facts.

Mr. Record: No. The only facts I am asking you to stipulate are those that a city official would come down here with the books and say such and such a resolution was passed such and such a day. You don't want to cross-examine him on that. But if you say that resolution was rescinded, I want proof of that.

Mr. Katzenbach: You have it here in the affidavit. I will find it for you.

Mr. Record: Yes, but you have no statement when it was done; the point being there is a big difference whether it was six years ago or now.

Mr. Katzenbach: I will let you select your time; it don't make any difference to us when it was passed. You can select any date you want. That wouldn't make any difference about our contention.

Mr. Record: I wish you would let me think about it. There may be a dilemma there, I don't want a man to come here just to show a book and all that thing; it has never been done.

Commissioner Donges: Everything in these matters you presented is a matter of public record.

Mr. Record: Public record, that the men would come down and say the same thing.

Mr. Katzenbach: No. These letters passing between Mayor Madden and Mr. Rigg are matters——

Mr. Record: They are matters of record, or you have the originals, one or the other. It is a mere matter of saying such and such a day I sent the following letters to these people. You have got it.

Mr. Katzenbach: We don't say it isn't so. It isn't a matter——

Mr. Record: You are right; those particular letters are not a matter of record at the last hearing.

Commissioner Donges: I understand this stipulation in effect merely means by putting these affidavits in there is contained in them the statement as to the passage of certain public documents, the adoption by the various public bodies, with copies of the papers themselves.

Mr. Record: Yes. The only variation from that is Mr. Madden wrote a letter and got one from them as Mayor. He says he sent the following letter and got the following letter; if there is any doubt about the letters being sent——

Mr. Katzenbach: No. When you said it was a matter of public record, they are not matters of public record.

Mr. Record: I am mistaken about that, but not as far as the others. Now, we get back to this point: this last affidavit of Mr. Salter's says that the paper marked C69——

Commissioner Donges: How long is the paper C69?

Mr. Katzenbach: It is not a very long paper. It is only two and a third printed pages.

Commissioner Donges: Why not have that put in? Is there any objection to that?

Mr. Katzenbach: None at all.

Commissioner Donges: As part of that affidavit?

Mr. Record: Scratch out that stipulation——

Mr. Katzenbach: I don't think we need any stipulation. That is in.

Mr. Record: I know it is in.

Mr. Katzenbach: We will stipulate the affidavit of Howell on page 17 refers to that exhibit.

Mr. Record: It is stipulated that the Exhibit C69 referred to in the foregoing affidavit reads as follows.

Mr. Katzenbach: That is all right.

Commissioner Donges: It stands by itself.

Mr. Record: Yes.

"Whereas at a special meeting of the Board of Directors of this company (Trenton Street Railway Company) held on October 4th, 1909, the following resolution was adopted:

" 'Whereas, in and by the several ordinances of the City of Trenton, granting the Trenton Horse Railroad Company, the City Railway Company, the Trenton Street Passenger Railway Company (Consolidated,) the Mulberry Street Railway Company, the Pennington Avenue Passenger Railway Company, the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company the right

to construct and operate street railway lines in and upon the public streets of the City of Trenton, the right was reserved to alter such ordinances at any future time whenever in the judgment of the Common Council it should become necessary for the public good so to do; and

" 'Whereas, in and by the ordinances aforesaid, or some of them, it is provided that no such alteration or amendments shall be made without giving the railway company affected thereby one month's written notice of such proposed alterations or amendments; and

" 'Whereas, by a resolution of the Common Council of the City of Trenton, adopted at a meeting held on the twenty-first day of September, A. D. 1909, it appears that the said Common Council is desirous of amending the several ordinances aforesaid, or of passing a new ordinance providing for the uninterrupted sale of tickets on the cars operated and to be operated by this company in said city at the rate of six tickets for twenty-five cents, which shall be good and valid over any and all of the lines operated by the company in said city; and

" 'Whereas, the amendment of the several ordinances aforesaid would involve greater delay, and entail a larger expense on said municipality than would be necessitated by the passage of said proposed new ordinance; and

" 'Whereas, the City Counsel of the City of Trenton, on behalf of said city, has submitted to this company a draft of said proposed new ordinance, and of a written form of agreement to be executed by this company (copies of which said proposed new ordinance and agreement are hereunto attached), and this Board having fully considered the premises, and being willing to aid in the more speedy passage of said proposed new ordinance; therefore, be it

" 'Resolved, that this company do, and it hereby does, waive any and all right to which it may be entitled, whether by virtue of the ordinances aforesaid, or otherwise however, to receive from said city any notice or notices relating to the introduction

or passage of the ordinance aforesaid, and that the proper officers of this company be, and they hereby are, authorized and directed to forthwith transmit to the proper authorities of said city a duly authenticated copy of this resolution; and be it further

"'Resolved, that immediately after the passage of said ordinance by the Common Council of said city, and its approval by the Mayor thereof, in the form, or substantially in the form, embodied in the copy hereunto annexed, that the proper officers of this company be, and they hereby are authorized and directed to execute said agreement on behalf of this company, in manner and form substantially similar to the draft of said proposed agreement hereunto annexed;' and

"Whereas, said resolution was presented to the Board of Directors of this company by the City of Trenton and passed in the form presented at said meeting of the Board under the belief that said resolution properly and correctly referred to the provisions of the ordinances therein mentioned, relative to the alteration of the terms of said ordinances, and that the right to alter said ordinances at any future time, whenever in the judgment of the Common Council of the City of Trenton it should become necessary so to do, was reserved in all of said ordinances; and

"Whereas, after the passage of the resolution an examination of said ordinances disclosed that the following ordinances did not reserve the right to alter the same.

"Ordinance, City of Trenton to the Trenton Passenger Railway Company (Consolidated); approved February 12, 1894.

"Ordinance, City of Trenton to Mulberry Street Railway Company; approved October 23, 1897.

"Ordinance, City of Trenton to Pennington Avenue Passenger Railway Company; approved December 22, 1897.

"Ordinance, City of Trenton to Trenton Street Railway Company; approved February 10, 1899.

"Ordinance, City of Trenton to Trenton Street Railway Company; approved February 10, 1899.

"Ordinance, Ewing Township to the Ewing Passenger Railway Company; passed March 28, 1898.

"Ordinance, City of Trenton to Trenton Street Railway Company; passed over the Mayor's veto December 5, 1905.

"Ordinance, City of Trenton to Mercer County Traction Company; approved October 11, 1901.

"Ordinance, City of Trenton to Mercer County Traction Company; approved October 11, 1901.

"Ordinance, City of Trenton to Mercer County Traction Company approved January 13, 1902.

"Ordinance, City of Trenton to Mercer County Traction Company; passed June 27, 1904; and

"Whereas, the agreement referred to in said resolution has never been executed by this company, by reason of the discovery of the misstatement in the recitals of said resolution which prompted the passage thereof, now therefore, be it

"Resolved that for the reasons aforesaid the said resolution passed at the said meeting of the Board of Directors of this company on October 4th, 1909, be rescinded."

Mr. Record: The next affidavit is an affidavit of Albert G. Howell on page 17 of the record, commencing with the words "Albert G. Howell" and ending with the words "Harry R. Bergen, Jr., Notary Public N. J."

"Albert G. Howell, being duly sworn according to law, upon his oath deposes and says that he is the Assistant City Clerk of the City of Trenton, and that he has examined the files of that office for the purpose of making this affidavit; that an examination of said files show that the resolution marked 'Exhibit C69,' printed on page 322 of Complainant's Bill of Complaint, was not received by the City Clerk, the Common Council or the Board of Commissioners of the City of Trenton.

"Albert G. Howell.

"Sworn and subscribed to before me this twenty-eighth day of September, 1915.

Harry R. Bergen, Jr.,
(Seal) Notary Public N. J."

Mr. Record: It is stipulated that Exhibit C69 referred to in the foregoing affidavit is the same exhibit as Exhibit C69 hereinbefore copied into the record.

The next affidavit is an affidavit of Clinton J. Swartz, commencing on page 18 of the Trenton affidavits with the words "Clinton J. Swartz" and concluding on the top of page 20 with the words "Harry R. Bergen, Jr., Notary Public N. J."

"Clinton J. Swartz, of full age, being duly sworn according to law, upon his oath deposes and says that he was a member of the Common Council of the City of Trenton during the year 1909; and that in the month of September of said year the Trenton Street Railway Co. discontinued the sale of six tickets for twenty-five cents; that the act of the company in that regard engendered harsh criticism and great hostility upon the part of the public; that he, with John D. Howell, then President of the Common Council, and William Mayers, deceased, who was a member of the Common Council during the year 1909, conferred with representatives of the railway company at the office of Ferdinand W. Roebling, in the City of Trenton, in an endeavor to induce the railway company to restore the sale of said tickets on its cars; that the representatives of the railway company present at said conference were John A. Rigg, of the City of Reading, Pa., then president of said company, Ferdinand W. Roebling and Henry C. Moore, Directors of said company, Peter E. Hurley and George W. Macpherson, general manager and general counsel, respectively, of said company.

"Deponent further says that he called the attention of said representatives of said company to the inflamed state of the public mind, and the hostile attitude of the Mayor and members of the Common Council, as manifested by the editorials, newspaper

articles and communications appearing in the public press, and more particularly in the Trenton Evening Times; that he also called the attention of said officials of said company to the tolerant manner in which the public had taken the poor service rendered by the company, and the friendly and liberal way in which the city had dealt officially with the railway company.

"Deponent further says that he urged the said representatives of the said company to restore the sale of tickets at the rate of six for twenty-five cents on all of its cars operated within the limits of the city, and explained to them that their refusal so to do would produce greater bitterness and hostility upon the part of the public and the city officials, and result in a loss to the company of the good will of the public, which was the best asset the railway company had, and which, in the opinion of deponent, was essential to the successful and profitable operation of the road.

"Deponent further explained to said officials of said company that the friendly relations then existing between the officials of the city and the company would be severed unless the company assented to the public demand and restored the sale of said tickets without delay.

"Deponent further says that he urged said officials of said company to restore the sale of said tickets on the cars because the right of the company to maintain its tracks and operate its cars on and through Broad Street and other thoroughfares of the city had been questioned by eminent counsel, and that in the event of the company's refusal to restore the sale of said tickets the city, acting through its governing body, would be impelled by the existing state of public opinion to litigate the company's right to the use of said streets, which would involve the company in vexatious and costly litigation, and possibly end in disastrous results to the company.

"Deponent further says that he called the attention of said officials of said company to the political aspect of then existing situation, and

to the fact that the whole question would be made a political issue at the next ensuing municipal election unless the company agreed to sell said tickets at the rate of six for twenty-five cents.

"Clinton J. Swartz.

"Sworn and subscribed to before me this 24th day of September, 1915.

"Harry R. Bergen, Jr."

(Seal) Notary Public of N. J."

Mr. Record: The next is an affidavit of John D. Howell, page 20 commencing page 20 with the words "John D. Howell" and ending on page 22 with the words "Harry R. Bergen, Jr., Notary Public, N. J."

"John D. Howell, of full age, being duly sworn according to law, upon his oath deposes and says that he was president of the Common Council of the City of Trenton during the year 1909, and that in the month of September of said year the Trenton Street Railway Company discontinued the sale of six tickets for twenty-five cents; that the act of the company in that regard resulted in a demand that all steps possible be taken by the governing body of the City of Trenton to compel said company to restore the sale of said tickets on all of the cars operated by it; that he went with Clinton J. Swartz and William Mayers, deceased, members of the Common Council during the year 1909, to the office of Ferdinand W. Roebling, in the City of Trenton, for the purpose of conferring with representatives of the railway company, in an endeavor to induce the company to restore the sale of said tickets on its cars; that the representatives of the railway company present at said conference were John A. Rigg, Ferdinand W. Roebling, Henry C. Moore, Peter E. Hurley and George W. Macpherson.

"Deponent further says that Clinton J. Swartz, acting as spokesman for the representatives of the city, called the attention of the railway officials present to the inflamed state of the public mind, and to the attitude of the Mayor and members of the Com-

mon Council, and their insistence that all possible measures be taken to procure for the public the sale of strip tickets on the cars of the company, at the rate of six for twenty-five cents.

"Deponent further says that Mr. Swartz called the attention of said officials of said company to the editorials, newspaper articles and communications appearing in the public press, and more particularly in the Trenton Evening Times, as exhibiting the state of the public mind.

"Deponent further says that Mr. Swartz likewise salled the attention of said officials of said company to the friendly and lenient manner in which the public and the city officials had dealt with the poor service rendered by the company.

"Deponent further says that Mr. Swartz urged the sale of tickets at the rate of six for twenty-five cents, and informed the representatives of the company that their refusal to sell such tickets at said rate would produce greater bitterness and hostility upon the part of the public and the city officials, and result in a loss to the company of the good will of the public, which was the best asset the railway company had, and which was essential to the profitable operation of the road; that Mr. Swartz stated that the friendly relations then existing between the officials of the city and the company would be severed unless the company complied with the public demand restored the sale of said tickets without delay.

"Deponent further says that Mr. Swartz urged said officials of said company to restore the sale of said tickets because the right of the company to maintain its tracks and operate its cars on and through Broad Street and other highways of the city had been questioned by an eminent lawyer, and that the company's refusal to restore the sale of said tickets would impel the city, acting through its Common Council, because of the existing state of public opinion, to litigate the company's right to use of said streets, which would involve the company in vexatious and costly litigation, and possibly end in disastrous results to the company.

"Deponent further says that Mr. Swartz also called the attention of said officials of said company to the political situation, and to the fact that the whole question would be made a political issue at the next ensuing municipal election unless the company agreed to sell said tickets at the rate of six for twenty-five cents.

"John D. Howell.

"Sworn and subscribed to before me this 25th day of September, 1915.

"Harry R. Bergen, Jr.,
(Seal) Notary Public of N. J."

Mr. Record: The next is an affidavit of Charles E. Bird, page 23 of the Trenton affidavits commencing with the words "Charles E. Bird" and ending with the words "Harry R. Bergen, Jr., Notary Public N. J."

"Charles E. Bird, of full age, being duly sworn according to law, upon his oath deposes and says that he is the City Counsel of the City of Trenton, and has filled that office since the year 1901; that he has read the affidavit made by John A. Rigg, printed on pages 60, 61, 62, 63 and 64 of Complainant's Bill of Complaint.

"Deponent further says that he has observed that said John A. Rigg avers among other things on page 61 that 'The Board of Directors of the Trenton Street Railway Company passed a resolution, drafted and submitted by the counsel of the City of Trenton, waiving its rights to receive notice of the alteration or amendment of said ordinance,' that is to say the ordinance particularly involved in this litigation.

"Deponent further says that he assumes that said John A. Rigg refers to 'Exhibit C-68,' printed on page 321 of Complainant's Bill of Complaint in said averment, and that if this deponent's assumption is correct the said John A. Rigg is in error, because deponent did not draft and submit said resolution to said company, or cause the same to be drafted or submitted.

"Deponent further says that he has no knowledge whatsoever of the preparation of said resolution.

"Chas E. Bird.

"Sworn and subscribed to before me this twenty-eighth day of September, 1915.

"Harry R. Bergen, Jr.,
(Seal) Notary Public N. J."

Mr. Record: Let us see if this suits you, Mayor: it is stipulated that the Exhibit C68 refers to the resolution which appears in the second part of Frank Thompson's affidavit that is on page 8, the last resolution appearing in the affidavit of Frank Thompson hereinbefore printed.

Commissioner Donges: You mean Frank Thompson refers——

Mr. Record: To a resolution.

Commissioner Donges: And that resolution is marked C68?

Mr. Record: Yes, in this big book.

Commissioner Donges: Not C69.

Mr. Record: No. This is another resolution. We have already put in the record, you might as well refer back to it and not turn to the big bill of complaint; there is no use putting it in again.

Mr. Katzenbach: I don't think there is any need of printing it or using it again. This refers to the affidavit and there is no objection—these affidavits might be taken with these affidavits (indicating) because otherwise you wouldn't understand these. In other words this stipulation ought to include the admission in evidence of the affidavits annexed to the bill of complaint.

Mr. Record: Of course, that is a large order. I don't know about that.

Mr. Katzenbach: If we are going to deal with affidavits; if you are going to make your answer in affidavits——

Mr. Record: I don't ask you to take the affidavits. I will produce our city officials here this afternoon and put them on the stand and ask them for two or three hours, solemnly put this in if you insist on it.

Commissioner Donges: What is C68?

Mr. Record: The point of this affidavit——

Commissioner Donges: You just put in C69.

Mr. Record: Just put in C69.

Commissioner Donges: What is C68?

Mr. Record: It is the resolution authorized by these directors which Frank Thompson says was received by the Common Council on such and such a day.

Commissioner Donges: That is the resolution rescinded by C69?

Mr. Record: Yes, that is it exactly.

Mr. Katzenbach: Yes. Wait a minute, we ought to have some understanding on this matter. These affidavits are in answer to the affiravits that were submitted with this bill of complaint, and of course to understand these affidavits you would have to read the affidavits annexed to the bill of complaint. There are in reality no disputed facts as I recall in this case at all.

Mr. Record: There is.

Mr. Katzenbach: What is that?

Mr. Record: I don't want to say disputed fact. I don't admit the fact that the Board of Directors ever rescinded that resolution. I don't admit that fact.

Mr. Katzenbach: That they couldn't rescind?

Mr. Record: No.

Mr. Katzenbach: Or didn't rescind.

Mr. Record: I mean as a matter of record in this case—you put in affidavits before and I did, all that you wanted of the affidavits; we had a hearing on affidavits and I didn't make objection to it. But here, if you are working to try to make the point you rescinded that resolution, I cannot admit you did.

Commissioner Donges: You require formal proof?

Mr. Record: Require formal proof.

Mr. Katzenbach: It seems strange that formal proof should be required of us.

Commissioner Donges: It is not required any more than is required of the other side. If you demand it——

Mr. Record: How can I admit that and how can you help admitting this? These are things that we can bring down.

Mr. Katzenbach: Just a minute ago you said the only thing that you objected to in the resolution rescinding is you didn't know when they were rescinded. As a matter of fact it may not be stated, I don't know about that; I state, take any date you want.

Mr. Record: I am not so sure, before we get through I will accept your proposition. I don't want in a running jump to put my neck in a noose.

Mr. Katzenbach: You are not putting your neck in a noose.

Commissioner Donges: I understand this, Mr. Record says he can bring down the city officials and prove the receipt of such communications for one or all of these and could prove by the records of the city in reference to certain Acts. He says that all of this information, and copies of the Acts are in these affidavits and for that purpose he introduces them. I understood there was no objection on your part.

Mr. Katzenbach: No, I had no objection to that.

Commissioner Donges: Mr. Record says he will agree to put in anything contained in your affidavits, as far as he now sees, with the exception of one thing. If you desire to have go into this record the fact the Board of Directors of the Trenton Street Railway Company rescinded the resolution adopted by them and known as C68, that he wants an opportunity to examine upon that rescission.

Mr. Record: Yes. I don't object to your putting in as evidence to this Board, as to what took place in the court. I am perfectly willing this bill of complaint and affidavits should go in that has been offered in the United States Court.

Commissioner Donges: That contains the statement there is a reservation——

Mr. Record: That is the evidence appearing in the United States Court.

Commissioner Donges: You have just now introduced a resolution known as Exhibit C69 which purports to be Act of the street railways com-

panies in rescinding the resolution passed some six years ago.

Mr. Record: No, I haven't. This is the point: The City Clerk says that in the bill of complaint filed with the Federal Court there is a statement that such and such a resolution was rescinded, or there is a statement that there is a rescinded resolution, is recited. The City Clerk says that never came here.

Commissioner Donges: Whatever it contains that fact appears in the case, there is an allegation on one side that such a resolution was passed and the clerk's affidavit is it was never received by the city.

Mr. Katzenbach: Yes, we agree to that, it was passed and never received by the city. We are perfectly willing to agree to that.

Mr. Record: I am not willing to agree it was ever passed, because I don't know.

Commissioner Donges: You think it is too vital to your case?

Mr. Record: Yes. I may take your view; you say I may put the date on them. I don't think these people come here and prevaricate, that isn't my point. It makes a big point to me when that was passed. I would like that fact to come out that it was passed six years ago and they never notified us. I would like that fact, if that was passed and accepted before they went into Trenton, I would like to know that fact. I don't want to guess at it, I want the facts.

Commissioner Donges: All we are now concerned in, as far as the record is concerned, is whether you can agree on a stipulation, if it is possible for you gentlemen to agree it shall go in now in the absence of formal proof.

Mr. Katzenbach: I understand Mr. Record is willing to admit all of the affidavits with the exception of that portion of the affidavit of Mr. Rigg with the statement that this resolution referred to as C69 had actually been passed by the Board of Directors of the Trenton Street Railway Company.

Mr. Record: I presume that is true, but just at this moment I don't want to admit that it has been accepted; as soon as I read those affidavits I assume that is what I will admit; but I won't admit their relevancy here; I won't admit them; I put my general objection to that and the Court allowed them to go in.

Mr. Katzenbach: That is as to the relevancy?

Mr. Record: Yes. I will agree to that, but I should like to run them over again and make dead sure about that. I won't put you to any trouble in proving a thing that is just a formal thing to prove.

Mr. Katzenbach: I thought that was all admitted, except as to relevancy.

Mr. Record: I think that is over my objection.

Mr. Katzenbach: Yes, over your objection.

Commissioner Donges: I think Mr. Katzenbach offered them and I think we received them.

Mr. Record: Yes, I think there was an objection to them.

Commissioner Donges: So all is in now on both sides.

Mr. Katzenbach: Yes, it really is. We don't want to take advantage of that. As far as this affidavit of Mr. Bird is concerned, I think that on that point

our position has always been that the resolution was prepared by the city and therefore—you were referring to the affidavit of Mr. Bird and if we were to produce proof that that resolution was rescinded I would ask you to produce proof that it was not tendered by the city, so as to give us a chance to cross-examine Mr. Bird.

Mr. Record: Yes, that would be fair.

Mr. Katzenbach: Mr. Bird says in his affidavit —

Commissioner Donges: It seems to me in a case of this importance if there is any material fact contained in any affidavit by either side that ought to be examined further into, that either side ought to have the right to call for the production of the witness for cross-examination.

Mr. Record: That is all right. I am giving these things, and you may call for cross-examination of any of these people.

Commissioner Donges: You might like Mr. Bird examined on this subject.

Mr. Katzenbach: Yes. I don't look at it as at all material.

Commissioner Donges: If it is you have the right to call him.

Mr. Katzenbach: That is the only one I would ask for. The others I think there is really no dispute on the questions of fact involved in the case.

Mr. Record: That was a disputed question of fact.

Commissioner Donges: You have the right to call the witness if you desire to have him examined on that point.

Mr. Katzenbach: Perhaps a few minutes conversation with Mr. Bird would clear that up. I would have to have Mr. Bird under oath.

Mr. Record: Mr. Stenographer, where was I, the Bird affidavit?

(The following read by stenographer):

"It is stipulated that the Exhibit C68 refers to the resolution which appears in the second part of the Frank Thompson, affidavit, that is on page 8."

Mr. Record: Which appeared as the second resolution recited in the affidavit of Frank Thompson hereinbefore set forth. That is merely identification; it is recited at length. When this Board comes to see this affidavit you go right there a page or two before and there it is. That is merely for convenience.

The next affidavit is the affidavit of Harry B. Salter page 24 of the Trenton Exhibit beginning with the words "Harry B. Salter" and ending with the words "Harry R. Bergen, Jr., Notary Public of N. J."

"Harry B. Salter, being duly sworn according to law, upon his oath deposes and says that he was City Clerk of the City of Trenton during the year 1909; that the ordinance referred to in Exhibit C68, printed on page 321 of Complainant's Bill of Complaint, was in the same words, letters and figures as the ordinance marked Exhibit C55, printed on page 304 of said bill, except that it did not contain the words 'at all times' as they appear in line 3 of section 1 of said Exhibit C55, which words were inserted by amendment adopted by the Common Council at a meeting of that body held on the eighth day of October, nineteen hundred and nine.

"Deponent further says that the agreement referred to in said Exhibit C68 was in the same words, letters and figures as the agreement marked 'Exhibit C70,' printed on page 325 of Complainant's Bill of Complaint.

"Harry B. Salter.

"Sworn and subscribed to before me this 30th day of September, 1915.

"Harry B. Bergen, Jr.,
"(Seal) Notary Public of N. J."

Mr. Record: The next affidavit—I don't care anything about the next affidavit. That is assessment for taxes. That is all in through Mr. Johnson's statement, so that don't need to come in again.

The next affidavit is the affidavit of Harry B. Salter appearing on page 27 of the Trenton affidavit and ending on page 29 of the affidavits with the words "Harry R. Bergen, Jr."

"Harry B. Salter, being duly sworn according to law, upon his oath deposes and says that he was City Clerk of the City of Trenton during the year 1909; that at a meeting of the Common Council held on the seventeenth day of September, nineteen hundred and nine, Clinton J. Swartz informed the Common Council that he had conferred with John A. Rigg, President, Ferdinand W. Roebling, Henry C. Moore, George W. Macpherson, General Counsel, and Peter E. Hurley, General Manager of the Trenton Street Railway Company, and that such meeting took place at the office of Ferdinand W. Roebling; that thereafter Mr. Swartz handed the City Clerk a letter received from President Rigg, which was read. Said letter read as follows:

" 'September 17, 1909.

" 'Honorable John D. Howell, President Common Council, Trenton, N. J.

" 'My Dear Sir—The officers of the Trenton Street Railway Company were waited upon by a committee of your body, consisting of yourself, Mr. Swartz and Mr. Mayers, with reference to securing a modification of the order recently issued pending the sale of strip tickets in the city of Trenton, and for such inquiry, upon consideration of the subject, the company has concluded to modify the order heretofore issued, and is willing to issue tickets at the rate of six for 25 cents, however, not to be sold upon the cars.

" 'We recognize that there are in our employ as conductors many men of proved integrity, and while there have been instances in which some conductors have taken advantage of the sale of tickets for their own behalf, nevertheless, those who have been honest have suffered through the conduct of others who are not as faithful in the discharge of their duties as they should be, and therefore, to relieve such conductors from being subjected to condemnation, we are not willing to permit the sale of such tickets upon the cars.

" 'We are willing, however, as said above, to reinstate the sale of tickets and to provide different places in the city of Trenton convenient to the general public, where such tickets can be procured with the least inconvenience to the public, and we are willing to co-operate with any committee of your body in determining and selecting such places.

" 'We would be willing to furnish and place on sale at the different large factories in this city tickets, which can be procured by the employees of such factory. Until such places are provided for the sale of tickets, they will be on sale at the company's office between the hours of 8 A. M. and 6 P. M., beginning tomorrow morning.

" 'Very truly yours,

" 'Trenton Street Railway Co.,

" 'John A. Rigg, President.'

"Deponent further says that between the said seventeenth day of September and the twenty-first day of September, nineteen hundred and nine, the said Trenton Street Railway Company placed strip tickets on sale at the rate of six for twenty-five cents at its principal office in the city of Trenton, and at a number of other places in said city of Trenton.

"Deponent further says that the limited sale of said tickets was unsatisfactory to the Common Council and the public.

"Deponent further says that on or about the twenty-third day of September, nineteen hundred and nine, the said Trenton Street Railway Company restored the sale of said tickets at the rate of six

for twenty-five cents on the cars operated by the company in the city of Trenton, and continued the sale of said tickets on said cars at said rate thereafter.

"Harry B. Salter.

"Sworn and subscribed to before me this 30th day of September, 1915.

"Harry R. Bergen, Jr.,
"(Seal) Notary Public of N. J."

Mr. Record: I have omitted one fact. This stipulation should follow the Thompson affidavit.

(Stipulation following Thompson affidavit dictated by Mr. Record.)

Commissioner Donges: I understand, Mr. Katzenbach, you agree to the stipulation.

Mr. Katzenbach: Yes, that is all right. I would suggest, however, there is no need of copying into the record all this book; it would be much better for the Board to use one of these printed forms.

Mr. Record: Well, that is all right enough. The affidavits are short, there should be a convenient memoranda for this Board and the Court above. These affidavits will be scattered. I would like to have that record just the way I have got it. It will pay.

Now, I would like to have entered: it is stipulated that on September 15, 1909, the Mayor of Trenton sent to the City Council the following message: Look at that and see whether you are willing to agree that that go in (handing Mr. Katzenbach paper); his message to the Council.

Mr. Katzenbach: Well, was it read on that date at all?

Mr. Record: It is immaterial about when it was read. It was sent on that day. It is part of the records of the City Clerk's office.

Mr. Katzenbach: I don't think we have any objection.

Mr. Record: You can correct it if I have the date wrong.

Mr. Katzenbach: Won't you look up as to the date of its receipt, because we don't know anything about that?

Mr. Record: Subject to correction then, copy in the letter of Mayor Madden appearing on newspaper extract as A.

"To the Honorable Common Council of the City of Trenton:

"Gentlemen—You, as individuals, no doubt are aware of the fact that the Trenton Street Railway Company, through its local management has announced its purpose of discontinuing its long-time policy of selling tickets to the public in strips of six for twenty-five cents. It is not necessary for me to say to you that this means a great hardship on the people of our city, and that its only purpose can be to increase the revenue of the company to the extent of many thousands of dollars annually, all of which must come out of the pockets of the people, and in most instances out of the pockets of those who can least afford to bear this increased burden. It does not seem to me that as a purely business proposition on the part of the company its announced policy is either fair or just to the people of the city, or even necessary from the standpoint of a business-like administration of the affairs of the company.

"I have already placed myself in communication with Mr. John A. Rigg, the president of the company, and informed him that unless an order abolishing the sale of these tickets was rescinded by noon today I should communicate with Common Council by a special message and take such other steps as

might be necessary or desirable to protect the people in their rights.

"I understand that the company in taking this step has given as an excuse that it has suffered some loss through alleged dishonesty of some of its employees. This, to my mind, is a puerile reason, and is not the real motive that prompts the company's action. I understand, further, that the company maintains that in this policy it is entirely within its legal rights. As a layman I am not qualified to pass upon the technical, legal side of this controversy, but it does seem to me that, inasmuch as this company has been selling strip tickets for years, and from the very beginning of its present charter's existence there is an implied contract upon the part of the company with the city to continue this practice. On this point I shall immediately ask for an opinion from our City Counsel, Mr. Charles E. Bird, and it is my purpose to do whatever I can as Chief Executive of the city to protect the people in every possible legal way.

"Moreover, I might say to you that I think the time for coddling this company has long since gone by. The company has one of the best-paying street railway properties in the United States and it should be forced to give the people a service that would show an adequate appreciation of the valuable franchise which it holds. According to the sworn statement of T. W. Grookett, Jr., treasurer of the company, for the year ending December 31, 1908, the Trenton Street Railway Company and its subsidiary concerns received as an income from passenger traffic the very large sum of $524,681.52, while the total amount expended for operating, superintending and managing the road for the year was $288,-619.13, leaving a net profit to pay interest on bonds and dividends on stock of, in round figures, $233,-000. The Trenton Street Railway Company and its subsidiary companies—the Trenton, Pennington and Hopewell Railway Company; the Trenton, Hamilton and Ewing Traction Company, and the Mercer County Traction Company—have a combined bond-

ed indebtedness of $2,985,000 and outstanding stock of $1,550,000. Just how much of this combined bond issue and capital stock of over $4,500,000 represents 'water' I do not assume to say, but I hardly think that any one will argue that such an immense amount of money has been actually invested in the construction and equipment of its roads. The Trenton Street Railway Company does not seem to be free from the modern system of making its property help support 'holding companies.' The Trenton Street Railway Company, it is generally understood, is owned largely by the United Power and Transportation Company, and the latter company, with the exception of an insignificant number of shares, is owned by the Inter-State Railway Company, which last February defaulted in the payment of interest on its bonds and which is now in the process of reorganization and has on its hands litigation directed toward the prevention of the plan of reorganization agreed upon. It is significant that the plan of reorganization contains a promise of increased receipts on the part of the companies it controls, and I cannot escape the conviction that the abolition of the sale of strip tickets in Trenton is part of the method by which these increased receipts are expected to be provided.

"I would call the attention of your honorable body to the fact that you have power to pass ordinances for the regulation of traffic by this company, and I think the time has arrived when there should be such additional regulations as would guarantee the people of Trenton better service, both as to schedules and as to the betterment of its tracks and cars.

"In the matter of improvement in the company's service I would call your attention to the fact that in a former message to your body I recommended an ordinance regulating the running of additional cars during the rush hours and the continuation of cars beyond the present hour at night when the trolley service in the city entirely ceases. I would also call your attention to the fact that an ordinance passed in Jersey City, requiring trolley companies

in that city to provide every passenger with a seat, was upheld by the courts as a reasonable regulation. It does not seem proper that the Trenton Street Railway Company, or any other company, should for the purpose of gain, inconvenience its patrons by the use of too few cars and the consequent overcrowding of the same.

"As the Trenton Street Railway Company is pursuing a policy of extracting from the people of Trenton the last pound of flesh, it behooves us, as representatives of the people, to make all possible exertion to protect the people in every reasonable right.

"Walter Madden,
"Mayor of Trenton.

"Trenton, Sept. 15, 1909."

Mr. Record: I offer another message of the Mayor of Trenton dated Trenton, N. J., September 17, 1909, which actually was read as annexed to another message which I am going to offer next. That is to say, according to his statement he sent one message to the Council one night and it was returned and next night sent another message another night stating he sent this message last night and it wasn't read, and he annexes that message to this message and both messages were read according to the record.

Mr. Katzenbach: According to the newspaper.

Mr. Record: I haven't any doubt about it. This is said to be so by Mr. Bird and the officials. I am assuming I can produce the original minutes if there is any doubt.

Mr. Katzenbach: No, I was just making an inquiry.

Mr. Record: I offer that and mark it "B," newspaper file under date of September 18th.

"Trenton, N. J., Sept. 17, '09.

"To the Honorable, the Members of Common Council of the City of Trenton.

"I have adopted an unusual method for calling you together, but the exigencies demand that I take this course, notwithstanding your body has its own rules for calling special meetings and as the elected representative of our citizens, and being as fully aware as I am of the predicament in which they have been placed by the Trenton Street Railway Company, I believe every member of you will promptly respond. You may lawfully act if you all appear. It will amount to a waiver of a call.

"The Trenton Street Railway Company, into which has been merged various subsidiary trolley lines, occupying our principal streets and deriving large profits from our citizens, has abruptly and arrogantly refused to further sell strip tickets at six for twenty-five cents, and has persisted in this course, although numerous and valiant efforts have been made to restore to our traveling public the former prevailing condition of affairs.

"The company pretends that the economic operation of the road required the present course, but a casual examination of their last annual report, which shows a net profit of over $233,000, explodes this claim.

"The Trenton Street Railway Company is a public servant, and not a public master, a role which it essays, and the time has now arrived and the point has been reached, where our city must assert its supremacy. The question confronting us now is, whether this company, which exists by our leave, shall arbitrarily dictate to our citizens, or be by us enforced into an appreciation and understanding that this city still controls its public highways.

"I promised in the call that I would point out a course which would drive the company into a realization of the duty which it owes to our city.

"The Trenton Street Railway Company was created by the consolidation of other companies one of which was the old City Railway Company, operating

the Broad Street, Perry Street, Centre Street and North Clinton Avenue lines. This corporation was formed as a steam railroad, and in my judgment never had and now has not the right to operate a street railway. In my opinion the rails on the streets mentioned are an unlawful encumbrance and burden which may be removed. The Trenton Street Railway Company inherited all the vices of the old City Railway Company. It has no additional elements which legalize its pretended rights to use our streets; hence, our remedy is obvious.

"An appeal to the court should be made to compel the present offending company to remove its tracks, and I recommend that a resolution be passed by your body, directing the law department of our city to at once institute such legal measures as will accomplish this end.

"I have given this matter serious consideration and hesitate to advise this drastic measure, in view of the capital involved belonging to some innocent investors, but our people have borne long and patiently the offensive attitude of this corporation, and have suffered and submitted to its domination until a halt must be called. I am,

"Very respectfully yours,

(Signed) "Walter Madden,

"Mayor."

Mr. Record: I offer another message of the Mayor dated September 21, 1909, which I mark as "C" on the newspaper file of September 22, 1909, and that refers to "B," says it is annexed.

Mr. Katzenbach: As I understand it, it is just simply the fact that these documents were received, and not the facts stated therein are correct.

Mr. Record: No.

Commissioner Donges: The Mayor sent the Council these several messages.

Mr. Record: He did not make proof of the facts, but he did send such a record.

Commissioner Donges: All you stipulate is the custodian of the public record if here produced he would present these documents as being from the public record.

Mr. Katzenbach: Yes.

Mr. Record: That is all I want of that.

"Mayor's Message.

"September 21, 1909.

"To the Honorable, the Members of the Common Council of the City of Trenton:

"Gentlemen—I am submitting to you herewith a statement in connection with a message previously drafted by me, which I had expected would be submitted to your honorable body on last Friday evening, September 17. The message I drafted on that occasion is herewith appended in connection with this communication.

"Since the drafting of this message I have been in receipt of a communication from Mr. Peter E. Hurley, general manager of the Trenton Street Railway Company, in which he promises, on behalf of the company, to agree to provide the people of Trenton with certain improvements in the trolley service which heretofore have been denied to the people of the city. Among these are specified the improvement of the company's roadbed, better regulations as to the use of open and closed cars, and the placing of extra cars in service during rush hours. This communication stipulates that the sale of strip tickets has been resumed as agreed upon between officers of the trolley company and Messrs. Swartz, Howell and Mayers, members of Common Council. But the already published information is to the effect that the sale of these strip tickets is to take place in a limited number of business places in the

city and not as heretofore, on the cars of the company.

"I believe that the paramount issue between the company and the people of the City of Trenton is the restoration of the sale of strip tickets on exactly the same conditions as to their place of sale that prevailed previous to the order of the company which provided for their absolute discontinuance. I believe, further, that the people will be satisfied with nothing short of an agreement to this effect that will be binding upon the company once and for all.

"As Mayor of the City of Trenton I shall be satisfied with nothing short of the restoration of the original condition, and I take this occasion to advise that unless the company agrees to this proposition I shall stick to my original determination to bring into court the validity of the company's franchise.

"These promises made on behalf of the company by General Manager Peter E. Hurley, to make improvements in the matter of the operation of the road, in the betterment of schedules and the elimination of flat wheels, etc., are only in a line with the company's obligations under their franchise, and these promises I do not look upon as a concession upon the part of the company. They are nothing more or less than a promise upon the part of the company to live up to its agreement with the city, and they in nowise appeal to me as a reason why the tickets should not be sold under all the conditions that existed prior to the company's order abolishing their sale entirely.

"In my message of last Friday, to which this is a supplement, I called attention to the fact that the company's franchise was open to serious attack in the courts, and I advised an appeal to the courts to compel the company to remove its tracks. I recommended the removal of the tracks from these streets upon which they were illegally laid. I reiterate these recommendations, and say to you again, once and for

all, that I believe the time has arrived when the people of the City of Trenton, through their legally chosen representatives, should take advantage of every legal opportunity for the purpose of compelling this company, which enjoys a valuable franchise, to give to our people not only a restoration of the sale of tickets on a basis of six for 25 cents, but also to give to them every other convenience and consideration that the people of Trenton have a right to reasonably expect, and that we have a right to legally enforce.

"Walter Madden, Mayor."

Mr. Record: All the rest are in in those affidavits. I think that is all of that.

Now I will call Mr. Swan.

MacCrellish & Quigley Co., Printers, Trenton, N. J

NEW JERSEY
Court of Errors and Appeals

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Prosecutors,
vs.
RALPH W. E. DONGES, JOHN J. TREACY AND JOHN W. SLOCUM, CONSTITUTING THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE INHABITANTS OF THE CITY OF TRENTON,
Defendants.

On Appeal.
On Certiorari.

Brief for the City of Trenton.

This appeal is prosecuted for the purpose of reversing the judgment of the Supreme Court affirming an order made by the Public Utility Commission forbidding the discontinuance by the Trenton and Mercer County Traction Corporation of the sale of six tickets for twenty-five cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

The opinion of Mr. Justice Swayze, filed in the Supreme Court and reported in 101 *Atl.* 562, has been printed separately for the convenience of the Court, and is submitted with this brief.

New Jersey State Library

Mergers, Consolidations and Leases of Trenton Street Railway Companies.

Trenton Horse Railroad Co.,
Inc. Mch. 9, 1859.
City Railway Co.,
Inc. Sep. 6, 1875.
Hamilton Township St. R. Co.,
Inc. Sep. 12, 1890.
South Clinton Ave. and Broad St. R. Co.,
Inc. Oct. 28, 1890.

Merged into
Trenton Passenger R. Co.
By Consolidation
Sep. 21, 1891.
Pennington Ave. Passenger R. Co.,
Inc. Sep. 24, 1897.
Mulberry St. R. Co.,
Inc. Sep. 24, 1897.
Ewing Passenger R. Co.,
Inc. Mch. 28, 1898.

Merged into
Trenton Street R. Co.
By Consolidation
June 28, 1898.
Mercer County Traction Co.,
Inc. July 31, 1899.
Trenton, Hamilton and Ewing Traction Co.,
Inc. Aug. 11, 1905.

Leased to Trenton and Mercer Co. Traction Co.,
Inc. Oct. 5, 1910.

STATEMENT.

On the opposite page there is arranged for the convenience of the Court a statement which shows the several combinations and leases of the Street Railway Companies operating street railways in the City of Trenton.

Some twenty years ago one of the predecessors in title of the prosecutor inaugurated the practice of selling six tickets for twenty-five cents in the City of Trenton, and this practice was continued until September, 1909, when it was discontinued. But after negotiations with the City officials it was restored in the same month, and has since been followed by the various operating companies. The said negotiations resulted in October, 1909, in the passage of an ordinance by the City requiring the sale of six tickets for twenty-five cents, which ordinance the company agreed to in advance, in writing, and promised to accept by a confirmatory agreement after it should be passed. The confirmatory agreement was never actually executed.

On August 13, 1915, prosecutor notified the City and the Board of Public Utility Commissioners of New Jersey, in writing, of its intention to discontinue the sale of such tickets. The said Board, immediately upon receipt of the said notice, caused a copy of the same to be sent to the Mayor of Trenton with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action of the company, an opportunity would be afforded on August 17, 1915. The Board also caused a letter to be sent to prosecutor acknowledging receipt of the notice from the company, and enclosing a copy of the letter sent to the Mayor of Trenton. On August 17 the company did not appear before the Board, but on application of the City the Board made an order suspending the pro-

posed change until November 16, 1915, and fixing a day for the hearing on the merits. After the making of this order, prosecutor filed a bill in the District Court of the United States for the District of New Jersey with affidavits annexed, in which bill it prayed that "the Board of Public Utility Commissioners of New Jersey may be enjoined from continuing the order of August 17, from conducting a hearing, and from taking jurisdiction of the matter at all;" and also praying for an injunction against the City and its Mayor from enforcing the penalty prescribed in the ordinance. This bill of complaint is Volume II of the State of the Case herein. Upon the filing of the bill an application was made to the Court for a preliminary injunction, upon which an order to show cause why the injunction prayed for should not be allowed was granted, but without any *ad interim* restraint. This application was heard before Circuit Judge Woolley and District Judges Rellstab and Haight, and that Court on October 14, 1915, filed it opinion refusing the preliminary injunction for the reasons which appear in the opinion, the substance of which is hereinafter quoted.

This judgment was appealed to the United States Circuit Court of Appeals, which sustained the judgment of the District Court.

After judgment was rendered in the United States District Court, the hearing before the State Board of Public Utility Commissioners was taken up. Witnesses were heard upon both sides, upon all of the points involved, at the conclusion of which an order was made by the Board of Public Utility Commissioners ordering the prosecutor to continue the sale of six tickets for a quarter. This order appears in the State of the Case, page 844.

The case came before the court below on certiorari of this order. There were thirty-nine reasons assigned by the prosecutor, but they were all reduced by us to the following legal propositions:

First: That the Board of Public Utility Commissioners had no jurisdiction to make the preliminary order of August 17, 1915, or the final order of January 11, 1916, because the prosecutor had no notice of the order of August 17, 1915, and because it has a contract with the City of Trenton authorizing it to charge the five-cent fare.

Second: That the final order of January 11, 1916, was not justified by the evidence in the case.

Third: That the lessor companies of the prosecutor were not made parties to the hearing.

To these main contentions of the prosecutor, the answer of the City of Trenton in substance is:

First: That the Public Utility Commissioners had jurisdiction over this case under the Public Utility Statute; that they had the power to make the order of August 17, 1915. But if the said Board had no such power, the duration of the order was three months and the time has now expired, and therefore there is nothing before this court on that point. That prosecutor has no contract with the City of Trenton, but on the contrary is bound by the provisions of the ordinance passed by the City of Trenton on October 22, 1909, requiring the Traction Company to sell six tickets for a quarter, to which prosecutor in writing expressly agreed, and that such ordinance and agreement constitute a binding contract now in force.

Second: That the order of January 11, 1916, is in accordance with the evidence taken in the case.

Third: That the lessor companies have no interest in this case, as prosecutor has leased their properties under a guaranteed rental, and they are not, therefore, proper parties to this controversy.

Fifty-one reasons are assigned for reversal in this Court, but as none of them presents any new feature, they too are reduced to the three legal propositions already stated for the purpose of this argument.

And, further, as we understand it, this Court will

not consider on appeal a point not raised in the Court below.

POINT I.

IT IS IMMATERIAL WHETHER THE ORDER OF AUGUST 17, 1915, WAS LEGAL; IF MATERIAL, IT WAS LEGAL.

As this order was a temporary suspension of the contemplated action of the prosecutor in discontinuing the sale of the six tickets for a quarter, and the three months of its duration having now passed, it seems idle to discuss the legality of the order.

If the Court, however, considers the point material, the claim of the City of Trenton is, that the company had ample notice and opportunity to be heard. The company itself invited the jurisdiction of the Board by forwarding a letter to the Public Utility Commission notifying the Commission that it intended to withdraw the sale of these tickets upon a specified day (see Case, Vol. 11, *Exhibit C 62, page* 308, letter of August 13, 1915). The forwarding of this letter was a recognition by the company of the power of the Public Utility Commission in the premises, even if the letter itself disclaimed the Public Utility Commission's power over the subject matter, otherwise there was no reason to send it. Immediately upon the receipt of this letter the Public Utility Commission sent a letter to the City of Trenton notifying the City of Trenton of the receipt of this communication from the prosecutor, and appointing Tuesday, August 17th, at eleven o'clock in the morning as the time, and the State House, at Trenton, as the place, where the said Public Utility Commission would sit for the purpose of hearing and considering any application that the City of Trenton might wish to make upon the subject matter contained in the letter from the prosecutor to the Public Utility Commission. This letter appears as *Exhibit C 64, page* 310,

Case, Vol. II. The Commission also caused a copy of this letter to the City to be sent to the Trenton and Mercer County Traction Company, as appears by *Exhibit C 63, page* 309, Case, Vol. II, letter of August 13, 1915, by the Public Utility Commission to the Trenton and Mercer County Traction Company. The transmission to the prosecutor of a copy of the letter from the Commission to the City was a direct notice that at the time and place mentioned therein the subject matter would be taken up and the City, as the representative of the people who were affected thereby, would be given an opportunity to apply for such order as might be reasonable in the premises. This not only was an adequate notice, but it at least was information that on such a day they would have an opportunity to be heard. As reasonable men they were charged with the knowledge that the public officials of Trenton would of course oppose, as they did so strenuously in 1909, the withdrawal of these tickets, and that they would apply to the Commission at the time and place mentioned for some order that would continue the issuing of these tickets until the whole matter could be finally heard.

But the complete answer to this claim of the prosecutor is set forth with reasoning that is conclusive in the opinion of Judge Haight in the United States District Court case, from which we quote:

> "The second ground requires a determination as to whether the order complained of was in fact made without notice to the plaintiffs and without affording them an opportunity to be heard, and if so, whether notice was necessary before the Board could have legally made it. The Board of Public Utility Commissioners was created by an act of the New Jersey Legislature, approved April 21, 1911 (*P. L.* 1911, *p.* 374), and was thereby vested with certain defined powers; among them to fix just and reasonable

rates to be charged by various public utilities, included in which are street railway companies, whenever it should determine any existing rate to be unjust, unreasonable or insufficient, and to hear and determine whether any increase, change or alteration in rates, which might thereafter be made by any public utility, would be just and reasonable. The Board was also vested with power, 'pending such hearing and determination' of the latter question, to order, for a period not exceeding three months, the suspension of the increase, change or alteration until it should have approved the same. It is by virtue of the last-mentioned power that the Board presumed to act in making the order in question. After the lessee company sent the notification to the Board of its intention to discontinue the sale of six tickets for twenty-five cents, the latter caused a copy of the same to be sent to the Mayor of the City with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action by the company, an opportunity would be afforded on August 17. On the same day the Board caused a letter to be sent to the lessee company acknowledging receipt of the notice, asking when it proposed to make the change, and enclosing a copy of the letter sent to the Mayor. The company was not represented before the Board at the hearing, and as far as appears, was not notified whether the City proposed to take any action or make any motion before the Board on the date specified, or otherwise. On that date, however, the City was represented, and on the motion of its solicitor the order in question was made. It thus appears that the only notice the plaintiffs had was that on a certain day the Board would hear any motion that the City intended to make; but

they were never notified that the City intended to make any motion whatsoever or what it would be, and were afforded no opportunity to defend against the motion which was made and the order which the Board entered. Under these circumstances, if notice and hearing were necessary prerequisites, we think the plaintiffs were not given such notice or afforded such an opportunity to be heard in respect to the action which was taken as to satisy the 'due process of law' clause of the Fourteenth Amendment. But we think that the statute creating the Board and defining its powers authorized an order of suspension to be made, without notice of hearing. The powers of the Board, so far as are necessary to be considered, are conferred by Sections 16 and 17 of the act. Section 16 provides: 'The Board shall have power'; then follows, in eleven separate paragraphs, an enumeration of the powers. In some of these paragraphs the exercise of the power is expressly limited to 'after hearing'; in others to 'after hearing upon notice.' Section 17 provides: 'The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined'; then follows, in eight separate paragraphs, an enumeration of powers. It thus appears that the Legislature has carefully defined when a hearing and notice are necessary. The last of the paragraphs of Section 17 confers two separate powers: one to hear and determine, either upon complaint or upon the Board's own initiative, whether an increase, change or alteration in any existing rate is just and reasonable, and the other to suspend, for a limited time, such increase, change or alteration, 'pending such hearing and determination.' The latter power is expressly conferred in so many words, and by a separate sen-

tence, in which there is no requirement that the order can be made only after hearing and notice. It is a separate power, deemed necessary by the Legislature, no doubt, to give more efficacy to the former. The reason for granting it, as well as the context, leads us to the conclusion that it is not limited or qualified by the opening paragraph of Section 17, before quoted. That paragraph, we think, refers to the powers to determine whether the proposed change would be just and reasonable. It is difficult to understand why the Legislature should have required two hearings on the same question. If no other question were presented than that of reasonableness of the rate, as would most often be the case, the first hearing, to be of any effect whatever, must, of necessity, be practically the same as the second. On the other hand, it is reasonable to assume that the Legislature would wish to clothe the Board, to which it had delegated the State's rate-making right, with power to preserve the *status quo* until there could be a hearing and determination upon the merits, without the delay incident to notice and hearing. This is the same power exercised by and conferred upon the Interstate Commerce Commission by the Act of June 18, 1910 (36 *Stat. at L.* 552). Nor do we doubt the right of the Legislature to grant such a power, without violating the Fourteenth Amendment. Nothing more was done than to clothe a quasi-judicial body with a power which has always been exercised by courts of competent jurisdiction."

POINT II.

THE PUBLIC UTILITY COMMISSION HAS JURISDICTION OVER THE SUBJECT MATTER IN THIS CASE. NO ACTION OF THE CITY OF TRENTON SHOWN BY PROSECUTOR COULD OR DID DEPRIVE THE STATE OF NEW JERSEY OF ITS RESERVED RIGHT TO FIX JUST AND REASONABLE RATES.

We content ourselves with a brief statement of the principles involved in this case and a citation of the authorities, relying upon the brief of the counsel for the Public Utility Commission for a more extended discussion of this point.

(a) The power to fix and regulate the rates charged in the conduct of a business affected with a public interest is an undoubted power of government continuing in its nature. *Stone* v. *Farmers' Loan & Trust Co.*, 106 *U. S.* 307.

(b) Since this power is a power of government it cannot be lost by nonuser, nor is it affected by the fact that before the power is exercised the income of the business subject to the power has been pledged for the payment of debts incurred, or that the property employed in such business has been leased to a tenant that relied upon the earnings for the means of paying the stipulated rent. *Chicago, Burlington & Quincy R. R. Co.* v. *Iowa*, 94 *U. S.* 155; *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164.

(c) If the State, directly or through any municipal corporation, has power to establish by an inviolable contract the rates to be charged in a public utility, it can only be where the language is express and the time of the contract limited to a definite term, not grossly unreasonable in point of time. *Stone* v. *Farmers' Loan & Trust Co., supra; Home Telephone & Telegraph Co.* v. *Los Angeles* 211 *U. S.* 265.

(d) The State did not, by the statutes referred to in

the bill of complaint—which in general terms grant authority to fix rates—renounce its governmental power to fix and regulate rates; the only authority granted was the authority in general terms to fix fares. By such general language the State does not part with its governmental power to fix and regulate rates. *Stone* v. *Illinois Central Railroad Co.*, 116 *U. S.* 347; *Stone* v. *Farmers' Loan & Trust Co.*, 116 *U. S.* 307; *Chicago, Milwaukee & St. Paul Railway Co.* v. *Minnesota*, 134 *U. S.* 418; *Minneapolis & Eastern Railway Co.* v. *Minnesota*, 134 *U. S.* 467; *Southern Pacific Co.* v. *Oregon Railroad Commission*, 230 *U. S.* 537; *Milwaukee Electric Light Co.*, 35 *Sup. Ct. Rep.* 820; *Duluth St. Railway Co.* v. *Railroad Commission of Wisconsin*, 152 *N. W. Rep.* 887.

(e) The fixing of a maximum rate of fare by the statute and ordinances referred to in the bill of complaint, did not create an inviolable contract as to rates which prevented the subsequent exercise by the State of the power to fix rates less than said maximum rates, provided such lesser rate is a just and reasonable one. *Dow* v. *Beidelman*, 49 *Ark.* 325, 5 *S. W.* 297; *Georgia Railroad & Banking Co.* v. *Smith*, 128 *U. S.* 174; *Rogers Park Water Co.* v. *Fergus*, 180 *U. S.* 625; *Knoxville Water Co.* v. *Knoxville*, 189 *U. S.* 425.

(f) The Legislature of the State of New Jersey has not conferred upon the municipalities of this State any power to enter into inviolable contracts with street railway companies establishing rates of fare and suspending the State's power to fix and regulate rates. *Home Telephone Co.* v. *Los Angeles*, 211 *U. S.* 265; *Wyandotte Gas Co.* v. *Kansas*, 231 *U. S.* 623.

(g) If the municipal corporation was vested with the power to engraft upon the franchises of the Railway Companies a provision limiting the rate of fares as a condition of the use of the highways for street railway purposes, the act of the municipality in imposing such liability was that of agency of the State in granting the

corporate franchises, and is therefore subject to the power reserved to the State by constitution and by statute, to amend, alter or repeal corporate statutes. The enactment of the statute creating the Board of Public Utility Commissioners and vesting in the Board power to fix just and reasonable rates whenever it determines existing rates to be unjust or unreasonable and temporarily pending hearing to suspend proposed increases in existing rates, was the exercise by the State of its reserved power to amend, alter or repeal corporate franchises. *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164; *San Antonio Traction Co.* v. *Altget*, 200 *U. S.* 304; *City of Mani* v. *Manitowac & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. W.* 925; *Louisville & Nashville R. R. Co.* v. *Railroad Commission of Kentucky*, 231 *U. S.* 298.

(h) A special statutory enactment from the governmental power of the State to fix and regulate rates does not pass to a new corporation succeeding others by consolidation or purchase in the absence of express direction to that effect in the statute.

The same rule is applicable where the constituent companies are merely owned and operated by one of them as authorized by the legislation. An enactment held by the latter will not pass unless so expressly provided. *St. Louis & San Francisco Railway Co.* v. *Gill*, 156 *U. S.* 649; *Matthew* v. *Board of Corporation Commissioners of North Carolina*, 97 *Fed.* 400; *Peoples Gas Light & Coke Co.* v. *Chicago*, 194 *U. S.* 1.

(i) Where the action of the municipality does not establish an inviolable contract suspending the State's power to fix and regulate rates, the power of the Board of Public Utility Commissioners is complete. The Board may, in such case, fix a just and reasonable rate, whenever it determines the existing rate to be unjust and unreasonable, notwithstanding the fact that the existing rate has the sanction of prior municipal action assented to by the company. A just and reasonable

rate so fixed by the Board may be less than that limited by the prior municipal action, or may exceed the rate so limited. This follows from the fact that the existing rate may be unjust and unreasonable to the community served because it affords more than a fair return, or unjust and unreasonable to the utility furnishing the service because it fails to afford a fair return. The power conferred upon the Board is, Public Laws 1911, page 374, Section 16:

> "(c) To fix just and reasonable rates * * * whenever the Board shall determine any existing rate * * * to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential."

City of Dawson v. *Dawson Telephone Co.*, 137 *Ga.* 62, 72 *S. E.* 508; *City of Manitowoc* v. *Manitowoc & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. E.* 925; *Milwaukee Electric Railway & Light Co.* v. *Railroad Commission of Wisconsin*, 153 *Wis.* 592, 142 *N. W.* 491; *City of Benwood* v. *Public Service Commission (W. Va.)*, 83 *S. E.* 295, *L. R. A. (N. S.)* 1915 *C.*

(j) Section 17 (h) of the Public Utility Act clothes the Board with power pending a hearing and determination on the justice and reasonableness of a proposed increase in any existing rate, or change or alteration in any existing classification, to order the suspension of such increase, change or alteration for a period not exceeding three months.

The statute does not make the exercise of the power of suspension dependent upon notice and hearing as to whether or not the power shall be preliminarily exercised in a specific case.

In this respect it resembles the Interstate Commerce Act.

No constitutional provision makes notice and hearing a prerequisite to the exercise of the power of suspension.

See *Home Telephone and Telegraph Co.* v. *City of Los Angeles*, 211 *U. S.* 265, 278.

POINT III.

ORDINANCE OF CITY OF TRENTON OF OCTOBER 22, 1909, REQUIRING SALE OF SIX TICKETS FOR A QUARTER, WAS A CONTRACT SUPERSEDING PREVIOUS CONTRACTS, IF ANY EXISTED.

Even if the ordinances relied upon by the prosecutor constituted a contract, that contract was abrogated by the ordinance of October 22, 1909. The following undisputed facts in the case conclusively established this contention.

For many years prior to September, 1909, the Trenton Street Railway Company (then the operating company), and the constituent companies which were merged into it, had voluntarily adopted the practice of selling six tickets for a quarter, each ticket good for a ride within the limits of the City of Trenton. That on Monday, September 13, 1909, an announcement was made on behalf of the company, then operating the Trenton Street Railway system, that no more strip tickets would be sold by the conductors after 6 P. M., on the 15th day of September, 1909, and on the said 15th day of September, the actual sale of the said tickets was discontinued in accordance with said notice. That the announcement of the purpose of the company to withdraw the sale of these tickets and the actual withdrawal of the same, aroused widespread indignation among the citizens and public officials of the City of Trenton. The action of the company became the leading news feature of the local newspapers from the 13th day of September, daily, until the whole matter was settled by the passage of the ordinance re-establishing the sale of the tickets on October 19, 1909. The subject was taken up by the Chamber of Commerce, of Trenton, and the Merchants' Association of that City, and by the Mayor and by the Common Council.

The Mayor of the City addressed strong messages

to the Common Council upon the subject of the withdrawal of these tickets, in substance, reciting that the company had grossly violated the provisions of the City ordinances in respect to the schedules of its cars, in the matter of running old and unsanitary and flat-wheeled cars, in the matter of running cars upon parallel tracks in the same direction, and called attention to various other violations of the City ordinances and instances of poor and inadequate service.

The Mayor, also, in a special message directed to the Council, raised the point that some of the company's franchises were probably void, and that a legal action would result in their being declared without any rights upon certain of the streets of the City, and suggested that the City should proceed by appropriate legal action to have these franchises set aside.

The result was such an aroused public opinion that representatives of the City and representatives of the company had several conferences from day to day.

As a result of these conferences the President of the Street Railway Company, on September 18, notified the Common Council that the Company was willing to compromise the strip ticket matter by restoring the sale of the strip tickets, not on the cars, but at certain stores or other places within the city limits. This compromise did not satisfy public opinion or the public officials, and various members of the Common Council announced that at the Council meeting to be held on Tuesday evening, September 21, 1909, they would introduce resolutions inaugurating an attack upon the company's franchises, and looking to the enforcement of various ordinances of the City as to better service.

As a result of all these influences assurances were made by the company to the Common Council on the evening of its meeting on September 21, that the tickets would be restored for sale upon all the cars the following Friday.

At said meeting a resolution was adopted to which the attention of the Court is particularly directed. It recited that in the ordinances of the City granting to the company operating the street railway and its predecessors the right to construct and operate street railway lines in and upon the public streets of the City of Trenton, the City reserved the right to alter or amend the same at any future time whenever in the judgment of the Common Council it should become necessary for the public good so to do. It recited that in said ordinances, or some of them, it is provided that no such alterations or amendments shall be made without giving to the Railway Company affected thereby one month's written notice. It recited that in the judgment of the Common Council it is necessary for the public good that the existing ordinances should be altered or amended so as to provide for the uninterrupted sale by the company of tickets at the rate of six tickets for twenty-five cents, or that in lieu of such amendment or alteration, a new ordinance should be passed requiring the sale of such tickets by the company upon the terms aforesaid, provided the company was willing to waive, in writing, one month's notice thereof, to which it was entitled, and signify its willingness to enter into a written contract or agreement with the City of Trenton accepting the terms of such proposed new ordinance, and agreeing to comply with the requirements thereof.

The resolution then proceeds to designate five members of the Common Council to act as a committee to confer with the officers of the Trenton Street Railway Company relative to the said matter.

The resolution further provided that if the company should fail within ten days to give such written waiver and signify its willingness to enter into a written agreement, that the City Clerk should forthwith give one month's written notice to the company of the intention of the Common Council to alter and amend the ordinance in the manner hereinbefore described.

The resolution further provided that in the event that the company should waive such notice and make such agreement and accept the terms of the new ordinance, that the City Counsel be directed to prepare a draft of such proposed new ordinance for introduction at the next meeting of the Common Council.

As a result of the passage of this resolution and the other influence hereinbefore described, on Wednesday, September 22, the Street Railway Company actually restored the sale of the strip tickets on all of its cars.

The committee appointed by the Common Council accompanied by the City Counsel, Mr. Charles E. Bird, met the representatives of the company in conference, and in such conference it was agreed that the sale of the six tickets for twenty-five cents should be continued by the company, and that a formal agreement to that effect should be made between the City and the Company. At this conference the company agreed that the sale of the strip tickets, which in fact had been theretofore resumed, as before stated, should be continued for the future, and that the company stood ready to take whatever action the City requested in order to make the obligation to sell these strip tickets binding upon the company in the future. It was thereupon arranged that the Board of Directors of the company should pass a resolution waiving its right to receive from the City any notice relating to the passage of a new ordinance providing for the sale of the said strip tickets, and agreeing to the adoption of a new ordinance to that effect, and further agreeing that when the ordinance was passed the company would execute another written agreement ratifying the said ordinance. In accordance with this arrangement the Board of Directors of the Trenton Street Railway Company, on the 4th day of October, 1909, adopted the resolution which appears as complainants' *Exhibit C 68*, page 321 of complainants' bill of complaint in the District Court case. (Case, Vol. II.) The attention of the Court is particularly directed to

this resolution. *It recites that the City in its several street railway ordinances has reserved the right to alter or amend such ordinances.* It recites the provision of the ordinance that the company shall have one month's written notice of any proposed amendment. It recites the resolution of the Common Council at the meeting held on the 21st day of September, to which reference has been heretofore made under this point, notifying the company of the desire of the Common Council to amend the existing ordinances or to pass a new ordinance, providing for the sale of strip tickets. It recites that the amendment of the several ordinances would involve a greater expense and delay than would be necessitated by the passage of a new ordinance. It recites that the City Counsel, on behalf of the City, has submitted to the company a draft of such proposed new ordinance, and of a written form of agreement to be executed by the Company, of which copies are mentioned as attached to the resolution, and *that the Board of Directors have fully considered the premises, and are willing to aid in the speedy passage of the proposed new ordinance.* The resolution then provides that the company *waives all right to receive any notice relating to the passage of the said new ordinance,* and that the proper officers of the company are directed to transmit to the said City a duly authenticated copy of the resolution.

The resolution further provides that immediately after the passage of the said new ordinance by the City, substantially in the form embodied in the copy annexed to the resolution, the proper officers of the company are directed execute an agreement in form substantially similar to the draft of the said agreement annexed to the resolution. This resolution of the directors was transmitted to the City on or about October 2, 1909.

Annexed to this resolution was a draft of the ordinance and of the subsequent agreement that the company was to execute after the passage of the ordinance, which ordinance is the ordinance in question in this

controversy and is complainants' *Exhibit C 55*, page 304, of the bill of complaint, in the U. S. case (Case, Vol. II), and which agreement is appellants' *Exhibit C 70*, page 325, of the bill of complaint in the U. S. case (Case, Vol. II).

On the 19th day of October, 1909, the said ordinance in the form recited in the resolution of the company's directors, was passed by the Common Council and approved by the Mayor on October 22. This is the ordinance which is in question in this case, *Exhibit C 55*, page 304, of complainants' bill of complaint in the U. S. case (Case, Vol. II). It provides expressly that the Street Railway Company shall be required to sell at all times, upon all of its cars, strip tickets at the rate of six tickets for twenty-five cents, and that the Mayor of the City shall be authorized to revoke the license of any car operated by the company upon which tickets are not sold. This ordinance was introduced October 5, 1909, referred to the proper committee, and passed October 19, 1909, and approved October 22, 1909.

Here, then, was an agreement reached after conferences between the representatives of the City and the representatives of the company, and carried out in writing in accordance with the verbal arrangements made by the representatives of the City and of the company respectively. The company agreed, by resolution of its directors, to waive any right to any notice that it might have of the intention of the City to pass this ordinance, and agreed that the City might pass it, and that the company would execute a written agreement after it was passed formally accepting its terms, and the officers of the company were authorized to execute such an agreement *immediately* upon the passage of the ordinance by the Common Council and its approval by the Mayor.

We insist that these several actions by the company and the City constituted an agreement on behalf of the company to maintain the sale of these tickets upon

all of its cars as long as it should exercise its franchises.

The company attempts to escape from the obligation of this contract by asserting two defenses: First, that it was misled into making the contract by the recital in the resolution adopted by the company's directors to the effect that in all of the ordinances of the Common Council to the company and its predecessors, the right was reserved to amend such ordinances. Our answer to this is that if said recital was a material fact in the negotiations and in the agreement, then of course it was the company's business and that of their legal advisers to ascertain whether said recital was true in fact or in law. If it was not a material recital then it does not affect the agreement. It is therefore immaterial whether this recital is as a matter of fact true or not true.

This claim of ours is absolutely clinched and proved beyond any discussion by the statement of John A. Rigg, General Manager, or whatever he was of the company, in his affidavit annexed to the bill of complaint in the U. S. (Case, Vol. II, page 63), wherein he specifically states

> "that the Trenton Street Railway always claimed that the City of Trenton had no right to alter or amend the ordinances * * * so as to in any way lessen the amount which the company had the right to charge for transportation of passengers * * * under said ordinances."

Our claim that this recital was not a material part of the agreement and did not enter into the company's mind is again confirmed by the first recital in the form of agreement which the company agreed to execute after the passage of the ordinance (complainants' *Exhibit C 70*, page 325, Case, Vol. II). In that agreement the following recital appears at the top of page 326:

> "Whereas, in and by the several ordinances aforesaid, *or some of them*, the right was reserved by the said party of the second part to

> alter or amend said ordinances at any future time, whenever, in the judgment of the Common Council of said City, it should become or be necessary for the public good so to do."

There is no possible denial of the fact that this right was reserved as to some of the ordinances of prosecutor, or its predecessors. The company's directors had this agreement in front of them when they passed their resolution drafted by their own counsel, and this agreement was annexed to the said solution. Therefore the claim that they were misled by the recital that all of the ordinances contained this provision falls to the ground.

As another defense to the validity of this solemn agreement, the company alleged a failure of consideration. Our answer to this claim is, that there was a most substantial and vital consideration that passed from the City to the company in return for this agreement. The consideration was the removal of the public and the official hostility to the company. The Mayor had publicly called upon the Council in a special message to attack the company's franchises; that the Council had started measures looking to compelling the company to buy new cars and to abolish flat wheels, and live up to its schedule, and to adopt new and reasonable schedules, and to twelve or thirteen other points which the City had raised as against the company's service or obligations under its franchises. It was this wave of public indignation and this threat of adverse City action that caused the company to yield. This is expressly proved by the assertion of General Manager Hurley in his letter to the Council, which was delivered on the evening of September 21st, wherein he says specifically:

> "We are desirous of doing everything in our power to meet the demands of the citizens, realizing that their good will is our greatest asset."

The good will of the public, says the Manager of the company, is the chief asset of this company. When by the making of this agreement the animosity of the public was removed, and its good will was won back, the company obtain the thing which was the real consideration for the making of the agreement.

The company therefore received its consideration, and the claim that its action was without consideration is therefore without force.

The company further claims that after the passage of the resolution by the Board of Directors waiving the notice in the ordinance, and agreeing to accept its provision and execute the contract to that effect, it discovered that the recital in the said resolution of their Board of Directors was untrue, and subsequently to the passage of said resolution rescinded the same. This resolution of rescission is *Exhibit C 69*, page 322 (Case, Vol. II). This claim is entirely without force if the foregoing reasoning is sound. If the recital in the resolution of the Board of Directors was passed upon by their own counsel, and they had full knowledge of its meaning, or if the recital was immaterial and was not a material part of the agreement, then it was impossible for the company to rescind the agreement after they had received the consideration, to wit, the restoration of public favor, and after the city had performed its part by the passage of the ordinance agreed to beforehand, and stopped proceedings to invalidate the company's franchise.

The resolution passed by the Board of Directors agreeing to execute the subsequent agreement after the City should act by the passage of the ordinance, simply put the company in the position, after the passage of the ordinance, that they could have been then and could now be compelled to execute the agreement agreed to be made. The company after it had received the benefit which the agreement to submit to the ordinance brought them in the way of the cessation of public agitation,

and in the fact of the abandonment by the City of the proposed attack upon the franchises, could not thereafter refuse to execute the agreement to which it had bound itself. As a matter of fact, the execution of this agreement was a mere formality. It is obvious that its execution was provided for merely that there should be additional evidence of the agreement between the City and the company.

The prosecutor does not claim that it has ever notified the City that it had rescinded the said resolution. All that appears is that the confirmatory agreement was never executed.

This amounts to a fraud upon the public. There is no other way to properly characterize it. If these Directors have known all of these years that the agreement they made with the City was void, and have not so notified the City, they have put the City in a false position, and have induced it to rest secure in the belief that the agreement between the City and the company was a valid one, and they have obtained all of the advantages in the way of a favorable public sentiment, and immunity from official attack, which the concealment of their position has brought them.

During all of those years they have sold these tickets they have acted in exactly the same way that they would have acted if they had actually executed the confirmatory agreement, which they failed to execute. We submit that this in any event is a ratification, in whole, of the agreement which they had made with the City, and is of equal binding force as if they had executed the confirmatory agreement which they failed to execute.

The cases cited in support of the prosecutor's position that there was no contract until the executory agreement was signed, do not fit this case at all. All these cases go upon the supposition that the minds of the parties have not met until the execution of the final agreement. They are all cases where only a preliminary

and general understanding was reached in the first instance, subject to be revised and modified, and these revisions and modifications to be stated in a subsequent agreement. In this case the minds of the parties met, and when the City Council passed the ordinance and sent a copy of it to the company, and the company by formal resolution recited the ordinance, expressly indicated its assent to its provisions and promised to execute not a modified agreement, but in the exact form annexed to the resolution. If the City had changed its ordinance in any material part after the passage of this resolution by the Board of Directors of the company, then there might be some force to the claim that the minds of the parties had not finally met.

Finally, there was no necessity for any specific consideration in this case. The City and the company had relations which had been established by ordinance. These relations were mutual. It is well-established that when parties to an agreement modify an existing agreement that the modification of the agreement is in itself the consideration, or is evidence of mutual advantages which constitute the consideration.

That these several acts constitute a contract between the Trolley Company and the City is supported by the case of *Jersey City* v. *Jersey City and Bergen Railroad Company*, 70 *N. J. L., page* 360. This was a case where provisions were incorporated in the ordinance requiring the company to pay license fees.

POINT IV.

Ordinance of October 22, 1909, Valid as an Ordinance if Not as a Contract.

If the facts set out under the previous point do not constitute a contract, nevertheless it is plain that the ordinance of October 22, 1909, was a valid exercise of the power vested in the municipality to amend the ordinances previously granted to prosecutor's lessor com-

panies. This ordinance, being valid, must stand until the Utility Board shall, under its power to fix just and reasonable rates, change the conditions as to fares established by the ordinance.

The prosecutor claims that this power of amendment does not extend to changing fares, because it claims that that is a vital matter. If this claim was sound, it would amount to the position that no amendment of an ordinance can be made which imposes any additional financial burden upon the company. There is no difference in principal between the power of the City to compel the company to put on additional cars, to abolish flat wheels, or to pave between the tracks, or to improve the service in any way through the power of amending an ordinance, and the power to reduce the fares. Any exercise of the power of amendment by the City government necessarily imposes a financial burden upon the company. The test is not whether the ordinance is directed to the amount to be charged for the fare, or to any other part of the service, but the test is whether after the amendment has gone into effect, there is still enough income left to afford a fair return over the value of the property. If the City by amending the ordinance compels the company to run so many cars that the existing rate is unprofitable, then the company can raise the rate, or if it is limited as to the rate, then the ordinance requiring an excessive expenditure for service must fail. That this is true appears from the consideration of the possibilities of the future.

Supposing a new motive power cheaper than electricity is discovered, or a cheaper method of producing electric power is discovered, whereby the company could transport passengers at a cost of one cent apiece, with the result that its earnings would be fifty per cent. upon the fair value of its property, is it not plain that both the City would have the power to amend the ordinance so as to reduce the rate, and that the Public Utility Commission would have power to reduce the rate so that the

net earnings would afford only a fair return upon the value of the property?

POINT V.

THE COMPANY IS BOUND TO MAINTAIN THE SALE OF TICKETS BY ITS OWN AGREEMENT WITH THE PUBLIC UTILITY COMMISSION.

It appears by the record offered in this case by Mr. Sommer of the application of the company for the approval of the Public Utility Commissioners of the lease by which it obtained control of the Trenton Street Railway system, that all of the present difficulties with which prosecutor is now struggling were foreseen by the Commission, made the subject of discussion and investigation, and resulted in a virtual agreement between prosecutor and the Commissioners. The proof of this statement appears in the quotation from the testimony taken in that proceedings given by Mr. Crosby, the representative of the existing companies and the president of the newly formed lessee company, which was read into the record. (Case, page 474, line 10.) Mr. Crosby said under oath:

> "There has been some contention in this particular case as to whether the tariff to be charged is fixed at five cents or a possible four and a sixth cents. I have not been able to find exactly what the legal status is as recognized by the (lessor) companies. I am under the impression they are practically committed to the six-for-a-quarter rule. I suppose we inherit that committal. If not, I should not have the authority to commit them, but I am ready to say, if there is any doubt, so far as we are concerned, we are willing to submit to a friendly suit to settle the question."

He further said (Case, page 474, line 36):

> "I looked at the matter when going over the

> estimates as to probable earnings that we should never have more than six-for-a-quarter tickets. If the ordinance has been passed and accepted, that settles it."

To clinch this point, Mr. Sommer, then President of the Commission, asked this question (Case, page 608):

> "*Q.* In making the estimate, however, of whether the future, on the lines laid down by the lease, would be profitable, you use as a basis what: five-cent fare or the six-for-a-quarter fare? *A.* We eliminated it in one sense. * * * WE HAVE BASED IT ON THE SIX-FOR-A-QUARTER BASIS REALLY. I should say, in regard to the six-for-a-quarter basis, there was no thought that the question would be raised for a change to five cents. Mr. Rigg told me they had made a spurt and had gone back. And he said they did not know just what the legal status was."

We submit that this language amounts to an agreement that this particular lessee company was prepared, as a condition of receiving the approval of the Commissioners, never to raise the question unless it was compelled to by their lessor companies, and that in that event it, the lessee company, agreed that it should be settled by a friendly suit. This means that the question as to whether there was a legal contract which the lessor companies could avail themselves of to discontinue the sale of the strip tickets, if ever raised, should be settled by a friendly litigation to determine the legal point involved.

We submit, therefore, that prosecutor obtained the approval of the Commission to this lease upon the distinct representation that it would not attempt to change the practice of selling six tickets for a quarter, except as the result of a friendly litigation upon the legal point of the contract. The Commission relied upon that representation in approving the lease. They should not be

allowed at this late date, after they have been disappointed in their anticipation of being able to squeeze the Trenton public into paying these rentals upon millions of watered stock, and to have something left over to pay dividends upon their own stock, all of which is shown by Mr. Johnson's testimony to be pure water—they should not be allowed in this proceeding to raise this question which they expressly covenanted not to raise. They do not show that they have been requested to raise this point by their lessor companies.

POINT VI.

Burden of Proof.

The prosecutor claims that the Commission erred in holding that the burden of proof was upon the prosecutor in proving that the new rate of a straight five-cent fare would be just and reasonable, and that the existing rates were unjust and unreasonable.

Had the prosecutor sought to change the existing conditions and give up a rate which had existed for twenty-five years, and to put in force a higher rate, it is obvious that the burden of proof was upon the company seeking to make the change.

But if the point was important and the burden of proof was upon the City, an inspection of the record will show that by a very great preponderance of proof, the City has established that fact both that the existing rate is more than just and reasonable and that any increase in the rate would be unjust and unreasonable. This will appear as we discuss he merits later in the Brief.

POINT VII.

The Prosecutor's Valuation of its Property is Excessive.

We contend that prosecutor has failed to meet the burden of proof that the existing earnings do not fur-

nish a fair return upon the value of the company's property which is devoted to a public use.

The prosecutor undertakes to prove a valuation of $3,700,000 for physical property, to which it adds anywhere from $1,000,000 to $2,000,000 for what Mr. Ford terms "development cost." Let us analyze these figures.

Mr. Johnson makes up his figures by taking the valuation of the physical property which he made in 1910, before the properties were taken over. This value he finds to be approximately $3,200,000, to which he added some $800,000 which has been subsequently spent upon the property. We attack this valuation upon many grounds. In the first place, he admits that his valuation was not made wholly by himself. He admits that he had the assistance of other people in gathering and marshaling his data, and these people are not produced for cross-examination. He does not produce his original notes. Nor does he produce the details of his valuation requested by the City.

This valuation in 1910 Mr. Johnson admits was what he called a valuation new. That is to say, he valued all of the property as though it was new and in good condition.

There is no dispute that this property was at that time badly run down.

Confirmation of the fact that the property of the prosecutor was very seriously depreciated appears in several ways. Mr. Hurley, the General Manager of the Trenton Street Railway Company, wrote a letter to the tax commissioners in August, 1907 (*Exhibit O 36*), in which he said:

> "As to our property in the streets, we can show unquestionably that much of the track will have to be entirely renewed within the next year or so."

The City of Trenton, at this very time in 1910, made formal complaint to the Board of Public Utility Com-

missioners that the company's condition was bad, specifying the exact particulars upon which its charge was based. Upon this complaint the Board of Public Utility Commissioners used the following language in its order:

> "The Board of Public Utility Commissioners for the State of New Jersey, after consideration of such testimony and the results of such inspections, determines that the Trenton Street Railway Company DOES NOT NOW FURNISH SAFE AND ADEQUATE SERVICE in the City of Trenton, and that in order that such service may be furnished by it, it is required that the following work be done."

Then follows twelve specific requirements, ranging from the complete reconstruction of the track on specified streets to the repair of joints on specified streets.

The Board further finds that

> "The work of RECONSTRUCTION and REPAIR, hereby ordered to be done, SHOULD HAVE BEEN DONE HERETOFORE from time to time as the occasion therefore first arose."

This is an official finding by this very Board that the condition of the company's plant at that time was so bad that it could not furnish safe and adequate service. It is in evidence that $500,000 was raised as a necessary condition of approving the lease in order that this property might be rehabilitated. This is conclusive proof that the company's property at that time was heavily depreciated, and, therefore, the value new found by Mr. Johnson is practically irrelevant, unless it is supplemented by some evidence to show to what extent it was depreciated. This the company has made no effort whatsoever to do. There is not a scintilla of proof in this case to show what was the real value or the real condition of this physical property at the time of Mr. Johnson's valuation in 1910, except the proof which I have cited to the effect that it was badly depreciated. The burden is, therefore, upon the company to establish

the value new less the depreciation in 1901, if it intends to make use of the value at that time as the basis for arriving at the value at the present time. This is so plain that it does not admit of any argument, and it is fatal to the company's position, which requires that it should furnish conclusive proof of the value of the company's property at the present time.

There is no evidence by Mr. Johnson, or by Mr. Ford, or by anybody else, showing the valuation of the company's property at the present time. Nobody on behalf of the company has made any attempt to value the property in its present condition, except by taking the valuation new as found by Mr. Johnson in 1910 and adding to it the money since expended.

The company offered as part of its proof the valuation made by Dr. Betts for the Commission, at the time the Commission was considering the application for the approval of the lease. This appraisal of Dr. Betts was made at about the same time as that of Mr. Johnson. It was put in evidence by counsel for the company. Dr. Betts' estimate of the total value of the property was approximately $2,600,000. This valuation is very far from that of Mr. Johnson, but it is offered by the company as corroborative of the correctness of Mr. Johnson's estimate at that time.

Dr. Betts' valuation is open to many objections. In the first place, he frankly says that he did not make this examination in the way that he would have made an examination if he had been valuing the property for the purpose of enabling the Commission to fix a just and reasonable rate. He stated that he only valued the company approximately for the purpose of determining whether or not the terms of the lease ought to be approved. Dr. Betts states that he would have made a valuation for rate-making purposes much more in detail. This alone is sufficient to invalidate this valuation as proof of the real value of the property at that time.

Dr. Betts valued the property as new. He made no

attempt to determine how badly the property was depreciated, or to fix the amount of the depreciation, or to fix the value of the property in its depreciated condition. He further stated that several of his subordinates spent three or four weeks in the field, and that he used the data so gathered, with only such verification as he was able to give it by three or four days in the field. We submit that this invalidates Dr. Betts' valuation as proof of the value at that time. The City is entitled to have the men who did the field work and who marshaled the data which Dr. Betts used put upon the stand for cross-examination.

The Betts' valuation, however it is viewed, leaves the question of the depreciated value of the property in 1910 absolutely unproved. Therefore, the base of the company proof of present value is not shown. No result can be obtained until this basis valuation of the property in its depreciated state in 1910 is shown by competent proof.

The company upon this invalid basis proceeds to build up the existing value by adding some $800,000, which the company claims has been spent upon the property since it took it over. The disposition of this $800,000 is the subject of conflicting claims by Mr. Johnson and by employees of the Board who have examined the company's books with reference to this expenditure. These witnesses testify (Case, pages 793 and 804) that they find that, according to the rules of the Board, about $550,000 of this sum can properly be charged to capital account.

This is positive proof by the Board's own employees. Against it are the confused and confusing statements of Mr. Johnson on the stand as to the expenditure of this money. He used the words "rehabilitation," "road and equipment," "repair account" and "maintenance account" with such inaccuracy and confusion that no clear deduction can be drawn from his statements as to how this money has actually been spent. A careful reading

of Mr. Johnson's testimony on this point will justify this statement.

We have, therefore, as the result of this method of proof by the company, an unknown figure as the value of the depreciated property in 1910, plus $550,000 as found by the Commission's employees to have been spent subsequently on capital account.

The company claims that it should be allowed this value new in 1910, and that no depreciation should be taken off. We submit that there is no finding by any court or commission in the whole history of rate-making in this country that affords any justification for any such claim. To argue it at length would be to impose upon the patience of the Court.

The company claims an additional valuation for going-concern value on Mr. Ford's cheerful guess of anywhere from twenty-five to fifty per cent. of tangible value. This claim involves the consideration of going-concern value or development cost, which we will treat of in a subsequent point. We here show that the mere statement of anywhere from twenty-five to fifty per cent. is not in evidence upon which the Board could act. It is too vague, too indefinite, and too general.

Mr. Ford made no study of the situation in Trenton, he merely came down a couple of times and talked with Mr. Johnson, the manager. As will appear when we discuss the subject of going-concern value, he expressly said that there should be no allowance for going-concern value beyond the actual cash invested in building up the property, if that fact could be ascertained. As we shall show later, it is easy in this case to prove the money that has been actually expended upon the plant.

Mr. Johnson made no estimate of franchise value at all.

This proof, such as it is, is completely offset by the testimony of the City's two experts, who made a study of this situation, extending over many weeks, that no

sum whatever beyond the value of the physical property in its existing state ought to be added in this case. The preponderance of proof, therefore, on this point is with the City and not with the company.

We submit that upon the company's evidence they have shown substantially as follows: That it would have cost in the fall of 1910 approximately $2,600,000 to reproduce the company's property new; that it was in a depreciated state; that such depreciation is fairly measured by the amount of 550,000 found by the Board's employees to have been actually expended to remedy this depreciation since 1910. That would make the value of the company's physical property at the present time approximately $2,600,000. Curiously enough this is almost the identical figure found by the joint appraisal of the City's experts, Messrs. Rand and Brackenridge. It is also practically the amount of money that was actually put into the property by investors up to 1910, as will be shown when we consider the capitalization of the company in a subsequent part of this brief.

The $500,000 raised for the rehabilitation of the property in 1910 cannot be considered as new capital, because it was caused by the wrongful diversion of the revenues to dividends. This was expressly found by the Commission in the order hereinbefore quoted.

From the proofs submitted by the prosecutor, therefore, we submit the Court cannot determine what is the value of the property at the present time, and that the claim of a value of approximately $4,000,000 is absurdly excessive.

POINT VIII.

The Value of the Company's Property as Proved by the City Does Not Exceed $2,700,000.

Not only has the company failed to present any proper evidence of the present value of this property,

but the City has produced a positive and definite valuation. The City's proof shows that this property, including every kind of contingency that can properly be charged, can be produced to-day for approximately $2,700,000. The witnesses for the city who made up this valuation were Mr. Swan, Mr. Brackenridge and Mr. Rand.

Mr. Swan has been connected with the City's engineering department for twenty-five years, except two years, and during that time has had practical charge of all the street work, including portions of the pavements required to be laid by the company. He produces from his records and from his personal knowledge an elaborate table showing the approximate time that the rails were laid; the character and time of laying of the pavements between the tracks in each street. The accuracy of this foundation work has not been in any way impeached.

Mr. Brackenridge has been engaged in every variety of street railway work since 1885. He has been a general contractor, and as such has built many electric street railways. He was connected for many years as engineer of construction with the Brooklyn Rapid Transit Railway Company, and this experience included the time when its transportation system was operated by horse power and when and after the motive power was changed from horses to electricity. It has been his business in all these years to actually purchase every form of electrical equipment. He has had the widest possible experience in the actual working of railways, and so is familiar not only wtih the cost, but with the life and rate of depreciation, of every class of physical property used in this class of work.

It would be impossible to find a man whose experience better qualified him to put an approximate value upon this property in the limited time that is afforded by the statute for the proofs to be taken in this case.

The accuracy of Mr. Brackenridge's work has not

been impeached by cross-examination, or by the rebuttal testimony of Mr. Johnson, except on minor and unimportant points. Mr. Johnson claims that he has actually paid $300 or $400 more for some of the cars than Mr. Brackenridge says he can buy them for.

Mr. Brackenridge uses 15 cents a pound as the price of copper, which is a liberal figure taking the average for many years, as against the present extraordinary price of 19½ cents; but even on this basis, the variation from Mr. Brakenridge's figures is trifling. It is substantially true that Mr. Brackenridge's figures are not discredited in the rebuttal or cross-examination.

Supporting Mr. Brackenridge is Mr. Rand. Mr. Rand is a consulting engineer, and has had upwards of thirty years' experience in the handling of securities relating to all kinds of railroads, including street railways; in the valuation of railroad and street railway properties; and as an expert in the famous Consolidated Gas case of New York, and in many cases involving both the consideration of physical and intangible elements of values of public utility corporations. He has been a student of the problem which is presented before this Court for discussion. He worked with Mr. Brackenridge in the personal inspection of this property, and in the fixing and checking up of the prices and the rates of depreciation upon the different items of property considered. Where two men of long experience and established reputation work together, each checking the other, the result is reasonably sure to be approximately correct.

These experts for the City spent many days in the actual inspection of the property. The care they exercised is evidenced by the notes of Mr. Brackenridge and Mr. Rand as to the special work. Mr. Rand drew a freehand sketch of every piece of special work in the whole system. Mr. Brackenridge at the same time made full notes of these pieces of special work, and the more complicated ones he also sketched upon paper.

The notes on this part of their work were put in evidence, and show the completeness of their inspection and valuation. Such material facts as they did not ascertain by personal inspection and investigation they got from Mr. Swan and from Mr. Johnson.

A very admirable summary of the results of the study of these experts was presented as an exhibit, and we herewith print it in this brief for convenient reference.

SUMMARY SHEET OF ESTIMATES GIVING COST TO REPRODUCE NEW, DEPRECIATION AND PRESENT VALUE, OF THE PROPERTY OPERATED BY THE TRENTON TRACTION CO., AS OF NOVEMBER 9, 1915.

Contractor's Profits Have Been Included in all Items.

ITEM.	*Annual % Deprec.*	*Reproduction Cost.*	*Annual Depreciation.*	*Accrued Depreciation.*	*Present Value.*
Tracks outside city,	3%	$324,616.39	$9,738.49	$109,440.76	$215,175.63
Tracks in city,	4%	370,910.80	14,836.43	160,588.64	210,322.16
Overhead line and feeders,	4%	307,100.30	12,284.01	82,549.90	224.550.40
Special work,	10%	70,662.00	7,066.20	35,331.00	35,331.00
Paving,	5%	358,845.02	17,942.25	141,358.17	217,486.85
Power plant,	4%	265,500.00	10,620.00	31,860.00	233,640.00
Car barns and contents,	2%	155,900.00	3,118.00	23,385.00	132,515.00
Cars and other rolling stock,	5%	400,000.00	20,000.00	140,000.00	260,000.00
Real estate, assessed value,	.....	110,025.00	.....	.....	110,025.00
Signal system,	.....	1,052.75	.....	.....	1,052.75
		$2,364,612.26	$95,605.01	$720,884.83	$1,643,727.43
Contingencies, including engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk,	15%	354,691.84	.....	108,132.73	246,559.11
		$2,719,304.10	$95,605.01	$829,017.56	$1,890,286.54

* Depreciation on overhead figured with copper wire out.

An inspection of this summary, together with the detailed sheets which these experts presented and the detailed sheets which Mr. Swan presented, will show that these experts for the city had given to them, or acquired personally, all of the information necessary to make an approximate valuation of this property at the present time, and they are the only witnesses who have made any attempt to make such a valuation.

The valuation which they fixed is corroborated in various ways. It is substantially corroborated by Mr. Betts' valuation in 1910, which was a valuation new. The established fact that the property was then run down, and the raising of $500,000 to restore it to its proper condition is substantial evidence that this property was then depreciated at least to that extent, and probably more. This depreciated value plus the amount since spent upon it, would make approximately the same value as found by Messrs. Rand and Brackenridge.

This valuation is further corroborated by the result of a study of the securities issued by the company and all the actual cash that has ever been invested in the creation of the company's property. The actual money that ever went into this property does not exceed $2,600,000, as will be shown when we consider the securities issued and the cost of the property in a subsequent part of this brief.

This valuation is further corroborated by the evidence which the City has put in with reference to taxation. The letters of Mr. Hurley and of Mr. Johnson from year to year to the tax officials of Trenton contain assertions that the assessments by the City are practically the full value of the company's property. These assessments at no time have exceeded $700,000 over the whole system, as is shown by the tax exhibits from the City of Trenton, and each of the other municipalities through which the property runs, which the City has put in evidence. (See *Exhibits O-2, O-3, O-4, O-5, O-6, O-7, O-34, O-35, O-36 and O-42.*

Both Mr. Brackenridge and Mr. Rand testify that no addition should be made to this property for development cost or any other intangible element of value, or for working capital.

The City's proof is the only legal evidence before this Court of the value of this property at the present time.

POINT IX.

THE VALUE OF THE PROPERTY AS SHOWN BY ACTUAL COST DOES NOT EXCEED $2,600,000.

The valuation of the property made by Mr. Brackenridge and Mr. Rand is supported by a study of the history of the constituent companies. It is not clear that the stock issued by the early horse railroad companies was water, but the presumption is strong that it was. But it is plain that all subsequent stock issues and part of the bond issues represent no money or service paid or rendered towards creating this property. Dr. Betts so finds, and the merger agreements prove it.

Mr. Rand has submitted a table (*Exhibit O-38*), which can be summarized as follows:

Trenton Street Railway—		
Stock,		$1,000,000
Bonds,		2,000,000
Subsidiary Companies—		
Stock,		550,000
Bonds,		1,000,000
Total securities,		$4,550,000
Inflated Securities—		
Stock of subsidiary companies issued with bonds,	$550,000	
Inflation by 1st consolidation,	1,343,000	

By 2d consolidation, ...	36,700	
Bonds owned by M. C. Tr. Co., ...	128,000	
		2,058,000
Bona fide securities issued, ...		$2,492,000

We submit a calculation made up differently which arrives at substantially the same result, viz.:

All stock of Horse R. R. Co.'s at time of first consolidation in 1891—		
Stock, ...		$156,000
Bonds, ...		190,000
Bonds issued by the Consolidated Co. (Tr. Pass. Ry. Co.), ...	$1,000,000	
Less amount paid to Wilson (see *Tr. Pass. Ry. Co.* v. *Wilson*, 11 *Dick. Ch. Rep.* 783), ...	260,000	
		740,000
Second Consolidation, 1898— (Tr. St. Ry. Co.) stock was all exchanged for securities of merged companies.		
Bonds, ...	$2,000,000	
Less used for refunding,.. $1,000,000		
Less exchanged for stock,... 552,000		
	1,552,000	
		448,000
Bonds of Tr., Penn. and Hopewell Ry. Co.,		350,000
Bonds of M. C. Tr. Co., ...		300,000
Bonds of T., H. and E. Co., ...		350,000
Total realized from securities to 1910,		$2,534,000

This is the maximum actual cost of creating these properties as shown by the proofs in this case. The money expended by the lessee company, being by the Board's own finding made necessary by wrongful diversion of earnings, is a restitution and should not be added to this estimate.

From every point of view, therefore, it appears that the value of this property to-day does not exceed $2,700,000.

The actual cost of this property ought to appear upon the books of the lessor companies. We have demanded these books. At the last moment some of them were produced, too late for even a casual examination. It is safe to assume that if these books showed a cost in excess of the City's valuation the company would put them in evidence.

The Wilson bonds, referred to in the foregoing table, were the subject of a litigation in our New Jersey courts, as above quoted. In this reported case it appears that $260,000 of the issue of bonds in 1891 was taken by one Wilson upon some pretense. The company claimed that he held them as trustee for the company. He, however, managed to hold onto them, and the company never received any of the proceeds of these bonds nor did Wilson ever render any service for them, as the Court expressly finds.

POINT X.

Mr. Ford's Estimate of Going-Concern Value Analyzed.

In the attempt to bolster up the Johnson valuation of this property, Mr. Ford was produced by the company as an expert. He took the position that the physical property should be taken as though it was brand new and so valued, and that in addition to such value there should be added from twenty-five to fifty per cent. for what he called "development cost." The claim

that the property should be valued as new has been argued in another part of this brief.

It is sufficient as to that point to say that if this company had obeyed the spirit of the injunction laid upon it by the Commission when the lease was approved, and had paid each year into a depreciation fund a sum of money sufficient to keep this property at all times in proper condition, the present value depreciated, plus the amount of money in such a depreciation fund, would give at all times a sum sufficient to reproduce the property new. As no adequate depreciation fund was set aside, the physical property must necessarily be valued as we find it in this depreciated condition. Mr. Johnson says he has spent not exceeding $68,000 on account of depreciation in any one year, and has set aside no fund beyond such expenditure. But he now says $135,000 a year is needed. This is a confession that the property is in a badly run-down and depreciated condition.

We submit that the value of Mr. Ford's testimony in this case is completely destroyed by his admission that in his judgment there should be no going-concern value allowed, if it is possible to arrive at the cash investment in the property. Here is his exact language, Case, page 243:

> "I might say in addition, that if we could arrive at the cash investment of this property, there would be little, if any, going-concern value to be added, because the cash investment would reflect the cost of producing a going concern. In the early years of operation the company probably did not get a fair return on its capital invested, and if, in arriving at the cash investment, you allow for that insufficient return, which, of course, the security holders originally had to provide, you would get the present cash investment, which would include such going-concern value."

* * * * * * * *

Case, page 280:

"*Q.* If you knew what it had cost these people in cash, you say you would limit the return to the fair return upon that, plus depreciation account and operating expenses?

A. I think that is a fair way of arriving at a figure.

Q. And you then would not put in any going-concern value?

A. I think that would include going-concern value.

Q. That is, going-concern value would then have been paid for?

A. Would have been paid for in cash."

* * * * * * * *

"*A.* In the case of the cash investment, if that cash investment represented the entire cost of developing the property I would not include—I would not add anything to it for going-concern value."

See Ford's testimony, page 40, to the same effect.

Mr. Ford supports his assertion of twenty-five to fifty per cent. addition for development cost by no facts whatsoever. He cites no actual instances or experiences. He admits that no accounts have ever been kept by any company with which he is familiar of any such item of going-concern value or development cost. In other words, he produces no proof in support of his opinion.

Mr. Ford does refer to the cases of Cleveland and of Chicago, but he put forward no detailed information by which his testimony can be tested. On cross-examination he admitted that in the Cleveland case the matter was settled by an arbitration, one of the conditions of which agreed to in advance was that the company should only charge a three-cent fare, with a one-cent transfer. The valuation agreed upon by the arbitration was determined with this limited fare as a con-

dition agreed upon in advance (Case, Vol. I, p. 379). In the Chicago case he admits that it was a case of a straight out settlement between the company and the city and not a judicial adjudication at all.

He does, however, endeavor to support his opinion by an imaginary illustration. He says that if a city of 100,000 people had no trolley system and one was inaugurated, that the item of development cost would amount to twenty-five or fifty per cent. of the physical value.

On cross-examination it appears that he had never even given the subject of this imaginary illustration any serious consideration. He had not taken into account the kind or cost of existing methods of transportation. He had not taken into account whether the people were familiar with trolley transportation or not. He finally said that they probably had become familiar with trolley transportation when visiting other cities. He finally agreed that we must suppose a more costly transportation system in vogue in the imaginary city. He agreed that the company would do no advertising and would be put to no special expense upon this item of development cost. He admitted that the only expenses of the company in his imaginary city, after the property was in operation, were the expenses that would be ordinarily charged to operating expense account. He was finally driven to the point that what he meant by development cost was that in this imaginary city it would take three years before the patronage of the line would be developed to the full capacity of the city. He said that the company would start at the beginning with eighty per cent. of the business that it was possible to obtain from the existing people in the city, and that within three years the remaining twenty per cent. of the possible patrons would gradually become patrons of the road. (Case, Vol. I, p. 371.)

Let us examine this illustration. In the first place it is open to the objection that it has nothing whatever to do with human experience.

It is a mere guess.

It is an attempt, always fallacious, to imagine what would have happened, if something which didn't happen had happened.

This involves so many elements that it is worse than idle to talk about it. The whole thing is too preposterous for serious consideration.

The preposterous nature of this illustration was shown by the question asked Mr. Ford by counsel for the City.

He was asked whether in all his experience he ever knew of any appraisers of any kind of property who undertook to appraise the value of the property by considering what it would cost to reproduce the property under conditions that had never existed in human history. After much squirming, he was forced to admit that this method of appraisal had never been adopted in civilized life, and said feebly that it was necessary to apply in this case a method that would not be reasonable in the other affairs of life.

To show that Mr. Ford was himself compelled to admit the utter adsurdity of his method of valuation in this respect, we quote from his testimony, as follows, Case, page 278:

> *Q.* You know of no such town?
>
> *A.* I know of none.
>
> *Q.* Then you are measuring the going-concern value by conditions of city life which have not had any existence since the trolley era; is that correct?
>
> *A.* In this country, yes.
>
> *Q.* Then you are measuring the value of this property by conditions that have never existed since the electric era applied to trolleys?
>
> *A.* It is purely a hypothetical case.
>
> *Q.* Will you name to me any article from a hairpin to a locomotive to which you apply any such principle in trying to arrive at value? Is

there any value which is appraised in our market, any physical piece of property, not talking about franchises, physical property purchased by man, which is measured by conditions that have never been known in the trade, is there any such article?

A. I think if you apply some of these theories of rate regulation to other business they become ridiculous.

Q. I am not asking you that?

A. If that is what you mean.

Q. I am asking if you ever knew of a value put upon the appraisement of a suit of clothes by imagining the production of clothes under conditions that never existed; ever heard of that?

A. I never did.

Q. Did you ever hear of a country appraisal of the furniture in a house for sale that was based upon conditions of production of that furniture and those effects that never existed?

A. No.

Q. You never did?

A. No.

Q. Then you are applying to going-concern value an imaginary condition that has never existed since the trolley era; that is a fact, isn't it?

A. I think that is the fact, as far as this country is concerned.

Q. Now, is that sense?

A. I would say that hypothetical case, I think, has been forced on the commissions and the street railway companies by the building up of a theory of value, which when applied to homely articles like shoes and clothing, does not look sensible.

Why is it necessary in the task of ascertaining the value of a property, every item of which has a regular

market value accessible to everybody, to resort to the test of a production under conditions that never existed and which never could exist?

But Mr. Ford's illustration of twenty-five or fifty per cent. of the tangible value of the property as representing development cost is not only preposterous, but it is unscientific. The development cost has no natural relation whatsoever to the value of the property. If we had the actual experience of many companies over a long series of years, and the actual items of development cost were figured out in relation to the cost of tangible property, the percentage relation as a matter of fact could be established, but it would be simply an arbitrary relation. In this case there are confessedly no facts upon which to establish a percentage relation. The estimate of twenty-five to fifty per cent. is so loose that it has no place in a careful investigation like this.

But it is easily possible to find with approximate exactness the amount of money which would represent Mr. Ford's item of development cost, and to determine the percentage of such amount to the value of the tangible property.

Let us assume the cost to reproduce this property at $3,000,000—a figure about half way between the estimate of the company and the City. The company would get at once, according the Mr. Ford, eighty per cent. of the possible patronage. In 1914 the receipts of the company were $776,000. Eighty per cent. of this amount would be $610,000. The operating expenses for that year were about fifty-five per cent. That proportion would give an operating expense for the imaginary company of $335,500, leaving a balance of $274,500. If you were to set aside for this property $95,000 as a depreciation fund, the remaining income applicable to a dividend upon the cost of the property would be $179,500, or a little less than six per cent. upon the cost of the property. If six per cent. is held to be a

fair return, there would be no development cost at all. But if we assume that the company is entitled to earn eight per cent., then the company is short, say, $75,000. This is the amount which represents the possible balance of the patronage which the company is to obtain within three years, and is therefore the outside measure of Mr. Ford's so-called development cost for the first year. If we assume that the acquisition of the remaining twenty per cent. of the patronage was not gradual, but was held off until the last day of the third year, the most that Mr. Ford could claim would be three times $75,000, or $225,000. This, instead of being from twenty-five to fifty per cent. of the cost of producing the property, would be seven and one-half per cent.

But, of course, the twenty per cent. possible patronage to be obtained would be obtained gradually over the course of the three years, and therefore the deficit in the second year would not be as great as in the first year, and in the third year would almost entirely disappear.

$150,000, therefore, upon Mr. Ford's own illustration, would be the outside amount that could possibly represent his item of development cost. This is five per cent. of the cost of the property, instead of twenty-five per cent. or fifty per cent.

This reasoning shows the utterly unscientific nature of Mr. Ford's method of reasoning, and the grossly exaggerated results to which he has testified. In other words, Mr. Ford has not only used a preposterous illustration, but he has grossly mistaken the actual and easily ascertained results of his own illustration.

This reasoning is absolutely clinched by the consideration that the imaginary company would be under the control of the Public Utility Commission, and no money could be issued except for the actual construction of the plant, and when the company showed a deficit for the first year, that deficit, which Mr. Ford calls development cost, would be either charged to capital ac-

count or set aside as a special account to be amortized when the earnings reached a point beyond a fair return upon the capital actually invested.

It is to be remembered that this Utility Commission in the Passaic Gas case, although it allowed thirty per cent. for going-concern value, expressly stated that no such allowance beyond actual deficits would ever be made in the case of a company starting new under the Commission's supervision.

This disposes of the only evidence offered by the company in support of the claim that an amount should be added to the cost of the tangible property to represent development cost.

Further authority on the subject of going-concern value is found in the recent case of *Des Moines Gas Co.* v. *City of Des Moines,* decided by the United States Supreme Court, In this case there was no allowance for going-concern value, and the Court held that if any allowance was to be made for going-concern value, the existence of such value must be proved by the company.

POINT XI.

GOING-CONCERN VALUE FULLY ALLOWED FOR BY THE COMMISSION.

The item of going-concern value in this case has been fully allowed for by the Commission. In the valuation of the property of the company arrived at by the Commission upon the evidence in this case, they have made liberal allowances for every element of value that can be properly classified under the term "going-concern value."

The theory of going-concern value set forth in the opinion in *Public Service Gas Co.* v. *Board of Public Utility Commissioners et al.,* 84 *N. J. L., page* 463, is stated in section 8 of the synopsis of decision, on page 464, in the following terms:

> "In fixing the value of property on which a gas company is entitled to earn a return, it is proper to allow for going value, which includes loss of interest while the plant is in course of construction and while pipe lines are extended, the cost of securing and retaining customers, of encouraging the greater use of gas for fuel and light by the introduction of new and improved appliances, the necessary loss attending experiments, obsolescence of plant apart from the ordinary calculable depreciation which may be charged to current expenses, the expense that attends and the additional value that arises from the uniting of separate companies and the organization of the industry with a view to economical production, and the cost of procuring capital."

Upon this definition of going-concern value, the Supreme Court in that case sustained the Board's allowance of thirty per cent. of the structural value upon the specific proofs in that case.

In all of the cases in this country before commissions and courts, an item of going-concern value has sometimes been allowed and sometimes been refused. When it is allowed it has varied from ten to fifteen per cent., except in the Passaic Gas case where it was fixed at thirty per cent. Of course it follows that each case depends upon its own facts. It is plain that it costs more to develop a gas business than it does a trolley business. In the gas business people have to be sought out in their homes and persuaded to use a new form of light, and as the new improvements are developed in stoves and fixtures people have to be canvassed and persuaded to use them. In the trolley system, however, there is no such thing as drumming up custom, and there are no expenses to be charged under that head.

In the Passaic Gas case the proofs of the experts of the company were that it would take at least six years to develop the business. Here the only proof on that

point is that of Mr. Ford, who says that eighty per cent. of the business will be developed the first year, and that the other twenty per cent. of the business will be developed in the course of the two following years.

There is no testimony in this case on behalf of the company as to the actual expenses. The only testimony is that of Mr. Ford, who never made any study of the property at all, but who was called to give general testimony as an expert in relation to general rules.

Mr. Ford's going-concern value, when he is pressed for a definition, practically comes down to early deficits growing out of the cost of development which could not be met out of earnings. In Case, Vol. I, page 270, he says:

> "*Q.* You say that the development cost is the amount expended after you have built your plant and got it in running order, in getting, developing the business, and I suppose you mean, you did not say so, in making the property fit together, if there is any defect in it, and getting it in working shape, is that about what you mean?
>
> *A.* Yes.
>
> *Q.* That is development cost. The first year or two that development is likely not to come out of earnings; I mean earnings are likely not to be enough to include that, operating expenses, depreciation, and a fair return upon capital, that is so, isn't it?
>
> *A.* That is correct?"

The Commission says, Case, page 839:

> "Except as hereinafter mentioned all proper allowances for intangibles have been heretofore included."

On page 840, the Board says:

> "Throughout this valuation in the allowances made full consideration has been given to the fact that the property valued was a harmonious operating system—a going concern—in success-

ful operation. In view of all the evidence we conclude that the value of the property, for the purpose of fixing rates, does not exceed $3,212,000."

The accurate valuation made by the City's experts, after weeks of painstaking investigation, makes the present value of the physical property about $1,800,000 in its present depreciated state. In fixing a value of $3,200,000 the Board therefore made a most liberal allowance for all of these elements of value which can properly be charged to going-concern value.

Upon the proofs in this case therefore, the element of going-concern value has been very liberally allowed for by the Board.

We respectfully urge upon the court that in any event, no allowance should be made for going-concern value as defined in the Passaic Gas case, unless same is proved in the case.

It is not possible to state a general rule. This is confessed by all of the experts. The true theory is that insisted upon by counsel for Passaic in the Passaic Gas case. We restate it here, not for the purpose of having the court reverse the position taken in the Passaic Gas case, but in order to show that if the definition which we give of intangible values and the method we point out of ascertaining those values is not followed, there is no other satisfactory way of arriving at a valuation of these intangible elements of value.

Our theory is that no piece of physical property can have a value in excess of the cost to reproduce it. This is a universal law of economics. No exception to it can be possibly imagined. The value of a piece of physical property may be, and usually is, very much less than the cost to reproduce it, but it can never be greater than that sum. If the net earnings, after deducting operating expenses, taxes, a depreciation fund and repair and maintenance account, are insufficient to pay a fair return upon the actual cost of producing the

physical property, then the value of the physical property is not worth what it cost to produce it, unless, of course, the future promises large returns. The company still has its franchises and all of the elements which are grouped under the head of "going-concern value," but obviously these elements had no value. When, however, the net earnings exceed a fair return upon the cost of the physical plant, then there comes into existence another element of value, so far as the market is concerned. The value of that element is easily ascertained. That value is measured by the excess of net earnings beyond a fair return, capitalized at a fair rate of interest. Mr. Ford admits this point, when, on page 262 of the Case, in discussing franchise value, he defines franchise value in almost the exact words we have used.

Whatever you call these elements of value, this is the only way that has ever been devised to measure them. The different names given to these intangibles merely indicate a confusion of thought on the subject by courts and commissions. The thing sought to be valued is simply the business that has been built up in connection with the plant. Until the plant pays upon its physical cost there is no business value, except as the future may hold out promise of better returns. As soon as there is an income beyond a fair return upon the physical cost there arises this value, which is really the business of the company. In the market this business is property, and is bought and sold. It exists in a public utility simply because the State has failed to enforce the implied contract of the original franchise that the company shall charge no more than a reasonable rate, that is to say, a fair return upon the actual cash expenditure of the company.

Unless this theory is followed, then the only other plan that can be used is to give a general, liberal value to tangible property on the loose theory that a tangible property held by a going concern is more valuable than

property which is not connected with a going concern. This, of course, is true. If we started by considering the value of the physical property as junk and then added to it the value indicated by the profits of the business, there would be no objection to this process, up to the point where the value equaled the cost of reproduction of the cost of the physical plant.

The difficulty with the present system of fixing going-concern value is that all of the items usually included under that head are properly chargeable to operating expenses, have always been so charged, and therefore the company ought not to be allowed to earn upon it, except they have taken the form of an actual deficit in the early years of the company's business. To the extent that the company has never in its early years been deprived of a fair return upon its actual cash invested, it ought to be allowed that amount in addition to the value of the plant, because it has been money actually invested in the enterprise.

There is not only no proof that this company has ever had any deficits, but on the contrary the proof is conclusive that it has enjoyed immense earnings beyond a fair return upon the cash capital.

Up to 1890 the Trenton Horse Railroad was the company, and its capitalization, both stocks and bonds, was $346,000. This is the only part of the history of the company concerning which we have no definite information in the record. Mr. Ford testified that on the coming in of the trolley era, about 1890, the trolleys were considered in the market as a bonanza, their earnings were so large. He says this condition continued until 1905.

This testimony is worth quoting:

> "*Q.* You spoke in your direct testimony about when they started the trolley era there was a time there when it expanded, the capitalization was expanded, and it was looked upon, I think your term was a bonanza, for awhile; you used that expression, didn't you?

A. Yes.

Q. How long did that period continue?

A. I think until about 1905.

Q. Starting when?

A. Starting with the electrification of the lines about 1890, to 1893."

(Case, Vol. I, p. 399.)

Therefore, the only deficits in this case must have been prior to 1891, and as the total capitalization of the horse railroad company was only $300,000, requiring only an income of $18,000 to provide a fair return, the deficits, if any, must have been very small, even though they continued over a long period of years.

In the face of these facts, no mere guess as to how much the deficit was, or what it cost to develop the horse railroad company, should be allowed. This is admitted by Mr. Ford, on page 271 of the Case, Vol. I, where when he was asked how long in the horse railroad era the condition continued where the income was not sufficient to pay the operating expenses, depreciation, actual or contemplated, and interest upon a fair return upon the cash capital actually invested, his answer was: "I think that would vary." If it would vary, then no general rule can be applied. As he admits he made no study of the Trenton case, except to talk with Mr. Johnson for an hour or two upon two visits, his guess as to development cost of the building up of the horse railroad is immaterial.

That Mr. Ford's definition of going-concern value is practically the early deficits appears clearly in various parts of his testimony. See Case, Vol. I, pages 266, 270–271.

The argument that these items are actual property, and that the company owns them and therefore should be allowed to earn a return upon them is easily answered. The truth is, that the company is not allowed to earn upon all its property. It is only allowed to earn upon the property which it devotes to a public use.

If the company has appropriated out of earnings a fund of money which it has invested in stocks and bonds or land, no commission would think of allowing them to earn upon such property, because it is not property devoted to the public use. Such property as is included under the head of intangible values is property only so long as the Commissions allow the companies to charge excessive rates. The minute the Commissions enforce the implied contract as to franchises, to wit, that the company shall be entitled only to charge rates which will give a fair return upon the cost of the property, or the actual investment, then these intangible elements of value will disappear.

They are property only so long as the public fails to enforce its contract rights in the premises.

They are elements of property built up upon the violation by the company of the implied contract to charge reasonable rates from the beginning.

This is the reasoning to which all of the Commissions and courts in the end must come. Any other line of reasoning leads, inevitably, to the ratification by Commissions and courts of the issues of water securities for which no money has ever been paid. Such a conclusion is intolerable.

For these reasons we submit that a very liberal allowance in this particular case has been made by the Board of the item of going-concern value.

POINT XII.

FRANCHISE VALUATION. THE COMPANY HAS NO RIGHT TO ALLOWANCE FOR VALUE OF FRANCHISES.

That the company has no right to any value of its franchises would seem to be settled by the decision of the Court of Errors in the Passaic Gas case, in which the decision of the Supreme Court in the same case was sustained. In that case the synopsis of the Court's decision, 84 *N. J. L., page* 464, says:

> "The special franchises of a public service company are property, but the right of property therein is not absolute, but is qualified by the right of the State to fix reasonable rates. In determining the reasonableness of rates, no allowance should be made for the value of the special franchise in a case where it is not legally exclusive and where the State still retains the right to fix rates."

This point is clinched by the statement of Mr. Ford, the only expert on behalf of the prosecutor, that he did not make any allowance for franchise values, and that he did not consider that franchise value ought to be allowed in this case. He stated that in his opinion the value of the franchise was simply the excess receipts, *i. e.*, the amount of the net income, over and above a fair return, capitalized at the present rate of interest. Testimony of Ford, Case, p. 262.

POINT XIII.

Working Capital. Not Proved. Not Needed.

The item of working capital is properly allowable in such utilities as gas and electric light and telephones, but it has no place in this case. All such items as stores and duplicate parts are already included in the appraisal, and do not amount to $20,000. There is no proof in the case to justify the Board in allowing anything for this account. Mr. Ford says it should be allowed, but offers no facts or reasoning to support his opinion. Mr. Rand and Mr. Brackenridge say nothing should be allowed. They point to the fact that the company receives cash every day for its service rendered, while wages and supplies are not paid for until several weeks after they are earned or furnished.

The fact that the company took over these great properties without a dollar of working capital, and that neither party to the lease considered any such capital

necessary is conclusive proof in support of our contention in this regard.

The Commission, however, has included in its valuation items for working capital. The report of the Commission, Case, page 840, says:

> "Under working capital, materials and supplies properly belong. These have been included in the appraisal of the physical property, and, in view of the facts testified in this case, we do not deem proper any further allowances for working capital."

POINT XIV.

Present Earnings are Ample to Provide Reasonable Return on Value of Property.

The gross earnings of the company for 1914 were $776,000.

While the earnings this year have fallen off, it is due to temporary and sporadic causes, and it is fair to assume that the earnings in the future will not fall below those of 1914, taking one year with another, but, on the contrary, will surely increase with the growth of the City.

Allow for operating expenses the amount actually expended by this company in 1914, viz., $377,000. Allow for taxes $50,000, the amount actually paid in 1914. Allow for depreciation $95,000. Mr. Johnson claims $135,000, but he has never expended in any one year more than $69,000, and he is on record in his letter to the Board, after two years' experience, to the effect that ten per cent. of the gross receipts would be ample for this account for 1915 and afterwards (*Exhibit O* 44).

Messrs. Rand and Brackenridge arrive at $95,000 as the actual yearly depreciation of this property.

Upon this basis we have the following result:

Gross earnings, ...		$776,000
Deduct:		
For operating expenses, ...	$377,000	
For taxes, ...	50,000	
For depreciation, ...	95,000	
		522,000
Net earnings available for dividends, ...		$254,000

Or over 9 per cent. on $2,700,000, which is every dollar ever invested in this property, or is 6 per cent. on $4,230,000.

When it is remembered that the various owners of this property have taken out of it in interest and dividends upon watered securities nearly $1,500,000 in excess of a fair return upon the *bona fide* investment in the property, as we show elsewhere, it is plain that this showing entitles the company to no relief here.

In this case the Court is bound by the New York Consolidated Gas Company case, where the Court held that the only duty of the Court was to see that the rate fixed by the Commission was not confiscatory, and that a return of 4.7 per cent. upon the fair value of the property was not confiscatory.

POINT XV.

Claim that Decrease of Earnings in Year 1915 Was Not Considered by the Board, Analyzed.

This claim is absurd. It would be utterly impossible to fix a just and reasonable rate of a public utility upon the earnings of any one year. Earnings fluctuate with good times and with bad times, and with local conditions. The only fair rule is to take the average of several years as the Commission has done; otherwise, in case of a great fair like the San Francisco Fair, or of a celebration like the Newark 250th Anniversary Celebration, the companies might have an extraordinar-

ily prosperous year, and if their rates were reduced upon the basis of the showing of that year, it would be unfair to the companies when the temporary conditions had passed.

POINT XVI.

Prosecutor's Claim that Value of Property is Measured by Stock and Bond Issue, Answered.

One of the reasons of the prosecutor asserts that the Board did not take into account the issue of stocks and bonds as a measure of value. The overwhelming weight of authority everywhere is that stocks and bonds are merely to be considered as throwing light upon the value of the property and are in themselves no measure of value. This point is conclusively settled in the Passaic Gas case. The portion of the opinion in that case which bears upon this point is found in 84 *N. J. L., page* 484.

This point is further answered by the testimony of Mr. Ford, Case, Vol. 1, page 280, in which he says that in the bonanza trolley era the excessive earnings were covered up by the issue of watered stock, and that the stock was issued for that especial purpose. (Case, page 280.)

POINT XVII.

Discontinuing the Tickets is an Increase of Fare and a Change in Classification Under Utility Statute.

One of the reasons advanced by the prosecutor in this case is that the abolition of the six tickets for a quarter is not an increase in rate or a change in classification. This claim seems too absurd for argument. To the thousands of people who go upon these trolleys to their employment in the morning and return at night, and who regularly buy six tickets for a quarter, the

change to a straight five-cent fare is a *real* increase. In fact one of the claims of the company is that it needs additional money and that the change from tickets to a straight five-cent fare would bring it an additional $100,000 a year. This is an increase of the company's income, and of course by its standard of common sense is accomplished by increasing the rate charged to the patrons of the company.

To the charge that there is a discrimination in charging some people five cents and other people four and one-quarter cents, the answer is that the lower charge is open to all, and that if any man elects to pay five cents he discriminates against himself,—it is within his power to ride for four and one-quarter cents if he purchases six tickets.

The principle of selling commodities by wholesale is an established one in all businesses. In the railroad business it is illustrated by the commutation principle, and the Public Utility Statute expressly gives the Board supervision over changes in classification and in commutation rates, and in the matter of the increase or decrease of fares.

POINT XVIII.

THE LESSEE COMPANY IS A SHAM COMPANY, WITHOUT ANY CAPITAL OR RESPONSIBILITY, AND WITHOUT ANY EQUITY IN THE PROPERTY, AND THEREFORE HAS NO CLAIM UPON THE CONSIDERATION OF THE COURT.

As we have shown in our proof, in this brief, the earnings of the company at the existing rates are ample to pay operating expenses, including repairs and taxes, provide for an adequate depreciation fund, and leave a balance sufficient to pay more than a fair return upon the value of its property devoted to the public use, whether such value is measured by the actual money ever invested in its creation, or by the cost of its reproduction new, less depreciation.

But it is perfectly plain that this company cannot continue to pay these rentals which it has contracted to pay to the lessor companies, provide a proper depreciation fund and pay operating expenses. Some part of this arrangement has got to break. Either the lessee company must default and give back the leased properties to the lessor companies, or the lessor companies must accept a smaller rental, or the public must be made to pay more. We submit that, under the peculiar circumstances of this case, the public cannot be asked to pay more.

When this property was taken over by the lessee company it was in bad condition, owing solely to the fact the money had been paid in dividends which ought to have gone in to maintain and renew the company's plant.

The Utility Board expressly so found, and $500,000 was raised to rehabilitate the plant. The Board of Public Utility Commissioners, in 1910, undertook to provide against the exact condition which has arisen here, namely, a run-down plant and the improper diversion of earnings to dividends and interest, which ought to go into the property. The company, therefore, had full warning and stands before this Court without any equity.

The company, by Mr. Johnson's confession, is composed of two men, neither of whom has invested a dollar which has gone into this plant.

The remarkable testimony of Mr. Johnson discloses the utter hollowness of this lessee company. Mr. Crosby negotiated the leases for the lessee company, paid in $150,000, and Mr. Johnson added another $150,000, and thereupon they went through the farce of pretending to buy these leases from Mr. Crosby for $300,000.

According to this remarkable story, Mr. Johnson is the victim and Mr. Crosby the beneficiary of frenzied finance to the extent of $150,000.

