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FIRST SESSION.

PASSAIC CIRCUIT.

Appeal from the Award of Commissioners, in the Matter of the Application of the North Jersey District Water Supply Commission for the appointment of three Commissioners to fix the compensation to be paid for certain lands of the Ringwood Company, situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, State of New Jersey, to be taken and condemned for public use.

Paterson, N. J., January 3, 1927.

Before—Hon. NEWTON H. PORTER, *Judge,* and a struck jury.

APPEARANCES:

For the Owner: EDGAR W. HUNT, Esq., and WILLIAM I. LEWIS, Esq.

For the Condemnor: SPAULDING FRAZER, Esq., and JOHN A. MATTHEWS, Esq. BERNARD L. STAFFORD, Esq., of Counsel.

HARRY G. HERSHFIELD, sworn.

DIRECT EXAMINATION BY MR. MATTHEWS:

Q. Where do you live, Mr. Hershfield? A. Pompton Lakes, New Jersey.

Q. How long have you lived there? A. Approximately 20 years.

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

Q. How long have you been in the real estate and insurance business? A. Over 25 years.

Q. In addition to that real estate and insurance business do you enjoy employment by the North Jersey District Water Supply Commission? A. Sometimes.

Q. What? A. Sometimes.

The Court: Does that mean that you enjoy it and sometimes you do not, or that you are employed by the Commission continuously?

Mr. Matthews: That is the purpose of that question. You may answer the Court.

The Witness: Both, your Honor.

Q. Mr. Hershfield, how long have you been in the real estate business for yourself? A. Over 25 years.

Q. And during that time have you operated in the vicinity of the land that is under condemnation? A. I have done rather considerable lot of business in that section.

Q. What other experience have you? I want to qualify you as a real estate expert. State all your experience. A. Well, I was the real estate purchasing agent for a while for the Third Avenue Railroad system, New York City. I was employed by the City of New York, State of New York, and County of New York at various times in connection with the opening of bridges; the purchase of fire house sites, and the purchase of armories in New York City, County and State. I was employed, for

a while, by the Brooklyn Elevated real estate department. I have had considerable experience appraising in the City of New York, and for a period of ten years was actively engaged in building business, there, building about five million worth of buildings, mostly apartment houses. Since coming to New Jersey I have been in the service or employment of this Commission for nine years. I have been employed by the State Highway department for the past eight years in a similar capacity, and by the City of Newark for the past three years. I have acted as appraiser for the valuation of lands for railroads, private individuals, banks. In other words, I have had a somewhat varied real estate experience as a builder, developer and appraiser. During the war—I forgot that—I was in the employ of the United State Government for two years laying out camp sites, hospital sites and doing such other work as was detailed to me.

Mr. Matthews: Do you wish to cross examine him on his qualifications?

Mr. Hunt: Not until you have finished.

Mr. Matthews: I have finished his direct examination as to his qualifications, and shall proceed to ask questions that are predicated upon his qualifications as an expert. I understand the rule to be if there is no objection he is qualified.

Mr. Hunt: I have no objection to make.

The Court: Very well.

Q. Mr. Hershfield, did you at the request of the North Jersey District Water Supply Commission examine this property? A. I did.

Q. How many times have you examined the property? A. I suppose in the last nine years I

have been on some portion of this property a thousand times.

Q. When was the last time you were there and over it? A. Yesterday afternoon.

Q. How frequently in the last month have you been over it? A. I have driven over the main roads, and some of the side roads, probably two or three times.

Q. Describe the property to us, will you, please? A. The property to be taken from the Ringwood Company is a strip of land running generally north and south to a degree roughly paralleling the Wanaque River. It consists of about 2,354 acres of land that, during my knowledge, none of it was, if any, a very small amount, had ever been cultivated. It lay there fallow. There were thirteen or fourteen houses with the attendant outbuildings on the property. The ground may be divided into four classifications, good ground, fair ground, tillable ground, and scrub ground. There is some timber on part of the property. The Wanaque River and four or five of its filling brooks—

Q. I understood that term as what? A. Filling brooks. They are brooks that help to fill the river, go through different parts of the property. The property, to my mind, has no particular—

Q. Louder, Mr. Hershfield. A. My throat is gone.

Q. I am sorry, I cannot hear you. A. I am sorry too. I say, the property has no particular characteristics that I could describe. It is similar to hundreds of thousands of other acres in northern New Jersey.

Q. Well, have you, at the request of the commission, divided the acreage and put a value upon it based upon your experience? A. I have, yes, sir.

Q. And will you give us that? Have you notes that you wish to use or can you remember all this acreage without it? A. I cannot remember the figures.

Q. All right. I do not suppose there would be any objection to your using a memorandum.

Mr. Hunt: I will answer when I see the memorandum, your Honor, and see the nature of it.

The Court: What is the date; when was it made?

The Witness: The memorandum was made last night.

Mr. Hunt: Who made it?

The Witness: I did. It is a compilation of figures used by me in the prior case.

Mr. Hunt: Is there anyone's figures in it besides yours?

The Witness: No, sir.

Mr. Hunt: No objection to your using it.

Mr. Matthews: I did not think there would be.

Q. Mr. Hershfield, using the memorandum when necessary, and relying upon your memory if you do not need to use it, will you tell us what the acreage in this plot of ground of the Ringwood Company that is being condemned? A. According to my record 2354 acres.

Q. Now, have you, in your experience as a real estate man and with your knowledge of the country and the terrain to be condemned divided that up into acreages of a different character? A. I have.

Q. And give us that division and state the character of acreages? A. I have figured there is 1450

acres of wood land which I have valued at $50 per acre; that there is 235 acres of scrub oak and swamp land which I valued at $20 per acre.

Q. Just a minute. You said 1450 acres of wood land at $50 an acre, that would be $7,250 as to the value of the wood land acreage? A. Yes, sir.

Q. And 235 acres of scrub oak and swamp land at $20 an acre, that would be $4,700 for the value of the swamp land and scrub oak acreage? A. Yes, sir.

Q. What next? A. 569 acres of good tillable land including rolling ground, plateaus and possible house sites for modest homes, about $250 an acre.

The Court: How many acres?

The Witness: 569. That would make $142,250, that item.

In addition to that, and spotted through the taking, there are in my opinion approximately 100 acres of what I would call the best land—sites for more pretentious homes—which I have valued at $500 an acre, or $50,000.

Q. Now have you in your studies for the purpose of giving testimony and based upon your experience and your view of the property, added anything of appreciation by reason of its facilities if it appreciates the land? A. Yes, sir.

Q. What were those appreciative facilities that you had in mind particularly? A. The presence of the Wanaque River, the presence of two brooks on the property, and the frontage on the main Greenwood Lake Road as well as on the tributary road. For each of those I have added a specific appreciation per foot.

Q. Can you give us the footage or frontage—footage perhaps is better—on the Wanaque River of this Ringwood property that is being condemned? A. There are, according to my figures, 24,000 feet of river frontage which I have figured appreciate the contiguous property $2.50 a foot, which adds $60,000 to the figures already given. There are brook frontages of the Cupsaw and West Brook Brooks relatively or respectively 24,000 and 6,800 feet each.

Q. Let me get you right. There are 24,000 feet frontage on the Cupsaw Brook, and 6,800 feet frontage on the West Brook? A. Yes, sir.

Q. What is your appreciating unit for each? A. I figured that appreciated the land a dollar a running foot, so I added $30,800 to my figure.

Q. $24,000 for the Cupsaw and $6,800 for the West Brook; is that right? A. Yes, sir.

Q. Was there a frontage on Greenwood Lake Road that you considered? A. There is a frontage on Greenwood Lake Road of 17,400 feet, and on the Sloatsburg Road 8,000 feet.

Q. Let us take the frontage of 17,400 feet on the Greenwood Lake Road. At what if anything did you appreciate that? A. $2.00 a foot to the adjacent land.

Q. That would make a total of what amount of frontage on Greenwood Lake Road? A. $48,000.

Q. You multiply wrong. A. I beg pardon. $34,800.

Q. All right. The 8,000 feet there was on the Sloatsburg Road was what unit? A. $2.00.

Q. Making what? A. $16,000.

Q. Was there a frontage on the Upper and Lower Hook Road that you take into consideration? A. I took that frontage into consideration.

Q. What was its frontage? A. 19,200 feet frontage on the Upper and Lower Hook Roads.

Q. At what appreciating unit? A. $1.00 a foot I employed.

Q. That would make your total what? A. $19,200.

The Court: How much a foot?

The Witness: $1.00 a foot for that road.

The Court: $19,000?

The Witness: Yes, sir.

The Court: Upper and Lower Hook Road?

The Witness: Yes, sir.

Q. Now the frontage on the West Brook Road? A. There is 10,800 feet.

The Court: He gave us that, 6,800—

Mr. Matthews: No. The West Brook. There is a Brook and a West Brook Road.

The Court: Very well.

A. 10,800 feet likewise at $1.00 a foot.

Q. That will make a total of appreciation there of $10,800? A. Yes, sir.

Q. Then did you have a frontage on the Stonetown Road? A. Yes. 5,600 feet, likewise at $1.00 a foot.

Q. That would total $5,600? A. Yes, sir.

Q. Now with the map that is on that board, can you point out the parts of this Hewitt property that appreciate by reason of the Wanaque River, the Cupsaw Brook and the West Brook and the different roads that you have mentioned? A. Yes, sir.

Q. Will you come down and do that, so that the court and jury may observe it? I will ask you

first of all, will you point out the frontage along the Wanaque River that the land to be condemned enjoys?

Mr. Hunt: May I suggest it has not been proven that the river appears on the map?

Mr. Matthews: I object unless there is objection to my question. The map is the map, and if my witness cannot find it there he may say so. Can you, Hershfield?

The Court: I can see it from here.

Q. Hershfield, answer the question unless there is an objection and the court rules against us. Give me the frontage that this Ringwood property to be condemned enjoys along the Wanaque River? A. 24,000 feet.

Q. Yes. Now trace it. A. Beginning at the northerly end of the taking close to the cemetery. Shall I trace it out with a pointer?

Q. Yes. A. Right within here. That stops there.

Q. Stops there indicating a point? A. At a point at the Eddie Hewitt taking. Then—

Q. Just a minute. I cannot hear my witness. A. Then it begins south of the Sloatsburg Road and runs in this direction.

Q. Just what direction? A. Southerly again until it reaches the railroad. Then the next place that the river comes along the Hewitt property is south of the Trinchieri tract at this point, and it continues again southerly over the Ringwood taking following the course of my pointer to the property formerly owned by the Wanaque River Paper Company, in other words, over a yellow tract, that is where the river has been on the Ringwood property, and there is where I applied the appreciation.

The Court: That is 24,000 feet?
The Witness: Yes, your Honor.

Q. Is that an accurate measurement of the footage, or have you allowed appreciation for footage regardless of what the character of the terrain was at the river? A. That is 24,000 feet according to our scales of river frontage, and we have applied a figure of $2.50 a foot. In some places the presence of the river is not of an appreciating degree, and in other places it may possibly be worth more.

Q. That is my question. A. I have considered $2.50 a running foot is eminently fair for the average condition of the contiguous ground.

Q. So that then the answer to me is that you allowed $2.50 a front foot for every foot that that land touches upon the Wanaque River? A. Yes, sir.

The Court: Just a minute. Didn't you testify it was $2.00 a foot?
The Witness: $2.50.
The Court: $2.50?
The Witness: $2.50 at the river.
Mr. Matthews: At the river, your Honor.
The Court: Yes, I understand.

Q. Now will you trace the Cupsaw Brook frontage and show us where the Ringwood holdings are that enjoy frontage on the Cupsaw Brook? A. The Cupsaw Brook is this meandering trout stream that starts here at the property of Dudley Carleton in Ringwood, and runs southerly this direction until it goes out of the Ringwood property under the railroad.

Q. Is there a frontage on the east and west side of that? Is that the proper geographical indication? A. North and south.

Q. Is there a frontage on the north and south of that brook? A. Yes, practically so.

Q. Describe that brook to us a little. A. It is a good trout stream when you get a permit to fish.

Q. Outside of that, what about its depth and width and so forth? A. It is not a deep stream; it is a stream that is always flowing, but it is not navigable. Its average width is propably six or seven feet, and it is what I call a cut bank trout stream; the bank are sheer and the trout are under the bank.

Q. Did you allow frontage for the entire length of that from Dudley Carleton's place as indicated? A. Yes.

Q. Regardless of the terrain being better or worse at any specific point, you gave an average unit value of $1.00? A. Yes.

Q. Now point to the West Brook? A. This is the West Brook here.

Q. Point to it? A. West Brook on the Ringwood property starts at the easterly side of the David Miller tract and works easterly roughly as indicated by my pointer until it hits this Morse sliver, then the next place it hits the Ringwood tract. Well, it doesn't hit it again except at this point, and there the river.

Q. Was there a frontage on both sides of that brook? A. Yes, sir.

Q. What is the character of that brook? Was it a trout stream or what is it? A. It is a stream that does not carry much water. It is a good trout stream above the falls, but the trout do not seem to get down.

Q. Describe it, please, on the property we are condemning? A. It is a stream that has a rock filled basin. In the summer time the water has to push its way under the rocks; in the spring there is a heavy flow. What I would call a torrential stream. You cannot get a boat on it. You could walk across it dry shod from rock to rock eight months in the year.

Q. Was it on both sides of that stream that you allowed for appreciation of frontage? A. Yes.

Q. You again allowed the unit regardless of whether the terrain differed? A. Average of $1.00 a foot.

Q. Briefly point out the frontage on the Greenwood Lake Road on that map? A. Well, the Greenwood Lake Road as far as the Ringwood interests are concerned—

Q. That is all we want. A. Commenced at the northerly end of the Japanese tract.

Q. The Fujita tract? A. Well, the Fujita tract, yes. Then it works practically on both sides—the Ringwood property is practically on both sides of the road. The road runs in a northerly direction—wait a minute; these colors are new to me and confuse me. It runs up to where the old school house was at Boardville. This section here. Both sides of the road. And then after leaving the Eddie Hewitt tract it is picked up again along here. This is the road here.

Q. What kind of road is it? A. That is a very good County road, main artery from Paterson to Greenwood Lake.

Q. Show us the Sloatsburg road? A. The Sloatsburg Road meets the main road at Boardville, and here is the junction here where this 66 is, and then

it works northerly, roughly paralleling the Ringwood Brook along this strip, and that is all.

The Court: Just a moment. You say roughly paralleling what road?

The Witness: The Ringwood Brook. That is the brook that comes into the river.

The Court: You have not told us anything about the Ringwood Brook yet.

The Witness: It does not—

The Court: That is why I did not recognize it.

The Witness: It does not to my mind appreciate any of the property here. It is not on it.

The Court: Very well.

Q. Then go ahead now, if you have answered the court's question as fully as you can, continue and show me the Upper and Lower Hook Roads on the map? A. The Lower Hook Road starts in below the dam. At this point here, roughly, and then it continues this way and does not strike the Ringwood property until we get north of the Serafino Murchio tract—begins there. Then it runs northerly in the direction indicated by my—wait a moment; no. Beginning on the Serafino Murchio tract, runs northerly approximately 1000 feet and then it runs westerly until it comes out on another property near the Harrison Bott tract, No. 101. That is the Lower Hook.

The Upper Hook Road starts in at the Ryerson Dam and runs northerly 1000 feet over Ringwood property and then it skips over the Marini tract, and then it follows approximately 3500 feet, roughly paralleling the Wanaque River and ends at the Thomas Trengrove property.

Q. The Upper and Lower Hook Roads, what kind of roads are they? A. They are good country roads, secondary roads, tributary to the main road.

Q. Where is the West Brook Road? A. The West Brook Roads run from the Personini Bridge, westerly, roughly paralleling the West Brook. Then it comes out at Macopin, near the Macopin Post Office.

Q. What kind of a road is that? A. That is a good road for a country road.

Q. And finally the Stonetown Road is where? A. Stonetown Road starts from the West Brook Road near the Belcher Farm, former Mayor Belcher's farm at this point here, and runs northerly, coming out at Stonetown Road, and eventually on the Greenwood Lake Road several miles up the valley. This is the Stonetown Road.

Q. All right, Mr. Hershfield. I just wanted you to point out to the court and jury where these factors are on that map C-1 that you have used as appreciating factors in your value. Was there anything else that you took into consideration in putting a value upon this property for the purpose of testifying as to its market value in this case? A. The buildings. On the place—

Q. Yes. What buildings are on the place, if your memorandum shows, and if it be not the same memorandum, let Mr. Hunt see it. A. I have the buildings totalled here. I have another sheet showing the details.

Q. Your own figures? A. The same ones I used on the original trial.

Q. Go ahead. A. The total of value of the buildings is $71,650.

Q. How many buildings were on the property, if you recall, Mr. Hershfield? A. There are 14

groups—either single buildings or groups of buildings, but 14 distinct residences.

The Court: $71,750?
The Witness: $71,650.

Q. In addition to that amount of $71,650 which you have added to $446,650, was there anything else that entered into your fixing of the market value of this property?

The Court: He has not mentioned $446,000. He has not added it up to this point.

Q. Didn't you add it? I beg pardon. Have you totals of all the acreage and the appreciating factors exclusive of the buildings? A. Yes.

Q. What are they? A. $446,650.

Q. I take it now that your testimony is in addition to that, which represents acreage and appreciative factors, frontage on water or on roads,—you have added $71,650 for buildings on the premises? A. Yes, sir.

Q. That total is what now, please. A. $518,250.

Q. Is or is not that your estimate of the fair market value of the property to be taken in these condemnation proceedings? A. Well, I have figured that a deduction of five per cent should be made because if the State was buying it the owners would not have to pay any real estate commission, consequently they would have saved that money.

The Court: Before you go into that, my figures do not prove. I understood you to say that the total was $446,650.

The Witness: Yes, sir.

The Court: Exclusive of the building value?
The Witness: Yes, sir.
The Court: The building value is $71,650.
The Witness: Yes, sir.
The Court: And the total you said was $518,250.
The Witness: It should be $300.
The Court: That is what I thought.
The Witness: $518,300.
The Court: Correct.
(Answer repeated by stenographer.)

A. So I deducted five per cent from those gross figures, which amounted to $25,912, and made a net figure of $492,338, or approximately $190 an acre, exclusive of the buildings.

The Court: $190 an acre?
The Witness: Yes, sir.
The Court: Exclusive of the buildings?
The Witness: Buildings.

Q. Now, Mr. Hershfield, have you had experience in the sale of properties similar to the acreages involved in this condemnation?

The Court: Just a minute, Mr. Matthews. Again we are $50 out of whack, Mr. Hershfield.
The Witness: That is the same $50.
The Court: The total would not be $338.
The Witness: It would be $288.
The Court: I think that is better.

Q. Have you had experience in buying and selling properties in the immediate vicinity or comparable properties to the property that is the subject of this condemnation? A. I have bought a

great many hundred acres of property, in fact several thousand acres of property in that section.

Q. I see. Well, now, will you give us some of those sales that are comparable and as an expert you know what comparable means.

Mr. Hunt: I submit that it is not for the witness to determine what comparable means. I object to the question as put, and insist upon its being put in such a manner as to enable us to make an objection for an incomparable property.

The Court: Yes. That calls for a conclusion on the part of this witness. I think he must describe the property in order that there may not be any trouble.

But before you do that, give me your total again. I could not read your figures.

The Witness: $492,288.

The Court: I think you better add a hundred and make it 388. All right.

Mr. Hunt: Might I also enter an objection to his referring now under the examination of counsel for the Water Commission to any purchases that he has made for or in behalf of the Water Commission, because such purchases are not admissible evidence at the offer or option of the Commission.

Mr. Matthews: Your Honor, such would not be the rule. If such purchases were not, cross examination might reveal it. In other words, if it was a willing seller and a willing buyer, it would be admissible.

The Court: The question was for him to tell whether or not the prices that he had given or the values that he has given are comparable

with other properties that he has actual knowledge of sales of. Is that the question?

Mr. Matthews: The question was, have you sold any properties in the vicinity, and if so, where were they and what are their prices—that is what I am coming to. But now Mr. Hunt made an objection that if he bought for the North Jersey District Water Supply Commission that forsooth it was not a willing buyer and a willing seller.

The Court: Might have been.

Mr. Matthews: That is my proposition. It will appear by cross examination.

Mr. Hunt: The fact that the Water Commission has the power of eminent domain and that advantage over the owner is held by the cases to make such evidence inadmissable at their offer. If I was to bring it out on cross examination, when it would come in as an admission against interest on their part, that is another matter. Laing vs. United New Jersey Railroad & Canal Company is the authority.

Mr. Matthews: I know no such authority that would bar a man who was buying for a company in the free market, because that company enjoyed condemnation rights, he could not testify.

Mr. Hunt: It is not an open and free market. That the owner knows and all the world concerned in this part of the world knows that all that area inside of this taking line is to be taken, and we are not the condemning party possessing the power of eminent domain.

The Court: Is not the Laing case the case that laid down the rule with respect to what was expert testimony?

Mr. Hunt: I think it did that also.

The Court: What is the citation?

Mr. Hunt: I don't remember it offhand. I will have to look. I have it here somewhere.

The Court: Well, we don't have to cross that bridge tonight, do we?

Mr. Frazer: There is another case. Brown vs. Short Line Railroad Company, where is says it was not error, and that the court acted within the range of its legal discretion. It is a matter of discretion in the court.

The Court: I would rather reserve it.

Mr. Frazer: That is in 76 New Jersey Law, page 795.

The Court: What was the Brown case? Will you give me that, Mr. Hunt?

Mr. Hunt: Yes, I will give it to you. I think it is in 54 Law. It is only dictum in the Laing case.

Q. Well, Mr. Hershfield, how about some of the properties that you bought or sold that you did not buy or sell for the Water Commission? Have you got samples of them for the time being?

Mr. Hunt: I object to purchases made for the Commission.

The Court: No; outside of the Commission.

Mr. Hunt: Then I insist upon my right to have the question put in such a form that the facts appear from which the Court can determine whether the transaction is comparable or not.

Mr. Matthews: I object to being told that this question—

The Court: It is revelant.

Mr. Matthews: I am not going to be told how to try my case by this man.

The Court: It is relevant and I will allow it, and we will pass on the comparability of it when it develops. The only question is what the places are, and we can develop whether they are comparable before he tells what the price is.

Mr. Hunt: Before he tells what the price is, all right. You understand that, Mr. Witness.

Mr. Matthews: I object.

The Court: Objection sustained. I will take care of this.

Mr. Matthews: If your Honor please, I am going to try my case here.

The Court: All right.

(Question repeated by stenographer.)

A. I have.

Q. What is one of them? A. I sold a tract of 475 acres—

The Court: Do not tell us the price. Let us judge as to the comparability of it.

A. In 1925. This was in Upper Macopin, belonged to the Estate of C. W. Vreeland. It consisted of 475 acres of rolling ground, meadow, approximately 22 houses and buildings on the same, 1000 feet of frontage on Echo Lake and 10,000 feet road frontage.

Q. How did that territory compare in terrain and surroundings with the Ringwood Company's territory? A. Why, very similar. They are both country places.

Mr. Matthews: I think if there is any objection to the value question now is the time to

cross examine as to comparability, and I turn him over for that purpose alone.

The Court: Examine him, Mr. Hunt.

CROSS EXAMINATION BY MR. HUNT:

Q. Is this property in the Wanaque Valley? A. No, sir; in the Pequanock Valley.

Q. Is it within or above the Newark watershed? A. It is within the Newark watershed.

Q. How many miles distant from New York is it? A. From where?

Q. From New York? A. (Examining small map.)

Mr. Matthews: Just a minute. I object to Mr. Hunt examining everything that this witness produces when he asks a question for the distance from New York.

The Court: Why, I don't see any objection to Mr. Hunt looking at the map. It is perfectly competent, this map that Mr. Hershfield has.

Mr. Matthews: But, if your Honor please, it is the courteous thing to do in the proposition when he is asking a question that is not relevant in cross examination, the distance from New York, that he should ask permission to look at the map.

The Court: Oh, well, I think we will waste a lot of time if we are quite as particular as that.

Mr. Matthews: If your Honor had the experience your Honor naturally has, the experience on the trial of the issue—we have to remember our experiences.

The Court: I will be getting some in a day or two, and then perhaps my rulings may be different.

Mr. Matthews: I am talking about the experience of my opponent.

Q. What road is that? A. That is the main Hamburg Turnpike. That is on the Echo Lake. This is on the same radius from New York.

Q. The same radius as this property? A. Same radius as this, in Newfoundland.

The Court: What is the answer?

A. Within 25 miles as the crow flies.

Q. It is not on an improved highway, is it? A. Yes.

Mr. Matthews: The answer is yes?

A. Yes; on several improved—

Mr. Matthews: I did not get his last answer.

A. On several improved highways. There is 10,000 feet if improved road running along these properties.

Q. All these improved highways are concrete, aren't they? A. No; an improved highway may be bitholitic or macadam. That is improved.

Q. What are these? A. These are bitholitic.

Q. Does the property have such a stream on it as the Wanaque River? A. It has Echo Lake on it, one of the finest lakes in the State.

Q. Will you answer the question? A. It has several small streams on it, but no one as large as the Wanaque River.

Q. Who was the seller in these transactions?

Mr. Matthews: I object to it as not cross examination. I have turned him over purely on comparability.

The Court: Objection sustained.

Mr. Hunt: The counsel may proceed with the witness.

REDIRECT EXAMINATION BY MR. MATTHEWS:

Q. What price was paid for that 475 acres of ground with the 22 houses and buildings thereon, 1000 feet of shore frontage on Echo Lake, and 10,000 frontage on the road? A. $150,000.

Q. Have you another sale, at this time remembering only sale that were not for our Commission you may offer subject to cross examination as to comparability? A. I sold a tract of 110 acres party in Passaic County and partly in Morris County, owned by a man by the name of Theodore Weaver, or, rather, his estate.

Q. When? A. Within a year. That place had a stone house on it, alleged to be built in 1774, numerous outbuildings, and it had a frontage on both sides of the Pequanock River which at that point is almost a navigable stream, inasmuch as it is flat and full generally in the year, through the year.

Q. What is the acreage? A. That property consisted of 110 acres of rolling ground, 80 per cent. of which was in pasture and cultivation.

The Court: Just a moment. Mr. Hunt, you cited this Laing case, did you not?

Mr. Hunt: Yes.

The Court: It is the case I thought it was, that I had in mind, with respect to what the qualifications of a witness as an expert are. I

do not see anything that covers the point by just glancing at the syllabi.

Mr. Hunt: I do not think the point I mentioned is covered in the syllabi, and as I said, it is dictum. Shall I show it to your Honor?

The Court: It is all right. I will read it tonight.

Mr. Hunt: Dictum by the Court of Appeals is good.

The Court: I thought it was on the naked proposition that every one understands, I think, that comparable property—as to whether it is comparable—is descretionary with the court. I did not see anything in there which had the proposition mentioned about the property being comparable.

Mr. Hunt: This is it. (Indicating in book.)

The Court: I see. All right.

Q. Now you said this was 110 acres of rolling ground, 80 per cent. in pasture. Is it similar in aspect of terrain to the property of the Ringwood Company that is the subject of this condemnation? A. To my mind it averages better ground than the average Ringwood.

The Court: Just a moment, Mr. Matthews. I don't know whether you gave it or not, but did you give the price per acre of the first piece that you described?

Mr. Matthews: No; he gave the totality and he did not exclude the buildings.

The Court: Are you in position to exclude the buildings by taking what your appraisal of the buildings was, so we may get the acreage price?

The Witness: Not without getting my office notes. I will have those the next day.

The Court: All right.

Mr. Matthews: Then, as I understand, you can produce those office notes, and will on the next day?

The Court: My point is it does not help us very much, because we don't know what the value of the buildings is. If it is a building such as Miss Hewitt's mansion, that is one thing; if they were shacks on it that is quite another thing.

Mr. Matthews: Yes, your Honor. We will produce it. I think it is well to. Now, do you wish to cross examine as to the comparability, Mr. Hunt, of the Weaver tract with your tract, and only as to that? I turn him over to you for that purpose.

FURTHER CROSS EXAMINATION BY MR. HUNT:

Q. Where is the Weaver tract situated? A. Partly in Passaic County and partly in Jefferson Township, Morris County, on one of the upper reaches of the Pequannock River.

Q. What is its distance from New York compared with the distance of the land under condemnation from New York? A. What portion of the land under condemnation?

Q. Well, any portion of it? A. Say the dam? Both would be well within the 25 mile radius.

Q. Both within the 25 mile radius? A. Yes, sir.

Q. How far is it from the property under condemnation? A. As the crow flies?

Q. Any way you please. As the crow flies first? Oh, just roughly, Mr. Hershfield; you need not lay a scale on it?

The Court: I suppose the assumption is that the crow flies straight?

The Witness: Yes, sir.

Mr. Hunt: Mr. Hershfield's former simile was as the bullet goes.

The Witness: I do not recall referring to a bullet. It is about five miles across country.

Q. How far by road? A. To where?

The Court: Between the two properties?

Q. Yes. A. About eight miles if you take the Macopin Road as the short cut.

Q. Is there a stream on the Weaver property comparable to the Wanaque River? A. The upper reaches of the Pequannock River are there; it is a better stream at that portion than your average of the Wanaque River. It is a flat water, everything about two feet in depth.

Q. How far is this Weaver purchase above the point where the Pequannock River crosses the Hamburg Turnpike? A. The Pequannock River crosses the Hamburg Turnpike? Where?

Q. Well, where it does? A. Well, it crosses it several places, Mr. Hunt. This property is on the road to Cozy Lake, if that helps any.

Q. Well, I refer to the crossing of the Hamburg Turnpike by the Pequannock River near the Pompton Station; how far above that crossing is it? A. You mean Riverdale?

Q. Yes. A. Oh, that is 16 miles north of there by road.

Q. 16 miles north of there? A. Yes.

Q. How are the roads out to this Weaver tract by comparison with the roads leading to the Ring-

wood tract—by comparison with the Greenwood Lake Turnpike? A. There is a State road which is better than the Greenwood Lake—Route 8 in the State Highway Department goes within two miles of this property and then there is a good secondary road leading from there to Cozey Lake.

Q. What is the secondary road, what is it built of? A. Gravel, clay—County road.

Q. You mean the natural soil? A. No, the stuff carted in there. It is a good all the year around road.

Mr. Hunt: Mr. Bugg?

Mr. Matthews: Just a moment until he is free. Mr. Bugg, remain here.

Mr. Hunt: May I borrow your map?

Mr. Matthews: Just a moment.

Mr. Hunt: Have you any objection to my borrowing Mr. Hershfield's map for a moment?

Mr. Matthews: No objection to borrowing anything Mr. Hershfield gives you. I want you to beware of the Greeks bearing gifts.

(Mr. Hunt examines map.)

Q. Now I want you to mark on this map where the Weaver property is?

Mr. Matthews: I object. There will be nothing marked on any map that is not in evidence. It may be pointed to on that map, if he wants to use it, but it is not any cross examination of this witness.

The Court: He is trying to find out the distance, relative distance, and the witness has referred to a map in order to show it.

Mr. Matthews: He referred to it.

The Court: The witness referred to it first in order to give the distance. Now having done that, I think it is perfectly proper for him to ask him to mark on it. I don't know but what it would be proper for him to put it in evidence.

Mr. Matthews: Will he offer it in evidence?

Mr. Hunt: I am going to ask your Honor if I may do so, yes.

The Witness: This is the State Highway map. I am going to a five mile scale. This is the highway you turn off at Oak Ridge at the railroad depot, and on this road (indicating)

Q. Here, I will give you a pen. A. Approximately on that road (indicating).

Q. Now, make a letter "W" in black ink at the approximate location of the Weaver tract? A. The Weaver tract?

Q. The Weaver is what I am talking.

Mr. Matthews: Theodore Weaver, your sale property.

The Witness: Yes, the Weaver tract is here (indicating), and the other one is roughly there (indicating).

Q. Which other one do you mean? A. The one I have not referred to yet. The Weaver—and the Weaver tract is roughly there (indicating), the most northerly crosses the Weaver tract.

Q. The most northerly crosses the Weaver tract? A. Yes.

Mr. Hunt: Perhaps I can save time by asking what the lower is.

Mr. Matthews: We do not want to save time except as to the comparability of this one. All we are examining now is the comparability of this particular Weaver tract. I object to any other.

Mr. Hunt: May I offer this map?

Mr. Matthews: When his case comes.

The Court: You may offer it for identification, if you wish.

Mr. Hunt: All right, I offer this map for identification.

(Map marked Exhibit O-1 for identification.)

Q. You have said the most northerly of the two crosses that you have put on there indicates the location approximately of the Weaver tract? A. Yes, sir.

Q. Now, will you also indicate approximately the location of the Vreeland tract which you said was sold for $150,000?

The Court: I do not think that is important at this time, Mr. Hunt.

Mr. Matthews: No, if your Honor pleases, it is part of his case.

The Court: That is properly cross examination.

Mr. Matthews: This other map business is part of his case.

The Court: No, in order to show comparability of the property it is perfectly proper for him to ask the distance that it was from the property of the Ringwood Company. He did so, and in order to do so he referred to a map and scaled it, and Mr. Hunt, in my judgment,

had a right then to ask him, having used that method to determine the question of marking the map so he could be cross examined on it, or so that there may be rebuttal to show that the answer was incorrect.

Mr. Matthews: We did not scale it. That is the unfortunate part of it. All we did was mark it on the map, for future use of counsel.

The Court: He marked it, and also gave the approximation of the distance of the property, and as I recall it, as the crow flew.

Mr. Matthews: That was before the map was marked.

The Court: He did it on this map.

Mr. Matthews: Well, the map is marked for identification anyway, your Honor. The next question was objected to by your Honor, and I intend to put it—

Mr. Hunt: If the Court please, I will object to the admission of evidence respecting the sales price or value of the Weaver property on the ground that it is not located sufficiently near to the property under condemnation.

The Court: The distance is how far?

The Witness: Five miles approximately across country.

The Court: Then it is the same character of land?

Mr. Matthews: Yes.

The Court: And I will allow it as comparable property.

By Mr. Matthews:

Q. Now, Mr. Hershfield, will you tell us what was the price paid for the 110 acres of rolling

ground, 80 per cent. of which was in pasture and which had a frontage on the Pequanock River and a sun house thereon called the Weaver, Theodore Weaver, property? A. For the property and all improvements on it, fifteen thousand.

Q. And have you any way, or do you know of your own knowledge, what the improvements were worth? A. I have the detail of that appraisal in my office. I can bring them at the next meeting day.

Mr. Matthews: Is your Honor going to adjourn at four o'clock?

The Court: Yes. I was waiting for a good stopping place, and if that covers that particular place we will adjourn now. I understand that arrangements have been made to convey the jury to the property tomorrow at 10, starting at this place.

Mr. Frazer: Starting from the court house there will be a bus, a De Luxe Bus.

The Court: Well, will the jury then meet here tomorrow morning at 10 o'clock and be prompt, and I would suggest that you wear your mittens and your rubbers.

Mr. Matthews: How about luncheon for the jury tomorrow?

The Court: I shall not buy it for them.

Mr. Matthews: There is a commissary on the property and it is only for the purpose of saving time in going back into the City. I would be very glad, if my opponent will have no objection, to putting the facilities of that commissary at the disposal of the jury.

Mr. Hunt: We have no objection whatever to the jury getting the best meal they can at the most convenient place they can get it.

The Court: Very well, we will consider the luncheon problem solved.

Mr. Hunt: I might add also that they be permitted to go in anywhere to get their feet warm.

The Court: I shall be with them to see that their feet are kept warm. Then, we will adjourn the trial of this case until 10 o'clock the next day.

(Adjourned to January 5, 1927, at 10 o'clock A. M.)

MEMORANDUM.

On January 4, 1927, the jury met at the Court House at 10:00 o'clock A. M., and went to view the lands in question under the guidance of Showers:

John F. Lee, Sr., selected by the Court.

Henry G. Hershfield selected by the Condemnor.

James P. Anderson selected by the Owner.

H. G. Hershfield—Recalled—Direct.

SECOND SESSION,

PASSAIC CIRCUIT.

Appeal from the Award of Commissioners, in the Matter of the Application of the North Jersey District Water Supply Commission for the appointment of three Commissioners to fix the compensation to be paid for certain lands of the Ringwood Company, situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, State of New Jersey, to be taken and condemned for public use.

Paterson, N. J., January 5, 1927.

Before—Hon. NEWTON H. PORTER, *Judge,* and a struck jury.

APPEARANCES:

For the owner: EDGAR W. HUNT, Esq., and WILLIAM I. LEWIS, Esq.

For the Condemnor: SPAULDING FRAZER, Esq., and JOHN A. MATTHEWS, Esq. BERNARD L. STAFFORD, Esq., of Counsel.

HENRY G. HERSHFIELD resumed.

FURTHER DIRECT EXAMINATION BY MR. MATTHEWS:

Q. Mr. Hershfield, did you bring the detail of your appraisal which you said you had with ref-

erence to the two sales that you testified to at the last day? A. I did.

Q. If you did, give us the building detail cost in the Vreeland sale?

Mr. Hunt: May I ask the preliminary question as to how the costs have been determined? He asks this witness to give us the cost. The witness built buildings. What kind of costs does he refer to?

The Court: I assume the witnesses's estimate of the cost of the building. If that is so, I think you may—is that true, Mr. Matthews?

Mr. Matthews: Yes. Your Honor asked the question, have you separated the buildings from the cost of the land. This man is qualified as a real estate expert, and I asked him the question as an expert to give us the cost, the building cost, in order that we may determine what your Honor sought—the land costs.

The Court: Do you object to his qualifications, Mr. Hunt?

Mr. Hunt: I do not think he is proven qualified to estimate the cost of the buildings. It does not appear so far.

The Court: You may examine him if you wish on that point.

Mr. Hunt: Very well, sir.

CROSS EXAMINATION AS TO QUALIFICATIONS BY MR. HUNT:

Q. What kind of construction are these buildings, Mr. Hershfield? A. Frame.

Q. What kind of lumber enters into its construction? A. Milled lumber.

Q. Milled lumber? A. Yes.

Q. What do you mean by milled lumber? A. Lumber that has been run through a mill, to differentiate it from hand hewn beams, as were used in the early days.

Q. Lumber that has been sawed in a mill? A. Yes.

Q. When you say milled you do not necessarily mean planed lumber? A. I do in many instances.

Q. What kind of buildings are they in general? Are they dwelling houses or barns or what? A. There is 17—16 dwellings, one manor house of some 25 rooms, and the balance are barns and dwellings.

Q. Yes. Now when and where did you last build a manor house of 25 rooms or approximately that kind of a building?

Mr. Matthews: I object. It is not a part of his experience. He is qualified as a real estate expert, if your Honor please, and I do not think this is cross examination as to the character of buildings, but only as to his expertness.

The Court: I think that question is directed to that issue. He is trying to find out his qualifications as an expert with respect to the value of the buildings, and to ask him when he last built such a building such as he has described, I think is well within the sphere of a proper cross examination, and I will allow it.

A. I have never built a 25 room dwelling house.

Q. What are some of the other buildings embraced in this tract? A. 12 or 15, 16, five and six room dwellings of one, one and a half and two stories.

H. G. Hershfield—Recalled—Cross.

Q. Of frame construction? A. Frame construction, yes.

Q. When and where did you last build a similar building? A. I have built during the last 12 months 15 buildings of various types, all of them better than these.

Q. Then I put my question to you again and ask you when and where you last built a building like these, not better than these and not worse than these, but like these.

Mr. Matthews: That question, if your Honor please, is not a question to test his capability or qualifications, that he built a building like these. If he has built buildings of wood that is sufficient.

The Court: I will allow it nevertheless.

A. I have remodeled thirty odd buildings—

Mr. Hunt: I ask that that answer be stricken out as not responsive.

A. I have never built a building of this character, because these buildings—I have always built better buildings than these.

Q. What other kinds of buildings are there on the premises? A. None.

Mr. Hunt: Now, if the court please, I object that the witness is not qualified in respect of both classes of buildings that were on the premises. He has admitted that he never built a building of that kind.

Mr. Matthews: By that token, your Honor, no man who never built a similar building

H. G. Hershfield—Recalled—Cross.

could testify to building costs. I submit he is qualified without further questions.

The Court: I will examine him further.

BY THE COURT:

Q. Mr. Hershfield, how do you arrive at the cost of these buildings? A. By squaring—cubing them and allowing for depreciation, based on use and abuse.

Q. And the figures that you used in cubing it are based on your experience as a builder? A. As a builder who has built over $5,000,000 worth of buildings.

The Court: I will allow the witness to testify as an expert on the value of the buildings.

Mr. Hunt: May I put one question?

BY MR. HUNT:

Q. The five million dollars worth of buildings just referred to is the same five million dollars of apartment house property in New York City that you said, in your direct examination, that you had built? A. Part of it. I built $450,000 worth of buildings in New Jersey on my own account.

Mr. Hunt: I submit, building apartment houses in New York City is not an experience that enabels a man to determine the value of a frame building in the country of North New Jersey.

The Court: But he has knowledge of the cost of various materials, and he has knowledge of the deterioration of buildings, because of their age. He has been engaged as an appraiser of

buildings. He followed the well-recognized practice of cubing the buildings, and valuing them at so much per cubic foot, according to the character of construction, the kind of materials of which he has knowledge because of his building operations, irrespective of the fact that the buildings that he may have testified to may be, when finished, of a different character, but he has knowledge of the cost of various materials which go into building, and because of the experience that he has had it seems to the Court that he is well qualified, as an expert, to give his judgment. From all of those considerations of the value of these particular buildings I will allow it.

Mr. Hunt: May I have an exception to your Honor's ruling?

The Court: You may.

By Mr. Matthews:

Q. The question is, therefore, Mr. Hershfield, will you give the values of those buildings based upon your expertness? A. I valued the 17 dwellings and 8 barns on the property at $44,800 in their condition at the time of my examination.

Q. Now, did you bring the detail involved in the Weaver sale, and did you value the buildings, again, according to your expertness? You said, I think, on that tract there was a stone house? Have you that detail, Mr. Hershfield? A. I have, yes, sir.

Q. Will you give it? A. Including an orchard which I valued at $1500, and the valuable improvements on the Weaver place at $12,350. That included an appreciation for river. The details of the building were as follows:

House, $4800.
Three-car garage, $150.
The horse barn, $2,000.
The cow barn, $2200.
Six Miscellaneous buildings, $1,000.

Q. That is on the Weaver tract? A. That is on the Weaver tract—Theodore Weaver Estate.

Q. That gave you the total you said of improvements, $12,350? A. Including a thousand dollars appreciation for its frontage on the river. And the orchard of 80 fruit trees which I valued at $15 apiece, or $1200.

Q. Included, therefore, in the $12,350 amount? A. Yes, sir.

Q. Those two sales that you testified to, the Vreeland sale and the Weaver sale, have you, in your experience, sold any other property that is similar to this property? A. Yes, sir.

Q. What is another one? Name it first of all? A. Take the Stephen Fitzpatrick farm.

Q. The Stephen Fitzpatrick farm? Where is that located? A. That is located in Upper West Milford Township, and partly, I believe, in Jefferson Township, Morris County.

Q. And when was this sale? A. On or about October 6, 1925.

Q. And how does the property compare? Give us some of the comparable features with the property? A. Shall I read my description of it? Shall I read my description of it?

Mr. Matthews: If Mr. Hunt has no objection.

Mr. Hunt: I have no objection to his reading the description of it.

Q. All right. A. The property consists of 72 acres, of which some 65 acres are cleared grounds and show signs of recent cultivation. In fact, Mr. Fitzpatrick has recently plowed up an acre or two preparatory to the Fall sowing. It has a frontage of 2,000 feet on both sides of the Pequannock River which runs through the northeast corner of the farm, there being pasture land on both sides of the river.

The improvements on the property consist of an eight-room stone and shingle dwelling with a new shingle roof thereon, besides a one-story frame addition.

The house is rented to a Mr. Dennison McKee to this January, and I am told he has been there for the past two years.

He not being on good terms with Mr. Fitzpatrick, I was unable to gain access to the house, but I was told it is plastered inside and in fair condition.

There are two wells within the property, one within the curtilage of the house and the other one on the lower floor of the barn.

Frame shingle roof pig-pen 16 by 16, in fair condition. Ten large apple trees on the place, besides numerous fruit trees.

The barn, this is a two-story barn and basement, 36 by 40 in size, contains stable for 27 cows in the basement and is of very heavy construction and is susceptible to being put in first class condition at a reasonable figure.

There is a one-story extension to the barn in poor condition. I would estimate the value of the ground—

Mr. Hunt: Just a minute. That is objected to. I would like the witness to be required to

state the location of the place and show it on the map definitely before he is allowed to testify as to the value.

The Court: That is proper.

By Mr. Hunt:

Q. Have you that map which I marked Exhibit so and so for identification? A. I have a better map.

Q. Will you answer my question? A. No, it is in evidence.

Q. Didn't you take the one that was marked the other day? A. I do not think so. It is a highway map that anyone can get. You can get thousands of them for the asking.

Q. There is only one with marking on it that you had the other day? A. No, that is a copy of the one I had the other day. Let us see if I have the original, Mr. Hunt. Yes, here it is. (Produced.)

Q. Now, you say the map hanging on the board is a better one, and I agree with you, and if the Court will permit and you are willing I will be glad to have the mark that you already made on O-1 transferred to the one on the board.

Mr. Matthews: The one on the board, apparently, was put there by Mr. Hershfield before my coming. We will offer it in evidence, Mr. Hunt, when the time comes. Mr. Hunt wants something put on with a mark on something which is not in evidence. We have no objection to his expropriating or appropriating anything of our witness, but I object to this evidence.

Mr. Hunt: The map bears the name of Mr. Hershfield, and he has said it is a better map for the purpose.

Mr. Matthews: Until he marks it at my request—

The Court: Do you offer it at this time?

Mr. Matthews: No, your Honor, not until I find what it is for.

The Court: They have it marked on a map which is in evidence, the location of this property.

Mr. Matthews: That is only for identification. This is not in evidence. It is his map so far.

The Court: Very well.

Mr. Hunt: May I first, your Honor, state that this is a map issued by the State of New Jersey Conservation and—

Mr. Matthews: I object to that.

The Court: That is not proper cross examination or proper at this time, Mr. Hunt. I think this map is not yet in evidence. I do not know why it is there, and Mr. Matthews does not see fit to put it in evidence at this time. I will allow you to have Mr. Hershfield mark on the map that has been marked for identification the location of this property. Later on I shall not object if he puts it on this map, if it ever comes in evidence and seems proper at that time.

Mr. Hunt: I am very sorry to take so much of your Honor's time, but Mr. Matthews did not permit me to finish my question, so the Court does not yet know what I wished to do. May I offer this map which is—

Mr. Matthews: I want to insist that my opponent be courteous enough to let our case go in. We won't object to his putting it in as his evidence when the time comes, but he knows he has no right to make this offer.

Mr. Hunt: May I suggest, if these gentlemen sitting at the table are the State, or representatives of the State, as they have asserted themselves to be, then I see no reason why I should not be permitted to offer the State's map.

Mr. Matthews: I object to the statement, if your Honor please, by Mr. Hunt.

The Court: I will rule that you both not talk at once. We are consuming considerable time. Mr. Hunt has made the suggestion or the request, and I am prepared to rule on it at this time without hearing from counsel.

I will not permit it to be offered at this time, for the reason that the Commission is not willing that it should be at this time. If it is offered later, in the proper course, I shall have no objection to your offering it at that time, and recalling Mr. Hershfield, if need be, as your witness to have the location marked on that map.

Mr. Hunt: I thank your Honor. That is sufficient for me.

The Court: Very well.

By Mr. Hunt:

Q. Then, Mr. Hershfield, on O-1 for Identification, please mark the location of the Fitzpatrick farm that you have just been talking about. A. Yes. The road that the Fitzpatrick farm is on is

not shown on this very small scale map. It is somewhere in this group of crosses I have already made. It is beyond the Weaver place, westerly on the same road. It would be approximately in this same group (indicating).

The Court: I think you better mark it, Mr. Hershfield, "Fitzpatrick", or "F".

The Witness: If I write that word I cover three counties on this map. Shall I write it out?

The Court: No, if there is not room.

The Witness: There is not room, that is the reason I brought the big one down.

Q. You have put three crosses in the immediate proximity of the two crosses that you put there day before yesterday? A. Yes, sir.

Q. You say the third cross represents the approximate location of the Fitzpatrick farm? A. The three properties are within a half mile of each other but in different counties, and on different roads.

Q. Are they farther from Newark than the property under condemnation? A. They are both within the 35 mile limit.

Mr. Hunt: I ask that that be stricken out as not responsive.

The Court: Strike it out.

Q. Are they farther from Newark than the property under condemnation? A. I will have to scale them and let you know.

Q. Well, you can tell by looking at that map without scaling, can't you? A. I cannot.

Q. Here is Newark. I will point it out to you. A. Yes. Now I get our property. Is is here? I should judge they are about four miles further as the crow flies.

Q. Than the property under condemnation? A. Than the property under condemnation.

Q. They are also farther from New York City than the property under condemnation, are they not? A. Yes, about—also about four miles.

Q. They are also farther from Paterson than the property under condemnation, are they not? A. Yes—yes, sir.

Mr. Hunt: May I hand the map to your Honor and say that if in your Honor's opinion properties so located geographically as this property is are properly admissible for the purpose of comparison, I have no objection.

Mr. Matthews: It is for your Honor to decide whether they are comparable or not. Neither have we any objection. We submit they are comparable, however.

The Court: I think they are comparable and the jury will give such weight as the jury thinks they are entitled to, having in view the location of them with respect to the location of this property. It is all a question of weight to be given to these various properties by the jury, having in mind the testimony that is given with respect to their location, with respect to the location of the property in question.

Mr. Hunt: Yes. My colleague, Judge Lewis, has suggested that I ask the witness whether this four miles further from Newark, or four miles further from New York that he refers

to, was a straight line as the crow flies, as you put it yesterday, Mr. Hershfield?

The Witness: Yes. I take a radius from 42nd Street and Broadway, New York. It is about four miles, further, I should judge.

Q. Traveling by public highways this Fitzpatrick property and also the Weaver property are much more than four miles farther away from Newark or New York than the property under condemnation? A. Probably seven or eight miles by road.

DIRECT EXAMINATION (CONTINUED) BY MR. MATTHEWS:

Q. Now, Mr. Hershfield, the court has ruled you may answer the question. Will you tell us what was the value of the Fitzpatrick tract that was sold? A. After deducting the improvements it was $117 per acre.

Q. What was the total price and what was the improvement price? What was the farm sold for? What are the buildings worth? A. I am trying to find the figures, Mr. Matthews. I have not located them.

Q. Haven't you a copy of the memorandum I have? A. Sold for $14,000.

Q. Yes. Improvements? A. And the improvements were the difference between the—the ground figure at $8,500, which for 72 acres was $117 per acre.

Q. What other property? What is your next sale, Mr. Hershfield? A. Do you want the acreage figures on the Vreeland tract? I have not given those in the record yet.

Q. I thought you had given me the improvement figures this morning as $44,800? A. Yes.

Q. You have given us the total price. Go ahead to the next. A. We have not given our total price so we could arrive at it. After deducting the appreciation caused by the rights on the lake and the houses it brought the property down, the naked acreage to $65,200, or $135 per acre.

The Court: That is the Vreeland piece?

The Witness: Charles Wesley Vreeland.

Q. That was the first case yesterday? A. Yes. I sold for Joseph Hough a property on the so-called Cozy Lake Road consisting of 153 acres. After deducting the value of the improvements, which I figured at $2,500 for buildings—that was that stone house I referred to—$1,500 for the farm buildings.

Q. Yes. A. $250 for the river frontage. $1,500 for the orchard consisting of 100 trees at $15 per tree, it brought the ground down to $8,250, or for 103 acres, $80 per acre.

The Court: What do you call that piece, Mr. Hershfield?

The Witness: Joseph Hough.

Q. What other sale?

The Court: I do not think Mr. Hershfield is being asked the dates at which these sales took place.

Mr. Matthews: He gave the date of the Fitzpatrick as October 25th. He gave the date of the Vreeland sale as of January, 1925, if I remember right. The Hough sale has not been given.

Q. Now give us that? A. I closed my end of it on December 14th, 1925. I don't remember when deed passed. I had practically nothing to do with it.

Mr. Hunt: If the court please, may I make a request or suggestion that time would be saved if they would have the witness in each case on his direct examination put in evidence the name of the grantor, the name of the grantee, and the place of record, if he knows that, because I want to look up each of these transactions.

Mr. Mathews: May I just say to the court with respect that we would like to try our own case, and if they want that they may go get it down in the Register's office?

The Court: Very well, you may bring that out on cross examination.

Mr. Hunt: It seems we must take the time on cross examination.

The Court: All right.

Q. Give us your next sale? A. About August 19th, 1924, I sold for one Thomas Jennings his farm on the Oak Ridge Road, Passaic County, New Jersey, West Milford Township. This farm consists—shall I read—of 49 acres—

Mr. Hunt: I object to this on the ground that the sale was made—oh, I withdraw the objection.

The Court: You may proceed.

A. I read the description. Farm approximately 49 acres in this tract, fronting some 300 feet on the

main road running westerly to the river, same having approximately 1900 feet frontage on the river. The property is divided by use into some six acres of orchard and curtilage to the main house, and the balance of the 43 acres is a rolling, cleared ground, used primarily for pasture. The improvements on the property consisted of orchard of some 80 trees, and the main house which is approximately 60 years old and some nine outbuildings, one of them the blacksmith shop being in a very fair state of repair.

I would value the ground, including the orchard, at $10,200, and the buildings at $7,300, total $17,500.

In the valuation of the ground I have taken into consideration its proximity to the railroad station and post office, likewise to the fact that there are 300 feet on the main road, and likewise that there are 80 matured fruit trees on the premises; likewise that there is a living stream running through the property, and likewise that it has some 1900 feet frontage on the river.

Q. When was the date of that sale? A. August—I don't remember the exact date when the deed passed, but my work finished on August 19th, 1924.

Dividing $10,200, the value of the ground, by 49 acres, would give $208 per acre for this ground, which fronts 1900 feet on the river and is within a half mile of the centre of this section.

Q. Another sale?

The Court: When you speak of the river, what river?

The Witness: Pequannock River. Where the river is good.

A. The other sale I hardly intended to refer to, because it was a small piece of acreage. I have been trying to keep in the 50 acre tract or more, unless they were immediately contiguous to the shed.

Q. Have you any other sales of 50 acres, and if so, where? A. I am familiar with the sale to the North Jersey Golf Club of 1300 acres of ground on the Paterson-Hamburg Turnpike, within three miles of the City of Paterson, and approximately 1500 feet frontage on the main road. This property—

Q. Just a minute. Is this property similar in character to the property under condemnation? A. It is fine rolling ground well wooded, and is within three miles of Paterson on the main Hamburg Turnpike, now used for the Golf Club.

Q. Any water on it? A. There were two streams on the—one stream on the property. There are now, of course, two ponds.

Mr. Hunt: May I seek out the exact location of this property, to see whether its location makes it comparable?

Mr. Matthews: Just a minute. Do I understand that at this time I may be interrupted before I have determined to view this property by reason of its comparability?

The Court: You may continue your examination with respect to its comparability, and when you have finished Mr. Hunt may ask about it.

Mr. Matthews: I have always turned him over for examination.

Q. What other, if any, features similiar are there than you have testified to, namely, the rolling

ground and the presence of two streams that are now ponds? A. There is nothing. It is a piece of rolling, well wooded country.

Q. You regard it as similar to the Ringwood? A. I regard the terrain as similar, and I consider its proximity to Paterson makes it infinitely more valuable.

Mr. Matthews: I have no objection to his being cross examined as to the comparability of this property and that alone at this time.

FURTHER CROSS EXAMINATION BY MR. HUNT:

Q. Just indicate its location on Exhibit O-1? A. This is Paterson. This is the road from Paterson to Pompton Lakes.

Q. Yes. A. That property would be approximately here (indicating).

Q. Make a circle there, please. A. (Witness complies.)

Q. The property I have just referred to is identified by a circle drawn in black pencil in a direction northwesterly from Paterson, and on the road from Paterson to Pompton Lakes; is that correct? A. Yes.

The Court: How far is it, Mr. Hershfield, from the property of this Ringwood Company?

The Witness: Figuring the dam as the Ringwood Company property for purposes of location, by crow it is seven and one-half miles nearer Paterson than the dam. By road it would be about ten miles nearer Paterson than the dam.

Mr. Hunt: May I consult with one of my advisers as to the location?

The Court: Certainly.

Mr. Hunt: I again hand Exhibit O-1 for identification to the Court, and say that I have no objection to this testimony if in the Court's view the property so located is properly comparable so far as the question of location is concerned.

The Court: I think there is some comparability between them, and for whatever it may be worth I will allow it. There again it is for the jury to weigh the value of the testimony having in mind the location of this property as compared with the location of the property being considered.