The company started business without a dollar, never had a dollar in money, and never has invested any money, except such sums it has been able to borrow.

These sums must have been borrowed on somebody's credit, because the company never had any of its own.

This whole transaction is a virtual fraud upon the public. It is one of the familiar games of frenzied finance by which the public are plundered, and which an outraged public opinion demands must stop. To compel the people of Trenton to fork over another $100,000 annually in order that these two men, who have never invested a dollar in Trenton, may be saved from the consequences of their improvident bargain in assuming these enormous rentals, and be allowed, in addition, to receive dividends upon their own watered stock, would, we submit, be a gross outrage upon the people of Trenton.

Consider now the equity of the claims of the lessor companies.

In the first place, they are not here asking any relief.

In the next place, they have since 1891 received nearly $1,500,000 in dividends upon watered securities issued without a dollar of return to the companies, either in money or service.

The company's own dividend sheet, in evidence (*Ex. T. & M.* 44), shows stock dividends actually paid to 1910 of, ... $520,000

To this add the interest for twenty years on the $260,000 Wilson bonds, ... 260,000

To this add the interest on $552,000 of bonds exchanged for watered stock in 1898–1914, fourteen years at 5 per cent., 386,000

Add rentals paid since 1910, ... 320,000

Total interest and dividends paid on watered securities, ... $1,486,000

From this it will be seen that the people who have received these immense unearned sums from the people

of Trenton have no claim upon this Court for further indulgence or aid.

Dr. Betts, in his report filed before the lease was approved in 1910, said:

> "If a proper depreciation fund is established and maintained it will be practically impossible for the lessee company to pay the rentals called for in the leases."

This conclusion was again stated forcibly by Dr. Betts in the last sentence of his report, and he recommended that the lease be not approved except upon the basis of providing for a depreciation fund of practically fifteen per cent. of the gross receipts.

In the face of this report the Commissioners approved this lease. They were moved doubtless by the fact that it seemed to promise, by the providing of additional capital, the rehabilitation of this run-down system. It seemed to the Commission the best practical thing to do at the moment in order to provide proper service for the City of Trenton. The Commission was then new and the whole subject was new, and in the light of the then conditions it is not fair to criticise the Commission for their action in approving this lease.

But, nevertheless, the fact remains that the Commission at that time stretched a point to give these people a chance. If after the approving of that lease, in the face of this report of its own engineer, showing that the lease could never be carried out without practical ruin to the property, this Commission had again undertaken to tide over this company by compelling the public to pay increased fares, instead of cutting down the dividends upon watered stock owned by men who have wrongfully diverted into their own pockets the money that should have gone to maintain the property, we submit that it would be an act of great injustice to the people of Trenton, and would destroy public confidence in the whole policy of public utility regulation.

The only thing now to do is to face the real situation and apply the proper remedy.

In this proceeding the Board has held that the existing rate of six tickets for a quarter is neither confiscatory nor unreasonable and has left the lessor and lessee companies to rearrange their relations upon a new basis that will permit proper service and proper maintenance and conservation of the property.

For these reasons we submit that the Court should sustain the order of the Public Utility Board in this case.

Respectfully submitted,

CHARLES E. BIRD,

City Counsel of Trenton.

GEORGE L. RECORD,

Of Counsel.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals.

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Prosecutors,

vs.

RALPH W. E. DONGES, JOHN J. TREACY AND JOHN W. SLOCUM CONSTITUTING THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE INHABITANTS OF THE CITY OF TRENTON,
Defendants.

On Appeal.
On Certiorari.

OPINION.

(Supreme Court of New Jersey. Aug. 2, 1917.)

1. CARRIERS 12(4)—REGULATION—FARES—JURISDICTION.

Public Utility Commission has jurisdiction, under P. L. 1911, p. 380, § 17h, to forbid street railways to put into effect proposed withdrawal of sale of six tickets for 25 cents, increasing rate to 5 cents.

2. CARRIERS 12(9)—CONTRACT AS TO RATES—RESCISSION.

Street railway company cannot rescind contract with city as to fares because of its own mistake, not induced by city, as to power reserved by city to alter its franchise ordinances.

3. CARRIERS 12(9)—CONTRACT AS TO RATES—WHEN COMPLETE.

Where street railway company's directors had ordered its officers to execute agreement as to fares on passage of ordinance of same tenor and officers cannot vary its terms and directors do not intend to pass on matter again, agreement becomes binding on passage of ordinance, since all that remains to be done is to execute formal contract.

4. CARRIERS 12(9)—CONTRACT AS TO RATES—CONSIDERATION.

Where city was threatening to alter franchises of street railway company to its detriment, passage of ordinance which does not contain threatened changes is sufficient consideration for agreement of company to continue existing fares.

5. CARRIERS 12(9)—CONTRACT AS TO RATES—EFFECT ON LESSOR ROADS.

An ordinance as to street car fares, passed by agreement between city and company, is binding also as to lines of companies under long-term leases to party to agreement.

Certiorari by Trenton & Mercer County Traction Corporation against the Inhabitants of the City of Trenton and others, to review an order of the Board of Public Utility Commissioners. Affirmed.

Argued November term, 1916, before SWAYZE, MINTURN, and KALISCH, JJ.

Frank S. Katzenbach, Jr., of Trenton (Edward M. Hunt, of Trenton, on the brief), for prosecutor. George L. Record, of Trenton (Charles E. Bird, of Trenton, on the brief), for City of Trenton. Frank H. Sommer, of Newark, for Board of Public Utility Commissioners.

SWAYZE, J. Although the voluminous record in this case has necessarily required a long time to examine, the decision may well be rested on a single point, and that within narrow compass. The prosecutor seeks to set aside an order forbidding it to put into effect a proposed withdrawal of the sale of six tickets for 25 cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company, and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

[1] We think it clear that the Public Utility Commission had jurisdiction under section 17, par. "h" of the act. P. L. 1911, 380. The withdrawal of the sale of six tickets for a quarter was an increase of an existing rate under which 82 per cent. of the passengers carried paid a fare of only $4^1/_6$ cents; by the proposed withdrawal they would be forced to pay a fare of 5 cents.

[2] We find it unnecessary to pass upon the question whether the original ordinances and their acceptance amounted to a contract by which the companies were authorized to charge as much as 5 cents, or whether they amounted only to a limitation by which the companies were forbidden to charge more than 5 cents. It is likewise unnecessary in our view to consider whether a fare of $4^1/_6$ cents is reasonable in view of present conditions and the situation of the company. We find that in 1909 a new contract was made between the city and the company which requires the company to sell six tickets for 25 cents upon all cars operated in the city of Trenton. The facts are as follows: For many years tickets had been sold at that rate. In 1909 the street railway company proposed to stop the sale. Naturally great public interest was aroused, threats were made of attacks upon the franchises of the company, and the city authorities were preparing for such an attack and for amendments of the ordinances. An agreement was reached by negotiation, and on October 4, 1909, the Trenton Street Railway Company adopted a resolution waiving its right to notice of alterations in the ordinances, and directing its officers to execute an agreement already prepared (a copy of which was set forth), immediately after the passage of a new ordinance, a draft of which had been submitted by the city counsel to the railway company. This ordinance provided for the sale of tickets at the old rate by the company upon all cars operated in the city of Trenton. The ordinance was passed by the common council on

October 19th and approved by the mayor on October 22d, 18 days after the resolution of the railway company. Had the agreement been signed by the officers of the company as directed by the resolution of October 4th on the faith of which the city passed the ordinance, no question could have arisen. Instead of that, the company, after the passage of the ordinance, rescinded the resolution because, as the rescinding resolution states, it was falsely recited therein that the city had reserved the right to alter the ordinances whenever in the judgment of the common council it became necessary for the public good. It is a little difficult to understand upon what theory it is supposed the false recital vitiates the action of the company. It is not charged that the city did anything to mislead the company in this respect; it could not have done so, since the ordinances were necessarily as well known to the company as to the city; and the proposed written form of contract, submitted by the city counsel, recited what was the exact truth, that the right of alteration or amendment was reserved "by the several ordinances aforesaid or some of them." The addition of the qualifying words was enough to call the attention of the company to the existence of a question as to the extent of the city's right. With this draft before them, the directors chose to put a broader statement in the recitals of their own resolution. Manifestly they ought not to be permitted for their own mistake to withdraw from the agreement after the city had acted thereon.

[3] It is argued that the parties did not intend that there should be a complete contract until the written agreement was executed. The case, it is said, is within the rule of Water Commissioners of Jersey City v. Brown, 32 N. J. Law, 504, decided by the Court of Errors and Appeals in 1866, and applied by the Supreme Court in Donnelly v. Currie Hardware Co., 66 N. J. Law, 388, 49 Atl. 428. These cases are not applicable. In the first the water commissioners directed

that their engineer and attorney should prepare a contract and submit the same for approval by the board before being executed. The court said that several particulars as to the time of finishing the work, as to the manner of doing it, and as to the guaranty of its permanence remained to be settled. The second case was decided upon the ground that there had been no agreement as to the time allowed for beginning and completing the work and the mode of payment, matters which are generally provided for in such arrangements. As Lord Cranworth said in Ridgeway v. Wharton, 6 H. of L. Cases, 238, at 268, the fact that the parties intend a subsequent agreement to be made is strong evidence to show that they did not intend the previous negotiations to amount to an agreement; but at the same time he protested against its being supposed because persons wish to have a formal agreement drawn up that therefore they cannot be bound by a previous agreement if it is clear that such an agreement had been made; and he expressed his approval of Sir William Grant's decision in the leading case of Fowle v. Freeman, 9 Vesey, 351. In Wharton v. Stoutenburgh, 35 N. J. Eq. 266, it was held that a final agreement had been reached, although the parties intended that a lease embodying the agreement should be executed. The applicability of that case to the present is not weakened by the fact that a written memorandum would have been there necessary to satisfy the statute of frauds if the vendee had not taken possession. The taking possession did not supply the terms of the lease, and before decreeing that the lease should be executed, it was necessary for the court to find that a final agreement had been previously reached, and that the execution of the lease was necessary only by way of part performance of the agreement, and not as a condition precedent to the existence of a final agreement. The facts of the present case bring it within the rule of Wharton v. Stoutenburgh. The draft agreement had

been submitted by the city to the company; the company had assented to its terms; all that remained was for the executive officers to execute the written instrument in which the terms of the agreement were set forth; but the officers had no power to vary the terms, and it was not contemplated that the directors should again pass on the matter. The case is as if in Water Commissioners of Jersey City v. Brown, the agreement had been already prepared and adopted by the water commissioners.

[4] There was sufficient legal consideration for the agreement by the company. It is true the ordinance did not affirmatively concede any benefit to the company; on its face it was rather a detriment; but that is too narrow a view to take. The situation was that the company was liable to attack, and the ordinances might be altered or amended in such a way as to be very harmful, or at least productive of long and expensive litigation. What the company secured was the adoption of an ordinance which contained no such drastic changes; the benefit to the company was in what the ordinance omitted, not in what it contained. In saying this, we are not to be understood as suggesting that the mere act of passing the ordinance in pursuance of the agreement would not be a sufficient consideration in a legal sense.

We think there was a valid contract requiring the company to sell six tickets for a quarter, and hence the Public Utility Commissioners might well conclude that such a rate was just and reasonable under the circumstances of the case.

[5] It is said, however, that the Mercer County Traction Company and the Trenton and Hamilton and Ewing Traction Company could not be affected by the ordinances because no official action was taken by either with reference to its terms. This argument overlooks the fact that both those companies were at the time under lease to the Trenton Street Railway Company

for a term of which more than 990 years were still to come. The probability of the two lessor companies being affected prejudicially by the ordinance is negligible.

The order is affirmed, with costs.

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NEW JERSEY
Court of Errors and Appeals

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Prosecutors,
vs.
RALPH W. E. DONGES, JOHN J. TREACY AND JOHN W. SLOCUM, CONSTITUTING THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE INHABITANTS OF THE CITY OF TRENTON,
Defendants.

On Appeal.
On Certiorari.

Brief for the City of Trenton.

This appeal is prosecuted for the purpose of reversing the judgment of the Supreme Court affirming an order made by the Public Utility Commission forbidding the discontinuance by the Trenton and Mercer County Traction Corporation of the sale of six tickets for twenty-five cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

The opinion of Mr. Justice Swayze, filed in the Supreme Court and reported in 101 *Atl.* 562, has been printed separately for the convenience of the Court, and is submitted with this brief.

Mergers, Consolidations and Leases of Trenton Street Railway Companies.

TRENTON HORSE RAILROAD Co.,
Inc. Mch. 9, 1859.
CITY RAILWAY Co.,
Inc. Sep. 6, 1875.
HAMILTON TOWNSHIP ST. R. Co.,
Inc. Sep. 12, 1890.
SOUTH CLINTON AVE. AND BROAD ST. R. Co.,
Inc. Oct. 28, 1890.

Merged into
TRENTON PASSENGER R. Co.
By Consolidation
Sep. 21, 1891.
PENNINGTON AVE. PASSENGER R. Co.,
Inc. Sep. 24, 1897.
MULBERRY ST. R. Co.,
Inc. Sep. 24, 1897.
EWING PASSENGER R. Co.,
Inc. Mch. 28, 1898.

Merged into
TRENTON STREET R. Co.
By Consolidation
June 28, 1898.
MERCER COUNTY TRACTION Co.,
Inc. July 31, 1899.
TRENTON, HAMILTON AND EWING TRACTION Co.,
Inc. Aug. 11, 1905.

Leased to TRENTON AND MERCER CO. TRACTION Co.,
Inc. Oct. 5, 1910.

STATEMENT.

On the opposite page there is arranged for the convenience of the Court a statement which shows the several combinations and leases of the Street Railway Companies operating street railways in the City of Trenton.

Some twenty years ago one of the predecessors in title of the prosecutor inaugurated the practice of selling six tickets for twenty-five cents in the City of Trenton, and this practice was continued until September, 1909, when it was discontinued. But after negotiations with the City officials it was restored in the same month, and has since been followed by the various operating companies. The said negotiations resulted in October, 1909, in the passage of an ordinance by the City requiring the sale of six tickets for twenty-five cents, which ordinance the company agreed to in advance, in writing, and promised to accept by a confirmatory agreement after it should be passed. The confirmatory agreement was never actually executed.

On August 13, 1915, prosecutor notified the City and the Board of Public Utility Commissioners of New Jersey, in writing, of its intention to discontinue the sale of such tickets. The said Board, immediately upon receipt of the said notice, caused a copy of the same to be sent to the Mayor of Trenton with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action of the company, an opportunity would be afforded on August 17, 1915. The Board also caused a letter to be sent to prosecutor acknowledging receipt of the notice from the company, and enclosing a copy of the letter sent to the Mayor of Trenton. On August 17 the company did not appear before the Board, but on application of the City the Board made an order suspending the pro-

posed change until November 16, 1915, and fixing a day for the hearing on the merits. After the making of this order, prosecutor filed a bill in the District Court of the United States for the District of New Jersey with affidavits annexed, in which bill it prayed that "the Board of Public Utility Commissioners of New Jersey may be enjoined from continuing the order of August 17, from conducting a hearing, and from taking jurisdiction of the matter at all;" and also praying for an injunction against the City and its Mayor from enforcing the penalty prescribed in the ordinance. This bill of complaint is Volume II of the State of the Case herein. Upon the filing of the bill an application was made to the Court for a preliminary injunction, upon which an order to show cause why the injunction prayed for should not be allowed was granted, but without any *ad interim* restraint. This application was heard before Circuit Judge Woolley and District Judges Rellstab and Haight, and that Court on October 14, 1915, filed it opinion refusing the preliminary injunction for the reasons which appear in the opinion, the substance of which is hereinafter quoted.

This judgment was appealed to the United States Circuit Court of Appeals, which sustained the judgment of the District Court.

After judgment was rendered in the United States District Court, the hearing before the State Board of Public Utility Commissioners was taken up. Witnesses were heard upon both sides, upon all of the points involved, at the conclusion of which an order was made by the Board of Public Utility Commissioners ordering the prosecutor to continue the sale of six tickets for a quarter. This order appears in the State of the Case, page 844.

The case came before the court below on certiorari of this order. There were thirty-nine reasons assigned by the prosecutor, but they were all reduced by us to the following legal propositions:

First: That the Board of Public Utility Commissioners had no jurisdiction to make the preliminary order of August 17, 1915, or the final order of January 11, 1916, because the prosecutor had no notice of the order of August 17, 1915, and because it has a contract with the City of Trenton authorizing it to charge the five-cent fare.

Second: That the final order of January 11, 1916, was not justified by the evidence in the case.

Third: That the lessor companies of the prosecutor were not made parties to the hearing.

To these main contentions of the prosecutor, the answer of the City of Trenton in substance is:

First: That the Public Utility Commissioners had jurisdiction over this case under the Public Utility Statute; that they had the power to make the order of August 17, 1915. But if the said Board had no such power, the duration of the order was three months and the time has now expired, and therefore there is nothing before this court on that point. That prosecutor has no contract with the City of Trenton, but on the contrary is bound by the provisions of the ordinance passed by the City of Trenton on October 22, 1909, requiring the Traction Company to sell six tickets for a quarter, to which prosecutor in writing expressly agreed, and that such ordinance and agreement constitute a binding contract now in force.

Second: That the order of January 11, 1916, is in accordance with the evidence taken in the case.

Third: That the lessor companies have no interest in this case, as prosecutor has leased their properties under a guaranteed rental, and they are not, therefore, proper parties to this controversy.

Fifty-one reasons are assigned for reversal in this Court, but as none of them presents any new feature, they too are reduced to the three legal propositions already stated for the purpose of this argument.

And, further, as we understand it, this Court will

not consider on appeal a point not raised in the Court below.

POINT I.

IT IS IMMATERIAL WHETHER THE ORDER OF AUGUST 17, 1915, WAS LEGAL; IF MATERIAL, IT WAS LEGAL.

As this order was a temporary suspension of the contemplated action of the prosecutor in discontinuing the sale of the six tickets for a quarter, and the three months of its duration having now passed, it seems idle to discuss the legality of the order.

If the Court, however, considers the point material, the claim of the City of Trenton is, that the company had ample notice and opportunity to be heard. The company itself invited the jurisdiction of the Board by forwarding a letter to the Public Utility Commission notifying the Commission that it intended to withdraw the sale of these tickets upon a specified day (see Case, Vol. 11, *Exhibit C 62, page* 308, letter of August 13, 1915). The forwarding of this letter was a recognition by the company of the power of the Public Utility Commission in the premises, even if the letter itself disclaimed the Public Utility Commission's power over the subject matter, otherwise there was no reason to send it. Immediately upon the receipt of this letter the Public Utility Commission sent a letter to the City of Trenton notifying the City of Trenton of the receipt of this communication from the prosecutor, and appointing Tuesday, August 17th, at eleven o'clock in the morning as the time, and the State House, at Trenton, as the place, where the said Public Utility Commission would sit for the purpose of hearing and considering any application that the City of Trenton might wish to make upon the subject matter contained in the letter from the prosecutor to the Public Utility Commission. This letter appears as *Exhibit C 64, page* 310,

Case, Vol. II. The Commission also caused a copy of this letter to the City to be sent to the Trenton and Mercer County Traction Company, as appears by *Exhibit C 63, page* 309, Case, Vol. II, letter of August 13, 1915, by the Public Utility Commission to the Trenton and Mercer County Traction Company. The transmission to the prosecutor of a copy of the letter from the Commission to the City was a direct notice that at the time and place mentioned therein the subject matter would be taken up and the City, as the representative of the people who were affected thereby, would be given an opportunity to apply for such order as might be reasonable in the premises. This not only was an adequate notice, but it at least was information that on such a day they would have an opportunity to be heard. As reasonable men they were charged with the knowledge that the public officials of Trenton would of course oppose, as they did so strenuously in 1909, the withdrawal of these tickets, and that they would apply to the Commission at the time and place mentioned for some order that would continue the issuing of these tickets until the whole matter could be finally heard.

But the complete answer to this claim of the prosecutor is set forth with reasoning that is conclusive in the opinion of Judge Haight in the United States District Court case, from which we quote:

> "The second ground requires a determination as to whether the order complained of was in fact made without notice to the plaintiffs and without affording them an opportunity to be heard, and if so, whether notice was necessary before the Board could have legally made it. The Board of Public Utility Commissioners was created by an act of the New Jersey Legislature, approved April 21, 1911 (*P. L.* 1911, *p.* 374), and was thereby vested with certain defined powers; among them to fix just and reasonable

rates to be charged by various public utilities, included in which are street railway companies, whenever it should determine any existing rate to be unjust, unreasonable or insufficient, and to hear and determine whether any increase, change or alteration in rates, which might thereafter be made by any public utility, would be just and reasonable. The Board was also vested with power, 'pending such hearing and determination' of the latter question, to order, for a period not exceeding three months, the suspension of the increase, change or alteration until it should have approved the same. It is by virtue of the last-mentioned power that the Board presumed to act in making the order in question. After the lessee company sent the notification to the Board of its intention to discontinue the sale of six tickets for twenty-five cents, the latter caused a copy of the same to be sent to the Mayor of the City with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action by the company, an opportunity would be afforded on August 17. On the same day the Board caused a letter to be sent to the lessee company acknowledging receipt of the notice, asking when it proposed to make the change, and enclosing a copy of the letter sent to the Mayor. The company was not represented before the Board at the hearing, and as far as appears, was not notified whether the City proposed to take any action or make any motion before the Board on the date specified, or otherwise. On that date, however, the City was represented, and on the motion of its solicitor the order in question was made. It thus appears that the only notice the plaintiffs had was that on a certain day the Board would hear any motion that the City intended to make; but

they were never notified that the City intended to make any motion whatsoever or what it would be, and were afforded no opportunity to defend against the motion which was made and the order which the Board entered. Under these circumstances, if notice and hearing were necessary prerequisites, we think the plaintiffs were not given such notice or afforded such an opportunity to be heard in respect to the action which was taken as to satisy the 'due process of law' clause of the Fourteenth Amendment. But we think that the statute creating the Board and defining its powers authorized an order of suspension to be made, without notice of hearing. The powers of the Board, so far as are necessary to be considered, are conferred by Sections 16 and 17 of the act. Section 16 provides: 'The Board shall have power'; then follows, in eleven separate paragraphs, an enumeration of the powers. In some of these paragraphs the exercise of the power is expressly limited to 'after hearing'; in others to 'after hearing upon notice.' Section 17 provides: 'The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined'; then follows, in eight separate paragraphs, an enumeration of powers. It thus appears that the Legislature has carefully defined when a hearing and notice are necessary. The last of the paragraphs of Section 17 confers two separate powers: one to hear and determine, either upon complaint or upon the Board's own initiative, whether an increase, change or alteration in any existing rate is just and reasonable, and the other to suspend, for a limited time, such increase, change or alteration, 'pending such hearing and determination.' The latter power is expressly conferred in so many words, and by a separate sen-

tence, in which there is no requirement that the order can be made only after hearing and notice. It is a separate power, deemed necessary by the Legislature, no doubt, to give more efficacy to the former. The reason for granting it, as well as the context, leads us to the conclusion that it is not limited or qualified by the opening paragraph of Section 17, before quoted. That paragraph, we think, refers to the powers to determine whether the proposed change would be just and reasonable. It is difficult to understand why the Legislature should have required two hearings on the same question. If no other question were presented than that of reasonableness of the rate, as would most often be the case, the first hearing, to be of any effect whatever, must, of necessity, be practically the same as the second. On the other hand, it is reasonable to assume that the Legislature would wish to clothe the Board, to which it had delegated the State's rate-making right, with power to preserve the *status quo* until there could be a hearing and determination upon the merits, without the delay incident to notice and hearing. This is the same power exercised by and conferred upon the Interstate Commerce Commission by the Act of June 18, 1910 (36 *Stat. at L.* 552). Nor do we doubt the right of the Legislature to grant such a power, without violating the Fourteenth Amendment. Nothing more was done than to clothe a quasi-judicial body with a power which has always been exercised by courts of competent jurisdiction."

POINT II.

THE PUBLIC UTILITY COMMISSION HAS JURISDICTION OVER THE SUBJECT MATTER IN THIS CASE. NO ACTION OF THE CITY OF TRENTON SHOWN BY PROSECUTOR COULD OR DID DEPRIVE THE STATE OF NEW JERSEY OF ITS RESERVED RIGHT TO FIX JUST AND REASONABLE RATES.

We content ourselves with a brief statement of the principles involved in this case and a citation of the authorities, relying upon the brief of the counsel for the Public Utility Commission for a more extended discussion of this point.

(a) The power to fix and regulate the rates charged in the conduct of a business affected with a public interest is an undoubted power of government continuing in its nature. *Stone* v. *Farmers' Loan & Trust Co.*, 106 *U. S.* 307.

(b) Since this power is a power of government it cannot be lost by nonuser, nor is it affected by the fact that before the power is exercised the income of the business subject to the power has been pledged for the payment of debts incurred, or that the property employed in such business has been leased to a tenant that relied upon the earnings for the means of paying the stipulated rent. *Chicago, Burlington & Quincy R. R. Co.* v. *Iowa*, 94 *U. S.* 155; *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164.

(c) If the State, directly or through any municipal corporation, has power to establish by an inviolable contract the rates to be charged in a public utility, it can only be where the language is express and the time of the contract limited to a definite term, not grossly unreasonable in point of time. *Stone* v. *Farmers' Loan & Trust Co., supra; Home Telephone & Telegraph Co.* v. *Los Angeles* 211 *U. S.* 265.

(d) The State did not, by the statutes referred to in

the bill of complaint—which in general terms grant authority to fix rates—renounce its governmental power to fix and regulate rates; the only authority granted was the authority in general terms to fix fares. By such general language the State does not part with its governmental power to fix and regulate rates. *Stone* v. *Illinois Central Railroad Co.*, 116 *U. S.* 347; *Stone* v. *Farmers' Loan & Trust Co.*, 116 *U. S.* 307; *Chicago, Milwaukee & St. Paul Railway Co.* v. *Minnesota*, 134 *U. S.* 418; *Minneapolis & Eastern Railway Co.* v. *Minnesota*, 134 *U. S.* 467; *Southern Pacific Co.* v. *Oregon Railroad Commission*, 230 *U. S.* 537; *Milwaukee Electric Light Co.*, 35 *Sup. Ct. Rep.* 820; *Duluth St. Railway Co.* v. *Railroad Commission of Wisconsin*, 152 *N. W. Rep.* 887.

(e) The fixing of a maximum rate of fare by the statute and ordinances referred to in the bill of complaint, did not create an inviolable contract as to rates which prevented the subsequent exercise by the State of the power to fix rates less than said maximum rates, provided such lesser rate is a just and reasonable one. *Dow* v. *Beidelman*, 49 *Ark.* 325, 5 *S. W.* 297; *Georgia Railroad & Banking Co.* v. *Smith*, 128 *U. S.* 174; *Rogers Park Water Co.* v. *Fergus*, 180 *U. S.* 625; *Knoxville Water Co.* v. *Knoxville*, 189 *U. S.* 425.

(f) The Legislature of the State of New Jersey has not conferred upon the municipalities of this State any power to enter into inviolable contracts with street railway companies establishing rates of fare and suspending the State's power to fix and regulate rates. *Home Telephone Co.* v. *Los Angeles*, 211 *U. S.* 265; *Wyandotte Gas Co.* v. *Kansas*, 231 *U. S.* 623.

(g) If the municipal corporation was vested with the power to engraft upon the franchises of the Railway Companies a provision limiting the rate of fares as a condition of the use of the highways for street railway purposes, the act of the municipality in imposing such liability was that of agency of the State in granting the

corporate franchises, and is therefore subject to the power reserved to the State by constitution and by statute, to amend, alter or repeal corporate statutes. The enactment of the statute creating the Board of Public Utility Commissioners and vesting in the Board power to fix just and reasonable rates whenever it determines existing rates to be unjust or unreasonable and temporarily pending hearing to suspend proposed increases in existing rates, was the exercise by the State of its reserved power to amend, alter or repeal corporate franchises. *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164; *San Antonio Traction Co.* v. *Altget*, 200 *U. S.* 304; *City of Mani* v. *Manitowac & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. W.* 925; *Louisville & Nashville R. R. Co.* v. *Railroad Commission of Kentucky*, 231 *U. S.* 298.

(h) A special statutory enactment from the governmental power of the State to fix and regulate rates does not pass to a new corporation succeeding others by consolidation or purchase in the absence of express direction to that effect in the statute.

The same rule is applicable where the constituent companies are merely owned and operated by one of them as authorized by the legislation. An enactment held by the latter will not pass unless so expressly provided. *St. Louis & San Francisco Railway Co.* v. *Gill*, 156 *U. S.* 649; *Matthew* v. *Board of Corporation Commissioners of North Carolina*, 97 *Fed.* 400; *Peoples Gas Light & Coke Co.* v. *Chicago*, 194 *U. S.* 1.

(i) Where the action of the municipality does not establish an inviolable contract suspending the State's power to fix and regulate rates, the power of the Board of Public Utility Commissioners is complete. The Board may, in such case, fix a just and reasonable rate, whenever it determines the existing rate to be unjust and unreasonable, notwithstanding the fact that the existing rate has the sanction of prior municipal action assented to by the company. A just and reasonable

rate so fixed by the Board may be less than that limited by the prior municipal action, or may exceed the rate so limited. This follows from the fact that the existing rate may be unjust and unreasonable to the community served because it affords more than a fair return, or unjust and unreasonable to the utility furnishing the service because it fails to afford a fair return. The power conferred upon the Board is, Public Laws 1911, page 374, Section 16:

> "(c) To fix just and reasonable rates * * * whenever the Board shall determine any existing rate * * * to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential."

City of Dawson v. *Dawson Telephone Co.*, 137 *Ga.* 62, 72 *S. E.* 508; *City of Manitowoc* v. *Manitowoc & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. E.* 925; *Milwaukee Electric Railway & Light Co.* v. *Railroad Commission of Wisconsin*, 153 *Wis.* 592, 142 *N. W.* 491; *City of Benwood* v. *Public Service Commission (W. Va.)*, 83 *S. E.* 295, *L. R. A. (N. S.)* 1915 *C.*

(j) Section 17 (h) of the Public Utility Act clothes the Board with power pending a hearing and determination on the justice and reasonableness of a proposed increase in any existing rate, or change or alteration in any existing classification, to order the suspension of such increase, change or alteration for a period not exceeding three months.

The statute does not make the exercise of the power of suspension dependent upon notice and hearing as to whether or not the power shall be preliminarily exercised in a specific case.

In this respect it resembles the Interstate Commerce Act.

No constitutional provision makes notice and hearing a prerequisite to the exercise of the power of suspension.

See *Home Telephone and Telegraph Co.* v. *City of Los Angeles*, 211 *U. S.* 265, 278.

POINT III.

ORDINANCE OF CITY OF TRENTON OF OCTOBER 22, 1909, REQUIRING SALE OF SIX TICKETS FOR A QUARTER, WAS A CONTRACT SUPERSEDING PREVIOUS CONTRACTS, IF ANY EXISTED.

Even if the ordinances relied upon by the prosecutor constituted a contract, that contract was abrogated by the ordinance of October 22, 1909. The following undisputed facts in the case conclusively established this contention.

For many years prior to September, 1909, the Trenton Street Railway Company (then the operating company), and the constituent companies which were merged into it, had voluntarily adopted the practice of selling six tickets for a quarter, each ticket good for a ride within the limits of the City of Trenton. That on Monday, September 13, 1909, an announcement was made on behalf of the company, then operating the Trenton Street Railway system, that no more strip tickets would be sold by the conductors after 6 P. M., on the 15th day of September, 1909, and on the said 15th day of September, the actual sale of the said tickets was discontinued in accordance with said notice. That the announcement of the purpose of the company to withdraw the sale of these tickets and the actual withdrawal of the same, aroused widespread indignation among the citizens and public officials of the City of Trenton. The action of the company became the leading news feature of the local newspapers from the 13th day of September, daily, until the whole matter was settled by the passage of the ordinance re-establishing the sale of the tickets on October 19, 1909. The subject was taken up by the Chamber of Commerce, of Trenton, and the Merchants' Association of that City, and by the Mayor and by the Common Council.

The Mayor of the City addressed strong messages

to the Common Council upon the subject of the withdrawal of these tickets, in substance, reciting that the company had grossly violated the provisions of the City ordinances in respect to the schedules of its cars, in the matter of running old and unsanitary and flat-wheeled cars, in the matter of running cars upon parallel tracks in the same direction, and called attention to various other violations of the City ordinances and instances of poor and inadequate service.

The Mayor, also, in a special message directed to the Council, raised the point that some of the company's franchises were probably void, and that a legal action would result in their being declared without any rights upon certain of the streets of the City, and suggested that the City should proceed by appropriate legal action to have these franchises set aside.

The result was such an aroused public opinion that representatives of the City and representatives of the company had several conferences from day to day.

As a result of these conferences the President of the Street Railway Company, on September 18, notified the Common Council that the Company was willing to compromise the strip ticket matter by restoring the sale of the strip tickets, not on the cars, but at certain stores or other places within the city limits. This compromise did not satisfy public opinion or the public officials, and various members of the Common Council announced that at the Council meeting to be held on Tuesday evening, September 21, 1909, they would introduce resolutions inaugurating an attack upon the company's franchises, and looking to the enforcement of various ordinances of the City as to better service.

As a result of all these influences assurances were made by the company to the Common Council on the evening of its meeting on September 21, that the tickets would be restored for sale upon all the cars the following Friday.

At said meeting a resolution was adopted to which the attention of the Court is particularly directed. It recited that in the ordinances of the City granting to the company operating the street railway and its predecessors the right to construct and operate street railway lines in and upon the public streets of the City of Trenton, the City reserved the right to alter or amend the same at any future time whenever in the judgment of the Common Council it should become necessary for the public good so to do. It recited that in said ordinances, or some of them, it is provided that no such alterations or amendments shall be made without giving to the Railway Company affected thereby one month's written notice. It recited that in the judgment of the Common Council it is necessary for the public good that the existing ordinances should be altered or amended so as to provide for the uninterrupted sale by the company of tickets at the rate of six tickets for twenty-five cents, or that in lieu of such amendment or alteration, a new ordinance should be passed requiring the sale of such tickets by the company upon the terms aforesaid, provided the company was willing to waive, in writing, one month's notice thereof, to which it was entitled, and signify its willingness to enter into a written contract or agreement with the City of Trenton accepting the terms of such proposed new ordinance, and agreeing to comply with the requirements thereof.

The resolution then proceeds to designate five members of the Common Council to act as a committee to confer with the officers of the Trenton Street Railway Company relative to the said matter.

The resolution further provided that if the company should fail within ten days to give such written waiver and signify its willingness to enter into a written agreement, that the City Clerk should forthwith give one month's written notice to the company of the intention of the Common Council to alter and amend the ordinance in the manner hereinbefore described.

The resolution further provided that in the event that the company should waive such notice and make such agreement and accept the terms of the new ordinance, that the City Counsel be directed to prepare a draft of such proposed new ordinance for introduction at the next meeting of the Common Council.

As a result of the passage of this resolution and the other influence hereinbefore described, on Wednesday, September 22, the Street Railway Company actually restored the sale of the strip tickets on all of its cars.

The committee appointed by the Common Council accompanied by the City Counsel, Mr. Charles E. Bird, met the representatives of the company in conference, and in such conference it was agreed that the sale of the six tickets for twenty-five cents should be continued by the company, and that a formal agreement to that effect should be made between the City and the Company. At this conference the company agreed that the sale of the strip tickets, which in fact had been theretofore resumed, as before stated, should be continued for the future, and that the company stood ready to take whatever action the City requested in order to make the obligation to sell these strip tickets binding upon the company in the future. It was thereupon arranged that the Board of Directors of the company should pass a resolution waiving its right to receive from the City any notice relating to the passage of a new ordinance providing for the sale of the said strip tickets, and agreeing to the adoption of a new ordinance to that effect, and further agreeing that when the ordinance was passed the company would execute another written agreement ratifying the said ordinance. In accordance with this arrangement the Board of Directors of the Trenton Street Railway Company, on the 4th day of October, 1909, adopted the resolution which appears as complainants' *Exhibit C 68,* page 321 of complainants' bill of complaint in the District Court case. (Case, Vol. II.) The attention of the Court is particularly directed to

this resolution. *It recites that the City in its several street railway ordinances has reserved the right to alter or amend such ordinances.* It recites the provision of the ordinance that the company shall have one month's written notice of any proposed amendment. It recites the resolution of the Common Council at the meeting held on the 21st day of September, to which reference has been heretofore made under this point, notifying the company of the desire of the Common Council to amend the existing ordinances or to pass a new ordinance, providing for the sale of strip tickets. It recites that the amendment of the several ordinances would involve a greater expense and delay than would be necessitated by the passage of a new ordinance. It recites that the City Counsel, on behalf of the City, has submitted to the company a draft of such proposed new ordinance, and of a written form of agreement to be executed by the Company, of which copies are mentioned as attached to the resolution, and *that the Board of Directors have fully considered the premises, and are willing to aid in the speedy passage of the proposed new ordinance.* The resolution then provides that the company *waives all right to receive any notice relating to the passage of the said new ordinance,* and that the proper officers of the company are directed to transmit to the said City a duly authenticated copy of the resolution.

The resolution further provides that immediately after the passage of the said new ordinance by the City, substantially in the form embodied in the copy annexed to the resolution, the proper officers of the company are directed execute an agreement in form substantially similar to the draft of the said agreement annexed to the resolution. This resolution of the directors was transmitted to the City on or about October 2, 1909.

Annexed to this resolution was a draft of the ordinance and of the subsequent agreement that the company was to execute after the passage of the ordinance, which ordinance is the ordinance in question in this

controversy and is complainants' *Exhibit C 55*, page 304, of the bill of complaint, in the U. S. case (Case, Vol. II), and which agreement is appellants' *Exhibit C 70*, page 325, of the bill of complaint in the U. S. case (Case, Vol. II).

On the 19th day of October, 1909, the said ordinance in the form recited in the resolution of the company's directors, was passed by the Common Council and approved by the Mayor on October 22. This is the ordinance which is in question in this case, *Exhibit C 55*, page 304, of complainants' bill of complaint in the U. S. case (Case, Vol. II). It provides expressly that the Street Railway Company shall be required to sell at all times, upon all of its cars, strip tickets at the rate of six tickets for twenty-five cents, and that the Mayor of the City shall be authorized to revoke the license of any car operated by the company upon which tickets are not sold. This ordinance was introduced October 5, 1909, referred to the proper committee, and passed October 19, 1909, and approved October 22, 1909.

Here, then, was an agreement reached after conferences between the representatives of the City and the representatives of the company, and carried out in writing in accordance with the verbal arrangements made by the representatives of the City and of the company respectively. The company agreed, by resolution of its directors, to waive any right to any notice that it might have of the intention of the City to pass this ordinance, and agreed that the City might pass it, and that the company would execute a written agreement after it was passed formally accepting its terms, and the officers of the company were authorized to execute such an agreement *immediately* upon the passage of the ordinance by the Common Council and its approval by the Mayor.

We insist that these several actions by the company and the City constituted an agreement on behalf of the company to maintain the sale of these tickets upon

all of its cars as long as it should exercise its franchises.

The company attempts to escape from the obligation of this contract by asserting two defenses: First, that it was misled into making the contract by the recital in the resolution adopted by the company's directors to the effect that in all of the ordinances of the Common Council to the company and its predecessors, the right was reserved to amend such ordinances. Our answer to this is that if said recital was a material fact in the negotiations and in the agreement, then of course it was the company's business and that of their legal advisers to ascertain whether said recital was true in fact or in law. If it was not a material recital then it does not affect the agreement. It is therefore immaterial whether this recital is as a matter of fact true or not true.

This claim of ours is absolutely clinched and proved beyond any discussion by the statement of John A. Rigg, General Manager, or whatever he was of the company, in his affidavit annexed to the bill of complaint in the U. S. (Case, Vol. II, page 63), wherein he specifically states

> "that the Trenton Street Railway always claimed that the City of Trenton had no right to alter or amend the ordinances * * * so as to in any way lessen the amount which the company had the right to charge for transportation of passengers * * * under said ordinances."

Our claim that this recital was not a material part of the agreement and did not enter into the company's mind is again confirmed by the first recital in the form of agreement which the company agreed to execute after the passage of the ordinance (complainants' *Exhibit C 70,* page 325, Case, Vol. II). In that agreement the following recital appears at the top of page 326:

> "Whereas, in and by the several ordinances aforesaid, *or some of them,* the right was reserved by the said party of the second part to

> alter or amend said ordinances at any future time, whenever, in the judgment of the Common Council of said City, it should become or be necessary for the public good so to do."

There is no possible denial of the fact that this right was reserved as to some of the ordinances of prosecutor, or its predecessors. The company's directors had this agreement in front of them when they passed their resolution drafted by their own counsel, and this agreement was annexed to the said solution. Therefore the claim that they were misled by the recital that all of the ordinances contained this provision falls to the ground.

As another defense to the validity of this solemn agreement, the company alleged a failure of consideration. Our answer to this claim is, that there was a most substantial and vital consideration that passed from the City to the company in return for this agreement. The consideration was the removal of the public and the official hostility to the company. The Mayor had publicly called upon the Council in a special message to attack the company's franchises; that the Council had started measures looking to compelling the company to buy new cars and to abolish flat wheels, and live up to its schedule, and to adopt new and reasonable schedules, and to twelve or thirteen other points which the City had raised as against the company's service or obligations under its franchises. It was this wave of public indignation and this threat of adverse City action that caused the company to yield. This is expressly proved by the assertion of General Manager Hurley in his letter to the Council, which was delivered on the evening of September 21st, wherein he says specifically:

> "We are desirous of doing everything in our power to meet the demands of the citizens, realizing that their good will is our greatest asset."

The good will of the public, says the Manager of the company, is the chief asset of this company. When by the making of this agreement the animosity of the public was removed, and its good will was won back, the company obtain the thing which was the real consideration for the making of the agreement.

The company therefore received its consideration, and the claim that its action was without consideration is therefore without force.

The company further claims that after the passage of the resolution by the Board of Directors waiving the notice in the ordinance, and agreeing to accept its provision and execute the contract to that effect, it discovered that the recital in the said resolution of their Board of Directors was untrue, and subsequently to the passage of said resolution rescinded the same. This resolution of rescission is *Exhibit C 69*, page 322 (Case, Vol. II). This claim is entirely without force if the foregoing reasoning is sound. If the recital in the resolution of the Board of Directors was passed upon by their own counsel, and they had full knowledge of its meaning, or if the recital was immaterial and was not a material part of the agreement, then it was impossible for the company to rescind the agreement after they had received the consideration, to wit, the restoration of public favor, and after the city had performed its part by the passage of the ordinance agreed to beforehand, and stopped proceedings to invalidate the company's franchise.

The resolution passed by the Board of Directors agreeing to execute the subsequent agreement after the City should act by the passage of the ordinance, simply put the company in the position, after the passage of the ordinance, that they could have been then and could now be compelled to execute the agreement agreed to be made. The company after it had received the benefit which the agreement to submit to the ordinance brought them in the way of the cessation of public agitation,

and in the fact of the abandonment by the City of the proposed attack upon the franchises, could not thereafter refuse to execute the agreement to which it had bound itself. As a matter of fact, the execution of this agreement was a mere formality. It is obvious that its execution was provided for merely that there should be additional evidence of the agreement between the City and the company.

The prosecutor does not claim that it has ever notified the City that it had rescinded the said resolution. All that appears is that the confirmatory agreement was never executed.

This amounts to a fraud upon the public. There is no other way to properly characterize it. If these Directors have known all of these years that the agreement they made with the City was void, and have not so notified the City, they have put the City in a false position, and have induced it to rest secure in the belief that the agreement between the City and the company was a valid one, and they have obtained all of the advantages in the way of a favorable public sentiment, and immunity from official attack, which the concealment of their position has brought them.

During all of those years they have sold these tickets they have acted in exactly the same way that they would have acted if they had actually executed the confirmatory agreement, which they failed to execute. We submit that this in any event is a ratification, in whole, of the agreement which they had made with the City, and is of equal binding force as if they had executed the confirmatory agreement which they failed to execute.

The cases cited in support of the prosecutor's position that there was no contract until the executory agreement was signed, do not fit this case at all. All these cases go upon the supposition that the minds of the parties have not met until the execution of the final agreement. They are all cases where only a preliminary

and general understanding was reached in the first instance, subject to be revised and modified, and these revisions and modifications to be stated in a subsequent agreement. In this case the minds of the parties met, and when the City Council passed the ordinance and sent a copy of it to the company, and the company by formal resolution recited the ordinance, expressly indicated its assent to its provisions and promised to execute not a modified agreement, but in the exact form annexed to the resolution. If the City had changed its ordinance in any material part after the passage of this resolution by the Board of Directors of the company, then there might be some force to the claim that the minds of the parties had not finally met.

Finally, there was no necessity for any specific consideration in this case. The City and the company had relations which had been established by ordinance. These relations were mutual. It is well-established that when parties to an agreement modify an existing agreement that the modification of the agreement is in itself the consideration, or is evidence of mutual advantages which constitute the consideration.

That these several acts constitute a contract between the Trolley Company and the City is supported by the case of *Jersey City* v. *Jersey City and Bergen Railroad Company, 70 N. J. L., page* 360. This was a case where provisions were incorporated in the ordinance requiring the company to pay license fees.

POINT IV.

Ordinance of October 22, 1909, Valid as an Ordinance if Not as a Contract.

If the facts set out under the previous point do not constitute a contract, nevertheless it is plain that the ordinance of October 22, 1909, was a valid exercise of the power vested in the municipality to amend the ordinances previously granted to prosecutor's lessor com-

panies. This ordinance, being valid, must stand until the Utility Board shall, under its power to fix just and reasonable rates, change the conditions as to fares established by the ordinance.

The prosecutor claims that this power of amendment does not extend to changing fares, because it claims that that is a vital matter. If this claim was sound, it would amount to the position that no amendment of an ordinance can be made which imposes any additional financial burden upon the company. There is no difference in principal between the power of the City to compel the company to put on additional cars, to abolish flat wheels, or to pave between the tracks, or to improve the service in any way through the power of amending an ordinance, and the power to reduce the fares. Any exercise of the power of amendment by the City government necessarily imposes a financial burden upon the company. The test is not whether the ordinance is directed to the amount to be charged for the fare, or to any other part of the service, but the test is whether after the amendment has gone into effect, there is still enough income left to afford a fair return over the value of the property. If the City by amending the ordinance compels the company to run so many cars that the existing rate is unprofitable, then the company can raise the rate, or if it is limited as to the rate, then the ordinance requiring an excessive expenditure for service must fail. That this is true appears from the consideration of the possibilities of the future.

Supposing a new motive power cheaper than electricity is discovered, or a cheaper method of producing electric power is discovered, whereby the company could transport passengers at a cost of one cent apiece, with the result that its earnings would be fifty per cent. upon the fair value of its property, is it not plain that both the City would have the power to amend the ordinance so as to reduce the rate, and that the Public Utility Commission would have power to reduce the rate so that the

net earnings would afford only a fair return upon the value of the property?

POINT V.

THE COMPANY IS BOUND TO MAINTAIN THE SALE OF TICKETS BY ITS OWN AGREEMENT WITH THE PUBLIC UTILITY COMMISSION.

It appears by the record offered in this case by Mr. Sommer of the application of the company for the approval of the Public Utility Commissioners of the lease by which it obtained control of the Trenton Street Railway system, that all of the present difficulties with which prosecutor is now struggling were foreseen by the Commission, made the subject of discussion and investigation, and resulted in a virtual agreement between prosecutor and the Commissioners. The proof of this statement appears in the quotation from the testimony taken in that proceedings given by Mr. Crosby, the representative of the existing companies and the president of the newly formed lessee company, which was read into the record. (Case, page 474, line 10.) Mr. Crosby said under oath:

> "There has been some contention in this particular case as to whether the tariff to be charged is fixed at five cents or a possible four and a sixth cents. I have not been able to find exactly what the legal status is as recognized by the (lessor) companies. I am under the impression they are practically committed to the six-for-a-quarter rule. I suppose we inherit that committal. If not, I should not have the authority to commit them, but I am ready to say, if there is any doubt, so far as we are concerned, we are willing to submit to a friendly suit to settle the question."

He further said (Case, page 474, line 36):

> "I looked at the matter when going over the

estimates as to probable earnings that we should never have more than six-for-a-quarter tickets. If the ordinance has been passed and accepted, that settles it."

To clinch this point, Mr. Sommer, then President of the Commission, asked this question (Case, page 608):

"*Q.* In making the estimate, however, of whether the future, on the lines laid down by the lease, would be profitable, you use as a basis what: five-cent fare or the six-for-a-quarter fare? *A.* We eliminated it in one sense. * * * WE HAVE BASED IT ON THE SIX-FOR-A-QUARTER BASIS REALLY. I should say, in regard to the six-for-a-quarter basis, there was no thought that the question would be raised for a change to five cents. Mr. Rigg told me they had made a spurt and had gone back. And he said they did not know just what the legal status was."

We submit that this language amounts to an agreement that this particular lessee company was prepared, as a condition of receiving the approval of the Commissioners, never to raise the question unless it was compelled to by their lessor companies, and that in that event it, the lessee company, agreed that it should be settled by a friendly suit. This means that the question as to whether there was a legal contract which the lessor companies could avail themselves of to discontinue the sale of the strip tickets, if ever raised, should be settled by a friendly litigation to determine the legal point involved.

We submit, therefore, that prosecutor obtained the approval of the Commission to this lease upon the distinct representation that it would not attempt to change the practice of selling six tickets for a quarter, except as the result of a friendly litigation upon the legal point of the contract. The Commission relied upon that representation in approving the lease. They should not be

allowed at this late date, after they have been disappointed in their anticipation of being able to squeeze the Trenton public into paying these rentals upon millions of watered stock, and to have something left over to pay dividends upon their own stock, all of which is shown by Mr. Johnson's testimony to be pure water—they should not be allowed in this proceeding to raise this question which they expressly covenanted not to raise. They do not show that they have been requested to raise this point by their lessor companies.

POINT VI.

Burden of Proof.

The prosecutor claims that the Commission erred in holding that the burden of proof was upon the prosecutor in proving that the new rate of a straight five-cent fare would be just and reasonable, and that the existing rates were unjust and unreasonable.

Had the prosecutor sought to change the existing conditions and give up a rate which had existed for twenty-five years, and to put in force a higher rate, it is obvious that the burden of proof was upon the company seeking to make the change.

But if the point was important and the burden of proof was upon the City, an inspection of the record will show that by a very great preponderance of proof, the City has established that fact both that the existing rate is more than just and reasonable and that any increase in the rate would be unjust and unreasonable. This will appear as we discuss he merits later in the Brief.

POINT VII.

The Prosecutor's Valuation of its Property is Excessive.

We contend that prosecutor has failed to meet the burden of proof that the existing earnings do not fur-

nish a fair return upon the value of the company's property which is devoted to a public use.

The prosecutor undertakes to prove a valuation of $3,700,000 for physical property, to which it adds anywhere from $1,000,000 to $2,000,000 for what Mr. Ford terms "development cost." Let us analyze these figures.

Mr. Johnson makes up his figures by taking the valuation of the physical property which he made in 1910, before the properties were taken over. This value he finds to be approximately $3,200,000, to which he added some $800,000 which has been subsequently spent upon the property. We attack this valuation upon many grounds. In the first place, he admits that his valuation was not made wholly by himself. He admits that he had the assistance of other people in gathering and marshaling his data, and these people are not produced for cross-examination. He does not produce his original notes. Nor does he produce the details of his valuation requested by the City.

This valuation in 1910 Mr. Johnson admits was what he called a valuation new. That is to say, he valued all of the property as though it was new and in good condition.

There is no dispute that this property was at that time badly run down.

Confirmation of the fact that the property of the prosecutor was very seriously depreciated appears in several ways. Mr. Hurley, the General Manager of the Trenton Street Railway Company, wrote a letter to the tax commissioners in August, 1907 (*Exhibit O 36*), in which he said:

> "As to our property in the streets, we can show unquestionably that much of the track will have to be entirely renewed within the next year or so."

The City of Trenton, at this very time in 1910, made formal complaint to the Board of Public Utility Com-

missioners that the company's condition was bad, specifying the exact particulars upon which its charge was based. Upon this complaint the Board of Public Utility Commissioners used the following language in its order:

> "The Board of Public Utility Commissioners for the State of New Jersey, after consideration of such testimony and the results of such inspections, determines that the Trenton Street Railway Company DOES NOT NOW FURNISH SAFE AND ADEQUATE SERVICE in the City of Trenton, and that in order that such service may be furnished by it, it is required that the following work be done."

Then follows twelve specific requirements, ranging from the complete reconstruction of the track on specified streets to the repair of joints on specified streets.

The Board further finds that

> "The work of RECONSTRUCTION and REPAIR, hereby ordered to be done, SHOULD HAVE BEEN DONE HERETOFORE from time to time as the occasion therefore first arose."

This is an official finding by this very Board that the condition of the company's plant at that time was so bad that it could not furnish safe and adequate service. It is in evidence that $500,000 was raised as a necessary condition of approving the lease in order that this property might be rehabilitated. This is conclusive proof that the company's property at that time was heavily depreciated, and, therefore, the value new found by Mr. Johnson is practically irrelevant, unless it is supplemented by some evidence to show to what extent it was depreciated. This the company has made no effort whatsoever to do. There is not a scintilla of proof in this case to show what was the real value or the real condition of this physical property at the time of Mr. Johnson's valuation in 1910, except the proof which I have cited to the effect that it was badly depreciated. The burden is, therefore, upon the company to establish

the value new less the depreciation in 1901, if it intends to make use of the value at that time as the basis for arriving at the value at the present time. This is so plain that it does not admit of any argument, and it is fatal to the company's position, which requires that it should furnish conclusive proof of the value of the company's property at the present time.

There is no evidence by Mr. Johnson, or by Mr. Ford, or by anybody else, showing the valuation of the company's property at the present time. Nobody on behalf of the company has made any attempt to value the property in its present condition, except by taking the valuation new as found by Mr. Johnson in 1910 and adding to it the money since expended.

The company offered as part of its proof the valuation made by Dr. Betts for the Commission, at the time the Commission was considering the application for the approval of the lease. This appraisal of Dr. Betts was made at about the same time as that of Mr. Johnson. It was put in evidence by counsel for the company. Dr. Betts' estimate of the total value of the property was approximately $2,600,000. This valuation is very far from that of Mr. Johnson, but it is offered by the company as corroborative of the correctness of Mr. Johnson's estimate at that time.

Dr. Betts' valuation is open to many objections. In the first place, he frankly says that he did not make this examination in the way that he would have made an examination if he had been valuing the property for the purpose of enabling the Commission to fix a just and reasonable rate. He stated that he only valued the company approximately for the purpose of determining whether or not the terms of the lease ought to be approved. Dr. Betts states that he would have made a valuation for rate-making purposes much more in detail. This alone is sufficient to invalidate this valuation as proof of the real value of the property at that time.

Dr. Betts valued the property as new. He made no

attempt to determine how badly the property was depreciated, or to fix the amount of the depreciation, or to fix the value of the property in its depreciated condition. He further stated that several of his subordinates spent three or four weeks in the field, and that he used the data so gathered, with only such verification as he was able to give it by three or four days in the field. We submit that this invalidates Dr. Betts' valuation as proof of the value at that time. The City is entitled to have the men who did the field work and who marshaled the data which Dr. Betts used put upon the stand for cross-examination.

The Betts' valuation, however it is viewed, leaves the question of the depreciated value of the property in 1910 absolutely unproved. Therefore, the base of the company proof of present value is not shown. No result can be obtained until this basis valuation of the property in its depreciated state in 1910 is shown by competent proof.

The company upon this invalid basis proceeds to build up the existing value by adding some $800,000, which the company claims has been spent upon the property since it took it over. The disposition of this $800,000 is the subject of conflicting claims by Mr. Johnson and by employees of the Board who have examined the company's books with reference to this expenditure. These witnesses testify (Case, pages 793 and 804) that they find that, according to the rules of the Board, about $550,000 of this sum can properly be charged to capital account.

This is positive proof by the Board's own employees. Against it are the confused and confusing statements of Mr. Johnson on the stand as to the expenditure of this money. He used the words "rehabilitation," "road and equipment," "repair account" and "maintenance account" with such inaccuracy and confusion that no clear deduction can be drawn from his statements as to how this money has actually been spent. A careful reading

of Mr. Johnson's testimony on this point will justify this statement.

We have, therefore, as the result of this method of proof by the company, an unknown figure as the value of the depreciated property in 1910, plus $550,000 as found by the Commission's employees to have been spent subsequently on capital account.

The company claims that it should be allowed this value new in 1910, and that no depreciation should be taken off. We submit that there is no finding by any court or commission in the whole history of rate-making in this country that affords any justification for any such claim. To argue it at length would be to impose upon the patience of the Court.

The company claims an additional valuation for going-concern value on Mr. Ford's cheerful guess of anywhere from twenty-five to fifty per cent. of tangible value. This claim involves the consideration of going-concern value or development cost, which we will treat of in a subsequent point. We here show that the mere statement of anywhere from twenty-five to fifty per cent. is not in evidence upon which the Board could act. It is too vague, too indefinite, and too general.

Mr. Ford made no study of the situation in Trenton, he merely came down a couple of times and talked with Mr. Johnson, the manager. As will appear when we discuss the subject of going-concern value, he expressly said that there should be no allowance for going-concern value beyond the actual cash invested in building up the property, if that fact could be ascertained. As we shall show later, it is easy in this case to prove the money that has been actually expended upon the plant.

Mr. Johnson made no estimate of franchise value at all.

This proof, such as it is, is completely offset by the testimony of the City's two experts, who made a study of this situation, extending over many weeks, that no

sum whatever beyond the value of the physical property in its existing state ought to be added in this case. The preponderance of proof, therefore, on this point is with the City and not with the company.

We submit that upon the company's evidence they have shown substantially as follows: That it would have cost in the fall of 1910 approximately $2,600,000 to reproduce the company's property new; that it was in a depreciated state; that such depreciation is fairly measured by the amount of 550,000 found by the Board's employees to have been actually expended to remedy this depreciation since 1910. That would make the value of the company's physical property at the present time approximately $2,600,000. Curiously enough this is almost the identical figure found by the joint appraisal of the City's experts, Messrs. Rand and Brackenridge. It is also practically the amount of money that was actually put into the property by investors up to 1910, as will be shown when we consider the capitalization of the company in a subsequent part of this brief.

The $500,000 raised for the rehabilitation of the property in 1910 cannot be considered as new capital, because it was caused by the wrongful diversion of the revenues to dividends. This was expressly found by the Commission in the order hereinbefore quoted.

From the proofs submitted by the prosecutor, therefore, we submit the Court cannot determine what is the value of the property at the present time, and that the claim of a value of approximately $4,000,000 is absurdly excessive.

POINT VIII.

THE VALUE OF THE COMPANY'S PROPERTY AS PROVED BY THE CITY DOES NOT EXCEED $2,700,000.

Not only has the company failed to present any proper evidence of the present value of this property,

but the City has produced a positive and definite valuation. The City's proof shows that this property, including every kind of contingency that can properly be charged, can be produced to-day for approximately $2,700,000. The witnesses for the city who made up this valuation were Mr. Swan, Mr. Brackenridge and Mr. Rand.

Mr. Swan has been connected with the City's engineering department for twenty-five years, except two years, and during that time has had practical charge of all the street work, including portions of the pavements required to be laid by the company. He produces from his records and from his personal knowledge an elaborate table showing the approximate time that the rails were laid; the character and time of laying of the pavements between the tracks in each street. The accuracy of this foundation work has not been in any way impeached.

Mr. Brackenridge has been engaged in every variety of street railway work since 1885. He has been a general contractor, and as such has built many electric street railways. He was connected for many years as engineer of construction with the Brooklyn Rapid Transit Railway Company, and this experience included the time when its transportation system was operated by horse power and when and after the motive power was changed from horses to electricity. It has been his business in all these years to actually purchase every form of electrical equipment. He has had the widest possible experience in the actual working of railways, and so is familiar not only wtih the cost, but with the life and rate of depreciation, of every class of physical property used in this class of work.

It would be impossible to find a man whose experience better qualified him to put an approximate value upon this property in the limited time that is afforded by the statute for the proofs to be taken in this case.

The accuracy of Mr. Brackenridge's work has not

been impeached by cross-examination, or by the rebuttal testimony of Mr. Johnson, except on minor and unimportant points. Mr. Johnson claims that he has actually paid $300 or $400 more for some of the cars than Mr. Brackenridge says he can buy them for.

Mr. Brackenridge uses 15 cents a pound as the price of copper, which is a liberal figure taking the average for many years, as against the present extraordinary price of 19½ cents; but even on this basis, the variation from Mr. Brakenridge's figures is trifling. It is substantially true that Mr. Brackenridge's figures are not discredited in the rebuttal or cross-examination.

Supporting Mr. Brackenridge is Mr. Rand. Mr. Rand is a consulting engineer, and has had upwards of thirty years' experience in the handling of securities relating to all kinds of railroads, including street railways; in the valuation of railroad and street railway properties; and as an expert in the famous Consolidated Gas case of New York, and in many cases involving both the consideration of physical and intangible elements of values of public utility corporations. He has been a student of the problem which is presented before this Court for discussion. He worked with Mr. Brackenridge in the personal inspection of this property, and in the fixing and checking up of the prices and the rates of depreciation upon the different items of property considered. Where two men of long experience and established reputation work together, each checking the other, the result is reasonably sure to be approximately correct.

These experts for the City spent many days in the actual inspection of the property. The care they exercised is evidenced by the notes of Mr. Brackenridge and Mr. Rand as to the special work. Mr. Rand drew a freehand sketch of every piece of special work in the whole system. Mr. Brackenridge at the same time made full notes of these pieces of special work, and the more complicated ones he also sketched upon paper.

The notes on this part of their work were put in evidence, and show the completeness of their inspection and valuation. Such material facts as they did not ascertain by personal inspection and investigation they got from Mr. Swan and from Mr. Johnson.

A very admirable summary of the results of the study of these experts was presented as an exhibit, and we herewith print it in this brief for convenient reference.

SUMMARY SHEET OF ESTIMATES GIVING COST TO REPRODUCE NEW, DEPRECIATION AND PRESENT VALUE, OF THE PROPERTY OPERATED BY THE TRENTON TRACTION CO., AS OF NOVEMBER 9, 1915.

Contractor's Profits Have Been Included in all Items.

ITEM.	*Annual % Deprec.*	*Reproduction Cost.*	*Annual Depreciation.*	*Accrued Depreciation.*	*Present Value.*
Tracks outside city,	3%	$324,616.39	$9,738.49	$109,440.76	$215,175.63
Tracks in city,	4%	370,910.80	14,836.43	160,588.64	210,322.16
Overhead line and feeders,	4%	307,100.30	12,284.01	82,549.90	224.550.40
Special work,	10%	70,662.00	7,066.20	35,331.00	35,331.00
Paving,	5%	358,845.02	17,942.25	141,358.17	217,486.85
Power plant,	4%	265,500.00	10,620.00	31,860.00	233,640.00
Car barns and contents,	2%	155,900.00	3,118.00	23,385.00	132,515.00
Cars and other rolling stock,	5%	400,000.00	20,000.00	140,000.00	260,000.00
Real estate, assessed value,	.....	110,025.00	.....	.....	110,025.00
Signal system,	.....	1,052.75	.....	.....	1,052.75
		$2,364,612.26	$95,605.01	$720,884.83	$1,643,727.43
Contingencies, including engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk,	15%	354,691.84	.....	108,132.73	246,559.11
		$2,719,304.10	$95,605.01	$829,017.56	$1,890,286.54

* Depreciation on overhead figured with copper wire out.

An inspection of this summary, together with the detailed sheets which these experts presented and the detailed sheets which Mr. Swan presented, will show that these experts for the city had given to them, or acquired personally, all of the information necessary to make an approximate valuation of this property at the present time, and they are the only witnesses who have made any attempt to make such a valuation.

The valuation which they fixed is corroborated in various ways. It is substantially corroborated by Mr. Betts' valuation in 1910, which was a valuation new. The established fact that the property was then run down, and the raising of $500,000 to restore it to its proper condition is substantial evidence that this property was then depreciated at least to that extent, and probably more. This depreciated value plus the amount since spent upon it, would make approximately the same value as found by Messrs. Rand and Brackenridge.

This valuation is further corroborated by the result of a study of the securities issued by the company and all the actual cash that has ever been invested in the creation of the company's property. The actual money that ever went into this property does not exceed $2,600,000, as will be shown when we consider the securities issued and the cost of the property in a subsequent part of this brief.

This valuation is further corroborated by the evidence which the City has put in with reference to taxation. The letters of Mr. Hurley and of Mr. Johnson from year to year to the tax officials of Trenton contain assertions that the assessments by the City are practically the full value of the company's property. These assessments at no time have exceeded $700,000 over the whole system, as is shown by the tax exhibits from the City of Trenton, and each of the other municipalities through which the property runs, which the City has put in evidence. (See *Exhibits O-2, O-3, O-4, O-5, O-6, O-7, O-34, O-35, O-36 and O-42.*

Both Mr. Brackenridge and Mr. Rand testify that no addition should be made to this property for development cost or any other intangible element of value, or for working capital.

The City's proof is the only legal evidence before this Court of the value of this property at the present time.

POINT IX.

The Value of the Property as Shown by Actual Cost Does Not Exceed $2,600,000.

The valuation of the property made by Mr. Brackenridge and Mr. Rand is supported by a study of the history of the constituent companies. It is not clear that the stock issued by the early horse railroad companies was water, but the presumption is strong that it was. But it is plain that all subsequent stock issues and part of the bond issues represent no money or service paid or rendered towards creating this property. Dr. Betts so finds, and the merger agreements prove it.

Mr. Rand has submitted a table (*Exhibit O-38*), which can be summarized as follows:

Trenton Street Railway—		
Stock,		$1,000,000
Bonds,		2,000,000
Subsidiary Companies—		
Stock,		550,000
Bonds,		1,000,000
Total securities,		$4,550,000
Inflated Securities—		
Stock of subsidiary companies issued with bonds,	$550,000	
Inflation by 1st consolidation,	1,343,000	

By 2d consolidation, ...	36,700	
Bonds owned by M. C. Tr. Co., ...	128,000	
		2,058,000
Bona fide securities issued, ...		$2,492,000

We submit a calculation made up differently which arrives at substantially the same result, viz.:

All stock of Horse R. R. Co.'s at time of first consolidation in 1891—		
Stock, ...		$156,000
Bonds, ...		190,000
Bonds issued by the Consolidated Co. (Tr. Pass. Ry. Co.), ...	$1,000,000	
Less amount paid to Wilson (see *Tr. Pass. Ry. Co.* v. *Wilson*, 11 *Dick. Ch. Rep.* 783), ...	260,000	
		740,000
Second Consolidation, 1898— (Tr. St. Ry. Co.) stock was all exchanged for securities of merged companies.		
Bonds, ...	$2,000,000	
Less used for refunding,.. $1,000,000		
Less exchanged for stock,... 552,000		
	1,552,000	
		448,000
Bonds of Tr., Penn. and Hopewell Ry. Co.,		350,000
Bonds of M. C. Tr. Co., ...		300,000
Bonds of T., H. and E. Co., ...		350,000
Total realized from securities to 1910,		$2,534,000

This is the maximum actual cost of creating these properties as shown by the proofs in this case. The money expended by the lessee company, being by the Board's own finding made necessary by wrongful diversion of earnings, is a restitution and should not be added to this estimate.

From every point of view, therefore, it appears that the value of this property to-day does not exceed $2,700,000.

The actual cost of this property ought to appear upon the books of the lessor companies. We have demanded these books. At the last moment some of them were produced, too late for even a casual examination. It is safe to assume that if these books showed a cost in excess of the City's valuation the company would put them in evidence.

The Wilson bonds, referred to in the foregoing table, were the subject of a litigation in our New Jersey courts, as above quoted. In this reported case it appears that $260,000 of the issue of bonds in 1891 was taken by one Wilson upon some pretense. The company claimed that he held them as trustee for the company. He, however, managed to hold onto them, and the company never received any of the proceeds of these bonds nor did Wilson ever render any service for them, as the Court expressly finds.

POINT X.

Mr. Ford's Estimate of Going-Concern Value Analyzed.

In the attempt to bolster up the Johnson valuation of this property, Mr. Ford was produced by the company as an expert. He took the position that the physical property should be taken as though it was brand new and so valued, and that in addition to such value there should be added from twenty-five to fifty per cent. for what he called "development cost." The claim

that the property should be valued as new has been argued in another part of this brief.

It is sufficient as to that point to say that if this company had obeyed the spirit of the injunction laid upon it by the Commission when the lease was approved, and had paid each year into a depreciation fund a sum of money sufficient to keep this property at all times in proper condition, the present value depreciated, plus the amount of money in such a depreciation fund, would give at all times a sum sufficient to reproduce the property new. As no adequate depreciation fund was set aside, the physical property must necessarily be valued as we find it in this depreciated condition. Mr. Johnson says he has spent not exceeding $68,000 on account of depreciation in any one year, and has set aside no fund beyond such expenditure. But he now says $135,000 a year is needed. This is a confession that the property is in a badly run-down and depreciated condition.

We submit that the value of Mr. Ford's testimony in this case is completely destroyed by his admission that in his judgment there should be no going-concern value allowed, if it is possible to arrive at the cash investment in the property. Here is his exact language, Case, page 243:

> "I might say in addition, that if we could arrive at the cash investment of this property, there would be little, if any, going-concern value to be added, because the cash investment would reflect the cost of producing a going concern. In the early years of operation the company probably did not get a fair return on its capital invested, and if, in arriving at the cash investment, you allow for that insufficient return, which, of course, the security holders originally had to provide, you would get the present cash investment, which would include such going-concern value."

* * * * * * * *

Case, page 280:

"*Q.* If you knew what it had cost these people in cash, you say you would limit the return to the fair return upon that, plus depreciation account and operating expenses?

A. I think that is a fair way of arriving at a figure.

Q. And you then would not put in any going-concern value?

A. I think that would include going-concern value.

Q. That is, going-concern value would then have been paid for?

A. Would have been paid for in cash."

* * * * * * * *

"*A.* In the case of the cash investment, if that cash investment represented the entire cost of developing the property I would not include—I would not add anything to it for going-concern value."

See Ford's testimony, page 40, to the same effect.

Mr. Ford supports his assertion of twenty-five to fifty per cent. addition for development cost by no facts whatsoever. He cites no actual instances or experiences. He admits that no accounts have ever been kept by any company with which he is familiar of any such item of going-concern value or development cost. In other words, he produces no proof in support of his opinion.

Mr. Ford does refer to the cases of Cleveland and of Chicago, but he put forward no detailed information by which his testimony can be tested. On cross-examination he admitted that in the Cleveland case the matter was settled by an arbitration, one of the conditions of which agreed to in advance was that the company should only charge a three-cent fare, with a one-cent transfer. The valuation agreed upon by the arbitration was determined with this limited fare as a con-

dition agreed upon in advance (Case, Vol. I, p. 379). In the Chicago case he admits that it was a case of a straight out settlement between the company and the city and not a judicial adjudication at all.

He does, however, endeavor to support his opinion by an imaginary illustration. He says that if a city of 100,000 people had no trolley system and one was inaugurated, that the item of development cost would amount to twenty-five or fifty per cent. of the physical value.

On cross-examination it appears that he had never even given the subject of this imaginary illustration any serious consideration. He had not taken into account the kind or cost of existing methods of transportation. He had not taken into account whether the people were familiar with trolley transportation or not. He finally said that they probably had become familiar with trolley transportation when visiting other cities. He finally agreed that we must suppose a more costly transportation system in vogue in the imaginary city. He agreed that the company would do no advertising and would be put to no special expense upon this item of development cost. He admitted that the only expenses of the company in his imaginary city, after the property was in operation, were the expenses that would be ordinarily charged to operating expense account. He was finally driven to the point that what he meant by development cost was that in this imaginary city it would take three years before the patronage of the line would be developed to the full capacity of the city. He said that the company would start at the beginning with eighty per cent. of the business that it was possible to obtain from the existing people in the city, and that within three years the remaining twenty per cent. of the possible patrons would gradually become patrons of the road. (Case, Vol. I, p. 371.)

Let us examine this illustration. In the first place it is open to the objection that it has nothing whatever to do with human experience.

It is a mere guess.

It is an attempt, always fallacious, to imagine what would have happened, if something which didn't happen had happened.

This involves so many elements that it is worse than idle to talk about it. The whole thing is too preposterous for serious consideration.

The preposterous nature of this illustration was shown by the question asked Mr. Ford by counsel for the City.

He was asked whether in all his experience he ever knew of any appraisers of any kind of property who undertook to appraise the value of the property by considering what it would cost to reproduce the property under conditions that had never existed in human history. After much squirming, he was forced to admit that this method of appraisal had never been adopted in civilized life, and said feebly that it was necessary to apply in this case a method that would not be reasonable in the other affairs of life.

To show that Mr. Ford was himself compelled to admit the utter adsurdity of his method of valuation in this respect, we quote from his testimony, as follows, Case, page 278:

> *Q.* You know of no such town?
>
> *A.* I know of none.
>
> *Q.* Then you are measuring the going-concern value by conditions of city life which have not had any existence since the trolley era; is that correct?
>
> *A.* In this country, yes.
>
> *Q.* Then you are measuring the value of this property by conditions that have never existed since the electric era applied to trolleys?
>
> *A.* It is purely a hypothetical case.
>
> *Q.* Will you name to me any article from a hairpin to a locomotive to which you apply any such principle in trying to arrive at value? Is

there any value which is appraised in our market, any physical piece of property, not talking about franchises, physical property purchased by man, which is measured by conditions that have never been known in the trade, is there any such article?

A. I think if you apply some of these theories of rate regulation to other business they become ridiculous.

Q. I am not asking you that?

A. If that is what you mean.

Q. I am asking if you ever knew of a value put upon the appraisement of a suit of clothes by imagining the production of clothes under conditions that never existed; ever heard of that?

A. I never did.

Q. Did you ever hear of a country appraisal of the furniture in a house for sale that was based upon conditions of production of that furniture and those effects that never existed?

A. No.

Q. You never did?

A. No.

Q. Then you are applying to going-concern value an imaginary condition that has never existed since the trolley era; that is a fact, isn't it?

A. I think that is the fact, as far as this country is concerned.

Q. Now, is that sense?

A. I would say that hypothetical case, I think, has been forced on the commissions and the street railway companies by the building up of a theory of value, which when applied to homely articles like shoes and clothing, does not look sensible.

Why is it necessary in the task of ascertaining the value of a property, every item of which has a regular

market value accessible to everybody, to resort to the test of a production under conditions that never existed and which never could exist?

But Mr. Ford's illustration of twenty-five or fifty per cent. of the tangible value of the property as representing development cost is not only preposterous, but it is unscientific. The development cost has no natural relation whatsoever to the value of the property. If we had the actual experience of many companies over a long series of years, and the actual items of development cost were figured out in relation to the cost of tangible property, the percentage relation as a matter of fact could be established, but it would be simply an arbitrary relation. In this case there are confessedly no facts upon which to establish a percentage relation. The estimate of twenty-five to fifty per cent. is so loose that it has no place in a careful investigation like this.

But it is easily possible to find with approximate exactness the amount of money which would represent Mr. Ford's item of development cost, and to determine the percentage of such amount to the value of the tangible property.

Let us assume the cost to reproduce this property at $3,000,000—a figure about half way between the estimate of the company and the City. The company would get at once, according the Mr. Ford, eighty per cent. of the possible patronage. In 1914 the receipts of the company were $776,000. Eighty per cent. of this amount would be $610,000. The operating expenses for that year were about fifty-five per cent. That proportion would give an operating expense for the imaginary company of $335,500, leaving a balance of $274,500. If you were to set aside for this property $95,000 as a depreciation fund, the remaining income applicable to a dividend upon the cost of the property would be $179,500, or a little less than six per cent. upon the cost of the property. If six per cent. is held to be a

fair return, there would be no development cost at all. But if we assume that the company is entitled to earn eight per cent., then the company is short, say, $75,000. This is the amount which represents the possible balance of the patronage which the company is to obtain within three years, and is therefore the outside measure of Mr. Ford's so-called development cost for the first year. If we assume that the acquisition of the remaining twenty per cent. of the patronage was not gradual, but was held off until the last day of the third year, the most that Mr. Ford could claim would be three times $75,000, or $225,000. This, instead of being from twenty-five to fifty per cent. of the cost of producing the property, would be seven and one-half per cent.

But, of course, the twenty per cent. possible patronage to be obtained would be obtained gradually over the course of the three years, and therefore the deficit in the second year would not be as great as in the first year, and in the third year would almost entirely disappear.

$150,000, therefore, upon Mr. Ford's own illustration, would be the outside amount that could possibly represent his item of development cost. This is five per cent. of the cost of the property, instead of twenty-five per cent. or fifty per cent.

This reasoning shows the utterly unscientific nature of Mr. Ford's method of reasoning, and the grossly exaggerated results to which he has testified. In other words, Mr. Ford has not only used a preposterous illustration, but he has grossly mistaken the actual and easily ascertained results of his own illustration.

This reasoning is absolutely clinched by the consideration that the imaginary company would be under the control of the Public Utility Commission, and no money could be issued except for the actual construction of the plant, and when the company showed a deficit for the first year, that deficit, which Mr. Ford calls development cost, would be either charged to capital ac-

count or set aside as a special account to be amortized when the earnings reached a point beyond a fair return upon the capital actually invested.

It is to be remembered that this Utility Commission in the Passaic Gas case, although it allowed thirty per cent. for going-concern value, expressly stated that no such allowance beyond actual deficits would ever be made in the case of a company starting new under the Commission's supervision.

This disposes of the only evidence offered by the company in support of the claim that an amount should be added to the cost of the tangible property to represent development cost.

Further authority on the subject of going-concern value is found in the recent case of *Des Moines Gas Co.* v. *City of Des Moines,* decided by the United States Supreme Court, In this case there was no allowance for going-concern value, and the Court held that if any allowance was to be made for going-concern value, the existence of such value must be proved by the company.

POINT XI.

GOING-CONCERN VALUE FULLY ALLOWED FOR BY THE COMMISSION.

The item of going-concern value in this case has been fully allowed for by the Commission. In the valuation of the property of the company arrived at by the Commission upon the evidence in this case, they have made liberal allowances for every element of value that can be properly classified under the term "going-concern value."

The theory of going-concern value set forth in the opinion in *Public Service Gas Co.* v. *Board of Public Utility Commissioners et al., 84 N. J. L., page* 463, is stated in section 8 of the synopsis of decision, on page 464, in the following terms:

> "In fixing the value of property on which a gas company is entitled to earn a return, it is proper to allow for going value, which includes loss of interest while the plant is in course of construction and while pipe lines are extended, the cost of securing and retaining customers, of encouraging the greater use of gas for fuel and light by the introduction of new and improved appliances, the necessary loss attending experiments, obsolescence of plant apart from the ordinary calculable depreciation which may be charged to current expenses, the expense that attends and the additional value that arises from the uniting of separate companies and the organization of the industry with a view to economical production, and the cost of procuring capital."

Upon this definition of going-concern value, the Supreme Court in that case sustained the Board's allowance of thirty per cent. of the structural value upon the specific proofs in that case.

In all of the cases in this country before commissions and courts, an item of going-concern value has sometimes been allowed and sometimes been refused. When it is allowed it has varied from ten to fifteen per cent., except in the Passaic Gas case where it was fixed at thirty per cent. Of course it follows that each case depends upon its own facts. It is plain that it costs more to develop a gas business than it does a trolley business. In the gas business people have to be sought out in their homes and persuaded to use a new form of light, and as the new improvements are developed in stoves and fixtures people have to be canvassed and persuaded to use them. In the trolley system, however, there is no such thing as drumming up custom, and there are no expenses to be charged under that head.

In the Passaic Gas case the proofs of the experts of the company were that it would take at least six years to develop the business. Here the only proof on that

point is that of Mr. Ford, who says that eighty per cent. of the business will be developed the first year, and that the other twenty per cent. of the business will be developed in the course of the two following years.

There is no testimony in this case on behalf of the company as to the actual expenses. The only testimony is that of Mr. Ford, who never made any study of the property at all, but who was called to give general testimony as an expert in relation to general rules.

Mr. Ford's going-concern value, when he is pressed for a definition, practically comes down to early deficits growing out of the cost of development which could not be met out of earnings. In Case, Vol. I, page 270, he says:

> "*Q.* You say that the development cost is the amount expended after you have built your plant and got it in running order, in getting, developing the business, and I suppose you mean, you did not say so, in making the property fit together, if there is any defect in it, and getting it in working shape, is that about what you mean?
>
> *A.* Yes.
>
> *Q.* That is development cost. The first year or two that development is likely not to come out of earnings; I mean earnings are likely not to be enough to include that, operating expenses, depreciation, and a fair return upon capital, that is so, isn't it?
>
> *A.* That is correct?"

The Commission says, Case, page 839:

> "Except as hereinafter mentioned all proper allowances for intangibles have been heretofore included."

On page 840, the Board says:

> "Throughout this valuation in the allowances made full consideration has been given to the fact that the property valued was a harmonious operating system—a going concern—in success-

> ful operation. In view of all the evidence we conclude that the value of the property, for the purpose of fixing rates, does not exceed $3,212,000."

The accurate valuation made by the City's experts, after weeks of painstaking investigation, makes the present value of the physical property about $1,800,000 in its present depreciated state. In fixing a value of $3,200,000 the Board therefore made a most liberal allowance for all of these elements of value which can properly be charged to going-concern value.

Upon the proofs in this case therefore, the element of going-concern value has been very liberally allowed for by the Board.

We respectfully urge upon the court that in any event, no allowance should be made for going-concern value as defined in the Passaic Gas case, unless same is proved in the case.

It is not possible to state a general rule. This is confessed by all of the experts. The true theory is that insisted upon by counsel for Passaic in the Passaic Gas case. We restate it here, not for the purpose of having the court reverse the position taken in the Passaic Gas case, but in order to show that if the definition which we give of intangible values and the method we point out of ascertaining those values is not followed, there is no other satisfactory way of arriving at a valuation of these intangible elements of value.

Our theory is that no piece of physical property can have a value in excess of the cost to reproduce it. This is a universal law of economics. No exception to it can be possibly imagined. The value of a piece of physical property may be, and usually is, very much less than the cost to reproduce it, but it can never be greater than that sum. If the net earnings, after deducting operating expenses, taxes, a depreciation fund and repair and maintenance account, are insufficient to pay a fair return upon the actual cost of producing the

physical property, then the value of the physical property is not worth what it cost to produce it, unless, of course, the future promises large returns. The company still has its franchises and all of the elements which are grouped under the head of "going-concern value," but obviously these elements had no value. When, however, the net earnings exceed a fair return upon the cost of the physical plant, then there comes into existence another element of value, so far as the market is concerned. The value of that element is easily ascertained. That value is measured by the excess of net earnings beyond a fair return, capitalized at a fair rate of interest. Mr. Ford admits this point, when, on page 262 of the Case, in discussing franchise value, he defines franchise value in almost the exact words we have used.

Whatever you call these elements of value, this is the only way that has ever been devised to measure them. The different names given to these intangibles merely indicate a confusion of thought on the subject by courts and commissions. The thing sought to be valued is simply the business that has been built up in connection with the plant. Until the plant pays upon its physical cost there is no business value, except as the future may hold out promise of better returns. As soon as there is an income beyond a fair return upon the physical cost there arises this value, which is really the business of the company. In the market this business is property, and is bought and sold. It exists in a public utility simply because the State has failed to enforce the implied contract of the original franchise that the company shall charge no more than a reasonable rate, that is to say, a fair return upon the actual cash expenditure of the company.

Unless this theory is followed, then the only other plan that can be used is to give a general, liberal value to tangible property on the loose theory that a tangible property held by a going concern is more valuable than

property which is not connected with a going concern. This, of course, is true. If we started by considering the value of the physical property as junk and then added to it the value indicated by the profits of the business, there would be no objection to this process, up to the point where the value equaled the cost of reproduction of the cost of the physical plant.

The difficulty with the present system of fixing going-concern value is that all of the items usually included under that head are properly chargeable to operating expenses, have always been so charged, and therefore the company ought not to be allowed to earn upon it, except they have taken the form of an actual deficit in the early years of the company's business. To the extent that the company has never in its early years been deprived of a fair return upon its actual cash invested, it ought to be allowed that amount in addition to the value of the plant, because it has been money actually invested in the enterprise.

There is not only no proof that this company has ever had any deficits, but on the contrary the proof is conclusive that it has enjoyed immense earnings beyond a fair return upon the cash capital.

Up to 1890 the Trenton Horse Railroad was the company, and its capitalization, both stocks and bonds, was $346,000. This is the only part of the history of the company concerning which we have no definite information in the record. Mr. Ford testified that on the coming in of the trolley era, about 1890, the trolleys were considered in the market as a bonanza, their earnings were so large. He says this condition continued until 1905.

This testimony is worth quoting:

> "*Q.* You spoke in your direct testimony about when they started the trolley era there was a time there when it expanded, the capitalization was expanded, and it was looked upon, I think your term was a bonanza, for awhile; you used that expression, didn't you?

A. Yes.

Q. How long did that period continue?

A. I think until about 1905.

Q. Starting when?

A. Starting with the electrification of the lines about 1890, to 1893."

(Case, Vol. I, p. 399.)

Therefore, the only deficits in this case must have been prior to 1891, and as the total capitalization of the horse railroad company was only $300,000, requiring only an income of $18,000 to provide a fair return, the deficits, if any, must have been very small, even though they continued over a long period of years.

In the face of these facts, no mere guess as to how much the deficit was, or what it cost to develop the horse railroad company, should be allowed. This is admitted by Mr. Ford, on page 271 of the Case, Vol. I, where when he was asked how long in the horse railroad era the condition continued where the income was not sufficient to pay the operating expenses, depreciation, actual or contemplated, and interest upon a fair return upon the cash capital actually invested, his answer was: "I think that would vary." If it would vary, then no general rule can be applied. As he admits he made no study of the Trenton case, except to talk with Mr. Johnson for an hour or two upon two visits, his guess as to development cost of the building up of the horse railroad is immaterial.

That Mr. Ford's definition of going-concern value is practically the early deficits appears clearly in various parts of his testimony. See Case, Vol. I, pages 266, 270–271.

The argument that these items are actual property, and that the company owns them and therefore should be allowed to earn a return upon them is easily answered. The truth is, that the company is not allowed to earn upon all its property. It is only allowed to earn upon the property which it devotes to a public use.

If the company has appropriated out of earnings a fund of money which it has invested in stocks and bonds or land, no commission would think of allowing them to earn upon such property, because it is not property devoted to the public use. Such property as is included under the head of intangible values is property only so long as the Commissions allow the companies to charge excessive rates. The minute the Commissions enforce the implied contract as to franchises, to wit, that the company shall be entitled only to charge rates which will give a fair return upon the cost of the property, or the actual investment, then these intangible elements of value will disappear.

They are property only so long as the public fails to enforce its contract rights in the premises.

They are elements of property built up upon the violation by the company of the implied contract to charge reasonable rates from the beginning.

This is the reasoning to which all of the Commissions and courts in the end must come. Any other line of reasoning leads, inevitably, to the ratification by Commissions and courts of the issues of water securities for which no money has ever been paid. Such a conclusion is intolerable.

For these reasons we submit that a very liberal allowance in this particular case has been made by the Board of the item of going-concern value.

POINT XII.

FRANCHISE VALUATION. THE COMPANY HAS NO RIGHT TO ALLOWANCE FOR VALUE OF FRANCHISES.

That the company has no right to any value of its franchises would seem to be settled by the decision of the Court of Errors in the Passaic Gas case, in which the decision of the Supreme Court in the same case was sustained. In that case the synopsis of the Court's decision, 84 *N. J. L., page* 464, says:

> "The special franchises of a public service company are property, but the right of property therein is not absolute, but is qualified by the right of the State to fix reasonable rates. In determining the reasonableness of rates, no allowance should be made for the value of the special franchise in a case where it is not legally exclusive and where the State still retains the right to fix rates."

This point is clinched by the statement of Mr. Ford, the only expert on behalf of the prosecutor, that he did not make any allowance for franchise values, and that he did not consider that franchise value ought to be allowed in this case. He stated that in his opinion the value of the franchise was simply the excess receipts, *i. e.*, the amount of the net income, over and above a fair return, capitalized at the present rate of interest. Testimony of Ford, Case, p. 262.

POINT XIII.

Working Capital. Not Proved. Not Needed.

The item of working capital is properly allowable in such utilities as gas and electric light and telephones, but it has no place in this case. All such items as stores and duplicate parts are already included in the appraisal, and do not amount to $20,000. There is no proof in the case to justify the Board in allowing anything for this account. Mr. Ford says it should be allowed, but offers no facts or reasoning to support his opinion. Mr. Rand and Mr. Brackenridge say nothing should be allowed. They point to the fact that the company receives cash every day for its service rendered, while wages and supplies are not paid for until several weeks after they are earned or furnished.

The fact that the company took over these great properties without a dollar of working capital, and that neither party to the lease considered any such capital

necessary is conclusive proof in support of our contention in this regard.

The Commission, however, has included in its valuation items for working capital The report of the Commission, Case, page 840, says:

> "Under working capital, materials and supplies properly belong. These have been included in the appraisal of the physical property, and, in view of the facts testified in this case, we do not deem proper any further allowances for working capital."

POINT XIV.

Present Earnings are Ample to Provide Reasonable Return on Value of Property.

The gross earnings of the company for 1914 were $776,000.

While the earnings this year have fallen off, it is due to temporary and sporadic causes, and it is fair to assume that the earnings in the future will not fall below those of 1914, taking one year with another, but, on the contrary, will surely increase with the growth of the City.

Allow for operating expenses the amount actually expended by this company in 1914, viz., $377,000. Allow for taxes $50,000, the amount actually paid in 1914. Allow for depreciation $95,000. Mr. Johnson claims $135,000, but he has never expended in any one year more than $69,000, and he is on record in his letter to the Board, after two years' experience, to the effect that ten per cent. of the gross receipts would be ample for this account for 1915 and afterwards (*Exhibit O* 44).

Messrs. Rand and Brackenridge arrive at $95,000 as the actual yearly depreciation of this property.

Upon this basis we have the following result:

Gross earnings, ...		$776,000
Deduct:		
For operating expenses, ...	$377,000	
For taxes, ...	50,000	
For depreciation, ...	95,000	
		522,000
Net earnings available for dividends, ...		$254,000

Or over 9 per cent. on $2,700,000, which is every dollar ever invested in this property, or is 6 per cent. on $4,230,000.

When it is remembered that the various owners of this property have taken out of it in interest and dividends upon watered securities nearly $1,500,000 in excess of a fair return upon the *bona fide* investment in the property, as we show elsewhere, it is plain that this showing entitles the company to no relief here.

In this case the Court is bound by the New York Consolidated Gas Company case, where the Court held that the only duty of the Court was to see that the rate fixed by the Commission was not confiscatory, and that a return of 4.7 per cent. upon the fair value of the property was not confiscatory.

POINT XV.

Claim that Decrease of Earnings in Year 1915 Was Not Considered by the Board, Analyzed.

This claim is absurd. It would be utterly impossible to fix a just and reasonable rate of a public utility upon the earnings of any one year. Earnings fluctuate with good times and with bad times, and with local conditions. The only fair rule is to take the average of several years as the Commission has done; otherwise, in case of a great fair like the San Francisco Fair, or of a celebration like the Newark 250th Anniversary Celebration, the companies might have an extraordinar-

ily prosperous year, and if their rates were reduced upon the basis of the showing of that year, it would be unfair to the companies when the temporary conditions had passed.

POINT XVI.

PROSECUTOR'S CLAIM THAT VALUE OF PROPERTY IS MEASURED BY STOCK AND BOND ISSUE, ANSWERED.

One of the reasons of the prosecutor asserts that the Board did not take into account the issue of stocks and bonds as a measure of value. The overwhelming weight of authority everywhere is that stocks and bonds are merely to be considered as throwing light upon the value of the property and are in themselves no measure of value. This point is conclusively settled in the Passaic Gas case. The portion of the opinion in that case which bears upon this point is found in 84 *N. J. L., page* 484.

This point is further answered by the testimony of Mr. Ford, Case, Vol. 1, page 280, in which he says that in the bonanza trolley era the excessive earnings were covered up by the issue of watered stock, and that the stock was issued for that especial purpose. (Case, page 280.)

POINT XVII.

DISCONTINUING THE TICKETS IS AN INCREASE OF FARE AND A CHANGE IN CLASSIFICATION UNDER UTILITY STATUTE.

One of the reasons advanced by the prosecutor in this case is that the abolition of the six tickets for a quarter is not an increase in rate or a change in classification. This claim seems too absurd for argument. To the thousands of people who go upon these trolleys to their employment in the morning and return at night, and who regularly buy six tickets for a quarter, the

change to a straight five-cent fare is a *real* increase. In fact one of the claims of the company is that it needs additional money and that the change from tickets to a straight five-cent fare would bring it an additional $100,000 a year. This is an increase of the company's income, and of course by its standard of common sense is accomplished by increasing the rate charged to the patrons of the company.

To the charge that there is a discrimination in charging some people five cents and other people four and one-quarter cents, the answer is that the lower charge is open to all, and that if any man elects to pay five cents he discriminates against himself,—it is within his power to ride for four and one-quarter cents if he purchases six tickets.

The principle of selling commodities by wholesale is an established one in all businesses. In the railroad business it is illustrated by the commutation principle, and the Public Utility Statute expressly gives the Board supervision over changes in classification and in commutation rates, and in the matter of the increase or decrease of fares.

POINT XVIII.

The Lessee Company is a Sham Company, Without any Capital or Responsibility, and Without any Equity in the Property, and Therefore Has No Claim Upon the Consideration of the Court.

As we have shown in our proof, in this brief, the earnings of the company at the existing rates are ample to pay operating expenses, including repairs and taxes, provide for an adequate depreciation fund, and leave a balance sufficient to pay more than a fair return upon the value of its property devoted to the public use, whether such value is measured by the actual money ever invested in its creation, or by the cost of its reproduction new, less depreciation.

But it is perfectly plain that this company cannot continue to pay these rentals which it has contracted to pay to the lessor companies, provide a proper depreciation fund and pay operating expenses. Some part of this arrangement has got to break. Either the lessee company must default and give back the leased properties to the lessor companies, or the lessor companies must accept a smaller rental, or the public must be made to pay more. We submit that, under the peculiar circumstances of this case, the public cannot be asked to pay more.

When this property was taken over by the lessee company it was in bad condition, owing solely to the fact the money had been paid in dividends which ought to have gone in to maintain and renew the company's plant.

The Utility Board expressly so found, and $500,000 was raised to rehabilitate the plant. The Board of Public Utility Commissioners, in 1910, undertook to provide against the exact condition which has arisen here, namely, a run-down plant and the improper diversion of earnings to dividends and interest, which ought to go into the property. The company, therefore, had full warning and stands before this Court without any equity.

The company, by Mr. Johnson's confession, is composed of two men, neither of whom has invested a dollar which has gone into this plant.

The remarkable testimony of Mr. Johnson discloses the utter hollowness of this lessee company. Mr. Crosby negotiated the leases for the lessee company, paid in $150,000, and Mr. Johnson added another $150,000, and thereupon they went through the farce of pretending to buy these leases from Mr. Crosby for $300,000.

According to this remarkable story, Mr. Johnson is the victim and Mr. Crosby the beneficiary of frenzied finance to the extent of $150,000.

The company started business without a dollar, never had a dollar in money, and never has invested any money, except such sums it has been able to borrow.

These sums must have been borrowed on somebody's credit, because the company never had any of its own.

This whole transaction is a virtual fraud upon the public. It is one of the familiar games of frenzied finance by which the public are plundered, and which an outraged public opinion demands must stop. To compel the people of Trenton to fork over another $100,000 annually in order that these two men, who have never invested a dollar in Trenton, may be saved from the consequences of their improvident bargain in assuming these enormous rentals, and be allowed, in addition, to receive dividends upon their own watered stock, would, we submit, be a gross outrage upon the people of Trenton.

Consider now the equity of the claims of the lessor companies.

In the first place, they are not here asking any relief.

In the next place, they have since 1891 received nearly $1,500,000 in dividends upon watered securities issued without a dollar of return to the companies, either in money or service.

The company's own dividend sheet, in evidence (*Ex. T. & M.* 44), shows stock dividends actually paid to 1910 of, ... $520,000

To this add the interest for twenty years on the $260,000 Wilson bonds, ... 260,000

To this add the interest on $552,000 of bonds exchanged for watered stock in 1898–1914, fourteen years at 5 per cent., 386,000

Add rentals paid since 1910, ... 320,000

Total interest and dividends paid on watered securities, ... $1,486,000

From this it will be seen that the people who have received these immense unearned sums from the people

of Trenton have no claim upon this Court for further indulgence or aid.

Dr. Betts, in his report filed before the lease was approved in 1910, said:

> "If a proper depreciation fund is established and maintained it will be practically impossible for the lessee company to pay the rentals called for in the leases."

This conclusion was again stated forcibly by Dr. Betts in the last sentence of his report, and he recommended that the lease be not approved except upon the basis of providing for a depreciation fund of practically fifteen per cent. of the gross receipts.

In the face of this report the Commissioners approved this lease. They were moved doubtless by the fact that it seemed to promise, by the providing of additional capital, the rehabilitation of this run-down system. It seemed to the Commission the best practical thing to do at the moment in order to provide proper service for the City of Trenton. The Commission was then new and the whole subject was new, and in the light of the then conditions it is not fair to criticise the Commission for their action in approving this lease.

But, nevertheless, the fact remains that the Commission at that time stretched a point to give these people a chance. If after the approving of that lease, in the face of this report of its own engineer, showing that the lease could never be carried out without practical ruin to the property, this Commission had again undertaken to tide over this company by compelling the public to pay increased fares, instead of cutting down the dividends upon watered stock owned by men who have wrongfully diverted into their own pockets the money that should have gone to maintain the property, we submit that it would be an act of great injustice to the people of Trenton, and would destroy public confidence in the whole policy of public utility regulation.

The only thing now to do is to face the real situation and apply the proper remedy.

In this proceeding the Board has held that the existing rate of six tickets for a quarter is neither confiscatory nor unreasonable and has left the lessor and lessee companies to rearrange their relations upon a new basis that will permit proper service and proper maintenance and conservation of the property.

For these reasons we submit that the Court should sustain the order of the Public Utility Board in this case.

Respectfully submitted,

CHARLES E. BIRD,

City Counsel of Trenton.

GEORGE L. RECORD,

Of Counsel.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals.

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Prosecutors,

vs.

RALPH W. E. DONGES, JOHN J. TREACY AND JOHN W. SLOCUM CONSTITUTING THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE INHABITANTS OF THE CITY OF TRENTON,
Defendants.

On Appeal.
On Certiorari.

OPINION.

(Supreme Court of New Jersey. Aug. 2, 1917.)

1. CARRIERS 12(4)—REGULATION—FARES—JURISDICTION.
Public Utility Commission has jurisdiction, under P. L. 1911, p. 380, § 17h, to forbid street railways to put into effect proposed withdrawal of sale of six tickets for 25 cents, increasing rate to 5 cents.

2. CARRIERS 12(9)—CONTRACT AS TO RATES—RESCISSION.
Street railway company cannot rescind contract with city as to fares because of its own mistake, not induced by city, as to power reserved by city to alter its franchise ordinances.

3. Carriers 12(9)—Contract as to Rates—When Complete.

Where street railway company's directors had ordered its officers to execute agreement as to fares on passage of ordinance of same tenor and officers cannot vary its terms and directors do not intend to pass on matter again, agreement becomes binding on passage of ordinance, since all that remains to be done is to execute formal contract.

4. Carriers 12(9)—Contract as to Rates—Consideration.

Where city was threatening to alter franchises of street railway company to its detriment, passage of ordinance which does not contain threatened changes is sufficient consideration for agreement of company to continue existing fares.

5. Carriers 12(9)—Contract as to Rates—Effect on Lessor Roads.

An ordinance as to street car fares, passed by agreement between city and company, is binding also as to lines of companies under long-term leases to party to agreement.

Certiorari by Trenton & Mercer County Traction Corporation against the Inhabitants of the City of Trenton and others, to review an order of the Board of Public Utility Commissioners. Affirmed.

Argued November term, 1916, before Swayze, Minturn, and Kalisch, JJ.

Frank S. Katzenbach, Jr., of Trenton (Edward M. Hunt, of Trenton, on the brief), for prosecutor. George L. Record, of Trenton (Charles E. Bird, of Trenton, on the brief), for City of Trenton. Frank H. Sommer, of Newark, for Board of Public Utility Commissioners.

Swayze, J. Although the voluminous record in this case has necessarily required a long time to examine, the decision may well be rested on a single point, and that within narrow compass. The prosecutor seeks to set aside an order forbidding it to put into effect a proposed withdrawal of the sale of six tickets for 25 cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company, and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

[1] We think it clear that the Public Utility Commission had jurisdiction under section 17, par. "h" of the act. P. L. 1911, 380. The withdrawal of the sale of six tickets for a quarter was an increase of an existing rate under which 82 per cent. of the passengers carried paid a fare of only $4^1/_6$ cents; by the proposed withdrawal they would be forced to pay a fare of 5 cents.

[2] We find it unnecessary to pass upon the question whether the original ordinances and their acceptance amounted to a contract by which the companies were authorized to charge as much as 5 cents, or whether they amounted only to a limitation by which the companies were forbidden to charge more than 5 cents. It is likewise unnecessary in our view to consider whether a fare of $4^1/_6$ cents is reasonable in view of present conditions and the situation of the company. We find that in 1909 a new contract was made between the city and the company which requires the company to sell six tickets for 25 cents upon all cars operated in the city of Trenton. The facts are as follows: For many years tickets had been sold at that rate. In 1909 the street railway company proposed to stop the sale. Naturally great public interest was aroused, threats were made of attacks upon the franchises of the company, and the city authorities were preparing for such an attack and for amendments of the ordinances. An agreement was reached by negotiation, and on October 4, 1909, the Trenton Street Railway Company adopted a resolution waiving its right to notice of alterations in the ordinances, and directing its officers to execute an agreement already prepared (a copy of which was set forth), immediately after the passage of a new ordinance, a draft of which had been submitted by the city counsel to the railway company. This ordinance provided for the sale of tickets at the old rate by the company upon all cars operated in the city of Trenton. The ordinance was passed by the common council on

October 19th and approved by the mayor on October 22d, 18 days after the resolution of the railway company. Had the agreement been signed by the officers of the company as directed by the resolution of October 4th on the faith of which the city passed the ordinance, no question could have arisen. Instead of that, the company, after the passage of the ordinance, rescinded the resolution because, as the rescinding resolution states, it was falsely recited therein that the city had reserved the right to alter the ordinances whenever in the judgment of the common council it became necessary for the public good. It is a little difficult to understand upon what theory it is supposed the false recital vitiates the action of the company. It is not charged that the city did anything to mislead the company in this respect; it could not have done so, since the ordinances were necessarily as well known to the company as to the city; and the proposed written form of contract, submitted by the city counsel, recited what was the exact truth, that the right of alteration or amendment was reserved "by the several ordinances aforesaid or some of them." The addition of the qualifying words was enough to call the attention of the company to the existence of a question as to the extent of the city's right. With this draft before them, the directors chose to put a broader statement in the recitals of their own resolution. Manifestly they ought not to be permitted for their own mistake to withdraw from the agreement after the city had acted thereon.

[3] It is argued that the parties did not intend that there should be a complete contract until the written agreement was executed. The case, it is said, is within the rule of Water Commissioners of Jersey City v. Brown, 32 N. J. Law, 504, decided by the Court of Errors and Appeals in 1866, and applied by the Supreme Court in Donnelly v. Currie Hardware Co., 66 N. J. Law, 388, 49 Atl. 428. These cases are not applicable. In the first the water commissioners directed

that their engineer and attorney should prepare a contract and submit the same for approval by the board before being executed. The court said that several particulars as to the time of finishing the work, as to the manner of doing it, and as to the guaranty of its permanence remained to be settled. The second case was decided upon the ground that there had been no agreement as to the time allowed for beginning and completing the work and the mode of payment, matters which are generally provided for in such arrangements. As Lord Cranworth said in Ridgeway v. Wharton, 6 H. of L. Cases, 238, at 268, the fact that the parties intend a subsequent agreement to be made is strong evidence to show that they did not intend the previous negotiations to amount to an agreement; but at the same time he protested against its being supposed because persons wish to have a formal agreement drawn up that therefore they cannot be bound by a previous agreement if it is clear that such an agreement had been made; and he expressed his approval of Sir William Grant's decision in the leading case of Fowle v. Freeman, 9 Vesey, 351. In Wharton v. Stoutenburgh, 35 N. J. Eq. 266, it was held that a final agreement had been reached, although the parties intended that a lease embodying the agreement should be executed. The applicability of that case to the present is not weakened by the fact that a written memorandum would have been there necessary to satisfy the statute of frauds if the vendee had not taken possession. The taking possession did not supply the terms of the lease, and before decreeing that the lease should be executed, it was necessary for the court to find that a final agreement had been previously reached, and that the execution of the lease was necessary only by way of part performance of the agreement, and not as a condition precedent to the existence of a final agreement. The facts of the present case bring it within the rule of Wharton v. Stoutenburgh. The draft agreement had

been submitted by the city to the company; the company had assented to its terms; all that remained was for the executive officers to execute the written instrument in which the terms of the agreement were set forth; but the officers had no power to vary the terms, and it was not contemplated that the directors should again pass on the matter. The case is as if in Water Commissioners of Jersey City v. Brown, the agreement had been already prepared and adopted by the water commissioners.

[4] There was sufficient legal consideration for the agreement by the company. It is true the ordinance did not affirmatively concede any benefit to the company; on its face it was rather a detriment; but that is too narrow a view to take. The situation was that the company was liable to attack, and the ordinances might be altered or amended in such a way as to be very harmful, or at least productive of long and expensive litigation. What the company secured was the adoption of an ordinance which contained no such drastic changes; the benefit to the company was in what the ordinance omitted, not in what it contained. In saying this, we are not to be understood as suggesting that the mere act of passing the ordinance in pursuance of the agreement would not be a sufficient consideration in a legal sense.

We think there was a valid contract requiring the company to sell six tickets for a quarter, and hence the Public Utility Commissioners might well conclude that such a rate was just and reasonable under the circumstances of the case.

[5] It is said, however, that the Mercer County Traction Company and the Trenton and Hamilton and Ewing Traction Company could not be affected by the ordinances because no official action was taken by either with reference to its terms. This argument overlooks the fact that both those companies were at the time under lease to the Trenton Street Railway Company

for a term of which more than 990 years were still to come. The probability of the two lessor companies being affected prejudicially by the ordinance is negligible.

The order is affirmed, with costs.

MacCrellish & Quigley Co., Printers, Trenton, N. J

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Defendants.

On Appeal.
On Certiorari.

Brief for the City of Trenton.

This appeal is prosecuted for the purpose of reversing the judgment of the Supreme Court affirming an order made by the Public Utility Commission forbidding the discontinuance by the Trenton and Mercer County Traction Corporation of the sale of six tickets for twenty-five cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

The opinion of Mr. Justice Swayze, filed in the Supreme Court and reported in 101 *Atl.* 562, has been printed separately for the convenience of the Court, and is submitted with this brief.

Mergers, Consolidations and Leases of Trenton Street Railway Companies.

TRENTON HORSE RAILROAD CO.,
Inc. Mch. 9, 1859.
CITY RAILWAY CO.,
Inc. Sep. 6, 1875.
HAMILTON TOWNSHIP ST. R. CO.,
Inc. Sep. 12, 1890.
SOUTH CLINTON AVE. AND BROAD ST. R. CO.,
Inc. Oct. 28, 1890.

} Merged into
TRENTON PASSENGER R. CO.
By Consolidation
Sep. 21, 1891.
PENNINGTON AVE. PASSENGER R. CO.,
Inc. Sep. 24, 1897.
MULBERRY ST. R. CO.,
Inc. Sep. 24, 1897.
EWING PASSENGER R. CO.,
Inc. Mch. 28, 1898.

} Merged into
TRENTON STREET R. CO.
By Consolidation
June 28, 1898.
MERCER COUNTY TRACTION CO.,
Inc. July 31, 1899.
TRENTON, HAMILTON AND EWING TRACTION CO.,
Inc. Aug. 11, 1905.

} Leased to TRENTON AND MERCER CO. TRACTION CO.,
Inc. Oct. 5, 1910.

STATEMENT.

On the opposite page there is arranged for the convenience of the Court a statement which shows the several combinations and leases of the Street Railway Companies operating street railways in the City of Trenton.

Some twenty years ago one of the predecessors in title of the prosecutor inaugurated the practice of selling six tickets for twenty-five cents in the City of Trenton, and this practice was continued until September, 1909, when it was discontinued. But after negotiations with the City officials it was restored in the same month, and has since been followed by the various operating companies. The said negotiations resulted in October, 1909, in the passage of an ordinance by the City requiring the sale of six tickets for twenty-five cents, which ordinance the company agreed to in advance, in writing, and promised to accept by a confirmatory agreement after it should be passed. The confirmatory agreement was never actually executed.

On August 13, 1915, prosecutor notified the City and the Board of Public Utility Commissioners of New Jersey, in writing, of its intention to discontinue the sale of such tickets. The said Board, immediately upon receipt of the said notice, caused a copy of the same to be sent to the Mayor of Trenton with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action of the company, an opportunity would be afforded on August 17, 1915. The Board also caused a letter to be sent to prosecutor acknowledging receipt of the notice from the company, and enclosing a copy of the letter sent to the Mayor of Trenton. On August 17 the company did not appear before the Board, but on application of the City the Board made an order suspending the pro-

posed change until November 16, 1915, and fixing a day for the hearing on the merits. After the making of this order, prosecutor filed a bill in the District Court of the United States for the District of New Jersey with affidavits annexed, in which bill it prayed that "the Board of Public Utility Commissioners of New Jersey may be enjoined from continuing the order of August 17, from conducting a hearing, and from taking jurisdiction of the matter at all;" and also praying for an injunction against the City and its Mayor from enforcing the penalty prescribed in the ordinance. This bill of complaint is Volume II of the State of the Case herein. Upon the filing of the bill an application was made to the Court for a preliminary injunction, upon which an order to show cause why the injunction prayed for should not be allowed was granted, but without any *ad interim* restraint. This application was heard before Circuit Judge Woolley and District Judges Rellstab and Haight, and that Court on October 14, 1915, filed it opinion refusing the preliminary injunction for the reasons which appear in the opinion, the substance of which is hereinafter quoted.

This judgment was appealed to the United States Circuit Court of Appeals, which sustained the judgment of the District Court.

After judgment was rendered in the United States District Court, the hearing before the State Board of Public Utility Commissioners was taken up. Witnesses were heard upon both sides, upon all of the points involved, at the conclusion of which an order was made by the Board of Public Utility Commissioners ordering the prosecutor to continue the sale of six tickets for a quarter. This order appears in the State of the Case, page 844.

The case came before the court below on certiorari of this order. There were thirty-nine reasons assigned by the prosecutor, but they were all reduced by us to the following legal propositions:

First: That the Board of Public Utility Commissioners had no jurisdiction to make the preliminary order of August 17, 1915, or the final order of January 11, 1916, because the prosecutor had no notice of the order of August 17, 1915, and because it has a contract with the City of Trenton authorizing it to charge the five-cent fare.

Second: That the final order of January 11, 1916, was not justified by the evidence in the case.

Third: That the lessor companies of the prosecutor were not made parties to the hearing.

To these main contentions of the prosecutor, the answer of the City of Trenton in substance is:

First: That the Public Utility Commissioners had jurisdiction over this case under the Public Utility Statute; that they had the power to make the order of August 17, 1915. But if the said Board had no such power, the duration of the order was three months and the time has now expired, and therefore there is nothing before this court on that point. That prosecutor has no contract with the City of Trenton, but on the contrary is bound by the provisions of the ordinance passed by the City of Trenton on October 22, 1909, requiring the Traction Company to sell six tickets for a quarter, to which prosecutor in writing expressly agreed, and that such ordinance and agreement constitute a binding contract now in force.

Second: That the order of January 11, 1916, is in accordance with the evidence taken in the case.

Third: That the lessor companies have no interest in this case, as prosecutor has leased their properties under a guaranteed rental, and they are not, therefore, proper parties to this controversy.

Fifty-one reasons are assigned for reversal in this Court, but as none of them presents any new feature, they too are reduced to the three legal propositions already stated for the purpose of this argument.

And, further, as we understand it, this Court will

not consider on appeal a point not raised in the Court below.

POINT I.

IT IS IMMATERIAL WHETHER THE ORDER OF AUGUST 17, 1915, WAS LEGAL; IF MATERIAL, IT WAS LEGAL.

As this order was a temporary suspension of the contemplated action of the prosecutor in discontinuing the sale of the six tickets for a quarter, and the three months of its duration having now passed, it seems idle to discuss the legality of the order.

If the Court, however, considers the point material, the claim of the City of Trenton is, that the company had ample notice and opportunity to be heard. The company itself invited the jurisdiction of the Board by forwarding a letter to the Public Utility Commission notifying the Commission that it intended to withdraw the sale of these tickets upon a specified day (see Case, Vol. 11, *Exhibit C 62, page* 308, letter of August 13, 1915). The forwarding of this letter was a recognition by the company of the power of the Public Utility Commission in the premises, even if the letter itself disclaimed the Public Utility Commission's power over the subject matter, otherwise there was no reason to send it. Immediately upon the receipt of this letter the Public Utility Commission sent a letter to the City of Trenton notifying the City of Trenton of the receipt of this communication from the prosecutor, and appointing Tuesday, August 17th, at eleven o'clock in the morning as the time, and the State House, at Trenton, as the place, where the said Public Utility Commission would sit for the purpose of hearing and considering any application that the City of Trenton might wish to make upon the subject matter contained in the letter from the prosecutor to the Public Utility Commission. This letter appears as *Exhibit C 64, page* 310,

Case, Vol. II. The Commission also caused a copy of this letter to the City to be sent to the Trenton and Mercer County Traction Company, as appears by *Exhibit C 63, page* 309, Case, Vol. II, letter of August 13, 1915, by the Public Utility Commission to the Trenton and Mercer County Traction Company. The transmission to the prosecutor of a copy of the letter from the Commission to the City was a direct notice that at the time and place mentioned therein the subject matter would be taken up and the City, as the representative of the people who were affected thereby, would be given an opportunity to apply for such order as might be reasonable in the premises. This not only was an adequate notice, but it at least was information that on such a day they would have an opportunity to be heard. As reasonable men they were charged with the knowledge that the public officials of Trenton would of course oppose, as they did so strenuously in 1909, the withdrawal of these tickets, and that they would apply to the Commission at the time and place mentioned for some order that would continue the issuing of these tickets until the whole matter could be finally heard.

But the complete answer to this claim of the prosecutor is set forth with reasoning that is conclusive in the opinion of Judge Haight in the United States District Court case, from which we quote:

> "The second ground requires a determination as to whether the order complained of was in fact made without notice to the plaintiffs and without affording them an opportunity to be heard, and if so, whether notice was necessary before the Board could have legally made it. The Board of Public Utility Commissioners was created by an act of the New Jersey Legislature, approved April 21, 1911 (*P. L.* 1911, *p.* 374), and was thereby vested with certain defined powers; among them to fix just and reasonable

rates to be charged by various public utilities, included in which are street railway companies, whenever it should determine any existing rate to be unjust, unreasonable or insufficient, and to hear and determine whether any increase, change or alteration in rates, which might thereafter be made by any public utility, would be just and reasonable. The Board was also vested with power, 'pending such hearing and determination' of the latter question, to order, for a period not exceeding three months, the suspension of the increase, change or alteration until it should have approved the same. It is by virtue of the last-mentioned power that the Board presumed to act in making the order in question. After the lessee company sent the notification to the Board of its intention to discontinue the sale of six tickets for twenty-five cents, the latter caused a copy of the same to be sent to the Mayor of the City with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action by the company, an opportunity would be afforded on August 17. . On the same day the Board caused a letter to be sent to the lessee company acknowledging receipt of the notice, asking when it proposed to make the change, and enclosing a copy of the letter sent to the Mayor. The company was not represented before the Board at the hearing, and as far as appears, was not notified whether the City proposed to take any action or make any motion before the Board on the date specified, or otherwise. On that date, however, the City was represented, and on the motion of its solicitor the order in question was made. It thus appears that the only notice the plaintiffs had was that on a certain day the Board would hear any motion that the City intended to make; but

they were never notified that the City intended to make any motion whatsoever or what it would be, and were afforded no opportunity to defend against the motion which was made and the order which the Board entered. Under these circumstances, if notice and hearing were necessary prerequisites, we think the plaintiffs were not given such notice or afforded such an opportunity to be heard in respect to the action which was taken as to satisy the 'due process of law' clause of the Fourteenth Amendment. But we think that the statute creating the Board and defining its powers authorized an order of suspension to be made, without notice of hearing. The powers of the Board, so far as are necessary to be considered, are conferred by Sections 16 and 17 of the act. Section 16 provides: 'The Board shall have power'; then follows, in eleven separate paragraphs, an enumeration of the powers. In some of these paragraphs the exercise of the power is expressly limited to 'after hearing'; in others to 'after hearing upon notice.' Section 17 provides: 'The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined'; then follows, in eight separate paragraphs, an enumeration of powers. It thus appears that the Legislature has carefully defined when a hearing and notice are necessary. The last of the paragraphs of Section 17 confers two separate powers: one to hear and determine, either upon complaint or upon the Board's own initiative, whether an increase, change or alteration in any existing rate is just and reasonable, and the other to suspend, for a limited time, such increase, change or alteration, 'pending such hearing and determination.' The latter power is expressly conferred in so many words, and by a separate sen-

tence, in which there is no requirement that the order can be made only after hearing and notice. It is a separate power, deemed necessary by the Legislature, no doubt, to give more efficacy to the former. The reason for granting it, as well as the context, leads us to the conclusion that it is not limited or qualified by the opening paragraph of Section 17, before quoted. That paragraph, we think, refers to the powers to determine whether the proposed change would be just and reasonable. It is difficult to understand why the Legislature should have required two hearings on the same question. If no other question were presented than that of reasonableness of the rate, as would most often be the case, the first hearing, to be of any effect whatever, must, of necessity, be practically the same as the second. On the other hand, it is reasonable to assume that the Legislature would wish to clothe the Board, to which it had delegated the State's rate-making right, with power to preserve the *status quo* until there could be a hearing and determination upon the merits, without the delay incident to notice and hearing. This is the same power exercised by and conferred upon the Interstate Commerce Commission by the Act of June 18, 1910 (36 *Stat. at L.* 552). Nor do we doubt the right of the Legislature to grant such a power, without violating the Fourteenth Amendment. Nothing more was done than to clothe a quasi-judicial body with a power which has always been exercised by courts of competent jurisdiction."

POINT II.

THE PUBLIC UTILITY COMMISSION HAS JURISDICTION OVER THE SUBJECT MATTER IN THIS CASE. NO ACTION OF THE CITY OF TRENTON SHOWN BY PROSECUTOR COULD OR DID DEPRIVE THE STATE OF NEW JERSEY OF ITS RESERVED RIGHT TO FIX JUST AND REASONABLE RATES.

We content ourselves with a brief statement of the principles involved in this case and a citation of the authorities, relying upon the brief of the counsel for the Public Utility Commission for a more extended discussion of this point.

(a) The power to fix and regulate the rates charged in the conduct of a business affected with a public interest is an undoubted power of government continuing in its nature. *Stone* v. *Farmers' Loan & Trust Co.*, 106 *U. S.* 307.

(b) Since this power is a power of government it cannot be lost by nonuser, nor is it affected by the fact that before the power is exercised the income of the business subject to the power has been pledged for the payment of debts incurred, or that the property employed in such business has been leased to a tenant that relied upon the earnings for the means of paying the stipulated rent. *Chicago, Burlington & Quincy R. R. Co.* v. *Iowa*, 94 *U. S.* 155; *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164.

(c) If the State, directly or through any municipal corporation, has power to establish by an inviolable contract the rates to be charged in a public utility, it can only be where the language is express and the time of the contract limited to a definite term, not grossly unreasonable in point of time. *Stone* v. *Farmers' Loan & Trust Co., supra; Home Telephone & Telegraph Co.* v. *Los Angeles* 211 *U. S.* 265.

(d) The State did not, by the statutes referred to in

the bill of complaint—which in general terms grant authority to fix rates—renounce its governmental power to fix and regulate rates; the only authority granted was the authority in general terms to fix fares. By such general language the State does not part with its governmental power to fix and regulate rates. *Stone* v. *Illinois Central Railroad Co.*, 116 *U. S.* 347; *Stone* v. *Farmers' Loan & Trust Co.*, 116 *U. S.* 307; *Chicago, Milwaukee & St. Paul Railway Co.* v. *Minnesota*, 134 *U. S.* 418; *Minneapolis & Eastern Railway Co.* v. *Minnesota*, 134 *U. S.* 467; *Southern Pacific Co.* v. *Oregon Railroad Commission*, 230 *U. S.* 537; *Milwaukee Electric Light Co.*, 35 *Sup. Ct. Rep.* 820; *Duluth St. Railway Co.* v. *Railroad Commission of Wisconsin*, 152 *N. W. Rep.* 887.

(e) The fixing of a maximum rate of fare by the statute and ordinances referred to in the bill of complaint, did not create an inviolable contract as to rates which prevented the subsequent exercise by the State of the power to fix rates less than said maximum rates, provided such lesser rate is a just and reasonable one. *Dow* v. *Beidelman*, 49 *Ark.* 325, 5 *S. W.* 297; *Georgia Railroad & Banking Co.* v. *Smith*, 128 *U. S.* 174; *Rogers Park Water Co.* v. *Fergus*, 180 *U. S.* 625; *Knoxville Water Co.* v. *Knoxville*, 189 *U. S.* 425.

(f) The Legislature of the State of New Jersey has not conferred upon the municipalities of this State any power to enter into inviolable contracts with street railway companies establishing rates of fare and suspending the State's power to fix and regulate rates. *Home Telephone Co.* v. *Los Angeles*, 211 *U. S.* 265; *Wyandotte Gas Co.* v. *Kansas*, 231 *U. S.* 623.

(g) If the municipal corporation was vested with the power to engraft upon the franchises of the Railway Companies a provision limiting the rate of fares as a condition of the use of the highways for street railway purposes, the act of the municipality in imposing such liability was that of agency of the State in granting the

corporate franchises, and is therefore subject to the power reserved to the State by constitution and by statute, to amend, alter or repeal corporate statutes. The enactment of the statute creating the Board of Public Utility Commissioners and vesting in the Board power to fix just and reasonable rates whenever it determines existing rates to be unjust or unreasonable and temporarily pending hearing to suspend proposed increases in existing rates, was the exercise by the State of its reserved power to amend, alter or repeal corporate franchises. *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164; *San Antonio Traction Co.* v. *Altget*, 200 *U. S.* 304; *City of Mani* v. *Manitowac & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. W.* 925; *Louisville & Nashville R. R. Co.* v. *Railroad Commission of Kentucky*, 231 *U. S.* 298.

(h) A special statutory enactment from the governmental power of the State to fix and regulate rates does not pass to a new corporation succeeding others by consolidation or purchase in the absence of express direction to that effect in the statute.

The same rule is applicable where the constituent companies are merely owned and operated by one of them as authorized by the legislation. An enactment held by the latter will not pass unless so expressly provided. *St. Louis & San Francisco Railway Co.* v. *Gill*, 156 *U. S.* 649; *Matthew* v. *Board of Corporation Commissioners of North Carolina*, 97 *Fed.* 400; *Peoples Gas Light & Coke Co.* v. *Chicago*, 194 *U. S.* 1.

(i) Where the action of the municipality does not establish an inviolable contract suspending the State's power to fix and regulate rates, the power of the Board of Public Utility Commissioners is complete. The Board may, in such case, fix a just and reasonable rate, whenever it determines the existing rate to be unjust and unreasonable, notwithstanding the fact that the existing rate has the sanction of prior municipal action assented to by the company. A just and reasonable

rate so fixed by the Board may be less than that limited by the prior municipal action, or may exceed the rate so limited. This follows from the fact that the existing rate may be unjust and unreasonable to the community served because it affords more than a fair return, or unjust and unreasonable to the utility furnishing the service because it fails to afford a fair return. The power conferred upon the Board is, Public Laws 1911, page 374, Section 16:

> "(c) To fix just and reasonable rates * * * whenever the Board shall determine any existing rate * * * to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential."

City of Dawson v. *Dawson Telephone Co.*, 137 *Ga.* 62, 72 *S. E.* 508; *City of Manitowoc* v. *Manitowoc & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. E.* 925; *Milwaukee Electric Railway & Light Co.* v. *Railroad Commission of Wisconsin*, 153 *Wis.* 592, 142 *N. W.* 491; *City of Benwood* v. *Public Service Commission (W. Va.)*, 83 *S. E.* 295, *L. R. A. (N. S.)* 1915 *C.*

(j) Section 17 (h) of the Public Utility Act clothes the Board with power pending a hearing and determination on the justice and reasonableness of a proposed increase in any existing rate, or change or alteration in any existing classification, to order the suspension of such increase, change or alteration for a period not exceeding three months.

The statute does not make the exercise of the power of suspension dependent upon notice and hearing as to whether or not the power shall be preliminarily exercised in a specific case.

In this respect it resembles the Interstate Commerce Act.

No constitutional provision makes notice and hearing a prerequisite to the exercise of the power of suspension.

See *Home Telephone and Telegraph Co.* v. *City of Los Angeles*, 211 *U. S.* 265, 278.

POINT III.

ORDINANCE OF CITY OF TRENTON OF OCTOBER 22, 1909, REQUIRING SALE OF SIX TICKETS FOR A QUARTER, WAS A CONTRACT SUPERSEDING PREVIOUS CONTRACTS, IF ANY EXISTED.

Even if the ordinances relied upon by the prosecutor constituted a contract, that contract was abrogated by the ordinance of October 22, 1909. The following undisputed facts in the case conclusively established this contention.

For many years prior to September, 1909, the Trenton Street Railway Company (then the operating company), and the constituent companies which were merged into it, had voluntarily adopted the practice of selling six tickets for a quarter, each ticket good for a ride within the limits of the City of Trenton. That on Monday, September 13, 1909, an announcement was made on behalf of the company, then operating the Trenton Street Railway system, that no more strip tickets would be sold by the conductors after 6 P. M., on the 15th day of September, 1909, and on the said 15th day of September, the actual sale of the said tickets was discontinued in accordance with said notice. That the announcement of the purpose of the company to withdraw the sale of these tickets and the actual withdrawal of the same, aroused widespread indignation among the citizens and public officials of the City of Trenton. The action of the company became the leading news feature of the local newspapers from the 13th day of September, daily, until the whole matter was settled by the passage of the ordinance re-establishing the sale of the tickets on October 19, 1909. The subject was taken up by the Chamber of Commerce, of Trenton, and the Merchants' Association of that City, and by the Mayor and by the Common Council.

The Mayor of the City addressed strong messages

to the Common Council upon the subject of the withdrawal of these tickets, in substance, reciting that the company had grossly violated the provisions of the City ordinances in respect to the schedules of its cars, in the matter of running old and unsanitary and flat-wheeled cars, in the matter of running cars upon parallel tracks in the same direction, and called attention to various other violations of the City ordinances and instances of poor and inadequate service.

The Mayor, also, in a special message directed to the Council, raised the point that some of the company's franchises were probably void, and that a legal action would result in their being declared without any rights upon certain of the streets of the City, and suggested that the City should proceed by appropriate legal action to have these franchises set aside.

The result was such an aroused public opinion that representatives of the City and representatives of the company had several conferences from day to day.

As a result of these conferences the President of the Street Railway Company, on September 18, notified the Common Council that the Company was willing to compromise the strip ticket matter by restoring the sale of the strip tickets, not on the cars, but at certain stores or other places within the city limits. This compromise did not satisfy public opinion or the public officials, and various members of the Common Council announced that at the Council meeting to be held on Tuesday evening, September 21, 1909, they would introduce resolutions inaugurating an attack upon the company's franchises, and looking to the enforcement of various ordinances of the City as to better service.

As a result of all these influences assurances were made by the company to the Common Council on the evening of its meeting on September 21, that the tickets would be restored for sale upon all the cars the following Friday.

At said meeting a resolution was adopted to which the attention of the Court is particularly directed. It recited that in the ordinances of the City granting to the company operating the street railway and its predecessors the right to construct and operate street railway lines in and upon the public streets of the City of Trenton, the City reserved the right to alter or amend the same at any future time whenever in the judgment of the Common Council it should become necessary for the public good so to do. It recited that in said ordinances, or some of them, it is provided that no such alterations or amendments shall be made without giving to the Railway Company affected thereby one month's written notice. It recited that in the judgment of the Common Council it is necessary for the public good that the existing ordinances should be altered or amended so as to provide for the uninterrupted sale by the company of tickets at the rate of six tickets for twenty-five cents, or that in lieu of such amendment or alteration, a new ordinance should be passed requiring the sale of such tickets by the company upon the terms aforesaid, provided the company was willing to waive, in writing, one month's notice thereof, to which it was entitled, and signify its willingness to enter into a written contract or agreement with the City of Trenton accepting the terms of such proposed new ordinance, and agreeing to comply with the requirements thereof.

The resolution then proceeds to designate five members of the Common Council to act as a committee to confer with the officers of the Trenton Street Railway Company relative to the said matter.

The resolution further provided that if the company should fail within ten days to give such written waiver and signify its willingness to enter into a written agreement, that the City Clerk should forthwith give one month's written notice to the company of the intention of the Common Council to alter and amend the ordinance in the manner hereinbefore described.

The resolution further provided that in the event that the company should waive such notice and make such agreement and accept the terms of the new ordinance, that the City Counsel be directed to prepare a draft of such proposed new ordinance for introduction at the next meeting of the Common Council.

As a result of the passage of this resolution and the other influence hereinbefore described, on Wednesday, September 22, the Street Railway Company actually restored the sale of the strip tickets on all of its cars.

The committee appointed by the Common Council accompanied by the City Counsel, Mr. Charles E. Bird, met the representatives of the company in conference, and in such conference it was agreed that the sale of the six tickets for twenty-five cents should be continued by the company, and that a formal agreement to that effect should be made between the City and the Company. At this conference the company agreed that the sale of the strip tickets, which in fact had been theretofore resumed, as before stated, should be continued for the future, and that the company stood ready to take whatever action the City requested in order to make the obligation to sell these strip tickets binding upon the company in the future. It was thereupon arranged that the Board of Directors of the company should pass a resolution waiving its right to receive from the City any notice relating to the passage of a new ordinance providing for the sale of the said strip tickets, and agreeing to the adoption of a new ordinance to that effect, and further agreeing that when the ordinance was passed the company would execute another written agreement ratifying the said ordinance. In accordance with this arrangement the Board of Directors of the Trenton Street Railway Company, on the 4th day of October, 1909, adopted the resolution which appears as complainants' *Exhibit C 68*, page 321 of complainants' bill of complaint in the District Court case. (Case, Vol. II.) The attention of the Court is particularly directed to

this resolution. *It recites that the City in its several street railway ordinances has reserved the right to alter or amend such ordinances.* It recites the provision of the ordinance that the company shall have one month's written notice of any proposed amendment. It recites the resolution of the Common Council at the meeting held on the 21st day of September, to which reference has been heretofore made under this point, notifying the company of the desire of the Common Council to amend the existing ordinances or to pass a new ordinance, providing for the sale of strip tickets. It recites that the amendment of the several ordinances would involve a greater expense and delay than would be necessitated by the passage of a new ordinance. It recites that the City Counsel, on behalf of the City, has submitted to the company a draft of such proposed new ordinance, and of a written form of agreement to be executed by the Company, of which copies are mentioned as attached to the resolution, and *that the Board of Directors have fully considered the premises, and are willing to aid in the speedy passage of the proposed new ordinance.* The resolution then provides that the company *waives all right to receive any notice relating to the passage of the said new ordinance,* and that the proper officers of the company are directed to transmit to the said City a duly authenticated copy of the resolution.

The resolution further provides that immediately after the passage of the said new ordinance by the City, substantially in the form embodied in the copy annexed to the resolution, the proper officers of the company are directed execute an agreement in form substantially similar to the draft of the said agreement annexed to the resolution. This resolution of the directors was transmitted to the City on or about October 2, 1909.

Annexed to this resolution was a draft of the ordinance and of the subsequent agreement that the company was to execute after the passage of the ordinance, which ordinance is the ordinance in question in this

controversy and is complainants' *Exhibit C 55*, page 304, of the bill of complaint, in the U. S. case (Case, Vol. II), and which agreement is appellants' *Exhibit C 70*, page 325, of the bill of complaint in the U. S. case (Case, Vol. II).

On the 19th day of October, 1909, the said ordinance in the form recited in the resolution of the company's directors, was passed by the Common Council and approved by the Mayor on October 22. This is the ordinance which is in question in this case, *Exhibit C 55*, page 304, of complainants' bill of complaint in the U. S. case (Case, Vol. II). It provides expressly that the Street Railway Company shall be required to sell at all times, upon all of its cars, strip tickets at the rate of six tickets for twenty-five cents, and that the Mayor of the City shall be authorized to revoke the license of any car operated by the company upon which tickets are not sold. This ordinance was introduced October 5, 1909, referred to the proper committee, and passed October 19, 1909, and approved October 22, 1909.

Here, then, was an agreement reached after conferences between the representatives of the City and the representatives of the company, and carried out in writing in accordance with the verbal arrangements made by the representatives of the City and of the company respectively. The company agreed, by resolution of its directors, to waive any right to any notice that it might have of the intention of the City to pass this ordinance, and agreed that the City might pass it, and that the company would execute a written agreement after it was passed formally accepting its terms, and the officers of the company were authorized to execute such an agreement *immediately* upon the passage of the ordinance by the Common Council and its approval by the Mayor.

We insist that these several actions by the company and the City constituted an agreement on behalf of the company to maintain the sale of these tickets upon

all of its cars as long as it should exercise its franchises.

The company attempts to escape from the obligation of this contract by asserting two defenses: First, that it was misled into making the contract by the recital in the resolution adopted by the company's directors to the effect that in all of the ordinances of the Common Council to the company and its predecessors, the right was reserved to amend such ordinances. Our answer to this is that if said recital was a material fact in the negotiations and in the agreement, then of course it was the company's business and that of their legal advisers to ascertain whether said recital was true in fact or in law. If it was not a material recital then it does not affect the agreement. It is therefore immaterial whether this recital is as a matter of fact true or not true.

This claim of ours is absolutely clinched and proved beyond any discussion by the statement of John A. Rigg, General Manager, or whatever he was of the company, in his affidavit annexed to the bill of complaint in the U. S. (Case, Vol. II, page 63), wherein he specifically states

> "that the Trenton Street Railway always claimed that the City of Trenton had no right to alter or amend the ordinances * * * so as to in any way lessen the amount which the company had the right to charge for transportation of passengers * * * under said ordinances."

Our claim that this recital was not a material part of the agreement and did not enter into the company's mind is again confirmed by the first recital in the form of agreement which the company agreed to execute after the passage of the ordinance (complainants' *Exhibit C 70*, page 325, Case, Vol. II). In that agreement the following recital appears at the top of page 326:

> "Whereas, in and by the several ordinances aforesaid, *or some of them*, the right was reserved by the said party of the second part to

> alter or amend said ordinances at any future time, whenever, in the judgment of the Common Council of said City, it should become or be necessary for the public good so to do."

There is no possible denial of the fact that this right was reserved as to some of the ordinances of prosecutor, or its predecessors. The company's directors had this agreement in front of them when they passed their resolution drafted by their own counsel, and this agreement was annexed to the said solution. Therefore the claim that they were misled by the recital that all of the ordinances contained this provision falls to the ground.

As another defense to the validity of this solemn agreement, the company alleged a failure of consideration. Our answer to this claim is, that there was a most substantial and vital consideration that passed from the City to the company in return for this agreement. The consideration was the removal of the public and the official hostility to the company. The Mayor had publicly called upon the Council in a special message to attack the company's franchises; that the Council had started measures looking to compelling the company to buy new cars and to abolish flat wheels, and live up to its schedule, and to adopt new and reasonable schedules, and to twelve or thirteen other points which the City had raised as against the company's service or obligations under its franchises. It was this wave of public indignation and this threat of adverse City action that caused the company to yield. This is expressly proved by the assertion of General Manager Hurley in his letter to the Council, which was delivered on the evening of September 21st, wherein he says specifically:

> "We are desirous of doing everything in our power to meet the demands of the citizens, realizing that their good will is our greatest asset."

The good will of the public, says the Manager of the company, is the chief asset of this company. When by the making of this agreement the animosity of the public was removed, and its good will was won back, the company obtain the thing which was the real consideration for the making of the agreement.

The company therefore received its consideration, and the claim that its action was without consideration is therefore without force.

The company further claims that after the passage of the resolution by the Board of Directors waiving the notice in the ordinance, and agreeing to accept its provision and execute the contract to that effect, it discovered that the recital in the said resolution of their Board of Directors was untrue, and subsequently to the passage of said resolution rescinded the same. This resolution of rescission is *Exhibit C 69*, page 322 (Case, Vol. II). This claim is entirely without force if the foregoing reasoning is sound. If the recital in the resolution of the Board of Directors was passed upon by their own counsel, and they had full knowledge of its meaning, or if the recital was immaterial and was not a material part of the agreement, then it was impossible for the company to rescind the agreement after they had received the consideration, to wit, the restoration of public favor, and after the city had performed its part by the passage of the ordinance agreed to beforehand, and stopped proceedings to invalidate the company's franchise.

The resolution passed by the Board of Directors agreeing to execute the subsequent agreement after the City should act by the passage of the ordinance, simply put the company in the position, after the passage of the ordinance, that they could have been then and could now be compelled to execute the agreement agreed to be made. The company after it had received the benefit which the agreement to submit to the ordinance brought them in the way of the cessation of public agitation,

and in the fact of the abandonment by the City of the proposed attack upon the franchises, could not thereafter refuse to execute the agreement to which it had bound itself. As a matter of fact, the execution of this agreement was a mere formality. It is obvious that its execution was provided for merely that there should be additional evidence of the agreement between the City and the company.

The prosecutor does not claim that it has ever notified the City that it had rescinded the said resolution. All that appears is that the confirmatory agreement was never executed.

This amounts to a fraud upon the public. There is no other way to properly characterize it. If these Directors have known all of these years that the agreement they made with the City was void, and have not so notified the City, they have put the City in a false position, and have induced it to rest secure in the belief that the agreement between the City and the company was a valid one, and they have obtained all of the advantages in the way of a favorable public sentiment, and immunity from official attack, which the concealment of their position has brought them.

During all of those years they have sold these tickets they have acted in exactly the same way that they would have acted if they had actually executed the confirmatory agreement, which they failed to execute. We submit that this in any event is a ratification, in whole, of the agreement which they had made with the City, and is of equal binding force as if they had executed the confirmatory agreement which they failed to execute.

The cases cited in support of the prosecutor's position that there was no contract until the executory agreement was signed, do not fit this case at all. All these cases go upon the supposition that the minds of the parties have not met until the execution of the final agreement. They are all cases where only a preliminary

and general understanding was reached in the first instance, subject to be revised and modified, and these revisions and modifications to be stated in a subsequent agreement. In this case the minds of the parties met, and when the City Council passed the ordinance and sent a copy of it to the company, and the company by formal resolution recited the ordinance, expressly indicated its assent to its provisions and promised to execute not a modified agreement, but in the exact form annexed to the resolution. If the City had changed its ordinance in any material part after the passage of this resolution by the Board of Directors of the company, then there might be some force to the claim that the minds of the parties had not finally met.

Finally, there was no necessity for any specific consideration in this case. The City and the company had relations which had been established by ordinance. These relations were mutual. It is well-established that when parties to an agreement modify an existing agreement that the modification of the agreement is in itself the consideration, or is evidence of mutual advantages which constitute the consideration.

That these several acts constitute a contract between the Trolley Company and the City is supported by the case of *Jersey City* v. *Jersey City and Bergen Railroad Company*, 70 *N. J. L., page* 360. This was a case where provisions were incorporated in the ordinance requiring the company to pay license fees.

POINT IV.

Ordinance of October 22, 1909, Valid as an Ordinance if Not as a Contract.

If the facts set out under the previous point do not constitute a contract, nevertheless it is plain that the ordinance of October 22, 1909, was a valid exercise of the power vested in the municipality to amend the ordinances previously granted to prosecutor's lessor com-

panies. This ordinance, being valid, must stand until the Utility Board shall, under its power to fix just and reasonable rates, change the conditions as to fares established by the ordinance.

The prosecutor claims that this power of amendment does not extend to changing fares, because it claims that that is a vital matter. If this claim was sound, it would amount to the position that no amendment of an ordinance can be made which imposes any additional financial burden upon the company. There is no difference in principal between the power of the City to compel the company to put on additional cars, to abolish flat wheels, or to pave between the tracks, or to improve the service in any way through the power of amending an ordinance, and the power to reduce the fares. Any exercise of the power of amendment by the City government necessarily imposes a financial burden upon the company. The test is not whether the ordinance is directed to the amount to be charged for the fare, or to any other part of the service, but the test is whether after the amendment has gone into effect, there is still enough income left to afford a fair return over the value of the property. If the City by amending the ordinance compels the company to run so many cars that the existing rate is unprofitable, then the company can raise the rate, or if it is limited as to the rate, then the ordinance requiring an excessive expenditure for service must fail. That this is true appears from the consideration of the possibilities of the future.

Supposing a new motive power cheaper than electricity is discovered, or a cheaper method of producing electric power is discovered, whereby the company could transport passengers at a cost of one cent apiece, with the result that its earnings would be fifty per cent. upon the fair value of its property, is it not plain that both the City would have the power to amend the ordinance so as to reduce the rate, and that the Public Utility Commission would have power to reduce the rate so that the

net earnings would afford only a fair return upon the value of the property?

POINT V.

THE COMPANY IS BOUND TO MAINTAIN THE SALE OF TICKETS BY ITS OWN AGREEMENT WITH THE PUBLIC UTILITY COMMISSION.

It appears by the record offered in this case by Mr. Sommer of the application of the company for the approval of the Public Utility Commissioners of the lease by which it obtained control of the Trenton Street Railway system, that all of the present difficulties with which prosecutor is now struggling were foreseen by the Commission, made the subject of discussion and investigation, and resulted in a virtual agreement between prosecutor and the Commissioners. The proof of this statement appears in the quotation from the testimony taken in that proceedings given by Mr. Crosby, the representative of the existing companies and the president of the newly formed lessee company, which was read into the record. (Case, page 474, line 10.) Mr. Crosby said under oath:

> "There has been some contention in this particular case as to whether the tariff to be charged is fixed at five cents or a possible four and a sixth cents. I have not been able to find exactly what the legal status is as recognized by the (lessor) companies. I am under the impression they are practically committed to the six-for-a-quarter rule. I suppose we inherit that committal. If not, I should not have the authority to commit them, but I am ready to say, if there is any doubt, so far as we are concerned, we are willing to submit to a friendly suit to settle the question."

He further said (Case, page 474, line 36):

> "I looked at the matter when going over the

> estimates as to probable earnings that we should never have more than six-for-a-quarter tickets. If the ordinance has been passed and accepted, that settles it."

To clinch this point, Mr. Sommer, then President of the Commission, asked this question (Case, page 608):

> "*Q.* In making the estimate, however, of whether the future, on the lines laid down by the lease, would be profitable, you use as a basis what: five-cent fare or the six-for-a-quarter fare? *A.* We eliminated it in one sense. * * * WE HAVE BASED IT ON THE SIX-FOR-A-QUARTER BASIS REALLY. I should say, in regard to the six-for-a-quarter basis, there was no thought that the question would be raised for a change to five cents. Mr. Rigg told me they had made a spurt and had gone back. And he said they did not know just what the legal status was."

We submit that this language amounts to an agreement that this particular lessee company was prepared, as a condition of receiving the approval of the Commissioners, never to raise the question unless it was compelled to by their lessor companies, and that in that event it, the lessee company, agreed that it should be settled by a friendly suit. This means that the question as to whether there was a legal contract which the lessor companies could avail themselves of to discontinue the sale of the strip tickets, if ever raised, should be settled by a friendly litigation to determine the legal point involved.

We submit, therefore, that prosecutor obtained the approval of the Commission to this lease upon the distinct representation that it would not attempt to change the practice of selling six tickets for a quarter, except as the result of a friendly litigation upon the legal point of the contract. The Commission relied upon that representation in approving the lease. They should not be

allowed at this late date, after they have been disappointed in their anticipation of being able to squeeze the Trenton public into paying these rentals upon millions of watered stock, and to have something left over to pay dividends upon their own stock, all of which is shown by Mr. Johnson's testimony to be pure water—they should not be allowed in this proceeding to raise this question which they expressly covenanted not to raise. They do not show that they have been requested to raise this point by their lessor companies.

POINT VI.

Burden of Proof.

The prosecutor claims that the Commission erred in holding that the burden of proof was upon the prosecutor in proving that the new rate of a straight five-cent fare would be just and reasonable, and that the existing rates were unjust and unreasonable.

Had the prosecutor sought to change the existing conditions and give up a rate which had existed for twenty-five years, and to put in force a higher rate, it is obvious that the burden of proof was upon the company seeking to make the change.

But if the point was important and the burden of proof was upon the City, an inspection of the record will show that by a very great preponderance of proof, the City has established that fact both that the existing rate is more than just and reasonable and that any increase in the rate would be unjust and unreasonable. This will appear as we discuss he merits later in the Brief.

POINT VII.

The Prosecutor's Valuation of its Property is Excessive.

We contend that prosecutor has failed to meet the burden of proof that the existing earnings do not fur-

nish a fair return upon the value of the company's property which is devoted to a public use.

The prosecutor undertakes to prove a valuation of $3,700,000 for physical property, to which it adds anywhere from $1,000,000 to $2,000,000 for what Mr. Ford terms "development cost." Let us analyze these figures.

Mr. Johnson makes up his figures by taking the valuation of the physical property which he made in 1910, before the properties were taken over. This value he finds to be approximately $3,200,000, to which he added some $800,000 which has been subsequently spent upon the property. We attack this valuation upon many grounds. In the first place, he admits that his valuation was not made wholly by himself. He admits that he had the assistance of other people in gathering and marshaling his data, and these people are not produced for cross-examination. He does not produce his original notes. Nor does he produce the details of his valuation requested by the City.

This valuation in 1910 Mr. Johnson admits was what he called a valuation new. That is to say, he valued all of the property as though it was new and in good condition.

There is no dispute that this property was at that time badly run down.

Confirmation of the fact that the property of the prosecutor was very seriously depreciated appears in several ways. Mr. Hurley, the General Manager of the Trenton Street Railway Company, wrote a letter to the tax commissioners in August, 1907 (*Exhibit O 36*), in which he said:

> "As to our property in the streets, we can show unquestionably that much of the track will have to be entirely renewed within the next year or so."

The City of Trenton, at this very time in 1910, made formal complaint to the Board of Public Utility Com-

missioners that the company's condition was bad, specifying the exact particulars upon which its charge was based. Upon this complaint the Board of Public Utility Commissioners used the following language in its order:

> "The Board of Public Utility Commissioners for the State of New Jersey, after consideration of such testimony and the results of such inspections, determines that the Trenton Street Railway Company DOES NOT NOW FURNISH SAFE AND ADEQUATE SERVICE in the City of Trenton, and that in order that such service may be furnished by it, it is required that the following work be done."

Then follows twelve specific requirements, ranging from the complete reconstruction of the track on specified streets to the repair of joints on specified streets.

The Board further finds that

> "The work of RECONSTRUCTION and REPAIR, hereby ordered to be done, SHOULD HAVE BEEN DONE HERETOFORE from time to time as the occasion therefore first arose."

This is an official finding by this very Board that the condition of the company's plant at that time was so bad that it could not furnish safe and adequate service. It is in evidence that $500,000 was raised as a necessary condition of approving the lease in order that this property might be rehabilitated. This is conclusive proof that the company's property at that time was heavily depreciated, and, therefore, the value new found by Mr. Johnson is practically irrelevant, unless it is supplemented by some evidence to show to what extent it was depreciated. This the company has made no effort whatsoever to do. There is not a scintilla of proof in this case to show what was the real value or the real condition of this physical property at the time of Mr. Johnson's valuation in 1910, except the proof which I have cited to the effect that it was badly depreciated. The burden is, therefore, upon the company to establish

the value new less the depreciation in 1901, if it intends to make use of the value at that time as the basis for arriving at the value at the present time. This is so plain that it does not admit of any argument, and it is fatal to the company's position, which requires that it should furnish conclusive proof of the value of the company's property at the present time.

There is no evidence by Mr. Johnson, or by Mr. Ford, or by anybody else, showing the valuation of the company's property at the present time. Nobody on behalf of the company has made any attempt to value the property in its present condition, except by taking the valuation new as found by Mr. Johnson in 1910 and adding to it the money since expended.

The company offered as part of its proof the valuation made by Dr. Betts for the Commission, at the time the Commission was considering the application for the approval of the lease. This appraisal of Dr. Betts was made at about the same time as that of Mr. Johnson. It was put in evidence by counsel for the company. Dr. Betts' estimate of the total value of the property was approximately $2,600,000. This valuation is very far from that of Mr. Johnson, but it is offered by the company as corroborative of the correctness of Mr. Johnson's estimate at that time.

Dr. Betts' valuation is open to many objections. In the first place, he frankly says that he did not make this examination in the way that he would have made an examination if he had been valuing the property for the purpose of enabling the Commission to fix a just and reasonable rate. He stated that he only valued the company approximately for the purpose of determining whether or not the terms of the lease ought to be approved. Dr. Betts states that he would have made a valuation for rate-making purposes much more in detail. This alone is sufficient to invalidate this valuation as proof of the real value of the property at that time.

Dr. Betts valued the property as new. He made no

attempt to determine how badly the property was depreciated, or to fix the amount of the depreciation, or to fix the value of the property in its depreciated condition. He further stated that several of his subordinates spent three or four weeks in the field, and that he used the data so gathered, with only such verification as he was able to give it by three or four days in the field. We submit that this invalidates Dr. Betts' valuation as proof of the value at that time. The City is entitled to have the men who did the field work and who marshaled the data which Dr. Betts used put upon the stand for cross-examination.

The Betts' valuation, however it is viewed, leaves the question of the depreciated value of the property in 1910 absolutely unproved. Therefore, the base of the company proof of present value is not shown. No result can be obtained until this basis valuation of the property in its depreciated state in 1910 is shown by competent proof.

The company upon this invalid basis proceeds to build up the existing value by adding some $800,000, which the company claims has been spent upon the property since it took it over. The disposition of this $800,000 is the subject of conflicting claims by Mr. Johnson and by employees of the Board who have examined the company's books with reference to this expenditure. These witnesses testify (Case, pages 793 and 804) that they find that, according to the rules of the Board, about $550,000 of this sum can properly be charged to capital account.

This is positive proof by the Board's own employees. Against it are the confused and confusing statements of Mr. Johnson on the stand as to the expenditure of this money. He used the words "rehabilitation," "road and equipment," "repair account" and "maintenance account" with such inaccuracy and confusion that no clear deduction can be drawn from his statements as to how this money has actually been spent. A careful reading

of Mr. Johnson's testimony on this point will justify this statement.

We have, therefore, as the result of this method of proof by the company, an unknown figure as the value of the depreciated property in 1910, plus $550,000 as found by the Commission's employees to have been spent subsequently on capital account.

The company claims that it should be allowed this value new in 1910, and that no depreciation should be taken off. We submit that there is no finding by any court or commission in the whole history of rate-making in this country that affords any justification for any such claim. To argue it at length would be to impose upon the patience of the Court.

The company claims an additional valuation for going-concern value on Mr. Ford's cheerful guess of anywhere from twenty-five to fifty per cent. of tangible value. This claim involves the consideration of going-concern value or development cost, which we will treat of in a subsequent point. We here show that the mere statement of anywhere from twenty-five to fifty per cent. is not in evidence upon which the Board could act. It is too vague, too indefinite, and too general.

Mr. Ford made no study of the situation in Trenton, he merely came down a couple of times and talked with Mr. Johnson, the manager. As will appear when we discuss the subject of going-concern value, he expressly said that there should be no allowance for going-concern value beyond the actual cash invested in building up the property, if that fact could be ascertained. As we shall show later, it is easy in this case to prove the money that has been actually expended upon the plant.

Mr. Johnson made no estimate of franchise value at all.

This proof, such as it is, is completely offset by the testimony of the City's two experts, who made a study of this situation, extending over many weeks, that no

sum whatever beyond the value of the physical property in its existing state ought to be added in this case. The preponderance of proof, therefore, on this point is with the City and not with the company.

We submit that upon the company's evidence they have shown substantially as follows: That it would have cost in the fall of 1910 approximately $2,600,000 to reproduce the company's property new; that it was in a depreciated state; that such depreciation is fairly measured by the amount of 550,000 found by the Board's employees to have been actually expended to remedy this depreciation since 1910. That would make the value of the company's physical property at the present time approximately $2,600,000. Curiously enough this is almost the identical figure found by the joint appraisal of the City's experts, Messrs. Rand and Brackenridge. It is also practically the amount of money that was actually put into the property by investors up to 1910, as will be shown when we consider the capitalization of the company in a subsequent part of this brief.

The $500,000 raised for the rehabilitation of the property in 1910 cannot be considered as new capital, because it was caused by the wrongful diversion of the revenues to dividends. This was expressly found by the Commission in the order hereinbefore quoted.

From the proofs submitted by the prosecutor, therefore, we submit the Court cannot determine what is the value of the property at the present time, and that the claim of a value of approximately $4,000,000 is absurdly excessive.

POINT VIII.

THE VALUE OF THE COMPANY'S PROPERTY AS PROVED BY THE CITY DOES NOT EXCEED $2,700,000.

Not only has the company failed to present any proper evidence of the present value of this property,

but the City has produced a positive and definite valuation. The City's proof shows that this property, including every kind of contingency that can properly be charged, can be produced to-day for approximately $2,700,000. The witnesses for the city who made up this valuation were Mr. Swan, Mr. Brackenridge and Mr. Rand.

Mr. Swan has been connected with the City's engineering department for twenty-five years, except two years, and during that time has had practical charge of all the street work, including portions of the pavements required to be laid by the company. He produces from his records and from his personal knowledge an elaborate table showing the approximate time that the rails were laid; the character and time of laying of the pavements between the tracks in each street. The accuracy of this foundation work has not been in any way impeached.

Mr. Brackenridge has been engaged in every variety of street railway work since 1885. He has been a general contractor, and as such has built many electric street railways. He was connected for many years as engineer of construction with the Brooklyn Rapid Transit Railway Company, and this experience included the time when its transportation system was operated by horse power and when and after the motive power was changed from horses to electricity. It has been his business in all these years to actually purchase every form of electrical equipment. He has had the widest possible experience in the actual working of railways, and so is familiar not only wtih the cost, but with the life and rate of depreciation, of every class of physical property used in this class of work.

It would be impossible to find a man whose experience better qualified him to put an approximate value upon this property in the limited time that is afforded by the statute for the proofs to be taken in this case.

The accuracy of Mr. Brackenridge's work has not

been impeached by cross-examination, or by the rebuttal testimony of Mr. Johnson, except on minor and unimportant points. Mr. Johnson claims that he has actually paid $300 or $400 more for some of the cars than Mr. Brackenridge says he can buy them for.

Mr. Brackenridge uses 15 cents a pound as the price of copper, which is a liberal figure taking the average for many years, as against the present extraordinary price of 19½ cents; but even on this basis, the variation from Mr. Brakenridge's figures is trifling. It is substantially true that Mr. Brackenridge's figures are not discredited in the rebuttal or cross-examination.

Supporting Mr. Brackenridge is Mr. Rand. Mr. Rand is a consulting engineer, and has had upwards of thirty years' experience in the handling of securities relating to all kinds of railroads, including street railways; in the valuation of railroad and street railway properties; and as an expert in the famous Consolidated Gas case of New York, and in many cases involving both the consideration of physical and intangible elements of values of public utility corporations. He has been a student of the problem which is presented before this Court for discussion. He worked with Mr. Brackenridge in the personal inspection of this property, and in the fixing and checking up of the prices and the rates of depreciation upon the different items of property considered. Where two men of long experience and established reputation work together, each checking the other, the result is reasonably sure to be approximately correct.

These experts for the City spent many days in the actual inspection of the property. The care they exercised is evidenced by the notes of Mr. Brackenridge and Mr. Rand as to the special work. Mr. Rand drew a freehand sketch of every piece of special work in the whole system. Mr. Brackenridge at the same time made full notes of these pieces of special work, and the more complicated ones he also sketched upon paper.

The notes on this part of their work were put in evidence, and show the completeness of their inspection and valuation. Such material facts as they did not ascertain by personal inspection and investigation they got from Mr. Swan and from Mr. Johnson.

A very admirable summary of the results of the study of these experts was presented as an exhibit, and we herewith print it in this brief for convenient reference.

SUMMARY SHEET OF ESTIMATES GIVING COST TO REPRODUCE NEW, DEPRECIATION AND PRESENT VALUE, OF THE PROPERTY OPERATED BY THE TRENTON TRACTION CO., AS OF NOVEMBER 9, 1915.

Contractor's Profits Have Been Included in all Items.

ITEM.	*Annual % Deprec.*	*Reproduction Cost.*	*Annual Depreciation.*	*Accrued Depreciation.*	*Present Value.*
Tracks outside city,	3%	$324,616.39	$9,738.49	$109,440.76	$215,175.63
Tracks in city,	4%	370,910.80	14,836.43	160,588.64	210,322.16
Overhead line and feeders,	4%	307,100.30	12,284.01	82,549.90	224.550.40
Special work,	10%	70,662.00	7,066.20	35,331.00	35,331.00
Paving,	5%	358,845.02	17,942.25	141,358.17	217,486.85
Power plant,	4%	265,500.00	10,620.00	31,860.00	233,640.00
Car barns and contents,	2%	155,900.00	3,118.00	23,385.00	132,515.00
Cars and other rolling stock,	5%	400,000.00	20,000.00	140,000.00	260,000.00
Real estate, assessed value,	.....	110,025.00	.....	.....	110,025.00
Signal system,	.....	1,052.75	.....	.....	1,052.75
		$2,364,612.26	$95,605.01	$720,884.83	$1,643,727.43
Contingencies, including engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk,	15%	354,691.84	.....	108,132.73	246,559.11
		$2,719,304.10	$95,605.01	$829,017.56	$1,890,286.54

* Depreciation on overhead figured with copper wire out.

An inspection of this summary, together with the detailed sheets which these experts presented and the detailed sheets which Mr. Swan presented, will show that these experts for the city had given to them, or acquired personally, all of the information necessary to make an approximate valuation of this property at the present time, and they are the only witnesses who have made any attempt to make such a valuation.

The valuation which they fixed is corroborated in various ways. It is substantially corroborated by Mr. Betts' valuation in 1910, which was a valuation new. The established fact that the property was then run down, and the raising of $500,000 to restore it to its proper condition is substantial evidence that this property was then depreciated at least to that extent, and probably more. This depreciated value plus the amount since spent upon it, would make approximately the same value as found by Messrs. Rand and Brackenridge.

This valuation is further corroborated by the result of a study of the securities issued by the company and all the actual cash that has ever been invested in the creation of the company's property. The actual money that ever went into this property does not exceed $2,600,000, as will be shown when we consider the securities issued and the cost of the property in a subsequent part of this brief.

This valuation is further corroborated by the evidence which the City has put in with reference to taxation. The letters of Mr. Hurley and of Mr. Johnson from year to year to the tax officials of Trenton contain assertions that the assessments by the City are practically the full value of the company's property. These assessments at no time have exceeded $700,000 over the whole system, as is shown by the tax exhibits from the City of Trenton, and each of the other municipalities through which the property runs, which the City has put in evidence. (See *Exhibits O-2, O-3, O-4, O-5, O-6, O-7, O-34, O-35, O-36 and O-42.*

Both Mr. Brackenridge and Mr. Rand testify that no addition should be made to this property for development cost or any other intangible element of value, or for working capital.

The City's proof is the only legal evidence before this Court of the value of this property at the present time.

POINT IX.

THE VALUE OF THE PROPERTY AS SHOWN BY ACTUAL COST DOES NOT EXCEED $2,600,000.

The valuation of the property made by Mr. Brackenridge and Mr. Rand is supported by a study of the history of the constituent companies. It is not clear that the stock issued by the early horse railroad companies was water, but the presumption is strong that it was. But it is plain that all subsequent stock issues and part of the bond issues represent no money or service paid or rendered towards creating this property. Dr. Betts so finds, and the merger agreements prove it.

Mr. Rand has submitted a table (*Exhibit O-38*), which can be summarized as follows:

Trenton Street Railway—		
Stock,		$1,000,000
Bonds,		2,000,000
Subsidiary Companies—		
Stock,		550,000
Bonds,		1,000,000
Total securities,		$4,550,000
Inflated Securities—		
Stock of subsidiary companies issued with bonds,	$550,000	
Inflation by 1st consolidation,	1,343,000	

By 2d consolidation, ...	36,700	
Bonds owned by M. C. Tr. Co., ...	128,000	
		2,058,000
Bona fide securities issued, ...		$2,492,000

We submit a calculation made up differently which arrives at substantially the same result, viz.:

All stock of Horse R. R. Co.'s at time of first consolidation in 1891—		
Stock, ...		$156,000
Bonds, ...		190,000
Bonds issued by the Consolidated Co. (Tr. Pass. Ry. Co.), ...	$1,000,000	
Less amount paid to Wilson (see *Tr. Pass. Ry. Co.* v. *Wilson*, 11 *Dick. Ch. Rep.* 783), ...	260,000	
		740,000
Second Consolidation, 1898—		
(Tr. St. Ry. Co.) stock was all exchanged for securities of merged companies.		
Bonds, ...	$2,000,000	
Less used for refunding,.. $1,000,000		
Less exchanged for stock,... 552,000		
	1,552,000	
		448,000
Bonds of Tr., Penn. and Hopewell Ry. Co.,		350,000
Bonds of M. C. Tr. Co., ...		300,000
Bonds of T., H. and E. Co., ...		350,000
Total realized from securities to 1910,		$2,534,000

This is the maximum actual cost of creating these properties as shown by the proofs in this case. The money expended by the lessee company, being by the Board's own finding made necessary by wrongful diversion of earnings, is a restitution and should not be added to this estimate.

From every point of view, therefore, it appears that the value of this property to-day does not exceed $2,700,000.

The actual cost of this property ought to appear upon the books of the lessor companies. We have demanded these books. At the last moment some of them were produced, too late for even a casual examination. It is safe to assume that if these books showed a cost in excess of the City's valuation the company would put them in evidence.

The Wilson bonds, referred to in the foregoing table, were the subject of a litigation in our New Jersey courts, as above quoted. In this reported case it appears that $260,000 of the issue of bonds in 1891 was taken by one Wilson upon some pretense. The company claimed that he held them as trustee for the company. He, however, managed to hold onto them, and the company never received any of the proceeds of these bonds nor did Wilson ever render any service for them, as the Court expressly finds.

POINT X.

Mr. Ford's Estimate of Going-Concern Value Analyzed.

In the attempt to bolster up the Johnson valuation of this property, Mr. Ford was produced by the company as an expert. He took the position that the physical property should be taken as though it was brand new and so valued, and that in addition to such value there should be added from twenty-five to fifty per cent. for what he called "development cost." The claim

that the property should be valued as new has been argued in another part of this brief.

It is sufficient as to that point to say that if this company had obeyed the spirit of the injunction laid upon it by the Commission when the lease was approved, and had paid each year into a depreciation fund a sum of money sufficient to keep this property at all times in proper condition, the present value depreciated, plus the amount of money in such a depreciation fund, would give at all times a sum sufficient to reproduce the property new. As no adequate depreciation fund was set aside, the physical property must necessarily be valued as we find it in this depreciated condition. Mr. Johnson says he has spent not exceeding $68,000 on account of depreciation in any one year, and has set aside no fund beyond such expenditure. But he now says $135,000 a year is needed. This is a confession that the property is in a badly run-down and depreciated condition.

We submit that the value of Mr. Ford's testimony in this case is completely destroyed by his admission that in his judgment there should be no going-concern value allowed, if it is possible to arrive at the cash investment in the property. Here is his exact language, Case, page 243:

> "I might say in addition, that if we could arrive at the cash investment of this property, there would be little, if any, going-concern value to be added, because the cash investment would reflect the cost of producing a going concern. In the early years of operation the company probably did not get a fair return on its capital invested, and if, in arriving at the cash investment, you allow for that insufficient return, which, of course, the security holders originally had to provide, you would get the present cash investment, which would include such going-concern value."
>
> * * * * * * * *

Case, page 280:

"*Q.* If you knew what it had cost these people in cash, you say you would limit the return to the fair return upon that, plus depreciation account and operating expenses?

A. I think that is a fair way of arriving at a figure.

Q. And you then would not put in any going-concern value?

A. I think that would include going-concern value.

Q. That is, going-concern value would then have been paid for?

A. Would have been paid for in cash."

* * * * * * * *

"*A.* In the case of the cash investment, if that cash investment represented the entire cost of developing the property I would not include—I would not add anything to it for going-concern value."

See Ford's testimony, page 40, to the same effect.

Mr. Ford supports his assertion of twenty-five to fifty per cent. addition for development cost by no facts whatsoever. He cites no actual instances or experiences. He admits that no accounts have ever been kept by any company with which he is familiar of any such item of going-concern value or development cost. In other words, he produces no proof in support of his opinion.

Mr. Ford does refer to the cases of Cleveland and of Chicago, but he put forward no detailed information by which his testimony can be tested. On cross-examination he admitted that in the Cleveland case the matter was settled by an arbitration, one of the conditions of which agreed to in advance was that the company should only charge a three-cent fare, with a one-cent transfer. The valuation agreed upon by the arbitration was determined with this limited fare as a con-

dition agreed upon in advance (Case, Vol. I, p. 379). In the Chicago case he admits that it was a case of a straight out settlement between the company and the city and not a judicial adjudication at all.

He does, however, endeavor to support his opinion by an imaginary illustration. He says that if a city of 100,000 people had no trolley system and one was inaugurated, that the item of development cost would amount to twenty-five or fifty per cent. of the physical value.

On cross-examination it appears that he had never even given the subject of this imaginary illustration any serious consideration. He had not taken into account the kind or cost of existing methods of transportation. He had not taken into account whether the people were familiar with trolley transportation or not. He finally said that they probably had become familiar with trolley transportation when visiting other cities. He finally agreed that we must suppose a more costly transportation system in vogue in the imaginary city. He agreed that the company would do no advertising and would be put to no special expense upon this item of development cost. He admitted that the only expenses of the company in his imaginary city, after the property was in operation, were the expenses that would be ordinarily charged to operating expense account. He was finally driven to the point that what he meant by development cost was that in this imaginary city it would take three years before the patronage of the line would be developed to the full capacity of the city. He said that the company would start at the beginning with eighty per cent. of the business that it was possible to obtain from the existing people in the city, and that within three years the remaining twenty per cent. of the possible patrons would gradually become patrons of the road. (Case, Vol. I, p. 371.)

Let us examine this illustration. In the first place it is open to the objection that it has nothing whatever to do with human experience.

It is a mere guess.

It is an attempt, always fallacious, to imagine what would have happened, if something which didn't happen had happened.

This involves so many elements that it is worse than idle to talk about it. The whole thing is too preposterous for serious consideration.

The preposterous nature of this illustration was shown by the question asked Mr. Ford by counsel for the City.

He was asked whether in all his experience he ever knew of any appraisers of any kind of property who undertook to appraise the value of the property by considering what it would cost to reproduce the property under conditions that had never existed in human history. After much squirming, he was forced to admit that this method of appraisal had never been adopted in civilized life, and said feebly that it was necessary to apply in this case a method that would not be reasonable in the other affairs of life.

To show that Mr. Ford was himself compelled to admit the utter adsurdity of his method of valuation in this respect, we quote from his testimony, as follows, Case, page 278:

Q. You know of no such town?

A. I know of none.

Q. Then you are measuring the going-concern value by conditions of city life which have not had any existence since the trolley era; is that correct?

A. In this country, yes.

Q. Then you are measuring the value of this property by conditions that have never existed since the electric era applied to trolleys?

A. It is purely a hypothetical case.

Q. Will you name to me any article from a hairpin to a locomotive to which you apply any such principle in trying to arrive at value? Is

there any value which is appraised in our market, any physical piece of property, not talking about franchises, physical property purchased by man, which is measured by conditions that have never been known in the trade, is there any such article?

A. I think if you apply some of these theories of rate regulation to other business they become ridiculous.

Q. I am not asking you that?

A. If that is what you mean.

Q. I am asking if you ever knew of a value put upon the appraisement of a suit of clothes by imagining the production of clothes under conditions that never existed; ever heard of that?

A. I never did.

Q. Did you ever hear of a country appraisal of the furniture in a house for sale that was based upon conditions of production of that furniture and those effects that never existed?

A. No.

Q. You never did?

A. No.

Q. Then you are applying to going-concern value an imaginary condition that has never existed since the trolley era; that is a fact, isn't it?

A. I think that is the fact, as far as this country is concerned.

Q. Now, is that sense?

A. I would say that hypothetical case, I think, has been forced on the commissions and the street railway companies by the building up of a theory of value, which when applied to homely articles like shoes and clothing, does not look sensible.

Why is it necessary in the task of ascertaining the value of a property, every item of which has a regular

market value accessible to everybody, to resort to the test of a production under conditions that never existed and which never could exist?

But Mr. Ford's illustration of twenty-five or fifty per cent. of the tangible value of the property as representing development cost is not only preposterous, but it is unscientific. The development cost has no natural relation whatsoever to the value of the property. If we had the actual experience of many companies over a long series of years, and the actual items of development cost were figured out in relation to the cost of tangible property, the percentage relation as a matter of fact could be established, but it would be simply an arbitrary relation. In this case there are confessedly no facts upon which to establish a percentage relation. The estimate of twenty-five to fifty per cent. is so loose that it has no place in a careful investigation like this.

But it is easily possible to find with approximate exactness the amount of money which would represent Mr. Ford's item of development cost, and to determine the percentage of such amount to the value of the tangible property.

Let us assume the cost to reproduce this property at $3,000,000—a figure about half way between the estimate of the company and the City. The company would get at once, according the Mr. Ford, eighty per cent. of the possible patronage. In 1914 the receipts of the company were $776,000. Eighty per cent. of this amount would be $610,000. The operating expenses for that year were about fifty-five per cent. That proportion would give an operating expense for the imaginary company of $335,500, leaving a balance of $274,-500. If you were to set aside for this property $95,000 as a depreciation fund, the remaining income applicable to a dividend upon the cost of the property would be $179,500, or a little less than six per cent. upon the cost of the property. If six per cent. is held to be a

fair return, there would be no development cost at all. But if we assume that the company is entitled to earn eight per cent., then the company is short, say, $75,000. This is the amount which represents the possible balance of the patronage which the company is to obtain within three years, and is therefore the outside measure of Mr. Ford's so-called development cost for the first year. If we assume that the acquisition of the remaining twenty per cent. of the patronage was not gradual, but was held off until the last day of the third year, the most that Mr. Ford could claim would be three times $75,000, or $225,000. This, instead of being from twenty-five to fifty per cent. of the cost of producing the property, would be seven and one-half per cent.

But, of course, the twenty per cent. possible patronage to be obtained would be obtained gradually over the course of the three years, and therefore the deficit in the second year would not be as great as in the first year, and in the third year would almost entirely disappear.

$150,000, therefore, upon Mr. Ford's own illustration, would be the outside amount that could possibly represent his item of development cost. This is five per cent. of the cost of the property, instead of twenty-five per cent. or fifty per cent.

This reasoning shows the utterly unscientific nature of Mr. Ford's method of reasoning, and the grossly exaggerated results to which he has testified. In other words, Mr. Ford has not only used a preposterous illustration, but he has grossly mistaken the actual and easily ascertained results of his own illustration.

This reasoning is absolutely clinched by the consideration that the imaginary company would be under the control of the Public Utility Commission, and no money could be issued except for the actual construction of the plant, and when the company showed a deficit for the first year, that deficit, which Mr. Ford calls development cost, would be either charged to capital ac-

count or set aside as a special account to be amortized when the earnings reached a point beyond a fair return upon the capital actually invested.

It is to be remembered that this Utility Commission in the Passaic Gas case, although it allowed thirty per cent. for going-concern value, expressly stated that no such allowance beyond actual deficits would ever be made in the case of a company starting new under the Commission's supervision.

This disposes of the only evidence offered by the company in support of the claim that an amount should be added to the cost of the tangible property to represent development cost.

Further authority on the subject of going-concern value is found in the recent case of *Des Moines Gas Co.* v. *City of Des Moines,* decided by the United States Supreme Court, In this case there was no allowance for going-concern value, and the Court held that if any allowance was to be made for going-concern value, the existence of such value must be proved by the company.

POINT XI.

GOING-CONCERN VALUE FULLY ALLOWED FOR BY THE COMMISSION.

The item of going-concern value in this case has been fully allowed for by the Commission. In the valuation of the property of the company arrived at by the Commission upon the evidence in this case, they have made liberal allowances for every element of value that can be properly classified under the term "going-concern value."

The theory of going-concern value set forth in the opinion in *Public Service Gas Co.* v. *Board of Public Utility Commissioners et al.,* 84 *N. J. L., page* 463, is stated in section 8 of the synopsis of decision, on page 464, in the following terms:

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> "In fixing the value of property on which a gas company is entitled to earn a return, it is proper to allow for going value, which includes loss of interest while the plant is in course of construction and while pipe lines are extended, the cost of securing and retaining customers, of encouraging the greater use of gas for fuel and light by the introduction of new and improved appliances, the necessary loss attending experiments, obsolescence of plant apart from the ordinary calculable depreciation which may be charged to current expenses, the expense that attends and the additional value that arises from the uniting of separate companies and the organization of the industry with a view to economical production, and the cost of procuring capital."

Upon this definition of going-concern value, the Supreme Court in that case sustained the Board's allowance of thirty per cent. of the structural value upon the specific proofs in that case.

In all of the cases in this country before commissions and courts, an item of going-concern value has sometimes been allowed and sometimes been refused. When it is allowed it has varied from ten to fifteen per cent., except in the Passaic Gas case where it was fixed at thirty per cent. Of course it follows that each case depends upon its own facts. It is plain that it costs more to develop a gas business than it does a trolley business. In the gas business people have to be sought out in their homes and persuaded to use a new form of light, and as the new improvements are developed in stoves and fixtures people have to be canvassed and persuaded to use them. In the trolley system, however, there is no such thing as drumming up custom, and there are no expenses to be charged under that head.

In the Passaic Gas case the proofs of the experts of the company were that it would take at least six years to develop the business. Here the only proof on that

point is that of Mr. Ford, who says that eighty per cent. of the business will be developed the first year, and that the other twenty per cent. of the business will be developed in the course of the two following years.

There is no testimony in this case on behalf of the company as to the actual expenses. The only testimony is that of Mr. Ford, who never made any study of the property at all, but who was called to give general testimony as an expert in relation to general rules.

Mr. Ford's going-concern value, when he is pressed for a definition, practically comes down to early deficits growing out of the cost of development which could not be met out of earnings. In Case, Vol. I, page 270, he says:

> "*Q.* You say that the development cost is the amount expended after you have built your plant and got it in running order, in getting, developing the business, and I suppose you mean, you did not say so, in making the property fit together, if there is any defect in it, and getting it in working shape, is that about what you mean?
>
> *A.* Yes.
>
> *Q.* That is development cost. The first year or two that development is likely not to come out of earnings; I mean earnings are likely not to be enough to include that, operating expenses, depreciation, and a fair return upon capital, that is so, isn't it?
>
> *A.* That is correct?"

The Commission says, Case, page 839:

> "Except as hereinafter mentioned all proper allowances for intangibles have been heretofore included."

On page 840, the Board says:

> "Throughout this valuation in the allowances made full consideration has been given to the fact that the property valued was a harmonious operating system—a going concern—in success-

> ful operation. In view of all the evidence we conclude that the value of the property, for the purpose of fixing rates, does not exceed $3,212,000."

The accurate valuation made by the City's experts, after weeks of painstaking investigation, makes the present value of the physical property about $1,800,000 in its present depreciated state. In fixing a value of $3,200,000 the Board therefore made a most liberal allowance for all of these elements of value which can properly be charged to going-concern value.

Upon the proofs in this case therefore, the element of going-concern value has been very liberally allowed for by the Board.

We respectfully urge upon the court that in any event, no allowance should be made for going-concern value as defined in the Passaic Gas case, unless same is proved in the case.

It is not possible to state a general rule. This is confessed by all of the experts. The true theory is that insisted upon by counsel for Passaic in the Passaic Gas case. We restate it here, not for the purpose of having the court reverse the position taken in the Passaic Gas case, but in order to show that if the definition which we give of intangible values and the method we point out of ascertaining those values is not followed, there is no other satisfactory way of arriving at a valuation of these intangible elements of value.

Our theory is that no piece of physical property can have a value in excess of the cost to reproduce it. This is a universal law of economics. No exception to it can be possibly imagined. The value of a piece of physical property may be, and usually is, very much less than the cost to reproduce it, but it can never be greater than that sum. If the net earnings, after deducting operating expenses, taxes, a depreciation fund and repair and maintenance account, are insufficient to pay a fair return upon the actual cost of producing the

physical property, then the value of the physical property is not worth what it cost to produce it, unless, of course, the future promises large returns. The company still has its franchises and all of the elements which are grouped under the head of "going-concern value," but obviously these elements had no value. When, however, the net earnings exceed a fair return upon the cost of the physical plant, then there comes into existence another element of value, so far as the market is concerned. The value of that element is easily ascertained. That value is measured by the excess of net earnings beyond a fair return, capitalized at a fair rate of interest. Mr. Ford admits this point, when, on page 262 of the Case, in discussing franchise value, he defines franchise value in almost the exact words we have used.

Whatever you call these elements of value, this is the only way that has ever been devised to measure them. The different names given to these intangibles merely indicate a confusion of thought on the subject by courts and commissions. The thing sought to be valued is simply the business that has been built up in connection with the plant. Until the plant pays upon its physical cost there is no business value, except as the future may hold out promise of better returns. As soon as there is an income beyond a fair return upon the physical cost there arises this value, which is really the business of the company. In the market this business is property, and is bought and sold. It exists in a public utility simply because the State has failed to enforce the implied contract of the original franchise that the company shall charge no more than a reasonable rate, that is to say, a fair return upon the actual cash expenditure of the company.

Unless this theory is followed, then the only other plan that can be used is to give a general, liberal value to tangible property on the loose theory that a tangible property held by a going concern is more valuable than

property which is not connected with a going concern. This, of course, is true. If we started by considering the value of the physical property as junk and then added to it the value indicated by the profits of the business, there would be no objection to this process, up to the point where the value equaled the cost of reproduction of the cost of the physical plant.

The difficulty with the present system of fixing going-concern value is that all of the items usually included under that head are properly chargeable to operating expenses, have always been so charged, and therefore the company ought not to be allowed to earn upon it, except they have taken the form of an actual deficit in the early years of the company's business. To the extent that the company has never in its early years been deprived of a fair return upon its actual cash invested, it ought to be allowed that amount in addition to the value of the plant, because it has been money actually invested in the enterprise.

There is not only no proof that this company has ever had any deficits, but on the contrary the proof is conclusive that it has enjoyed immense earnings beyond a fair return upon the cash capital.

Up to 1890 the Trenton Horse Railroad was the company, and its capitalization, both stocks and bonds, was $346,000. This is the only part of the history of the company concerning which we have no definite information in the record. Mr. Ford testified that on the coming in of the trolley era, about 1890, the trolleys were considered in the market as a bonanza, their earnings were so large. He says this condition continued until 1905.

This testimony is worth quoting:

> "*Q.* You spoke in your direct testimony about when they started the trolley era there was a time there when it expanded, the capitalization was expanded, and it was looked upon, I think your term was a bonanza, for awhile; you used that expression, didn't you?

A. Yes.

Q. How long did that period continue?

A. I think until about 1905.

Q. Starting when?

A. Starting with the electrification of the lines about 1890, to 1893."

(Case, Vol. I, p. 399.)

Therefore, the only deficits in this case must have been prior to 1891, and as the total capitalization of the horse railroad company was only $300,000, requiring only an income of $18,000 to provide a fair return, the deficits, if any, must have been very small, even though they continued over a long period of years.

In the face of these facts, no mere guess as to how much the deficit was, or what it cost to develop the horse railroad company, should be allowed. This is admitted by Mr. Ford, on page 271 of the Case, Vol. I, where when he was asked how long in the horse railroad era the condition continued where the income was not sufficient to pay the operating expenses, depreciation, actual or contemplated, and interest upon a fair return upon the cash capital actually invested, his answer was: "I think that would vary." If it would vary, then no general rule can be applied. As he admits he made no study of the Trenton case, except to talk with Mr. Johnson for an hour or two upon two visits, his guess as to development cost of the building up of the horse railroad is immaterial.

That Mr. Ford's definition of going-concern value is practically the early deficits appears clearly in various parts of his testimony. See Case, Vol. I, pages 266, 270–271.

The argument that these items are actual property, and that the company owns them and therefore should be allowed to earn a return upon them is easily answered. The truth is, that the company is not allowed to earn upon all its property. It is only allowed to earn upon the property which it devotes to a public use.

If the company has appropriated out of earnings a fund of money which it has invested in stocks and bonds or land, no commission would think of allowing them to earn upon such property, because it is not property devoted to the public use. Such property as is included under the head of intangible values is property only so long as the Commissions allow the companies to charge excessive rates. The minute the Commissions enforce the implied contract as to franchises, to wit, that the company shall be entitled only to charge rates which will give a fair return upon the cost of the property, or the actual investment, then these intangible elements of value will disappear.

They are property only so long as the public fails to enforce its contract rights in the premises.

They are elements of property built up upon the violation by the company of the implied contract to charge reasonable rates from the beginning.

This is the reasoning to which all of the Commissions and courts in the end must come. Any other line of reasoning leads, inevitably, to the ratification by Commissions and courts of the issues of water securities for which no money has ever been paid. Such a conclusion is intolerable.

For these reasons we submit that a very liberal allowance in this particular case has been made by the Board of the item of going-concern value.

POINT XII.

FRANCHISE VALUATION. THE COMPANY HAS NO RIGHT TO ALLOWANCE FOR VALUE OF FRANCHISES.

That the company has no right to any value of its franchises would seem to be settled by the decision of the Court of Errors in the Passaic Gas case, in which the decision of the Supreme Court in the same case was sustained. In that case the synopsis of the Court's decision, 84 *N. J. L., page* 464, says:

> "The special franchises of a public service company are property, but the right of property therein is not absolute, but is qualified by the right of the State to fix reasonable rates. In determining the reasonableness of rates, no allowance should be made for the value of the special franchise in a case where it is not legally exclusive and where the State still retains the right to fix rates."

This point is clinched by the statement of Mr. Ford, the only expert on behalf of the prosecutor, that he did not make any allowance for franchise values, and that he did not consider that franchise value ought to be allowed in this case. He stated that in his opinion the value of the franchise was simply the excess receipts, *i. e.*, the amount of the net income, over and above a fair return, capitalized at the present rate of interest. Testimony of Ford, Case, p. 262.

POINT XIII.

Working Capital. Not Proved. Not Needed.

The item of working capital is properly allowable in such utilities as gas and electric light and telephones, but it has no place in this case. All such items as stores and duplicate parts are already included in the appraisal, and do not amount to $20,000. There is no proof in the case to justify the Board in allowing anything for this account. Mr. Ford says it should be allowed, but offers no facts or reasoning to support his opinion. Mr. Rand and Mr. Brackenridge say nothing should be allowed. They point to the fact that the company receives cash every day for its service rendered, while wages and supplies are not paid for until several weeks after they are earned or furnished.

The fact that the company took over these great properties without a dollar of working capital, and that neither party to the lease considered any such capital

necessary is conclusive proof in support of our contention in this regard.

The Commission, however, has included in its valuation items for working capital The report of the Commission, Case, page 840, says:

> "Under working capital, materials and supplies properly belong. These have been included in the appraisal of the physical property, and, in view of the facts testified in this case, we do not deem proper any further allowances for working capital."

POINT XIV.

PRESENT EARNINGS ARE AMPLE TO PROVIDE REASONABLE RETURN ON VALUE OF PROPERTY.

The gross earnings of the company for 1914 were $776,000.

While the earnings this year have fallen off, it is due to temporary and sporadic causes, and it is fair to assume that the earnings in the future will not fall below those of 1914, taking one year with another, but, on the contrary, will surely increase with the growth of the City.

Allow for operating expenses the amount actually expended by this company in 1914, viz., $377,000. Allow for taxes $50,000, the amount actually paid in 1914. Allow for depreciation $95,000. Mr. Johnson claims $135,000, but he has never expended in any one year more than $69,000, and he is on record in his letter to the Board, after two years' experience, to the effect that ten per cent. of the gross receipts would be ample for this account for 1915 and afterwards (*Exhibit O* 44).

Messrs. Rand and Brackenridge arrive at $95,000 as the actual yearly depreciation of this property.

Upon this basis we have the following result:

Gross earnings, ...		$776,000
Deduct:		
For operating expenses, ...	$377,000	
For taxes, ...	50,000	
For depreciation, ...	95,000	
		522,000
Net earnings available for dividends, ...		$254,000

Or over 9 per cent. on $2,700,000, which is every dollar ever invested in this property, or is 6 per cent. on $4,230,000.

When it is remembered that the various owners of this property have taken out of it in interest and dividends upon watered securities nearly $1,500,000 in excess of a fair return upon the *bona fide* investment in the property, as we show elsewhere, it is plain that this showing entitles the company to no relief here.

In this case the Court is bound by the New York Consolidated Gas Company case, where the Court held that the only duty of the Court was to see that the rate fixed by the Commission was not confiscatory, and that a return of 4.7 per cent. upon the fair value of the property was not confiscatory.

POINT XV.

Claim that Decrease of Earnings in Year 1915 Was Not Considered by the Board, Analyzed.

This claim is absurd. It would be utterly impossible to fix a just and reasonable rate of a public utility upon the earnings of any one year. Earnings fluctuate with good times and with bad times, and with local conditions. The only fair rule is to take the average of several years as the Commission has done; otherwise, in case of a great fair like the San Francisco Fair, or of a celebration like the Newark 250th Anniversary Celebration, the companies might have an extraordinar-

ily prosperous year, and if their rates were reduced upon the basis of the showing of that year, it would be unfair to the companies when the temporary conditions had passed.

POINT XVI.

Prosecutor's Claim that Value of Property is Measured by Stock and Bond Issue, Answered.

One of the reasons of the prosecutor asserts that the Board did not take into account the issue of stocks and bonds as a measure of value. The overwhelming weight of authority everywhere is that stocks and bonds are merely to be considered as throwing light upon the value of the property and are in themselves no measure of value. This point is conclusively settled in the Passaic Gas case. The portion of the opinion in that case which bears upon this point is found in 84 *N. J. L., page* 484.

This point is further answered by the testimony of Mr. Ford, Case, Vol. 1, page 280, in which he says that in the bonanza trolley era the excessive earnings were covered up by the issue of watered stock, and that the stock was issued for that especial purpose. (Case, page 280.)

POINT XVII.

Discontinuing the Tickets is an Increase of Fare and a Change in Classification Under Utility Statute.

One of the reasons advanced by the prosecutor in this case is that the abolition of the six tickets for a quarter is not an increase in rate or a change in classification. This claim seems too absurd for argument. To the thousands of people who go upon these trolleys to their employment in the morning and return at night, and who regularly buy six tickets for a quarter, the

change to a straight five-cent fare is a *real* increase. In fact one of the claims of the company is that it needs additional money and that the change from tickets to a straight five-cent fare would bring it an additional $100,000 a year. This is an increase of the company's income, and of course by its standard of common sense is accomplished by increasing the rate charged to the patrons of the company.

To the charge that there is a discrimination in charging some people five cents and other people four and one-quarter cents, the answer is that the lower charge is open to all, and that if any man elects to pay five cents he discriminates against himself,—it is within his power to ride for four and one-quarter cents if he purchases six tickets.

The principle of selling commodities by wholesale is an established one in all businesses. In the railroad business it is illustrated by the commutation principle, and the Public Utility Statute expressly gives the Board supervision over changes in classification and in commutation rates, and in the matter of the increase or decrease of fares.

POINT XVIII.

The Lessee Company is a Sham Company, Without any Capital or Responsibility, and Without any Equity in the Property, and Therefore Has No Claim Upon the Consideration of the Court.

As we have shown in our proof, in this brief, the earnings of the company at the existing rates are ample to pay operating expenses, including repairs and taxes, provide for an adequate depreciation fund, and leave a balance sufficient to pay more than a fair return upon the value of its property devoted to the public use, whether such value is measured by the actual money ever invested in its creation, or by the cost of its reproduction new, less depreciation.

But it is perfectly plain that this company cannot continue to pay these rentals which it has contracted to pay to the lessor companies, provide a proper depreciation fund and pay operating expenses. Some part of this arrangement has got to break. Either the lessee company must default and give back the leased properties to the lessor companies, or the lessor companies must accept a smaller rental, or the public must be made to pay more. We submit that, under the peculiar circumstances of this case, the public cannot be asked to pay more.

When this property was taken over by the lessee company it was in bad condition, owing solely to the fact the money had been paid in dividends which ought to have gone in to maintain and renew the company's plant.

The Utility Board expressly so found, and $500,000 was raised to rehabilitate the plant. The Board of Public Utility Commissioners, in 1910, undertook to provide against the exact condition which has arisen here, namely, a run-down plant and the improper diversion of earnings to dividends and interest, which ought to go into the property. The company, therefore, had full warning and stands before this Court without any equity.

The company, by Mr. Johnson's confession, is composed of two men, neither of whom has invested a dollar which has gone into this plant.

The remarkable testimony of Mr. Johnson discloses the utter hollowness of this lessee company. Mr. Crosby negotiated the leases for the lessee company, paid in $150,000, and Mr. Johnson added another $150,000, and thereupon they went through the farce of pretending to buy these leases from Mr. Crosby for $300,000.

According to this remarkable story, Mr. Johnson is the victim and Mr. Crosby the beneficiary of frenzied finance to the extent of $150,000.

The company started business without a dollar, never had a dollar in money, and never has invested any money, except such sums it has been able to borrow.

These sums must have been borrowed on somebody's credit, because the company never had any of its own.

This whole transaction is a virtual fraud upon the public. It is one of the familiar games of frenzied finance by which the public are plundered, and which an outraged public opinion demands must stop. To compel the people of Trenton to fork over another $100,000 annually in order that these two men, who have never invested a dollar in Trenton, may be saved from the consequences of their improvident bargain in assuming these enormous rentals, and be allowed, in addition, to receive dividends upon their own watered stock, would, we submit, be a gross outrage upon the people of Trenton.

Consider now the equity of the claims of the lessor companies.

In the first place, they are not here asking any relief.

In the next place, they have since 1891 received nearly $1,500,000 in dividends upon watered securities issued without a dollar of return to the companies, either in money or service.

The company's own dividend sheet, in evidence (*Ex. T. & M.* 44), shows stock dividends actually paid to 1910 of, ... $520,000

To this add the interest for twenty years on the $260,000 Wilson bonds, ... 260,000

To this add the interest on $552,000 of bonds exchanged for watered stock in 1898–1914, fourteen years at 5 per cent., 386,000

Add rentals paid since 1910, ... 320,000

Total interest and dividends paid on watered securities, ... $1,486,000

From this it will be seen that the people who have received these immense unearned sums from the people

of Trenton have no claim upon this Court for further indulgence or aid.

Dr. Betts, in his report filed before the lease was approved in 1910, said:

> "If a proper depreciation fund is established and maintained it will be practically impossible for the lessee company to pay the rentals called for in the leases."

This conclusion was again stated forcibly by Dr. Betts in the last sentence of his report, and he recommended that the lease be not approved except upon the basis of providing for a depreciation fund of practically fifteen per cent. of the gross receipts.

In the face of this report the Commissioners approved this lease. They were moved doubtless by the fact that it seemed to promise, by the providing of additional capital, the rehabilitation of this run-down system. It seemed to the Commission the best practical thing to do at the moment in order to provide proper service for the City of Trenton. The Commission was then new and the whole subject was new, and in the light of the then conditions it is not fair to criticise the Commission for their action in approving this lease.

But, nevertheless, the fact remains that the Commission at that time stretched a point to give these people a chance. If after the approving of that lease, in the face of this report of its own engineer, showing that the lease could never be carried out without practical ruin to the property, this Commission had again undertaken to tide over this company by compelling the public to pay increased fares, instead of cutting down the dividends upon watered stock owned by men who have wrongfully diverted into their own pockets the money that should have gone to maintain the property, we submit that it would be an act of great injustice to the people of Trenton, and would destroy public confidence in the whole policy of public utility regulation.

The only thing now to do is to face the real situation and apply the proper remedy.

In this proceeding the Board has held that the existing rate of six tickets for a quarter is neither confiscatory nor unreasonable and has left the lessor and lessee companies to rearrange their relations upon a new basis that will permit proper service and proper maintenance and conservation of the property.

For these reasons we submit that the Court should sustain the order of the Public Utility Board in this case.

Respectfully submitted,

CHARLES E. BIRD,

City Counsel of Trenton.

GEORGE L. RECORD,

Of Counsel.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals.

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Prosecutors,

vs.

RALPH W. E. DONGES, JOHN J. TREACY AND JOHN W. SLOCUM CONSTITUTING THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE INHABITANTS OF THE CITY OF TRENTON,
Defendants.

On Appeal.
On Certiorari.

OPINION.

(Supreme Court of New Jersey. Aug. 2, 1917.)

1. CARRIERS 12(4)—REGULATION—FARES—JURISDICTION.
Public Utility Commission has jurisdiction, under P. L. 1911, p. 380, § 17h, to forbid street railways to put into effect proposed withdrawal of sale of six tickets for 25 cents, increasing rate to 5 cents.

2. CARRIERS 12(9)—CONTRACT AS TO RATES—RESCISSION.
Street railway company cannot rescind contract with city as to fares because of its own mistake, not induced by city, as to power reserved by city to alter its franchise ordinances.

3. CARRIERS 12(9)—CONTRACT AS TO RATES—WHEN COMPLETE.
Where street railway company's directors had ordered its officers to execute agreement as to fares on passage of ordinance of same tenor and officers cannot vary its terms and directors do not intend to pass on matter again, agreement becomes binding on passage of ordinance, since all that remains to be done is to execute formal contract.

4. CARRIERS 12(9)—CONTRACT AS TO RATES—CONSIDERATION.
Where city was threatening to alter franchises of street railway company to its detriment, passage of ordinance which does not contain threatened changes is sufficient consideration for agreement of company to continue existing fares.

5. CARRIERS 12(9)—CONTRACT AS TO RATES—EFFECT ON LESSOR ROADS.
An ordinance as to street car fares, passed by agreement between city and company, is binding also as to lines of companies under long-term leases to party to agreement.

Certiorari by Trenton & Mercer County Traction Corporation against the Inhabitants of the City of Trenton and others, to review an order of the Board of Public Utility Commissioners. Affirmed.

Argued November term, 1916, before SWAYZE, MINTURN, and KALISCH, JJ.

Frank S. Katzenbach, Jr., of Trenton (Edward M. Hunt, of Trenton, on the brief), for prosecutor. George L. Record, of Trenton (Charles E. Bird, of Trenton, on the brief), for City of Trenton. Frank H. Sommer, of Newark, for Board of Public Utility Commissioners.

SWAYZE, J. Although the voluminous record in this case has necessarily required a long time to examine, the decision may well be rested on a single point, and that within narrow compass. The prosecutor seeks to set aside an order forbidding it to put into effect a proposed withdrawal of the sale of six tickets for 25 cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company, and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

[1] We think it clear that the Public Utility Commission had jurisdiction under section 17, par. "h" of the act. P. L. 1911, 380. The withdrawal of the sale of six tickets for a quarter was an increase of an existing rate under which 82 per cent. of the passengers carried paid a fare of only $4^1/_6$ cents; by the proposed withdrawal they would be forced to pay a fare of 5 cents.

[2] We find it unnecessary to pass upon the question whether the original ordinances and their acceptance amounted to a contract by which the companies were authorized to charge as much as 5 cents, or whether they amounted only to a limitation by which the companies were forbidden to charge more than 5 cents. It is likewise unnecessary in our view to consider whether a fare of $4^1/_6$ cents is reasonable in view of present conditions and the situation of the company. We find that in 1909 a new contract was made between the city and the company which requires the company to sell six tickets for 25 cents upon all cars operated in the city of Trenton. The facts are as follows: For many years tickets had been sold at that rate. In 1909 the street railway company proposed to stop the sale. Naturally great public interest was aroused, threats were made of attacks upon the franchises of the company, and the city authorities were preparing for such an attack and for amendments of the ordinances. An agreement was reached by negotiation, and on October 4, 1909, the Trenton Street Railway Company adopted a resolution waiving its right to notice of alterations in the ordinances, and directing its officers to execute an agreement already prepared (a copy of which was set forth), immediately after the passage of a new ordinance, a draft of which had been submitted by the city counsel to the railway company. This ordinance provided for the sale of tickets at the old rate by the company upon all cars operated in the city of Trenton. The ordinance was passed by the common council on

October 19th and approved by the mayor on October 22d, 18 days after the resolution of the railway company. Had the agreement been signed by the officers of the company as directed by the resolution of October 4th on the faith of which the city passed the ordinance, no question could have arisen. Instead of that, the company, after the passage of the ordinance, rescinded the resolution because, as the rescinding resolution states, it was falsely recited therein that the city had reserved the right to alter the ordinances whenever in the judgment of the common council it became necessary for the public good. It is a little difficult to understand upon what theory it is supposed the false recital vitiates the action of the company. It is not charged that the city did anything to mislead the company in this respect; it could not have done so, since the ordinances were necessarily as well known to the company as to the city; and the proposed written form of contract, submitted by the city counsel, recited what was the exact truth, that the right of alteration or amendment was reserved "by the several ordinances aforesaid or some of them." The addition of the qualifying words was enough to call the attention of the company to the existence of a question as to the extent of the city's right. With this draft before them, the directors chose to put a broader statement in the recitals of their own resolution. Manifestly they ought not to be permitted for their own mistake to withdraw from the agreement after the city had acted thereon.

[3] It is argued that the parties did not intend that there should be a complete contract until the written agreement was executed. The case, it is said, is within the rule of Water Commissioners of Jersey City v. Brown, 32 N. J. Law, 504, decided by the Court of Errors and Appeals in 1866, and applied by the Supreme Court in Donnelly v. Currie Hardware Co., 66 N. J. Law, 388, 49 Atl. 428. These cases are not applicable. In the first the water commissioners directed

that their engineer and attorney should prepare a contract and submit the same for approval by the board before being executed. The court said that several particulars as to the time of finishing the work, as to the manner of doing it, and as to the guaranty of its permanence remained to be settled. The second case was decided upon the ground that there had been no agreement as to the time allowed for beginning and completing the work and the mode of payment, matters which are generally provided for in such arrangements. As Lord Cranworth said in Ridgeway v. Wharton, 6 H. of L. Cases, 238, at 268, the fact that the parties intend a subsequent agreement to be made is strong evidence to show that they did not intend the previous negotiations to amount to an agreement; but at the same time he protested against its being supposed because persons wish to have a formal agreement drawn up that therefore they cannot be bound by a previous agreement if it is clear that such an agreement had been made; and he expressed his approval of Sir William Grant's decision in the leading case of Fowle v. Freeman, 9 Vesey, 351. In Wharton v. Stoutenburgh, 35 N. J. Eq. 266, it was held that a final agreement had been reached, although the parties intended that a lease embodying the agreement should be executed. The applicability of that case to the present is not weakened by the fact that a written memorandum would have been there necessary to satisfy the statute of frauds if the vendee had not taken possession. The taking possession did not supply the terms of the lease, and before decreeing that the lease should be executed, it was necessary for the court to find that a final agreement had been previously reached, and that the execution of the lease was necessary only by way of part performance of the agreement, and not as a condition precedent to the existence of a final agreement. The facts of the present case bring it within the rule of Wharton v. Stoutenburgh. The draft agreement had

been submitted by the city to the company; the company had assented to its terms; all that remained was for the executive officers to execute the written instrument in which the terms of the agreement were set forth; but the officers had no power to vary the terms, and it was not contemplated that the directors should again pass on the matter. The case is as if in Water Commissioners of Jersey City v. Brown, the agreement had been already prepared and adopted by the water commissioners.

[4] There was sufficient legal consideration for the agreement by the company. It is true the ordinance did not affirmatively concede any benefit to the company; on its face it was rather a detriment; but that is too narrow a view to take. The situation was that the company was liable to attack, and the ordinances might be altered or amended in such a way as to be very harmful, or at least productive of long and expensive litigation. What the company secured was the adoption of an ordinance which contained no such drastic changes; the benefit to the company was in what the ordinance omitted, not in what it contained. In saying this, we are not to be understood as suggesting that the mere act of passing the ordinance in pursuance of the agreement would not be a sufficient consideration in a legal sense.

We think there was a valid contract requiring the company to sell six tickets for a quarter, and hence the Public Utility Commissioners might well conclude that such a rate was just and reasonable under the circumstances of the case.

[5] It is said, however, that the Mercer County Traction Company and the Trenton and Hamilton and Ewing Traction Company could not be affected by the ordinances because no official action was taken by either with reference to its terms. This argument overlooks the fact that both those companies were at the time under lease to the Trenton Street Railway Company

for a term of which more than 990 years were still to come. The probability of the two lessor companies being affected prejudicially by the ordinance is negligible.

The order is affirmed, with costs.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals.

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Prosecutors,

vs.

RALPH W. E. DONGES, JOHN J. TREACY AND JOHN W. SLOCUM CONSTITUTING THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE INHABITANTS OF THE CITY OF TRENTON,
Defendants.

On Appeal.
On Certiorari.

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3. Carriers 12(9)—Contract as to Rates—When Complete.

Where street railway company's directors had ordered its officers to execute agreement as to fares on passage of ordinance of same tenor and officers cannot vary its terms and directors do not intend to pass on matter again, agreement becomes binding on passage of ordinance, since all that remains to be done is to execute formal contract.

4. Carriers 12(9)—Contract as to Rates—Consideration.

Where city was threatening to alter franchises of street railway company to its detriment, passage of ordinance which does not contain threatened changes is sufficient consideration for agreement of company to continue existing fares.

5. Carriers 12(9)—Contract as to Rates—Effect on Lessor Roads.

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Defendants.

On Appeal.
On Certiorari.

Brief for the City of Trenton.

This appeal is prosecuted for the purpose of reversing the judgment of the Supreme Court affirming an order made by the Public Utility Commission forbidding the discontinuance by the Trenton and Mercer County Traction Corporation of the sale of six tickets for twenty-five cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

The opinion of Mr. Justice Swayze, filed in the Supreme Court and reported in 101 *Atl.* 562, has been printed separately for the convenience of the Court, and is submitted with this brief.

Mergers, Consolidations and Leases of Trenton Street Railway Companies.

Trenton Horse Railroad Co.,
Inc. Mch. 9, 1859.
City Railway Co.,
Inc. Sep. 6, 1875.
Hamilton Township St. R. Co.,
Inc. Sep. 12, 1890.
South Clinton Ave. and Broad St. R. Co.,
Inc. Oct. 28, 1890.

Merged into
Trenton Passenger R. Co.
By Consolidation
Sep. 21, 1891.
Pennington Ave. Passenger R. Co.,
Inc. Sep. 24, 1897.
Mulberry St. R. Co.,
Inc. Sep. 24, 1897.
Ewing Passenger R. Co.,
Inc. Mch. 28, 1898.

Merged into
Trenton Street R. Co.
By Consolidation
June 28, 1898.
Mercer County Traction Co.,
Inc. July 31, 1899.
Trenton, Hamilton and Ewing Traction Co.,
Inc. Aug. 11, 1905.

Leased to Trenton and Mercer Co. Traction Co.,
Inc. Oct. 5, 1910.

STATEMENT.

On the opposite page there is arranged for the convenience of the Court a statement which shows the several combinations and leases of the Street Railway Companies operating street railways in the City of Trenton.

Some twenty years ago one of the predecessors in title of the prosecutor inaugurated the practice of selling six tickets for twenty-five cents in the City of Trenton, and this practice was continued until September, 1909, when it was discontinued. But after negotiations with the City officials it was restored in the same month, and has since been followed by the various operating companies. The said negotiations resulted in October, 1909, in the passage of an ordinance by the City requiring the sale of six tickets for twenty-five cents, which ordinance the company agreed to in advance, in writing, and promised to accept by a confirmatory agreement after it should be passed. The confirmatory agreement was never actually executed.

On August 13, 1915, prosecutor notified the City and the Board of Public Utility Commissioners of New Jersey, in writing, of its intention to discontinue the sale of such tickets. The said Board, immediately upon receipt of the said notice, caused a copy of the same to be sent to the Mayor of Trenton with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action of the company, an opportunity would be afforded on August 17, 1915. The Board also caused a letter to be sent to prosecutor acknowledging receipt of the notice from the company, and enclosing a copy of the letter sent to the Mayor of Trenton. On August 17 the company did not appear before the Board, but on application of the City the Board made an order suspending the pro-

posed change until November 16, 1915, and fixing a day for the hearing on the merits. After the making of this order, prosecutor filed a bill in the District Court of the United States for the District of New Jersey with affidavits annexed, in which bill it prayed that "the Board of Public Utility Commissioners of New Jersey may be enjoined from continuing the order of August 17, from conducting a hearing, and from taking jurisdiction of the matter at all;" and also praying for an injunction against the City and its Mayor from enforcing the penalty prescribed in the ordinance. This bill of complaint is Volume II of the State of the Case herein. Upon the filing of the bill an application was made to the Court for a preliminary injunction, upon which an order to show cause why the injunction prayed for should not be allowed was granted, but without any *ad interim* restraint. This application was heard before Circuit Judge Woolley and District Judges Rellstab and Haight, and that Court on October 14, 1915, filed it opinion refusing the preliminary injunction for the reasons which appear in the opinion, the substance of which is hereinafter quoted.

This judgment was appealed to the United States Circuit Court of Appeals, which sustained the judgment of the District Court.

After judgment was rendered in the United States District Court, the hearing before the State Board of Public Utility Commissioners was taken up. Witnesses were heard upon both sides, upon all of the points involved, at the conclusion of which an order was made by the Board of Public Utility Commissioners ordering the prosecutor to continue the sale of six tickets for a quarter. This order appears in the State of the Case, page 844.

The case came before the court below on certiorari of this order. There were thirty-nine reasons assigned by the prosecutor, but they were all reduced by us to the following legal propositions:

First: That the Board of Public Utility Commissioners had no jurisdiction to make the preliminary order of August 17, 1915, or the final order of January 11, 1916, because the prosecutor had no notice of the order of August 17, 1915, and because it has a contract with the City of Trenton authorizing it to charge the five-cent fare.

Second: That the final order of January 11, 1916, was not justified by the evidence in the case.

Third: That the lessor companies of the prosecutor were not made parties to the hearing.

To these main contentions of the prosecutor, the answer of the City of Trenton in substance is:

First: That the Public Utility Commissioners had jurisdiction over this case under the Public Utility Statute; that they had the power to make the order of August 17, 1915. But if the said Board had no such power, the duration of the order was three months and the time has now expired, and therefore there is nothing before this court on that point. That prosecutor has no contract with the City of Trenton, but on the contrary is bound by the provisions of the ordinance passed by the City of Trenton on October 22, 1909, requiring the Traction Company to sell six tickets for a quarter, to which prosecutor in writing expressly agreed, and that such ordinance and agreement constitute a binding contract now in force.

Second: That the order of January 11, 1916, is in accordance with the evidence taken in the case.

Third: That the lessor companies have no interest in this case, as prosecutor has leased their properties under a guaranteed rental, and they are not, therefore, proper parties to this controversy.

Fifty-one reasons are assigned for reversal in this Court, but as none of them presents any new feature, they too are reduced to the three legal propositions already stated for the purpose of this argument.

And, further, as we understand it, this Court will

not consider on appeal a point not raised in the Court below.

POINT I.

IT IS IMMATERIAL WHETHER THE ORDER OF AUGUST 17, 1915, WAS LEGAL; IF MATERIAL, IT WAS LEGAL.

As this order was a temporary suspension of the contemplated action of the prosecutor in discontinuing the sale of the six tickets for a quarter, and the three months of its duration having now passed, it seems idle to discuss the legality of the order.

If the Court, however, considers the point material, the claim of the City of Trenton is, that the company had ample notice and opportunity to be heard. The company itself invited the jurisdiction of the Board by forwarding a letter to the Public Utility Commission notifying the Commission that it intended to withdraw the sale of these tickets upon a specified day (see Case, Vol. 11, *Exhibit C 62, page* 308, letter of August 13, 1915). The forwarding of this letter was a recognition by the company of the power of the Public Utility Commission in the premises, even if the letter itself disclaimed the Public Utility Commission's power over the subject matter, otherwise there was no reason to send it. Immediately upon the receipt of this letter the Public Utility Commission sent a letter to the City of Trenton notifying the City of Trenton of the receipt of this communication from the prosecutor, and appointing Tuesday, August 17th, at eleven o'clock in the morning as the time, and the State House, at Trenton, as the place, where the said Public Utility Commission would sit for the purpose of hearing and considering any application that the City of Trenton might wish to make upon the subject matter contained in the letter from the prosecutor to the Public Utility Commission. This letter appears as *Exhibit C 64, page* 310,

Case, Vol. II. The Commission also caused a copy of this letter to the City to be sent to the Trenton and Mercer County Traction Company, as appears by *Exhibit C 63, page* 309, Case, Vol. II, letter of August 13, 1915, by the Public Utility Commission to the Trenton and Mercer County Traction Company. The transmission to the prosecutor of a copy of the letter from the Commission to the City was a direct notice that at the time and place mentioned therein the subject matter would be taken up and the City, as the representative of the people who were affected thereby, would be given an opportunity to apply for such order as might be reasonable in the premises. This not only was an adequate notice, but it at least was information that on such a day they would have an opportunity to be heard. As reasonable men they were charged with the knowledge that the public officials of Trenton would of course oppose, as they did so strenuously in 1909, the withdrawal of these tickets, and that they would apply to the Commission at the time and place mentioned for some order that would continue the issuing of these tickets until the whole matter could be finally heard.

But the complete answer to this claim of the prosecutor is set forth with reasoning that is conclusive in the opinion of Judge Haight in the United States District Court case, from which we quote:

> "The second ground requires a determination as to whether the order complained of was in fact made without notice to the plaintiffs and without affording them an opportunity to be heard, and if so, whether notice was necessary before the Board could have legally made it. The Board of Public Utility Commissioners was created by an act of the New Jersey Legislature, approved April 21, 1911 (*P. L.* 1911, *p.* 374), and was thereby vested with certain defined powers; among them to fix just and reasonable

rates to be charged by various public utilities, included in which are street railway companies, whenever it should determine any existing rate to be unjust, unreasonable or insufficient, and to hear and determine whether any increase, change or alteration in rates, which might thereafter be made by any public utility, would be just and reasonable. The Board was also vested with power, 'pending such hearing and determination' of the latter question, to order, for a period not exceeding three months, the suspension of the increase, change or alteration until it should have approved the same. It is by virtue of the last-mentioned power that the Board presumed to act in making the order in question. After the lessee company sent the notification to the Board of its intention to discontinue the sale of six tickets for twenty-five cents, the latter caused a copy of the same to be sent to the Mayor of the City with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action by the company, an opportunity would be afforded on August 17. On the same day the Board caused a letter to be sent to the lessee company acknowledging receipt of the notice, asking when it proposed to make the change, and enclosing a copy of the letter sent to the Mayor. The company was not represented before the Board at the hearing, and as far as appears, was not notified whether the City proposed to take any action or make any motion before the Board on the date specified, or otherwise. On that date, however, the City was represented, and on the motion of its solicitor the order in question was made. It thus appears that the only notice the plaintiffs had was that on a certain day the Board would hear any motion that the City intended to make; but

they were never notified that the City intended to make any motion whatsoever or what it would be, and were afforded no opportunity to defend against the motion which was made and the order which the Board entered. Under these circumstances, if notice and hearing were necessary prerequisites, we think the plaintiffs were not given such notice or afforded such an opportunity to be heard in respect to the action which was taken as to satisy the 'due process of law' clause of the Fourteenth Amendment. But we think that the statute creating the Board and defining its powers authorized an order of suspension to be made, without notice of hearing. The powers of the Board, so far as are necessary to be considered, are conferred by Sections 16 and 17 of the act. Section 16 provides: 'The Board shall have power'; then follows, in eleven separate paragraphs, an enumeration of the powers. In some of these paragraphs the exercise of the power is expressly limited to 'after hearing'; in others to 'after hearing upon notice.' Section 17 provides: 'The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined'; then follows, in eight separate paragraphs, an enumeration of powers. It thus appears that the Legislature has carefully defined when a hearing and notice are necessary. The last of the paragraphs of Section 17 confers two separate powers: one to hear and determine, either upon complaint or upon the Board's own initiative, whether an increase, change or alteration in any existing rate is just and reasonable, and the other to suspend, for a limited time, such increase, change or alteration, 'pending such hearing and determination.' The latter power is expressly conferred in so many words, and by a separate sen-

tence, in which there is no requirement that the order can be made only after hearing and notice. It is a separate power, deemed necessary by the Legislature, no doubt, to give more efficacy to the former. The reason for granting it, as well as the context, leads us to the conclusion that it is not limited or qualified by the opening paragraph of Section 17, before quoted. That paragraph, we think, refers to the powers to determine whether the proposed change would be just and reasonable. It is difficult to understand why the Legislature should have required two hearings on the same question. If no other question were presented than that of reasonableness of the rate, as would most often be the case, the first hearing, to be of any effect whatever, must, of necessity, be practically the same as the second. On the other hand, it is reasonable to assume that the Legislature would wish to clothe the Board, to which it had delegated the State's rate-making right, with power to preserve the *status quo* until there could be a hearing and determination upon the merits, without the delay incident to notice and hearing. This is the same power exercised by and conferred upon the Interstate Commerce Commission by the Act of June 18, 1910 (36 *Stat. at L.* 552). Nor do we doubt the right of the Legislature to grant such a power, without violating the Fourteenth Amendment. Nothing more was done than to clothe a quasi-judicial body with a power which has always been exercised by courts of competent jurisdiction."

POINT II.

THE PUBLIC UTILITY COMMISSION HAS JURISDICTION OVER THE SUBJECT MATTER IN THIS CASE. NO ACTION OF THE CITY OF TRENTON SHOWN BY PROSECUTOR COULD OR DID DEPRIVE THE STATE OF NEW JERSEY OF ITS RESERVED RIGHT TO FIX JUST AND REASONABLE RATES.

We content ourselves with a brief statement of the principles involved in this case and a citation of the authorities, relying upon the brief of the counsel for the Public Utility Commission for a more extended discussion of this point.

(a) The power to fix and regulate the rates charged in the conduct of a business affected with a public interest is an undoubted power of government continuing in its nature. *Stone* v. *Farmers' Loan & Trust Co.*, 106 *U. S.* 307.

(b) Since this power is a power of government it cannot be lost by nonuser, nor is it affected by the fact that before the power is exercised the income of the business subject to the power has been pledged for the payment of debts incurred, or that the property employed in such business has been leased to a tenant that relied upon the earnings for the means of paying the stipulated rent. *Chicago, Burlington & Quincy R. R. Co.* v. *Iowa*, 94 *U. S.* 155; *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164.

(c) If the State, directly or through any municipal corporation, has power to establish by an inviolable contract the rates to be charged in a public utility, it can only be where the language is express and the time of the contract limited to a definite term, not grossly unreasonable in point of time. *Stone* v. *Farmers' Loan & Trust Co., supra; Home Telephone & Telegraph Co.* v. *Los Angeles* 211 *U. S.* 265.

(d) The State did not, by the statutes referred to in

the bill of complaint—which in general terms grant authority to fix rates—renounce its governmental power to fix and regulate rates; the only authority granted was the authority in general terms to fix fares. By such general language the State does not part with its governmental power to fix and regulate rates. *Stone* v. *Illinois Central Railroad Co.*, 116 *U. S.* 347; *Stone* v. *Farmers' Loan & Trust Co.*, 116 *U. S.* 307; *Chicago, Milwaukee & St. Paul Railway Co.* v. *Minnesota*, 134 *U. S.* 418; *Minneapolis & Eastern Railway Co.* v. *Minnesota*, 134 *U. S.* 467; *Southern Pacific Co.* v. *Oregon Railroad Commission*, 230 *U. S.* 537; *Milwaukee Electric Light Co.*, 35 *Sup. Ct. Rep.* 820; *Duluth St. Railway Co.* v. *Railroad Commission of Wisconsin*, 152 *N. W. Rep.* 887.

(e) The fixing of a maximum rate of fare by the statute and ordinances referred to in the bill of complaint, did not create an inviolable contract as to rates which prevented the subsequent exercise by the State of the power to fix rates less than said maximum rates, provided such lesser rate is a just and reasonable one. *Dow* v. *Beidelman*, 49 *Ark.* 325, 5 *S. W.* 297; *Georgia Railroad & Banking Co.* v. *Smith*, 128 *U. S.* 174; *Rogers Park Water Co.* v. *Fergus*, 180 *U. S.* 625; *Knoxville Water Co.* v. *Knoxville*, 189 *U. S.* 425.

(f) The Legislature of the State of New Jersey has not conferred upon the municipalities of this State any power to enter into inviolable contracts with street railway companies establishing rates of fare and suspending the State's power to fix and regulate rates. *Home Telephone Co.* v. *Los Angeles*, 211 *U. S.* 265; *Wyandotte Gas Co.* v. *Kansas*, 231 *U. S.* 623.

(g) If the municipal corporation was vested with the power to engraft upon the franchises of the Railway Companies a provision limiting the rate of fares as a condition of the use of the highways for street railway purposes, the act of the municipality in imposing such liability was that of agency of the State in granting the

corporate franchises, and is therefore subject to the power reserved to the State by constitution and by statute, to amend, alter or repeal corporate statutes. The enactment of the statute creating the Board of Public Utility Commissioners and vesting in the Board power to fix just and reasonable rates whenever it determines existing rates to be unjust or unreasonable and temporarily pending hearing to suspend proposed increases in existing rates, was the exercise by the State of its reserved power to amend, alter or repeal corporate franchises. *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164; *San Antonio Traction Co.* v. *Altget*, 200 *U. S.* 304; *City of Mani* v. *Manitowac & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. W.* 925; *Louisville & Nashville R. R. Co.* v. *Railroad Commission of Kentucky*, 231 *U. S.* 298.

(h) A special statutory enactment from the governmental power of the State to fix and regulate rates does not pass to a new corporation succeeding others by consolidation or purchase in the absence of express direction to that effect in the statute.

The same rule is applicable where the constituent companies are merely owned and operated by one of them as authorized by the legislation. An enactment held by the latter will not pass unless so expressly provided. *St. Louis & San Francisco Railway Co.* v. *Gill*, 156 *U. S.* 649; *Matthew* v. *Board of Corporation Commissioners of North Carolina*, 97 *Fed.* 400; *Peoples Gas Light & Coke Co.* v. *Chicago*, 194 *U. S.* 1.

(i) Where the action of the municipality does not establish an inviolable contract suspending the State's power to fix and regulate rates, the power of the Board of Public Utility Commissioners is complete. The Board may, in such case, fix a just and reasonable rate, whenever it determines the existing rate to be unjust and unreasonable, notwithstanding the fact that the existing rate has the sanction of prior municipal action assented to by the company. A just and reasonable

rate so fixed by the Board may be less than that limited by the prior municipal action, or may exceed the rate so limited. This follows from the fact that the existing rate may be unjust and unreasonable to the community served because it affords more than a fair return, or unjust and unreasonable to the utility furnishing the service because it fails to afford a fair return. The power conferred upon the Board is, Public Laws 1911, page 374, Section 16:

> "(c) To fix just and reasonable rates * * * whenever the Board shall determine any existing rate * * * to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential."

City of Dawson v. *Dawson Telephone Co.*, 137 *Ga.* 62, 72 *S. E.* 508; *City of Manitowoc* v. *Manitowoc & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. E.* 925; *Milwaukee Electric Railway & Light Co.* v. *Railroad Commission of Wisconsin*, 153 *Wis.* 592, 142 *N. W.* 491; *City of Benwood* v. *Public Service Commission (W. Va.)*, 83 *S. E.* 295, *L. R. A. (N. S.)* 1915 *C.*

(j) Section 17 (h) of the Public Utility Act clothes the Board with power pending a hearing and determination on the justice and reasonableness of a proposed increase in any existing rate, or change or alteration in any existing classification, to order the suspension of such increase, change or alteration for a period not exceeding three months.

The statute does not make the exercise of the power of suspension dependent upon notice and hearing as to whether or not the power shall be preliminarily exercised in a specific case.

In this respect it resembles the Interstate Commerce Act.

No constitutional provision makes notice and hearing a prerequisite to the exercise of the power of suspension.

See *Home Telephone and Telegraph Co.* v. *City of Los Angeles*, 211 *U. S.* 265, 278.

POINT III.

ORDINANCE OF CITY OF TRENTON OF OCTOBER 22, 1909, REQUIRING SALE OF SIX TICKETS FOR A QUARTER, WAS A CONTRACT SUPERSEDING PREVIOUS CONTRACTS, IF ANY EXISTED.

Even if the ordinances relied upon by the prosecutor constituted a contract, that contract was abrogated by the ordinance of October 22, 1909. The following undisputed facts in the case conclusively established this contention.

For many years prior to September, 1909, the Trenton Street Railway Company (then the operating company), and the constituent companies which were merged into it, had voluntarily adopted the practice of selling six tickets for a quarter, each ticket good for a ride within the limits of the City of Trenton. That on Monday, September 13, 1909, an announcement was made on behalf of the company, then operating the Trenton Street Railway system, that no more strip tickets would be sold by the conductors after 6 P. M., on the 15th day of September, 1909, and on the said 15th day of September, the actual sale of the said tickets was discontinued in accordance with said notice. That the announcement of the purpose of the company to withdraw the sale of these tickets and the actual withdrawal of the same, aroused widespread indignation among the citizens and public officials of the City of Trenton. The action of the company became the leading news feature of the local newspapers from the 13th day of September, daily, until the whole matter was settled by the passage of the ordinance re-establishing the sale of the tickets on October 19, 1909. The subject was taken up by the Chamber of Commerce, of Trenton, and the Merchants' Association of that City, and by the Mayor and by the Common Council.

The Mayor of the City addressed strong messages

to the Common Council upon the subject of the withdrawal of these tickets, in substance, reciting that the company had grossly violated the provisions of the City ordinances in respect to the schedules of its cars, in the matter of running old and unsanitary and flat-wheeled cars, in the matter of running cars upon parallel tracks in the same direction, and called attention to various other violations of the City ordinances and instances of poor and inadequate service.

The Mayor, also, in a special message directed to the Council, raised the point that some of the company's franchises were probably void, and that a legal action would result in their being declared without any rights upon certain of the streets of the City, and suggested that the City should proceed by appropriate legal action to have these franchises set aside.

The result was such an aroused public opinion that representatives of the City and representatives of the company had several conferences from day to day.

As a result of these conferences the President of the Street Railway Company, on September 18, notified the Common Council that the Company was willing to compromise the strip ticket matter by restoring the sale of the strip tickets, not on the cars, but at certain stores or other places within the city limits. This compromise did not satisfy public opinion or the public officials, and various members of the Common Council announced that at the Council meeting to be held on Tuesday evening, September 21, 1909, they would introduce resolutions inaugurating an attack upon the company's franchises, and looking to the enforcement of various ordinances of the City as to better service.

As a result of all these influences assurances were made by the company to the Common Council on the evening of its meeting on September 21, that the tickets would be restored for sale upon all the cars the following Friday.

At said meeting a resolution was adopted to which the attention of the Court is particularly directed. It recited that in the ordinances of the City granting to the company operating the street railway and its predecessors the right to construct and operate street railway lines in and upon the public streets of the City of Trenton, the City reserved the right to alter or amend the same at any future time whenever in the judgment of the Common Council it should become necessary for the public good so to do. It recited that in said ordinances, or some of them, it is provided that no such alterations or amendments shall be made without giving to the Railway Company affected thereby one month's written notice. It recited that in the judgment of the Common Council it is necessary for the public good that the existing ordinances should be altered or amended so as to provide for the uninterrupted sale by the company of tickets at the rate of six tickets for twenty-five cents, or that in lieu of such amendment or alteration, a new ordinance should be passed requiring the sale of such tickets by the company upon the terms aforesaid, provided the company was willing to waive, in writing, one month's notice thereof, to which it was entitled, and signify its willingness to enter into a written contract or agreement with the City of Trenton accepting the terms of such proposed new ordinance, and agreeing to comply with the requirements thereof.

The resolution then proceeds to designate five members of the Common Council to act as a committee to confer with the officers of the Trenton Street Railway Company relative to the said matter.

The resolution further provided that if the company should fail within ten days to give such written waiver and signify its willingness to enter into a written agreement, that the City Clerk should forthwith give one month's written notice to the company of the intention of the Common Council to alter and amend the ordinance in the manner hereinbefore described.

The resolution further provided that in the event that the company should waive such notice and make such agreement and accept the terms of the new ordinance, that the City Counsel be directed to prepare a draft of such proposed new ordinance for introduction at the next meeting of the Common Council.

As a result of the passage of this resolution and the other influence hereinbefore described, on Wednesday, September 22, the Street Railway Company actually restored the sale of the strip tickets on all of its cars.

The committee appointed by the Common Council accompanied by the City Counsel, Mr. Charles E. Bird, met the representatives of the company in conference, and in such conference it was agreed that the sale of the six tickets for twenty-five cents should be continued by the company, and that a formal agreement to that effect should be made between the City and the Company. At this conference the company agreed that the sale of the strip tickets, which in fact had been theretofore resumed, as before stated, should be continued for the future, and that the company stood ready to take whatever action the City requested in order to make the obligation to sell these strip tickets binding upon the company in the future. It was thereupon arranged that the Board of Directors of the company should pass a resolution waiving its right to receive from the City any notice relating to the passage of a new ordinance providing for the sale of the said strip tickets, and agreeing to the adoption of a new ordinance to that effect, and further agreeing that when the ordinance was passed the company would execute another written agreement ratifying the said ordinance. In accordance with this arrangement the Board of Directors of the Trenton Street Railway Company, on the 4th day of October, 1909, adopted the resolution which appears as complainants' *Exhibit C 68*, page 321 of complainants' bill of complaint in the District Court case. (Case, Vol. II.) The attention of the Court is particularly directed to

this resolution. *It recites that the City in its several street railway ordinances has reserved the right to alter or amend such ordinances.* It recites the provision of the ordinance that the company shall have one month's written notice of any proposed amendment. It recites the resolution of the Common Council at the meeting held on the 21st day of September, to which reference has been heretofore made under this point, notifying the company of the desire of the Common Council to amend the existing ordinances or to pass a new ordinance, providing for the sale of strip tickets. It recites that the amendment of the several ordinances would involve a greater expense and delay than would be necessitated by the passage of a new ordinance. It recites that the City Counsel, on behalf of the City, has submitted to the company a draft of such proposed new ordinance, and of a written form of agreement to be executed by the Company, of which copies are mentioned as attached to the resolution, and *that the Board of Directors have fully considered the premises, and are willing to aid in the speedy passage of the proposed new ordinance.* The resolution then provides that the company *waives all right to receive any notice relating to the passage of the said new ordinance,* and that the proper officers of the company are directed to transmit to the said City a duly authenticated copy of the resolution.

The resolution further provides that immediately after the passage of the said new ordinance by the City, substantially in the form embodied in the copy annexed to the resolution, the proper officers of the company are directed execute an agreement in form substantially similar to the draft of the said agreement annexed to the resolution. This resolution of the directors was transmitted to the City on or about October 2, 1909.

Annexed to this resolution was a draft of the ordinance and of the subsequent agreement that the company was to execute after the passage of the ordinance, which ordinance is the ordinance in question in this

controversy and is complainants' *Exhibit C 55*, page 304, of the bill of complaint, in the U. S. case (Case, Vol. II), and which agreement is appellants' *Exhibit C 70*, page 325, of the bill of complaint in the U. S. case (Case, Vol. II).

On the 19th day of October, 1909, the said ordinance in the form recited in the resolution of the company's directors, was passed by the Common Council and approved by the Mayor on October 22. This is the ordinance which is in question in this case, *Exhibit C 55*, page 304, of complainants' bill of complaint in the U. S. case (Case, Vol. II). It provides expressly that the Street Railway Company shall be required to sell at all times, upon all of its cars, strip tickets at the rate of six tickets for twenty-five cents, and that the Mayor of the City shall be authorized to revoke the license of any car operated by the company upon which tickets are not sold. This ordinance was introduced October 5, 1909, referred to the proper committee, and passed October 19, 1909, and approved October 22, 1909.

Here, then, was an agreement reached after conferences between the representatives of the City and the representatives of the company, and carried out in writing in accordance with the verbal arrangements made by the representatives of the City and of the company respectively. The company agreed, by resolution of its directors, to waive any right to any notice that it might have of the intention of the City to pass this ordinance, and agreed that the City might pass it, and that the company would execute a written agreement after it was passed formally accepting its terms, and the officers of the company were authorized to execute such an agreement *immediately* upon the passage of the ordinance by the Common Council and its approval by the Mayor.

We insist that these several actions by the company and the City constituted an agreement on behalf of the company to maintain the sale of these tickets upon

all of its cars as long as it should exercise its franchises.

The company attempts to escape from the obligation of this contract by asserting two defenses: First, that it was misled into making the contract by the recital in the resolution adopted by the company's directors to the effect that in all of the ordinances of the Common Council to the company and its predecessors, the right was reserved to amend such ordinances. Our answer to this is that if said recital was a material fact in the negotiations and in the agreement, then of course it was the company's business and that of their legal advisers to ascertain whether said recital was true in fact or in law. If it was not a material recital then it does not affect the agreement. It is therefore immaterial whether this recital is as a matter of fact true or not true.

This claim of ours is absolutely clinched and proved beyond any discussion by the statement of John A. Rigg, General Manager, or whatever he was of the company, in his affidavit annexed to the bill of complaint in the U. S. (Case, Vol. II, page 63), wherein he specifically states

> "that the Trenton Street Railway always claimed that the City of Trenton had no right to alter or amend the ordinances * * * so as to in any way lessen the amount which the company had the right to charge for transportation of passengers * * * under said ordinances."

Our claim that this recital was not a material part of the agreement and did not enter into the company's mind is again confirmed by the first recital in the form of agreement which the company agreed to execute after the passage of the ordinance (complainants' *Exhibit C 70,* page 325, Case, Vol. II). In that agreement the following recital appears at the top of page 326:

> "Whereas, in and by the several ordinances aforesaid, *or some of them,* the right was reserved by the said party of the second part to

> alter or amend said ordinances at any future time, whenever, in the judgment of the Common Council of said City, it should become or be necessary for the public good so to do."

There is no possible denial of the fact that this right was reserved as to some of the ordinances of prosecutor, or its predecessors. The company's directors had this agreement in front of them when they passed their resolution drafted by their own counsel, and this agreement was annexed to the said solution. Therefore the claim that they were misled by the recital that all of the ordinances contained this provision falls to the ground.

As another defense to the validity of this solemn agreement, the company alleged a failure of consideration. Our answer to this claim is, that there was a most substantial and vital consideration that passed from the City to the company in return for this agreement. The consideration was the removal of the public and the official hostility to the company. The Mayor had publicly called upon the Council in a special message to attack the company's franchises; that the Council had started measures looking to compelling the company to buy new cars and to abolish flat wheels, and live up to its schedule, and to adopt new and reasonable schedules, and to twelve or thirteen other points which the City had raised as against the company's service or obligations under its franchises. It was this wave of public indignation and this threat of adverse City action that caused the company to yield. This is expressly proved by the assertion of General Manager Hurley in his letter to the Council, which was delivered on the evening of September 21st, wherein he says specifically:

> "We are desirous of doing everything in our power to meet the demands of the citizens, realizing that their good will is our greatest asset."

The good will of the public, says the Manager of the company, is the chief asset of this company. When by the making of this agreement the animosity of the public was removed, and its good will was won back, the company obtain the thing which was the real consideration for the making of the agreement.

The company therefore received its consideration, and the claim that its action was without consideration is therefore without force.

The company further claims that after the passage of the resolution by the Board of Directors waiving the notice in the ordinance, and agreeing to accept its provision and execute the contract to that effect, it discovered that the recital in the said resolution of their Board of Directors was untrue, and subsequently to the passage of said resolution rescinded the same. This resolution of rescission is *Exhibit C 69*, page 322 (Case, Vol. II). This claim is entirely without force if the foregoing reasoning is sound. If the recital in the resolution of the Board of Directors was passed upon by their own counsel, and they had full knowledge of its meaning, or if the recital was immaterial and was not a material part of the agreement, then it was impossible for the company to rescind the agreement after they had received the consideration, to wit, the restoration of public favor, and after the city had performed its part by the passage of the ordinance agreed to beforehand, and stopped proceedings to invalidate the company's franchise.

The resolution passed by the Board of Directors agreeing to execute the subsequent agreement after the City should act by the passage of the ordinance, simply put the company in the position, after the passage of the ordinance, that they could have been then and could now be compelled to execute the agreement agreed to be made. The company after it had received the benefit which the agreement to submit to the ordinance brought them in the way of the cessation of public agitation,

and in the fact of the abandonment by the City of the proposed attack upon the franchises, could not thereafter refuse to execute the agreement to which it had bound itself. As a matter of fact, the execution of this agreement was a mere formality. It is obvious that its execution was provided for merely that there should be additional evidence of the agreement between the City and the company.

The prosecutor does not claim that it has ever notified the City that it had rescinded the said resolution. All that appears is that the confirmatory agreement was never executed.

This amounts to a fraud upon the public. There is no other way to properly characterize it. If these Directors have known all of these years that the agreement they made with the City was void, and have not so notified the City, they have put the City in a false position, and have induced it to rest secure in the belief that the agreement between the City and the company was a valid one, and they have obtained all of the advantages in the way of a favorable public sentiment, and immunity from official attack, which the concealment of their position has brought them.

During all of those years they have sold these tickets they have acted in exactly the same way that they would have acted if they had actually executed the confirmatory agreement, which they failed to execute. We submit that this in any event is a ratification, in whole, of the agreement which they had made with the City, and is of equal binding force as if they had executed the confirmatory agreement which they failed to execute.

The cases cited in support of the prosecutor's position that there was no contract until the executory agreement was signed, do not fit this case at all. All these cases go upon the supposition that the minds of the parties have not met until the execution of the final agreement. They are all cases where only a preliminary

and general understanding was reached in the first instance, subject to be revised and modified, and these revisions and modifications to be stated in a subsequent agreement. In this case the minds of the parties met, and when the City Council passed the ordinance and sent a copy of it to the company, and the company by formal resolution recited the ordinance, expressly indicated its assent to its provisions and promised to execute not a modified agreement, but in the exact form annexed to the resolution. If the City had changed its ordinance in any material part after the passage of this resolution by the Board of Directors of the company, then there might be some force to the claim that the minds of the parties had not finally met.

Finally, there was no necessity for any specific consideration in this case. The City and the company had relations which had been established by ordinance. These relations were mutual. It is well-established that when parties to an agreement modify an existing agreement that the modification of the agreement is in itself the consideration, or is evidence of mutual advantages which constitute the consideration.

That these several acts constitute a contract between the Trolley Company and the City is supported by the case of *Jersey City* v. *Jersey City and Bergen Railroad Company, 70 N. J. L., page* 360. This was a case where provisions were incorporated in the ordinance requiring the company to pay license fees.

POINT IV.

Ordinance of October 22, 1909, Valid as an Ordinance if Not as a Contract.

If the facts set out under the previous point do not constitute a contract, nevertheless it is plain that the ordinance of October 22, 1909, was a valid exercise of the power vested in the municipality to amend the ordinances previously granted to prosecutor's lessor com-

panies. This ordinance, being valid, must stand until the Utility Board shall, under its power to fix just and reasonable rates, change the conditions as to fares established by the ordinance.

The prosecutor claims that this power of amendment does not extend to changing fares, because it claims that that is a vital matter. If this claim was sound, it would amount to the position that no amendment of an ordinance can be made which imposes any additional financial burden upon the company. There is no difference in principal between the power of the City to compel the company to put on additional cars, to abolish flat wheels, or to pave between the tracks, or to improve the service in any way through the power of amending an ordinance, and the power to reduce the fares. Any exercise of the power of amendment by the City government necessarily imposes a financial burden upon the company. The test is not whether the ordinance is directed to the amount to be charged for the fare, or to any other part of the service, but the test is whether after the amendment has gone into effect, there is still enough income left to afford a fair return over the value of the property. If the City by amending the ordinance compels the company to run so many cars that the existing rate is unprofitable, then the company can raise the rate, or if it is limited as to the rate, then the ordinance requiring an excessive expenditure for service must fail. That this is true appears from the consideration of the possibilities of the future.

Supposing a new motive power cheaper than electricity is discovered, or a cheaper method of producing electric power is discovered, whereby the company could transport passengers at a cost of one cent apiece, with the result that its earnings would be fifty per cent. upon the fair value of its property, is it not plain that both the City would have the power to amend the ordinance so as to reduce the rate, and that the Public Utility Commission would have power to reduce the rate so that the

net earnings would afford only a fair return upon the value of the property?

POINT V.

THE COMPANY IS BOUND TO MAINTAIN THE SALE OF TICKETS BY ITS OWN AGREEMENT WITH THE PUBLIC UTILITY COMMISSION.

It appears by the record offered in this case by Mr. Sommer of the application of the company for the approval of the Public Utility Commissioners of the lease by which it obtained control of the Trenton Street Railway system, that all of the present difficulties with which prosecutor is now struggling were foreseen by the Commission, made the subject of discussion and investigation, and resulted in a virtual agreement between prosecutor and the Commissioners. The proof of this statement appears in the quotation from the testimony taken in that proceedings given by Mr. Crosby, the representative of the existing companies and the president of the newly formed lessee company, which was read into the record. (Case, page 474, line 10.) Mr. Crosby said under oath:

> "There has been some contention in this particular case as to whether the tariff to be charged is fixed at five cents or a possible four and a sixth cents. I have not been able to find exactly what the legal status is as recognized by the (lessor) companies. I am under the impression they are practically committed to the six-for-a-quarter rule. I suppose we inherit that committal. If not, I should not have the authority to commit them, but I am ready to say, if there is any doubt, so far as we are concerned, we are willing to submit to a friendly suit to settle the question."

He further said (Case, page 474, line 36):

> "I looked at the matter when going over the

estimates as to probable earnings that we should never have more than six-for-a-quarter tickets. If the ordinance has been passed and accepted, that settles it."

To clinch this point, Mr. Sommer, then President of the Commission, asked this question (Case, page 608):

"*Q.* In making the estimate, however, of whether the future, on the lines laid down by the lease, would be profitable, you use as a basis what: five-cent fare or the six-for-a-quarter fare? *A.* We eliminated it in one sense. * * * WE HAVE BASED IT ON THE SIX-FOR-A-QUARTER BASIS REALLY. I should say, in regard to the six-for-a-quarter basis, there was no thought that the question would be raised for a change to five cents. Mr. Rigg told me they had made a spurt and had gone back. And he said they did not know just what the legal status was."

We submit that this language amounts to an agreement that this particular lessee company was prepared, as a condition of receiving the approval of the Commissioners, never to raise the question unless it was compelled to by their lessor companies, and that in that event it, the lessee company, agreed that it should be settled by a friendly suit. This means that the question as to whether there was a legal contract which the lessor companies could avail themselves of to discontinue the sale of the strip tickets, if ever raised, should be settled by a friendly litigation to determine the legal point involved.

We submit, therefore, that prosecutor obtained the approval of the Commission to this lease upon the distinct representation that it would not attempt to change the practice of selling six tickets for a quarter, except as the result of a friendly litigation upon the legal point of the contract. The Commission relied upon that representation in approving the lease. They should not be

allowed at this late date, after they have been disappointed in their anticipation of being able to squeeze the Trenton public into paying these rentals upon millions of watered stock, and to have something left over to pay dividends upon their own stock, all of which is shown by Mr. Johnson's testimony to be pure water—they should not be allowed in this proceeding to raise this question which they expressly covenanted not to raise. They do not show that they have been requested to raise this point by their lessor companies.

POINT VI.

Burden of Proof.

The prosecutor claims that the Commission erred in holding that the burden of proof was upon the prosecutor in proving that the new rate of a straight five-cent fare would be just and reasonable, and that the existing rates were unjust and unreasonable.

Had the prosecutor sought to change the existing conditions and give up a rate which had existed for twenty-five years, and to put in force a higher rate, it is obvious that the burden of proof was upon the company seeking to make the change.

But if the point was important and the burden of proof was upon the City, an inspection of the record will show that by a very great preponderance of proof, the City has established that fact both that the existing rate is more than just and reasonable and that any increase in the rate would be unjust and unreasonable. This will appear as we discuss he merits later in the Brief.

POINT VII.

The Prosecutor's Valuation of its Property is Excessive.

We contend that prosecutor has failed to meet the burden of proof that the existing earnings do not fur-

nish a fair return upon the value of the company's property which is devoted to a public use.

The prosecutor undertakes to prove a valuation of $3,700,000 for physical property, to which it adds anywhere from $1,000,000 to $2,000,000 for what Mr. Ford terms "development cost." Let us analyze these figures.

Mr. Johnson makes up his figures by taking the valuation of the physical property which he made in 1910, before the properties were taken over. This value he finds to be approximately $3,200,000, to which he added some $800,000 which has been subsequently spent upon the property. We attack this valuation upon many grounds. In the first place, he admits that his valuation was not made wholly by himself. He admits that he had the assistance of other people in gathering and marshaling his data, and these people are not produced for cross-examination. He does not produce his original notes. Nor does he produce the details of his valuation requested by the City.

This valuation in 1910 Mr. Johnson admits was what he called a valuation new. That is to say, he valued all of the property as though it was new and in good condition.

There is no dispute that this property was at that time badly run down.

Confirmation of the fact that the property of the prosecutor was very seriously depreciated appears in several ways. Mr. Hurley, the General Manager of the Trenton Street Railway Company, wrote a letter to the tax commissioners in August, 1907 (*Exhibit O 36*), in which he said:

> "As to our property in the streets, we can show unquestionably that much of the track will have to be entirely renewed within the next year or so."

The City of Trenton, at this very time in 1910, made formal complaint to the Board of Public Utility Com-

missioners that the company's condition was bad, specifying the exact particulars upon which its charge was based. Upon this complaint the Board of Public Utility Commissioners used the following language in its order:

> "The Board of Public Utility Commissioners for the State of New Jersey, after consideration of such testimony and the results of such inspections, determines that the Trenton Street Railway Company DOES NOT NOW FURNISH SAFE AND ADEQUATE SERVICE in the City of Trenton, and that in order that such service may be furnished by it, it is required that the following work be done."

Then follows twelve specific requirements, ranging from the complete reconstruction of the track on specified streets to the repair of joints on specified streets.

The Board further finds that

> "The work of RECONSTRUCTION and REPAIR, hereby ordered to be done, SHOULD HAVE BEEN DONE HERETOFORE from time to time as the occasion therefore first arose."

This is an official finding by this very Board that the condition of the company's plant at that time was so bad that it could not furnish safe and adequate service. It is in evidence that $500,000 was raised as a necessary condition of approving the lease in order that this property might be rehabilitated. This is conclusive proof that the company's property at that time was heavily depreciated, and, therefore, the value new found by Mr. Johnson is practically irrelevant, unless it is supplemented by some evidence to show to what extent it was depreciated. This the company has made no effort whatsoever to do. There is not a scintilla of proof in this case to show what was the real value or the real condition of this physical property at the time of Mr. Johnson's valuation in 1910, except the proof which I have cited to the effect that it was badly depreciated. The burden is, therefore, upon the company to establish

the value new less the depreciation in 1901, if it intends to make use of the value at that time as the basis for arriving at the value at the present time. This is so plain that it does not admit of any argument, and it is fatal to the company's position, which requires that it should furnish conclusive proof of the value of the company's property at the present time.

There is no evidence by Mr. Johnson, or by Mr. Ford, or by anybody else, showing the valuation of the company's property at the present time. Nobody on behalf of the company has made any attempt to value the property in its present condition, except by taking the valuation new as found by Mr. Johnson in 1910 and adding to it the money since expended.

The company offered as part of its proof the valuation made by Dr. Betts for the Commission, at the time the Commission was considering the application for the approval of the lease. This appraisal of Dr. Betts was made at about the same time as that of Mr. Johnson. It was put in evidence by counsel for the company. Dr. Betts' estimate of the total value of the property was approximately $2,600,000. This valuation is very far from that of Mr. Johnson, but it is offered by the company as corroborative of the correctness of Mr. Johnson's estimate at that time.

Dr. Betts' valuation is open to many objections. In the first place, he frankly says that he did not make this examination in the way that he would have made an examination if he had been valuing the property for the purpose of enabling the Commission to fix a just and reasonable rate. He stated that he only valued the company approximately for the purpose of determining whether or not the terms of the lease ought to be approved. Dr. Betts states that he would have made a valuation for rate-making purposes much more in detail. This alone is sufficient to invalidate this valuation as proof of the real value of the property at that time.

Dr. Betts valued the property as new. He made no

attempt to determine how badly the property was depreciated, or to fix the amount of the depreciation, or to fix the value of the property in its depreciated condition. He further stated that several of his subordinates spent three or four weeks in the field, and that he used the data so gathered, with only such verification as he was able to give it by three or four days in the field. We submit that this invalidates Dr. Betts' valuation as proof of the value at that time. The City is entitled to have the men who did the field work and who marshaled the data which Dr. Betts used put upon the stand for cross-examination.

The Betts' valuation, however it is viewed, leaves the question of the depreciated value of the property in 1910 absolutely unproved. Therefore, the base of the company proof of present value is not shown. No result can be obtained until this basis valuation of the property in its depreciated state in 1910 is shown by competent proof.