FURTHER DIRECT EXAMINATION BY MR. MATTHEWS:

Q. Then, Mr. Hershfield, what was the value of that ground, 310 acres on the Paterson-Hamburg Turnpike three miles from Paterson with 1500 feet of frontage on the main road and with a house on the property? A. The whole business sold for less than $100 an acre.

Q. The whole business, I understood you to say? A. Yes.

Q. Any other sale?

The Court: Unimproved, was it not?

The Witness: Unimproved, excepting the house on it. There was a house on it, a house probably worth $3,000 or $4,000.

The Court: Are you excluding the house in that $100 an acre?

The Witness: No; that $100 an acre included the house. Everything on the property brought less than $100 an acre.

Q. Another sale, Mr. Hershfield, please. A. I sold for Edwin Corning to Frank Stead within two years a tract of 310 or more acres on the easterly side of Pompton Lakes in Wayne Township, Passaic County, New Jersey.

Q. Give us the topography of it, please. A. This was a piece of rolling country at least 60 or 70—

Q. You will have to speak louder. A. I say this was a piece, about 60 or 70 acres of this was rolling country. It had been in fact put into a golf course by people who rented it. The balance of the low land was in meadow and cultivation.

Q. Any road frontage? A. It had—there was also probably 60 acres of timber on it. That property had 2000 feet of road frontage.

Q. 2000, you say? A. Yes, on two roads, the State Road—the Valley Road from Pompton Lakes to Oakland, and the back road, known as the Colfax Estate Road, running from the lake to Paterson.

Q. What was the sale price? A. $100 an acre based on 310 acres. There was really more than that conveyed.

Q. Another property, if you have one? A. I sold for Edwin Corning to the Corning Development a tract of approximately 75 acres in the heart of the residential section of the Borough of Pompton Lakes.

Q. Now give us the topography of that? A. This was a piece of ground with two levels; probably 60 acres on the upper level, 15 acres on the lower level.

Q. It was acreage you sold? A. It was acreage I sold. I am only referring to acreage in my sales. This property had sidewalks along the main road, had electric light on it, sidewalks on the part of it, city water on part of it.

Q. Well, is this comparable? A. I am saying—I am referring to it as acreage, but it had these town improvements in it.

Q. Well, I will withdraw that sale to the Corning Development as not comparable in my own estimation. Have you any other sale that is comparable in acreage out in the wilds—comparable to the Ringwood property? A. I can refer to a sale made by the Ringwood Company to one Ernest Krysel, on the Conklintown Road, made this Spring or within a year, 51 acres of hardwood, bought for wood purposes, price—

Q. Just a minute. The entire feature of the land was woodland? A. It was bought as a wood lot for sawmill purposes.

Q. Does that woodland compare in your estimation with the woodland that is part of the Ringwood tract? A. It is a very good stand of red oak. The man told me who bought it—

Mr. Hunt: I object.

Q. Never mind. A. I would consider it a very good stand of woodland and one of the best pieces of woodland in that section.

The Court: The question is—

Q. Answer the question, is it similar to the woodland that you have described as part of the Ringwood tract that is under condemnation? A. I would consider it better than the average woodland.

Q. So it is similar but better; is that it? A. But better, yes.

Mr. Matthews: Do you wish to cross examine him, sir, as to the comparability? I turn him over for that purpose at this time.

FURTHER CROSS EXAMINATION BY MR. HUNT:

Q. Well, Mr. Hershfield, this property you speak of is about three miles from any main highway, located on a very rough wood road, isn't it? A. It is not.

Q. It is not? A. It is located on a very well traveled road, the road to Stonetown. To get into this property you have to go a third of a mile over a private road, but I had no trouble in getting over it in various cars I used to examine it. The man trucks wood in and out of it.

Q. Now you were with the jury on their view of inspection yesterday, were you not? A. Yes.

Mr. Matthews: I object to that as not cross examination, irrelevant and immaterial.

The Court: What materiality has it with respect to the comparability of this piece?

Mr. Hunt: It is simply preliminary. I was going to ask him whether the jury yesterday were taken over the road that connects this property that he speaks of with the main road.

Mr. Matthews: I object to it as immaterial to this examination.

The Court: Objection sustained.

Q. What road do you say this property is on? A. The Conklintown Road.

Q. Does it abut on a public road known as the Conklintown Road? A. No. A third of a mile off—go over a private road for a third of a mile.

Q. The private road you say forks off from the Conklintown Road? A. Yes.

H. G. Hershfield—Recalled—Direct.

By Mr. Hunt:

Q. What do you mean by Conklintown Road? The road that goes from where to where? A. The road leading from the cemetery at Midvale making the hook through this property facing Julian Durant place, coming around by Lake Erskine and Spook Rock and entering in the Lake Erskine Road. The road which has been there for a hundred years, I suppose.

Mr. Hunt: Well, if the witness says this is the location of the property there is no basis for the objection to its location.

The Court: Very well.

By Mr. Matthews:

Q. Mr. Hershfield, will you give me the value of that acreage that was sold by the Ringwood Company—by the way, is that the same company that is in this condemnation? A. Yes, sir.

Q. And is this the same holdings of the Ringwood Company that are centuries old? A. Yes, sir, I presume so.

Q. Now, will you give us the sale of this century old property, the price of it? A. $35 an acre, that is $1800 was paid for 51, approximately, acres.

Q. Tell us when that was? A. Within a year, as far as I recall.

Q. Have you any other sales that are comparable property? A. I can refer to a sale of 160 acres on the northern end of Pompton Lakes, fronting on both sides of Sager Pond.

Q. Is that improved or unimproved section? A. This property has city water.

H. G. Hershfield—Recalled—Direct.

Q. Well, give us just the wild acreage. Have you any others? A. This is wild. The city water did not make it any tamer. It is still wild. It has electric lights on it.

Q. That applies to civilization. Give us something that had neither; have you any other? A. The price did not indicate civilization. This 160 acres sold for $21,500.

Mr. Matthews: Well, now, I consent that be stricken out until Mr. Hunt has a chance to examine him on comparability of the property.

By Mr. Hunt:

Q. Whereabouts is it located? A. On the northern end of Pompton Lakes, from Sager Pond, it lays partly on both side of the Greenwood Lake Railroad.

Mr. Hunt: That is all right. We have no objection to it as to any point of location.

Mr. Matthews: Then I understand they do not object.

Mr. Hunt: That is right.

By Mr. Matthews:

Q. And the price you have testified is $21,500? A. For 160 acres. This property had some rights in the little pond known as Sager Pond.

By the Court:

Q. What do you call that piece? A. It is one of the two holdings of the Twin Lakes Realty Company.

By Mr. Matthews:

Q. What is the property described as the Sager Pond? A. They called it the Sager Pond property.

Q. Any other sales?

The Court: You have not told us the acreage price yet; at least, I did not get it.

The Witness: I will have to divide it.

Q. I think it is $134 plus, if my division is correct. Is that right, Mr. Hershfield? A. Approximately, yes. One hundred thirty odd dollars; call it $135 an acre.

Q. Any other sales that are comparable? A. A sale of adjacent property consisting of 90 acres, a piece contiguous to this property is on the southerly side of the Borough of Wanaque, both sides of the railroad, and both sides of the Bloomingdale crossroad. Has electric light and water on this property of 90 acres.

Q. Just a minute before you go any further. What are the similar characteristics? A. It is a piece of wooded land, reasonably level. These two combined properties give the ownership of Sager Pond, about a 12 acre lake, when the dam is up.

Mr. Matthews: Does Mr. Hunt wish to cross examine him on the comparability feature? I turn him over for that purpose, alone, now.

Mr. Hunt: I think the location of the property is all right.

Q. What was the price? A. That 90 acres sold for $12,500.

The Court: What is that an acre, if you have figured it out?

The Witness: That is about $140 an acre.

Mr. Hunt: I believe the date of that sale has not been given, your Honor.

The Court: No, it has not.

Mr. Hunt: May that be given?

The Court: Yes, what is the date?

The Witness: Within a year and a half, both of them.

Mr. Hunt: How is that?

The Witness: Within a year and a half.

Mr. Hunt: Were they before—

Mr. Matthews: I object to cross examination now. He is my witness.

The Court: Objection sustained. It is only with respect to comparability that you may examine him at this time, Mr. Hunt.

Mr. Hunt: Doesn't it come within the question—

The Court: I asked the question, and he said within a year and a half, and you may further examine on cross examination to your heart's content.

Mr. Hunt: I thought there was one preliminary ground. This condemnation proceeding was commenced in March, 1925—

Mr. Matthews: I object to being butted into by this man on my direct examination of my witnesses.

The Court: If this sale took place at a time which makes it inadmissible, however, this is a good time to find it out; but the better time, it seems to me, is on cross examination.

Mr. Matthews: A year and a half ago certainly makes it admissible.

Mr. Hunt: Then it is in already.

The Court: That is true, but we can cross it out.

Mr. Matthews: A year and a half ago is the time testified to.

Mr. Hunt: May I ask whether it was before or after this proceeding?

The Court: You may on cross examination.

Mr. Matthews: I object to that, if your Honor please.

Q. Now, Mr. Hershfield, have you any other sale? A. I would like a ruling from the Court—

Q. Just a minute. Have you any other sale? A. I do not know whether I am permitted to or not.

Q. Answer my question. Have you any other sale? A. I have several other sales.

Q. Do they or not involve sales to the North Jersey District Water Supply Commission? A. Two of them do, but they were beyond the pale of condemnation.

Q. Whether they are beyond the pale or within the pale, give me the next one you have, and we will reach the pale in argument. What is the next sale which you wish to offer us in comparable property, regardless of whether it was within or without the pale? A. Sale of property Wilson Estate to Louis Van Orden.

Q. The sale from the Wilson Estate to Van Orden, that was property that had the features, terrain and otherwise? A. It had 55 acres on the easterly side of Pompton Lakes in Wayne Township, New Jersey, had 525 feet of lake frontage, 680 feet of frontage on the Valley Road, that is the main road there leading to Oakland, and 2,000 feet frontage on the back road which is known locally as Indian Road.

Q. Indian Road? A. Yes.

Q. Any other features that you wish to give us? A. The ground sloped naturally towards the lake. The lake at that point had deep water in it, and it was reasonably well wooded ground.

Mr. Matthews: Now, at this time, Mr. Hunt, if he wishes may cross examine him as to the features of comparability, because I am going to offer this as comparable property, and ask the price.

Mr. Hunt: What was the date of the sale?

Q. What was the date, Mr. Hershfield, of the Wilson Estate sale to Van Orden, approximately? A. Well, some time this past Spring.

Mr. Hunt: The Spring of 1926?

The Witness: Yes.

Mr. Matthews: Last Spring is the Spring of 1926, naturally.

Mr. Hunt: That is objected to on the ground the sale was after the commencement of the condemnation proceeding.

Mr. Matthews: It does not make a bit of difference, if your Honor please.

The Court: What difference does it make, Mr. Hunt?

Mr. Hunt: Can this gentleman, who is a hired servant of the Water Supply Commission, make evidence against me of sales after the commencement of the proceeding?

The Court: I think it is proper, and I will allow it.

Mr. Hunt: May I have an exception?

The Court: You may have an exception.

Mr. Hunt: I wish your Honor more to know the procedure that will be established so we can move along rapidly without so many objections and exceptions. If your Honor means by that to indicate a general course of procedure—

The Court: I do.

Mr. Hunt: Then I withdraw the exception.

The Court: Very well.

Mr. Matthews: There is something on the record I did not get.

The Court. Mr. Hunt asked whether that is to be considered as the general course of procedure, and I said it was.

Mr. Matthews: Do I understand therefore that the objection is withdrawn?

The Court: He did withdraw it.

Mr. Matthews: To this question as to this property?

The Court: Yes.

Mr. Matthews: And the general procedure will be there will be no objection to sales of property made since the condemnation?

The Court: He did not say that.

Mr. Matthews: Then I do not quite understand.

The Court: He withdrew his objection after finding from the Court that the general procedure, as far as the Court was concerned, was to allow testimony of this character.

Mr. Hunt: I will not, your Honor, put another objection on that ground. I simply wanted to know what our procedure was, and I made it as a general waiver, my objection, on that ground.

The Court: Very well.

Mr. Matthews: Mr. Hunt, do you wish to further cross examine as to comparability features?

Mr. Hunt: No. Go ahead. I do not wish to delay you a moment more than I have to.

Mr. Matthews: That is the most generous thing you have said since we began. Pardon me, your Honor.

By Mr. Matthews:

Q. What is the sale price of that, Mr. Hershfield? A. $8,000, or $145 an acre.

The Court: All unimproved?

The Witness: All unimproved.

Q. Anything else, Mr. Hershfield, that you have sold? A. I have not sold this. I know of the sale.

Q. Do you know of it in the practice of the real estate man? A. Yes, sir. I know of a sale of approximately 2,000 acres in this same territory.

Q. What is the name of this property? A. We used to call it Rotten Pond. It is now known as Lake Lagrande, and I think it has another name since.

Q. Rotten Pond is now named Lake Lagrande? A. Yes, sir. It has been changed.

Q. 3,000 acres? A. 1960 acres, with a 100 acre lake on it. Four or five miles of road and three buildings, a lodge house, a caretaker's house, and a clubhouse on the island in the lake.

Q. What was it sold—was it sold in its native wildness or rottenness, whichever the case may be? A. Only the pond was rotten, and when the dam was raised it ceased to purge, and it lost its name, and the stuff is not wild. I suppose on that prop-

erty there has been spent $350,000 in improvements.

Q. Now, give me the answer to my question. My question was, was it sold as virgin country? A. It was sold as it was. The nucleus of the development, the lake and the roads.

The Court: And with a clubhouse on the island and various rather palatial buildings?

The Witness: No. One palatial building that did not appear in this sale; that was exempt.

Q. Does the territory compare in terrain and other features? A. It is almost contiguous to the Ringwood buildings.

Mr. Hunt: When was the date?

The Court: When was the date?

The Witness: Within three years.

Q. What was the price? A. The property, consisting of 1960 acres.

Mr. Hunt: He has described the property, and I submit we might save time by not having him read over this rigamarole.

The Witness: This is not a rigamarole.

The Court: Do not again describe it, Mr. Hershfield. If there are any parts of the description which you have omitted you may add those, but do not cover the same ground that you have already covered.

Q. What was the acreage?

Mr. Hunt: That has been stated.

The Court: 2960 acres.

Mr. Matthews: I thought it was 1960.

The Court: I misunderstood him, then.

Q. The acreage was 1960? A. Yes.

Q. What was the price? A. $260,000.

Q. What was the acreage price? A. Approximately $130 an acre, including those other things.

The Court: Including what other things?

The Witness: Including roads, finished lake, improved dam.

Mr. Hunt: That is objected to.

The Court: I only meant as to comparability.

The Witness: Including three buildings.

Q. Have you made any estimate based upon your experience that would give us the land value separated from these appreciations of buildings? A. Yes, I can give it to you from memory. I haven't got it before me.

Q. Is it scientific? A. It is based on my experience.

A. All right, give it to us, then. A. I should say the buildings on the Van Slyke tract were worth at least $20,000; that the value of the road already—

The Court: No, do not take the road.

Q. I said the buildings? A. The buildings, $20,000. Shall I give the dam?

Q. The dam is a building, if it is masonry or concrete, or whatever else it is. Masonry and concrete are the same.

The Court: Yes, you may give that.

The Witness: To raise the dam to the new might cost $15,000, according to Mr. Van Slyke.

The Court: That was there when this sale took place?

The Witness: Yes, sir.

Q. Anything else of building appreciation? A. No.

Q. That would be $35,000? A. From two hundred sixty.

Q. From $260,000? A. Yes, sir.

Q. $215,000 for land value plus road appreciations and so forth? A. Two hundred twenty.

Q. Do you get two hundred twenty-five from two hundred sixty? Yes. What is that the value per acre now, if you know? A. A little over $110 an acre.

Q. Any other sales? A. Nothing unless you want to make—

Q. Have you any other sales of similar property? A. No, sir, not within your ruling and the Judge's.

Q. Upon what did you say? A. Not within your rulings.

Q. I humbly submit to the Court there is no ruling of mine with your Honor on the bench. Mr. Hershfield, have you any other sales of property, regardless of any other rulings which you think I made? A. Yes, sir; I have numerous sales, if I am permitted to testify.

Q. What are the sales that you are hesitant about testifying to? A. One is the sale of 100 acre farm known as the Decker farm in Midvale.

Q. When was that sale made? A. About four years ago; maybe five.

Q. Made to whom? A. To the Water Supply Commission.

Q. And made by the owner? A. Made by the owner.

Q. What was the character of that territory?

Mr. Hunt: I will admit for this purpose, the character of the territory is substantially the same, but I object to a sale made to the Water Supply Commission on the ground they cannot, at their option, put in a purchase by themselves as evidence against us. We can, on cross examination. They cannot.

Mr. Matthews: I do not so understand the rule. If the property is similar in character and has been sold, you cannot preclude a public body that has got the property in that vicinity, unless it be shown on cross examination at the time that the sale was forced or not a full and free open market sale. That is the rule as I understand it, and there is no evidence to the contrary.

Mr. Hunt: Such sales are presumed to be forced because of the power of eminent domain possessed by the Commission.

The Court: Have you any authority on that?

Mr. Hunt: Only the dictum in the Laing case I laid before your Honor, but it is the rule of reason and logic. When this Water Supply Commission comes to a land owner and makes him an offer, the average land owner knows that he has got to accept or reject it. He cannot afford to go through what we are compelled to go through to get his rights. His property would be eaten up, a property or 100 or 40 acres, whatever this Sager pond is, it would be eaten up, in the amount it would cost

setting himself against this power of eminent domain. The law recognizes it is not a free agent. Therefore, they cannot take advantage of the sales made under those circumstances.

The Court: But you say you can.

Mr. Hunt: Yes, sir. If they have made a purchase of a piece of property—

The Court: Why should not the rule then work both ways?

Mr. Hunt: Every man, your Honor, is bound, where he is a party to a litigation, by those acts which his adversary in that litigation conceives amounts to admissions against the interest of the actor and in favor of the adversary, but no man in the litigation can aid his cause by self-serving declaration and self-serving acts.

The Court: If you can find by cross examination that the prices were excessive, and you would not, or that they were inadequate because of the conditions that you have recited, that will go to the weight of such testimony, but in the absence of any knowledge that we may now have with respect to conditions that prevailed when this property was acquired, I have no right, it seems to me, to assume that the Water Commission drove an unconscionable bargain, or that the mere fact that it had power to take did not make for a proper bargaining on each side. I think that the price might have been paid under proper conditions has evidential value, and on that theory I will allow it and you, if you can, of course, on cross examination, destroy the value of the testimony because of the conditions which you may be able to show prevailed. I do not understand from a reading of the Laing case that I am violating the philosophy of that case. I may be wrong. If I am, of course, you have your remedy.

Mr. Hunt: But, your Honor understands that my objection goes to the fundamental ground that such transactions are not admissible in evidence on the part of the Water Supply Commission.

The Court: I understand the objection is tantamount to self-serving declarations, among other things.

Mr. Hunt: I prefer to put it on the broad ground that I can support by whatever reasoning can support it, that the condemning party has not the right to put in evidence prices paid by itself in the private purchase of other lands in the taking. May we have an exception now to your Honor's ruling?

The Court: You may have an exception, yes.

Mr. Hunt: And perhaps it may be understood that this exception will apply to all the proof that is offered.

The Court: I will permit it to be a continuous exception to the admission of any such testimony in the progress of the Commission's case.

Mr. Matthews: From this witness, if your Honor please, because I take it we would suffer in the record, if your Honor please, if we were to be met with the objection as to any other witnesses.

The Court: Very well, we will limit it to this witness.

Mr. Matthews: May I, since your Honor has ruled, have permission of the Court to say to

your Honor that the statement of Mr. Hunt that the Water Board in buying property within the shed would preclude any owner, not of the size of this owner, from appeal, by saying to your Honor that your Honor sat only two weeks ago from an appeal by a woman in a five acre tract award, and she found she had enough money to appeal that case. I say that because it is prejudicial for him to state that they cannot afford to appeal. They have all appealed, but they have not all succeeded.

Mr. Hunt: Now, I will make a statement, if the Court please. I have tried two other cases. In one there was an award of $258,000 and that was not appealed. It was paid by these gentlemen.

The Court: I do not think the sweeping statement that Mr. Matthews made is probably correct. I am not as conversant with the situation as you gentlemen are, but I should not suppose it was true that they did any of them appeal.

Mr. Matthews: No, one of the Hewitts accepted his award.

Mr. Hunt: And one other case, may I say, because Mr. Matthews interrupted me, there was an award of $40,000 or $50,000, and these gentlemen paid it.

The Court: I do not see that we are getting anywhere by this discussion.

Mr. Matthews: And we paid that because we thought it was a reasonable award.

The Court: I assume that is true.

Q. Now, Mr. Hershfield, will you give us that property you are speaking of? A. The price.

Q. First of all, have you described it fully? I have forgotten in the argument? A. That was 93 acres of level ground on the northerly side of the Wanaque River, Borough of Wanaque.

Q. Will you give me the name? A. The Decker farm, the grantor was W. Carrington Cabell and his wife of Passaic, but it was known locally as the Decker farm. 93 acres of farm, including one large house and three outbuildings, all in good condition. Price $10,000. I valued the buildings at $7,000. On that property—I may say this was not under condemnation. We could not condemn. It was outside of the shed. It was a free sale. We bought this ground long after the Water Supply used up dirt, to get dirt that was on it for filling purposes. In other words, there was no fear of condemnation over these three sales that I next want to refer to. We could not condemn them.

The Court: What was the price per acre?

The Witness: $30.

The Court: You did not mean that, Mr. Hershfield, that you could not condemn them?

The Witness: We could not condemn them under the Act, because they were not needed for water supply.

The Court: We will strike that out, because it is a conclusion.

The Witness: I mean—

The Court: I understand it is your opinion of the law, and we do not need that.

Q. Mr. Hershfield, may I, with the Court's permission, instruct you to answer my question and leave to the Court and our humble selves—

H. G. Hershfield—Recalled—Direct.

The Court: I was going to ask the price per acre of the Decker tract inclusive of the improvements, if you have figured it.

The Witness: Approximately $30 per acre.

Q. What was the next one, Mr. Hershfield? A. The next one was a sale of approximately 13 acres of ground contiguous to the pipe line south of the dam sold by Austin Monks to the Commission and resale at $100 an acre.

The Court: What improvements?

The Witness: Unimproved; just a piece of timber land.

Q. Any other sale? A. The next one was a piece of property I bought for the Commission from one Josiah Ricker at Midvale.

Mr. Hunt: That is objected to on the ground previously stated, that it is within the shed and they have power of eminent domain; on the further ground that Josiah Ricker is an employee of the Commission and is an assistant of this gentleman in his work for the Commission.

The Court: I will allow it.

Mr. Hunt: May we have an exception?

The Court: You may have it.

A. This is a piece of property which is on the westerly side of the main road and west of the Hercules Silk Mills in Wanaque. There was a road running through it. Of the 44 acres that we bought, we bought it for $100 an acre.

H. G. Hershfield—Recalled—Direct.

The Court: Unimproved property?

The Witness: Unimproved property, yes.

Q. When? A. Within a year and a half.

Q. 44 acres at $100 an acre? A. Yes.

Q. Any other one? A. I have dozens of other sales that we have made to the Commission, but I have not the details with me.

Q. Mr. Hershfield, you can only give me what you have. A. Yes, sir; I can get them here.

Q. And do you remember any other sales? A. I remember numerous other sales I have made of comparable property on an acreage basis.

Q. Can you take out of the numerous memory and individual memory of sales and give them to me? A. I sold for the Commission to the Ringwood Company, this same company, approximately 200 acres of wood land for $50 an acre.

Q. Where was that and when? A. That was on the southern end of the reservoir taking near the Wolf Den Dam, a piece of rough wood land at $50 an acre.

The Court: $50 an acre?

The Witness: Yes, sir.

Q. That is the tract that is referred to by the Ringwood interests as an isolated tract? A. Yes, sir.

Q. Any other property? A. I sold this Jacob Brown farm in the lower end of Ringwood borough to the Commission. This property consisted of approximately 85 acres. It had an old house and an old barn on it. It had a good many, probably 1500 feet frontage on two roads. It had several hundred feet frontage on the river. It had a good

many thousand feet frontage on both sides of the Greenwood Lake Railroad, probably 70 per cent of this farm had been cultivated. It was rolling ground, cleared, the balance was rough wood land. I sold that acreage, buildings and everything, as I recall it, approximately $12,000. It may have been $500 one way or the other.

Q. And when was that? A. Oh, that was five years ago, I reckon.

Q. Any others? A. If you will give me the reservoir map to refresh my mind.

Mr. Hunt: I object to that sale and move the evidence be stricken out on the ground that the sale is too remote in point of time; five years ago.

Mr. Matthews: I submit, if your Honor please, that sales five years ago are perfectly comparable.

The Court: I think that goes to the weight, Mr. Hunt, of the testimony.

Mr. Hunt: May I have an exception?

The Court: In view of the fact that there has been no material changes—

Mr. Hunt: Well, that does not appear yet, your Honor. That will appear whether or not there have been material changes.

The Court: I assume that is so.

Mr. Hunt: I think your Honor will find that assumption is not justified. If you mean material changes in market price—

The Court: Well, I will allow it to stand subject to whatever weight it might have, of course.

Mr. Hunt: We may have an exception?

The Court: You may have an exception.

Q. Anything else; any other sales? A. If you will put the map up it will refresh my memory.

Q. You have a map on the board about which there was some discussion a short while ago. Did you cause this map to be placed here? A. I did.

Q. What is that map? A. That is a map issued by the United States Government or the State of New Jersey, I forget which. It is known as the Geological Survey of the Northern Portion of the State of New Jersey.

Q. I see some red and black pins there. Do you want to come down to that map, if our opponent have no objection; and pin on the map with a color that shall appropriate to our side of the case the different sales that you have testified about? A. That was my object in bringing the map to locate for the jury the sales.

Q. I divined that when I saw the pins.

Mr. Matthews: Have you any objection, Mr. Hunt?

Mr. Hunt: No.

Q. Well, then, come down and pin.

Mr. Hunt: I want the pin further identified by some further marking on the map. The pins can be taken out or dropped out by themselves.

Mr. Matthews: We submit pins can drop out. We can only say that we do not know of anybody that would take them out.

The Court: My suggestion would be a little circle be made first and the pin be inserted in the center of the circle.

The Witness (Indicates.) That first pin would locate the approximation of the Jennings farm I referred to.

The Court: Have you put a circle on the map?

The Witness: Beg your pardon?

The Court: Have you put a circle on the map?

The Witness: (Indicates with circle) That is the Jennings property and lies east of the reservoir.

Q. Is it going to take all of that time for each pin? A. I have got to locate it on the map if you want it exact.

Q. Oh, absolutely, Mr. Hershfield. You are under oath. A. The second pin will locate approximately the Fitzpatrick property. The third pin locates—

Mr. Hunt: You did not put a circle around the Fitzpatrick property.

Mr. Lewis: There is no way of locating these pins.

Mr. Matthews: The record will show.

Mr. Lewis: It will show the first, second and third pin.

The Witness: The third pin is the Vreeland property. The fourth pin locates approximately the Weaver property with—

Mr. Hunt: Locate the last pin that you fixed with reference to the body of water.

The Witness: It lies easterly of what is marked on the map as Macopin Lake. I refer to it as Echo Lake. This is the Fitzpatrick property. This is the Weaver property and the Jennings property. This last pin is the Hough property. Those are the five sales I referred to in that shed.

Q. Are there any other sales that you referred to that you can pin on the map? A. I can pin them all on.

Q. Yes.

The Court: Suppose we take a recess. Is there any reason why Mr. Hershfield cannot be doing this while we are recessing? I do not think the record is showing this. Are you taking it all down?

The Stenographic Reporter: Yes.

Mr. Hunt: Then it should be on the record.

The Court: I think it should be, and I find it is being taken down. We will take a recess and defer putting the pins down until after the recess.

(A short recess of five minutes was then taken.)

Q. Go on. What is the next number you are going to pin? A. North Jersey—

The Court: Has that map been marked?

Mr. Matthews: No. If there is no objection I would like to offer it.

The Court: You may mark it.

(Map marked Exhibit C-4.)

Mr. Frazer: It is being marked only to show geographical locations and not for contour lines.

(Witness continues putting pins in the map.)

Mr. Hunt: If the court please, may the ruling be a somewhat less general one than that the map goes in as it is and what it is, with the understanding that if we choose to refer

to contour lines shown on it, and they should object, that question may be passed on then? I make that request for this purpose. The map shows a large area of the northern part of New Jersey, and I might wish to refer to contours and elevations in this area, and since this is a map put out by the authority of the State and bearing such an endorsement printed on it, I think these contour lines might be useful as well as its other features.

The Court: I will rule on it if it comes up. In the meantime the record shows the map has been offered for the purpose of location only. If it is sought to use the map for any other purpose I will then rule on the propriety of it.

Mr. Hunt. That is perfectly satisfactory to us.

The Court: I notice that Mr. Hershfield is continuing to put pins in. As I recall it, before we had our recess he was describing the various pins as he put them in, and that he is not now doing it. Therefore on the record it is blank as to the present proceedings. I don't know that what he said as he put the pins in before helped very much, because there is no way of identifying the pins.

The Witness: I was going to put them all in and then point them out afterwards.

The Court: Very well; I think perhaps that would be very much better, because it has not been helpful to me up to this point, and I doubt therefor whether it has to the jury.

Mr. Lewis: Perhaps the circles which Mr. Hershfield is putting on the map are the real

things. Would not some way of marking those circles besides with a pin be better?

The Court: I have already suggested there be a circle around each pin, and if there has not been I will ask that there be such circle, and then if there are any other colored pins to be put in later perhaps it would be wise also to put a different colored circle around the other pins.

Mr. Frazer: Might not each circle bear a little number and then a legend to be written on the margin of the map with the name of the tract as it has been testified to?

The Court: I think it most excellent and intelligible, otherwise I am afraid we are wasting considerable time.

Mr. Matthews: You can run a tangent from the circle to the border of the map.

Mr. Hunt: The minute the map comes off the board all the pins are going to come out.

The Court: That is all the more reason that Mr. Frazer's suggestion is valuable, that there be a number placed opposite each pin and a corresponding key or legend to describe what that number means.

Mr. Hunt: Yes.

Mr. Frazer: Might we speak to the Court while Mr. Hunt is doing that, on another matter?

Mr. Hunt: You wish me?

Mr. Frazer: Yes.

(Counsel and the court confer off the record.)

(Witness resumes stand.)

Q. Have you finished pinning, Mr. Hershfield?
A. Yes, sir.

Q. You have circled every pin? A. No, sir.

Q. Will you do that and with a distinguishing pencil? I dare say black would not be enough, will it?

The Court: Black will be all right if there are any others, the others could be a different color.

The Witness: Bugg suggests he has some different pencils if we might use them.

The Court: Why don't you use black circles and then a more vivid or more contrasting color.

Mr. Hunt: And a number.

Mr. Lewis: Which will correspond with the name of the owner of the property.

A. Pin No. 1—

Mr. Hunt: That is not No. 1 that you used before. That is No. 5 in the order you described. Here is the first pin you put in.

A. Pin No. 1, Jennings Farm, circled in black, marked 1.

Mr. Frazer: No, will you mark the one on the margin, too.

The Witness: Over here?

Mr. Frazer: Yes.

A. No. 1, Jennings; 2, Weaver; 3, Hough; 4, Fitzpatrick; 5, Vreeland Estate; 6, Golf Club; 7, Stead; 8, Van Orden; 9 and 10, Twin Lakes; 11, Monks; 12, Cabell; 13, Lake LeGrande.

Mr. Frazer: Rotten Pond.

A. No. 14, Krissell; 1, Josiah Ricker; 16, Brown Farm; 17, Isolated tract of Ringwood, marked Ringwood.

Mr. Lewis: Is that Brown's Farm?

The Witness: Yes, Brown's Farm—Jacob Brown Farm.

Q. I understand that you have indicated on Exhibit C-4 with 17 black pins in the center of circles made with black pencil the different tracts, the values of which you have given as comparable property to the Ringwood tract that is being condemned? Right? A. Yes, sir.

Q. And the circles are not coterminus with the lines of the property, as Mr. Lewis suggests; they are simply markings? A. Simple a circle.

Q. Have you given me out of your experience all of the saes of comparable property that you have? A. No, sir.

Q. What others could you give me? A. I can give you many more if you will show me a map to refresh my memory.

Q. Well, we have a map in evidence, and I show you map C-1. Will that do? A. If I get the names which will help me.

Q. The names are on there. (Map placed on easel.) Now, Mr. Hershfield, will you look at C-1 for the purpose of refreshing your recollection and tell me, after thus refreshing your recollection, of any other sales that you have made that are comparable? A. I sold this property for Irving Stone to the Water Supply Commission.

Q. Indicating on the map what? A. Tract No. 74.

Q. Indicating on map C-1 the tract No. 74. Describe the terrain? A. It is a piece of rolling country about six acres cleared, balance woodland.

Q. How many acres cleared? A. Possibly five or six or seven.

Q. Immediately contiguous to the property being condemned or not? A. That is part of the property being condemned.

Q. The answer is yes? A. Yes.

The Court: What is the name of the piece, please?

The Witness: Irving Stone.

Q. When was that sale? A. Within a year and a half.

Mr. Matthews: Do you wish to cross examine as to comparability, Mr. Hunt?

Mr. Hunt: I will admit as to location it is comparable.

The Court: Very well.

Q. Well, the price paid? A. The price including the buildings and improvements on the place was $10,000, as I recall it.

Q. Any other properties, looking at C-1 for the purpose of refreshing your memory? A. Want me to distinguish between buildings and the improvements?

Q. If you can? A. After taking off my value of the buildings it brought this property down to $40 an acre. I bought this property here, Herbert Morse, 47 acres, known as Tract 20-A on C-1. That had a barn in good shape on it, and the foundation of a house that had burned down. It was mostly

wood, but there was a two or three acre farm up on top of a little rise, and there was—it fronted on a public road. I paid $2,200 for everything. I may be a hundred or two hundred dollars out of the way.

Q. What was the acreage? A. 47 acres plus.

Q. Do you wish to differentiate between the buildings and land cost there? A. It did not amount to more than a thousand dollars, the buildings and what was left of the old house.

Q. What others? A. I sold a tract, No. 50-B on C-1 for the Estate of Christopher Ricker. That consisted of 59 acres of side hill and timber land and the ruins of an old house.

Q. How long ago? A. Within two years.

Q. How was the land compared with the Ringwood land being condemned? A. It averaged with the Ringwood mountain land.

Q. Is it immediately contiguous to any part of the condemned property? A. Yes, on two sides.

Q. What was the price paid for that?

Mr. Hunt: If the court please, I think it is understood that the objection we entered a while ago to the offer of evidence on the part of the Commission respecting any prices paid by them for any purchase applies?

The Court: The record will show so, I think, Mr. Hunt.

Mr. Hunt: Yes.

Mr. Lewis: As to this witness.

The Court: Yes.

Q. Now, Mr. Hershfield, you may state the value, the price? A. My recollection was $85 an acre. I may be a few dollars out.

Q. Does a few dollars mean more than five? A. Not in my opinion.

Q. Any other properties, by looking at the map C-1, that you sold or bought that are comparable? A. Sold tract No. 62.

Q. On C-1? A. On C-1.

Q. Known as what, the owner's name? A. Vander Beek Estate, 45 acres.

Q. How is its terrain as compared— A. It is a piece of woodland.

Q. Is the woodland comparable to the Ringwood woodland that is being condemned? A. Contiguous to the Ringwood isolated tract piece.

Q. When was that bought? A. Four years ago.

Q. The price? A. Approximately $2,000.

Q. How many acres? A. 45 acres plus.

Q. All right. Any others? A. I sold this tract 119 on map C-2.

Q. Can you recall it by the owner's name? A. William Mullen is the grantor. Approximately 48 acres. Sold for $45 an acre.

Q. How long ago? A. Within four years, about.

Q. Any others? A. Sold this tract No.—two tracts for Edward Livingston Price, the former Councilman of Newark, approximately 40 acres, tracts 47-B and 47-A on C-2. This tract had a particularly good stand of white oak on it.

The Court: How many acres?

The Witness: About 40 acres on the two tracts, 47-A and 47-B.

A. That brought, as I recall, $40 an acre.

Q. Any other, looking at C-2 to refresh your recollection? A. Tract 51 approximately 50 acres for a man named Marozileone. That was a very

good stand of timber. We gave $100 an acre for the timber land and $40 for the poor land. As I recall, it averaged about $60 an acre for the ground. There was a house on that, but I am not counting it.

Q. Anything else? A. Well, I sold of course, all of these, but I would have to get my figures.

Q. If you haven't your figures, have you come to the end of your memory unless you consult your notes? A. Yes.

Q. May I refresh your recollection as to whether or not you bought the paper mill tract? A. I bought it in one sense, but I did not make the appraisal of all of the property, because all the stuff I was not competent to appraise, the paper making machinery.

Q. Will you describe that tract and let us see whether or not you are competent to testify to it. Where is it, first of all? Indicate it if you can on C-2. A. The paper mill tract included this piece in here, being west of the river—west of the main road and north of the river. It also included tract 29-A on this same map C-2, and as I recall the tract in between the river and the race.

Q. Do you recall the acreage involved in the paper mill sale? A. I do not, not without my notes.

Q. Could you produce those notes? A. I think I could. I am not positive of that, because most of the work done on that sale was done by a firm of appraisers from Rhode Island, whom I suggested to value the machinery, which I could not do. I valued the buildings and ground, but not the machinery.

Q. So that the paper mill sale was a sale not only of acreage, as I understand it, but of a factory, or something of that sort? A. Why, it was a fac-

tory that had been running for years and making upwards of $200,000 a year profit. We put them completely out of business.

Q. How about the Miller tract, do you recall that sale? A. I do, yes.

Q. Where is that, from Exhibit C-2? A. The Miller tract is indicated on map C-2 as tract 107-E or 107-A.

Q. And the Miller tract, what if anything did they have in comparison with the Ringwood under condemnation? A. Well, the Ringwood tract consisted of a piece of meadow land and also—

Q. The Ringwood tract? A. The Miller tract. And also a frame house and barn on the road, and also had the Miller's Falls there.

Q. The Miller's Falls? A. Yes.

Q. What was that? A. It is one of the scenic attractions of our part of the State.

Q. Was that sale such that you could compare it with this territory, or were there or were there not additional features? A. There were additional features that impelled that sale.

Q. Would those additional features remove it from comparability with the Ringwood property? A. In many instances, yes.

Q. To the accretion of the price or to depreciation of it? A. Accretion.

Q. Do you recall the acreage? Did you tell me the acreage? A. It is supposed to be 40 acres.

Q. Are there any other tracts that you remember now looking at C-2? A. Nothing without my notes. I recall these names and they are my negotiations, but I do not recall the details.

Q. Do you remember the Parsonage tract? A. Up here? Yes, I remember that Parsonage tract. Six acre tract, yes.

Q. When was that sale? A. About five years ago.

Q. Who owned it? A. It belonged to the consistory of the Dutch Reformed Church in Pompton Lakes.

Q. I notice it is in the heart of the yellow. Is it in the heart of the Ringwood property? A. It is in the heart of this Ringwood taking.

Q. What was the acreage involved? A. A scant six acres.

Q. Were there any other features besides terrain that would increase or decrease the price of that Parsonage property? A. There was approximately 1000 feet frontage on the road. It had 400 or 500 feet of Cupsaw Brook running through it. It had an old orchard on it, and the house on that property was worth $2,500 at the time we took it.

Q. What was the price of that, do you remember? A. Less than $4,000 for everything.

Q. Did I understand you to say that the reasonable value of the house was $2,500? A. At that time. It was a very well built house, plastered throughout and had some architectural pretensions.

Q. Architectural what? A. Pretensions.

Q. Anything else of sales that you remember now? A. Nothing without consulting my records.

Q. All right, take the chair.

The Court: What is the number of that Parsonage tract as shown on C-1?

The Witness: No. 5, your Honor.

Mr. Matthews: Cross examine.

CROSS EXAMINATION BY MR. HUNT:

Q. Mr. Hershfield, are you a member of the North Jersey District Water Supply Commission?

A. No, sir; I am simply one of their occasional employes.

Q. I didn't get that. A. I am one of their occasional employes.

Q. Not regularly employed by them, eh? A. No, sir.

Q. Well, I read from your direct testimony on Monday the following: "Since coming to New Jersey I have been in the service or employment of this Commission for nine years." A. Yes, sir.

Q. Is that not true then? A. It is true. When needed, I am in their employ. I receive no salary.

Q. You receive no salary. Have you any official rating in their organization? A. A-1, I believe.

Q. What is you rating? Are you First Sergeant, a Corporal—

Mr. Matthews: I object to this facetiousness.

The Court: I will allow it.

Mr. Matthews: Exception.

A. My title is appraiser. I believe they call me the head of their real estate department.

Q. During the past nine years or thereabouts you have actually acted as the head of their real estate department, have you not? A. Not the entire time. In the beginning there were four of us, and it gradually sifted down to myself, although I have numerous assistants from time to time.

Q. How long ago did you become the leading man? A. I think I was from the beginning.

Q. Ah, I thought you said a moment ago it was not so from the beginning. A. No; I considered myself as the head of the department from the beginning.

Q. Now you were the Chief Appraiser and head of the real estate department then at the time that the project which is described on page 23 of the report of the North Jersey District Water Supply Commission—

Mr. Matthews: I object to the use of that, if your Honor please.

Q. (Continuing) For the year 1925—

Mr. Matthews: I object.

The Court: I am going to let him finish the question.

Mr. Matthews: If your Honor please, the very reference to a document that is not identified or in evidence is improper.

The Court: I will let him finish his question, so I may rule.

Mr. Matthews: Exception.

Mr. Hunt: I will withdrawn this question.

The Court: It is withdrawn.

Mr. Hunt: Perhaps I can get it a little more rapidly by making a fresh start.

Q. I show you this and ask you whether it is a copy of the report of the North Jersey District Water Supply Commission for 1925? A. I presume it is. I never read it.

Q. Well, the cover states that that is what it is, doesn't it?

Mr. Matthews: I object to what the cover states. He has testified he does not know.

The Court: He can read and he can say so.

A. It is printed on the cover, "Report, 1925."

Q. Is it true that the title page reads as I now read: "North Jersey District Water Supply Commission of the State of New Jersey," then the imprint of the great seal of the State of New Jersey, then the words "Report for the period May 5, 1916, to June 30, 1925. Commissioners Berkley W. Moore, Jr., Chairman; Wood McKee, Thomas L. Raymond, Charles Wagner—"

Mr. Matthews: I object.

Q. (Continuing) "Office of the Commission, 20 Clinton Street—"

The Court: I will allow it.

Mr. Matthews: The objection is that this is the use of a document that is not in evidence.

The Court: He is not using it now. He is asking the witness to identify it.

Mr. Matthews: He is reading from the title page.

The Court: He is reading the caption on it, that is all. He is identifying the book. Up to this point I think that is all he is doing.

Q. "Office of the Commission, 20 Clinton Street, Newark, N. J., July 1, 1925." Have I read this title page correctly? A. My eyes are bad; I never read unless I can't help it. I presume you have.

Mr. Hunt: I would like to have this volume marked for identification.

The Court: What is the objection, if any?

Mr. Matthews: Marked for identification, there is no objection.

The Court: Let it be received and marked for identification.

(Book marked Exhibit C-5 for identification.)

Q. Now from Appendix 1 of this volume—

Mr. Matthews: I object to the use of this book. This book is marked for identification and cannot be used to cross examine this witness, because the witness has not proved nor can it be proved excepting on his direct case.

The Court: What have you to say? The objection is being made to the use of this book or any of its contents at this time on cross examination.

Mr. Hunt: Upon what ground?

Mr. Matthews: On the ground it is their direct case, and they cannot put it in here by cross examination until it is properly proven.

Mr. Hunt: Well, if your Honor please, here is a book. I have read the title page, which makes it at least purport to be an official document put out by the body represented in court by these gentlemen and for which this man has testified he is the head of the real estate department.

The Court: It is not objected to because it is not the report of the Commission; it is objected to because this is not the time nor the way to prove it, to be used in the cross examining of this witness.

Mr. Hunt: Then may I have the Court's permission to have this witness step aside and to call some witness from the court room by whom I can prove this book, because I wish to make use of it.

The Court: You may call Mr. Hershfield later if you wish for that purpose.

Mr. Hunt: I cannot cross examine him without referring to this book.

The Court: The point is that Mr. Matthews objects that it is not a proper method of cross examination, that there was nothing that was in his examination in chief that you may properly cross examine him on from that book. Isn't that your point?

Mr. Matthews: Yes.

Mr. Hunt: Perhaps I will be able to avoid using the book by drawing upon the witness' general knowledge.

Q. Mr. Hershfield, the Wanaque Reservoir is being built today in pursuance of what is known as the Water Supply Commission organization as the final $20,350,000 Wanaque project, isn't it?

Mr. Matthews: I object to it as incompetent and immaterial.

The Court: Objection sustained. It is not proper cross examination.

Mr. Hunt: May I have an exception?

The Court: You may.

Q. Isn't it true, Mr. Hershfield, that the North Jersey District Water Supply Commission, prior to having acquired the properties which you have just testified that you have acquired in its behalf, had worked out an estimate of the cost of producing the Wanaque Reservoir, which estimate included an item of a certain amount of money for real estate and land damages? Is that true or isn't it?

Mr. Matthews: I object to it as incompetent, and irrelevant.

The Court: Objection sustained.

Mr. Hunt: May I have an exception?

The Court: You may.

Mr. Hunt: May I state to your Honor the reason why I wish to thus proceed? Then I think its competency and its relevancy and its materiality and its enormous importance will be perfectly plain.

The Court: It is perfectly plain to the court without the explanation.

Mr. Hunt: I fear not, sir, really.

The Court: My motion about it is this. This witness was put on not as the Water Commission or as a man who was asked the history of this project or the estimated cost of it or the cost of the dam or anything of that kind, but he was only put on with respect to his being an expert concerning property values testified to.

Mr. Hunt: Yes, but can the Commission avoid the fact that he is its servant and agent?

The Court: He says that he was employed by the Commission for that purpose.

Mr. Hunt: No, I do not.

The Court: You should be confined in your cross examination to that. I haven't any doubt that you can, perhaps, if it is competent and relevant, introduce the testimony that you are trying to bring out from this witness on cross examination, and I will rule on it, at the proper time as to its admissibility, if you do it, but I do not think it is competent here on cross examination of this witness. That is the only reason for my ruling at this time.

Mr. Hunt: Well, I apologize to your Honor if I am too persistent. I hope that I may be

permitted to open my point fully, because it is of major importance. This man has testified—

Mr. Matthews: May I ask that this discussion be not in the presence of the jury, because it is highly prejudicial, what is sought to be introduced at this time—highly prejudicial.

The Court: The jury may retire.

(The jury retired from the court room.)

The Court: Very well.

Mr. Hunt: This man has testified he is the head of the real estate department of the North Jersey District Water Supply Commission. The report of 1925, being the most recently issued report of that Commission, sets forth in a table on page 24 the Commission's estimate of the cost of the Wanaque project now under construction. In that estimate is an item of real estate and land damages, $1,750,000. This witness has testified that he purchased all this property that has been purchased by the Commission. I can show out of the mouth of this witness and incontrovertibly that the estimate is being vastly exceeded in proportion and relative to the amount of property acquired.

The Court: Suppose it has?

Mr. Hunt: My argument then is that there is the reason and the motive for the absurd price this man puts on this property. That is it. There is motive. There is reason. This is a perfectly ridiculous price. It is a joke to anybody who knows the property or knows anything about its value. Of course, it is not a joke to us, when we hear it solemnly testified to under oath before the jury, who do not know anything about the property.

The Court: What is the joke the testimony of this witness?

Mr. Hunt: The absolutely low prices, the witness puts upon the property, when this property he paid, three months ago, $258,000 for, less than 600 acres, less than one-fourth of what he is taking here—$258,000, and then comes in and says that is worth $445,000, something of that sort.

The Court: What is the materiality of what the Commission might say in this book?

Mr. Hunt: I propose to find out whether this man is not responsible in whole or part for this estimate of $1,750,000.

The Court: Suppose he might be?

Mr. Hunt: Then it all goes, your Honor, to explain, to show the reason for the testimony he is giving now. His estimate has been overrun. I want to find out whether that is not the fact. That he made this estimate of $1,750,000 and now he finds that money overrun before 50 per cent. of the property has been acquired—or no more than about 50 per cent. approximately. He sees the million and more of it expended already, and approximately 50 per cent. of the property, including improvements, available for all they have to take still standing out of their hands. He sees his estimate going to smithereens. If that is the case, I have a right to prove it, because if a motive of that kind is shown to exist, it is the jury's right to know it, and to form their own conclusion as to whether the testimony is colored by it.

The Court: Is that the situation?

Mr. Hunt: That is my argument.

The Court: I will hear you.

Mr. Matthews: May I just say to your Honor that I can imagine nothing more inane under the sun than to say the North Jersey District Water Supply Commission should be bound by an estimate in a report. That that estimate for the total cost of the property should be used as a basis for discrediting this witness. Because if it is true, forsooth, they may have paid more now than the estimate that they reckoned with. Why, that is totally incompetent, that report, if your Honor please, and Mr. Hershfield's agency, even if it were established that he were the author of it, would not make this competent cross examination. In other words, the test here is, is that the market value of the property at that time, not what did you say in 1925 the total estimate of the land that we will need for reservoir and aqueduct and making this road—the aqueduct alone has been changed a number of times; the dam has been raised higher and higher up again. Why, it is totally incompetent, and it absolutely has nothing to do with the issue. It is seeking, if your Honor please, and that is why I said to exclude the jury—it is seeking to make capital out of the fact that because they are the owners of a large tract, that forsooth their large tract has a higher value on account of the fact they spent money for the other tracts in excess of what they say they estimated those tracts to be worth. Since they estimated the cost of purchase they have gone into condemnation, they have gone into the cost of condemnation, the lawyers' fees; they have added ten per cent. to their payroll since

I have been there, for instance—all of those facts. I mention that, not facetiously, but to show you the total incompetency of using our record to bind this Commission of the appraisal.

The Court: That is not the theory on which it is offered. The theory on which Mr. Hunt offers it is to discredit the testimony of this witness because perhaps of estimates he has made before or appraisals which do not now square with his testimony.

Mr. Hunt: Your Honor states my theory exactly.

The Court: That is what you said.

Mr. Hunt: Yes.

Mr. Matthews: I do not think I miss the point. Supposing Hershfield had made an examination or appraisal of the property. It is the estimate of appraisal of this property that he should be cross examined on. He is estimating the appraisal of the total, from which must be subtracted this. Well, suppose that it is perfectly competent to ask him, did you appraise this in 1925 for so much money, and he may answer yes or no; but what he appraised the total acreage for acqueduct purposes and for reservoir purposes is not only incompetent—

Mr. Hunt: I did not refer to the Acqueduct at all. That is a separate item.

Mr. Matthews: The proposition is this, whether an aqueduct is included, Hershfield's appraisal of a totality of the lands has nothing to do with this company's land.

Mr. Hunt: May I lay this book before your Honor? (Hands the court a book.)

H. G. Hershfield—Recalled—Cross.

The Court: I am still of the opinion that I was at the beginning before argument on either side that it is incompetent, irrelevant and immaterial, and I will so rule.

Mr. Hunt: I may have an exception?

The Court: You may have an exception.

Bring the jury back.

(Jury returns to the court room.)

BY MR. HUNT:

Q. How long ago was it that you gave up your employment with these large corporate concerns in New York that you mentioned in your direct examination and came out to New Jersey to go into the real estate business? A. About 15 years ago.

Q. 15? A. About that time—when I got more interested in New Jersey than I was in New York.

Mr. Hunt: Your Honor bear with me for a moment while I am getting my material organized, I think I can make up for the lost time.

The Court: All right.

Q. Now you said on your direct examination that one of the classifications into which you divided this land was 235 acres of scrub oak and swamp land. Just come down to the map and indicate to the jury where the scrub oak and swamp land is located, won't you? A. Scrub wood.

Q. Well, I read from the record at page 129, "Scrub oak and swamp land, which I valued at $20 per acre."

Mr. Matthews: And I have on my notes that I directly examined the witness from, "Scrub wood."

H. G. Hershfield—Recalled—Cross.

Mr. Hunt: The stenographer has you on the third line from the bottom saying: "Q. And 235 acres of scrub oak and swamp land at $20 an acre, that would be $4,700 for the value of the swamp land and scrub oak acreage." I will lay it before the court.

Mr. Matthews: There are several corrections in mine.

Mr. Hunt: It is three times in here.

The Court: What is the importance of it?

Mr. Hunt: Another witness testifying about scrub oak, and if there is scrub oak there I want to know it.

Mr. Matthews: On page 129 I have two pencil interlineations in my copy.

Mr. Hunt: I have not done anything to mine. Here it is. Did the stenographer make the alterations in your copy or did you make them?

Mr. Matthews: I am talking to the Court, that we have said scrub oak instead of scrub wood.

The Court: The record shows scrub oak and the record will stand as scrub oak.

A. I did not say scrub oak. My memorandum from which I testified—

Mr. Hunt: I object to his referring to his memorandum.

The Court: I will allow it.

A. My memorandum from which I testified, a copy of which Mr. Matthews examined me on this matter, states—pardon me a moment. It is 1450 acres of woodland—

Mr. Hunt: If the court please, I object to this.

The Court: You have asked him to point out the scrub oak.

Mr. Hunt: He is reading from a memorandum.

The Court: Just a moment. You and I can't both talk at once. It is a habit lawyers have, and I think we are going to waste a lot of time if we persist in interruptions. The witness has been asked in this case to show the scrub oak that he has testified to; in answer to that question he says that he did not testify to scrub oak, and he is explaining why he makes the statement that he did not refer to it as scrub oak, and I will allow him to finish.

A. I testified from this memorandum, a copy of which Mr. Matthews had, the second differentiation of the real estate is as follows: 235 acres of scrub wood and swamp at $20 an acre.

Q. Now step down to the map and show the jury where that is, won't you? A. Scrub wood is third grade wood and laying along the fringe of where we were yesterday.

Q. Now you are indicating the southwesterly section of the property being taken, aren't you? A. The easterly section of tract No. 79. That is a poor stand of wood. There is a swamp and low bog ground on the Ringwood tract, a portion of tract 80.

Q. How many acres of swamp are there in tract 80? A. In the aggregate there is swamp and scrub wood—

Mr. Hunt: I ask that that be stricken out as not responsive.

The Court: It may be. The question is, how much in tract 80.

Q. How much swamp in tract 80? A. I did not divide it. I added it all.

Q. How much swamp in the aggregate? A. I haven't my record here to answer that question.

Q. I ask you from your memory. You said yesterday that you had been on the property a thousand times in the last nine years. A. Not on the swamp.

Q. Are you unable now to inform the jury from your memory the approximate number of acres as swamp land in the Ringwood taking? A. As distinguished from scrub wood land? I would say there are probably 60 acres of what I would define as swamp and bog land.

By Mr. Hunt:

Q. All right, return to the chair, Mr. Hershfield, please. Now, Mr. Hershfield, I read from your direct examination as follows, a question by Mr. Matthews at page 126 towards the bottom:

"Q. How many times have you examined the property? A. I suppose in the last nine years I have been over some portions of this property a thousand times."

Mr. Matthews: Have you an interlineation of "over" in your copy?

Mr. Hunt: I have an interlineation from the stenographer of the word 'over."

Mr. Matthews: Thank you, I have it too.

Q. You so testified? A. Yes, sir.

Q. Now, you also testified in this matter on the 30th of November, 1925, before the Board of Commissioners who tried this case previously, did you not? A. Yes, sir.

Mr. Matthews: The page in that, please?

Mr. Hunt: I will refer to that in a moment.

Mr. Matthews: I beg your pardon.

Q. Since the 30th of November, 1925, on how many days have you been on this property? A. What do you mean by "on"?

Q. On any part of the property? A. When I say I have been over the property a thousand times within the last ten years, I mean I have driven over the roads which give me a view of some portions of this property.

Q. Well, how many times have you done that since the 30th of November, 1925? A. Oh, possibly I have made—I have been up there on an average of three or four times a week, maybe more, not for the purpose of examination, simply to attend to my business in that section.

Q. Well, now, Mr. Hershfield, on the 30th of November, 1925, at page 32 of the previous record, you testified that you had been on one part of the tract or another at intervals averaging one week apart for the past six years. Now, once a week for six years would be 312 times, wouldn't it? A. Yes, sir.

Q. So that to make up your thousand it is necessary for you to have been there 688 times since the 30th of November, 1925?

Mr. Matthews: I object to that deduction.

Q. (Continued) Have you been—

The Court: Wait a minute; there is an objection.