The company upon this invalid basis proceeds to build up the existing value by adding some $800,000, which the company claims has been spent upon the property since it took it over. The disposition of this $800,000 is the subject of conflicting claims by Mr. Johnson and by employees of the Board who have examined the company's books with reference to this expenditure. These witnesses testify (Case, pages 793 and 804) that they find that, according to the rules of the Board, about $550,000 of this sum can properly be charged to capital account.

This is positive proof by the Board's own employees. Against it are the confused and confusing statements of Mr. Johnson on the stand as to the expenditure of this money. He used the words "rehabilitation," "road and equipment," "repair account" and "maintenance account" with such inaccuracy and confusion that no clear deduction can be drawn from his statements as to how this money has actually been spent. A careful reading

of Mr. Johnson's testimony on this point will justify this statement.

We have, therefore, as the result of this method of proof by the company, an unknown figure as the value of the depreciated property in 1910, plus $550,000 as found by the Commission's employees to have been spent subsequently on capital account.

The company claims that it should be allowed this value new in 1910, and that no depreciation should be taken off. We submit that there is no finding by any court or commission in the whole history of rate-making in this country that affords any justification for any such claim. To argue it at length would be to impose upon the patience of the Court.

The company claims an additional valuation for going-concern value on Mr. Ford's cheerful guess of anywhere from twenty-five to fifty per cent. of tangible value. This claim involves the consideration of going-concern value or development cost, which we will treat of in a subsequent point. We here show that the mere statement of anywhere from twenty-five to fifty per cent. is not in evidence upon which the Board could act. It is too vague, too indefinite, and too general.

Mr. Ford made no study of the situation in Trenton, he merely came down a couple of times and talked with Mr. Johnson, the manager. As will appear when we discuss the subject of going-concern value, he expressly said that there should be no allowance for going-concern value beyond the actual cash invested in building up the property, if that fact could be ascertained. As we shall show later, it is easy in this case to prove the money that has been actually expended upon the plant.

Mr. Johnson made no estimate of franchise value at all.

This proof, such as it is, is completely offset by the testimony of the City's two experts, who made a study of this situation, extending over many weeks, that no

sum whatever beyond the value of the physical property in its existing state ought to be added in this case. The preponderance of proof, therefore, on this point is with the City and not with the company.

We submit that upon the company's evidence they have shown substantially as follows: That it would have cost in the fall of 1910 approximately $2,600,000 to reproduce the company's property new; that it was in a depreciated state; that such depreciation is fairly measured by the amount of 550,000 found by the Board's employees to have been actually expended to remedy this depreciation since 1910. That would make the value of the company's physical property at the present time approximately $2,600,000. Curiously enough this is almost the identical figure found by the joint appraisal of the City's experts, Messrs. Rand and Brackenridge. It is also practically the amount of money that was actually put into the property by investors up to 1910, as will be shown when we consider the capitalization of the company in a subsequent part of this brief.

The $500,000 raised for the rehabilitation of the property in 1910 cannot be considered as new capital, because it was caused by the wrongful diversion of the revenues to dividends. This was expressly found by the Commission in the order hereinbefore quoted.

From the proofs submitted by the prosecutor, therefore, we submit the Court cannot determine what is the value of the property at the present time, and that the claim of a value of approximately $4,000,000 is absurdly excessive.

POINT VIII.

The Value of the Company's Property as Proved by the City Does Not Exceed $2,700,000.

Not only has the company failed to present any proper evidence of the present value of this property,

but the City has produced a positive and definite valuation. The City's proof shows that this property, including every kind of contingency that can properly be charged, can be produced to-day for approximately $2,700,000. The witnesses for the city who made up this valuation were Mr. Swan, Mr. Brackenridge and Mr. Rand.

Mr. Swan has been connected with the City's engineering department for twenty-five years, except two years, and during that time has had practical charge of all the street work, including portions of the pavements required to be laid by the company. He produces from his records and from his personal knowledge an elaborate table showing the approximate time that the rails were laid; the character and time of laying of the pavements between the tracks in each street. The accuracy of this foundation work has not been in any way impeached.

Mr. Brackenridge has been engaged in every variety of street railway work since 1885. He has been a general contractor, and as such has built many electric street railways. He was connected for many years as engineer of construction with the Brooklyn Rapid Transit Railway Company, and this experience included the time when its transportation system was operated by horse power and when and after the motive power was changed from horses to electricity. It has been his business in all these years to actually purchase every form of electrical equipment. He has had the widest possible experience in the actual working of railways, and so is familiar not only wtih the cost, but with the life and rate of depreciation, of every class of physical property used in this class of work.

It would be impossible to find a man whose experience better qualified him to put an approximate value upon this property in the limited time that is afforded by the statute for the proofs to be taken in this case.

The accuracy of Mr. Brackenridge's work has not

been impeached by cross-examination, or by the rebuttal testimony of Mr. Johnson, except on minor and unimportant points. Mr. Johnson claims that he has actually paid $300 or $400 more for some of the cars than Mr. Brackenridge says he can buy them for.

Mr. Brackenridge uses 15 cents a pound as the price of copper, which is a liberal figure taking the average for many years, as against the present extraordinary price of 19½ cents; but even on this basis, the variation from Mr. Brakenridge's figures is trifling. It is substantially true that Mr. Brackenridge's figures are not discredited in the rebuttal or cross-examination.

Supporting Mr. Brackenridge is Mr. Rand. Mr. Rand is a consulting engineer, and has had upwards of thirty years' experience in the handling of securities relating to all kinds of railroads, including street railways; in the valuation of railroad and street railway properties; and as an expert in the famous Consolidated Gas case of New York, and in many cases involving both the consideration of physical and intangible elements of values of public utility corporations. He has been a student of the problem which is presented before this Court for discussion. He worked with Mr. Brackenridge in the personal inspection of this property, and in the fixing and checking up of the prices and the rates of depreciation upon the different items of property considered. Where two men of long experience and established reputation work together, each checking the other, the result is reasonably sure to be approximately correct.

These experts for the City spent many days in the actual inspection of the property. The care they exercised is evidenced by the notes of Mr. Brackenridge and Mr. Rand as to the special work. Mr. Rand drew a freehand sketch of every piece of special work in the whole system. Mr. Brackenridge at the same time made full notes of these pieces of special work, and the more complicated ones he also sketched upon paper.

The notes on this part of their work were put in evidence, and show the completeness of their inspection and valuation. Such material facts as they did not ascertain by personal inspection and investigation they got from Mr. Swan and from Mr. Johnson.

A very admirable summary of the results of the study of these experts was presented as an exhibit, and we herewith print it in this brief for convenient reference.

SUMMARY SHEET OF ESTIMATES GIVING COST TO REPRODUCE NEW, DEPRECIATION AND PRESENT VALUE, OF THE PROPERTY OPERATED BY THE TRENTON TRACTION CO., AS OF NOVEMBER 9, 1915.

Contractor's Profits Have Been Included in all Items.

ITEM.	*Annual % Deprec.*	*Reproduction Cost.*	*Annual Depreciation.*	*Accrued Depreciation.*	*Present Value.*
Tracks outside city,	3%	$324,616.39	$9,738.49	$109,440.76	$215,175.63
Tracks in city,	4%	370,910.80	14,836.43	160,588.64	210,322.16
Overhead line and feeders,	4%	307,100.30	12,284.01	82,549.90	224.550.40
Special work,	10%	70,662.00	7,066.20	35,331.00	35,331.00
Paving,	5%	358,845.02	17,942.25	141,358.17	217,486.85
Power plant,	4%	265,500.00	10,620.00	31,860.00	233,640.00
Car barns and contents,	2%	155,900.00	3,118.00	23,385.00	132,515.00
Cars and other rolling stock,	5%	400,000.00	20,000.00	140,000.00	260,000.00
Real estate, assessed value,	.....	110,025.00	.....	.....	110,025.00
Signal system,	.....	1,052.75	.....	.....	1,052.75
		$2,364,612.26	$95,605.01	$720,884.83	$1,643,727.43
Contingencies, including engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk,	15%	354,691.84	.....	108,132.73	246,559.11
		$2,719,304.10	$95,605.01	$829,017.56	$1,890,286.54

* Depreciation on overhead figured with copper wire out.

An inspection of this summary, together with the detailed sheets which these experts presented and the detailed sheets which Mr. Swan presented, will show that these experts for the city had given to them, or acquired personally, all of the information necessary to make an approximate valuation of this property at the present time, and they are the only witnesses who have made any attempt to make such a valuation.

The valuation which they fixed is corroborated in various ways. It is substantially corroborated by Mr. Betts' valuation in 1910, which was a valuation new. The established fact that the property was then run down, and the raising of $500,000 to restore it to its proper condition is substantial evidence that this property was then depreciated at least to that extent, and probably more. This depreciated value plus the amount since spent upon it, would make approximately the same value as found by Messrs. Rand and Brackenridge.

This valuation is further corroborated by the result of a study of the securities issued by the company and all the actual cash that has ever been invested in the creation of the company's property. The actual money that ever went into this property does not exceed $2,600,000, as will be shown when we consider the securities issued and the cost of the property in a subsequent part of this brief.

This valuation is further corroborated by the evidence which the City has put in with reference to taxation. The letters of Mr. Hurley and of Mr. Johnson from year to year to the tax officials of Trenton contain assertions that the assessments by the City are practically the full value of the company's property. These assessments at no time have exceeded $700,000 over the whole system, as is shown by the tax exhibits from the City of Trenton, and each of the other municipalities through which the property runs, which the City has put in evidence. (See *Exhibits O-2, O-3, O-4, O-5, O-6, O-7, O-34, O-35, O-36 and O-42.*

Both Mr. Brackenridge and Mr. Rand testify that no addition should be made to this property for development cost or any other intangible element of value, or for working capital.

The City's proof is the only legal evidence before this Court of the value of this property at the present time.

POINT IX.

THE VALUE OF THE PROPERTY AS SHOWN BY ACTUAL COST DOES NOT EXCEED $2,600,000.

The valuation of the property made by Mr. Brackenridge and Mr. Rand is supported by a study of the history of the constituent companies. It is not clear that the stock issued by the early horse railroad companies was water, but the presumption is strong that it was. But it is plain that all subsequent stock issues and part of the bond issues represent no money or service paid or rendered towards creating this property. Dr. Betts so finds, and the merger agreements prove it.

Mr. Rand has submitted a table (*Exhibit O-38*), which can be summarized as follows:

Trenton Street Railway—		
Stock,		$1,000,000
Bonds,		2,000,000
Subsidiary Companies—		
Stock,		550,000
Bonds,		1,000,000
Total securities,		$4,550,000
Inflated Securities—		
Stock of subsidiary companies issued with bonds,	$550,000	
Inflation by 1st consolidation,	1,343,000	

By 2d consolidation, ...	36,700	
Bonds owned by M. C. Tr. Co., ...	128,000	
		2,058,000
Bona fide securities issued, ...		$2,492,000

We submit a calculation made up differently which arrives at substantially the same result, viz.:

All stock of Horse R. R. Co.'s at time of first consolidation in 1891—		
Stock, ...		$156,000
Bonds, ...		190,000
Bonds issued by the Consolidated Co. (Tr. Pass. Ry. Co.), ...	$1,000,000	
Less amount paid to Wilson (see *Tr. Pass. Ry. Co.* v. *Wilson*, 11 *Dick. Ch. Rep.* 783), ...	260,000	
		740,000
Second Consolidation, 1898— (Tr. St. Ry. Co.) stock was all exchanged for securities of merged companies.		
Bonds, ...	$2,000,000	
Less used for refunding,.. $1,000,000		
Less exchanged for stock,.... 552,000		
	1,552,000	
		448,000
Bonds of Tr., Penn. and Hopewell Ry. Co.,		350,000
Bonds of M. C. Tr. Co., ...		300,000
Bonds of T., H. and E. Co., ...		350,000
Total realized from securities to 1910,		$2,534,000

This is the maximum actual cost of creating these properties as shown by the proofs in this case. The money expended by the lessee company, being by the Board's own finding made necessary by wrongful diversion of earnings, is a restitution and should not be added to this estimate.

From every point of view, therefore, it appears that the value of this property to-day does not exceed $2,700,000.

The actual cost of this property ought to appear upon the books of the lessor companies. We have demanded these books. At the last moment some of them were produced, too late for even a casual examination. It is safe to assume that if these books showed a cost in excess of the City's valuation the company would put them in evidence.

The Wilson bonds, referred to in the foregoing table, were the subject of a litigation in our New Jersey courts, as above quoted. In this reported case it appears that $260,000 of the issue of bonds in 1891 was taken by one Wilson upon some pretense. The company claimed that he held them as trustee for the company. He, however, managed to hold onto them, and the company never received any of the proceeds of these bonds nor did Wilson ever render any service for them, as the Court expressly finds.

POINT X.

Mr. Ford's Estimate of Going-Concern Value Analyzed.

In the attempt to bolster up the Johnson valuation of this property, Mr. Ford was produced by the company as an expert. He took the position that the physical property should be taken as though it was brand new and so valued, and that in addition to such value there should be added from twenty-five to fifty per cent. for what he called "development cost." The claim

that the property should be valued as new has been argued in another part of this brief.

It is sufficient as to that point to say that if this company had obeyed the spirit of the injunction laid upon it by the Commission when the lease was approved, and had paid each year into a depreciation fund a sum of money sufficient to keep this property at all times in proper condition, the present value depreciated, plus the amount of money in such a depreciation fund, would give at all times a sum sufficient to reproduce the property new. As no adequate depreciation fund was set aside, the physical property must necessarily be valued as we find it in this depreciated condition. Mr. Johnson says he has spent not exceeding $68,000 on account of depreciation in any one year, and has set aside no fund beyond such expenditure. But he now says $135,000 a year is needed. This is a confession that the property is in a badly run-down and depreciated condition.

We submit that the value of Mr. Ford's testimony in this case is completely destroyed by his admission that in his judgment there should be no going-concern value allowed, if it is possible to arrive at the cash investment in the property. Here is his exact language, Case, page 243:

> "I might say in addition, that if we could arrive at the cash investment of this property, there would be little, if any, going-concern value to be added, because the cash investment would reflect the cost of producing a going concern. In the early years of operation the company probably did not get a fair return on its capital invested; and if, in arriving at the cash investment, you allow for that insufficient return, which, of course, the security holders originally had to provide, you would get the present cash investment, which would include such going-concern value."

* * * * * * * *

Case, page 280:

"*Q.* If you knew what it had cost these people in cash, you say you would limit the return to the fair return upon that, plus depreciation account and operating expenses?

A. I think that is a fair way of arriving at a figure.

Q. And you then would not put in any going-concern value?

A. I think that would include going-concern value.

Q. That is, going-concern value would then have been paid for?

A. Would have been paid for in cash."

* * * * * * * *

"*A.* In the case of the cash investment, if that cash investment represented the entire cost of developing the property I would not include—I would not add anything to it for going-concern value."

See Ford's testimony, page 40, to the same effect.

Mr. Ford supports his assertion of twenty-five to fifty per cent. addition for development cost by no facts whatsoever. He cites no actual instances or experiences. He admits that no accounts have ever been kept by any company with which he is familiar of any such item of going-concern value or development cost. In other words, he produces no proof in support of his opinion.

Mr. Ford does refer to the cases of Cleveland and of Chicago, but he put forward no detailed information by which his testimony can be tested. On cross-examination he admitted that in the Cleveland case the matter was settled by an arbitration, one of the conditions of which agreed to in advance was that the company should only charge a three-cent fare, with a one-cent transfer. The valuation agreed upon by the arbitration was determined with this limited fare as a con-

dition agreed upon in advance (Case, Vol. I, p. 379). In the Chicago case he admits that it was a case of a straight out settlement between the company and the city and not a judicial adjudication at all.

He does, however, endeavor to support his opinion by an imaginary illustration. He says that if a city of 100,000 people had no trolley system and one was inaugurated, that the item of development cost would amount to twenty-five or fifty per cent. of the physical value.

On cross-examination it appears that he had never even given the subject of this imaginary illustration any serious consideration. He had not taken into account the kind or cost of existing methods of transportation. He had not taken into account whether the people were familiar with trolley transportation or not. He finally said that they probably had become familiar with trolley transportation when visiting other cities. He finally agreed that we must suppose a more costly transportation system in vogue in the imaginary city. He agreed that the company would do no advertising and would be put to no special expense upon this item of development cost. He admitted that the only expenses of the company in his imaginary city, after the property was in operation, were the expenses that would be ordinarily charged to operating expense account. He was finally driven to the point that what he meant by development cost was that in this imaginary city it would take three years before the patronage of the line would be developed to the full capacity of the city. He said that the company would start at the beginning with eighty per cent. of the business that it was possible to obtain from the existing people in the city, and that within three years the remaining twenty per cent. of the possible patrons would gradually become patrons of the road. (Case, Vol. I, p. 371.)

Let us examine this illustration. In the first place it is open to the objection that it has nothing whatever to do with human experience.

It is a mere guess.

It is an attempt, always fallacious, to imagine what would have happened, if something which didn't happen had happened.

This involves so many elements that it is worse than idle to talk about it. The whole thing is too preposterous for serious consideration.

The preposterous nature of this illustration was shown by the question asked Mr. Ford by counsel for the City.

He was asked whether in all his experience he ever knew of any appraisers of any kind of property who undertook to appraise the value of the property by considering what it would cost to reproduce the property under conditions that had never existed in human history. After much squirming, he was forced to admit that this method of appraisal had never been adopted in civilized life, and said feebly that it was necessary to apply in this case a method that would not be reasonable in the other affairs of life.

To show that Mr. Ford was himself compelled to admit the utter adsurdity of his method of valuation in this respect, we quote from his testimony, as follows, Case, page 278:

> *Q.* You know of no such town?
>
> *A.* I know of none.
>
> *Q.* Then you are measuring the going-concern value by conditions of city life which have not had any existence since the trolley era; is that correct?
>
> *A.* In this country, yes.
>
> *Q.* Then you are measuring the value of this property by conditions that have never existed since the electric era applied to trolleys?
>
> *A.* It is purely a hypothetical case.
>
> *Q.* Will you name to me any article from a hairpin to a locomotive to which you apply any such principle in trying to arrive at value? Is

there any value which is appraised in our market, any physical piece of property, not talking about franchises, physical property purchased by man, which is measured by conditions that have never been known in the trade, is there any such article?

A. I think if you apply some of these theories of rate regulation to other business they become ridiculous.

Q. I am not asking you that?

A. If that is what you mean.

Q. I am asking if you ever knew of a value put upon the appraisement of a suit of clothes by imagining the production of clothes under conditions that never existed; ever heard of that?

A. I never did.

Q. Did you ever hear of a country appraisal of the furniture in a house for sale that was based upon conditions of production of that furniture and those effects that never existed?

A. No.

Q. You never did?

A. No.

Q. Then you are applying to going-concern value an imaginary condition that has never existed since the trolley era; that is a fact, isn't it?

A. I think that is the fact, as far as this country is concerned.

Q. Now, is that sense?

A. I would say that hypothetical case, I think, has been forced on the commissions and the street railway companies by the building up of a theory of value, which when applied to homely articles like shoes and clothing, does not look sensible.

Why is it necessary in the task of ascertaining the value of a property, every item of which has a regular

market value accessible to everybody, to resort to the test of a production under conditions that never existed and which never could exist?

But Mr. Ford's illustration of twenty-five or fifty per cent. of the tangible value of the property as representing development cost is not only preposterous, but it is unscientific. The development cost has no natural relation whatsoever to the value of the property. If we had the actual experience of many companies over a long series of years, and the actual items of development cost were figured out in relation to the cost of tangible property, the percentage relation as a matter of fact could be established, but it would be simply an arbitrary relation. In this case there are confessedly no facts upon which to establish a percentage relation. The estimate of twenty-five to fifty per cent. is so loose that it has no place in a careful investigation like this.

But it is easily possible to find with approximate exactness the amount of money which would represent Mr. Ford's item of development cost, and to determine the percentage of such amount to the value of the tangible property.

Let us assume the cost to reproduce this property at $3,000,000—a figure about half way between the estimate of the company and the City. The company would get at once, according the Mr. Ford, eighty per cent. of the possible patronage. In 1914 the receipts of the company were $776,000. Eighty per cent. of this amount would be $610,000. The operating expenses for that year were about fifty-five per cent. That proportion would give an operating expense for the imaginary company of $335,500, leaving a balance of $274,500. If you were to set aside for this property $95,000 as a depreciation fund, the remaining income applicable to a dividend upon the cost of the property would be $179,500, or a little less than six per cent. upon the cost of the property. If six per cent. is held to be a

fair return, there would be no development cost at all. But if we assume that the company is entitled to earn eight per cent., then the company is short, say, $75,000. This is the amount which represents the possible balance of the patronage which the company is to obtain within three years, and is therefore the outside measure of Mr. Ford's so-called development cost for the first year. If we assume that the acquisition of the remaining twenty per cent. of the patronage was not gradual, but was held off until the last day of the third year, the most that Mr. Ford could claim would be three times $75,000, or $225,000. This, instead of being from twenty-five to fifty per cent. of the cost of producing the property, would be seven and one-half per cent.

But, of course, the twenty per cent. possible patronage to be obtained would be obtained gradually over the course of the three years, and therefore the deficit in the second year would not be as great as in the first year, and in the third year would almost entirely disappear.

$150,000, therefore, upon Mr. Ford's own illustration, would be the outside amount that could possibly represent his item of development cost. This is five per cent. of the cost of the property, instead of twenty-five per cent. or fifty per cent.

This reasoning shows the utterly unscientific nature of Mr. Ford's method of reasoning, and the grossly exaggerated results to which he has testified. In other words, Mr. Ford has not only used a preposterous illustration, but he has grossly mistaken the actual and easily ascertained results of his own illustration.

This reasoning is absolutely clinched by the consideration that the imaginary company would be under the control of the Public Utility Commission, and no money could be issued except for the actual construction of the plant, and when the company showed a deficit for the first year, that deficit, which Mr. Ford calls development cost, would be either charged to capital ac-

count or set aside as a special account to be amortized when the earnings reached a point beyond a fair return upon the capital actually invested.

It is to be remembered that this Utility Commission in the Passaic Gas case, although it allowed thirty per cent. for going-concern value, expressly stated that no such allowance beyond actual deficits would ever be made in the case of a company starting new under the Commission's supervision.

This disposes of the only evidence offered by the company in support of the claim that an amount should be added to the cost of the tangible property to represent development cost.

Further authority on the subject of going-concern value is found in the recent case of *Des Moines Gas Co.* v. *City of Des Moines,* decided by the United States Supreme Court, In this case there was no allowance for going-concern value, and the Court held that if any allowance was to be made for going-concern value, the existence of such value must be proved by the company.

POINT XI.

GOING-CONCERN VALUE FULLY ALLOWED FOR BY THE COMMISSION.

The item of going-concern value in this case has been fully allowed for by the Commission. In the valuation of the property of the company arrived at by the Commission upon the evidence in this case, they have made liberal allowances for every element of value that can be properly classified under the term "going-concern value."

The theory of going-concern value set forth in the opinion in *Public Service Gas Co.* v. *Board of Public Utility Commissioners et al., 84 N. J. L., page* 463, is stated in section 8 of the synopsis of decision, on page 464, in the following terms:

> "In fixing the value of property on which a gas company is entitled to earn a return, it is proper to allow for going value, which includes loss of interest while the plant is in course of construction and while pipe lines are extended, the cost of securing and retaining customers, of encouraging the greater use of gas for fuel and light by the introduction of new and improved appliances, the necessary loss attending experiments, obsolescence of plant apart from the ordinary calculable depreciation which may be charged to current expenses, the expense that attends and the additional value that arises from the uniting of separate companies and the organization of the industry with a view to economical production, and the cost of procuring capital."

Upon this definition of going-concern value, the Supreme Court in that case sustained the Board's allowance of thirty per cent. of the structural value upon the specific proofs in that case.

In all of the cases in this country before commissions and courts, an item of going-concern value has sometimes been allowed and sometimes been refused. When it is allowed it has varied from ten to fifteen per cent., except in the Passaic Gas case where it was fixed at thirty per cent. Of course it follows that each case depends upon its own facts. It is plain that it costs more to develop a gas business than it does a trolley business. In the gas business people have to be sought out in their homes and persuaded to use a new form of light, and as the new improvements are developed in stoves and fixtures people have to be canvassed and persuaded to use them. In the trolley system, however, there is no such thing as drumming up custom, and there are no expenses to be charged under that head.

In the Passaic Gas case the proofs of the experts of the company were that it would take at least six years to develop the business. Here the only proof on that

point is that of Mr. Ford, who says that eighty per cent. of the business will be developed the first year, and that the other twenty per cent. of the business will be developed in the course of the two following years.

There is no testimony in this case on behalf of the company as to the actual expenses. The only testimony is that of Mr. Ford, who never made any study of the property at all, but who was called to give general testimony as an expert in relation to general rules.

Mr. Ford's going-concern value, when he is pressed for a definition, practically comes down to early deficits growing out of the cost of development which could not be met out of earnings. In Case, Vol. I, page 270, he says:

> "*Q.* You say that the development cost is the amount expended after you have built your plant and got it in running order, in getting, developing the business, and I suppose you mean, you did not say so, in making the property fit together, if there is any defect in it, and getting it in working shape, is that about what you mean?
>
> *A.* Yes.
>
> *Q.* That is development cost. The first year or two that development is likely not to come out of earnings; I mean earnings are likely not to be enough to include that, operating expenses, depreciation, and a fair return upon capital, that is so, isn't it?
>
> *A.* That is correct?"

The Commission says, Case, page 839:

> "Except as hereinafter mentioned all proper allowances for intangibles have been heretofore included."

On page 840, the Board says:

> "Throughout this valuation in the allowances made full consideration has been given to the fact that the property valued was a harmonious operating system—a going concern—in success-

ful operation. In view of all the evidence we conclude that the value of the property, for the purpose of fixing rates, does not exceed $3,212,000."

The accurate valuation made by the City's experts, after weeks of painstaking investigation, makes the present value of the physical property about $1,800,000 in its present depreciated state. In fixing a value of $3,200,000 the Board therefore made a most liberal allowance for all of these elements of value which can properly be charged to going-concern value.

Upon the proofs in this case therefore, the element of going-concern value has been very liberally allowed for by the Board.

We respectfully urge upon the court that in any event, no allowance should be made for going-concern value as defined in the Passaic Gas case, unless same is proved in the case.

It is not possible to state a general rule. This is confessed by all of the experts. The true theory is that insisted upon by counsel for Passaic in the Passaic Gas case. We restate it here, not for the purpose of having the court reverse the position taken in the Passaic Gas case, but in order to show that if the definition which we give of intangible values and the method we point out of ascertaining those values is not followed, there is no other satisfactory way of arriving at a valuation of these intangible elements of value.

Our theory is that no piece of physical property can have a value in excess of the cost to reproduce it. This is a universal law of economics. No exception to it can be possibly imagined. The value of a piece of physical property may be, and usually is, very much less than the cost to reproduce it, but it can never be greater than that sum. If the net earnings, after deducting operating expenses, taxes, a depreciation fund and repair and maintenance account, are insufficient to pay a fair return upon the actual cost of producing the

physical property, then the value of the physical property is not worth what it cost to produce it, unless, of course, the future promises large returns. The company still has its franchises and all of the elements which are grouped under the head of "going-concern value," but obviously these elements had no value. When, however, the net earnings exceed a fair return upon the cost of the physical plant, then there comes into existence another element of value, so far as the market is concerned. The value of that element is easily ascertained. That value is measured by the excess of net earnings beyond a fair return, capitalized at a fair rate of interest. Mr. Ford admits this point, when, on page 262 of the Case, in discussing franchise value, he defines franchise value in almost the exact words we have used.

Whatever you call these elements of value, this is the only way that has ever been devised to measure them. The different names given to these intangibles merely indicate a confusion of thought on the subject by courts and commissions. The thing sought to be valued is simply the business that has been built up in connection with the plant. Until the plant pays upon its physical cost there is no business value, except as the future may hold out promise of better returns. As soon as there is an income beyond a fair return upon the physical cost there arises this value, which is really the business of the company. In the market this business is property, and is bought and sold. It exists in a public utility simply because the State has failed to enforce the implied contract of the original franchise that the company shall charge no more than a reasonable rate, that is to say, a fair return upon the actual cash expenditure of the company.

Unless this theory is followed, then the only other plan that can be used is to give a general, liberal value to tangible property on the loose theory that a tangible property held by a going concern is more valuable than

property which is not connected with a going concern. This, of course, is true. If we started by considering the value of the physical property as junk and then added to it the value indicated by the profits of the business, there would be no objection to this process, up to the point where the value equaled the cost of reproduction of the cost of the physical plant.

The difficulty with the present system of fixing going-concern value is that all of the items usually included under that head are properly chargeable to operating expenses, have always been so charged, and therefore the company ought not to be allowed to earn upon it, except they have taken the form of an actual deficit in the early years of the company's business. To the extent that the company has never in its early years been deprived of a fair return upon its actual cash invested, it ought to be allowed that amount in addition to the value of the plant, because it has been money actually invested in the enterprise.

There is not only no proof that this company has ever had any deficits, but on the contrary the proof is conclusive that it has enjoyed immense earnings beyond a fair return upon the cash capital.

Up to 1890 the Trenton Horse Railroad was the company, and its capitalization, both stocks and bonds, was $346,000. This is the only part of the history of the company concerning which we have no definite information in the record. Mr. Ford testified that on the coming in of the trolley era, about 1890, the trolleys were considered in the market as a bonanza, their earnings were so large. He says this condition continued until 1905.

This testimony is worth quoting:

> "*Q.* You spoke in your direct testimony about when they started the trolley era there was a time there when it expanded, the capitalization was expanded, and it was looked upon, I think your term was a bonanza, for awhile; you used that expression, didn't you?

A. Yes.

Q. How long did that period continue?

A. I think until about 1905.

Q. Starting when?

A. Starting with the electrification of the lines about 1890, to 1893."

(Case, Vol. I, p. 399.)

Therefore, the only deficits in this case must have been prior to 1891, and as the total capitalization of the horse railroad company was only $300,000, requiring only an income of $18,000 to provide a fair return, the deficits, if any, must have been very small, even though they continued over a long period of years.

In the face of these facts, no mere guess as to how much the deficit was, or what it cost to develop the horse railroad company, should be allowed. This is admitted by Mr. Ford, on page 271 of the Case, Vol. I, where when he was asked how long in the horse railroad era the condition continued where the income was not sufficient to pay the operating expenses, depreciation, actual or contemplated, and interest upon a fair return upon the cash capital actually invested, his answer was: "I think that would vary." If it would vary, then no general rule can be applied. As he admits he made no study of the Trenton case, except to talk with Mr. Johnson for an hour or two upon two visits, his guess as to development cost of the building up of the horse railroad is immaterial.

That Mr. Ford's definition of going-concern value is practically the early deficits appears clearly in various parts of his testimony. See Case, Vol. I, pages 266, 270–271.

The argument that these items are actual property, and that the company owns them and therefore should be allowed to earn a return upon them is easily answered. The truth is, that the company is not allowed to earn upon all its property. It is only allowed to earn upon the property which it devotes to a public use.

If the company has appropriated out of earnings a fund of money which it has invested in stocks and bonds or land, no commission would think of allowing them to earn upon such property, because it is not property devoted to the public use. Such property as is included under the head of intangible values is property only so long as the Commissions allow the companies to charge excessive rates. The minute the Commissions enforce the implied contract as to franchises, to wit, that the company shall be entitled only to charge rates which will give a fair return upon the cost of the property, or the actual investment, then these intangible elements of value will disappear.

They are property only so long as the public fails to enforce its contract rights in the premises.

They are elements of property built up upon the violation by the company of the implied contract to charge reasonable rates from the beginning.

This is the reasoning to which all of the Commissions and courts in the end must come. Any other line of reasoning leads, inevitably, to the ratification by Commissions and courts of the issues of water securities for which no money has ever been paid. Such a conclusion is intolerable.

For these reasons we submit that a very liberal allowance in this particular case has been made by the Board of the item of going-concern value.

POINT XII.

FRANCHISE VALUATION. THE COMPANY HAS NO RIGHT TO ALLOWANCE FOR VALUE OF FRANCHISES.

That the company has no right to any value of its franchises would seem to be settled by the decision of the Court of Errors in the Passaic Gas case, in which the decision of the Supreme Court in the same case was sustained. In that case the synopsis of the Court's decision, 84 *N. J. L., page* 464, says:

> "The special franchises of a public service company are property, but the right of property therein is not absolute, but is qualified by the right of the State to fix reasonable rates. In determining the reasonableness of rates, no allowance should be made for the value of the special franchise in a case where it is not legally exclusive and where the State still retains the right to fix rates."

This point is clinched by the statement of Mr. Ford, the only expert on behalf of the prosecutor, that he did not make any allowance for franchise values, and that he did not consider that franchise value ought to be allowed in this case. He stated that in his opinion the value of the franchise was simply the excess receipts, *i. e.*, the amount of the net income, over and above a fair return, capitalized at the present rate of interest. Testimony of Ford, Case, p. 262.

POINT XIII.

Working Capital. Not Proved. Not Needed.

The item of working capital is properly allowable in such utilities as gas and electric light and telephones, but it has no place in this case. All such items as stores and duplicate parts are already included in the appraisal, and do not amount to $20,000. There is no proof in the case to justify the Board in allowing anything for this account. Mr. Ford says it should be allowed, but offers no facts or reasoning to support his opinion. Mr. Rand and Mr. Brackenridge say nothing should be allowed. They point to the fact that the company receives cash every day for its service rendered, while wages and supplies are not paid for until several weeks after they are earned or furnished.

The fact that the company took over these great properties without a dollar of working capital, and that neither party to the lease considered any such capital

necessary is conclusive proof in support of our contention in this regard.

The Commission, however, has included in its valuation items for working capital The report of the Commission, Case, page 840, says:

> "Under working capital, materials and supplies properly belong. These have been included in the appraisal of the physical property, and, in view of the facts testified in this case, we do not deem proper any further allowances for working capital."

POINT XIV.

Present Earnings are Ample to Provide Reasonable Return on Value of Property.

The gross earnings of the company for 1914 were $776,000.

While the earnings this year have fallen off, it is due to temporary and sporadic causes, and it is fair to assume that the earnings in the future will not fall below those of 1914, taking one year with another, but, on the contrary, will surely increase with the growth of the City.

Allow for operating expenses the amount actually expended by this company in 1914, viz., $377,000. Allow for taxes $50,000, the amount actually paid in 1914. Allow for depreciation $95,000. Mr. Johnson claims $135,000, but he has never expended in any one year more than $69,000, and he is on record in his letter to the Board, after two years' experience, to the effect that ten per cent. of the gross receipts would be ample for this account for 1915 and afterwards (*Exhibit O* 44).

Messrs. Rand and Brackenridge arrive at $95,000 as the actual yearly depreciation of this property.

Upon this basis we have the following result:

Gross earnings, ...		$776,000
Deduct:		
For operating expenses, ...	$377,000	
For taxes, ...	50,000	
For depreciation, ...	95,000	
		522,000
Net earnings available for dividends, ...		$254,000

Or over 9 per cent. on $2,700,000, which is every dollar ever invested in this property, or is 6 per cent. on $4,230,000.

When it is remembered that the various owners of this property have taken out of it in interest and dividends upon watered securities nearly $1,500,000 in excess of a fair return upon the *bona fide* investment in the property, as we show elsewhere, it is plain that this showing entitles the company to no relief here.

In this case the Court is bound by the New York Consolidated Gas Company case, where the Court held that the only duty of the Court was to see that the rate fixed by the Commission was not confiscatory, and that a return of 4.7 per cent. upon the fair value of the property was not confiscatory.

POINT XV.

Claim that Decrease of Earnings in Year 1915 Was Not Considered by the Board, Analyzed.

This claim is absurd. It would be utterly impossible to fix a just and reasonable rate of a public utility upon the earnings of any one year. Earnings fluctuate with good times and with bad times, and with local conditions. The only fair rule is to take the average of several years as the Commission has done; otherwise, in case of a great fair like the San Francisco Fair, or of a celebration like the Newark 250th Anniversary Celebration, the companies might have an extraordinar-

ily prosperous year, and if their rates were reduced upon the basis of the showing of that year, it would be unfair to the companies when the temporary conditions had passed.

POINT XVI.

Prosecutor's Claim that Value of Property is Measured by Stock and Bond Issue, Answered.

One of the reasons of the prosecutor asserts that the Board did not take into account the issue of stocks and bonds as a measure of value. The overwhelming weight of authority everywhere is that stocks and bonds are merely to be considered as throwing light upon the value of the property and are in themselves no measure of value. This point is conclusively settled in the Passaic Gas case. The portion of the opinion in that case which bears upon this point is found in 84 *N. J. L., page* 484.

This point is further answered by the testimony of Mr. Ford, Case, Vol. 1, page 280, in which he says that in the bonanza trolley era the excessive earnings were covered up by the issue of watered stock, and that the stock was issued for that especial purpose. (Case, page 280.)

POINT XVII.

Discontinuing the Tickets is an Increase of Fare and a Change in Classification Under Utility Statute.

One of the reasons advanced by the prosecutor in this case is that the abolition of the six tickets for a quarter is not an increase in rate or a change in classification. This claim seems too absurd for argument. To the thousands of people who go upon these trolleys to their employment in the morning and return at night, and who regularly buy six tickets for a quarter, the

change to a straight five-cent fare is a *real* increase. In fact one of the claims of the company is that it needs additional money and that the change from tickets to a straight five-cent fare would bring it an additional $100,000 a year. This is an increase of the company's income, and of course by its standard of common sense is accomplished by increasing the rate charged to the patrons of the company.

To the charge that there is a discrimination in charging some people five cents and other people four and one-quarter cents, the answer is that the lower charge is open to all, and that if any man elects to pay five cents he discriminates against himself,—it is within his power to ride for four and one-quarter cents if he purchases six tickets.

The principle of selling commodities by wholesale is an established one in all businesses. In the railroad business it is illustrated by the commutation principle, and the Public Utility Statute expressly gives the Board supervision over changes in classification and in commutation rates, and in the matter of the increase or decrease of fares.

POINT XVIII.

THE LESSEE COMPANY IS A SHAM COMPANY, WITHOUT ANY CAPITAL OR RESPONSIBILITY, AND WITHOUT ANY EQUITY IN THE PROPERTY, AND THEREFORE HAS NO CLAIM UPON THE CONSIDERATION OF THE COURT.

As we have shown in our proof, in this brief, the earnings of the company at the existing rates are ample to pay operating expenses, including repairs and taxes, provide for an adequate depreciation fund, and leave a balance sufficient to pay more than a fair return upon the value of its property devoted to the public use, whether such value is measured by the actual money ever invested in its creation, or by the cost of its reproduction new, less depreciation.

But it is perfectly plain that this company cannot continue to pay these rentals which it has contracted to pay to the lessor companies, provide a proper depreciation fund and pay operating expenses. Some part of this arrangement has got to break. Either the lessee company must default and give back the leased properties to the lessor companies, or the lessor companies must accept a smaller rental, or the public must be made to pay more. We submit that, under the peculiar circumstances of this case, the public cannot be asked to pay more.

When this property was taken over by the lessee company it was in bad condition, owing solely to the fact the money had been paid in dividends which ought to have gone in to maintain and renew the company's plant.

The Utility Board expressly so found, and $500,000 was raised to rehabilitate the plant. The Board of Public Utility Commissioners, in 1910, undertook to provide against the exact condition which has arisen here, namely, a run-down plant and the improper diversion of earnings to dividends and interest, which ought to go into the property. The company, therefore, had full warning and stands before this Court without any equity.

The company, by Mr. Johnson's confession, is composed of two men, neither of whom has invested a dollar which has gone into this plant.

The remarkable testimony of Mr. Johnson discloses the utter hollowness of this lessee company. Mr. Crosby negotiated the leases for the lessee company, paid in $150,000, and Mr. Johnson added another $150,000, and thereupon they went through the farce of pretending to buy these leases from Mr. Crosby for $300,000.

According to this remarkable story, Mr. Johnson is the victim and Mr. Crosby the beneficiary of frenzied finance to the extent of $150,000.

The company started business without a dollar, never had a dollar in money, and never has invested any money, except such sums it has been able to borrow.

These sums must have been borrowed on somebody's credit, because the company never had any of its own.

This whole transaction is a virtual fraud upon the public. It is one of the familiar games of frenzied finance by which the public are plundered, and which an outraged public opinion demands must stop. To compel the people of Trenton to fork over another $100,000 annually in order that these two men, who have never invested a dollar in Trenton, may be saved from the consequences of their improvident bargain in assuming these enormous rentals, and be allowed, in addition, to receive dividends upon their own watered stock, would, we submit, be a gross outrage upon the people of Trenton.

Consider now the equity of the claims of the lessor companies.

In the first place, they are not here asking any relief.

In the next place, they have since 1891 received nearly $1,500,000 in dividends upon watered securities issued without a dollar of return to the companies, either in money or service.

The company's own dividend sheet, in evidence (*Ex. T. & M.* 44), shows stock dividends actually paid to 1910 of, ... $520,000

To this add the interest for twenty years on the $260,000 Wilson bonds, ... 260,000

To this add the interest on $552,000 of bonds exchanged for watered stock in 1898–1914, fourteen years at 5 per cent., 386,000

Add rentals paid since 1910, ... 320,000

Total interest and dividends paid on watered securities, ... $1,486,000

From this it will be seen that the people who have received these immense unearned sums from the people

of Trenton have no claim upon this Court for further indulgence or aid.

Dr. Betts, in his report filed before the lease was approved in 1910, said:

> "If a proper depreciation fund is established and maintained it will be practically impossible for the lessee company to pay the rentals called for in the leases."

This conclusion was again stated forcibly by Dr. Betts in the last sentence of his report, and he recommended that the lease be not approved except upon the basis of providing for a depreciation fund of practically fifteen per cent. of the gross receipts.

In the face of this report the Commissioners approved this lease. They were moved doubtless by the fact that it seemed to promise, by the providing of additional capital, the rehabilitation of this run-down system. It seemed to the Commission the best practical thing to do at the moment in order to provide proper service for the City of Trenton. The Commission was then new and the whole subject was new, and in the light of the then conditions it is not fair to criticise the Commission for their action in approving this lease.

But, nevertheless, the fact remains that the Commission at that time stretched a point to give these people a chance. If after the approving of that lease, in the face of this report of its own engineer, showing that the lease could never be carried out without practical ruin to the property, this Commission had again undertaken to tide over this company by compelling the public to pay increased fares, instead of cutting down the dividends upon watered stock owned by men who have wrongfully diverted into their own pockets the money that should have gone to maintain the property, we submit that it would be an act of great injustice to the people of Trenton, and would destroy public confidence in the whole policy of public utility regulation.

The only thing now to do is to face the real situation and apply the proper remedy.

In this proceeding the Board has held that the existing rate of six tickets for a quarter is neither confiscatory nor unreasonable and has left the lessor and lessee companies to rearrange their relations upon a new basis that will permit proper service and proper maintenance and conservation of the property.

For these reasons we submit that the Court should sustain the order of the Public Utility Board in this case.

Respectfully submitted,

CHARLES E. BIRD,

City Counsel of Trenton.

GEORGE L. RECORD,

Of Counsel.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals.

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Prosecutors,

vs.

RALPH W. E. DONGES, JOHN J. TREACY AND JOHN W. SLOCUM CONSTITUTING THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE INHABITANTS OF THE CITY OF TRENTON,
Defendants.

On Appeal.
On Certiorari.

OPINION.

(Supreme Court of New Jersey. Aug. 2, 1917.)

1. CARRIERS 12(4)—REGULATION—FARES—JURISDICTION.

Public Utility Commission has jurisdiction, under P. L. 1911, p. 380, § 17h, to forbid street railways to put into effect proposed withdrawal of sale of six tickets for 25 cents, increasing rate to 5 cents.

2. CARRIERS 12(9)—CONTRACT AS TO RATES—RESCISSION.

Street railway company cannot rescind contract with city as to fares because of its own mistake, not induced by city, as to power reserved by city to alter its franchise ordinances.

3. Carriers 12(9)—Contract as to Rates—When Complete.

Where street railway company's directors had ordered its officers to execute agreement as to fares on passage of ordinance of same tenor and officers cannot vary its terms and directors do not intend to pass on matter again, agreement becomes binding on passage of ordinance, since all that remains to be done is to execute formal contract.

4. Carriers 12(9)—Contract as to Rates—Consideration.

Where city was threatening to alter franchises of street railway company to its detriment, passage of ordinance which does not contain threatened changes is sufficient consideration for agreement of company to continue existing fares.

5. Carriers 12(9)—Contract as to Rates—Effect on Lessor Roads.

An ordinance as to street car fares, passed by agreement between city and company, is binding also as to lines of companies under long-term leases to party to agreement.

Certiorari by Trenton & Mercer County Traction Corporation against the Inhabitants of the City of Trenton and others, to review an order of the Board of Public Utility Commissioners. Affirmed.

Argued November term, 1916, before Swayze, Minturn, and Kalisch, JJ.

Frank S. Katzenbach, Jr., of Trenton (Edward M. Hunt, of Trenton, on the brief), for prosecutor. George L. Record, of Trenton (Charles E. Bird, of Trenton, on the brief), for City of Trenton. Frank H. Sommer, of Newark, for Board of Public Utility Commissioners.

Swayze, J. Although the voluminous record in this case has necessarily required a long time to examine, the decision may well be rested on a single point, and that within narrow compass. The prosecutor seeks to set aside an order forbidding it to put into effect a proposed withdrawal of the sale of six tickets for 25 cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company, and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

[1] We think it clear that the Public Utility Commission had jurisdiction under section 17, par. "h" of the act. P. L. 1911, 380. The withdrawal of the sale of six tickets for a quarter was an increase of an existing rate under which 82 per cent. of the passengers carried paid a fare of only $4^1/_6$ cents; by the proposed withdrawal they would be forced to pay a fare of 5 cents.

[2] We find it unnecessary to pass upon the question whether the original ordinances and their acceptance amounted to a contract by which the companies were authorized to charge as much as 5 cents, or whether they amounted only to a limitation by which the companies were forbidden to charge more than 5 cents. It is likewise unnecessary in our view to consider whether a fare of $4^1/_6$ cents is reasonable in view of present conditions and the situation of the company. We find that in 1909 a new contract was made between the city and the company which requires the company to sell six tickets for 25 cents upon all cars operated in the city of Trenton. The facts are as follows: For many years tickets had been sold at that rate. In 1909 the street railway company proposed to stop the sale. Naturally great public interest was aroused, threats were made of attacks upon the franchises of the company, and the city authorities were preparing for such an attack and for amendments of the ordinances. An agreement was reached by negotiation, and on October 4, 1909, the Trenton Street Railway Company adopted a resolution waiving its right to notice of alterations in the ordinances, and directing its officers to execute an agreement already prepared (a copy of which was set forth), immediately after the passage of a new ordinance, a draft of which had been submitted by the city counsel to the railway company. This ordinance provided for the sale of tickets at the old rate by the company upon all cars operated in the city of Trenton. The ordinance was passed by the common council on

October 19th and approved by the mayor on October 22d, 18 days after the resolution of the railway company. Had the agreement been signed by the officers of the company as directed by the resolution of October 4th on the faith of which the city passed the ordinance, no question could have arisen. Instead of that, the company, after the passage of the ordinance, rescinded the resolution because, as the rescinding resolution states, it was falsely recited therein that the city had reserved the right to alter the ordinances whenever in the judgment of the common council it became necessary for the public good. It is a little difficult to understand upon what theory it is supposed the false recital vitiates the action of the company. It is not charged that the city did anything to mislead the company in this respect; it could not have done so, since the ordinances were necessarily as well known to the company as to the city; and the proposed written form of contract, submitted by the city counsel, recited what was the exact truth, that the right of alteration or amendment was reserved "by the several ordinances aforesaid or some of them." The addition of the qualifying words was enough to call the attention of the company to the existence of a question as to the extent of the city's right. With this draft before them, the directors chose to put a broader statement in the recitals of their own resolution. Manifestly they ought not to be permitted for their own mistake to withdraw from the agreement after the city had acted thereon.

[3] It is argued that the parties did not intend that there should be a complete contract until the written agreement was executed. The case, it is said, is within the rule of Water Commissioners of Jersey City v. Brown, 32 N. J. Law, 504, decided by the Court of Errors and Appeals in 1866, and applied by the Supreme Court in Donnelly v. Currie Hardware Co., 66 N. J. Law, 388, 49 Atl. 428. These cases are not applicable. In the first the water commissioners directed

that their engineer and attorney should prepare a contract and submit the same for approval by the board before being executed. The court said that several particulars as to the time of finishing the work, as to the manner of doing it, and as to the guaranty of its permanence remained to be settled. The second case was decided upon the ground that there had been no agreement as to the time allowed for beginning and completing the work and the mode of payment, matters which are generally provided for in such arrangements. As Lord Cranworth said in Ridgeway v. Wharton, 6 H. of L. Cases, 238, at 268, the fact that the parties intend a subsequent agreement to be made is strong evidence to show that they did not intend the previous negotiations to amount to an agreement; but at the same time he protested against its being supposed because persons wish to have a formal agreement drawn up that therefore they cannot be bound by a previous agreement if it is clear that such an agreement had been made; and he expressed his approval of Sir William Grant's decision in the leading case of Fowle v. Freeman, 9 Vesey, 351. In Wharton v. Stoutenburgh, 35 N. J. Eq. 266, it was held that a final agreement had been reached, although the parties intended that a lease embodying the agreement should be executed. The applicability of that case to the present is not weakened by the fact that a written memorandum would have been there necessary to satisfy the statute of frauds if the vendee had not taken possession. The taking possession did not supply the terms of the lease, and before decreeing that the lease should be executed, it was necessary for the court to find that a final agreement had been previously reached, and that the execution of the lease was necessary only by way of part performance of the agreement, and not as a condition precedent to the existence of a final agreement. The facts of the present case bring it within the rule of Wharton v. Stoutenburgh. The draft agreement had

been submitted by the city to the company; the company had assented to its terms; all that remained was for the executive officers to execute the written instrument in which the terms of the agreement were set forth; but the officers had no power to vary the terms, and it was not contemplated that the directors should again pass on the matter. The case is as if in Water Commissioners of Jersey City v. Brown, the agreement had been already prepared and adopted by the water commissioners.

[4] There was sufficient legal consideration for the agreement by the company. It is true the ordinance did not affirmatively concede any benefit to the company; on its face it was rather a detriment; but that is too narrow a view to take. The situation was that the company was liable to attack, and the ordinances might be altered or amended in such a way as to be very harmful, or at least productive of long and expensive litigation. What the company secured was the adoption of an ordinance which contained no such drastic changes; the benefit to the company was in what the ordinance omitted, not in what it contained. In saying this, we are not to be understood as suggesting that the mere act of passing the ordinance in pursuance of the agreement would not be a sufficient consideration in a legal sense.

We think there was a valid contract requiring the company to sell six tickets for a quarter, and hence the Public Utility Commissioners might well conclude that such a rate was just and reasonable under the circumstances of the case.

[5] It is said, however, that the Mercer County Traction Company and the Trenton and Hamilton and Ewing Traction Company could not be affected by the ordinances because no official action was taken by either with reference to its terms. This argument overlooks the fact that both those companies were at the time under lease to the Trenton Street Railway Company

for a term of which more than 990 years were still to come. The probability of the two lessor companies being affected prejudicially by the ordinance is negligible.

The order is affirmed, with costs.

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NEW JERSEY
Court of Errors and Appeals

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Prosecutors,
vs.
RALPH W. E. DONGES, JOHN J. TREACY AND JOHN W. SLOCUM, CONSTITUTING THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE INHABITANTS OF THE CITY OF TRENTON,
Defendants.

On Appeal.
On Certiorari.

Brief for the City of Trenton.

This appeal is prosecuted for the purpose of reversing the judgment of the Supreme Court affirming an order made by the Public Utility Commission forbidding the discontinuance by the Trenton and Mercer County Traction Corporation of the sale of six tickets for twenty-five cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

The opinion of Mr. Justice Swayze, filed in the Supreme Court and reported in 101 *Atl.* 562, has been printed separately for the convenience of the Court, and is submitted with this brief.

Mergers, Consolidations and Leases of Trenton Street Railway Companies.

TRENTON HORSE RAILROAD CO.,
Inc. Mch. 9, 1859.
CITY RAILWAY CO.,
Inc. Sep. 6, 1875.
HAMILTON TOWNSHIP ST. R. CO.,
Inc. Sep. 12, 1890.
SOUTH CLINTON AVE. AND BROAD ST. R. CO.,
Inc. Oct. 28, 1890.

Merged into
TRENTON PASSENGER R. CO.
By Consolidation
Sep. 21, 1891.
PENNINGTON AVE. PASSENGER R. CO.,
Inc. Sep. 24, 1897.
MULBERRY ST. R. CO.,
Inc. Sep. 24, 1897.
EWING PASSENGER R. CO.,
Inc. Mch. 28, 1898.

Merged into
TRENTON STREET R. CO.
By Consolidation
June 28, 1898.
MERCER COUNTY TRACTION CO.,
Inc. July 31, 1899.
TRENTON, HAMILTON AND EWING TRACTION CO.,
Inc. Aug. 11, 1905.

Leased to TRENTON AND MERCER CO. TRACTION CO.,
Inc. Oct. 5, 1910.

STATEMENT.

On the opposite page there is arranged for the convenience of the Court a statement which shows the several combinations and leases of the Street Railway Companies operating street railways in the City of Trenton.

Some twenty years ago one of the predecessors in title of the prosecutor inaugurated the practice of selling six tickets for twenty-five cents in the City of Trenton, and this practice was continued until September, 1909, when it was discontinued. But after negotiations with the City officials it was restored in the same month, and has since been followed by the various operating companies. The said negotiations resulted in October, 1909, in the passage of an ordinance by the City requiring the sale of six tickets for twenty-five cents, which ordinance the company agreed to in advance, in writing, and promised to accept by a confirmatory agreement after it should be passed. The confirmatory agreement was never actually executed.

On August 13, 1915, prosecutor notified the City and the Board of Public Utility Commissioners of New Jersey, in writing, of its intention to discontinue the sale of such tickets. The said Board, immediately upon receipt of the said notice, caused a copy of the same to be sent to the Mayor of Trenton with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action of the company, an opportunity would be afforded on August 17, 1915. The Board also caused a letter to be sent to prosecutor acknowledging receipt of the notice from the company, and enclosing a copy of the letter sent to the Mayor of Trenton. On August 17 the company did not appear before the Board, but on application of the City the Board made an order suspending the pro-

posed change until November 16, 1915, and fixing a day for the hearing on the merits. After the making of this order, prosecutor filed a bill in the District Court of the United States for the District of New Jersey with affidavits annexed, in which bill it prayed that "the Board of Public Utility Commissioners of New Jersey may be enjoined from continuing the order of August 17, from conducting a hearing, and from taking jurisdiction of the matter at all;" and also praying for an injunction against the City and its Mayor from enforcing the penalty prescribed in the ordinance. This bill of complaint is Volume II of the State of the Case herein. Upon the filing of the bill an application was made to the Court for a preliminary injunction, upon which an order to show cause why the injunction prayed for should not be allowed was granted, but without any *ad interim* restraint. This application was heard before Circuit Judge Woolley and District Judges Rellstab and Haight, and that Court on October 14, 1915, filed it opinion refusing the preliminary injunction for the reasons which appear in the opinion, the substance of which is hereinafter quoted.

This judgment was appealed to the United States Circuit Court of Appeals, which sustained the judgment of the District Court.

After judgment was rendered in the United States District Court, the hearing before the State Board of Public Utility Commissioners was taken up. Witnesses were heard upon both sides, upon all of the points involved, at the conclusion of which an order was made by the Board of Public Utility Commissioners ordering the prosecutor to continue the sale of six tickets for a quarter. This order appears in the State of the Case, page 844.

The case came before the court below on certiorari of this order. There were thirty-nine reasons assigned by the prosecutor, but they were all reduced by us to the following legal propositions:

First: That the Board of Public Utility Commissioners had no jurisdiction to make the preliminary order of August 17, 1915, or the final order of January 11, 1916, because the prosecutor had no notice of the order of August 17, 1915, and because it has a contract with the City of Trenton authorizing it to charge the five-cent fare.

Second: That the final order of January 11, 1916, was not justified by the evidence in the case.

Third: That the lessor companies of the prosecutor were not made parties to the hearing.

To these main contentions of the prosecutor, the answer of the City of Trenton in substance is:

First: That the Public Utility Commissioners had jurisdiction over this case under the Public Utility Statute; that they had the power to make the order of August 17, 1915. But if the said Board had no such power, the duration of the order was three months and the time has now expired, and therefore there is nothing before this court on that point. That prosecutor has no contract with the City of Trenton, but on the contrary is bound by the provisions of the ordinance passed by the City of Trenton on October 22, 1909, requiring the Traction Company to sell six tickets for a quarter, to which prosecutor in writing expressly agreed, and that such ordinance and agreement constitute a binding contract now in force.

Second: That the order of January 11, 1916, is in accordance with the evidence taken in the case.

Third: That the lessor companies have no interest in this case, as prosecutor has leased their properties under a guaranteed rental, and they are not, therefore, proper parties to this controversy.

Fifty-one reasons are assigned for reversal in this Court, but as none of them presents any new feature, they too are reduced to the three legal propositions already stated for the purpose of this argument.

And, further, as we understand it, this Court will

not consider on appeal a point not raised in the Court below.

POINT I.

IT IS IMMATERIAL WHETHER THE ORDER OF AUGUST 17, 1915, WAS LEGAL; IF MATERIAL, IT WAS LEGAL.

As this order was a temporary suspension of the contemplated action of the prosecutor in discontinuing the sale of the six tickets for a quarter, and the three months of its duration having now passed, it seems idle to discuss the legality of the order.

If the Court, however, considers the point material, the claim of the City of Trenton is, that the company had ample notice and opportunity to be heard. The company itself invited the jurisdiction of the Board by forwarding a letter to the Public Utility Commission notifying the Commission that it intended to withdraw the sale of these tickets upon a specified day (see Case, Vol. 11, *Exhibit C 62, page* 308, letter of August 13, 1915). The forwarding of this letter was a recognition by the company of the power of the Public Utility Commission in the premises, even if the letter itself disclaimed the Public Utility Commission's power over the subject matter, otherwise there was no reason to send it. Immediately upon the receipt of this letter the Public Utility Commission sent a letter to the City of Trenton notifying the City of Trenton of the receipt of this communication from the prosecutor, and appointing Tuesday, August 17th, at eleven o'clock in the morning as the time, and the State House, at Trenton, as the place, where the said Public Utility Commission would sit for the purpose of hearing and considering any application that the City of Trenton might wish to make upon the subject matter contained in the letter from the prosecutor to the Public Utility Commission. This letter appears as *Exhibit C 64, page* 310,

Case, Vol. II. The Commission also caused a copy of this letter to the City to be sent to the Trenton and Mercer County Traction Company, as appears by *Exhibit C 63, page* 309, Case, Vol. II, letter of August 13, 1915, by the Public Utility Commission to the Trenton and Mercer County Traction Company. The transmission to the prosecutor of a copy of the letter from the Commission to the City was a direct notice that at the time and place mentioned therein the subject matter would be taken up and the City, as the representative of the people who were affected thereby, would be given an opportunity to apply for such order as might be reasonable in the premises. This not only was an adequate notice, but it at least was information that on such a day they would have an opportunity to be heard. As reasonable men they were charged with the knowledge that the public officials of Trenton would of course oppose, as they did so strenuously in 1909, the withdrawal of these tickets, and that they would apply to the Commission at the time and place mentioned for some order that would continue the issuing of these tickets until the whole matter could be finally heard.

But the complete answer to this claim of the prosecutor is set forth with reasoning that is conclusive in the opinion of Judge Haight in the United States District Court case, from which we quote:

> "The second ground requires a determination as to whether the order complained of was in fact made without notice to the plaintiffs and without affording them an opportunity to be heard, and if so, whether notice was necessary before the Board could have legally made it. The Board of Public Utility Commissioners was created by an act of the New Jersey Legislature, approved April 21, 1911 (*P. L.* 1911, *p.* 374), and was thereby vested with certain defined powers; among them to fix just and reasonable

rates to be charged by various public utilities, included in which are street railway companies, whenever it should determine any existing rate to be unjust, unreasonable or insufficient, and to hear and determine whether any increase, change or alteration in rates, which might thereafter be made by any public utility, would be just and reasonable. The Board was also vested with power, 'pending such hearing and determination' of the latter question, to order, for a period not exceeding three months, the suspension of the increase, change or alteration until it should have approved the same. It is by virtue of the last-mentioned power that the Board presumed to act in making the order in question. After the lessee company sent the notification to the Board of its intention to discontinue the sale of six tickets for twenty-five cents, the latter caused a copy of the same to be sent to the Mayor of the City with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action by the company, an opportunity would be afforded on August 17. On the same day the Board caused a letter to be sent to the lessee company acknowledging receipt of the notice, asking when it proposed to make the change, and enclosing a copy of the letter sent to the Mayor. The company was not represented before the Board at the hearing, and as far as appears, was not notified whether the City proposed to take any action or make any motion before the Board on the date specified, or otherwise. On that date, however, the City was represented, and on the motion of its solicitor the order in question was made. It thus appears that the only notice the plaintiffs had was that on a certain day the Board would hear any motion that the City intended to make; but

they were never notified that the City intended to make any motion whatsoever or what it would be, and were afforded no opportunity to defend against the motion which was made and the order which the Board entered. Under these circumstances, if notice and hearing were necessary prerequisites, we think the plaintiffs were not given such notice or afforded such an opportunity to be heard in respect to the action which was taken as to satisy the 'due process of law' clause of the Fourteenth Amendment. But we think that the statute creating the Board and defining its powers authorized an order of suspension to be made, without notice of hearing. The powers of the Board, so far as are necessary to be considered, are conferred by Sections 16 and 17 of the act. Section 16 provides: 'The Board shall have power'; then follows, in eleven separate paragraphs, an enumeration of the powers. In some of these paragraphs the exercise of the power is expressly limited to 'after hearing'; in others to 'after hearing upon notice.' Section 17 provides: 'The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined'; then follows, in eight separate paragraphs, an enumeration of powers. It thus appears that the Legislature has carefully defined when a hearing and notice are necessary. The last of the paragraphs of Section 17 confers two separate powers: one to hear and determine, either upon complaint or upon the Board's own initiative, whether an increase, change or alteration in any existing rate is just and reasonable, and the other to suspend, for a limited time, such increase, change or alteration, 'pending such hearing and determination.' The latter power is expressly conferred in so many words, and by a separate sen-

tence, in which there is no requirement that the order can be made only after hearing and notice. It is a separate power, deemed necessary by the Legislature, no doubt, to give more efficacy to the former. The reason for granting it, as well as the context, leads us to the conclusion that it is not limited or qualified by the opening paragraph of Section 17, before quoted. That paragraph, we think, refers to the powers to determine whether the proposed change would be just and reasonable. It is difficult to understand why the Legislature should have required two hearings on the same question. If no other question were presented than that of reasonableness of the rate, as would most often be the case, the first hearing, to be of any effect whatever, must, of necessity, be practically the same as the second. On the other hand, it is reasonable to assume that the Legislature would wish to clothe the Board, to which it had delegated the State's rate-making right, with power to preserve the *status quo* until there could be a hearing and determination upon the merits, without the delay incident to notice and hearing. This is the same power exercised by and conferred upon the Interstate Commerce Commission by the Act of June 18, 1910 (36 *Stat. at L.* 552). Nor do we doubt the right of the Legislature to grant such a power, without violating the Fourteenth Amendment. Nothing more was done than to clothe a quasi-judicial body with a power which has always been exercised by courts of competent jurisdiction."

POINT II.

THE PUBLIC UTILITY COMMISSION HAS JURISDICTION OVER THE SUBJECT MATTER IN THIS CASE. NO ACTION OF THE CITY OF TRENTON SHOWN BY PROSECUTOR COULD OR DID DEPRIVE THE STATE OF NEW JERSEY OF ITS RESERVED RIGHT TO FIX JUST AND REASONABLE RATES.

We content ourselves with a brief statement of the principles involved in this case and a citation of the authorities, relying upon the brief of the counsel for the Public Utility Commission for a more extended discussion of this point.

(a) The power to fix and regulate the rates charged in the conduct of a business affected with a public interest is an undoubted power of government continuing in its nature. *Stone* v. *Farmers' Loan & Trust Co.*, 106 *U. S.* 307.

(b) Since this power is a power of government it cannot be lost by nonuser, nor is it affected by the fact that before the power is exercised the income of the business subject to the power has been pledged for the payment of debts incurred, or that the property employed in such business has been leased to a tenant that relied upon the earnings for the means of paying the stipulated rent. *Chicago, Burlington & Quincy R. R. Co.* v. *Iowa*, 94 *U. S.* 155; *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164.

(c) If the State, directly or through any municipal corporation, has power to establish by an inviolable contract the rates to be charged in a public utility, it can only be where the language is express and the time of the contract limited to a definite term, not grossly unreasonable in point of time. *Stone* v. *Farmers' Loan & Trust Co., supra; Home Telephone & Telegraph Co.* v. *Los Angeles* 211 *U. S.* 265.

(d) The State did not, by the statutes referred to in

the bill of complaint—which in general terms grant authority to fix rates—renounce its governmental power to fix and regulate rates; the only authority granted was the authority in general terms to fix fares. By such general language the State does not part with its governmental power to fix and regulate rates. *Stone* v. *Illinois Central Railroad Co.*, 116 *U. S.* 347; *Stone* v. *Farmers' Loan & Trust Co.*, 116 *U. S.* 307; *Chicago, Milwaukee & St. Paul Railway Co.* v. *Minnesota*, 134 *U. S.* 418; *Minneapolis & Eastern Railway Co.* v. *Minnesota*, 134 *U. S.* 467; *Southern Pacific Co.* v. *Oregon Railroad Commission*, 230 *U. S.* 537; *Milwaukee Electric Light Co.*, 35 *Sup. Ct. Rep.* 820; *Duluth St. Railway Co.* v. *Railroad Commission of Wisconsin*, 152 *N. W. Rep.* 887.

(e) The fixing of a maximum rate of fare by the statute and ordinances referred to in the bill of complaint, did not create an inviolable contract as to rates which prevented the subsequent exercise by the State of the power to fix rates less than said maximum rates, provided such lesser rate is a just and reasonable one. *Dow* v. *Beidelman*, 49 *Ark.* 325, 5 *S. W.* 297; *Georgia Railroad & Banking Co.* v. *Smith*, 128 *U. S.* 174; *Rogers Park Water Co.* v. *Fergus*, 180 *U. S.* 625; *Knoxville Water Co.* v. *Knoxville*, 189 *U. S.* 425.

(f) The Legislature of the State of New Jersey has not conferred upon the municipalities of this State any power to enter into inviolable contracts with street railway companies establishing rates of fare and suspending the State's power to fix and regulate rates. *Home Telephone Co.* v. *Los Angeles*, 211 *U. S.* 265; *Wyandotte Gas Co.* v. *Kansas*, 231 *U. S.* 623.

(g) If the municipal corporation was vested with the power to engraft upon the franchises of the Railway Companies a provision limiting the rate of fares as a condition of the use of the highways for street railway purposes, the act of the municipality in imposing such liability was that of agency of the State in granting the

corporate franchises, and is therefore subject to the power reserved to the State by constitution and by statute, to amend, alter or repeal corporate statutes. The enactment of the statute creating the Board of Public Utility Commissioners and vesting in the Board power to fix just and reasonable rates whenever it determines existing rates to be unjust or unreasonable and temporarily pending hearing to suspend proposed increases in existing rates, was the exercise by the State of its reserved power to amend, alter or repeal corporate franchises. *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164; *San Antonio Traction Co.* v. *Altget*, 200 *U. S.* 304; *City of Mani* v. *Manitowac & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. W.* 925; *Louisville & Nashville R. R. Co.* v. *Railroad Commission of Kentucky*, 231 *U. S.* 298.

(h) A special statutory enactment from the governmental power of the State to fix and regulate rates does not pass to a new corporation succeeding others by consolidation or purchase in the absence of express direction to that effect in the statute.

The same rule is applicable where the constituent companies are merely owned and operated by one of them as authorized by the legislation. An enactment held by the latter will not pass unless so expressly provided. *St. Louis & San Francisco Railway Co.* v. *Gill*, 156 *U. S.* 649; *Matthew* v. *Board of Corporation Commissioners of North Carolina*, 97 *Fed.* 400; *Peoples Gas Light & Coke Co.* v. *Chicago*, 194 *U. S.* 1.

(i) Where the action of the municipality does not establish an inviolable contract suspending the State's power to fix and regulate rates, the power of the Board of Public Utility Commissioners is complete. The Board may, in such case, fix a just and reasonable rate, whenever it determines the existing rate to be unjust and unreasonable, notwithstanding the fact that the existing rate has the sanction of prior municipal action assented to by the company. A just and reasonable

rate so fixed by the Board may be less than that limited by the prior municipal action, or may exceed the rate so limited. This follows from the fact that the existing rate may be unjust and unreasonable to the community served because it affords more than a fair return, or unjust and unreasonable to the utility furnishing the service because it fails to afford a fair return. The power conferred upon the Board is, Public Laws 1911, page 374, Section 16:

> "(c) To fix just and reasonable rates * * * whenever the Board shall determine any existing rate * * * to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential."

City of Dawson v. *Dawson Telephone Co.*, 137 *Ga.* 62, 72 *S. E.* 508; *City of Manitowoc* v. *Manitowoc & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. E.* 925; *Milwaukee Electric Railway & Light Co.* v. *Railroad Commission of Wisconsin*, 153 *Wis.* 592, 142 *N. W.* 491; *City of Benwood* v. *Public Service Commission (W. Va.)*, 83 *S. E.* 295, *L. R. A. (N. S.)* 1915 *C.*

(j) Section 17 (h) of the Public Utility Act clothes the Board with power pending a hearing and determination on the justice and reasonableness of a proposed increase in any existing rate, or change or alteration in any existing classification, to order the suspension of such increase, change or alteration for a period not exceeding three months.

The statute does not make the exercise of the power of suspension dependent upon notice and hearing as to whether or not the power shall be preliminarily exercised in a specific case.

In this respect it resembles the Interstate Commerce Act.

No constitutional provision makes notice and hearing a prerequisite to the exercise of the power of suspension.

See *Home Telephone and Telegraph Co.* v. *City of Los Angeles*, 211 *U. S.* 265, 278.

POINT III.

ORDINANCE OF CITY OF TRENTON OF OCTOBER 22, 1909, REQUIRING SALE OF SIX TICKETS FOR A QUARTER, WAS A CONTRACT SUPERSEDING PREVIOUS CONTRACTS, IF ANY EXISTED.

Even if the ordinances relied upon by the prosecutor constituted a contract, that contract was abrogated by the ordinance of October 22, 1909. The following undisputed facts in the case conclusively established this contention.

For many years prior to September, 1909, the Trenton Street Railway Company (then the operating company), and the constituent companies which were merged into it, had voluntarily adopted the practice of selling six tickets for a quarter, each ticket good for a ride within the limits of the City of Trenton. That on Monday, September 13, 1909, an announcement was made on behalf of the company, then operating the Trenton Street Railway system, that no more strip tickets would be sold by the conductors after 6 P. M., on the 15th day of September, 1909, and on the said 15th day of September, the actual sale of the said tickets was discontinued in accordance with said notice. That the announcement of the purpose of the company to withdraw the sale of these tickets and the actual withdrawal of the same, aroused widespread indignation among the citizens and public officials of the City of Trenton. The action of the company became the leading news feature of the local newspapers from the 13th day of September, daily, until the whole matter was settled by the passage of the ordinance re-establishing the sale of the tickets on October 19, 1909. The subject was taken up by the Chamber of Commerce, of Trenton, and the Merchants' Association of that City, and by the Mayor and by the Common Council.

The Mayor of the City addressed strong messages

to the Common Council upon the subject of the withdrawal of these tickets, in substance, reciting that the company had grossly violated the provisions of the City ordinances in respect to the schedules of its cars, in the matter of running old and unsanitary and flat-wheeled cars, in the matter of running cars upon parallel tracks in the same direction, and called attention to various other violations of the City ordinances and instances of poor and inadequate service.

The Mayor, also, in a special message directed to the Council, raised the point that some of the company's franchises were probably void, and that a legal action would result in their being declared without any rights upon certain of the streets of the City, and suggested that the City should proceed by appropriate legal action to have these franchises set aside.

The result was such an aroused public opinion that representatives of the City and representatives of the company had several conferences from day to day.

As a result of these conferences the President of the Street Railway Company, on September 18, notified the Common Council that the Company was willing to compromise the strip ticket matter by restoring the sale of the strip tickets, not on the cars, but at certain stores or other places within the city limits. This compromise did not satisfy public opinion or the public officials, and various members of the Common Council announced that at the Council meeting to be held on Tuesday evening, September 21, 1909, they would introduce resolutions inaugurating an attack upon the company's franchises, and looking to the enforcement of various ordinances of the City as to better service.

As a result of all these influences assurances were made by the company to the Common Council on the evening of its meeting on September 21, that the tickets would be restored for sale upon all the cars the following Friday.

At said meeting a resolution was adopted to which the attention of the Court is particularly directed. It recited that in the ordinances of the City granting to the company operating the street railway and its predecessors the right to construct and operate street railway lines in and upon the public streets of the City of Trenton, the City reserved the right to alter or amend the same at any future time whenever in the judgment of the Common Council it should become necessary for the public good so to do. It recited that in said ordinances, or some of them, it is provided that no such alterations or amendments shall be made without giving to the Railway Company affected thereby one month's written notice. It recited that in the judgment of the Common Council it is necessary for the public good that the existing ordinances should be altered or amended so as to provide for the uninterrupted sale by the company of tickets at the rate of six tickets for twenty-five cents, or that in lieu of such amendment or alteration, a new ordinance should be passed requiring the sale of such tickets by the company upon the terms aforesaid, provided the company was willing to waive, in writing, one month's notice thereof, to which it was entitled, and signify its willingness to enter into a written contract or agreement with the City of Trenton accepting the terms of such proposed new ordinance, and agreeing to comply with the requirements thereof.

The resolution then proceeds to designate five members of the Common Council to act as a committee to confer with the officers of the Trenton Street Railway Company relative to the said matter.

The resolution further provided that if the company should fail within ten days to give such written waiver and signify its willingness to enter into a written agreement, that the City Clerk should forthwith give one month's written notice to the company of the intention of the Common Council to alter and amend the ordinance in the manner hereinbefore described.

The resolution further provided that in the event that the company should waive such notice and make such agreement and accept the terms of the new ordinance, that the City Counsel be directed to prepare a draft of such proposed new ordinance for introduction at the next meeting of the Common Council.

As a result of the passage of this resolution and the other influence hereinbefore described, on Wednesday, September 22, the Street Railway Company actually restored the sale of the strip tickets on all of its cars.

The committee appointed by the Common Council accompanied by the City Counsel, Mr. Charles E. Bird, met the representatives of the company in conference, and in such conference it was agreed that the sale of the six tickets for twenty-five cents should be continued by the company, and that a formal agreement to that effect should be made between the City and the Company. At this conference the company agreed that the sale of the strip tickets, which in fact had been theretofore resumed, as before stated, should be continued for the future, and that the company stood ready to take whatever action the City requested in order to make the obligation to sell these strip tickets binding upon the company in the future. It was thereupon arranged that the Board of Directors of the company should pass a resolution waiving its right to receive from the City any notice relating to the passage of a new ordinance providing for the sale of the said strip tickets, and agreeing to the adoption of a new ordinance to that effect, and further agreeing that when the ordinance was passed the company would execute another written agreement ratifying the said ordinance. In accordance with this arrangement the Board of Directors of the Trenton Street Railway Company, on the 4th day of October, 1909, adopted the resolution which appears as complainants' *Exhibit C 68*, page 321 of complainants' bill of complaint in the District Court case. (Case, Vol. II.) The attention of the Court is particularly directed to

this resolution. *It recites that the City in its several street railway ordinances has reserved the right to alter or amend such ordinances.* It recites the provision of the ordinance that the company shall have one month's written notice of any proposed amendment. It recites the resolution of the Common Council at the meeting held on the 21st day of September, to which reference has been heretofore made under this point, notifying the company of the desire of the Common Council to amend the existing ordinances or to pass a new ordinance, providing for the sale of strip tickets. It recites that the amendment of the several ordinances would involve a greater expense and delay than would be necessitated by the passage of a new ordinance. It recites that the City Counsel, on behalf of the City, has submitted to the company a draft of such proposed new ordinance, and of a written form of agreement to be executed by the Company, of which copies are mentioned as attached to the resolution, and *that the Board of Directors have fully considered the premises, and are willing to aid in the speedy passage of the proposed new ordinance.* The resolution then provides that the company *waives all right to receive any notice relating to the passage of the said new ordinance,* and that the proper officers of the company are directed to transmit to the said City a duly authenticated copy of the resolution.

The resolution further provides that immediately after the passage of the said new ordinance by the City, substantially in the form embodied in the copy annexed to the resolution, the proper officers of the company are directed execute an agreement in form substantially similar to the draft of the said agreement annexed to the resolution. This resolution of the directors was transmitted to the City on or about October 2, 1909.

Annexed to this resolution was a draft of the ordinance and of the subsequent agreement that the company was to execute after the passage of the ordinance, which ordinance is the ordinance in question in this

controversy and is complainants' *Exhibit C 55*, page 304, of the bill of complaint, in the U. S. case (Case, Vol. II), and which agreement is appellants' *Exhibit C 70*, page 325, of the bill of complaint in the U. S. case (Case, Vol. II).

On the 19th day of October, 1909, the said ordinance in the form recited in the resolution of the company's directors, was passed by the Common Council and approved by the Mayor on October 22. This is the ordinance which is in question in this case, *Exhibit C 55*, page 304, of complainants' bill of complaint in the U. S. case (Case, Vol. II). It provides expressly that the Street Railway Company shall be required to sell at all times, upon all of its cars, strip tickets at the rate of six tickets for twenty-five cents, and that the Mayor of the City shall be authorized to revoke the license of any car operated by the company upon which tickets are not sold. This ordinance was introduced October 5, 1909, referred to the proper committee, and passed October 19, 1909, and approved October 22, 1909.

Here, then, was an agreement reached after conferences between the representatives of the City and the representatives of the company, and carried out in writing in accordance with the verbal arrangements made by the representatives of the City and of the company respectively. The company agreed, by resolution of its directors, to waive any right to any notice that it might have of the intention of the City to pass this ordinance, and agreed that the City might pass it, and that the company would execute a written agreement after it was passed formally accepting its terms, and the officers of the company were authorized to execute such an agreement *immediately* upon the passage of the ordinance by the Common Council and its approval by the Mayor.

We insist that these several actions by the company and the City constituted an agreement on behalf of the company to maintain the sale of these tickets upon

all of its cars as long as it should exercise its franchises.

The company attempts to escape from the obligation of this contract by asserting two defenses: First, that it was misled into making the contract by the recital in the resolution adopted by the company's directors to the effect that in all of the ordinances of the Common Council to the company and its predecessors, the right was reserved to amend such ordinances. Our answer to this is that if said recital was a material fact in the negotiations and in the agreement, then of course it was the company's business and that of their legal advisers to ascertain whether said recital was true in fact or in law. If it was not a material recital then it does not affect the agreement. It is therefore immaterial whether this recital is as a matter of fact true or not true.

This claim of ours is absolutely clinched and proved beyond any discussion by the statement of John A. Rigg, General Manager, or whatever he was of the company, in his affidavit annexed to the bill of complaint in the U. S. (Case, Vol. II, page 63), wherein he specifically states

> "that the Trenton Street Railway always claimed that the City of Trenton had no right to alter or amend the ordinances * * * so as to in any way lessen the amount which the company had the right to charge for transportation of passengers * * * under said ordinances."

Our claim that this recital was not a material part of the agreement and did not enter into the company's mind is again confirmed by the first recital in the form of agreement which the company agreed to execute after the passage of the ordinance (complainants' *Exhibit C 70*, page 325, Case, Vol. II). In that agreement the following recital appears at the top of page 326:

> "Whereas, in and by the several ordinances aforesaid, *or some of them,* the right was reserved by the said party of the second part to

> alter or amend said ordinances at any future time, whenever, in the judgment of the Common Council of said City, it should become or be necessary for the public good so to do."

There is no possible denial of the fact that this right was reserved as to some of the ordinances of prosecutor, or its predecessors. The company's directors had this agreement in front of them when they passed their resolution drafted by their own counsel, and this agreement was annexed to the said solution. Therefore the claim that they were misled by the recital that all of the ordinances contained this provision falls to the ground.

As another defense to the validity of this solemn agreement, the company alleged a failure of consideration. Our answer to this claim is, that there was a most substantial and vital consideration that passed from the City to the company in return for this agreement. The consideration was the removal of the public and the official hostility to the company. The Mayor had publicly called upon the Council in a special message to attack the company's franchises; that the Council had started measures looking to compelling the company to buy new cars and to abolish flat wheels, and live up to its schedule, and to adopt new and reasonable schedules, and to twelve or thirteen other points which the City had raised as against the company's service or obligations under its franchises. It was this wave of public indignation and this threat of adverse City action that caused the company to yield. This is expressly proved by the assertion of General Manager Hurley in his letter to the Council, which was delivered on the evening of September 21st, wherein he says specifically:

> "We are desirous of doing everything in our power to meet the demands of the citizens, realizing that their good will is our greatest asset."

The good will of the public, says the Manager of the company, is the chief asset of this company. When by the making of this agreement the animosity of the public was removed, and its good will was won back, the company obtain the thing which was the real consideration for the making of the agreement.

The company therefore received its consideration, and the claim that its action was without consideration is therefore without force.

The company further claims that after the passage of the resolution by the Board of Directors waiving the notice in the ordinance, and agreeing to accept its provision and execute the contract to that effect, it discovered that the recital in the said resolution of their Board of Directors was untrue, and subsequently to the passage of said resolution rescinded the same. This resolution of rescission is *Exhibit C 69*, page 322 (Case, Vol. II). This claim is entirely without force if the foregoing reasoning is sound. If the recital in the resolution of the Board of Directors was passed upon by their own counsel, and they had full knowledge of its meaning, or if the recital was immaterial and was not a material part of the agreement, then it was impossible for the company to rescind the agreement after they had received the consideration, to wit, the restoration of public favor, and after the city had performed its part by the passage of the ordinance agreed to beforehand, and stopped proceedings to invalidate the company's franchise.

The resolution passed by the Board of Directors agreeing to execute the subsequent agreement after the City should act by the passage of the ordinance, simply put the company in the position, after the passage of the ordinance, that they could have been then and could now be compelled to execute the agreement agreed to be made. The company after it had received the benefit which the agreement to submit to the ordinance brought them in the way of the cessation of public agitation,

and in the fact of the abandonment by the City of the proposed attack upon the franchises, could not thereafter refuse to execute the agreement to which it had bound itself. As a matter of fact, the execution of this agreement was a mere formality. It is obvious that its execution was provided for merely that there should be additional evidence of the agreement between the City and the company.

The prosecutor does not claim that it has ever notified the City that it had rescinded the said resolution. All that appears is that the confirmatory agreement was never executed.

This amounts to a fraud upon the public. There is no other way to properly characterize it. If these Directors have known all of these years that the agreement they made with the City was void, and have not so notified the City, they have put the City in a false position, and have induced it to rest secure in the belief that the agreement between the City and the company was a valid one, and they have obtained all of the advantages in the way of a favorable public sentiment, and immunity from official attack, which the concealment of their position has brought them.

During all of those years they have sold these tickets they have acted in exactly the same way that they would have acted if they had actually executed the confirmatory agreement, which they failed to execute. We submit that this in any event is a ratification, in whole, of the agreement which they had made with the City, and is of equal binding force as if they had executed the confirmatory agreement which they failed to execute.

The cases cited in support of the prosecutor's position that there was no contract until the executory agreement was signed, do not fit this case at all. All these cases go upon the supposition that the minds of the parties have not met until the execution of the final agreement. They are all cases where only a preliminary

and general understanding was reached in the first instance, subject to be revised and modified, and these revisions and modifications to be stated in a subsequent agreement. In this case the minds of the parties met, and when the City Council passed the ordinance and sent a copy of it to the company, and the company by formal resolution recited the ordinance, expressly indicated its assent to its provisions and promised to execute not a modified agreement, but in the exact form annexed to the resolution. If the City had changed its ordinance in any material part after the passage of this resolution by the Board of Directors of the company, then there might be some force to the claim that the minds of the parties had not finally met.

Finally, there was no necessity for any specific consideration in this case. The City and the company had relations which had been established by ordinance. These relations were mutual. It is well-established that when parties to an agreement modify an existing agreement that the modification of the agreement is in itself the consideration, or is evidence of mutual advantages which constitute the consideration.

That these several acts constitute a contract between the Trolley Company and the City is supported by the case of *Jersey City* v. *Jersey City and Bergen Railroad Company*, 70 *N. J. L., page* 360. This was a case where provisions were incorporated in the ordinance requiring the company to pay license fees.

POINT IV.

Ordinance of October 22, 1909, Valid as an Ordinance if Not as a Contract.

If the facts set out under the previous point do not constitute a contract, nevertheless it is plain that the ordinance of October 22, 1909, was a valid exercise of the power vested in the municipality to amend the ordinances previously granted to prosecutor's lessor com-

panies. This ordinance, being valid, must stand until the Utility Board shall, under its power to fix just and reasonable rates, change the conditions as to fares established by the ordinance.

The prosecutor claims that this power of amendment does not extend to changing fares, because it claims that that is a vital matter. If this claim was sound, it would amount to the position that no amendment of an ordinance can be made which imposes any additional financial burden upon the company. There is no difference in principal between the power of the City to compel the company to put on additional cars, to abolish flat wheels, or to pave between the tracks, or to improve the service in any way through the power of amending an ordinance, and the power to reduce the fares. Any exercise of the power of amendment by the City government necessarily imposes a financial burden upon the company. The test is not whether the ordinance is directed to the amount to be charged for the fare, or to any other part of the service, but the test is whether after the amendment has gone into effect, there is still enough income left to afford a fair return over the value of the property. If the City by amending the ordinance compels the company to run so many cars that the existing rate is unprofitable, then the company can raise the rate, or if it is limited as to the rate, then the ordinance requiring an excessive expenditure for service must fail. That this is true appears from the consideration of the possibilities of the future.

Supposing a new motive power cheaper than electricity is discovered, or a cheaper method of producing electric power is discovered, whereby the company could transport passengers at a cost of one cent apiece, with the result that its earnings would be fifty per cent. upon the fair value of its property, is it not plain that both the City would have the power to amend the ordinance so as to reduce the rate, and that the Public Utility Commission would have power to reduce the rate so that the

net earnings would afford only a fair return upon the value of the property?

POINT V.

THE COMPANY IS BOUND TO MAINTAIN THE SALE OF TICKETS BY ITS OWN AGREEMENT WITH THE PUBLIC UTILITY COMMISSION.

It appears by the record offered in this case by Mr. Sommer of the application of the company for the approval of the Public Utility Commissioners of the lease by which it obtained control of the Trenton Street Railway system, that all of the present difficulties with which prosecutor is now struggling were foreseen by the Commission, made the subject of discussion and investigation, and resulted in a virtual agreement between prosecutor and the Commissioners. The proof of this statement appears in the quotation from the testimony taken in that proceedings given by Mr. Crosby, the representative of the existing companies and the president of the newly formed lessee company, which was read into the record. (Case, page 474, line 10.) Mr. Crosby said under oath:

> "There has been some contention in this particular case as to whether the tariff to be charged is fixed at five cents or a possible four and a sixth cents. I have not been able to find exactly what the legal status is as recognized by the (lessor) companies. I am under the impression they are practically committed to the six-for-a-quarter rule. I suppose we inherit that committal. If not, I should not have the authority to commit them, but I am ready to say, if there is any doubt, so far as we are concerned, we are willing to submit to a friendly suit to settle the question."

He further said (Case, page 474, line 36):

> "I looked at the matter when going over the

estimates as to probable earnings that we should never have more than six-for-a-quarter tickets. If the ordinance has been passed and accepted, that settles it."

To clinch this point, Mr. Sommer, then President of the Commission, asked this question (Case, page 608):

"*Q.* In making the estimate, however, of whether the future, on the lines laid down by the lease, would be profitable, you use as a basis what: five-cent fare or the six-for-a-quarter fare? *A.* We eliminated it in one sense. * * * WE HAVE BASED IT ON THE SIX-FOR-A-QUARTER BASIS REALLY. I should say, in regard to the six-for-a-quarter basis, there was no thought that the question would be raised for a change to five cents. Mr. Rigg told me they had made a spurt and had gone back. And he said they did not know just what the legal status was."

We submit that this language amounts to an agreement that this particular lessee company was prepared, as a condition of receiving the approval of the Commissioners, never to raise the question unless it was compelled to by their lessor companies, and that in that event it, the lessee company, agreed that it should be settled by a friendly suit. This means that the question as to whether there was a legal contract which the lessor companies could avail themselves of to discontinue the sale of the strip tickets, if ever raised, should be settled by a friendly litigation to determine the legal point involved.

We submit, therefore, that prosecutor obtained the approval of the Commission to this lease upon the distinct representation that it would not attempt to change the practice of selling six tickets for a quarter, except as the result of a friendly litigation upon the legal point of the contract. The Commission relied upon that representation in approving the lease. They should not be

allowed at this late date, after they have been disappointed in their anticipation of being able to squeeze the Trenton public into paying these rentals upon millions of watered stock, and to have something left over to pay dividends upon their own stock, all of which is shown by Mr. Johnson's testimony to be pure water—they should not be allowed in this proceeding to raise this question which they expressly covenanted not to raise. They do not show that they have been requested to raise this point by their lessor companies.

POINT VI.

Burden of Proof.

The prosecutor claims that the Commission erred in holding that the burden of proof was upon the prosecutor in proving that the new rate of a straight five-cent fare would be just and reasonable, and that the existing rates were unjust and unreasonable.

Had the prosecutor sought to change the existing conditions and give up a rate which had existed for twenty-five years, and to put in force a higher rate, it is obvious that the burden of proof was upon the company seeking to make the change.

But if the point was important and the burden of proof was upon the City, an inspection of the record will show that by a very great preponderance of proof, the City has established that fact both that the existing rate is more than just and reasonable and that any increase in the rate would be unjust and unreasonable. This will appear as we discuss he merits later in the Brief.

POINT VII.

The Prosecutor's Valuation of its Property is Excessive.

We contend that prosecutor has failed to meet the burden of proof that the existing earnings do not fur-

nish a fair return upon the value of the company's property which is devoted to a public use.

The prosecutor undertakes to prove a valuation of $3,700,000 for physical property, to which it adds anywhere from $1,000,000 to $2,000,000 for what Mr. Ford terms "development cost." Let us analyze these figures.

Mr. Johnson makes up his figures by taking the valuation of the physical property which he made in 1910, before the properties were taken over. This value he finds to be approximately $3,200,000, to which he added some $800,000 which has been subsequently spent upon the property. We attack this valuation upon many grounds. In the first place, he admits that his valuation was not made wholly by himself. He admits that he had the assistance of other people in gathering and marshaling his data, and these people are not produced for cross-examination. He does not produce his original notes. Nor does he produce the details of his valuation requested by the City.

This valuation in 1910 Mr. Johnson admits was what he called a valuation new. That is to say, he valued all of the property as though it was new and in good condition.

There is no dispute that this property was at that time badly run down.

Confirmation of the fact that the property of the prosecutor was very seriously depreciated appears in several ways. Mr. Hurley, the General Manager of the Trenton Street Railway Company, wrote a letter to the tax commissioners in August, 1907 (*Exhibit O 36*), in which he said:

> "As to our property in the streets, we can show unquestionably that much of the track will have to be entirely renewed within the next year or so."

The City of Trenton, at this very time in 1910, made formal complaint to the Board of Public Utility Com-

missioners that the company's condition was bad, specifying the exact particulars upon which its charge was based. Upon this complaint the Board of Public Utility Commissioners used the following language in its order:

> "The Board of Public Utility Commissioners for the State of New Jersey, after consideration of such testimony and the results of such inspections, determines that the Trenton Street Railway Company DOES NOT NOW FURNISH SAFE AND ADEQUATE SERVICE in the City of Trenton, and that in order that such service may be furnished by it, it is required that the following work be done."

Then follows twelve specific requirements, ranging from the complete reconstruction of the track on specified streets to the repair of joints on specified streets.

The Board further finds that

> "The work of RECONSTRUCTION and REPAIR, hereby ordered to be done, SHOULD HAVE BEEN DONE HERETOFORE from time to time as the occasion therefore first arose."

This is an official finding by this very Board that the condition of the company's plant at that time was so bad that it could not furnish safe and adequate service. It is in evidence that $500,000 was raised as a necessary condition of approving the lease in order that this property might be rehabilitated. This is conclusive proof that the company's property at that time was heavily depreciated, and, therefore, the value new found by Mr. Johnson is practically irrelevant, unless it is supplemented by some evidence to show to what extent it was depreciated. This the company has made no effort whatsoever to do. There is not a scintilla of proof in this case to show what was the real value or the real condition of this physical property at the time of Mr. Johnson's valuation in 1910, except the proof which I have cited to the effect that it was badly depreciated. The burden is, therefore, upon the company to establish

the value new less the depreciation in 1901, if it intends to make use of the value at that time as the basis for arriving at the value at the present time. This is so plain that it does not admit of any argument, and it is fatal to the company's position, which requires that it should furnish conclusive proof of the value of the company's property at the present time.

There is no evidence by Mr. Johnson, or by Mr. Ford, or by anybody else, showing the valuation of the company's property at the present time. Nobody on behalf of the company has made any attempt to value the property in its present condition, except by taking the valuation new as found by Mr. Johnson in 1910 and adding to it the money since expended.

The company offered as part of its proof the valuation made by Dr. Betts for the Commission, at the time the Commission was considering the application for the approval of the lease. This appraisal of Dr. Betts was made at about the same time as that of Mr. Johnson. It was put in evidence by counsel for the company. Dr. Betts' estimate of the total value of the property was approximately $2,600,000. This valuation is very far from that of Mr. Johnson, but it is offered by the company as corroborative of the correctness of Mr. Johnson's estimate at that time.

Dr. Betts' valuation is open to many objections. In the first place, he frankly says that he did not make this examination in the way that he would have made an examination if he had been valuing the property for the purpose of enabling the Commission to fix a just and reasonable rate. He stated that he only valued the company approximately for the purpose of determining whether or not the terms of the lease ought to be approved. Dr. Betts states that he would have made a valuation for rate-making purposes much more in detail. This alone is sufficient to invalidate this valuation as proof of the real value of the property at that time.

Dr. Betts valued the property as new. He made no

attempt to determine how badly the property was depreciated, or to fix the amount of the depreciation, or to fix the value of the property in its depreciated condition. He further stated that several of his subordinates spent three or four weeks in the field, and that he used the data so gathered, with only such verification as he was able to give it by three or four days in the field. We submit that this invalidates Dr. Betts' valuation as proof of the value at that time. The City is entitled to have the men who did the field work and who marshaled the data which Dr. Betts used put upon the stand for cross-examination.

The Betts' valuation, however it is viewed, leaves the question of the depreciated value of the property in 1910 absolutely unproved. Therefore, the base of the company proof of present value is not shown. No result can be obtained until this basis valuation of the property in its depreciated state in 1910 is shown by competent proof.

The company upon this invalid basis proceeds to build up the existing value by adding some $800,000, which the company claims has been spent upon the property since it took it over. The disposition of this $800,000 is the subject of conflicting claims by Mr. Johnson and by employees of the Board who have examined the company's books with reference to this expenditure. These witnesses testify (Case, pages 793 and 804) that they find that, according to the rules of the Board, about $550,000 of this sum can properly be charged to capital account.

This is positive proof by the Board's own employees. Against it are the confused and confusing statements of Mr. Johnson on the stand as to the expenditure of this money. He used the words "rehabilitation," "road and equipment," "repair account" and "maintenance account" with such inaccuracy and confusion that no clear deduction can be drawn from his statements as to how this money has actually been spent. A careful reading

of Mr. Johnson's testimony on this point will justify this statement.

We have, therefore, as the result of this method of proof by the company, an unknown figure as the value of the depreciated property in 1910, plus $550,000 as found by the Commission's employees to have been spent subsequently on capital account.

The company claims that it should be allowed this value new in 1910, and that no depreciation should be taken off. We submit that there is no finding by any court or commission in the whole history of rate-making in this country that affords any justification for any such claim. To argue it at length would be to impose upon the patience of the Court.

The company claims an additional valuation for going-concern value on Mr. Ford's cheerful guess of anywhere from twenty-five to fifty per cent. of tangible value. This claim involves the consideration of going-concern value or development cost, which we will treat of in a subsequent point. We here show that the mere statement of anywhere from twenty-five to fifty per cent. is not in evidence upon which the Board could act. It is too vague, too indefinite, and too general.

Mr. Ford made no study of the situation in Trenton, he merely came down a couple of times and talked with Mr. Johnson, the manager. As will appear when we discuss the subject of going-concern value, he expressly said that there should be no allowance for going-concern value beyond the actual cash invested in building up the property, if that fact could be ascertained. As we shall show later, it is easy in this case to prove the money that has been actually expended upon the plant.

Mr. Johnson made no estimate of franchise value at all.

This proof, such as it is, is completely offset by the testimony of the City's two experts, who made a study of this situation, extending over many weeks, that no

sum whatever beyond the value of the physical property in its existing state ought to be added in this case. The preponderance of proof, therefore, on this point is with the City and not with the company.

We submit that upon the company's evidence they have shown substantially as follows: That it would have cost in the fall of 1910 approximately $2,600,000 to reproduce the company's property new; that it was in a depreciated state; that such depreciation is fairly measured by the amount of 550,000 found by the Board's employees to have been actually expended to remedy this depreciation since 1910. That would make the value of the company's physical property at the present time approximately $2,600,000. Curiously enough this is almost the identical figure found by the joint appraisal of the City's experts, Messrs. Rand and Brackenridge. It is also practically the amount of money that was actually put into the property by investors up to 1910, as will be shown when we consider the capitalization of the company in a subsequent part of this brief.

The $500,000 raised for the rehabilitation of the property in 1910 cannot be considered as new capital, because it was caused by the wrongful diversion of the revenues to dividends. This was expressly found by the Commission in the order hereinbefore quoted.

From the proofs submitted by the prosecutor, therefore, we submit the Court cannot determine what is the value of the property at the present time, and that the claim of a value of approximately $4,000,000 is absurdly excessive.

POINT VIII.

THE VALUE OF THE COMPANY'S PROPERTY AS PROVED BY THE CITY DOES NOT EXCEED $2,700,000.

Not only has the company failed to present any proper evidence of the present value of this property,

but the City has produced a positive and definite valuation. The City's proof shows that this property, including every kind of contingency that can properly be charged, can be produced to-day for approximately $2,700,000. The witnesses for the city who made up this valuation were Mr. Swan, Mr. Brackenridge and Mr. Rand.

Mr. Swan has been connected with the City's engineering department for twenty-five years, except two years, and during that time has had practical charge of all the street work, including portions of the pavements required to be laid by the company. He produces from his records and from his personal knowledge an elaborate table showing the approximate time that the rails were laid; the character and time of laying of the pavements between the tracks in each street. The accuracy of this foundation work has not been in any way impeached.

Mr. Brackenridge has been engaged in every variety of street railway work since 1885. He has been a general contractor, and as such has built many electric street railways. He was connected for many years as engineer of construction with the Brooklyn Rapid Transit Railway Company, and this experience included the time when its transportation system was operated by horse power and when and after the motive power was changed from horses to electricity. It has been his business in all these years to actually purchase every form of electrical equipment. He has had the widest possible experience in the actual working of railways, and so is familiar not only wtih the cost, but with the life and rate of depreciation, of every class of physical property used in this class of work.

It would be impossible to find a man whose experience better qualified him to put an approximate value upon this property in the limited time that is afforded by the statute for the proofs to be taken in this case.

The accuracy of Mr. Brackenridge's work has not

been impeached by cross-examination, or by the rebuttal testimony of Mr. Johnson, except on minor and unimportant points. Mr. Johnson claims that he has actually paid $300 or $400 more for some of the cars than Mr. Brackenridge says he can buy them for.

Mr. Brackenridge uses 15 cents a pound as the price of copper, which is a liberal figure taking the average for many years, as against the present extraordinary price of 19½ cents; but even on this basis, the variation from Mr. Brakenridge's figures is trifling. It is substantially true that Mr. Brackenridge's figures are not discredited in the rebuttal or cross-examination.

Supporting Mr. Brackenridge is Mr. Rand. Mr. Rand is a consulting engineer, and has had upwards of thirty years' experience in the handling of securities relating to all kinds of railroads, including street railways; in the valuation of railroad and street railway properties; and as an expert in the famous Consolidated Gas case of New York, and in many cases involving both the consideration of physical and intangible elements of values of public utility corporations. He has been a student of the problem which is presented before this Court for discussion. He worked with Mr. Brackenridge in the personal inspection of this property, and in the fixing and checking up of the prices and the rates of depreciation upon the different items of property considered. Where two men of long experience and established reputation work together, each checking the other, the result is reasonably sure to be approximately correct.

These experts for the City spent many days in the actual inspection of the property. The care they exercised is evidenced by the notes of Mr. Brackenridge and Mr. Rand as to the special work. Mr. Rand drew a freehand sketch of every piece of special work in the whole system. Mr. Brackenridge at the same time made full notes of these pieces of special work, and the more complicated ones he also sketched upon paper.

The notes on this part of their work were put in evidence, and show the completeness of their inspection and valuation. Such material facts as they did not ascertain by personal inspection and investigation they got from Mr. Swan and from Mr. Johnson.

A very admirable summary of the results of the study of these experts was presented as an exhibit, and we herewith print it in this brief for convenient reference.

SUMMARY SHEET OF ESTIMATES GIVING COST TO REPRODUCE NEW, DEPRECIATION AND PRESENT VALUE, OF THE PROPERTY OPERATED BY THE TRENTON TRACTION CO., AS OF NOVEMBER 9, 1915.

Contractor's Profits Have Been Included in all Items.

ITEM.	*Annual % Deprec.*	*Reproduction Cost.*	*Annual Depreciation.*	*Accrued Depreciation.*	*Present Value.*
Tracks outside city,	3%	$324,616.39	$9,738.49	$109,440.76	$215,175.63
Tracks in city,	4%	370,910.80	14,836.43	160,588.64	210,322.16
Overhead line and feeders,	4%	307,100.30	12,284.01	82,549.90	224.550.40
Special work,	10%	70,662.00	7,066.20	35,331.00	35,331.00
Paving,	5%	358,845.02	17,942.25	141,358.17	217,486.85
Power plant,	4%	265,500.00	10,620.00	31,860.00	233,640.00
Car barns and contents,	2%	155,900.00	3,118.00	23,385.00	132,515.00
Cars and other rolling stock,	5%	400,000.00	20,000.00	140,000.00	260,000.00
Real estate, assessed value,	.....	110,025.00	.....	.....	110,025.00
Signal system,	.....	1,052.75	.....	.....	1,052.75
		$2,364,612.26	$95,605.01	$720,884.83	$1,643,727.43
Contingencies, including engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk,	15%	354,691.84	.....	108,132.73	246,559.11
		$2,719,304.10	$95,605.01	$829,017.56	$1,890,286.54

* Depreciation on overhead figured with copper wire out.

An inspection of this summary, together with the detailed sheets which these experts presented and the detailed sheets which Mr. Swan presented, will show that these experts for the city had given to them, or acquired personally, all of the information necessary to make an approximate valuation of this property at the present time, and they are the only witnesses who have made any attempt to make such a valuation.

The valuation which they fixed is corroborated in various ways. It is substantially corroborated by Mr. Betts' valuation in 1910, which was a valuation new. The established fact that the property was then run down, and the raising of $500,000 to restore it to its proper condition is substantial evidence that this property was then depreciated at least to that extent, and probably more. This depreciated value plus the amount since spent upon it, would make approximately the same value as found by Messrs. Rand and Brackenridge.

This valuation is further corroborated by the result of a study of the securities issued by the company and all the actual cash that has ever been invested in the creation of the company's property. The actual money that ever went into this property does not exceed $2,600,000, as will be shown when we consider the securities issued and the cost of the property in a subsequent part of this brief.

This valuation is further corroborated by the evidence which the City has put in with reference to taxation. The letters of Mr. Hurley and of Mr. Johnson from year to year to the tax officials of Trenton contain assertions that the assessments by the City are practically the full value of the company's property. These assessments at no time have exceeded $700,000 over the whole system, as is shown by the tax exhibits from the City of Trenton, and each of the other municipalities through which the property runs, which the City has put in evidence. (See *Exhibits O-2, O-3, O-4, O-5, O-6, O-7, O-34, O-35, O-36 and O-42.*

Both Mr. Brackenridge and Mr. Rand testify that no addition should be made to this property for development cost or any other intangible element of value, or for working capital.

The City's proof is the only legal evidence before this Court of the value of this property at the present time.

POINT IX.

THE VALUE OF THE PROPERTY AS SHOWN BY ACTUAL COST DOES NOT EXCEED $2,600,000.

The valuation of the property made by Mr. Brackenridge and Mr. Rand is supported by a study of the history of the constituent companies. It is not clear that the stock issued by the early horse railroad companies was water, but the presumption is strong that it was. But it is plain that all subsequent stock issues and part of the bond issues represent no money or service paid or rendered towards creating this property. Dr. Betts so finds, and the merger agreements prove it.

Mr. Rand has submitted a table (*Exhibit O-38*), which can be summarized as follows:

Trenton Street Railway—		
Stock,		$1,000,000
Bonds,		2,000,000
Subsidiary Companies—		
Stock,		550,000
Bonds,		1,000,000
Total securities,		$4,550,000
Inflated Securities—		
Stock of subsidiary companies issued with bonds,	$550,000	
Inflation by 1st consolidation,	1,343,000	

By 2d consolidation, ...	36,700	
Bonds owned by M. C. Tr. Co., ...	128,000	
		2,058,000
Bona fide securities issued, ...		$2,492,000

We submit a calculation made up differently which arrives at substantially the same result, viz.:

All stock of Horse R. R. Co.'s at time of first consolidation in 1891—		
Stock, ...		$156,000
Bonds, ...		190,000
Bonds issued by the Consolidated Co. (Tr. Pass. Ry. Co.), ...	$1,000,000	
Less amount paid to Wilson (see *Tr. Pass. Ry. Co.* v. *Wilson*, 11 *Dick. Ch. Rep.* 783), ...	260,000	
		740,000
Second Consolidation, 1898— (Tr. St. Ry. Co.) stock was all exchanged for securities of merged companies.		
Bonds, ...	$2,000,000	
Less used for refunding,..	$1,000,000	
Less exchanged for stock,...	552,000	
	1,552,000	
		448,000
Bonds of Tr., Penn. and Hopewell Ry. Co.,		350,000
Bonds of M. C. Tr. Co., ...		300,000
Bonds of T., H. and E. Co., ...		350,000
Total realized from securities to 1910,		$2,534,000

This is the maximum actual cost of creating these properties as shown by the proofs in this case. The money expended by the lessee company, being by the Board's own finding made necessary by wrongful diversion of earnings, is a restitution and should not be added to this estimate.

From every point of view, therefore, it appears that the value of this property to-day does not exceed $2,700,000.

The actual cost of this property ought to appear upon the books of the lessor companies. We have demanded these books. At the last moment some of them were produced, too late for even a casual examination. It is safe to assume that if these books showed a cost in excess of the City's valuation the company would put them in evidence.

The Wilson bonds, referred to in the foregoing table, were the subject of a litigation in our New Jersey courts, as above quoted. In this reported case it appears that $260,000 of the issue of bonds in 1891 was taken by one Wilson upon some pretense. The company claimed that he held them as trustee for the company. He, however, managed to hold onto them, and the company never received any of the proceeds of these bonds nor did Wilson ever render any service for them, as the Court expressly finds.

POINT X.

Mr. Ford's Estimate of Going-Concern Value Analyzed.

In the attempt to bolster up the Johnson valuation of this property, Mr. Ford was produced by the company as an expert. He took the position that the physical property should be taken as though it was brand new and so valued, and that in addition to such value there should be added from twenty-five to fifty per cent. for what he called "development cost." The claim

that the property should be valued as new has been argued in another part of this brief.

It is sufficient as to that point to say that if this company had obeyed the spirit of the injunction laid upon it by the Commission when the lease was approved, and had paid each year into a depreciation fund a sum of money sufficient to keep this property at all times in proper condition, the present value depreciated, plus the amount of money in such a depreciation fund, would give at all times a sum sufficient to reproduce the property new. As no adequate depreciation fund was set aside, the physical property must necessarily be valued as we find it in this depreciated condition. Mr. Johnson says he has spent not exceeding $68,000 on account of depreciation in any one year, and has set aside no fund beyond such expenditure. But he now says $135,000 a year is needed. This is a confession that the property is in a badly run-down and depreciated condition.

We submit that the value of Mr. Ford's testimony in this case is completely destroyed by his admission that in his judgment there should be no going-concern value allowed, if it is possible to arrive at the cash investment in the property. Here is his exact language, Case, page 243:

> "I might say in addition, that if we could arrive at the cash investment of this property, there would be little, if any, going-concern value to be added, because the cash investment would reflect the cost of producing a going concern. In the early years of operation the company probably did not get a fair return on its capital invested, and if, in arriving at the cash investment, you allow for that insufficient return, which, of course, the security holders originally had to provide, you would get the present cash investment, which would include such going-concern value."
>
> * * * * * * * *

Case, page 280:

"*Q.* If you knew what it had cost these people in cash, you say you would limit the return to the fair return upon that, plus depreciation account and operating expenses?

A. I think that is a fair way of arriving at a figure.

Q. And you then would not put in any going-concern value?

A. I think that would include going-concern value.

Q. That is, going-concern value would then have been paid for?

A. Would have been paid for in cash."

* * * * * * *

"*A.* In the case of the cash investment, if that cash investment represented the entire cost of developing the property I would not include—I would not add anything to it for going-concern value."

See Ford's testimony, page 40, to the same effect.

Mr. Ford supports his assertion of twenty-five to fifty per cent. addition for development cost by no facts whatsoever. He cites no actual instances or experiences. He admits that no accounts have ever been kept by any company with which he is familiar of any such item of going-concern value or development cost. In other words, he produces no proof in support of his opinion.

Mr. Ford does refer to the cases of Cleveland and of Chicago, but he put forward no detailed information by which his testimony can be tested. On cross-examination he admitted that in the Cleveland case the matter was settled by an arbitration, one of the conditions of which agreed to in advance was that the company should only charge a three-cent fare, with a one-cent transfer. The valuation agreed upon by the arbitration was determined with this limited fare as a con-

dition agreed upon in advance (Case, Vol. I, p. 379). In the Chicago case he admits that it was a case of a straight out settlement between the company and the city and not a judicial adjudication at all.

He does, however, endeavor to support his opinion by an imaginary illustration. He says that if a city of 100,000 people had no trolley system and one was inaugurated, that the item of development cost would amount to twenty-five or fifty per cent. of the physical value.

On cross-examination it appears that he had never even given the subject of this imaginary illustration any serious consideration. He had not taken into account the kind or cost of existing methods of transportation. He had not taken into account whether the people were familiar with trolley transportation or not. He finally said that they probably had become familiar with trolley transportation when visiting other cities. He finally agreed that we must suppose a more costly transportation system in vogue in the imaginary city. He agreed that the company would do no advertising and would be put to no special expense upon this item of development cost. He admitted that the only expenses of the company in his imaginary city, after the property was in operation, were the expenses that would be ordinarily charged to operating expense account. He was finally driven to the point that what he meant by development cost was that in this imaginary city it would take three years before the patronage of the line would be developed to the full capacity of the city. He said that the company would start at the beginning with eighty per cent. of the business that it was possible to obtain from the existing people in the city, and that within three years the remaining twenty per cent. of the possible patrons would gradually become patrons of the road. (Case, Vol. I, p. 371.)

Let us examine this illustration. In the first place it is open to the objection that it has nothing whatever to do with human experience.

It is a mere guess.

It is an attempt, always fallacious, to imagine what would have happened, if something which didn't happen had happened.

This involves so many elements that it is worse than idle to talk about it. The whole thing is too preposterous for serious consideration.

The preposterous nature of this illustration was shown by the question asked Mr. Ford by counsel for the City.

He was asked whether in all his experience he ever knew of any appraisers of any kind of property who undertook to appraise the value of the property by considering what it would cost to reproduce the property under conditions that had never existed in human history. After much squirming, he was forced to admit that this method of appraisal had never been adopted in civilized life, and said feebly that it was necessary to apply in this case a method that would not be reasonable in the other affairs of life.

To show that Mr. Ford was himself compelled to admit the utter adsurdity of his method of valuation in this respect, we quote from his testimony, as follows, Case, page 278:

> *Q.* You know of no such town?
>
> *A.* I know of none.
>
> *Q.* Then you are measuring the going-concern value by conditions of city life which have not had any existence since the trolley era; is that correct?
>
> *A.* In this country, yes.
>
> *Q.* Then you are measuring the value of this property by conditions that have never existed since the electric era applied to trolleys?
>
> *A.* It is purely a hypothetical case.
>
> *Q.* Will you name to me any article from a hairpin to a locomotive to which you apply any such principle in trying to arrive at value? Is

there any value which is appraised in our market, any physical piece of property, not talking about franchises, physical property purchased by man, which is measured by conditions that have never been known in the trade, is there any such article?

A. I think if you apply some of these theories of rate regulation to other business they become ridiculous.

Q. I am not asking you that?

A. If that is what you mean.

Q. I am asking if you ever knew of a value put upon the appraisement of a suit of clothes by imagining the production of clothes under conditions that never existed; ever heard of that?

A. I never did.

Q. Did you ever hear of a country appraisal of the furniture in a house for sale that was based upon conditions of production of that furniture and those effects that never existed?

A. No.

Q. You never did?

A. No.

Q. Then you are applying to going-concern value an imaginary condition that has never existed since the trolley era; that is a fact, isn't it?

A. I think that is the fact, as far as this country is concerned.

Q. Now, is that sense?

A. I would say that hypothetical case, I think, has been forced on the commissions and the street railway companies by the building up of a theory of value, which when applied to homely articles like shoes and clothing, does not look sensible.

Why is it necessary in the task of ascertaining the value of a property, every item of which has a regular

market value accessible to everybody, to resort to the test of a production under conditions that never existed and which never could exist?

But Mr. Ford's illustration of twenty-five or fifty per cent. of the tangible value of the property as representing development cost is not only preposterous, but it is unscientific. The development cost has no natural relation whatsoever to the value of the property. If we had the actual experience of many companies over a long series of years, and the actual items of development cost were figured out in relation to the cost of tangible property, the percentage relation as a matter of fact could be established, but it would be simply an arbitrary relation. In this case there are confessedly no facts upon which to establish a percentage relation. The estimate of twenty-five to fifty per cent. is so loose that it has no place in a careful investigation like this.

But it is easily possible to find with approximate exactness the amount of money which would represent Mr. Ford's item of development cost, and to determine the percentage of such amount to the value of the tangible property.

Let us assume the cost to reproduce this property at $3,000,000—a figure about half way between the estimate of the company and the City. The company would get at once, according the Mr. Ford, eighty per cent. of the possible patronage. In 1914 the receipts of the company were $776,000. Eighty per cent. of this amount would be $610,000. The operating expenses for that year were about fifty-five per cent. That proportion would give an operating expense for the imaginary company of $335,500, leaving a balance of $274,500. If you were to set aside for this property $95,000 as a depreciation fund, the remaining income applicable to a dividend upon the cost of the property would be $179,500, or a little less than six per cent. upon the cost of the property. If six per cent. is held to be a

fair return, there would be no development cost at all. But if we assume that the company is entitled to earn eight per cent., then the company is short, say, $75,000. This is the amount which represents the possible balance of the patronage which the company is to obtain within three years, and is therefore the outside measure of Mr. Ford's so-called development cost for the first year. If we assume that the acquisition of the remaining twenty per cent. of the patronage was not gradual, but was held off until the last day of the third year, the most that Mr. Ford could claim would be three times $75,000, or $225,000. This, instead of being from twenty-five to fifty per cent. of the cost of producing the property, would be seven and one-half per cent.

But, of course, the twenty per cent. possible patronage to be obtained would be obtained gradually over the course of the three years, and therefore the deficit in the second year would not be as great as in the first year, and in the third year would almost entirely disappear.

$150,000, therefore, upon Mr. Ford's own illustration, would be the outside amount that could possibly represent his item of development cost. This is five per cent. of the cost of the property, instead of twenty-five per cent. or fifty per cent.

This reasoning shows the utterly unscientific nature of Mr. Ford's method of reasoning, and the grossly exaggerated results to which he has testified. In other words, Mr. Ford has not only used a preposterous illustration, but he has grossly mistaken the actual and easily ascertained results of his own illustration.

This reasoning is absolutely clinched by the consideration that the imaginary company would be under the control of the Public Utility Commission, and no money could be issued except for the actual construction of the plant, and when the company showed a deficit for the first year, that deficit, which Mr. Ford calls development cost, would be either charged to capital ac-

count or set aside as a special account to be amortized when the earnings reached a point beyond a fair return upon the capital actually invested.

It is to be remembered that this Utility Commission in the Passaic Gas case, although it allowed thirty per cent. for going-concern value, expressly stated that no such allowance beyond actual deficits would ever be made in the case of a company starting new under the Commission's supervision.

This disposes of the only evidence offered by the company in support of the claim that an amount should be added to the cost of the tangible property to represent development cost.

Further authority on the subject of going-concern value is found in the recent case of *Des Moines Gas Co.* v. *City of Des Moines,* decided by the United States Supreme Court, In this case there was no allowance for going-concern value, and the Court held that if any allowance was to be made for going-concern value, the existence of such value must be proved by the company.

POINT XI.

GOING-CONCERN VALUE FULLY ALLOWED FOR BY THE COMMISSION.

The item of going-concern value in this case has been fully allowed for by the Commission. In the valuation of the property of the company arrived at by the Commission upon the evidence in this case, they have made liberal allowances for every element of value that can be properly classified under the term "going-concern value."

The theory of going-concern value set forth in the opinion in *Public Service Gas Co.* v. *Board of Public Utility Commissioners et al.,* 84 *N. J. L., page* 463, is stated in section 8 of the synopsis of decision, on page 464, in the following terms:

> "In fixing the value of property on which a gas company is entitled to earn a return, it is proper to allow for going value, which includes loss of interest while the plant is in course of construction and while pipe lines are extended, the cost of securing and retaining customers, of encouraging the greater use of gas for fuel and light by the introduction of new and improved appliances, the necessary loss attending experiments, obsolescence of plant apart from the ordinary calculable depreciation which may be charged to current expenses, the expense that attends and the additional value that arises from the uniting of separate companies and the organization of the industry with a view to economical production, and the cost of procuring capital."

Upon this definition of going-concern value, the Supreme Court in that case sustained the Board's allowance of thirty per cent. of the structural value upon the specific proofs in that case.

In all of the cases in this country before commissions and courts, an item of going-concern value has sometimes been allowed and sometimes been refused. When it is allowed it has varied from ten to fifteen per cent., except in the Passaic Gas case where it was fixed at thirty per cent. Of course it follows that each case depends upon its own facts. It is plain that it costs more to develop a gas business than it does a trolley business. In the gas business people have to be sought out in their homes and persuaded to use a new form of light, and as the new improvements are developed in stoves and fixtures people have to be canvassed and persuaded to use them. In the trolley system, however, there is no such thing as drumming up custom, and there are no expenses to be charged under that head.

In the Passaic Gas case the proofs of the experts of the company were that it would take at least six years to develop the business. Here the only proof on that

point is that of Mr. Ford, who says that eighty per cent. of the business will be developed the first year, and that the other twenty per cent. of the business will be developed in the course of the two following years.

There is no testimony in this case on behalf of the company as to the actual expenses. The only testimony is that of Mr. Ford, who never made any study of the property at all, but who was called to give general testimony as an expert in relation to general rules.

Mr. Ford's going-concern value, when he is pressed for a definition, practically comes down to early deficits growing out of the cost of development which could not be met out of earnings. In Case, Vol. I, page 270, he says:

> "*Q.* You say that the development cost is the amount expended after you have built your plant and got it in running order, in getting, developing the business, and I suppose you mean, you did not say so, in making the property fit together, if there is any defect in it, and getting it in working shape, is that about what you mean?
>
> *A.* Yes.
>
> *Q.* That is development cost. The first year or two that development is likely not to come out of earnings; I mean earnings are likely not to be enough to include that, operating expenses, depreciation, and a fair return upon capital, that is so, isn't it?
>
> *A.* That is correct?"

The Commission says, Case, page 839:

> "Except as hereinafter mentioned all proper allowances for intangibles have been heretofore included."

On page 840, the Board says:

> "Throughout this valuation in the allowances made full consideration has been given to the fact that the property valued was a harmonious operating system—a going concern—in success-

> ful operation. In view of all the evidence we conclude that the value of the property, for the purpose of fixing rates, does not exceed $3,212,000."

The accurate valuation made by the City's experts, after weeks of painstaking investigation, makes the present value of the physical property about $1,800,000 in its present depreciated state. In fixing a value of $3,200,000 the Board therefore made a most liberal allowance for all of these elements of value which can properly be charged to going-concern value.

Upon the proofs in this case therefore, the element of going-concern value has been very liberally allowed for by the Board.

We respectfully urge upon the court that in any event, no allowance should be made for going-concern value as defined in the Passaic Gas case, unless same is proved in the case.

It is not possible to state a general rule. This is confessed by all of the experts. The true theory is that insisted upon by counsel for Passaic in the Passaic Gas case. We restate it here, not for the purpose of having the court reverse the position taken in the Passaic Gas case, but in order to show that if the definition which we give of intangible values and the method we point out of ascertaining those values is not followed, there is no other satisfactory way of arriving at a valuation of these intangible elements of value.

Our theory is that no piece of physical property can have a value in excess of the cost to reproduce it. This is a universal law of economics. No exception to it can be possibly imagined. The value of a piece of physical property may be, and usually is, very much less than the cost to reproduce it, but it can never be greater than that sum. If the net earnings, after deducting operating expenses, taxes, a depreciation fund and repair and maintenance account, are insufficient to pay a fair return upon the actual cost of producing the

physical property, then the value of the physical property is not worth what it cost to produce it, unless, of course, the future promises large returns. The company still has its franchises and all of the elements which are grouped under the head of "going-concern value," but obviously these elements had no value. When, however, the net earnings exceed a fair return upon the cost of the physical plant, then there comes into existence another element of value, so far as the market is concerned. The value of that element is easily ascertained. That value is measured by the excess of net earnings beyond a fair return, capitalized at a fair rate of interest. Mr. Ford admits this point, when, on page 262 of the Case, in discussing franchise value, he defines franchise value in almost the exact words we have used.

Whatever you call these elements of value, this is the only way that has ever been devised to measure them. The different names given to these intangibles merely indicate a confusion of thought on the subject by courts and commissions. The thing sought to be valued is simply the business that has been built up in connection with the plant. Until the plant pays upon its physical cost there is no business value, except as the future may hold out promise of better returns. As soon as there is an income beyond a fair return upon the physical cost there arises this value, which is really the business of the company. In the market this business is property, and is bought and sold. It exists in a public utility simply because the State has failed to enforce the implied contract of the original franchise that the company shall charge no more than a reasonable rate, that is to say, a fair return upon the actual cash expenditure of the company.

Unless this theory is followed, then the only other plan that can be used is to give a general, liberal value to tangible property on the loose theory that a tangible property held by a going concern is more valuable than

property which is not connected with a going concern. This, of course, is true. If we started by considering the value of the physical property as junk and then added to it the value indicated by the profits of the business, there would be no objection to this process, up to the point where the value equaled the cost of reproduction of the cost of the physical plant.

The difficulty with the present system of fixing going-concern value is that all of the items usually included under that head are properly chargeable to operating expenses, have always been so charged, and therefore the company ought not to be allowed to earn upon it, except they have taken the form of an actual deficit in the early years of the company's business. To the extent that the company has never in its early years been deprived of a fair return upon its actual cash invested, it ought to be allowed that amount in addition to the value of the plant, because it has been money actually invested in the enterprise.

There is not only no proof that this company has ever had any deficits, but on the contrary the proof is conclusive that it has enjoyed immense earnings beyond a fair return upon the cash capital.

Up to 1890 the Trenton Horse Railroad was the company, and its capitalization, both stocks and bonds, was $346,000. This is the only part of the history of the company concerning which we have no definite information in the record. Mr. Ford testified that on the coming in of the trolley era, about 1890, the trolleys were considered in the market as a bonanza, their earnings were so large. He says this condition continued until 1905.

This testimony is worth quoting:

> "*Q.* You spoke in your direct testimony about when they started the trolley era there was a time there when it expanded, the capitalization was expanded, and it was looked upon, I think your term was a bonanza, for awhile; you used that expression, didn't you?

A. Yes.

Q. How long did that period continue?

A. I think until about 1905.

Q. Starting when?

A. Starting with the electrification of the lines about 1890, to 1893."

(Case, Vol. I, p. 399.)

Therefore, the only deficits in this case must have been prior to 1891, and as the total capitalization of the horse railroad company was only $300,000, requiring only an income of $18,000 to provide a fair return, the deficits, if any, must have been very small, even though they continued over a long period of years.

In the face of these facts, no mere guess as to how much the deficit was, or what it cost to develop the horse railroad company, should be allowed. This is admitted by Mr. Ford, on page 271 of the Case, Vol. I, where when he was asked how long in the horse railroad era the condition continued where the income was not sufficient to pay the operating expenses, depreciation, actual or contemplated, and interest upon a fair return upon the cash capital actually invested, his answer was: "I think that would vary." If it would vary, then no general rule can be applied. As he admits he made no study of the Trenton case, except to talk with Mr. Johnson for an hour or two upon two visits, his guess as to development cost of the building up of the horse railroad is immaterial.

That Mr. Ford's definition of going-concern value is practically the early deficits appears clearly in various parts of his testimony. See Case, Vol. I, pages 266, 270–271.

The argument that these items are actual property, and that the company owns them and therefore should be allowed to earn a return upon them is easily answered. The truth is, that the company is not allowed to earn upon all its property. It is only allowed to earn upon the property which it devotes to a public use.

If the company has appropriated out of earnings a fund of money which it has invested in stocks and bonds or land, no commission would think of allowing them to earn upon such property, because it is not property devoted to the public use. Such property as is included under the head of intangible values is property only so long as the Commissions allow the companies to charge excessive rates. The minute the Commissions enforce the implied contract as to franchises, to wit, that the company shall be entitled only to charge rates which will give a fair return upon the cost of the property, or the actual investment, then these intangible elements of value will disappear.

They are property only so long as the public fails to enforce its contract rights in the premises.

They are elements of property built up upon the violation by the company of the implied contract to charge reasonable rates from the beginning.

This is the reasoning to which all of the Commissions and courts in the end must come. Any other line of reasoning leads, inevitably, to the ratification by Commissions and courts of the issues of water securities for which no money has ever been paid. Such a conclusion is intolerable.

For these reasons we submit that a very liberal allowance in this particular case has been made by the Board of the item of going-concern value.

POINT XII.

Franchise Valuation. The Company has no Right to Allowance for Value of Franchises.

That the company has no right to any value of its franchises would seem to be settled by the decision of the Court of Errors in the Passaic Gas case, in which the decision of the Supreme Court in the same case was sustained. In that case the synopsis of the Court's decision, 84 *N. J. L., page* 464, says:

> "The special franchises of a public service company are property, but the right of property therein is not absolute, but is qualified by the right of the State to fix reasonable rates. In determining the reasonableness of rates, no allowance should be made for the value of the special franchise in a case where it is not legally exclusive and where the State still retains the right to fix rates."

This point is clinched by the statement of Mr. Ford, the only expert on behalf of the prosecutor, that he did not make any allowance for franchise values, and that he did not consider that franchise value ought to be allowed in this case. He stated that in his opinion the value of the franchise was simply the excess receipts, *i. e.*, the amount of the net income, over and above a fair return, capitalized at the present rate of interest. Testimony of Ford, Case, p. 262.

POINT XIII.

WORKING CAPITAL. NOT PROVED. NOT NEEDED.

The item of working capital is properly allowable in such utilities as gas and electric light and telephones, but it has no place in this case. All such items as stores and duplicate parts are already included in the appraisal, and do not amount to $20,000. There is no proof in the case to justify the Board in allowing anything for this account. Mr. Ford says it should be allowed, but offers no facts or reasoning to support his opinion. Mr. Rand and Mr. Brackenridge say nothing should be allowed. They point to the fact that the company receives cash every day for its service rendered, while wages and supplies are not paid for until several weeks after they are earned or furnished.

The fact that the company took over these great properties without a dollar of working capital, and that neither party to the lease considered any such capital

necessary is conclusive proof in support of our contention in this regard.

The Commission, however, has included in its valuation items for working capital The report of the Commission, Case, page 840, says:

> "Under working capital, materials and supplies properly belong. These have been included in the appraisal of the physical property, and, in view of the facts testified in this case, we do not deem proper any further allowances for working capital."

POINT XIV.

Present Earnings are Ample to Provide Reasonable Return on Value of Property.

The gross earnings of the company for 1914 were $776,000.

While the earnings this year have fallen off, it is due to temporary and sporadic causes, and it is fair to assume that the earnings in the future will not fall below those of 1914, taking one year with another, but, on the contrary, will surely increase with the growth of the City.

Allow for operating expenses the amount actually expended by this company in 1914, viz., $377,000. Allow for taxes $50,000, the amount actually paid in 1914. Allow for depreciation $95,000. Mr. Johnson claims $135,000, but he has never expended in any one year more than $69,000, and he is on record in his letter to the Board, after two years' experience, to the effect that ten per cent. of the gross receipts would be ample for this account for 1915 and afterwards (*Exhibit O* 44).

Messrs. Rand and Brackenridge arrive at $95,000 as the actual yearly depreciation of this property.

Upon this basis we have the following result:

Gross earnings, ...		$776,000
Deduct:		
For operating expenses, ...	$377,000	
For taxes, ...	50,000	
For depreciation, ...	95,000	
		522,000
Net earnings available for dividends, ...		$254,000

Or over 9 per cent. on $2,700,000, which is every dollar ever invested in this property, or is 6 per cent. on $4,230,000.

When it is remembered that the various owners of this property have taken out of it in interest and dividends upon watered securities nearly $1,500,000 in excess of a fair return upon the *bona fide* investment in the property, as we show elsewhere, it is plain that this showing entitles the company to no relief here.

In this case the Court is bound by the New York Consolidated Gas Company case, where the Court held that the only duty of the Court was to see that the rate fixed by the Commission was not confiscatory, and that a return of 4.7 per cent. upon the fair value of the property was not confiscatory.

POINT XV.

Claim that Decrease of Earnings in Year 1915 Was Not Considered by the Board, Analyzed.

This claim is absurd. It would be utterly impossible to fix a just and reasonable rate of a public utility upon the earnings of any one year. Earnings fluctuate with good times and with bad times, and with local conditions. The only fair rule is to take the average of several years as the Commission has done; otherwise, in case of a great fair like the San Francisco Fair, or of a celebration like the Newark 250th Anniversary Celebration, the companies might have an extraordinar-

ily prosperous year, and if their rates were reduced upon the basis of the showing of that year, it would be unfair to the companies when the temporary conditions had passed.

POINT XVI.

Prosecutor's Claim that Value of Property is Measured by Stock and Bond Issue, Answered.

One of the reasons of the prosecutor asserts that the Board did not take into account the issue of stocks and bonds as a measure of value. The overwhelming weight of authority everywhere is that stocks and bonds are merely to be considered as throwing light upon the value of the property and are in themselves no measure of value. This point is conclusively settled in the Passaic Gas case. The portion of the opinion in that case which bears upon this point is found in 84 *N. J. L., page* 484.

This point is further answered by the testimony of Mr. Ford, Case, Vol. 1, page 280, in which he says that in the bonanza trolley era the excessive earnings were covered up by the issue of watered stock, and that the stock was issued for that especial purpose. (Case, page 280.)

POINT XVII.

Discontinuing the Tickets is an Increase of Fare and a Change in Classification Under Utility Statute.

One of the reasons advanced by the prosecutor in this case is that the abolition of the six tickets for a quarter is not an increase in rate or a change in classification. This claim seems too absurd for argument. To the thousands of people who go upon these trolleys to their employment in the morning and return at night, and who regularly buy six tickets for a quarter, the

change to a straight five-cent fare is a *real* increase. In fact one of the claims of the company is that it needs additional money and that the change from tickets to a straight five-cent fare would bring it an additional $100,000 a year. This is an increase of the company's income, and of course by its standard of common sense is accomplished by increasing the rate charged to the patrons of the company.

To the charge that there is a discrimination in charging some people five cents and other people four and one-quarter cents, the answer is that the lower charge is open to all, and that if any man elects to pay five cents he discriminates against himself,—it is within his power to ride for four and one-quarter cents if he purchases six tickets.

The principle of selling commodities by wholesale is an established one in all businesses. In the railroad business it is illustrated by the commutation principle, and the Public Utility Statute expressly gives the Board supervision over changes in classification and in commutation rates, and in the matter of the increase or decrease of fares.

POINT XVIII.

THE LESSEE COMPANY IS A SHAM COMPANY, WITHOUT ANY CAPITAL OR RESPONSIBILITY, AND WITHOUT ANY EQUITY IN THE PROPERTY, AND THEREFORE HAS NO CLAIM UPON THE CONSIDERATION OF THE COURT.

As we have shown in our proof, in this brief, the earnings of the company at the existing rates are ample to pay operating expenses, including repairs and taxes, provide for an adequate depreciation fund, and leave a balance sufficient to pay more than a fair return upon the value of its property devoted to the public use, whether such value is measured by the actual money ever invested in its creation, or by the cost of its reproduction new, less depreciation.

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But it is perfectly plain that this company cannot continue to pay these rentals which it has contracted to pay to the lessor companies, provide a proper depreciation fund and pay operating expenses. Some part of this arrangement has got to break. Either the lessee company must default and give back the leased properties to the lessor companies, or the lessor companies must accept a smaller rental, or the public must be made to pay more. We submit that, under the peculiar circumstances of this case, the public cannot be asked to pay more.

When this property was taken over by the lessee company it was in bad condition, owing solely to the fact the money had been paid in dividends which ought to have gone in to maintain and renew the company's plant.

The Utility Board expressly so found, and $500,000 was raised to rehabilitate the plant. The Board of Public Utility Commissioners, in 1910, undertook to provide against the exact condition which has arisen here, namely, a run-down plant and the improper diversion of earnings to dividends and interest, which ought to go into the property. The company, therefore, had full warning and stands before this Court without any equity.

The company, by Mr. Johnson's confession, is composed of two men, neither of whom has invested a dollar which has gone into this plant.

The remarkable testimony of Mr. Johnson discloses the utter hollowness of this lessee company. Mr. Crosby negotiated the leases for the lessee company, paid in $150,000, and Mr. Johnson added another $150,000, and thereupon they went through the farce of pretending to buy these leases from Mr. Crosby for $300,000.

According to this remarkable story, Mr. Johnson is the victim and Mr. Crosby the beneficiary of frenzied finance to the extent of $150,000.

The company started business without a dollar, never had a dollar in money, and never has invested any money, except such sums it has been able to borrow.

These sums must have been borrowed on somebody's credit, because the company never had any of its own.

This whole transaction is a virtual fraud upon the public. It is one of the familiar games of frenzied finance by which the public are plundered, and which an outraged public opinion demands must stop. To compel the people of Trenton to fork over another $100,000 annually in order that these two men, who have never invested a dollar in Trenton, may be saved from the consequences of their improvident bargain in assuming these enormous rentals, and be allowed, in addition, to receive dividends upon their own watered stock, would, we submit, be a gross outrage upon the people of Trenton.

Consider now the equity of the claims of the lessor companies.

In the first place, they are not here asking any relief.

In the next place, they have since 1891 received nearly $1,500,000 in dividends upon watered securities issued without a dollar of return to the companies, either in money or service.

The company's own dividend sheet, in evidence (*Ex. T. & M.* 44), shows stock dividends actually paid to 1910 of, ... $520,000

To this add the interest for twenty years on the $260,000 Wilson bonds, ... 260,000

To this add the interest on $552,000 of bonds exchanged for watered stock in 1898–1914, fourteen years at 5 per cent., 386,000

Add rentals paid since 1910, ... 320,000

Total interest and dividends paid on watered securities, ... $1,486,000

From this it will be seen that the people who have received these immense unearned sums from the people

of Trenton have no claim upon this Court for further indulgence or aid.

Dr. Betts, in his report filed before the lease was approved in 1910, said:

> "If a proper depreciation fund is established and maintained it will be practically impossible for the lessee company to pay the rentals called for in the leases."

This conclusion was again stated forcibly by Dr. Betts in the last sentence of his report, and he recommended that the lease be not approved except upon the basis of providing for a depreciation fund of practically fifteen per cent. of the gross receipts.

In the face of this report the Commissioners approved this lease. They were moved doubtless by the fact that it seemed to promise, by the providing of additional capital, the rehabilitation of this run-down system. It seemed to the Commission the best practical thing to do at the moment in order to provide proper service for the City of Trenton. The Commission was then new and the whole subject was new, and in the light of the then conditions it is not fair to criticise the Commission for their action in approving this lease.

But, nevertheless, the fact remains that the Commission at that time stretched a point to give these people a chance. If after the approving of that lease, in the face of this report of its own engineer, showing that the lease could never be carried out without practical ruin to the property, this Commission had again undertaken to tide over this company by compelling the public to pay increased fares, instead of cutting down the dividends upon watered stock owned by men who have wrongfully diverted into their own pockets the money that should have gone to maintain the property, we submit that it would be an act of great injustice to the people of Trenton, and would destroy public confidence in the whole policy of public utility regulation.

The only thing now to do is to face the real situation and apply the proper remedy.

In this proceeding the Board has held that the existing rate of six tickets for a quarter is neither confiscatory nor unreasonable and has left the lessor and lessee companies to rearrange their relations upon a new basis that will permit proper service and proper maintenance and conservation of the property.

For these reasons we submit that the Court should sustain the order of the Public Utility Board in this case.

Respectfully submitted,

CHARLES E. BIRD,

City Counsel of Trenton.

GEORGE L. RECORD,

Of Counsel.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

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Prosecutors,

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Defendants.

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OPINION.

(Supreme Court of New Jersey. Aug. 2, 1917.)

1. CARRIERS 12(4)—REGULATION—FARES—JURISDICTION.

Public Utility Commission has jurisdiction, under P. L. 1911, p. 380, § 17h, to forbid street railways to put into effect proposed withdrawal of sale of six tickets for 25 cents, increasing rate to 5 cents.

2. CARRIERS 12(9)—CONTRACT AS TO RATES—RESCISSION.

Street railway company cannot rescind contract with city as to fares because of its own mistake, not induced by city, as to power reserved by city to alter its franchise ordinances.

3. Carriers 12(9)—Contract as to Rates—When Complete.

Where street railway company's directors had ordered its officers to execute agreement as to fares on passage of ordinance of same tenor and officers cannot vary its terms and directors do not intend to pass on matter again, agreement becomes binding on passage of ordinance, since all that remains to be done is to execute formal contract.

4. Carriers 12(9)—Contract as to Rates—Consideration.

Where city was threatening to alter franchises of street railway company to its detriment, passage of ordinance which does not contain threatened changes is sufficient consideration for agreement of company to continue existing fares.

5. Carriers 12(9)—Contract as to Rates—Effect on Lessor Roads.

An ordinance as to street car fares, passed by agreement between city and company, is binding also as to lines of companies under long-term leases to party to agreement.

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Swayze, J. Although the voluminous record in this case has necessarily required a long time to examine, the decision may well be rested on a single point, and that within narrow compass. The prosecutor seeks to set aside an order forbidding it to put into effect a proposed withdrawal of the sale of six tickets for 25 cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company, and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

[1] We think it clear that the Public Utility Commission had jurisdiction under section 17, par. "h" of the act. P. L. 1911, 380. The withdrawal of the sale of six tickets for a quarter was an increase of an existing rate under which 82 per cent. of the passengers carried paid a fare of only $4^1/_6$ cents; by the proposed withdrawal they would be forced to pay a fare of 5 cents.

[2] We find it unnecessary to pass upon the question whether the original ordinances and their acceptance amounted to a contract by which the companies were authorized to charge as much as 5 cents, or whether they amounted only to a limitation by which the companies were forbidden to charge more than 5 cents. It is likewise unnecessary in our view to consider whether a fare of $4^1/_6$ cents is reasonable in view of present conditions and the situation of the company. We find that in 1909 a new contract was made between the city and the company which requires the company to sell six tickets for 25 cents upon all cars operated in the city of Trenton. The facts are as follows: For many years tickets had been sold at that rate. In 1909 the street railway company proposed to stop the sale. Naturally great public interest was aroused, threats were made of attacks upon the franchises of the company, and the city authorities were preparing for such an attack and for amendments of the ordinances. An agreement was reached by negotiation, and on October 4, 1909, the Trenton Street Railway Company adopted a resolution waiving its right to notice of alterations in the ordinances, and directing its officers to execute an agreement already prepared (a copy of which was set forth), immediately after the passage of a new ordinance, a draft of which had been submitted by the city counsel to the railway company. This ordinance provided for the sale of tickets at the old rate by the company upon all cars operated in the city of Trenton. The ordinance was passed by the common council on

October 19th and approved by the mayor on October 22d, 18 days after the resolution of the railway company. Had the agreement been signed by the officers of the company as directed by the resolution of October 4th on the faith of which the city passed the ordinance, no question could have arisen. Instead of that, the company, after the passage of the ordinance, rescinded the resolution because, as the rescinding resolution states, it was falsely recited therein that the city had reserved the right to alter the ordinances whenever in the judgment of the common council it became necessary for the public good. It is a little difficult to understand upon what theory it is supposed the false recital vitiates the action of the company. It is not charged that the city did anything to mislead the company in this respect; it could not have done so, since the ordinances were necessarily as well known to the company as to the city; and the proposed written form of contract, submitted by the city counsel, recited what was the exact truth, that the right of alteration or amendment was reserved "by the several ordinances aforesaid or some of them." The addition of the qualifying words was enough to call the attention of the company to the existence of a question as to the extent of the city's right. With this draft before them, the directors chose to put a broader statement in the recitals of their own resolution. Manifestly they ought not to be permitted for their own mistake to withdraw from the agreement after the city had acted thereon.

[3] It is argued that the parties did not intend that there should be a complete contract until the written agreement was executed. The case, it is said, is within the rule of Water Commissioners of Jersey City v. Brown, 32 N. J. Law, 504, decided by the Court of Errors and Appeals in 1866, and applied by the Supreme Court in Donnelly v. Currie Hardware Co., 66 N. J. Law, 388, 49 Atl. 428. These cases are not applicable. In the first the water commissioners directed

that their engineer and attorney should prepare a contract and submit the same for approval by the board before being executed. The court said that several particulars as to the time of finishing the work, as to the manner of doing it, and as to the guaranty of its permanence remained to be settled. The second case was decided upon the ground that there had been no agreement as to the time allowed for beginning and completing the work and the mode of payment, matters which are generally provided for in such arrangements. As Lord Cranworth said in Ridgeway v. Wharton, 6 H. of L. Cases, 238, at 268, the fact that the parties intend a subsequent agreement to be made is strong evidence to show that they did not intend the previous negotiations to amount to an agreement; but at the same time he protested against its being supposed because persons wish to have a formal agreement drawn up that therefore they cannot be bound by a previous agreement if it is clear that such an agreement had been made; and he expressed his approval of Sir William Grant's decision in the leading case of Fowle v. Freeman, 9 Vesey, 351. In Wharton v. Stoutenburgh, 35 N. J. Eq. 266, it was held that a final agreement had been reached, although the parties intended that a lease embodying the agreement should be executed. The applicability of that case to the present is not weakened by the fact that a written memorandum would have been there necessary to satisfy the statute of frauds if the vendee had not taken possession. The taking possession did not supply the terms of the lease, and before decreeing that the lease should be executed, it was necessary for the court to find that a final agreement had been previously reached, and that the execution of the lease was necessary only by way of part performance of the agreement, and not as a condition precedent to the existence of a final agreement. The facts of the present case bring it within the rule of Wharton v. Stoutenburgh. The draft agreement had

been submitted by the city to the company; the company had assented to its terms; all that remained was for the executive officers to execute the written instrument in which the terms of the agreement were set forth; but the officers had no power to vary the terms, and it was not contemplated that the directors should again pass on the matter. The case is as if in Water Commissioners of Jersey City v. Brown, the agreement had been already prepared and adopted by the water commissioners.

[4] There was sufficient legal consideration for the agreement by the company. It is true the ordinance did not affirmatively concede any benefit to the company; on its face it was rather a detriment; but that is too narrow a view to take. The situation was that the company was liable to attack, and the ordinances might be altered or amended in such a way as to be very harmful, or at least productive of long and expensive litigation. What the company secured was the adoption of an ordinance which contained no such drastic changes; the benefit to the company was in what the ordinance omitted, not in what it contained. In saying this, we are not to be understood as suggesting that the mere act of passing the ordinance in pursuance of the agreement would not be a sufficient consideration in a legal sense.

We think there was a valid contract requiring the company to sell six tickets for a quarter, and hence the Public Utility Commissioners might well conclude that such a rate was just and reasonable under the circumstances of the case.

[5] It is said, however, that the Mercer County Traction Company and the Trenton and Hamilton and Ewing Traction Company could not be affected by the ordinances because no official action was taken by either with reference to its terms. This argument overlooks the fact that both those companies were at the time under lease to the Trenton Street Railway Company

for a term of which more than 990 years were still to come. The probability of the two lessor companies being affected prejudicially by the ordinance is negligible.

The order is affirmed, with costs.

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that their engineer and attorney should prepare a contract and submit the same for approval by the board before being executed. The court said that several particulars as to the time of finishing the work, as to the manner of doing it, and as to the guaranty of its permanence remained to be settled. The second case was decided upon the ground that there had been no agreement as to the time allowed for beginning and completing the work and the mode of payment, matters which are generally provided for in such arrangements. As Lord Cranworth said in Ridgeway v. Wharton, 6 H. of L. Cases, 238, at 268, the fact that the parties intend a subsequent agreement to be made is strong evidence to show that they did not intend the previous negotiations to amount to an agreement; but at the same time he protested against its being supposed because persons wish to have a formal agreement drawn up that therefore they cannot be bound by a previous agreement if it is clear that such an agreement had been made; and he expressed his approval of Sir William Grant's decision in the leading case of Fowle v. Freeman, 9 Vesey, 351. In Wharton v. Stoutenburgh, 35 N. J. Eq. 266, it was held that a final agreement had been reached, although the parties intended that a lease embodying the agreement should be executed. The applicability of that case to the present is not weakened by the fact that a written memorandum would have been there necessary to satisfy the statute of frauds if the vendee had not taken possession. The taking possession did not supply the terms of the lease, and before decreeing that the lease should be executed, it was necessary for the court to find that a final agreement had been previously reached, and that the execution of the lease was necessary only by way of part performance of the agreement, and not as a condition precedent to the existence of a final agreement. The facts of the present case bring it within the rule of Wharton v. Stoutenburgh. The draft agreement had

been submitted by the city to the company; the company had assented to its terms; all that remained was for the executive officers to execute the written instrument in which the terms of the agreement were set forth; but the officers had no power to vary the terms, and it was not contemplated that the directors should again pass on the matter. The case is as if in Water Commissioners of Jersey City v. Brown, the agreement had been already prepared and adopted by the water commissioners.

[4] There was sufficient legal consideration for the agreement by the company. It is true the ordinance did not affirmatively concede any benefit to the company; on its face it was rather a detriment; but that is too narrow a view to take. The situation was that the company was liable to attack, and the ordinances might be altered or amended in such a way as to be very harmful, or at least productive of long and expensive litigation. What the company secured was the adoption of an ordinance which contained no such drastic changes; the benefit to the company was in what the ordinance omitted, not in what it contained. In saying this, we are not to be understood as suggesting that the mere act of passing the ordinance in pursuance of the agreement would not be a sufficient consideration in a legal sense.

We think there was a valid contract requiring the company to sell six tickets for a quarter, and hence the Public Utility Commissioners might well conclude that such a rate was just and reasonable under the circumstances of the case.

[5] It is said, however, that the Mercer County Traction Company and the Trenton and Hamilton and Ewing Traction Company could not be affected by the ordinances because no official action was taken by either with reference to its terms. This argument overlooks the fact that both those companies were at the time under lease to the Trenton Street Railway Company

for a term of which more than 990 years were still to come. The probability of the two lessor companies being affected prejudicially by the ordinance is negligible.

The order is affirmed, with costs.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals.

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Prosecutors,

vs.

RALPH W. E. DONGES, JOHN J. TREACY AND JOHN W. SLOCUM CONSTITUTING THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY, AND THE INHABITANTS OF THE CITY OF TRENTON,
Defendants.

On Appeal.
On Certiorari.

OPINION.

(Supreme Court of New Jersey. Aug. 2, 1917.)

1. CARRIERS 12(4)—REGULATION—FARES—JURISDICTION.

Public Utility Commission has jurisdiction, under P. L. 1911, p. 380, § 17h, to forbid street railways to put into effect proposed withdrawal of sale of six tickets for 25 cents, increasing rate to 5 cents.

2. CARRIERS 12(9)—CONTRACT AS TO RATES—RESCISSION.

Street railway company cannot rescind contract with city as to fares because of its own mistake, not induced by city, as to power reserved by city to alter its franchise ordinances.

3. Carriers 12(9)—Contract as to Rates—When Complete.

Where street railway company's directors had ordered its officers to execute agreement as to fares on passage of ordinance of same tenor and officers cannot vary its terms and directors do not intend to pass on matter again, agreement becomes binding on passage of ordinance, since all that remains to be done is to execute formal contract.

4. Carriers 12(9)—Contract as to Rates—Consideration.

Where city was threatening to alter franchises of street railway company to its detriment, passage of ordinance which does not contain threatened changes is sufficient consideration for agreement of company to continue existing fares.

5. Carriers 12(9)—Contract as to Rates—Effect on Lessor Roads.

An ordinance as to street car fares, passed by agreement between city and company, is binding also as to lines of companies under long-term leases to party to agreement.

Certiorari by Trenton & Mercer County Traction Corporation against the Inhabitants of the City of Trenton and others, to review an order of the Board of Public Utility Commissioners. Affirmed.

Argued November term, 1916, before Swayze, Minturn, and Kalisch, JJ.

Frank S. Katzenbach, Jr., of Trenton (Edward M. Hunt, of Trenton, on the brief), for prosecutor. George L. Record, of Trenton (Charles E. Bird, of Trenton, on the brief), for City of Trenton. Frank H. Sommer, of Newark, for Board of Public Utility Commissioners.

Swayze, J. Although the voluminous record in this case has necessarily required a long time to examine, the decision may well be rested on a single point, and that within narrow compass. The prosecutor seeks to set aside an order forbidding it to put into effect a proposed withdrawal of the sale of six tickets for 25 cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company, and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

[1] We think it clear that the Public Utility Commission had jurisdiction under section 17, par. "h" of the act. P. L. 1911, 380. The withdrawal of the sale of six tickets for a quarter was an increase of an existing rate under which 82 per cent. of the passengers carried paid a fare of only $4^1/_6$ cents; by the proposed withdrawal they would be forced to pay a fare of 5 cents.

[2] We find it unnecessary to pass upon the question whether the original ordinances and their acceptance amounted to a contract by which the companies were authorized to charge as much as 5 cents, or whether they amounted only to a limitation by which the companies were forbidden to charge more than 5 cents. It is likewise unnecessary in our view to consider whether a fare of $4^1/_6$ cents is reasonable in view of present conditions and the situation of the company. We find that in 1909 a new contract was made between the city and the company which requires the company to sell six tickets for 25 cents upon all cars operated in the city of Trenton. The facts are as follows: For many years tickets had been sold at that rate. In 1909 the street railway company proposed to stop the sale. Naturally great public interest was aroused, threats were made of attacks upon the franchises of the company, and the city authorities were preparing for such an attack and for amendments of the ordinances. An agreement was reached by negotiation, and on October 4, 1909, the Trenton Street Railway Company adopted a resolution waiving its right to notice of alterations in the ordinances, and directing its officers to execute an agreement already prepared (a copy of which was set forth), immediately after the passage of a new ordinance, a draft of which had been submitted by the city counsel to the railway company. This ordinance provided for the sale of tickets at the old rate by the company upon all cars operated in the city of Trenton. The ordinance was passed by the common council on

October 19th and approved by the mayor on October 22d, 18 days after the resolution of the railway company. Had the agreement been signed by the officers of the company as directed by the resolution of October 4th on the faith of which the city passed the ordinance, no question could have arisen. Instead of that, the company, after the passage of the ordinance, rescinded the resolution because, as the rescinding resolution states, it was falsely recited therein that the city had reserved the right to alter the ordinances whenever in the judgment of the common council it became necessary for the public good. It is a little difficult to understand upon what theory it is supposed the false recital vitiates the action of the company. It is not charged that the city did anything to mislead the company in this respect; it could not have done so, since the ordinances were necessarily as well known to the company as to the city; and the proposed written form of contract, submitted by the city counsel, recited what was the exact truth, that the right of alteration or amendment was reserved "by the several ordinances aforesaid or some of them." The addition of the qualifying words was enough to call the attention of the company to the existence of a question as to the extent of the city's right. With this draft before them, the directors chose to put a broader statement in the recitals of their own resolution. Manifestly they ought not to be permitted for their own mistake to withdraw from the agreement after the city had acted thereon.

[3] It is argued that the parties did not intend that there should be a complete contract until the written agreement was executed. The case, it is said, is within the rule of Water Commissioners of Jersey City v. Brown, 32 N. J. Law, 504, decided by the Court of Errors and Appeals in 1866, and applied by the Supreme Court in Donnelly v. Currie Hardware Co., 66 N. J. Law, 388, 49 Atl. 428. These cases are not applicable. In the first the water commissioners directed

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been submitted by the city to the company; the company had assented to its terms; all that remained was for the executive officers to execute the written instrument in which the terms of the agreement were set forth; but the officers had no power to vary the terms, and it was not contemplated that the directors should again pass on the matter. The case is as if in Water Commissioners of Jersey City v. Brown, the agreement had been already prepared and adopted by the water commissioners.

[4] There was sufficient legal consideration for the agreement by the company. It is true the ordinance did not affirmatively concede any benefit to the company; on its face it was rather a detriment; but that is too narrow a view to take. The situation was that the company was liable to attack, and the ordinances might be altered or amended in such a way as to be very harmful, or at least productive of long and expensive litigation. What the company secured was the adoption of an ordinance which contained no such drastic changes; the benefit to the company was in what the ordinance omitted, not in what it contained. In saying this, we are not to be understood as suggesting that the mere act of passing the ordinance in pursuance of the agreement would not be a sufficient consideration in a legal sense.

We think there was a valid contract requiring the company to sell six tickets for a quarter, and hence the Public Utility Commissioners might well conclude that such a rate was just and reasonable under the circumstances of the case.

[5] It is said, however, that the Mercer County Traction Company and the Trenton and Hamilton and Ewing Traction Company could not be affected by the ordinances because no official action was taken by either with reference to its terms. This argument overlooks the fact that both those companies were at the time under lease to the Trenton Street Railway Company

for a term of which more than 990 years were still to come. The probability of the two lessor companies being affected prejudicially by the ordinance is negligible.

The order is affirmed, with costs.

MacCrellish & Quigley Co., Printers, Trenton, N. J

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vs.
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Defendants.

On Appeal.
On Certiorari.

Brief for the City of Trenton.

This appeal is prosecuted for the purpose of reversing the judgment of the Supreme Court affirming an order made by the Public Utility Commission forbidding the discontinuance by the Trenton and Mercer County Traction Corporation of the sale of six tickets for twenty-five cents on street railways operated by it. These railways are three in number, the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company. They are operated under leases and agreements of October 15, 1910. The two latter had been leased prior to 1909 to the first named for 999 years.

The opinion of Mr. Justice Swayze, filed in the Supreme Court and reported in 101 *Atl.* 562, has been printed separately for the convenience of the Court, and is submitted with this brief.

Mergers, Consolidations and Leases of Trenton Street Railway Companies.

TRENTON HORSE RAILROAD Co.,
Inc. Mch. 9, 1859.
CITY RAILWAY Co.,
Inc. Sep. 6, 1875.
HAMILTON TOWNSHIP ST. R. Co.,
Inc. Sep. 12, 1890.
SOUTH CLINTON AVE. AND BROAD ST. R. Co.,
Inc. Oct. 28, 1890.

Merged into
TRENTON PASSENGER R. Co.
By Consolidation
Sep. 21, 1891.
PENNINGTON AVE. PASSENGER R. Co.,
Inc. Sep. 24, 1897.
MULBERRY ST. R. Co.,
Inc. Sep. 24, 1897.
EWING PASSENGER R. Co.,
Inc. Mch. 28, 1898.

Merged into
TRENTON STREET R. Co.
By Consolidation
June 28, 1898.
MERCER COUNTY TRACTION Co.,
Inc. July 31, 1899.
TRENTON, HAMILTON AND EWING TRACTION Co.,
Inc. Aug. 11, 1905.

Leased to TRENTON AND MERCER CO. TRACTION Co.,
Inc. Oct. 5, 1910.

STATEMENT.

On the opposite page there is arranged for the convenience of the Court a statement which shows the several combinations and leases of the Street Railway Companies operating street railways in the City of Trenton.

Some twenty years ago one of the predecessors in title of the prosecutor inaugurated the practice of selling six tickets for twenty-five cents in the City of Trenton, and this practice was continued until September, 1909, when it was discontinued. But after negotiations with the City officials it was restored in the same month, and has since been followed by the various operating companies. The said negotiations resulted in October, 1909, in the passage of an ordinance by the City requiring the sale of six tickets for twenty-five cents, which ordinance the company agreed to in advance, in writing, and promised to accept by a confirmatory agreement after it should be passed. The confirmatory agreement was never actually executed.

On August 13, 1915, prosecutor notified the City and the Board of Public Utility Commissioners of New Jersey, in writing, of its intention to discontinue the sale of such tickets. The said Board, immediately upon receipt of the said notice, caused a copy of the same to be sent to the Mayor of Trenton with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action of the company, an opportunity would be afforded on August 17, 1915. The Board also caused a letter to be sent to prosecutor acknowledging receipt of the notice from the company, and enclosing a copy of the letter sent to the Mayor of Trenton. On August 17 the company did not appear before the Board, but on application of the City the Board made an order suspending the pro-

posed change until November 16, 1915, and fixing a day for the hearing on the merits. After the making of this order, prosecutor filed a bill in the District Court of the United States for the District of New Jersey with affidavits annexed, in which bill it prayed that "the Board of Public Utility Commissioners of New Jersey may be enjoined from continuing the order of August 17, from conducting a hearing, and from taking jurisdiction of the matter at all;" and also praying for an injunction against the City and its Mayor from enforcing the penalty prescribed in the ordinance. This bill of complaint is Volume II of the State of the Case herein. Upon the filing of the bill an application was made to the Court for a preliminary injunction, upon which an order to show cause why the injunction prayed for should not be allowed was granted, but without any *ad interim* restraint. This application was heard before Circuit Judge Woolley and District Judges Rellstab and Haight, and that Court on October 14, 1915, filed it opinion refusing the preliminary injunction for the reasons which appear in the opinion, the substance of which is hereinafter quoted.

This judgment was appealed to the United States Circuit Court of Appeals, which sustained the judgment of the District Court.

After judgment was rendered in the United States District Court, the hearing before the State Board of Public Utility Commissioners was taken up. Witnesses were heard upon both sides, upon all of the points involved, at the conclusion of which an order was made by the Board of Public Utility Commissioners ordering the prosecutor to continue the sale of six tickets for a quarter. This order appears in the State of the Case, page 844.

The case came before the court below on certiorari of this order. There were thirty-nine reasons assigned by the prosecutor, but they were all reduced by us to the following legal propositions:

First: That the Board of Public Utility Commissioners had no jurisdiction to make the preliminary order of August 17, 1915, or the final order of January 11, 1916, because the prosecutor had no notice of the order of August 17, 1915, and because it has a contract with the City of Trenton authorizing it to charge the five-cent fare.

Second: That the final order of January 11, 1916, was not justified by the evidence in the case.

Third: That the lessor companies of the prosecutor were not made parties to the hearing.

To these main contentions of the prosecutor, the answer of the City of Trenton in substance is:

First: That the Public Utility Commissioners had jurisdiction over this case under the Public Utility Statute; that they had the power to make the order of August 17, 1915. But if the said Board had no such power, the duration of the order was three months and the time has now expired, and therefore there is nothing before this court on that point. That prosecutor has no contract with the City of Trenton, but on the contrary is bound by the provisions of the ordinance passed by the City of Trenton on October 22, 1909, requiring the Traction Company to sell six tickets for a quarter, to which prosecutor in writing expressly agreed, and that such ordinance and agreement constitute a binding contract now in force.

Second: That the order of January 11, 1916, is in accordance with the evidence taken in the case.

Third: That the lessor companies have no interest in this case, as prosecutor has leased their properties under a guaranteed rental, and they are not, therefore, proper parties to this controversy.

Fifty-one reasons are assigned for reversal in this Court, but as none of them presents any new feature, they too are reduced to the three legal propositions already stated for the purpose of this argument.

And, further, as we understand it, this Court will

not consider on appeal a point not raised in the Court below.

POINT I.

IT IS IMMATERIAL WHETHER THE ORDER OF AUGUST 17, 1915, WAS LEGAL; IF MATERIAL, IT WAS LEGAL.

As this order was a temporary suspension of the contemplated action of the prosecutor in discontinuing the sale of the six tickets for a quarter, and the three months of its duration having now passed, it seems idle to discuss the legality of the order.

If the Court, however, considers the point material, the claim of the City of Trenton is, that the company had ample notice and opportunity to be heard. The company itself invited the jurisdiction of the Board by forwarding a letter to the Public Utility Commission notifying the Commission that it intended to withdraw the sale of these tickets upon a specified day (see Case, Vol. 11, *Exhibit C 62, page* 308, letter of August 13, 1915). The forwarding of this letter was a recognition by the company of the power of the Public Utility Commission in the premises, even if the letter itself disclaimed the Public Utility Commission's power over the subject matter, otherwise there was no reason to send it. Immediately upon the receipt of this letter the Public Utility Commission sent a letter to the City of Trenton notifying the City of Trenton of the receipt of this communication from the prosecutor, and appointing Tuesday, August 17th, at eleven o'clock in the morning as the time, and the State House, at Trenton, as the place, where the said Public Utility Commission would sit for the purpose of hearing and considering any application that the City of Trenton might wish to make upon the subject matter contained in the letter from the prosecutor to the Public Utility Commission. This letter appears as *Exhibit C 64, page* 310,

Case, Vol. II. The Commission also caused a copy of this letter to the City to be sent to the Trenton and Mercer County Traction Company, as appears by *Exhibit C 63, page* 309, Case, Vol. II, letter of August 13, 1915, by the Public Utility Commission to the Trenton and Mercer County Traction Company. The transmission to the prosecutor of a copy of the letter from the Commission to the City was a direct notice that at the time and place mentioned therein the subject matter would be taken up and the City, as the representative of the people who were affected thereby, would be given an opportunity to apply for such order as might be reasonable in the premises. This not only was an adequate notice, but it at least was information that on such a day they would have an opportunity to be heard. As reasonable men they were charged with the knowledge that the public officials of Trenton would of course oppose, as they did so strenuously in 1909, the withdrawal of these tickets, and that they would apply to the Commission at the time and place mentioned for some order that would continue the issuing of these tickets until the whole matter could be finally heard.

But the complete answer to this claim of the prosecutor is set forth with reasoning that is conclusive in the opinion of Judge Haight in the United States District Court case, from which we quote:

> "The second ground requires a determination as to whether the order complained of was in fact made without notice to the plaintiffs and without affording them an opportunity to be heard, and if so, whether notice was necessary before the Board could have legally made it. The Board of Public Utility Commissioners was created by an act of the New Jersey Legislature, approved April 21, 1911 (*P. L.* 1911, *p.* 374), and was thereby vested with certain defined powers; among them to fix just and reasonable

rates to be charged by various public utilities, included in which are street railway companies, whenever it should determine any existing rate to be unjust, unreasonable or insufficient, and to hear and determine whether any increase, change or alteration in rates, which might thereafter be made by any public utility, would be just and reasonable. The Board was also vested with power, 'pending such hearing and determination' of the latter question, to order, for a period not exceeding three months, the suspension of the increase, change or alteration until it should have approved the same. It is by virtue of the last-mentioned power that the Board presumed to act in making the order in question. After the lessee company sent the notification to the Board of its intention to discontinue the sale of six tickets for twenty-five cents, the latter caused a copy of the same to be sent to the Mayor of the City with a letter, advising him that if the City desired to submit anything to the Board or to make any motion in respect to the proposed action by the company, an opportunity would be afforded on August 17. On the same day the Board caused a letter to be sent to the lessee company acknowledging receipt of the notice, asking when it proposed to make the change, and enclosing a copy of the letter sent to the Mayor. The company was not represented before the Board at the hearing, and as far as appears, was not notified whether the City proposed to take any action or make any motion before the Board on the date specified, or otherwise. On that date, however, the City was represented, and on the motion of its solicitor the order in question was made. It thus appears that the only notice the plaintiffs had was that on a certain day the Board would hear any motion that the City intended to make; but

they were never notified that the City intended to make any motion whatsoever or what it would be, and were afforded no opportunity to defend against the motion which was made and the order which the Board entered. Under these circumstances, if notice and hearing were necessary prerequisites, we think the plaintiffs were not given such notice or afforded such an opportunity to be heard in respect to the action which was taken as to satisy the 'due process of law' clause of the Fourteenth Amendment. But we think that the statute creating the Board and defining its powers authorized an order of suspension to be made, without notice of hearing. The powers of the Board, so far as are necessary to be considered, are conferred by Sections 16 and 17 of the act. Section 16 provides: 'The Board shall have power'; then follows, in eleven separate paragraphs, an enumeration of the powers. In some of these paragraphs the exercise of the power is expressly limited to 'after hearing'; in others to 'after hearing upon notice.' Section 17 provides: 'The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined'; then follows, in eight separate paragraphs, an enumeration of powers. It thus appears that the Legislature has carefully defined when a hearing and notice are necessary. The last of the paragraphs of Section 17 confers two separate powers: one to hear and determine, either upon complaint or upon the Board's own initiative, whether an increase, change or alteration in any existing rate is just and reasonable, and the other to suspend, for a limited time, such increase, change or alteration, 'pending such hearing and determination.' The latter power is expressly conferred in so many words, and by a separate sen-

tence, in which there is no requirement that the order can be made only after hearing and notice. It is a separate power, deemed necessary by the Legislature, no doubt, to give more efficacy to the former. The reason for granting it, as well as the context, leads us to the conclusion that it is not limited or qualified by the opening paragraph of Section 17, before quoted. That paragraph, we think, refers to the powers to determine whether the proposed change would be just and reasonable. It is difficult to understand why the Legislature should have required two hearings on the same question. If no other question were presented than that of reasonableness of the rate, as would most often be the case, the first hearing, to be of any effect whatever, must, of necessity, be practically the same as the second. On the other hand, it is reasonable to assume that the Legislature would wish to clothe the Board, to which it had delegated the State's rate-making right, with power to preserve the *status quo* until there could be a hearing and determination upon the merits, without the delay incident to notice and hearing. This is the same power exercised by and conferred upon the Interstate Commerce Commission by the Act of June 18, 1910 (36 *Stat. at L.* 552). Nor do we doubt the right of the Legislature to grant such a power, without violating the Fourteenth Amendment. Nothing more was done than to clothe a quasi-judicial body with a power which has always been exercised by courts of competent jurisdiction."

POINT II.

THE PUBLIC UTILITY COMMISSION HAS JURISDICTION OVER THE SUBJECT MATTER IN THIS CASE. NO ACTION OF THE CITY OF TRENTON SHOWN BY PROSECUTOR COULD OR DID DEPRIVE THE STATE OF NEW JERSEY OF ITS RESERVED RIGHT TO FIX JUST AND REASONABLE RATES.

We content ourselves with a brief statement of the principles involved in this case and a citation of the authorities, relying upon the brief of the counsel for the Public Utility Commission for a more extended discussion of this point.

(a) The power to fix and regulate the rates charged in the conduct of a business affected with a public interest is an undoubted power of government continuing in its nature. *Stone* v. *Farmers' Loan & Trust Co.*, 106 *U. S.* 307.

(b) Since this power is a power of government it cannot be lost by nonuser, nor is it affected by the fact that before the power is exercised the income of the business subject to the power has been pledged for the payment of debts incurred, or that the property employed in such business has been leased to a tenant that relied upon the earnings for the means of paying the stipulated rent. *Chicago, Burlington & Quincy R. R. Co.* v. *Iowa*, 94 *U. S.* 155; *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164.

(c) If the State, directly or through any municipal corporation, has power to establish by an inviolable contract the rates to be charged in a public utility, it can only be where the language is express and the time of the contract limited to a definite term, not grossly unreasonable in point of time. *Stone* v. *Farmers' Loan & Trust Co., supra; Home Telephone & Telegraph Co.* v. *Los Angeles* 211 *U. S.* 265.

(d) The State did not, by the statutes referred to in

the bill of complaint—which in general terms grant authority to fix rates—renounce its governmental power to fix and regulate rates; the only authority granted was the authority in general terms to fix fares. By such general language the State does not part with its governmental power to fix and regulate rates. *Stone* v. *Illinois Central Railroad Co.*, 116 *U. S.* 347; *Stone* v. *Farmers' Loan & Trust Co.*, 116 *U. S.* 307; *Chicago, Milwaukee & St. Paul Railway Co.* v. *Minnesota*, 134 *U. S.* 418; *Minneapolis & Eastern Railway Co.* v. *Minnesota*, 134 *U. S.* 467; *Southern Pacific Co.* v. *Oregon Railroad Commission*, 230 *U. S.* 537; *Milwaukee Electric Light Co.*, 35 *Sup. Ct. Rep.* 820; *Duluth St. Railway Co.* v. *Railroad Commission of Wisconsin*, 152 *N. W. Rep.* 887.

(e) The fixing of a maximum rate of fare by the statute and ordinances referred to in the bill of complaint, did not create an inviolable contract as to rates which prevented the subsequent exercise by the State of the power to fix rates less than said maximum rates, provided such lesser rate is a just and reasonable one. *Dow* v. *Beidelman*, 49 *Ark.* 325, 5 *S. W.* 297; *Georgia Railroad & Banking Co.* v. *Smith*, 128 *U. S.* 174; *Rogers Park Water Co.* v. *Fergus*, 180 *U. S.* 625; *Knoxville Water Co.* v. *Knoxville*, 189 *U. S.* 425.

(f) The Legislature of the State of New Jersey has not conferred upon the municipalities of this State any power to enter into inviolable contracts with street railway companies establishing rates of fare and suspending the State's power to fix and regulate rates. *Home Telephone Co.* v. *Los Angeles*, 211 *U. S.* 265; *Wyandotte Gas Co.* v. *Kansas*, 231 *U. S.* 623.

(g) If the municipal corporation was vested with the power to engraft upon the franchises of the Railway Companies a provision limiting the rate of fares as a condition of the use of the highways for street railway purposes, the act of the municipality in imposing such liability was that of agency of the State in granting the

corporate franchises, and is therefore subject to the power reserved to the State by constitution and by statute, to amend, alter or repeal corporate statutes. The enactment of the statute creating the Board of Public Utility Commissioners and vesting in the Board power to fix just and reasonable rates whenever it determines existing rates to be unjust or unreasonable and temporarily pending hearing to suspend proposed increases in existing rates, was the exercise by the State of its reserved power to amend, alter or repeal corporate franchises. *Peik* v. *Chicago & Northwestern Railway Co.*, 94 *U. S.* 164; *San Antonio Traction Co.* v. *Altget*, 200 *U. S.* 304; *City of Mani* v. *Manitowac & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. W.* 925; *Louisville & Nashville R. R. Co.* v. *Railroad Commission of Kentucky*, 231 *U. S.* 298.

(h) A special statutory enactment from the governmental power of the State to fix and regulate rates does not pass to a new corporation succeeding others by consolidation or purchase in the absence of express direction to that effect in the statute.

The same rule is applicable where the constituent companies are merely owned and operated by one of them as authorized by the legislation. An enactment held by the latter will not pass unless so expressly provided. *St. Louis & San Francisco Railway Co.* v. *Gill*, 156 *U. S.* 649; *Matthew* v. *Board of Corporation Commissioners of North Carolina*, 97 *Fed.* 400; *Peoples Gas Light & Coke Co.* v. *Chicago*, 194 *U. S.* 1.

(i) Where the action of the municipality does not establish an inviolable contract suspending the State's power to fix and regulate rates, the power of the Board of Public Utility Commissioners is complete. The Board may, in such case, fix a just and reasonable rate, whenever it determines the existing rate to be unjust and unreasonable, notwithstanding the fact that the existing rate has the sanction of prior municipal action assented to by the company. A just and reasonable

rate so fixed by the Board may be less than that limited by the prior municipal action, or may exceed the rate so limited. This follows from the fact that the existing rate may be unjust and unreasonable to the community served because it affords more than a fair return, or unjust and unreasonable to the utility furnishing the service because it fails to afford a fair return. The power conferred upon the Board is, Public Laws 1911, page 374, Section 16:

> "(c) To fix just and reasonable rates * * * whenever the Board shall determine any existing rate * * * to be unjust, unreasonable, insufficient or unjustly discriminatory or preferential."

City of Dawson v. *Dawson Telephone Co.*, 137 *Ga.* 62, 72 *S. E.* 508; *City of Manitowoc* v. *Manitowoc & Northern Traction Co.*, 145 *Wis.* 13, 129 *N. E.* 925; *Milwaukee Electric Railway & Light Co.* v. *Railroad Commission of Wisconsin*, 153 *Wis.* 592, 142 *N. W.* 491; *City of Benwood* v. *Public Service Commission* (*W. Va.*), 83 *S. E.* 295, *L. R. A.* (*N. S.*) 1915 *C.*

(j) Section 17 (h) of the Public Utility Act clothes the Board with power pending a hearing and determination on the justice and reasonableness of a proposed increase in any existing rate, or change or alteration in any existing classification, to order the suspension of such increase, change or alteration for a period not exceeding three months.

The statute does not make the exercise of the power of suspension dependent upon notice and hearing as to whether or not the power shall be preliminarily exercised in a specific case.

In this respect it resembles the Interstate Commerce Act.

No constitutional provision makes notice and hearing a prerequisite to the exercise of the power of suspension.

See *Home Telephone and Telegraph Co.* v. *City of Los Angeles*, 211 *U. S.* 265, 278.

POINT III.

ORDINANCE OF CITY OF TRENTON OF OCTOBER 22, 1909, REQUIRING SALE OF SIX TICKETS FOR A QUARTER, WAS A CONTRACT SUPERSEDING PREVIOUS CONTRACTS, IF ANY EXISTED.

Even if the ordinances relied upon by the prosecutor constituted a contract, that contract was abrogated by the ordinance of October 22, 1909. The following undisputed facts in the case conclusively established this contention.

For many years prior to September, 1909, the Trenton Street Railway Company (then the operating company), and the constituent companies which were merged into it, had voluntarily adopted the practice of selling six tickets for a quarter, each ticket good for a ride within the limits of the City of Trenton. That on Monday, September 13, 1909, an announcement was made on behalf of the company, then operating the Trenton Street Railway system, that no more strip tickets would be sold by the conductors after 6 P. M., on the 15th day of September, 1909, and on the said 15th day of September, the actual sale of the said tickets was discontinued in accordance with said notice. That the announcement of the purpose of the company to withdraw the sale of these tickets and the actual withdrawal of the same, aroused widespread indignation among the citizens and public officials of the City of Trenton. The action of the company became the leading news feature of the local newspapers from the 13th day of September, daily, until the whole matter was settled by the passage of the ordinance re-establishing the sale of the tickets on October 19, 1909. The subject was taken up by the Chamber of Commerce, of Trenton, and the Merchants' Association of that City, and by the Mayor and by the Common Council.

The Mayor of the City addressed strong messages

to the Common Council upon the subject of the withdrawal of these tickets, in substance, reciting that the company had grossly violated the provisions of the City ordinances in respect to the schedules of its cars, in the matter of running old and unsanitary and flat-wheeled cars, in the matter of running cars upon parallel tracks in the same direction, and called attention to various other violations of the City ordinances and instances of poor and inadequate service.

The Mayor, also, in a special message directed to the Council, raised the point that some of the company's franchises were probably void, and that a legal action would result in their being declared without any rights upon certain of the streets of the City, and suggested that the City should proceed by appropriate legal action to have these franchises set aside.

The result was such an aroused public opinion that representatives of the City and representatives of the company had several conferences from day to day.

As a result of these conferences the President of the Street Railway Company, on September 18, notified the Common Council that the Company was willing to compromise the strip ticket matter by restoring the sale of the strip tickets, not on the cars, but at certain stores or other places within the city limits. This compromise did not satisfy public opinion or the public officials, and various members of the Common Council announced that at the Council meeting to be held on Tuesday evening, September 21, 1909, they would introduce resolutions inaugurating an attack upon the company's franchises, and looking to the enforcement of various ordinances of the City as to better service.

As a result of all these influences assurances were made by the company to the Common Council on the evening of its meeting on September 21, that the tickets would be restored for sale upon all the cars the following Friday.

At said meeting a resolution was adopted to which the attention of the Court is particularly directed. It recited that in the ordinances of the City granting to the company operating the street railway and its predecessors the right to construct and operate street railway lines in and upon the public streets of the City of Trenton, the City reserved the right to alter or amend the same at any future time whenever in the judgment of the Common Council it should become necessary for the public good so to do. It recited that in said ordinances, or some of them, it is provided that no such alterations or amendments shall be made without giving to the Railway Company affected thereby one month's written notice. It recited that in the judgment of the Common Council it is necessary for the public good that the existing ordinances should be altered or amended so as to provide for the uninterrupted sale by the company of tickets at the rate of six tickets for twenty-five cents, or that in lieu of such amendment or alteration, a new ordinance should be passed requiring the sale of such tickets by the company upon the terms aforesaid, provided the company was willing to waive, in writing, one month's notice thereof, to which it was entitled, and signify its willingness to enter into a written contract or agreement with the City of Trenton accepting the terms of such proposed new ordinance, and agreeing to comply with the requirements thereof.

The resolution then proceeds to designate five members of the Common Council to act as a committee to confer with the officers of the Trenton Street Railway Company relative to the said matter.

The resolution further provided that if the company should fail within ten days to give such written waiver and signify its willingness to enter into a written agreement, that the City Clerk should forthwith give one month's written notice to the company of the intention of the Common Council to alter and amend the ordinance in the manner hereinbefore described.

The resolution further provided that in the event that the company should waive such notice and make such agreement and accept the terms of the new ordinance, that the City Counsel be directed to prepare a draft of such proposed new ordinance for introduction at the next meeting of the Common Council.

As a result of the passage of this resolution and the other influence hereinbefore described, on Wednesday, September 22, the Street Railway Company actually restored the sale of the strip tickets on all of its cars.

The committee appointed by the Common Council accompanied by the City Counsel, Mr. Charles E. Bird, met the representatives of the company in conference, and in such conference it was agreed that the sale of the six tickets for twenty-five cents should be continued by the company, and that a formal agreement to that effect should be made between the City and the Company. At this conference the company agreed that the sale of the strip tickets, which in fact had been theretofore resumed, as before stated, should be continued for the future, and that the company stood ready to take whatever action the City requested in order to make the obligation to sell these strip tickets binding upon the company in the future. It was thereupon arranged that the Board of Directors of the company should pass a resolution waiving its right to receive from the City any notice relating to the passage of a new ordinance providing for the sale of the said strip tickets, and agreeing to the adoption of a new ordinance to that effect, and further agreeing that when the ordinance was passed the company would execute another written agreement ratifying the said ordinance. In accordance with this arrangement the Board of Directors of the Trenton Street Railway Company, on the 4th day of October, 1909, adopted the resolution which appears as complainants' *Exhibit C 68,* page 321 of complainants' bill of complaint in the District Court case. (Case, Vol. II.) The attention of the Court is particularly directed to

this resolution. *It recites that the City in its several street railway ordinances has reserved the right to alter or amend such ordinances.* It recites the provision of the ordinance that the company shall have one month's written notice of any proposed amendment. It recites the resolution of the Common Council at the meeting held on the 21st day of September, to which reference has been heretofore made under this point, notifying the company of the desire of the Common Council to amend the existing ordinances or to pass a new ordinance, providing for the sale of strip tickets. It recites that the amendment of the several ordinances would involve a greater expense and delay than would be necessitated by the passage of a new ordinance. It recites that the City Counsel, on behalf of the City, has submitted to the company a draft of such proposed new ordinance, and of a written form of agreement to be executed by the Company, of which copies are mentioned as attached to the resolution, and *that the Board of Directors have fully considered the premises, and are willing to aid in the speedy passage of the proposed new ordinance.* The resolution then provides that the company *waives all right to receive any notice relating to the passage of the said new ordinance,* and that the proper officers of the company are directed to transmit to the said City a duly authenticated copy of the resolution.

The resolution further provides that immediately after the passage of the said new ordinance by the City, substantially in the form embodied in the copy annexed to the resolution, the proper officers of the company are directed execute an agreement in form substantially similar to the draft of the said agreement annexed to the resolution. This resolution of the directors was transmitted to the City on or about October 2, 1909.

Annexed to this resolution was a draft of the ordinance and of the subsequent agreement that the company was to execute after the passage of the ordinance, which ordinance is the ordinance in question in this

controversy and is complainants' *Exhibit C 55*, page 304, of the bill of complaint, in the U. S. case (Case, Vol. II), and which agreement is appellants' *Exhibit C 70*, page 325, of the bill of complaint in the U. S. case (Case, Vol. II).

On the 19th day of October, 1909, the said ordinance in the form recited in the resolution of the company's directors, was passed by the Common Council and approved by the Mayor on October 22. This is the ordinance which is in question in this case, *Exhibit C 55*, page 304, of complainants' bill of complaint in the U. S. case (Case, Vol. II). It provides expressly that the Street Railway Company shall be required to sell at all times, upon all of its cars, strip tickets at the rate of six tickets for twenty-five cents, and that the Mayor of the City shall be authorized to revoke the license of any car operated by the company upon which tickets are not sold. This ordinance was introduced October 5, 1909, referred to the proper committee, and passed October 19, 1909, and approved October 22, 1909.

Here, then, was an agreement reached after conferences between the representatives of the City and the representatives of the company, and carried out in writing in accordance with the verbal arrangements made by the representatives of the City and of the company respectively. The company agreed, by resolution of its directors, to waive any right to any notice that it might have of the intention of the City to pass this ordinance, and agreed that the City might pass it, and that the company would execute a written agreement after it was passed formally accepting its terms, and the officers of the company were authorized to execute such an agreement *immediately* upon the passage of the ordinance by the Common Council and its approval by the Mayor.

We insist that these several actions by the company and the City constituted an agreement on behalf of the company to maintain the sale of these tickets upon

all of its cars as long as it should exercise its franchises.

The company attempts to escape from the obligation of this contract by asserting two defenses: First, that it was misled into making the contract by the recital in the resolution adopted by the company's directors to the effect that in all of the ordinances of the Common Council to the company and its predecessors, the right was reserved to amend such ordinances. Our answer to this is that if said recital was a material fact in the negotiations and in the agreement, then of course it was the company's business and that of their legal advisers to ascertain whether said recital was true in fact or in law. If it was not a material recital then it does not affect the agreement. It is therefore immaterial whether this recital is as a matter of fact true or not true.

This claim of ours is absolutely clinched and proved beyond any discussion by the statement of John A. Rigg, General Manager, or whatever he was of the company, in his affidavit annexed to the bill of complaint in the U. S. (Case, Vol. II, page 63), wherein he specifically states

> "that the Trenton Street Railway always claimed that the City of Trenton had no right to alter or amend the ordinances * * * so as to in any way lessen the amount which the company had the right to charge for transportation of passengers * * * under said ordinances."

Our claim that this recital was not a material part of the agreement and did not enter into the company's mind is again confirmed by the first recital in the form of agreement which the company agreed to execute after the passage of the ordinance (complainants' *Exhibit C 70,* page 325, Case, Vol. II). In that agreement the following recital appears at the top of page 326:

> "Whereas, in and by the several ordinances aforesaid, *or some of them,* the right was reserved by the said party of the second part to

> alter or amend said ordinances at any future time, whenever, in the judgment of the Common Council of said City, it should become or be necessary for the public good so to do."

There is no possible denial of the fact that this right was reserved as to some of the ordinances of prosecutor, or its predecessors. The company's directors had this agreement in front of them when they passed their resolution drafted by their own counsel, and this agreement was annexed to the said solution. Therefore the claim that they were misled by the recital that all of the ordinances contained this provision falls to the ground.

As another defense to the validity of this solemn agreement, the company alleged a failure of consideration. Our answer to this claim is, that there was a most substantial and vital consideration that passed from the City to the company in return for this agreement. The consideration was the removal of the public and the official hostility to the company. The Mayor had publicly called upon the Council in a special message to attack the company's franchises; that the Council had started measures looking to compelling the company to buy new cars and to abolish flat wheels, and live up to its schedule, and to adopt new and reasonable schedules, and to twelve or thirteen other points which the City had raised as against the company's service or obligations under its franchises. It was this wave of public indignation and this threat of adverse City action that caused the company to yield. This is expressly proved by the assertion of General Manager Hurley in his letter to the Council, which was delivered on the evening of September 21st, wherein he says specifically:

> "We are desirous of doing everything in our power to meet the demands of the citizens, realizing that their good will is our greatest asset."

The good will of the public, says the Manager of the company, is the chief asset of this company. When by the making of this agreement the animosity of the public was removed, and its good will was won back, the company obtain the thing which was the real consideration for the making of the agreement.

The company therefore received its consideration, and the claim that its action was without consideration is therefore without force.

The company further claims that after the passage of the resolution by the Board of Directors waiving the notice in the ordinance, and agreeing to accept its provision and execute the contract to that effect, it discovered that the recital in the said resolution of their Board of Directors was untrue, and subsequently to the passage of said resolution rescinded the same. This resolution of rescission is *Exhibit C 69*, page 322 (Case, Vol. II). This claim is entirely without force if the foregoing reasoning is sound. If the recital in the resolution of the Board of Directors was passed upon by their own counsel, and they had full knowledge of its meaning, or if the recital was immaterial and was not a material part of the agreement, then it was impossible for the company to rescind the agreement after they had received the consideration, to wit, the restoration of public favor, and after the city had performed its part by the passage of the ordinance agreed to beforehand, and stopped proceedings to invalidate the company's franchise.

The resolution passed by the Board of Directors agreeing to execute the subsequent agreement after the City should act by the passage of the ordinance, simply put the company in the position, after the passage of the ordinance, that they could have been then and could now be compelled to execute the agreement agreed to be made. The company after it had received the benefit which the agreement to submit to the ordinance brought them in the way of the cessation of public agitation,

and in the fact of the abandonment by the City of the proposed attack upon the franchises, could not thereafter refuse to execute the agreement to which it had bound itself. As a matter of fact, the execution of this agreement was a mere formality. It is obvious that its execution was provided for merely that there should be additional evidence of the agreement between the City and the company.

The prosecutor does not claim that it has ever notified the City that it had rescinded the said resolution. All that appears is that the confirmatory agreement was never executed.

This amounts to a fraud upon the public. There is no other way to properly characterize it. If these Directors have known all of these years that the agreement they made with the City was void, and have not so notified the City, they have put the City in a false position, and have induced it to rest secure in the belief that the agreement between the City and the company was a valid one, and they have obtained all of the advantages in the way of a favorable public sentiment, and immunity from official attack, which the concealment of their position has brought them.

During all of those years they have sold these tickets they have acted in exactly the same way that they would have acted if they had actually executed the confirmatory agreement, which they failed to execute. We submit that this in any event is a ratification, in whole, of the agreement which they had made with the City, and is of equal binding force as if they had executed the confirmatory agreement which they failed to execute.

The cases cited in support of the prosecutor's position that there was no contract until the executory agreement was signed, do not fit this case at all. All these cases go upon the supposition that the minds of the parties have not met until the execution of the final agreement. They are all cases where only a preliminary

and general understanding was reached in the first instance, subject to be revised and modified, and these revisions and modifications to be stated in a subsequent agreement. In this case the minds of the parties met, and when the City Council passed the ordinance and sent a copy of it to the company, and the company by formal resolution recited the ordinance, expressly indicated its assent to its provisions and promised to execute not a modified agreement, but in the exact form annexed to the resolution. If the City had changed its ordinance in any material part after the passage of this resolution by the Board of Directors of the company, then there might be some force to the claim that the minds of the parties had not finally met.

Finally, there was no necessity for any specific consideration in this case. The City and the company had relations which had been established by ordinance. These relations were mutual. It is well-established that when parties to an agreement modify an existing agreement that the modification of the agreement is in itself the consideration, or is evidence of mutual advantages which constitute the consideration.

That these several acts constitute a contract between the Trolley Company and the City is supported by the case of *Jersey City* v. *Jersey City and Bergen Railroad Company*, 70 *N. J. L., page* 360. This was a case where provisions were incorporated in the ordinance requiring the company to pay license fees.

POINT IV.

Ordinance of October 22, 1909, Valid as an Ordinance if Not as a Contract.

If the facts set out under the previous point do not constitute a contract, nevertheless it is plain that the ordinance of October 22, 1909, was a valid exercise of the power vested in the municipality to amend the ordinances previously granted to prosecutor's lessor com-

panies. This ordinance, being valid, must stand until the Utility Board shall, under its power to fix just and reasonable rates, change the conditions as to fares established by the ordinance.

The prosecutor claims that this power of amendment does not extend to changing fares, because it claims that that is a vital matter. If this claim was sound, it would amount to the position that no amendment of an ordinance can be made which imposes any additional financial burden upon the company. There is no difference in principal between the power of the City to compel the company to put on additional cars, to abolish flat wheels, or to pave between the tracks, or to improve the service in any way through the power of amending an ordinance, and the power to reduce the fares. Any exercise of the power of amendment by the City government necessarily imposes a financial burden upon the company. The test is not whether the ordinance is directed to the amount to be charged for the fare, or to any other part of the service, but the test is whether after the amendment has gone into effect, there is still enough income left to afford a fair return over the value of the property. If the City by amending the ordinance compels the company to run so many cars that the existing rate is unprofitable, then the company can raise the rate, or if it is limited as to the rate, then the ordinance requiring an excessive expenditure for service must fail. That this is true appears from the consideration of the possibilities of the future.

Supposing a new motive power cheaper than electricity is discovered, or a cheaper method of producing electric power is discovered, whereby the company could transport passengers at a cost of one cent apiece, with the result that its earnings would be fifty per cent. upon the fair value of its property, is it not plain that both the City would have the power to amend the ordinance so as to reduce the rate, and that the Public Utility Commission would have power to reduce the rate so that the

net earnings would afford only a fair return upon the value of the property?

POINT V.

THE COMPANY IS BOUND TO MAINTAIN THE SALE OF TICKETS BY ITS OWN AGREEMENT WITH THE PUBLIC UTILITY COMMISSION.

It appears by the record offered in this case by Mr. Sommer of the application of the company for the approval of the Public Utility Commissioners of the lease by which it obtained control of the Trenton Street Railway system, that all of the present difficulties with which prosecutor is now struggling were foreseen by the Commission, made the subject of discussion and investigation, and resulted in a virtual agreement between prosecutor and the Commissioners. The proof of this statement appears in the quotation from the testimony taken in that proceedings given by Mr. Crosby, the representative of the existing companies and the president of the newly formed lessee company, which was read into the record. (Case, page 474, line 10.) Mr. Crosby said under oath:

> "There has been some contention in this particular case as to whether the tariff to be charged is fixed at five cents or a possible four and a sixth cents. I have not been able to find exactly what the legal status is as recognized by the (lessor) companies. I am under the impression they are practically committed to the six-for-a-quarter rule. I suppose we inherit that committal. If not, I should not have the authority to commit them, but I am ready to say, if there is any doubt, so far as we are concerned, we are willing to submit to a friendly suit to settle the question."

He further said (Case, page 474, line 36):

> "I looked at the matter when going over the

estimates as to probable earnings that we should never have more than six-for-a-quarter tickets. If the ordinance has been passed and accepted, that settles it."

To clinch this point, Mr. Sommer, then President of the Commission, asked this question (Case, page 608):

"*Q.* In making the estimate, however, of whether the future, on the lines laid down by the lease, would be profitable, you use as a basis what: five-cent fare or the six-for-a-quarter fare? *A.* We eliminated it in one sense. * * * WE HAVE BASED IT ON THE SIX-FOR-A-QUARTER BASIS REALLY. I should say, in regard to the six-for-a-quarter basis, there was no thought that the question would be raised for a change to five cents. Mr. Rigg told me they had made a spurt and had gone back. And he said they did not know just what the legal status was."

We submit that this language amounts to an agreement that this particular lessee company was prepared, as a condition of receiving the approval of the Commissioners, never to raise the question unless it was compelled to by their lessor companies, and that in that event it, the lessee company, agreed that it should be settled by a friendly suit. This means that the question as to whether there was a legal contract which the lessor companies could avail themselves of to discontinue the sale of the strip tickets, if ever raised, should be settled by a friendly litigation to determine the legal point involved.

We submit, therefore, that prosecutor obtained the approval of the Commission to this lease upon the distinct representation that it would not attempt to change the practice of selling six tickets for a quarter, except as the result of a friendly litigation upon the legal point of the contract. The Commission relied upon that representation in approving the lease. They should not be

allowed at this late date, after they have been disappointed in their anticipation of being able to squeeze the Trenton public into paying these rentals upon millions of watered stock, and to have something left over to pay dividends upon their own stock, all of which is shown by Mr. Johnson's testimony to be pure water—they should not be allowed in this proceeding to raise this question which they expressly covenanted not to raise. They do not show that they have been requested to raise this point by their lessor companies.

POINT VI.

Burden of Proof.

The prosecutor claims that the Commission erred in holding that the burden of proof was upon the prosecutor in proving that the new rate of a straight five-cent fare would be just and reasonable, and that the existing rates were unjust and unreasonable.

Had the prosecutor sought to change the existing conditions and give up a rate which had existed for twenty-five years, and to put in force a higher rate, it is obvious that the burden of proof was upon the company seeking to make the change.

But if the point was important and the burden of proof was upon the City, an inspection of the record will show that by a very great preponderance of proof, the City has established that fact both that the existing rate is more than just and reasonable and that any increase in the rate would be unjust and unreasonable. This will appear as we discuss he merits later in the Brief.

POINT VII.

The Prosecutor's Valuation of its Property is Excessive.

We contend that prosecutor has failed to meet the burden of proof that the existing earnings do not fur-

nish a fair return upon the value of the company's property which is devoted to a public use.

The prosecutor undertakes to prove a valuation of $3,700,000 for physical property, to which it adds anywhere from $1,000,000 to $2,000,000 for what Mr. Ford terms "development cost." Let us analyze these figures.

Mr. Johnson makes up his figures by taking the valuation of the physical property which he made in 1910, before the properties were taken over. This value he finds to be approximately $3,200,000, to which he added some $800,000 which has been subsequently spent upon the property. We attack this valuation upon many grounds. In the first place, he admits that his valuation was not made wholly by himself. He admits that he had the assistance of other people in gathering and marshaling his data, and these people are not produced for cross-examination. He does not produce his original notes. Nor does he produce the details of his valuation requested by the City.

This valuation in 1910 Mr. Johnson admits was what he called a valuation new. That is to say, he valued all of the property as though it was new and in good condition.

There is no dispute that this property was at that time badly run down.

Confirmation of the fact that the property of the prosecutor was very seriously depreciated appears in several ways. Mr. Hurley, the General Manager of the Trenton Street Railway Company, wrote a letter to the tax commissioners in August, 1907 (*Exhibit O 36*), in which he said:

> "As to our property in the streets, we can show unquestionably that much of the track will have to be entirely renewed within the next year or so."

The City of Trenton, at this very time in 1910, made formal complaint to the Board of Public Utility Com-

missioners that the company's condition was bad, specifying the exact particulars upon which its charge was based. Upon this complaint the Board of Public Utility Commissioners used the following language in its order:

> "The Board of Public Utility Commissioners for the State of New Jersey, after consideration of such testimony and the results of such inspections, determines that the Trenton Street Railway Company DOES NOT NOW FURNISH SAFE AND ADEQUATE SERVICE in the City of Trenton, and that in order that such service may be furnished by it, it is required that the following work be done."

Then follows twelve specific requirements, ranging from the complete reconstruction of the track on specified streets to the repair of joints on specified streets.

The Board further finds that

> "The work of RECONSTRUCTION and REPAIR, hereby ordered to be done, SHOULD HAVE BEEN DONE HERETOFORE from time to time as the occasion therefore first arose."

This is an official finding by this very Board that the condition of the company's plant at that time was so bad that it could not furnish safe and adequate service. It is in evidence that $500,000 was raised as a necessary condition of approving the lease in order that this property might be rehabilitated. This is conclusive proof that the company's property at that time was heavily depreciated, and, therefore, the value new found by Mr. Johnson is practically irrelevant, unless it is supplemented by some evidence to show to what extent it was depreciated. This the company has made no effort whatsoever to do. There is not a scintilla of proof in this case to show what was the real value or the real condition of this physical property at the time of Mr. Johnson's valuation in 1910, except the proof which I have cited to the effect that it was badly depreciated. The burden is, therefore, upon the company to establish

the value new less the depreciation in 1901, if it intends to make use of the value at that time as the basis for arriving at the value at the present time. This is so plain that it does not admit of any argument, and it is fatal to the company's position, which requires that it should furnish conclusive proof of the value of the company's property at the present time.

There is no evidence by Mr. Johnson, or by Mr. Ford, or by anybody else, showing the valuation of the company's property at the present time. Nobody on behalf of the company has made any attempt to value the property in its present condition, except by taking the valuation new as found by Mr. Johnson in 1910 and adding to it the money since expended.

The company offered as part of its proof the valuation made by Dr. Betts for the Commission, at the time the Commission was considering the application for the approval of the lease. This appraisal of Dr. Betts was made at about the same time as that of Mr. Johnson. It was put in evidence by counsel for the company. Dr. Betts' estimate of the total value of the property was approximately $2,600,000. This valuation is very far from that of Mr. Johnson, but it is offered by the company as corroborative of the correctness of Mr. Johnson's estimate at that time.

Dr. Betts' valuation is open to many objections. In the first place, he frankly says that he did not make this examination in the way that he would have made an examination if he had been valuing the property for the purpose of enabling the Commission to fix a just and reasonable rate. He stated that he only valued the company approximately for the purpose of determining whether or not the terms of the lease ought to be approved. Dr. Betts states that he would have made a valuation for rate-making purposes much more in detail. This alone is sufficient to invalidate this valuation as proof of the real value of the property at that time.

Dr. Betts valued the property as new. He made no

attempt to determine how badly the property was depreciated, or to fix the amount of the depreciation, or to fix the value of the property in its depreciated condition. He further stated that several of his subordinates spent three or four weeks in the field, and that he used the data so gathered, with only such verification as he was able to give it by three or four days in the field. We submit that this invalidates Dr. Betts' valuation as proof of the value at that time. The City is entitled to have the men who did the field work and who marshaled the data which Dr. Betts used put upon the stand for cross-examination.

The Betts' valuation, however it is viewed, leaves the question of the depreciated value of the property in 1910 absolutely unproved. Therefore, the base of the company proof of present value is not shown. No result can be obtained until this basis valuation of the property in its depreciated state in 1910 is shown by competent proof.

The company upon this invalid basis proceeds to build up the existing value by adding some $800,000, which the company claims has been spent upon the property since it took it over. The disposition of this $800,000 is the subject of conflicting claims by Mr. Johnson and by employees of the Board who have examined the company's books with reference to this expenditure. These witnesses testify (Case, pages 793 and 804) that they find that, according to the rules of the Board, about $550,000 of this sum can properly be charged to capital account.

This is positive proof by the Board's own employees. Against it are the confused and confusing statements of Mr. Johnson on the stand as to the expenditure of this money. He used the words "rehabilitation," "road and equipment," "repair account" and "maintenance account" with such inaccuracy and confusion that no clear deduction can be drawn from his statements as to how this money has actually been spent. A careful reading

of Mr. Johnson's testimony on this point will justify this statement.

We have, therefore, as the result of this method of proof by the company, an unknown figure as the value of the depreciated property in 1910, plus $550,000 as found by the Commission's employees to have been spent subsequently on capital account.

The company claims that it should be allowed this value new in 1910, and that no depreciation should be taken off. We submit that there is no finding by any court or commission in the whole history of rate-making in this country that affords any justification for any such claim. To argue it at length would be to impose upon the patience of the Court.

The company claims an additional valuation for going-concern value on Mr. Ford's cheerful guess of anywhere from twenty-five to fifty per cent. of tangible value. This claim involves the consideration of going-concern value or development cost, which we will treat of in a subsequent point. We here show that the mere statement of anywhere from twenty-five to fifty per cent. is not in evidence upon which the Board could act. It is too vague, too indefinite, and too general.

Mr. Ford made no study of the situation in Trenton, he merely came down a couple of times and talked with Mr. Johnson, the manager. As will appear when we discuss the subject of going-concern value, he expressly said that there should be no allowance for going-concern value beyond the actual cash invested in building up the property, if that fact could be ascertained. As we shall show later, it is easy in this case to prove the money that has been actually expended upon the plant.

Mr. Johnson made no estimate of franchise value at all.

This proof, such as it is, is completely offset by the testimony of the City's two experts, who made a study of this situation, extending over many weeks, that no

sum whatever beyond the value of the physical property in its existing state ought to be added in this case. The preponderance of proof, therefore, on this point is with the City and not with the company.

We submit that upon the company's evidence they have shown substantially as follows: That it would have cost in the fall of 1910 approximately $2,600,000 to reproduce the company's property new; that it was in a depreciated state; that such depreciation is fairly measured by the amount of 550,000 found by the Board's employees to have been actually expended to remedy this depreciation since 1910. That would make the value of the company's physical property at the present time approximately $2,600,000. Curiously enough this is almost the identical figure found by the joint appraisal of the City's experts, Messrs. Rand and Brackenridge. It is also practically the amount of money that was actually put into the property by investors up to 1910, as will be shown when we consider the capitalization of the company in a subsequent part of this brief.

The $500,000 raised for the rehabilitation of the property in 1910 cannot be considered as new capital, because it was caused by the wrongful diversion of the revenues to dividends. This was expressly found by the Commission in the order hereinbefore quoted.

From the proofs submitted by the prosecutor, therefore, we submit the Court cannot determine what is the value of the property at the present time, and that the claim of a value of approximately $4,000,000 is absurdly excessive.

POINT VIII.

The Value of the Company's Property as Proved by the City Does Not Exceed $2,700,000.

Not only has the company failed to present any proper evidence of the present value of this property,

but the City has produced a positive and definite valuation. The City's proof shows that this property, including every kind of contingency that can properly be charged, can be produced to-day for approximately $2,700,000. The witnesses for the city who made up this valuation were Mr. Swan, Mr. Brackenridge and Mr. Rand.

Mr. Swan has been connected with the City's engineering department for twenty-five years, except two years, and during that time has had practical charge of all the street work, including portions of the pavements required to be laid by the company. He produces from his records and from his personal knowledge an elaborate table showing the approximate time that the rails were laid; the character and time of laying of the pavements between the tracks in each street. The accuracy of this foundation work has not been in any way impeached.

Mr. Brackenridge has been engaged in every variety of street railway work since 1885. He has been a general contractor, and as such has built many electric street railways. He was connected for many years as engineer of construction with the Brooklyn Rapid Transit Railway Company, and this experience included the time when its transportation system was operated by horse power and when and after the motive power was changed from horses to electricity. It has been his business in all these years to actually purchase every form of electrical equipment. He has had the widest possible experience in the actual working of railways, and so is familiar not only wtih the cost, but with the life and rate of depreciation, of every class of physical property used in this class of work.

It would be impossible to find a man whose experience better qualified him to put an approximate value upon this property in the limited time that is afforded by the statute for the proofs to be taken in this case.

The accuracy of Mr. Brackenridge's work has not

been impeached by cross-examination, or by the rebuttal testimony of Mr. Johnson, except on minor and unimportant points. Mr. Johnson claims that he has actually paid $300 or $400 more for some of the cars than Mr. Brackenridge says he can buy them for.

Mr. Brackenridge uses 15 cents a pound as the price of copper, which is a liberal figure taking the average for many years, as against the present extraordinary price of 19½ cents; but even on this basis, the variation from Mr. Brakenridge's figures is trifling. It is substantially true that Mr. Brackenridge's figures are not discredited in the rebuttal or cross-examination.

Supporting Mr. Brackenridge is Mr. Rand. Mr. Rand is a consulting engineer, and has had upwards of thirty years' experience in the handling of securities relating to all kinds of railroads, including street railways; in the valuation of railroad and street railway properties; and as an expert in the famous Consolidated Gas case of New York, and in many cases involving both the consideration of physical and intangible elements of values of public utility corporations. He has been a student of the problem which is presented before this Court for discussion. He worked with Mr. Brackenridge in the personal inspection of this property, and in the fixing and checking up of the prices and the rates of depreciation upon the different items of property considered. Where two men of long experience and established reputation work together, each checking the other, the result is reasonably sure to be approximately correct.

These experts for the City spent many days in the actual inspection of the property. The care they exercised is evidenced by the notes of Mr. Brackenridge and Mr. Rand as to the special work. Mr. Rand drew a freehand sketch of every piece of special work in the whole system. Mr. Brackenridge at the same time made full notes of these pieces of special work, and the more complicated ones he also sketched upon paper.

The notes on this part of their work were put in evidence, and show the completeness of their inspection and valuation. Such material facts as they did not ascertain by personal inspection and investigation they got from Mr. Swan and from Mr. Johnson.

A very admirable summary of the results of the study of these experts was presented as an exhibit, and we herewith print it in this brief for convenient reference.

SUMMARY SHEET OF ESTIMATES GIVING COST TO REPRODUCE NEW, DEPRECIATION AND PRESENT VALUE, OF THE PROPERTY OPERATED BY THE TRENTON TRACTION CO., AS OF NOVEMBER 9, 1915.

Contractor's Profits Have Been Included in all Items.

ITEM.	*Annual % Deprec.*	*Reproduction Cost.*	*Annual Depreciation.*	*Accrued Depreciation.*	*Present Value.*
Tracks outside city,	3%	$324,616.39	$9,738.49	$109,440.76	$215,175.63
Tracks in city,	4%	370,910.80	14,836.43	160,588.64	210,322.16
Overhead line and feeders,	4%	307,100.30	12,284.01	82,549.90	224.550.40
Special work,	10%	70,662.00	7,066.20	35,331.00	35,331.00
Paving,	5%	358,845.02	17,942.25	141,358.17	217,486.85
Power plant,	4%	265,500.00	10,620.00	31,860.00	233,640.00
Car barns and contents,	2%	155,900.00	3,118.00	23,385.00	132,515.00
Cars and other rolling stock,	5%	400,000.00	20,000.00	140,000.00	260,000.00
Real estate, assessed value,	.....	110,025.00	.....	.....	110,025.00
Signal system,	.....	1,052.75	.....	.....	1,052.75
		$2,364,612.26	$95,605.01	$720,884.83	$1,643,727.43
Contingencies, including engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk,	15%	354,691.84	.....	108,132.73	246,559.11
		$2,719,304.10	$95,605.01	$829,017.56	$1,890,286.54

* Depreciation on overhead figured with copper wire out.

An inspection of this summary, together with the detailed sheets which these experts presented and the detailed sheets which Mr. Swan presented, will show that these experts for the city had given to them, or acquired personally, all of the information necessary to make an approximate valuation of this property at the present time, and they are the only witnesses who have made any attempt to make such a valuation.

The valuation which they fixed is corroborated in various ways. It is substantially corroborated by Mr. Betts' valuation in 1910, which was a valuation new. The established fact that the property was then run down, and the raising of $500,000 to restore it to its proper condition is substantial evidence that this property was then depreciated at least to that extent, and probably more. This depreciated value plus the amount since spent upon it, would make approximately the same value as found by Messrs. Rand and Brackenridge.

This valuation is further corroborated by the result of a study of the securities issued by the company and all the actual cash that has ever been invested in the creation of the company's property. The actual money that ever went into this property does not exceed $2,600,000, as will be shown when we consider the securities issued and the cost of the property in a subsequent part of this brief.

This valuation is further corroborated by the evidence which the City has put in with reference to taxation. The letters of Mr. Hurley and of Mr. Johnson from year to year to the tax officials of Trenton contain assertions that the assessments by the City are practically the full value of the company's property. These assessments at no time have exceeded $700,000 over the whole system, as is shown by the tax exhibits from the City of Trenton, and each of the other municipalities through which the property runs, which the City has put in evidence. (See *Exhibits O-2, O-3, O-4, O-5, O-6, O-7, O-34, O-35, O-36 and O-42.*

Both Mr. Brackenridge and Mr. Rand testify that no addition should be made to this property for development cost or any other intangible element of value, or for working capital.

The City's proof is the only legal evidence before this Court of the value of this property at the present time.

POINT IX.

THE VALUE OF THE PROPERTY AS SHOWN BY ACTUAL COST DOES NOT EXCEED $2,600,000.

The valuation of the property made by Mr. Brackenridge and Mr. Rand is supported by a study of the history of the constituent companies. It is not clear that the stock issued by the early horse railroad companies was water, but the presumption is strong that it was. But it is plain that all subsequent stock issues and part of the bond issues represent no money or service paid or rendered towards creating this property. Dr. Betts so finds, and the merger agreements prove it.

Mr. Rand has submitted a table (*Exhibit O-38*), which can be summarized as follows:

Trenton Street Railway—		
Stock,		$1,000,000
Bonds,		2,000,000
Subsidiary Companies—		
Stock,		550,000
Bonds,		1,000,000
Total securities,		$4,550,000
Inflated Securities—		
Stock of subsidiary companies issued with bonds,	$550,000	
Inflation by 1st consolidation,	1,343,000	

By 2d consolidation, ...	36,700	
Bonds owned by M. C. Tr. Co., ...	128,000	
		2,058,000
Bona fide securities issued, ...		$2,492,000

We submit a calculation made up differently which arrives at substantially the same result, viz.:

All stock of Horse R. R. Co.'s at time of first consolidation in 1891—		
Stock, ...		$156,000
Bonds, ...		190,000
Bonds issued by the Consolidated Co. (Tr. Pass. Ry. Co.), ...	$1,000,000	
Less amount paid to Wilson (see *Tr. Pass. Ry. Co.* v. *Wilson,* 11 *Dick. Ch. Rep.* 783), ...	260,000	
		740,000
Second Consolidation, 1898— (Tr. St. Ry. Co.) stock was all exchanged for securities of merged companies.		
Bonds, ...	$2,000,000	
Less used for refunding,..	$1,000,000	
Less exchanged for stock,...	552,000	
	1,552,000	
		448,000
Bonds of Tr., Penn. and Hopewell Ry. Co.,		350,000
Bonds of M. C. Tr. Co., ...		300,000
Bonds of T., H. and E. Co., ...		350,000
Total realized from securities to 1910,		$2,534,000

This is the maximum actual cost of creating these properties as shown by the proofs in this case. The money expended by the lessee company, being by the Board's own finding made necessary by wrongful diversion of earnings, is a restitution and should not be added to this estimate.

From every point of view, therefore, it appears that the value of this property to-day does not exceed $2,700,000.

The actual cost of this property ought to appear upon the books of the lessor companies. We have demanded these books. At the last moment some of them were produced, too late for even a casual examination. It is safe to assume that if these books showed a cost in excess of the City's valuation the company would put them in evidence.

The Wilson bonds, referred to in the foregoing table, were the subject of a litigation in our New Jersey courts, as above quoted. In this reported case it appears that $260,000 of the issue of bonds in 1891 was taken by one Wilson upon some pretense. The company claimed that he held them as trustee for the company. He, however, managed to hold onto them, and the company never received any of the proceeds of these bonds nor did Wilson ever render any service for them, as the Court expressly finds.

POINT X.

Mr. Ford's Estimate of Going-Concern Value Analyzed.

In the attempt to bolster up the Johnson valuation of this property, Mr. Ford was produced by the company as an expert. He took the position that the physical property should be taken as though it was brand new and so valued, and that in addition to such value there should be added from twenty-five to fifty per cent. for what he called "development cost." The claim

that the property should be valued as new has been argued in another part of this brief.

It is sufficient as to that point to say that if this company had obeyed the spirit of the injunction laid upon it by the Commission when the lease was approved, and had paid each year into a depreciation fund a sum of money sufficient to keep this property at all times in proper condition, the present value depreciated, plus the amount of money in such a depreciation fund, would give at all times a sum sufficient to reproduce the property new. As no adequate depreciation fund was set aside, the physical property must necessarily be valued as we find it in this depreciated condition. Mr. Johnson says he has spent not exceeding $68,000 on account of depreciation in any one year, and has set aside no fund beyond such expenditure. But he now says $135,000 a year is needed. This is a confession that the property is in a badly run-down and depreciated condition.

We submit that the value of Mr. Ford's testimony in this case is completely destroyed by his admission that in his judgment there should be no going-concern value allowed, if it is possible to arrive at the cash investment in the property. Here is his exact language, Case, page 243:

> "I might say in addition, that if we could arrive at the cash investment of this property, there would be little, if any, going-concern value to be added, because the cash investment would reflect the cost of producing a going concern. In the early years of operation the company probably did not get a fair return on its capital invested, and if, in arriving at the cash investment, you allow for that insufficient return, which, of course, the security holders originally had to provide, you would get the present cash investment, which would include such going-concern value."
>
> * * * * * * * *

Case, page 280:

"*Q.* If you knew what it had cost these people in cash, you say you would limit the return to the fair return upon that, plus depreciation account and operating expenses?

A. I think that is a fair way of arriving at a figure.

Q. And you then would not put in any going-concern value?

A. I think that would include going-concern value.

Q. That is, going-concern value would then have been paid for?

A. Would have been paid for in cash."

* * * * * * * *

"*A.* In the case of the cash investment, if that cash investment represented the entire cost of developing the property I would not include—I would not add anything to it for going-concern value."

See Ford's testimony, page 40, to the same effect.

Mr. Ford supports his assertion of twenty-five to fifty per cent. addition for development cost by no facts whatsoever. He cites no actual instances or experiences. He admits that no accounts have ever been kept by any company with which he is familiar of any such item of going-concern value or development cost. In other words, he produces no proof in support of his opinion.

Mr. Ford does refer to the cases of Cleveland and of Chicago, but he put forward no detailed information by which his testimony can be tested. On cross-examination he admitted that in the Cleveland case the matter was settled by an arbitration, one of the conditions of which agreed to in advance was that the company should only charge a three-cent fare, with a one-cent transfer. The valuation agreed upon by the arbitration was determined with this limited fare as a con-

dition agreed upon in advance (Case, Vol. I, p. 379). In the Chicago case he admits that it was a case of a straight out settlement between the company and the city and not a judicial adjudication at all.

He does, however, endeavor to support his opinion by an imaginary illustration. He says that if a city of 100,000 people had no trolley system and one was inaugurated, that the item of development cost would amount to twenty-five or fifty per cent. of the physical value.

On cross-examination it appears that he had never even given the subject of this imaginary illustration any serious consideration. He had not taken into account the kind or cost of existing methods of transportation. He had not taken into account whether the people were familiar with trolley transportation or not. He finally said that they probably had become familiar with trolley transportation when visiting other cities. He finally agreed that we must suppose a more costly transportation system in vogue in the imaginary city. He agreed that the company would do no advertising and would be put to no special expense upon this item of development cost. He admitted that the only expenses of the company in his imaginary city, after the property was in operation, were the expenses that would be ordinarily charged to operating expense account. He was finally driven to the point that what he meant by development cost was that in this imaginary city it would take three years before the patronage of the line would be developed to the full capacity of the city. He said that the company would start at the beginning with eighty per cent. of the business that it was possible to obtain from the existing people in the city, and that within three years the remaining twenty per cent. of the possible patrons would gradually become patrons of the road. (Case, Vol. I, p. 371.)

Let us examine this illustration. In the first place it is open to the objection that it has nothing whatever to do with human experience.

It is a mere guess.

It is an attempt, always fallacious, to imagine what would have happened, if something which didn't happen had happened.

This involves so many elements that it is worse than idle to talk about it. The whole thing is too preposterous for serious consideration.

The preposterous nature of this illustration was shown by the question asked Mr. Ford by counsel for the City.

He was asked whether in all his experience he ever knew of any appraisers of any kind of property who undertook to appraise the value of the property by considering what it would cost to reproduce the property under conditions that had never existed in human history. After much squirming, he was forced to admit that this method of appraisal had never been adopted in civilized life, and said feebly that it was necessary to apply in this case a method that would not be reasonable in the other affairs of life.

To show that Mr. Ford was himself compelled to admit the utter adsurdity of his method of valuation in this respect, we quote from his testimony, as follows, Case, page 278:

> *Q.* You know of no such town?
>
> *A.* I know of none.
>
> *Q.* Then you are measuring the going-concern value by conditions of city life which have not had any existence since the trolley era; is that correct?
>
> *A.* In this country, yes.
>
> *Q.* Then you are measuring the value of this property by conditions that have never existed since the electric era applied to trolleys?
>
> *A.* It is purely a hypothetical case.
>
> *Q.* Will you name to me any article from a hairpin to a locomotive to which you apply any such principle in trying to arrive at value? Is

there any value which is appraised in our market, any physical piece of property, not talking about franchises, physical property purchased by man, which is measured by conditions that have never been known in the trade, is there any such article?

A. I think if you apply some of these theories of rate regulation to other business they become ridiculous.

Q. I am not asking you that?

A. If that is what you mean.

Q. I am asking if you ever knew of a value put upon the appraisement of a suit of clothes by imagining the production of clothes under conditions that never existed; ever heard of that?

A. I never did.

Q. Did you ever hear of a country appraisal of the furniture in a house for sale that was based upon conditions of production of that furniture and those effects that never existed?

A. No.

Q. You never did?

A. No.

Q. Then you are applying to going-concern value an imaginary condition that has never existed since the trolley era; that is a fact, isn't it?

A. I think that is the fact, as far as this country is concerned.

Q. Now, is that sense?

A. I would say that hypothetical case, I think, has been forced on the commissions and the street railway companies by the building up of a theory of value, which when applied to homely articles like shoes and clothing, does not look sensible.

Why is it necessary in the task of ascertaining the value of a property, every item of which has a regular

market value accessible to everybody, to resort to the test of a production under conditions that never existed and which never could exist?

But Mr. Ford's illustration of twenty-five or fifty per cent. of the tangible value of the property as representing development cost is not only preposterous, but it is unscientific. The development cost has no natural relation whatsoever to the value of the property. If we had the actual experience of many companies over a long series of years, and the actual items of development cost were figured out in relation to the cost of tangible property, the percentage relation as a matter of fact could be established, but it would be simply an arbitrary relation. In this case there are confessedly no facts upon which to establish a percentage relation. The estimate of twenty-five to fifty per cent. is so loose that it has no place in a careful investigation like this.

But it is easily possible to find with approximate exactness the amount of money which would represent Mr. Ford's item of development cost, and to determine the percentage of such amount to the value of the tangible property.

Let us assume the cost to reproduce this property at $3,000,000—a figure about half way between the estimate of the company and the City. The company would get at once, according the Mr. Ford, eighty per cent. of the possible patronage. In 1914 the receipts of the company were $776,000. Eighty per cent. of this amount would be $610,000. The operating expenses for that year were about fifty-five per cent. That proportion would give an operating expense for the imaginary company of $335,500, leaving a balance of $274,500. If you were to set aside for this property $95,000 as a depreciation fund, the remaining income applicable to a dividend upon the cost of the property would be $179,500, or a little less than six per cent. upon the cost of the property. If six per cent. is held to be a

fair return, there would be no development cost at all. But if we assume that the company is entitled to earn eight per cent., then the company is short, say, $75,000. This is the amount which represents the possible balance of the patronage which the company is to obtain within three years, and is therefore the outside measure of Mr. Ford's so-called development cost for the first year. If we assume that the acquisition of the remaining twenty per cent. of the patronage was not gradual, but was held off until the last day of the third year, the most that Mr. Ford could claim would be three times $75,000, or $225,000. This, instead of being from twenty-five to fifty per cent. of the cost of producing the property, would be seven and one-half per cent.

But, of course, the twenty per cent. possible patronage to be obtained would be obtained gradually over the course of the three years, and therefore the deficit in the second year would not be as great as in the first year, and in the third year would almost entirely disappear.

$150,000, therefore, upon Mr. Ford's own illustration, would be the outside amount that could possibly represent his item of development cost. This is five per cent. of the cost of the property, instead of twenty-five per cent. or fifty per cent.

This reasoning shows the utterly unscientific nature of Mr. Ford's method of reasoning, and the grossly exaggerated results to which he has testified. In other words, Mr. Ford has not only used a preposterous illustration, but he has grossly mistaken the actual and easily ascertained results of his own illustration.

This reasoning is absolutely clinched by the consideration that the imaginary company would be under the control of the Public Utility Commission, and no money could be issued except for the actual construction of the plant, and when the company showed a deficit for the first year, that deficit, which Mr. Ford calls development cost, would be either charged to capital ac-

count or set aside as a special account to be amortized when the earnings reached a point beyond a fair return upon the capital actually invested.

It is to be remembered that this Utility Commission in the Passaic Gas case, although it allowed thirty per cent. for going-concern value, expressly stated that no such allowance beyond actual deficits would ever be made in the case of a company starting new under the Commission's supervision.

This disposes of the only evidence offered by the company in support of the claim that an amount should be added to the cost of the tangible property to represent development cost.

Further authority on the subject of going-concern value is found in the recent case of *Des Moines Gas Co.* v. *City of Des Moines,* decided by the United States Supreme Court, In this case there was no allowance for going-concern value, and the Court held that if any allowance was to be made for going-concern value, the existence of such value must be proved by the company.

POINT XI.

GOING-CONCERN VALUE FULLY ALLOWED FOR BY THE COMMISSION.

The item of going-concern value in this case has been fully allowed for by the Commission. In the valuation of the property of the company arrived at by the Commission upon the evidence in this case, they have made liberal allowances for every element of value that can be properly classified under the term "going-concern value."

The theory of going-concern value set forth in the opinion in *Public Service Gas Co.* v. *Board of Public Utility Commissioners et al.,* 84 *N. J. L., page* 463, is stated in section 8 of the synopsis of decision, on page 464, in the following terms:

> "In fixing the value of property on which a gas company is entitled to earn a return, it is proper to allow for going value, which includes loss of interest while the plant is in course of construction and while pipe lines are extended, the cost of securing and retaining customers, of encouraging the greater use of gas for fuel and light by the introduction of new and improved appliances, the necessary loss attending experiments, obsolescence of plant apart from the ordinary calculable depreciation which may be charged to current expenses, the expense that attends and the additional value that arises from the uniting of separate companies and the organization of the industry with a view to economical production, and the cost of procuring capital."

Upon this definition of going-concern value, the Supreme Court in that case sustained the Board's allowance of thirty per cent. of the structural value upon the specific proofs in that case.

In all of the cases in this country before commissions and courts, an item of going-concern value has sometimes been allowed and sometimes been refused. When it is allowed it has varied from ten to fifteen per cent., except in the Passaic Gas case where it was fixed at thirty per cent. Of course it follows that each case depends upon its own facts. It is plain that it costs more to develop a gas business than it does a trolley business. In the gas business people have to be sought out in their homes and persuaded to use a new form of light, and as the new improvements are developed in stoves and fixtures people have to be canvassed and persuaded to use them. In the trolley system, however, there is no such thing as drumming up custom, and there are no expenses to be charged under that head.

In the Passaic Gas case the proofs of the experts of the company were that it would take at least six years to develop the business. Here the only proof on that

point is that of Mr. Ford, who says that eighty per cent. of the business will be developed the first year, and that the other twenty per cent. of the business will be developed in the course of the two following years.

There is no testimony in this case on behalf of the company as to the actual expenses. The only testimony is that of Mr. Ford, who never made any study of the property at all, but who was called to give general testimony as an expert in relation to general rules.

Mr. Ford's going-concern value, when he is pressed for a definition, practically comes down to early deficits growing out of the cost of development which could not be met out of earnings. In Case, Vol. I, page 270, he says:

> "*Q.* You say that the development cost is the amount expended after you have built your plant and got it in running order, in getting, developing the business, and I suppose you mean, you did not say so, in making the property fit together, if there is any defect in it, and getting it in working shape, is that about what you mean?
>
> *A.* Yes.
>
> *Q.* That is development cost. The first year or two that development is likely not to come out of earnings; I mean earnings are likely not to be enough to include that, operating expenses, depreciation, and a fair return upon capital, that is so, isn't it?
>
> *A.* That is correct?"

The Commission says, Case, page 839:

> "Except as hereinafter mentioned all proper allowances for intangibles have been heretofore included."

On page 840, the Board says:

> "Throughout this valuation in the allowances made full consideration has been given to the fact that the property valued was a harmonious operating system—a going concern—in success-

ful operation. In view of all the evidence we conclude that the value of the property, for the purpose of fixing rates, does not exceed $3,212,000."

The accurate valuation made by the City's experts, after weeks of painstaking investigation, makes the present value of the physical property about $1,800,000 in its present depreciated state. In fixing a value of $3,200,000 the Board therefore made a most liberal allowance for all of these elements of value which can properly be charged to going-concern value.

Upon the proofs in this case therefore, the element of going-concern value has been very liberally allowed for by the Board.

We respectfully urge upon the court that in any event, no allowance should be made for going-concern value as defined in the Passaic Gas case, unless same is proved in the case.

It is not possible to state a general rule. This is confessed by all of the experts. The true theory is that insisted upon by counsel for Passaic in the Passaic Gas case. We restate it here, not for the purpose of having the court reverse the position taken in the Passaic Gas case, but in order to show that if the definition which we give of intangible values and the method we point out of ascertaining those values is not followed, there is no other satisfactory way of arriving at a valuation of these intangible elements of value.

Our theory is that no piece of physical property can have a value in excess of the cost to reproduce it. This is a universal law of economics. No exception to it can be possibly imagined. The value of a piece of physical property may be, and usually is, very much less than the cost to reproduce it, but it can never be greater than that sum. If the net earnings, after deducting operating expenses, taxes, a depreciation fund and repair and maintenance account, are insufficient to pay a fair return upon the actual cost of producing the

physical property, then the value of the physical property is not worth what it cost to produce it, unless, of course, the future promises large returns. The company still has its franchises and all of the elements which are grouped under the head of "going-concern value," but obviously these elements had no value. When, however, the net earnings exceed a fair return upon the cost of the physical plant, then there comes into existence another element of value, so far as the market is concerned. The value of that element is easily ascertained. That value is measured by the excess of net earnings beyond a fair return, capitalized at a fair rate of interest. Mr. Ford admits this point, when, on page 262 of the Case, in discussing franchise value, he defines franchise value in almost the exact words we have used.

Whatever you call these elements of value, this is the only way that has ever been devised to measure them. The different names given to these intangibles merely indicate a confusion of thought on the subject by courts and commissions. The thing sought to be valued is simply the business that has been built up in connection with the plant. Until the plant pays upon its physical cost there is no business value, except as the future may hold out promise of better returns. As soon as there is an income beyond a fair return upon the physical cost there arises this value, which is really the business of the company. In the market this business is property, and is bought and sold. It exists in a public utility simply because the State has failed to enforce the implied contract of the original franchise that the company shall charge no more than a reasonable rate, that is to say, a fair return upon the actual cash expenditure of the company.

Unless this theory is followed, then the only other plan that can be used is to give a general, liberal value to tangible property on the loose theory that a tangible property held by a going concern is more valuable than

property which is not connected with a going concern. This, of course, is true. If we started by considering the value of the physical property as junk and then added to it the value indicated by the profits of the business, there would be no objection to this process, up to the point where the value equaled the cost of reproduction of the cost of the physical plant.

The difficulty with the present system of fixing going-concern value is that all of the items usually included under that head are properly chargeable to operating expenses, have always been so charged, and therefore the company ought not to be allowed to earn upon it, except they have taken the form of an actual deficit in the early years of the company's business. To the extent that the company has never in its early years been deprived of a fair return upon its actual cash invested, it ought to be allowed that amount in addition to the value of the plant, because it has been money actually invested in the enterprise.

There is not only no proof that this company has ever had any deficits, but on the contrary the proof is conclusive that it has enjoyed immense earnings beyond a fair return upon the cash capital.

Up to 1890 the Trenton Horse Railroad was the company, and its capitalization, both stocks and bonds, was $346,000. This is the only part of the history of the company concerning which we have no definite information in the record. Mr. Ford testified that on the coming in of the trolley era, about 1890, the trolleys were considered in the market as a bonanza, their earnings were so large. He says this condition continued until 1905.

This testimony is worth quoting:

> "*Q.* You spoke in your direct testimony about when they started the trolley era there was a time there when it expanded, the capitalization was expanded, and it was looked upon, I think your term was a bonanza, for awhile; you used that expression, didn't you?

A. Yes.

Q. How long did that period continue?

A. I think until about 1905.

Q. Starting when?

A. Starting with the electrification of the lines about 1890, to 1893."

(Case, Vol. I, p. 399.)

Therefore, the only deficits in this case must have been prior to 1891, and as the total capitalization of the horse railroad company was only $300,000, requiring only an income of $18,000 to provide a fair return, the deficits, if any, must have been very small, even though they continued over a long period of years.

In the face of these facts, no mere guess as to how much the deficit was, or what it cost to develop the horse railroad company, should be allowed. This is admitted by Mr. Ford, on page 271 of the Case, Vol. I, where when he was asked how long in the horse railroad era the condition continued where the income was not sufficient to pay the operating expenses, depreciation, actual or contemplated, and interest upon a fair return upon the cash capital actually invested, his answer was: "I think that would vary." If it would vary, then no general rule can be applied. As he admits he made no study of the Trenton case, except to talk with Mr. Johnson for an hour or two upon two visits, his guess as to development cost of the building up of the horse railroad is immaterial.

That Mr. Ford's definition of going-concern value is practically the early deficits appears clearly in various parts of his testimony. See Case, Vol. I, pages 266, 270–271.

The argument that these items are actual property, and that the company owns them and therefore should be allowed to earn a return upon them is easily answered. The truth is, that the company is not allowed to earn upon all its property. It is only allowed to earn upon the property which it devotes to a public use.

If the company has appropriated out of earnings a fund of money which it has invested in stocks and bonds or land, no commission would think of allowing them to earn upon such property, because it is not property devoted to the public use. Such property as is included under the head of intangible values is property only so long as the Commissions allow the companies to charge excessive rates. The minute the Commissions enforce the implied contract as to franchises, to wit, that the company shall be entitled only to charge rates which will give a fair return upon the cost of the property, or the actual investment, then these intangible elements of value will disappear.

They are property only so long as the public fails to enforce its contract rights in the premises.

They are elements of property built up upon the violation by the company of the implied contract to charge reasonable rates from the beginning.

This is the reasoning to which all of the Commissions and courts in the end must come. Any other line of reasoning leads, inevitably, to the ratification by Commissions and courts of the issues of water securities for which no money has ever been paid. Such a conclusion is intolerable.

For these reasons we submit that a very liberal allowance in this particular case has been made by the Board of the item of going-concern value.

POINT XII.

FRANCHISE VALUATION. THE COMPANY HAS NO RIGHT TO ALLOWANCE FOR VALUE OF FRANCHISES.

That the company has no right to any value of its franchises would seem to be settled by the decision of the Court of Errors in the Passaic Gas case, in which the decision of the Supreme Court in the same case was sustained. In that case the synopsis of the Court's decision, 84 *N. J. L., page* 464, says:

> "The special franchises of a public service company are property, but the right of property therein is not absolute, but is qualified by the right of the State to fix reasonable rates. In determining the reasonableness of rates, no allowance should be made for the value of the special franchise in a case where it is not legally exclusive and where the State still retains the right to fix rates."

This point is clinched by the statement of Mr. Ford, the only expert on behalf of the prosecutor, that he did not make any allowance for franchise values, and that he did not consider that franchise value ought to be allowed in this case. He stated that in his opinion the value of the franchise was simply the excess receipts, *i. e.*, the amount of the net income, over and above a fair return, capitalized at the present rate of interest. Testimony of Ford, Case, p. 262.

POINT XIII.

Working Capital. Not Proved. Not Needed.

The item of working capital is properly allowable in such utilities as gas and electric light and telephones, but it has no place in this case. All such items as stores and duplicate parts are already included in the appraisal, and do not amount to $20,000. There is no proof in the case to justify the Board in allowing anything for this account. Mr. Ford says it should be allowed, but offers no facts or reasoning to support his opinion. Mr. Rand and Mr. Brackenridge say nothing should be allowed. They point to the fact that the company receives cash every day for its service rendered, while wages and supplies are not paid for until several weeks after they are earned or furnished.

The fact that the company took over these great properties without a dollar of working capital, and that neither party to the lease considered any such capital

necessary is conclusive proof in support of our contention in this regard.

The Commission, however, has included in its valuation items for working capital The report of the Commission, Case, page 840, says:

> "Under working capital, materials and supplies properly belong. These have been included in the appraisal of the physical property, and, in view of the facts testified in this case, we do not deem proper any further allowances for working capital."

POINT XIV.

PRESENT EARNINGS ARE AMPLE TO PROVIDE REASONABLE RETURN ON VALUE OF PROPERTY.

The gross earnings of the company for 1914 were $776,000.

While the earnings this year have fallen off, it is due to temporary and sporadic causes, and it is fair to assume that the earnings in the future will not fall below those of 1914, taking one year with another, but, on the contrary, will surely increase with the growth of the City.

Allow for operating expenses the amount actually expended by this company in 1914, viz., $377,000. Allow for taxes $50,000, the amount actually paid in 1914. Allow for depreciation $95,000. Mr. Johnson claims $135,000, but he has never expended in any one year more than $69,000, and he is on record in his letter to the Board, after two years' experience, to the effect that ten per cent. of the gross receipts would be ample for this account for 1915 and afterwards (*Exhibit O* 44).

Messrs. Rand and Brackenridge arrive at $95,000 as the actual yearly depreciation of this property.

Upon this basis we have the following result:

Gross earnings, ...		$776,000
Deduct:		
For operating expenses, ...	$377,000	
For taxes, ...	50,000	
For depreciation, ...	95,000	
		522,000
Net earnings available for dividends, ...		$254,000

Or over 9 per cent. on $2,700,000, which is every dollar ever invested in this property, or is 6 per cent. on $4,230,000.

When it is remembered that the various owners of this property have taken out of it in interest and dividends upon watered securities nearly $1,500,000 in excess of a fair return upon the *bona fide* investment in the property, as we show elsewhere, it is plain that this showing entitles the company to no relief here.

In this case the Court is bound by the New York Consolidated Gas Company case, where the Court held that the only duty of the Court was to see that the rate fixed by the Commission was not confiscatory, and that a return of 4.7 per cent. upon the fair value of the property was not confiscatory.

POINT XV.

Claim that Decrease of Earnings in Year 1915 Was Not Considered by the Board, Analyzed.

This claim is absurd. It would be utterly impossible to fix a just and reasonable rate of a public utility upon the earnings of any one year. Earnings fluctuate with good times and with bad times, and with local conditions. The only fair rule is to take the average of several years as the Commission has done; otherwise, in case of a great fair like the San Francisco Fair, or of a celebration like the Newark 250th Anniversary Celebration, the companies might have an extraordinar-

ily prosperous year, and if their rates were reduced upon the basis of the showing of that year, it would be unfair to the companies when the temporary conditions had passed.

POINT XVI.

PROSECUTOR'S CLAIM THAT VALUE OF PROPERTY IS MEASURED BY STOCK AND BOND ISSUE, ANSWERED.

One of the reasons of the prosecutor asserts that the Board did not take into account the issue of stocks and bonds as a measure of value. The overwhelming weight of authority everywhere is that stocks and bonds are merely to be considered as throwing light upon the value of the property and are in themselves no measure of value. This point is conclusively settled in the Passaic Gas case. The portion of the opinion in that case which bears upon this point is found in 84 *N. J. L., page* 484.

This point is further answered by the testimony of Mr. Ford, Case, Vol. 1, page 280, in which he says that in the bonanza trolley era the excessive earnings were covered up by the issue of watered stock, and that the stock was issued for that especial purpose. (Case, page 280.)

POINT XVII.

DISCONTINUING THE TICKETS IS AN INCREASE OF FARE AND A CHANGE IN CLASSIFICATION UNDER UTILITY STATUTE.

One of the reasons advanced by the prosecutor in this case is that the abolition of the six tickets for a quarter is not an increase in rate or a change in classification. This claim seems too absurd for argument. To the thousands of people who go upon these trolleys to their employment in the morning and return at night, and who regularly buy six tickets for a quarter, the

change to a straight five-cent fare is a *real* increase. In fact one of the claims of the company is that it needs additional money and that the change from tickets to a straight five-cent fare would bring it an additional $100,000 a year. This is an increase of the company's income, and of course by its standard of common sense is accomplished by increasing the rate charged to the patrons of the company.

To the charge that there is a discrimination in charging some people five cents and other people four and one-quarter cents, the answer is that the lower charge is open to all, and that if any man elects to pay five cents he discriminates against himself,—it is within his power to ride for four and one-quarter cents if he purchases six tickets.

The principle of selling commodities by wholesale is an established one in all businesses. In the railroad business it is illustrated by the commutation principle, and the Public Utility Statute expressly gives the Board supervision over changes in classification and in commutation rates, and in the matter of the increase or decrease of fares.

POINT XVIII.

The Lessee Company is a Sham Company, Without any Capital or Responsibility, and Without any Equity in the Property, and Therefore Has No Claim Upon the Consideration of the Court.

As we have shown in our proof, in this brief, the earnings of the company at the existing rates are ample to pay operating expenses, including repairs and taxes, provide for an adequate depreciation fund, and leave a balance sufficient to pay more than a fair return upon the value of its property devoted to the public use, whether such value is measured by the actual money ever invested in its creation, or by the cost of its reproduction new, less depreciation.

But it is perfectly plain that this company cannot continue to pay these rentals which it has contracted to pay to the lessor companies, provide a proper depreciation fund and pay operating expenses. Some part of this arrangement has got to break. Either the lessee company must default and give back the leased properties to the lessor companies, or the lessor companies must accept a smaller rental, or the public must be made to pay more. We submit that, under the peculiar circumstances of this case, the public cannot be asked to pay more.

When this property was taken over by the lessee company it was in bad condition, owing solely to the fact the money had been paid in dividends which ought to have gone in to maintain and renew the company's plant.

The Utility Board expressly so found, and $500,000 was raised to rehabilitate the plant. The Board of Public Utility Commissioners, in 1910, undertook to provide against the exact condition which has arisen here, namely, a run-down plant and the improper diversion of earnings to dividends and interest, which ought to go into the property. The company, therefore, had full warning and stands before this Court without any equity.

The company, by Mr. Johnson's confession, is composed of two men, neither of whom has invested a dollar which has gone into this plant.

The remarkable testimony of Mr. Johnson discloses the utter hollowness of this lessee company. Mr. Crosby negotiated the leases for the lessee company, paid in $150,000, and Mr. Johnson added another $150,000, and thereupon they went through the farce of pretending to buy these leases from Mr. Crosby for $300,000.

According to this remarkable story, Mr. Johnson is the victim and Mr. Crosby the beneficiary of frenzied finance to the extent of $150,000.

The company started business without a dollar, never had a dollar in money, and never has invested any money, except such sums it has been able to borrow.

These sums must have been borrowed on somebody's credit, because the company never had any of its own.

This whole transaction is a virtual fraud upon the public. It is one of the familiar games of frenzied finance by which the public are plundered, and which an outraged public opinion demands must stop. To compel the people of Trenton to fork over another $100,000 annually in order that these two men, who have never invested a dollar in Trenton, may be saved from the consequences of their improvident bargain in assuming these enormous rentals, and be allowed, in addition, to receive dividends upon their own watered stock, would, we submit, be a gross outrage upon the people of Trenton.

Consider now the equity of the claims of the lessor companies.

In the first place, they are not here asking any relief.

In the next place, they have since 1891 received nearly $1,500,000 in dividends upon watered securities issued without a dollar of return to the companies, either in money or service.

The company's own dividend sheet, in evidence (*Ex. T. & M.* 44), shows stock dividends actually paid to 1910 of, ... $520,000

To this add the interest for twenty years on the $260,000 Wilson bonds, ... 260,000

To this add the interest on $552,000 of bonds exchanged for watered stock in 1898–1914, fourteen years at 5 per cent., 386,000

Add rentals paid since 1910, ... 320,000

Total interest and dividends paid on watered securities, ... $1,486,000

From this it will be seen that the people who have received these immense unearned sums from the people

of Trenton have no claim upon this Court for further indulgence or aid.

Dr. Betts, in his report filed before the lease was approved in 1910, said:

> "If a proper depreciation fund is established and maintained it will be practically impossible for the lessee company to pay the rentals called for in the leases."

This conclusion was again stated forcibly by Dr. Betts in the last sentence of his report, and he recommended that the lease be not approved except upon the basis of providing for a depreciation fund of practically fifteen per cent. of the gross receipts.

In the face of this report the Commissioners approved this lease. They were moved doubtless by the fact that it seemed to promise, by the providing of additional capital, the rehabilitation of this run-down system. It seemed to the Commission the best practical thing to do at the moment in order to provide proper service for the City of Trenton. The Commission was then new and the whole subject was new, and in the light of the then conditions it is not fair to criticise the Commission for their action in approving this lease.

But, nevertheless, the fact remains that the Commission at that time stretched a point to give these people a chance. If after the approving of that lease, in the face of this report of its own engineer, showing that the lease could never be carried out without practical ruin to the property, this Commission had again undertaken to tide over this company by compelling the public to pay increased fares, instead of cutting down the dividends upon watered stock owned by men who have wrongfully diverted into their own pockets the money that should have gone to maintain the property, we submit that it would be an act of great injustice to the people of Trenton, and would destroy public confidence in the whole policy of public utility regulation.

The only thing now to do is to face the real situation and apply the proper remedy.

In this proceeding the Board has held that the existing rate of six tickets for a quarter is neither confiscatory nor unreasonable and has left the lessor and lessee companies to rearrange their relations upon a new basis that will permit proper service and proper maintenance and conservation of the property.

For these reasons we submit that the Court should sustain the order of the Public Utility Board in this case.

Respectfully submitted,

CHARLES E. BIRD,

City Counsel of Trenton.

GEORGE L. RECORD,

Of Counsel.

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PETITION FOR WRIT OF CERTIORARI.

(Filed March 27, 1916)

NEW JERSEY SUPREME COURT.

Trenton and Mercer County Traction Corporation,
Prosecutor,

vs.

The Mercer County Board of Taxation, the Inhabitants of the City of Trenton, the Township of Lawrence in the County of Mercer, the Township of Princeton in the County of Mercer, the Township of Ewing in the County of Mercer, the Township of Hopewell in the County of Mercer, and the Township of Hamilton in the County of Mercer,
Defendants.

PETITION FOR WRIT OF CERTIORARI.

To the Supreme Court of Judicature of the State of New Jersey:

The petition of the Trenton and Mercer County Traction Corporation, a corporation created by and existing under and by virtue of the laws of the state of New Jersey, respectfully shows:

A. That your petitioner is the lessee of the street railway systems located in the city of Trenton, in the county of Mercer and state of New Jersey, and in the townships of Lawrence, Princeton, Ewing, Hopewell and Hamilton in the county of Mercer aforesaid, and in the boroughs of Princeton, Pennington and Hopewell in the county of Mercer aforesaid, owned by the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company, under leases bearing date the fifteenth day of October, 1910, and duly approved by the board of public utility commissioners of the state of New Jersey, and under said leases operates said systems of street railway.

B. That your petitioner as lessee under said leases, which are for the period of 990 years, unless sooner determined under certain covenants therein contained, covenanted with the lessor companies that it would pay the taxes imposed upon said systems of street railway.

C. That for the year 1915 the board of taxes and assessment of the city of Trenton and the assessors in the said townships of Lawrence, Princeton, Ewing, Hopewell and Hamilton in the county of Mercer aforesaid, and the assessors in the boroughs of Princeton, Pennington and Hopewell, duly assessed the real and personal property of your petitioner and the lessor companies operated by your petitioner in the county of Mercer aforesaid in the amounts as shown upon Schedule A hereto annexed and made a part hereof; that said assessments were made as of the date of May 20th, 1915; that upon the receipt of the tax bills for the amount of the

taxes for real and personal property in said several taxing districts by your petitioner, said bills were paid by your petitioner on or about December 15th, 1915.

D. That the rate of taxation for the real and personal property so assessed varied in the respective taxing districts and the rates of taxation in said taxing districts are set forth upon Schedule A hereto annexed and made a part hereof.

E. That on December 17th, 1915, the inhabitants of the city of Trenton, acting through Clinton J. Swartz, receiver of taxes, and Everett Townsend, a citizen and taxpayer, filed a petition with the Mercer County Board of Taxation alleging that the property of your petitioner was under-assessed by the city of Trenton for the purposes of taxation for the year 1915; that on December 18th, 1915, a similar petition was filed by the township of Lawrence in the county of Mercer, acting through its township committee and George C. Blake, a citizen and taxpayer; that on December 18th, 1915, a similar petition was filed by the township of Princeton in the county of Mercer; that on December 18th, 1915, a similar petition was filed by the township of Ewing in the county of Mercer, acting through its township committee; that on December 20th, 1915, a similar petition was filed by the township of Hamilton in the county of Mercer, acting for itself and through Edward W. Daymond, a citizen and taxpayer; that on December 20th, 1915, a similar petition was filed by the township of Hopewell in the county of Mercer.