Mr. Matthews: He said he had been going over it once a week for six years, and that will make it 312 times, and from November, 1925, to now will make it seven years, so there are two years unaccounted for, and I object to that deduction.

The Court: I will allow it.

Mr. Matthews: The question calls for an answer based on a conclusion and on a false premise.

The Court: I will strike it out on the ground that it calls for a conclusion; not on the other ground, because Mr. Hershfield could have made his own calculations.

Mr. Matthews: Thank you, your Honor. I meant that and I thought I explained it to the Court.

The Court: Well, maybe you did.

Q. Well, Mr. Hershfield, was it true as you testified on the 30th of November, 1925, that your experienced observation of the property up to that time had consisted of seeing it at intervals averaging one week apart for the past six years? A. That is true. Those statements are true. I have examined the property, if you call it to examine it, I have been on the property probably three or four hundred times.

Q. That includes all the times you have been up there fishing? A. Partly yes; and also I have been over it well over a thousand times by counting the number of times I have been over the roads from which some portions of this vast taking can be seen; so both statements are true.

Q. Every time—over all the time that you have lived in New Jersey that you had occasion to go up to that part of the country for any purpose you would treat that as a seeing of the Ringwood tract? A. Why, certainly; I always look over the property to see what else has fallen down on it.

Q. Now, come down to the map and show the jury where the 1450 acres of wood land valued at $50 an acre lies, please? A. In the upper reaches to the west of tract 79.

Q. State the acreage there, so many acres, in tract 79? A. Not to differentiate tract by tract, I simply grouped 1400 acres. I have some details probably showing how much of each division there was on each tract, but I have not them with me.

Q. Mr. Hershfield, I expect the chief appraiser and a real estate man of the Water Supply Commission who has been on this property a thousand times to be able to tell this jury approximately. I won't ask for the exact correctness of the 1450 acres of land which you classify as wood land valued at $50 per acre—

Mr. Matthews: Is that a question, if your Honor please?

The Court: No, sir, it is a statement.

Mr. Hunt: That is a statement and a direction to the witness.

Mr. Matthews: I ask that be stricken out.

The Court: If it is intended as a question I strike it out because it is not a question. It is a statement.

Mr. Hunt: I will put it then as a question.

Q. Please, Mr. Hershfield, show the jury where the 1450 acres of wood land, valued at $50 an acre,

lies, stating the acreage approximately in each section that you point to? A. The westerly side of the upper reaches of Tract 79.

Q. How many acres there, approximately? A. Oh, let us see, 100.

Q. Proceed. A. The westerly section of Tract 80, probably 75 acres in there is all wood; some wood along the easterly section of Tract 80.

Q. How many acres there? A. Probably 50.

Q. Coming out close to the line of the Wanaque River in Tract 80 on either side of the river? A. On the westerly side of the river it would come within an average of 150 feet on the westerly side of the river. And this is all open fields in here (indicating).

The Court: Keep your voice up, Mr. Hershfield, please.

The Witness: On the westerly side of the river there was a fringe of timber near what I call the German Village.

Q. How many acres of timber was there on Tract 80 on the westerly side of the river that you valued at $50 an acre? A. This section of Tract 80, the one contiguous to the Morse tract, I would say that is all in timber, 50 acres, 60 acres, 80 acres.

Mr. Hunt: May I pause for a moment, your Honor; I think it will save time.

The Court: Very well.

Mr. Hunt: This map which was offered by counsel for the Water Supply Commission and which the witness Craigmile said the other day stated the averages of these tracts does not state it, so far as I am able to conceive in re-

gard to one, two, three, at least, different numbered sections that I have just pointed to. Each of them is numbered 80 and no acreage is stated for it.

The Witness: I think—

Mr. Matthews: The total acreage of the 80 tract is given. There are subdivisions to that tract.

Q. Well, Mr. Hershfield, proceed then. I point you to a tract numbered 80 and another tract numbered 80, both lying on the westerly side of the Wanaque River, and ask you to state how many acres of wood land, valued by you at $50 an acre, there is in each tract? A. In subdivision—this subdivision of Tract 80, which lays contiguous to the Morse tract, I would say in that particular subdivision it would be practically 75 acres of timber ground.

In this subdivision of tract 80 which lays contiguous to the Harrison tract—

Q. That is on the east side of the Wanaque River? A. I would say there would be 40 acres.

Q. Now, then, in the subdivision of tract 80 which lies between the two that you have referred to, how many acres of timber are there? Please stand out so the jury can see you.

The Court: I am afraid we cannot get this on the record, gentlemen.

Q. Stand right there (indicating). Will you? Possibly you can go where Mr. Anderson is.

Mr. Hunt: I am afraid this gentleman, Mr. 6, cannot see it.

Juror No. 6: Yes, I can see.

Mr. Hunt: Oh, can you? All right.

Q. I point you to subdivision on tract 80 which lies between the two subdivisions we have just mentioned, and ask you how many acres of land that you valued at $50 an acres you put in that subdivision? A. Possibly 20.

Q. Now, move to the north, into Tract 81, how many acres of wood land at $50 an acre are there in there? A. I guess about 15.

Q. How many in tract 83? A. About 140 to 150.

Q. That is out of a total of 200 acres in that tract, isn't it? A. Yes, sir.

Q. Now, in tract 80 that lies north of Tract 80 Subdivision that you have been talking about, that lies on both sides of Wanaque River. How many acres of wood land at $50 an acre in there? A. 100.

Q. Now, up into Tract 84? A. This is all wood land, about 135 acres of wood land.

Q. At $50 an acre? A. Some of it a little more.

Q. I want you to show the jury only the $50 land? A. $50 land, an average—

Q. I want no averages here. You testified "I have a figure there at 1450 acres of wood and which I have valued at $50 an acre". Now, I want you to point out that 1450 acres, and nothing else? A. Yes, sir.

Q. How many did you say there were in tract 84? A. Approximately 125.

Q. That is out of a total of 135 in the tract? A. Yes, sir.

Q. Then, you wish the jury to understand, in Tract 84, which I now point out, that there are only 10 acres of land whose value is something less than $50 an acre? A. Approximately.

Q. And only 10 acres at more than $50 an acre? A. Approximately.

The Court: I did not hear your answer.

Mr. Hunt: "Approximately" he said.

Mr. Matthews: It was a double answer, approximately, approximately.

Q. Coming to Tract 85, please, how many acres of woodland valued at $50 an acre do you place in that tract? Now, Mr. Hershfield, could you stand this way (indicating)? A. Approximately 1,000 acres. I would not want—

Q. Yes, but the estimate contains 971.25 acres. I want to know how many of those acres you classified as wood land at $50 an acre? A. I could not without consulting my notes and maps to differentiate.

Q. You had a memorandum here when you were testifying for Mr. Matthews. Go get it. A. (Witness produces paper).

Q. Have you got it? A. Yes, sir.

Q. Don't you find something in this memorandum which refers to your 1450 acres of wood land at $50 an acre? A. Nothing except the figures.

Q. It only appears on the first page? A. Yes, sir.

Q. I will read it.

Mr. Matthews: I object to his reading the memorandum. He is not being cross examined as to the fullness of the memorandum. It was only as to one item.

Q. You read that memorandum that has any reference to 1450 acres which you testified as wood land at $50 an acre? A. 1450 acres of wood land at $50 an acre.

Q. Come back to the map. I want you to tell this jury what you ever had in your mind and your secret heart that led up to this memorandum—

Mr. Matthews: I object to that. He is only permitted to testify—

Q. (Continued) To this 1450—

The Court: Wait a moment, Mr. Hunt. An objection is made, Mr. Hunt, and if you will please wait until I can rule on the objection. There is objection about the secret heart.

Mr. Hunt: I will withdraw that if he wishes me to.

The Court: The phrase is withdrawn. Proceed.

Q. I ask you, Mr. Hershfield, to give to the jury every bit of knowledge that you have got that enabled you to write down on that paper "1450 acres of wood land at $50 an acre". Now, go back to the map and give it to the jury. A. I can give it to them right from here.

Q. No, I want it on the map. A. My—

Q. Come to the map, please? A. My description of the wood land was predicated on notes that I have in my office, and on photographs that I have in my office. I have an aerial photograph taken from an aeroplane of all this tract.

Mr. Hunt: I object to it.

The Court: I will allow it. You have asked him to show on the map his figures, and he is explaining why he cannot do it.

Mr. Hunt: That is true, and I will withdraw the objection.

The Court: All right, proceed.

A. (Continued) I have this photograph from an approximate altitude of a thousand feet.

Mr. Hunt: 500.

A. (Continued) Or 500, whatever it is. I can bring that photograph here and you, for yourself, can see from the photograph itself what is wood land and what is plain. From that photograph and from my field notes I have deduced these figures.

Q. You bring the photograph here tomorrow, Mr. Hershfield, will you? A. If we are in court.

Q. Bring your field notes here tomorrow, too, will you? A. Yes, sir.

Q. Now, so far, out of this 1450 acres you have pointed out to the jury 630 acres. Point out some more. A. I cannot. I refuse to point out any more.

Q. Step up to the map. A. Without having my tools here. I cannot take a thousand acres—

Q. Step up to the map. A. What for?

Q. I will tell you when you get there. You say your eye-sight is poor. I put my pencil on here. Can you read that? What does it say? A. It says "Cupsaw Brook".

Q. Now, I am going to describe the course of it. Here is where it empties into the Wanaque River (indicating), isn't it? A. Yes, sir.

Q. Well, now, I am going to follow it up, up. Here I go, up, up, up, up, up to the Carleton property.

Mr. Matthews: Now, is that "up" your testimony or is it the witness's testimony?

Mr. Hunt: I am showing the witness what I have done.

Mr. Matthews: I understand, but "up, up" means what?

The Witness: It is up the creek, that is all.

Q. You understood it, didn't you, Mr. Hershfield? A. Up stream.

Q. Now, tell the jury how many acres, approximately, of land lying along either side or both sides of Cupsaw Brook you classified as wood land worth $50? A. I will, when I have my data.

Q. I ask you to do it now, and ask the Court to instruct you? A. I cannot do it from memory. I cannot take a thousand acres and visualize that.

The Court: Can you give any idea, any approximation?

The Witness: I can tell you what portions of that tract are in fallow ground. I can tell you what portions are reasonably wood land, if that helps any.

Q. Now, Mr. Hershfield, you were along with the jury all day yesterday on their view, I suppose? A. Yes.

Q. Did they go up through this territory that lies along the Cupsaw Brook?

Mr. Matthews: I object. It is immaterial and high impertinent to this issue how the jury went, where they went, and they are intelligent enough to know what they saw.

The Court: I will allow it.

Mr. Matthews: Will your Honor allow me an exception?

The Court: You may have it.

The Witness: The jury traversed this ground. Attention was called to the fact that this was Cupsaw Brook.

Q. I asked you whether they came up through this country which Cupsaw runs? A. They did not. There is no road near Cupsaw Brook. You cannot get nearer Cupsaw Brook than this portion here (indicating).

Q. That is a public road crossing here? A. Yes, sir.

Q. That is between the Brown Cemetery and the Pompton Reformed Church, there is a public road? A. Yes, sir.

Q. Did the jury pass over the road at that point? A. Yes, sir.

Q. Is that land in there land that you classified as land at $50 an acre? A. No, sir, that is swamp.

Q. Then, that is $20 an acre? A. $20 or less. This is swamp in here (indicating).

Q. Now, Mr. Hershfield, you say you cannot with any more definiteness than you have already done tell us how many acres of wood land at $50 an acre there are in 85? A. Not without my data.

Q. Now, I come to Tract 66, and ask you how many acres of wood land at $50 an acre you put in there? A. When I get my data I can tell you.

The Court: I did not hear you.

The Witness: When I get my data I can tell you.

Q. Don't go away from the map. I take you to tract 88, and ask you how many acres of wood land

at $50 an acre there are in there? A. All wood land to the north of the Forge Pond shore line.

Q. And you classified all that at $50 an acre? A. No, some of that is better.

Q. Then work it out and tell me how many acres of wood land are in there. Let us make it short and snappy.

Mr. Matthews: I object to that direction of the witness.

A. I will tell you when I get my notes, I will give you all the data.

Q. Tract 89, how many acres of wood land at $50 an acre? A. It is all wood. How much is good I don't recall.

Q. Tract 90? A. Tract 90 is partly swamp, along the stream, low ground.

Q. Of wood land at $50 an acre? A. I cannot recall.

Q. So out of the 1450 acres of wood land at $50 an acre you were able to point out to the jury only 630 acres? A. Isn't it enough from memory.

Q. Answer my question, please.

Mr. Hunt: I ask to strike out the answer as not responsive.

The Court: Strike it out, the sentence, isn't it enough from memory.

Mr. Hunt: Will you read the question to him, please?

(Question repeated by the stenographer.)

The Witness: I am able to point out more, but not with any degree of exactitude.

Q. Come over to the map and point out more.

The Court: After 2 o'clock we will do that.

(Recess until 2 o'clock.)

H. G. Hershfield—Recalled—Cross.

(Afternoon Session, 2 P. M.)

HENRY G. HERSHFIELD, resumed.

CROSS EXAMINATION CONTINUED BY MR. HUNT:

Q. Mr. Hershfield, just turn your attention to this Weaver property about which you testified, won't you? A. Yes.

Q. And give me the names of the grantors in that transaction? A. The Estate of Theodore Weaver.

Q. Now, on the record books it probably would not appear as the estate. Just give me the first name of somebody who signed that deed as grantor, won't you? A. The only letter from the widow is signed Mrs. Theodore Weaver.

Q. Well, what was the name of the grantee? A. The City of Newark.

Q. About what time was the deed given? A. Some time after October 5, 1925.

Q. Has it been recorded, if so, in what book? A. I have nothing to do with that, Mr. Hunt.

Q. Is the property in Passaic County?

The Court: Is the property in Passaic County?

A. I am seeing. I think it is in two counties. Part of it is in Passaic County. I do not know whether the other half is or not.

Q. And what other county does it lie in? A. Passaic and Morris.

Q. Now, tell me who was grantor in the deed to the New Jersey Golf Club?

The Court: North Jersey.

H. G. Hershfield—Recalled—Cross.

Q. North Jersey Golf Club, yes? A. I do not remember it; a man with a Scotch name, that is all.

Q. What was the name of the grantee? A. The North Jersey Country Club.

Q. And when was that deed given? A. I should judge about four years ago.

Q. Was the grantor's name Peck? A. Not that I recall.

Q. Have you any notes at your office that would help you to give me that information? A. No, sir; it is on record; Senator Wood McKee is president of the club. He can tell you who the club was bought from.

Q. How is it you happen to remember all about the property and the price of the property and what the estimated value of the buildings were, but cannot remember the names of the people who sold the property? A. Because, as a Class A member of the club I am one of the owners of the property and, naturally, knew what we paid for it.

Q. You do not mean to tell us you have accurate knowledge, do you? A. I have accurate knowledge based on the conversation held no later than last night with Senator McKee, president of the club, who verified my impression that the final price was approximately $90 an acre.

Q. What, you could not remember? He refreshed your mind? A. I remembered, but I did not remember whether it was nearer ninety or one hundred. He said it was approximately $90 an acre.

Q. Were there any buildings involved in that sale? A. One house now occupied by the Greenskeeper, worth probably $3,000.

Q. What is that? A. A house probably worth $3,000.

Q. Now, or at the time of the sale? A. At the time of the sale.

Q. Whose recollection is that, your's or Senator McKee's? A. Mine.

Q. How does it happen that is clearly in your mind when you have forgotten the names of the people who sold the property? A. Because I never had any dealings with the people who sold the property, but I have passed that house which is close to the road a good many hundred times each year.

Q. How did you happen to have anything to do with the transaction? A. I did not.

Q. I thought you said you had been agent of the transaction? A. I said I knew of the sale.

Q. On the Thomas Jennings sale, were you the agent? A. I was employed by the City of Newark to buy the property—received no commission. I am paid by Newark on the per diem basis.

Q. Who was the grantor there? A. Thomas Jennings.

Q. And the date of that deed? A. After August 19, 1924.

Q. That was in the Newark Watershed, wasn't it? A. Yes, sir.

Q. And Newark had already previously acquired a great deal of surrounding contiguous property? A. I would not say it was surrounding. It was property near there that had been bought.

Q. And you estimated that to reproduce the buildings on that property would cost $7300? A. At their present value, less depreciation.

Q. What was the acreage in the Thomas Jennings tract? A. 49 acres.

Q. And was it a title clear of any encumbrances? A. As far as I know, yes.

Q. Conveyed by general warranty deed? A. By a deed satisfactory to the City of Newark? I think they have a special deed they employ.

Mr. Hunt: I ask that answer be stricken out at not responsive.

The Court: I think it is partly responsive. I am afraid I could not—

Mr. Hunt: I will put the question again.

Q. Was it a general warranty deed?

Mr. Hunt: I will withdraw the request.

The Court: All right.

Q. (Continued) Was it a general warranty deed? A. I do not know; I never saw it.

Q. Was the Weaver property conveyed by warranty deed? A. I never saw the deed.

Q. Was it free and clear of encumbrances? A. To the best of my knowledge and belief it was in salable condition.

Mr. Hunt: I ask that be stricken out as not responsive.

The Court: Strike it out as not responsive.

Q. Was it free and clear of encumbrances? A. Yes, sir, that is, meaning mortgages as an encumbrance.

The Court: Mortgages, taxes, water rent.

The Witness: Yes.

Q. You understand what is embraced within the term encumbrances, do you not? A. I do not. I

consider your mineral rights in the Ringwood case an encumbrance on the property.

Q. Yes. Was there like encumbrances in the Weaver tract? A. Not to my knowledge.

Q. Now, may we have this private understanding between us, that when I ask you whether a property is free and clear of encumbrances, that will mean free and clear of mortgages, or judgments, and of every other right of easement of every kind whatsoever outstanding in any third person?

Mr. Matthews: I submit that is not a correct technical definition of "encumbrances".

Mr. Hunt: That may be.

The Witness: I said the property is salable. That is what I construed as salable property.

Q. Will you answer whether we may have that understanding. It will enable me to make my questions shorter and therefore move more rapidly? A. I will tell you all I know about the title.

Q. Will you answer whether we may have that understanding, or whether I shall have to make a definite question each time?

Mr. Matthews: I am going to object to the question as incompetent and immaterial, unless the question should be was the price predicated upon its being unencumbered. That is the only relevancy.

The Court: It is not relevant, but I will exercise my discretion and allow it for the purpose of saving time, and you may answer it now, Mr. Hershfield; yes or no.

The Witness: Two sales, as far as—

The Court: No, the question is—the proposition of Mr. Hunt is whether you will keep in

mind hereafter when he asks you the question with respect to whether or not a property is encumbered that what he means by that is what he just described and answer accordingly? The answer is yes.

The Witness: Yes.

Mr. Hunt: The answer is yes. All right.

Q. Tell me who were the grantors, the conveyors, in the Wilson Estate? A. The widow—the executors, whoever they were.

Q. Don't you know the names? A. I know Mrs. Wilson. I don't know her first name. I do not know who the other executors were. I think it was Mr. McHugh, president of the Butler Bank, and possibly the bank as trust.

Q. What was the name of the grantee? A. Louis Van Orden.

Q. Was the property free and clear of encumbrances in the sense of out understanding, regarding the meaning of that term? A. It was sold without any mortgage on it.

Q. What? A. It was sold free and clear of any mortgage.

Mr. Hunt: I ask that be stricken out as not responsive.

The Court: Strike it out.

Mr. Hunt: Will you read the question, please?

(Question read.)

A. It was.

Mr. Matthews: I want to put in an objection to—

Mr. Hunt: It is already answered.

Mr. Matthews: I am objecting. I got up as quickly as I could.

The Court: Strike the answer out.

Mr. Matthews: Thank you. I want to put an objection on the record that this is incompetent, that question is incompetent, unless it is asked for the purpose of showing that the price was predicated upon it free and clear from encumbrances. That is the only relevancy it can have. It is nothing to this record whether mortgage encumbered, or easement or anything else, unless it was reflected in the price.

The Court: I understand that is the only purpose of the question, and that is the question.

Mr. Matthews: If that is the question I have not so understood it. I have no objection to it.

The Court: I understood it to be that.

Mr. Hunt: That is the purpose of the question and the answer, and I will illustrate it this way: If the witness testified the property was sold for $10,000, and then it appeared it was sold subject to an existing mortgage of $100,000, I would say the sale represented the value of $110,000.

Mr. Matthews: I would not say that.

The Court: So would I.

Mr. Matthews: Because the mortgage might be more than it was.

The Court: Of course, that may be.

Mr. Matthews: That would not be true market value price. There may be a building and loan mortgage.

The Court: Well, we have not come to any mortgages yet. We will cross that bridge when we come to that. Perhaps they do not mortgage their properties in that part of the world.

Q. Now what you have described as the—

The Court: Now I will allow him to answer the last question that you had put when Mr. Matthews objected. As the answer was yes, I struck it out. Is that correct?

The Witness: Yes, sir.

The Court: I will restore the answer.

Mr. Hunt: Thank you, very much.

Q. Strike out the pending question I commenced. Please state the names of the grantors in the conveyance which you have described as the Fitzpatrick transaction? A. Stephen Fitzpatrick.

Q. The name of the grantee? A. The City of Newark.

Q. The approximate date? Just approximate? A. Within a year and a half.

Q. That is near enough. That was property in the Newark watershed? A. Yes.

Q. And continuous or adjacent to other property previously acquired by Newark? A. They owned properties in that section also, yes, sir.

Q. The properties that they owned there have been depopulated following their acquisition of it? A. They generally tear the houses down after they buy them.

Q. Their purpose in buying these properties is to tear down the houses and depopulate the territory in order to protect the shed, isn't it?

Mr. Matthews: I object to it as immaterial, what is the purpose of Newark City in acquiring.

The Court: What is the materiality, Mr. Hunt?

Mr. Hunt: I understand the witness to say that the properties that this Fitzpatrick property adjoined other properties previously acquired by Newark and the buildings on which Newark had torn down.

The Court: That is correct.

Mr. Hunt: So I would argue to the jury—

Mr. Matthews: I object to what he would argue to the jury.

Mr. Hunt: When it comes to closing this matter, that the Fitzpatrick property for example had been reduced in value by reason that Newark had previously acquired the adjoining property and torn the buildings down, leaving the Fitzpatrick homestead without a neighbor.

Mr. Matthews: I object to that as being argument.

The Court: He is explaining why he thinks this is a relevant question, which you objected to, because of its being irrelevant and immaterial, as to the uses to which Newark has put it. Now he is explaining why he asked it and why he contends it is material, on the ground that the practice of Newark in demolishing the buildings reflects the value or has a bearing on the value of the other properties adjacent, and if that is your proposition I think it makes it relevant and I will allow it.

Mr. Matthews: Your Honor allow an objection on the record, or exception, rather?

The Court: You may have it. It is not my ruling that it does have any effect on values, but that it might, and it may be evidential to that effect, that is all.

Q. Now was the Fitzpatrick property conveyed by a warranty deed? A. Yes, sir.

Q. Was it free and clear of encumbrances within the meaning of that term as you understand? A. That price I mentioned—all prices mentioned by me presume—

Mr. Hunt: I am asking one at a time, and I ask that that be stricken out.

The Court: Strike it out.

Mr. Matthews: May I interrupt. Unless this question is so understood, and I fear this witness does not understand the question in view of the objection I put to the court when the court replied to me that that is the purpose of Mr. Hunt's question. The witness has just given a reply to something about the price reflecting, and so forth—I don't want to put the words into his mouth.

The Court: I do not think that the answer that the witness was attempting to give or did give was at all responsive to the question, and that is why I struck it out.

Mr. Matthews: It was responsive to the question if the question is a legal question. The legal question should be, are there incumbrances on the property that would reflect themselves in the value.

The Court: The question was, the kind of a deed that was given.

Mr. Matthews: The kind of a deed. Were there any incumbrances as we understand

these terms incumbrances, that is the question. Mr. Hershfield was going to say something about the values reflecting—I do not want to further say what he would have said.

The Court: I will allow the answer, and I will see whether the answer is proper or not.

A. In every instance where I purchased property for the City of Newark the price I agree upon for the City with the respective owners is predicated upon a full covenant warranty deed free from any incumbrances.

Mr. Hunt: I ask that that be stricken out as not responsive. I am asking the witness one question about one transaction. He undertakes—

The Court: That will be stricken out as not responsive. Now answer with respect to—

The Witness: What is the question?

The Court: Of course, in a way it is responsive, because if it is true that in every instance there was only one kind of a deed, then of course we can argue that that answers this specific question, but there may be an exception, and there usually is, to every situation, and Mr. Hunt is entitled to have the specific question that he asked specifically answered.

Mr. Matthews: May I say a word. What I would like the record to show is what price was paid over and above any incumbrance, but this man is the negotiator for the property and cannot be held to know what mortgages are on record or anything else.

The Court: Then he must not answer that way. The question is, was there an incum-

brance, and he either knows or doesn't know. If he doesn't know, he will say so. If he does know and says there was or there was not, the answer will stand.

Mr. Matthews: But when your Honor says he should know or should not answer—

The Court: I don't mean that he should know. I mean he should not answer if he did not know.

Mr. Matthews: Well, the proposition then comes in, the price I paid for this property reckoned no incumbrance; I don't know whether there was any incumbrance over and above that or not.

The Court: That has been stricken out, so it doesn't matter. The answer has been stricken out.

Mr. Matthews: I am through.

(Question repeated by stenographer as follows:) "Was it free and clear of incumbrances within the meaning of that term as you understand?"

Q. As we understand it, according to our understanding? A. It was.

Q. Now the Joseph Hough property, who was the grantor? A. Joseph Hough and his wife were the people I did business with.

Q. Who was the grantee? A. City of Newark.

Q. Was that also in the Newark shed? A. Yes.

Q. Adjacent to property that Newark had previously acquired? A. In the immediate vicinity. It was close to the Weaver Farm, I know that.

Q. When was the conveyance? A. After December 14th, 1925.

Q. Was the deed a general warranty deed, do you know? A. The same as the others.

Mr. Hunt: I ask that be stricken out.

A. It was a general warranty deed. I have never seen those deeds.

The Court: If you have never seen them and don't know, please say so, for you will have us an awful lot of time.

A. I know it was a deed.

The Court: If you don't know, if you were not present.

The Witness: I never saw any of Newark City's deeds.

The Court: Then you don't know anything about it, and the answer is simply no, and we will proceed with much rapidity.

Q. Then, Mr. Hershfield, to try to make rapid progress now, with regard to all of these properties conveyed to Newark about which I have asked you, I put it to you that you don't know whether the deed was a warranty deed or not; is that true? A. It is not. I know it was a deed satisfactory to the City and conveying the fee simple of the title.

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

A. I don't know what you call—you have a very strange language at times.

The Court: This man is the negotiator for the City of Newark, and I suppose all he may

testify to is what he negotiated. With respect to what happened after his negotiations I assume he knows nothing. I may be wrong in my assumption, but that is my belief nevertheless, and if that be so I think you can save considerable time if Mr. Hershfield will say he doesn't know the kind of a deed except by hearsay or except by practice or except by something else. If he was present at the closing and has actual knowledge of what kind of deed and what the terms were with respect to the closing and the incumbrances, let him state; but my notion is that the testimony up to this point rather bears me out that he simply made the bargain—to tell what he undertook to get. That is it, isn't it, Mr. Hershfield?

The Witness: To a degree, yes.

Q. Isn't it true that with regard to the several conveyances to the City of Newark concerning which you have testified, you don't know whether the deed was a general warranty deed or was not? A. I know it was a warranty deed. I know in numerous instances the City of Newark refused to buy other properties because they said the owners could not give a satisfactory deed. I presume this deed was the same kind of a deed as the average, ordinary man would employ. It had some special restrictions.

Q. Just stop. You are not preaching a sermon. A. No, I am telling you the truth.

Mr. Hunt: I ask that everything be stricken out beyond the first sentence in which he says I know it was a general warranty deed.

Mr. Matthews: I object.

The Court: I will allow it all to stand up to the point of your stopping him, because it would be rather difficult to separate the wheat from the chaff again, and I think there is no harm in letting it all stand.

Mr. Matthews: And the rule of law is that what one cannot wait until the witness is through and then when he determines it is harmful to him, ask that it be stricken out.

Q. Can you in the Vreeland transaction give us the names of the grantors? A. The executors of the Estate of Charles W. Vreeland.

Q. What were their names? A. The only one I can recall is Drake—Dr. Drake.

Q. What was his first name? I may explain to you, Mr. Hershfield, a searcher going to the Clerk's office has to have the Christian name and surname of the grantor in order to be able to find the conveyance, or of the grantee; that is why I put this question to you. A. (Witness examines paper.)

Q. Perhaps I can save time. Was it the Vreeland conveyance that involved a consideration of $150,000 and an area of 462 acres? A. The price is right, but my figures were 478 acres.

Q. 475, I see. Now were the grantors, Walter D. Hoad and others, executors? A. I do not— I am not sure of the name Hoad.

Q. Daniel E. Drake? A. Dr. Drake, the head of the Idle Ease Inn was one.

Q. Executors of Harry M. Vreeland? A. That is right.

Q. All right. Then we can pass from that one. Was that a general warranty deed? A. My knowledge and belief.

Q. Well, what, yes or no? A. I don't know. I did not see it.

Mr. Hunt: I asked him if that is a general warranty deed and he says to the best of my knowledge and belief.

The Court: Then he says he doesn't know.

Q. Now tell us the truth in the matter. A. I have told you the truth.

Q. Well, what is it, do you know? A. I don't know. I think it was, but I don't know.

The Court: I think he made that quite clear, Mr. Hunt.

Q. Now what was the name of the grantee? A. City of Newark.

Q. Was it in the Newark watershed? A. Partly in and partly out, as I recall.

Q. Partly in and partly out? A. Yes.

Q. Was it adjacent to other lands of the City of Newark, which it had previously acquired? A. They have some land in that territory, yes.

Q. Was that sold free and clear of any incumbrance in the sense in which we understand that word? A. Yes, sir.

Q. You say that when the Vreeland Estate conveyed this land to the City of Newark, the conveyance left no interest outstanding in any third persons? A. Not that I know of.

Q. I put it to you that it was sold subject to the rights of certain tenants—

Mr. Matthews: I object.

Q. —then on the property, and ask you whether you know anything about that?

Mr. Matthews: I object, "I put it to you that it was sold subject to the rights of tenants". That is testimony.

The Court: I did not understand him that way. (Question repeated by stenographer.)

Mr. Matthews: There is a positive statement of fact. It is testimony not under oath from Mr. Hunt.

The Court: I do not think it is intended to be such. I understand it as a question. I think the witness does. Technically, I suppose it is not a question, and again technically, I expect you are right, and I will rule it out.

Mr. Hunt: All right, then, I will put it in another phraseology.

Q. Was it not conveyed subject to the rights of certain tenants then in possession of certain parts of it? Do you know or don't you? A. I do know.

Q. Well, what is the answer then, yes or no? A. Yes.

Q. Well, to that extent it was not free and clear of any incumbrances, in the sense in which you and I have an understanding that we would employ that word, was it? A. No, not absolutely.

Q. No. Now was it not conveyed subject to the rights of the public over the roads, avenues or lanes along said property? A. Yes, they were public roads.

Q. Oh, they were public roads? A. Yes.

Q. You spoke of a transaction involving the conveyance of what you said had once been called Rotten Pond and was now called Legrande Lake? A. Yes.

Q. Who was the grantor in that conveyance? A. Some land company, Ramapo Park Land Company. I do not recall the name of the grantor.

Q. Haven't you got any memorandum there that will give me the name of the grantor? A. No, sir.

Q. Have you anything at home or in your office that would give me the name of the grantor? A. Except I represented him in some tax appeals in Bergen County. The man who employed me and paid me was a man by the name of VanSlyke, a New York lawyer, since dead.

Q. Was he the man that signed this deed of conveyance? A. He had died and it was his estate then formed into a realty company that did the business.

Q. What was the name of the Realty Company? A. Without being sure, I think it was Ramapo Park Company, or Ramapo Park Land Company.

Q. In what county is its principal office? A. It is in the principal portion of the property, it is in Bergen County.

Q. You did not understand me. In what county is the principal office of the corporation? A. I do not know where it is. I only did business with VanSlyke in New York.

Q. What was the name of the grantee? A. Also another company, as far as I know.

Q. That does not tell me much. I want its name? A. You can ascertain that by calling up Mr. Clifford F. McAvoy in Newark who is the principal owner of the property.

Q. Will you give me the name of the corporation which you say was the grantee in this deed? A. I do not know it, if I ever heard it.

Q. In what county does the land lie? A. Partly in Bergen, and partly in Passaic.

Q. Mostly in which? A. Well, I am not sure of the county line there. I think most of it is in Bergen County.

Q. What kind of deed was given in that transaction, a general warranty deed? A. To the best of my knowledge and belief, yes.

Q. Have you any knowledge concerning it? A. Only statements made by interested third parties, if they got proper title.

Q. When you say interested third parties, you mean parties other than the grantor or grantee? A. No, the grantee himself, or the president of the company.

Q. Then, the president of the company to which the land was conveyed told you, you mean to say, that the land was conveyed to this company by deed of general warranty? A. He told me he had a good title to it.

Mr. Hunt: I ask that be stricken out.

The Court: Strike it out.

Mr. Hunt: Will you read the question, please.

(Question read.)

Q. Will you answer that? I think that could be answered yes or no? A. He merely told me he had a good title. I put my own interpretation on the terminology of good title. That means salable title.

The Court: But it might not mean warranty deed?

The Witness: It might not mean warranty deed.

Q. Now, a moment ago you said to the best of your knowledge and belief this property was conveyed to this company upon a general warranty deed. Now, I ask you to indicate to the Court and

jury what basis you have for any belief on that question? A. The fact that when a man tells me he has a good title I believe it is a warranty deed that he hold.

Q. Then, you form your belief on the fact that the president of the purchasing company told you he had a good title? A. I formed my belief from nearly thirty years' experience in real estate, when a man says he has a good title, he means he has a good covenant warranty deed.

Q. Have you ever seen this deed? A. No, sir.

Q. Now, once more; can you give me the name of the company which was grantor in the deed? A. I told you it was the Ramapo Park Company or the Ramapo Park Land Company, but that can be ascertained also.

Q. And will you give me—try once more to give me the name of the grantee? A. I don't know as I ever heard it.

Q. Now, give me the date of the deed as nearly as you can? A. About two years ago.

Q. That would be about January, 1925? A. Somewheres in that neighborhood.

Q. Was it a little before that or a little after that? A. It may have been six months one way or the other.

Q. It may have been six months one way or the other? A. Yes.

Q. You are quite sure about that? A. I say it may have been.

Mr. Matthews: If your Honor please, all of this examination is, to my mind, totally irrelevant, except insofar as it would furnish counsel a chance to check up these different instruments in the Register's office.

The Court: And also with respect to the credibility of the witness.

Mr. Matthews: But, if your Honor please, it does seem to me it is irrelevant. We cannot be expected to furnish this man with his case. He has the name and that ought to be sufficient. He has the grantee in most of the cases. If he has either of one he can search the title.

The Court: I will allow it.

Mr. Hunt: Mr. Matthews answers my thought. I wanted to make my title searchers' task as light as possible by getting as near as I can that the date was given.

Q. Did you say my searchers need not look any further back than six months prior to January, 1925?

Mr. Matthews: I object to what his searchers have to do.

Q. If he starts there which would be, say, July, 1924, and comes down to date, he should find this deed, because it was between those dates when the deed was given?

Mr. Matthews: I object to that as irrelevant.

The Court: It is irrelevant, because we do not know what the searcher may have to do. The objection is sustained.

Q. You are sure, Mr. Hershfield, that this deed by the Ramapo Company or Ramapo Land Company to some other corporation whose name you cannot remember was given no further back than about July, 1924, is that correct? A. I would not

be sure of that. That is my impression. You can search and find out when it was recorded.

Q. Now, I think you have already said to the best of your knowledge and belief that was a general warranty deed? A. That was the inference I gained from the conversation with the owner, the man who bought it.

Q. Now, was the property free and clear of mortgages at the time of the conveyance? A. The price he paid called for everything being clear. But he paid $260,000 for the property, as I understand, free of everything.

Q. Now, what do you mean by free of everything? A. Free of everything in the shape of a mortgage. There may have been some special rights of way over the road leading to a section of the property that had been sold, but aside from that there was no encumbrance on this property, in the sense of a mortgage.

Q. Do you mean then— A. (Interposing) That is the price, if there was a mortgage on it, the payment of that price meant the wiping out of the mortgage.

Q. If there was a mortgage on it the mortgage was paid out of the $260,000? A. That is my understanding.

Q. But if there was a right of way over this property to some other property, that was to remain? A. Yes.

Q. That would be an encumbrance— A. (Interposed) Not in my sense.

Mr. Matthews: I object to that as calling for a legal conclusion.

The Court: He has answered it, and I will let his answer stand. Don't answer when an objection is made.

Mr. Hunt: He answered before I had finished the question. I said an encumbrance in the sense which he and I for this particular purpose understand that word. Now, in that sense it would be an incumbrance, wouldn't it, because it has a right in this land outstanding in a third person.

Mr. Matthews: I object to that as calling for a legal conclusion. This is my impression, legally, as I sit here, that it is not an encumbrance.

The Court: It is not a legal conclusion, because he has stated what he understands Mr. Hunt means by an encumbrance. It may be legally correct, and it may not be, but Mr. Hunt has defined to him what he means by encumbrance, and has asked Mr. Hershfield to answer the questions with this knowledge in mind.

He now asks him whether this is the kind of an encumbrance that he and Mr. Hunt have been talking about, so it takes it out of the category of calling for a conclusion, in my judgment.

Mr. Hunt: May I not object on this record that this man is going to urge afterwards, in examination, that he admitted it is an encumbrance, as we understand it, and that it is such an encumbrance that would reflect itself in the value of the premises and, therefore, you did not pay all they were worth. That is the proposition here. That is an insidious attempt to put legal evidence before this jury.

The Court: If it is, I do not think it will succeed, because I think the jury understands it as I do.

Mr. Matthews: Then I will put an exception to your Honor's ruling on the record.

The Court: You may have it.

Mr. Hunt: May the question be read? I forgot what it was.

(Question and answer read.)

Q. Such a right of way outstanding in a third person would be an encumbrance on the land in the sense in which you and I are using the word "encumbrance" in this examination, would it not, Mr. Hershfield?

Mr. Matthews: I object as calling for a legal conclusion.

The Court: I have already ruled on that very same thing, and will give you an exception.

Mr. Matthews: Exception.

A. A right of way that you and I apparently agree upon in the beginning was the right of way to the public. This was a right of way just to the person who owned that one house on the hill. I do not believe that right of way, to a single person, or family, would be construed as an encumbrance.

Q. Well, Mr. Hershfield, I ask you to understand that as between you and me and the Court and jury, and for the purpose of this examination, if I put the question to you, is a certain property free of any encumbrance, that would mean not only free of mortgages, free of judgments, free of other pecuniary liens of that kind, but also that no third person had any interest in that property, but that the grantee owned it, free and clear of all outstanding rights or interests of any kind whatsoever in any third person. Now, you understand that question—

Mr. Matthews: I object to that as a misstatement of the fact, and he is putting in this witness's testimony an absolute predicate for all of his testimony. That is a legal conclusion.

Mr. Hunt: I thought that was what he agreed with me.

Mr. Matthews: There is no instruction from counsel to the witness.

The Court: I have no objection to Mr. Hunt trying to make clear his question, and trying to get to an understanding with the witness at the outset, but I have no way, nor would I seek to find a way to have this witness or any other layman understand your legal phraseology and the way you hoped he may understand it.

Mr. Hunt: Well, I am afraid I will have to take a longer way around, your Honor, and ask him the definite questions.

The Court: I think you better, so there will be no question about it.

Q. Now, Mr. Hershfield, what we are talking about is Rotten Pond property, Legrande Lake, as you call it, and I ask you to believe I am not trying to examine you in any insidious manner, as Mr. Matthews stated—

Mr. Matthews: I object to this lecturing of the witness.

The Court: Objection sustained. Ask a question.

Q. I ask you this: When the title to this property was transferred from the corporation formerly owning it to the corporation whose name you cannot remember, but to which it was conveyed, did

that second corporation get the property absolutely free and clear of any rights or interests whatsoever outstanding in third persons, whether of a public or a private character, or did it take it subject to rights and interests outstanding in third persons?

The Court: The question has already been answered, Mr. Hunt, in my opinion. I may be wrong, that it was taken subject to the right of way from the main property to one dwelling house.

Mr. Hunt: May I clarify my question by saying, with that one exception of the driveway that you have referred to?

The Witness: With that exception of that one driveway, to the best of my knowledge and belief, it was conveyed free and clear, according to our understanding.

Q. So to the best of your knowledge and in your belief the corporation purchasing that property could deal with it as it pleased within the law, save as concerned that single right of way outstanding in the third person, is that correct?

Mr. Matthews: That calls for an absolute conclusion.

The Court: Objection sustained.

Q. Was this property limited or restricted in its manner of use in any way? A. I believe it was.

Q. Oh.

Mr. Matthews: Is that a question?

The Court: No, no.

Q. How was it limited or restricted? A. I am not familiar with it, but I believe it was restricted to a limited use, assuming that such a limitation of use would enhance the value of the property by restricting the classes of houses that would go on it, the number of people who would go there. In other words, not to make it a cheap colony.

The Court: You are still talking about the deed from the man that you represented to the company who bought it? Are you talking about the major deed?

The Witness: Yes.

The Court: There were restrictions?

The Witness: Yes, of a beneficial nature which I would not consider in any way as militating against the property.

Q. You have testified to one corporation selling it to another corporation, and you mean in that very deed in which that conveyance was effected, these restrictions appear? A. The properties were sold free and clear with the certain conditions of its use agreed upon between both sides.

Q. And those conditions were used, you say— A. For its betterment, in my opinion.

Q. Did they appear in the deed from the one corporation to the other? A. I never saw the deed.

Q. Mr. Hershfield, as a matter of fact, is there such a deed? A. I don't know; if I have never seen it, how could I tell you?

Q. Was there ever such a conveyance? A. Was there ever such a conveyance?

Q. Yes, was there ever such a conveyance? A. As far as I know, yes.

Mr. Matthews: I object—

Q. Answer yes or no. You testified this morning, was there such a conveyance?

The Court: He says yes, now.

Mr. Hunt: He says as far as I know.

The Witness: There is no use, Hunt, pounding the table. I can hear you from here. There is no use trying to scare me.

The Court: Strike all that out of the record. It is not responsive to any question.

Mr. Matthews: May I just respectfully ask the Court to ask Mr. Hunt not to browbeat the witness for literally it has been done by the pounding of the witness chair.

The Court: I think the witness will be able to take care of himself.

The Witness: I want to try and demonstrate for myself.

The Court: But I would suggest that Mr. Hunt should not attempt to intimidate him.

Mr. Hunt: Your Honor can assist me greatly.

The Court: I will be very glad to.

Mr. Hunt: If you will admonish the witness to give a fair answer to a fair question.

The Witness: Yes, when I get a fair question.

The Court: I will not characterize the answers as unfair, but I will admonish the witness to answer responsively, and not to answer otherwise, because it wastes time; and if the witness does not know the answer we will save considerable time if he will say he does not know. In other words, when the question is with respect to something that has to do with something that you do not know of your own

knowledge you will not answer it on knowledge that you have obtained in a hearsay way, as you sometimes do. That is the great difficulty I find with your answers, and I think it is the reason for our getting into these difficulties. Now, Mr. Hunt, you will proceed, please.

Q. Mr. Hershfield, is it true that this Rotten Pond property was conveyed by William Porter to the Ramapo Park Club by a deed recorded in Volume Y-19, page 69 to 77 of the Deed Records of this county? A. I know that a man by the name of Porter, afterwards killed in an automobile accident, was the third owner of that property. That I know. Whom he conveyed to, I don't know.

Q. Do you know whether or not he conveyed it to the Ramapo Park and Club? A. That may be the outfit I referred to, whose name I was not sure of.

Q. Is the Ramapo Park & Club the corporation which you say conveyed the property to another corporation sometime since July, 1924? A. I do not recall the name. It was Ramapo something.

Q. How many acres are contained in this tract, did you say? A. According to my knowledge, 1960 acres, roughly 2,000.

Q. Well, now, has that large acreage, whether it be just one amount or just another, that large acreage, something over 1800 we will say to be on the safe side, to your knowledge been conveyed to any person or corporation to any other person or corporation since July, 1924? A. If it has been it has been the conveyance I referred to to Mr. McAvoy, Clifford McAvoy Company.

Q. This morning you testified that it had been sold for $260,000? A. So he told me.

Q. Didn't you say that you had negotiated the sale? A. I did not. I simply—

Q. Your only knowledge is what somebody told you? A. No. I was consulted on it but not paid. I simply advised on it.

Q. Consulted about what? A. As to the desirability and what could be taken out of it if possible, and whether any of it could be possibly broken up.

Q. Then, of your own knowledge, you do not know whether it was sold or not? A. Only by Mr. McAvoy's statement, and the fact that there have been three or four, $10,000, or $20,000 houses built there, the insurance on some of which are in my office. I presume those people owned those houses, and it is part of this tract.

Q. And you do not know whether if there was sale that the price was $260,000, or something else? A. Only by what the purchaser told me.

Q. In other words, all that is hearsay as far as you are concerned? A. Yes. I was not there when the money was turned over.

Q. And you were not there when the deed was delivered? A. No, sir.

Q. And you do not know that any deed was delivered? A. I have never seen it on record. I only presume the deed was delivered, because there have been resales out of this property to people who have spent $20,000 or $30,000 on houses.

Q. Now, then, give me the names of the grantors in one of those resales.

Mr. Matthews: I object to that, if your Honor please, as not material to this issue. The grantee of a sale of a piece of property that has been

testified to is not cross examination or material to this issue.

The Court: What is the materiality of that, Mr. Hunt?

Mr. Hunt: Why, if I have the grantor, in what he says is a resale, then I have a clue to the grantee in the corporate transaction that he has referred to.

The Court: Very well; on that theory I will allow it.

The Witness: The only one I can recall now is Gifford of Newark.

Q. Gifford was the grantor? A. Was the man who bought it.

Q. I want the man who sold it? A. I don't recall. He bought it from McAvoy's outfit.

Q. Is that the name of the corporation, McAvoy's outfit? A. I don't recall if I ever heard it.

Q. Then, Mr. Gifford was the grantee? A. Yes, sir.

Q. What was Mr. Gifford's first name? A. I don't recall; I believe it was a woman.

Q. Now, give me the name of another grantee? A. I cannot. I would have to consult my office records.

Q. Now, you referred to the Irving Stone property? A. Yes, sir.

Q. Has that been conveyed to the Water Supply Commission? A. I believe it has. Mr. Stone said it had.

Q. At what time? A. Within a few months.

Q. Now, go back into the Rotten Pond property for a minute, Mr. Hershfield. It is true, is it not, that the deeds entering in the chain of title of the Rotten Pond property contains such provisions as

that the owner could not sell to me, for example, a plot of land 100 feet square or 200 feet square to build a house on?

Mr. Matthews: I object to that as immaterial, if your Honor please. This was an acreage sale, and calling for deeds in the chain of title as affecting a lot to be sold out of the tract, I submit, as incompetent and immaterial for two reasons. First of all, it calls for the chain of title to the property itself; and in the second place, it calls for the sale of a piece cut out of that tract, whereas in this sale is given here and offered at an acreage sale and at acreage prices.

Mr. Hunt: I am going to show it is not an acreage sale at all. That is the very point of the thing.

The Court: If that is the point, I will allow it.

Mr. Matthews: That question is not competent to show that, if your Honor please.

The Court: I did not hear it.

Mr. Matthews: May I ask your Honor to pardon us, and then have it read.

The Court: Read it please, Mr. Stenographer.

(Question read.)

Mr. Matthews: That calls for a conclusion. Necessarily that involves houses and lots, and if he says the purpose of his question was not to show an acreage sale but a plot sale, that is not competent to show it, that is incompetent to show it.

The Court: I suppose the question is directed to the proposition that the major deed,

if I may again so term it, contains such a clause.

Mr. Hunt: That is it.

The Court: And if that is the purpose it would have a bearing on the question of whether or not there was acreage property sold in the first instance and on that theory I think it is competent, and I will allow it.

Mr. Matthews: Your Honor, please, will allow me an exception?

The Court: Certainly.

Mr. Hunt: Now, read the question to the witness, please.

(Question read.)

The Witness: I cannot answer that; I never saw the deeds.

Q. Don't you know it is true that that property is so restricted that it can only be sold in lots of five acres or ten acres with one dwelling to be erected on each lot? A. I believe there are beneficial restrictions of that nature on the property.

Q. Then why did you tell us and persist in it so long? A. I cannot hear you, Mr. Hunt.

Q. Why did you tell us and persist in so saying, that this property was free and clear of every encumbrance, and third persons had no outstanding rights in that?

The Court: He made that statement in answer to that very question at the outset, that the restrictions were beneficial restrictions and enhanced the value.

Mr. Hunt: Yes, your Honor.

The Court: And now your question is directed to why he did not say that before and he did say that before.

Mr. Hunt: Excuse me. He said that after a time. This has taken a long time. At first he said no encumbrances within our understanding of the term, then he said there was a right of way, then he spoke of beneficial restrictions not saying what they were, at least, and I got him to this. I am intent upon having the truth.

The Court: My recollection is that this witness told you at the very beginning of his description of the deed in that property. I may be wrong. The jury will recall.

Mr. Hunt: I must have been stone deaf if he did at that time.

The Court: Well, perhaps I was.

Q. Who was the grantor in the Herbert Moss deed? A. Herbert Moss himself.

Q. Who was the grantee? A. The North Jersey District Water Supply Commission.

Q. Who was the grantor in the Cabell conveyance? A. Which one, please?

Q. Cabell? A. Former Judge W. Carrington Cabell of Passaic, and his wife, as near as I can recall.

Q. Who was the grantee, the Water Supply Commission? A. Yes.

Q. On the Austin Monks transactions who was the grantor? A. Austin Monks himself, possibly his wife.

Q. And the grantee? A. The Water Supply Commission.

Q. Was the Monks property free and clear of encumbrances? A. I presume so.

Q. Was the Cabell property? A. Yes, sir; I also presume the price was predicated on that assumption.

Q. Didn't you testify this morning that you sold the Irving Stone property to the Commission? A. Yes, sir.

Q. Well, then, what did you mean while ago by saying to the best of your knowledge and belief it had been conveyed? I want to know whether it was conveyed or not? A. There was a question of title, whether he had a marketable title, or was the title satisfactory to the Commission. The deal was consummated, as far as my department was concerned, months ago.

Q. Do you know whether it has been conveyed or not? A. I understand title has passed. That is a matter of ten minutes' work downstairs on the part of your searcher to find out.

Q. It is a matter of ten seconds for you, if you know that? A. It is not my business. This is in another man's department. I do not attempt to run the whole Commission.

Q. Who was the grantee in the Jacob Brown conveyance? A. The Estate of Jacob Brown; he was a railroad conductor, and—

Q. The grantee, I said? A. The Water Supply Commission.

Q. Now, I want you to identify the Herbert Moss property on Exhibit C-4. A. This property here (indicating)?

Q. I said Exhibit C-4? A. But I want to show you where I am looking for it. It would be approximately here (indicating).

Mr. Matthews: Make a circle, won't you?

(The witness indicates with circle on map.)

Mr. Hunt: Witness makes circle enclosing figure 21, and inserts pin.

The Court: Mr. Hershfield, you better put it on your legend on the margin.

The Witness: I want to get a pin.

(Witness puts pin in the map.)

Q. Now you said on your direct testimony that Herbert Moss was on top of a little rise? A. No; I said it was along the road; consisted of a piece of woodland, but that there was a two or three acres flat piece on the property which he farmed and which I went over.

Q. On top of a little rise? A. No; there was a bench on the side of the mountain. There was—

Q. Well, Mr. Hershfield, perhaps you misunderstand me. I am referring—I have here in quotations your remark this morning in your direct examination: "The Herbert Moss property was on top of a little rise." That is the way you put it down, didn't you? A. The farm part of it was.

Q. Well, then the remainder of it is on the slope of the rise, I suppose? A. Well, some level ground along the road, a small amount, and the balance of it is a slope and wood land.

Q. Now the flow line of the reservoir is elevation 300? A. 305, I believe.

Q. Well, no part of the Herbert Moss property comes down to that flow line, does it? A. I believe it does.

Q. You believe it does? A. Oh, yes, it is flooded, the lower end.

Q. Now we will come on to Exhibit C-1, and I ask you to show us how much of the Moss property is flooded?

Mr. Matthews: I object to this as immaterial, how much of this property is flooded, if your Honor please. This is not cross examination of this witness as to market value.

A. I can show him.

Mr. Matthews: Wait, Mr. Hershfield.

The Court: What is the materiality of it?

Mr. Hunt: Here is land that comes inside the flowed land. I will argue from my point of view it is more valuable than it is outside.

The Court: Why should it be more valuable for the new purpose to which this land is to be put should be under water or should be planted with shrubbery on the edge of the water?

Mr. Hunt: The fact it comes in the water shows it is available for the purpose for which this is being put.

The Court: I assume that every bit that is being taken by the Water Commission is available or it would not be purchased.

Mr. Hunt: Your Honor does not permit me to put the question, how much of this property would be flowed?

The Court: If you can show me the materiality of it I will. I do not object to your asking anything that is material.

Mr. Hunt: I think that fact has a bearing on the value of the property.

The Court: On the theory that you distinguish the McGovern case from this, for the reason that there may be a larger percentage of this land that goes into the bed of the reservoir than was the case in the McGovern case?

Mr. Hunt: That might be the case, I don't know what the fact is. That is what my question is intended to elicit.

Mr. Matthews: I object to it as immaterial, because there is no private owner can take of the public necessity to enhance the market

value of his land. It makes no difference whether it is flooded, whether it is a sanitation area. It is intended for the improvement, candidly admitted, and we are willing to pay a fair market value shown by legal standards, one of which is positively not the public necessity. The Rum River boom case was brought here as indicating that they could injure it, that is, the strategic point of advantage. When the strategic point is that of an individual, an individual may collect against another individual, but when the strategic value of the land is a public interest, the individual having his land condemned cannot use that strategic value as against the public. Now the flowing of this proposition, the use of it for sanitation area, the use of it in any fashion by the public interest cannot be used as an appreciating factor of value, and that is what that question is. It is immaterial to this issue. It is incompetent to this issue.

The Court: I am not sure that it is. As I understand Mr. Hunt's reason for the question is that in response to my question, and if he can distinguish the McGovern case from this on theory that this is a large percentage of the area, whereas the McGovern case was one per cent or such a matter—

Mr. Hunt: Less than one per cent.

The Court: Of the area. If the case can be distinguished, and you can show me that this is a larger percentage and that takes it out of the McGovern case, it may be material, and I will allow it, subject, however, to be stricken out if I find it is not material when I come to that point. I see no harm in letting it in at this time with that understanding.

H. G. Hershfield—Recalled—Cross.

Mr. Matthews: May I have a word further with your Honor?

The Court: Yes.

Mr. Matthews: Do I understand your Honor—

Mr. Hunt: In order to save time, I will withdraw the question. I will do most anything to save time, because we have a long case before us.

The Court: Very well.

Q. Now, the Christopher Ricker, was that conveyed to Water Commission? A. Yes.

Q. I think perhaps I state it correctly when I say that every property that you referred to this morning by way of pointing it out on this map was conveyed to the Water Commission, was it not? A. Yes.

Q. Isn't it true that with the exception of conveyances to the Water Commission, all of the transactions that you testified to this morning were outside of the Wanaque Valley and in some other area indicated by your various points here? A. No, sir.

Q. Well, now, show me one in the Wanaque Valley that was not conveyed to the Water Commission? Just give me its number here and that will be quicker? A. The two sales to the Twin Lake Land Company are of 250 acres of ground, and tract Nos. 9 and 10, they were sold—these two (indicating); these two tracts here, 9 and 10. They are in the Wanaque Valley, but were bought by independent people.

Q. They are south of the reservoir? A. South of the reservoir.

Mr. Matthews: The reservoir or the valley?

Mr. Hunt: The first question was the valley and this one is the reservoir, Mr. Matthews.

H. G. Hershfield—Recalled—Cross.

Q. South is below the reservoir. Who was the grantor in this Twin Lakes transaction? A. One tract was sold by a man by the name of Theodore Beck of Hoboken, and the other one was sold by a man named Alexander or Joseph McLean—I think the first name is Joseph—of New York City.

Mr. Matthews: I understand time would be saved, because Mr. Houman is the attorney and has got all that data.

The Court: I have nothing else to do.

Q. Now, the McLean property has not yet as a matter of fact been conveyed to the Twin Lakes Company, has it? A. According to the officers of the company it has.