F. That on January 31st, 1916, the Mercer County Board of Taxation (hereinafter called the "Board") heard the said petition of appeal; that on January 31st, 1916, the said board rendered its decision in said appeals and entered orders therein; that by said orders the assessment of the property of your petitioner in the city of Trenton was increased from $815,025 to $1,589,500; in the township of Lawrence from $30,000 on tracks, rails, ties and other property to $89,475; in the township of Princeton from $12,500 to $39,255; in the township of Ewing from $3500 on tracks, rails, overhead construction and other property of the Trenton, Hamilton and Ewing Traction Company located on the public roads in Ewing Township to $9,870, and from $13,500 on the tracks, rails, ties, overhead construction and other property of the Trenton, Pennington and Hopewell Street Railway Company on the roads and highways of Ewing Township to $36,940; and in the township of Hopewell from $27,000 to $80,970; and in the township of Hamilton from $50,310 to $171,745.

G. That your petitioner insists that the said orders of the said board dated January 31st, 1916, are unjust, erroneous and illegal and should be set aside for the following reasons:

1. That said board had no jurisdiction to make said orders of increase of assessment dated January 31st, 1916.

2. That the appellants in said appeals to said board presented no evidence of discrimination between the assessments upon the property of your petitioner and its lessor companies, and the property of other street railway or traction companies in

said or other taxing districts in the county of Mercer, or the assessments upon the property of the said appellants in said several taxing districts, or the assessed valuation of property in any other taxing districts in the county of Mercer.

3. That no evidence was presented to said board which supported or justified the said increases in assessment made by said board upon the property of your petitioner and its lessor companies in said taxing districts of the county of Mercer.

4. That said board in making said increases acted without evidence, arbitrarily and illegally.

5. That no service of the petition of the township of Hopewell was made upon your petitioner.

6. That the assessments upon the property of your petitioner and its lessor companies in said taxing districts were not revised in accordance with the true market value of such taxable property.

7. That the assessment upon property in the streets of the city of Trenton as made by the said board included items of property not located in said city of Trenton, namely, signal system and special work.

8. That the assessment upon property in the streets of the city of Trenton included part of the paving done in the city of Trenton by your petitioner and its lessor companies in accordance with ordinances of the city of Trenton which does not constitute a part of the property of your petitioner or its lessor companies.

9. That no allowance was made by said board for the depreciation of that part of the paving in the city of Trenton included within the assessment upon property in the streets of the city of Trenton made against your petitioner.

10. That the assessment upon property in the streets of the city of Trenton as made by said board is based upon and calculated upon a distribution of the overhead construction in proportion to mileage, whereas said overhead construction has no relation to mileage.

11. That the assessment includes a proposed line of street railway unconstructed, unoperated, and unleased to your petitioner, and for which no franchise for the operation thereof exists.

12. That the assessment on said proposed line of street railway is made upon the same basis as the assessment made upon completed and operated lines of street railway.

13. That the assessment upon property in the streets in the city of Trenton includes overhead construction in car barns which is also included in the assessment upon said car barns, so that the same property is twice assessed.

14. That said board in increasing said assessments upon the power plant, car barns and contents, cars and other rolling stock, real estate, tracks and overhead construction, and special work, included in said assessments an arbitrary percentage of fifteen per cent. for what was termed contingencies, engineering, superintendence, omissions,

administration, management, insurance, incidentals and builders' risk.

15. That there was no evidence before the said Mercer County Board of Taxation which supported or justified the inclusion of said fifteen per cent. of cost for contingencies, engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk, on all or any of said items to which said fifteen per cent. was included or added.

16. That the board in increasing the assessments upon the power plant, car barns and contents, cars and other rolling stock, real estate, tracks and overhead construction and special work, added arbitrarily, illegally and unjustly twenty per cent. to the alleged values of said items of property, after said fifteen per cent. heretofore referred to had been added.

17. That there was no evidence before the said board which supported or justified the addition or inclusion of said twenty per cent. in the assessed values of said items of property.

18. That the value of the land upon which the power plant of your petitioner is erected is included within the assessment of the item of real estate and also in the item of the assessment of the power plant of your petitioner.

19. That the value of the power plant buildings is included in the items as fixed by said Board of the assessed value of the real estate and of the assessed value of the power plant.

20. That the said board added to the assessment of the land and buildings as made by the taxing district of the city of Trenton upon which the power plant of your petitioner is erected the sum of $41,950, without evidence as to the value of said land and buildings being presented to said board, or without any view or inspection thereof by said board.

21. That the said board added to the assessment of the land and car barn buildings as made by the taxing district of the city of Trenton the sum of $54,910, without evidence as to the value of said land and car barn buildings being presented to said board, or without any view or inspection thereof by said board.

22. That said board included in the assessment made by it of property in the streets of the city of Trenton the value of tracks laid in the car barns of your petitioner and also included the value of the same tracks in the assessment made by it upon the car barns of your petitioner.

23. That no evidence of the value of the real and personal property of your petitioner as of the date of May 20th, 1915, was presented to said board and the assessments made by said board were based upon evidence of value at a later date than May 20th, 1915.

24. That the evidence presented to the board and upon which it based its assessments was evidence as to the value of the property, real and personal, of your petitioner and its lessor companies for rate making purposes, which included elements such as

franchise value, going concern value, etc., which do not enter into assessments of property for taxing purposes.

25. That the said board assessed the contents of the car barns of your petitioner at $116,978, (not including rolling stock) without evidence to support said valuation.

26. That said board made the assessment of property in the streets of the city of Trenton the sum of $634,760, without evidence to support the same.

27. That said board in making said assessment of $634,760, upon property in the streets of the city of Trenton, arbitrarily included in said assessment the sum of $61,179.50, which has no relation to property in the streets.

28. That said board assessed the value of tracks and overhead construction of your petitioner and its lessor companies outside of the city of Trenton without evidence as to the value of said tracks and overhead construction in each of the taxing districts outside of the city of Trenton, for which assessments were made by said board, to wit: Ewing Township, Lawrence Township, Hopewell Township, Princeton Township and Hamilton Township.

29. That said board used an erroneous principle in making assessments of the value of tracks and overhead construction in each of the said taxing districts outside of the city of Trenton, in that the evidence of value presented to said Board consisted of evidence of a total valuation of all tracks and overhead construction outside of the city of Trenton

irrespective of taxing districts in each of which a separate and different rate of taxation existed, which total valuation was then divided on a mileage basis, irrespective of the value of the tracks and overhead construction in each of said taxing districts hereinbefore mentioned, outside of the city of Trenton.

30. That said board included in its assessment of property of your petitioner and its lessor companies outside of the city of Trenton the cost of street paving done in accordance with municipal ordinances and which does not form a part of the property of your petitioner and its lessor companies.

31. That the said assessments made by said board for each of the taxing districts of Ewing Township, Lawrence Township, Hopewell Township, Princeton Township, and Hamilton Township are not based upon the value of the property of your petitioner and its lessor companies in each of said taxing districts.

32. That the said board did not in making said assessments in each of said taxing districts outside of the city of Trenton consider, estimate, or allow for the depreciation of the property of your petitioner and its lessor companies in each of said taxing districts.

33. That said board made the assessments in each taxing district outside of the city of Trenton without evidence of the value of the property of your petitioner and its lessor companies in the taxing district for which said assessment was made.

34. That said board valued the power plant land and buildings twice in the assessments made by it.

35. That said board made a division between the real and personal property in each of the items of "power plant" and "car barns and contents," without evidence as to the values of the real property and personal property included within said items.

36. That the method by which the said board arrived at the respective assessments upon property in streets in the city of Trenton, power plant, car barns and contents, cars and other rolling stock, and real estate, and property outside of the city of Trenton, was illegal, erroneous, and unsupported by evidence.

Your petitioner therefore prays that a writ of certiorari may be issued to review and determine the legality of the action of the Mercer County Board of Taxation in making said orders of January 31st, 1916, relating to the increases of assessment upon the property of your petitioner and its lessor companies in the city of Trenton and in the townships of Ewing, Lawrence, Hopewell, Princeton and Hamilton in the county of Mercer aforesaid, and the proceedings resulting in the making of said orders, and the method and principles employed by the said Mercer County Board of Taxation in arriving at the making of said increases of assessment.

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
By RANKIN JOHNSON,
President.

TRENTON AND MERCER COUNTY TRACTION CORPORATION.

Statement Showing Tax Assessments and Taxes Levied as of May 20th, 1915, and as Increased by the County Board of Taxation on February 1st, 1916.

	VALUATION			RATE	TAX		
	Original for 1915.	Increased for 1915.	Increase	Original for 1915.	Increased for 1915.	Increase	
City of Trenton							
Property in Streets	340,000.	634,760.	294,760.	2.28	7752.00	14472.53	6720.52
Other Personal Property	365,000.	747,865.	382,865.	"	8322.00	17051.32	8729.32
Lincoln Ave.—Power House	34,500.	76,450.	41,950.	"	786.60	1743.06	956.46
" " —Storage Battery	3,500.*	3,500.			79.80	79.80	
Seward Ave.—Lot	100.**				2.28		
N. Clinton Ave.—Stable & Lots	7,900.*	7,900.			180.12	180.12	
Sheridan Ave.—Lots	950.**				21.66		
Princeton Ave.—Building & Land	5,175.*	5,175.			117.99	117.99	
Lalor St.—Car Barns	55,150.	110,050.	54,900.	"	1257.42	2509.14	1251.72

Davies St.—Car Barns	4,025.**			91.77		
Second St.—Car Barns	2,300.*	2,300.		52.44	52.44	
Stuyvesant Ave.—						
Private Right of Way	1,500.	1,500.		34.20	34.20	
	820,100.	1,589,500.	774,475.	18699.28	36240.60	17658.02

* No Change

** Omitted in increased valuation of 2/1/16 ($5075.)

Trenton, N. J.
March 1st, 1916.

30 20 10

Brought forward—City of Trenton	620,100.	1,589,500.	774,475.	2.28	18698.28	36240.60	17658.02
Borough of Princeton							
University Place—Land	300.	300.			4.68	4.68	
" " —Personal Property	2,875.*	2,875.			44.85	44.85	
" " —Land	1,615.*	1,615.			25.19	25.19	
" " —Building	450.*	450.			7.02	7.02	
Alexander St.—Land	270.*	270.			4.21	4.21	
Borough of Pennington							
Tracks, Poles, etc.	12,062.*	12,062.			201.44	201.44	
Borough of Hopewell							
Tracks, Poles, etc.	4,800.*	4,800.			81.60	81.60	
Lawrence Township							
Tracks, Poles, etc.	30,000.	89,475.	59,475.	1.32	396.00	1181.07	785.07
Land	400.*	400.			5.28	5.28	
Building	600.*	600.			7.92	7.92	
Private Right of Way	6,000.*	6,000.			76.80	76.80	
Princeton Township							
Tracks, Poles, etc.	6,500.	33,255.	26,755.	1.28	83.20	425.66	342.46
Ewing Township							
Tracks, Poles, etc. Trenton Junction Road	3,500.	9,870.	6,370.	1.52	53.20	150.02	96.82

Tracks, Poles, etc. Pennington & Hopewell Road	13,500.	36,940.	23,440.	"	205.20	561.48	356.28
Hopewell Township 6 miles of Road, etc.	27,000.	80,970.	53,970.	1.86	502.20	1506.04	1003.84
Hamilton Township							
Broad Street Land Association	1,600.*	1,600.			24.64	24.64	
3 Houses, 90 acres & 80 lots	20,000.*	20,000.			308.00	308.00	
Lots at Yardville	2,000.*	2,000.			30.80	30.80	
Tracks, Poles, etc. Trenton to Yardville & E. State & Greenwood Avenue	29,610.)				455.99)		
Tracks, Poles, etc. Hamilton Square Road & Private Right of Way	20,700.)	171,745.	121,435.	1.54	318.78)	2644.67	1870.10
	1,003,882.	2,064,727.	1065,920.		21535.28	45532.17	22113.59

* No change.

STATE OF NEW JERSEY,
COUNTY OF MERCER, } *ss.*

RANKIN JOHNSON, of full age, being duly sworn according to law, on his oath says that he is the president of the Trenton and Mercer County Traction Corporation, lessee of the lines of street railway owned by the Trenton Street Railway Company, the Mercer County Traction Company, the Trenton, Pennington and Hopewell Street Railway Company and the Trenton, Hamilton and Ewing Traction Company, and the petitioner in the foregoing petition; that he has read the foregoing petition and that the statements and allegations therein contained are true; that this deponent heard and has also read the testimony taken on January 31st, 1916, before the Mercer County Board of Taxation in the matter of the appeals to said Board mentioned in the foregoing petition; that this deponent has examined the items of the assessments made by said Board, and the figures as to said items given by the secretary of the Mercer County Board of Taxation to Edward M. Hunt and Frank S. Katzenbach, Jr.; that in the item classified as tracks, overhead construction, special work, etc., covering personal property in the streets within the city of Trenton there is included part of the paving done within the city of Trenton by the Trenton and Mercer County Traction Corporation and its lessor companies in accordance with the provisions of ordinances of the city of Trenton, which is not, in the opinion of this deponent and the counsel of the said Trenton and Mercer County Traction Corporation, taxable; that in the assessment made by said Board of said paving no allowance was made for depreciation thereof; that said

assessment upon property in the streets of the city of Trenton as made by said board is based and calculated upon a distribution of the overhead construction in proportion to mileage of track, whereas said overhead construction has no relation to mileage of track; that said board included in the assessments of each of the items given in the statement of the secretary of said board an arbitrary percentage of fifteen per cent. for what was termed "contingencies, engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk"; that there was no evidence before the said board which supported or justified the inclusion of said fifteen per cent. in the value of the particular items of property assessed, for the purposes aforesaid; that the said board also arbitrarily increased the assessments upon each of said items set forth in the statement of said secretary by adding thereto twenty per cent., without supporting evidence; that the said board increased the assessment of the land and buildings of the power plant, located within the taxing district of the city of Trenton, by the sum of $41,950, without any evidence being submitted to the board as to the value of said land and buildings; that said board increased the assessment of the land and car barn buildings by the sum of $54,910, without evidence being submitted as to the value of said land and car barn buildings; that the said board based its assessments of the various items of property as stated by the secretary upon evidence as to the reproduction cost new, less insufficient depreciation, which was no evidence of the true value of said property; that said board assessed the contents of the car barns (not including rolling stock) at $116,978, without evidence being submitted to support said valuation; that said board assessed

the property in the streets of the city of Trenton at the sum of $634,760, without evidence to support the same; that in said assessment of $634,760 there was included the sum of $61,179.50, which had no relation to property in the streets; that said board assessed the tracks and overhead construction outside of the city of Trenton without evidence being given as to the value thereof in each of the taxing districts outside of the city of Trenton, that is to say, that said assessments were made by taking the alleged value of tracks and overhead construction in all of the said taxing districts outside of the city of Trenton, irrespective of the character of the construction in each of said taxing districts, and distributing the total so estimated in proportion to miles of track in each of said taxing districts; that no sufficient evidence of the mileage in each of said respective taxing districts was given before said board; that in making the assessment of property outside of the city of Trenton the said board included the cost of street paving done in accordance with municipal ordinances; that in making said assessments outside of the city of Trenton said board did not allow depreciation upon tracks and overhead construction according to the actual depreciation existing in each of the several taxing districts outside of the city of Trenton; that said board valued the power plant land and buildings twice in the assessments made by it and also valued the car barn land and buildings twice in making said assessments; that no evidence of the value as of May 20th, 1915, of the specific property upon which said assessments were increased was given to said board; that the assessment of property in Hamilton Township included a proposed line of street railway unconstructed, unoperated and not included in the lease

to the Trenton and Mercer County Traction Corporation, and for which no franchise for the operation thereof exists; that said proposed line was assessed as if the same were a completed and operated line of street railway; that the evidence presented to said board and upon which said board based its assessments or said increases of assessment was evidence of the value of the property for rate making purposes; that said valuation included element which do not enter into assessments of property, in the opinion of this deponent, for taxing purposes, such as an element of franchise or going concern value; that the Trenton and Mercer County Traction Corporation paid a separate tax for the year 1915 of $32,326.65, upon the franchise, going concern and other intangible value of said properties; that no service of the petition of the township of Hopewell was made upon the Trenton and Mercer County Traction Corporation.

RANKIN JOHNSON.

Sworn and subscribed before me this 24th day of March, A. D. 1916, at Trenton, New Jersey.

GEORGE GILDEA,
Notary Public.

STATE OF NEW JERSEY,
COUNTY OF MERCER, } *ss.*

FRANK S. KATZENBACH, JR., being duly sworn according to law, on his oath deposes and says that he is an attorney and counsellor at law of the Supreme Court of the state of New Jersey, and was the counsel for the Trenton and Mercer County Traction

Corporation in the matter of certain appeals made by the taxing districts mentioned in the foregoing petition; that on March 13th, 1916, this deponent called at the office of Harry C. Hartpence, secretary of the Mercer County Board of Taxation, and asked Mr. Hartpence for the figures upon which the Mercer County Board of Taxation had based the increase made by it in the assessments in the townships of Ewing, Lawrence, Hopewell, Princeton and Hamilton in the county of Mercer; that said Harry C. Hartpence stated to this deponent that the Mercer County Board of Taxation had taken as a basis the cost of the property less depreciation, and that to this estimate the board had added twenty per cent.; that the figures of Mr. Rand in the respective townships of Hamilton, Lawrence, Ewing, Hopewell and Princeton were as follows:

Hamilton Township.	
Rand's Basis	$143,122.
20% added	
	171,745.
Original assessment	50,310.
	121,435.
Lawrence Township.	
Rand's estimate	74,565.
20% added	14,910.
	89,475.
Original assessment	30,000.
	59,475.

Ewing Township.

Rand estimate (Trenton Junction)	8,224.
20% added	1,646.
	9,870.
Original assessment	3,500.
	6,370.
Rand estimate (Pennington Road)	30,785.
20% added	6,155.
	36,940.
Original assessment	13,500.
	23,440.

Hopewell Township.

Rand's estimate	67,477.
20% added	13,493.
	80,970.
Original assessment	27,000.
	53,970.

Princeton Township.

Rand's estimate	27,713.
20% added	5,542.
	33,255.
Original assessment	6,500.
	26,755.

FRANK S. KATZENBACH, JR.

Sworn and subscribed before me this 25th day of March, A. D. 1916, at Trenton, N. J.

GEORGE GILDEA,
Notary Public.

STATE OF NEW JERSEY,
COUNTY OF MERCER, } *ss.*

EDWARD M. HUNT, being duly sworn according to law, on his oath says that he is the secretary and treasurer of the Trenton and Mercer County Traction Corporation and an attorney and counsellor at law of the Supreme Court of the state of New Jersey; that on March 15th, 1916, this deponent asked Harry C. Hartpence, secretary of the Mercer County Board of Taxation, for the items making up the total assessment of $1,589,500.64 of the property of the Trenton and Mercer County Traction Corporation and its lessor companies, within the limits of the city of Trenton; that said Harry C. Hartpence then wrote out for this deponent the following statement of the items and figures employed to arrive at the said sum of $1,589,500.64, to wit:

Mr. Rand's Value	Depreciative Value.
Tracks and overhead constructs., special work, etc.,	477,985.20
Power Plant	268,686.
Car Barn	152,392.25
Cars & other Rolling stock	299,000.00
Real Estate	126,528.75
	$1,324,592.20
20% added	264,918.44
	$1,589,510.64

Divided as follows:			
Real Estate—	7,900.		
—	3,500.		
Power House, increase 41950.	76,450.		
—	5,175.		
Car Barn, increase 54,900	110,050.		
—	2,300.		
—	1,500.	206,875.00	
Original Assessment	110,025.		10
Increase	96,850.		
Personal—			
Rolling Stock, Cars	299,000.		
20%	59,800.		
	358,800.		
Power House	268,686.		
Less amount added to R. E.	41,950.		
	226,736.		20
20% added Co. Board	45,347.		
	272,083.		
Car Barn	152,392.		
Less Amt. added to Real Estate	54,910.		
	97,482.		
20% added by Co. Board,	19,496.		30
	116,978.	747,865.	

Original Assessment 365,000.,
Increase $382,865.

Balance to property in Streets 634,760.
Original assessment 340,000.,
Increase $294,760.

$1,589,500.
EDWARD M. HUNT.

Sworn and subscribed before me this 24th day of March, A. D. 1916, at Trenton, New Jersey.
GEORGE GILDEA,
Notary Public.

STATE OF NEW JERSEY,
COUNTY OF MERCER, } *ss.*

ALTA M. RISDON, of full age, being duly sworn according to law, on her oath deposes and says that she took down stenographically the evidence and proceedings at the hearing by the Mercer County Board of Taxation on January 31st, 1916, of the appeals before said board in the matter of the assessments upon the property of the Trenton and Mercer County Traction Corporation and its lessor companies, and the New Jersey and Pennsylvania Traction Company, and the Public Service Railway Company, and that the annexed is a true copy of the evidence and proceedings taken before said Mercer County Board of Taxation.

ALTA M. RISDON.

Sworn and subscribed before me this 24th day of March, A. D. 1916, at Trenton, N. J.
GEORGE GILDEA,
Notary Public.

REASONS.

(Filed October 28, 1916)

NEW JERSEY SUPREME COURT.

Trenton and Mercer County Traction Corporation,
Prosecutor,

vs.

The Mercer County Board of Taxation, the Inhabitants of the City of Trenton, the Township of Lawrence in the County of Mercer, the Township of Princeton in the County of Mercer, the Township of Ewing in the County of Mercer, the Township of Hopewell in the County of Mercer and the Township of Hamilton in the County of Mercer,
Defendants.

ON CERTIORARI.

REASONS.

The said prosecutor, by Frank S. Katzenbach, Jr., its attorney, comes and prays that the orders of the Mercer County Board of Taxation, dated January 31st, 1916, increasing the assessment of the property of the Trenton Street Railway Company, the Mercer County Traction Company, the Tren-

ton, Hamilton and Ewing Traction Company, and the Trenton, Pennington and Hopewell Street Railway Company, in the city of Trenton, and in the townships of Lawrence, Princeton, Ewing, Hopewell and Hamilton, in the county of Mercer, New Jersey, which property has been leased to the prosecutor for the period of 990 years, by which leases the prosecutor covenanted to pay the taxes upon said property, may be set aside, reversed and for nothing holden, for the following reasons:

1. That the said board had no jurisdiction to make said orders of increase of assessment dated January 31st, 1916.

2. That the appellants in said appeals to said board presented no evidence of discrimination between the assessments upon the property of your petitioner and its lessor companies, and the property of other street railway or traction companies in said or other taxing districts in the county of Mercer, or the assessments upon the property of the said appellants in said several taxing districts, or the assessed valuation of property in any other taxing districts in the county of Mercer.

3. That no evidence was presented to said board which supported or justified the said increases in assessment made by said board upon the property of your petitioner and its lessor companies in said taxing districts of the county of Mercer.

4. That said board in making said increases acted without evidence, arbitrarily and illegally.

5. That no service of the petition of the township of Hopewell was made upon your petitioner.

6. That the assessments upon the property of your petitioner and its lessor companies in said taxing districts were not revised in accordance with the true market value of such taxable property.

7. That the assessment upon property in the streets of the city of Trenton as made by the said board included items of property not located in said city of Trenton, namely, signal system and special work.

8. That the assessment upon property in the streets of the city of Trenton included part of the paving done in the city of Trenton by your petitioner and its lessor companies in accordance with ordinances of the city of Trenton which does not constitute a part of the property of your petitioner or its lessor companies.

9. That no allowance was made by said board for the depreciation of that part of the paving in the city of Trenton included within the assessment upon property in the streets of the city of Trenton made against your petitioner.

10. That the assessment upon property in the streets of the city of Trenton as made by said board is based upon and calculated upon a distribution of the overhead construction in proportion to mileage, whereas said overhead constructions has no relation to mileage.

11. That the assessment includes a proposed line of street railway unconstructed, unoperated, and unleased to your petitioner, and for which no franchise for the operation thereof exists.

12. That the assessment on said proposed line of street railway is made upon the same basis as the assessment made upon completed and operated lines of street railway.

13. That the assessment upon property in the streets in the city of Trenton includes overhead construction in car barns which is also included in the assessment upon said car barns, so that the same property is twice assessed.

14. That said board in increasing said assessments upon the power plant, car barns and contents, cars and other rolling stock, real estate, tracks and overhead construction, and special work, included in said assessments an arbitrary percentage of fifteen per cent. for what was termed contingencies, engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk.

15. That there was no evidence before the said Mercer County Board of Taxation which supported or justified the inclusion of said fifteen per cent. of cost for contingencies, engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk, on all or any of said items to which said fifteen per cent. was included or added.

16. That the board in increasing the assessments upon the power plant, car barns and contents, cars and other rolling stock, real estate, tracks and overhead construction and special work, added arbitrarily, illegally and unjustly twenty per cent. to the alleged values of said items of property, after

said fifteen per cent. heretofore referred to had been added.

17. That there was no evidence before the said board which supported or justified the addition or inclusion of said twenty per cent. in the assessed values of said items of property.

18. That the value of the land upon which the power plant of your petitioner is erected is included within the assessment of the item of real estate and also in the item of the assessment of the power plant of your petitioner.

19. That the value of the power plant buildings is included in the items as fixed by said board of the assessed value of the real estate and of the assessed value of the power plant.

20. That the said board added to the assessment of the land and buildings as made by the taxing districts of the city of Trenton upon which the power plant of your petitioner is erected the sum of $41,950, without evidence as to the value of said land and buildings being presented to said board, or without any view or inspection thereof by said board.

21. That the said board added to the assessment of the land and car barn buildings as made by the taxing district of the city of Trenton the sum of $54,910, without evidence as to the value of said land and car barn buildings being presented to said board, or without any view or inspection thereof by said board.

22. That said board included in the assessment

made by it of property in the streets of the city of Trenton the value of tracks laid in the car barns of your petitioner and also included the value of the same tracks in the assessment made by it upon the car barns of your petitioner.

23. That no evidence of the value of the real and personal property of your petitioner as of the date of May 20th, 1915, was presented to said board and the assessments made by said board were based upon evidence of value at a later date than May 20th, 1915.

24. That the evidence presented to the board upon which it based its assessments was evidence as to the value of the property, real and personal, of your petitioner and its lessor companies for rate making purposes, which included elements such as franchise value, going concern value, etc., which do not enter into assessments of property for taxing purposes.

25. That the said board assessed the contents of the car barns of your petitioner at $116,978, (not including rolling stock) without evidence to support said valuation.

26. That said board made the assessment of property in the streets of the city of Trenton the sum of $634,760, without evidence to support the same.

27. That said board in making said assessment of $634,760, upon property in the streets of the city of Trenton, arbitrarily included in said assessment the sum of $61,179.50, which has no relation to property in the streets.

28. That said board assessed the value of tracks and overhead construction of your petitioner and its lessor companies outside of the city of Trenton without evidence as to the value of said tracks and overhead construction in each of the taxing districts outside of the city of Trenton, for which assessments were made by said board, to wit: Ewing Township, Lawrence Township, Hopewell Township, Princeton Township and Hamilton Township.

29. That said board used an erroneous principle in making assessments of the value of tracks and overhead construction in each of the said taxing districts outside of the city of Trenton, in that the evidence of value presented to said board consisted of evidence of a total valuation of all tracks and overhead construction outside of the city of Trenton, irrespective of taxing districts in each of which a separate and different rate of taxation existed, which total valuation was then divided on a mileage basis, irrespective of the value of the tracks and overhead construction in each of said taxing districts hereinbefore mentioned, outside of the city of Trenton.

30. That said board included in its assessment of property of your petitioner and its lessor companies outside of the city of Trenton the cost of street paving done in accordance with municipal ordinances and which does not form a part of the property of your petitioner and its lessor companies.

31. That the said assessments made by said board for each of the taxing districts of Ewing Township, Lawrence Township, Hopewell Township, Princeton Township, and Hamilton Township are not based

upon the value of the property of your petitioner and its lessor companies in each of said taxing districts.

32. That the said board did not, in making said assessments in each of said taxing districts outside of the city of Trenton, consider, estimate, or allow for the depreciation of the property of your petitioner and its lessor companies in each of said taxing districts.

33. That said board made the assessments in each taxing district outside of the city of Trenton without evidence of the value of the property of your petitioner and its lessor companies in the taxing district for which said assessment was made.

34. That said board valued the power plant and buildings twice in the assessment made by it.

35. That said board made a division between the real and personal property in each of the items of "power plant" and "car barns and contents," without evidence as to the values of the real property and personal property included within said items.

36. That the method by which the said board arrived at the respective assessments upon property in streets in the city of Trenton, power plant, car barns and contents, cars and other rolling stock, and real estate, and property outside of the city of Trenton, was illegal, erroneous, and unsupported by evidence, and said increases in assessment should be set aside and for nothing holden.

FRANK S. KATZENBACH, JR.,
Attorney of Prosecutor.

WRIT OF CERTIORARI.

(Filed March 29, 1916)

NEW JERSEY SUPREME COURT.

Trenton and Mercer County Traction Corporation,
Prosecutor,

vs.

The Mercer County Board of Taxation, the Inhabitants of the City of Trenton, the Township of Lawrence in the County of Mercer, the Township of Princeton in the County of Mercer, the Township of Ewing in the County of Mercer, the Township of Hopewell in the County of Mercer and the Township of Hamilton in the County of Mercer,
Defendants.

WRIT OF CERTIORARI.

NEW JERSEY, *ss.*

The State of New Jersey to The Mercer County Board of Taxation, GREETING:

(Seal)

We being willing for certain reasons to be certified of and concerning certain orders or judgments of the Mercer County Board of Taxation made on the 31st day of January, 1916, increasing the assess-

ments for purposes of taxation of the Trenton and Mercer County Traction Corporation and its lessor companies upon their real and personal property in the city of Trenton and in the townships of Ewing, Lawrence, Hopewell, Princeton and Hamilton, in the county of Mercer, and all things touching and concerning the same, do command you that the said orders or judgments together with all proceedings had and taken by the Mercer County Board of Taxation upon which the same are founded, together with all the testimony of witnesses and other evidence taken thereon, as fully as before you they appear and remain, and also all the facts submitted to you and the grounds, reasons and legal principles upon which you proceeded in your said determinations and judgments, and all things touching and concerning the same, you certify and send under your seal to our Justices of our Supreme Court at Trenton on the seventeenth day of April next, that we may cause to be done thereon what according to law and the Constitution of New Jersey ought to be done.

Witness, the Honorable William S. Gummere, Chief Justice of our Supreme Court, at Trenton, the 27th day of March, in the year of our Lord 1916.

WM. C. GEBHARDT,
Clerk.

FRANK S. KATZENBACH, JR.,
Attorney.

[ENDORSED]

I allow this writ. Let it be sealed.
Thomas W. Trenchard,
J. S. C.

RETURN.

NEW JERSEY SUPREME COURT.

The Trenton & Mercer County Traction Corporation,
Prosecutor,

vs.

The Mercer County Board of Taxation, the Inhabitants of the City of Trenton, the Township of Lawrence in the County of Mercer, the Township of Princeton in the County of Mercer, the Township of Ewing in the County of Mercer, the Township of Hopewell in the County of Mercer and the Township of Hamilton in the County of Mercer,
Defendants.

WRIT OF CERTIORARI.

In obedience to the command of this writ, to us directed, we, The Mercer County Board of Taxation, do hereby certify and send to the Honorable, the Justices of the Supreme Court within mentioned, the

orders or judgments together with all proceedings had and taken by the Mercer County Board of Taxation upon which the same are founded in the appeals to have the valuation of the property of the Trenton & Mercer County Traction Corporation increased for the purposes of taxation for the year 1915, wherein mention is within made, with all things touching the same, as fully as before us they remain.

And we do further certify and send to the Honorable, the Justices of the Supreme Court within mentioned, as we are commanded to do in said writ, the grounds and reasons upon which we proceeded in our said determinations and judgments were as follows: The testimony of the witnesses called on both sides as to the true value of the property assessed. Witnesses on behalf of the prosecutor company testified to a total value of three million four hundred thousand dollars ($3,400,000.00) and gave details and items of that valuation, and their reasons for arriving at the same. The witnesses on behalf of the defendant municipalities testified to a total valuation of two million three hundred seventy-nine thousand eight hundred fifty-one dollars and ninety-five cents ($2,379,851.95) as the reproduction value, and one million seven hundred nine thousand two hundred twenty-two dollars and forty cents ($1,709,222.40) as the depreciation (or present) value, and gave the details and items of that valuation, and their reasons for arriving at the same.

Both sides also submitted various exhibits in support of their valuations, which appear in the record. We considered all of this evidence and took into account the experience and credibility and special knowledge of all the witnesses who testified, and after weighing all this evidence we decided that the true value of this property on May 20th, 1915, was

as stated in our determinations and formal judgments.

The legal principals upon which we proceeded in these determinations and judgments were that property must be assessed by uniform rules and at its true value, as shown by the evidence presented in the case.

In witness whereof we have hereunto directed the president and secretary of the said board to set their respective hands and the seal of the board this seventeenth day of April, nineteen hundred and sixteen.

FRANK R. ADAMS,
President.

HARRY C. HARTPENCE,
Secretary.

(Seal)

THE MERCER COUNTY BOARD OF TAXATION.

In the matter of Appeal of The Township of Princeton, from the Assessment of Property in the Township of Princeton, County of Mercer, for the year 1915.

Judgment.

An appeal, in writing, having been filed with the Mercer County Board of Taxation, duly verified according to the rules of practice prescribed by said board, by the township of Princeton, in which it is alleged that an injustice has been done the said complainant by the assessment of the property of the

Trenton & Mercer County Traction Corp. for taxation for the year 1911, located in the township of Princeton, county of Mercer, and that the property is assessed lower than the true value thereof;

After hearing evidence produced on the part of the said complainant, and the argument of Geo. L. Record and Bayard Stockton for the complainant, and F. S. Katzenbach, Jr., for the respondents, for the city of Trenton, and after considering the same, it is, on this 31st day of January, nineteen hundred and 16, at a session of the Mercer County Board of Taxation, Ordered, Adjudged and Decreed, under and by virtue of Chapter 120 of the Laws of 1906, that the assessment of $12,500 be increased to $39,255, being $6,000 on land (right of way) and $33,255 on the tracks, rails, overhead construction and other property of the company in the township of Princeton for the year 1915.

And it is Further Ordered, That this order be certified to the receiver of taxes of the township of Princeton, county of Mercer.

F. R. Adams,
A. K. Leuckel,
Edward B. Morris,
Mercer County Board of Taxation.

Attest:
Harry C. Hartpence,
Secretary.
(Seal)

Decided and filed, Jan. 31, 1916, Harry C. Hartpence, Secretary of Mercer County Board of Taxation.

THE MERCER COUNTY BOARD OF TAXATION.

In the matter of Appeal of Township of Ewing, from the Assessment of Property in the Township of Ewing, County of Mercer, for the year 1915.

Judgment.

An appeal, in writing, having been filed with the Mercer County Board of Taxation, duly verified according to the rules of practice prescribed by said board, by the township of Ewing, in which it is alleged that an injustice has been done the said complainant by the assessment of the property of the Trenton, Hamilton & Ewing Traction Co., for taxation for the year 1915, located in the township of Ewing, county of Mercer, and that the property is assessed lower than the true value thereof;

After hearing evidence produced on the part of the said complainant, and the argument of Geo. L. Record and Willis P. Bainbridge for the complainant, and F. S. Katzenbach, Jr., for the respondents, and after considering the same, it is, on this 31st day of January, nineteen hundred and 16, at a session of the Mercer County Board of Taxation, Ordered, Adjudged and Decreed, under and by virtue of Chapter 120 of the Laws of 1906, that the assessment of $3,500 on the rails, overhead construction and other property of the said company located on the public roads in Ewing Township be increased to $9,870 for the year 1915.

And it is Further Ordered, That this order be

certified to the receiver of taxes of the township of Ewing, county of Mercer.

F. R. Adams,
A. K. Leuckel,
Edward B. Morris,
Mercer County Board of Taxation.

Attest:
Harry C. Hartpence,
Secretary.
(Seal)

Decided and filed, Jan. 31, 1916, Harry C. Hartpence, Secretary of Mercer County Board of Taxation.

THE MERCER COUNTY BOARD OF TAXATION.

In the matter of Appeal of Township of Ewing, from the Assessment of Property in the Township of Ewing, County of Mercer, for the year 1915.

Judgment.

An appeal, in writing, having been filed with the Mercer County Board of Taxation, duly verified according to the rules of practice prescribed by said board, by township of Ewing, in which it is alleged that an injustice has been done the said complainant by the assessment of the property of the Trenton, Pennington & Hopewell Traction Co., for taxation

for the year 1915, located in the township of Ewing, county of Mercer, and that the property is assessed lower than the true value thereof;

After hearing evidence produced on the part of the said complainant, and the argument of Geo. L. Record and Willis P. Bainbridge for the complainant, and F. S. Katzenbach, Jr., for the respondents and after considering the same, it is, on this 31st day of January, nineteen hundred and 16, at a session of the Mercer County Board of Taxation, Ordered, Adjudged and Decreed, under and by virtue of Chapter 120 of the Laws of 1906, that the assessment of $13,500 on tracks, rails, overhead construction and other property on the roads and highways of Ewing Township owned by the above-named company be increased to $36,940 for the year 1915.

And it is Further Ordered, That this order be certified to the receiver of taxes of the city of Trenton, county of Mercer.

F. R. Adams,
A. K. Leuckel,
Edward B. Morris,
Mercer County Board of Taxation.

Attest:

Harry C. Hartpence,
Secretary.

(Seal)

Decided and filed, Jan. 31, 1916, Harry C. Hartpence, Secretary of Mercer County Board of Taxation.

THE MERCER COUNTY BOARD OF TAXATION.

In the matter of Appeal of the Township of Lawrence and Geo. C. Blake, from the Assessment of Property in the Township of Lawrence, County of Mercer, for the year 1915.

Judgment.

An appeal, in writing, having been filed with the Mercer County Board of Taxation, duly verified according to the rules of practice prescribed by said board, by the township committee of the township of Lawrence, and Geo. C. Blake, in which it is alleged that an injustice has been done the said complainant by the assessment of the property for taxation for the year 1915, located in the township of Lawrence, belonging to the Trenton & Mercer County Traction Corporation as lessee and the Trenton Street Railway Co., owner, county of Mercer, and that the property is assessed lower than the true value thereof;

After hearing evidence produced on the part of the said complainants, and the argument of Geo. L. Record and Harvey T. Satterthwaite for the complainants, and Frank S. Katzenbach, Jr., for the respondents, for the city of Trenton, and after considering the same, it is, on this 31st day of January, nineteen hundred and 16, at a session of the Mercer County Board of Taxation, Ordered, Adjudged and Decreed, under and by virtue of Chapter 120 of the Laws of 1906, that the assessment of $30,000 on the tracks, rails, ties and other property incident to the operation of the electric railway owned by the abovenamed company be increased to $89,475, for the year

1915, and that the value of the power house remain as assessed ($1000).

And it is Further Ordered, That this order be certified to the receiver of taxes of the county of Mercer.

F. R. Adams,
A. K. Leuckel,
Edward B. Morris,
Mercer County Board of Taxation.

Attest:

Harry C. Hartpence,
Secretary.

(Seal)

Decided and filed, Jan. 31, 1916, Harry C. Hartpence, Secretary of Mercer County Board of Taxation.

THE MERCER COUNTY BOARD OF TAXATION.

In the matter of Appeal of Township Committee of Hopewell Township, from the Assessment of Property in the Township of Hopewell, County of Mercer, for the year 1915.

Judgment.

An appeal, in writing, having been filed with the Mercer County Board of Taxation, duly verified according to the rules of practice prescribed by said board, by the township committee of Hopewell Township in which it is alleged that an injustice has been done the said complainant by the assessment of the property of the Trenton & Mercer County Trac-

tion Corporation for taxation for the year 1915, located in the township of Hopewell, county of Mercer, and that the property is assessed lower than the true value thereof;

After hearing evidence produced on the part of the said complainant, and the argument of Geo. L. Record and Edwin C. Long, for the complainant, and Frank S. Katzenbach, Jr., for the respondents and after considering the same, it is, on this 31st day of January, nineteen hundred and 16, at a session of the Mercer County Board of Taxation, Ordered, Adjudged and Decreed, under and by virtue of Chapter 120 of the Laws of 1906, that the assessment of $27,000 on the tracks, rails, overhead construction and all other property located on the roads and private right of way in Hopewell Township be increased to $80,970 for the year 1915.

And it is Further Ordered, That this order be certified to the receiver of taxes of the township of Hopewell, county of Mercer.

F. R. Adams,
A. K. Leuckel,
Edward B. Morris,
Mercer County Board of Taxation.

Attest:

Harry C. Hartpence,
Secretary.

(Seal)

Decided and filed, Jan. 31, 1916, Harry C. Hartpence, Secretary of Mercer County Board of Taxation.

THE MERCER COUNTY BOARD OF TAXATION.

In the matter of Appeal of the city of Trenton, by its Mayor, and Clinton J. Swartz, receiver of taxes and Everitt Townsend, from the Assessment of Property in the city of Trenton, county of Mercer, for the year 1915, owned by the Trenton & Mercer County Traction Corporation.

Judgment.

An appeal, in writing, having been filed with the Mercer County Board of Taxation, duly verified according to the rules of practice prescribed by said board, by the city of Trenton by the Mayor, Fred'k. W. Donnelly, Clinton J. Swartz, receiver of taxes of the city of Trenton and Everitt Townsend, in which it is alleged that an injustice has been done the said complainants by the assessment of the property of the Trenton & Mercer County Traction Corp. for taxation for the year 1915, located in the several wards, on the streets and plots of land, and described as power plant, car barns and tracks and other property in the streets and personal property, Lot No. of the city atlas of the city of Trenton, county of Mercer, and that the property is assessed lower than the true value thereof;

After hearing evidence produced on the part of the said complainants, and the argument of Geo. L. Record, and Chas. E. Bird, for the complainants, and Frank S. Katzenbach, Jr., for the respondents, and after considering the same, it is, on this 31st day of January, nineteen hundred and 16, at a session of the Mercer County Board of Taxation, Ordered, Ad-

judged and Decreed, under and by virtue of Chapter 120 of the Laws of 1906, that the assessment of $815,-025 on all the property of the company in the city of Trenton be increased to $1,589,500, proportioned as follows: North Clinton Ave. property, page 15 lot 45, 144 196 260r, 63 city atlas $7,900, no change; Lincoln Ave. property, page 15 lot 291 $3,500, no change; power house, rear of Lincoln Ave. page 15 lot 279 r city atlas $76,450; Princeton Ave. property, page 46a lot 23, 24 city atlas $5,175, no change; Lalor St. car barns page 75 lots 15, 24, 21 r, 22 r city atlas $110,050, lot on Second St. page 75 lot 11 city atlas, $2300, no change; Stuyvesant Ave. private right of way page 409 lot city atlas $1500, no change; value of tracks and overhead construction and other property in the streets $634,760. Personal property $747,865. Total 1,589,500.

And it is Further Ordered, That this order be certified to the receiver of taxes of the city of Trenton, county of Mercer.

F. R. Adams,
A. K. Leuckel,
Edward B. Morris,
Mercer County Board of Taxation.

Attest:

Harry C. Hartpence,
Secretary.

(Seal)

Decided and filed Jan. 31, 1916, Harry C. Hartpence, Secretary of Mercer County Board of Taxation.

THE MERCER COUNTY BOARD OF TAXATION.

In the matter of Appeal of the Township of Hamilton and Edward W. Daymond of the township of Hamilton, from the Assessment of Property in the township of Hamilton, county of Mercer, for the year 1915, owned by the Trenton and Mercer County Traction Corporation.

Judgment.

An appeal, in writing, having been filed with the Mercer County Board of Taxation, duly verified according to the rules of practice prescribed by said board, by the township of Hamilton and Edward W. Daymond, in which it is alleged that an injustice has been done the said complainants by the assessment of the property of the Trenton & Mercer County Traction Corporation for taxation for the year 1915, located in the township of Hamilton, county of Mercer, and that the property is assessed lower than the true value thereof;

After hearing evidence produced on the part of the said complainants, and the argument of Geo. L. Record and Alvin W. Sykes, for the complainants, and Frank S. Katzenbach, Jr., for the respondents, for the city of Trenton, and after considering the same, it is, on this 31st day of January, nineteen hundred and 16, at a session of the Mercer County Board of Taxation, Ordered, Adjudged and Decreed, under and by virtue of Chapter 120 of the Laws of 1906, that the assessment of $50,310 on the rails and overhead construction and all other property on the streets, roads and private rights of way in Hamilton

Township be increased to $171,745 for the year 1915.

And it is Further Ordered, That this order be certified to the receiver of taxes of the township of Hamilton, county of Mercer.

FRANK R. ADAMS,
A. K. LEUCKEL,
EDWARD B. MORRIS,
Mercer County Board of Taxation.

Attest:
HARRY C. HARTPENCE,
Secretary.

(Seal)

Decided and filed Jan. 31, 1916, Harry C. Hartpence, Secretary of Mercer County Board of Taxation.

To the County Board of Taxation of Mercer County:

The petition of the city of Trenton respectfully shows:

That the property owned or operated by the Trenton and Mercer County Traction Corporation within the city of Trenton was assessed for taxation by the taxing officials of the said city at the sum of eight hundred and fifteen thousand and twenty-five dollars for the current year.

And your petitioner further shows that subsequent to the making of said assessment a litigation was had before the State Board of Public Utility Commissioners between the said city of Trenton and the said Trenton and Mercer County Traction Corporation, growing out of the attempt of the said company

to discontinue the sale of six tickets for twenty-five cents. That in the said litigation the officials of the said company presented evidence claiming to support their claim that the property of the said company was worth upon the twentieth day of May of this year, approximately the sum of four millions of dollars, and that the said Board of Public Utility Commissioners found as a matter of fact from the evidence submitted in said litigation that the said property was worth the sum of approximately three million two hundred thousand dollars.

Your petitioner further shows that at least eighty-three per cent. in value of the property of the said company is situated within the limits of the city of Trenton, and that therefore the assessment of the property of the company by the city of Trenton for the current year should have been, according to the company's claim and evidence, at least eighty-three per cent. of the four million dollars, or three million three hundred and twenty thousand dollars, and according to the finding of the State Board of Public Utility Commissioners at least eighty-three per cent. of three million two hundred thousand dollars, or two million six hundred and fifty-six thousand dollars.

Your petitioner therefore shows that the property of the said company has been under assessed by the said city for the purpose of taxation for the current year.

And your petitioner further shows that the taxing officials of the city of Trenton assessed the property in the said city of the New Jersey and Pennsylvania Traction Company at the sum of one hundred fourteen thousand four hundred fifty dollars for the current year, and that said officials assessed the property of the Public Service Railway Company, in the name of the Riverside Traction Company, in said city

for the current year at the sum of seventy-two thousand, six hundred fifty dollars.

And your petitioner further shows that in the assessment of the property of the last mentioned two companies the same method of valuation was pursued as in assessing the property of the Trenton and Mercer County Traction Corporation, and that therefore the said property of the said New Jersey and Pennsylvania Traction Company and of the Public Service Railway Company was by said city undervalued in making the said assessments in the same proportion that the property of the Trenton and Mercer County Traction Corporation was undervalued as hereinbefore set forth.

Your petitioner therefore appeals from the said assessments upon the property of the said three companies for the current year, and brings to the attention of your honorable board the facts hereinbefore stated, and respectfully prays that the assessment of the Trenton and Mercer County Traction Corporation may be by your honorable board increased from the sum of eight hundred and fifteen thousand twenty-five dollars, to the sum of three million three hundred and twenty thousand dollars, or such other sum as your honorable board may determine to be the true value of such property; and that the assessment of the property of the New Jersey and Pennsylvania Traction Company may be increased from the sum of one hundred fourteen thousand, for hundred fifty dollars to the sum of one hundred thirty-six thousand nine hundred fifty dollars, or such other sum as your honorable board may determine to be the true value of the said property; and that the assessment of the property of the Public Service Railway Company may be increased from the sum of seventy-two thousand, six hundred fifty dollars to the

sum of one hundred six thousand dollars, or such other sum as your honorable board may determine to be the true value of the said property.

And your petitioner will ever pray, &c.

FREDK. W. DONNELLY,
Mayor.

Attest
FRANK THOMPSON, *City Clerk.*

Submitted by order of the Board of Commissioners of the city of Trenton.

CHAS. E. BIRD,
City Counsel.

State of New Jersey,
County of Mercer, } *ss.*

Abram Swan, Jr., being duly sworn according to law, on his oath says that he is the engineer of streets of the city of Trenton, and that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

ABRAM SWAN, JR.

Sworn and subscribed before me this 17th day of December, 1915.

B. B. MCAVOY,
Notary Public, State of New Jersey.

State of New Jersey, } *ss.*
County of Mercer, }

Dorothy B. Perkins, being duly sworn according to law, upon her oath deposes and says that she served a true copy of the notice and petition hereunto attached upon the Trenton & Mercer County Traction Corporation, by handing the same to Rankin Johnson, president of said company, at the office of the company in the American Mechanics Building, Trenton, N. J., on the twentieth day of December, nineteen hundred and fifteen, and informing him of the contents thereof.

DOROTHY B. PERKINS.

Sworn and subscribed to before me this 21st day of December, 1915.

ALBERT G. HOWELL,
Notary Public, N. J.

I hereby certify this to be a true copy of the petition and proof of service filed in the above-named cause.

HARRY C. HARTPENCE,
Secretary,
Mercer County Board of Taxation.

Filed Dec. 17, 1915. Heard Jan. 31, 1916. Decided Jan. 31, 1916.

To the County Board of Taxation of Mercer County:

The petition of Clinton J. Swartz, receiver of taxes of the city of Trenton, county of Mercer and state of New Jersey, respectfully shows:

That your petitioner is receiver of taxes of the city of Trenton. That the property owned or operated by the Trenton and Mercer County Traction Corporation within the city of Trenton was assessed for taxation by the taxing officials of the said city at the sum of eight hundred and fifteen thousand and twenty-five dollars for the current year.

And your petitioner further shows that subsequent to the making of said assessment a litigation was had before the State Board of Public Utility Commissioners between the said city of Trenton and the said Trenton and Mercer County Traction Corporation, growing out of the attempt of the said company to discontinue the sale of six tickets for twenty-five cents. That in the said litigation the officials of the said company presented evidence claiming to support their claim that the property of the said company was worth upon the twentieth day of May of this year, approximately the sum of four millions of dollars, and that the said Board of Public Utility Commissioners found as a matter of fact from the evidence submitted in said litigation that the said property was worth the sum of approximately three million two hundred thousand dollars.

Your petitioner further shows that at least eighty-three per cent. in value of the property of the said company is situated within the limits of the city of Trenton, and that therefore the assessment of the property of the company by the city of Trenton for the current year should have been, according to the company's claim and evidence, at least eighty-three per cent. of the four million dollars, or three million three hundred and twenty thousand dollars, and according to the finding of the State Board of Public Utility Commissioners at least eighty-three per cent. of three million two hundred thousand dollars, or

two million six hundred and fifty-six thousand dollars.

Your petitioner therefore shows that the property of the said company has been under assessed by the said city for the purpose of taxation for the current year.

And your petitioner further shows that the taxing officials of the city of Trenton assessed the property in the said city of the New Jersey and Pennsylvania Traction Company at the sum of one hundred fourteen thousand four hundred fifty dollars for the current year, and that said officials assessed the property of the Public Service Railway Company, in the name of the Riverside Traction Company, in said city for the current year at the sum of seventy-two thousand, six hundred fifty dollars.

And your petitioner further shows that in the assessment of the property of the last mentioned two companies the same method of valuation was pursued as in assessing the property of the Trenton and Mercer County Traction Corporation, and that therefore the said property of the said New Jersey and Pennsylvania Traction Company and of the Public Service Railway Company was by said city undervalued in making the said assessments in the same proportion that the property of the Trenton and Mercer County Traction Corporation was undervalued as hereinbefore set forth.

Your petitioner therefore appeals from the said assessments upon the property of the said three companies for the current year, and brings to the attention of your honorable board the facts hereinbefore stated, and respectfully prays that the assessment of the Trenton and Mercer County Traction Corporation may be by your honorable board increased from the sum of eight hundred and fifteen

thousand twenty-five dollars, to the sum of three million three hundred and twenty thousand dollars, or such other sum as your honorable board may determine to be the true value of such property; and that the assessment of the property of the New Jersey and Pennsylvania Traction Company may be increased from the sum of one hundred fourteen thousand, four hundred fifty dollars to the sum of one hundred thirty-six thousand nine hundred fifty dollars, or such other sum as your honorable board may determine to be the true value of the said property; and that the assessment of the property of the Public Service Railway Company may be increased from the sum of seventy-two thousand, six hundred fifty dollars to the sum of one hundred six thousand dollars, or such other sum as your honorable board may determine to be the true value of the said property.

And your petitioner will ever pray, &c.

CLINTON J. SWARTZ,
Receiver of Taxes,
City of Trenton, N. J.

State of New Jersey,
County of Mercer, } *ss.*

being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

EVERITT TOWNSEND.

Sworn and subscribed before me this 17th day of December, 1915.

HARRY R. BERGEN, JR.,
Notary Public of N. J.

State of New Jersey,
County of Mercer, } *ss.*

Dorothy B. Perkins, being duly sworn according to law, upon her oath deposes and says that she served a true copy of the notice and petition hereunto attached upon the Trenton and Mercer County Traction Corporation, by handing the same to Rankin Johnson, president of said company, at the office of the company, in the American Mechanics Building, Trenton, N. J., on the twentieth day of December, nineteen hundred and fifteen, and informing him of the contents thereof.

DOROTHY B. PERKINS.

Sworn and subscribed to before me this 21st day of December, 1915.

ALBERT G. HOWELL,
Notary Public, N. J.

I hereby certify this to be a true copy of the petition and proof of service filed in the above-named cause.

HARRY C. HARTPENCE,
Secretary,
Mercer County Board of Taxation.

Filed Dec. 17, 1915.

To the County Board of Taxation of Mercer County:

The petition of Everitt Townsend of the city of Trenton, county of Mercer and state of New Jersey, respectfully shows:

That your petitioner is a citizen and taxpayer of the city of Trenton. That the property owned or operated by the Trenton and Mercer County Traction Corporation within the city of Trenton was assessed for taxation by the taxing officials of the said city at the sum of eight hundred and fifteen thousand and twenty-five dollars for the current year.

And your petitioner further shows that subsequent to the making of said assessment a litigation was had before the State Board of Public Utility Commissioners between the said city of Trenton and the said Trenton and Mercer County Traction Corporation, growing out of the attempt of the said company to discontinue the sale of six tickets for twenty-five cents. That in the said litigation the officials of the said company presented evidence claiming to support their claim that the property of the said company was worth upon the twentieth day of May of this year, approximately the sum of four millions of dollars, and that the said Board of Public Utility Commissioners found as a matter of fact from the evidence submitted in said litigation that the said property was worth the sum approximately three million two hundred thousand dollars.

Your petitioner further shows that at least eighty-three per cent. in value of the property of the said company is situated within the limits of the city of Trenton, and that therefore the assessment of the property of the company by the city of Trenton for the current year should have been, according to the company's claim and evidence, at least eighty-three per cent. of the four million dollars, or three million three hundred and twenty thousand dollars, and according to the finding of the State Board of Public Utility Commissioners at least eighty-three per cent. of three million two hundred thousand dollars, or

New Jersey State Library

two million six hundred and fifty-six thousand dollars.

Your petitioner therefore shows that the property of the said company has been under assessed by the said city for the purpose of taxation for the current year.

And your petitioner further shows that the taxing officials of the city of Trenton assessed the property in the said city of the New Jersey and Pennsylvania Traction Company at the sum of one hundred fourteen thousand four hundred fifty dollars for the current year, and that said officials assessed the property of the Public Service Railway Company, in the name of the Riverside Traction Company, in said city for the current year at the sum of seventy-two thousand, six hundred fifty dollars.

And your petitioner further shows that in the assessment of the property of the last mentioned two companies the same method of valuation was pursued as in assessing the property of the Trenton and Mercer County Traction Corporation, and that therefore the said property of the said New Jersey and Pennsylvania Traction Company and of the Public Service Railway Company was by said city undervalued in making the said assessments in the same proportion that the property of the Trenton and Mercer County Traction Corporation was undervalued as hereinbefore set forth.

Your petitioner therefore appeals from the said assessments upon the property of the said three companies for the current year, and brings to the attention of your honorable board the facts hereinbefore stated, and respectfully prays that the assessment of the Trenton and Mercer County Traction Corporation may be by your honorable board increased from the sum of eight hundred and fifteen thousand twen-

ty-five dollars, to the sum of three million three hundred and twenty thousand dollars, or such other sum as your honorable board may determine to be the true value of such property; and that the assessment of the property of the New Jersey and Pennsylvania Traction Company may be increased from the sum of one hundred fourteen thousand, four hundred fifty dollars to the sum of one hundred thirty-six thousand nine hundred fifty dollars, or such other sum as your honorable board may determine to be the true value of the said property; and that the assessment of the property of the Public Service Railway Company may be increased from the sum of seventy-two thousand, six hundred fifty dollars to the sum of one hundred six thousand dollars, or such other sum as your honorable board may determine to be the true value of the said property.

And your petitioner will ever pray, &c.

EVERITT TOWNSEND.

State of New Jersey,
County of Mercer, } *ss.*

being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

EVERITT TOWNSEND.

Sworn and subscribed before me this 17th day of December, 1915.

HARRY R. BERGEN, JR.,
Notary Public of N. J.

State of New Jersey, }
County of Mercer, } *ss.*

Dorothy B. Perkins, being duly sworn according to law, upon her oath deposes and says that she served a true copy of the notice and petition hereunto attached upon the Trenton & Mercer County Traction Corporation, by handing the same to Rankin Johnson, president of said company, at the office of the company in the American Mechanics Building, Trenton, N. J., on the twentieth day of December, nineteen hundred and fifteen, and informing him of the contents thereof.

DOROTHY B. PERKINS.

Sworn and subscribed to before me this 21st day of December, 1915.

ALBERT G. HOWELL,
Notary Public, N. J.

I hereby certify this to be a true copy of the petition and proof of service filed in the above-named cause.

HARRY C. HARTPENCE,
Secretary,
Mercer County Board of Taxation.

Filed Dec. 17, 1915.

(Original Copy)

PETITION OF APPEAL—BOROUGHS AND TOWNSHIPS.

Note.—The original petition of appeal must be filed with the Mercer County Board of Taxation in their office, at the court house, Trenton, at least five days before the date set for hearing, and in no case can petitions be filed later than December 20th.

A duplicate copy must be filed with the clerk or attorney of the taxing district where property is assessed.

A separate petition must be used for each property.

This petition cannot be given consideration unless sworn to in accordance with the affidavits on the reverse side.

In the matter of application of the township of Princeton, for the increase of the tax assessment for the year 1915, on property of the Trenton & Mercer County Traction Corporation, situate in the township of Princeton, county of Mercer and state of New Jersey.

Petition.

To the Mercer County Board of Taxation:

Your petitioner, the township of Princeton residing at (P. O. address) respectfully shows that the Trenton & Mercer County Traction Corporation is the owner of certain property situate in the taxing district of Princeton Township, county

of Mercer, consisting of private right of way and tracks and overhead construction located in said township.

That said property has been assessed for the purpose of taxation for the year 1915, at a valuation of twelve thousand and five hundred dollars, at which assessment your petitioner is aggrieved, because the said assessment is not as much as its true value.

Your petitioner therefore prays that the said assessment of twelve thousand five hundred dollars for the year 1915 be increased to the true value of the property, to wit: Fifty thousand dollars.

Dated Princeton, N. J., Dec. 18th, 1915.

(Signed) The Township of Princeton.
by Bayard Stockton,
Its Attorney.

State of New Jersey,
County of Mercer, } *ss.*

Bayard Stockton, the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

Bayard Stockton.

Sworn and subscribed before me, this 18th day of Dec. 1915.

Harry C. Hartpence,
Notary Public.

(Heard Jan. 31, 1916. Decided Jan. 31, 1916.)

I hereby certify the within to be a true copy of the petition filed in the within-named cause.

HARRY C. HARTPENCE,
Secretary,
Mercer County Board of Taxation.

(Original Copy)

PETITION OF APPEAL—BOROUGHS AND TOWNSHIPS.

Note.—The original petition of appeal must be filed with the Mercer County Board of Taxation in their office, at the court house, Trenton, at least five days before the date set for hearing, and in no case can petitions be filed later than December 20th.

A duplicate copy must be filed with the clerk or attorney of the taxing district where property is assessed.

A separate petition must be used for each property.

This petition cannot be given consideration unless sworn to in accordance with the affidavits on the reverse side.

In the matter of application of township of Ewing for a increase of the tax assessment for the year 1915, on property of the Trenton, Hamilton & Ewing Traction Co., situate in the township of Ewing, county of Mercer and state of New Jersey.

Petition.

To the Mercer County Board of Taxation:

Your petitioner, Ewing Township Committee residing at (P. O. address) respectfully shows that the said company is the owner of certain property situate in the taxing district of Ewing Township, county of Mercer, consisting of rails and roadbed and overhead work located on New Jersey State Hospital Road (or street) from the city of Trenton line to the R. R. crossing and known as Trenton, Hamilton & Ewing Trac. Co.

That said property has been assessed for the purpose of taxation for the year 1915, at a valuation of $3500.00 for 94/100 of a mile at which assessment your petitioner is aggrieved, because the said assessment is short of its true value.

Your petitioner therefore prays that the said assessment of $3500.00 for 94/100 mile for the year 1915 be increased to the true value of the property, to wit: $15,900 per mile.

Dated Dec. 18, 1915.

(Signed) Ewing Township Committee.
W. P. Conard.

State of New Jersey, } *ss.*
County of Mercer, }

Wm. P. Conard, the above-named petitioner, being duly affirmed according to law, on his affirmation says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

William P. Conard.

Sworn and subscribed before me, this 18th day of Dec., 1915.

HARRY C. HARTPENCE,
Notary Public.

State of New Jersey, }
County of Mercer, } *ss.*

Laura Atkinson, being duly sworn according to law, on his oath saith that he served a copy of the above petition and affidavit on Edward M. Hunt (attorney) of Trenton, Hamilton & Ewing Traction Co., (name of taxing district), personally, this 18th day of December, 1915.

LAURA ATKINSON.

Sworn and subscribed before me, this 31st day of January, 1916.

ALVIN W. SYKES,
M. C. C. of N. J.

(Heard Jan. 31, 1916. Decided Jan. 31, 1916.)

I hereby certify the within to be a true copy of the petition filed in the within-named cause.

HARRY C. HARTPENCE,
Secretary,
Mercer County Board of Taxation.

(Original Copy)

PETITION OF APPEAL—BOROUGHS AND TOWNSHIPS.

Note.—The original petition of appeal must be filed with the Mercer County Board of Taxation in their office, at the court house, Trenton, at least five days before the date set for hearing, and in no case can petitions be filed later than December 20th.

A duplicate copy must be filed with the clerk or attorney of the taxing district where property is assessed.

A separate petition must be used for each property.

This petition cannot be given consideration unless sworn to in accordance with the affidavits on the reverse side.

In the matter of application of township of Ewing for a increase of the tax assessment for the year 1915, on property of the Trenton, Pennington & Hopewell Tract. Co., situate in the township of Ewing, county of Mercer and state of New Jersey.

Petition.

To the Mercer County Board of Taxation:

Your petitioner, Ewing Township Committee, residing at (P. O. address) respectfully shows that the said company is the owner of certain property situate in the taxing district of Ewing Township, county of Mercer, consisting of rails, roadbed and overhead work, located on the Penning-

ton Road from the City Line to Cornell Switch and known as Trenton, Pennington & Hopewell Railway Co.

That said property has been assessed for the purpose of taxation for the year 1915, at a valuation of thirteen thousand, five hundred dollars, at which assessment your petitioner is aggrieved, because the said assessment is short of its true value.

Your petitioner prays that the said assessment of $13,500.00 for the year 1915 be increased to the true value of the property, to wit: $15,900 per mile.

Dated 12/18/15.

(Signed) EWING TOWNSHIP COMMITTEE,
W. P. CONARD.

State of New Jersey, }
County of Mercer, } ss.

WM. P. CONARD, the above-named petitioner, being duly affirmed according to law, on his affirmation says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

WILLIAM P. CONARD.

Sworn and subscribed before me, this 18 day of Dec., 1915.

HARRY C. HARTPENCE,
Notary Public.

State of New Jersey, }
County of Mercer, } ss.

Laura Atkinson, being duly sworn according to law, on her oath saith that she served a copy of the above petition and affidavit on Edward M. Hunt, (attorney) of Trenton, Pennington & Hopewell Traction Co., personally, this 18 day of December, 1915.

Laura Atkinson.

Sworn and subscribed before me, this 31 day of January, 1916.

Alvin W. Sykes,
M. C. C. of N. J.

(Heard Jan. 31, 1916. Decided Jan. 31, 1916.)

I hereby certify the within to be a true copy of the petition filed in the within-named cause.

Harry C. Hartpence,
Secretary,
Mercer County Board of Taxation.

In the matter of the application of the Township Committee of the township of Lawrence, in the county of Mercer, representing the taxing district of Lawrence Township, in the county of Mercer, for the increasing of the tax assessment on property situated in said township, in said county, state of New Jersey.

Petition.

To the Mercer County Board of Taxation:

Your petitioner, the Township Committee of Law-

rence Township, in the county of Mercer, representing the taxing district of said Lawrence Township, on behalf of said taxing district, respectfully shows that the Trenton Street Railway Company is the owner and the Trenton and Mercer County Traction Corporation is the lessee of certain property situate in the taxing district of said Lawrence Township, in the county of Mercer, consisting of rails, ties, poles, trolley wires and feed wires, and other property incident to the operation of trolley cars propelled by electricity, and situate in the public highway in said township, on the road known as the Lawrence Road, beginning at the township line at Mulberry Street, in the city of Trenton, and extending along said line of road about five and one-half miles by and through the village of Lawrence to the Shipetankin Creek, and thence extending over private rights of way, wherein the said company owns various rights of way, easements, and privileges, and estates in fee simple, a distance of about one and one-half miles to the Princeton Township line, together with all bridges, culverts, transforming stations incident to the necessary operation and successful use of the said line of tracks in the operation of said trolley road with electric cars for the transportation of passengers and freight. That said property has been assessed for the purpose of taxation for the year nineteen hundred and fifteen at the valuation of thirty-one thousand dollars, at which assessment your petitioner is aggrieved and discriminated against because said assessment is greatly less than the true value of the said property, and is also less than the assessment levied against other properties of like character, and similarly situated, in the same locality.

Your petitioner therefore prays that the said as-

sessment of thirty-one thousand dollars, for the year nineteen hundred and fifteen, be increased to the true value of the property, to wit, the sum of one hundred and sixteen thousand dollars.

Dated December the 18th, 1915.

Township Committee of the Township of Lawrence, in the County of Mercer.

By JOHN C. HILL,
Chairman,
A. CROZER REEVES,
THOMAS S. STEVENS.

Attest:
F. W. KAFER,
Clerk of the Township of Lawrence in the County of Mercer.
(Seal)

State of New Jersey, } ss.
County of Mercer, }

JOHN C. HILL, A. CROZER REEVES and THOMAS S. STEVENS, being duly sworn, according to law, on their respective oaths say that they have read the foregoing petition, know the contents thereof, and that the statements set forth and contained therein are true, to the best of their knowledge, information and belief, and furthermore is it true that they have signed the same in obedience to a resolution passed by the Township Committee of the township of Lawrence, in the county of Mercer, on the eighteenth day of December, nineteen hundred and

fifteen, and are members of said committee and the only members thereof.

JOHN C. HILL,
A. CROZER REEVES,
THOMAS S. STEVENS.

Sworn and subscribed before me this 18th day of December, 1915.

HARVEY T. SATTERTHWAITE,
M. C. C. of N. J.

To the Trenton and Mercer County Traction Corporation, lessee, (the Trenton Street Railway Company, Owner):

Please take notice that the township of Lawrence, in the county of Mercer, did on the eighteenth day of December, nineteen hundred and fifteen, file a petition with the Mercer County Board of Taxation, praying that the assessments for the purpose of taxation against the property of the above-named corporation be increased, according to the prayer of said petition, of which a copy is hereto annexed, and did at the same time apply to the said board to fix a time for hearing the same, and that said petition will be heard at a time and place to be fixed by said Mercer County Board of Taxation.

The Township of Lawrence in the County of Mercer.
By HARVEY T. SATTERTHWAITE,
Attorney.

State of New Jersey, }
County of Mercer, } ss.

HARVEY T. SATTERTHWAITE, being duly sworn according to law, on his oath deposes and says that he served a copy of the above notice, together with a copy of the petition referred to therein and to which this affidavit is annexed, on the "Trenton and Mercer County Traction Corporation," by delivering, at the office of said the same to Rankin Johnson, president of said corporation, at the office of said company, No. 137 E. State Street, Trenton, N. J., on Monday, December 20th, 1915, and by informing him of the contents thereof.

HARVEY T. SATTERTHWAITE.

Sworn and subscribed to before me this 10th day of April, A. D. nineteen hundred and sixteen.

ALEXANDER TRAPP,
M. C. C. of N. J

To the Trenton Street Railway Company, Owner, (Trenton and Mercer County Traction Corporation, Lessee):

Please take notice that the township of Lawrence, in the county of Mercer, on the eighteenth day of December, nineteen hundred and fifteen, filed a petition with the Mercer County Board of Taxation, praying that the assessments for the purpose of taxation against the property of the above-named corporation be increased according to the prayer of said petition, of which a copy is annexed hereto, and did at the same time apply to the said board to

fix a time for hearing the same, and that the said petition will be heard at a time and place to be fixed by the said Mercer County Board of Taxation.

The Township of Lawrence, in the
County of Mercer.
By HARVEY T. SATTERTHWAITE,
Attorney.

State of New Jersey, } ss.
County of Mercer, }

HARVEY T. SATTERTHWAITE, being duly sworn according to law, on his oath deposes and says that he served a copy of the above notice together with a copy of the petition referred to herein and to which this affidavit is annexed, on the "Trenton Street Railway Company," by delivering a copy of the same at the office of said company, No. 137 E. State Street, Trenton, N. J., by leaving the same with Rankin Johnson, the person in charge of the office of said company, on Monday, December 20th, 1915, and by informing him of the contents thereof.

HARVEY T. SATTERTHWAITE.

Sworn and subscribed before me this 13th day of April, A. D. nineteen hundred and fifteen.

ALEXANDER TRAPP,
M. C. C. of N. J.

(Heard Jan. 31, 1916. Decided Jan. 31, 1916.)

I hereby certify this to be a true copy of the petition filed in the above-named cause.

HARRY C. HARTPENCE,
Secretary,
Mercer County Board of Taxation.

In the matter of the petition of Geo. C. Blake, a taxpayer and resident of the township of Lawrence, in the county of Mercer, for the increasing of the tax assessment on property situated in said county, state of New Jersey.

Petition.

To the Mercer County Board of Taxation:

Your petitioner respectfully shows that he is a taxpayer in the township of Lawrence, county of Mercer, and that the Trenton Street Railway Company is the owner and the Trenton and Mercer County Traction Corporation is the lessee of certain property situated in the taxing district of said township of Lawrence, county of Mercer, consisting of rails, ties, poles, trolley wires, feed wires, signal wires and other property incident to the operation of trolley cars propelled by electricity, and situated in the public highway in said township, on the road known as the Lawrence Road, beginning at the township line at Mulberry Street, in the city of Trenton, and extending along said line of said road about five and one-half miles by and through the village of Lawrenceville to the Shipetankin Creek, and thence extending over private rights of way, wherein the said company owns various rights of way, easements, and privileges, and estates in fee simple, a distance of about one and one-half miles to the Princeton Township line, together with all bridges, culverts, transforming stations incident to the necessary operation and successful use of the said line of tracks in the operation of said trolley road with electric cars for the transportation of passengers and freight. That said property has been assessed

for the purpose of taxation for the year nineteen hundred and fifteen at the valuation of thirty-one thousand dollars, at which assessment your petitioner is aggrieved and discriminated against because said assessment is greatly less than the true value of the said property, and is also less than the assessment levied against other properties of like character, and similarly situated, in the same locality.

Your petitioner therefore prays that the said assessment of thirty-one thousand dollars, for the year nineteen hundred and fifteen, be increased to the true value of the property, to wit, the sum of one hundred and sixteen thousand dollars.

Dated December the 18th, 1915.

GEO. C. BLAKE,
Petitioner.

State of New Jersey, } ss.
County of Mercer, }

GEORGE C. BLAKE, being duly sworn, according to law, on his oath deposes and says that he is the petitioner named in the foregoing petition, knows the contents thereof, and that he signed the same, and that the statements set forth and contained therein are true to the best of his knowledge, information and belief.

GEO. C. BLAKE.

Sworn and subscribed before me this eighteenth day of December, A. D. nineteen hundred and fifteen.

HARVEY T. SATTERTHWAITE,
M. C. C. of N. J.

To the Trenton and Mercer County Traction Corporation, Lessee, (the Trenton Street Railway Company, Owner):

Please take notice that George C. Blake, a taxpayer of the township of Lawrence, in the county of Mercer, did on the eighteenth day of December, nineteen hundred and fifteen, file a petition with the Mercer County Board of Taxation, praying that the assessments for the purpose of taxation against the property of the above-named corporation be increased, according to the prayer of said petition, of which a copy is hereto annexed, and did at the same time apply to the said board to fix a time for hearing the same, and that said petition will be heard at a time and place to be fixed by said Mercer County Board of Taxation.

GEORGE C. BLAKE,
of the Township of Lawrence in the
County of Mercer.
By HARVEY T. SATTERTHWAITE,
Attorney.

State of New Jersey, }
County of Mercer, } ss.

HARVEY T. SATTERTHWAITE, being duly sworn according to law, on his oath deposes and says that he served a copy of the above notice, together with a copy of the petition referred to therein and to which this affidavit is annexed, on the "Trenton and Mercer County Traction Corporation," by delivering, at the office of said the same to Rankin Johnson, president of said corporation, at the office

of said company, No. 137 E. State Street, Trenton, N. J., on Monday, December 20th, 1915, and by informing him of the contents thereof.

HARVEY T. SATTERTHWAITE.

Sworn and subscribed to before me this 10th day of April A. D. nineteen hundred and sixteen.

ALEXANDER TRAPP,
M. C. C. of N. J.

To the Trenton Street Railway Company, Owner, (Trenton and Mercer County Traction Corporation, Lessee):

Please take notice that Geo. C. Blake, a taxpayer in the township of Lawrence, county of Mercer, did, on the eighteenth day of December, nineteen hundred and fifteen, file a petition with the Mercer County Board of Taxation, praying that the assessments for the purpose of taxation against the property of the above-named corporation be increased according to the prayer of said petition, of which a copy is annexed hereto, and did at the same time apply to the said board to fix a time for hearing the same, and that the said petition will be heard at a time and place to be fixed by the said Mercer County Board of Taxation.

GEORGE C. BLAKE,
of the Township of Lawrence, in the County of Mercer.
By HARVEY T. SATTERTHWAITE,
Attorney.

State of New Jersey, } ss.
County of Mercer, }

HARVEY T. SATTERTHWAITE, being duly sworn according to law, on his oath deposes and says that he served a copy of the above notice, together with a copy of the petition referred to herein and to which this affidavit is annexed, on the "Trenton Street Railway Company," by delivering a copy of the same at the office of said company, No. 137 E. State Street, Trenton, N. J., by leaving the same with Rankin Johnson, the person in charge of the office of said company, on Monday, December 20th, 1915, and by informing him of the contents thereof.

HARVEY T. SATTERTHWAITE.

Sworn and subscribed before me this 13th day of April, A. D. nineteen hundred and fifteen.

ALEXANDER TRAPP,
M. C. C. of N. J.

(Filed Dec. 18th, 1915.)

I hereby certify this to be a true copy of the petition filed in the above-named cause.

HARRY C. HARTPENCE,
Secretary,
Mercer County Board of Taxation.

(Original Copy)

PETITION OF APPEAL—BOROUGHS AND TOWNSHIPS.

Note.—The original petition of appeal must be filed with the Mercer County Board of Taxation in

their office, at the court house, Trenton, at least five days before the date set for hearing, and in no case can petitions be filed later than December 20th.

A duplicate copy must be filed with the clerk or attorney of the taxing district where property is assessed.

A separate petition must be used for each property.

This petition cannot be given consideration unless sworn to in accordance with the affidavits on the reverse side.

In the matter of application of Hopewell Township for the raise of the tax assessment for the year 1915, on property situate in the township of Hopewell, county of Mercer and state of New Jersey.

Petition.

To the Mercer County Board of Taxation:

Your petitioner, the Township Committee of Hopewell Township, residing at Pennington, N. J., respectfully shows that there is certain property situate in the taxing district of Hopewell Township, county of Mercer, consisting of tracks and appurtenances of the Trenton & Mercer County Traction Corporation (also 3 turnouts and Glenmore bridge that has not been assessed, located on Trenton, Pennington & Hopewell road, and known as Trenton, Pennington & Hopewell trolley road.

That said property has been assessed for the purpose of taxation for the year 1915, at a valuation of $27,000, at which assessment your petitioner is

aggrieved, because the said assessment is less than its true value.

Your petitioner therefore prays that the said assessment of $27,000 for the year 1915 be raised to the true value of the property, to wit: 6 mile track $37,800, 3 turnouts not assessed $2,000, Glenmoore bridge not assessed $3,000, making a total assessment of $42,800.

Dated Dec. 18, 1915.

(Signed) Hopewell Township Committee,
Per D. M. VOORHEES,
Twp. Clerk.

State of New Jersey, } ss.
County of Mercer, }

D. M. VOORHEES, clerk of Hopewell Twp., the above-named petitioner, being duly sworn according to law, on his oath says that he has read the above petition and knows the contents thereof, and that the statements set forth and contained therein are true.

D. M. VOORHEES,
Township Clerk.

Sworn and subscribed before me, this 20 day of Dec., 1915.

HARRY C. HARTPENCE,
Notary Public.

Filed Dec. 20, 1915. By mail postmarked Dec. 18, 1915.

(Heard Jan. 31, 1916. Decided Jan. 31, 1916.)

I hereby certify the foregoing to be a true copy of the petition filed in the within-named cause.

HARRY C. HARTPENCE,
Secretary,
Mercer County Board of Taxation.

Before the
MERCER COUNTY BOARD OF TAXATION.

In the matter of the application of the township of Hamilton in the county of Mercer, for an increase in the valuation of certain property in the said township, for the purposes of taxation for the year 1915,

against

The Trenton & Mercer County Traction Corporation.

Petition.

Your petitioner, the Township of Hamilton, in the county of Mercer, a municipal corporation of the state of New Jersey, respectfully shows that there are eleven and eighteen-hundredths miles of tracks and overhead trolley equipment of the Trenton & Mercer County Traction Corporation in the taxing district of said township of Hamilton and that said property has been valued for the purposes of taxation for the year 1915 at forty-seven thousand, eight hundred eighty dollars ($47,880.00) or at the rate of forty-five hundred dollars ($4,500.00) per mile.

Your petitioner further shows that said tracks, &c., are located on South Broad Street from line of the city of Trenton to the village of Yardville; on State

Street from the line of the city of Trenton to Johnson Ave., and continuing on Johnson Avenue to Greenwood Avenue and continuing on Greenwood Avenue to the Inter-State Fair Grounds, situate on Nottingham Way; and on State Street from Johnson Avenue to the Hamilton Hotel, and continuing from Hamilton Hotel to the village of Mercerville over private right of way and continuing on Nottingham Way from Mercerville to the village of Hamilton Square.

And your petitioner further shows that it appears from the evidence submitted by said Trenton & Mercer County Traction Corporation before the Board of Public Utility Commissioners of the state of New Jersey in litigation arising out of the attempt of the said corporation to withdraw the sale of strip tickets within the city of Trenton, New Jersey, and the finding of the said board, that the value of said property is greatly in excess of forty-seven thousand, eight hundred eighty dollars or forty-five hundred dollars per mile.

Your petitioner is aggrieved and believes itself discriminated against because of said undervaluation and therefore prays, that said property in Hamilton Township be valued for the purposes of taxation for the year 1915 at its true value, to wit: one hundred sixty-seven thousand, seven hundred dollars ($167,700.00), or at the rate of fifteen thousand dollars per mile.

Dated, December 18, 1915.

ALVIN W. SYKES,
Attorney for Petitioner.

State of New Jersey, } ss.
County of Mercer, }

EDWARD W. DAYMOND, of full age, being duly sworn according to law, on his oath deposes and says that he is a member of the Township Committee of the township of Hamilton, in the county of Mercer; and that he has read the foregoing petition and that the matters and facts therein set forth are true to the best of his knowledge and belief.

EDWARD W. DAYMOND.

Sworn and subscribed before me this 18th day of December, 1915.

ELLERY ROBBINS,
M. C. C. of N. J.

I hereby certify this to be a true copy of the petition filed in the within-named cause.

HARRY C. HARTPENCE,
Secretary,
Mercer County Board of Taxation.

Before the
MERCER COUNTY BOARD OF TAXATION.

In the matter of the application of the township of Hamilton in the county of Mercer for an increase in the valuation of certain property in the said township, for the purpose of taxation for the year 1915,

against

The Trenton & Mercer County Traction Corporation.

On Petition. Affidavit.

State of New Jersey, }
County of Mercer, } ss.

Alvin W. Sykes, of full age, being duly sworn according to law on his oath deposes and says that he is the attorney for the petitioner in the above-named matter; that he personally served the petition in the above-mentioned matter on the Trenton and Mercer County Traction Corporation on the twenty-first of December, nineteen hundred and fifteen, by delivering a true and correct copy thereof to Edward M. Hunt, secretary of the said company in the registered office of said company in the American Mechanic Building, in the city of Trenton, N. J., and explaining to the said Edward M. Hunt the contents thereof.

Alvin W. Sykes.

Sworn and subscribed before me this twelfth day of April, 1916.

H. C. Scudder,
M. C. C. of N. J.

Filed Dec. 20, 1915, by letter postmarked Dec. 18th, 5:30 P. M.

Before the
MERCER COUNTY BOARD OF TAXATION.

In the matter of the application of Edward W. Daymond, of the township of Hamilton, in the county of Mercer, for an increase in the valua-

tion of certain property in said township, for the purposes of taxation for the year 1915,

vs.

The Trenton & Mercer County Traction Corporation.

Petition.

Your petitioner, Edward W. Daymond, a citizen and taxpayer of the township of Hamilton, in the county of Mercer and state of New Jersey, respectfully shows that there are eleven and eighteen-hundredths miles of tracks and overhead trolley equipment of the Trenton & Mercer County Traction Corporation in the taxing district of said township of Hamilton and that said property has been valued for the purposes of taxation for the year 1915 at forty-seven thousand, eight hundred eighty dollars ($47,880.00) or at the rate of forty-five hundred dollars ($4,500.00) per mile.

Your petitioner further shows that said tracks, &c., are located on South Broad Street from line of the city of Trenton to the village of Yardville; on State Street from the line of the city of Trenton to Johnson Ave., and continuing on Johnson Avenue to Greenwood Avenue and continuing on Greenwood Avenue to the Inter-State Fair Grounds, situate on Nottingham Way; and on State Street from Johnson Avenue to the Hamilton Hotel, and continuing from Hamilton Hotel to the village of Mercerville over private right of way and continuing on Nottingham Way from Mercerville to the village of Hamilton Square.

And your petitioner further shows that it appears from the evidence submitted by said Trenton & Mercer County Traction Corporation before the Board

of Public Utility Commissioners of the state of New Jersey in litigation arising out of the attempt of the said corporation to withdraw the sale of strip tickets within the city of Trenton, New Jersey, and the finding of the said board, that the value of said property is greatly in excess of forty-seven thousand, eight hundred eighty dollars or forty-five hundred dollars per mile.

Your petitioner is aggrieved and believes itself discriminated against because of said undervaluation and therefore prays that said property in Hamilton Township be valued for the purposes of taxation for the year 1915 at its true value, to wit: one hundred sixty-seven thousand, seven hundred dollars ($167,700.00), or at the rate of fifteen thousand dollars per mile.

Dated, December 18, 1915.

EDWARD W. DAYMOND,
Petitioner.

State of New Jersey, }
County of Mercer, } ss.

EDWARD W. DAYMOND, of full age, being duly sworn according to law, on his oath deposes and says that he is the petitioner named in the foregoing petition and that the matters and things therein set forth are true to the best of his knowledge and belief.

EDWARD W. DAYMOND.

Sworn and subscribed before me this 18th day of December, 1915.

ELLERY ROBBINS,
M. C. C. of N. J.

Filed Dec. 20, 1915, by letter postmarked Dec. 18, at 5:30 P. M.

(Heard Jan. 31, 1916. Decided Jan. 31, 1916.)

I hereby certify this to be a true copy of the petition filed in the within-named cause.

HARRY C. HARTPENCE,
Secretary,
Mercer County Board of Taxation.

Mercer County Board of Taxation
Office, Mercer County Court House
Frank R. Adams, President.
Alfred K. Leuckel.
Edward B. Morris.
Harry C. Hartpence, Secretary.

Trenton, N. J. Jan. 12 1916 191

Mr. Rankin Johnson,
President of the Trenton & Mercer County Traction Corporation 137 E. State St, Trenton, N. J.

Dear Sir:—

This is to give notice that the Mercer County Board of Taxation will sit at the Court House, S. Broad Street, Trenton, N. J. on Friday morning January the 21st inst., at 10 o'clock for the purpose of hearing appeals filed against the assessment on your property for the year 1915 and for the increase thereof; as follows:

The City of Trenton, by its Mayor, Fred'k W. Donnelly, asking that the assessed value of the property of the Trenton and Mercer County Traction Corporation be increased from $815,025. to $3,320,000.

Mr. Clinton J. Swartz, Receiver of Taxes of the City of Trenton asking for the increase in the assessed value of the property of the Trenton & Mercer County Traction Corp from $815,025. to $3,320,000.

Everitt Townsend of the City of Trenton, asking for the increase of the assessed value of the property of the Trenton & Mercer County Traction Corporation from $815,025 to $3,320,000.

Ewing Township Committee vs Trenton, Pennington & Hopewell Trac Co Asking for an increase in valuation from $13,500. total assessment to the rate of $15,900. per mile.

Ewing Township Committee vs Trenton, Hamilton & Ewing Trac Co Asking for an increase from $3500. for 94/100 of a mile to the rate of $19,500. per mile.

The Township of Princeton vs Trenton & Mercer County Trac. Corp asking for an increase in valuation from $12,500. to $50,000.

The Township Committee of the Township of Lawrence vs Trenton Street Railway Co, owner Trenton & Mercer County Trac Corp, lessee Asking for an increase from $31,000. to $116,000.

Geo. C. Blake, taxpayer of Lawrence Township vs Trenton Street Railway Co., owner Trenton & Mercer County T. Corp, lessee Asking for increase in valuation of property in Lawrence Township from $31,000. to $116.000.

The Township of Hamilton vs Trenton & Mercer County Traction Corp Asking for an increase in the valuation of the property located in the Township of Hamilton from $47,880. to $167,700.

Edward W. Daymond vs Trenton & Mercer County Traction Corp Asking for the increase in the property of the Trenton & Mercer County Traction cor-

poration located in the township of Hamilton from $47,880. to $167,700.

The Township of Hopewell vs Trenton & Mercer County Traction Corp Asking for an increase in valuation from $27,000. to $42,800.

You as defendant in each of the above appeals are hereby notified to appear before the Board at the time and place above stated to take such action to protect your interests as the circumstances seem to warrant.

We remain,

Yours very truly,

Mercer County Board of Taxation
by Harry C. Hartpence
Secretary.

I hereby certify this to be a true copy of the notice of the hearing of the appeals in the above named causes.

Harry C. Hartpence
Secty.

Mercer County Board of Taxation
Office, Mercer County Court House
Frank R. Adams, President.
Alfred K. Leuckel.
Edward B. Morris.
Harry C. Hartpence, Secretary.

Trenton, N. J. Jan 26 1916 191

Mr. Rankin Johnson,
President of the Trenton & Mercer County Traction Corporation 137 E. State St. Trenton, N. J.

Dear Sir:—

The Mercer County Board of Taxation will sit at the Court House, S. Broad St., Trenton, N. J. on Fri-

day morning Jany 28 1916 at 10 o'clock, for the purpose of hearing all the appeals that have been filed by the several taxing district, and individuals therein, of the County of Mercer for an increase in the valuation of the property of the Trenton & Mercer County Traction Corporation, the Trenton Street Railway Co., The Trenton Pennington & Hopewell Traction Co., the Trenton Hamilton & Ewing Traction Co., the Public Service Railway Co and the New Jersey & Penna Traction Co., for the year 1915, the hearing of which was adjourned from Jan 21st inst.

We remain,

Yours very truly,
Harry C. Hartpence
Secretary

I hereby certify this to be a true copy of the notice of the adjourned hearing in the above named causes.

Harry C. Hartpence
Secty.

Mercer County Board of Taxation
Office, Mercer County Court House
Frank R. Adams, President.
Alfred K. Leuckel.
Edward B. Morris.
Harry C. Hartpence, Secretary.

Trenton, N. J. Jany 28 1916 191

Mr. Rankin Johnson,
President of the Trenton & Mercer County Traction Corporation American Mechanic Building,
Trenton, N. J.

Dear Sir:—

Upon the application of the attorney for the City of Trenton, and consented to by all the other parties

concerned, the hearing of the appeals for the increase of assessments against the Trenton & Mercer County Traction Corporation, The Public Service Railway Co., and the New Jersey & Pennsylvania Traction Co., has been adjourned to Monday morning Jan. 31st at ten o'clock at the Court House Trenton, N. J.

We remain,

Yours very truly,
Harry C. Hartpence
Secretary

I hereby certify this to be a true copy of the notice of adjournment of the hearing.

Harry C. Hartpence
Secty.

List of appeals scheduled for hearing
before the
MERCER COUNTY BOARD OF TAXATION
Friday Morning January 21st 1916 at ten o'clock

City of Trenton vs Trenton & Mercer County Trac Corp asks increase in assessment from $815,025. to $3,320,000. on property in the City of Trenton

C. J. Swartz rec. Taxes vs Trenton & Mercer County Trac Corp asks increase in assessment from $815,-025. to $3,320,000. on property in the city of Trenton

Everitt Townsend vs Trenton & Mercer County Tract Corp asks increase in assessment from $815,-025. to $3,320,000 on property in the City of Trenton

The Township of Princeton vs Trenton & Mercer County Tract Corp asks increase in assessment from $12,500. to $50,000. on property in the Township of Princeton

The Township of Ewing vs The Trenton, Pennington & Hopewell Railway Co asks increase in assessment from a total of $13,500. to a rate of $19,500. per mile on property on Penn. Road

The Township of Ewing vs Trenton, Hamilton &

Ewing Trac Co asks increase in assessment from $3,500. on 94/100 of mile to a rate of $19,500. per mile on property on Trenton Junction road

The Township committee of the Township of Lawrence vs Trenton Street Railway Co asks increase in assessment from $31,000. to $116,300. on property in Lawrence Township

Geo. C. Blake vs Trenton Street Railway Co asks increase in assessment from $31,000. to $116,300 on property located in Lawrence Township

Township Committee of Hopewell Township vs Trenton & Mercer County Tract Corp asks increase in assessment from $27,000. to $42,800. on the following property in Hopewell Township

6 miles of Track	$37,800
Glenmore Bridge	3,000
3 Turnouts	2,000.

The Township of Hamilton vs Trenton & Mercer County Trac Corp asks increase in assessment from $47,880. to $167,600. on property in Hamilton Township.

Edward W. Daymond vs Trenton & Mercer County Tract Corp asks increase in assessment from $47,880. to $167,600. on property in Hamilton Township

The Township of Hamilton vs The Public Service Railway Co asks increase in assessment from $11,490.29 to $40,000. on line from from Lalor St to the Burlington Co. Line

Edward W. Daymond vs The Public Service Railway Co asks increase in assessment from $11,490.29. to $40,000. on line from Lalor St to Burlington County line

The City of Trenton vs Public Service Railway Co asks increase in assessment from $72,650. to $106,000. on property in the City of Trenton

C. J. Swartz, Rec. Taxes vs The Public Service

Railway Co asks increase in assessment from $72,-650. to $106,000.

Everitt Townsend vs The Public Service Railway Co asks increase from $72,650. to $106,000. in assessment on property of Pub. Service Ry Co in the City of Trenton

The City of Trenton vs New Jersey & Penna Tract Co asks increase in assessment from $114,450. to $136,950 on property in the City of Trenton

C. J. Swartz vs New Jersey & Penna. Tract. Co asks increase in assessment from $114,450. to $136,-950. on property in the City of Trenton

Everitt Townsend vs New Jersey & Penna. Tract Co asks increase in assessment from $114,450. to $136,950. on property in the City of Trenton

I hereby certify this to be a true copy of the list of cases called and heard on Jan 31, 1916.

Harry C. Hartpence
Secty
Mercer County Board of Taxation

EXCERPTS FROM THE MINUTES OF THE MERCER COUNTY BOARD OF TAXATION REFERRING TO THE APPEALS FOR THE INCREASE OF ASSESSMENTS ON THE TRENTON & MERCER COUNTY TRACTION CORPORATION.

Trenton, N. J. Dec 17th, 1915

The Mercer County Board of Taxation met at the City Hall Trenton, this afternoon to hear appeals filed against assessments in the City of Trenton.

All members were present with Mr. F. R. Adams presiding.

* * * * * *

At this point the Trenton City Counsel, Mr. Chas. E. Bird, filed with the Mercer County Board of Taxation three appeals as follows:

The City of Trenton vs The Trenton & Mercer County Traction Corporation
The New Jersey & Pennsylvania Trac Co
The Public Service Railway Co.

To have the assessment on the Trolley property increased;

Clinton J. Swartz, Receiver of Taxes of the City of Trenton vs The the Same Companies as above and for the same purpose;

Everitt Townsend vs The same Companies as above, and for the same purpose.

The appeals were ordered filed, and a date of hearing will be fixed.

* * * * * *

Harry C. Hartpence
Secretary

Trenton, N. J. Dec 18 1915

The following appeals were filed against the Trenton & Mercer County Traction Corporation, in the office of the Mercer County Board of Taxation, today.

The Township of Princeton vs the Trenton & Mercer County Traction Corporation to increase assessment from $12,500. to $50,000.

The Ewing Township Committee vs Trenton, Pennington & Hopewell Traction Co. to increase assessment from $13,500. to a rate of $15,900. per mile

The Ewing Township Committee vs Trenton, Hamilton & Ewing Traction Co., to increase assessment from $3,500. to a rate of $19,500. per mile.

The Township Committee of Lawrence Township vs The Trenton Street Railway Co Owner and the Trenton & Mercer County Traction Corp Lessee. to increase assessment from $31,000. to $116,300.

Geo C. Blake, a citizen and taxpayer of Lawrence Township vs The Trenton Street Railway Co., owner, and the Trenton & Mercer County Traction Corporation, Lessee to increase assessment from $31,000. to $116,300.

Harry C. Hartpence
Secretary.

Trenton, N. J. Dec. 20th, 1915

The Mercer County Board of Taxation met in its room at the Court House, Trenton, at 2 o'clock this afternoon to hear appeals from assessments in West Windsor Township and East Windsor Township and Hightstown that were adjourned from the regular hearing dates.

Members present were Mr. F. R. Adams and A. K. Leuckel.

The following appeals were heard * * * *

Harvey Satterthwaite Esq., attorney for Lawrence Township, appeared before the Board and asked that a date be set for hearing the appeal of Lawrence Township for the increase in the valuation on the Trenton & Mercer County Traction Corporation property in the Township. The Board received his application for a hearing and stated that a date would be set convenient for all.

The Hamilton Township Committee and Edward W. Daymond, citizen each filed appeals for the increase of assessment on the property of the Trenton & Mercer County Traction Corp from $47800 to $167,700. and on property of Public Service Railway Co from $11,490.29 to $40,000.

Both sets of appeals were of the same import.

The Township Committee of Hopewell Township filed an appeal for the increase of the valuation of the property of the Trenton Pennington & Hopewell Trolley Road from $27,000. to $42,800.

Harry C. Hartpence
Secretary.

Trenton, N. J., Jan. 7th, 1916

The Mercer County Board of Taxation sat in the Court House, Trenton, today to hear appeals from assessments in Hamilton Township for the year 1915.

All the members were present, with Mr. F. R. Adams, presiding.

The following appeals were heard: * * * *

Moved that we meet in conference on the appeals to raise the valuations on Trolley Co's., on Tuesday afternoon Jan 11th at 2 o'clock. Carried.

On motion adjourned.

Harry C. Hartpence
Secretary.

Trenton, N. J. Jan 11th, 1916

The Mercer County Board of Taxation met in its room at the Court House this afternoon.

All the members were present with F. R. Adams presiding.

After conferring on the appeals of the City of Trenton and other taxing districts for increase of valuation on the property of the Trenton & Mercer County Traction Corporation, the New Jersey and Pennsylvania Traction Co., and the Public Service Railway Co., it was regularly moved and seconded that the date for the hearing of these appeals be set for Friday morning January 21st at ten o'clock, in the Court House. Carried.

The secretary was asked to confer with the County Solicitor relative to Legal Advisor during the hearings.

It was moved and seconded that the Board meet on Friday the 14th at 10 o'clock to confer on appeals that have been heard and referred for decisions. Carried.

On motion adjourned.

Harry C. Hartpence
Secretary.

Trenton, N. J. Jan 21st 1916

The Mercer County Board of Taxation sat in the Court room in the Mercer County Court House, at ten o'clock this morning for the purpose of hearing the appeals that have been filed against the Trolley Companies for an increase in valuation for the year 1915.

Members present were F. R. Adams, and A. K. Leuckel.

Mr. F. R. Adams, president of the Board, presided.

Before calling the list of appeals the president announced that the Board thought, because of the importance of the appeals, that they should have counsel to advise them on matters of a legal nature that might arise; that the Board had asked the County Solicitor if he were the Board's solicitor? and he had replied that he was not; that inquiry had been made to the State Board of Taxes and Assessment if we were entitled to the services of the Attorney General in an emergency such as this, and we were advised that they thought we were without counsel. In our extremity Mr. Martin P. Devlin, the County Prosecutor, and a former member of the County Tax Board consented to act as our counsel, without compensation.

Mr. Hamill was appointed official reporter for these appeals.

The following appearances were noted:

The City of Trenton	vs The Trenton & Mercer County Trac Corp
Henry M.Hartman, City Attorney appeared for the City	Mr. Edward M. Hunt, appeared for the Trenton & Mercer County Traction Corporation. He stated
Mr. Hartman also appeared for Mr. C. J.	That he appeared for all Companies against which

Swartz, Receiver of Taxes of the City of Trenton and for

Everitt Townsend.

appeals had been filed and of which the Trenton & Mercer County Traction Corporation was lessee. Mr. Rankin Johnson also appeared for the Trenton & Mercer County Traction Corporation.

The Township of Princeton was represented by John H. Warren, assessor

The Township of Ewing was represented by Willis P. Bainbridge, Atty

The Township of Lawrence and Geo. C. Blake were represented by Harvey T. Satterthwaite, Attorney

Hopewell Township Committee was represented by Edwin C. Long, Atty

The Township of Hamilton and Edward W. Daymond were represented by Alvin W. Sykes, attorney.

The Public Service Railway Co, by Edmund W. Wakelee, attorney

The New Jersey & Pennsylvania Traction Co, was represented by Edward M. Hunt in behalf of F. S. Katzenbach, Jr.

Upon the call of the first case,

The City of Trenton vs The Trenton & Mercer County Tract Corp Mr. Hartman asked for an adjournment of the hearing until February 4th, 1916.

After listening to the reasons advanced by the attorneys in all the appeals—all being in agreement for adjournment—the Counsel for the Board advised that in his opinion, this Board was without authority to hear appeals after the 31st of January, under the statute creation County Boards.

After conferring with all parties concerned, the Board granted an adjournment to Friday morning

Jan. 28th at ten o'clock. The hearings to be heard in the Mercer County Court House.

On motion the Board adjourned.

Harry C. Hartpence
Secretary.

Trenton, N. J. Jan. 28th, 1916

The Mercer County Board of Taxation met in the Court House this morning for the purpose of hearing the several appeals filed to increase assessments on the Trolley Roads, adjourned from the 21st inst.

Members present were F. R. Adams, and Edw. B. Morris.

Mr. A. K. Leuckel, because of the death of his sister, was not present.

Mr. F. R. Adams, presided.

Martin P. Devlin Esq., acted as counsel.

Mr. Hamill acted as stenographer.

On call of cases the following appearances were noted:

The City of Trenton, and C. J. Swartz, Receiver of taxes, and Everitt Townsend	Henry M. Hartman, Esq
Princeton Township	no appearance
The Township of Ewing	Willis P. Bainbridge Esq
The Township of Lawrence and Geo. Blake	Harvey T. Satterthwaite Esq
Hopewell Township	Edwin C. Long Esq
Hamilton Township and Edw W. Daymond	Alvin W. Sykes.
Trenton & Mercer County Traction Corporation	No appearance
Public Service Railway Co	Edmund W. Wakelee
New Jersey & Penna. Traction Co	Mr. Thompson, Gen'l Manager

On call of the first case, Mr. Hartman as counsel for the City of Trenton, asked that a further postponement of the hearing be made to Monday Jan 31st, because Mr. Record the advisory counsel for the City and Mr. F. S. Katzenbach Jr., counsel for the Trenton & Mercer County Traction Corporation were occupied before the United State Circuit Court of Appeals, at Philadelphia.

All other parties interested in the appeals consenting to the request, the hearing of the appeals were adjourned to Monday Jan 31st at 10 o'clock

* * * * *

Harry C. Hartpence
Secretary.

Trenton, N. J. Jan. 31st, 1916

The Mercer County Board of Taxation sat in the Court Room, at the Court House, Trenton this morning at 10 o'clock for the purpose of hearing the appeals of the several taxing districts of the County for increased valuation upon the properties of the Trenton & Mercer County Traction Corporation, the Public Service Railway Co., and the New Jersey & Pennsylvania Traction Co.

Members present were F. R. Adams, A. K. Leuckel and Edw. B. Morris.

Mr. F. R. Adams, presided. Martin P. Devlin, Esq., acted as Counsel for the Board. Miss Risdon was appointed to take the testimony.

The following appearances were noted:

The City of Trenton	vs	Trenton & Mercer County Traction Corp
C. J. Swartz, Rec of Taxes	vs	Trenton & Mercer County Traction Corp
Everitt Townsend, Charles E. Bird, Esq., and Geo. L. Record, Esq.,	vs	Trenton & Mercer County Traction Corp: F. S. Katzenbach, Jr., and Edward M. Hunt.
The Township of Princeton Bayard Stockton Esq.,	vs	The Trenton & Mercer County Traction Corp F. S. Katzenbach Jr, & E. M. Hunt
The Township of Ewing	vs	Trenton, Pennington & Hopewell Trac. Co
The Township of Ewing Willis P. Bainbridge, Esq	vs	Trenton, Hamilton & Ewing Traction Co F. S. Katzenbach Jr., & E. M. Hunt
The Township Committee of Lawrence Township	vs	Trenton Street Railway Co., owner Trenton & Mercer County Trac Corp, lesee
George C. Blake Harvey T. Satterthwaite, Esq.	vs	The same parties F. S. Katzenbach Jr, & E. M. Hunt
The Township Committee of Hopewell Township Edwin C. Long, Esq	vs	Trenton & Mercer County Traction Corp F. S. Katzenbach Jr & E. M. Hunt
The Township of Hamilton	vs	Trenton & Mercer County Traction Corp
Edward W. Daymond Alvin W. Sykes, Esq.,	vs	Trenton & Mercer County Traction Corp F. S. Katzenbach Jr., & E. M. Hunt
The City of Trenton	vs	Public Service Railway Co.,

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10 20

vs Public Service Railway Co
vs Public Service Railway Co
Edmund W. Wakelee, Esq.,

vs New Jersey & Penna. Traction Co
vs New Jersey & Penna. Traction Co
vs New Jersey & Penna. Traction Co
Frank S. Katzenbach, Jr., Esq.

vs The Public Service Railway Co.,
vs The Public Service Railway Co
Edmund W. Wakelee, Esq.,

30

C. J. Swartz, Rec of Taxes
Everitt Townsend,
Geo. L. Record, Esq.,
and Chas. E. Bird
The City of Trenton
C. J. Swartz, Rec of Taxes
Everitt Townsend
Geo. L. Record, Esq.,
and Chas. E. Bird, Esq
The Township of Hamilton
Edward W. Daymond
Alvin W. Sykes, Esq.,

Mr. Record for the City of Trenton asked the privilege of putting in testimony on all appeals as a whole. No objections were made by the respondents and they agreed to allow the testimony to apply to all the appeals against the Trenton & Mercer County T. Co.

Mr. E. M. C. Rand was offered as an expert witness by the appellants. After ascertaining his qualifications his testimony was accepted.

Mr. Abram Swann, the City Engineer was called as a witness for the appellants.

Mr. J. C. Brackenridge was the next expert witness for the appellants.

Mr. Rankin Johnson was also called as a witness for the appellants.

The respondents also called Mr. Rankin Johnson as their only witness.

At the close of hearing the testimony, after the stenographer had gone, and before the attorneys commenced their arguments, the Board ruled to admit all of the exhibits offered by the Complainants with the exception of the stenogrgaphic report of the testimony before the Public Utility Commission in the application for the abolition of the sale of six tickets for a quarter, and they were marked C#1 C#2 C#3 C#4 C#5 C#6.

After hearing the arguments of Mr. Record for the appellants and Mr. Katzenbach Jr., for the Trenton & Mercer County Traction Corporation; Mr. Wakelee for the Public Service Railway Co., and Mr. Katzenbach for the New Jersey & Penna. Traction Co., and of Mr. Sykes in behalf of the Township of Hamilton signifying his willingness to accept a verdict of $23,000. valuation on the property of the Public Service Railway Co., within Hamilton Township, the Board took the appeals under advisement.

After carefully considering the testimony and giving full consideration to the arguments pro and con, it was regularly moved and seconded that the valuation of the property of the Trenton & Mercer County Traction Corp. within the City of Trenton be increased from $815,025. to $1,589,500. Motion carried unanimously.

Moved and seconded that the valuation of the property of the Trenton and Mercer County Traction Corp within the Township of Princeton be increased from $12,500. to $39,255. Motion unanimously carried.

Moved and seconded that the property of the Trenton, Hamilton and Ewing Traction Co. within the Township of Ewing be increased in value, on the line running to Trenton Junction, from $3,500. to $9,870. Motion carried unanimously.

Moved and seconded that the valuation of the property of the Trenton Pennington & Hopewell Traction Co., within the Township of Ewing on the line from Trenton to Pennington and Hopewell be increased from $13,500. to $36,940. Motion carried unanimously.

Moved and seconded that the valuation of the property of the Trenton & Mercer County Traction Corp. within the Township of Hopewell be increased from $27,000. to $80,970. Motion unanimously carried.

Moved and seconded that the valuation of the property of the Trenton & Mercer County Traction Corp. within the Township of Lawrence be increased from $30,000. to $89,475. Motion carried unanimously.

Moved and seconded that the valuation of the property of the Trenton & Mercer County Traction Corp.,

within the Township of Hamilton be increased from $50,310. to $171,745. Carried unanimously.

* * * * * *

Harry C. Hartpence
Secretary.

I hereby certify the foregoing excerpts of the minutes to be true copies of all the minutes of the Mercer County Board of Taxation relating to the appeals for increase of valuation on the property of the Trenton & Mercer County Traction Corp.

Harry C. Hartpence
Secty
Mercer County Board of Taxation

MERCER COUNTY BOARD OF TAXATION.

I, Harry C. Hartpence, Secretary of the Mercer County Board of Taxation, do hereby certify that the foregoing are true copies, judgments, petitions, notices, minutes and rules of the board in the matter of the appeal of the several taxing districts of Mercer County for an increase in the assessment against the Trenton & Mercer County Traction Corporation within the county of Mercer for the year 1915, as the same is taken from and compared with the original, filed in the office of the Mercer County Board of Taxation, on the 17th day of December, 1915, and the several other days of December, 1915, and January, A. D. 1916, and now remaining of record therein.

In testimony whereof I have hereunto set my hand and affixed the official seal of the board at Trenton, this seventeenth day of April, A. D. 1916.

HARRY C. HARTPENCE,
Secretary.

(Seal)

TESTIMONY.

MERCER COUNTY BOARD OF TAXATION.

CITY OF TRENTON, *et al.*,
Appellant,

vs.

TRENTON & MERCER COUNTY TRACTION CORPORATION, *et al.*,
Respondent.

TESTIMONY.

Transcript of testimony taken in the above-entitled cause before the Mercer County Board of Taxation, at the court house, Trenton, New Jersey, on Monday, January 31st, 1916, at eleven o'clock A. M.

PRESENT:

MR. FRANK R. ADAMS, PRESIDENT,
MR. EDWARD B. MORRIS,
MR. A. K. LEUCKEL.

APPEARANCES:

CHAS. E. BIRD and GEORGE L. RECORD, ESQS., for the City of Trenton.

FRANK S. KATZENBACH, JR., and EDWARD M. HUNT, ESQS., for the Trenton & Mercer County Traction Corporation.

EDMUND W. WAKELEE, ESQ., for the Public Service Railway Company.
HON. MARTIN P. DEVLIN, for the Board.
BAYARD STOCKTON, ESQ., for the Township of Princeton.
WILLIS P. BAINBRIDGE, ESQ., for the Township of Ewing.
HARVEY T. SATTERTHWAITE, ESQ., for the Township of Lawrence.
EDWIN C. LONG, ESQ., for the Township Committee of Hopewell Township.
ALVIN W. SYKES, ESQ., for the Township of Hamilton.

The President: We are ready to move the appeal of the City of Trenton, vs. The Trenton and Mercer County Traction Corporation.

Mr. Record: I would suggest, if the board please, that we try all of these cases, so far as the complainants are concerned, together. We have two witnesses, Mr. Rand and Mr. Brackenridge, who testified in the hearing before the State Board of Public Utility Commissioners at great length and after exhaustive examination, and we have also had them value the properties on the basis of cost of reproduction of the other companies which are brought in new here. As I understand this proceeding, the proposition is to get before this board the valuation in the method that we arrived at the value of all of this property in the county. These witnesses are prepared not only on the total valuations but subdivided as between municipalities, and, if necessary, as between constituent companies that the lessor company

operates and controls. Therefore, I would suggest that all of the cases be tried together so far as we are concerned. We will put our witnesses on the stand and have them testify first as to the valuation of all the properties controlled by the Trenton & Mercer County Traction Corporation, and then as to what we find as to the companies represented by the other gentlemen. Then that will finish the whole thing, so far as we are concerned. Is the board willing to follow that procedure?

Mr. Devlin: How does the opposition feel about that proposition?

Mr. Wakelee: So far as the Public Service Railway is concerned, we raise no point or objection as to the order of proof or when the testimony is taken, except that we would object to any testimony given against some other railway as applying to us. So long as it is indicated exactly what portion of the testimony that we may have to meet as applicable to our company we don't care whether it is put in in a haphazard way with others or separately. We don't want any general testimony that will apply to all of the companies.

Mr. Record: We won't do anything of that kind. It will be absolutely to the point as to your company separately.

Mr. Devlin: Is it agreeable to you to go on in that way?

Mr. Katzenbach: We have no objection.

E. C. M. Rand, a witness being duly sworn on behalf of the city, testified as follows:

Direct examination.

By Mr. Record:

Q. Mr. Rand, did you testify as an expert on behalf of the city in the valuation of street railway securities, and an expert on the cost of construction of street railway properties in the case of the city of Trenton and the Trenton & Mercer County Traction Corporation before the Board of Public Utility Commissioners a few weeks ago?

A. I did.

Q. How long have you had experience in the of the valuation of securities of public utility corporations and in the valuation of the properties of public utility corporations, extending over how many years?

A. Over thirty years.

Mr. Record: Do you want me to qualify him at length as an expert?

Mr. Katzenbach: I think if you just brought out the fact that he was Russell Sage's confidential advisor, that would be satisfactory.

Mr. Record: We will have that entered on the record, that he was Russell Sage's advisor for several years.

The Witness: On values.

Mr. Record: If there is any objection as to his qualifications, Senator, I can ask him for ten minutes a list of cases he has been in.

Mr. Wakelee: I think you ought to set it down for the record.

Q. State generally what your experience has been.

A. Originally I was a contractor on railroad companies in the West, and as stated I was for a number of years an expert for Russell Sage in valuing properties he was interested in, upon which loans were proposed in the purchase of securities. I was also expert for the city of New York in the tax cases that have been going on for the past ten years, and many times appeared as a witness on valuation.

Q. Tax cases with reference to public utility corporations?

A. On public utility companies in the city of New York. I have practically valued every utility company over a time of fifteen years in the city of New York, where the amount of valuation collected as a result of that litigation was something over a hundred million dollars for the city of New York.

Mr. Record: I submit that this gentleman is an expert as to his qualifications. If there is no objection I will go ahead with the questioning.

Mr. Devlin: His qualifications are all right.

Q. Mr. Rand, in your testimony before the Public Utility Commission of the state of New Jersey did you make up a statement divided into certain specific items showing the value of the tangible properties on the basis of the cost of reproduction, and

also on the basis of reproduction new, less depreciation, did you make such a statement up?

A. I did.

Q. Have you it here?

A. I have.

Q. Will you produce it? (Witness produces paper.) What does this show, in general terms?

A. It shows the valuation placed upon the tracks of the street railway in Trenton, inside and outside the city; the overhead lines and feeders, the special work, the paving, the power house, car barns and contents, cars and other rolling stock, the real estate and the signal system, and the allowance for contingency, engineering, superintendence, administration, insurance, incidentals and builders' risks.

Q. That included all of the property operated by the Trenton & Mercer County Traction Corporation within the county of Mercer, is that right?

A. That is true.

Q. And it is separated as to the city of Trenton but not as to the municipalities outside of Trenton, is that right?

A. That is true.

Mr. Record: I offer that in evidence and ask that it be marked Complainant's Exhibit 1.

Mr. Katzenbach: We desire to object to the offer of that at this time because it is a mere statement prepared by him. We are entitled to know how it was prepared and on what data. I have no objection to its being offered for identification and the witness reading it to refresh his memory.

Mr. Record: I think that is fair. Mark it for identification.

(Paper above referred to marked Exhibit "C1" for identification.)

Q. What did you do previous to making that statement?

A. I first went over the entire property with Mr. Swan, the city engineer, and Mr. Breckenridge, with whom I was associated in the valuation, and made a careful, detailed inspection of all of the property in the streets, and also the property off the streets,—as thorough an inspection as could be made in the time we had in which to make it.

Q. Did you make an appraisement from this personal inspection and this information that was given you as to these items of property as shown upon this exhibit for identification "C1"?

A. I did.

Q. How long a time did you spend upon that work?

A. The entire time in making the valuation and attendance at the hearing covered something like thirty-four days, and the hearing was continuing while the estimating was going on. That is, we attended the hearing in the daytime——

Q. How much time, generally speaking, did you spend on the preparation of this exhibit?

A. I should say three weeks.

Q. Getting the information necessary to make up this?

A. Getting the information and the computation, I should say three weeks.

Q. You went over personally all of the property?

A. I did.

Q. Throughout the county?

A. As I have stated, yes.

Q. And inspected it?

A. Yes.

Mr. Record: Now, I think I offer that. I offer that merely to be short, that is all.

Mr. Katzenbach: We would object to it until it is more satisfactorily proven as to how it is made up, just exactly on what data he made it, and where he got it.

Mr. Devlin: I would suggest that you get him to read off the total valuation in each thing.

Q. As a result of your inspection of the property operated by this company in Mercer County and the city of Trenton, and of your valuation of that property on the basis of cost of reproduction new, and cost of reproduction less depreciation, what did you find, read into the record what you found.

A. I found that the tracks outside the city cost to reproduce $324,616.39; the estimated annual depreciation of $9,738.49; accrued depreciation $109,440.76; the present valuation $215,175.63; tracks in the city $370,910.80, the reproduction cost; annual depreciation $14,836.43; accrued depreciation $160,588.64; present value $210,322.16; overhead line and feeders, reproduction cost $307,100.30; annual depreciation $12,284.01. The annual depreciation estimated on that figure includes no depreciation on the feeders which were copper wire. The scrap value of copper wire is very often by watching the market, sufficient to cover the original cost. In this case we figured the feed wires at 15¢ a pound. During the hearing we made inquiry and the price was then 19½¢. So that in the copper wire this overhead depreciation only applies to the poles and the other structures, everything overhead exclusive of the feed wires. The accrued depreciation $82,549.90; present

value $224,550.40; special work $70,662; reproduction cost; annual depreciation $7,066.20; accrued depreciation $35,331; present value $35,331; the pavement $358,845.02; annual depreciation $17,942.25. That figure of paving includes the foundation on which no depreciation is allowed, the foundation being constructed of concrete, "accrued depreciation $141,358.17; present value $217,486.85; the power plant, $265,500; annual depreciation $10,620; accrued depreciation $31,860; present value $233,640; car barns and contents $155,900; annual depreciation $3,118; accrued depreciation $23,385; present value $132,515. Cars and other rolling stock, $400,000; annual depreciation $20,000; accrued depreciation $140,000; present value $260,000. Real estate at the assessed value we are not qualified to make a valuation on, so we took the assessed valuation, $110,025, and no depreciation on that. Signal system $1,052.75 reproduction value; present value $1,052.75." To each of those items is added 15% (fifteen per cent.) for contingencies including engineering, superintendence, masons, administration, management, insurance, incidentals and builder's risk. That amounts to a total sum of $354,691.84. The proportion allowed for depreciation on that item is $108,132.73, making the 15% (fifteen per cent.) on the depreciation value $246,559.11, making the total reproduction cost, $2,719,304.10, with an annual depreciation of $95,605.01, with an accrued depreciation of $829,017.56, with the present value of $1,886,113.61.

Q. What work have you done in reference to subdividing this property as thus valued by you among the municipalities of the county of Mercer since your testimony?

A. I have estimated and determined the portion of

the tracks outside of the city, located in each township and in each borough. In the township of Hamilton ——

Q. Wait a minute. You have apportioned the values found by you as testified, among all of the municipalities in the county in which the line operates, in which the Trenton company operates the trolley service?

A. I have made an apportionment based on the figures of the valuation which I found.

Q. You have, since you made up this statement marked for identification "C1," made those values upon which you have since then made an apportionment of those values?

A. I have.

Q. How have you done that,—and what time have you spent on it, before you start to show what it was?

A. I made the apportionment, the basis of the apportionment upon an examination of the records in the engineer's office of the city, with the assistance of Mr. Abram Swan, the city engineer.

Q. To what was his assistance directed?

A. Giving me information with regard to facts in the division of the lines in the various townships and boroughs.

Q. That is to say, you have ascertained the point where the municipal lines are divided by such information as you could get with Mr. Swan?

A. With his assistance.

Q. With his assistance. And upon that basis you have made an apportionment?

A. I have.

Q. Of this property. Will you read into the record what you find and how you apportioned it as to each township?

A. In the city of Trenton, reproduction cost, $772,940.74——

Mr. Katzenbach: Reproduction cost of what?

The Witness: Of the property in the streets in the city of Trenton exclusive of the paving.

Mr. Katzenbach: Have you a copy of that?

The Witness: You can see this in just a minute.

Mr. Record: As a matter of fact, the proper way to do this is to have those statements offered in evidence and marked. If you don't like to do it that way we can read them in the record.

Mr. Katzenbach: I would like to hear them. It is the only way I can see as I have no copy. I don't know what it is and neither would any of these other gentlemen know.

Mr. Record: My idea was to let you have it.

The Witness: I will have copies made. Reproduction cost, $772,940.74, in the city.

Mr. Devlin: Cost of what?

The Witness: Of the property in the streets.

Mr. Devlin: Including what?

The Witness: Including the tracks, the ties and the construction, the special work, the overhead work, and it does not include the paving,—everything connected with the tracks except the paving.

Mr. Devlin: Poles too, and wires?

The Witness: Poles and everything and wires. Depreciation value $477,985.20. Hamilton Township ——

Q. Wait a minute. Are you through with all of the work in the city of Trenton?
A. I am.
Q. That covers everything?
A. Everything, the property off the street.
Q. Car barns and contents?
A. That is not included in this distribution.
Q. My point is that I want you to put down now the apportionment, you have put down a portion of the apportionment portioned off to the city of Trenton. Tell us the entire value of what you have testified to.

Mr. Devlin: And what it consists of.

Q. Yes, and what it consists of?
A. The power plant, $305,325 reproduction cost. Fifteen per cent. is added to that. The fifteen per cent. which is added is distributed on these items. Depreciation value $268,686, car barns and contents $179,285; depreciated value $152,329.25; cars and other rolling stock $460,000; depreciated value $299,000.

Mr. Leuckel: Does he mean by "depreciated value," the present value?

Mr. Record: Yes.

Mr. Leuckel: Then you ought to say that, because you have said so much for depreciation.

The Witness: It is the present value.

Mr. Morris: What do you mean by "accrued depreciation," what period does that cover, from the time of the construction to the 20th of May last year?

The Witness: It accrues from different periods. It is supposed to be from the time of the construction up to the present time at so much a year.

Q. Do you mean by "accrued depreciation" that that represents the condition of the property at the present time?

A. At the present time.

Mr. Morris: From the time it was originally constructed until the present time, that is the accrued depreciation?

The Witness: That is the accrued depreciation. If a piece of property has been constructed fifteen years, the rails have been down fifteen years, the life we estimate is thirty years. Then fifty per cent. of the value is gone, so the present value would be the reproduction value less the accrued depreciation. "Real estate $126,528.75, reproduction value; depreciated value $126,528.75, that is the same value, no depreciation.

Mr. Hartpence: Did you give the value of the cars and rolling stock?

The Witness: I did. "Cars and other rolling stock, reproduction value $460,000; present value $299,000." I have excluded,—do you want the items I have excluded?

Mr. Record: Yes.

The Witness: I have excluded from the valuation as first given for paving $339,452.15; depreciated value, present value excluded $176,890.25.

Mr. Katzenbach: You said you excluded from the valuation of what?

The Witness: I excluded from my computation for the property in the city of Trenton, the paving.

Mr. Devlin: I was going to suggest, after consultation with the board, that the only thing we are interested in is what was the value on the 20th day of May, 1915. We have got to place our valuation on that. These figures you are giving here, show, of course, how you arrive at the conclusions you state and they are of value as to the credibility of your testimony, but for the purpose of letting us get a comprehensive statement on the record I would suggest that in direct examination you tell us what the value was, as near as you can estimate on each of these items on the 20th of May, 1915. If the other side care to develop as to how you arrived at these conclusions they can do so. If we have these tangible figures it will enable us to do our work. If the counsel for the plaintiff does not object, for the purpose of getting the records straight, will you just read each item inside and outside the city, and give the present value as you estimate it on the 20th day of May, 1915.

Mr. Record: My suggestion is this. I want to keep away from technical errors as much as I can, although I do not think this is a technical case. Mr.