Q. What officer of what company? A. Mr. Pasquale Lento of Haskell; I don't know what office he holds.

Q. What company does he hold office in? A. Entertainer, I think—Twin Lakes Realty Company. Mr. Edwin Merrill, treasurer; Mr. Houman, I believe, is counsel for the company. He can tell. This gentleman here. He knows more than I do.

Q. Then you say according to your hearsay information from these officers of that company a conveyance has been made and delivered? A. I believe it has been consummated. It may not be on record, but it has been consummated.

Q. Now, if McLean had given a deed, was it a warranty deed? A. That I don't know.

Mr. Matthews: I object to that, if your Honor please, as calling for a conclusion. That is really a hypothesis contrary to it.

The Court: He has already answered it, and I will allow it to stand, "I don't know."

H. G. Hershfield—Recalled—Cross.

Q. Do you know anything about the character of the deed which McLean was willing to give?

Mr. Matthews: I object to that as immaterial.

The Court: What is the materiality, Mr. Hunt?

Mr. Hunt: If the title to property is in such a state that it cannot be conveyed by general warranty deed, I think that that may be fairly be inferred to have an effect on its price, but first I am trying to show whether this witness knows anything about it.

The Court: Well, he very frankly said he doesn't know anything about it except what he was told by various people.

Mr. Hunt: Yes.

The Court: That being so, it seems a waste of time to pursue that subject further.

Q. The North Jersey District Water Supply Commission's pipe line goes through this McLean property on the surface, does it not?

Mr. Matthews: I object to it as immaterial, whether our pipe lines go through it some place else.

Mr. Hunt: That would be very detrimental to the value of the property.

The Court: If it does go through and if it did go through for the sales, possibly it may have a bearing on the value. If that is the purpose of the question.

Mr. Matthews: We have no pipe lines yet, because we have no water to pipe, so there is no pipe line.

H. G. Hershfield—Recalled—Cross.

Q. Well, right of way for the pipe line then.

Mr. Matthews: If your Honor please, whether the right of way goes through because whether it is covered aqueduct or steel pipe would determine.

The Court: I think it would be incompetent and immaterial with respect to whether or not a right of way has been acquired over this property, and if so, at the time of this sale. It might then have a bearing on the value of the property, otherwise not.

Q. Now, do you, Mr. Hershfield, as a real estate agent for the Water Commission, have to do with acquiring rights for their pipe line? A. I have.

Q. Isn't it true that at about the time that the sale from McLean to this Twin Lakes Company was being negotiated, the Water Commission was also in negotiation with McLean to get a right of way through this property for its pipe line? A. That is true.

Q. Isn't it a fact that your Water Commission claimed that it had got a right of way from McLean, while McLean on the other hand denied the claim and said it had not? That is true, isn't it? A. The Water Commission—

Mr. Hunt: If the court please, I ask that he answer the question.

The Court: One minute. Can't you answer it yes or no?

Mr. Matthews: Each answer would be two questions.

The Court: I will ask if he can.

A. I can't answer two questions.

Q. I will withdraw the question then, and I will separate it.

The Court: Question withdrawn.

Q. Isn't it true that the North Jersey District Water Supply Commission at the time that the sale of the McLean property to the Twin Lakes Company was being negotiated or discussed between the owner and would-be purchaser, that they claimed they had acquired a right of way over or through the McLean property for its pipe line? Yes or no? A. No.

Q. Isn't it true that McLean denied that the Commission had acquired any such right of way? A. Yes, sir.

Mr. Hunt: May I make a request to the court that my adversary be instructed to have here tomorrow morning to aid me in further cross examination on this point the plans for the Wanaque aqueduct to convey the water from the river down to the point of use, so that we can see from those plans whether or not it does go through this McLean property, and if so, whether on the surface or underground?

Mr. Matthews: What a preposterous thing, your Honor.

The Court: What would be the materiality of it?

Mr. Hunt: It seems to me if this aqueduct, which I understand is several feet in diameter, even where it is steel pipe—

Mr. Matthews: This is prejudicial and I object.

The Court: Just a moment. The objection is that it is prejudicial in the presence of the jury, and I will ask the jury to retire.

(Jury retires from the court room.)

Mr. Matthews: There has been a request made to the court by Mr. Hunt, as I understand it, that his adversary be instructed to bring here plans of that aqueduct in order to see whether it goes through the piece of property that he is examining about.

Mr. Hunt: That is not it.

The Court: No, that is not his point. The point is that he may know to what use the right of way may be put on this particular property; that is to say, that he may visualize it in order to know the depreciation of the value or appreciation as the case may be of that particular piece, by reason of the use to which it is to be put. Now I understood that is what you mean?

Mr. Hunt: That is the point. If this table be imagined to be the McLean property and it appears from their plans that the pipe line will come across the property on the surface, then certainly I would argue, and I think it would be an arguable point, that the presence of the pipe there depreciated the value of the land; even if it were to go beneath the surface it might still be an arguable point, depending on the depth, which might interfere with cellar construction.

The Court: You certainly do not care about any other property except the McLean property?

Mr. Hunt: For the present, no, sir. Some other similar situation might arise in the case.

The Court: I am not going to take the time to examine 21 miles or whatever number of miles there are.

Mr. Matthews: We haven't any such plans.

Mr. Hunt: All the properties that are now in question I think are this McLean one and the Theodore Beck one, which I understand are adjoining or practically so, are the only ones.

The Court: Mr. Matthews has stated there are no such plans.

Mr. Hunt: That cannot be true. This says contracts are issued for it.

The Court: Why can't it be true?

Mr. Matthews: Contracts are issued for what? For the construction of the reservoir? Do you know the difference between reservoir and the pipe line?

The Court: Yes.

Mr. Hunt: Here is a book to which pages and pages are devoted to the description of the aqueduct.

Mr. Matthews: Yes, and he won't find one contract in it.

Mr. Hunt: I don't know that I have to find contracts in it.

The Court: Mr. Matthews has made the statement unequivocably there are no plans in existence in the Water Commission of any aqueduct between these points.

Mr. Matthews: Right.

The Court: If that be true, he cannot prove it, anything in the report notwithstanding.

Mr. Matthews: Not only that, but what he must show is whether or not at the time this Vreeland property was sold, and we are wasting a lot of time, that right was taken into consideration in the selling price. There is not any such evidence, and it is his case to prove to the contrary.

The Court: Well, that is what he is attempting to prove by moving for the production of your plans, in order that he may ascertain what effect that might have.

Mr. Matthews: That is his case.

The Court: Very true. You mean that would be on cross examination?

Mr. Matthews: Certainly.

Mr. Frazer: May I make a simple statement? There have been no plans approved of the aqueduct. There have been studies for aqueducts. There have been no plan approved by the Commission, and therefore there are no plans which are at the present time binding in any way upon the Commission.

The Court: No contract, of course.

Mr. Frazer: No contracts have been let. In the second place, in relation to this particular tract of land, the right of way, so-called, which Mr. Hunt refers to, has not been acquired by the Commission, and the land lies as it was at the time of the conveyance to which Mr. Hershfield has testified; and if a right of way subsequently should be acquired across that land, and if that acquisition resulted in the depreciation of the value of the remaining land, the Commission would be forced to pay that to the owner.

Mr. Hunt: Mr. Frazer's statement seems to make it so clear I need go no further with it. I stop.

The Court: Bring in the jury.

Mr. Hunt: Your Honor, I think we will have to hold the jury for a moment.

The Court: Just a moment.

Mr. Hunt: I am told by Mr. Houman, a member of the Bar, as my associate and colleague in this case, that the Beck property lies south of the McLean property and adjoining, or Mr. Houman believes if not actually adjoining, very close to it; that the Water Commission has acquired a right of way over the Beck property. Now, therefore, it would seem to be inevitable that they must eventually, either by negotiations or condemnation, acquire a right of way over the McLean property. Here is a reservoir. Here is the Beck property on which they have a right of way. Here is the McLean property. To connect the two they must go through the McLean property.

The Court: Unless they go around it.

Mr. Frazer: Let us assume that Mr. Hunt's assumption is true, where is the materiality even then? How does that have any effect upon the value, the market value of the land sold a year or more ago, without this right having been acquired?

Mr. Hunt: But the right had been acquired, as I understand it, over the Beck property at the time of the McLean sale.

The Court: If that is so, I can see how that might have a bearing. If the right of way had been acquired over the Beck property at the time of which Mr. Hershfield testifies as to these values, then I can see that it may be material with respect to what Mr. Hunt is asking upon cross examination, but the point, it seems to me,—it is none of my business, however; it

is a question of fact—to be of not sufficient consequence to wast very much time with. Now of course that is just my notion. You have in your minds things that I cannot fathom, perhaps, that would make it very material or very important. But in the face of Mr. Frazer's statement that there are no plans, that there have been no contracts, and that even the right of way over the property first mentioned has not yet been acquired, it seems to me that you cannot get what does not exist by the way of plans.

Mr. Hunt: I might ask the witness whether or not they have acquired a right of way over the Beck property.

The Court: Do you want the jury to hear it?

Mr. Hunt: I will repeat it. We might still be arguing.

The Court: Very well.

By Mr. Hunt:

Q. Has the Commission or has it not acquired a right of way over the Beck property? A. We have.

Q. And the Beck property lies on the Newark side of the McLean property, doesn't it? A. Yes. But we acquired it from the new owners and not from Beck. The new owners.

Q. Yes. A. At the time the Twin Lake Realty Company bought these two tracts we had not acquired either right of way. We have subsequently purchased one.

Q. You were then negotiating for both? A. We were dickering for both, yes.

Q. It was known, or at least to the best of your judgment and your knowledge and belief, at that

time it appeared that the fact would be that the water pipe, the aqueduct, would cross the Beck property and the McLean property or some parts of them at the surface? A. It would cross them. Nothing was stated as to how it would cross or where.

Q. Well, you knew? A. I didn't know. I don't know now.

Mr. Matthews: Neither do we.

Mr. Hunt: I do not want to take up time unnecessarily.

The Court: Well, bring back the jury.

Mr. Hunt: I think perhaps the court will permit me to have the question and answer that was just made read to the jury?

(Jury return to the court room.)

Mr. Matthews: Is the stenographer going to read those questions?

The Court: I think, perhaps, Mr. Hunt, in order that rather than have you ask the last question over again, the stenographer might read the question and answer.

Mr. Hunt: Yes. That is perfectly satisfactory to me.

(Testimony repeated by the stenographer as follows:

"By Mr. Hunt:

"Q. Has the Commission or has it not acquired a right of way over the Beck property? A. We have.

"Q. And the Beck property lies on the Newark side of the McLean property, doesn't it? A. Yes. But we acquired it from the new owners and not from Beck. The new owners.

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"Q. Well, you know? A. I didn't know. I don't know now.")

Q. How many acres are there in the McLean property? A. I believe 90.

Q. Does it show here on this map? A. No, sir; it is south of the reservoir.

Q. Part of it is swamp, isn't it? A. Yes; there is some low ground and part of it is the pond, a lake.

Q. How much of it is swamp? A. Possibly 20 acres all together.

Q. Does that include the pond, the land covered by water that forms the pond? A. Yes, sir.

Q. Part of it is hill side? A. A good deal of it.

Q. How much of it is hill side? A. Of the 90 acres?

Q. Yes. A. Possibly 40 acres.

Q. Yes. So that 20 is swamp, 40 are hill side, what is the balance? A. The rolling ground, reasonably level.

Q. On top of the hill? A. No, along the road.

Q. Between the swamp and the road? A. No; above the swamp, between the road and the hill, Sager's Pond Road.

Q. First there is swamp and then there is a road and then there is rolling ground, then the hill side? A. I would not call it a swamp; it is a piece of low meadow.

Q. I asked you how much swamp there was, and you said 20 acres? A. You might call it a swamp. It is a piece of meadow.

Q. Suppose it was on the Ringwood property, what would you call it, swamp or low meadow? A. Low meadow.

Q. How would you value it on the Ringwood Company? A. My average for the Ringwood is $230 an acre.

Mr. Hunt: I ask that that be stricken out as not responsive.

The Court: I have not heard all of it.

A. Depends where on the Ringwood Company it was.

Mr. Hunt: I will withdraw the question.

The Court: Very well.

Q. In your classification of Ringwood land you did not have any category of low meadow, did you? A. I had five or six hundred acres of ground tillable and suitable for modest house sites at $250 an acre. I would put most of this in that category.

Q. Now then the low land in the McLean property that you at first referred to in answer to my question how much swamp land there was, you now put in the category of tillable land, do you? A.

No; in the Ringwood category I would call it tillable, because this can be tilled, it was tilled, pastured.

Q. In the Ringwood property you did not have any low meadow classification? A. I put it tillable ground.

Q. Yes. Now in the Ringwood tract you did have a swamp classification? A. Yes, sir.

Q. Now what would this strip of the McLean property that you have first described as swamp now describe as low meadow, what classification would that fall in if it were on the Ringwood property? A. $250 an acre average.

Q. I didn't ask you about the price, but the descriptive classification? A. I am putting it by price now. I would call it tillable land, pasture land.

Q. Tillable land? A. Yes.

Q. Now the McLean property I think you said brought a price that amounted to about $140 an acre for the land? A. $12,500 for 90 acres, as I recall it.

Q. So that owner sold his low meadow or tillable land for less than the valuation that you put on similar Ringwood land, didn't he? A. Yes, he did.

Q. Yes. A. And he was glad to get it.

Q. Yes, but he got $140 an acre for his hill side as compared with somewhere from $20 to $50 an acre that you allow for Ringwood hill side. A. I didn't say that. He had a lake on this property.

Q. But he did not have a lake on the hillside, did he? A. Not that I know of, but he had a lake on this property.

Q. How many acres in that lake? A. When the dam was up, as I recall that lake—I used to fish it—12 acres—10 acres.

Q. Then when the dam was up he only had 8 acres of low meadow, didn't he? A. No.

Q. You said there were 20 all together. A. I don't call the lake low meadow; I call the lake a lake.

Q. I wish you would remember what you have said just a moment before. I asked you whether in the 20 acres of swamp, when you were calling it swamp, there was included the land covered with water forming the pond, and you said yes. A. Yes.

Q. I think the court will remember it. That is my recollection.

The Court: I don't remember it. I didn't understand he included in what he said was swamp or low land, the acreage covered by the lake.

Mr. Hunt: I thought he did, and I will ask him again.

Q. Now when you described the 20 acres of this land as swamp, did you mean that that swamp included the land covered with water forming the pond or did not include it? A. The 20 acres includes the lake when the dam is returned to its former height plus the waters and land downstream from the dam, which amounts probably to seven or eight acres in the aggregate. The lake itself is about, or did have about 12 acres in it, as I recall it.

Q. Now the area covered by water is about five acres, isn't it? A. Because the dam has gone out and has never been replaced, the old dam.

Mr. Hunt: May that be stricken out, if your Honor please.

The Court: Yes, strike it out. The question is, what the acreage of the present pond is, Mr. Hershfield.

A. I should judge four or five acres.

The Court: Very well.

A. Because the dam is out.

Q. Now between the line, between the margin of the water in the present pond and what might be called low meadow there is swamp land, is there not? A. No. It is all lying subject to the lake when the dam is returned. It is not swamp.

Q. Well, until the water in the dam is returned and covers it, what is it? A. It is a piece of low meadow.

Q. A piece of low meadow. All right. Then it is not tillable land like the 569 acres of Ringwood, is it? A. Not as good as the Ringwood land, no. That is the reason I didn't give it so good a price.

Q. Can you tell me by this time who were the grantors in the transactions that you testified to, the conveyance by Wilson to Van Orden? A. I can't think of Charley Wilson's widow's first name; I never knew her well enough to get it.

Q. That is outside the watershed? A. I will try to get it though tonight, if you want it.

Q. That is outside both the Wanaque and the Pequannock watershed, isn't it? A. No; it is in the Wanaque watershed.

Q. In the Wanaque watershed? A. Yes.

Q. Above the Wanaque Dam? A. South of the dam—oh, I beg pardon. It is in the Ramapo watershed.

H. G. Hershfield—Recalled—Cross.

Q. It is in the Ramapo watershed? A. I beg pardon. It is in the Ramapo watershed.

Q. Oh, the Golf Club! That is the North Jersey Golf Club. Are you a member of that club? A. Yes.

Mr. Matthews: I object to it as immaterial.

The Court: He has already said he was.

Q. Do you play golf there?

Mr. Matthews: His membership was only as to value.

The Court: What is the purpose, to find out how good a player he is?

Mr. Hunt: No; to find out how good or how poor the land is.

The Court: Do you think you can tell that when you miss the ball?

Mr. Hunt: I want to see whether he is familiar with the land there, that is all.

The Court: Why don't you ask him that. If that is the purpose, I haven't any objection and will allow it.

Mr. Matthews: I will withdraw my objection.

Q. Are you familiar with the Golf Club tract? A. I have been over it, naturally.

Q. On a great many of the greens it is very difficult to get a growth of grass? A. Not now.

Q. Not now? A. No.

Mr. Matthews: I object. It doesn't make any difference to me as a golfer; I can putt anywhere.

H. G. Hershfield—Recalled—Cross.

Q. In the fairways?

The Court: I will allow it to stand.

Mr. Matthews: Exception as immaterial.

The Court: You may have it.

Q. In the fairways aren't there so many outcroppings of rock in many places that it is difficult to get grass? A. Naturally in the fairways you have rock, but I have never heard any of the players complain, excepting on the 19th hole.

Mr. Hunt: I object and ask that that be stricken out.

The Court: If you want to know what he knows about the condition of the grass, I think I will let him tell what he has stated.

Mr. Hunt: I don't know that any of the question has been answered.

The Court: You asked him the condition of the course.

Mr. Hunt: Yes, of his knowledge.

The Court: Very well, strike out everything that he has answered, and we will start over again. The only part of the answer that I recall was intelligent—perhaps that was not very responsive—was that he naturally went over the course.

Q. Isn't it true that at the time the property was bought by the Golf Club there, a good deal of outcropping of trap rock was in the places where the fairways had to be laid out? A. The fairways were grass and turfed and sodded and in many cases levelled and some rock was removed.

Q. Some rock was removed, and some soil brought in to make fairways? A. Yes, a great deal.

Q. Now, of course, land that is in such a condition as that is less valuable for a golf course than land on which those outlays would not have to be made, isn't it?

Mr. Matthews: I object to that as calling for a conclusion. That is not Tillinghast on the stand. I submit it may be that some golf courses might lay their natural hazards along such courses as they have—I speak as one of the committee of my own club who built our course, but this witness, unless he qualifies, is not entitled to say whether this would be more valuable for a golf course if it were rocky than if it were plain, because a golf course is individual in character, depending on the character of the course.

The Court: I do not think this witness is competent to answer that question, because golf architects occupy a peculiar field and it requires peculiar qualifications, which this witness has not qualified for whatsoever.

Mr. Matthews: I don't think he can even play golf.

Mr. Hunt: I think as a real estate man he would be able to answer it.

The Court: I should have allowed him to, had objection not been made, but objection having been made I think it is sound and I will sustain it.

Q. Now this transaction or conveyance from Wilson to Van Orden that you speak of, was your

concern in that in any way? A. My office made the sale, and I naturally got the commission.

Q. I notice in speaking of a number of properties that the Water Commission had got, you said that you had sold so-and-so's property to the Commission. Now for example, you said, "I sold tract No. 119 on C-2," referring to the map. When the Commission acquired those properties, were you acting as agent for the Commission in their acquisition, or as agent for the owner in their sale? A. I was an employee of the Commission.

Q. Were you paid a commission or fee by the owner?

Mr. Matthews: I object to it as immaterial to this issue, whether he was paid a commission or not.

The Court: What is the materiality?

Mr. Hunt: I want to see on which side his duty lay, whether he was there as a man who should have obtained the lowest price he could, because he represented the purchaser, or the highest price, because he represented the seller.

The Court: I think it is proper.

Mr. Matthews: The proposition is whether or not he obtained a commission from the other side. The question is did you also represent the owner as well as the Commission.

The Court: I think it is proper for a man to tell in answering a question just what his relationship with the various parties was, so that we may see what bearing it might have on his actions as a broker.

Mr. Matthews: I have no objection to that question, but this is a commission question.

The Court: It tends to bring out that information, as I understand the question.

Mr. Lewis: It explains Mr. Hershfield's statement he sold the property to the Commission, which was rather misleading.

The Court: I think it is proper.

Mr. Matthews: Exception, on the ground it is immaterial.

The Court: You may have it.

(Question repeated by stenographer.)

A. I have never received one cent commission, pay, emolument, honorarium, or anything in any way except occasionally a chew of tobacco from some of those owners.

Q. Now you refer to a sale of 310 acres? A. Yes, sir.

Q. Were you concerned in that? A. I sold the property for a man whom—you mean the Corning sale?

Q. Yes. A. I sold that property to a representative of the owner.

Q. Were you agent for the owner or for the buyer? A. For the owner, Mr. Corning.

Q. Now you testified concerning a sale of 51 acres of the Ringwood Company. Were you concerned in any way in that? A. I didn't get the beginning of the question.

Q. You testified concerning the sale of 51 acres of land by the Ringwood Company. Were you in anywise concerned in that transaction? A. Only that I made the loan, mortgage loan, for my bank on the property, and when I went up to look at the property the owner showed me the deed he had from the Ringwood, or the contract he had from the

Ringwood Company, and there I saw the price stated, which was—

Q. That is all. I asked you if you were concerned in it, and you have answered.

Now step down to the map again, will you, Mr. Hershfield?

Now this morning you could not point out very much of the 235 acres of scrub oak and swamp land at $20 an acre, or scrub wood, as you said you meant to put it. Can you now show the jury where that 235 acres lies? A. I cannot. I did nothing during the noon hour except eat lunch. I have not refreshed my memory.

Q. Try to be prepared tomorrow? A. I will try.

Q. Now I want you to show the location of the 569 acres of good tillable land including rolling ground, plateaus and possible house sites for modest homes which you value at about $250 an acre? A. I will show that at the same time I divide up the balance of the property.

Q. Well, Mr. Hershfield, you will show that now? A. I cannot.

Q. This matter is within my control. A. We will leave it to the Judge.

Mr. Hunt: May I ask the court to instruct the witness?

The Court: If you can answer it, you must, Mr. Hershfield.

The Witness: I cannot intelligently answer that question without having the data here, my data here, my maps, my aerial map.

The Court: You can approximately?

The Witness: I can locate it roughly, but not within one tenth of one per cent that Mr. Hunt wants.

H. G. Hershfield—Recalled—Cross.

The Court: Mr. Hunt wants the best he can have offhand. You may give it.

Mr. Hunt: That is all I wish.

A. What do you want now?

(Question repeated by stenographer.)

A. The good lands on this bench here (indicating).

Q. Pointing to the tract No. 90? A. Yes.

Q. How many acres? A. I couldn't tell without the map.

Q. Here is the map right before you? A. I mean without the aerial map and also my notes.

Q. The aerial map does not contain any statement of acreage, does it? A. It contains the trees and the barren gound.

Q. Well now— A. Also the houses.

Q. When you refer to this 569 acres as good tillable land, you do not mean it has land on which trees are growing, do you? A. No, sir.

Q. Then surely you can remember where the open, unforested tillable areas are? A. Some through this section.

Q. Come up in 90 again; can you tell us how many acres are there? A. I cannot, no.

Q. How many acres in 89? A. Very few. That is all wood.

Q. How many? A. Very few. Possibly—I don't think any to speak of there.

Q. Not any? A. Not to speak of. The woods come right down to the river.

Q. Tract 87, how many acres of good tillable land, including rolling ground, plateaus and possibly house sites for modest homes? A. Very few, except a fringe along the river.

H. G. Hershfield—Recalled—Cross.

Q. How many acres? A. Four or five.

Q. Four or five acres. We have got that many out of 89. How many acres in tract 88. A. 88? What do you want, tillable ground?

Q. I will read your description of it, Mr. Hershfield: "569 acres of good tillable land including rolling ground, plateaus and possible house sites for modest homes, about $250 an acre." If you will understand it, that is the classification of land I am asking you about now, and I will save time by not repeating it again, if we may have that understanding. May we?

Mr. Matthews: Do I understand it is tillable land or for home sites?

Mr. Hunt: I understand it to be exactly what Mr. Hershfield stated and I just read, 569 acres—

Mr. Matthews: The question is directed to home sites now, and tillable land, and home sites are included in that acreage. I submit that the question, unless it is to home sites, cannot be answered.

The Court: If Mr. Hershfield included it in his classification, I think it is proper to cross examine him in the same language that he used.

Mr. Matthews: Except, if your Honor please, if your Honor will read that which Mr. Hunt has just put, it says, "569 acres suitable for—" there are four different suitables.

Mr. Hunt: I put it in the words of Mr. Hershfield.

The Court: Here is the answer: "569 acres of good tillable land including rolling ground, plateaus and possible houe sites for modest homes, about $250 an acre."

Mr. Matthews: There are three characteristics; there is those that are rolling land, those that are another, and then there is the home sites. I suppose if he is asking him about actual home sites, that is different from the tillable land sites.

The Court: He is trying to check up the 500 acres.

Mr. Hunt: I am asking about 569 acres, and he has given me five or six of them.

Mr. Frazer: I have here an aerial map which you may use.

Mr. Hunt: No.

Q. Now, how many acres of this description in Tract 88? A. Very little; I should say except this section south of Forge Pond; maybe five, six or eight.

Q. Five, six or eight? A. There may be some house sites there.

Q. I am not asking about house sites. I am asking about the 569 acres of land.

The Court: Which includes house sites.

Mr. Matthews: Which includes home sites.

Q. Any of these 569 acres? A. Well, what about them?

The Court: He is asking you how many you can find in that particular piece?

The Witness: I am showing him.

Mr. Hunt: Here he said five, six or eight.

Q. Well, now, shall Mr. Bugg put down five, six or eight?

Mr. Matthews: What difference does it make what Mr. Bugg does?

Mr. Hunt: He does it for me.

The Witness: Let him take any of the three figures. Without the map I cannot tell.

Q. Now, we come to tract 66, how many in there? How many are there? A. 66?

Q. How many in there (indicating)? A. 66 is one lot, none.

Q. 85-B; how many acres in there out of this 569? A. This is tillable ground, the valley of the Cupsaw Brook to this place is reasonably tillable. There are some house sites along this bench, also along here where the frog pond is.

Q. How many of the 569 acres is in 85-B? A. I would not even guess.

Q. Your best approximation? A. I would not even approximate it.

Q. Are there ten? A. 250 I answer; that is purely a guess.

Q. Did I ask you about 87? A. Probably.

Q. Did I ask you about 86? A. Not 86.

Q. How many of the 569 acres are in Tract 86? A. That is low tillable ground; probably all of it.

Q. How many of the— A. 22 roughly.

Q. Now, are you sure there isn't any of your $20 swamp land in there? A. Not that I recall.

Q. Then, we will pass to 84. How many of the 569 acres are in 84? A. There is mostly side hill stuff; very few, if any.

Q. How many? A. Very few. That is all mountain.

Q. One? A. No, less than that.

Q. Less than one. Put down one minus.

Mr. Matthews: I object to this "Put down" business.

The Court: Just a moment. I do not wish the stenographer to put down your remarks.

Mr. Hunt: Pardon me. I did not mean it in that sense. Mr. Bugg was putting it down for my benefit.

Q. Tract 80. How many of the 569 acres are in that? A. In this particular sub-division (indicating)?

Q. All right, we will say in that sub-division? A. Sub-division containing the Cahill house.

Q. All right. A. I should say that contains about 125 acres altogether, with about 80 of those acres that would be tillable ground.

Q. Well, would 80 of them come in the 569 acres at $250 an acre? A. Approximately that.

Q. Now, strike 100-B; how many in there? A. That would be hill top; very little; none of it would come there.

Q. 81, how many? A. 81 is a piece of wood land there; there may be a few out of the 17 acres; there may be 5 acres.

Q. All right. 82; how many? A. 82 is only a house lot; one lot.

Q. No acres? A. No.

Q. 83, how many? A. 83 contains 300 acres. Probably of that 200, 150; probably 100 of that would come under that classification.

Q. How many acres in 83, altogether? A. 200.

Q. Now, I am sorry, but this morning—

Mr. Matthews: I object to this "I am sorry". We do not need regrets of counsel.

The Court: Have you finished that line of examination? Have you gone from one end of the map to the other?

Mr. Hunt: No, sir. I am now just coming back to this morning when I was asking the witness similarly about the $50 classification.

The Court: I would rather not go on that, if you have covered the 569.

Mr. Hunt: No, your Honor. If you were thinking of stopping will you let me go on for a minute. This is very important.

The Court: I wanted a good place to stop.

Mr. Hunt: This would be a very bad place for me to stop. I would want about three more minutes.

Q. This morning you testified to Tract 83 which contains a total of 212 acres and you said it contained 150 acres of wood land at $50 an acre. Now, you say it contains 100 acres of this 569 of tillable land. Now, you see it won't work, Mr. Hershfield, because—

Mr. Matthews: I object to that comment, if your Honor please. He said "approximately" this afternoon. I object to the comment.

The Court: The objection is made to your comment to Mr. Hershfield, "So, you see, Mr. Hershfield, it won't work."

Mr. Hunt: I simply meant to say that the two add to more than the total of the area.

The Court: I know what you meant, but the objection is that you are arguing with the witness, I assume.

Mr. Matthews: It is, and the further statement that his acreage when given on his direct examination,—in fact he was forced to these figures despite the fact he had not either the aerial map or his field notes.

H. G. Hershfield—Recalled—Cross.

Q. Now, I ask the witness to explain how it is out of tract 83 which contains 200.12 he gets 150 acres of $50 and 100 acres of $250 land? A. I am not attempting to explain anything. I said, in the beginning I was practically powerless to describe this tract unless I had the tools to measure them with.

Q. All right, Mr. Hershfield— A. And consequently, any figures I may have given may be 50 per cent out, subject to my final correction, after I have my data. Nobody, unless he is an ass, would attempt from memory to describe in detail 2500 acres of this varied terrain.

Mr. Matthews: This what terrain?

The Witness: Varied, and to be held down to this meticuously careful examination—

Q. Now, Mr. Hershfield, out of 1450 acres at the $50 classification, you only pointed out 630 on the map. That is not holding you down to a very meticulous examination? A. I think it is, yes.

Q. Why, that is less than 50 per cent. A. I am not prepared to give any figures, unless I have my data here.

Q. You have been on some parts of this property a thousand times? A. Absolutely, and I will be over it again one thousand times. I would not be able to get over more than one per cent of it.

Q. Just put your pointer on one of these plots on this map that you have been on a thousand times, will you? A. I have said I have been on the property a thousand times.

Q. Oh, excuse me. I will read from the record what you have said.

Mr. Matthews: What page, Mr. Hunt, please?

H. G. Hershfield—Recalled—Cross.

Mr. Hunt: When I find it, I will tell you.

Mr. Matthews: Thank you.

Q. Page 126, question by Mr. Matthews to Mr. Hershfield in his direct examination:

"Q. How many times have you examined the property? A. I suppose in the last nine years I have been over some portions of this property a thousand times."

Now, I ask the gentleman to point to some portion of the property identified by one of the lot numbers which the Water Supply Commission has put on its map which he has been over a thousand times.

Mr. Matthews: Now, that is not the indication of that answer. It does not mean a thousand times over one portion. "I have been over some portions of the property a thousand times" means he has been a thousand times on the property, and out of that thousand there have been some portions at each time. That is the logical English of it. There, the meticulousness is in the question, not in the answer, the meticulosity of it, your Honor, I do not know.

The Court: If the witness can answer I will permit it.

The Witness: I will state again that I have been in the last nine years, over a thousand times at the Boardville corner on the public road what is indicated by paster 66, and call a thousand days in ten years is only one hundred times a year, or twice a week.

Q. That paster 66 adjoins— A. This is where the old Boardville School was, where the pigpens are, if that helps you a little.

Q. Never mind about the pigpens. A. But I want to distinguish it.

Q. It adjoins lot 88? A. Where the pigpens are, I will leave it there.

Q. You you see 88? A. No, I am looking at 66.

Q. Does 66 adjoin 88; yes or no? A. No, it adjoins 85.

Q. I point my finger to 88, and I point to 66 and I ask whether they do not adjoin? A. I point my finger to 85, and I point to 66, and I say they adjoin.

The Court: It is not responsive. Strike it out. Now, the question is whether 66 and 88, as the figures on the map, adjoin?

The Witness: On one side, yes.

The Court: That is all until tomorrow morning. We will take an adjournment now until 10 o'clock tomorrow morning.

(Adjourned to January 6th, 1927, at 10 A. M.)

THIRD SESSION.

PASSAIC CIRCUIT.

Appeal from the Award of Commissioners, in the Matter of the Application of the North Jersey Water Supply Commission for the appointment of three Commissioners to fix the compensation to be paid for certain lands of the Ringwood Company, situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, State of New Jersey, to be taken and condemned for public use.

Paterson, N. J., January 6, 1927.

Before—Hon. NEWTON H. PORTER, *Judge,*
And a struck jury.

APPEARANCES:

For the Owner: EDGAR W. HUNT, Esq., and WILLIAM I. LEWIS, Esq.

For the Condemnor: SPAULDING FRAZER, Esq., and JOHN A. MATTHEWS, Esq. Bernard L. Stafford, Esq., of Counsel.

HENRY G. HERSHFIELD resumed.

FURTHER CROSS EXAMINATION BY MR. HUNT:

Q. Mr. Hershfield, I asked you yesterday to bring here today your notes regarding the classifi-

cation of the Ringwood land into various areas. Have you done so? A. I have.

Q. Step down to the map again then, please. Now when we stopped yesterday afternon you had described this tract 83 on the map as containing 150 acres of $50 land, and 100 acres of $250 land, and I pointed out to you that the full tract is only 200.12 acres. Will you straighten that out to the jury and tell us how much of each classification there is in tract 83? A. I told you yesterday it was purely by memory. I have got my notes and now have the exact division. In tract 83, which I call the Belcher tract, I have 100 acres of woodland, 80 acres of tillable land, and 20 acres of the best land, covering 200 acres.

Q. So you were wrong in informing the jury yesterday morning that 150 acres of that tract was only $50 land?

Mr. Matthews: I object, if the court please. That is a conclusion of Mr. Hunt. He said he was not sure of his number, as he did not have his notes. I object to that question, "therefore you were wrong."

Mr. Hunt: I will withdraw the question.

The Court: Question withdrawn.

Q. Then in telling the jury yesterday that to the best of your ability to inform them there were 150 acres of $50 land in that tract you were wrong, weren't you? A. I was not wrong. I told the jury I was relying on my memory, and I did not believe I was to be subjected—

Q. Now—

The Court: Let him finish his answer.

A. And I did not believe my purpose in being here was to be subjected to a memory test.

Q. You were not wrong, although you do now tell them that there are only 100 acres of $50?

Mr. Matthews: I object to the question, whether he was wrong or not, as characterizing the testimony unjustly.

The Court: He has explained how he came to testify yesterday as he did.

Mr. Hunt: Yes.

Q. Now, yesterday you were able to point out to the jury to the best of your ability 630 acres of the $50 land. Now point out the remainder of the 1450 acres which you say are worth $50? A. In tract No. 79, which is this tract (indicating), 194 acres I have classified that as entirely wood land, which it is.

Q. That would be $50 an acre? A. Yes, $50 an acre land, Tract No. 80—

Q. Just one moment. How many acres of the $50 land in tract 78? A. All of them; 194 acres.

Q. How many in tract 80? A. In tract No. 80, which tract contains 482 acres, there are four classifications—

Q. I asked you how many acres of woodland you valued at $50 an acre there are in tract 80? A. 288.

Q. In tract 84 how many? A. Tract 84 is this tract here (indicating), 136 acres out of one hundred and—

Q. I didn't ask you the whole number of the tract. I asked you how many acres of $50 there was? A. All of it. 136 acres.

H. G. Hershfield—Recalled—Cross.

Q. 136 acres. Tract 86, how many acres of woodland valued at $50 an acre? A. Seven.

Q. In tract 85-B, how many? A. 85 who?

Q. B. Here it is (indicating)? A. I have not any such tract on my record. I have tract 86.

Q. You have given me 86. A. 85-B I have.

Q. How many did you say there were in tract 86? A. 7 acres out of a possible—seven acres.

Q. Now I pass by 85-B for a moment, because you say you haven't any such tract. A. There is no such number.

Q. In tract 66 how many acres? A. I haven't any such number. 66 is only a lot consisting of a house lot.

Q. In tract 88 how many? A. That is the Forge Pond tract, 46 acres of woodland.

Q. At $50 an acre? A. Yes.

Q. In tract 87, how many acres at $50, woodland? A. That is Board Mountain tract. All woodland. 91 acres.

Q. In tract 89 how many? A. That is this tract (indicating). All of it. 71 acres.

Q. In tract 90 how many? A. 42 acres.

Q. Now have you on your memorandum any other tracts identified by numbers? A. I have tract No. 85-A, according to my maps.

Q. Just a minute now. And any others besides that? A. Tract 100-A and 100-B.

Q. There are no 100-A and 100-B on this map, are there? A. They are small tracts lying in here (indicating).

Q. Is there? How many acres of $50 woodland in 100-B? A. 13 acres.

Q. That is all of it? A. Yes.

Q. How many in 100-A? A. 5 acres. All of it.

H. G. Hershfield—Recalled—Cross.

Q. Now have you any other tracts on your memorandum that I have not asked you about? A. I have tract of 971 acres which my records call for No. 85-A.

Q. Well, there is a tract on the map marked 85-B, which is said to contain 971 acres. How many acres of $50 land in that? A. 37.

Q. Now have you any other tracts on your memorandum which have not been called to your attention on the map? A. I don't recall—tract 81. Tract 81 of 18 acres, or tract 82 of 2 acres.

Q. 81, how many acres? A. 81 of 18 acres of woodland. 82, 2 acres of woodland.

Q. Now I point you to Cupsaw Brook, which passes through 85-B. See, lies out here. A. Yes, sir.

Q. And I am tracing it up stream. A. Yes.

Q. Are you able to tell the jury this morning how many of the $50 acres lie along the course of the Cupsaw Brook? A. I can't tell you how many along the Brook. In the whole tract my figures are 437 acres.

Q. But considering the number of acres on this property, you are not able to inform the jury whether those four hundred and odd acres lie along the Brook or whether there was— A. I could see this much. This part is cleared property to this radius.

Q. Now you are pointing to an area back of the church property? A. Back of the Reformed Church property. This is meadow.

Q. How did you classify this meadow in there? A. On that tract 100 acres of swamp and 434 acres of good tillable ground in this tract.

Q. Well, I asked you how you classified the meadow that you just pointed to on the Cupsaw

Brook? A. Part of it as swamp and the higher portion of the meadow is tillable ground.

Q. How many acres of that meadow land did you appraise as swamp at $50 an acre? A. 100.

Q. How many did you appraise as tillable land? A. 434.

Q. At what price? A. $250 an acre.

Q. I observe part of that land abuts upon the road, that part of it that lies north of the Pompton Church, does it not? A. Yes, sir.

Q. How much did you appraise that that lies along the road? A. The contour is of such a nature that the road appreciates it, and I valued it at $500 an acre, plus appreciation of the road.

Q. Then, there is in this road some of this highest classification also? A. No, I would not say any of this is worth $500 an acre. $250 an acre, plus road appreciation brings it to $500.

Q. What is the road appreciation on that road? A. $2 a foot.

Q. What road is that? A. That is the main road leading from Pompton Lakes to Greenwood Lake.

Q. By the way, when you say you appreciated land along this road at the rate of $2 per foot front on account of the presence of the road, how far back from the road does the area extend to which you attach that appreciation? A. About 150 feet; the depth of an average lot.

Q. 150 feet. Now, is that true in general with respect to all these appreciation for road frontage and for stream frontage? A. I figured the presence of the road or stream or brook appreciates the abutting property 150 to 200 feet back.

Q. To a depth of 150 to 200 feet back? A. Yes.

Q. Just so the jury can see the thing as clearly as possible, how deep would that appreciation usually

extend in respect to the greater length of frontage; would it be 150 or 200 feet depth? A. In our part of the State the lots average 150 feet deep. That is the appreciation of the road is supposed to wear itself out 150 feet back. Then you are in the second tier of property.

Q. Well, then, will you point out to the jury the Lower Hook Road and Upper Hook Road on this map in the Ringwood Property? A. Here is one of the roads (indicating).

Q. What is that? A. That is practically—that road is abandoned.

Q. I want you to point out Lower Hook Road that is known by that name. You called it by that name. A. Here it is, near the Bott place, and it runs—

Q. In a westerly direction? A. In a westerly direction, and then—

Q. And then southwest until it passes off the lands of the Ringwood Company in Tract 80, is that correct? A. Yes.

Q. Now, point out Upper Hook Road in the Ringwood property. A. The Upper Hook Road begins at Ryerson's—the Upper Hook Road begins at the Persinini corner, and the road ends here at the overhead bridge. Some call this section of it the portion of the Upper Hook Road. I refer to that as part of the Macopin Road, because this is the main road.

Q. Point out what you refer to as the Macopin Road when you were giving your front road appreciations in your valuations. A. It goes here, and begins here and goes up (indicating).

Q. Mr. Bugg tells me that you did not call it Macopin Road, but West Brook Road? A. Sometimes I refer to it as West Brook Road, and sometimes as the Macopin Road.

Q. You meant the road that you just described running up to Tract 83 and roughly paralleling the line of the West Brook? A. Yes, sir.

Q. Is this property I now point to on the westerly side of the map the Miller property? A. Yes, sir.

Q. That was bought by the Water Commission at a price of $25,000? A. Yes.

Q. Bought how many acres? A. 40 acres of falls, a house and small building.

Mr. Matthews: If this examination of this property has to do with the map I think the witness ought to take the stand.

Mr. Hunt: It has to do with the map.

Mr. Matthews: The value of the Miller tract has been pointed out. I cannot understand my opponent. It seems to me, in this tract, if its value is gone into it would be a whole lot easier for the jury and your Honor to get the facts. There was $25,000 paid for certain acreage, in addition to which there was a house and a falls.

The Court: Your point is he should come to the stand?

Mr. Matthews: Yes, your Honor.

The Court: Are you using the map?

Mr. Hunt: I expect to use the map in about eight or ten questions.

The Court: Then keep your voice up so the jury and the stenographer can hear it.

Mr. Hunt: Will you read the last question and answer?

(Question and answer read.)

Q. And you told me, Mr. Hershfield, did you not, some time before or during the pendency of

the proceeding before the Condemnation Commissioners that you had recommended to the Water Supply Commission to pay $25,000 for that property on the theory that its value was $7500, and the value preventing the Ringwood Company from getting it was $17,500? A. Absolutely correct; to keep the Ringwood Company—

Q. Just a minute.

Mr. Matthews: I object to his interrupting the witness in his answer. His answer cannot get on the record.

The Court: Do not interrupt.

A. (Continued) I recommended to the Water Supply Commission to buy that property because it controlled a lake that might be put up by this Ringwood Company. I told the owners of the property the commission would pay them a thousand dollars more than any offer that the Ringwood Company might make in order to prevent another alleged lake to be foisted through there.

Q. Did you see the representative? A. I saw the representative of the Ringwood Company there myself and talked to him.

Q. All right, now, Mr. Hershfield, point out the land along the West Brook Road which you appreciated by reason of the road frontage. A. That appreciation I allowed on both sides of the West Brook Road extending back 150 feet, in other words, to the acreage value.

Q. And following West Brook Road throughout what part of its course, all through the the Ringwood property? A. Up here to the Miller place, and also up to the Stone Town Road.

H. G. Hershfield—Recalled—Cross.

Q. And under my examination yesterday morning you told the jury that Tract 83 which, according to this map contains 200.12 acres, contains 150 acres of $50 land and now, this morning, you corrected that by saying it contains 100 acres of $50 land. Where does the 100 acres of $50 land, with reference to the portion on the West Brook Road that you just described lay? A. On this bench. This is all wood here at the foot of Wind Beam Mountain. This is a precipitous cliff. Some of that $50 land lays along here back from the road (indicating), and along here (indicating), there is some good ground.

Q. I am only asking you where the $50 land lies, and that is all I want you to tell me. Have you shown the jury where all the $50 land lies? A. Some of it lays in here and here and around here (indicating).

Q. How many acres of the 50 land abuts upon the West Brook Road? A. Where it is wooded, and particularly good, I would call that $50 land.

Q. How many acres are there of it? A. I cannot tell you. I have not given that subdivision. I said in that direction. It is Tract No. 83, plus 100 acres of the $50 land, 80 acres of $250 land and $20 acres of $500 land.

Q. Now, I point to Tract 83 to the parallel dotted lines running through the tract and passing out its northwest corner, and ask you what those lines represent? A. That is the re-located road that is to be moved from here—or from here (indicating) to here, northerly up at a higher elevation, because all this is going to be flooded, the existing road is going to be flooded. This is a re-located road. Yes, that is a re-located road.

H. G. Hershfield—Recalled—Cross.

Q. Now, Mr. Hershfield, I ask you whether it is not true that from this little triangle appearing on the map just to the left of the figure "83" on the northwest corner of the tract, these dotted lines do not also represent the presently existing Stone Town Road? A. I believe the road is to be moved from this point to this point.

Q. Now, what was your appreciation on account of road frontage on this piece of Stone Town Road? A. One dollar a foot.

Q. But you told us a moment ago that all this territory in here through which this piece of road runs was $50 wood land? A. The wood land runs along here (indicating).

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

Q. Mr. Hershfield, I suppose you know how many square feet there are in an acre, 43,560? A. So I believe.

Q. Would you like to check this map and tell me that it is true that if an acre of land has a depth from the road or stream of 150 feet, it has a frontage on that stream— A. of 300 feet.

Q. Of 290 feet? A. Call it 300.

Q. Call it 300, all right. That would be an easier figure to deal with, anyhow. So that in your method of calculation, then, upon the Stonetown Road that I now point to abutting on the road on either side, having a depth of 150 feet from the road, a frontage on the road of 300 feet, has a value of fifty for the acreage, plus one dollar per foot for the 300 feet or $350; is that correct? A. Yes, sir.

Q. On an acreage that lies immediately back of that 150 feet has, in your method of calculation, a value of only $50? A. Because it is not on the road and has no road appreciation.

Q. Now, the same thing would be true with regard to any land lying along West Brook stream where you added appreciation of one dollar? A. Absolutely.

Q. And in principle the same thing would be true regarding any land along the Wanaque River where your appreciation for road was $2.50? A. Some of my methods of appreciation I have given you the value of $1,000 an acre. That is expressed in my final figures.

Q. Now, just point out to the jury the Greenwood Lake Turnpike as it runs through the property under condemnation. A. It starts here at the north end of the Japanese tract, runs on for approximately a thousand feet, then—I beg your pardon, that is the railroad I am looking at.

Q. I want Greenwood Lake Turnpike. A. Here it is. It is just south of the Twin Sisters Tearoom.

Q. Then, it runs through our property in the direction which you will please trace? A. Then it runs northerly to where the pigsties are.

Q. Yes. A. Then it leaves your property and runs over the Eddie Hewitt property until it gets up to Tract 90, and then runs north along there.

Q. And runs through our property to the north? A. Yes.

Q. And then here do you call this the point where our pigpens are, that I now point to? A. Yes.

Q. Are the pigpens such a prominent object in the landscape that the jury would recognize the place by that description, do you think, or would some of these other land marks here be better? A. They are sufficiently prominent, in my opinion, to considerably depreciate the house that—

Q. How many acres do they cover? A. Pigpens do not usually cover acres.

Q. I thought perhaps it would. A. It smells bad.

Q. What causes the smell about a pigpen, is it the area or—

Mr. Matthews: I think the Court will take judicial notice that it is the pigs.

Q. How many acres are covered by the pigpens? A. With the pigpens and the attendant buildings and the shambles—

Mr. Hunt: I ask that be stricken out.

The Witness: I do not differentiate the pigpens from the other buildings.

Q. And you cannot tell us how many acres are covered by the pigpens? A. I should say there were probably pens to accommodate—

Mr. Hunt: I ask that be stricken out as not responsive.

The Court: Strike it out.

Mr. Matthews: If your Honor please, he was going to say there were pens enough to accommodate so many pigs.

The Court: But the question is acreage, and not the number of pigs.

Q. How many acres are covered by the pigpens? A. As the number of pigs increase—

Q. How many years has it been since any pigs have been kept there? A. Well, I believe the last tenant kept a few.

Q. How many years has it been since any pigs were kept there? A. To my belief it has been about two years.

Q. Who was the tenant that you referred to who kept them there two years ago? A. I believe Mr. Ball.

Q. How many pigs did he keep on that property? A. I don't know.

Q. Before you came there how many years had it been before Mr. Ball came there? A. I don't know.

Q. How many pigs did Mr. Ball keep? A. That I am not positive of.

Q. Do you know? A. Not positively. They increase from time to time.

Q. Now answer the question.

The Court: They increase from time to time.

Mr. Matthews: Then he said that was literally.

Q. You could not find any better way of identifying this particular point for the jury than referring to it as where the pig pens are? A. That to my mind has been almost a sacriligious condition in the place, to have a good house damned by those shambles.

Mr. Hunt: I ask that that be stricken out and my question answered.

The Court: Strike it out.

(Question repeated by stenographer.)

A. That satisfies me and it locates the property.

Mr. Hunt: I ask that that be stricken out as not responsive.

Mr. Matthews: I think that is competent, and the answer is responsive, and I ask that it be left to stay.

Mr. Hunt: This witness evidently fancies he is the jury, because I am endeavoring to identify the property for the jury, and he says that it satisfies him.

The Court: I do not think that is responsive. The question is, why does the witness refer to the property as the pig pen.

Mr. Hunt: If the Court please, that is not the question. May I have the question read?

The Court: No, you don't need to have it read. I think I understand what you are driving at by putting the question as you put it. My understanding—I do not hear perfectly here with your backs toward me—my understanding of the question, of the purport of the question was to have this witness tell why he referred to it, identified it, because of the pig pens.

M. Hunt: I beg your pardon, that was not the purport of the question.

The Court: Very well; I don't understand it then.

(Question repeated by stenographer as follows: "You could not find any better way of identifying this particular point for the jury than referring to it as where the pig pens are?")

The Court: I will strike that out as not responsive.

Mr. Hunt: Now may the question be read again?

(Question repeated by stenographer as follows: "You could not find any better way of identifying this particular point for the jury than referring to it as where the pig pens are?")

Mr. Hunt: May the witness be instructed to answer the question responsively?

Mr. Frazer: There was a second answer.

The Court: The second answer was also stricken out.

Mr. Frazer: No.

(Answer repeated as follows by stenographer: "That satisfies me and it locates the property.")

The Court: That is not responsive either, because the question is not what satisfies this witness, but what other mark there might be there that might identify it to others, other than this witness.

Mr. Hunt: Now could it be read again?

The Court: The second answer will be therefore stricken out.

Mr. Hunt: Might I ask the Court to direct the witness to give a responsive answer?

The Court: I will, if he can.

(Question repeated by stenographer as follows: "You could not find any better way of identifying this particular point for the jury than referring to it as where the pig pens are?")

The Court: Yes or no.

Mr. Matthews: The question is, "You could not find."

The Court: He is asking whether he can find any there. He says this thing was the identifying mark. Now the question is, can he find any other identifying mark. Yes or no.

A. I know of no better way of describing that location than to say it is on that point of the road where the house is on one side of the road and the

pig pens and stables immediately opposite on the other. I so describe the property to strangers who ask me where to take the branch off the main road to the Sloatsburg Road. I say, "Go up until you find that condition and then turn to the right." It is notorious and patent to anyone that is looking for it.

Q. But during the past two years it would be impossible for anybody to recognize the pig pens by the smell, wouldn't it? A. I have not smelled when I have been around.

Q. No. Now, Mr. Hershfield, let us see whether we can find something that would perhaps serve a little better to identify this point in the minds of the jury. It is the point or junction between the Sloatsburg Road and the main Greenwood Lake Turnpike, isn't it? A. It is one way, not the other.

Q. Also it is the site of the railroad station called Erskine, isn't it? A. No; that is beyond there, four or five or six hundred feet.

Q. Feet beyond there. All right. A. On the branch of the road.

Mr. Hunt: Capt. Crockett, where is the list of acreage you took down in 85-B, and he calls it 85-A?

Q. Now you said in the tract 85-B, as appears on the map, or 85-A, according to your memorandum, there were 437 acres of woodland which you valued at $50 an acre; is that correct? A. Yes, sir.

Q. How many of those acres lie along the main Greenwood Lake Highway as it passes through tract 85-B or A, as you have it? A. None of it.

Q. None of it. How many of them lie within 150 feet of that highway? A. None of them.

Q. I point to a road on tract 85-B as shown on the map, which leaves the Greenwood Lake Highway in an easterly direction about two inches according to the scale on this map before the Greenwood Lake Road reaches the figure 66 on the map. What do you call that road? A. I believe that is the Cupsaw Brook Road.

Q. How many acres of this $50 woodland lie along that road? A. Begins approximately here (indicating); I don't recall the percentage.

Q. You are pointing to that part of the road which lies away from the Greenwood Lake Turnpike and into the centre of the tract 85-B, aren't you? A. This cup here is all going to be flooded.

Mr. Hunt: I ask that that be stricken out and a responsive answer given.

A. This is swamp ground.

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

Q. I want to get the location of more $50 an acre ground. A. All right here. Here it is (indicating).

Q. That is not on the road I pointed to. A. Up along the upper reaches of the road you find some woodland.

Q. $50 an acre? A. Yes.

Q. Now you are pointing to that part of the road—what did you call the road? A. Cupsaw Brook Road.

Q. Now you are pointing to that part of the Cupsaw Brook Road which lies easterly of the point

where the road crosses Cupsaw Brook, are you not? A. Yes, sir.

Q. Now how much appreciation for road frontage did you attach to the property lying along that road, how much per foot? A. Nothing on the Cupsaw Brook Road.

Q. Nothing on the Cupsaw Brook Road; is that correct?

Mr. Matthews: I object to that question, "Is that correct," to his assistant in front of the jury.

The Court: Yes; I wish you would make your comments to your associate in a manner that will not be audible to the jury, Mr. Hunt, please.

Mr. Hunt: Yes, your Honor.

The Court: I do not think you intentionally do it, but nevertheless you have.

Mr. Hunt: I did not intentionally mean to do what I should not.

Q. Now I point to the point in tract 85-B where the Cupsaw Brook Road crosses Cupsaw Brook, and I trace the course of the road from that point in a southwesterly direction over to the Greenwood Lake Turnpike, and ask you whether any of the $50 per acre land lies along that piece of the road? A. I should not say so.

Q. Not any of it at all? A. No.

Q. Which is the most desirable land, Mr. Hershfield, that that lies along the West Brook Road of the Ringwood property, or that that lies along the lower Hook Road on the Ringwood property? A. Why, I would say that certain portions of tract 83 and certain portions of tract 80 and certain portions of this section of tract 80—

H. G. Hershfield—Recalled—Cross.

Q. You are getting off the road? A. They are on the roads.

Q. I want you to answer between the road lying along the West Brook Road and the land lying along the Hook Road; which land is more valuable? A. I have allowed $500 an acre equally for this land (indicating), this land (indicating), and this land in certain sections of it.

Q. You mean where it lies along the road? A. Along the road, or wherever it has a good view and where it is reasonably close to the stream.

Q. You get that $500 per acre by adding your road appreciation of $1.00? A. Without it. I have added road and stream appreciation and some times get $1,000 an acre on that road.

Q. Even on the West Brook Road? A. No, not there.

Q. I am asking you about the West Brook Road. A. Why, I would figure these benches being worth $500 an acre.

Mr. Hunt: May the witness be admonished to answer the question responsively? I can go so much faster, and I don't want to take the court's time unnecessarily.

The Court: I wish you would, Mr. Hershfield, please.

The Witness: I will try to.

Q. And I point to the West Brook Road as it runs through the Ringwood property, and I point to the Lower Hook Road as it runs through the Ringwood property, and I ask in which place the land is most valuable? A. On the Lower Hook Road.

H. G. Hershfield—Recalled—Cross.

Q. On the Lower Hook Road. All right. A. That is along the road.

Q. Then I come up on the West Brook Road and ask you what appreciation on account of this road frontage you attach to this land where I am pointing at? A. $1.00 a foot.

Q. That applied to 150 feet abutting on the road? A. Yes.

Q. Back of that, what value would that be? A. $500 an acre on some of the acreage.

Q. The other parts of the acreage what? A. It was only wood; didn't have a view, needed clearing, and so forth, $50. and $250 an acre.

Q. Now I come here (indicating), where you made it $500 an acre? A. Yes.

Q. Back up here where I am pointing, the road frontage would be worth $500 per acre as acreage, $300 more on account of the road appreciation of $1.00 per foot for 300 running feet? A. Yes.