Rand and Mr. Brackenridge, our experts, made their valuation in the summer, several months after May, —of course, they were not here then. My method of proving that was that I would have each one testify as to what he finds the facts now, or when he inspected them. I would then put Mr. Swan and Mr. Johnson on the stand, one who is a city employee and the other representing the company, and ask them if there had been any material change since May 20th.

Mr. Devlin: That will be all right. My purpose here is to get the present value. The other point you suggest is a very good additional point showing what change was made.

The President: Proceed along the same lines.

Q. I will ask this question, which may help a little bit. It is on the line of the prosecutor's suggestion. Mr. Rand, when did you inspect this property as the foundation for your making your original valuation for the state board of public utility commissioners, at what time?

A. I think it was September and October.

Q. Of last year?

A. Of last year.

Q. Did you determine by that inspection the depreciation that had accrued upon this property in the subdivisions as you stated?

A. I did.

Q. You did that from inspection?

A. From inspection.

Q. And you estimated the life of each class of property?

A. I did.

Q. In your judgment was there any material change between values as you found them in September and October, of 1915, and May 20th, 1915?

Mr. Katzenbach: That is objected to because he could not tell the condition of the property on May 20th, 1915. He never had examined it. How could he tell anything about it?

(After Argument)

Mr. Record: Strike out the last question.

Q. Give the value based on the cost of reproduction new and the value based on the depreciated condition as you have estimated the amount of depreciation and give those two values and not the depreciation separately. Read that into the record.

A. I have finished with the city of Trenton.

Mr. Record: Mr. Katzenbach, in the paving proposition they originally make the proposition that we put in the paving as though it was your property. In this testimony we deduct the paving. That is to your benefit and not to ours. We deduct the paving but we retain the foundation, the cost of reproducing the foundation upon which it is laid. The actual paving we estimate is not property on which you can be taxed and we have not put it in. That is the difference in the figures.

Mr. Katzenbach: That is what I want to get.

Mr. Hartpence: Will you please repeat those figures?

The Witness: $339,452.15.

Mr. Katzenbach: What does that represent?

The Witness: The reproduction cost of the paving, which is excluded.

Q. That does not include the foundation of the paving?

A. It does not.

Mr. Morris: What do you mean?

Mr. Record: The concrete foundation underneath the paving which we say is necessary to sustain their structure and also sustains the paving. If there was no paving there they would not have to have it and therefore we charge them with the foundation.

Mr. Hartpence: The $176,890.25 is the present value of the paving?

The Witness: Excluded. The total value, the reproduction value of the property in the city of Trenton is $1,844,079.44; the present value is $1,324,592.20.

Q. That present value each time is the value you arrived at by computing what it would cost to construct the property new and then taking off the depreciation you have figured from your actual inspection of the property?

A. Actual inspection.

Q. That is so each time when you say reproduction cost and the present value, that is your definition?

A. Yes, from a very careful inspection of that.

Q. Go ahead with the other townships.

A. The reproduction value and the present value?

Q. Yes.

A. Hamilton Township, reproduction value $198-505.11; present value $143,122.65. Lawrence Township, reproduction value $103,991.64; present value $74,565.69. Ewing Township, reproduction value $53,556.58; present value $39,009.22; Hopewell Township, reproduction value $94,139.80; present value $67,477.52. Princeton Township, reproduction value, $38,724.73; present value $27,713.77. Pennington Borough, reproduction value, $25,653.87; present value, $18,298.62. Hopewell Borough, reproduction value $15,715.09; present value $11,168.27. Princeton Borough, reproduction value, $5,477.56; present value $3,934.88.

Mr. Leuckel: I would like to ask if that includes all of the property of the railroads in those different townships.

The Witness: It does.

Mr. Devlin: What does that property consist of?

The Witness: All of the property in the different boroughs,—the rails, the track, everything connected with the track and the overhead construction.

Mr. Devlin: And ties?

The Witness: Yes, and ties, and the ballasting wherever there is any and the bridges, and any station buildings that we had, and culverts, turnouts, frogs, switches,—everything connected with the property in the streets and roads.

Mr. Devlin: I would like to ask you this. You said, "Contents of barn." Of what does that consist, do you remember?

The Witness: There was machinery in the car barn, principally machinery, and there was a sand boiler for the sand house for sanding, heating and drying the sand for cars.

Mr. Devlin: Give us an estimate of the cars and other rolling stock. What was the other rolling stock?

The Witness: Sweepers and work cars, they have sweepers for the snow plows.

Mr. Devlin: Sand cars.

The Witness: Sand cars.

Mr. Devlin: Repair cars?

The Witness: Repair cars.

Mr. Devlin: And cars for doing overhead work?

The Witness: Cars for overhead work.

Mr. Hartpence: Any value on their repair wagons?

The Witness: That is all included.

Mr. Morris: That is in the rolling stock too?

The Witness: In the rolling stock.

Mr. Satterthwaite: As to Lawrence Township—there is I think a mile and a half of private right of way, did you make an allowance for that?

The Witness: I did not.

Mr. Satterthwaite: It includes tracks, rails and overhead?

The Witness: I couldn't value the right of way over the land because I am not familiar with real estate values.

Mr. Devlin: Did I understand Mr. Satterthwaite to say that this right of way is private property?

Mr. Satterthwaite: It is a mile and a half over private property?

The Witness: It goes over private property. The right of way is not included in here.

Mr. Devlin: Does the company own the real estate on which this track is laid?

Mr. Satterthwaite: I think they own about a mile and a half.

Mr. Devlin: Isn't that assessed at the valuation of the land on the books of the assessor?

Mr. Satterthwaite: I think it is. I will offer them for that purpose.

Mr. Devlin: I presume Mr. Rand would do the same as with Trenton.

The Witness: Yes, I would if I were going to include it.

Mr. Record: Our idea was on the value of the land, as these are not local men, we would take the assessed valuation of last year which you have.

Mr. Devlin: I wanted to know if the same rule applied for private right of way for townships

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Q. Have you named all of those municipalities?

A. I have named them all.

Q. Will you give the total valuation on the basis of reproduction new, throughout all of the municipalities, Trenton included?

A. Trenton included?

Q. Yes.

Mr. Leuckel: For Trenton & Mercer County.

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Mr. Record: Yes, I wanted to get a total now.

A. The reproduction value of the entire property, excluding the paving is $2,379,851.95?

Q. That paving item is the one that makes the difference between your total as apportioned and your total as given before the State Board of Public Utility Commissioners?

A. It would, approximately.

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Mr. Katzenbach: That is objected to.

Q. Otherwise your items are the same?

A. The total present value in the county is $1,709,-223.40.

Q. Does that include the valuation of the rights of way in the outlying townships?

A. No, sir.

Q. But it does include the assessed value of other real estate in the city of Trenton?

A. Yes, sir.

Q. Now, Mr. Rand, have you had experience in the sale of securities of street railway companies?

Mr. Katzenbach: That is objected to. I can't see that that would have any relevancy on what the value of this property is.

Mr. Record: I wish to put on the record what this property as a whole would sell for in the market as a whole. That is part of my testimony from which I will argue when I get to the end. This is a street railway composed of tangible property plus franchises.

Mr. Devlin: Go ahead with that testimony.

Mr. Katzenbach: Is the objection overruled?

The President: Yes.

Mr. Wakelee: This is not my case. I want to state to the board that I don't want this to have to do with any case in which I appear.

Mr. Katzenbach: I want to enter an objection to any line of testimony by which the value of the physical property of this company is to be determined by the value of securities.

(Question repeated.)

A. I have.

Q. How, in your judgment, would the market value of the property controlled by the Trenton & Mercer County Traction Company be determined in the actual market, on what basis?

A. The basis of determination would be the net earnings capitalized at six per cent.

Q. The net earnings capitalized at six per cent. Would the market take into account whether this was a growing section or a receding section as to population?

A. It would.

Mr. Morris: This is not a physical valuation?

Mr. Record: No, I am trying to put on the record what would be the way the market would appraise the value of this property.

Mr. Morris: That is an operating valuation?

The Witness: Yes, but that includes a lot of elements you are not to tax. That includes a valuation of franchise, or whatever thing you choose to define your intangible values, which I am not asking you to tax. I am introducing it as a method by which you determine the tangible value.

Mr. Katzenbach: It is objected to. I never heard of it.

Q. Your answer was on the basis of six per cent.?

A. Yes.

Q. The earnings will appear in the record. I think I won't ask you further on that.

Mr. Record: Mr. Wakelee, now I will take up the testimony in the case of the Public Service Railway Company, and also of the New Jersey & Pennsylvania Traction Company.

Mr. Wakelee: Those are not together. The Public Service Railway is the only one I am interested in.

Q. Are those figures here yet as to those?
A. Mr. Brackenridge has that.

Mr. Record: I will withdraw that, Senator, because my witness is not quite ready for that.

Q. Have you the figures for the earnings of this company for the year 1914?
A. I have.
Q. What were the gross earnings?
A. $776,548.46.
Q. What were the operating expenses?

Mr. Katzenbach: I object to that because I don't suppose the witness has any knowledge of it except what he might have gathered from hearsay.

(After Argument)

(Objection overruled.)

A. Operating expenses $377,000, allowing for taxes $50,000, allowing for depreciation fund $95,000, total $522,000, deducted from the gross earnings leaving a net earning of $254,548, capitalized at ——

Q. Never mind what it is capitalized at. That is the net earning you have of this company from its statement.

Mr. Record: Now, except as to the $95,000 that you did not put in, that is our estimate of what you ought to have over the depreciation fund.

Mr. Katzenbach: Then he has put in something that is your opinion of what we ought to do.

Mr. Record: I am saying that $377,000 is your figure. Taxes I have put in at $50,000, which is a fact one way or the other subject to your correction. We put in an arbitrary figure of $95,000 as against the prior figure you show, which was $69,000. That helps you.

Mr. Katzenbach: Thank you very much. I don't see how it is very much help, but whatever I ought to thank you for, I thank you. I have not discovered yet what it is.

Q. Upon that basis, assuming that this company will be allowed by the state to earn and will, as a fact, earn the net of $254,000, what, in your judgment, will the property sell for in the market?

Mr. Katzenbach: Objected to, because it states an assumption. It strikes me that we have not been permitted so far to earn anything much, and therefore it contains a statement that this witness could not know anything about.

(After Argument)

Mr. Record: I will withdraw the question because I have all I want on that.

By Mr. Devlin:

Q. You examined, I think you said, the whole property in September of last year?

A. I can't locate it exactly, but it was September and October.

Q. October of last year?

A. In 1915.

Q. You made a separate examination of the property outside the city of Trenton within the last few weeks?

A. Within the last few weeks, yes.

Q. Let me ask you one question and see if you can aid me some. What do you think would be the depreciation in the value of the property from the month of May in Trenton till the first of October, a period of five months?

A. I saw nothing in the examination which would lead me to make any further allowance for depreciation than we allow in the accrued annual depreciation, and the property had all the appearance in the examination we made of having been in that condition for several months prior to the time we made the examination with the exception of possibly some new equipment in the power house.

Q. The point I am getting at is this. Can you give us an estimate of what per cent. it would depreciate from the month of May when we are supposed to levy the tax till the first of October, five months, in the city of Trenton portion of that property?

Mr. Wakelee: He said he did not know what the property was in May.

Mr. Devlin: I asked him if he could give us an estimate of what the depreciation would be for five months on that property.

The Witness: You may be able to get at it by deducting the amount which we have determined as the annual depreciation, $95,000.

Q. In the city of Trenton?

A. Yes.

Q. Now, give us the city of Trenton alone, if you please, or will you give us the figures later?

A. Yes, I will give you the figures later.

Q. You examined the districts outside of the city of Trenton within these last two or three weeks?

A. No, not all of them.

Q. What have you left unexamined?

A. I made no examination of the districts—I didn't make an examination of the districts except in connection with Mr. Brackenridge, who made the estimate for the Camden and Trenton road, but as to going into examining the districts particularly in connection with this apportionment, we did not make an examination in the last two or three weeks.

Q. I will withdraw that and put this question. Can you give us the estimate of depreciation of the property that would occur during the last eight months, outside?

A. I can give you approximately.

Mr. Record: That would be eight-twelfths of $95,000?

Q. Then your depreciation covers the whole of the property, of $95,000?

A. Yes.

Q. That is an annual depreciation of the property?

A. That is an annual depreciation.

Q. If a property is kept up, that $95,000 is put in?

A. Yes.

Q. Did you allow that for depreciation?

A. Yes, $95,000 is the annual depreciation which is supposed to be taken care of by the depreciation fund, which comes from the earnings and is supposed to have an equivalent value ——

Q. I want a fact on which I can get an approximately definite value on May 20th.

A. Even though there may be a depreciation the fund to take care of that has been earned by the company and set aside so if it has not gone back into the property to maintain it, that fund is in the bank and has the same value. For all principles of taxation you are safe in taking the value. You can go back as far as you like. If a depreciation has taken place between May and the time we made it, the money should be there as an offset to that depreciation.

By Mr. Record:

Q. If the depreciation has taken place would it be measured by taking a fraction out of the number of months between May and the present time?

A. Yes, you could take that.

Q. Your testimony, Mr. Rand, before the Public Utility Commission was that $95,000 ——

Mr. Katzenbach: I don't think that is really the way to show what his testimony was before the Public Utility Commission. You are telling him what his testimony was.

(Objection sustained.)

Mr. Record: I will withdraw that.

Q. Your basis of $95,000 is what, yearly or permanently?

A. It is based on the lives of the various elements that go to make up the property.

Q. What does $95,000 represent?

A. It represents the amount of annual depreciation, the depreciation which will take place in a property annually.

Q. In your judgment?

A. In our judgment,—in my judgment.

Cross-examination.

By Mr. Katzenbach:

Q. Mr. Rand, how would you define depreciation, what is your definition of it?

A. Depreciation is primarily an operating expense. The depreciation fund which we are talking about is a fund provided out of the earnings to take care of the deterioration in the property. A depreciation fund is necessary in order that heavy expenditures for replacement of rails, dynamos, generators, and the replacement of cars should not all be put on one year. And in determining depreciation we estimate the lives of the various articles and then assume to set aside each year a percentage represented by the life of the element. To be literal, if we could determine the exact life of a car and know exactly what that car would have a value of as salvage at the end of the life, then the depreciation fund would be required and divided by the number of years that that life had been determined to be. Is that clear?

Q. That is your definition. Now, Mr. Rand, you speak about a fund set aside in bank. That is your idea of a depreciated fund, isn't it?

A. That is literal.

Q. That is the idea of a depreciation fund which you obtained through your association with Mr. Sage?

A. That is true.

Q. When you were advising Mr. Sage in the purchase of railroads, did you always advise Mr. Sage that it was advisible to take the gross earnings of a road and the operating expenses for a road for one year and then capitalize that at six per cent., and offer those having the road to sell that amount of money?

A. If that year was an average year, was a normal year, the whole negotiation would be based upon the net earnings capitalized at a reasonable figure. Then the next consideration would be the condition of the property and how much is necessary to be expended.

Q. Then you did not take in the net earnings all together, but you would want to know what was the physical condition of the property, wouldn't you?

A. Always.

Q. You think Mr. Sage was a man who wanted to know that?

A. Every time.

Q. Did you ever know of his purchasing a railroad when he did not look at the physical condition of the road, or at least have you look at it for him, before purchasing?

A. No, I don't.

Q. So that therefore the physical condition or the value of the tangible property of the railroad is a very important item if you happen to be a purchaser, is it not?

A. It certainly is.

Q. That item would then be taken into consideration in determining the selling or market value of the property, wouldn't it?

A. It certainly does.

Q. You wouldn't think of purchasing a railroad property, would you, or advising Mr. Sage in his lifetime to do it, by simply taking the outstanding securities of bonds and stock?

A. No, sir.

Q. You never did that, did you?

A. No.

Q. You would have lost your position if you had?

A. Yes.

Q. Instead of being associated with Mr. Sage for this great length of years?

A. Yes.

Q. The important matter is the actual value of the tangible property, isn't it, in determining the value of a railroad?

A. That is right.

Q. Was that the reason why you made an inspection of this property as you say you did?

A. For the purpose of determining its condition.

Q. Yes. The first month that you commenced to inspect this property was the month of September, 1915?

A. I think it was.

Q. And you have no knowledge as to the property as of the date of May 20th, from any personal observation that you made?

A. None whatever.

Q. Did you make the entire valuation of this property any deductions for property that had been added between May 20th, 1915, and September, 1915?

A. I did not. We valued the property as it stood at the time we made the examination.

Q. There may have been then pieces of track and machinery that had been added to this property

subsequent to the date of May 20, 1915, which you neglected in your valuation?

A. That is barely possible, but not to any great extent, because if it had been entirely new ——

Q. In your examination of the property did you obeserve that some of the track had been recently built?

A. Yes. All things had to be taken into consideration.

Q. In your observation of this property, what track did you with your experience think had been constructed subsequent to May 20, 1915?

A. What track had been constructed subsequent to May 20th?

Q. Yes.

A. I can't just place it. Not very much.

Q. Just what was it and where was it?

A. I can't give you the location of the street at the present time. I might by going over the data.

Q. You must have it in your data?

A. Yes. I haven't got it with me. It is filed in the other case.

Q. You haven't anything now to determine what that is?

A. Not here.

Q. You don't know what machinery may have been installed in the power house subsequent to May 20, 1915?

A. The only machinery that I saw in the power house that possibly could have been installed, judging by the appearance of the machinery, was a De Laval generator. That is the only one. I only saw one.

Q. What valuation, for instance, assuming that to be the only one, did you place on the De Laval generator?

A. I can't give you the value here. It would take a little time ti find that. (Examining papers.) I can give you that, Mr. Katzenbach, but I can't find it just at once. If you would like it later ——

Q. We want to expedite this as much as possible. Now, Mr. Rand, you have estimated the tracks outside of the city of Trenton as having a value in September or October, 1915, of $215,175.63, I think, have you not?

A. I think you have that figure wrong.

Mr. Hartpence: That is on the first statement you made this morning.

The Witness: Yes, that is right. The present value is $215,175.63.

Q. You later, on your testimony, attempted to apportion that as between different townships, I believe?

A. Yes.

Q. Was that apportionment made arbitrarily, I mean to say, did you do it according to the length of the track, is that the way you made the apportionment?

A. According to the length of the track and the amount of rail, special work and bridges in the various locations.

Q. Of course, that would all be correspondingly the same, would it not?

A. Practically, it makes very little difference.

Q. Then you did that by simply taking that amount of $215,175.63 and dividing that up among these townships in proportion to the length of track in each township?

Mr. Record: He said no.

(Question repeated.)

A. Not exactly.

Q. How did you do it?

A. I took the track work and separated the special work, bridges, stations and rails. Then to that is added also the overhead work and the feed wires. And then that is distributed on the unit mile basis.

Q. You said on the unit mile basis?

A. Yes, on the mile basis as a unit.

Q. What I want to know is this. Did you make any distinction between a mile of track in Hamilton Township and a mile of track in Lawrence Township?

A. I think there would be—in Hamilton and Lawrence, those two run very similar. I took the track mile unit and then added in the town of Hamilton and Lawrence, the girder rail, the special work and the labor and bridges in those towns.

Q. There was no difference in your calculation with reference to the length of time that particular track had been down either in the township of Lawrence or Hamilton?

A. It would not show at all.

Q. That would not show?

A. That would not show. That is taken care of ——

Q. I asked you whether that would show it?

A. That is taken care of in the average depreciation which is deducted. That figure which was given to you originally of $325,000, I took from that $109,000 for depreciation. It was not possible in the time we had,—I don't think it would be possible in a longer time to distribute the exact depreciation

over each mile specifically. It showed that I considered it fair to distribute the depreciation over the whole.

Q. So that the depreciation was distributed over all the properties outside the city of Trenton?

A. That is a fact.

Q. So that the same depreciation was applied equally to the track in Hamilton and in Lawrence Townships?

A. That is true.

Q. Just how did you make up your estimate, just give the figures.

A. In each township?

Q. And the quantities in Hamilton Township.

A. In Hamilton Township the present value is $8,843.20 a mile.

Q. How did you arrive at that? How much did you assign for rails and ties?

A. That eight thousand eight hundred and forty-three dollars includes the tracks, ties and the overhead structure and the feed wires, the signal, and fifteen per cent. for contingencies and engineering and superintendence.

Q. State what you allowed for each item, and the quantities and prices in Hamilton Township for your track.

A. In Hamilton Township for the track of the Trenton street railways, 7.47 miles, present value $66,058.70; girder rail $2,821.78; special work $2,175; bridges $3,183.26. The Mercer County Traction Company 2.15 ——

Q. Wait until we get to that. Just state where your girder rail was, what the length of it was, how many ties you estimate and how much rail there was, the character of the rail and the character of the overhead construction, and how much copper you used in feet.

A. It will take me a little while to dig that out.

Q. You must have it because you couldn't otherwise give these figures.

A. Hamilton Township $3,370 feet of nine inch girder rail.

Q. Where is the girder rail located?

A. I will have to go to other data which I have not got here to get that location.

Mr. Record: I submit, that is pushing it finer than this board requires. We have not got to locate this as four feet from such a corner.

The Witness: I have it, Mr. Katzenbach, and can give it to you but it will take a little time.

Q. I want you to give it.

A. We will have to suspend until I get the other records.

Mr. Record: We are not obliged to locate the girder rail. We have testified it is in that township.

Mr. Katzenbach: How can we submit proof if the witness is wrong?

Mr. Record: You testify that you have no such rail in the township?

Mr. Katzenbach: Not at all. We are entitled to know the amount and where it is.

Mr. Record: No, you are not, in a case like this. The property stretches all over the township and we have not got to locate the rail.

The Witness: That particular rail is in Hamilton Square. It is not scattered anywhere else. As to the exact street we have not made a note. I did not take the streets, Mr. Katzenbach, that that lay between, because the town of Hamilton Square is not large. I did not suppose anyone would question that. I don't know whether there is more than one street in the town of Hamilton Square. There is 3,370 feet of nine inch, 7,050 feet of nine inch and 1,375 feet of six inch girder. In Yardville there is 910 feet of nine inch girder and 1,530 feet of seven inch girder.

Q. Is that all there is in Hamilton Township?

A. That is all the girder rail which I have in Hamilton Township.

Q. Go on with the amount of rails, the number of ties and the amount of feet.

A. That I will have to get.

Q. I want to know exactly what is the actual amount.

A. I will have to go to other records than what I have here. I thought I brought everything you would want.

Q. Now, Mr. Rand, just put down what the valuation is in Hamilton Township.

A. The present value in Hamilton Township is $143,122.65.

Q. How would you arrive at that item, give every single track that went into it, the quantity and value?

A. I can't give you the exact quantities. I can give you the value here and I will give you the quantities.

Q. I want the quantity and value.

A. You will have to wait until I figure it out from the records.

The President: I wish counsel could agree on the time it will take to try this out. Of course, you understand our time is limited.

Mr. Katzenbach: We are agreeable to an extension of that time, so far as that goes.

Mr. Record: I think we can arrange this. I want it spread on the record that the time is extended by mutual consent, and that on any appeal in any form no point will be raised as to the jurisdiction of this board after today. That is the agreement we had beforehand and I want that agreement now. It is similar to the agreement we made before the Public Utility Commission.

An adjournment was here taken until two o'clock P. M.

AFTER RECESS.

E. C. M. Rand resumes the stand.

Continuation of cross-examination.

By Mr. Katzenbach:

Q. Now, Mr. Rand, what have you testified as to the present value of the property of the company in Hamilton Township?

A. It is $143,122.65.

Q. What I want you to do is to show exactly how you arrived at that figure, that is to say, I want the details as to how you got that, by what quantities

and what prices you used, and everything that entered into that specific piece or pieces of property that you have valued at $143,122.65.

A. In Hamilton Township there is of the Trenton Street Railway Company 7.47 miles.

Q. Did you measure that?

A. I ascertained it by taking your records that were in the other case and comparing them with the drawings in the city office here and with the maps, and with the advice and suggestion of Mr. Swan.

Q. You didn't make that measurement yourself?

Mr. Record: Wait a minute. He has testified just what he did.

Mr. Katzenbach: I have a right to ask whether he did it himself or not.

Mr. Record: He has told what he did himself.

Mr. Katzenbach: He has told what he didn't do.

The Witness: I told what I did do.

Q. Then you didn't measure it yourself, did you?

A. I didn't measure the ground itself, but I measured it on the maps of the county.

Q. You scaled it off?

A. I scaled it off.

Q. Yourself?

A. Yes. I checked it up with Mr. Swan, and also had an assistant of mine check it up, and we came to practically the same result.

Q. Where is your map?

A. I can give you one of the maps we used.

Q. I want all of the maps.

A. I will have to ask Mr. Swan to go down to his office and get them.

Q. You haven't got them?

A. I have got one of the maps. I understood it was the same map you used in making the estimates that went in the other case. I will give you some of your own figures ——

Q. I am asking you how you arrived at those figures?

A. This is a schedule.

Q. I don't want our figures.

A. It is a schedule that was used to check up in the rate case, made up by your people.

Q. Did you make this schedule?

A. I didn't, that is an exhibit, but I verified it. I hadn't finished answering your question.

Q. Go ahead.

A. There were 7.47 miles of the Trenton Street Railway, 2.15 miles of the Mercer County Traction Company, and five and sixteen-hundredths miles of the Trenton, Hamilton and Ewing. I can give you the amount of each.

Q. You have got those in miles, have you?

A. That is carried out. For the 7.47 miles I estimated the present value at $74,238.74.

Q. Let's take up that. In that seven and a fraction miles, state what kind of ties there are.

A. Chestnut ties.

Q. Did you see them?

A. I saw a great many ties, I didn't count every tie.

Q. State what the weight of the rail is.

A. Some of that rail is 70 and some 60.

Q. How much is 70 pound?

Mr. Record: What did you use?

The Witness: I took all in there to make that up.

Mr. Record: Tell them what you did.

Q. Tell me just how many feet of that was 70 pound rail.

Mr. Record: I object. Mr. Rand can only be asked as to what he did. If he took an average he states an average, and that is all you can ask him to do.

The Witness: I took an average.

Mr. Record: Then you didn't measure each of them?

The Witness: I did not.

Q. You don't know how much was 70 and how much was 60 pound rail?

A. I can determine it from the data if I have time to pick it out.

Mr. Record: What did you do?

The Witness: I took an average.

Mr. Leuckel: It seems to me that Mr. Katzenbach is conducting the cross-examination.

Mr. Record: My point is that Mr. Katzenbach is bringing out a fact that did not transpire at all. He used an average. You are wasting a lot of time to show that he did not.

Mr. Katzenbach: That may be true, but I want to find out what he did.

Q. You used an average and did not make any measurements?

A. No, I did not.

Q. As a matter of fact is there a difference between seventy and sixty pound rail?

A. Not per ton.

Q. Per length?

A. Per length there is a difference in the price with regard to the quantity in a mile.

Q. There is. You can't tell how much is seventy and how much is sixty pounds?

A. I could determine it. The correct amount was used in the estimate in order to give the total amount.

Q. I am asking if you can tell me?

A. I can't tell you now.

Q. Or did you use some?

A. I can't tell you now.

Q. Tell me what amount of feeder wire, and what price, there is in that construction in Hamilton Township, how many feet or pounds there are, whatever you used as a criterion.

A. I can't separate that now.

Q. Tell me what the size of feeder wire is in Hamilton Township from your inspection.

A. Some of it is 500 circular mill.

Q. How much is 500 circular mill?

A. I can't give you that now.

Q. How much is something else?

A. I can't give it to you.

Q. There is a difference in the price between the two?

A. There is.

Q. Did you calculate the overhead poles?

A. I did.

Q. That are used?

A. Yes.

Q. How many poles and what kind are used in Hamilton Township property?

A. Eighty-eight poles to the mile, wooden poles.

Q. What price poles did you use?

A. Four dollars a pole placed.

Q. What other material in the overhead construction did you estimate, and what were the quantities of it?

A. I estimated $2100 per mile for the overhead construction, including the poles, the trolley wire and the other supplies.

Q. Did you actually see the poles and count them?

A. I didn't count them, no.

Q. That is then an approximate estimate, is it?

A. It is an approximate estimate ——

Q. Of what kind of feeder wire?

Mr. Record: Wait a minutte. Let him finish his answer.

A. (Continuing) An approximate estimate of the number of poles in Hamilton Township based on eighty-eight poles to the mile, a distance of 7.47 miles, 2.15 and five and sixteen-hundredths miles. You couldn't get it any better than that.

Q. I don't know about that at all. Tell me how many of those miles were ballasted road?

A. I can't give you that.

Q. Tell me in that seven miles how many bridges there were.

A. That I will be able to give you. I have one bridge in about two and one-half miles from Rowen Avenue, $3,806.40. No bridges in Hamilton Square.

Q. How many culverts?

A. I can't give you the culverts.

Q. What was the character of the construction of the culverts?

A. Different character—some of it was timber construction, and some was stone abuttments with an I-beam, different lengths of I-beams, some one length and some another. Some abuttments were three or four feet in height and others were six feet possibly.

Q. How many culverts were there, altogether?

A. I can't give you that.

Q. Is there a difference in price in the building of these culverts?

A. Certainly, according to the quantity of masonry in there and according to the size of the I-beam and the length.

Q. Have you got down how many there are in one class and how many in another?

A. I have not. It is all included in the estimate the exact number and quantity.

Q. Just add up together the figures that make $143,122.65. Just give the series of figures and what they are.

A. 7.47 miles at $8,843.20 a mile, $66,058.70. There is a girder rail on the Trenton Street Railway $2,821.-78; special work, $2,175.

Q. Where is the special work?

A. I can't give you the location.

Q. What does it consist of?

A. It consists of frogs, switches, turnouts.

Q. Where are they located?

A. I can't give you the location. I don't think it is possible to give the exact location. There is no map in existence that has it.

Q. How many frogs?

A. I have not got that here.

Q. How many switches?

A. I can't give it to you.

Q. Any other kind of special work except frogs and switches?

A. That is all—turnouts.

Q. A turnout is a piece of special work?

A. There is a guard rail.

Q. Any crossings, any frogs?

A. I don't recall any crossings ——

Q. You say there are crossings?

A. Yes, crossings are included—I hadn't finished——

Q. Any other weight of rail besides the sixty and seventy pound girder rail in this seven miles?

A. I think there is. I can't tell you that exactly now without taking a lot of time to get it. If you wish, Mr. Katzenbach, I can give you a bill of particulars right straight through on that. I only had four or five days to do this work.

Q. This is not the first pleasant interview we have had together. You know what I want every time. You say you can't give me that.

Mr. Record: We have a book I can give to you.

Mr. Katzenbach: Give it to me.

The Witness: Do you want me to finish? You asked me, if I understood you, to tell you how I made up the one hundred and forty-three thousand dollars.

Mr. Katzenbach: Go on.

A. Bridges, Trenton Street Railway, $3,183.26; total for the Trenton Street Railway, $74,238.74. The Mercer County Traction Company, 2.15 miles, $19,012.88. The Trenton, Hamilton & Ewing, 5.16 miles,

$45,630.91; girder rail, $2540.12; special work, $1,-700; total for the Trenton, Hamilton and Ewing, $49,871.03—total $143,122.65.

Q. Now, Mr. Rand, in estimating these quantities that you have given, did you insert anything there for omissions or contingencies that you have referred to in your direct examination?

A. Fifteen per cent.

Q. You added fifteen per cent. for what?

A. I will read it off to you.

Q. You need not read it off, just tell what it is for.

A. Commissions and omissions.

Q. Commissions on what?

A. Maybe commissions that paid for conducting the property that is a usual expression. If you will let me answer,—you asked what included the fifteen per cent.

Q. All right.

A. If you want to take it up piecemeal.

Q. We will take it up all together if you would rather have it that way.

A. It is already in the testimony. Contingencies, including engineering. I should have said contingencies, including engineering, superintendence, administration, management, insurance, incidentals, omissions and builder's risks. That is all added on.

Q. You have no knowledge at all of what went in there as administration expense or insurance or superintendence, or anything of that kind?

A. I have not.

Q. That is purely an estimate of yours which represents something intangible?

A. It is customarily added.

Q. It represents something you can't touch?

A. That you can't count on.

Q. Yes. And that is not based on any knowledge or information you have as to this particular property?

A. Only from experience.

Q. That fifteen per cent. is entered into every one of these items, I presume?

A. Every one of them.

Q. Can you check up in one of the estimates for these pieces of track in Hamilton Township, and tell just exactly in dollars and cents how you apportioned the money to each item?

A. How I apportion the fifteen per cent.? I can, if you wait until I make a computation.

Q. Not the fifteen per cent., I mean the actual materials that have gone in.

A. I can do it, but not in a moment. It is already included. I could segregate it.

Mr. Wakelee: Will you give me the figure for the 2.15 miles?

The Witness: 2.15?

Mr. Wakelee: What was the value for that?

The Witness: $19,012.88. I am uncertain, it may be that I got the bridge on the wrong portion, I won't say positively. I had to be governed by Mr. Swan with regard to the location of the bridges.

Q. You have given the present value, according to your opinion in several other political divisions, that is, like Lawrence Township and Princetown Borough. Will you take up any one of those of your choosing?

A. I have no choice. If you will name one, I will take it up.

Q. Very well then, let's take up Lawrence Township. What is the present value, as you fix it, of the property of the railroad company in Lawrence Township?

A. Present value $74,565.69, in Lawrence Township.

Q. Will you state without the use of approximate figures, just exactly how you arrive at that estimate? In other words, I want it in detail.

A. I took the same——

Q. I don't want your guess as to what the cost of a mile would be, but what the actual mile cost in Ewing Township?

A. Understand, there is no guess at all. I am dealing with facts.

Q. Let us have the facts then.

A. I took the unit basis of the cost of reproducing the miles of track of the Mercer County Traction Company outside of the city of Trenton. I can't separate at this moment the seventy and sixty pound rail that you have. I have separated the girder rails, the special work and the bridges and the labor connected with the bridges.

Q. Can you tell just what was the weight of rail of the track in Lawrence Township, for instance?

A. My best recollection is it is seventy pound T-rail.

Q. All the way through?

A. I would not say all through.

Q. How many rails in pounds?

A. I can't give you that. Some guard rail I remember was about fifty pounds.

Q. How much, fifty pound?

Mr. Record: You haven't it, or you can't give it?

The Witness: I can't segregate it.

Mr. Record: Was it ascertained?

The Witness: It was not divided into townships. It was ascertained as a whole. We had no data that would enable us to segregate and put into each township the different kinds of rail. We were taking the quantity and kind as we went along without regard to townships. Subsequently we have distributed the whole of the track outside of the city into the various townships, according to the miles in each township.

Q. Then, you can't, in this estimate you have given tell what kind of rails and the amount specifically in any one of these political divisions, can you?

A. Mr. Katzenbach, I can't answer you right at the moment but I can determine it. It takes time to do it, to pick it out from the data which we have. That is the best answer I can give.

Q. Of course, when you make an estimate of $74,565.69, you must have taken either the time to make it or a fraction of the time to guess at it, one or the other.

A. It was no guess. It was all very careful.

Q. Tell me this. What was the length of time in Lawrence Township that this work had been down there, and what did you allow for accrued depreciation in the political division of Lawrence Township?

A. I can't give you that at the moment.

Q. Just pick out one of these political divisions in which you can give it.

A. My answer applies to all of them for the moment.

Q. It applies to all of them for the moment?

A. Yes.

Q. Can you tell about the feeder wire in Lawrence Township, the amount of it?

A. The same answer would apply to that. If I should take the time to get my data I could find exactly what I had in it as to the size and quality of the wire, where it began and where it ended in each town. I might add, Mr. Katzenbach, that I think you know that all my notes were filed in the case and are now a part of the record. My notes that I made from the physical examination are a part of the record in the rate case.

Q. You are not unfamiliar with my style of cross-examination, are you?

A. Not at all. I might say further, if I had had time I would have prepared to anticipate all of your questions.

Q. Just what theory did you use to compute it, state your theory from beginning to end.

A. I have already stated that. I take the cost, the present value of the tracks outside of the city and I deduct ——

Q. How did you arrive at the present value of the tracks outside the city?

Mr. Record: Mr. Katzenbach just kills time. He asks this man and he gets started with half a sentence and is broken into. Why can't he answer a question?

The Witness: He has asked me a question which has been answered three times, but I will answer it once more.

A. I take the present value of the tracks outside

of the city. I ascertain the amount and quantity of girder rail outside of the city, the bridges, the culverts, the special work, and I deduct that from the amount of the tracks outside of the city. I then compute the tracks less those things I have named outside the city, and I get $8,843.20 per mile. I take the miles of the traction company in each township and borough multiplied by this rate, and where my records show there is a bridge, special work and girder rails, I add it to that specific township, and the total is the figure I have given you. That is the third time ——

Q. Have you a memorandum that you can produce upon which all those calculations are made?

A. I can give it to you right here.

Q. Let me see it.

A. Inside and outside the city. You can't tally up unless you have them both.

Q. It is not of any use to me, you say I can't do it.

A. You can't do it unless you have them all.

Q. Now, Mr. Rand, this fifteen per cent. for contingencies and omissions was carried all the way through?

A. Yes, sir, on everything.

Q. Everything. And that is purely your opinion and you have no definite knowledge?

Mr. Record: This is the second time you have asked that.

Mr. Katzenbach: I have a perfect right on cross-examination.

Q. I asked if you did that to everything outside the city?

A. I did. You asked if it was my opinion. It is not my opinion, it is the custom in making estimates.

Mr. Devlin: Is it a standard rule in making valuations?

The Witness: It is.

Mr. Devlin: In that business?

The Witness: Yes.

Mr. Devlin: Recognized by men throughout the country?

The Witness: Everywhere on all sides, to make these allowances.

Mr. Devlin: It is a standard rule of computation?

The Witness: It is a standard rule of computation, the same as allowing for contractor's profits.

Q. In each one of these estimates that you have made you have put in a certain amount for contractor's profits, haven't you?

A. It has been allowed in each case.

Q. What has there been allowed that you have put in for the profit of the contractor?

A. I think it would be, I think the estimate—it varies, sometimes $200 a mile, the rate per mile, $200 to $300. There is also a profit allowed in the material, that is added in, not at the wholesale, but at the open market prices.

Mr. Leuckel: Is that the fifteen per cent.?

The Witness: That fifteen per cent. is just exactly what it is specified.

Q. In addition to the fifteen per cent., this contractor's profit has been included in each one of these items?

A. Yes, in each one of these items.

Q. That is the profit the party who put the track there would have gotten?

A. Assuming he would have done it and I would have been satisfied with it.

Q. Just exactly what profit did you put in, in dollars and cents for the tracks outside the city.

A. Can't give it to you just now. I would be glad to give it to you, Mr. Katzenbach, but the time would not permit the making of an estimate of it now. If we had time I would be very glad to make it.

Q. In arriving at this sum on all the track outside of the city you must have put it in?

A. Yes, we did.

Q. If you did put it in—

A. I can't separate it.

Q. How much did you put in?

A. I can't tell you.

Mr. Devlin: Do you know what percentage you put in?

The Witness: It was not done by percentage.

Mr. Devlin: That profit was determined in the character of the construction?

The Witness: In character; for instance, if a pole is four or five dollars,—you know what you can buy a thirty-five-foot chestnut pole for, I sell them

myself at $1.25,—and the cross ties put in at 40¢. There is not much profit at any rate, but they can be bought for less than that.

Q. You are willing to enter into a contract to furnish chestnut poles at $1.25?

A. I would like to sell you some.

Mr. Morris: That is just the poles as they are?

The Witness: Others are dressed off and these are skinned.

Q. I am not talking about fishing poles, I am talking about trolley poles.

A. I never saw a thirty-five-foot fishing pole.

Q. Now, Mr. Rand, in the property of the traction company you estimated a value for the rolling stock, did you not?

A. Yes.

Q. What was that?

A. You will find that on those sheets, I think, that I gave you there. The rolling stock, cars and other rolling stock, $400,000 plus 15 per cent., $460,000. The value today, $260,000 plus 15 per cent., $299,000.

Q. This fifteen per cent. do you mean to say in the purchase of a car which will cost $5500 that you add fifteen per cent. to that car for engineering and superintendence?

A. I wouldn't look at it the same as you would. If you were constructing a line as a whole and getting cars you would have to have an engineer give you the plans. After you had the plans made then they have to have your superintendence, you have to pay the president and the lawyers for taking care of the company, while you wouldn't necessarily pay anything to draw up a contract to buy cars.

Q. Your idea is, Mr. Rand, that in making a purchase of ten cars of a standard pattern that you would say it was fair to immediately add to the price that you pay per car fifteen per cent.?

A. I wouldn't say it that way, Mr. Katzenbach, I would say that if in assemblying the Mercer County Traction Company in Mercer County I had to buy a number of cars, and snow cars, had to have plans and do construction, making an assemblage, getting the property together, that fifteen per cent. for engineering, for contingencies, for all the things that go to make it up, the administration, for the insurance, for the risk, is a very fair and reasonable amount. You can add it on to each one, or, if you like, to the whole.

Q. You don't mean to say it cost any more for this assemblage in Mercer County than in any other case?

A. It is customary ——

Q. The locality didn't have anything to do with it?

A. No, the locality didn't have anything to do with it.

Q. You know the cars of this traction company, the double truck cars, do you not?

A. Yes, I do.

Q. What is the price at which one of those cars can be bought for in the open market, from a manufacturer like the J. J. Brill Company?

A. My best memory—I recall that Mr. Johnson testified that he could buy it for $5300, and I have no reason to doubt that.

Q. $5300. You think Russell Sage could have bought it a little cheaper, is that it?

A. Yes, he would, surely.

Q. You go down there and buy ten cars, we will say at $5300 apiece, that is $53,000, isn't it?

A. Yes, sir.

Q. Do you say by reason of contingencies, engineering, superintendence, omission, administration, management, incidentals, insurance and builders' risks you want to add fifteen per cent. to that amount right away?

Mr. Record: I object. This is about the eighteenth time he has asked this man this question, and he says he adds the fifteen per cent. He can argue it ought not to be added, but he can't keep repeating it.

Mr. Katzenbach: I have a right to ask whether those were the items which you thought ought to be added.

The President: Objection sustained.

Q. What I want to know is, have you added that to the cars?

A. I have, and I would.

Q. All right. Notwithstanding the fact that was all that was paid out by the company for it?

Mr. Record: I object. That has been hashed over.

Mr. Devlin: Isn't that a matter for argument?

The Witness: I would add fifteen per cent. to whatever had been paid out.

Q. You would?

A. Yes. That is the same thing.

Q. Let me ask you as to how you fix the car barns and contents, just what valuation did you make in detail?

A. I am sorry I haven't it here. I could give it to you, but at the present time I can't. It is in my data at the Capitol.

Q. You can't give it to me?

A. Because I only worked from the summation of our work in the other case.

Q. On the paving, what did you estimate this company had paid out for paving?

Mr. Devlin: He put that out as not assessible. The foundation of the paving he put as assessible, but not the paving.

Mr. Record: Why can't you ask him what you are driving at? Why should you ask him to say over what he has said before?

Mr. Katzenbach: I have not asked him on the subject of paving before.

Mr. Devlin: That was taken up.

Mr. Katzenbach: He has added it in again.

Mr. Record: He has not.

Q. Have you added in your total value that in your opinion this property is worth at the present time, or in September or October, whenever you made this estimate,—you have then eliminated the $358,845.02?

A. I have.

Q. That is different.

A. No, I eliminated that but put back in the amount for foundation, which is 106,115 square yards at 60¢ a square yard making $63,669.24, which

has gone back into the estimate for the property in the street.

Q. You say $106,000?

A. 106,115 square yards.

Q. 106,115 square yards?

A. Yes.

Q. Tell me the reason you left that in, what is represented by that?

A. That is the concrete. It is estimated at 60¢ a square yard, that is principally what it is.

Q. Where is that concrete?

A. That is under the paving.

Q. Under what part of what tracks is the concrete?

A. Under all the tracks where the paving has been placed to the best of my knowledge, under all of it in the city.

Q. Is it below the top, or under the ties?

A. It comes up to the top of the ties.

Q. How many square yards and at what price have you deducted that?

A. 106,115.41 at 60¢ a square yard.

Q. That you have added to your estimate. What did you deduct, how much?

A. I took out, in order to simplify it, I took out all the items for paving.

Q. How many square yards of paving and how much did you allow per square yard for paving?

A. Several different prices on paving. I took out the total sum.

Q. The average?

A. I can't give you the average. I have every foot of it and the rate, but I can't separate it and give it to you now. I took out the whole sum and put back the foundation.

Q. You could divide the total number of square yards by the total you took out?

A. I could make a computation.

Q. Could you make it just so as to get the price?

Mr. Record: I object to taking any time to do any arithmetic.

Q. How much did you allow on the average for paving per square yard?

A. You can take the amount, deducting that figure which I gave you, $63,000, from the $358,000, and you have got the amount which has been taken out, which I allow for what I took out. You can divide it just as easy as I can.

Q. How many square yards do you divide it by?

A. I haven't divided that at all. I took the whole sum.

Q. How many square yards are there to divide it by?

A. I took out 116,115. I would assume there is that many square yards to divide it by, there is that much foundation.

Q. The foundation of a piece of track, isn't that included in an estimate upon the cost of construction of a track?

A. It should be. It was not included by us. That is why I included it, that is why I put it in.

Q. You added it on in the price?

A. It was not added in the other items and I added it on in that item.

Q. That concrete is necessary to the paving and not to the track, isn't it?

A. No, sir. It is necessary to the track because you have got to have a foundation there to put ballast on, because the time you would spend tramping

ballast under your ties would more than offset putting the track in where you have heavy street traffic. You couldn't put paving down without a foundation for it. Otherwise it would sink down into the mud.

Q. If the paving was there in a street and the track was not, wouldn't this concrete have to be put down in order to separate the paving, by the city?

A. That is a question of law. I took it for granted it had to be.

Q. It is not a question of law.

A. It certainly is.

Q. What did you put in as the assessed value of the real estate?

A. $110,025.

Q. You gave a larger figure on that.

A. The fifteen per cent.

Q. Was that by reason of adding fifteen per cent.?

A. It is added as part of the cost of reproduction.

Q. You added the fifteen per cent. for builder's risk, and so forth, to the assessed value?

A. No, I wouldn't put it that way.

Mr. Record: Here is a statement that he added fifteen per cent. to the value of the land. Why waste any time? Let him answer your question.

A. That fifteen per cent. is to cover contingencies, such as engineering, superintendence, administration, management, insurance, incidentals and builder's risk. That is supposed to be used by the good judgment of the management, and they certainly would not make an entry in a real estate transaction that had not the fifteen per cent. for builder's risks.

Q. What is that land, or don't you know anything about it? What is on the land?

A. Power house. There are two old horse barns, there is a car barn, three car barns and a machine shop, and then there is another old building used for storage, another building that is a paint shop, and another sand drying house. I think that is all.

Q. In your estimate of power plant, $265,500, did you include the cost of the land in that?

A. No. That is the reason I put it in a lump sum. We had no means of knowing what it was. I took the valuation as given by the assessing department of the city, because we had no foundation on which to base any value.

Mr. Devlin: You had no expert knowledge of the value of the land?

The Witness: We took the record given by the assessing department in the city.

Q. You never have said you included the cost of the land in the $265,500?

A. I never have intentionally.

Q. Did you make the calculation of the 106,115 square yards in dollars and cents?

A. I did.

Q. How much is it?

A. Oh, you mean, have I made it since you asked me?

Q. Have you got it, anywheres?

A. I am not a wonder.

Q. I am asking you whether you have made such a calculation?

A. I don't know whether you do it to put me in a ridiculous light. I couldn't make a computation and be answering questions.

Q. I ask you if you have made it, not now, but at any other time?

A. I have not.

Mr. Devlin: The one hundred and six thousand yards, you put that, I think you said at 60 cents?

The Witness: Yes.

Mr. Devlin: You calculated that at about sixty thousand dollars, didn't you?

The Witness: $63,000. I understood him to mean ——

Mr. Devlin: Do you mean your question was whether he put 106,000 yards back? I understood him to say he put it back at 60 cents, which made an estimate of about sixty-three thousand. Is that what you mean?

Mr. Katzenbach: I didn't hear you. What I want to know is whether he has added that as a part of this sixty-three or four thousand dollars, whether he has added the sixty-four thousand dollars plus the fifteen per cent. to that, too?

The Witness: Yes.

Mr. Katzenbach: Whether that sixty-four thousand dollars plus the 15 per cent. is in your valuation of this property, that is what I want to know?

The Witness: It is.

Mr. Leuckel: It has been admitted by the witness

New Jersey State Library

that fifteen per cent. has been added on everything he has done. What is the use of going over it so many times?

Mr. Katzenbach: It is an important matter and I feel I am entitled to know.

Mr. Leuckel: That one question has been answered in my hearing a dozen times. He has stated that he added fifteen per cent. to all of them. He is willing to admit it.

Q. In this one hundred and six thousand square yards, that assumes that under all the paving there is this concrete, does it not?

A. Yes, that assumes that.

Q. As a matter of fact, you don't know whether that is so or not?

A. Only from the reason there may be some few places—I only know from the fact that it is necessary to have foundation under paving or heavy trucks or anything going over would destroy your paving.

Abram Swan, a witness being duly sworn on behalf of the city, testified as follows:

Direct examination.

By Mr. Record:

Q. Mr. Swan, what is your business?

A. Engineer of streets, city of Trenton.

Q. Have you helped Mr. Rand and Mr. Brackenridge make up a computation of the length of the

mileage of the Trenton & Mercer County Traction Corporation's tracks in each of these townships and in the city of Trenton?

A. I have.

Q. Will you read into the record the result of that computation which you helped to make?

A. In the city we found 34.21 miles; Hamilton 14.78 miles; Lawrence, 7.59 miles; Ewing Township, 4.38 miles; Hopewell Township, 6.53 miles; Princeton Township, 2.75 miles; Pennington Borough, 1.61 miles; Hopewell Borough, .95 miles, and Princeton Borough, .37 of a mile.

Q. How long have you been connected with the city of Trenton as an official?

A. Since 1888, except for a couple of years.

Q. Are you generally familiar with the trolley tracks and overhead and general conditions of the trolley plant in the city of Trenton?

A. I am.

Q. Are you generally familiar with the condition of that plant prior to May, or about May 20th, 1915?

A. Yes, sir.

Q. I forgot to ask you as to the Trenton & Mercer County Traction Company in the city of Trenton. Has there been any substantial change in the company's property since May 20, 1915?

A. A new double track on West State Street from Calhoun to Prospect Street, about 3400 feet of track in all. There is a track relaid on South Clinton Avenue from Liberty Street to Stanton. The old rail was used and they rebuilt the road. Everything else was new outside the rails.

Mr. Leuckel: Done since May 20th?

The Witness: Yes, sir.

Q. The part that was replaced since May 20th was in existence and in use on May 20th?

A. It was in use, but it has been replaced.

Q. I mean did the replacement take the place of some property which was there on May 20th?

A. The old track was taken out and a new track built on West State Street. The old track was left on South Clinton Avenue and new ties put in.

Q. Hasn't a statement been made in your presence by any employee of this company as to the condition of the property any changes in the property in the power house?

A. Yes.

Q. What was that statement?

A. There has been no material change in the power house excepting maintenance in the last two years.

Q. That is in the machinery?

A. That was in October.

Q. Is that a statement as to the machinery?

A. Everything.

Q. In the power house?

A. Yes, sir.

Q. Who made that statement?

A. One of the engineers.

Q. In whose presence?

A. In the presence of Mr. Brackenridge and myself.

Q. What occasioned you to be there?

A. Making an inventory of the interior for the purpose of the case before the Public Utilities Commission.

Q. What time was it that that statement was made?

A. In October.

Q. I show you some blue prints and ask you what they are. (Showing blue prints to witness.)

A. My estimate of the lines.

Q. I didn't make clear outside of the city as to the property of the Trenton & Mercer County Traction Company. Mr. Swan, what do you say as to the condition of the Mercer County Traction Company property outside of the city in reference to any substantial changes in its condition since May 20th?

A. You mean the Trenton & Mercer County Traction Company?

Q. Yes, the Trenton & Mercer County Traction Company outside the city.

A. Substantially nothing in the way of new work excepting replacement of ties and fixing up the tracks, no new work.

Q. I ask you what these blue prints are that I hand you. Did you make them?

A. I made these from copies submitted to us by Mr. Johnson of the Trenton & Mercer County Traction Company.

Q. When did you make them?

A. Sometime in October.

Q. Those are correct copies of the originals that you took the copies from?

A. They are blue prints which we made from the copies Mr. Johnson gave us.

Q. That is a facsimile?

A. Yes, sir.

Mr. Record: I offer these in evidence. These purport to be blue prints of Mr. Johnson's exhibits in the public utility case in which he states in detail the items on his roads in all parts of the county and his estimate of the cost of replacement. Those were offered by them as an exhibit.

Mr. Katzenbach: I object because this is an entirely different proceeding and the evidence in that

proceeding cannot be offered in this. Besides, that is only a small fraction of it. It is secondary evidence.

Mr. Record: That speaks for itself.

(After discussion.)

Mr. Katzenbach: I have no objection to the stenographic report.

Mr. Record: You don't deny that you put that proposition in as Mr. Johnson's estimate as the replacement cost of the items shown on those blue prints?

Mr. Katzenbach: I don't know anything about them.

Mr. Record: I put that in as having Mr. Johnson's own signature on it. It is defective only to the extent that we might be held to produce the original.

Mr. Devlin: Mr. Swan here testified that he made this, that it is a facsimile.

Mr. Record: Yes, from something received from Mr. Johnson.

Q. Mr. Swan, you know Mr. Johnson's signature?
A. I do.
Q. Is that a copy of Mr. Johnson's signature?
A. Yes, sir.

Mr. Record: I offer that.

Mr. Katzenbach: We object.

Cross-examination.

By Mr. Katzenbach:

Q. What did you make the total mileage of the entire system of the Trenton & Mercer County Traction Company?

A. I have 73.15 miles, one mile less than the schedule sheet we had from Mr. Johnson, about that, 73.35 I think it was.

Q. Is that the length of the operated track?

A. I believe that includes some sidings. I think it includes it. I don't remember just now what it is. It is the entire amount of track as turned over by Mr. Johnson.

Q. Does it include the line from Yardville to Crosswicks?

A. Yes, sir.

Q. It is not operated track?

A. It is not operated track, no, sir. This is 2.16 miles in that part.

Mr. Record: I offer the record of the case before the Public Utility Commission and I offer the report of the Public Utility Commission in the recent case.

Mr. Devlin: What do you offer the record for?

Mr. Record: I offer the record simply because I think this board here is sitting as a tax board and it has a right to consider anything that throws any light on this. I will offer the record largely to avoid any criticism about this. For instance, in the record is the testimony in which that is offered.

Mr. Devlin: Will you tell me, tell this board, be-

fore the Public Utility Board what was the question on valuation, was it a question of a going value, of a market value or a physical value?

Mr. Record: All of them were elaborately discussed, testified about and argued.

Mr. Devlin: Each proposition?

Mr. Record: Each proposition.

Mr. Devlin: In other words, you say the respondents here and the appellants both put up the question of physical valuation?

Mr. Record: Separately and apart in the record.

Mr. Devlin: And besides the question of going value?

Mr. Record: And franchise value and intangible value, they put that up and we fought it. But the tangible property was made the subject of special testimony by Mr. Johnson, supplemented by these exhibits. These exhibits are merely an assemblying of his testimony, that is, on the basis that that is the cost of replacement. I am not saying that they say that is the value for tax purposes at all. Mr. Johnson testified in that record as to what it would cost to reproduce this tangible property in this county.

Mr. Devlin: He testified to the physical value?

Mr. Record: I won't say that either, he testified to the cost of reproduction.

Mr. Devlin: That is the physical value.

Mr. Record: That is for argument. I want to get all the light before the board before I argue.

Mr. Devlin: Is there any question as to the authenticity of this record?

Mr. Katzenbach: How can I answer that when I have never seen it? I don't mean to intimate that there is but I can't answer your question. We want to enter an objection because the inquiry in this proceeding is an entirely different inquiry from the one that is now before this board. The two questions are separate and distinct and therefore this record could not be applicable to the situation here.

Mr. Devlin: You don't challenge this as being the record of that hearing?

Mr. Katzenbach: It could not be the full record of the hearing because there were sixty-two exhibits that are not part of this.

Mr. Devlin: I mean the stenographic end.

Mr. Katzenbach: I presume this is the stenographic end. Of course, the record of a former proceeding is simply the memory of the person who was there refreshed by his notes, and therefore I do not want to be put in a position of assenting that this is the stenographic record.

Mr. Devlin: Your point is that the proper way to prove this record would be to have the stenographer swear that this is a transcript, but generally we overlook that.

Mr. Katzenbach: He would have to go through it all before he could tell. This is a different proceeding in the first place, and in the second place to understand this record, if you are to read it now, you would have to take with it the sixty-two or more exhibits because it is unintelligible unless you have the sheets before you containing these figures. Therefore, if anything is admissible it must be the entire record.

Mr. Devlin: At the same time, I view the records as litigating in the same thing, it is the same question really, and the records so far as they go might throw light on the case.

(After argument.)

Mr. Record: The time presses. I want to offer these things and you may object to them and let the board reserve its decision until the case is in. I don't want to waste time in the argument on these things, if the board is willing to do that.

I offer one more thing, which is a copy of the lease, the Trenton & Mercer County Traction Company's lease of these properties in 1911. Here is a copy of the lease.

Mr. Katzenbach: I have no objection to that.

Mr. Record: The lease I offer also.

(Paper above referred to received in evidence and marked Exhibit "C2.")

Mr. Wakelee: May I interject on the record that none of these are touching on my client at all?

Mr. Devlin: You are not affected, Mr. Wakelee.

Mr. Record: I offer as exhibits for the convenience of the board these different distributions of values by Mr. Rand.

(Papers above referred to marked "C3.")

Mr. Katzenbach: We object to an offer of scraps of paper. It is not for my convenience, I don't want them. If he can't testify, if they are inadmissible —

Mr. Record: He put everyone in the record.

Mr. Katzenbach: If they are in the record why do you want it?

Mr. Devlin: What injury can they do?

Mr. Record: I offer them.

Mr. Katzenbach: We object. It has not been properly testified to. A man can't submit his own conclusions in the form of a memorandum.

J. C. Brackenridge, a witness being duly sworn on behalf of the city, testified as follows:

Direct examination.

By Mr. Record:

Q. Where do you reside?
A. I reside at Richmond Hill, Queens County, Long Island.

Q. Did you testify as an expert on behalf of the city of Trenton in the case before the Public Utility Commission in which the Trenton & Mercer County Traction Company property was involved?

A. Yes.

Q. What experience have you had, in a general way, with reference to appraisement of street railway property as to the cost of reproducing it and as to the depreciation of it?

A. About thirty years.

Q. State generally what your experience has covered just as briefly as you can.

A. I was in charge of construction of the Brooklyn Elevated Railroad in 1885, part of it, and of the Brooklyn Heights Railroad, Brooklyn Rapid Transit Company, Brooklyn, Queens County and Suburban, all the railroads in the present borough of Brooklyn for about sixteen years altogether. I was for ten years in private practice as consulting engineer and contractor in New York, during which time I appraised for the city and the Public Service Commission practically all the railroads in New York City.

Q. As a result of that experience are you familiar with the market value of materials and the cost of labor involved in street railway construction as of May 20, 1915?

A. Yes.

Q. Did you have to do with the making up of an appraisement of the cost of reproduction new and the cost of reproduction depreciated of the property of the Trenton & Mercer County Traction Company to submit as evidence before the Public Utility Commission?

A. Yes.

Q. How long did you work over that proposition?

A. About thirty-three or four days.

Q. Did you inspect the property of the Trenton & Mercer County Traction Company in the city of Trenton?

A. Yes.

Q. Did you make up your estimate and appraisement at that time from such inspection and study?

A. Yes.

Q. Did you investigate and estimate the reproduction cost and the depreciation of the property of that company outside of the city?

A. Yes.

Q. Have you since that time made a distribution of the value of the property in the city and the value of the property of the Trenton & Mercer County Traction Company in each of the municipalities through which it runs?

A. I assisted Mr. Rand.

Q. Have you prepared figures upon that?

A. He kept the figures.

Q. You assisted him in the making up of the figures to which he has testified?

A. Yes.

Q. Have you inspected the property in the city of Trenton of the Public Service Railway Company?

A. Yes.

Q. Within what time?

A. Within the past week.

Q. Have you made an inspection and valuation of that property on the basis of cost to reproduce new with depreciation off, outside of the city of Trenton?

A. Yes, sir.

Q. I ask you the same question as to the New Jersey & Pennsylvania Traction Company?

A. Yes.

Q. You have made inspections and estimate of value of that company in the city and outside the city?

A. The Pennsylvania & New Jersey is all within the city.

Q. It is all within the city?

A. Yes.

Q. I ask you first to give to the board your estimate of the cost of reproducing new and also the depreciation of the Public Service Railway Company property locating it in the municipalities in which it is situated.

Mr. Wakelee: And I ask the board to instruct the witness to only testify to figures that he has made up.

Mr. Devlin: I presume the question carries that.

Mr. Record: It is my understanding that he has made this up himself.

Q. Read it into the record, taking the totals, the valuation in each township and put such subdivisions as you have.

Mr. Wakelee: I object; I don't know what you mean by totals.

Mr. Record: I said, by such subdivisions as he has.

A. I have Camden and Trenton in Hamilton Township. The cost to reproduce new and the present value of the Crosswicks Bridge, one-half the value of that, $1,075.20; depreciation $322.56; present value $752.64.

Mr. Wakelee: Wouldn't it save a great deal of time if I cross-examined on items as he goes along?

Mr. Record: Let us try that.

Cross-examination.

By Mr. Wakelee:

Q. Did you examine that bridge yourself?

A. I did.

Q. These figures you have given are your judgment of these values?

A. My own figures, yes. Track work on bridge to Cedar Lane $16,907.30; depreciation $7,608.29; present value $9,299.01.

Q. What is the length of the track on which you estimate the present value of $9,299.01?

A. That is a track from the centre of the bridge to the city line.

Q. How much track in length?

A. To the center of the bridge—there is a station, —170 plus 24, and Cedar to Lalor Street, or the city line is 47 plus 26. The difference is the length of track between those two stations.

Q. What is the distance, Mr. Brackenridge, that you included in that estimate?

A. The total distance is 2,838 feet, or 11,090 single track and 1,064 double track.

Q. 2,838 feet, did you say?

A. It is 11,090 feet of single track and 1,064 feet of double track.

Q. How did you make up that figure of $9,299, did you take a unit value at so much per foot or dissect it into its elements?

A. I took a unit value of so much a foot after dissecting it into its elements, and allowed so much for rail and ties.

Q. What are your unit values as used in that figure?

A. The unit value is $31.40 a ton for rail, 40¢ a

piece for ties and 60¢ a foot for all labor, grading and laying track.

Q. How did you arrive at the number of tons in the track?

A. It is a sixty-pound rail, sixty pound to the yard.

Q. All of it?

A. No, not all. There is a place at Cedar Lane where there is some heavier.

Q. You actually measured the quantity of each kind of rail?

A. Each kind, I got heavy rail, heavy special work, double track and single track.

Q. All right, go on.

A. Curves are in addition to the straight track, $989.74, depreciation $445.38; present value $544.36.

Q. Did you measure those curves?

A. Yes.

Q. And those figures are your personal estimate, are they?

A. Yes. Turnouts $420 value new; depreciation $189; present value $231. Culverts $528; depreciation $158.40; present value $367.60.

Q. How many culverts?

A. Three culverts.

Q. Mr. Brackenridge, after you give the heading of your next item don't give your figures until I have a chance to object.

Continuation of direct examination.

By Mr. Record:

Q. What is the next heading?

A. Private right of way and fencing.

Mr. Wakelee: I object to any testimony from Mr. Brackenridge on the value of the right of way.

Q. What is the foundation for your figures that you are about to give on that?

A. I estimated it at $1000 an acre.

Q. You don't know anything about values yourself?

A. Not a thing.

Q. You put it in at $1000 an acre?

A. I put it in ——

Mr. Wakelee: I object to any figures given by him.

Mr. Record: I think he can put the figures in but they have got to be supplemented by some other information.

Mr. Wakelee: What is the good of his putting that in? I am willing that all the items he can testify to should go in, but not items that he does not know anything about.

Mr. Record: I am assuming on the value of land out there that the board has before it its own assessed values,—anyhow it is a guide.

Mr. Wakelee: When you get down to the question of rights of way you have not proven anything. If you let this witness put figures in we have got to meet that whole situation.

Mr. Record: We will have no difference with you on that. We will take what you say except as to where you own property we will have to get some way to value it.

Mr. Wakelee: I am objecting to Mr. Brackenridge's estimate of value.

The President: Objection sustained.

Continuation of cross-examination.

By Mr. Wakelee:

Q. Go on.

A. Trackwork, Cedar Lane down to Annabelle Avenue, $1,091.71; depreciation $491.30, present value $600.41. To Lalor Street, City Line, $5,989.02, depreciation $2,695.06; present value $3,293.96.

Q. Did you figure that track work on the same basis as the track work you testified to a few months ago, up by the bridge?

A. You mean where that deep rail is?

Q. The $9,299 item, I refer to.

A. No, there is a different section of rail in there, 70 pound or 75 pound rail there.

Q. In which?

A. In that little stretch there.

Q. In the Annabelle stretch, you mean?

A. Cedar Lane to Annabelle is 75 pound "T". Feeder and overhead ——

Q. Did you estimate on that feeder and overhead?

A. Yes.

Q. All right.

A. $9,774.40; no depreciation $9,774.40.

Q. Why do you not allow some depreciation on the overhead and feeder?

A. The overhead is figured at about 20¢ a pound and it is worth about 27¢ now, so there is no depreciation.

Q. How about in May last?

A. I don't know what it was, probably somewhere around 18¢.

Q. It was less than it is now, wasn't it?

A. Yes.

Mr. Record: But you say it was probably about what?

The Witness: Eighteen cents.

Q. What have you figured it at?

A. Twenty, somewhere around eighteen or twenty.

Q. Then there should be a deduction there, shouldn't there?

A. No, I am not sure there should be. It may have been twenty. Copper has been fluctuating a great deal.

Q. Then you should allow depreciation item if you put it in at full value, shouldn't you?

A. No, I don't allow any depreciation on copper.

Q. At no time?

A. I would if you got copper now at 27¢, you might allow some depreciation on it. It has been going steadily up for a year, so there isn't any depreciation. You can sell old copper for more than you can get for new.

Q. Your figures are based on the present value, today, is that so?

A. Not today, it is about 7¢ below the price today.

Q. That is a very recent rise, isn't it?

A. I think that is a fair valuation for it, 20¢.

Q. How about the pole line, that is included in that, isn't it?

A. Yes.

Q. Why shouldn't you allow some depreciation for the pole line?

A. I didn't allow any.

Q. If you were going to buy that property you would want some depreciation allowed for on the pole line, wouldn't you?

A. There isn't much to depreciate.

Q. Wooden poles rot, don't they?

A. Yes, but they don't cost very much when they are put in new.

Q. How much do you think would be a fair allowance for depreciation on that item?

A. I suppose the life of one of those poles would be pretty nearly twenty years. You can buy them cheaper today than when they were put in fifteen years ago.

Q. That is the more reason for giving a depreciation. Your excuse with regard to the copper wire was that the cost of copper wire had increased in value. Now, you say with regard to the poles that the difference is because the cost of the poles has decreased.

A. Five per cent. depreciation would be 75% depreciation. They were figured at $4.00 which would be $3.00 a pole depreciation.

Q. How many poles?

A. An average of about eighty-eight poles to the mile.

Q. How many poles are figured in this item of $9,774.40?

A. It would be a depreciation of $244 a mile, about.

Q. Say $250?

A. Two hundred and fifty dollars would be all right.

Q. Per mile?

A. No, $244 a mile.

Q. How many miles are there?

A. A mile and three-quarters, about.

Q. How much?

A. It would be about $500.

Q. How about the insulation, didn't you allow

any depreciation for that insulation on the feeders?

A. No.

Q. Why not?

A. It is not customary to allow it.

Q. If you were going to buy that property you would be willing to pay the full cost value, would you?

A. I would rather have it with the insulation off than on, if I were going to buy it. Fifteen per cent. for engineering contractor's profit and contingencies, $5,396.73.

Q. One minute. I think I can correct you to save time if you will take that out. You figured fifteen per cent. including the right of way which you have not been allowed to testify to.

Mr. Record: You will have to reform that item and take 15 per cent. on all except the land.

The Witness: That is the value of all the property in Hamilton Township.

Q. Your figure that you are going to estimate the 15 per cent. on, that is what we want to know.

A. $35,976.18 minus $11, ——

Q. Don't cumber up the record with that. Don't forget that $500 too.

Mr. Record: We will straighten it out as to all those points with you.

Q. Mr. Brackenridge, your total was $35,978.18, wasn't it?

A. Yes.

Q. From that you want to subtract $11,114.80, the item which you did not testify to, and also sub-

tract $500, the item you are going to give us for depreciation, and that leaves $24,363.38?

A. That is right.

Q. You are trying to figure 15 per cent. on that. Now, $3,654.50 added to $24,363.38 makes a total full value of $28,017.88, is that correct?

A. All right, yes.

Q. Now, Mr. Brackenridge, if I told you as a fact that in constructing work of this kind the Public Service Railway Company only allows for its own estimate, for its purposes, 10 per cent. for all this overhead that you put at 15 per cent., it would throw some doubt on the advisability of your 15 per cent., wouldn't it?

A. No, it would not make any difference to me what the Public Service Company did.

Q. If the Public Service Company in New Jersey can build railways all through the state and only be required to add 10 per cent., do you still think the assessor ought to add fifteen do you?

A. I think fifteen is little enough, yes.

Q. Go ahead.

Mr. Record: What is this?

The Witness: Camden and Trenton in Trenton.

Mr. Record: What is this Camden in Trenton?

Mr. Wakelee: I don't know what it is.

A. Special work is the first item. I have special work $16,240.50; depreciation on the average at 50 per cent. over the whole system, $8,120.25, present value $8,120.25.

Q. Did you make that estimate yourself?

A. Yes.

Q. Did you measure up the special work?

A. Yes.

Q. What unit values did you apply there?

A. I used $100 for frogs, $120 for mate, $150 and in a few cases $175 for a switch, plus $62.50 for that double mate frog. Groove girder rail, 7 inches ——

Q. Groove girder rail, what is that?

A. Girder and groove rail, I mean, $8,976.73; $65,441.40; $18,976.17, making $93,394.30.

Q. What are the items that go into that total that you just read off? Are they the different sections of track?

A. Yes, that is the track form Lalor Street to Liberty Street, and on Adeline Street to Cass Street to Grand Street and on Liberty Street and Adeline Street, through Liberty to Grand and through Grand to Cass, through Cass to Lamberton to Federal, through Federal to Union, Union to Mill Street to South Warren to State.

Q. The items you read off are the different divisions of track on the streets you have now recited?

A. Yes, and in addition to that there is a track from Liberty through Adeline to the City Line, a distance of 5,129 feet.

Q. All right go on with the depreciation on that item.

A. The depreciation is $56,036.58, present value $37,357,72; tee rail, $6,369.34; depreciation $2,866.-20; present value $3,503.14. Overhead for the entire line, $20,363.79, no depreciation.

Q. And the present value?

A. $20,363.79.

Q. Just read that item for a minute. Shouldn't we have some depreciation there?

A. No, it is worth more than that on account of the advanced price in copper.

Q. How about the poles?

A. The poles seem to be in good condition.

Q. You say we should be entitled to same depreciation in Hamilton Township, why not the same in Trenton?

A. Those were wooden and these are iron poles.

Q. All iron poles in Trenton?

A. All except those in Liberty Avenue.

Q. What is the life of an iron pole?

A. I put some in in 1892, and they are still there in good condition.

Q. What do you estimate the life of these poles is, you examined them?

A. I should think they ought to be good for fifty years.

Q. Where did you ever hear of an iron pole lasting such a time as that?

A. I never heard of it. They didn't have them fifty years ago that I know of.

Q. Didn't you testify thirty years in the other case?

A. I may have.

Q. What has happened to cause you to change your mind?

A. I know poles that have been in for thirty years.

Q. We are not making a fight for this. We want your fair judgment on this. We think you ought to give us the depreciation, what do you think about it?

A. I think you might add 2 per cent. depreciation on those poles.

Q. What would that be? That is 2 per cent. a year, you mean?

A. I mean 2 per cent. ——

Mr. Record: What would you say was the life of a pole?

The Witness: Two per cent. a year that would be a life of fifty years.

Q. That is pretty long, isn't it?

A. Fifty years, no. The only place a pole goes is right at the ground line and that is only in certain conditions of the soil. That can be remedied by putting a sleeve on and imbedding it in concrete at a comparatively small expense, then it is good for another fifty years.

Q. Don't you think on that item of $20,000 a fair depreciation of the overhead construction poles would be $2500.00. You would want that if you were buying that property, wouldn't you?

A. Twenty-five hundred dollars?

Q. Yes.

A. Yes, I think that would be a fair amount.

Q. You will give us that, will you?

A. I think you might add that.

Q. All right, go on.

Mr. Wakelee: Now, I object to any testimony from this witness as to the office building and substation. He has not shown his competency.

Mr. Record: What is this item?

The Witness: Office building and contents.

Mr. Record: Have you had any experience in building that kind of a building?

Mr. Wakelee: I might save you time by saying that we pay that under another item. It is not involved in this appeal at all.

Mr. Record: Your point is that it ought to be stricken out of here?

Mr. Wakelee: He is not competent in that respect.

Mr. Record: Where is it located?

Mr. Wakelee: Liberty and Adeline. It is assessed to the Holland Company.

Mr. Record: Then that goes out.

The Witness: The next is office building.

Mr. Wakelee: I object to any testimony from this witness on the value of the office building.

Mr. Record: Do you know anything about the value of the office building?

The Witness: That is the assessed valuation.

Mr. Wakelee: These men can take the assessed valuation as well as he.

Mr. Record: I agree to that, but that is the way he has done it.

Mr. Wakelee: Just leave it out.

Mr. Morris: Is that assessed separately, too?

Mr. Wakelee: It is included in this appeal, that is the only difference.

Mr. Record: It is an item of property you own?

Mr. Wakelee: For the purpose of straightening out everybody,—as I understand it, this appeal takes two separate assessments as they appear on the books of the city of Trenton, 1, the property in the streets and the other this office building. So far as the office building is concerned, it is subject to this assessment, to this appeal, that is in this appeal. If you are to take it at the assessed valuation, what is the use of cumbering up the record with it? It is paid, we have paid the taxes on it.

Mr. Record: I don't understand there is any quarrel about the office building.

Mr. Wakelee: Then let's drop it. That is all I want to do.

Mr. Hartpence: I think he should testify as to the value of the property located in the street and then this assessment should be added.

Mr. Devlin: To the office building.

Mr. Burd: To the total.

Mr. Wakelee: We don't object to that.

Mr. Record: We will add it that way, take the property in the streets and add the assessed value of this office building.

Mr. Wakelee: My point is, how can you appeal from an assessment and come before the Commission and say you are willing to take the assessed valuation? There is no appeal on this. It is on the books and the bill is paid. You are satisfied with

the amount and what is the use of our talking about it? It is not before us at all if you are satisfied. The only dispute is that our property in the street is too low.

Mr. Record: Let this witness testify as to the value of the property in the street.

Mr. Wakelee: Then he is all done.

Mr. Record: Is that all of the property of the Public Service?

The Witness: That is all the Public Service.

Mr. Wakelee: You have not added your percentage. Are you going to do that?

The Witness: Plus 15 per cent., makes a total of $129,616.96, subject to correction.

Mr. Record: Less the 15 per cent. on the value of the office building.

Mr. Wakelee: I think he should give the totals of his figures with these things left out.

Mr. Record: I don't see why we can't put these figures in the way he gave them and on cross-examination you have brought out certain things and we can make those deductions.

Mr. Wakelee: If you want to go on I will make them now and put it in later.

Mr. Record: We won't quibble over the figures.

Now, Senator, these books show $11,650 as the value of your office building, the assessed value of your office building. Is that agreed to?

Mr. Wakelee: It is agreed that is the assessed value.

Mr. Record: The difference between us is as to whether there should be any addition to that.

Mr. Wakelee: I don't think there was any dispute about that. There is no evidence that it should be applied to that.

Mr. Record: He has added it.

Mr. Wakelee: I can add the amount but that doesn't say it makes it so.

Mr. Record: I want to get on the record that $11,650 is the assessed value.

Mr. Burd: The total value.

Mr. Wakelee: Before we close the case I want Mr. Brackenridge to give us the totals of the items he has testified to.

Continuation of cross-examination.

By Mr. Wakelee:

Q. You have a total on your sheet here of $112,-710.40. That is right, isn't it?

A. It is.

Q. That includes $35,245.50 for the sub-station, which goes out?

A. Yes.

Q. That wants to be deducted?

A. Yes.

Q. It also includes your figure of $8,120 for the office building, and that goes out?

A. I am not so sure about that.

Mr. Record: You say $8,000 is the figure for the office building?

Mr. Wakelee: He wants to lower your assessment.

The Witness: I didn't say the building at all. I testified this was the assessed value given me on that building.

Mr. Record: That is not the assessed value, Senator. There is a mistake here.

Q. Mr. Brackenridge, if your estimate is confined to the property in the street then that $8,120 should go out, shouldn't it?

A. Yes, if it was confined to the property in the street.

Q. That is what we are confining it to now.

A. Then it should go out.

Q. In addition to that, $2500 depreciation which you put on it should go out, isn't that right?

A. $2500 for overhead.

Q. That is a total of $45,865.50 which should be deducted from your general total?

Mr. Record: What is your figure, Senator?

Mr. Wakelee: My figure is $66,844.90.

Mr. Record: To which we want to add the assessed valuation of $11,650?

Mr. Wakelee: Correct.

Mr. Record: These are our figures, Senator, we added the 15 per cent. of the $66,000 and that makes $76,000; $11,650 makes $88,521.64.

Mr. Wakelee: What does your 15 per cent. amount to?

Mr. Record: $66,844.90, and that amounts to $10,026.74. That is the way we figure.

Mr. Record: You want to add your $11,650 to that, and that makes $88,521.64.

Q. Are you sure, Mr. Brackenridge, that you didn't figure in the 15 per cent. in the items as you have given them here?

A. Yes, I am quite positive of that.

Q. In this typewritten sheet you made up as to this value, I don't see anything about the 15 per cent. to be added. That comes out of your mind afterwards, is that correct?

A. I see you think I didn't have it on when I came here. It was an oversight on my part. It should have been on. I afterwards put it on. We worked until three o'clock on it and we had an outside typewriter to write that for us and it was balled up.

Q. How much time did you spend on the valuation of the property of the Public Service Railway in these two municipalities?

A. I came down here last Tuesday and have been

on it ever since, on the Public Service and New Jersey and Pennsylvania.

Q. I am not interested in that. How much time did you spend on the Public Service Railroad?

A. Half my time was on the Public Service.

Q. Since last Tuesday?

A. Yes.

Q. Here every day?

A. I was here until Friday night, when I went home, and came back Sunday night.

Q. Wednesday, Thursday and Friday, three days altogether half of that on us, that makes a day and a half?

A. I came here last Tuesday and went away Friday night.

Q. You were hanging around court here last Tuesday pretty nearly all day. I saw you at noon on Tuesday. You hadn't done any appraising then, had you?

A. You saw me on Tuesday?

Q. Wasn't Tuesday the day we were all down here?

Mr. Record: That was Friday.

A. I wasn't here anyway. I never appeared before this board.

Q. You were here Friday, weren't you?

A. I was here in town, but not before the board.

Q. Weren't you up here in the court house?

A. No, I was not here.

Q. Where did I meet you?

A. I don't know where I had that pleasure.

Q. I was very surely talking to you.

A. I think I met you in Hoboken.

Q. You still maintain, do you, that notwithstand-

ing the practice of reputable companies to only add 10 per cent., you think you ought to add 15, do you?

Mr. Record: I don't think you ought to ask that.

Q. Is that so?

A. That is so, in these quantities, in these estimates,—the actual number of feet, supplies, bolts, and everything that go to make up the structure,—there is bound to be some loss, some little extra labor, and 15 per cent, is not very much to add for engineering, contingencies, and contractor's profit.

Q. If this property could be constructed with an overhead addition of only ten per cent., then that ten per cent. added would be its true value, wouldn't it?

A. Yes.

Continuation of direct examination.

By Mr. Record:

Q. Take up the New Jersey & Pennsylvania Traction Company. That is wholly within the city, is it?

A. Yes.

Q. Give your figures as to that.

A. The New Jersey & Pennsylvania Traction Company in the city of Trenton, road, bed and track, 7 inch groove rail, section 3, fifty-seven; 96 pound rail, 30 foot length, West Hanover Street to North Willow, from there to Gordon Street, the car barn property, 3180 feet of single track, car barn property siding 888 feet single track; on West Hanover to Calhoun Street, private bridge over Sanhicon Creek, it is 3175 feet. There is a siding on that street of 1,008 feet, making a total of 8,251 feet of single

track, $2.26 a foot, $18,647.26. Special track work and labor on above streets, $7,602. That includes all frogs, switches and guard rail, crossings and the girder rails. The 75 pound T-rail is 600 feet. From the Sanhicon Creek to the bridge over the Delaware River, and half the width of the Delaware bridge, six hundred and some odd feet more. And from the private right of way at North Willow to the City Line the car bar property at North Willow and Gordon Street to the City Line is 2,027 feet of single track. In and about the car barn and yard, 1,142 feet; main track and siding, Calhoun Street and company's bridge at Sanhicon Creek to Delaware River 466 instead of the 600 I gave you, making 3,635 feet of single track at $1.78 equals $6,470.30. Special track work, frogs and switches on above streets $640. Special work and tracks and car barn and Hanover and Warren Streets $5,717. Overhead, entire line in city $5,812.80. Feeders, entire line in city, $2,946, making a total on that sheet of $44,735.-28.

Mr. Katzenbach: I suppose we had better cross-examine on that.

Cross-examination.

By Mr. Katzenbach:

Q. That is all of your track?

A. We have not finished yet. The interlocking tower of the Pennsylvania Railroad is $8000.

Q. What do you know about the interlocking tower? Whose property is it on?

A. I suppose it is on the Pennsylvania Railroad property.

Q. Do you know that is not assessed against the Pennsylvania Railroad Company?

A. No, but I know the trolley company have to pay for it.

Q. Assuming they did have to pay for it years ago, it doesn't still remain the property of the trolley company. It is on the land of the Pennsylvania Railroad Company, isn't it?

A. It is on the line also, on the land of the trolley company and belongs to the trolley company, I assume.

Q. You have no right to assume that. What do you know about it? Did you ever inquire as to whether that was assessed against the Pennsylvania Railroad as a part of their property?

A. I have had similar instances myself where I had to pay for the tower and taxes and operation.

Q. I am asking you whether you have ascertained whether that is Pennsylvania Railroad property or not.

A. No, I believe it to be the property of the trolley road.

Q. What basis have you for that?

A. Because it would not have been put there if it had not been for the trolley road. They put it there and probably own it, just the same as they put rails in the street.

Q. Can't you put property on somebody else's land and have the party that owns the land pay the taxes on it afterwards?

A. If you deeded it to them you could.

Q. You have given the property in the streets, haven't you?

A. I have some more property.

Q. I am talking about property in the streets, rails and ties ——

A. Yes.

Q. Have you got more than that?

A. I have got one more bridge in the street at Sanhicon Creek.

Q. How do you know that belongs to the trolley company and not the water power company?

A. I learned it was put there by the trolley company.

Q. Does that necessarily cause the trolley company to own it?

A. I should think so, yes.

Q. Do you know anything about it?

A. They have to pay for it.

Q. It might be that you had to pay for a thing, but that does not necessarily follow if you pay for something for somebody else that you own it.

Mr. Record: It seems to me that you haven't any right, if the board please, to argue with this witness about that.

Mr. Katzenbach: He is stating it as a matter of fact. It is up to you to prove that we own it. He can't say that we own that.

Mr. Record: He says he assumes you own it because on inquiry he judged that to be the fact.

Mr. Katzenbach: I object to that testimony. We have got to have the person who says so. That is hearsay evidence.

Mr. Record: All we are proving is the value.

Mr. Katzenbach: It is up to you to show that we own it.

Mr. Record: We show what you are using and what it is worth. If it is not your property you will tell the board. It is your business to tell the board and be frank with them as to whether you own it or not.

Mr. Katzenbach: We don't own it. We had to pay for it originally, but we don't own it.

Mr. Record: That is part of your case.

Mr. Katzenbach: No, it is not.

Mr. Record: We assume that you do own it. You are using it.

Mr. Katzenbach: Besides that, it is taxed as the property of the Trenton City Bridge Company.

Mr. Record: This witness has told all he knows about it.

The President: Is it your contention that you do not own the property?

Mr. Katzenbach: No, the New Jersey & Pennsylvania Traction Company does not and never did own it, they never paid for it.

The President: It would be up to you to prove they do own it.

Mr. Record: We come here and show you a lot of property that has been under assessed. We are only now going through the form as a convenience to help this board as to how to divide it in this town-

ship and what we think of this work. In my opinion all I thought we had to do was to tell you to locate the people it belongs to. You should locate who it does belong to and ascertain who owns it.

The President: That is what we are trying to do.

Mr. Record: We can't enlighten you any more. We find out they are using it and it is worth so much money.

The President: All right. You may proceed.

Q. Have you stated all the property that is in the streets?

A. Yes, I have some in the river here now, the Delaware River bridge I have here.

Q. You have the Delaware River bridge?

A. Yes.

Q. Do you know that there is a company known as the Trenton City Bridge Company?

A. No, I don't know that company. I found a road operating tracks and the bridge being used by the company, and I put it in my estimate.

Mr. Record: What did you put in, the tracks or the bridge?

The Witness: I have got them both in there.

Q. Are you wholly through?

A. I am through with everything on the street, if you consider the bridge on the street.

Q. Now, Mr. Brackenridge, how did you make your figures for the track on Calhoun Street, did you make a separate estimate for the track on

Calhoun Street or did you group it with some other tracks?

A. I made a separate estimate.

Q. What is the length of the track on Calhoun Street?

A. Do you want it exactly from the centre of the street or taking the point of curve?

Q. Take either one so that we get it.

A. 1,118 feet.

Q. Is that double or single track?

A. That is single track with the exception of a little spur, as I have got it, near station 27, plus 39 to station 25 plus 75.

Q. What rail is that composed of?

A. That is a "T" rail, 70 pound "T," 75 pound.

Q. What is it?

A. Seventy-five pound "T".

Q. Have you made a separate estimate for that part of the track of the company?

A. Yes.

Q. Just give the figures you made for that part of the track.

A. $1.78 a foot.

Q. You say $1.78 per foot. What does that include, the ties and the rails and the sub-structure, and the spikes and the bolts and plates, does that include all that, all the overhead too?

A. It includes rails, spikes, ballast, joints, labor.

Q. That cost $1.78 per foot?

A. $1.78.

Q. When was that track put down there?

A. I allowed fifteen years on all that track, 45 per cent. depreciation.

Q. You say you allowed fifteen years at 3 per cent. a year?

A. Yes, sir.

Q. Now, in your estimate, in the city of Trenton for depreciation you allowed 4 per cent. a year?

A. This is "T" rail and I allowed four per cent. on the girder rail and three per cent. on the "T" rail.

Q. You allowed 4 per cent. on the girder and 3 per cent. on the "T", so that you allowed 45 per cent. depreciation on that. Then what was your present value of that track on Calhoun Street?

A. I have not got that separated.

Q. You have not got that separated?

A. It would be 45 per cent. depreciation.

Q. Can't you give the exact figure you estimated the present value of the track at?

A. No, I have all that "T" rail and girder rail in together.

Q. How many feet of track with girder rail have you got?

A. I have got 8,251 feet of single track with girder rail.

Q. 8,251 feet of single track of girder rail. What was the cost of that track per foot, according to your opinion?

A. $2.26.

Q. That is all of the girder rail track, isn't it?

A. Yes.

Q. What depreciation did you allow on that? Sixty per cent., didn't you?

A. That is 60 per cent., yes.

Q. What was the total cost of that and what was the depreciated value of all that?

A. The total cost, $18,647.26. The present value is 60 per cent. off.

Q. You say it is 60 per cent. off?

A. Yes.

Q. How many feet altogether of "T" rail did

you make the measurement of this "T" rail track?

A. Mr. Swan and myself measured it.

Q. Together?

A. Yes.

Q. Did you measure the "T" rail track together?

A. Yes.

Q. How many feet altogether of "T" rail track?

A. We have got three thousand six hundred and thirty-five feet.

Q. That is the total of "T" rail. Where is that "T" rail track?

A. From the car barn property at North Willow and Gordon Street to the City Line, 2,027 feet of single track in and about the car barn and yard, 1,142 feet main track and siding, Calhoun Street and railroad company bridge at Sanhicon Creek to Delaware River bridge 466 feet, making a total of 3,635 feet at $1.78 a foot, equals $6,470.30.

Q. What is your overhead construction, what did you estimate that at?

A. I think I estimated that at $2600 a mile. Wait a minute; I will get it. (Examining papers) $2800 a mile.

Q. How do you make that? What do those figures consist of?

A. They consist of iron poles, span wires, trolley wires.

Q. Give the number of iron poles per mile and the cost.

A. In this case we counted all those poles, 88 poles heavy No. 2 iron poles, 700 pounds at 2.6¢ per pound, $18.20 per pole, $1,601.60. No. 4 iron, 825 pounds at $21.45 per pole, $85.80, $1,687.40. Hauling, setting, painting at $3.55 per pole, trolley wire $326.60.

Q. What is that?

A. It is for the hauling, setting, painting, $3.55

per pole, $326.60, trolly wire, $22.33; 00—copper wire at 15¢, $335, labor running at $100, spans, $44.-53; 2200 feet of 3/8—7 spans at $11.00 per M, $24.20; labor putting up spans $1.30, $57.20; 88 insulators $44; bolts 12¢ per pole, $10.50; 44 hangers. 345, $15.18; 44 ears at 35¢ each, $15.40; 2 splicing ears at $1.12, $2.25; 20 globe spans at 25¢, $9.00; 1 sectional insulator at $6.90, $6.90; 25 poles at 40¢, $10.00; 44 sets sundries at 12¢, $5.28; labor on above $133, making $2,781.90.

Q. You say $2,781.90. That is simply your estimate of what should go in a mile line, what you absolutely saw and counted,—you didn't count all those things?

A. We did count them. We used this figure.

Q. You say you didn't, or did?

A. We counted the poles.

Q. The other things?

A. If we count the poles the other things count themselves.

Q. In your estimate of present value you have made no account of depreciation for any of these overhead items, have you?

A. No, sir.

Q. Yet you testify and produce in the case of the Trenton & Mercer County Traction Company a statement that the depreciation was 4 per cent. a year, didn't you?

A. I don't remember whether I did or not.

Q. I am asking you if you know whether you didn't estimate the depreciation at 4 per cent. a year. Doesn't that refresh your recollection, on overhead wire? (Handing paper to witness.)

A. Yes.

Q. You did so testify, didn't you? The depreciation on this item of overhead would be 60 per cent. on that basis, would it not?

A. It might not be the same character of construction. As a matter of fact, it is not.

Q. What is the difference in construction?

A. This road has got a good deal better construction than the Trenton road.

Q. Do you mean to say in fifteen years it has not depreciated at all?

A. It has depreciated some, I suppose a little, but it is worth more today than the day it was put in.

Q. Why is it worth more today, than the day it was put in?

A. On account of the increased value of copper that is in there.

Q. That is simply because copper today is 27¢ a pound, that is your idea?

A. Pretty nearly twice what it was.

Q. What was copper on May 20, 1915?

A. It was not very far from 20¢.

Q. What were you basing your value upon, what estimate, of what date?

A. That is a mistake in that price on there. It ought to have been about 20¢. I meant to make it 20. We have made an error in it somehow.

Q. As a matter of fact, would you, as an expert, say the overhead construction of trolley line did not depreciate in fifteen years?

A. It would depreciate if the price of copper remained the same. There would be a depreciation.

Q. You calculated $2800 a mile and one of the largest items was the steel poles which you calculated at $1,601.60 a mile?

A. Yes.

Q. Those certainly depreciate, don't they?

A. I think it would be fair to allow some depreciation on that?

Q. You allowed 4 per cent. a year in the Trenton &

Mercer County Traction Company. Do you think that would be a fair figure?

A. I think so.

Q. That would be 60 per cent. depreciation on what you have testified to here as to the value, wouldn't it, for the fifteen years?

A. Four per cent.

Q. Fifteen years is 60 per cent.?

A. In everything but the copper.

Q. Let us take up the copper. Doesn't a trolley wheel come in contact with the copper, isn't that the way the electricity is communicated to the motors?

A. By the trolley wheel?

Q. By the trolley wheel attaching to the copper?

A. Yes.

Q. Doesn't that copper become worn out? Doesn't the trolley wheel every time it passes over it take off just a little?

A. It wears out in time.

Q. It wears out, doesn't it? What is the life of a trolley wire, how many years?

A. It would have to be figured by the number of cars that run over it and the number of wheels that pass over it.

Q. Have you ever made any calculation as to how rapidly it wears out—in your experience in Brooklyn how often did you replace an overhead trolley wire?

A. We had cars running about every thirteen seconds there, we replaced a trolley wire somewhere in the neighborhood of five years.

Q. How long on curves would it last?

A. Probably half that time.

Q. You would have to take into account the depreciation of copper wire, wouldn't you?

A. Either that or put up metal troths to save the wire.

Q. There were no metal troths here in this road, were there?

A. No.

Q. What special work was there there, Mr. Brackenridge, on all the feeders, you made no depreciation on the feeders but you did make a depreciation of 4 per cent. a year on the feeders in the Trenton & Mercer County Traction case?

A. I don't remember.

Q. Let me refresh your recollection as to what you did. On the overhead line of feeders the depreciation was 4 per cent., wasn't it?

A. That is what that shows.

Q. That would be a fair depreciation then for this, wouldn't it?

A. I can't agree with you, Mr. Katzenbach, I don't see how there can be depreciation when the wire is worth twice as much today as when it was bought.

Q. What was it worth the day it was bought? Do you know when it was bought?

A. I know wire about fifteen years ago was anywhere from 9 to 15¢.

Q. You have no idea as to what this valuation was on overhead feeders?

A. It was a great deal less than it is today.

Q. Wasn't in May, 1915, the cost of feeder wire 12¢ a pound?

A. In May.

Q. Couldn't it be bought for that?

A. That I am not sure of, I don't know.

Q. What about the special work, Mr. Brackenridge, what special work was there there?

A. Special work in car barn at Hanover and Warren, $5,717.

Q. You allowed for the fifteen years on that work, what percentage?

A. Fifty per cent.

Q. Didn't you testify before the Board of Public Utility Commissioners that the proper depreciation on special work was 10 per cent. a year?

A. Ten per cent.?

Q. Yes. Let me show you your document there.

A. That has been over ten years now.

Q. I will ask you whether you didn't testify that the annual depreciation was 10 per cent.

A. Not on this particular piece of work.

Q. On special work, generally?

A. Yes. You don't get the traffic on this that you do on other pieces.

Q. You have no personal knowledge as against whom the interlocking tower is assessed, have you?

A. As to whether it is assessed or not?

Q. As to whether it is assessed as against the Pennsylvania Railroad Company or whether it is on there property, or the circumstances under which it was erected?

A. It was erected because the trolley company laid their tracks across the track of the Pennsylvania Railroad Company and in order to do it they made them install this interlocking tower.

Q. That is something somebody told you, isn't it?

A. I would not have to be told that.

Q. Were you told, or were you not?

A. As a matter of fact I was told, but I would have seen it.

Q. Do you know or not whether that is Pennsylvania Railroad property?

Mr. Record: We went over that before, what is the use of going over it again?

Q. Do you know or not whether the city bridge,

the Delaware River bridge and the Sanhicon Creek bridge are assessed to the City Bridge Company?

A. No, I don't know.

The President: That is a separate assessment. The Sanhicon bridge is not assessed separately to anyone.

Mr. Katzenbach: It is the Trenton City Bridge Company property.

Mr. Leuckel: It may be, but it is not designated so on the assessment.

Mr. Katzenbach: I don't know about that, but the title of the land runs to the northerly side of the water power.

Mr. Leuckel: The City Bridge Company has a separate assessment.

Mr. Record: There is a bridge that is not assessed to anybody.

Mr. Katzenbach: I only know that I have examined the title to that property, and it is shown on the map, I think, as to the title.

Q. Now, then, Mr. Brackenridge, go ahead and answer the question.

Mr. Record: What is the question now?

Mr. Katzenbach: It is your question to give the balance of the overhead line in the city.

Mr. Record: We have already taken that up and been examined and cross-examined on it.

The Witness: Car barn ——

Mr. Katzenbach: I object to that. Have you any knowledge, any experience in the values of properties in the city of Trenton for real estate purposes?

The Witness: I have experience in valuing buildings, building buildings, and I know what it is worth.

Mr. Katzenbach: I mean in land.

The Witness: I took the assessed valuation for the land and estimated the value for the building.

Mr. Katzenbach: I object to that.

Mr. Devlin: If he could testify to the value of the building and fix the city assessment as to the value of the land, what could be the objection? He doesn't attempt to assess the land but takes the present assessment that you have agreed to. You paid taxes on the present assessment on the land.

Mr. Katzenbach: Buildings and land both, and that was sustained in the matter of the Public Service Corporation, that objection.

Mr. Devlin: In assessing in Trenton the land and buildings are separately assessed.

Mr. Katzenbach: You sustained the objection in the other case.

Mr. Morris: That was with reference to the land.

Mr. Devlin: That was assessed by another corporation.

Mr. Hartpence: The office building was cut out of the testimony and it was added on later at its assessed valuation.

Mr. Katzenbach: It would seem to me that nothing this witness could testify to as a matter of building in the city of Trenton could offset an assessment made by our own board of assessors.

Mr. Devlin: It is a fact anyhow.

Mr. Record: What is the point now?

Mr. Katzenbach: You have a certain piece of real estate here that he has put down here and it has all been assessed, buildings and land and everything of that kind, and I can't see what you want to go into it again for.

Mr. Record: We put down the assessed value of the land and he has put what he thinks is the cost to reproduce the building.

Mr. Katzenbach: He does not distinguish between the two but says he has had no experience in real estate values in Trenton.

Mr. Record: He has taken the assessed value for that. He is not competent to assess it. I don't see what you are arguing about.

Mr. Katzenbach: I am not arguing about anything. It is a continuation of your question.

Mr. Record: I have not asked any question.

Mr. Devlin: Suppose you testify to the value of the building.

The Witness: I valued the building at the car barn,—four different pieces of the building,—and have that down at $24,886.80. In addition to that we have an office building there which I estimated at $7,375. That is all in the same property. There are four buildings there.

Mr. Leuckel: Are those replacement values, or what you consider present values ?

The Witness: I should say they are present values. I figured them at 8¢ a cubic foot, which is a low rate for that character of building. I got in addition to that 2 per cent. depreciation, which is hardly enough depreciation for that character of building, if it hadn't been figured on such a low basis.

Mr. Record: Take your next figures.

The Witness: You want the assessed value of the land. The total value of the building and land, $53,336.80; car bar at North Willow and Gordon Streets, 126,880 cubic feet at 6¢ a cubic foot, $7,612.80, less 2 per cent. depreciation; land around this car barn 326 feet by 220, or ninety-five one hundredths of an acre, call it one acre and put it down at $2000.

By Mr. Katzenbach:

Q. Is that the assessed value?
A. I didn't have the assessed value.
Q. That is what you think it was worth?
A. That is what I think it was worth.

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

The President: Strike that out.

Mr. Record: I don't think he has qualified as a land expert.

The Witness: I put those items at what I thought they were worth. I would call attention to the fact that they were there. There is a small building 24 x 30 x 12, $600. That makes a total of $10,212.80; right of way from the car barn to the City Line is one piece, 216 x 30 x 243 ——

Q. Is that just simply a right of way?
A. Private right of way, yes.
Q. What is the value of that?
A. I put that down at $2000 an acre, and that makes a total of $2,224. I put down the rolling stock at $30,200, present value. The items are four new passenger cars.
Q. You said you put it down at $30,200, is that it?
A. Yes, present value.
Q. Mr Brackenridge, you say there were three buildings upon this terminal property at West Hanover and Chancery?
A. That is the way we measured them up. There is one building 40 x 87 x 61.
Q. How long ago was that building built?

A. I assume when the railroad was built, fifteen years ago.

Q. Do you know whether or not it was there some twenty-five years ago, before the railroad was built as a livery stable?

A. No.

Q. You just simply estimated it by cubic feet, is that it?

A. Yes.

Q. And don't know anything at all about the history of the building?

A. I wasn't interested in the history. I went over the building and saw the character of construction and knew about what it cost.

Q. Did you make an actual measurement of it by a rule or line?

A. I measured it with a steel tape.

Q. Who was present?

A. I was there.

Q. Anybody else?

A. Mr. Swan and Mr. Rand.

Q. What measurement did you give for the building on the corner of Chancery, how did you measure the cubical contents?

A. The main building on the north end, 61 x 87 x 40 feet high.

Q. Is that wood or brick?

A. It is brick most of the way up and the balance is wood.

Q. What did you make it?

A. That is 87 x 61 x 40.

Q. I mean to say you said that you estimated it at 6¢, didn't you?

A. At 8¢ a cubic foot.

Q. At 6¢. This was the one at six or was it the car barn that had six?

A. This is six at North Willow and Broad.

Q. What were the number of feet, cubic feet?

A. I don't know what it is, I haven't got it here, but it is in these papers somewhere. It is 87 multiplied by 61 by 40.

Q. What were the dimensions of the second building?

A. The one in the corner, it is 35 x 25 x 15.

Q. That is inside of the first one, isn't it?

A. It is right in the angle there, it is not inside, no.

Q. What is the third one?

A. The third one is 55½ plus 79 one way by 28 feet wide by 18 feet high. That completes those three buildings that make up the car barns. The office building is 25 feet wide and 59 feet deep and two stories high, 25 feet.

Q. What depreciation did you allow per year on those?

A. Two per cent.

Q. For what number of years?

A. Fifteen years, 30 per cent.

Mr. Katzenbach: That is all.

RANKIN JOHNSON, a witness being duly sworn on behalf of the city, testified as follows:

Direct examination.

By Mr. Record:

Q. Mr. Johnson, I show you a table which was made up by Mr. Betts, which purports to show the amount of interest and rentals which your company

guaranteed to pay for a series of years. Look at that and see if that is correct according to your understanding. (Handing paper to witness.)

A. I think that is correct. If there were any mistakes on it I would have to check it to be sure.

Mr. Record: I put that in, subject to any correction.

Mr. Katzenbach: That is objected to, as it has no bearing.

Mr. Record: The lease has been admitted. The lease was a sale. I shall argue that this property was sold to a willing purchaser, from a willing seller to a willing purchaser in the form of a lease. The lease shows there are certain outstanding bonds, the interest on which shall be paid, and certain amounts of rental. This is a computation made up by Mr. Betts of the Public Utility Board. I shall offer that anyhow as Mr. Betts' statement with reference to this property, and this gentleman I ask to verify merely as to the accuracy of it, because if we have a right to put the lease in, which I understood you didn't object to even, we have a right to put in an interpretation of it.

Mr. Katzenbach: I think not. I object to the offer.

Mr. Record: That shows the amount of interest and rentals that Mr. Johnson's company agreed to pay when they took the property over. It is measured by its total value, not the measure of its taxable value.

The President: We will reserve our decision.

Mr. Katzenbach: That is all right.

Q. Mr. Johnson, what is your connection with the Trenton & Mercer County Traction Company?

A. President.

Q. How long have you been connected with them?

A. Since October, 1910.

Q. Did you testify in the Public Utility case that you made a valuation of this property in detail, of the Trenton & Mercer County Traction Company, about 1910?

A. Yes.

Q. What did you testify that you found the replacement cost of that property to be in that year?

A. I would have to refer to my notes.

Q. Did you not testify that you found the replacement cost in that year three millions of dollars?

Mr. Katzenbach: Objected to, on the ground that we must determine the value of this property as of May 20th, 1915.

Mr. Record: I am coming to that.

Q. Isn't that a fact?

A. It was about that, yes.

Q. Didn't you testify that since that time down to the fall of 1915, when the case was up, that some eight hundred thousand dollars had been spent upon that property in addition, in putting additions to it, beyond what you found there in 1910?

A. I testified that money had been expended for road and equipment and rehabilitation.

Q. Did you testify that the replacement of the

value of the property controlled by the Trenton & Mercer County Traction Company was, in the fall of 1915, in excess of $3,400,000 tangible property?

A. May I ask you to repeat that?

Q. Did you testify that the replacement value of the property in the fall of 1914 exceeded the sum of $3,400,000?

A. Yes, new.

Q. Replacement new. How much of that property had been put into use, purchased since May 20th, 1915?

A. I don't know as I quite get that.

Q. You made that value as of the fall of 1915, didn't you?

A. Yes.

Q. Was there any particular change between September, 1915, and May 20th, 1915?

A. Yes, we had done something. I think, to correct the record, that you said 1914 at first.

Q. Perhaps I did. It should be corrected.

A. During the season of 1915 we reconstructed about 5,000 feet of track, single track, except that 1600 feet of that was the old rail which had been used in the reconstructing. Besides the ties used in that section of the track we replaced with new ties about 12,500 old ties. We made maintenance and repair expenditures, and the various other items of the property which would bring them up to condition. That was done between May and September, because that is the season.

Q. Did you testify as to the amount of depreciation when you gave this replacement value of exceeding $3,400,000, did you put another figure on it for depreciation?

A. I did not.

Q. Did you testify that, in your opinion, the value

of this property, intangibles and tangibles together, was in excess of four millions and a half?

Mr. Katzenbach: That is objected to because it takes into this an element known as intangible value, which could not be a subject of inquiry before this board.

Mr. Record: That is the same point we have had up several times. It is a subject for argument. I don't introduce it for the purpose of taxing that but for the purpose of arguing as to what is the real value of the tangible.

The President: Objection sustained. You can argue that.

Mr. Record: It was admitted before.

Mr. Katzenbach: This is an entirely different proceeding, Mr. Record.

Mr. Leuckel: It is sustained for the purpose of arguing.

(After Argument)

Cross-examination.

By Mr. Katzenbach:

Q. Mr. Johnson, as I understood your testimony, you said that your opinion was merely as to the cost of reproduction of the property, was it not?

A. Reproduction new, yes.

Q. Reproduction new, and you did testify on the

subject of what you considered the value of the property to be for taxing purposes in that case, did you not?

Mr. Record: I object to that. I have asked this witness a narrow question as to what he estimated the cost to reproduce this property. I have not asked his opinion of value at all, but I have asked what he estimated the cost to reproduce it at. There is no question about taxation or rate making or anything else.

The President: Objection sustained.

Mr. Katzenbach: I want to ask Mr. Johnson a few questions on direct examination.

Mr. Record: That is for your side?

Mr. Katzenbach: It probably would not be considered cross-examination.

Direct examination.

By Mr. Katzenbach:

Q. Mr. Johnson, there are certain figures testified to by Mr. Rand with reference to the receipts of the property and with reference to the operating expenses and taxes for the year 1914. Were those figures correctly stated by Mr. Rand?

A. I think not.

Q. It is stated that they were given from your testimony. You may refresh yourself.

Mr. Katzenbach: This is merely for the purpose of correcting a minor error or two.

A. (Witness refers to papers.) Our gross receipts for the year 1915 were ——

Mr. Record: I am talking about 1914.

A. For the year 1914, $776,548.48; our operating expenses, taxes and rehabilitation for the year 1914 were $523,861.78, leaving $252,686.70. We deduct $65,000 for the depreciation fund, which would leave $187,686.70. If the depreciation fund were provided for that would be the net result.

Q. Mr. Johnson, what taxes were paid by your company in the year 1915, at the conclusion of the year 1915, for the property?

A. We have paid as property taxes, $21,554.72; franchise tax, $32,326.65, making a total of $53,-881.37.

Mr. Record: What year is this, Mr. Johnson?

The Witness: This is the year 1915, and that is only for city taxes, not including Federal Corporation taxes.

Q. I meant the taxes that these different municipalities were paid, what was the total of that?

A. $53,881.37.

Q. There has been a reference here to street paving. What is that, approximately, annually?

A. During the past five years we have spent for replacement and repairs to paving an average of $25,446.90 per year, which does not include some. Quite a number of times we sent our own maintenance forces to repair spots in brick and block paving, and this annual paving item added to the tax would make $79,328.27.

Q. There was a statement made here with reference to 106,000 yards, approximately of concreting. Is that concreting anything that forms a part of the paving?

A. No, that is part of the track laying. The paving commences at the top of the tie, we consider it is from the top of the tie up. In our investigations and measurements we seem to have somewhat more than 200,000 square yards of paving in the city of Trenton, and we estimate it that that paving had cost on an average about $2.20 a square yard.

Q. What was the total cost of the paving that the company has paid for?

A. About $440,000 is what we make as the capital investment in paving. One further point in connection with that testimony, was, as I understood it, that the concreting which was allowed for by Mr. Rand as a deduction from his paving estimate amounting to about $63,000,—he said it was over 106,000 square yards of concreting, and that that underlay all the paving so there would have been 106,000 square yards of paving. The ties would occupy some space so in this 106,000 square yards of paving there must be less of that concrete between the ties, and it was not true that there is that concrete between all the ties in the old construction, and by deducting that from paving it would leave his allowance for paving very small. I think that approximately $63,000 or $64,000 should be deducted for the paving.

Mr. Katzenbach: That is all

Cross-examination.

By Mr. Record:

Q. What do you say that concreting in the city of Trenton has cost?

A. I would have to look up my notes. That is included in my estimate.

Q. Is there concrete under the Belgian block paving between the ties?

A. Yes, we laid the track and then we put sand on top of the ties and then block on that.

Q. Do you testify that, as a matter of fact, there is not the amount of concrete that Mr. Rand has testified to in your system, in Trenton?

A. No, I say, in that estimate of paving shown on his estimate sheet and in his testimony today, if I understood it correctly, he said he would deduct from that paving estimate 106,000 square yards of concrete, surface yards of concrete, at 60¢ a yard, and that there was that same amount of paving. Therefore, if I understood him correctly, it meant there was 106,000 square yards of paving in the city of Trenton and that he assumed that under that and below the surface was the same surface area of concrete which he deducted from his paving and added to the taxable property of the company at 60¢ per square yard.

Q. Do you deny there is that quantity of concrete, you don't deny that?

A. I don't know.

Mr. Katzenbach: The concrete would not be there if it was not for the street paving, would it?

The Witness: No, it would not be because we

don't put concrete between the ties where there is no paving, where we are not on a street.

Q. Isn't it better construction to do that?

A. That is a question. As an illustration, we have a case now, the crossing over the Pennsylvania Railroad at Warren Street, and we are planning to work over our crossing with them, and they say the crossing is a little rough, and they say it is because concrete was put between the ties and that broke away at the edges of the concrete and the ties and let water through into the substructure below the tie. They say if we hadn't had concrete there we would have a better result from that crossing.

Q. Is it a fact that the Board of Public Utility Commissioners require you to put this concrete between the ties as a method of furnishing a staple roadbed over which the cars will run quieter?

A. That question has never been determined in our case by the Board of Public Utility Commissioners.

Q. Such a construction does add to the quietness and smoothness of the running on the track, doesn't it?

A. I don't know that it does. That is a question engineers might differ on. Some, I think, think if you put ballast between the ties it would be good in some respect.

An adjournment was here taken until seven o'clock P. M. for argument.

STATE OF NEW JERSEY, }
COUNTY OF MERCER, } *ss*:

ALTA M. RISDON, of full age, being duly sworn according to law, on her oath deposes and says that she took down stenographically the evidence and proceedings at the hearing by the Mercer County Board of Taxation on January 31st, 1916, of the appeals before said board in the matter of the assessments upon the property of the Trenton and Mercer County Traction Corporation and its lessor companies, and the New Jersey and Pennsylvania Traction Company, and the Public Service Railway Company, and that the annexed is a true copy of the evidence and proceedings taken before said Mercer County Board of Taxation.

ALTA M. RISDON.

Sworn and subscribed before me this 24th day of March, A. D. 1916, at Trenton, N. J.

GEORGE GILDEA,
Notary Public of N. J.

(Seal)

EXHIBIT C1 for identification.
Street Railway in City of Trenton

Trenton St Ry	Miles	Reproduction 22.594 per mile	Dep. Value 13.972.09 per mile
From S. Clinton & E. State St to Stanton to Broad St.			
W. State St. from Parkside Ave to Warren St. E. State St. Warren to City Line			
Warren St. from State to Princeton Ave to Paul Ave to Brunswick Ave to City Line at Mulberry St.			
Mulberry St. to Clinton to Perry to Broad to City Line at Cedar Lane	26 5/10	$598,741	$370,260.39

Centre St. from Broad to Lalor to Car Barn			
Hamilton Ave from Clinton to Chambers			
Perry St from Broad to Warren St			
Pennington Ave from Warren St. to Prospect St.			
Mercer Co. Tr. Co.			
Prospect from State to Stuyvesant —Stuyvesant from Prospect to Whittlesey Road			
Market St. from Broad to Warren to Bridge to Fair to Fall to Warren St.	5.0/10	$112,970	$69,860.45

Hamilton Ave from Chambers to Olden to Estate St.			
Pennington Ave from Prospect to Parkway Ave			
Trenton Hamilton & Ewing Tract Co.			
W. State St. from River Rd to Parkside Ave			
Stuyvesant Ave from Whittlesey Rd. to Private R. of W. to Sullivan Way to City Line	2 71/100	$ 61,229.74	$37,864.36
Totals		$772,940.74	$477,985.20+

City of Trenton

Paving Foundation 1:3:6 =
1.10 Bbl Cement
.46 Cu yd Sand
.93 Cu yd gravel

		Revoduc. Cost	% accrued Dep		Dep'd Value
Tracks in City		370,910.80			210,322.16
Overhead in City		166,880.30			106,316.90
Special Work		70,662.00			35,331.00
Foundation for Paving		63,669.24			63,669.24
		672,122.34			415,639.30
15% Contingencies Engineering Omissions Supt. Adm. Ins. Mang. Ins Inc and Builders Risks		100,818.35			62,345.90
		772,940.69			477,985.20
Power Plant	265,500			233,640.	
15%	39,825	305,325	15%	35,046	268,686

30 20 10

	30		20		10	
Car Barns & etc	155,900				132,515.	
15%	23,385	179,285		15%	19,877.25	152,392.25
Cars & Other R. S.	400,000				260,000	
15%	60,000	460,000		15%	39,000	299,000.+
Real Estate	110,025				110,025	
15%	16,503.75	126,528.75		15%	16,503.75	126,528.75
		1,844,079.44				1,324,592.20
PLUS						
Paving Excluded	295,175.78				153,817.61	
15%	44,276.37	339,452.15		15%	23,072.64	176,890.25
Outside City, 15% included		535,772.51				384,631.16
		$2,719,304.10				$1,886,113.61
						176,890.21
						1,709,223.40

3421 Miles City Inc) Everything)	$53,612.30 per mile	$38,719.40 per mile
3421 Tracks Overhead) Special Work.) Form Rates for) Paving) 15% Cont etc)	$22,594 per mile	$13,972.09 per mile

Summary Outside City—38.95 M

		Rep. Cost	Accrued Dep. @33.71%		Deprecd Value
Tracks. Rate Case R & B.		324,616.39	109,440.76		215,175.63
Less Items Directly Distribd					
Special Work	15,449.		50%	7,724.50	
Bridges	25,327.80		33.71%	16,789.80	
Stations Fencing & Bldgs	2,134.00		33.71%	1,414.63	
Girder Rails	21,509.13	64,419.93	33.71%	14,258.41	40,187.34
		260,196.46			174,988.29

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38.95 Overhead at 21.00¢ M=	81,795.		26.88%	59,808.50
389,500 lbs feed wire @ 15¢	58,425.00		No Dep	58,425.00
		140,220.00		
Signal System		1,052.75		1,052.75
		401,469.21		294,274.54
15% Contingencies Eng.		60,220.38		44,141.18
Omission Etc		$461,689.59		338,415.72
15% + 64,419.93		9,663.	15% on 40,187.34	6,028.18
		$471,352.59		344,443.90
÷ 38.95	$12,101.50 per mi.		$8,843.20 per mi.	

EXHIBIT C3.

STREET RAILWAY IN TOWNSHIP.

Hamilton Township

Distributed as per Situs Bridges etc.

	Miles		Reproduction 12,101.50 per m	Depreciated Value 8,843.20 per mile
Trenton St Ry.	7.47	90,398.20	66,058.70	
Girder Rail		4256.72	2,821.78	
Special Work		4,350.00	2,175.00	
Bridges		3,806.40	3,183.26	
			102,811.32	74,238.74
Mercer Co Tr Co	2.15		26,018.22	19,012.88
Trenton Hamilton & Ewing	5.16	62,443.74	45,630.91	
Girder Rail		3,831.83	2,540.12	
Special Work		3,400.00	1,700.00	
			69,675.57	49,871.03
			198,505.11	143,122.65

Lawrence Township

Distributed as per Situs Bridges Etc

Road	Miles		Reproduction Value		Dep'd Value
			12,101.50		8,843.20
Trenton St Ry	5.98	72,366.97		52,882.33	
Girder Rails		5,471.47		3,627.04	
Special Work		3,649.00		1,824.50	
Bridges & Labour		1,525.40		1,011.19	
			83,012.84		59,345.06
Mercer Co Tr Co	1.6	19,362.40		14,149.12	
Bridges		508.40		337.02	
Stations & Blds		500.00)			
Stations		80.00)		384.48	
Fencing		528.00		350.01	
			20,978.80		15,220.63
			103,991.64		74,565.69

Ewing Township.

Distributed as per Situs Bridges etc

	Miles		Reproduction Value 12,101.50 per mi		Depreciated Value 8,843.20 per mi
Trenton Pennington & Hopewell	3.45	41,750.18		30,509.04	
Special Work		200.00		100.00	
Special Work		352.00		176.00	
			42,302.18		30,785.04
Trenton Hamilton & Ewing Tr Co	.93		11,254.40		8,224.18
			53,556.58		39,009.22

Hopewell Township

Distributed as per Situs Bridges etc

	Miles		Reproduction Value 12,101.50	Depreciated Value 8,843.20
Trenton Pennington & Hopewell	6.53	79,022.80	57,746.10	
Special		1,778.00	889.00	
Bridges & Labor		13,339.00	8,842.42	
			94,139.80	67,477.52

Princeton Township.

Distributed as per Situs Bridges etc

	Miles		Reproduction Value		Depcd Val
			12,101.50		8,843.20
Mercer Co Tr Co	2.75	33,279.13		24,318.80	
Special Work		1,360.00		680.00	
Bridges		4,059.60)			
Fencing		26.00)		2,714.97	
			38,724.73		27,713.77

Pennington Borough

Distributed as per Situs Bridges etc.

	Miles		Reproduction Value 12101.50	Dep'd Value 8,843.20
Trenton Pennington & Hopewell	1.61	19,483.42	14,237.55	
Girder Rails		3,910.45	2,592.24	
Special Work		180.00	90.00	
Bridges		2080.00	1,378.83	
			25,653.87	18,298.62

Hopewell Borough.

Distributed as per Situs Bridges Etc

	Miles		Reproduction Value 12,101.50	Depd Value 8,843.20
Trenton Pennington & Hopewell St Ry	.95	11,496.43	8,401.04	
Girder Rails		4,038.66	2,677.23	
Special Work		180.00	90.00	
			15,715.09	11,168.27

Princeton Borough

	Miles		Reproduction Value 12,101.50	Depd Value 8,843.20
Mercer Co Tr Co	.37	4,477.56	3,271.98	
Stations		1000.	662.90	
			5,447.56	3,934.88

EXHIBIT C4.

Car Equipment

10—30 foot Body Double Truck Closed Cars
5—20 " " Single " " "
40—18 " " " " " "
10 2—16 " " " " " "
3—15 " " " " " "
32—10 Bench " " " Open "
17— 9 " " " " " "

110—Open and Closed Cars

10—Brill No. 21 Trucks
59— " 21 E "
5—Pairs Brill 27 G Double Trucks
20 5— " " 27 G 1 Double Trucks

79—Single and Double Track Equipments

52—25 H. P. Motors, Westinghouse No. 3
4—30 " " " " 49
36—25 " " GE 800
24—40 " " GE 80
34—35 " " GE 1000
20—27 " " GE 52
30 4—40 " " GE 70

174

174 Motors total, or
10—4 motor equipments and
67—2 " "

Estimated cost of replacement $350000.00

Rankin Johnson

October 1910

Machinery at Power House

1 16″ & 29″ x 42″ tandem compound condensing Watts Campbell engine, 90 r.p.m., 18 years old, belted to

1 100 K. W. 500 volt Short Generator, 500 r.p.m. and also to

1 200 K.W. 550 volt Westinghouse Generator 525 r.p.m.

1 16″ & 29″ x 42″ tandem compound condensing Watts Campbell Corliss engine, 90 r.p.m., 18 years old, belted to

1 350 K.W. 575 volt, Bullock Mfg. Co. generator, 500 r.p.m.

1 24″ & 44″ x 48″ tandem compound condensing Watts Campbell Corliss engine, 75 r.p.m., 17 years old, belted to

1 750 K.W. 550 volt General Electric generator 220 r.p.m.

1 25″ & 46″ x 48″ cross compound condensing Wetherill Corliss engine, 100 r.p.m., 6 years old, direct connected to

1 800 K.W. 575 volt Stanley Generator.

2 125 H.P. horizontal return tubular boilers hand fired, 18 years old.

2 500 H.P. Edgemore water tube boilers equipped with Wetzel mechanical stokers, 1 year old.

2 400 H.P. Aultman & Taylor water tube boilers, equipped with Wetzel mechanical stokers, 6 years old.

1 10″ x 6″ x 10″ Worthington duplex piston

steam pump, 18 years old.

1 10″ x 6″ x 12″ outside end packed pot valve, brass plunger pump, duplex, made by Stillwell-Bierce & Smith-Vaile Co., 6 years old.

1 7-¼″ x 4-½″ x 6″ Worthington duplex piston pump.

1 vertical air pump jet condenser made by Dean Mfg. Co. for Wetherill engine.

1 16″ x 24″ x 24″ single cylinder horizontal air pump Dean jet condenser, being installed for large Watts Campbell Corliss engine.

1 Western Electric type 15-½ battery booster set 90 volts, 650 amps., not used.

Switchboard consists of six generator panels, one motor generator panel, one storage battery panel, one station panel, seven double circuit feeder panels.