Q. Or $800 an acre along the road; is that correct? A. Approximately, in certain sections.

Q. Yes, in certain sections. I do not mean all of it. Now let's come over on the Greenwood Lake Turnpike. Now I want you to show the jury a place on the Greenwood Lake Turnpike where, entirely aside from any question of road frontage appreciation, you valued the land at $50 an acre? A. I recall no $50 acre land along either side of the main line. I recall some $20 an acre land.

Q. All right; show the $20? A. The swamp in here and the swamp in here, low ground (indicating), but I recall no $50 an acre. There is not any woodland through there. It has been cleared.

Q. Show me some $250 per acre land along the Greenwood Lake Turnpike? A. The benches (indicating).

H. G. Hershfield—Recalled—Cross.

Q. Just one moment, please. Here you say these benches? A. Yes. I would say the stretch running along the Stewart place, north of it, on the easterly side of the road, I would say that this ground here—

Q. That is up by the pig pens? A. South of the pig pens, but up wind further would be worth $250 an acre.

Q. Then where it abutted on the road you would add how much? A. $2.00 a foot appreciation.

Q. So that if the appreciation applied to the land running along 150 feet from the road, then the acre on the road would be worth $250 to begin with, plus— A. $300.

Q. No; it is twice $300, $2.00 a foot. Plus twice $300 or $600, or a total of $850 an acre? A. Yes, sir.

Q. While the land lying back of it in the next 150 feet would be worth $250? A. It would be worth the same price we paid without the road frontage.

Q. And where the swamp classification is, it would be worth $20? A. Yes.

Q. But if it were of the wood classification it would be worth $50? A. $50 an acres, yes, except it has a good view or was on a knoll, in that case I would arbitrarily call it worth $500 an acre as potential house sites.

Q. Yes; but at least in here where you pointed near the figure 66, and in here where you pointed north of the Stewart house, in those areas the acre along the road would be worth $850, and the acre back of that would be worth $250? A. Where its lie to the road warranted such terrain classification.

H. G. Hershfield—Recalled—Cross.

Q. Yes. Now back here on West Brook I think you said there was some $500 land? A. Yes.

Q. So you want the jury to understand that an acre in tract 83 along the West Brook Road back more than 150 feet from the West Brook Road, is worth in some instances $500? A. If the view is unobstructed, and if the approach to it is so reasonably level that you can get into it with a vehicle without spending too much money.

Q. Yes. Well, you want that. Where I am pointing, tract 85-B, the Greenwood Lake Turnpike, but back 150 feet from that road, is worth $250? A. If it comes under that classification, being tillable or—

Q. Why do you add any appreciation for road frontage? A. Because the presence and existence of a road is what makes property valuable, gives it—

Q. Why did you add $2.00 for the presence of one road, and only $1.00 on account of the presence of the other? A. Because one road is worth twice as much to the property as the other.

Q. Why is that? A. It is the main road. It is a traveled road.

Q. Does its condition for travel have anything to do with it? A. To a degree.

Q. Suppose that the Greenwood Lake Turnpike were not a turnpike or improved road at all, but were a dirt road and that the West Brook Road were the kind of a road that the Greenwood Lake Turnpike actually is, which of the two roads would give the greater appreciation to the property it lies alongside of?

Mr. Matthews: I object to that as immaterial to this issue, because it has nothing to do with the market value of this place as is.

The Court: What is the materiality, Mr. Hunt?

Mr. Hunt: Well, simply to test the logicalness of the witness' mental—

The Court: I think it is permissible from the standpoint of testing the credibility of the witness.

Mr. Matthews: I cannot object to that. That is the court's discretion.

The Court: I will allow it.

A. It is the travel on a road or on a street that makes for value in real estate. The most traveled road, everything being equal, produces a greater value for contiguous property.

Mr. Hunt: May that be stricken out as not responsive, and the answer required?

The Court: I think it is responsive, Mr. Hunt.

Mr. Hunt: No, sir. He says travel on a road makes the value. I ask what the difference would be if fine improved highway now existing on the Greenwood Lake Turnpike existed over on the unimproved West Brook Road.

The Court: Certainly, and he explains his answer, assuming that if the West Brook Road were improved it would be traveled more.

Mr. Hunt: I did not understand him to say that, sir.

The Court: That is the only inference I can draw from his answer.

Mr. Hunt: No; I thought he meant that no matter how good or bad the two roads, each of the two roads was relatively to the other, the question of value depends on the amount

of travel going over the roads. I can imagine circumstances in which there might be an enormous travel over an unimproved road because necessity forced it, and the relatively light travel over an improved road because the necessity for going somewhere via that road did not exist. That is what I want to bring out, if your Honor will permit me.

The Court: Very well, you may ask him again, and I will let the answer stand because of the inference I thought could be drawn from the answer. I may be wrong, but you can ask him again.

Mr. Hunt: May I ask him in the form of the same question then?

The Court: You may.

(Question repeated by stenographer as follows: "Suppose that the Greenwood Lake Turnpike were not a turnpike or improved road at all, but were a dirt road, and that the West Brook Road were the kind of a road that the Greenwood Lake Turnpike actually is, which of the two roads would give the greater appreciation to the property it lay alongside of?")

A. The condition of the road is what determines ordinarily the amount of travel that is on it. If the West Brook Road was as well paved as the main road, the travel would naturally divert itself to it, inasmuch as they are both leading to the same ultimate points, Greenwood Lake. Now if travel went over West Brook Road, property on West Brook Road would soon be worth more than the property here, because as a rule, everything being equal, the density of travel determines value.

Q. Now, Mr. Hershfield, with your pointer on the map, please start in tract 83 of the Ringwood land at the point on the West Brook Road where the Ringwood property joins the Miller property, and trace the course of the West Brook Road as presently existing down to its junction with the Greenwood Lake Turnpike? A. It does not meet the Turnpike.

Q. Down to its junction with an improved stone road? A. Beginning here it roughly parallels this road (indicating). At this point, which I call Personini's Bridge, it meets the Upper Hook Road, and then follows this direction until it comes to Ryerson's Furnace, and then it comes out here on the Greenwood Lake Road and the hotel.

Q. How many miles is the road following its meanderings as you have traced it? A. I would have to scale it.

Q. All right. What is the scale on this map? A. 400 feet to the inch.

Q. What is the scale of this map? A. 400 feet to the inch.

Q. All right, just scale it. A. To the road, or to your property.

Q. To Greenwood Lake Turnpike? A. 5600 feet; about a mile.

Q. Well, Mr. Hershfield, have you been over that road that you just described there? A. Yes, sir.

Q. Your scale shows it to be a mile? A. Roughly; I am not accurate about it.

Q. How many times have you been over it? A. The Macopin?

Q. Yes? A. Probably five or six hundred.

Q. Were the jury, by the way, taken over it the other day? A. Yes, sir, we went up to Miller's Falls, where the gentleman lost his profession, and

we turned around and came back to that point (indicating) and came back to the Belcher farm.

Q. I ask you had they been over this course that you described? A. Twice.

Q. From the Miller place down to John Poole's hotel and the point you have just described? A. They did.

Q. And you say you have been over that five or six hundred times? A. Yes, sir.

Q. In spite of the fact that this little indicator indicates 5,600 feet, you know the distance is at least two and a half miles? A. I do not.

Q. You don't know that? A. No, sir; I must have misread my compass.

Q. All right, then, put your compass over it again. A. Do you want the course over your property, or the entire road?

Q. I want it over the entire road.

Mr. Matthews: I object to this as immaterial.

Mr. Hunt: Your Honor recognizes I want to know how many miles where he says this land is worth $500 an acre down to the stone road.

Mr. Matthews: I will withdraw the objection. I object to the checking up of this until this witness is through cross examination.

The Court: Objection sustained.

Mr. Matthews: There is plenty of chance to refute it if he is wrong.

Q. Did you check it up with your little tool, Mr. Hershfield? A. Yes, sir.

Q. What did it come to this time? A. The complete road I scaled this time amounts to approximately 10,000 feet. Before that I omitted what

was over your own property. This is not accurate. This is only rough.

Q. If it is not accurate why wouldn't you as readily add 400 feet as to subtract 400 feet?

Mr. Matthews: I object to asking a question why he would not do it. He is testifying according to the best of his knowledge.

Mr. Hunt: I saw him make a calculation when it come to 10,400 feet, and then when he gave me the answer he subtracted 400 feet.

The Court: Perhaps it is an Ingersoll and he thinks it loses, and he made that deduction on account of that.

Mr. Matthews: Perhaps he figured that he was going to be checkmated by the testimony of a fast compass.

The Court: I will allow the question.

A. Approximately it is 10,000 feet, including going over the property not owned by the Ringwood Company.

Q. If you were going to go from the point I now point to at 83 to the Greenwood Lake Turnpike, you would have to go over the property that did not belong to the Ringwood Company? A. Yes, sir.

Q. And the road that you have just described is the shortest practical route from point 83 down to Greenwood Lake Turnpike? A. No, if you get north on Persinini's corner it is closer to the overhead bridge.

Q. Do you want to measure that? A. No, I don't need it. My eyes tell me that.

Q. How much closer? A. Four or five hundred feet.

Q. Just put your tool on it, and see if it says it is 500 feet closer. I want you to subtract what you get from the 10,400 feet? A. They are both the same.

Q. When you said 10,000 feet you subtracted 400? A. I said approximately 10,000 feet. I may be a thousand feet out of the way. A survey will show that.

Q. Your actual calculation for what your machine is worth is 10,400 feet? A. No, sir. This scale is 400 feet. Shall I finish what you asked me?

The Court: You have not answered the question yet, Mr. Hershfield. He asked how much shorter it was to go over the route which you said was the shorter route.

Q. I ask you whether this is not the paper on which you made the calculation from your little machine that you used on the map? A. I say that is roughly what the machine shows.

Mr. Hunt: Can the answer be stricken out?

The Court: No, because I think it is responsive.

Mr. Hunt: I have a paper here and I want to offer it in evidence to the jury.

Mr. Matthews: I object to his offering that paper.

Mr. Hunt: On which he made calculations.

Mr. Matthews: It is captious and an unethical way of doing it. The witness, in trying to give an accurate figure, would not trust to memory his multiplication, and this man picks up his memorandum and wants to offer it in evidence, and you know he cannot do it.

Mr. Hunt: He made it under my eyes. When I saw him testifying to something else besides the calculation, why shouldn't I request it?

The Court: You have asked him and he has answered.

Mr. Matthews: How does he know his calculation is the final calculation?

Q. Whatever your calculation may be, you wish the jury to believe that 150 acres of land here in part of Tract 83 next to the Miller place that I now point to is worth $500, although another acre of like land and equal distance from Greenwood Lake Turnpike in Tract 85-B, which I now point to which is north of the Stewart property is worth $250? A. Or less.

Q. So that after all, when it comes to practical valuation in the way that you do it, the presence of a fine road like Greenwood Lake Turnpike does not add value to the property, after all? A. Not property of this nature.

Q. Because the road that you describe running from John Poole's Hotel back to $500 property at the edge of Tract 83 is unimproved throughout its whole distance? A. No, sir.

Q. What part of it is improved? A. It has a road that is improved by the Township of West Milford, Borough of Ringwood. It is a dirt road.

Q. It is not a macadamized road? A. It is not a county road. It is a very good local road.

Q. Is it a macadamized road? A. No, sir, it is not.

Q. Is it a bithulitic road? A. No, sir, it is not.

Q. Is it a concrete road? A. No, sir, it is not.

Q. Is it a dirt road? A. Yes, sir, a very good one, with dirt and gravel.

Q. Now, show the jury where the land is in this taking that you valued at $500 an acre, I think you said there were 100 acres of it? A. That land is dotted, those house sites, all through the taking, whether there is a good view or as enviable a location on the stream or brook or the trees and warrants such a value, I have figured there are probably 100 acres scattered through here that are worth, in their present condition, $500 an acre; some of them of those up here (indicating). Are you listening?

Q. I am. A. On the south side of Tract 83 that is worth $500 an acre, to my mind, because you have a view of the falls. You are at the foot of Wind Beam Mountain, and you have a noble view up the Stonetown Valley.

Q. How many acres of $500 in Tract 83? A. 20.

Q. All right. Now show the jury what your next lot of $500 for regular land is? A. In Tract 80, that is this tract here (indicating). Now, there is good land for view purposes.

Q. How many acres would that be? A. I figured 80 acres at $500. Land in that tract—now, that is along the river, on both sides of the river in this case, up on these benches where you get the same view, and the fact that it is along the river.

Q. On both sides of the river and extending back how far from the river? A. 150 feet. This river is very good in this section.

Q. Why do you say 150 feet lying along the river in that section is worth more than any other land in the taking except various other small pieces? A. Because of the existence of the river where there is flat water as there is in that reach, appreciates the land.

Q. But where we come to a little ripple in the river, the appreciation— A. It ceases, because you could neither bathe or boat on the river.

Q. But you can fish for trout? A. If they are there, and also in a flat water.

Q. You, as a trout fisherman would perhaps rather have a ripple than a place to wade in? A. No, I would rather wade up-stream.

Q. Now, go on towards the $500 land. A. In Tract 83, which I designated as the Belcher tract, when I say there are 20 acres of $500 land in that tract, that is this tract in here (indicating); some of it along where Henry Morelli has a summer home, and some of it on the reach back here (indicating); and some of it on this bench (indicating).

Q. Just mark with this black pencil land that you are pointing to when you said some of it on this bench. A. There (indicating); and there (indicating).

Q. I said when you said "some of it on this bench"? A. There are three benches.

Q. This bench, the one that you are pointing to in here? A. Possibly along in here (indicating).

Q. Now, Mr. Hershfield, if my memory is correct earlier this morning when you were pointing out $50 land in Tract 83, you rubbed your pointer all over this on the north side of this dotted line, and said all of that is $50? A. If I said that I did not mean it, because it is not true, because at this point —because this ground here (indicating) is appreciated by the view of the falls, and by the fact that it is protected from the north winds by the mountain. Those are very good house sites in here (indicating). Those are very good house sites in here (indicating). They are good up here (indicating).

Q. Let me see this brook that you said in the summer time seeped around through the stones but in the Spring it was "torrential"? A. That upper end of it,—this brook is very flat.

Q. Did the jury see the falls the other day? A. Yes, sir.

Q. Then I need not ask that they are a second Niagara.

Mr. Matthews: I object to that. There is no such testimony.

The Court: The objection is sustained.

Mr. Matthews: May I have stricken out that remark that they are a second Niagara?

The Court: If the stenographer has it down he will strike it out.

Mr. Matthews: Thank you.

Q. Tell the jury how many feet it is from this site of $500 land on the north side of the dotted line over to the falls; put a scale on it. This will be as the crow flies, of course? A. About 2,000 feet.

Q. How visible do you think the falls will be at a distance of 2,000 feet, Mr. Hershfield? A. Not noticeable, they would not absolutely dominate the view.

Q. So we have to eliminate the falls at a distance of 2,000 feet as an element of making this land in her worth $500 an acre? A. No; at the present it is 2,000 feet nearer to the falls than all the balance of your tract.

Q. Would you consider that the fact that you are 2,000 feet nearer to the falls made that property which you just referred to in Tract 83 more valuable than the property lying along the Green-

wood Lake Turnpike, but 150 feet back from the Turnpike in Tract 85-B? A. Not that alone; there are other contributing factors. That is only one of them.

Q. I see. A man who owned land and had a home on the Greenwood Lake Turnpike, but 150 feet back from the road could get into his land 365 days in the year with an automobile or a horse by building a lane across from the road back to his own lot? A. If the snow permitted.

Q. Well, the county clears snow out of Greenwood Lake Turnpike with a snow-plow? A. They have recently, yes.

Q. So if a man shovels his lane of 150 feet back to the edge of his lot he would be in on his own premises? A. Yes, sir.

Q. Nevertheless you think because of its being 2,000 nearer to the falls, the property up here in Tract 83 is worth more than the property 150 feet back from the line of the Greenwood Lake Turnpike? A. With the average who wants a country home with an attending view, there is a characteristic about it. There is no characteristic here. This is a big swale of a thousand acres. It has features to it. At the foot of Wind Beam Mountain, at the foot of Buttermilk Falls,—a man that goes to the country would like to say his home place has some characteristic to it, that he can locate it definitely.

Q. Now, let us see. I take the falls in Wanaque River at the Old Hewitt Furnace. A. I have been there several times.

Q. Now, the man who had his home along the Greenwood Lake Turnpike in Tract 85-B would be somewhere from four to five miles nearer to those falls than the Wanaque—than the fellow living over here in Tract 83 would be? A. No.

Q. He would not? A. No, sir.

Q. Now, let us see. A man in Tract 83 would have to go 10,000 feet, according to your calculation? A. No, not to this point.

Q. That would be 690 feet to come here (indicating)? A. Yes.

Q. Then he would have to go, to get up where we are here (indicating), how many feet? A. About 5600.

Q. Then we have to add 96 to that, a little under three miles? A. Approximately.

Q. The volume of water in the Wanaque River is several times the volume of water back here in the Miller place? A. Many times.

Q. And the height of the falls up here at the Old Hewitt Furnace is considerably higher than the height of the falls at the Miller Place? A. Yes, but the fall is not as great.

Q. The height is greater but not the fall? A. Yes, the elevation is higher, but does not fall as far. This is only a cascade. To my mind it is not as picturesque a fall.

Q. I cannot understand how water falls from a higher elevation and have a low fall, so far as the fall is concerned, and a higher fall from a lower elevation? A. Water can fall from an elevation of 1400 feet two feet, because that is where it catches. It can fall 200 feet from an elevation of 250 feet.

Q. You mean the Miller Fall is a cascade? A. Yes, sir.

Q. It falls and breaks and falls? A. Yes.

Q. Now, Mr. Hershfield, you can take the witness stand and go back to the map when you have had a chance to rest yourself from standing on your feet. What did the Water Commission pay for the

Wanaque Paper Mill property? A. $535,000, as I recall.

Q. Now was that payment partly—strike that out, please—does that payment stand charged against the—strike that out please—

You are aware, are you not, of the fact that the Water Supply Commission estimated the cost of real estate and land damages in this proceeding at a total cost of $1,750,000?

Mr. Matthews: I object, if your Honor please, as totally immaterial. The question is "You are aware that the Water Commission estimated damages in this proceeding at $1,750,000."

The Court: Objection sustained.

Mr. Hunt: May we have an exception, your Honor?

The Court: Yes, certainly.

Q. Do you know what the North Jersey District Water Supply Commission's estimate of the cost of real estate and land damages in connection with the acquisition and construction of the Wanaque Reservoir is?

Mr. Matthews: I object as immaterial. It is the same question.

The Court: Objection sustained.

Mr. Hunt: And we pray for an exception, if the Court please.

The Court: Yes.

Q. The property that I now point to on the map has been acquired during the past summer by the Water Supply Commission from Mr. Edward R.

Hewitt by condemnation proceedings, has it not? A. I so believe.

Q. Well, you testified as a witness? A. I testified as a witness; I do not know whether they have taken title to it or not.

Q. But you so believe? A. I believe they have; yes, sir.

Q. How many acres are there in that Edward R. Hewitt property? A. A scant 600; scant 600 of acres with $145,000 of improvements on it, according to your figures.

Q. And according to your figures how much value of improvements? A. As I recall—I haven't my figures here.

Q. Have them here to-morrow, will you? A. I will try and get them, if I have them.

Q. Have them here to-morrow, and I will pass on that for the moment. Mr. Hershfield, who was the grantor in the property that the Water Supply Commission acquired formerly belonging to the Pompton Reformed Church? A. The Consistory of the Pompton Reformed Church, Pompton Lakes, New Jersey.

Q. Well, the deed was signed by the sole surviving Vestryman and Trustee of the Old Church? A. I was not present when it was signed; I simply negotiated for the property.

Q. Didn't you draw the deed? A. I did not; I don't draw deeds.

Q. Do you know by whom it was signed? A. I never saw the deed.

Q. There was a tenant in the property? A. There was a tenant whom the owner had to pay $500 to move out before they could get possession or give deed.

Q. There was a grave doubt about the title, the tenant claiming the rights by reason of his possession?

Mr. Matthews: I object as calling for hearsay. He said he never saw the deed.

The Court: I will allow it.

A. The tenant had lived there for nineteen years and some months and believed or was commencing to believe he owned the property, until we called attention of the fact to the church that the record showed it belonged to the Dutch Reformed Church, and they immediately got busy and asserted their right and ousted the tenant.

Q. But it required $500 payment into the tenant's pocket to oust him? A. That was the reason it cost $3,500, because they got $4,000 and had to pay $500.

Q. Was that property conveyed to the Commission by a general warranty deed? A. I never saw the deed; I presume it was.

Q. Mr. Hershfield, you have no knowledge on which to base any presumption? A. In what case?

Q. In that case. A. Only what I am telling you that I got the property for them for that amount of money.

Q. Now, I ask you this; you say here being bound by an oath whose language requires you to tell the truth, the whole truth and nothing but the truth, that—

Mr. Hunt: What was his last answer?

Mr. Matthews: I object to the first part of the question and ask it be stricken out. The oath speaks for itself.

The Court: I will allow it to stand. In effect it says are you telling the truth or lying. He may ask that.

(Answer read.)

Q. Now, being bound by such an oath you say "I presume it was." Tell me whether you are in possession of any facts upon which to base any presumption whatsoever? A. I am in possession of these facts: That the Water Supply Commission employed me to buy the property. I located the owners of the property and they said they would sell it for so much money. They sold it, and I presume a satisfactory deed was given, as would naturally follow the terminology "sale".

Q. And you are also aware of the fact that there was a tenant in the property whom you just said had been there for more than nineteen years and who thought he was the owner of the property? A. He was paid out of the purchase price, I am told, $500 in order that they might get their money without any trouble.

Q. Now, you say on the basis of all those facts you are warranted in making the answer "I presume there was a warranty deed given"? A. What else can I presume?

Q. You can assume a bargain and sale, quit claim or deed without any covenants of any kind.

Mr. Matthews: That hasn't anything to do with the market value of this property. It might be a quit claim.

The Court: Not much.

Q. Did the church know that they owned property or had any interest in it until you told them so?

Mr. Matthews: I object to that as immaterial.

The Court: I do not know how this man can tell the mental processes of the church.

Mr. Lewis: He has already answered.

Mr. Hunt: He has shaken his head in answer "No, sir".

The Court: I did not hear it and did not see it shake.

Mr. Hunt: May I put the question again then and ask for the answer which is by the voice instead of by inclination.

The Court: But objection has been made to the question.

Mr. Matthews: I move the sign of the head be stricken out.

The Court: I ruled that it is a question that is not susceptible of being answered by this witness, because it calls for his knowing something that it is impossible for him to know.

Mr. Hunt: Well, he knew yesterday, your Honor, about a great many warranty deeds that he had never seen.

The Court: I do not have any question about this witness attempting to answer, and I think he probably would answer if he were permitted to, but objection has been made to the form of the question. You may get the same information by re-framing your question, perhaps; but I have ruled that the question is not proper in its present form.

Q. Did you tell the church officials that they owned the property?

Mr. Matthews: I object as immaterial.

The Court: I will allow it.

Mr. Matthews: Exception, please.

The Court: I will allow it, because he has already gone into the question. I think it is proper.

A. I told them, according to your records, they owned the property.

Q. Now, Mr. Hershfield, you as agent of the North Jersey District Water Supply Commission, made a tender to the Ringwood Company of a certain amount of money prior to the institution of these proceedings in an endeavor, as you said, to purchase the property, did you not? A. I did.

Q. You came to their office and tendered a certified check, we having consented?

Mr. Matthews: I object to Mr. Hunt's testifying what he consented to. I want to cross examine him if he takes the stand, and I will be glad to do it, but I do not think he ought to put testimony in the question.

Q. Well, Mr. Hershfield, was it actual money, coin, or was it a certified check that was tendered? A. By consent it was a certified check, so I did not have to carry a large amount of money in cash with me more than I usually carry.

Q. What was the amount of the check?

Mr. Matthews: I object.

The Court: What is the materiality of that?

Mr. Hunt: If the Court please, this man testified this property is worth some sum of money, I forgot what—

H. G. Hershfield—Recalled—Cross.

The Court: How is it material as to what he was then authorized to pay? He may have been authorized to pay a million dollars more than the Commission thought it was worth, for various good and sufficient reasons. If you can show it is material, and there is no objection, I do not care anything about whether it goes in or not; but objection is made because of its materiality to the question that we are to decide in this case, namely, market value of the property.

Mr. Matthews: If your Honor please, tenders, as he knows, of money for property are made in order that we may condemn. We may tender a small amount or large amount, or any amount. The tender is that we may condemn. He knows it is not competent evidence, it is no measure of market value.

Mr. Hunt: I will answer that very briefly, if the Court please: I have not heretofore been aware that the law permitted a tender not as in good faith, and I now hear counsel for the Water Supply Commission assert that is their right.

Mr. Matthews: I object to that; that is not so.

The Court: I did not so understand it.

Mr. Matthews: I never made such a statement. I never make statements that are not in good faith, and I think the Court, humbly, will take from my part notice of the fact. I do not know anything about this Trentonian.

Mr. Hunt: May the stenographer read what the gentleman said?

The Court: I do not need it, unless you want it read. If you want it I will have it read.

H. G. Hershfield—Recalled—Cross.

Mr. Hunt: I would like to argue closely to it.

The Court: I understood him to say a tender might be made of a sum that would have no relation to the value of the property.

Mr. Matthews: Not that we did it.

The Court: For the purpose of striking condemnation. He had no reference, I take it, in his statement, that that was done in this case.

Mr. Matthews: I made it to show, if your Honor please, that is why the lawyers who frame the law and evidence is born of our practice, and since such can be done, therefore, that is not an estimate of damage. I have said nothing about our practice. They know our practice.

Mr. Hunt: May I inquire of the clerk whether the record upon which this case is being tried is in court?

The Court: It is on my desk.

Mr. Hunt: May I have it, your Honor?

The Court: You may.

Mr. Matthews: The issue in this case, your Honor, the framed issue, that is all the record is in this case.

Mr. Hunt: It has always been my understanding of the Eminent Domain Act—

Mr. Matthews: If there is going to be a discussion I ask that the jury be excluded, because it is prejudicial.

The Court: Very well, let the jury retire.

(Jury retired.)

Mr. Hunt: It has always been my understanding of the Eminent Domain Act, and I am so sure that your Honor's understanding

will accord with mine, that I won't as yet take the trouble to get out the statute.

That the condemning party, before it acquired the right to condemn, had to undertake, in good faith, to purchase the property from the owner, if there was an owner who was competent to give a deed.

And then, as the initial step, both for acquiring jurisdiction and right to condemn and putting the right into motion, it comes to the Supreme Court Justice in a written petition in which it has to set out certain facts, one of the facts that must be alleged in order to give the Justice the power to appoint Commissioners, thereby setting the proceeding on foot, is that for some certain definitely stated reason, contemplated by law, the property cannot be acquired by purchase.

The reason may be that the owner is not known; the reason may be that the owner is incompetent, therefore cannot sign; that he is absent and cannot be found to negotiate with, but where the owner is a corporation of the State, having an office in the State, complying with all the laws that give it birth and continued existence and recognition of the corporation, then the necessity of going to that answer and endeavoring, by negotiation, to purchase that property, can not be avoided.

Now, in negotiations, not carried on in good faith, any offer not made or tender not made in good faith, would fail to establish a basis for the application to the Court for the appointment of Commissioners.

I have always supposed that this proceeding was instituted in good faith.

This petition says, in Section 2:

"Petitioner cannot acquire such lands by agreement with the owner thereof for the reason that petitioner is unable to agree with it as to the fair value of the land which the petitioner has determined to acquire, as aforesaid.

"3. At a meeting of the Commission it was resolved that the lands and properties hereinafter more specifically described were necessary; and

"4—"

I am just reading the high points—

"Under resolution of the Commission, the legal department was authorized to proceed with the condemnation, in the event that the tender of the sum of $6000,00 therefor should be refused by the owner. On or about the 27th day of February, 1925, said tender was made on behalf of the Commission, and the conveyance of said lands requested."

Paragraph 6:

"Said Ringwood Company refused to accept said tender."

Now, Mr. Moore, swears here before a Notary, under his seal, that the statements made in this petition are true, according to the best of his knowledge and belief, first qualifying him as chairman and acquainted with the facts, and so forth. Major Pratt swears—

The Court: I have read it and know all about it.

Mr. Hunt: Yes. The witness swears that on the 27th of February, he tendered the sum of $600,000.

Now, if the Court please, it seems to me it is depriving us of the substantial right if the chief of the real estate department of the Water Supply Commission comes in here and testifies this property is worth $435,000, whatever it was, some sum less than $600,000. If we are not permitted to bring out on his cross examination that he as agent of the Commission tendered the sum of $600,000 for it, because there is a conflict between—

The Court: What is the purport of your argument with respect to lack of good faith? Is that born from the statement that Mr. Matthews made awhile back?

Mr. Hunt: Solely from that statement.

The Court: There is nothing in that statement upon which you can predicate any such argument.

Mr. Hunt: I may have misunderstood him.

The Court: You did misunderstand him, or I did; one of the two.

Mr. Hunt: If I did, I shall wish to withdraw it before the jury, your Honor.

Mr. Matthews: No, thank you. I do not care for that.

The Court: Mr. Matthews stated, by way of illustration, that all that was necessary was that a tender be made in order to comply, technically, with the statute. He may be wrong about it, but he did not make any statement upon which you could predicate an argument that there is in this case before us any want of good faith because of the negotia-

tions that existed between the Commission and the owners. Now, as I understand the situation, as shown by the petition which you have just referred to, there was an offer made for such sum as the Commission thought, for what reason we do not know, and I submit we do not care as far as this issue is concerned, to offer the sum of $600,000.

It may well be that they had in mind the intrinsic value of the land was worth considerably less than that, but because of reasons best known to them and which to them seemed good, they were willing to pay a sum, perhaps, greatly in advance of the amount which they considered the property worth, in order to avoid proceedings, in order to avoid the delay in the work, perhaps, and for many, many reasons that we do not need to inquire about and which are none of your business, it seems to me. Now, if that be so, it strikes me there is no materiality in this issue with respect to the amount of money that the Water Company were then willing to pay and did in fact offer. The issue in this case is what is the price, the value of this taking, and I cannot see the evidential value of the amount that was offered by the Commission to the owners at that time, any more than I can see the admissibility of the findings of the Commission, from which both of you have appealed, and, therefore, my ruling is that it is incompetent, irrelevant and immaterial, and will not be allowed.

Mr. Hunt: Your Honor will allow me an exception, of course.

The Court: Certainly.

Mr. Hunt: And may I go a little further, since the jury is already out?

The Court: I might add further, that it seems to me that the only issue in this case is that which is the framed issue, and we are not concerned with a mass of papers that are in the record that you have before you. They are not evidence in this hearing, as I view the law. The only thing that we have before us, that we are to adjudicate in this case, is the question of the issue as it is framed in the last paper. Up to that point, as I view the law, it all had to do with the condemnation; it all had to do with the Commission that was appointed by the Supreme Court to examine into the value of the lands.

Now, they finished their work. They made an award. You both appealed from it. That closes the door. That, in my view, is still, as far as these proceedings are concerned, except as the issue is framed, growing out of that situation.

Mr. Matthews: That is the understanding of the Commission, if your Honor please. This is a de novo proceeding, and your only jurisdictional fact is the paper that you have signed.

The Court: That seems to me to be the law, and I so ruled, anyway.

Mr. Hunt: May I take an exception to your Honor's ruling, in so far as it applies to statements made by members, or qualified agents, or officers of the Water Supply Commission, whether under oath or otherwise in these paper constituting the file in this case?

The Court: You mean by that you feel that should be presented to the jury?

Mr. Hunt: At this time I have no such idea. I just thought, if I did want to refer to any fact evidenced by the papers in this trial, by means of a statement, whether under oath or not under oath, by a member, an official or agent of the Water Supply Commission, then I should be at liberty to do so.

The Court: You mean in an evidential way?

Mr. Hunt: I mean in an evidential way, yes, sir.

The Court: I will not permit that, and will grant you an exception to my ruling. That is not permissible. I do not mean to say it is not evidential for the jury that there was a compliance with the statute. I mean we are properly here. I do not know that the jury need consider that, or is that anything that concerns themselves, but you have opened, both of you, to the jury and explained how we come here, and I shall do that in my charge to the jury, but that is quite a different thing from getting in evidence statements that might have been made or may have been assigned to various papers that have been filed in this proceeding from the beginning.

Mr. Hunt: Now, if the Court please, I beg leave, upon the return of the jury, to be permitted to show by this witness, Mr. Hershfield, that the tender of $600,000 made by the Water Supply Commission to the owner, was based upon a valuation and appraisal of the property, and the ascertainment of its value made by this witness as appraiser and head of the real estate department of the Water Sup-

ply Commission with the assistance to a greater or less extent, I do not know how much, of his assistants.

Mr. Matthews: That is objected to.

The Court: Let him finish.

Mr. Matthews: Pardon me. I thought he was through.

Mr. Hunt: And that it was only by reason of this witness' investigation and opinion as to the value and report thereof to the Water Supply Commission, that the offer was $600,000 rather than some other sum; and I wish, therefore, to be permitted to show those facts to the jury, for one reason, in order, for whatever effect it may have on the credibility of the witness who now comes forward and swears it is worth less than $600,000.

Mr. Matthews: I object, if your Honor please.

The Court: Let him finish, Mr. Matthews.

Mr. Hunt: In order also to enable me to argue that the Commission by reason of having offered $600,000 for the property is now stopped from claiming it to be worth less; in order to permit me to request the Court for instructions to the jury, at the close of the case, that the Commission, having offered $600,000 for the property, that amounts to an admission on their part that it is worth at least that much, and, therefore, makes it impossible for the jury to find a verdict for any lower sum than that, and if, in their opinion, that the disclosure of this offer of $600,000 might have for me during the progress of the case—there is so much in the case that I find it impossible to look forward and picture

every possible situation in which I might want to refer to that tender.

I might say the Condemnation Commissioners, of course, permitted evidence as to the amount of the tender, for whatever that was worth. It was the ruling of three lawyers whom I believe are regarded as men of the highest standing at the bar of this Circuit of the Court.

The Court: I think that is true, and they may be very much more competent than the Court.

Mr. Hunt: I do not mean to suggest that.

The Court: —to pass on that. I shall not pass on that either, but my conception of the law does not coincide with yours, and my conception of the law being, as I have already explained it, I am forced to deny you the privilege of asking the questions that you have sought to ask of this witness, for the reasons I have already stated, and I will deny your request to ask those questions when the jury returns, and will grant you an exception to my ruling.

Mr. Hunt: And will state that I am to have the benefit of an exception in the same manner and to the same extent as though the questions had been put and an objection made and sustained with the jury present?

The Court: Certainly. Now, the jury may be brought back.

(The jury then returned to the court room.)

BY MR. HUNT:

Q. Are you able to tell the jury today from your notes the acreage of the Wanaque Paper Mill prop-

erty? A. I did not look it up, Mr. Hunt. I think there is 50 acres. I can tell you from here, probably from the map.

Q. Yesterday you said you could not. A. Beg pardon?

Q. Yesterday you said you could not. A. Did I try to?

Q. I think you did, for Mr. Matthews. I would rather you had brought your notes. A. My notes would be predicated on that map. If it is there I can give it to you now.

Q. Do you know how much of the $500,000 was for machinery in the mill? A. I did not appraise the machinery. I cannot recall, but a goodly, a very large portion of it was for machinery that could not be moved, that had been permanently affixed to the buildings which were of a very solid construction.

Q. What machinery was there in that paper mill that could not be removed? A. The machinery that was embedded in the concrete and brick walls, the floors and partitions of the mill.

Q. Couldn't you remove machinery from partitions? A. They said they could not.

Q. Or from brick walls? A. In some instances —in this case the machinery, according to the owners and the appraisers, could not be removed.

Q. Then I understand the machinery is to remain there when the Wanaque Dam is filled up and be there 60 feet under water? A. No, it has been junked.

Mr. Matthews: I object to it as immaterial. It was junked when the material in the buildings were—

Q. It has been removed and sold by the Water Commission?

Mr. Matthews: I object to it as immaterial.

The Court: I will allow it. I don't know that it is, but it may be.

Mr. Hunt: I am trying to get down to the value of the land.

The Court: I understand that.

A. All that could be removed I presume has been salvaged.

Q. Yes, by the Water Supply Commission, sold by them? A. That I don't know, who bought it. I had nothing to do with the machinery, Mr. Hunt.

Q. Well, the fact is that the owner of the mill was permitted to salvage the machinery, wasn't he? A. Where it was portable, yes.

Q. Yes. So that the $500,000 was not paid for machinery. A. Machinery, land, buildings and largely the value of the business, which was absolutely done away with.

Q. Oh, you paid damages for destruction of the business, eh? A. We put a man out of business and he was making $200,000 a year in that mill.

Mr. Hunt: May I ask the court that I be informed by counsel on the other side whether that is the practice of the Water Supply Commission in these proceedings, to pay out damages for the destruction of a business? Because if that is the case, I would be able to bring some more damages into my case here. I had understood this was not legal.

Mr. Matthews: I hasten to answer the question. Counsel for the Water Supply Commis-

sion, as beholden to the State of New Jersey, practice their law within the limitations of their intellectual ability, according to just law and in the interest of the citizens of this State, and, excepting the impertinence of the question, counsel answer it is none of his business how we act or do as long as we do according to law.

Mr. Hunt: I understand that counsel decline to tell me whether or not it is true that damages were paid for the destruction of the paper company's business.

Mr. Matthews: Counsel will not be quizzed by this man representing this corporation, because counsel, as a technician in the trial of the case, simply speaks in order to show the court and jury how unbridled the effrontry of his opening is.

Q. Well, Mr. Hershfield, do you know whether the machinery in the Wanaque Paper Company's plant and buildings was sold by the owners to the Water Supply Commission or not? A. Some of it I believe had to be sold as the buildings—as it could not be removed from the buildings.

Q. How many beaters were there in the paper mill? A. I don't recall. I did not appraise the machinery. I have said that from the beginning.

Q. Do you know what a beater in a paper mill is? A. I do not.

Q. Well, that is a sort of a tub with a paddle blade turning around in it, in which the material out of which the paper is made is reduced to a pulp, mixed with water. A. I know what you mean.

Q. Those beaters could be removed? A. I don't know. I never owned a beater.

Q. How many paper machines were there? A. I don't know. There were numerous rolls there—

Q. Well, paper machines contain as parts a good many rolls, several rolls. How many machines were there? A. I don't recall, Mr. Hunt.

Q. How many steam engines were there? A. I don't recall.

Q. How many electric motors were there? A. I don't recall.

Q. How many boilers were there? A. I don't recall.

Q. Was there any steam plant or was it purely a water power operation? A. Both, I believe.

Q. At least they had to have steam heating for the dryers and paper machines? A. There was steam used there.

Q. Now did the boilers and steam engines become the property of the Water Supply Commission or remain the property of the paper mill company? A. I don't know.

Mr. Matthews: I object to it as immaterial.
The Court: I will allow it.
Mr. Matthews: Exception.

Q. Did the paper machines become the property of the Water Supply Commission? A. Those that could not be removed, I believe did.

Q. How many paper machines could not be removed? A. I don't know.

Q. Was there any paper machine that could not be removed? A. I don't know.

Q. Why could any paper machine not be removed?

Mr. Matthews: I object to that as calling for a conclusion that he would not be entitled to answer.

The Court: He has already answered it by saying that there were certain machinery there that was so affixed to the realty it could not be removed, and I think that being so it is a competent question and I will allow it.

(Question repeated by stenographer.)

A. I don't know.

Q. What piece of machinery was there in the whole plant that could not be removed? A. Those that were permanently affixed to the real estate.

Q. How many of them? Name one of them? A. I don't know them technically.

Q. Describe the best you can to the jury? A. I couldn't even—

Q. One single piece of machinery in that paper mill was so affixed that it could not be removed. A. I am not conversant with paper making machinery. I know I am not qualified to answer any of these questions, simply because I don't know.

Q. Now, for example, some of the machinery consisted of water wheels employing the water for power, didn't they? A. I saw some such wheels outside of the buildings.

Q. No reason they could not be removed, is there? A. I don't know.

Q. And some of them consisted of line of shafting running through the mill, didn't it, from which the belts for the various machines were run off" A. There was shafting through the various buildings.

Q. No trouble about removing shafting, is there? A. Not if it is not permanently affixed to the walls.

Q. Well, these buildings were to be torn down, weren't they? A. Those buildings when we tore them down were so well built that when the walls were blasted the bricks broke around the cement mortar that tied them together.

Q. For example, if the end of a line shaft was rested in this brick wall for support— A. Yes.

Q. The wall was so good that you don't think a workman with a sledge hammer could have so knocked a hole in it as to have disengaged the end of that line of shafting and enabled its removal, eh? A. He might, but in doing that he would have raised the devil with the shafting.

Q. Well, now, suppose that the shafting had a little heavy scaffolding or some heavy timbers put under it back of the point where it bore on the wall, so that wen he knocked the wall out the shafting rested on this new support, then it would not have hurt the shafting a bit, would it?

Mr. Matthews: I object. Mr. Hunt is continually talking about saving time. This is so immaterial it seems to me to answer that. We do not like to rise all the time, but he is supposing a situation now that did not exist. That certainly is immaterial.

The Court: I don't know that this witness is in possession of information from which he can answer the question. He has so indicated. However, because of the relation with the machinery moved out to the price paid, I shall allow him to pursue the general subject for still a while, at any rate.

Mr. Matthews: I withdraw my objection.

Q. Will you answer that? A. What is the question?

(Question repeated by the stenographer.)

A. I cannot answer that question. I have had no experience with the removal of shafting.

Q. You have known of steam engines to be removed from their foundations and transported to an entirely new location? A. Portable engines.

Q. To be put to work, haven't you? A. Only portable engines.

Q. I mean a steam engine up to three or four or five thousand horse power, have frequently been transported. A. Mr. Hunt, I am not a technician, as apparently you are, on the question of steam engines.

Q. You don't know that there is a regular business of the sale and purchase of second hand steam engines, eh? A. Oh, yes, I know that. Not that they are second hand machinery. Bought and sold, but I don't know in what condition.

Q. Bought and sold for use? A. That I don't know that.

Q. You don't know that paper factories are sometimes moved from one location to another and taken their machines with them? A. I never had any experience with the removal of paper factories.

Q. You don't know anything peculiar about a paper mill that would make it more difficult to move its machinery than the machinery of some other kind of mill whose machines were equally heavy, do you? A. Not unless it was as solidly and apparently as permanently constructed as Mr. Carter's mills were.

Q. Well, to the best of your knowledge the Wanaque Paper Company remained the owner of such part of the machines as could be dismantled and moved? A. I have no knowledge on the subject at all.

Q. I thought you said to the best of your knowledge that was the fact? A. No; as to the best of my knowledge, such machinery as was portable was removed. Who owned it I don't know.

Q. Have you got your data regarding that sale. A. I have no data on the machinery. I never had. From the beginning I told my employers I was not competent to appraise that. They hired someone else for that job.

Q. Have you got your data on the other parts of the paper mill property with you? A. No, not with me, no, sir.

Q. Bring it with you tomorrow? A. If I have it, yes.

Q. Now, Mr. Hershfield, when did you make the appraisal of the Ringwood property to which you testified yesterday or the day before? A. Well, the final figures were made somewhat prior to the tender.

Q. When was the tender? A. I believe February of last year. I am not positive of the date.

Q. For how many years before that had you been making notes and studies and calculations of value of the property with a view to eventually advising your principal what tender it should make?

Mr. Matthews: I object to it as not a question, if your Honor please. He has not said that he had to advise his people.

Mr. Hunt: I will strike out that part of the question.

The Court: Very well.

A. Ever since I started to work for this Commission I knew these vast tracts of wild land had to be acquired, and every prior sale that I made of

similar land gave me additional information on which to base my valuations. That extended over a period probably of five or six years.

Q. I noticed the other day there were some slight variations between the valuation that you have given here and the valuation that you gave before the Condemnation Commissioners as regards the aggregate value and also as regards certain particular items entering into the aggregate. That is correct, isn't it?

Mr. Matthews: I object. If he wants to contradict what was said in a previous proceeding it must be contradicted item by item by testimony.

The Court: This is a general question, which I think is proper, and I will allow it.

Mr. Matthews: Exception.

Mr. Hunt: I am not going to criticize his work on account of the slight changes.

Mr. Matthews: We object to it.

The Court: I will allow it.

Mr. Matthews: Exception on the ground it is not proper cross examination.

The Court: You may have it.

A. There was an error of $5,000. I might say that with courtesy to the stenographers—a stenographer's error of $5,000 in what you deducted as commission, that ran all through my figures. I did not correct it, nor do I blame the stenographer. I often wonder he gets it as correct as he does.

Q. Then there was another variation of about $5,000 in your valuation of the buildings at that time and your valuation of the buildings you put down here? A. No; there was an omission of the Belcher house of $6,500.

Q. Made a variation of about $5,000? A. A small variation, which when you reconcile the two figures can be readily explained.

Q. I am not criticising you for it; I am just leading up to the inquiry. A. There was a very small variation, but the basic facts were the same.

Q. That is what I want to come to. When you testified before the Condemnation Commissioners and when you testified here the basic facts that you had in mind regarding the property and upon which its value in your judgment depends, are the same?

Mr. Matthews: I object to that as immaterial to this issue, if your Honor please. This issue is not the Condemnation Commission issue; this issue is the issue framed before your Honor, the market value of this property. Therefore, unless Mr. Hershfield is sought to be contradicted, unless his credibility is sought to be impeached by specific reference to statements under oath, I would object most strenuously to this general, basic principle proposition, which is an out of the way way to open the door to other testimony. I think it is immaterial and incompetent.

The Court: What is the materiality of it, Mr. Hunt?

Mr. Hunt: It is material. I am trying to arrive by a short road to an answer to this question. I am ready now to put it.

Q. Isn't it true, Mr. Hershfield, that your work in valuing this property was done and your conclusions were formed and arrived at before the opening of the hearing before the Condemnation Commissioners?

Mr. Matthews: I object to it as immaterial to this issue, if your Honor please.

The Court: What difference does it make when he did it?

Mr. Hunt: I just want to find out whether at a certain date he knew certain things, your Honor; that is all.

Mr. Matthews: Why not ask those questions? Because this could well be the predicate of a question, "What value did you put at that time."

Mr. Hunt: It would not be material unless it appeared at that time he had done his work in this valuation. I think now with a case of this magnitude, unless we are to be very, very long, I should not be required to go clear around Robin Hood's barn and ask five hundred questions to get what could be covered with ten.

The Court: I do not see the materiality at this time. When you finally get to another question that you really want to get the answer to—because I cannot understand that the answer to these questions are going to be material in any way to the issue we are trying—then I will rule on it, but in the meantime I will allow the questions to be asked that you put, subject to being stricken out later on. Answer the question.

Mr. Matthews: Your Honor allows an exception?

The Court: Certainly.

Mr. Matthews: On the ground it is incompetent and immaterial?

The Court: Certainly.

(Question repeated by stenographer.)

A. 90 per cent. of them.

The Court: 90 per cent of them?

Q. 90 per cent., yes. Now prior to the opening of the hearings before the Condemnation Commissioners, did you know how many acres of the land within this Ringwood taking contained deposits of sand and gravel?

Mr. Matthews: I objejct, if your Honor please, whether it did before the Condemnation Commissioners hearing opened or not is immaterial. What may be done to this witness—and there is no testimony—it is not cross examination, in addition—there is no testimony here at all as to sand and gravel in his direct examination. If he wants to contradict this witness—

Mr. Hunt: I will withdraw the question.

The Court: Question withdrawn.

Q. Mr. Hershfield, do you know now today that on the land of the Ringwood Company within its taking there are some evidences of sand and gravel deposits? A. I have always known that.

Q. Prior to the commencement of the proceedings before the Condemnation Commission did you know how many acres there were? A. I never had it measured. I know there was gravel all through that valley for miles.

Q. Prior to the commencement of those proceedings did you know how deep those deposits were? A. No, sir.

Q. In estimating the value of the property or forming the opinion of the value of the property to

which you testified before the Commissioners, did you take into account the presence of those gravel deposits?

Mr. Matthews: I object to it as immaterial.

The Court: Objection sustained.

Mr. Hunt: I pray an exception.

The Court: You may have it.

Mr. Hunt: Will your Honor permit a little argument?

The Court: I will allow you to ask him whether the figures that he has testified to here took that into consideration.

Mr. Hunt: Yes.

Mr. Matthews: I have no objection to that.

Q. Do the figures you have testified to here—value figures on this property—take into consideration the fact that the sand and gravel deposits are there? A. When I made those figures I knew there was sand and gravel all through that country, but inasmuch as, according to my reckoning, there is no market for it except a local one, I attached no value to its presence.

Q. Then the value to which you have testified in this proceeding before this jury is no greater by reason of the presence of the sand and gravel than it would have been if the sand and gravel were not there? A. There is nothing I have learned since the opening of the prior case—

Mr. Hunt: I ask that this be stricken out as not responsive.

The Court: Strike it out.

(Question repeated by stenographer.)

A. No, sir.

Q. Now, Mr. Hershfield, before the commencement of the proceeding before the Condemnation Commissioners, did you have any knowledge respecting the amount of water that might be impounded in reservoirs produced within the 2350 acres under condemnation, with flowage extending over the adjoining land of Edward Hewitt and Sarah Hewitt, in which the Ringwood Company has flowage rights?

Mr. Matthews: I object to that, if your Honor please, as immaterial to this issue and as incompetent, and moreover, most strenuously object to them building any dams or making any reservoirs, because forsooth it is not a measure of damage. They cannot create and capitalize something at the public interest. At this point, therefore, I put the ground of my objection to be that it is incompetent to this issue, and immaterial whether before the Condemnation hearing he had in mind the possibilities of creating these dams.

Mr. Hunt: If your Honor please, I have not tried yet to build any dams. That comes later. I have put the question in this form, did you know it before the proceedings before the Condemnation Commissioners, because in the course of those proceedings he learned it, don't you see, he heard our evidence given.

Mr. Matthews: I object to that statement.

Mr. Hunt: The point is, did he take that into account in fixing the value of this property, and as a preliminary to that point, I inquired did you know about it. Of course, if he didn't know about it he could not have taken it into account. It think that is perfectly competent.

The Court: I think that the question might be competent with respect to what this man's figures are based on. It has nothing to do with whether or not you can get it into your case.

Mr. Hunt: No, it has nothing to do with that.

The Court: Very well, I will allow it.

Mr. Matthews: Your Honor allows an exception on the ground it is incompetent?

The Court: Yes.

(Question repeated by stenographer.)

A. I am not a water engineer, and I know nothing about any alleged storage that may be there.

Q. Now before the commencement of the proceedings before the Condemnation Commissioners, did you have any knowledge concerning the existence in the 2350 acres being taken, of site available and adaptable for the production of water power, hydro-electric power.

Mr. Matthews: Just a minute. I don't know whether he is through yet.

Mr. Hunt: Which is the same thing, your Honor.

Mr. Matthews: If your Honor please, all of this is immaterial and incompetent, whether he had this knowledge before the Condemnation hearing or the hearing before the Condemnation Commissioners. That is not the issue in this case.

The Court: No, but the issue in this case is, on what did Mr. Hershfield base his estimate of values.

Mr. Matthews: Ask the question, did you not in making your estimate of values, take into

consideration the possibility of hydro-electric power, which I would object to on the ground that is not a measure of market value. Your Honor then might overrule me. I think I would be overruled with respect within right, but the fact that he considered it before the Condemnation hearing has absolutely no relevancy to this issue.

The Court: Except as it has a bearing on whether he estimated it in his figures. If he says that he did not, that is answering the question as though it was put in the way you have just indicated it. I will allow it and you may have an exception.

Mr. Matthews: On the ground of its competency and irrelevancy and immateriality?

The Court: Certainly.

Mr. Hunt: Irrelevancy also?

Mr. Matthews: No, thank you.

(Question repeated by stenographer.)

A. I had no information given me by anybody that there was going to be any of those things there. There was some small lakes sketched out, but nothing that would indicate any horse power.

Q. Then is the valuation of the property which you have testified in this proceeding, this present proceeding, any larger by reason of any possibilities for storage of water it possesses, or by reason of any possibilities for the production of hydro-electric power that it possesses, than it would have been had it possessed no such possibilities?

Mr. Matthews: I object to the question, because the witness is asked to answer a question that would furnish an incompetent meas-

ure of market value. The possibilities of hydro-electric power or the possibilities of anything else are not the measure of value. Otherwise the possibilities of that being the place where the last judgment was going to be held—

Mr. Hunt: I will say the possible availability, if Mr. Matthews prefers that.

Mr. Matthews: The possible availability is not the thing. The commercial availability.

Mr. Hunt: I will say available, without any adjective, if Mr. Matthews prefers that.

Mr. Matthews: I object to that as calling for an incompetent measure of damage, not the market value, but present availability in commerce, for the purpose alleged in the immediate future adaptable in commerce, not a capitalization of the public necessity.

The Court: For that reason you say it is incompetent?

Mr. Matthews: Yes.

The Court: If it is for the purpose of showing the competency of those things with respect to the value of this property I would be prepared to rule on that, but just because he is asking him whether he took those things into consideration, I do not think that that goes to the question of whether or not the hydro-electric power potentialities may be capitalized in the verdict of this jury, and for that reason I will allow him to answer the question, which is simply whether he took those things into consideration in fixing his value, and I will grant you an exception, Mr. Matthews.

Mr. Matthews: Yes.

A. I valued the ground as—

The Court: Yes or no.

A. I did not. I found nothing to value.

Mr. Matthews: All right. You have answered it.

Q. Does the valuation which you have testified to in this proceeding contain any item or sum of money which represents the damage done to the remaining lands of the Ringwood Company not taken in this proceeding? A. That element was considered and dismissed. I can find no severance damage, because existing roads or other roads will be provided by the Commission—

Mr. Hunt: I ask that this be stricken out and the witness instructed to give a responsive answer.

The Court: I think it is responsive. He is giving the reason why he found no consequential damage.

Mr. Hunt: I have not asked him about it. I asked him whether he did find any consequential damage or not.

The Court: You are right. I will strike it out as not responsive.

Q. Yes or no. A. No.

Q. Does your valuation contain any item of consequential damages? A. No, sir.

The Court: His answer is no.

Q. Come down to the map, please. Pointing to Exhibit C-1, I ask you whether this shows the flow

line of the Wanaque Reservoir when filled? A. Yes.

Q. This is it, isn't it? A. Yes.

Q. Elevation 300? A. Yes.

Q. That is this meandering blue line that runs all around the map? A. Yes.

Mr. Hunt: I am sending for a map of my own, your Honor. I cannot locate myself on this one as regards the adjoining lines.

The Court: Very well.

Q. Meanwhile, to save time, I might ask Mr. Hershfield whether the small lakes that he said he saw produced on some map during the course of the first proceeding could in his judgment be produced on the property being taken?

Mr. Matthews: I object to that as immaterial to this issue, if your Honor please, because whether or not lakes can be produced does not make the value of this property. It is the country as is. They may appreciate the property because of its adaptability, but the production of—

Mr. Hunt: I withdraw the question.

The Court: Question withdrawn.

Q. Mr. Hershfield, if small lakes could be produced here and there throughout the property being taken, would that fact tend to increase its value for such real estate development purposes as you have spoken of, that is, modest homes in one class, and more pretentious homes, I think was the phrase you employed, of another class?

Mr. Matthews: I object to it as immaterial to this issue. If lakes could be, would that create a development such as you visualized? In other words, the only testimony that this expert is entitled to give on cross examination or direct examination, or any expert, with reference to that is this, is this available for home purposes and home sites generally—not a development. He said he saw nothing of water power here, but he saw a lake on the map.

Mr. Hunt: I withdraw where the question did relate to the lake on the map.

Mr. Matthews: Then the following question is just as harmful, because forsooth that visualizes a condition that is not present, and I think it is purely immaterial, and at this time it should be argued to the court that it would be alleged later as opening the door to testimony on direct which was foundationed in cross. That is why I object so often, because it seems necessary.

The Court: The objection is sustained.

Mr. Hunt: May we have an exception?

The Court: You may have it.

Q. Mr. Hershfield, you are a real estate expert, I think you said yesterday? A. I have had a great deal of experience in real estate.

Q. You said that some of this land is available for the development of modest homes?

Mr. Matthews: I object to that statement. If that is his testimony, the testimony should be read—not developed—erection. I cannot imagine the development of a home, unless the greater growth of the family, as in my own

experience. That is development. I have five and I only had one when I started.

Q. Now, Mr. Hershfield, I read from your testimony of the first day, page 130: Question by Mr. Matthews:

"Q. What next? A. 569 acres of good tillable land including rolling ground, plateaus and possible house sites for modest homes, about $250 an acre.

The Court: How many acres?

The Witness: 569. That would make $142,250, that item. In addition to that, and spotted through the taking, there are in my opinion approximately 100 acres of what I would call the best land—sites for more pretentious homes—which I have valued at $500 an acre, or $50,000."