1 Storage battery 264 cells on Lincoln Ave.

1 Storage battery 264 cells on Princeton line.

Including building and adjacent real estate

Estimated Cost of Replacement $300000.00

Sept 1910

Trolley and Feeder Construction

Trolley Construction:	Trolley Wire				Poles		Spans	Center pole bracket	Side bracket	
	1st track	2nd track	Sidings	Total	Iron	Wood				
Trenton Street R'way Co.										
Trenton City	76,600	56,130	2,765	135,485	777	540)	635)	37		
Hamilton Township	29,400	11,065	820	41,325	13	355)	160)	46		
Lawrence Township	28,165		1,365	29,530	4	290)	50)		200	
	134,165	67,195	4,950	206,340	794	1,185	845	83	200	
Mercer Co. Traction Co.										
Trenton City	19,225	7,815	955	27,995	195	135	170			
Lawrence Township	8,410		280	8,690		85)		)		
Princeton Township	15,120		530	15,650		160)	40	)	170	
Princeton Borough	1,770	370		2,140		20)		)		
	44,525	8,185	1,765	54,475		400	210		170	

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Trenton, Hamilton & Ewing Tr. Co.									
Trenton City	12,015	2,605	550	15,170	116	85	105		
Hamilton Township	24,290	185	1,410	25,885		520	260		
Ewing Township	5,025		390	5,415		120	60		
	41,330	2,790	2,350	46,470		725	425		
Trenton, Pennington & Hopewell Street R'way Co.									
Ewing Township	18,890		500	19,390	)			)	
Hopewell Township	37,730		1,250	38,980	)	1,030	360	)	306
Pennington Borough	4,775		250	5,025	)			)	
Hopewell Borough	4,990			4,990	)			)	
	66,385		2,000	68,385		1,030	360		306
Totals	286,405	78,170	11,065	375,670	1,105	3,340	1,840	83	676

Feeders:

Trenton Street R'way Co.

2—500,000	c.m.	positive	feeders	aggregating	116,750	ft.	in	length
3—500,000	"	negative	"	"	11,460	"	"	"
5—500,000	"	neg. & pos.	"	"	128,210	"	"	"
11—4/0		positive	"	"	95,670	"	"	"
7—4/0		negative	"	"	24,750	"	"	"
18—4/0		neg. & pos.	"	"	120,420	"	"	"
1—2/0			"	"	22,100	"	"	"

Trenton, Pennington & Hopewell Street R'way Co.

2—500,000	c.m.	positive	feeders	aggregating	94,530	"	"	"
1—500,000	"	negative	"	"	10,500	"	"	"
3—500,000	"	pos. & neg.	"	"	105,030	"	"	"
1—4/0		positive	"	"	11,480	"	"	"

Estimated cost of replacement $320000.00
September 1910

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	Track Length—Feet.				Rail						Paving—Square Yards.					
	1st. Track	2nd. Track	Sidings & Cross-overs	Total	9″ Tram Girder	9″ Grooved Girder	7″ Tram Girder	6″ Tram Girder	75# Tee	60# Tee	Asphalt	Granite Brick	Belgian Block	Belgian Block	Cobble	Macadam
SUMMARY—																
Trenton Street Railway Co.																
On Streets & Highways	134,205	67,195	4,950	206,350	100,395	430	15,545	28,505	45,945	15,530	54,620	37,010		31,820	11,880	1,000
On Right of Way	—	—	—	—	—	—	—	—	—	—	—	—		—	—	—
Total—	134,205	67,195	4,950	206,350	100,395	430	15,545	28,505	45,945	15,530	54,620	37,010		31,820	11,880	1,000
Mercer County Traction Co.																
On Streets & Highways	31,045	7,815	955	39,815	14,895	4,000	9,100		11,820		2,440	3,350	1,230	11,340	3,300	420
On Right of Way	24,880	370	810	26,060					26,060							
Total—	55,925	8,185	1,765	65,875	14,895	4,000	9,100		37,880		2,440	3,350	1,230	11,340	3,300	420
Trenton, Hamilton & Ewing Traction Co.																
On Streets & Highways	28,685	2,605	1,790	33,080	11,930				21,150					4,075	7,900	
On Right of Way	12,645	185	560	13,390					13,390							
Total—	41,530	2,790	2,350	46,470	11,930				34,540					4,075	7,900	
Trenton, Pennington & Hopewell Street Rwy. Co.																
On Streets & Highways	63,955	—	2,000	65,955	—	—	9,815		56,140							10,350
On Right of Way	2,430	—	—	2,430	—	—	—	—	2,430							
Total	66,385		2,000	68,385			9,815		58,570							10,350
Grand Total:																
On Streets & Highways	257,890	77,615	9,695	345,200	127,220	4,430	34,460	28,505	135,055	15,530	57,060	40,360	1,230	47,235	23,080	11,770
On Right of Way	39,955	555	1,370	41,880	—	—	—	—	41,880	—	—	—	—	—	—	—
Total—	297,845	78,170	11,065	387,080	127,220	4,430	34,460	28,505	176,935	15,530	57,060	40,360	1,230	47,235	23,080	11,770

Estimated cost of replacement $2100000.00
September 1910.

Rankin Johnson

Location— Streets.			Track Length—Feet				Rail						Paving—Square Yards					
Mercer County Traction Co.					Sidings		9″	9″	7″	6″								
Trenton City:			1st.	2nd.	& Cross-		Tram	Grooved	Tram	Tram	75#	60#			Granite	Belgian		
On	From	To	Track	Track	overs.	Total	Girder	Girder	Girder	Girder	Tee	Tee	Asphalt	Brick	Block	Block	Cobble	Macadam
Prospect Av.	E. State St.	Stuyvesant Av.	2,000	2,000		4,000			4,000					3,350		420		
Stuyvesant Av.	Prospect Av.	Whittlesey Av.	5,715	5,715	65	11,495	11,495									6,210		
Pennington Av.	Prospect Av.	City Line	2,140		250	2,390				2,390						640	990	
Market St.	S. Broad St.	Warren St.	1,200	100		1,300	1,300									935	250	
Warren St.	Market St.	Bridge St.	1,020			1,020	1,020								1,230			
Bridge St.	Warren St.	Fair St.	350			350	350									105	160	
Fair St.	Bridge St.	Fall St.	450			450	450									135	210	
Fall St.	Fair St.	Warren St.	280			280	280									85	130	
Hamilton Av.	Chambers St.	Olden Av.	3,010		320	3,330				3,330			2,440			1,800		
Olden Av.	Hamilton Av.	E. State St.	3,060		320	3,360				3,380						1,010	1,560	
Total in Trenton City—			19,225	7,815	955	27,995	14,895	4,000		9,100			2,440	3,350	1,230	11,340	3,300	
Hamilton Township:																		
Crosswicks Pike	Yardville	Crosswicks	11,400			11,400					11,400							
Lawrence Township:																		
Right-of-way	Lawrenceville Rd.	Township Line	8,410		280	8,690					8,690							
Princeton Township:																		
Right-of-way	Township Line	Princeton Boro.	15,060		530	15,590					15,590							
Highway	Township Line	Princeton Boro.	60			60					60							60
Total in Princeton Township—			15,120		530	15,650					15,650							60
Princeton Borough:																		
Right-of-way	Borough Line	Pa. R. R. Sta.	1,410	370		1,780					1,780							
Highway	Borough Line	Pa. R. R. Sta.	360			360					360							360
Total in Princeton Borough—			1,770	370		2,140					2,140							360
Total Mercer County Traction Co.—			55,925	8,185	1,765	55,875	14,895	4,000		9,100	57,880		2,440	3,350	1,230	11,340	3,300	420
Trenton, Pennington and Hopewell Railway Co.																		
Ewing Township:																		
Highway	City Line	Township Line	18,890		500	19,390					19,390							
Hopewell Township:																		
Highway			35,500		1,250	36,750					36,750							
Right-of-way			2,230			2,230					2,230							
Total Hopewell Township—			37,730		1,250	38,980					38,980							
Pennington Borough:																		
Highway			4,575		250	4,825				4,825								5,080
Right-of-way			200			200					200							
Total Pennington Borough—			4,775		250	5,025				4,825	200							5,080
Hopewell Borough:																		
Highway			4,990			4,990				4,990								5,270
Total Trenton, Pennington & Hopewell Street Railway Co.			66,385		2,000	68,385				9,815	58,570							10,350

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New Jersey State Library

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Location—Streets.			Track Length—Feet				Rail					Paving—Square Yards.					
Trenton St. R'way Co.					Sidings		9″	9″	7″	6″							
Trenton City:			1st.	2nd.	& Cross-		Tram	Grooved	Tram	Tram	75#	60#			Granite	Belgian		
On	From	To	Track	Track	overs.	Total	Girder	Girder	Girder	Girder	Tee	Tee	Asphalt	Brick	Block	Block	Cobble	Macadam
E. State St.	Broad St.	Parkside Av.	9,250	9,250	150	18,650	18,650						2,030	13,400		1,010	1,690	
E. State St.	Broad St.	City Line	8,730	8,730	150	17,650	17,650						17,060			380		
Warren St.	State St.	Pennington Av.	2,160	2,160		4,320	4,320						4,480					
Pennington Av.	Warren St.	Prospect St.	4,260	200	470	4,630	4,630		300					1,540		1,970	1,140	
Princeton Av.	Pennington Av.	Paul Av.	4,165	210	540	4,915	4,915						3,070			2,660		
Paul Av.	Princeton Av.	Brunswick Av.	1,125		210	1,335	1,335									400	610	
Brunswick Av.	Paul Av.	City Line	4,500		420	4,920	4,920									2,370	870	
N. Broad St.	State St.	Perry St.	875	875	65	1,816				1,315			1,830					
Perry St.	Warren St.	N. Clinton Av.	3,810	5,510		7,320	3,860	430		3,030			7,500					
N. Clinton Av.	Perry St.	Mulberry St.	5,125	5,000	65	10,190			8,690	1,500				9,940				
Mulberry St.	N. Clinton Av.	Pa. R. R.	1,900		250	2,150	2,150									2,510		
S. Clinton Av.	E. State St.	Stanton St.	8,500	8,500	65	17,065	12,940		4,125				1,990	8,130		6,290	870	
Stanton St.	S. Clinton Av.	Broad St.	3,610	540		1,150	1,150									220	630	
Hamilton Av.	S. Clinton Av.	Chambers St.	3,260	200	250	3,710	3,710						2,620			1,990		
S. Broad St.	State St.	City Line	11,060	11,060	130	22,230	1,015		900	19,535			14,040	4,000		1,280	2,660	
Center St.	S. Broad St.	Car barn	7,250	5,675		13,125	11,075			1,250						9,020	720	
Total in City of Trenton—			76,600	56,130	2,765	135,495	93,920	430	14,015	27,130			54,620	37,010		30,100	9,240	
Hamilton Township:																		
So. Broad St.	City line	Yardville	20,370	3,140	500	24,010	910		1,530		20,990	580				270	420	
E. State St.)																		
Johnston St.)	City line	Fair Grounds	9,070	7,925	320	17,315	750			1,575	240	14,950						1,000
Greenwood St.)																		
Total in Hamilton Township—			29,440	11,065	820	41,325	1,660		1,530	1,575	21,230	15,530				270	420	1,000
Lawrence Township:																		
Lawrenceville Rd.	City line	Shippetauquin Creek	28,165		1,365	29,530	4,815				24,715					1,450	2,220	
Total Trenton St. R'way Co.			154,205	67,195	4,950	206,550	100,395	430	15,545	28,505	45,945	15,530	54,620	37,010		31,820	11,880	1,000
Trenton, Hamilton & Ewing Traction Co.																		
Trenton City:																		
W. State St.	Parkside Av.	Pa. R. R.	3,330	2,505		5,936	5,935									1,180	3,460	
Stuyvesant Av.	Whittlesey Rd.	Right-of-way	2,870		260	3,130	2,625				505					940	1,440	
Right-of-way	Stuyvesant Av.	Asylum Rd.	2,665		290	2,955					2,955							
Asylum Rd.	Right-of-way	City line	3,150			3,150					3,150					945	1,450	
Total in City of Trenton—			12,015	2,505	550	15,170	8,560				6,610					3,065	6,350	
Hamilton Township:																		
Highway	Johnston St.	Hamilton Sq.	14,310		1,140	15,450	3,370				12,080							
Right-of-way	Johnston St.	Hamilton Sq.	9,980	185	270	10,435					13,435					1,010	1,550	
Total Hamilton Township—			24,290	185	1,410	25,885	3,370				25,515					1,010	1,550	
Ewing Township:																		
Asylum Rd.	City line	P. & R. R. R. track	5,025		390	6,415					5,415							
Total Trenton, Hamilton & Ewing Traction Co.			41,330	2,790	2,350	46,470	11,930				34,540					4,075	7,900	

EXHIBIT C5.

BOARD OF PUBLIC UTILITY COMMISSIONERS FOR THE STATE OF NEW JERSEY.

In the matter of the leases of the Trenton Street Railway Co., and affiliated by the Mercer County Traction Corporation.

Corporate History:

In the history of the Trenton Street Railway system commenced in 1859, March 9th, when the New Jersey Legislature granted a charter to the Trenton Horse Railroad Company. Three years later, in 1862, the first car was operated through East State Street, from Warren to Clinton Street. This system, which was single track, existed until 1883, when double tracks were put down, and the line extended from Warren and East State through West State to Calhoun Streets.

The Trenton Horse Railroad Company started in business with $30,000 capital. In 1876 a charter was granted incorporating the City Railway Company, which built a line from Millham through Perry and Clinton Streets, and down Broad Street to the dividing line between Trenton and the Borough of Chambersburg. Before 1880 the Trenton Horse Railroad Company had extended its line through South Clinton Avenue to the Chambersburg district, and had built a short line through Whittaker Avenue. September 30th 1891 the existing railways were consolidated under the name of the Trenton Passenger Railway Company, Consolidated.

The roads which were being merged at this time were the Trenton Horse Railroad Company, the City Railway Company, the South Clinton Avenue and Broad Street Railway Company, the Hamil Township Street Railway Company. The consolidated co the name of the Trenton Passenger Railway Company,

It appears to have been the policy in the construction of extensions to organize a new company which would be leased to the original company, and later merged with it, so that between 1891 and 1898 lines had been built bearing the following names:

Pennington Avenue Passenger Railway Company.

Mulberry Street Railway Company.

Ewing Passenger Railway Company.

On June 28th, 1898 the roads then existing, consisting of the three last mentioned roads, were consolidated with the Trenton Passenger Railway Company, Consolidated,—the name of the new company being the *Trenton Street Railway Company.* The same policy referred to above with regard to extensions appears to have been continued, for we find that on June 19, 1899 the Mercer County Traction Company was organized, under the name of which were constructed extensions to the system already known as the *Trenton Street Railway Company.*

The *Trenton Street Railway Company* consists of the following items:—

(1) West State Street, from Broad St. to Overbrook Ave.

(2) East State Street, from Broad St. to Johnstone Ave. Johnston avenue and Greenwood Ave. to the Fair Grounds;

(3) South Clinton Avenue from East State to Stanton, and Stanton to Broad Street;

(4) South Broad Street to Yardville, built in 1899;
(5) Centre Street, from Broad to the Car barns;
(6) North Broad street to Perry; Perry street and North Clinton avenue and Mulberry street;
(7) North Warren Street to Pennington Avenue, and Pennington avenue as far as Prospect street; Princeton avenue, Paul street, Brunswick Ave. and Lawrenceville road to a point about one mile beyond the Bridge over Shabakunk Creek.

The Mercer County Traction Company consists of:

(1) The Market Street line from South Broad Street;
(2) West State Street from Overbrook ave. to Parkside avenue, and in Parkside avenue northward to the Park Entrance (the Parkside Ave. track has been removed)
(3) Prospect Street from West State to Stuyvesant, and Stuyvesant Ave. to the end of double track at Whittlesey Road;
(4) Pennington Ave. from Prospect Street to the City line at Parkway Avenue;
(5) Hamilton Ave. from Chambers street to Olden and Olden Ave. from Hamilton to East State Street;
(6) South Broad Street, from Yardville to Crosswicks;
(7) Extension of the Lawrenceville and Princeton line from a point about one mile beyond the bridge over Shabakunk Creek to Princeton.

Trenton, Hamilton and Ewing Traction Company consists of:—

(1) West State Street from Parkside Avenue to the Railroad;

(2) Stuyvesant Avenue, from Whittlesay Road to a private right of way; thence to the Asylum Road, and Asylum Road to Trenton Junction, built in 1906;

(3) East State Street from Johnston Avenue to Hamilton Square, built in 1906.

Trenton, Pennington & Hopewell Street Railway Company:—

(1) Pennington Avenue from the city line at Parkway Avenue to Hopewell.

Financial History:

In the formation of the Trenton Horse Railroad Company its capital stock was placed at $30,000. This company had a rather checkered career, during which time a considerable amount of money was lost, but by the time of the first consolidation in 1891, the system had been entirely reorganized, and the conditions of this consolidation are shown in the following table, numbered 1.

TABLE—NUMBER 1.

Stock first consolidation Sept. 30, 1891	Old stock	New
1. Tren. Horse R. R. Co.	36,100	144,400
2. City Railway Company	90,000	1,325,600
3. Ham. Twp. St. Ry. Co.	20,000	20,000

4. S. C. Ave. & Broad St.	10,000	10,000
Totals	$156,100	
Trenton Pass. Ry. Co,—15000 shares—		1,500,000
1891		
Bonds:—		
City Railway Co.	90,000.	
Tren. Horse Railway	100,000	
	$190,000.	

It will be noted from this table that the capital stock of the new company was nearly ten times as great as the combined capital stocks of the merging companies, and there does not appear to have any value added to the system corresponding with this increase in capital stock.

It will be noted that the Trenton Passenger Railway Company assumed the bonded indebtedness of the underlying companies amounting to $190,000.

Attached hereto and marked *Exhibit "A"* is a copy of the agreement of consolidation by which the Trenton Passenger Railway Company was formed.

The Trenton Passenger Railway Company authorized in 1891 a bond issue of $1,000,000, which was to be used in electrifying the system. At this time, February 1911, $40,000 of this issue has been refunded.

On December 7th, 1894 the Trenton Traction Company was organized with a capital stock of $500,000. On July 18, 1898, capital stock was reduced to $1000. Statement filed in the office of the Secretary of State on February 4th, 1910 shows that capital outstanding is $1000. There appears to be nothing in the record showing just what effect

the formation of this company had on the situation.

The *Trenton Street Railway Company* was formed June 28, 1898 by consolidation, (see *Exhibit "B"*) as stated above,—the financial basis being as given in the following Table No. II.

TABLE—NUMBER II.

June 28, 1898

	Stock	Second Consolidation	Bonds—
Tren. Pass. Ry. Co.	1,500,000	990,000 &	$540,000
Penn. Ave. Ry. Co.	5,100		6,000
Mulberry St. Ry. Co.	5,100		6,000
Ewing Pass. Ry. Co.	5,100	10,000	
	1,515,300	1,000,000	$552,000

Trenton St. Railway Co.

Bonds	Old Companies	New Company issue.
Tren. Pass. Ry. Co.	($1,000,000)	Refunded by new
Penn. Ave. Ry. Co.	6,000	
Mulberry St. Ry. Co.	6,000	
Ewing Pass. Ry. Co.		
	$1,012,000	$2,000,000
Less Amounts exchanged for stock		552,000
		$1,448,000
Less amounts reserved for refunding		1,000,000
Balance for new work		$448,000

In the first consolidation in 1891, it will be noted that stock of the presumed value of $156,100 was expanded to stock to the par value of $1,500,000. In the consolidation of 1898 the Trenton Passenger

Railway Company's stock of $1,500,000 was exchanged for stock to the value of $990,000, and bonds to the value of $450,000. Immediately after the formation of the *Trenton Street Railway Company,* bonds to the amount of $2,000,000 were authorized,—$1,000,000 to be reserved to retire an equal amount of bonds of the Trenton Passenger Railway Company. $540,000 worth of bonds were given in part payment for Trenton Passenger Railway Company's stock, and $12,000 worth of bonds for the purchase of stock of two of the other companies. This transaction leaving in the hands of the company, available for new work, bonds to the value of $448,000.

Mercer Traction Company organized June 19th, 1899 with a capital stock of $100,000, and on 1904 issued bonds to the value of $300,000 of which $128,000 are owned by the *Trenton Street Railway Company.*

September 22d 1902 the Trenton, Pennington & Hopewell Street Railway Company was organized with a capital stock of $250,000, all of which is owned by the *Trenton Street Railway Company,* and on June 1st, 1903, issued bonds to the value of $350,000.

August 11th 1905 the Trenton, Hamilton & Ewing Traction Company was organized with a capital stock of $200,000, all owned by the *Trenton Street Railway Company,* and on November 1st, 1905, issued bonds to the value of $350,000

The securities outstanding against the various properties at this time are given in the following table, numbered III.

TABLE—NUMBER III.

	Capital Authorized	Securities. Stock Issued	Bonds Authorized	Bonds Issued	Total Authorized	Total Issued
Trenton Street Railway Company	1,000,000	1,000,000	960,000 1,040,000	2,000,000	3,000,000	3,000,000
Trenton Hamilton & Ewing Traction Company	200,000	200,000	500,000	350,000	700,000	550,000
Mercer County Traction Company	100,000	100,000	300,000	300,000	400,000	400,000

Trenton Pennington & Hopewell Street Ry. Company	250,000	250,000	350,000	350,000	600,000	600,000
Totals	$1,550,000	1,550,000	3,150,000	3,000,000	4,700,000	4,550,000

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Valuation:

The valuation of this property, as shown by the schedule attached hereto and marked *Exhibit "C,"* show that the total physical property of the four companies could be reproduced for about Two Million Six Hundred and Four Thousand Dollars. This is made up somewhat as follows. It is somewhat difficult to identify the property of each company. Except where definitely known, the real estate, buildings and movable equipment, as well as the machinery in the plant, have all been credited to the *Trenton Street Railway Company.* The total however will fairly represent the cost to reproduce the property in first-class operating condition without reference to the depreciation that has already accrued.

SUMMARY OF VALUATION.

Trenton Street Railway Co.	$1,820,320.00
Trenton Hamilton & Ewing	180,000.00
Mercer County Traction Co.	348,500.00
Trenton, Pennington & Hopewell	255,650.00
	$2,604,470.00

Inasmuch as this company has found it difficult to properly maintain its property, and at the same time pay its interest charges and dividends, it is pertinent to analyze the financial conditions already existing and those which may exist under the terms of the leases, approval of which is sought at this time. The terms of each lease provide that the lessee company is to pay all interest charges, taxes and insurance, all operating expenses, proper maintenance charges, and in addition is to pay as rental a definite sum of money increasing in amount through a period of about fifteen years. The amount paid as rental would be available for the payment of dividends, as there are no other charges to be deducted from it. The amounts called for by the terms of the leases are shown in the following tables, numbered Four to Eight, inclusive, from which it will be seen that, after allowing for all fixed charges, the rate of return increases gradually up to an amount which equals ten percent on the total outstanding capitalization of three of the companies, and up to eight percent on the Trenton, Pennington & Hopewell Street Railway Company.

TABLE NUMBER IV.

	Year	Annual Rent	Bond Interest	Office Expense	Total	Rate of return on capital stock
	1911	$47,000	$109,600	$850	157,450	4.7%
Trenton	1912	49,500	109,300	"	159,150	4.9
	1913	52,000	109,000	"	161,850	5.2
Street	1914	57,000	108,700	"	166,550	5.7
	1915	62,000	108,400	"	171,250	6.2
Railway	1916	64,000	108,100	"	172,950	6.4
	1917	66,500	107,800	"	175,150	6.65
Company	1918	71,500	107,500	"	179,850	7.15
	1919	76,500	107,200	"	184,550	7.65
	1920	81,500	106,900	"	188,250	8.15
	1921	83,500	106,600	"	190,950	8.35
	1922	86,000	106,300	"	193,150	8.6
	1923	91,000	106,000	"	197,850	9.1
	1924	95,000	105,700	"	201,550	9.5
	1925	98,000	105,400	"	204,250	9.8
	1926	100,000	105,100	"	205,950	10%

	1927	"	104,800	"	205,650	"
	1928	"	104,500	"	205,350	"
	1929	"	104,200	"	205,050	"
	1930	"	103,900	"	204,750	"

TABLE V.

	1911	$12,000	17,500	$50	$29,550	6%
	1912	"	"	"	"	"
Trenton	1913	"	"	"	"	"
	1914	"	"	"	"	"
Hamilton	1915	"	"	"	"	"
	1916	14,000	"	"	31,550	7%
& Ewing	1917	"	"	"	"	"
	1918	"	"	"	"	"
Traction	1919	"	"	"	"	"
	1920	"	"	"	"	"
Company	1921	16,000	"	"	33,550	8%
	1922	"	"	"	"	"
	1923	"	"	"	"	"
	1924	"	"	"	"	"
	1925	18,000	"	"	35,550	9%

	1926	20,000	"	"	37,550	10%
	1927	"	"	"	"	"
	1928	"	"	"	"	"
	1929	"	"	"	"	"
	1930	"	"	"	"	"

TABLE VI.

Mercer	1911	$6,000	$15,000	$50	$21,050	6%
	1912	"	"	"	"	"
County	1913	"	"	"	"	"
	1914	"	"	"	"	"
Traction	1915	"	"	"	"	"
	1916	7,000	"	"	22,050	7%
Company	1917	"	"	"	"	"
	1918	"	"	"	"	"
	1919	"	"	"	"	"
	1920	"	"	"	"	"
	1921	8,000	"	"	23,050	8%
	1922	"	"	"	"	"
	1923	"	"	"	"	"
	1924	9,000	"	"	24,050	9%

	1925	"	"	"	"	"
	1926	10,000	"	"	25,050	10%
	1927	"	"	"	"	"
	1928	"	"	"	"	"
	1929	"	"	"	"	"
	1930	"	"	"	"	"

TABLE VII.

	1911	$15,000	$17,500	$50	$32,550	6%
	1912	"	"	"	"	"
Trenton	1913	"	"	"	"	"
Pennington	1914	"	"	"	"	"
&	1915	"	"	"	"	"
Hopewell	1916	"	"	"	"	"
Street	1917	17,500	"	"	35,050	7%
Railway	1918	"	"	"	"	"
Company.	1919	"	"	"	"	"
	1920	"	"	"	"	"
	1921	"	"	"	"	"
	1922	20,000	"	"	37,550	8%
	1923	"	"	"	"	"

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					10
1924	"	"	"	"	"
1925	"	"	"	"	"
1926	"	"	"	"	"
1927	"	"	"	"	"
1928	"	"	"	"	"
1929	"	"	"	"	"
1930	"	"	"	"	"
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Table VIII. gives the total amounts to be paid by the company in addition to fixed charges before any money will remain as a profit to the lessee company.

TABLE VIII

Year	Total Rentals	Total Interest	Office Expense	Grand Total
1911	$ 80,000	$159,600	$1,000	$240,600
1912	82,500	159,300	"	242,300
1913	85,000	159,000	"	245,000
1914	90,000	158,700	"	249,700
1915	95,000	158,400	"	254,400
1916	100,000	158,100	"	259,100
1917	105,000	157,800	"	263,800
1918	110,000	157,500	"	268,500
1919	115,000	157,200	"	273,200
1920	120,000	156,900	"	277,900
1921	125,000	156,600	"	282,600
1922	130,000	156,300	"	287,300
1923	135,000	156,000	"	292,000
1924	140,000	155,700	"	296,700
1925	145,000	155,400	"	301,400
1926	150,000	155,100	"	306,100
1927	"	154,800	"	305,800
1928	"	154,500	"	305,500
1929	"	154,200	"	305,200
1930	"	153,900	"	304,900

If a proper depreciation fund is established and maintained, it will be practically impossible for the lessee company to pay the rentals called for in the leases. The experience of some of the larger companies has shown that about fifteen percent of the gross income ought to be allowed for Depreciation of track, line and rolling stock, or 18% including plant.

Table IX. is constructed to show the rate of return on the total valuation of the property, as compared with the rate of return on the outstanding capitalization.

TABLE IX.

AS OF 1909	Trenton Street Railway	Trenton Hamilton & Ewing	Mercer County Traction	Trenton Pennington & Hopewell	TOTAL
VALUATION	1,820,320.00	180,000	348,500	255,650	2,604,470.00
GROSS INCOME	$566,287.07				$ 566,287.07
FRANCHISE TAX	15,896.49				15,896.49
OPERATION	271,766.41				271,766.41
TAXES, Insurance & other expense					
RENT to be paid	47,000.	12,000	6,000	15,000	80,000.00
INTEREST to be paid	109,600.	17,500	15,000	17,500	159,600.00
Office Expense	1,000.	50	50	50	1,000.00
Total rental	850.	29,550	21,050	32,550	239,600.
Rate of return on valuation	156,600.				
Rate of return on stock issued	4.7%	6%	6%	6%	9.2% 5.16%

When it is understood that the *Trenton Street Railway Company* owns all of the stock of the three affiliated companies, for which it apparently paid nothing, it will readily be seen that the *Trenton Street Railway Company* is not entitled to earn a return on anything but its own capitalization.

It is interesting to compare the total securities issued by this company with the total securities issued by street railway companies generally. In large cities, the capitalization ranges from seven to ten times the gross income.

The total securities outstanding against the Brooklyn & Coney Island Railroad are equal, to 5.8 times the gross income. The Brooklyn & Coney Island Railroad has been valued in the last two years from five different standpoints, and it is found that the total securities issued bear a very close relation to the actual value of the property after making due allowances for organization and other intangible items of value.

The gross income in Trenton in 1909 was $566,287, —5.8 times that income amounts to $3,284,464;— seven times the gross income $3,964,000. The total amount of securities outstanding against the *Trenton Street Railways* is $4,550,000. On the face of it, this would appear to be within reasonable limits. A little further study however shows that the *Trenton Street Railway* proper, the conditions of which could be compared with those of other cities, amounts to only thirty-eight miles, out of a total of 64.42 miles figured as single track, 26.42 miles are operated under leases, and most of the leased lines are located in suburban or semi-suburban territory.

The *Trenton Street Railway Company* proper has outstanding bonds to the value of $2,000,000, and stock to a par value of $1,000,000, making a total

amount of security,—$3,000,000. or $78,950 per mile. The valuation which has been made shows that the Trenton Street Railway is worth $47,900.00 per mile. This includes all of the buildings and real estate on which they stand, all of the rolling stock and other movable property, and most of the machinery in the power house. In other words, the cost to reproduce the *Trenton Street Railway* proper is about 61% of the total amount of securities issued against it, or to state the figures again, the *Trenton Street Railway* proper would cost to reproduce approximately $1,820,000. The road is bonded to the value of $2,000,000 and there is outstanding capital stock to the value of $1,000,000. By expenditures from income, the actual value of the system ought to be restored to a figure very close to the outstanding bond issue, if such a plan were feasible, which is rather doubtful. With the exception of an allowance for engineering and contingencies, no attempt has been made to estimate the costs of organization, experimentation, due to changes in the methods of operating, good will, franchise value or expenditures during construction for interest, taxes, insurance or casualties. The items enumerated above are represented in the capital stock of the company.

In making up a report on the complaint filed by the inhabitants of the city of Trenton, I touched only on the points covered by the company, that is, the condition of tract, in addition to the reconstruction of tract, it would be necessary to install an additional unit in the power house; to put up an addition to the car barn; to install some machinery in the car shops, and to purchase some additional large cars to replace some of the smaller ones. These items are properly chargeable to "Capital Account," and approval could be granted for the issue of a sufficient

amount of bonds to provide for the payment of the same.

With regard to the terms of the lease, in so far as the rental is concerned, I am of opinion, that the rental should be stated in the terms of a percentage of the net income after proper credits have been made to the Depreciation fund.

The present terms of the lease provide for payment of a definite sum each year, and as stated earlier in the report, it does not appear possible to carry out these terms, and at the same time make proper provision for the maintenance of "safe and adequate" service to the public.

Respectfully submitted,
(Signed) Philander Betts,
Chief Inspector
Utilities Division.

Dated February 20, 1911.

EXHIBIT "A."

Agreement of Consolidation, dated September 30, 1891, *Between* the Trenton Horse Railroad Company, The City Railway Company, The South Clinton Avenue and Broad Street Railway Company, The Hamilton Township Street Railway Company, to be known as *The Trenton Passenger Railway Company,* Consolidated.

The capital stock of the Trenton Passenger Railway Company, Consolidated, $1,500,000 (15000 shares par value $100. each).

The capital stock of the Trenton Horse Railroad Company which now consists of 1444 shares of the par value of $25. each, amounting to $36,100, shall be

convertible into 1444 shares of the capital stock of the Consolidated company, namely, 1 share of the stock of the Trenton Horse Railroad Company for 1 share of the stock of the Consolidated company, deliverible to the officers of the Trenton Horse Railroad Company, appointed for such purpose, upon the surrender of the shares of the capital stock of the said last mentioned company, for which the shares of the stock of the consolidated company are to be so exchanged.

The capital stock of the City Railway Company, which now consists of 900 shares of the par value of $100. each, amounting to $90,000, shall be convertible into $13,256 shares of the capital stock of the consolidated company, namely, 1 share of the stock of the said City Railway Company for 14 shares and 164/225ths of a share of the stock of the consolidated company, deliverible to the officers of the City Railway Company, appointed for such purpose, upon the surrender of the shares of the capital stock of the said last mentioned company, for which the shares of the stock of the consolidated company are to be so exchanged.

The capital stock of the Hamilton Township Street Railway Company, which now consists of 200 shares of the par value of $100. each, amounting to $20,000, shall be convertible into 200 shares of the capital stock of the consolidated company, namely 1 share of the stock of the Hamilton Township Railway Company for 1 share of the stock of the Consolidated Company, deliverible to the officers of the Hamilton Township Railway Company, appointed for such purpose, upon the surrender of the shares of the capital stock of said last mentioned company, for which the shares of the stock of the consolidated company are to be so exchanged.

The capital stock of the South Clinton Avenue and Broad Street Railway Co., which now consists of 100 shares of the par value of $100. each, amounting to $10,000, shall be convertible into 100 shares of the capital stock of the consolidated company, namely, 1 share of the stock of the South Clinton Avenue and Broad Street Railway Co., for 1 share of the stock of the consolidated company, deliverible to the officers of the South Clinton Avenue & Broad Street Railway Company, appointed for such purpose, upon the surrender of the shares of the capital stock of the said last mentioned company, for which the shares of the stock of the consolidated company are to be so exchanged.

In the above agreement, the following two paragraphs appear:

Assumed by the Trenton Passenger Railway Company, Consolidated:

Bonds of said Trenton Horse Railway Co., amounting to $100,000 secured by a mortgage upon the road of the said last mentioned company, dated December 1st, 1887.

Bonds of the said The City Railroad Company, to the amount of $90,000, secured by mortgage, dated June 30, 1887

EXHIBIT "B."

June 28, 1898.

Conditions in articles of agreement between Trenton Passenger Railway Company Consolidated, party of the first part; Pennington Avenue Passenger Railway Co., party of the second part; Mulberry Street Railway Company, party of the third part;

Ewing Passenger Railway Co., party of the fourth part, consolidated into *Trenton Street Railway Company.*

The amount of the capital stock of the said *Trenton Street Railway Company* shall be $1,000,000, consisting of 25,000 shares of the par value of Fifty Dollars each.

The capital stock of the said companies consolidated shall be convertible into the capital stock and bonds of the said *Trenton Street Railway Company* in manner following:—

The capital stock of the Trenton Passenger Railway Co., Consolidated, which now consists of 15000 shares of the par value of $100. each shall be convertible into 19800 shares of the capital stock of the *Trenton Street Railway Company,* hereby formed, and into bonds of said *Trenton Street Railway Company* to the amount of $540,000; said bonds to be part of an issue of bonds to the amount of $2,000,000 to be made by said *Trenton Street Railway Company,* of which bonds to the amount of $1,000,000 shall be reserved to take up or refund a like amount of bonds heretofore issued by the party of the first part hereto, and now outstanding; twelve bonds shall be issued for the purpose of carrying out this agreement as herein provided, and the balance of said bonds, namely bonds to the amount of $448,000 or any part thereof shall be issued from time to time, as may be required by the Board of Directors of said *Trenton Street Railway Company.* Said bonds shall be of the denomination of One Thousand Dollars each, to bear interest at the rate of 5% per annum, payable semi-annually, to be secured by a consolidated mortgage or deed of trust covering all of the property owned and to be acquired by the said *Trenton Street Railway Company.*

Said 19800 shares of stock and bonds to the amount of $540,000 to be divided among the owners of the stock of the Trenton Passenger Railway Company, Consolidated, upon surrender of the shares of the Trenton Passenger Railway Co., Consolidated.

The capital stock of the Pennington Avenue Passenger Railway Company, which now consists of 51 shares of the par value of $100 each, shall be convertible into said bonds of the *Trenton Street Railway Company* to the amount of $6000, upon surrender of the shares of the capital stock of the said Pennington Avenue Passenger Railway Company.

Capital stock of the Mulberry Street Railway Company, which now consists of 51 shares of the par value of $100 each, shall be convertible into said bonds of the said *Trenton Street Railway Company* to the amount of Six thousand dollars, upon surrender of the shares of the capital stock of the Mulberry Street Passenger Railway Company.

The capital stock of the Ewing Passenger Railway Company, which now consists of 51 shares of the par value of $100 each, shall be convertible into 200 shares of the capital stock of the *Trenton Street Railway Company;* one share of the stock of the Ewing Passenger Railway Company for four shares of the stock of the said *Trenton Street Railway Company,* upon the surrender of the shares of the capital stock of the said Ewing Passenger Railway Company.

EXHIBIT "C."

TRENTON STREET RAILWAY CO.
Valuation of property on basis of cost to reproduce.

	Real Estate:		
	Car barn property (assessed valuation)		$6850.00
	Old barn property on North Clinton		6150.00
	Old barn property on Princeton Ave.		600.00
10	Power house property		800.00
			$14400.00
	Add an arbitrary amount of 25%		3800.00
	Real estate in city		$18200.00
	Land at Yardville—4 acres	100.00	
	Land at Yardville—4 lots	600.00	
	Hamilton Township—90 acres	13,500.00	
	Princeton Township	6,000.00	
20	Princeton Township	1,200.00	
		$21,400.00	
	Add arbitrary amount 25%	5,350.00	
	Real estate in country		26,750.00
	Total		44,950.00
	Buildings:		
30	Lalor St. Car barns-Assessed Value		Cost to reproduce
		$30,000.	50,000.00
	Storage barn (iron)		7,500.00
	Paint Shop		25,000.00
	Boiler house		2,500.00
		$30,000.	$85,000.00

Clin. Av. horse barns	2,700.	7,200.00
Princeton Av. horse barns	3,400.	12,000.00
Power house)	25,700.	(50,000.00
Battery house)		(12,000.00
Brick stack)		(15,000.00
Coal trestle		1,500.00
	$61,800.	$182,700.00

Rolling Stock: (see inventory submitted by company for present value.)

32-10 bench open cars, without motors	$38,400.
17-9 bench open cars,	20,400.
3-15 ft. single truck closed cars	4,800.
2-16 ft. single truck closed cars	3,600.
40-18 ft. single truck closed cars	80,000.
6-20 ft. single truck closed cars	15,000.
10-30 ft. double truck closed cars	30,000.
10- ft. double truck closed cars (new)	30,000.
(brought forward)	$222,200.
(brought forward	222,200.
5 single truck sweepers (cost new	5,400.
1 rotary snow plow & sweeper	3,500.
1 work car	2,500.
1 sand car	2,500.
1 line car	2,500.
1 tower wagon	200.
1 emergency wagon	200.
10—4 motor equipments @ $3000.	30,000.
67—2 motor equipments @ $1800.	120,600.
10—2 Motor equipments	18,400.
	$408,000.
Office Furniture:	$1,200.00

Movable Equipment:		
Track Dept.	$1200.	
Line Dept.	650.	
Car shops	2500.	
Power plant	2000.	
Miscellaneous	6000.	12,350.00
Power Plant Machinery:		
2200 kw. capacity @ $120. per kw.		264,000.00
Could be replaced today for $90. per kw.		
Track & Line:		
Track Construction.		
25.6 miles, single track in city at average price of $14,500 per mile		371,200.
7.5 miles in suburbs at average price of $14,000. per mile		105,000.
		$476,200.
Paving 52,000 ft. asphalt @ $2.25		117,000.
Paving 21,60 ft. brick @ $2.50		54,000.
Paving 27,200 ft. Belgian block @ $2.		54,400.
Paving 18,200 ft. cobble @ .50		9,100.
Paving 11,200 ft. Macadam @ .75		8,400.
Paving 9,300 ft. Dirt @ .30		2,800.
		$245,700.
Overhead Construction:		
5.70 miles iron pole dbl. track spans @ $3200.		$18,250.00
.60 miles iron pole single track spans @ 2500.		1,500.00
5.80 miles wood pole dbl. track spans @ 2400.		14,000.00

5.70 miles wood pole single track spans @ 1900.	10,850.00	
1.30 miles iron center poles 2500.	3,250.00	
1.60 miles wood poles—single brackets 1600.	2,550.00	
	$50,400.00	
Bridges and culverts	1500.00	
Additional allowance for feeders & pole lines	10,000.00	
Special overhead work at canal bridges	5,000.00	
Track construction	476,200.00	
Paving	245,700.00	
	788,800.00	
Contingent—15%	118,320.00	
Total cost to reproduce track & line	$907,120.00	

SUMMARY OF TRENTON STREET RAILWAY.

Real Estate	44,950.
Buildings	182,700.
Rolling stock	408,000.
Office furniture	1,200.
Movable Equipment	12,350.
Power Plant Machinery	264,000.
Track and Line	907,120.
Total	1,820,320.

TRENTON, HAMILTON & EWING TRACTION CO.

Real Estate:	
Hamilton Township	
4 6/10 acres	$4,600.00
Buildings—None	
Rolling Stock—None	
Movable Equipment—None	
Power Plant Machinery	
Track and Line:	
Track construction 8.32 single track miles @ $14,000 per mile	116,500.00
Paving 4500 ft. cobble @ .50	2,250.00
Paving 7500 ft. Belgian Block @ $2.00	15,000.00
Overhead Construction—all span type	
.34 miles iron pole, dbl. track @ $3200.	1,100.00
.74 miles iron pole, single track 2500.	1,850.00
.12 miles wood pole, dbl. track (@ 2400.)	300.00
6.81 miles wood pole single track 1900.	13,000.00
	$154,600.00
Add for contingencies 15%	25,400.00
Total Cost to reproduce	$180,000.00

MERCER COUNTY TRACTION CO.

Real Estate—none—included under Trenton St. Ry. Co.		
Allowance for right of way, Princeton line	$5,000.00	
Buildings: Substation	4,000.00	
Rolling Stock—Substation		
Movable Equipment—none.		
Power Plant Machinery		
Substation on Princeton Line	12,000.00	
Track and Line:		
Track construction—		
West State St. (dbl. track) .52 miles Prospect & Stuyvesant (dbl. tr.) 1.40 mi. Pennington Ave. (sin. tr.) .47 mi. Hamilton & Olden Ave. (sin. tr.) 1.17 mi. Market St. line (sin. tr.) .67 mi.	6.15 miles @ $14,000. 86,100.	
(Yardville to Crosswicks sin. tr.) 2.3 miles @ $11,000.	25,300.	
(Line to Princeton (sin. tr.) 8.00 mi. @ $11,000.	88,000.	
	$199,400.	
Paving:		
4120 ft. asphalt @ 2.25	9,300.	
4800 ft. brick 2.50	12,000.	
5760 ft. cobble .50	2,900.	
11860 ft. Belgian 2.00	23,700.	
3960 ft. macadam .75	3,000.	
	$50,900.	

Overhead Construction

.32 mi. iron pole, dbl. bracket @ 2500.	800.00
1.5 mi. iron pole dbl. track span @ $3200.	4800.00
1.5 mi. iron pole single track span 2500.	3750.00
2.0 mi. wood pole single track span 1900.	3800.00
9.14 mi. wood pole single bracket 1600.	14650.00
	$27800.00
Bridges and culverts	4000.00

SUMMARY.

Real Estate	5000.
Buildings	4000.
Substation Battery	12000.
Track	199400.
Paving	50900.00
Line	27800.00
Bridges & Culverts	4000.00
	$303100.00
Add for contingencies &c 15%	45,400.00
	$348,500.00

TRENTON PENNINGTON & HOPEWELL STREET RAILWAY CO.

Real Estate:

Lincoln Av. assessed @ $2200.	3000.00

Buildings:

Lincoln Ave., assessed @ $1300.	2500.00

Rolling Stock: none

Movable Equipment: none

Power Plant Machinery:

Track & Line:

Track construction:		
13 miles single track @ $14,000.	182,000.00	
Paving:		10
11,000 ft. macadam @ 75¢	8,250.00	
Overhead Construction:		
8 miles wood pole, spans @ $1900.	15,200.00	
5 miles wood pole, bracket @ $1600.	8,000.00	
Bridges & retaining walls	9,300.00	
Total	$228,250.00	
Contingencies—12%	27,400.00	
		20
Cost to reproduce	$255,650.00	

SUMMARY OF VALUATION.

Trenton Street Railway Co.	$1,820,320.00	
Trenton, Hamilton & Ewing	180,000.00	
Mercer County Traction Co.	348,500.00	
Trenton, Pennington & Hopewell	255,650.00	
	$2,604,470.00	30

EXHIBIT "D."

	Miles single Track in city limits	Miles double track in city limits	Miles single track in country	Miles double track in country	Total single track miles
Trenton Street Railway	3.6	11.0	4.5	1.5	33.1
Mercer County Traction	2.1	1.85	10.05	—	16.3
Trenton, Hamilton & Ewing	1.3	.4	6.2	—	8.3
Trenton, Pennington & Hopewell	—	——	13.0	—	13.0
Total	7.0	13.25	34.2	1.5	70.7

EXHIBIT "E."

Extract from Moody's Manual 1909.

Trenton Street Railway (controlled by stock ownership) Incorporated June 28, 1898, in New Jersey; consolidation of the Trenton Passenger Railway Co., the Mulberry street Passenger Railway Co., the Ewing Passenger Railway Co., and the Pennington Avenue Passenger Railway Co.

Owns the entire capital stock of the Mercer County Traction Company, and the Trenton, Pennington & Hopewell Street Railway Co.

On May 1, 1906, leased the Trenton, Hamilton & Ewing Traction Co., for 999 years.

Total track operated 64 miles. Gauge, 5 ft., 2 in. Rails, 78 to 90 lb. T and girder. Power stations, 1; engines to generate power, 3.

At the time of going to press negotiations were pending for the lease of this company's property to a syndicate headed by F. W. Roebling.

Capital Stock—Authorized and outstanding, $1,000,000; par $50. All but 37 shares owned by United Power & Transportation Co.

Bonded Debt—$970,000 (entire issue) Trenton Passenger Ry. First Gold 6s; dated 1891; due $10,000 yearly on Sept. 30, from 1908 to 1915; $15,000 annually, 1916 to 1925; $20,000 per annum, 1926 to 1930, and the remaining $650,000 on Sept. 30, 1931; int. A & O at National Mechanics' Bank, Trenton, N. J. Coupon $1,000; principal may be registered. Authorized $1,000,000. remainder having been retired.

$1,030,000 *Trenton St. Ry. First Gold* 5s; dated 1898; due July 1, 1938; int. J. & J. at Mechanics' Natl. Bank, Trenton, or at Real Estate Title Ins. & Trust Co., Philadelphia. Girard Trust Co., Philadelphia, Trustee. Coupon $1,000; principal may be registered. Authorized $2,000,000, of which $970,000 are reserved to retire the Trenton Passenger Ry. 6s. Secured on entire property now owned or hereafter acquired. Listed on the Philadelphia Stock Exchange.

Earnings, Expenses & Income Account—Years Ending Dec. 31.

Years	Gross Earnings	Operating Expenses	Net Earnings	Interest & Taxes	Dividends	Surplus for year
1905	$453,649	$235,343	$218,306	152,529	59,910	5,867

1906	492,948	250,739	242,209	157,754	59,910	24,544
1907	528,325	293,554	234,771	174,839	59,928	4
1908	528,563	289,716	238,847	178,916	59,926	3
1909	566,287	271,767	294,520	181,905	49,540	63,075

Officers: J. A. Rigg, Pres; T. W. Groockett, Jr.. Sec. & Treas; Philadelphia, Pa; P. E. Hurley, Supt., Trenton, N. J. Directors:—J. A. Rigg, D. B. C. Gatherwood, Philadelphia, Pa. J. L. Kuser, F. W. Roebling, Trenton, N. J.; R. L. Jones, Reading, Pa. Office:—Trenton, N. J.

RAILROADS CONTROLLED BY TRENTON ST. RY. CO.

Mercer County Traction Co.—Inc. June 19, 1899, in N. J. Leased to the Trenton St. Ry. Co. for 999 years from Aug. 1, 1904. Length of line 11.42 miles. Gauge, standard.

Capital Stock—Authorized and outstanding, $100,000. All owned by Trenton Street Railway.

Bonded Debt—$300,000 First Gold 5s; dated July 1, 1904; due July 1, 1944; int. J. & J. 1, at company's office, or in Philadelphia. Coupon and registered, $1,000. Real Estate Title Ins. & Trust Co., Philadelphia, Trustee. Of the $300,000 outstanding $128,000 are owned by the Trenton Street Railway Co.

Officers: John A. Rigg, Pres.; T. W. Crockett, Jr., Sec. & Treas. Philadelphia.

Office: Trenton, N. J.

Trenton, Hamilton & Ewing Traction Co.—Inc. Aug. 11, 1905 in N. J., leased to Trenton St. Ry. Company for 999 years from May 1, 1906; lessee guaranteeing principal and interest on the undernoted bonds. Length of line, 8.32 miles.

Capital Stock—authorized and outstanding, $200,000; all owned by Trenton Street Railway Co.

Bonded Debt—$350,000 First Gold 5s; dated 1905; due Nov. 1, 1955; int. M. & N. at Real Estate Title Ins. & Trust Co., Philadelphia, Trustee. Coupon, $1,000; principal may be registered. Authorized $500,000. A first lien on property owned and guaranteed, principal and interest, by the *Trenton Street Railway Co.*

Trenton, Pennington & Hopewell Street Railway: Inc. Sept. 22, 1902 in N. J. Leased to Trenton St. Ry. Co. which owns the entire $250,000 capital stock. Line of road: Trenton to Hopewell, N. J., 13 miles.

Bonded Debt—$350,000 First Gold 5s; dated 1903; due June 1, 1943; int. N. & D. at Fidelity Trust Co., Newark, N. J. Trustee. Guaranteed, principal and interest, by the Trenton St. Ry. Co.

Officers: John A. Rigg, Pres; T. W. Grockett, Jr., Sec. & Treas. Philadelphia; P. E. Hurley, Gen. Mgr., Trenton Street Railway Co.

Office: Trenton, N. J.

TRENTON & MERCER COUNTY TRACTION CORP.

Expenditures for additions and betterments of Trenton property since October 15th, 1910.

Expended a/c Gen'l Mortgage Bond Issue, 1911 Road and Equipment	$319,671.40	
Rehabilitation	180,328.60	$500,000.00
Trenton & Mercer County Traction Corporation Road and Equipment		128,562.38

Trenton Street Railway Company Road & Equipment	17,026.84	
Rehabilitation	56,841.61	73,868.45
Mercer County Traction Company Road and Equipment	25,791.75	
Rehabilitation	8,445.50	34,237.25
Trenton, Pennington & Hopewell St. Ry. Co. Road and Equipment	2,688.26	
Rehabilitation	9,236.84	11,925.10
Trenton, Hamilton & Ewing Traction Co. Road and Equipment	55,898.78	
Rehabilitation	192.96	56,091.74
		$804,684.92

1915

Construction work in progress:	
West State St. reconstruction Calhoun to Prospect Sts.	10,997.71
Suspense accounts:	
Inter-State Fair Terminal	3,171.11
Crosswicks Extension	2,351.81
Pay Within Features—large cars	627.76
	$821,833.31

October 22d, 1915.

TRENTON & MERCER COUNTY TRACTION CORPORATION EXPENDITURES a/c TRENTON STREET RAILWAY CO., $500,000.00 BOND ISSUE.

Track			
Reconstruction of Track Princeton Ave., Warren St. to Paul Ave. 4345 ft. Single Track			
Charges to Road & Equipment		22772.43	10
Reconstruction of Track E. State St. D. & R. Canal to S. Clinton Ave. 750 ft. D. T.			
Charles to Road & Equipment	5124.67		
Charges to Rehabilitation	34.34		
		5159.01	
Reconstruction of Track S. Clinton Ave. E. State St. to Penn. R. R. Bridge 1250 ft. D. T.			20
Charges to Road & Equipment		6484.06	
Reconstruction of Track S. Broad St. State St. to Livingston St. 978 ft. D. T.			
Charges to Road & Equipment (Ballast)	1377.71		
Charges to Rehabilitation	6611.87		
		7989.58	
Reconstruction of Track E. State St. Broad St. to D. & R. Canal 1645 ft. D. T.			30
Charges to Road & Equipment (Ballast)	1995.90		
Charges to Rehabilitation	13167.63		
		15163.53	

	Reconstruction of Track S. Broad St. Greenwood Ave. to American Bridge Co.'s Crossing 1920 ft. D. T.		
	Charges to Road & Equipment (Ballast)	1981.30	
	Charges to Rehabilitation	18417.17	
			20398.47
10	Reconstruction of Track S. Clinton ton Ave. Penn. R. R. Bridge to Greenwood Ave. 630 ft. D. T.		
	Charges to Road & Equipment (ballast)	216.38	
	Charges to Rehabilitation	2785.62	
			3002.00
	New Second Track Hamilton Ave. S. Clinton Ave. to Chambers St. 3250 ft. Track		
20	Charges to Road & Equipment		19030.67
	Reconstruction of First Tract Hamilton Ave. S. Clinton Ave. to Chambers St. 3250 ft. Track		
	Charges to Rehabilitation		16678.38
	Reconstruction of Track Centre St. Broad St. to Ferry St. 598 ft. D. T.		
	Charges to Road & Equipment (Ballast)	321.60	
30	Charges to Rehabilitation	6487.22	
			6808.82
	Reconstruction of Track N. Broad St. State St. to Perry St. 870 ft. D. T.		
	Charges to Road & Equipment (Ballast)	531.30	

Charges to Rehabilitation	8866.40	
		9417.70
Reconstruction of Track S. Broad St. Livingston St. to Greenwood Ave. 1478 ft. D. T.		
Charges to Road & Equipment (Ballast)	1323.48	
Charges to Rehabilitation	17319.21	
		18642.69
Reconstruction of Track Stanton St. S. Clinton Ave. to S. Broad St. 600 ft.		
Charges to Road & Equipment (Ballast)	151.17	
Charges to Rehabilitation	833.33	
		984.50
Reconstruction of Track Centre St. near Lalor St. 80 ft. D. T.		
Charges to Road & Equipment (Ballast)	19.08	
Charges to Rehabilitation	516.22	
		535.30
Reconstruction S. Broad St. Hudson to Liberty Sts. 2984 ft. D. T.		
Charges to Road & Equipment		14257.02
Reconstruction Track perry St. to D. & R. Canal Broad St.		
Charges to Rehabilitation		4.25
Atlas Joints & Bonds W. State St. Willow St. to Prospect St. & at Murray St.		
Charges to Road & Equipment (Ballast)	357.93	
Charges to Rehabilitation	6379.14	
		6737.07

	Atlas Joints S. Clinton Ave.		
	Charges to Rehabilitation		142.67
	Joints Welded by Lorain Steel Co. S. Clinton Ave. from Greenwood Ave. to Dye St.		
	Charges to Road & Equipment (Ballast)	26.66	
	Charges to Rehabilitation	8161.97	
			8188.63
	N. Clinton Ave. from Stone Bridge to Mulberry St.		
	Charges to Road & Equipment (Ballast)	113.63	
	Charges to Rehabilitation	3141.31	
			3254.94
	Mulberry St. from Clinton Ave. to Terminus		
	Charges to Road & Equipment (Ballast)	2.28	
	Charges to Rehabilitation	506.47	
			508.75
	N. Warren St. from Perry St. to Pennington Ave.		
	Charges to Road & Equipment (Ballast)	99.02	
	Charges to Rehabilitation	1561.49	
			1660.51
	E. State St. from Clinton Ave. to Logan Ave.		
	Charges to Road & Equipment (Ballast)	36.48	
	Charges to Rehabilitation	6335.86	
			6372.34
	W. State St. from Prospect St. to Overbrook Ave.		
	Charges to Road & Equipment (Ballast)	32.79	

Charges to Rehabilitation	2477.51	
		2510.30
Paul Avenue Princeton Ave. to Brunswick Ave.		
Charges to Rehabilitation		262.59
Pennington Ave. Frazier St. to Prospect St.		
Charges to Rehabilitation		605.37
Stanton St. at Switch		
Charges to Rehabilitation		18.90
Tracks Lowered—Pennington Ave.		
Charges to Road & Equipment (Ballast)	488.49	
Charges to Rehabilitation	1123.73	
		1612.22
New Guard Rail & Joints W. State St. & Murray St.		
Charges to Road & Equipment	5.04	
Charges to Rehabilitation	155.23	
		160.27
Crossover renewed Broad & State Sts.		
Charges to Road & Equipment		250.16
Renewal Curve S. Broad St. & D. & R. Canal		
Charges to Road & Equipment	269.66	
Charges to Rehabilitation	569.69	
		838.35
Renewal Special Work Centre & Lalor Sts.		
Charges to Road & Equipment	12.75	
Charges to Rehabilitation	547.76	
		560.51
Renewal Special Work S. Clinton & Hamilton Aves.		
Charges to Road & Equipment (Ballast)	207.69	

	Charges to Rehabilitation	2810.25	
			3017.94
	Renewal Switch State & Warren Sts.		
	Charges to Rehabilitation		203.74
	Renewal Special Work S. Broad & Market Sts.		
	Charges to Rehabilitation		201.00
	Renewal Curve Paul & Brunswick Aves.		
	Charges to Rehabilitation		449.16
10	Renewal Curve Mulberry St.		
	Charges to Rehabilitation		155.35
	Renewal Crossover Broad & Hanover Sts.		
	Charges to Rehabilitation		70.79
	Renewal Steam Railroad Crossing N. Warren St.		
	Charges to Rehabilitation		818.44
	Renewal Steam Railroad Crossing E. State St.		
	Charges to Rehabilitation		1124.06
20	Renewal Steam Railroad Crossing S. Broad St.		
	Charges to Rehabilitation		1701.89
	Renewal Steam Railroad Crossing Perry St.		
	Charges to Rehabilitation		2957.42
	Rebuilding Penn. R. R. Bridge E. State & Monmouth Sts.		
	Charges to Rehabilitation		874.06
	Renewal Switch Frog Broad & Centre Sts.		
	Charges to Rehabilitation		124.94
30	Repairs to Asphalt Pavement		
	Charges to Rehabilitation		10647.80
	Paving W. State St. Overbrook Ave. to Parkside Ave.		
	Charges to Road & Equipment		298.31
	Plank Crossing S. Broad St.		
	Charges to Road & Equipment		60.48

New Track Lalor St. Car House			
Charges to Road & Equipment		265.69	
Installation Derailing Switch S. Broad St. Crossing			
Charges to Road & Equipment		282.58	
Paving Lalor St. with Belgian Block			
Charges to Road & Equipment		180.78	
Renewal Brick Pavement W. State St. Willow to Calhoun Sts.			
Charges to Rehabilitation		22.20	10
Rehabilitation of Suburban Lines:			
Princeton Line—Trenton to Shippetauquin Creek			
Charges to Road & Equipment	2252.08		
Charges to Rehabilitation	3312.87		
		5564.95	
Yardville Line			
Charges to Road & Equipment	268.46		
Charges to Rehabilitation	610.43		
		878.89	20
Fair Grounds Line			
Charges to Road & Equipment	56.81		
Charges to Rehabilitation	237.04		
		293.85	
Portable Crossover			
Charges to Road & Equipment		772.49	
One Pellessier Rail Grinder			
Charges to Road & Equipment		1500.00	
Miscellaneous Track Tools		210.60	
Overhauling Bridges between Trenton & Lawrenceville			30
Charges to Rehabilitation		288.41	
		$233977.81	

Power Plant.

Road & Equipment Charges.

Two Wetzel Mechanical Stokers installed 1911	1584.15
Steam Lines for 1500 K. W. Turbo Generator	5234.46
Extension to Power House Building	12095.81
New Concrete Floor under Turbines	2801.89
Two Wetzel Mechanical Stokers installed 1912	3125.00
One DeLaval Turbo-Generator 750 K. W. installed 1912	17125.47
Condensing Equipment for 750 K. W. Turbo Generator	5751.61
One Babcock & Wilcox Boiler installed 1911	538.41
Two Edge Moor Boilers installed 1912	111130.73
Two Connery & Co. Steel Smoke Stacks	2646.10
One DeLaval Turbo-Generator 1500 K. W. installed 1913	29427.49
One Steam Turbine Pump 55 h.p.	1469.40
Condensing Apparatus for 1500 K. W. Turbine	9321.75
Extra Condenser Pump Bushing	200.58
New 17 Panel Crocker-Wheeler Switchboard	
Charges to Road & Equipment 60% cost $3031.27	
Charges to Rehabilitation 40% cost 1956.12	
	4987.39
Booster Switchboard—one panel	599.28
Addition to Switchboard for 1500 K. W. Turbine	432.24
Pipe Lines for 750 K. W. Turbo-Generator	1708.77
Pipe Lines from Intake & Discharge Wells	1939.84
Suction, Intake & Discharge Wells	3764.86
Retaining Wall Power House	6715.86

Asbestos Pipe Covering Old Equipment	120.00
Asbestos Pipe Covering Turbines	391.00
Oil Guards	36.20
Lightning Arrestors	49.88
Crosby Engine Indicator	60.35
Installation of Coal Conveyor	227.17
Miscellaneous Equipment for Power Plant	212.70
Iron Stairs from Turbine Floor to Basement	52.92
Arc Lights at Power House	18.24
Lights in cellar at Power House	63.96
New Storeroom Power House	24.46

Rehabilitation Charges.

Overhauling	Power House Machinery	8379.08
"	Electrical Instrument	49.83
"	Circuit Breakers	177.13
"	Boilers	487.80
"	Belts	12.00
"	Booster	9.50
"	Plumbing	70.00
"	Lights	13.96
"	Mechanical Stokers	1027.13
"	Building	210.00
Engine Parts		95.00
Replacing Wooden Floor with Concrete Floor		500.00
		$134889.40

Car Barn.

Cars & Equipments.

Road & Equipment.

Ten P. A. Y. E. Double Truck Cars #224-242 incl.	52193.63
Equipping Cars with Sand Boxes	643.28
Miscellaneous Equipment for Cars	499.69
Extra Car Wheels & Axles	30.40

	Rehabilitation.	
	Rebuilding Cars	3782.56
	Overhauling Car Bodies 1910	501.99
	Overhauling Motor Equipment 1910	993.40
	New International Registers	600.00
	Snow Equipment	194.60
		$59439.55
	Car Barn Buildings & Equipment.	
	Construction New Car Barn #5 Lalor & Davies Sts.	30795.26
	Property purchased from Jeremiah Lalor Estate for Corrugated Iron Barn #3 (Road & Equipment) 4333.66	
	Moving & Erecting Corrugated Iron Barn #3 (Rehab) 3929.41	
		8263.07
	New Tracks between Car Barns #3 & #5	187.12
	Cement Sidewalks Davies, Lalor & Second Sts.	523.99
	Vitrified Brick Pavement Davies St.	1860.87
	Fire Pails A/C Insurance	33.77
	New Floor Paint Shop	93.04
	Time Clock Register	30.00
	New Machinery in Shops	5325.82
	Wreck Tools	255.17
	Installation of Heating Plant Car Barn (Partial Cost)	4777.98
	Rehabilitation.	
	Rehabilitation Roofs on Car Barns	448.12
	Enlarging Storeroom	297.21
		$52891.42

Line:

Road & Equipment.

New feeders S. Broad St.	2551.29
New Feeders Lawrenceville Line	7214.03
Overhead Line Hamilton Ave. second track	149.67
New Signals Princeton Line	23.44
Overhead Line Lalor St. Car House	36.76
New Feeder Cable at Mulberry St. & D. & R. Canal	13.61
New Pole S. Clinton & Roebling Sts.	3.80
Installation Bond Opener Mulberry St.	10.83
New Ground Wire Perry & Clinton Sts.	31.53
New Signal at White Horse	22.32
Cable Boxes Perry St. & D. & R. Canal	361.97
New Feeder Poles Perry & Broad Sts.	108.71
Trolley Guard at S. Broad St. Railroad Crossing	306.76

Rehabilitation.

Overhauling Signal System	173.68
Overhauling Feeder Poles Perry St. Bridge	37.29
" Poles & Cables Power House	151.54
" Cables under Canal at Perry St.	225.19
" Cables under Canal at Mulberry St.	347.84
Replacing Trolley Wire	3030.93
Replacing Poles	1712.99
Painting Iron Poles	348.39
New Trough Warren St. Bridge	43.53
	$16906.10

Miscellaneous:

Road & Equipment.

Horse & Carriage	500.00
Horse for Line Wagon	150.00

Dump Wagon	125.00
Office Furniture	337.70
Payment A/C Plant Stores	538.40
Installation Western Union Clock Broad & State Sts.	10.84
A/C Stations, Waiting Rooms, etc.	4.60
New Stop Signs	26.98
Rehabilitation.	
Overhauling Trolley Wagon	202.20
	$1895.72

SUMMARY.

Track	$233977.81
Power Plant	134889.40
Cars & Equipments	59439.55
Car Barn Buildings & Equipment	52891.42
Line	16906.10
Miscellaneous	1895.72
	$500000.00

Charges to Road & Equipment	$319671.40	
Charges to Rehabilitation	180328.60	
		$500000.00

EXHIBIT C6.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Proposed Withdrawal from Sale of Six Tickets for Twenty-five Cents by the Trenton & Mercer County Traction Corporation, on Street Railways Operated by it.	Report

George L. Record and Charles E. Bird, for the City of Trenton.
Edward M. Hunt and Frank S. Katzenbach, Jr., for Trenton & Mercer County Traction Corporation.
Frank H. Sommer, for the Commission.

Under date of August 13th 1915, the Board received a communication from Trenton & Mercer County Traction Corporation, by Rankin Johnson, President, which notified the Board that the company and its lessors had "for many years past" sold six tickets for twenty-five cents, that owing to decreased revenue and increased cost of operation the company intended to discontinue this practice and to withdraw the tickets from sale and would exact a five cent fare for carrying each passenger over five years of age, and that under the charters and ordinances by virtue of which it operated its roads it was entitled to exact such fare.

New Jersey State Library

In a later communication the company advised the Board that it intended to withdraw the sale of such tickets on August 20th 1915.

The Trenton & Mercer County Traction Corporation operates as lessee the railways of the Trenton Street Railway Company, the Mercer County Traction Company and the Trenton, Hamilton and Ewing Traction Company. The tickets, withdrawal of which was proposed, have been and are sold as mentioned above and each ticket has been and is accepted as the equivalent of a five cent fare for transportation on all of the leased lines of said company.

On August 17th 1915, the Board entered an order suspending the increase in the existing individual and special rate, and the charge or alteration of the existing classification, as proposed by the company, and fixed a time for hearing. Hearings were held and the matter was finally submitted November 23rd 1915.

The company contended that the Board was without jurisdiction to inquire into the justice and reasonableness of the proposed change, because the ordinances passed by the City of Trenton, under which it operates, constituted inviolable contracts by which the rate of fare for each passenger over five years of age is fixed at five cents.

We have examined the acts of incorporation and ordinances upon which this claim is based. In our judgment they do not support such claim, nor do they preclude us from the exercise of the jurisdiction conferred by the act creating this Board and defining its powers.

In the judgment of the Board the proposed withdrawal of tickets would result in requiring the users of such tickets to pay a higher charge or rate for carriage on the cars of respondent, and involves an in-

crease in the charge or rate to be paid by them for such service, and further involves a change or alteration in the existing classification or rates and charges.

The question before us is, therefore, whether the proposed increase, change or alteration in charge, rate or classification is just and reasonable. To determine this question we turn to the proofs before us.

Incidentally, it is to be noted that the tickets in question have been sold by the company and its predecessors for upwards of twenty years.

VALUATION

The books of the Trenton Street Railway Company and its subsidiaries produced, are incomplete and do not disclose the actual cost of the property. The books do disclose some information as to the amounts of stock and bonds which were issued by the subsidiary companies. The amount of stocks and bonds so issued, however, bear no necessary relation to reasonable cost or value.

There is in evidence a valuation made by the Board's engineer in the Spring of 1911 in connection with the lease of the properties to a new operating company. There is also a valuation made in a very general way by Mr. Rankin Johnson, based upon an investigation which he made in 1910.

In addition, there is a valuation made for the purpose of this case by engineers representing the city, Messrs. Rand & Brackenridge, and, a fourth valuation made up practically as of the present time by Mr. Rankin Johnson for the company. There is also in testimony data concerning the expenditures upon this property since 1910. The proper classification

of these expenditures as between construction and maintenance accounts is subject to some doubt and consequent criticism. An examination of the charges to these accounts has been made by the Board's examiners, assisted by one of its engineers, Mr. Ingham, who is familiar with street railway construction. The Brackenridge estimate made for the city discloses certain errors and omissions due to the use of low unit prices and to insufficient estimates of quantity. When corrected in these respects, it will be found that the Brackenridge estimate of value does not differ greatly from the value of the property as determined by us.

The Johnson valuation is subject to some criticism, also, as it is more or less based upon his estimate of 1910, with additions for the work done since that time.

In view of all the testimony with regard to valuation of this property, we are of opinion that the best estimate can be made up by taking the Betts' report made in February 1911, deducting from the inventory in that report the items which have since disappeared, adjusting the values where the testimony in this case shows substantial error, and adding thereto the amounts found by the Board's examiners to be properly chargeable to road and equipment during the period from February 1911, to the present time.

The value placed upon this property by the Board's engineers in 1911, which valuation was made for the purpose of considering whether approval of the lease should be given, was, omitting overhead charges $2,387,950.

This valuation includes materials and supplies on hand at the time, these items being properly classified as a part of working capital.

Deductions from the above because of items removed, are as follows:		
No. 1 engine and two generators 300 k. w. @ $120.	$36,000.	
Two 125 h.p. h.r.t. boilers	2,500.	
1 battery booster	950.	
2 storage batteries	20,000.	
Excess value allowed for old machinery, 1900 k.w. @ $30, per k.w.	57,000.	
No. 3 generating unit, nearly obsolete, 750 k.w. @ $30. (full value being $60. per k.w.)	22,500.	
Old horse car barns:—		
Land	7,687.	
Buildings	19,200.	
Line from Yardville to Crosswicks, not now in the service of the public	25,300.	
Land in Yardville	$875.	
Total deductions taken as		$192,012.
		$2,195,938.

Spring Lake Park, owned by the company and partly rented for resort purposes is valued by the company at $35,000. An outstanding mortgage leaves an equity of $15,000. The value allowed in the Betts' report for this property was $16,875. This amount should be deducted, because we conclude it is not property used or useful in transportation service. This reduces this figure to $2,179,063.

ADDITIONS.

Before adding the cost of work done since 1911 some additions must be made for inadequate allowances in the Betts' estimate of 1911. Value of land was obtained by taking the assessor's valuation and adding thereto 25% on the assumption that land was assessed at 80% of its true value. There does not appear to have been any great error in the valuation of the land occupied by the car barns, but the allowance of $4,000. for power station land is clearly insufficient. This land is so situated as to accommodate a siding from the railroad. It is contiguous to the Assunpink Creek from which an ample supply of water is obtained for condensing purposes. The value of $6,000. placed on this land by the company is not regarded as excessive. An addition of $2,000., therefore, will be made for power house land.

Private right of way for the Princeton line was estimated by Mr. Betts at approximately $36,000., but for some reason he omitted a portion of it and allowed only $14,000. We accept $36,000. as value of this land. On account of Princeton right of v there will be an additional allowance made of $22,000.

In the western part of Trenton, on the Trenton Junction Line, there is a private right of way 2,700 feet in length. This appears to have been omitted entirely from the Betts' appraisal. We allow for this land $6,750. Total additions for land will, therefore, be $30,750.

TRACK AND ROADWAY.

After an examination of the testimony of the several witnesses as to unit prices, the estimate of Mr. Betts will be allowed to stand as the value new in 1911. The same may be said with regard to paving.

BRIDGES AND CULVERTS.

With regard to this item there appears to have been an omission of certain bridges. From the testimony in this proceeding it is clear that the cost of reproduction for all the bridges found in this system will approximate $50,000. This agrees with the company's estimate (Ex. T. & M. #62). In the Betts' estimate, the amount allowed was $14,800. There will, therefore, be added the amount of $35,200.

OVERHEAD CONSTRUCTION.

In the Betts' estimate of 1911 the total allowance for overhead construction including overhead charges was $152,547. The estimate made by the city's representative places the value at the present time at approximately $307,000., and that made by the company at $320,000. Examination indicates that in the Betts' estimate an insufficient amount was allowed for copper feeders running from the power plant to points on the various lines. Additional feeders have been installed since 1911 and some further changes were made in the distribution system when the storage batteries were discarded. There appears to have been also a lack of proper allowances for track bonds. On the whole, we accept the Brackenridge estimate of $307,000. plus an allowance of $5,000. for special overhead work at drawbridges, which appears to have been omitted from his estimate.

Brackenridge estimate	$307,000.
Overhead specials	5,000.
	$312,000.

Deduct cost of additions since 1911, added hereafter in allowance for additions made since 1910.	16,906.
Estimated value 1911	295,094.
Deduct estimate in Betts' report of 1911 and already included	152,547.
Amount to be added for fair value of overhead construction	142,547.
Taken as	142,550.

ROLLING STOCK AND EQUIPMENT

With regard to this class of property, we are inclined to let the estimate stand as the cost to reproduce the equipment owned by the company in 1911. It should be noted that Mr. Betts included the first ten new cars, the value of which must be deducted from his estimate, as they are also included in the figure for additions amounting to $568,307. The cost of the ten cars referred to was $50,370. This we deduct from Mr. Betts' figure of $408,000., leaving an amount of $357,630. as the value of the cars. Further comment will be made upon this item in connection with the accrued depreciation.

CAR HOUSES, REPAIR SHOPS, TOOLS, STOCK AND ADJACENT REAL ESTATE.

With the exception of the real estate which has been referred to above, we see no reason to make any adjustment in the amount allowed in the Betts' estimate.

POWER STATIONS

Proper deductions and allowances for power station and its equipment as of 1911 have already been made above.

ADDITIONS MADE SINCE 1910.

Exhibit C-1 b & c submitted by the company contain detailed lists of the items of work done by the company since 1910. All of the work found in these lists was charged either to road and equipment account or to rehabilitation, but the total finally is found in charges to capital account. If we are to obtain the value of actual additions to the property made since 1910, a re-classification is necessary. Using Exhibit C-1 b & c as a basis, the accountants of the Board made an examination of the books of the company and arrived at the conclusion that of the amounts found in Exhibit C-1 b, which totaled $500,000., the correct amount chargeable to capital account is $338,256. Of the amount found in Exhibit C-1 c totaling $321,916. it was found that approximately $230,051. was properly chargeable to capital account, making a total addition to the value of the property up to September 30th 1915, of $568,-307.

SUMMARY OF VALUATION

Summarizing the above we have:	
Value Betts' report, 1911	$2,387,950.
Deductions for discarded plant	192,012.
	2,195,938.
Deduct for Spring Lake Park	16,875.
	2,179,063.

Additions—Land	30,750.
Bridges and culverts	35,200.
Copper Feeders and Bonding	142,550.
Addition since 1910	568,307.
Total value of physical property, new	2,955,870.
Deduct for cars included twice	50,370.
Value as of Sept. 30th 1915	$2,905,500.

ACCRUED DEPRECIATION

The depreciation that had accrued to the property in existence in 1911 was very considerable. Because of the failure to maintain the property, extension rebuilding was necessary, both with regard to the tracks, the overhead construction, and the cars. Additional machinery in the power plant and additional cars were required. Some of the depreciation which had accrued up to 1911 has been made good by expenditures upon the property in the last four years. These expenditures have been greater than normal, as the amount which was necessary to expend was considerably above the average which would have been necessary if the property had been well maintained prior to 1911. A deduction for accrued depreciation has already been made in connection with the No. 3 generating unit in the power station. Items of property not in existence in 1911 have been eliminated from the above appraisal. Included above is the full allowance for all of the cars upon a basis of value new. There are one hundred single truck cars which must either be replaced by new equipment or must undergo very considerable reconstruction, the cost of which in most cases would nearly equal that of new cars. These one hundred

cars have an average cost value in excess of $3000. each, and therefore represent an original cost of perhaps $300,000. The motor equipments are but slightly depreciated. The car bodies and trucks have depreciated fully 75% and the total depreciation on cars is fully $100,000. There is an accrued depreciation in track and roadway and overhead system, not including copper wire, of not less than 10%. This amounts to at least $120,000.

We have made no further deductions for accrued depreciation.

Value as found above	$2,905,500.
Accrued depreciation	220,000.
Present Value Sept. 30, 1915	$2,685,500.

The deduction made for accrued depreciation is based upon actual depreciation ascertained upon inspection, and not upon theoretical depreciation.

INTANGIBLE ALLOWANCES

Except as hereinafter mentioned, all proper allowances for intangibles have been heretofore included.

OVERHEAD CHARGES

For overhead charges we consider the allowance of 15% sufficient to cover engineering, errors and omissions, contingencies, and interest during construction, considering the piecemeal manner in which a number of these roads and extensions were constructed. Calculated upon the items subject to such charges, we obtain the amount of $32,000, which will be included.

We allow for organization expenses at 2½% upon bare structural cost, which for

this purpose will be assumed to be $2,500,000 $62,500.

In view of all of the circumstances in this case, we allow for contractor's profit, the sum of $140,000. We regard this sum as liberal in any circumstances.

Under working capital, materials and supplies properly belong. These have been included in the appraisal of the physical property, and in view of the facts testified in this case, we do not deem proper any further allowances for working capital.

There is no proof in the record of development cost; nor is there proof of inadequacy of a fair return at any time upon fair value. No allowance on account of development costs or past inadequacy of fair return can be made.

Throughout this valuation in the allowances made, full consideration has been given to the fact that the property valued was a harmonious operating system —a going concern—in successful operation.

In view of all the evidence we conclude that the value of the property, for the purpose of fixing rates, does not exceed $3,212,000. as follows:—

Present value, Sept. 30, 1915	$2,685,500.
Overhead charges	324,000.
Organization expenses	62,500.
Contractor's profit	140,000.
Total	$3,212,000.

The complete summary of value by classes of property is as follows:

Land	$70,000.
Buildings	217,500.
Track and roadway and paving	1,285,000.
Bridges	50,000.
Overhead construction	312,000.
Rolling stock	475,500.

Office furniture and supplies and office cash	3,000.
Materials and supplies and fuel	24,000.
Power house machinery	248,500.
	2,685,500.
Overhead charges	324,000.
Organization expenses	62,500.
Contractor's profit	140,000.
	$3,212,000.

EARNINGS AND EXPENSES

The earnings and expenses of the Trenton & Mercer County Traction Corporation are summarized for the years 1911 to 1914 in Exhibit C-1-a. Exhibit C-2 gives the detail for the calendar year of 1914 and also gives the increase or decrease of each item. Page 5 of Exhibit C-2 gives the detail of the construction account for the calendar year 1914.

Before attempting to draw any conclusions with regard to the relation between the net revenues as shown on Exhibit C-1-a, it may be well to consider the differences between the operating expenses for 1914 and those of 1913. The operating revenues have shown an increase each year from 1911 to 1914, the average for the four years being $736,840.38. The operating expenses have also increased each year, but not in the same proportion, the average for the four years being $389,923.34. Taxes have shown an increase each year, average for the four years being $45,061.89. The operating income, or net revenue, has not shown the same increase as has been the case with the gross revenues, the net revenue for the four years being as follows:

1911	$323,012.62
1912	295,536.61
1913	312,006.47
1914	276,866.87

The average net revenue for the four years was $301,856.

The financial statement submitted by the company appears to show a deficit, but in arriving at this deficit there has been included among the deductions the amounts required to pay the rentals which the Trenton and Mercer County Traction Corporation agreed to pay to owners of the Trenton Street Railway Company. These statements, therefore, cannot be considered as showing the actual relation between net revenues and value of property, when the relation between the earnings of the past four years and the value of the property used in the production of these revenues is considered. The charges to operating expenses made by the company have been inspected by the Board's examiners and it is found that they are properly classified.

Examination of the detail found in Exhibit C-2 shows that the disproportionate increase in operating expenses for 1914 over those for 1913 are due to several items, must important of which were the removal of snow and ice, which showed an increase of $13,284., an increase in the charges to maintenance of way and structures of approximately $5,000., and an increase in the cost of transportation amounting to $11,507., the larger portion of which was due to an increase of wages of motormen and conductors.

Based upon the value of property found above $3,212,000. the average net revenue for the four years $301,855. shows a net return of 9.4%. It will be noted that the value adopted above is as of September 30th 1915, and it is quite clear that the value in each of the previous three years was less, so that if the aver-

age net revenue for the four years is set off against the average valuation for the same period, the percentage of net return will be higher. The average net revenue for the four years, $301,855. affords a return of 7% upon $4,312,000. and a return of 8% upon $3,773,000. If the company were allowed to earn upon its claim of value including all intangibles of $1,139,952. and making a total of tangible and intangible values, $5,900,793 the average return would be 5.11%.

It is claimed that the street railway properties in Trenton have not been maintained in a first class manner, and it may be that a larger amount should be set aside for depreciation and expended upon the property each year. The amount expended in 1914 was approximately $70,000. This included more than the average amount of replacement work. If, however, the allowance for depreciation is increased to $135,000. the amount which Mr. Johnson alleges is required, thus decreasing the average net revenue from $301,855. to $236,855. a net return of approximately 7.37% would still be shown on the value allowed.

After full consideration of all of the facts in this case as developed from the testimony and the Exhibits which have been voluminous, the Board finds and determines that the proposed withdrawal of the sale of six tickets for twenty-five cents by the Trenton and Mercer County Traction Corporation, and the increase, change or alteration in charge, rate or classification which would result therefrom, is not just and reasonable, and DISAPPROVES the same.

Dated December 13th 1915.

Board of Public Utility Commissioners.

By

(Signed) Ralph W. E. Donges,

President.

(Seal)

Attest:
(Signed) Alfred N. Barber,
Secretary.

I Hereby Certify the foregoing to be a true copy of Report, made and filed by the Board of Public Utility Commissioners, at a meeting held Monday, December 13th 1915.

Alfred N. Barber,
Secretary.

(Seal)

RULE TO TAKE DEPOSITIONS.

(Filed Feb. 9, 1917)

Trenton and Mercer County Traction Corporation,
Prosecutor,

vs.

The Mercer County Board of Taxation, the Inhabitants of the City of Trenton, the Township of Lawrence in the County of Mercer, the Township of Princeton in the County of Mercer, the Township of Ewing in the County of Mercer, the Township of Hopewell in the County of Mercer, the Township of of Hamilton in the County of Mercer,
Defendants.

ON CERTIORARI.
RULE TO TAKE DEPOSITIONS.

Application being made for leave to take depositions to be used in the argument of the above-stated cause, it is on this eighth day of February, 1917.

Ordered that the said prosecutor and defendants have leave to take depositions before Frederick W.

Gnichtel, Esquire, Supreme Court Commissioner, to be used on said argument.

On motion of

FRANK S. KATZENBACH, JR.,
Attorney for Prosecutor.

Let this rule be entered on the minutes.

THOMAS W. TRENCHARD,
J. S. C.

TESTIMONY.

NEW JERSEY SUPREME COURT.

Trenton and Mercer County Traction Corporation,
Prosecutor,

vs.

The Mercer County Board of Taxation, the Inhabitants of the City of Trenton, the Township of Lawrence in the County of Mercer, the Township of Princeton in the County of Mercer, the Township of Ewing in the County of Mercer, the Township of Hopewell in the County of Mercer and the Township of Hamilton in the County of Mercer,
Defendants.

ON CERTIORARI.

Transcript of testimony taken in the above-entitled cause, before Frederick W. Gnichtel, Esquire, Supreme Court Commissioner, in the Grand Jury Room, Mercer County Court House, Trenton, N. J., at 11 o'clock A. M., Thursday, May 3, 1917, by Harold Vaughn, stenographer.

Appearances: Frank S. Katzenbach, Jr., Esq., and Edward M. Hunt, Esq., for Tren. & Mer. Co. Trac. Corp.; Charles E. Bird, Esq., and George L. Record, Esq., in behalf of the Inhabitants of the City of Trenton;

Harvey T. Satterthwaite, Esq., in behalf of the Township of Lawrence;

Harvey T. Satterthwaite, Esq., (by proxy of Edwin C. Long, Esq.,) in behalf of the Township of Hopewell;

Alvin W. Sykes, Esq., in behalf of the Township of Hamilton;

Alvin W. Sykes, Esq., (by proxy of Richard Stockton, 3d) in behalf of the Township of Princeton;

Willis P. Bainbridge, Esq., in behalf of the Township of Ewing.

Frank S. Katzenbach, Jr., a witness produced on behalf of the prosecutor, being duly sworn, testified as follows:

Direct examination.

By Mr. Hunt:

Q. Mr. Katzenbach, did you have a talk with Mr. Hartpence, the secretary of the tax board, in reference to the assessment made against the Trenton and Mercer County Traction Corporation for the taxes of 1915?

A. I did.

Q. Will you please state what that resulted in?

A. After the determination of the board, on or

about February first, 1916, I called some weeks later, probably in the latter part of February, 1916, or the first part of March, 1916, upon Mr. Harry C. Hartpence, the secretary of the Mercer County Board of Taxation; I found Mr. Hartpence in the room occupied as the office of the Mercer County Board of Taxation, and after entering the room and greeting Mr. Hartpence—Mr. Hunt, who was associated with me in the matter, accompanied me on that day—I asked Mr. Hartpence if he would tell me how the Mercer County Board of Taxation had arrived at the increase that had been made in taxes for the year 1915 assessed against the Trenton and Mercer County Traction Corporation. Mr. Hartpence got out some papers and said that he would ——

Mr. Record: I object to what Mr. Hartpence said.

A. (Continuing) He got out some papers and then Mr. Hartpence stated to me ——

Mr. Record: I object to that; my objection is to anything that Mr. Hartpence may have said.

A. (Continuing) Mr. Hartpence then said that if I would take a piece of paper and a pencil that he would tell me just how the increases had been arrived at. He commenced with Hamilton Township and stated that the board had taken Mr. Rand's basis or figures which were $143,122, and that the board had then added twenty per cent. to that amount, which made the assessment in Hamilton Township $171,745, and that the original assessment for Hamilton Township was $50,310, making an increase of $121,435. Mr. Hartpence then stated that the next Township that he would give me was Lawrence Township.

he said that the board had taken Mr. Rand's estimate, or $74,565, that he had then added twenty per cent. ——

Mr. Record: They had added it, not he.

A. (Continuing) They added $14,910, making the assessment $89,475; that the original assessment was $30,000, so that the increase was $59,475. Mr. Hartpence then said that he would give me the figures for Ewing Township. He said this was divided into two parts, one known as the Trenton Junction Part, and the other as the Pennington Road part; that he would first give me the figures for the Trenton Junction part. He stated that the board had taken Mr. Rand's estimate of $8,224; that it had then added twenty per cent, or $1,646, making the assessment $9,870; that the original assessment had been $3,500, so that the increase made by the board was $6,370. Mr. Hartpence then gave me the figures for the part known as Pennington Road. He stated that the board had taken Mr. Rand's estimate of $30,785 and had added to it twenty per cent., or $6,155, making the assessment $36,940; that the original assessment had been $13,500, and that the increase made by the board was $23,440. Mr. Hartpence then gave me the figures for Hopewell Township, as follows: Mr. Rand's estimate, $67,477, to which the board had added twenty per cent., or $13,493; that this made the assessment $80,970; that the original assessment was $27,000, and that the increase made by the board was $53,970. Mr. Hartpence then stated that he would give me the figures for Princeton Township; he stated the board had taken Mr. Rand's estimate of $27,713 and had added to it twenty per cent., which was $5,542, making the assessment $33,-

255; that the original assessment had been $6,500, and that the increase was $26,755. I had taken all of these figures down as Mr. Hartpence gave them to me upon these two sheets of paper, which I will have marked.

The Commissioner: They will be marked Exhibit P1.

Mr. Record: I object to those on the ground just stated.

(Papers referred to received in evidence and marked Exhibit P1, a copy of which follows):

"Hamilton Township

"Rand's Basis	143122.
20% added	171745.
original ass.	50310.
	121435.
"Lawrence Twp.	
Rand Est.	74565.
20% added	14910.
	89475.
original ass.	30000.
	59475.
"Ewing Twp.	
Rand Est. (Trenton Junction)	8224.
20% added	1646.
	9870.
original ass.	3500.
	6370.

"Rand Est. (Pennington Rd.)	30785.
20% added	6155.
	36940.
original ass.	13500.
	23440.
(page 2)	
"Hopewell Twp.	
"Rand's Est.	67477.
20% added	13493.
	80970.
original ass.	27000.
	53970.
Princeton Twp.	
"Rand's Est.	27713.
20% added	5542.
	33255.
original ass.	6500.
	26755.

6000 for right of way."

A. (Continuing) Mr. Hartpence then stated that he would give to me the figures of the assessment for the city of Trenton, but after looking at his papers for a few minutes he said that he would prefer to defer that because it had been some weeks since the board had taken action and that he desired to look over them to refresh his memory, and that if I would call on him again that he would give me this figures.

Q. Is there anything else?

A. I did not call upon Mr. Hartpence again, but I subsequently saw the figures given by Mr. Hart-

pence in his own handwriting to my associate, Mr. Hunt; but I was not present when they were given to Mr. Hunt.

Q. Did you ask Mr. Hunt to go and get these figures?

A. I asked Mr. Hunt to get the figures from Mr. Hartpence some days later than the date of the first interview or of the interview that I had with Mr. Hartpence, the secretary of the board.

Q. Did you take down the figures upon the Exhibit P1 in your own handwriting at the time that you conferred with Mr. Hartpence?

A. I took them down in my own handwriting as they were given to me by Mr. Hartpence in the presence of Mr. Hartpence and Mr. Hunt.

Mr. Hunt: That is all.

Mr. Record: No cross-examination.

Edward M. Hunt, a witness produced in behalf of the prosecutor, being duly sworn, testified as follows:

Direct examination.

By Mr. Katzenbach:

Q. Mr. Hunt, you are a counsellor at law of the Supreme Court of New Jersey?

A. Yes.

Q. And one of the counsel of the Trenton and Mercer County Traction Corporation?

A. Yes.

Q. And you acted as such counsel in the matter of the petitions for an increase in assessments made to the Mercer County Board of Taxation in the latter part of the year 1915, and heard in the month of January, 1916?

A. Yes.

Q. Subsequent to the determination of the board did you have—were you present at any interview with Mr. Harry C. Hartpence, the secretary of the board, at which I was present?

A. Yes.

Q. Where was that interview held?

A. It was held in the office room of the Mercer County Board of Taxation, in the county court house.

Q. When was that conversation held?

A. I should say it was toward the latter part of February, 1916, or March of that year, the first part of March.

Q. Will you state what that conversation was?

A. Mr. Katzenbach and I went to the office and asked Mr. Hartpence if he—Mr. Katzenbach asked Mr. Hartpence if he would let him have the details of the assessment that had been made by the county board, and Mr. Hartpence referred to various papers which he had and read off figures which Mr. Katzenbach took down on a memorandum which he made; these figures related to the townships.

Q. What, if anything, was said with reference to the assessments of property in the city of Trenton by Mr. Hartpence?

A. Mr. Hartpence said he would like sometime to look that over, and if we came back at another time later he would be able to give us those figures.

Q. Did you afterwards go to the office of the secretary of the board?

A. I did.

Q. And whom did you see on that occasion?

A. I saw Mr. Hartpence, the secretary of the board.

Q. What did you ask Mr. Hartpence, or what did Mr. Hartpence say to you?

Mr. Record: I should have had a formal objection to Mr. Hunt's remarks before. I object to all that Mr. Hartpence said to Mr. Hunt as hearsay.

A. I told Mr. Hartpence that I had come to get the figures which he had told Mr. Katzenbach and myself he would give us with regard to the assessment in the city of Trenton. He said that he would give them to me, and took a pad of paper and sat down and wrote off in his own handwriting the following. Shall I read this in?

Q. Yes.

A. "Mr. Rand's Value" is the heading.

Mr. Record: Same objection to this information.

A. (Continuing) And at the right-hand of the paper a heading "Depreciative Value."

Mr. Record: Why don't you put this in?

Mr. Katzenbach: I will put it in, but I think it should be embodied in the record because there are certain explanations as he went along.

Q. Is it not so, Mr. Hunt, that he made certain explanations?

A. Yes, he went over and explained it to me so that I understood.

Mr. Record: It seems you produce his written statement and that ought to go up.

Mr. Katzenbach: I will ask to have that marked as an exhibit.

The Commissioner: Marked Exhibit P2.

(The papers above referred to received in evidence and marked Exhibit P2, a copy of which follows):

"Mr. Rand's Value

	Depreciative Value
Tracks and Overhead construction Special Work, etc.	477,985.20
Power Plant	268,686.
Car Barn	152,392.25
Cars & other Rolling Stock	299,000.00
Real Estate	126,528.75
	$1,324, 592.20
20% added	264,918.44
	$1,589,510.64
	00.

"Divided as follows

Real Estate		7,900.	
		3,500	
Power House	Increase 41950.	76,450.	
Car Barn	Increase 54900.	110,050.	
Original Assessment		2,300.	
110,025. Increase $96,850.		1,500.	206,875,
Personal			
(Rolling Stock Cars		299,000	

(20% added	59,800.	358,800.
(		
(Power House	268,686.	
(Less amt added to R. E.	41,950.	
(		
(	226,736.	
Original Assessment 365,000.		
Increase $382,865.		
(20% added Co. Board	45,347.	272,083.
(		
(Car Barn	152,392.	
(Less Amt added to R. E.al		
(Estate	54,910.	
(		
(	97,482.	
(20% added by Co. Board	19,496.	116,978.
		747.865.
(page 2) Amt frod		954,740.
Balance to Property in Streets		634,760.
original assessment		
340,000 Increase $294,760.		$1,589,500."

Mr. Record: Same objection to that; I have no objection to the stenographer copying it in as a whole.

Q. I show you Exhibit P2, and is this exhibit what Mr. Hartpence wrote in your presence?

A. Yes, it is.

Q. And did you see him write it?

A. I did.

Q. After he wrote it, did he hand it to you?

A. He handed it to me.

Q. Did he make any explanation and go over the figures in any way?

A. He went over it, reading them off, reading the whole paper, and he called my attention to some of the figures, explaining them where there was a raise.

Q. Just take up the first of these raises and state what he stated to you.

Mr. Record: I object to that, not only because it is hearsay, but because there is no pretense that what he said was there and then taken down by the witness.

A. In the recapitulation of Mr. Rand's values, under the heading "Depreciative Value," here, the total of $1,324,592.20, he called my attention to the fact that twenty per cent. was added; that he had put that down, amounting to $264,918.44, which made a total of $1,589,510.64; he then—drew a line through the $10.64 and wrote two zeros under the ten dollars, and said that had been cast off as a small amount.

Q. Cast off by whom?

A. By the board. Then he explained that under his heading following that, "Divided as follows" ——

Mr. Record: I further object to any summary by this witness of what he said. I think, if he testifies at all, to which I object, he should testify words and not what Mr. Hartpence meant.

Q. Will you just state, to the best of your recollection, the exact words of Mr. Hartpence in each instance?

A. That is what I am doing to the best of my recol-

lection. He explained that under the heading, "Divided as follows," that that was an explanation of how they took the grand sum and opportioned it to the various items in so far as they did make items. As to the power house he showed me that the increase of $41,950 had been made, making the total of $76,450; that the car barn had been increased $54,900, making a total of $110,050, and that these items, together with the other items of real estate, totaled $206,875; that the increase thereof had been $96,850; the original assessment had been $110,025. Then that rolling stock and cars was $299,000; that that had been taken from the item "Cars and other rolling stock", of the first part of this statement.

Q. Whose estimate was that?

A. (Continuing) which he had put down under Mr. Rand's value as the "Depreciative Value"; then that twenty per cent. had been added to that, or $59,800, giving a total of $358,800; then that the power house—$268,686 was the amount taken from the first part of his written statement as "Mr. Rand's Value—Depreciative Value"; that from this had been subtracted the amount added to the power house in the real estate assessment under the item "Power House" as shown in the first lot of items in the second part of his statement; that that left an amount of $226,736, to which twenty per cent. had been added by the county board namely, the amount of $45,347, giving a total of $272,083; that for the car barn had been taken the amount of $152,392, which corresponded with the item as given in the first part of his statement under "Car Barn" of "Mr. Rand's Value-Depreciative Value," except that the odd amount of twenty-five cents had been dropped; and that from this amount had been subtracted the amount added to real estate in connec-

tion with the car barn, the amount being $54,910, which left an amount of $97,482; that twenty per cent. had been added by the county board, which was $19,496, and this gave an amount of $116,978; that the three items under the headings, "Rolling Stock, Cars"; "Power House"; and "Car Barn," gave a total of $747,865; that of this amount $365,000 was original assessment and the increase was $382,865. Then on the second page of his statement he had added the two main items and brought it forward under the heading "Amt frod," amounting to $954,740, and that they had cast the balance left by subtracting that sum from the total sum of $1,589,500, which left a balance to property in the streets of $634,760; that of this amount $340,000 was original assessment, giving an increase of $294,760.

Q. Did Mr. Hartpence deliver to you this Exhibit P2?

A. He did.

Q. And where has it been since that time?

A. It has either been in my possession or in Mr. Katzenbach's possession, or at times most of the time, I have kept it in the safe of the traction company.

Q. Did you have any further interview with Mr. Hartpence on this subject other than those which you have mentioned?

A. I don't recall that I had any further interview with him in regard to these matters; I may have referred to them at the various times I have seen him in the subsequent hearings with regard to tax matters, but I do not recall anything specifically in regard to this.

Cross-examination.

By Mr. Record:

Q. It does appear in this record when this judgment was rendered, does it not?

Mr. Katzenbach: We can agree to that; of course, it will appear in the record.

Mr. Record: I think it will be convenient to have it here.

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto that the judgment was rendered by the County Board of Taxation on February first, A. D. 1916.

Frank R. Adams, a witness produced in behalf of the prosecutor, being duly sworn, testified as follows:

Direct examination.

By Mr. Katzenbach:

Q. Mr. Adams, in the year 1916, you were a member of the Mercer County Board of Taxation?
A. Yes, sir.
Q. And president of the board?
A. Yes, sir.

Q. And your associates on the board were Mr. Alfred K. Leuckel and Mr. Edward B. Morris?

A. Yes.

Q. And Mr. Harry C. Hartpence was secretary?

A. Yes, sir.

Q. You recall the hearing that was had before the board in the month of January, 1916, with reference to the property leased and operated by the Trenton and Mercer County Traction Corporation, do you not?

A. Yes.

Q. After the evidence was submitted in that case you didn't, or the members of the board didn't, make any personal inspection of the property, did you?

A. No, sir.

Q. And you hadn't done so prior to the hearing, had you?

A. Well, we had seen some of the property, yes.

Q. Well, had you ever gone in the power plant to inspect that?

A. No.

Mr. Record: I object to that.

Q. And you had never gone into the car barns and made inspection of the rolling stock?

A. No.

Q. Or the overhead construction?

A. No.

Q. Or had ever gone over the entire line in the townships and municipalities outside of the city with a view of inspecting the track?

A. No.

Q. Do you recall the amount of the increase that was made by the board in Hamilton Township?

A. I do not; I have not had the opportunity to see the testimony or any figures made since the judgment was rendered; I think those memorandums and papers were all taken from us afterwards and I haven't seen them since.

Q. Do you know on what basis the board proceeded in fixing the assessment in Hamilton Township in this proceeding?

Mr. Record: I object to that, first, because nobody knows what it means; I don't see how anybody can answer that question; what do you mean by basis?

Q. Do you recall whose testimony you used in making that assessment?

A. Mr. Brackenridge's and Mr. Rand's.

Q. And those figures were taken by the board?

A. Yes.

Q. And then to those figures you added the twenty per cent., did you not?

A. No, I don't think we did it that way.

Q. What way did you do it to the best of your recollection?

A. We took the figures in the testimony of Mr. Rand and Mr. Brackenridge and all the evidence together and arrived at a judgment.

Q. Well, in the case of each of these townships, did you not add just the amount of twenty per cent. to the figures of Mr. Rand and Mr. Brackenridge?

A. Well, in making the apportionment—the secretary made the apportionment—it was at that figure; after it was apportioned over the different districts it seemed to be that twenty per cent. that brought it up to our judgment.

Q. So that the final assessment was just twenty

per cent. more than Mr. Rand's and Mr. Brackenridge's estimate; that is correct, is it not?

Mr. Record: The evidence and figures show that one way or the other.

A. I wouldn't want to say it was twenty per cent. more than Mr. Brackenridge's or Mr. Rand's; I don't remember that their testimony was just the same; but in making up our judgment after we had taken the figures from the two experts we found that the board differed in its opinion and it necessitated taking some percentage in order to arrive at a judgment.

Q. Well, now, do you recall what that percentage was; what is your best recollection as to that?

A. As I remember, after we had individually worked the problem, I, as president of the board, asked how near we were alike, and I think there was thirty per cent. difference between two of the members and in another instance I think there was ten, or it might have been fifteen or twenty, I don't remember; but we were from ten to thirty per cent. different in our opinion.

Q. That ten or thirty per cent., that was the difference as to whether it should be ten or thirty per cent. added to Mr. Rand's or Mr. Brackenridge's estimate?

A. Whichever one testified to the lowest value.

Q. So that you compromised between ten and thirty per cent. and made it twenty per cent.?

A. I presume that twenty per cent. is correct.

Q. Now, that was what was done in each of the townships, was it not?

A. Well, the secretary made the apportionment on that basis.

Q. And then the board acted by making the increase on the figures of the secretary made on that basis?

A. Yes.

Q. In making the increases in valuation in real estate, particularly in the power house and car barn; as I understood it, you didn't make any examination of these properties?

A. No.

Cross-examination.

By Mr. Record:

Q. Mr. Adams, you were not an expert in the valuation of railroad property in any way yourself?

A. No, sir.

Q. You were obliged to rely upon the evidence produced in this case as to value?

A. Absolutely.

Q. When you retired to consider this case, how long a time did you devote to it, the board?

A. As I remember, the case ended at about ten o'clock when we were holding a night session on the last day, and we worked on the testimony that we had before us up until one o'clock, and then we adjourned and I stayed over night in Trenton, and we worked the next day, from I think eight-thirty until about noon—it may have been a little after noon, but we arrived at a judgment somewhere between twelve and one o'clock of the next day.

Q. Prior to your going into a discussion of the evidence at the close of the night session there had been arguments by Mayor Katzenbach and myself upon the part of the different municipalities, had there not, and the case had been summed up that evening?

A. Yes.

Q. In these several hours of discussion, you had before you the evidence in the case, did you not?

A. Yes.

Q. And you were fresh from your recollection of the arguments in the case?

A. Yes.

Q. You had before you the testimony of Mr. Johnson, the president of the railroad company to the effect—in the shape of exhibits—showing the valuation new on the basis of cost of reproduction in the fall of 1910 of some $3,200,000, did you not?

A. That was Mr. Johnson's testimony; that was put in.

Q. In the form of exhibits?

A. That he testified to the Public Utilities Board?

Q. Yes. And you had that testimony?

A. Yes, sir.

Q. And Mr. Johnson on the stand testified that it was a correct estimate in 1910, did he not, in this case?

Mr. Katzenbach: The evidence will show what he did testify to.

A. That is my memory that he did testify to that.

Q. You had also before you in this discussion and consideration the evidence and exhibits made by Mr. Betts, the engineer of the Public Utility Commission, did you not?

A. Yes.

Q. And that showed the valuation at about the same time of Mr. Johnson's of some $2,800,000, or whatever it did show?

A. I don't remember the figures.

Mr. Katzenbach: I make the same objection; the evidence will show.

Q. You had also the evidence and exhibits showing—which had also been used in the rate case—of Mr. Johnson's showing the expenditure of some $800,000, spent for rehabilitation, and what is that other word Mr. Johnson uses?

Mr. Katzenbach: Replacement?

Mr. Record: Yes, replacement.

A. I am a little mixed as to what word Mr. Johnson used.

Q. You remember there were some $800,000 of additions for rehabilitation and replacement put in in the shape of exhibits made by Mr. Johnson?

A. I remember some figures; I am not clear as to the amount.

Q. You are clear as to its being a large sum, and it is whatever the exhibit shows?

A. Yes.

Q. And you had Mr. Johnson's testimony to the effect that those amounts had been expended by the company since 1911?

Mr. Katzenbach: Same objection.

A. Yes, sir.

Q. You had also the testimony of Messrs. Rand and Brackenridge, which was reduced to exhibits, was it not, or statements?

A. I think Mr. Brackenridge's and Mr. Rand's testimony was what we took in the case.

Q. Their testimony gave one set of figures for

the cost of reproduction new and another set of figures for their estimate of the amount of depreciation, did they not?

A. Yes.

Q. When considering and discussing this proposition, did you discuss among yourselves all of these different estimates of value by these different witnesses?

A. Yes, sir.

Q. Did you adopt any one of these estimates of value as your final conclusion as to what was the true value?

A. We did not.

Q. You made up a final figure which represented your judgment and that was different from the exact figures of any of the witnesses, is that right?

A. We made them up figures that was our judgment, and I don't know whether they struck any figures of any others.

Q. When you say you used the Rand and Brackenridge figures as a basis, you mean by that you used also all of the figures as a basis in the sense of considering them, do you not?

A. Yes, sir.

Q. When you adopted this among yourselves—I understood you to say there was a difference of opinion among the members of the board at the beginning?

A. Yes, sir.

Q. And that difference of opinion was as to what final figures you should fix as your true estimate?

A. Yes.

Q. That was the subject of your discussion during these several hours?

A. Yes.

Q. Then as a result of that discussion you came to a conclusion, is that right?

A. Yes.

Q. And finally agreed upon a figure?

A. Yes.

Q. And that figure represented your best judgment upon all of the evidence before you, is that right?

A. Yes, sir.

Q. You didn't take a statement of figures from your secretary and adopt that without investigation, did you?

A. We gave our figures to our secretary.

Q. You gave your figures to your secretary?

A. Yes, sir.

Q. Then any apportionment he made was made in accordance with your direction as to how he should make it?

A. Yes, according to our total judgment.

Q. I mean, he didn't apportion it arbitrarily on his own notion?

A. No.

Q. Pursuant to his instructions he got from the board?

A. Yes.

Q. Did that judgment, so far as you were concerned, at the end of this discussion and after consideration of all of the evidence, represent your best judgment based upon the evidence of the true value of that property?

A. Yes; of course, the board felt that it didn't have any evidence except from the complainants.

Q. You were confined to what evidence you had?

A. Yes.

Q. Your vote for that judgment represented when it was cast your best judgment as to the true value of that property after considering all of the evi-

dence and all of the arguments of counsel and all of the discussion in the board?

A. Yes, sir.

Re-direct examination.

By Mr. Katzenbach:

Q. You say that you with your comembers on the board deliberated during these hours; I presume Mr. Devlin was present during these deliberations, was he not?

A. No, not at all, he didn't deliberate with us; he was counsel of the board.

Q. During the hours from ten o'clock to about one o'clock on the day of the argument and the following morning from eight-thirty till noon, was he present?

Mr. Record: I object to that line of questioning.

A. No, sir, not all the time.

Q. When he was present was he always silent?

A. No, sir.

Q. He did some talking then?

A. Yes, sir.

STIPULATION.

It is stipulated and agreed by and between the parties hereto that the testimony of Mr. Alfred K. Leuckel and Mr. Edward B. Morris, the other members of the board, would be substantially the same as that given by Mr. Adams.

I certify that the foregoing testimony was taken before me as Supreme Court Commissioner in the presence of the counsel stated; that by consent of counsel the testimony was taken in shorthand and the signatures of witnesses were waived; that the witnesses were duly sworn before their testimony was taken; that the foregoing is a transcript of the stenographer's notes as furnished by him.

F. W. GNICHTEL,
Sup. Ct. Com.

May 8, 1917.

OPINION.

(Filed Nov. 19, 1917)

NEW JERSEY SUPREME COURT.

TRENTON AND MERCER COUNTY TRACTION CORPORATION,
Prosecutor,
vs.
THE MERCER COUNTY BOARD OF TAXATION, *et al.*

JUNE TERM, 1917.

CERTIORARI REMOVING THE JUDGMENT OF THE MERCER COUNTY BOARD OF TAXATION INCREASING VALUATIONS.

Argued June Term, 1917. Decided November Term, 1917.

FRANK S. KATZENBACH and EDWARD M. HUNT, for prosecutor.
CHARLES E. BIRD and GEORGE L. RECORD, for City of Trenton.
MARTIN DEVLIN, for Mercer County Board of Taxation.
BAYARD STOCKTON, for Princeton Township.
WILLIS P. BAINBRIDGE, for Ewing Township.
HARVEY T. SATTERTHWAITE, for Lawrence Township.
EDWIN C. LONG, for Hopewell Township.
ALVIN W. SYKES, for Hamilton Township.

Argued before JUSTICES TRENCHARD and MINTURN.

The opinion of the Court was delivered by MINTURN, J.:

The Trenton Street Railway Company: The Mercer County Traction Company, and the Trenton, Pennington and Hopewell Street Railway Company, traction companies in the County of Mercer, are leased to and operated by the prosecutor in this writ.

In the year 1915, these various units were assessed by the different municipalities in the county, into and through which they extended, in an amount aggregating $1,003,882 upon which valuation the prosecutor paid the annual tax for that year amounting to $21,553.72 in addition to the annual franchise tax of five per cent. upon the gross receipts for the same year.

Thereafter on December 17, 1913, Everett Townsend, a citizen and taxpayer, and Clinton J. Schwartz, receiver of taxes of the City of Trenton, filed a petition with the County Board of Taxation, alleging that the property of the prosecutor was under assessed by the City of Trenton for taxation purposes, for the year 1915, and petitions of like import were thereafter filed by the Townships of Lawrence and Princeton, Ewing, Hamilton and Hopewell. A hearing was held in due course with the result that the total assessment of the prosecutor for the year 1915 was raised from the sum of $1,003,882 to $2,064,727, being an increase of $1,060,845.

The writ of certiorari brings up the record of this proceeding for review upon the ground generally of its unreasonableness and illegality in various aspects.

Before proceeding to discuss the validity of this contention we must promise that while the prosecutor was represented at the hearing of its counsel, and its officials, and cross-examined the witnesses produced, it offered no testimony in its own behalf, but allowed the hearing to be determined by the *ex parte* case presented by the petitions. The case is constituted, therefore, of a record which presents the testimony of Mr. Johnson, the president of the prosecutor, as to valuations of the constituent elements of the properties involved, made by him in 1910, for use before the Public Utility Commission, upon an application by the prosecutor to issue additional bonds for the purpose of enabling the prosecutor to develop and improve the conditions of its constituent companies. His estimate of the cost of reproducing the properties at that time was $3,070,000 which was exclusive of the value of car barns, repair shops, tools and adjacent real estate.

Since that period and until the fall of 1915, he testified the prosecutor expended about $821,000 upon the various properties for rehabilitation and replacement. The Public Utility Commission for the purpose of determining the propriety of the proposed bond issue, caused an independent appraisement of the properties to be made, by Mr. Betts, its engineer, and the report of that official shows a valuation of $2,600,000 based upon the cost of reproduction. This was supplemented by the testimony of Mr. Rand and Mr. Brackenridge, two engineers, who testified that their judgment of value was $2,379,851.95, based upon cost of reproduction, and the present cost less depreciation, $1,709,222.40.

The report of the Board of Public Utility Commissioners as of September 30, 1915, was offered in evidence and shows a valuation based upon cost

of reproduction, less depreciation of $2,685,500. The value of the car barns and other properties, real and personal, omitted by Mr. Johnson, the president of the company, from his estimate of value in 1910, was shown by witnesses upon this hearing to be $100.000.

In this situation we must assume in the absence of contrary evidence, that the county board acted properly, and upon due proof; and that the burden of proving facts to decrease the assessment rested upon the prosecutor.

Newton Trust Co. vs. Atwood, 77 N. J. L. 141.

In the absence of such affirmative proof upon the part of the prosecutor, it was open to the county board to rest its judgment after due consideration of the testimony, upon any estimate of value varying from the minimum figure to the maximum estimate of these estimates, and a judgment based thereon establishing the fair market value of these properties cannot be said without some affirmative proof to support the contention, either to be unreasonable or without a substantial basis of fact to support it.

The prosecutor, however, charges that the action of the board was *ultra vires*. We think it manifest that the power it exercised in this instance was expressly conferred upon it by sections three and four of Chapter 125 of the Laws of 1906, and that its exercise of the power thus conferred was in substantial conformity with the provisions of the act.

We think the case of Long Dock Company vs. State Board of Assessors, 86 N. J. L. 592, relied upon by prosecutors, is not analogous to the present situation.

The rationale of the doctrine of that case was that the subconscious knowledge of members of the State Board of Assessors could not be injected into the case as an evidential factor upon which to base its judgment of value, because it lacked the essential requirements of juridical proof. That criticism is not applicable to the case *sub judice*, since the testimony adduced was admitted and treated with all the formal requirements, and subject to all the scrutiny and criticism that characterize opinion evidence in a formal litigation *inter partes*, at law or in equity.

Its weight and importance in view of the qualifications and opportunities for accurate observation of the respective witnesses was of course peculiarly a matter for the consideration of the board. It is argued that the result was reached upon a per centage basis, and the authority for the assertion is a statement made by the clerk of the board, during a conversation with a representative of the prosecutor. Assuming such testimony to be admissible, we are still unable to perceive why the board should be foreclosed, as a *modus operandi*, from accepting the lowest estimate of value, as a basis and by a process of elimination and addition of the different factors omitted by some witnesses, and included by others, reach a result at once reasonable, legal, and logical upon a percentage basis, between the two extremes.

The result thus reached in any event is supportable by the testimony, and was much below the valuation put upon the properties by the prosecutor's president in 1910, before the Public Utility Commission, and which estimate took no account of an expenditure of over $800,000 after that estimate of valuation was made, and excluded any estimate of value of car barns, repair shops, tools and certain

real estate holdings. Upon the subject of depreciation, it had before it, the testimony of the various witnesses, as well as the report of the Public Utility Commissioners, made for rate making purposes, in which the market value of the properties as of September 30th, 1915, was fixed at the sum of $2,685,500.

Objection is made that the property of the prosecutor in the streets was illegally considered in the estimate of value. We find no evidence that the paving was included in the estimate, and if it was it seems manifest to us that it extended only to the concrete foundation to support and stabilize the tracks, an annexation which obviously rendered it taxable as a part of the substructure of the track.

The objection urged by the prosecutor that it received no notice of the application of Hopewell Township, by which it became a party to the proceeding is inconsequential, since the prosecutor responded to the notice of hearing before the county board, cross-examined the witnesses, and introduced no evidence applicable to any of the protesting municipalities, and therefore it cannot be said to be injured by any informality which obviously has not prejudiced it, in the prosecution of its rights or in its legal status upon this judgment.

Our examination of the testimony has satisfied us that the conclusion of the county board in formulating its judgment was not unreasonably or illegally reached; that it is supportable upon the facts and the figures adduced before it, and should therefore be affirmed.

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

TRENTON AND MERCER COUNTY TRACTION CORPORATION,

Prosecutor,

vs.

THE MERCER COUNTY BOARD OF TAXATION, THE INHABITANTS OF THE CITY OF TRENTON, THE TOWNSHIP OF LAWRENCE IN THE COUNTY OF MERCER, THE TOWNSHIP OF PRINCETON IN THE COUNTY OF MERCER, THE TOWNSHIP OF EWING IN THE COUNTY OF MERCER, THE TOWNSHIP OF HOPEWELL IN THE COUNTY OF MERCER, AND THE TOWNSHIP OF HAMILTON IN THE COUNTY OF MERCER,

Defendants.

ON CERTIORARI.
NOTICE OF APPEAL FROM THE JUDGMENT OF THE SUPREME COURT.

To Charles E. Bird and George L. Record, Esqs., attorneys for the inhabitants of the City of Trenton, Martin P. Devlin, Esq., attorney for Mercer County Board of Taxation, Bayard

Stockton, Esq., attorney for the Township of Princeton, Willis P. Bainbridge, Esq., attorney for the Township of Ewing, Harvey T. Satterthwaite, attorney for the township of Lawrence, Edwin C. Long, Esq., attorney for the Township of Hopewell, Alvin W. Sykes, Esq., attorney for the Township of Hamilton:

Take Notice, that the prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause, on the following grounds:

1. Because the Mercer County Board of Taxation, hereinafter called the board, had no jurisdiction to make said orders of increase of assessment dated January 31st, 1916.

2. Because the appellants in said appeals to said board presented no evidence of discrimination between the assessments upon the property of the prosecutor and its lessor companies, and the property of other street railway or traction companies in said or other taxing districts in the County of Mercer, or the assessments upon the property of the said appellants in said several taxing districts, or the assessed valuation of property in any other taxing districts in the County of Mercer.

3. Because no evidence was presented to said board which supported or justified the said increases in assessment made by said board upon the property of the prosecutor and its lessor companies in said taxing districts of the County of Mercer.

4. Because said board in making said increases acted without evidence, arbitrarily and illegally.

5. Because no service of the petition of the Township of Hopewell was made upon your petitioner.

6. Because the assessments upon the property of the prosecutor and its lessor companies in said taxing districts were not revised in accordance with the true market value of such taxable property.

7. Because the assessment upon property in the streets of the City of Trenton as made by the said board included items of property not located in said City of Trenton, namely, signal system and special work.

8. Because the assessment upon property in the streets of the City of Trenton included part of the paving done in the City of Trenton by your petitioner and its lessor companies in accordance with ordinances of the City of Trenton which does not constitute a part of the property of your petitioner and its lessor companies.

9. Because no allowance was made by the said board for the depreciation of that part of the paving in the City of Trenton included within the assessment upon property in the streets of the City of Trenton made against your petitioner.

10. Because the assessment upon property in the streets of the City of Trenton as made by said board is based upon and calculated upon a distribution of the overhead construction in proportion to mileage, whereas said overhead construction has no relation to mileage.

11. Because the assessment includes a proposed line of street railway unconstructed, unoperated and

unleased to the prosecutor, and for which no franchise for the operation thereof exists.

12. Because the assessment on said proposed line of street railway is made upon the same basis as the assessment made upon completed and operated lines of street railway.

13. Because the assessment upon property in the streets in the City of Trenton includes overhead construction in car barns which is also included in the assessment upon said car barns, so that the same property is twice assessed.

14. Because said board in increasing said assessments upon the power plant, car barns and contents, cars and other rolling stock, real estate, tracks and overhead construction and special work, included in said assessments an arbitrary percentage of fifteen per cent. for what was termed contingencies, engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk.

15. Because there was no evidence before the said board which supported or justified the inclusion of said fifteen per cent. of cost for contingencies, engineering, superintendence, omissions, administration, management, insurance, incidentals and builders' risk, on all or any of said items to which said fifteen per cent. was included or added.

16. Because the board in increasing the assessments upon the power plant, car barns and contents, cars and other rolling stock, real estate, tracks and overhead construction and special work added arbi-

trarily, illegally and unjustly twenty per cent. to the alleged values of said items of property, after said fifteen per cent. heretofore referred to had been added.

17. Because there was no evidence before the said board which supported or justified the addition or inclusion of said twenty per cent. in the assessed values of said items of property.

18. Because the value of the land upon which the power plant of your petitioner is erected is included within the assessment of the item of real estate and also in the item of the assessment of the power plant of the prosecutor.

19. Because the value of the power plant buildings is included in the items as fixed by said board of the assessed value of the real estate and of the assessed value of the power plant.

20. Because the said board added to the assessment of the land and buildings as made by the taxing districts of the City of Trenton upon which the power plant of the prosecutor is erected the sum of $41,950, without evidence as to the value of said land and buildngs being presented to said board, or without any view or inspection thereof by said board.

21. Because the said board added to the assessment of the land and car barn buildings as made by the taxing district of the City of Trenton the sum of $54,910, without evidence as to the value of said land and car barn buildings being presented to said board, or without any view or inspection thereof by said board.

22. Because said board included in the assessment made by it of property in the streets of the City of Trenton in the value of tracks laid in the car barns of the prosecutor and also included the value of the same tracks in the assessment made by it upon the car barns of the prosecutor.

23. Because no evidence of the value of the real and personal property of the prosecutor as of the date of May 20th, 1915, was presented to said board and the assessments made by said board were based upon evidence of value at a later date than May 20th, 1915.

24. Because the evidence presented to the board upon which it based its assessments was evidence as to the value of the property, real and personal, of the prosecutor and its lessor companies for rate making purposes, which included elements such as franchise value, going concern value, etc., which do not enter into assessments of property for taxing purposes.

25. Because the said board assessed the contents of the car barns of the prosecutor of $116,978 (not including rolling stock) without evidence to support said valuation.

26. Because said board made the assessment of property in the streets of the City of Trenton the sum of $634,760, without evidence to support the same.

27. Because said board in making said assessment of $634,760, upon property in the streets of the City of Trenton, arbitrarily included in said assessment

the sum of $61,179.50, which has no relation to property in the streets.

28. Because said board assessed the value of tracks and overhead construction of the prosecutor and its lessor companies outside of the City of Trenton without evidence as to the value of said tracks and overhead construction in each of the taxing districts outside of the City of Trenton, for which assessments were made by said board, to wit: Ewing Township, Lawrence Township, Hopewell Township, Princeton Township and Hamilton Township.

29. Because said board used an erroneous principle in making assessments of the value of tracks and overhead construction in each of the said taxing districts outside of the City of Trenton, in that the evidence of value presented to said board consisted of evidence of a total valuation of all tracks and overhead construction outside of the City of Trenton, irrespective of taxing districts in each of which a separate and different rate of taxation existed, which total valuation was then divided on a mileage basis, irrespective of the value of the tracks and overhead construction in each of said taxing districts hereinbefore mentioned, outside of the City of Trenton.

30. Because said board included in its assessment of property of your petitioner and its lessor companies outside of the City of Trenton the cost of street paving done in accordance with municipal ordinances and which does not form a part of the property of the prosecutor and its lessor companies.

31. That the said assessments made by said board for each of the taxing districts of Ewing Township,

Lawrence Township, Hopewell Township, Princeton Township, and Hamilton Township are not based upon the value of the property of the prosecutor and its lessor companies in each of said taxing districts.

32. Because the said board did not, in making said assessments in each of said taxing districts outside of the City of Trenton, consider, estimate, or allow for the depreciation of the property of the prosecutor and its lessor companies in each of said taxing districts.

33. Because said board made the assessments in each taxing district outside of the City of Trenton without evidence of the value of the property of the prosecutor and its lessor companies in the taxing district for which said assessment was made.

34. Because said board valued the power plant and buildings twice in the assessment made by it.

35. Because said board made a division between the real and personal property in each of the items of "power plant" and "car barns and contents," without evidence as to the values of the real property and personal property included within said items.

36. Because the method by which the said board arrived at the respective assessments upon property in streets in the City of Trenton, power plant, car barns and contents, cars and other rolling stock and real estate, and property outside of the City of Trenton, was illegal, erroneous, and unsupported by evidence, and said increases in assessment should be set aside and for nothing holden.

FRANK S. KATZENBACH, JR.,
Attorney for Prosecutor.