I ask you whether in estimating the value of possible house sites for modest homes at $250 an acre, and sites for more pretentious homes at $500 an acre, you did or did not take into account the availability or the non-availability of the property for the production of small ponds or lakes?

Mr. Matthews: I object, if the court please, because that would be an immaterial issue and an immaterial question therefor. The testimony of this witness, if he is seeking to contradict him, is just as I insisted on my previous objection, not development, not lakes, and not opening the door to laying this place out, this wild terrain, in a bungalow colony, but, your Honor, we and the Board says to them,

"You may have sites there up in the mountains where a wealthy man may build a home. That is worth $500 an acre there. We will pay that to you. You have a place where a less wealthy following, some of our own type, might want to build a summer house. We will give you $200 an acre for that." But our testimony is not, nor can it be predicated upon any cross examination that we have in testimony, that this may be developed by putting lakes in it or putting creations in there that Almighty God has not put there. It is this land as God left it there. It is adaptable because of nature's giving to it. And this surrounding country. Beyond that you cannot get. Neither the law of God or justice gives it. Therefore it is incompetent and irrelevant to this issue.

The Court: In the event of such improvements having been made, as I understand the decision of our Court of Errors and Appeals, there can be no testimony with respect to maps and plottings that were not in existence or planned at the time; and if that is so with respect to the plottings of land it must also be true it seems to me with respect to the building of artificial lakes for the same purpose. Therefore I think that the objection is well founded and will be sustained.

Mr. Hunt: If the court please, I pray an exception, of course. I also—

The Court: You may have it.

Mr. Hunt: I also respectfuly ask whether your Honor, in view of the importance of this issue, would be willing to hear an argument upon that point?

The Court: Yes, of course.

Mr. Matthews: I think that argument ought to be out of the presence of the jury.

The Court: Very well; the jury may retire.

(The jury retires from the court room.)

Mr. Hunt: Now, as your Honor sees, the question does not involve any reference to any map or plan, does not involve any reference to any articial structure on the land. The question is, did you take into account the fact that the property is available for such and such a purpose.

In Currie v. New York Bay, &c., 52 Law. 281, the court decided as follows:

"The questions raised by this rule are (1) May the situation and surroundings of land sought for railroad purposes impart to it a special value for such purposes generally. (2) If such special value is shown, may the owner reap the benefit of them when called upon to part with his land by the compulsory process of condemnation. That land near a centre of trade—"

Now I go on and read, because I take it the principle is no different between land fitted for railroad use and land fitted for building development, reservoir or anything else.

The Court: All right.

Mr. Hunt: "That land near a centre of trade increases in value with the growth of commerce and in the line of its requirements is not more self-evident than that as the locations for railroad access to such a centre are taken up and occupied, the residue of the lands available for such purposes increases in special value in proportion to the demands thus created and by the scarcity thus produced.

From the same element of common knowledge it results that the value arising from this situation of affairs is an existing value inherent in the residue of such lands at whatever time any portion of such residue is sought by a new claimant for railroad facilities. It would be contrary to economic law and repellant to common justice to permit the fact that the lands are selected by a public agent because of its availability, to strip it of any element of value which independently of the newcomer and prior to his advent it possessed."

See how that applies here, because this land has a real estate value independant of the Water Supply Commission, and prior to its advent. The Water Supply Commission by its taking destroys their availability for real estate development purposes.

The Court: The only difficulty with that is, it seems to me, that the Morris Dredging Company case upsets that.

Mr. Hunt: No, it did not at all, your Honor, not at all.

The Court: Well, I don't agree with you. I think the Morris Dredging Company case did not perhaps upset the theory of the Currie case, but it put a limit beyond which you could not go. In other words, in the Morris Dredging case it was sought to show that the lands were available for certain development of the Port Authority of the Port of New York, and it was sought to bring the Navy or Army Engineers there to visualize a picture of great warehouses and new means of transportation and whatnot. That created a picture that would of course greatly enhance the value of the land as it was at the time of the taking. That the court said, and it seems to me very

soundly said, "The Currie case won't let us go that far." Now why isn't the situation that presents itself here when you begin to open the door for lake sites and hydro-electric power and reservoir purposes, on absolutely all fours with the case I am just referring to?

Mr. Hunt: Why, it is very clearly and absolutely distinguishable, your Honor. In the case that you are referring to, the production of these improvements to which you have just alluded required, as the opinion points out. legislation from the State Legislature and from the Federal Congress, the appropriation of money of both of those Governments,—all things to come in the future. Now this is a much simpler proposal. I am asking this gentleman whether in valuing of this property he took into account the fact that lakes could be produced on it. We do not have to have an Act of the Legislature to build a little dam and produce a little lake on our property. We do not have to have an Act of Congress for an appropriation of public money. May I finish reading the opinion?

The Court: Yes, but while we are on that subject, I did not quite finish my analysis with the dredging case, because I left out, it seems to me, a very important thing that many of the things that you might seek to do and to which you are opening the door, it seems to me in the case at Bar, would need governmental permission, and that brings them to a certain extent within the dredging company case. For instance, you could not go into a water business without governmental action.

Mr. Hunt: I have not so far suggested doing so.

The Court: No, but I am showing the further analogy.

Mr. Hunt: Might it not be better to take this part as we come to it.

The Court: In the absence of the jury I wanted you to know how my mind is working, that is my only purpose, and not to bar you.

Mr. Hunt: Yes. May I there express this thought to your Honor, and then perhaps your Honor will carry the thought and give consideration to it further.

In this very case I am reading from, the Currie case, Currie could not go into the railroad business. He did not have any charter, did not have any railroad, but he owned land that was valuable—that was available for the location of a railroad, and the court says—well, I will read on from the opinion. (Reads from Currie case.)

Now if there is any real estate development value there, it is not created by the Water Commission. They destroy value of that kind rather than create. "Land values not created by it nor based upon its advantage or necessity—"

Value for real estate development purposes would not be based on the advantage or necessity of this Commission. "But which on the contrary antedated its advent, and owed their existence to natural situation and growth of trade."

We will show that except for the act of the Water Commission reaching out over this property, it would have been developed with towns and villages like every other valley in North Jersey. They have retarded and checked and paralyzed its growth for 25 years. That is, not this very Commission, because it had

not been in existence that long. The fact has been known for that long, that eventually this would be a water supply.

"Antedated its advent and owed their existence to natural situation and growth of trade, and the general economic laws underlying all commercial values. The rule that the special advantages of the land—" this is very important, although it applies more to the water supply phase of the case than to this present case. "The rule that the special advantage of the land to the acquiring corporation shall not add to the compensation to be paid the land owner, applies to cases where the taking which is advantageous to the purchaser is not pecuniarily disadvantageous to the seller."

"If, however, the advantageous feature is of such a nature that it is of commercial value in the hands of either—" that would be the case with our water storage possibilities— "then one cannot take it from the other without paying for it."

Now I have read the case from our own book first. The Rum River Boom Company case in the United States Supreme Court—

The Court: Just a minute. Do you mean to argue from that and your side remark, that because this valley was known for 25 years as a future reservoir site, that that paralyzed all growth up in that valley?

Mr. Hunt: It very nearly paralyzed it.

The Court: Then why didn't it depreciate to a very marked degree the value of your land?

Mr. Hunt: It did. The land would be worth five times as much today as it is had not this threat of eventual taking for a water supply hung over it for so many years.

The Court: Then you cannot take advantage now, can you, of the fact that because of the natural location and natural basin that is there, that the owner could sit supinely by for a quarter of a century or longer and say, "Some day they will have to take this, and all we need do is hold, and when they do, we will get City lot values"?

Mr. Hunt: I have not said anything about City lot values, your Honor.

The Court: No, but isn't that the logical reasoning of it?

Mr. Hunt: If you mean getting unearned increment, yes. That is the law we use, isn't it? That is the constitution we use? When we deny that, then we depart from American institutions and the American constitution, and enter upon another course. If you own a lot adjoining the court house and you choose to hold it 25 years and your son chooses to hold it for 25 years after to see its value increase, he is entitled under all our constitutions so far to reap the increase.

The Court: That is true, but if it is evident to everybody for a quarter of a century that the land cannot be used except as a reservoir, and that so depreciates the value that it does not build up, and settlers do not come there, notwithstanding the beauty of the valley and the natural location for homes and hotels and recreation centres and whatnot, do you mean to say that that can be capitalized and that you can come in and say, "This is worth so much in view of the fact that it has laid dormant for all these years because of that fact?"

Mr. Hunt: The very thing that prevents its real estate development like other valleys increases its value for water storage purposes.

If your Honor will take the trouble to read the last report of the Water Supply Commission, part of which I hope and expect to be able to use in this proceeding, it will be perceived that according to the studied judgment of this Commission a project equal to the Wanaque project with 100,000,000 gallons per day flow, must be added to this Metropolitan District, as the Commission calls it, that this Commission serves, every eight years, and in this book they point out their next project, that is, Chimney Rock, in Somerset County, and then they point out and illustrate very graphically by a map how they go further and further, and further and further, and only two or three of these eight year periods will have rolled by when they are taking water from the Delaware River into the northwestern section of the State, over here to Paterson and Passaic and the Hackensack and the Hudson, as the lifeblood of the people living here. Now when that occurs, that adds value. Already the Delaware Valley lands of Sussex County will begin to show an enhancement of value by reason of the fact that it now becomes known that eventually they have got to be taken for this purpose. A thing that comes in demand has a value by reason of that purpose. Now it is idle and absurd to say that the Water Supply Commission creates that value, or that there would not be any value or any demand in the absence of the Water Supply Commission. The people of Newark and in every municipality represented by the Water Commission both drank water and bathed in it prior to the creation of the Water Supply Commission, and by one means or another got their water supply —sometimes from private company, sometimes

from municipal undertakings, but always got the water supplies.

When we come to the water portion of the case, I shall undertake to prove, and I trust that your Honor will permit me, that if there were no Water Supply Commission existing there would be at least a half a dozen takers for this property because of its water supply availability, because of this formation which makes it a cup to hold water, and every one of those takers would be possessed of the power of eminent domain to the same extent that the Water Supply Commission is possessed here, that is, entitled to proceed under the Eminent Domain Act of 1900, just as they proceeded. So that there is a market, and entirely independent of the advent of this newcomer in this case, and it stands on all fours in that respect with the Currie case. Moreover, the Rum River Boom case is an even stronger illustration, considering the facts there. Patterson was the owner of three little islands out in the stream of the Mississippi River. The Boom Company owned the west bank, and it claimed to possess, although the opinion does not make it clear that the court laid much importance upon this claim—they claimed to possess the exclusive franchise to build booms on that part of the Mississippi River by virtue of an Act of the Legislature giving it that franchise. The fact is that the Boom Company owned the west bank of the river and possessed the power of eminent domain. Patterson owned the islands and possessed no power of eminent domain. Neither party could form a boom without controlling both the bank and the islands. Patterson could never hope to control the boom, because he had

neither eminent domain nor boom building franchise. The company had both. They condemned the island. On an appeal the case got before the court just as it is here, and because of diversity of citizenship it was removed into the United States Court and hence it came by appeal to the Federal Court as a last resort for a ruling. The court instructed the jury to bring in a special verdict, first, the value of these islands if their availability for boom purposes be left out of account; second, the value of the islands if their availability for boom purposes be taken into account. The jury came in with a verdict: First, special value for boom purposes left out of account, $300. The second question, so many thousands of dollars—I forget how many thousand, but the court thought it was excessive and on a rule cut it down to $5,500. So there the record stood—a special verdict of $300 did not take availability for boom purposes into account. $5,500 if you did. The court certified the question to the Supreme Court at Washington for an answer, should it be taken into account. The court says yes, and its yes comes again right square to our water question here. The court says:

"The inquiry in such a case (that is, in this eminent domain case) must be what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adaptable. That is to say, what is it worth from its availability for valuable uses. Property is not to be deemed worthless because the owner allows it to go to waste, or to be regarded as valueless because he is unable to put it to any use."

This property is not to be regarded as valueless for water supply purposes because the Ringwood Company is unable to put it to that use. The court says others may be able to use it—this Commission—Jersey City, Newark, Elizabeth, Bloomfield, any one of the twelve municipalities these gentlemen mentioned in the opening, may be able to use it, and make it subserve the necessities and conveniences of life. They can. It is capable of being thus made valuable, because it has a market value which can be readily estimated.

"Exceptional circumstances"—I will skip a few relatively unimportant words and say—"exceptional circumstances will modify the most carefully guarded rule, but as a general thing, we should say that the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future."

Now compare the last paragraph with the present situation.

The position of the three islands in the Mississippi fitting them to form, in connection with the west bank of the river, a boom of immense dimensions, capable of holding in safety over 20,000,000 feet of logs, added largely to the value of the land. The Boom Company would greatly prefer them to more valuable agricultural lands, or to lands situated elsewhere on the river; as, by utilizing them in the manner proposed, they would save heavy expenditures of money in constructing a boom of equal capacity. Their adaptability for boom purposes was a circumstance, therefor, which the owner had a right to insist upon as an element in estimating the value of his land."

Now to your Honor is that any less the law if I read it as follows:

"The position of the Ringwood property in the Wanaque Valley fitting this land to form in connection with the other lands in the valley a reservoir of immense dimensions, capable of holding in safety over 26,000,000,000 of gallons of water, added largely to the value of the lands. The Water Supply Commission would greatly prefer them to more valuable agricultural lands or city lots or lands situated elsewhere in the State, as, by utilizing them in the manner proposed they would save heavy expenditures of money in constructing a dam or well or reservoir to hold water—their adaptability as a cup for holding water was a circumstance, therefore, which the owner had a right to insist upon as an element in estimating the value of his land."

Does not principle permit me to read the words I have just read, as fully as it permitted the court to write the words that were actually written? Now that was affirmed. That very principle was affirmed by the Supreme Court, not more than a year ago—I have the reference right here. By the way, it is very interesting in the view of the Supreme Court—there is no conflict between this case I have just read and the Sage case, because the Supreme Court on March 2nd, 1925, in Mitchell vs. United States, 267 U. S. 345, 69 Lawyers Edition, advanced sheets No. 10, page 311, cited two cases—the Boom case I have just read, and Sage, which your Honor has referred to some times—Sage or McGovern, they are companion cases—cited those two cases and only those two cases together to support the following proposition: The special value of land

due to its adaptability for use in a particular business is an element which the owner of land is entitled under the Fifth Amendment to have considered in determining the amount to be paid as the just compensation upon a taking by eminent domain.

Your Honor understands that the reference is to the fifth amendment, the reason being that the United States was the party, but the fourteenth amendment and also the Constitution of the State of New Jersey are the same, employ exactly the same language in this respect as the fifth amendment does in its application to the United States. The language of the fifth amendment is:

"Nor to be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation."

The Federal Fourteenth Amendment contains the provision that no State shall pass any law depriving any person of life, liberty or property without due process of law. So they are tied in together in this decision based upon the Fifth Amendment just as much as though the Court of Errors and Appeals of New Jersey had uttered it and based it upon the similar words in the State Constitution. Now in between the decision in the McGovern and Sage cases and this latest Supreme Court pronouncement I have just read, three or four other United States Courts in similar circumstances construed the two cases together in support of that proposition. For example, Judge Mayer—a very good judge, I think all will admit that Judge Mayer of the Federal Court, Southern District of New York, is a most excellent judge—in National City Bank vs. U. S., 275

Federal 855, at page 1860, citing Boom Company case, says: "It is well settled that a person whose property is taken is entitled to its market value for the most valuable use, although as a matter of fact he did not devote it to that use, and for some reason or other could not do so. In such a case, however, he would be free to sell it to a person who could so use it." We would be free to sell it to Newark or any one of the dozen municipalities that furnish money for the Water Supply Commission.

Now that case was affirmed by the Second Circuit Court of Appeals in 279 Federal, page 71. I have no reference to any further progress of the case, and I fancy it stopped there.

Moreover, the Circuit Court of Appeals, First Circuit, in United States vs. The Boston, Cape Cod & New York Canal Company, 271 Federal, page 893, quite a recent case, said this:

"We are of the opinion that in ascertaining the market value of property taken by condemnation proceeding the utility or availability of the property for the special use of the taker cannot be shown if the taker is the only party who can use the property for that purpose."

But the twelve constituent cities, if there were no Water Supply Commission, would each be entitled to take the land.

The Court: Only where there is no such Commission. The only difficulty with the argument is there is such a Commission.

Mr. Hunt: Yes, but, your Honor, a jury cannot say that the State of New Jersey by establishing a Commission, by creating a Commission and by permitting the Commission to function in behalf of any two or more, or of one or more municipalities that might apply to them for that purpose, had deprived every property owner in North Jersey, everything north of Mercer County—your Honor has never ruled that the Legislature by simply making and creating a Commission and saying that a City might apply to it and offer to furnish the money, the Commission might build a dam—to be by that means deprive every land owner in the northern half of the State of New Jersey of any value that his property might have on account of its availability for water supply purposes. If that is the case, Russia is not in it with us.

The Court: I do not think that is the case.

Mr. Hunt: Certainly not.

The Court: But this is a case. It stops us with a lot of speculative—

Mr. Hunt: I do not want a speculative dollar, your Honor. I do not want one red cent that doesn't represent sound value.

The Court: I do not mean speculative with money as much as I mean speculative things as you might picture on this plan, because under the Morris Dredging Company case our Court of Errors and Appeals said no to that proposition, as I understand that case.

Mr. Hunt: Well, they said no, very largely, as I understand the reason for it, because it required legislation by Congress, legislation of the State, appropriation by Congress, appropriation by the State, to bring about this situation which was to enhance the value of the property. Of course, that won't do. I have no quarrel with the Morris & Cummings Dredging case. I say that it and Currie and Rum River Boom case all stand together, each party in its proper sphere. The Currie and Rum River support us here; Morris & Cummings will operate in its proper field. Its field is not in this case.

Of course, they are going to argue they are the only parties, and I am going to say that they cannot become the only parties at our expense until we are paid compensation. The Legislature cannot take our properties away from us, cannot take its usability and availability here. I stand here in New Jersey, not as these men will ask you to believe, in Russia or any other Soviet country. If, however, the property has a certain utility or availability, not only to the Water Supply Commission but to other parties who could use the property for the particular purpose intended by the taker, if it is to every constituent city who is supplying the money for the Water Supply Commission, then this utility or availability may be shown.

Now, let me try to make plain what the Water Supply Commission is. I do not think it is a very useful state body, of course, but I do not think there is any need of taking the exaggerated view of their own importance.

Newark has produced a water supply which is more or less adequate in present conditions, but, as plainly can be seen, is not adequate for future conditions or drought conditions present. Jersey City is in the same position, but probably a little better off than Newark. Elizabeth, Plainfield, and those towns served by the Plainfield-Union Water Company have been drawing very rapidly, and more rapidly than private water resources would permit it to increase its facilities and, therefore, there is some very serious flows of water, offhand.

Paterson, Montclair, and so on, and your Honor knows the situation there—now, this Water Supply Commission is nothing more or less, your Honor, than an organization that

permits those municipalities to work in concert and produce a project that is to serve all of them and pay the cost proportionately. That is all it is. It is not God Almighty. It is not a State government. It is only that it is just a little device that the law has accomplished in the interest of organized communities and concerted efforts to allow two municipalities or more to make a joint effort for the production of water, rather than to compel each to get it separately.

That is all I know. It is not necessary for me to argue that the fact of setting up such an agency as that will not be construed by any court of this State as robbing every land owner north of the line of Newark, New Brunswick, Trenton, of any value that his property possesses on account of its availability for water use. On the other hand, every dollar for the land remains in there just the same. The taker has got to pay for it.

The issue comes down to these two questions: First, as a matter of fact, is the property available, or is it not, for the production of the water supply?

If it were a property like the Sage or the McGovern property—I forget which of those two cases come first—if it was a property like that involved in those cases which constituted less than one per cent of the area where a water supply project could be created, I would say it had no value because of availability for water supply purposes. Less than one per cent of this area that we see before us now would be a small pond that might serve a private house. I do not know whether it would even do that, but certainly I would not claim that it had value because of its availability for

water supply purposes; but here is 40 odd per cent shown in yellow and taken from us, and on it, as we shall prove, there can be produced by this Commission, if it chose to take it and do it, by Newark, Plainfield, Elizabeth, Montclair, any municipality that had the right of eminent domain and got possession from the State Water Conservation Board which can deal as it pleases with these state agencies, but cannot deal as it pleases, disregardful of my client's constitutional rights in its property, could go there, take our property, develop that fifteen or thirteen billion of gallons of storage and 62,000,000 gallons of daily yield. So could any private water company. There are a number of them organized by the Special Act of the Legislature prior to the Constitutional Amendments of 1874 or five, I forget which it was,—some possession, some not possessing power of eminent domain. One of them—the Plainfield-Union, East Jersey—I cannot think of any other companies' names at the moment —they are all there—Hackensack. They could do it. So could the Water Company organized under the General Water Rights Act which the Legislature passed some years ago.

Mr. Frazer: Under the Home Rule Act any municipality may do it.

Mr. Hunt: Under the Home Rule Act of 1918, yes, any municipality may do it. Now, all that field is open, and we will show by witnesses who know what they are talking about— I would like to show it by the Commission's engineers if they will have them here and let me put them on, that is the best valley, in the sense of availability for holding water, and in the sense of nearness to the point of use in the State of New Jersey, the valley in which a

memory of Judge Dickson, and too much for Judge Lewis. To imagine if there was a damage to the trees, and no value given, and the trees were not proved to be in foliage, for instance, dead so that the jury could give value for it; but in that case they were existent factors. This jury was permitted to look at the property and they may get whatever they visualize as to the adaptability of that property in its present condition. But, if we open this door by that question to Hershfield, on cross examination his denial of his taking that non-existent factor into his consideration of values makes them bring evidence to show that they may put these things there.

His admission of taking non-existent factors into his estimate of value immediately puts him subject to cross examination, of putting a lake there himself.

I call your Honor's attention to the fact that in the experience of this Court and my own experience, the same witness being at elbow of trial counsel, that was the circuitous attempt in the DuBois case of trying to get evidence in, of laying out of its lake front lots. And may I just read the one opinion, because I am sure you will pay more attention to what the Court said than to what I say.

This is in the Manda case: It is argued that such testimony is requisite in order to show the true value of the land, because all value is not of the land in the wastage, but which can be reasonably given it, perhaps, with a slight expenditure.

While the rule is that the land owner is entitled to receive a fair price for any use for which it has a commercial value of its own in the immediate present or in reasonable antici-

pation of the near future—citing the Currie case—that that concerns the present market value, having the reasonable anticipated use in view. Having a different use from laying out plots on a map, or laying out lakes on a terrain. In this case, estimating the cost of putting seed upon it, and estimating the purchase to these lake shores. I interpolate, and again, the Court continuing, and calculating what the value would be if such improvements were actually made. Such proof was condemned in New Jersey R. T. Co. vs. Suydam, and also in National Docks vs. P. R. R., in 57 Law, where in a dissenting opinion of Mr. Justice Lippincott made use, in the dissenting argument,—neither the Court nor jury could determine this and it cannot be of value in the proper determination of the amount of damage to know what some particular structure if built upon a certain site would cost now. And it is beyond question that the Court and the jury are to determine judicially what are now the present values of the land and the present damages sustained by the taking. The reasoning of the learned justice commends itself to us. The rule limits proof to the present condition of the land and uses to which it is naturally adapted, but excludes speculative and possible uses if improvements and changes are made. It seems to me to be—

Mr. Lewis: If your Honor please, my friend Matthews and myself are not very far apart. I think I do not claim, for a moment, that we have a right to show here what the value of this land would be with lakes on it, or what the value of this land would be with the reservoir. To go a little further, and that is entirely aside from the question, the question is

as to what the capabilities of that land were in March, 1925. Building lakes come after, perhaps. If the purchaser went there in March and looked at the land, why, he might say, well, it is not wild land, this is not farm land, this is land that can be developed. I can put lakes here. I can put this there, and I can afford, therefore, to pay for this land so much money. He pays according to the capabilities of the land, what it is worth for the purpose of development. What it is worth at the time he purchased it, and the jury may say, and they have a right to consider, whether or not if it is shown that this land may be improved by the putting of lakes upon it of an ornamental character, that the land, for that purpose, without a lake on it, is more valuable than it would be if it did not have any such capabilities. That is all there is to it.

The Court: I have already ruled that Mr. Hershfield, over objection of counsel, could answer the question as to whether or not in valuing the land he took into consideration the potential hydro-electric powers, and to be consistent I will permit the question that you have propounded to be answered but not for the purpose of allowing the questions further to be asked to rebut this with respect to what lands would be when they were along the lake front, because that would be, in my opinion, directly contrary to the Manda case.

Mr. Lewis: I promise we won't ask that question.

The Court: I just want you to know what the ruling would be if you ask it.

Mr. Hunt: We had not expected to ask that question.

The Court: If you wish an exception to that ruling you may have it.

Mr. Matthews: Yes, on the ground that that evidence is incompetent.

The Court: I thought you should have an exception, because you took exceptions to my previous ruling on the same principle. Now, then, the jury and Mr. Hershfield may return.

(The jury then returned to the court room.)

HENRY G. HERSHFIELD, resumed.

CROSS EXAMINATION CONTINUED BY MR. HUNT:

Mr. Hunt: If the Court please, at the time the jury was excluded a question had been put by me and an objection made and it was argued in the absence of the jury. I would like to have that question read now.

The Court: Since Mr. Kelley is out of the room perhaps you better re-state it.

Q. Now Mr. Hershfield, in lieu of the question which was actually pending and which Mr. Kelley has carried out with his notes, I will put this which is agreed to be substantially the same question: In arriving at the valuation of this land to which you have testified, did you take into consideration the availability and adaptability and capability of the lands under condemnation for the creation within their borders of ornamental lakes? A. I did.

Q. And how much greater is the value of the land as testified to by you by reason of its possess-

ing that availability and capability than it would have been had it not possessed such an availability?

Mr. Matthews: The same exception.

The Court: I understand this is a continuing exception to all this line of testimony.

Mr. Matthews: Yes, your Honor.

The Court: You may have an exception to my permitting it.

Mr. Matthews: Thank you.

A. I figured out there were some lakes that the Ringwood interests told me they intended putting there.

Mr. Hunt: I ask this be stricken out as not responsive.

Mr. Matthews: We consent to that.

The Court: Very well, strike it out.

Mr. Hunt: Will you read the question, please, Mr. Kestenbaum?

(Question read.)

The Witness: I added nothing to it for three reasons.

Mr. Hunt: One moment.

The Court: That is not responsive either, Mr. Hershfield.

Mr. Hunt: He said he added nothing to it. Therefore, his answer is no greater, and if the Court will admonish him to go no further—

The Court: Yes, the reasons were not asked.

Q. To shape your reply in the form of the question, you say no greater? A. For the three reasons.

H. G. Hershfield—Recalled—Cross.

Q. I have not asked anything for any reasons. What is the fact; greater or no greater? A. I have no knowledge that the lakes could be there.

Mr. Hunt: I ask that be stricken out.

Mr. Matthews: I submit this cannot be yes or no, particularly in view of the ruling of the Court.

The Court: If the answer cannot be yes or no I will allow the witness to state what he did add to the value because of the possible lakes.

The Witness: I did not add to the value for three reasons. The first—

Mr. Hunt: The Court is permitting the witness to say this. I have not asked such a question.

The Court: No, I am permitting him to amplify his answer as to why he did not add to the value. That is all.

The Witness (Continuing): In the first place—

The Court: He says he cannot answer it by yes or no. Isn't that the fact, Mr. Hershfield?

The Witness: Yes, sir.

The Court: Very well.

The Witness (Continuing): The first reason that I did not pad the values was because the lakes—

Mr. Hunt: I object to the phrase "pad value."

The Court: I will let it stand. It is not meant that way. I think you understand what he means.

The Witness (Interposing): Add to the value.

H. G. Hershfield—Recalled—Cross.

Mr. Hunt: I think he means, your Honor, to create prejudice against me if he can.

The Court: If he does I will strike it out.

Mr. Matthews: May I at this time, if your Honor please, ask the Court to believe that it was probably a slip in the use of the word, a slip, instead of saying "add."

The Court: He has already corrected it. He has already said what he meant by it, and he said he meant by it "add"; but if the witness doesn't answer—any witness for the obvious purpose of prejudicing either side, his answers will be stricken out.

Mr. Matthews: I think Mr. Hunt is predicating, perhaps, counsel's attitude of the witness.

The Witness: I did not add to the value already given, for three reasons. The first one was that the lakes in question were not there, nor could I visualize them.

In the second place, if the lakes were where they alleged they could be placed, according to my information they would flood ground not belonging to the Ringwood Company.

In the third place, I did not know, nor did I have any data as to what these lakes, if produced, would cost. It might be possible that the cost of the lake would not be advantageous to the surrounding property. It would cost more to build the lake and keep it than it would as if they left the ground as it was before.

For these three reasons I could give no added value, because they were entirely too speculative.

Q. Now, Mr. Hershfield, please bring your data concerning this valuation and come down to the map. A. What data?

Q. The data in regard to the value of this property. You had it here this morning, and point out to the jury on Exhibit C-1 the location of the Hook Road as it crosses the Wanaque River near the side of what is called the Old Ryerson Furnace? A. Here (indicating.)

Q. Write your initial there, will you, with the black pencil that I hand you. A. (Indicating).

Mr. Hunt: The witness makes an initial surrounded by a circle on the right flank of the Wanaque River at the point where the west bank crosses it.

Q. Will you look at your notes and tell the jury at what price per acre you valued the land comprised within that circle which you have drawn around your initial H? A. That is swamp ground at $20 an acre.

Q. Now, Mr. Hershfield, I point to your initial as you just placed it on the map, and ask you to tell the jury whether at that very spot that you are speaking of in approximate terms there is not now existing a part of a concrete dam built in such position and manner as if completely closed would serve to dam the waters of the Wanaque River and create a lake?

Mr. Matthews: As if completely closed, that includes what is not now on the premises.

The Court: I do not understand so.

Mr. Matthews: If the physical characteristics are his, the dam could not be there.

The Court: Now, the question is if that opening were closed so that the water backed up beyond the dam that is now there. That is the question, isn't it, Mr. Hunt?

Mr. Hunt: The question is whether those two parts of the dam not closed together by the remaining third part that would run across the stream are not there.

Mr. Matthews: If your Honor please, that means the building of something that is not on these premises.

Mr. Hunt: This is testing what the witness said a moment ago. I wrote down what he said, that the dams were not there nor could I visualize them.

Mr. Matthews: The lakes were not there. I object to the testimony as incompetent because it does not visualize conditions existant. All they are entitled to show is what Judge Lewis said they wanted to show, whether or not it was taken into consideration. The answer of the witness is no for three reasons: I could not visualize them being there. I argued with your Honor in the absence of the jury, and I won't again, but your Honor gets my point. That is opening the door to the construction of things that are not there as of March, 1925.

The Court: As I understand this question, he is asking him about something that is there, at least, in part, so that he is asking the witness now: Could you not visualize the lake because of the dam, or part of the dam that is now there.

Mr. Hunt: Precisely.

H. G. Hershfield—Recalled—Cross.

The Court: I will allow it. I think that is proper.

Mr. Matthews: Will your Honor allow an exception as to its being incompetent?

The Court: Yes.

Mr. Hunt: Will you read the question, please?

(Question read).

Q. Yes or no, please. A. There are two shoulders of the dam there.

Q. You saw them being constructed, did you not? A. I stopped there several times.

Q. And they were constructed before this condemnation proceeding was commenced, were they not? A. I believe so.

Q. In fact, our beginning to construct that dam was what occasioned your commission to begin condemnation proceedings? A. I think so.

Mr. Matthews: I object to that as calling for a conclusion, and the statement of counsel is prejudicial.

Mr. Hunt: He has already answered.

The Court: If he has answered I will strike the answer out because the questions calls for a conclusion.

Q. You were present at that point the other day with the jury, were you not? A. Yes, sir.

Q. And did you not then see and hear pointed out what would be the flow of that dam if it were filled? A. No, sir.

Q. You did not? A. No, sir.

Mr. Matthews: If it were, I think it would have been contrary to your Honor's ruling.

H. G. Hershfield—Recalled—Cross.

The Court: I was present. I do not remember it.

Mr. Lewis: It is a question of—

Mr. Matthews: Did you see pointed out to the jury, he said, the very line of that dam there?

The Court: Well, he said no, he did not hear it.

Q. You are aware, however, are you not, that on the east side of the river the concrete dam existing there had been brought up to its full intended height? A. I don't know what its intended height was. I know a dam was started there.

Q. You have been there and you have seen to what height it has been brought?

Mr. Matthews: I object to all these questions.

The Court: I will allow it.

Q. With the dam standing at the height to which it had been raised already on the east side, and closed so as to stop the water, these lands in that neighborhood which you have told us you valued as swamp land at $20 an acre, would be flowed with water and would constitute a pond? Can't you visualize that? A. I can visualize that the completion of this dam would unquestionably cause a pond to be in there, but the extent of the pond I cannot visualize because I cannot look around corners.

Q. But you certainly, you have been there often enough to visualize that the land that you have classified at that location as swamp lands would be flooded by the waters of this pond and would be

lands under water, that is true? A. It would be lands under water of that dam was ever completed.

Q. While the surrounding dams that stand higher would be lands abutting upon but standing several feet above the water of the pond?

Mr. Matthews: I object as calling for a situation that is not existing.

Mr. Hunt: I asked is he cannot visualize that.

Mr. Matthews: I object as incompetent, testimony because it visualizes a condition that would create a market value, contrary to the rules as to market values.

Now, this is not only a creation of this partially physical existing dam and lake that would be held by it, but the appreciation of shore lines in other property already now valued by Hershfield as wastage and must be so, it seems to me. They want to refute it by bringing in these impossibilities, according to the Manda ruling, the making of new land out of this by a lake that is not existent. That is why I object, because it creates artificial market value.

The Court: I will let him say whether he can visualize or not, and I will grant you an exception.

Mr. Matthews: Yes, if your Honor please.

Q. Did you visualize or not? A. I do not know the outlines of the proposed pond. There were any stakes there, to my knowledge.

Q. On the occasion when the Condemnation Commissioners were there, when I also was there and Mr. Anderson was there, and you were there, Mr.

Anderson pointed out the flow line of the pond, did he not? A. He indicated what he thought it would be. There is no accuracy—

Q. Yes, there is accuracy, because—

Mr. Matthews: I object to this statement of counsel "yes, there is accuracy" to this witness. It is testimony.

The Court: Strike it out.

Mr. Hunt: Strike it out.

Q. Didn't Mr. Anderson on the occasion I have referred to, point to a certain place on the bridge structure of the bridge crossing the Wanaque River there and say the water will flow to this height on this bridge?

Mr. Matthews: I object to this as incompetent and immaterial, because it is an artificial—

Q. (Continued) Did he—

Mr. Matthews: Will you please give me a chance to put my question on the record, Mr. Hunt. It is an artificial created condition, and cannot go to market value of this as of March, 1925, the condemnation date.

The Court: This is something that was told this witness subsequently?

Mr. Hunt: Something that was told this witness on the view of inspection had by the condemnation Commissioners.

The Court: And if it still goes to his power to visualize—

Mr. Hunt: Yes, that is it, sir.

The Court: And for that purpose only I will allow it.

Q. Yes, sir. Will you answer?

Mr. Matthews: An exception on the ground it is incompetent.

The Witness: If he did say it, I don't remember it.

Q. Didn't Mr. Anderson at that time in your presence and hearing point out the lands on the Hook Road as well as lands north of the Hook Road that would be flowed by the water standing in the pond created by this dam, the new dam?

Mr. Matthews: I object to what Anderson said on this occasion about an artificial condition as not competent testimony on cross examination of this witness, to show or to make a predicate for the future showing in their direct case of market value.

Here is Anderson an agent of the Ringwood Company trying to show the Condemnation Commissioners a lake. He must have shown it to them, as a matter of fact, but he cannot show it in a court of law.

If your Honor please, it is not competent. The lake is not there and he cannot create values, otherwise every Tom, Dick and Harry that has a piece of property can stick a tub out in his back yard and make a lake out of it.

The Court: I have indicated the extent to which this testimony might go, and no further, and I will read the situation that you fear when it crops up, but for the purpose, of having

this witness visualize a lake and amplify the reasons that he gave in connection with the reasons that he gave for not adding any value because of the lakes I think it is competent, and I will allow it, and you have an exception.

Mr. Hunt: Will you answer, it, please?

The Witness: What is the question?

(Question read.)

The Witness: If he did, I don't remember it.

Q. Did you not on this occasion that you refer to ask Mr. Anderson whether that dam would not cause backwaters, that it would create to the west of the river to flood the bridge that carries the road over to the Hook Road,—did he ask that question?

Mr. Matthews: Same objection.

The Court: Same ruling.

Mr. Matthews: Exception.

A. If I asked any questions that would cause the lake—

Q. Did you not ask that question? A. If I did it was not based on the state of facts—

Q. Please answer yes or no, did you not ask that question? A. You referred to that bridge—

Mr. Matthews: If your Honor please—

The Court: He says he did not. That is the answer.

Q. Did you not, before the commencement of the condemnation proceedings, see in the Ringwood Company's office the plans for the dam which were to bet built for this location?

Mr. Matthews: I object as to whether he saw plans.

Mr. Hunt: Whether he can visualize it.

Mr. Matthews: This visualization is getting to be a reality, if your Honor please. Whether he saw plans in the Ringwood office of lakes that were going to be dotted there or not is immaterial to this issue. They, of course, will create lakes where another man would not have the temerity even to have a drop of water, and they will build costly projects in them. Mr. Hunt asked Mr. Hershfield, on cross examination, if we did not have to buy the Miller place, so they would not build another lake, but the proposition as to what he saw in their office is not testing his credibility.

The Court: I will sustain the objection to that question because it does not help the visualization of the lakes, as I see it, if they were shown to him on a map.

Q. May I ask the witness,—Mr. Hershfield, would it or would it not aid you in visualizing a map if he had an engineer's plan of it laid before you that showed it in all its details?

Mr. Matthews: I object, because that asks him whether his power of visualization would be increased. Not that he visualized. He said he did not. Now, he had no maps or anything else but Henry Hershfield's experience dies, and that is all we offered him for.

Mr. Hunt: He said he could not visualize. Now I ask him whether seeing a map would or would not assist him.

The Court: I will allow him to answer that.

The Witness: If I had a map it would naturally assist me.

Q. You did, in the Ringwood Company, prior to this commencement of this Condemnation proceeding, see a map of those plans?

Mr. Matthews: I want to object to it, because this cross examination, if I understand it, is being allowed in order to show his failure to visualize these lakes on the maps by Ringwood.

Mr. Lewis: Not his failure, but his inability.

Mr. Matthews: When I am through you can have your say, Judge Lewis. Do not get in Hunt's habit. I will be through in a minute.

Mr. Lewis: I had not—

Mr. Matthews: The cross examination of Hershfield is allowed because in taking market value he did not take in the lakes into consideration, because he did not visualize them. Now they come along and ask him didn't he see maps in the Ringwood Company's office that would help him to visualize these lakes. Now, that is an improper question. Maps are self-serving. That is the map of the Ringwood Company gotten up for the purpose of creating values, and we should not be bound in this examination to an artificial value.

The Court: What was his answer to the other question. I could not hear it.

Mr. Hunt: His answer was that a map would assist him in visualizing.

The Court: That being so, I think it would be proper to ask him whether he saw such a map. I will allow it.

Mr. Matthews: Your Honor will allow me an exception because you ruled before and allowed an exception.

The Court: Yes. They have laid the foundation now.

Mr. Matthews: And I objected to the foundation, because I saw the purpose of it.

Mr. Hunt: Will you read the question.

The Court: The question is, did he see in the Ringwod Company a map or plans of the lake.

(Question read.)

Mr. Hunt: I could not possibly have asked the question in that way.

The Court: Suppose you reframe the question.

Q. Did you or did you not in the Ringwood Company's office or elsewhere, prior to the commencement of this condemnation proceeding, see a map or plan or drawing of that dam which is now partially located at the point that you have marked on C-1?

Mr. Matthews: I object for the same reasons and ask an exception to that question.

The Court: I will allow it. You may have it.

A. I do not recall seeing any plans of any dams. I do recall asking the Ringwood Company to send me maps showing their proposed lakes. They did send me—

Mr. Matthews: I object to this, if your Honor please.

Mr. Hunt: I do not understand that Mr. Matthews has the right to object to an answer to a question I put on cross examination.

The Court: If it is not responsive, and this is not responsive, therefore I will not allow him to go on any further.

Mr. Hunt: I have always understood, your Honor, that it was only counsel putting the question who could object that an answer was not responsive. The Supreme Court so ruled a year or two ago. I cannot remember the title of the case now, and I am sorry about it.

The Court: You are right, but this is not responsive.

Mr. Matthews: But I cannot stand by and let a whole lot of irrelevancy go in.

Q. Did they send you a plan or map of this dam? A. No, sir.

Q. Did they send you a plan or map of other dams?

Mr. Matthews: I object to other dams that are not existant.

The Coure: Objection sustained.

Mr. Hunt: All right.

Q. Did they send you a map or plan of a lake to be created by this dam?

Mr. Matthews: I object to that as immaterial, if your Honor please.

The Court: That is the very thing we are trying to get. I will allow that.

Mr. Matthews: Will you allow me an exception.

The Court: Yes.

A. At my request, they sent me a map showing some of their proposed lakes.

Mr. Matthews: Now, I object to this. The question is a lake involved in a dam, and I move to strike it out as not responsive.

The Court: It will be stricken out.

Mr. Hunt: Will you read the question.

(The question read by stenographer.)

Q. Yes or no. A. Yes, they did.

Mr. Matthews: May I have an exception on the record to that, if your Honor please.

The Court: You may have it.

Q. You are aware of the fact, are you not, Mr. Hershfield, that there formerly stood at this very site the old Ryerson Forge Dam which flowed to a flow line of approximately 235 feet?

Mr. Matthews: I object to that, if your Honor please, as immaterial to this issue.

The Court: I think that is material. I will allow it.

Mr. Matthews: If he knows.

A. I know there was a pond there, but what height it flowed I do not know.

Q. Now, we will come to your second reason. You said, according to your information, these dams would flood other people's land. Now, did you have any information that this particular dam to which I have now directed your attention would flood any ther person's land? A. I did.

Mr. Matthews: I object to that as immaterial.

The Witness (interposing): Yes, I did.

Mr. Matthews: Just a moment, can't I get a ruling on my objection.

The Court: I will allow it and grant you an exception.

Q. From whom did you obtain such information?

Mr. Matthews: I object on the same ground that it is incompetent and immaterial.

The Court: Objection sustained.

Q. Was your information of a hearsay character?

Mr. Matthews: I object as immaterial.

The Court: I will allow it.

Mr. Matthews: An exception, please, sir.

The Court: You may have it.

Mr. Matthews: It is only a foundation for the same question to be asked all over again.

A. Yes; I didn't get it myself; some one had to tell it to me.

The Court: I cannot hear you, Mr. Hershfield.

The Witness: I say I did not deduce it myself. It was told me by someone who had followed the contour lines around which showed they flood Murchios property in one case, and Marini's property in another. For that reason I dismissed the lake.

Mr. Matthews: Just a moment, Mr. Hershfield.

Q. This person showed you the contour lines that were followed around? A. Someone did.

Q. Yet, with the aid of these contour lines you could not visualize the lakes? A. When I got this map it was so absolutely undecipherable, I wrote the Ringwood Company and said if they expected me to make any use of it, please send me a map that I could read. He never did it, and I have the map yet in my files that no one can read, blotted and blurred, covered with myriads of lines, and they asked me to take that as their final study. They never gave me a map that a man of average intelligence could glean anything from. I have a map home that they gave me, if it is of any value to you.

Mr. Matthews: Just a minute, Mr. Hershfield, haven't you answered the question. I don't want to be objecting all the time.

The Court: Well, he has answered it, I think.

Q. But even with this showing the contour lines you could not visualize this? A. I could visualize this, but not to any degree that caused me to give it any particular value, because even then I don't know what it is.

Q. Now, then, tell me again whose lands it floods? A. According to information—

Mr. Matthews: I object to this as immaterial to the issue.

The Court: I will allow it.

Mr. Matthews: An exception, please.

The Court: You may have it.

The Witness: Portions of Marini's and Murchio's in this case, and other cases other people's lands.

Q. Aren't you familiar with the fact that the Ringwood Company possesses frontage rights over the property?

Mr. Matthews: I object as calling for the conclusion of law.

The Court: Objection sustained.

Mr. Hunt: If, as a matter of fact, the witness knows, he should be permitted to be interrogated on it.

The Court: How can he know?

Mr. Hunt: He is their real estate expert who has examined all this valley for them.

Mr. Matthews: But not their titles.

Mr. Hunt: He has testified that he has seen the deeds put in evidence.

Mr. Matthews: Not their titles, he has not. He is not our legal expert. We are. Call us, we will tell you.

Mr. Hunt: Our deed for the flowage rights on the Marini place was put in evidence.

Mr. Matthews: I object to the statement about the former hearing regarding the Marini deed, because we will attend to that when we come to it, because that is the direct case. This is not cross examination. It is incompetent on this issue and calls for a legal conclusion from a real estate man.

Q. What land have you been informed this land would flood except the Marini property?

Mr. Matthews: I object to that as incompetent.

The Court: Very well, I will allow it.

Mr. Matthews: An exception, please.

A. The Murchio property.

H. G. Hershfield—Recalled—Cross.

Q. How do you spell it? A. Murchio, M-u-r-c-h-i-o.
Q. What other property?

Mr. Matthews: I object as incompetent.
The Court: I will allow it.
Mr. Matthews: Exception.

A. That is all I can recall, except possibly a portion of Joseph Albegese's property up here (indicating).
Q. Whose else? A. That is all I can recall.

Mr. Matthews: I object as incompetent.
The Court: I will allow it.
Mr. Matthews: An exception, please.

Q. You say, then, it does not flood anybody else's land besides those you have mentioned? A. Not that I know of.

Mr. Matthews: I object to that as incompetent as to any other flowage, and ask an exception.
The Court: I will allow it.

Q. Now, Mr. Hershfield, referring once more to this morning's pig pens, you know, do you not, as a matter of fact, that those pig pens are now inhabited and have been for some time inhabited by employees of the Water Supply Commission or its contractors who are engaged on the project? A. Yes.
Q. People are living in there? A. There are some darkies there, just existing.
Q. Human beings are living in them? A. Yes, sometimes.
Q. You call a negro or black man a human being?

H. G. Hershfield—Recalled—Cross.

Mr. Matthews: I object to this. He is talking about somebody on the witness stand seeking to prejudice him. This is raising the flag of love for the colored man, and I object to it.
Mr. Hunt: I asked him whether the people were not living there, and he said—
The Court: I will allow it.
Mr. Matthews: You asked him if a colored man—
The Court: He asked him whether a colored man was a human being, or words to that effect, and I think he is entitled to an answer. I will allow the answer.
Mr. Matthews: The constitution that he has been prating about says "No distinction shall be made on account of race, color or creed," and he is an American, and says—
Mr. Hunt: He does not know his constitution very well. It is as to his previous servitude.
Mr. Matthews: I was not thinking of that. I was not thinking of slaves. I observe it, if your Honor please, when I speak to you.
The Court: The answer, please.
The Witness: What is the question?
(Question read by stenographer.)
The Witness: They are bound to be.
The Court: Please do not let us encumber the record with such silly questions.

Q. Mr. Hershfield, what is the whole number of acres to be acquired by the Water Supply Commission in this taking for the Wanaque Reservoir? A. I do not know it accurately.

Mr. Matthews: I object to that as immaterial.

The Court: What is the materiality of it, Mr. Hunt?

Mr. Hunt: I thought that had been ruled as material when the witness Craigmile was on the stand, and I wished to know how many acres in the entire taking, so that the jury may see what proportion of the entire taking is being taken from my client.

The Court: I think you withdrew your question, if you did ask Mr. Craigmile that.

Mr. Hunt: No, sir; Mr. Craigmile said he could not give me the information at the moment, but he would make a tabulation of the figure which he promised to do and give it to me the next day, but I have not seen him in court since.

Mr. Matthews: The proportion that the Hewitt acreage bears to the whole is a simple proportion and makes no difference in market value. We bought everything, apparently, except Hewitt's and what we condemned.

Mr. Frazer: May I make a statement in reply to Mr. Hunt's statement of Mr. Craigmile's statement. I pointed out that on the map the various parts had their acreage marked upon them, and it was a mere matter of computation which anybody might make.

The Court: I think that is correct.

Mr. Frazer: And I think the request was then essentially withdrawn.

Mr. Hunt: The request was not withdrawn, because on the same afternoon we found through inadvertance omissions of area on some of these tracts. The area of these tracts, or some of them, is omitted and not stated on the map.

Mr. Frazer: That was another error on your part, because you failed to note tract 80 was divided into three sections. You looked at two and found no acreage, and under the third area the total acreage was stated.

Mr. Matthews: And the numbers found on the other amounted to the totality of the Hewitt acreage and the proportion to its totality of the basin acreage has absolutely no effect upon the market value.

The Court: What materiality do you claim for that question, Mr. Hunt?

Mr. Hunt: I will claim this materiality for it, your Honor, that if it be true that the property being taken from this owner constitutes a large percentage of the whole property required for the Water Supply project, then its value was relatively greater.

Mr. Hunt: That is why I am objecting to it, if your Honor please, and it comes within the ruling that your Honor has sustained.

The Court: Yes, I will not allow it at this time. Later on, if it becomes important you may get that information, I think, without any difficulty.

Q. Mr. Hershfield, you know this dam we have been talking about where you placed your initial on the map is built on property belonging to the Ringwood Company, is it not? A. I so believe.

Q. You know it? A. Yes, I know it; as far as I know anything connected with this case.

Q. And you know that it was being built by a contractor for the account of and under contract with the Ringwood Company?

Mr. Matthews: I object to that as immaterial.

The Court: The materiality of the thing, it seems to me, you have already shown that it was in course of construction or had been constructed prior to the beginning of these proceedings, and that the witness has so testified to.

Mr. Hunt: May I respectfully refer the court to the first day's record, page 115, question by me:

"What is the total acreage within the taking line as shown on this map?

Mr. Frazer: Acreage of the Ringwood Company?

Mr. Hunt: No, total acreage?

Mr. Frazer: I object to that as irrelevant." Then I state my grounds for pressing it.

Mr. Matthews: Is this a question to this witness?

Mr. Hunt: No, it is addressed to the court.

Mr. Matthews: I did not so construe it.

Mr. Hunt: Then the court asks:

"What is the objection made. Why is it immaterial?

Mr. Frazer: I cannot see that it has any relevancy at all."

Then Mr. Frazer argues his position, after which, without further remark, from me, your Honor said, "I will allow you, and grant you," Mr. Frazer, "an exception; but I do not see the relevancy of it at this time."

However, your Honor allowed it and so perhaps your Honor might give instructions to the other side to have Mr. Craigmile here so he can answer the question that you have thus disallowed.

The Court: Mr. Frazer has pointed out at that time, that the map itself, which is in evidence, contains that very information, and has pointed out the fact that one of the tracts is divided into three parts, and on one of those divisions the total acreage of all three parts is given. If it is true, if that map contains all that information, I see no need of asking Mr. Craigmile or anybody else to appear, because it is merely a matter of calculation, and if somebody will jot it down and add it up, there is no question about agreeing that that map shows that acreage. If that is your only purpose, and assuming it is competent—

Mr. Matthews: When Craigmile was on the stand there was not the opening or the purpose that there is in the question now. Your Honor has not ruled to that.

The Court: I said if it was competent.

Mr. Matthews: Keeping within the rule that your Honor and we all agreed we would keep until your Honor decided the question.

The Court: Yes, very well.

Q. Now, Mr. Hershfield, I believe you said on direct examination that you had described all of the properties that you acquired for the Water Supply Commission that are shown on this map? A. All that I could recall from memory.

Q. Now, I point to certain small tracts in Tract No. 80 which are indicated by the following numbers 133-A, 132-A, 130-A, 138 and 137 with the names of the owners set opposite in each case, you prepared those for the Water Supply Commission by purchase, did you not? A. Yes, sir.

Q. Then I ask whether it is not an error on this map—I observe in this point in the northerly division of Tract 80 some small plots have been scaled in here and then apparently erased and the contour of the map covered with yellow color indicating Ringwood?

Mr. Matthews: I object to that statement. I can only see lines and all plots are indicated by the number.

The Court: I will let it stand. I do not think the question meant to convey the impression they were plots.

Mr. Matthews: He said plots, though.

Mr. Hunt: I do not know how better to describe a piece of land enclosed by lines than to say a plot, tract or area.

Mr. Matthews: Pieces of land.

Mr. Hunt: All right, I will call it pieces of land enclosed by lines.

Mr. Matthews: There are lines drawn over it. It does not enclose.

The Court: Very well. Proceed with the question.

Q. (Continued) The lines have been scratched out and the lands covered with a yellow which indicates the Ringwood Company. Now, you know as a matter of fact respecting the large plots, tracts or lines that have been put on the map and then erased, indicate pieces of property which the Ringwood Company had sold to various parties under contracts where the contracts have been filed in the County Clerk's office, but the deed has not yet been executed, or at least have not been recorded in the County Clerk's office, that is true?

Mr. Matthews: I object to it. Those are contracts of sale that he is talking about, and not a sale. Unless I am given an opportunity to directly examine this witness upon the character of this testimony I should strenuously object to it because I know this has to do with the so-called millionaire plots that were contracted for but not sold, with the idea of creating values there. Now, unless we have an opportunity to ask Mr. Hershfield about that it is incompetent here, because it is not sales that would create market value. In fact, I would not care to have cross examination applied to it, because I do not think it applies to market value, what is known as their millionaire colony, by Mr. Bugg, I believe.

The Court: What is the materiality of it, Mr. Hunt?

Mr. Hunt: In the case of Crawford, 134, on page 120—Kapper vs. Crawford—I think it is a New Jersey case very recently decided. I would not say with definiteness that it is a New Jersey case—I failed to note that down here, but I think it is our New Jersey Court of Chancery, it holds that the contract holders, if I may call them so, persons who are the purchasers under a contract of sale which has not yet been consummated by the payment of the full price and the delivery of the deed, are entitled to the value of the lands embraced in the contracts out of an award by condemnation commissioners.

Now, as the map is made up, it would appear that the Ringwood Company is entitled to that value. I just want to straighten that

out from the witness. They put something on there, and they rubbed it off.

Mr. Matthews: That is a statement that is entirely gratuitous that we put it on there and rubbed it off.

Mr. Hunt: There is the map.

Mr. Matthews: There is an erasure there, but no evidence there were lots there. The contract of sale is not a measure of market value in any sense of the word.

Mr. Hunt: I did not say that.

Mr. Matthews: Moreover all that can be testified to is market value, and if there any servitudes or liens, it is up to their millionaire friends to go into the Court of Chancery and get their bit of the award, but they will never go, if I may say so, without any disrespect to the Court.

The Court: I do not see any materiality in that.

Mr. Hunt: Well, I won't pursue it. I did not think it would bring such a lengthy argument.

Q. Now, one of the small tracts I referred to a moment ago is 132-A, owner named J. J. Sherman, do you know that tract, Mr. Hershfield? A. Yes, sir.

Q. What is its dimensions? A. As I recall, 100 by 100.

Q. Your recollection is correct. A. Thank you.

Q. Has it been purchased by the Water Supply Commission through you as its agent? A. It has.

Q. You called it for the purpose of purchase by the Commission, did you not? A. I did.

Q. What improvements stood on the property at the time that you valued it? A. A bungalow.

Q. Did you form an opinion as to the value of the bungalow? A. I did.

Q. Was that based on an estimate of the cost of reproducing it? A. Yes, sir.

Q. What was the estimated cost of the reproduction? A. I would have to take my notes on that.

Q. All right, get them? A. I figured the value of the property, lot and building at approximately $2500.

Mr. Hunt: I ask that answer be stricken out as not responsive.

The Court: I do not remember the question. Read it to me, please.

(Questions and answers read.)

The Court: Strike it out as not responsive. The question is what was your estimate of the cost to reproduce.

The Witness: I should say the naked building with attendant labor to assemble it would be worth $1600 or $1700, then. There was the other work done on the property subsequent to the man's finishing the building. Altogether, I believe, the property, lot and building and everything combined was worth around $2500.

Mr. Hunt: I am sorry, your Honor, but I have to ask that be stricken out as not responsive.

The Court: I think the first part of it is responsive, up to the point where he said $1600 or $1700, or whatever it was he said.

Q. That is your opinion as to the cost of reproduction of the building, $1600 or $1700? A. Mine and the owner's.

Q. Did you hear the owner testify in the proceeding before the Condemnation Commissioners? A. Yes, sir.

Q. I read from his testimony at page 925 of the record, under examination by me as follows:

"Q. What is the total amount of money that you paid to third persons for all of the material, and all of the labor that entered into the construction of that bungalow? A. The lumber and labor $992.65.

"Q. $992.65".

Mr. Matthews: I object, unless the question is given one by one, did you hear that, because he is only entitled to use this testimony to cross examine him as to his credibility.

Mr. Hunt: I will ask him—

Q. Did you hear that?

Mr. Matthews: Just a moment. The first question for the foundation was, did you hear him testify.

The Court: He said yes.

Mr. Matthews: Yes, and there is a question pending, and he is starting to read the man's testimony and I submit he is entitled to ask each question, and did you hear him say that.

The Court: Very well, he is proceeding to do that.

Mr. Hunt: I am only trying to save time, your Honor.

Q. Did you hear the following question put by me to the owner of the bungalow, the person who sold it to the Commission?

"Q. What is the total amount of money that you paid to third persons for all of the material and all of the labor that entered into the construction of that bungalow?" A. Yes, I heard that question.

Q. Did you hear the witness making the following answer: "A. The lumber and labor, $992.65." A. That is what he paid to others.

The Court: No, the question is did you hear that answer?

The Witness: I heard that statement.

Q. "Q. $992.65?" Did you hear me put that question? A. Yes, sir.

Q. Did you hear the witness making the following answer? "A. That includes the carpenter's bill, yes." Did you hear me then put the following question:

"Q. Did you yourself contribute any labor to the erection of the bungalow or any fixtures or additions?" A. Yes, I heard that question asked.

Q. Did you hear Mr. Sherman who had sold the bungalow to the Commission give the following answer? "A. Oh, yes." Did you hear that answer made? A. Yes.

Q. Did you hear me then put the following question: "Q. What did you do?" A. I did not hear that, Mr. Hunt.

Q. Did you hear that? A. I heard the whole colloquy.

Mr. Hunt: Your counsel insisted that I ask you each question separately.

The Witness: Yes, I heard all that.

Q. Did you hear the witness answer as follows: "A. I built the piazza and put up the partitions in-

side, built the outside."

Did you hear him so? A. I presume so.

Q. Did you hear me ask the following question:

"Q. How much time altogether did you put in in labor on the erection of the bungalow?"

A. I heard the whole conversation, yes.

Q. Did you hear him answer:

"A. Oh, well, if I was to put it altogether it might possibly take a week, two weeks at the most, I should imagine."

Did you hear him so testify? A. I did.

Q. Now, having heard the owner of the bungalow and person who sold it to the Water Supply Commission testify, do you still wish this jury to understand that, in your opinion, the cost of reproducing that bungalow was $1600 or $1700?

Mr. Matthews: I object to the question, if your Honor please, as an improper question because it is argumentative in the first place, and in the second place it is not what he wishes the jury to understand.

The Court: That is correct. The objectionable part of the question, as I understand it, is the argumentative part. Do you wish the jury to understand. We are not concerned with what this witness wishes him to understand.

Mr. Hunt: Yes, I will withdraw it, your Honor. I should not put it that way.

The Court: Very well. Suppose you let the question stand as it is with the omission of those words.

Q. In his opinion, after having heard the person who owned the bungalow, and who had had it built and assisted in its building, and who sold it to the

Water Supply Commission so testified, do you still believe that the fair reproduction cost of the bungalow was $1600 or $1700? A. I believe that is a fair price for the naked bungalow, based on my experience in allowing a man a reasonable profit for his job.

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

The Court: No, I will, let it stand, because it explains why he believes it. I think it is responsive.

Mr. Hunt: The question of profit does not enter into reproduction cost.

The Court: Oh, yes, it does.

Mr. Hunt: Oh no, it does not. Reproduction cost, the question is after having heard—

The Court: Suppose I reproduce my garage that burned down, and I have to reproduce it. Do you mean to say I could not get from the insurance company anything except the bare cost to the carpenter who did it, and could not get the difference between what it cost him to put it up and what he charged me?

Mr. Hunt: Oh, no, no; you get what it cost, your Honor, but you are not allowed to make a profit on the fire.

The Court: I am not.

Mr. Hunt: But suppose where the construction of your garage cost $3,000, that is what you paid the contractor—

The Court: I am not wealthy enough to have that kind of a garage.

Mr. Hunt: Then it cost $1,000, and that $1,000, eight hundred is what the contractor has to pay for the labor and material that he puts into the job, $200 is the profit, that goes

in his own pocket. You are entitled to get the whole thousand from your insurer, but not more. Now, I ask the witness whether, after having heard the man who owned the bungalow and had hired it built testified that his whole bill—

The Court: I get your point now. In other words, the owner of this bungalow put his own services on it.

Mr. Hunt: The owner of this bungalow paid to third persons for lumber and material $992.65. Now, of course, that includes profit that the third person made on that business.

The Court: I understand.

Mr. Hunt: Then, the owner put in, if he were to put it altogether, might possibly take a week or two weeks, two weeks at the most. That is his own labor on the job.

The Court: I understand now.

Mr. Hunt: I asked the witness, having heard the owner so testify that the cash cost was $992.65, and over that, he, the owner, had put in at the utmost two weeks work of his own, and I asked the witness whether he still believed that the fair reproduction cost of the bungalow was $1600 or $1700.

Mr. Matthews: And his answered yes, and added he thought that was a fair profit to which he was entitled.

The Witness: And also the owner had other conversation with me to which he has not referred.

Mr. Hunt: I ask that be stricken out. There was no question to the witness.

The Court: The latter part of the answer was not responsive. That is where we stopped when you re-framed it, and I will allow it to stand.

Mr. Hunt: The witness has referred to other conversations with the owner, and I have been reading the owner's sworn testimony.

The Court: I understand, but I am not referring to that. I am referring to the answer that he made before that question came in. Part of it, strictly speaking, might not have been responsive, but it is so dove-tailed in with what is responsive that I will allow the entire answer to stand.

Q. Now, Mr. Hershfield, how much did you, as agent of the Water Supply Commission, pay to Mr. Sherman for this lot of land 100 feet square containing this bungalow? A. We paid him $2,500 for the property and $500 for the inconvenience by causing him to move out. That was for two lots and the bungalow and his inconvenience.

Q. Now, you also bought a lot from a person named Eckerson; what was the size of that lot? A. I will have to look up my notes.

Q. Now, Mr. Hershfield, do you remember that while you were under examination by me in the proceeding before the Condemnation Commissioners, I called upon the Water Supply Commission to produce its minutes containing the resolution it adopted authorizing the purchase of the Sherman property?

Mr. Matthews: I object to that as immaterial to this issue, whether he did call upon him and he remembers his calling upon him.

The Court: What is the materiality of it?

Mr. Hunt: It goes to contradict the resolution itself, goes to contradict the testimony of the witness given a moment ago.

The Court: What materiality has that. Suppose it does. He is not bound by the resolution or by what somebody else said.

Mr. Hunt: I fancy that the jury is entitled to have the facts, and to have the facts correctly. First, in regard to the purchase of the Sherman property, the price paid for it and so forth, I take it all set forth in the authorizing resolution.

The Court: This witness can only testify to what he himself has knowledge of.

Mr. Hunt: Yes, I am going to show he has knowledge of this.

Mr. Matthews: It is their direct case, if your Honor please. If they think that is so they have witnesses they can produce to show it.

Mr. Hunt: I haven't any witnesses on my side who can produce Volume No. 7, page 133 of—

The Court: That is not the point. The point is the materiality of asking this witness whether he remembers that you did call for the production of such a paper at the hearing. I understand that is a preliminary question, but what materiality will it lead up to is what I do not quite see.

Mr. Hunt: It will show what he has just testified to so much being paid for one thing and so much for another thing for this property is not true.

Mr. Matthews: Only the resolution will show that. It is only contradicting him with the resolution. It is not material to this issue. It is dragging this whole case where there were no rules of law observed, and trying to, and

seeking to bring them in a court of law where rules of law are observed. I submit this is not only immaterial but incompetent, and it is not proper cross examination.

Mr. Hunt: I submit the official resolution adopted by the Master, his superior, in respect to what was paid for the property, than the word of mouth, the statement, given by a servant.

The Court: I do not think so necessarily. The resolution may not contain the information that $500 of this purchase price was made up of the matter of convenience. The resolution may very well say the price was $2,500. This witness—

Mr. Hunt: It does not say that, your Honor.

The Court: I do not know what it says. I am only arguing what it might say as a matter of principle, and why it is not material to this witness who negotiated the sale, and therefore, has knowledge of his own with respect to what the price was. As testified it was $2,500, $2,000 for the land and buildings, and $500 the matter of bonus, or whatnot, to get the man to move, or to pay him for his inconvenience.

Mr. Matthews: They can only call the owner in their case.

The Court: And that being so, I do not see the materiality of whether this man knew what the resolution contained, or did not.

Mr. Frazer: I think it was $2,500, and $500—

The Court: Or whatever the figures were.

Mr. Hunt: If the court please, I desire to contradict the truth of the statement that the witness has just made by showing it to be at

variance with the official resolution of the Water Supply Commission.

Mr. Matthews: I object to that.

The Court: This is not the way to do it.

Mr. Hunt: Very well, may I ask the court to instruct counsel for the Water Supply Commission to have present in court tomorrow page 133 of the minutes of November 7th, 1925, of the North Jersey District Water Supply Commission.

Mr. Matthews: If your Honor please, I know you will not instruct anything of the kind, and he knows how to get papers if he thinks he is legally entitled to them and not depending on the court's say so. It would have to be through a process of the court.

Mr. Hunt: Do I have to issue a duces tecum when I am in court?

Mr. Matthews: Before we are not the Board. We are its employees.

The Court: If counsel says he cannot comply with that request because he is not in a position to do so, then, of course, I cannot make any such request.

Mr. Hunt: Will the court permit me to address my request to the counsel of the Water Supply Commission.

Mr. Matthews: I am the counsel of the Water Supply Commission.

Mr. Hunt: Well, then, I request you, Mr. Matthews, to spare me the trouble of a subpoena to produce the minutes.

Mr. Matthews: Are you requesting me for the benefit of the jury? If you want me to do that, do it after court, and if I can do it I will.

Mr. Hunt: Consider the request being made.

Mr. Matthews: After court make it, because I think it is only being made for the effect upon the jury.

Q. At all events, when the Sherman property passed to the ownership of the Water Supply Commission, the Water Supply Commission paid $3,000 to Mr. Sherman? A. For his property and for his trouble.

Mr. Hunt: I ask that the latter part of the answer be stricken out as not responsive.

Mr. Matthews: I submit the question is immaterial, because we did not pay it to him for nothing.

The Court: I will allow it.

Q. Have you found the size of the Eckerson lot? A. Eckerson?

Q. Yes. A. 50x100.

Q. Any improvements on it? A. A bungalow.

Q. What did you appraise the bungalow at? A. The house and lot and trouble $2,000.

Mr. Hunt: I ask that be stricken out as not responsive.

The Court: Yes, strike it out.

The Witness: I did not differentiate. I appraised it as a small piece of property, and appraised it as a unit.

Q. What did the Water Supply Commission pay for the Eckerson property 50x100 with a bungalow? A. $2,750 for house, lot and inconvenience.

Q. Show me the document from which you read the word "inconvenience"? A. I added that.

H. G. Hershfield—Recalled—Cross.

Q. What? A. I added that.

Mr. Matthews: I object to his saying he read from any document.

Q. You added that? A. Yes.

Q. How much for inconvenience? A. Approximately $500.

Q. How much of the value of the Ringwood Company appraisal, as made by you, is for inconvenience? A. Of my appraisal?

Q. Yes. A. Nothing.

Q. Did you also buy for the Water Supply Commission lot No. 130-A? A. What is the name?

Q. The Haverman and Meyer lot? A. I did.

Q. What was the size of it? A. Marie Haverman, 50x100.

Q. Were there any structures on that lot? A. A bungalow.

Q. One bungalow? A. Yes, sir.

Q. Did you ascertain or estimate its reproduction cost? A. I did to my satisfaction.

Q. How much? A. Possibly $1,400.

Q. Now, do you think that the relation of that sum to the actual cost of the bungalow is about the same as the relation of your cost of the reproduction of the Sherman property was to its actual cost? A. That figure is approximately the owner's valuation of it, because that was the amount of insurance she carried on it.

Q. What did you pay for the Meyer and Haverman property 50x100 with this bungalow? A. $2,500 for the lot, bungalow and inconvenience.

Q. And again you added "inconvenience"? A. I gave each of those people that have put houses there, where they were compelled to move before they expected to, approximately $500 apiece.

H. G. Hershfield—Recalled—Cross.

Q. These people were living in these little bungalows only in the summer time, weren't they? A. True.

Q. The bungalows were not equipped in any manner for winter living in this climate, were they? A. No, sir.

Q. At what date did you buy the Meyer and Haverman bungalow? A. They were all within a couple of months of each other, approximately September, 1925.

Q. September, 1925. And at what date did you buy the Sherman property? A. That was the Haverman bungalow. When I say I buy them, I mean that is when it passed out of my province and went into the title department.

Q. But actually—but the actual payment would not be until after that? A. No, sir.

Q. What date did the Meyer property pass out of your purview, as you put it, and go to the title department? A. Approximately September 18th, 1925.

Q. And the other one, when were they, in September or later? A. Which other one?

Q. Have we spoken of two or three? A. I think I testified to Haverman and Meyer.

Q. That is one, though, isn't it? A. No, Haverman and Meyer are separate titles.

Q. I think you are wrong about that. Sherman is one title. A. Sherman, Valoise, Eckerson, Haverman, Meyer.

Q. Leave out the ones that I have not mentioned. Sherman is one? A. Yes, sir.

Q. When did you close the Sherman transaction?

Mr. Matthews: If your Honor please, the testimony is not that he closed it, but it went from his department to our legal department.

The Court: I assumed that is what he meant.
The Witness: About September 18th, 1925.

Q. How long would it take the legal department in the ordinary course of events to finish its work so settlement can be made to Mr. Meyer?

Mr. Matthews: I object as calling for a conclusion. That he is not competent to state.
The Court: If he knows, I will let him state it.

A. If the title is in shape—

The Court: No, the question is how long that would take, if you know.
The Witness: Approximately a month, if the title is all right.

Q. That would bring it to about the middle of October? A. If the title is all right.
Q. Now, then, the owner and occupant of such a bungalow as that on the Wanaque River is not much inconvenienced by selling it in the middle of October, the season for living there is over in October? A. The season is over, but the person who bought there bought for permanency.
Q. But you said these houses were built for summer use only? A. Yes, but not for winter permanency.
Q. When did Haverman give up possession? A. I don't know.
Q. When did Meyer give up possession? A. I do not know.
Q. When did Eckerson give up possession? A. I do not know.

Q. Do you know whether they were all in there in September or October when you finished your part of the business with them? A. I could not say, Mr. Hunt.
Q. Where did you meet them to talk business with them?

Mr. Matthews: I object. It is immaterial. He says he does not know whether they continued to live there.
The Court: If he can tell us where he met them, that can help us. Answer this question if it is of any importance. I will allow it.
The Witness: I met them first when I went up to the properties to look at the buildings, to put insurance on them.

Q. I mean, when you made the deal to buy the property? A. Some time a month or two before we closed.
Q. Where? A. On the premises.
Q. Well, now, here is the Walter Haverman lot, 138 on the map. Did you buy that for the Commission? A. I have the Marie Haverman and Amena Meyer.
Q. Step down to the map a minute, will you, Mr. Hershfield?

(Witness goes to map.)

Q. That is a lot, but it has no bungalow on it? A. I would have to look at my notes. What is the number of the lot?
Q. The lot is No. 138? A. Walter Haverman.
Q. No. 138, Walter Haverman, and there are some letters preceding the word "Walter" that I cannot make out myself. Oh, it is .011, 11/100 of

an acre. A. I haven't any papers, but I think that was a vacant lot without a house on it.

Q. Now, the next which is south, is lot No. 137, .011 acres, Amena Meyer; was there any building on that? A. I believe there was a foundation for a tent or a portable house on that, otherwise it was a lot.

Q. Was it a concrete foundation? A. It was more than a foundation. It was a platform upon which a portable house could be erected, a substantially built platform. What the neighbors have not wanted is still there if you want to see it.

Q. There was no foundation there at all? A. Only one of spiles.

Q. Of wooden posts driven in the ground, is that what you mean by spiles? A. That is what a spile is.

Q. I thought a spile had something to do with a barrel? A. No, you are thinking of a bung.

Q. This is a wooden post or spile set in the ground with the platform built over that? A. Yes, sir.

Q. What is the platform built out of? A. Wood.

Q. What kind of wood? A. I did not notice it.

Q. It was not oak that had been cut on the premises and sawed or hewn by hand, ordinary wood from the lumber yard? A. Yes, sir.

Q. What is the size of the platform? A. I do not recall.

Q. Well, approximately? A. 20 x 32.

Q. What would be the reproduction value of such a platform? A. It would not be much now.

Q. At the time that you bought it? A. I figured approximately $300. There was that much work of labor, material and inconvenience on that lot.

Q. Leave out the inconvenience, and tell me how much labor was on that lot? A. With the labor and grading and clearing of trees—

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

The Court: If he can divide it.

Mr. Hunt: There is nothing to divide if he sticks to what I asked him. I asked about the platform, and he talks about outhouses.

The Court: And I am saying to him if he can divide the figure that he has in mind that comprehends all of these items, so he can answer your specific question as to the value of just this platform, I wish he would do so.

Mr. Matthews: He has already testified, however, that the platform was built there, and if the trees were cut down, therefore that labor would be part of the labor on the platform. I do not think for once Hunt and I are in disagreement about that, so that is what he is trying to do, add labor, or differentiate between labor of the cutting of the trees and putting the platform there.

The Court: That may be. I thought he said the lumber that went into it was ordinary lumber that came from the lumber yard rather than it being produced on the premises.

Mr. Matthews: But he had to cut the trees down to get the platform there.

The Court: Oh, I see. Tell us what the valuation of that is.

The Witness: I figured there was $300 worth of material, labor and inconvenience expended on that lot.

Mr. Hunt: I ask that the answer be stricken out as not responsive.

The Court: Strike it out.

The Witness: I cannot differentiate to how much was labor and material at the time when everything was there. I placed that valuation on it.

Q. Which lot are you talking about now? A. The lot that had the platform on it.

Q. Do you mean to say there was an outhouse on that lot? A. I believe there was.

Q. There was one on the adjoining lot? A. I presume so.

Q. Well, you know? A. I do not specialize on outhouses.

Mr. Matthews: I did not get the witness' last answer.

The Witness: I do not specialize on outhouses.

Q. These two lots together, were there two outhouses or only one? A. I don't now recall. According to the best of my knowledge and belief with each lot on which there was a separate dwelling there was a separate outhouse.

Q. There wasn't any dwelling on either of these lots, was there? A. A tent is a dwelling.

Q. Well, the tent was only there when the owner brought it there and stayed there? A. And so was the outhouse.

Mr. Matthews: What was the answer?

The Witness: So were the outhouses.

Mr. Matthews: Do you mean the outhouses were brought there by the people?

The Witness: No, no.

Q. Now, Mr. Hershfield, you cannot tell this jury how much of the cost of this platform was labor and how much was material and how much was inconvenience, eh? A. I can't give that. At the time when I made a personal examination and everything was on the ground, I valued those three factors and other things as $300.

Q. Please tell the jury how much of that was inconvenience? A. I would say roughly in that case $100, because they had not built a house.

Q. How do you estimate the value of the inconvenience in selling a lot less a platform built on it? I don't see it.

Mr. Matthews: I object to his comment.

Mr. Hunt: I will strike out the comment.

Q. How do you estimate it? A. Because those people in that village were the first ones there and built buildings.

Q. This was a village, wasn't it? A. I called it a German Village,—five houses.

Q. Why did you call that a German Village?

Mr. Matthews: I submit that the witness is entitled to the answer. He says it is a village.

The Court: He says a village of five houses.

Mr. Matthews: He says why do you call that a village.

Mr. Hunt: No. He said he called it a German village, and I asked him why he called it a German village.

Mr. Matthews: I submit in the beginning it was interrupted when the word village was uttered by Mr. Hershfield. His voice was still on the rising inflection, showing grammatically he had not finished his answer. Mr. Hunt, there-

FOURTH SESSION,

PASSAIC CIRCUIT.

Appeal from the Award of Commissioners, in the Matter of the Application of the North Jersey District Water Supply Commission for the appointment of three Commissioners to fix the compensation to be paid for certain lands of the Ringwood Company, situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, State of New Jersey, to be taken and condemned for public use.

Paterson, N. J., January 10, 1927.

Before--Hon. NEWTON H. PORTER, *Judge,* and a struck jury.

APPEARANCES:

For the Owner: EDGAR W. HUNT, Esq., and WILLIAN I. LEWIS, Esq.

For the Condemnor: SPAULDING FRAZER, Esq., and JOHN A. MATTHEWS, Esq. BERNARD L. STAFFORD, Esq., of Counsel.

HENRY G. HERSHFIELD resumed.

FURTHER CROSS EXAMINATION BY MR. HUNT:

Q. Before I forget it now, Mr. Hershfield, did you bring down with you today the plan given you by the Ringwood Company showing the layout of the

lakes which you said was of such a character that it could not be read? Have you that? A. I didn't know I was to bring it. If I have it—

Mr. Matthews: That was not to be brought.

Q. Well, you have not brought it? A. I have not brought it, no, sir.

Q. Now, at the adjournment on Thursday afternoon we were talking about the Minna Meyer property which was a lot that was vacant except for the existence upon it of a platform which you had described? A. Yes, sir.

Q. How much did the Water Supply Commission pay for that lot with the platform on it? A. I will have to look at my notes.

Q. All right, look at your notes. A. A lot 50x100 with foundation, flooring, and so forth, $600.

Q. Well, it was not a foundation, it was the spiles driven in the ground that you testified to on Thursday, was it not? A. They were spiles in the ground, yes.

Q. And a platform built on it? A. A platform, a substantial platform, $600 for the whole thing. I will read from the description.

Q. No, don't read anything. Answer the question. A. $600 for everything she had there including the lot and the inconvenience that she was put to by moving.

Q. Yes, and that inconvenience you testified on Thursday you valued at $100, did you not? A. Oh, approximately.

Q. How much did you value the platform at? A. I figured that there had been at least $200 worth of work done there in addition to the price of the lot.

Mr. Hunt: I ask that that be stricken out as not responsive.

A. Well, the lot, platform, cutting of trees and trimming around the place, I figured there was $200 represented. The platform was a very substantial one. Part of it is still there.

Mr. Hunt: May I have that stricken out as not responsive?

(Question repeated by stenographer as follows: "How much did you value the platform at?")

A. I valued the platform—

The Court: Strike out the other answer.

A. I did not differentiate the platform alone. I valued everything I found there.

Q. Had you at any time previously differentiated the platform alone and given a value to it? A. Not that I know of.

Q. Did you testify in the proceeding brought by the Water Supply Commission to acquire the property of Joseph Albegese and Enrico Marini? A. Yes, I did testify.

Q. On the 2nd day of November, 1926, were you cross examined in that proceeding by Mr. Benson, the counsel for the owners? A. I was. I believe I was.

Q. Was the following question put to you in regard to this platform on the Minna Meyer lot in cross examination: "Q. You think the platform would be worth $100?" A. Possibly I was asked that question. I don't recall it.

Q. Did you make this answer: "A. I should say it represented approximately $100 worth of labor and material." A. Approximately.

Q. The question is, did you make that answer that I just read? A. If it is in the minutes I presume I did. In addition to the platform there was a porch there.

Q. Well, I show you the minutes and ask you to state whether or not the question and answer do appear in the minutes as I read them,—from there to there (indicating)? A. Yes, it is in the minutes.

Q. You say it is in the minutes? A. Yes, sir.

Q. Now at the former trial of this case before the Condemnation Commissioners you testified to the purchase of the Valois property by the Water Supply Commission, did you not? A. Yes, sir.

Q. And I point to the map and I ask you whether the Valois property is not at the point I now indicate, the most northerly of this range of small properties in which the Sherman and Minna Meyer's lots are also situated? A. I don't know where it is. I know it is—

Q. Come down and look at the map. A. It is in that group of bungalows. (Examines map.)

Q. I point out to you a lot marked No. 133-A, twenty-two one-hundredths of an acre, R. J. Valois, and ask you if that is the Valois property that you purchased for the Water Supply Commission? A. Yes, sir.

Q. What was standing on it at the time you purchased it? A. A bungalow.

Q. Substantially or practically a new bungalow, wasn't it? A. Yes, sir.

Q. And its reproduction cost, what? To the best of your opinion? A. (Examining memorandum) Say roughly about $1,500.

Q. Well now, let us see. It was a frame building one story high, wasn't it? A. Yes, sir.

Q. What dimensions? A. 24x30, sheathed and shingled, with a porch 8x12 feet—

Q. Just a minute.

Mr. Matthews: No, finish the answer.

The Court: You may finish the answer.

Mr. Hunt: He is going into other things.

The Court: No, the porch is part of the building.

Mr. Hunt: He can give me the dimension of the porch if he wishes.

The Court: That is exactly what he gave you.

Mr. Hunt: I thought he was going into the construction.

A. The bungalow proper, according to my information, received from the owner, was 24x30 feet, and in addition to that there was an 8x12 enclosed porch.

Q. Of what material was the frame building? A. As I recall—

Q. Well, was it 2x4 hemlock rough sawed? A. I don't remember.

Q. What was it sheathed with? A. Novelty siding, as I recall it. Oh, sheathed? The ordinary sheathing boards.

Q. Ordinary sheathing boards? A. Same as any other house is sheathed.

Q. Outside of the shingle boards there were shingles? A. Outside of the sheathing there was shingles, as I recall.

Q. Yes, outside of the sheathing there was shingles? A. Yes.

Q. Then there was not any novelty siding? A. I don't remember whether there was novelty siding or sheathing.

Q. You have seen it many times? A. Yes, I never detailed—

Q. You have read shingles.

(Question repeated by stenographer.)

A. This one is sheathed and shingled.

Q. There was no bathroom in that place? A. No; the river furnished the bathroom.

Q. There was no running water in that place? A. Yes, I believe there was in that house.

Q. Whereabouts in the house was it? A. There was a tank on the rear porch which furnished running water to the basin.

Q. From what source did the tank get its water? A. I think there was a water supply pump from the river, a hand pump.

Q. Pumped by hand, pumped from the river into the tank, eh? A. Yes.

Q. Then, you could open the cock and the water would run from the tank, out of the tank? A. Yes.

Q. What did you say a minute ago you thought its reproduction value would be? A. About $1500.

Q. How high was the building to the eaves? A. I would say to the plate would be about ten feet.

Q. Ten feet to the plate, and then did it go from the plate up to the peak? A. Yes.

Q. You said "Yes", did you not, that the roof rose from the plate to a peak? A. All roofs do.

Q. What was the height of the peak above the plate? A. Approximately eight feet, I should say, to the ridge.

Q. Now, if I were going to cube this building, it would be fair to take the ten feet height to the

plate, and then half of the eight foot height from the plate to the peak for the purpose of getting the proper figure for cubing, wouldn't it; that would be 14? A. Take half the height to the ridge?

Q. I thought you said it was eight feet from the plate to the ridge. I call it peak, and you call it ridge? A. Yes.

Q. Half of that is four, isn't it? A. No, I would add that to the dimensions from the sill to the plate.

Q. You add that to the ten, wouldn't you? A. Yes.

Q. Fourteen. What did you say the reproduction cost was. A. I should say approximately $1500 with the attendant labor connected with the ground.

Q. Do you know the cost per cubic foot as architects and contractors roughly estimate such costs of building at the time this bungalow was built, an eight room brick house, with a steam heater in the cellar, and one bathroom, and laundry tubs and sink in the kitchen, and all the usual finished accessories of an eight-room brick house?

Mr. Matthews: I object to that as immaterial.

The Court: This witness, however, is an expert and is testifying to his experience in valuing or appraising buildings by cubing them, and if it goes to his credibility I think it is competent. I will allow it.

Mr. Matthews: Well, my objection was as to the materiality of it, but I will add the competency of it now, because there was no dimensions given to the house; and if an expert, by cubing it, and that is one way of arriving at

the value, and only by that, then he must have dimensions to cube it, and this problem does not give it, and I object to its competency on that account.

The Court: The question, as I remember it, was with respect to the cubing of a building of that type.

Mr. Hunt: That is it.

The Witness: Will the question be repeated?

Mr. Matthews: May I have an exception on the ground that it is immaterial and incompetent?

The Court: You may have it.

(Question read.)

Mr. Matthews: I submit, if your Honor please, it would not be competent even though he was able to get at the values by cubing with accessories of steam heating and otherwise. It is not a competent question within the purview of his experience as qualified. He is qualified as an expert on building value.

The Court: Of all types of building.

Mr. Matthews: Of all types of building, but the steam heater and the set tubs and the rest of this proposition are a plumbing item of subcontractors, and has nothing to do with it.

The Court: No, that goes into the entire building, and this witness has undertaken to qualify as an expert for reproduction value.

Mr. Matthews: You could not cube a steam heating plant.

The Court: But the practice, as I understand it, is to take those things into consideration when they make their basic figure for cube foot. If it is steam-heated and has pipes they put a certain figure; if it has no heating

apparatus they put a lower figure; if it has so many bath tubs they cube it at a different figure, as I understand the practice. My understanding may be faulty.

Mr. Matthews: Counsel gladly takes the Court's understanding, with the humble statement that counsel does not so understand it. I have just been through it in the Federal Metal case. We took all our machinery out before we cubed.

The Court: I see. I may be wrong in my notion, but I will take it.

Mr. Matthews: An exception is taken on the ground stated, but if your Honor please, on the ground stated that it is incompetent and immaterial.

The Court: You may have it. Now, you may answer, Mr. Hershfield.

The Witness: Where is this house to be built?

Q. On the site of this bungalow? A. It would cost you about—

Q. I asked you whether you did or did not know? A. I believe I know.

Q. What would it cost per cubic foot?

Mr. Matthews: The same objection.

The Court: Yes.

A. On the site of this bungalow?

Q. Yes. A. About 35 cents per cubic foot for building the house, and the appurtenances that go with a house of that description.

Q. A brick house? A. Yes, solid brick.

Q. That would be, first, a cellar, since there is a steam heating plant there and there must be a cellar under the house? A. Correct.

Q. This bungalow has no cellar under it? A. Yes.

Q. There would be the foundation? A. Yes, sir.

Q. What kind of a foundation has this bungalow? A. Nothing but spiles.

Q. With the spiles set in the ground? A. Yes.

Q. Now, a brick house would also be furred and plastered? A. Not necessarily; it may be beaver-boarded.

Q. What? A. It may be beaver-boarded.

Q. It would be furred out anyway? A. Yes, sir.

Q. And the bungalow was not furred out, was it? A. No, sir.

Q. And then, certainly, if a brick house were to have an interior finish in keeping with the fact that it has a steam heater and bathroom and laundry tubs, as I described, and so on, then it should not be beaver-boarded, but it should be lathed and plastered? A. Not necessarily.

Q. I see; all right. Well, then, the bungalow was not beaver-boarded, was it? A. No, sir.

Q. When you come to think of it, a good job of beaver-board costs about 75 per cent of the cost of lath and plaster, doesn't it? A. Approximately.

Q. And a two-story house would also, of course, have to have two floors in it?

Mr. Matthews: I object.

Q. (Continued) One on the first floor and one one the second floor, at least—

Mr. Matthews: I object. The question does not call for a two story house. The question calls for an eight-room house.

Mr. Hunt: I will recall that question. Strike it out.

Q. Such a house as I have described would have to have double floors? A. Not necessarily.

Q. But to be right it would? A. Not necessarily.

Q. All right, a house costing 35 cents a cubic foot would have— A. Would carry double flooring, yes.

Q. And then this bungalow has not double floors, has it? A. Not that I recall.

Q. And a brick house that we are talking about would have a bathroom with a tub, and have a water closet bowl and a lavatory? A. Yes, sir.

Q. And this bungalow has none of these things? A. I am not sure whether it had a toilet or not.

Q. Look at your notes and see. A. I have nothing in my notes, but let us admit it.

Q. Let us admit it hasn't those things? A. Yes.

Q. Then, this brick house would have either its own cesspool for sewage disposal, or connection with the sewer, if there were a sewer there? A. Presumably.

Q. While the bungalow has neither? A. Not that I know. I think there is a privy vault.

Q. And the brick house, of course, would have radiation in each of its eight rooms? A. Yes.

Q. The bungalow has no radiation? A. Yes.

Q. No heating plant of any kind? A. No, sir.

Q. And yet, you wish the jury to believe that the cost of construction of such a bungalow would be 15 cents per cubic foot or three-sevenths of the cost of such a brick house as we have described, is that correct?

Mr. Matthews: I object to the form of the question, what he wishes the jury to believe, and I ask counsel be instructed not to repeat it.

Mr. Hunt: I will withdraw it.

The Court: Very well, the question is withdrawn.

Q. You assert this bungalow, built in such a manner as this question and answer between us has elicited, would cost 15 cents per cubic foot or three-sevenths of the cost of such a brick house as has been described in our exchange of question and answer? A. I did not say that: said the cost of the bungalow, with the attendant work is $1500.

Q. Well, now, you said the bungalow was 24 by 30, that makes the square foot ground dimensions 720, doesn't it?

Mr. Matthews: I can save you time if you are cavilling for multiplication. That is correct.

A. Yes, sir, I make it 10,080 cubic feet.

Q. That is what I make it. A. Not counting the porches.

Q. Well, the porches in the square of the building, not added on at all? A. No, sir, it is not. It is extra.

Mr. Hunt: Will the Court bear in mind when the jury is next taken to the premises, I should like the Valois bungalow looked at for the answer to this question.

Mr. Matthews: I object to this request to the Court. I think that the Court when the jury is taken next time to view the property there they are entitled to a view of everything that they can obtain.

The Court: If you will remind me of it I will try to call it to their attention.

Q. I will ask you, Mr. Witness, to bear this in mind when you are next with the jury as a shower on the premises, will you point out the Valois bungalow to see whether you or I are mistaken?

Mr. Matthews: I object to this.

The Court: I did not understand there was any misunderstanding between you. The jury may. I have not gotten it. He squares the building without the porch. You square it with the porch. You may be both right. Isn't that the situation?

Mr. Hunt: No, the question is whether the dimension of the porch was that much more to the area of the building, whether the porch is included within this 24 by 30 ground area, or his explanation that 24 by 30—that is the question.

The Witness: I am reading the owner's description of the building. He does not say whether it is included or not. He makes a separate item of the porch. For that reason, I presume it was not included in the original area given.

The Court: You did not measure it yourself?

The Witness: I have not measured the building. There have been three other people besides myself to measure this building.

Q. Who are they? A. Mr. Josiah Ricker, Mr. Arthur T. Riedel, and the owner himself.

Q. You recommended to the Water Supply Commission to purchase it at a certain price without personally inspecting it? A. I personally inspected it several times, but I took other peoples' version of the value, besides my own.

Q. And you took no notes of its size? A. I have the notes given me by the owner in writing.

Q. Would you have any objection to my being permitted to see what you have before you?

Mr. Matthews: If it contains anything other than the notes of the dimension, I think we would have every objection, if it is our record.

The Witness: I will read the letter.

The Court: Is there anything in it other than dimensions?

The Witness: The parts he wants have a further description of the building.

Q. Are you willing to let me have it in my hand a minute?

Mr. Matthews: Not unless it is read. We are willing to have it read to you.

The Court: Do you wish it read, Mr. Hunt?

Mr. Hunt: No, sir.

Q. Now, how much did you pay for this Valois property? A. I paid the price he wanted, $2,950, which three people—

Mr. Hunt: I ask everything after "$2,950" be stricken out.

A. (Continued) $2,950 for the bungalow and 100 feet of ground and the inconvenience of moving.

The Court: Very well.

Q. The ground was 100 feet square, wasn't it? A. Yes, sir.

Q. At what time of the year was possession taken? A. Apparently we closed with him about the middle of October. On the 3rd I wrote him that the Commission had agreed to pay that for the property.

The Court: What year, Mr. Hershfield?
The Witness: 1925.

Q. And on what date did the Commission pay? A. I don't know.

Q. On what day did Valois give up the bungalow? A. I don't know.

Q. And does your memorandum there show about how much you allowed for inconvenience? A. Not here.

Q. Have you any memorandum anywhere which shows what you allowed for inconvenience? A. I simply stated it to the Commission.

Q. Did you ever have any memorandum which showed what you allowed for inconvenience? A. Yes, in my notes to the Commission, when I reported on these bungalows, I stated the buildings, in my opinion, were worth so much, and I would recommend the sum of $500 apiece be paid to these people for their inconvenience in causing them to move when they expected to be there for some years.

Q. Did you keep a copy of those notes yourself? A. They are on the minutes of the Commission. I make verbal reports on these small items.

Mr. Hunt: Then, I ask, if the Court please, that the witness be instructed to produce these notes that he has asserted are on the minutes of the Commission.

Mr. Matthews: I object to this statement. If he wants us to produce them he can subpoena

our records, if he wants them. This is preposterous, this business of assuming to be the Court and counsel, he will ask to have them produced. Let him produce them the way every lawyer does, by subpoena.

The Court: This witness has not a memorandum, and I do not see how he can produce them, Mr. Hunt.

Mr. Hunt: All right.

Q. You did not keep any copy of it? A. No, sir.

Q. That is true, that you did not keep a copy of this inconvenience that you made, but you did keep a copy of their values which you made here into which inconvenience did not enter? You had a copy here the other day and testified from it? A. What do you refer to?

Q. Well, I refer, for example, to any of this section down here in the southern end of this exhibit C-1 where its color red indicates that the Commission bought it, and you had notes here the other day showing what you bought and what valuation you allowed for the buildings, on what was bought? A. Yes. Those tracts, in the first place, were larger and, in the second place, the terrain was more varied. I had to figure on orchard, on fences, on out-buildings, on houses, on ponds, and in some cases I had to give a more detailed explanation. I could not carry all that detail in my head, and for that reason I employed my field notes. In this case, to the Commission, I simply told them, as I recall, there was a small lot and a bungalow there, and I would value the holdings at anywheres from $2,000 to $2400 apiece, and would recommend that $500 additional be added for the inconvenience of the people moving. The Commission coincided with my view and authorized the payment.

H. G. Hershfield—Recalled—Cross.

Q. Mr. Hershfield, the amount that the Commission under your advice paid for the land involved in the Valois and Sherman and Meyer and other adjoining appraisals is by far and away a larger price per acre or per square foot or any unit of measurement you want to use than any price paid in any transaction that you testified to under direct examination, isn't it? A. I only testified to acreage. I did not testify to small lots. In some cases—

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

A. —I paid more.

The Court: I will allow it to stand. He says in some cases that we paid more.

A. We paid more than this.

Q. In what case did you pay more? A. I will have to look over my notes.

The Court: Yes.

Q. Well, look at your notes. I want to know. A. Where we bought a house and lot on the Hook Road we paid more. Shall I go through my notes?

Q. Yes. Tell me the seller's name?

Mr. Matthews: He is looking at his notes, and I submit he ought to be entitled to look at them until he finds an answer to that question, a house on Hook Road.

Mr. Hunt: I am just simply trying to save time.

Mr. Matthews: Oh! 40 minutes saved this morning.

H. G. Hershfield—Recalled—Cross.

Q. If you refer to a purchaser you—

Mr. Matthews: I object to the question.

The Court: Let him look at his notes, Mr. Hunt. I am afraid he can't do both at once.

Mr. Hunt: I thought he could save time if he could say yes, then I could pass on, because I will ask him about that later anyway.

A. I bought a property from Pauline Marozileono on the Hook Road.

Q. How do you spell that name? A. M-a-r-o-z-i-l-e-o-n-o.

Q. What was the size of that property? A. Well, I have got it down here as a lot. It must have been 50 x 150.

Q. Well, was it? A. I am looking to find out. I called it a lot. I presume it was. We paid—

Q. What was its dimensions? A. I will say 50 x 100.

Q. Do you know? A. I haven't anything here to tell me.

Q. Don't your notes show it? A. I simply call it a lot here.

Q. Have you any objection to my looking at your notes of this transaction? A. No.

Mr. Matthews: I object.

Q. What?

Mr. Matthews: I object.

A. I have not unless Mr. Matthews has.

Mr. Hunt: Has the counsel?

Mr. Matthews: I think he is entitled to go through his notes. He can read them himself.

He is being asked to refresh his memory upon them. He would not accept a letter read a minute ago. I haven't any objection to him reading his notes, but I have lots of objection to Mr. Hunt perusing.

The Court: All right.

Q. Do you know the size of the lot or do you not? A. I presume it is 50 by—

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

A. I can tell possibly by—I haven't anything on this field sheet that shows the lot, but on the—

Q. Aside from that—

The Court: Go on with your answer.

A. I valued that lot—

The Court: No, just about the size.

A. I have simply got it down here, your Honor, as one lot.

Q. Is it a 50 acre lot belonging to a person of the same name that you testify on direct examination? A. No, that is another proposition.

Q. That is another property? A. Yes.

Q. Entirely aside from any notes that you have, have you any recollection of the size of that lot? A. Yes.

Q. Is it an exact and distinct recollection? A. It is a reasonably positive one.

Q. So that you are able to swear according to it? A. No.

Mr. Matthews: I object to any question, you are able to swear, because he is under oath.

The Court: I haven't any objection to it, because it in effect is, can you testify accurately to the size. That is what the question really means.

Mr. Matthews: I haven't any objection to that.

Q. Is your recollection such as to enable you to testify accurately to the size of the lot? A. My recollection—

Q. That is substantially accurate, I mean? A. My recollection is, it is a 50 foot lot.

Q. How deep? A. Approximately 150, as I recall.

Q. Well now, just look down here on C-1 and see if it is now shown there? A. (Witness examines map.) It is 19/100 of an acre. According to Mr. Bugg, that would be about 50 x 150 feet in depth.

The Court: The question was, did you find it on the map?

The Witness: Yes, sir.

The Court: You did?

The Witness: Yes, sir.

The Court: Does that show the size?

The Witness: Only by percentage of acreage.

The Court: Very well.

Q. Well, now let us—

The Court: Then it is not according to Mr. Bugg, but according to the map; is that it?

The Witness: No. Mr. Bugg deduced from the acreage it was 50 x 150 in size.

The Court: Yes, but you are testifying, Mr. Hershfield, and you were asked to look at the map and tell whether it was on the map, and

you say it was. Does the map say it is so much, a certain part of an acre?

A. Yes, 19/100 of an acre.

The Court: All right.

Q. Now the map as a matter of fact does not refer to any property owned by Pauline Marozileono at all, does it? A. The name on the map is Guiseppe. It was his wife. She was his wife.

Q. You say Pauline is Guiseppe's wife and you did business with her. All right. I thought the jury might refer to it.

The Court: She is probably, like in most families, the boss.

Q. The map shows the property in the name of Guiseppe. What did you pay for that property? A. Shall I read my detail?

Q. No; tell me what you paid for the property? A. We paid for the house and lot and improvements $5,050.

Q. Of what material was the house on the property built? A. It was a frame two story house.

Q. Now just answer the questions one at a time. A. I am telling you.

Q. Of what material was it built? A. It was a frame house.

Q. How many stories? A. Full two stories.

Q. Any attic over there? A. As I recall there was, with a slate roof on it.

Q. Was there a cellar under it? A. Yes, because there was wine in it.

Q. What were the ground dimensions of the house? A. As I recall, 50 x 150.

The Court: No, the ground dimensions of the house?

A. Oh, of the house? 28 x 30.

Q. What was the height from the sill to the plate? A. I haven't any detail of that here.

Q. What was the height from the plate to the peak, the ridge? A. I haven't any detail.

Q. How many rooms were there in the house? A. I haven't any detail.

Q. How many bathrooms? A. None.

Q. Any heating plant? A. I can't recall.

Q. Of what kind and size of material was the frame of the house built? A. The house was plastered inside throughout.

Q. Now— A. It was sheathed and novelty siding on the—

Mr. Hunt: May I ask that that be stricken out. I have not asked anything about it but the frame. Do you know anything about the frame?

The Court: He has just stated.

Mr. Hunt: I asked of what size and kind of material was the frame of the house built, and he starts to tell me about the plastering and sheathing.

The Court: Strike out the answer.

Mr. Matthews: The first question did not have the word frame in it.

(Question repeated by stenographer as follows: "Of what kind and size of material was the frame of the house built?")

The Court: Do you know the question? Of what is the frame of the house, the material?

Q. What material and what size? A. The house, as far as size, was 28 x 30.

Q. No, no, the frame of the house? A. The frame of the house was a standard construction house, probably 2 x 6's centered 18 inches.

Q. How do you know that? A. Because I examined the house minutely.

Q. Did you see the 2 x 6's? A. Yes, I went up in the attic and saw the construction.

Q. Why didn't you state that and let us move on? A. Because you did not ask me.

Q. And the exterior consisted of 2 x 6's? A. Yes.

Q. That is the side towards the weather? A. I know what exterior means.

Q. Yes. What is the next material attached to the 2 x 6's? A. The sheathing.

Q. What is the sheathing? A. Sheathing.

Q. Well, describe it. A. Well, sheathing is sheathing. There is only one definition of sheathing, and that is sheathing.

Q. How long ago was this house built? A. About less than ten years.

Q. Sheathing of the period of less than ten years ago? A. Yes.

Q. Now on the exterior side of the sheathing what is the next thing? A. Weather paper.

Q. Did you see it? A. I did.

Q. On the exterior side of the weather paper what is the next? A. Novelty siding, standard trim.

Q. Now coming inwards from the 2 x 6's forming the frame, what is the first thing that touches it? A. Lath.

Q. Lath, eh? A. I call it lath.

Q. All right. A. Lathing.

Q. Well, I call that lath. Now on the lathing, what comes next? A. Plastering.

Q. On the plaster what comes? A. The finished coat of plaster, the second coat.

Q. On that what comes? A. Kalsomine or paint or some other decoration.

Q. What decoration? A. In this case here the walls were simply kalsomined, as I recall it.

Q. What kind of roof? A. Slate roof.

Q. What kind of a cellar floor? A. Either concrete or earth pounded hard.

Q. Look at your notes and say which? A. I have not the detail of that.

Q. Well, there is a difference, isn't there, of about $1.50 a square foot on the cost of concrete or earth pounded hard? A. No; about 8 cents a square foot.

Q. You mean you can put in a concrete cellar for 8 cents? A. I have done it.

Q. Eight cents a square foot? A. Yes; I am doing it now. Just finished a job now.

Mr. Hunt: Off the record I have such a floor to do—

Mr. Matthews: I object to anything off the record. We don't care anything about his floor.

The Court: I know, but Mr. Hershfield might like to get a job.

Mr. Matthews: I don't think so.

Q. What do your notes say as to whether it is a dirt floor or a concrete floor? A. Doesn't say anything. It is simply my recollection.

Q. What is the height of this house from the sill to the plate? A. I figured from the footings in the cellar to the plate three stories of ten feet each.

Q. Now you please figure the cubic capacity of this house? A. I have already figured here. Figured years ago.

Q. All right. A. It is 29,800 cubic feet.

Q. You say it is 28 x 30? A. 28 x 30 x 35.

Q. All right. A. Three and a half stories.

Q. 29,000 and what? A. 29,800, my figures of some years ago reach.

Q. Yes, that is all right. Now what did you estimate, how much per cubic foot in coming to the conclusion that the house had such and such a value? A. I figured it at 10 cents a cubic foot rough, afterwards to be added the improvements that were in, which apparently aggregated $1,020 for improvements. I valued the house at $4,000 as it stood.

Q. Just a minute. When you say you valued this at 10 cents a cubic foot rough, what does that mean? A. Without the improvements.

Q. What improvements? A. Such improvements as may have been there.

Q. Well, what were they? A. There was water in the house and some heating system, some kind, stoves, chimneys.

Q. Go on. A. And the better roof that was on—that was a slate roof or tile roof.

Q. You figured the roof as part of the improvements? A. I figured that; at 10 cents a cubic foot one would not expect as good a roof as was on that house.

Q. Well, state the condition and degree of completion of the house up to the point that caused you to figure the value at 10 cents a cubic foot? A. I figured that house could be roughed in at 10 cents a cubic foot.

Q. What do you mean by roughed in? A. Finished ordinarily, but a slate roof is—

Q. Now let's see. With the trim up and the exterior siding on, and whatever comes between the

siding and the frame, that is the sheating and the paper; right? A. Yes.

Q. With lath on? A. Yes.

Q. And the plaster on? A. No, not necessarily the plaster.

Q. Well, now, was the plaster or was it not in your 10 cent estimate? A. Mr. Hunt, I figured the building complete at $4,000.

Q. Mr. Hershfield, if the 10 cent estimate per cubic foot did not include the plaster, turn to your notes of the amount added for improvements, and tell the jury how much you added for plastering? A. I figured the house in the rough at $10,980.

Q. Did that include plastering or did it not? A. Not necessarily, and I figured the house completed at $4,000. The house cubed—

Q. Now turn to your notes and tell the jury whether or not the 10 cents per cubic foot contemplated that the house had been plastered or had not been plastered? A. I don't belive it contemplated plaster at that figure. There is nothing in my notes to indicate it.

Q. But you still tell us that 10 cents a cubic foot is right for this house in an unplastered condition? A. Unimproved condition.

Q. Although with a cellar that may have a concrete floor or a dirt floor as against 15 cents per cubic foot for the Valois bungalow with neither plastering nor cellar, have you? A. I did not figure the Valois bungalow at 15 cents a foot.

Q. That is what it does figure out to? A. According to your interpretation. I said the house and the improvements attendant—the other work that had been done there.

Q. What other work had been done on the Valois place? A. The clearing of the ground, the putting

of copper screens on, the interior partitions, the little fixings that any house owner would put on a house. The little niceties and fixings that any owner would put on a house where the owner intended to occupy it permanently.

Q. Well, you told us when I was asking you about the Valois house, that it was all one room, so it could not have had any interior— A. I didn't say that. It was partitioned off.

Q. Into how many rooms? A. Four or five.

Q. Sure it was not separated by curtains into rooms? A. As I recall the house it was partitioned so that the various sexes could disrobe there without being immodest.

Q. Partitioned in what manner or what material? A. As I recall, there was tongue and grooved partition boards or siding. There may also have been some beaver board employed.

Q. Running up to the ceiling? A. No, I don't believe it ran over eight feet high.

Q. Now is the Valois house still standing? A. The outside walls are there. I don't know how much the neighbors have left of the interior, but those houses are pretty well stripped now.

Q. Well, it is not likely anybody would steal the partitions out of the house, is it?

Mr. Matthews: I object to whether it is likely.

A. It is likely anything would be stolen up there.

Mr. Hunt: Well, on the jury's next inspection of the property, will you, as an employe of the Water Supply Commission, take with you—

Mr. Matthews: I object to this instruction.

The Court: I think rather than present the matter in that way, if counsel will call my attention to the various specific things that might be looked up—either counsel—I will take it under consideration at that time.

Mr. Hunt: If the court would be good enough to take under consideration the question of having the key taken along, so that the inside of the property could be seen.

The Court: I will be glad to at that time. I do not want to charge my memory with it.

Mr. Hunt: Well, that was the reason I was asking him.

The Court: If you will make a note of that and call my attention to it when the next view is made, I will be very glad to.

A. May I say that no key is necessary. The doors are stolen off those houses and also the windows, in many instances.

Q. That has occurred since the Water Supply Commission became the owner of the property, hasn't it? A. I don't know when they were taken.

Q. By the way, isn't it true that the buildings on the Ringwood taking have suffered a great damage since the Ringwood Company gave the Water Supply Commission the entry to its land?

Mr. Matthews: I object to that question as immaterial and as a nasty inference against the Water Commission, if your Honor please. If the Ringwood Company has lost anything, then, indeed, it is not running true to historic form. I will say that.

Mr. Hunt: It is not intended as a nasty inference.

H. G. Hershfield—Recalled—Cross.

The Court: I assume the question was asked in good form for the purpose of demonstrating to the jury when they view the premises whether the buildings are in the same condition as they were when there was a taking or the possesion turned over, and if that be the purpose I will allow it.

Mr. Matthews: Your Honor will allow me an exception, as it is immaterial.

The Court: Well, it may be material. I will allow it. I will grant you an exception.

A. The Ringwood Company's as well as all other buildings have been badly despoiled since they have been abandoned.

Q. I say since they have been taken into possession of the Water Supply Commission? A. That I reckon their abandonment.

Q. You reckon that to be their abandonment? A. Yes.

Q. Now tell us what other improvements there were on this Marozileono property? A. There was a stone wall, a brick flight of steps, a gate, an outside kitchen, a woodshed, a chicken coop, an outside toilet, some fencing, some fruit trees, some concrete sidewalks, and a pump and well.

Q. Where was the stone wall? A. In front of the house, along the road—the front of the lot along the road.

Q. How much value did you allow for it? A. $100.

Q. How many feet long was the wall? A. The width of the lot, whatever that was.

Q. Well, that would be 50 feet, according to your statement? A. Approximately.

Q. How many feet wide was the wall? A. It was a wall that revetted probably three feet at the base, coming up to a foot at the top.

H. G. Hershfield—Recalled—Cross.

The Court: Were there any openings in the wall?

The Witness: Yes, where the gate was.

The Court: Then it was not the width of the lot?

The Witness: Except for the gate, your Honor, the steps.

Q. You say it was three feet at the base and tapered to one foot at the top? A. I would say that that is the stone wall of that character would ordinarily be built.

Q. How high was it? A. Probably three to four feet outside the ground.

Q. How deep underground? A. I did not examine that. Probably two feet.

Q. Was this a masonry wall? A. It was laid up, as I recall, of field stone in concrete.

Q. In concrete? A. Yes.

Q. Then the value entering into that would be the value of the material and of the labor, wouldn't it? A. Primarily labor. The material is nothing; there is plenty of stone around there.

Q. How much did you allow for the stone walls on the Ringwood property in the 2350 acres under condemnation? A. Where I found them I allowed on the same basis.

Q. Look at your notes and tell us how much you allowed? A. (Witness examines papers.)

Q. Pick out some tract on which there are no buildings, so it would not be confused with the buildings. A. Well, where there are no buildings there were no walls of this nature.

Q. There are miles of stone walls there on the Ringwood property, aren't there?

H. G. Hershfield—Recalled—Cross.

Mr. Matthews: I object to the statement of counsel.

Q. Isn't that true? A. I don't recall any except division walls between the fields.

Q. All right; division walls between the fields. A. Some miles of them.

Q. How much did you allow for them? A. Nothing.

Q. Labor entered into their making? A. The labor that entered into their making—

Mr. Matthews: I object to him interrupting the witness.

The Court: Mr. Kelley cannot put down both conversations. Strike out the last question of Mr. Hunt until Mr. Hershfield has had an opportunity to answer the first question.

(Question repeated by stenographer.)

A. The labor that entered into the making of these division walls between the fields was reflected in the fact that the fields were cleared, and I allowed an additional value for cleared fields.

Q. What did the Water Commission pay for the Eckerson property 50 x 100 feet? A. $2,750.

Q. How much of that was for the value of the bungalow? A. Well, he carried $2,000 insurance on the bungalow, and I presume that was approximately his interpretation of its value.

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

The Court: Strike it out.

A. And would be approximately what I would value it at.

H. G. Hershfield—Recalled—Cross.

The Court: Strike out the first part and say that I approximately value it at $2,000.

A. Approximately. $1,500 or $2,000.

Mr. Hunt: Well now, I submit, if the court please, there is a very wide difference between $1,500 and $2,000—25 per cent.

Q. Look to your notes? A. My notes are largely predicated on a letter I received from the owner. With that—

Q. Please do not refer to the letter. I don't know what it is.

Mr. Matthews: I submit that the letter is a part of his notes.

A. The letter is part of my notes. This is the owner's value of the property with the reason for it.

Q. Mr. Hershfield! A. Sir.

Q. Do your notes show an estimate of the value of the building on the Eckerson property made by yourself? A. My notes show nothing else—

Mr. Hunt: I ask that this be stricken out and a yes or no answer be given to my question, if your Honor please.

The Court: Very well, strike it out. Can you answer yes or no?

The Witness: What is the question?

The Court: Do your notes show the value of the buildings?

The Witness: No, sir.

Q. What was the size of the Eckerson bungalow, do your notes show? A. No, sir; only the lot.

Q. All right. You say your notes do not show? A. No, sir.

Q. Independent of your notes have you a distinct and accurate recollection of the size of the Eckerson bungalow? A. No, sir.

Q. Now what price did you pay for the Eckerson property? A. For the land—

Q. For the property? A. For the land, building and inconvenience, $2,750.

Q. How much for inconvenience? A. Approximately $500.

Q. Did you testify to the purchase of the Eckerson property before the Condemnation Commissioners' proceeding? A. I don't recollect? If I was asked I did.

Q. You were asked, weren't you? A. I don't recall.

Q. Did you say anything about inconvenience then?

Mr. Matthews: I object to that. He is entitled to be confronted with the question and answer, if your Honor please, and if he is not confronted with it it is not proper cross examination.

The Court: I will sustain the objection.

Mr. Hunt: If the court please, I do not like to waste time, but it seems to me I have a right to ask him whether this is the first time he ever brought the word inconvenience into these proceedings, without going through thousands of pages of testimony.

Mr. Matthews: I object to the statement. I objected to the question, and the court ruled. He ought not to state this is the first time inconvenience has been brought into this discussion.

The Court: The record will show, Mr. Hunt. I think we must be bound by the rules of evidence.

Mr. Hunt: Of course. The trouble is this, the record of the first trial is 4000 pages, and perhaps he contributed half of it.

Mr. Matthews: I object to that statement.

Mr. Hunt: Or one-third of it.

Mr. Matthews: Because, like in this case, Mr. Hunt committed two-thirds of it in argument.

Mr. Hunt: May I be permitted to ask him whether at any time previous to Thursday, when he last testified here, he had ever mentioned the element of inconvenience as an item for allowance?

Mr. Matthews: The only purpose would be to test his credibility, and he must be confronted with the testimony, and I object to it as immaterial and incompetent.

Mr. Hunt: Isn't this the proper method? If he says yes, all right. If he says this is the first time, then the question is passed, that is all, and if he says no, he has mentioned it before, then it will be time enough for me to turn to the testimony of the last trial, read it all to him, if necessary, in order that it may appear whether or not what he has just said is true.

Mr. Matthews: If the court please, that is not the rule, and he knows it is not. This is simply a stall while they are searching through it. The proposition is whether or not he ever testified as to inconvenience. He can be asked the general question, did you testify at a previous proceeding to examining the Eckerson

bungalow. He was asked, and he said I think so, I don't remember. Then he is entitled to be confronted with the testimony. At the present moment he doesn't know whether he did or not, and he is trying to supply his lack of knowledge, and that is immaterial to this issue.

The Court: I think the strict rule must be followed, and I understand the rule to be that you must confront him with his record. In the face of the objection that is made, I must so rule.

Q. What did you allow for the fruit trees on the Marozileono property? A. $20.

Q. What were they? A. I don't recall now.

Q. Don't your notes show? A. No, sir. Simply shows fruit trees.

Q. What did you allow for fruit trees on the 2350 acres under condemnation? A. From $15 to $25 for a matured tree in good condition.

Q. Well, Mr. Hershfield, I did not hear you testify to any such item, and I took down notes of what you said and it came out exactly to the aggregate value that you gave, and there was no fruit tree item in it. A. They were reflected—

Mr. Matthews: I object to the argument of counsel as not a question. If Mr. Hunt did not hear it or did not take any notes, is that Mr. Hershfield's fault?

The Court: Objection sustained.

Q. How many fruit trees did you testify were on the 2350 acres under condemnation? A. I don't recall them by number. Wherever I found an orchard or had been an orchard, it was reflected in

the price I allowed for the particular piece of acreage.

Q. Yes. What did you allow per tree for an orchard or what had been an orchard? A. It depended on the age and condition of the tree.

Q. Well now, take one instance in which you allowed something for a certain number of trees, tell us what it was? A. $15 generally, sometimes $25 a tree.

Q. Tell us where there were some trees on the 2350 acres for which you allowed $15 or $25? A. I will have to go all over my field notes.

Q. Go ahead.

BY MR. HUNT:

Q. (Continued) Tell us whether some trees on the 2350 acres for which you allowed $15 or $25? A. On the Kaywood property owned by the Ringwood Company I allowed for 10 apple trees at $10; two cherry trees at $10, and two plum trees at $5. That is one item.

Q. Well, now, why is it that you did not give us that item when you were giving elements of the value of this property?

Mr. Matthews: I object to this question as argumentative. I asked him on direct examination questions that were asked and he has the right to answer me according to my questions. This is cross examination now. I did not ask him as to any particular division, not by inference.

The Court: Objection sustained.

Mr. Hunt: If the Court please, the witness valued the property in this manner: On his cross examination, so many acres at such and

such a price, so many of another at such and such a price, and—

The Court: I am not objecting to your getting the information. I am objecting to your getting it by arguing with the witness.

Mr. Hunt: I am not arguing with him when I put a question to him.

The Court: I did not understand it was a question. It was a question in a very argumentative form asking him why he did not do so and so. Of course, the question may be that he was not asked that specifically, but you might ask him whether he was asked to separate it.

Mr. Hunt: I thought the question was where does this appear in any of the valuation that you gave. I thought that was it in substance. May the stenographer read? I do not think there was any "why" in it.

The Court: I understood it was.

Mr. Hunt: I will put another one and withdraw this. That is the shortest cut.

Q. What did you state the whole value of the Ringwood property in this taking was? A. Without the buildings?

Q. Without them or with them; I don't care how?

Mr. Matthews: Well, there are two values.

Q. All right, with the buildings? A. $492,388, which figure included five per cent commission, taken off.

Q. Now, it included these items, did it not: 1450 acres one class; 255 another class; 569 another class; 100 acres another class, an appreciation for

various river frontages, stream frontages, and road frontages? A. And buildings.

Q. And additional for buildings? A. Yes, sir.

Q. Deduction of five per cent commission? A. Yes, sir.

Q. Whereabouts do your apple trees come in to that? A. In my figuring the value of the greater, I put some ground at $500 an acre, and some at $250 where I found an orchard—

Q. Where are the apple trees; on the $500 ground? A. Some of them.

Q. If the apple trees had not been there, what value would you have put on that ground? A. The value of the trees, less.

Q. $499, for instance, eh? A. If my field notes show the detail—

Q. Are some of the apple trees on the $50 ground? A. No, that was mostly wood land.

Q. Some of the apple trees on the $500 ground? A. I said so.

Q. How much less would that have been worth if the apple trees had not been there? A. Less than the values of the orchards.

Q. And the $250 ground, the same thing? A. Yes, sir.

Q. Now, what is the total allowance you made for fruit trees? A. Whatever the number of trees I figured were there.

Q. What amount did you add by reason of the presence of white oak trees? A. White oak?

Q. Yes. A. Where I found a good stand of white oak I appreciated the ground accordingly.

Q. Tell us about a place where you did that? A. On the Forge Pond there is some white oak there.

Q. You said that was worth $50 an acre? A. Part of it; without the white oak it would not have been worth that, in my opinion.

Q. Why not? A. Because it was rough ground, similar to such as I bought for $20 or $30 an acre.

Q. But coming back in here, along the Cupsaw Brook, you valued a large number of acres of rough ground, without any timber on it, at $250 an acre? A. Because it had a good view, it was open ground. The ground did not have to be cleared in order to use it for tillable purposes.

Q. Is this Forge Pond to which I now point on the map (indicating)? A. Yes, sir.

Q. Now, I call your attention to the land lying on the easterly side of it, looking out over the pond and the hill opposite the pond, hasn't that a good view? A. I would consider that some of my $250 acre ground.

Q. Now, then, I point to the land on the west side of the Forge Pond and running down to the margin of the pond, and looking out across it to the hill on the opposite side; hasn't that a good view? A. It would have after you cleared it. There is a heavy stand of timber on it.

Q. After you cut out some of the timber it has a good view? A. Yes, sir.

Q. That you valued, that, in Tract 88, at $50 an acre? A. Yes, sir, because it is wood land.

Q. But if you cut out a sufficient number of trees to create a clearance to put houses in, then it would do for resident sites just as well as the land over here on 85-B that you have valued as residence sites at $250 an acre? A. If you spent several hundred dollars an acre for clearing and grubbing, it would be residence sites.

Q. Now, Mr. Hershfield, you would not have to spend $250 an acre? A. I think it would—

Mr. Matthews: I object as immaterial, and ask an exception.

The Court: You may have it.

Q. Do you know anything about the cost of preparing an acre of wooded land such as that on the west side of Forge Pond in such a manner as to fit it for the erection of a nice bungalow to cost somewhere from $5,000 to $10,000?

Mr. Matthews: I object as immaterial to this issue, if your Honor please. It is only another attempt, thinking our patience has been imposed on, to give value to this land which it has not. That will give a unit of value for bungalow sites. We must condemn this property as it is, if your Honor please.

The Court: That is true, but this witness is being examined with respect to why he has placed a value of so much per acre, and said that it had to do with the condition in which he found it.

Mr. Matthews: Yes.

The Court: And I think it is proper to ask him what it would cost to clear it. He has already said it would cost several hundred dollars an acre.

Mr. Matthews: That is not the measure of market value in this proceeding.

The Court: That may be true, but it goes to his credibility when he gives his estimate of value.

Mr. Matthews: Well, if that is the only purpose of it, and if it will not be used as a foundation or an opening of the door to testimony of others with reference to creating a value for

bungalow purposes by doing something to the ground that has to be done, I have no objection to it.

The Court: I think that can be the only purpose of the question, to test his credibility. He is delving into this witness's figures; he is trying to find out how much weight this expert's testimony should be given with respect to values.

Mr. Matthews: I have nothing—

The Court: And therefore, it goes to the credibility of this witness' testimony; and for that reason I think this is competent. If it is put in for the purpose of opening the door to something which I might rule to be inadmissible I shall close the door when that time arrives.

Mr. Matthews: I protected myself on the record if your Honor please.

The Court: Very well.

(Question read.)

Mr. Matthews: I object to that as immaterial and incompetent.

The Court: I will allow it and grant you an exception.

Mr. Matthews: Exception.

The Witness: I know that it cost the North Jersey Country Club $700 an acre—

Mr. Hunt: I ask that be stricken out as not responsive.

The Court: I will allow it because he is telling how much it would cost and giving his reasons for the $700 an acre to clear that property.

A. (Continued) $700 an acre to clear their property for a fit condition for their fairways. The

clearing that would be needed here would probably be not so intensive. I should say approximately 30 per cent of that figure would clear the westerly slope of the Forge Pond tract sufficient for your purposes.

Q. Thirty per cent, about $210? A. About $210 would clear it, roughly.

Q. And that would be true of any other part of this property that is accessible for building purposes, would it not? A. No, that figure would be applicable to a place as accessible as the Forge Pond tract is. There are other tracts, owing to the topography of the country, you could not get the lumber out as readily as you would on the Forge Pond tract.

Q. There you would burn it on the ground? A. If you had no market for it.

Q. And there are other tracts where the growth is not so thick and heavy and, therefore, the cost of clearing would not be so great? A. There is no standard cost of clearing. Each acreage stands on its own figures.

Q. Now, I refer to your direct testimony of the first day, page 130 where you say:

"In addition to that, and spotted through the taking there are, in my opinion, approximately 100 acres of what I would call the best lands—sites for more pretentious homes—which I have valued at $500 an acre or $50,000."

Q. There is none of that $500 acre land on either the west side or the east side of Forge Pond, is there? A. I don't seem to have my detail of the acreage here, unless you have it.

Q. Can't you answer that? A. I would say that might be.

Mr. Matthews: Do you want my copy of the detail?

The Witness: I would like the one I prepared, the original one, if I could get it.

Q. Mr. Hershfield, maybe I can help you here by pointing to Exhibit C-1. Didn't you tell us the other day, under my cross examination, that of the $500 land 20 acres lay up here where I am now pointing in Tract 83 by the Miller place and 20 acres lay to where I am pointing on Tract 80, on both sides of the Wanaque River? A. I said there were 80 acres in Tract 80, and approximately 20 acres in Tract 83.

Q. Tract 83, that is right. That is where I pointed. A. Yes, sir.

Q. Therefore there cannot be any up here in Tract 88, and 85-B, which are the tracts that lie on the west side and east side respectively of Forge Pond, can there? A. There might be some there after it was cleared that was worth $500.

Q. But in your estimate— A. I didn't figure that ground as valuable as the other two sites.

Q. And you did not put any $500 ground in either of those tracts? A. No, only in those two.

Q. On the contrary, up here around Forge Pond on both sides you made it mostly $50 per acre? A. What is the number of that tract, please?

Q. 88? A. No, I had mostly 46 acres; is that tract 88?

Q. That is 88? A. I had 46 acres of wood land, 20 acres of swamp land, that is where the pond is.

Q. Tract 88 you have 46 acres at $50 an acre, and 20 acres at $20 an acre? A. Where the pond is.

Q. Now, you told the jury, with a little trimming of the trees there that would come in your $500 classification? A. I have not said that.

Mr. Matthews: I object to that.

The Court: Objection sustained. I do not understand that he said that, Mr. Hunt.

Mr. Hunt: I understood it. I may be wrong. Will the stenographer turn back two or three questions, please.

The Court: I understood him to say that it would cost $200 an acre to clear the lands similarly wooded to the North Jersey Country Club, 70 per cent of what it cost them, which was $700, that everything depended upon the particular acre in question, according to the stand of timber and the density of it, and the proximity of it to a road where the logs could be taken away, and so forth. That is as I recall he said it.

Mr. Lewis: I followed the thing somewhat, and my impression is very strong it was: This witness was being examined about the Eckerson property, and an allowance was made in the Eckerson property because of the view which developed from that property. Then, Mr. Hunt took the witness to the property around Forge Pond and wanted to know what the difference was and the witness answered there is a growth of trees there, that is full of woods; then the question came as to how much cleared off, those trees, and if, when cleared off, it would not be just the same kind of property as the Eckerson property.

Mr. Matthews: There wasn't any question like that.

The Court: If there was I did not hear it.

Mr. Matthews: He said if you cleared it off and built houses on it, what would it cost to clear it? That is all that was asked. If they

want the figures on clearing, I think the Commission will be glad to bring that contract here.

Q. How much did you allow Mr. Sherman for the inconvenience of giving up possession of his property? A. Approximately $500.

Q. By the way, Mr. Hershfield, in your experience as a real estate agent—

Mr. Matthews: I did not hear that question. Pardon me I was talking. May I have it read? (Incomplete question read by the stenographer.)

Q. (Continued) In your experience as a real estate agent is it or is it not the case that one owner can get a better price for a given piece of property than another owner?

Mr. Matthews: I object as immaterial to this issue what can be gotten, if your Honor please. The proposition is what is the market value of this property, and the practice among real estate owners has nothing to do with it.

The Court: What is the purpose of it?

Mr. Hunt: What I wish to do is draw from this witness his opinion on the question as to whether or not the same piece of property hasn't different realizable market value in the hands of one owner than in the hands of another.

The Court: That is so obvious. Is it necessary to ask, if the owner needs money and sells because of the necessity, then he will, of course, sell for less than he would if he did not need

the money and held on. If, on the other hand, he was a shrewder man than the other man he would probably get more. All of those things are present in all of these sales, and every member of this jury knows it. Now, this witness knows it.

Mr. Hunt: Your Honor has stated exactly what is in my mind. May I ask whether the witness agrees with the statement your Honor has just made?

The Court: I do not see any objection to that.

Mr. Matthews: Except the first statement would not reflect the market value,—an urgency of sale. It is a fair and free market between a willing seller and a willing buyer, neither of whom is forced to buy or sell.

The Court: That is true, and I will so instruct the jury at the proper time.

Mr. Matthews: Then I have no objection to your Honor's statement being asked the witness as a question by your Honor.

The Witness: What is the question, please?

The Court: I have just said to Mr. Hunt what I consider elements which might affect the price of property. You heard what I said?

The Witness: Yes, sir.

The Court: Is that correct?

The Witness: The price which the owner obtains depends, unless there is some suasion over him, on how good a dickerer he is.

Q. Now, when you acquired the various properties shown on the map that you testified you had acquired, I think you said you were acting for the Water Supply Commission and not for the sellers

of the property? A. I went there and told them I represented the Commission and we needed their property.

Q. And you dickered for the Commission? A. And for the owners, yes, sir.

Q. That is what I want to know; did you represent the Commission or did you represent the owner? A. Inasmuch as there was no broker on the other side, I suppose I represented both people. We went to bat with none of them. We agreed upon a price.

Q. Who paid you? A. Who paid me?

Q. Yes. A. The Water Supply Commission.

Q. In whose interest did you work when you bought these properties? A. Both parties; in some cases I gave them more—

Q. Did you understand—

Mr. Matthews: May we have that completed on the record,—his answer?

A. (Continued) In some cases I gave them more than they asked; in one case more than we had the property listed for.

Mr. Hunt: I have not asked a question. If there is an objection put to a question I put—

The Court: No, I think it is part of his answer to the question as to whom he represented. He is elucidating what he meant by stating he represented both parties, and he is giving his reasons why he represented both parties, at least, in some instances and I will let it stand.

Q. Whom did you represent, the Water Supply Commission or the seller? A. In some instances both.

Q. Tell us the instance in which you represented both? A. Col. Edward Livingston Price, former City Counsel for the City of Newark.

Q. Tell us another instance? A. I don't recall any other property we had listed with this excepting the Price property.

Q. Tell us another instance in which you represented the seller of the property as well as the Water Supply Commission. A. I figure I represented them all inasmuch as they consulted with me as to what price we were paying, and what was a fair price. I was not paid by anyone except by the Water Supply Commission.

Q. Did you consider it your duty to get the lowest price you could for the Water Supply Commission, or the highest price you could for the seller? A. I considered it my duty to buy the property at its fair price; and in several instances I paid more for the property than what they had agreed to sell it for. In other words, advised them they could get more. My instructions were to buy the property at the fair market price.

The Court: I suppose it was from one of those that you gave more to than the value of the property or land that they were willing to sell that you got the chew of tobacco from?

The Witness: Yes, sir, as I recall, in one instance, yes.

Q. Did you bring your aerial map with you today, Mr. Hershfield? A. I think it is in court already.

Mr. Hunt: Is that the same one that was used in Newark before the Condemnation Commissioners?

Mr. Frazer: No, it is not. This is the one that Mr. Hershfield, I understand, used in his office.

Mr. Hunt: Then, I don't want it.

Mr. Matthews: Is there any difference between them?

Mr. Frazer: The only difference is that this is in sheets bound, and the other is a large one that was spread on the table.

Mr. Matthews: It is from the same negative?

Q. Mr. Hershfield—

Mr. Matthews: You don't want this one?

Mr. Hunt: I don't want this one.

Mr. Matthews: It is the same thing.

Mr. Frazer: It is the same, only the other was glued together.

Mr. Hunt: It has certain marks on it and made by certain witnesses in response to demands made by me.

Mr. Frazer: I submit that is a very excellent reason why it should not be admitted here.

Mr. Matthews: I take it you do not want it, Mr. Hunt.

Q. When you valued the Ringwood Company property why did you deduct this five per cent? A. Because they procured a cash purchaser for the property without paying the usual commission for securing the cash purchaser.

Q. What is the usual percentage? A. Five per cent in country property.

Q. Then you consider the Ringwood Company incompetent to sell their own property? A. I would not so differentiate.

Q. You think they could not sell their property without hiring an agent to do it for them? A. Being in the real estate business myself I naturally believe that the best price is secured through the ability of a broker.

Q. They are in the real estate business too, are they? A. Only as owners, as far as I know.

Q. Then, they have done a great deal of selling of lots at Greenwood Lake, at a settlement called Awosting?

Mr. Matthews: I object to that as immaterial.

The Court: I will allow it.

Mr. Matthews: Exception?

The Court: Yes.

A. As owners, they did.

Q. If they sold the property under condemnation they would be selling it as owners? A. If they did, then they would save five per cent.

Q. Then, why do you take five per cent away from them when you value the property? A. Because in 99 out of 100 cases properties are sold through the agency of a real estate broker.

Q. Suppose, Mr. Hershfield—strike that out, please—you own some property in Passaic County that you are holding for resale and offering in lots, do you not?

Mr. Matthews: I object to that as immaterial, whether he does or not.

Mr. Hunt: All right, strike that out.

Q. Does the Tri-County Realty Company own some property in Passaic County that is being resold in lots?

Mr. Matthews: I object as immaterial to this issue what the Tri-County Realty Company may hold in Passaic County for resale. I think that is immaterial.

The Court: I think that is immaterial.

Mr. Hunt: All right, strike it out.

The Court: Very well.

Q. Mr. Hershfield if you, as a real estate agent, sold me a piece of land, we will say for $2,000, but your arrangement with the owner for whom you are acting in making the sale is that the owner pays you five per cent which would be $100, the basis of my buying that lot at $2,000 established the market price of $2,000 or only of $1900?

Mr. Matthews: I object to that as immaterial. It should not be asked in this case what Mr. Hershfield would do with Mr. Hunt.

The Court: Yes, but Mr. Hershfield has testified he has taken $25,000 off the value of the lands that he put on them in order to sustain the view he has given, and that being so, I think it is a proper question to see whether that is the general practice, and what relation that practice bears to the real market value of the land. Mr. Hershfield said that is the market value and it is four hundred and ninety odd thousand dollars; the intrinsic value would be about twenty-five thousand less, and I think it is proper. I will allow it.

Mr. Matthews: Exception on the ground that it is incompetent.

The Court: You may have it. What is the answer?

The Witness: I have forgotten the question.

The Court: Read it to him, please.

(Question read.)

The Witness: I can answer that two ways, to say that the owner got $1900 for the land; the buyer paid $2,000 for the land.

Q. Well, the value is, the market value is by what the buyer pays no matter where the money goes to? A. Ordinarily, yes.

Q. If you are agent for a seller, and you have an arrangement with him by which you get fifty per cent commission, and I come along and buy a lot for $1,000, that establishes the market value of that lot as a thousand dollars?

Mr. Matthews: I object to this as immaterial, if your Honor please, because it may be, as undoubtedly those questions are, for the purpose to prepare for those fellows who try to create value up there, to get fifty per cent off themselves. I refer to Mr. Bugg's bungalows. That would not be a fair test of market value. Such a question is incompetent to this issue.

The Court: I will allow it.

Mr. Matthews: An exception on the ground that it is incompetent, if a man's commission is fifty per cent of the value, it does not show market value, but shows hold-up value.

The Court: You may answer.

A. It depends on what the man who got fifty per cent did in order to earn it. The owner certainly did not get that for the land.

Q. Well, if the public is willing to pay a thousand dollars each for pieces of land of a certain character, that fact establishes the market value

of lands at $1,000, does it not, regardless of what becomes of the money that the purchasers pay?

Mr. Matthews: I object.

Q. (Continued) The money might be thrown down the sewer, but the value would be the same in the market?

Mr. Matthews: I object to the question as incompetent, because he is going to lay a basis again for this falsely created standards of value. It would not create a value for this tract, because a few millionaires were brought out and entered contracts to buy certain pieces at fabulous amounts.

The Court: That is not what he asks. He asks whether the public would buy some lots at a thousand dollars, and wouldn't that create market value, and if the question is based upon the proper hypothesis that they were bona fide purchases in the open market, under proper conditions, I must assume that the question is based on such an assumption, I think it is a proper question.

Mr. Matthews: I would have no objection if that were the question, "bona fide purchases."

The Court: I cannot see into Mr. Hunt's mind, and see what is coming. You are guessing, and I am not going to guess.

Mr. Matthews: But I am not guessing on the predicate.

The Court: All right.

Q. Answer that, please. A. If the purchaser knew that the broker was making fifty per cent commission I think he would demand a considerable portion of the commission be returned to him before he would buy.

Mr. Hunt: I ask the answer be stricken out as not responsive.

The Court: I think it is responsive. It is entirely in the question, the question being whether if the public purchased lots at a thousand dollars apiece, whether that would be a proper criterion to create or show market value. That is my own language what I understood the question to be.

Mr. Hunt: That puts it fairly, sir.

The Witness: If the public paid, without knowing these untoward circumstances, a thousand dollars a lot, they presumably were paying that to the owner, and they figured the lot was worth that. I cannot conceive—I have never had any experience with fifty per cent commission. I have never got more than five, the legal commission; so, consequently, I cannot even visualize a condition where a man got fifty per cent commission, and what he produces for that value.

Q. You testified in the case brought by the Water Supply Commission—I will withdraw that—

Mr. Hershfield, have you yourself, either individually or through the medium of companies in which you are interested, bought real estate and afterwards sold it at an advance?

Mr. Matthews: I object as immaterial to this issue whether this man either for himself—

The Court: What is the materiality of it, Mr. Hunt?

Mr. Hunt: Well, it just ties up with the last question, your Honor. I want to make it clear that it is the price which a purchaser will pay for property that establishes its value, regardless of whose pocket the purchase price goes into.

The Court: Do you need any testimony on that?

Mr. Hunt: Well, I concede that—

The Court: No, I mean, can't you argue that to the jury?

Mr. Hunt: Well, I suppose my adversary might admit that, perhaps.

The Court: I mean it is a matter of universal knowledge, some of these things that you are asking this witness about. It is perfectly apparent that people do buy and they are going to sell but not until they do get a profit, usually; and on the other hand, at times, people buy lemons.

Mr. Hunt: And get stuck.

Mr. Matthews: And get lemonade.

The Court: It works both ways.

Mr. Matthews: I would have no objection to this question, if Mr. Hershfield were asked the question have you bought property and sold it in similar conditions that you bought it in? I am objecting to this question because it is opening the door to development purposes and greater prices on that.

Mr. Hunt: I will not ask it.

The Court: Well, it is withdrawn.

Q. Mr. Hershfield, in the last six or seven years, the years since the close of the war, there has been a good deal of improvement in roads running

through the country, has there not? A. Not through this section of the country.

Q. Not through this? A. No, sir.

Q. Through North Jersey, generally? A. The State Highway and Passaic County has improved their highways.

Q. There has been a good deal of increase in persons owning automobiles? A. No question about that.

Q. Have those two factors worked together produced any effect on the country property in North Jersey? A. Yes, there has been a better demand in the last few years than there was ten years ago.

Q. Then that increased demand that has resulted, has it, to an increase in prices? A. No; it simply resulted in more people looking and willing to buy at former prices.

Q. Well, it has resulted in some people buying, hasn't it? A. It resulted in people buying to-day who would not buy ten years ago.

Q. And it has resulted in sellers getting higher prices to-day than they could get ten years ago, hasn't it? A. In some instances, yes; and in some instances no.

Q. And it has resulted in owners getting higher prices, for example, 1926, than they could get in 1925? A. In some instances.

Q. Well, that is quite the general rule? A. No, sir.

Q. Throughout this North Jersey territory? A. No, sir; it simply means that property can be sold to-day that could not be sold ten years ago.

Q. Well, don't you understand that throughout North Jersey in general there has been an advance in the market value of real estate in the last ten years? A. There has been a general advance all

through northern New Jersey; in some cases more pronounced than others.

(A short recess was taken.)

Q. Mr. Hershfield, I think you testified in your direct examination that you as agent for a man named Corning had advised him to sell a certain tract of about 310 acres at a price of less than $100 per acre, and that he had acted accordingly, is that correct? A. No, sir.

Mr. Matthews: I do not remember any such testimony.

Q. In your direct examination, did you refer to a sale of 310 acres? A. I referred to a sale of 310 aces that I had made.

Q. That you made, all right. A. Yes, sir.

Q. Who was the seller, Edward Corning? A. Edwin Corning, the present Lieutenant Governor of New York State.

Q. I show you this paper, and ask you whether that 310 acres is indicated here as Tract D? A. It is not all. There is a road running through here (indicating), that is not shown.

Mr. Matthews: I think, if your Honor please, that that testimony as to the Corning tract is not comparable property, and I would like to have the record show it had sidewalks, electric lights and sewerage, and I withdrew it as comparable property on my own initiative. I am prompted to that, and I would be sure to—

The Witness: This is not the same one.

Mr. Matthews: Very well.

The Witness: (Continuing) This is approximately the property, but there are roads which are not shown on the map.

Q. Is this approximately the outline of the exterior line of the property? A. Approximately.

Q. When did that sale take place?

The Court: Do you wish them marked for identification?

Mr. Hunt: Oh, yes; if the Court please.

(Map marked O-2 for identification.)

Q. When did that sale take place? A. I should say the deed passed sometime within two years.

Q. What has that property been called since this sale?

Mr. Matthews: I object to that as immaterial to this issue, unless it is the—

The Court: What is the question, what it is called?

Mr. Hunt: The question is what has that property been called since this sale?

The Court: I do not know about that. What difference does it make if it is still called the "Corning piece" or the "Jones piece"?

Mr. Matthews: I have no objection if that is the purpose of the question.

Q. Can you answer that? A. This has no particular name.

Q. Has it not been called Pine Lake? A. No, that was a subdivision of it that was resold; a small tract was sold of it, I thought.

Q. Oh, now, who sold that?

Mr. Matthews: I object to that as immaterial, if the Court please.

The Court: What is the materiality of that, Mr. Hunt; to further identify it?

Mr. Hunt: This is another transaction to be traced, your Honor. I want to know who the seller was and who the buyer was, and see what the price was and whether it is comparable property.

Mr. Matthews: If your Honor please, the price of a subdivision, unless in the same character of terrain, at some sale by Mr. Hershfield would be immaterial to this issue, and particularly it would not be cross examination because Mr. Hershfield testified as to the original tract sale only.

Mr. Hunt: When I am examining, and in every respect testing an expert witness who testifies to a sale of 310 acres at a certain price two years ago, if he now tells me that since that sale a part of this 310 acres have been sold, I think I have a right to ask who sold it, who bought it, and how many acres are in it, and what was the price.

Mr. Matthews: Unless it was in the same condition, it would be immaterial.

The Court: I think that is true, but it can be brought out on redirect. They can testify on this question.

Q. Who was the seller to whom you referred?

Mr. Matthews: I think I ought to be entitled to cross examine at this time.

The Court: I will allow you to do so before the question is answered.

BY MR. MATTHEWS:

Q. You are being asked now concerning the sale of a portion of the Corning tract, and I think the portion has been referred to as Pine Lake, if you know and are going to testify about that, is that section known as Pine Lake that was resold or was it rather in the same condition at the time of resale as it was at the time of the original sale or the whole acreage? A. No, because the resale of these ten acres carried with it certain water rights; that was the sale.

BY MR. HUNT:

Q. The same 310 acres had water rights from Corning? A. No, sir; just water rights extending over the whole 310 acres. When this man bought ten acres, he paid a special price, as I understand, because it guaranteed him a certain flow of water which he would not ordinarily have, so he could put a pond in it for his own use.

BY MR. MATTHEWS:

Q. In other words, Mr. Hershfield, was or was not the sale of that ten acres in contemplation of a pond development? A. It was.

Mr. Matthews: Therefore, I submit it is not comparable, if your Honor please.

The Witness: (Interposing) That was the essence of the sale.

BY MR. HUNT:

Q. Had the pond development taken place at the time of the sale, or had it not? A. Only on paper.

Mr. Hunt: Then I submit it is comparable.

The Court: No you want the first sale?

Mr. Hunt: No, the second sale. That was the first sale at $100 an acre, then a second sale of ten acres with a pond development in contemplation. I asked him whether the development had actually taken place. He said "No". He said, "On paper".

The Court: Yes, but here is a case where the objection is that it is not comparable, because during the interval between the time that Mr. Hershfield speaks of it having been sold, a lake or pond was developed and in contemplation, and on paper; and then you are trying to find what the second price was at the second sale and after this proposed development had been planned and mapped, and the objection is that that being so, the price paid the second time is not competent, because not comparable to the property in question. Is that your point, Mr. Matthews?

Mr. Matthews: Yes, sir, your Honor, and the inclusion of water rights that Mr. Hershfield added.

Mr. Hunt: It is an absurdity, the one with respect to the pond on paper. They complain we cannot put ponds on paper on our property, but here they do put the pond on paper. The situation is so changed that it is not comparable. There has to be uniformity of rulings one way or the other, it seems to me, or there should be. Now, if they have been able to put a pond on paper, it means nothing more than that the land in question presents that availability or capability of having a pond created on it. That is all. It does not change the land there. It is

yet without any pond there. It is yet in what my friend calls the raw state, or wild state. I do not see why I cannot inquire about it; the same capability for producing a pond, whether when Mr. Corning sold it or—

The Court: Here is an entire new situation, not only is it a potential pond, but there is machinery or method present now with respect to water rights that had in the meantime been acquired.

By Mr. Hunt:

Q. Had there been water rights acquired in addition to the 310 acres? A. The ten acre piece has a guarantee of sufficient water to be let down from the upper pond to keep it full at all times; that was one of the conditions of the sale, I am told.

Q. You were told; do you know anything about it? A. I did not make the sale.

Q. Have you ever seen the deed? A. No.

Mr. Matthews: All these questions would be immaterial if the first one was.

Mr. Hunt: I won't pursue it, your Honor. I will try to save time.

The Court: It is withdrawn.

The Witness: (Interposing) In addition to that—

Mr. Hunt: Never mind. The question is withdrawn.

Q. Now, I show you a paper which has been marked Exhibit O-2 for identification, and I point to a tract marked C-2 in red pencil with the words "Tri-County" written in it? A. Yes, sir.

Q. Now, do you know what that is? A. I do.

Q. That is 30 acres, approximately, of land adjoining the 310 acre tract, isn't it? A. Across the road, but entirely a different—

Q. Separated from—

Mr. Matthews: Just a minute, may we have the answer complete?

The Court: Entirely different what?

A. (Continued) Entirely different as regards terrain, and also lake frontage. This property owns and carries with it—what is the scale of this map, please?

Mr. Hunt: Now, if the Court please—

Mr. Matthews: This is not cross examination.

Mr. Hunt: This witness is about to say this property carries with it—he will have a chance under my examination or redirect examination by his counsel—for the moment, I beg of the Court to require him to answer the question put by me responsively and to say nothing more.

Mr. Matthews: I object to the question.

The Court: The question is objected to because it is not, Mr. Matthews says, cross examination.

Mr. Hunt: Well, now, 310 acres is one of the tracts that he referred to in his direct examination as support for his opinion of the value of the Ringwood property.

The Court: And this is contiguous to it.

Mr. Hunt: Now, I am asking about a tract of 30 acres marked here C-2 which he says is contiguous, to the 310, altogether separated

from it by a road which is marked on this map "Colfax Road".

The Court: I think I will allow it. This is a proper question.

Mr. Matthews: Will your Honor have the question read? Counsel leaves a question in abeyance and argues for a while, and we are inclined to forget it. Mr. Hershfield was interrupted in his answer to a question. Now, I ask that question and answer be read and you will see that my objection is well put.

(Testimony read.)

The Court: Proceed.

Q. Now you say this 30 acres is separated from the 310 acres by the Colfax Road? A. Yes, sir.

Q. What is the Tri-County Realty Company; is that a corporation of this State? A. Yes, sir.

Mr. Matthews: I object to it as immaterial to this issue, if your Honor please.

The Court: Objection sustained. What is the materiality of it. Unless you can show that it is material—

Mr. Hunt: I propose to show your Honor that the Tri-County Realty Company, a corporation of this State, its principal stockholder is the witness, Henry G. Hershfield, and that at the same time the 310 acre tract was sold by Mr. Corning at a certain price, the 32 acres sold by Mr. Hershfield's company at another price—

Mr. Matthews: I object, that it is only sought to be asked for the purpose of prejudicing the witness and not contradicting the witness.

The Court: The witness on his direct examination referred to having purchased some

property by a corporation that was owned by him, I don't recall whether it was this corporation or this property.

Mr. Matthews: If it was not, then—

Mr. Hunt: He is not referring to this. He would not refer to this for worlds.

Mr. Matthews: I object to that statement.

Mr. Hunt: I withdraw it.

Mr. Matthews: That is absolutely unfair.

The Court: That remark is objectionable.

Mr. Hunt: I withdraw it and apologize.

The Court: The whole question before the court is the propriety of the present question, and you object to that because it is immaterial and irrelevant?

Mr. Matthews: Yes, your Honor.

The Court: Isn't it material and relevant with respect to the credibility of this witness' testimony? If it be true that what Mr. Hunt said that he is the corporation, is a large stockholder? I think it is. From that standpoint I think it is proper, going to his credibility.

Mr. Matthews: By reason of the statement just made I will withdraw my objection.

The Court: Very well.

Q. Who is the principal stockholder? A. I am.

Q. Did the Tri-County Realty Company purchase from Mr. Corning the tract marked here C-2, this adjoining to the 310 acre tract? A. We did.

Q. At what time? That is, with reference to the date when the 310 acre tract was sold? A. Oh, roughly, a year later.

Q. Wasn't it about the same time? A. No.

Q. Well, as a matter of fact, the sale of the 310 acre tract was only about a year and a half ago,

wasn't it? A. The contract for the 310 acre tract was closed a matter of a year and a half, as I recall, before the deed was given; the reason being that the purchasers were unable to finance it, and it dragged along for a year or a year and a half.

Q. All right. When was the title closed? A. As I recall, within two years.

Q. Yes; and within six months after that time the Tri-County Company purchased this tract C-2 from Mr. Corning; that is correct? A. I don't know when the 31 acre deed passed, but I know that the Tri-County purchased two tracts in there.

Q. I am asking about C-2? A. I should say about a year ago or a year and a half ago. I am not positive of those dates.

The Court: Mr. Hershfield, did the jury see this property on their view? Was it pointed out to them?

The Witness: I did not refer to this property. If your Honor will recall, I said that in my—

The Court: No, that answers it. It was not.

The Witness: I did not refer to it.

The Court: Was it pointed out to the jury?

The Witness: No. I pointed to stuff across the lake, and it was not comparable.

Mr. Matthews: It was not pointed to.

The Court: I understand that, but the witness nevertheless did on the trip the other day show other property with my permission, other than the property under condemnation, and Mr. Anderson was present and he asked permission to show, point out properties that we were passing, that were testified to or would be testified to in this trial as comparable property. That is why I asked the question.

Mr. Matthews: Yes, your Honor.

The Court: I allowed him to do it without giving the prices, just to identify the properties.

The Witness: This property, your Honor, is known as Hemlock Hill. In my opening testimony I stated—

Mr. Hunt: I have not asked the question.

The Witness: I am answering the Judge.

Mr. Hunt: I object to his making a speech.

The Court: Objection sustained.

Q. Mr. Hershfield, negotiations between Tri-County Company and Mr. Corning for the purchase of the 30 acre tract were taking place at about the same time that the negotiations of the sale of 310 acres were taking place, were they not? A. No, sir; subsequent.

Q. Subsequent. All right. Were you the chief stockholder of Tri-County Company at the time this purchase was made? A. I was then and am yet.

Q. What price per acre did the Tri-County Company pay for the 30 acres embraced in C-2?

Mr. Matthews: I object to it as immaterial and incomparable to the property under consideration, therefore is not competent.

The Court: What do you say?

Mr. Hunt: I say according to the witness' own admission it is separated from the 310 acre tract by a public road, and if the 310 acre tract was testified to be comparable, as it was, this must be comparable.

Mr. Matthews: That is preposterous. A road may separate two properties; one of them may

be mountainous in character and the other level terrain.

Mr. Hunt: That can be shown.

Mr. Matthews: I object to this as incomparable properties. This is not cross examination. This is a direct case. On the direct case I would have an opportunity to cross examine. I submit that the price paid by the Tri-County for this land is not competent to be testified to unless it is shown it is comparable property.

The Court: The objection is sustained. I think it is correct. There is nothing before the court now on which the court can rule as to whether or not it is comparable property.

Mr. Hunt: If your Honor please—

The Court: Just because it is across the road necessarily does not make it comparable. If you can further satisfy me it is comparable I will rule on it at that time. If there is a gully through it that goes down to the centre of the earth, which may be for all I know, it is not comparable. If on the other hand, it is a palisade, like the Palisades along the Hudson River, it is not comparable. I do not know.

Mr. Hunt: Well, may I have an exception to your Honor's present ruling and then proceed further?

The Court: You may.

Q. Now, Mr. Hershfield—

The Court: I have no objection to your developing the comparability, Mr. Hunt.

Mr. Hunt: I am going to try to do it.

The Court: Very well.

H. G. Hershfield—Recalled—Cross.

Q. What is the character of the 310 acres as it lies along the Colfax Road? A. It drops off from the road at least 50 per cent of it, towards a hollow to the north.

Q. Now what is the character of the 30 acre tract as it lies along the Colfax Road? A. The 30 acre tract has a frontage—

Q. Now the question relates to the 30 acre tract as it lies along the Colfax Road, so don't come to any lake frontage. A. Please do not tell me what I am going to answer.

Mr. Matthews: I object. We are dealing with similarity, and the witness is starting to measure the tract so as to give similarity, and he tells him what to do.

(Question repeated by stenographer.)

The Court: You may answer that.

A. This 30 acres has on it the finest stand of hemlock in northern New Jersey, according to the New Jersey Board of Forestry. In addition to that, practically all of it faces Pompton Lakes. In addition to that it has 2500 feet of road frontage, and in addition to that it has rights on 1000 feet of lake front.

The Court: That is the property that you called our attention to as we passed it?

The Witness: Hemlock Hill. Stating that I supposed some day the County would take it over as a park.

The Court: That is the piece you are now talking about?

The Witness: Yes, sir.

The Court: Very well.

H. G. Hershfield—Recalled—Cross.

Q. Now, Mr. Hershfield, you said it had rights in the lake. As a matter of fact, it is separated from that lake by a public road, isn't it? A. Yes, but the—

Q. Just answer the question and stop, if you please. A. It is.

Q. The 310 acre tract also has a stream flowing through it, hasn't it? A. There is what we call Hickock's Brook flowing through it.

Q. And presents capabilities of producing a lake within itself, does it not?

Mr. Matthews: I object to that as immaterial. It is the terrain as is that we must consider. It is the conditions as were that we are entitle to consider only.

The Court: I don't know that it is very objectionable except from the point of time consumed.

Mr. Matthews: He is arguing now in order to satisfy the court that this terrain across the street, 30 acres, is the same as the 310, comparable, and therefore the price may go in. Mr. Hunt asks isn't it possible to create something out of that stream. Now that is not comparable, what may be created. What is, makes it comparable.

Mr. Hunt: What I am trying to pursuade the court is that when a witness has testified a property of 310 acres that lies seven or eight miles from the taking is proper for him to take as one basis of the valuation that he put on the taking, I am trying to pursuade the court that it is proper to permit him to prove out of his own mouth that his own company paid more than five times as much for a piece of adjoin-

ing land bought at the same time or within six months afterwards.

The Court: Yes.

Mr. Hunt: I think it should be possible without argument and no demonstration. If the 310 acres is comparable, this is comparable. Which is nearer in likeness to the land under condemnation is for the jury to say. Whether either is comparable is for the jury to say. But certainly when he has put before the jury a sale of 310 acres at less than $100 an acre, but has himself purchased 30 acres that adjoins it at $500 an acre, I think I am entitled to show it, without long argument.

Mr. Matthews: If he proves the terrain is comparable, and he has not done it.

Mr. Hunt: The jury may go and see whether it is comparable.

The Court: Inasmuch as the jury has already seen it and knows the land—at least I recall it very distinctly, and it seems to me that it is in my judgment comparable to anything that I ever saw before because of the natural, physical things that I saw there,—but inasmuch as the jury have seen it and may think it is comparable, it ought to go in and I will allow it, and you may have an exception.

Q. Mr. Hershfield —

Mr. Matthews: May I cross examine after that in order that there may be before the jury the facts of incomparability, if the court please?

The Court: You may.

Mr. Hunt: What, interrupt me?

Mr. Matthews: On the incomparability.

FURTHER DIRECT EXAMINATION BY MR. MATTHEW:

Q. Will you please take the Tri-Country's 31 acres and compare them feature by feature with the acreage across the street, the Corning acreage of 310 acres, the Hemlock Hill, so-called.

The Court: Wait. I do not think this is proper at this time. I will allow you to do it on cross examination. I did not get quite what you were at.

Mr. Matthew: You are determining then—

The Court: I am saying it may now be testified to, and for the jury to determine whether it is comparable and the weight that they will give it, particularly inasmuch as the jury have seen this piece and are acquainted with it, and if they have the recollection that I have it will stand out like a sore thumb in their minds,—I don't know that they have—but you may on redirect examination go into the comparability part. I am not passing on the comparability of it, except for the purpose of having the jury hear the witness' story, inasmuch as it is so close in proximity to the other piece, and in further consideration of the fact that the jury are acquainted with the property.

Mr. Lewis: It was presented to them by the shower of the appropriator.

The Court: Yes. Not for the purpose of being comparable, Judge Lewis, but as a matter of pride in the nature of the property, as I recall it, just incidentally as we pass it, as being property that he was interested in, and he told us some interesting things with respect to what the Forestry Department of New Jersey said about the character of the trees and his

notion of what use the property might and should be put to. That is as I recall it. I don't recall that he pointed it out as comparable property to the Ringwood property at all. Now you may proceed.

FURTHER CROSS EXAMINATION BY MR. HUNT:

Q. Well, Mr. Hershfield, the Tri-County Realty Company, of which you were and are chief stockholder, purchased the 30 acre tract C-2, at $500 an acre, did it not? A. Approximately.

Q. At the same time the Tri-County Realty Company bought the tract marked on this memorandum C-1, which contains about 11½ acres, did it not? A. Yes.

Q. Is there any hemlock timber on tract C-1? A. About an acre.

Q. About one acre. What is there on the rest of it in the way of growth? A. We have cleared off the balance, what there was.

Q. What was there that you cleared off? A. Nothing to speak of,—brush principally.

Q. Mostly brush. Not any good white oak? A. No.

Q. Now your company paid for the 11½ acre tract C-1, $15,000 I believe, did it not?

Mr. Matthews: I object to that statement.

Q. Well, did it or not pay $15,000? A. We did.

Q. That is at the rate of more than $1,500 per acre, isn't it? A. No. Approximately $1,400 an acre.

Q. Well, when I— A. 11 acres for $15,000 would be less than—

Mr. Matthews: Of course, there is objection.

Q. 11 acres, $15,000. A. 11 or 12 acres.

The Court: I will rule the same with respect to the 11 acre piece as I did with respect to the hemlock piece, whatever it is called.

Q. I have not quite finished with that yet, your Honor. Now the Tri-County Realty Company, since its purchase of the 30 acre tract on which the hemlock stands, has rented a small part of it, has it not?

Mr. Matthews: I object to it as immaterial to this issue.

The Court: What is the materiality of that?

Mr. Hunt: Why, rental values, your Honor, have a bearing on market values. If the property rents for so much—

The Court: That is true, if it is comparable property.

Mr. Matthews: But rental value, I respectfully differ, does not have any bearing on value, because along comes a fellow with a hot dog stand and three months during the year—

Mr. Hunt: I understand this to be a permanent leasehold value, and not a hot dog stand.

The Court: I will allow it.

Mr. Matthews: Exception, on the ground it has nothing to do with market value and therefore is incompetent.

(Question repeated by stenographer.)

A. We rented approximately an acre at the corner and with rights to the lake another half acre.

Q. For how long a term is the lease? A. 20 years.

H. G. Hershfield—Recalled—Cross.

Q. What is the annual rental?

Mr. Matthews: I object as immaterial to this issue.

The Court: I will allow it.

Mr. Matthews: Exception, please.

The Court: You may have it.

A. The annual rental, as I recall, was $2,000 a year net for the ground. It is averaged; it starts in, I think at $1,000, and ends up at about $3,000, the average I believe $2,020 a year net.

Q. For the 20 year term. When you say net, I suppose that means that any improvements are put on the property it must be put on by the lessee at his own expense and not by yourselves, and you mean that the lessee pays the taxes? A. Net in every sense of the term.

Q. Yes, net in every sense of the term. Now, Mr. Hershfield, I show you this paper and ask you whether that does not show a part of the 310 acre tract? A. It purports to. I imagine it does.

Mr. Matthews: I object to this, if it doesn't show a part of the tract as the tract was when the tract was sold, and you cannot show a development of that tract making it different.

Mr. Hunt: It doesn't show any development, Mr. Matthews.

Q. You recognize it as showing one end of the 310 acre tract, do you not? A. Approximately.

Q. Now the companion map would show the other end. Would you like me to get that and put them together? Personally I don't care about it.

H. G. Hershfield—Recalled—Cross.

This end is all I care to point to. A. It is immaterial to me.

Mr. Hunt: May I have this marked for identication then.

(Map marked O-3 for identification.)

Q. And pointing to the part of the 310 acre tract which is shown on O-3 for identification, I point out two lines running across it and turning at an angle in the centre of the tract, which are marked "Ellen Spanlove, 22 acres," and ask you whether that is not what is known as the Spanlove intrusion? A. There was a squatter there who claimed some rights, that is all I know about it.

Q. Now then it was made manifest in the former trial of these proceedings, was it not, that the squatter claiming rights as you describe it, had been regularly paying taxes on this property for many years past?

Mr. Matthews: I object to it as immaterial and calling for a conclusion.

The Court: Objection sustained.

Mr. Matthews: He must be confronted with the testimony.

Mr. Hunt: I thought I might save time with it.

Q. You know, Mr. Hershfield, entirely aside from anything--strike that out, please. Mr. Hershfield, don't you know it to be a fact that the property which was marked on this map "Ellen Spanlove" has been assessed to Ellen Spanlove for many years and taxes paid by her?

Mr. Matthews: I object to it as immaterial to this issue.

The Court: What is the materiality?

Mr. Hunt: There is a cloud on the title of the 310 acre tract, that is why it sold so cheap.

Mr. Matthews: This calls for a conclusion. Whether or not that gives title ultimately is a legal question.

The Court: This question is whether he knows it was assessed against her and taxes paid by her. He may answer that yes or no.

Mr. Matthews: It is prejudicial, this question. It is not cross examination.

Mr. Hunt: I will withdraw the question, your Honor.

The Court: Question withdrawn.

Mr. Matthews: Can't put their case in on cross examination. I want a chance to cross examine his witness. I am losing that opportunity if I do not object now.

Q. Mr. Hershfield, I show you what purports to be a copy certified by the Register of Deeds of Passaic County, of a deed from Edwin Corning and wife to Pine Lakes Land Company, dated the 26th of August, 1925, and ask you whether you recognize that as a deed of conveyance of the 310 acre tract?

Mr. Matthews: I object to it as immaterial to this issue.

Mr. Hunt: Its materiality will appear if the court permits it to be referred to.

Mr. Matthews: This is not cross examination of this witness.

The Court: If this has to do with the credibility of this witness with respect to the testimony that he gave with respect to this piece, I will allow it.

Mr. Hunt: Yes, and it has to do, your Honor, with the value of this piece as affected by certain circumstances proved by the deed.

Mr. Matthews: I object to that.

The Court: This is the piece, is it, that he has testified to as being a piece that was comparable to the Ringwood property?

Mr. Hunt: Yes. He so described it.

Mr. Matthews: What the deed will show has absolutely nothing to do with this issue. That is a conclusion of law that the lawyers must testify to.

Mr. Hunt: This man testified he was the agent.

Mr. Matthews: He saw none of the deeds, but negotiated the sale. What the deed may show is matter of conclusion for the attorneys, and he is not competent to testify to that, and it is not cross examination.

Mr. Hunt: We are not going to ask him to give conclusions about the deed. What I asked him is whether he recognized this as the deed.

Mr. Matthews: I object to this as immaterial.

Mr. Hunt: I want to read from the deed after it is identified.

The Court: That is the very thing that Mr. Matthews says would be incompetent and improper.

Mr. Hunt: I am not going to ask him for any expression of opinion on the construction of the deed. I simply want at this point—I think it is fair to do it at this point, when this 310 acre tract is before the jury, to show what the grantors own deed—this agent's principal's

own deed—says about the matter, which has relation to the title he was conveying.

Mr. Matthews: That is the grantors business. That is not cross examination. That is their direct case.

The Court: I think that is correct.

Mr. Hunt: I think I have a right to discredit the witness in this manner.

The Court: You didn't say anything with respect to the terms or conditions of the sale, and therefore I don't see how you can discredit him by that.

Mr. Hunt: If the court please, will not the court's recollection bear me out when I say that I think—I do not want to assert it too positively—I think that with respect to all those transactions he testified to—I spent the better part of an afternoon asking who was grantor, who was grantee, what kind of a deed was this, whether a warranty deed without exception of any kind, free of all encumbrances in practically every instance, including this instance. Now I confront the witness with the certified copy of a deed.

The Court: I don't think you have got a warranty deed. You got an assumption on the part of this witness it was a suitable deed. He called everything a warranty deed that in his judgment conveyed the title.

Mr. Hunt: Yes. He gave the jury the impression that is free and clear, sound title was being given.

Mr. Matthews: I object to that statement.

The Court: He didn't give me such an impression, and if he did not give it to me, I do not see how he could give it to the jury.

Mr. Hunt: I thought he attempted to do so.

The Court: I do not think so. I think the terms were very loose with respect to the kind of deed that was passed in all these. He assumed the titles were all right, because the titles went through, and he therefore assumed that the lawyers who had to do with that part of it were satisfied; and he even went so far as to call them warranty deeds on that assumption. That is as I recall it, and I have a very distinct recollection. He did not in my mind create any notion that there were no restrictions or that there were no exceptions or anything of that kind in the deeds.

Mr. Hunt: May I make a formal tender so as to have the record straight?

The Court: You may.

Mr. Matthews: You may make a tender of the instrument and not a part of the instrument.

Mr. Hunt: No. I offer to bring out from this witness on cross examination that what I have in my hand, being a certified copy of a deed from Edward Corning and wife to Pine Lakes Land Company, dated 26th of August, 1925, is in fact a certified copy of the deed of conveyance employed in that very transaction to which he has testified as the sale of the 310 acre tract.

The Court: Inasmuch as Mr. Matthews' objects because—

Mr. Hunt: I have not finished. My purpose in offering the deed being to show that it appears by the contents of the deed itself, this being also—

H. G. Hershfield—Recalled—Cross.

Mr. Matthews: I do not think he ought to read it.

The Court: He is not going to read it.

Mr. Hunt: This being also a matter which should be peculiarly within this witness' knowledge, because he testified that he acted as agent for the seller in negotiating the sale. That upon the face of the deed itself there appear statements of conditions existing with regard to the title to the property which are of such a character as to adversely affect the sales value of the property. That is my offer.

The Court: Inasmuch as there is an objection to it on the ground that it is immaterial and irrelevant, and not proper cross examination, the objection is sustained.

Mr. Hunt: And we may note an exception?

The Court: You may have an exception.

Q. Now I also show witness a copy certified by the Register of Deeds of Passaic County, of a deed from James Allen to Ellen Spanlove, dated May 10th, 1905, and ask him to examine that deed and state whether it does not describe the premises which are marked on Exhibit O-3 for identification with the words Ellen Spanlove, 22 acres, and in regard to which he remarked that there had been a squatter—that she had been a squatter on the property?

Mr. Matthews: I object to this as not proper cross examination.

Mr. Lewis: Just half a minute.

The Court: I sustain the objection.

Mr. Hunt: May we have an exception?

The Court: You may.

H. G. Hershfield—Recalled—Cross.

Q. Now I show you once more the certified copy of the deed from Edward Corning to the Pine Lakes Land Company, dated 26th of August, 1925, and ask you whether that is the deed for the 310 acre tract to which you have testified regarding what you have testified?

Mr. Matthews: I object to it as immaterial, whether it is the deed or not. This is an instrument of record, if your Honor please, and cannot be used in that question to contradict this witness or to test his credibility.

Mr. Hunt: I am trying to get it marked for identification, that is all I want now.

Mr. Matthews: Even so, it does not need to be marked for identification, except for use.

The Court: I do not understand so. There are other ways. It is not proper cross examination.

Mr. Hunt: Your Honor sustains the objection and we have an exception?

The Court: I sustain the objection.

Q. Now I show you a certified copy of the deed from James Allen to Ellen Spanlove, dated May 10th, 1905, and I ask you whether that is the deed for the property marked on Exhibit O-3 for identification as Ellen Spanlove, 22 acres?

Mr. Matthews: Same objection.

The Court: Same ruling.

Mr. Hunt: Same exception?

The Court: Same exception.

Mr. Hunt: O-2 for identification I now have to offer in evidence.

Mr. Matthews: You cannot offer it at this time in my case.

The Court: Not at this time.

Mr. Hunt: All right.

Q. Now since the Tri-County Realty Company bought the 30 acre tract, it has resold certain parts of it, has it not?

Mr. Matthews: I object to it as immaterial to this issue, if your Honor please, in two particulars: First of all, the Tri-County Realty plot of 32 acres as compared with the 310, was admitted by your Honor at that time to be brought into this evidence as to its price of acreage solely and purely to test his credibility, its comparability not being determined even though certain strictures on it had been passed in argument. Now he is sought to be asked a price of a section of that land that has been proven. I submit that before that can be at all competent I would first have to determine is the property comparable, and in the second place, is the portion of that comparable piece in the same condition as it was when you bought it. Otherwise—

The Court: Is this the smaller piece of the two?

Mr. Hunt: No, sir. This is the larger of the two pieces that he bought.

The Court: The one that he testified to on direct examination?

Mr. Hunt: I was wrong about that. This refers to the smaller of the two pieces.

The Court: That is what I thought.

Mr. Matthews: The 11 acre tract.

Mr. Hunt: Yes, the 11 acre tract, which does not contain any hemlock only on one acre.

The rest was covered with brush which they cut off.

Mr. Matthews: I am entitled, if your Honor please, to show whether or not this was sold out of its virgin self or with the adornments of civilization, and if it was not sold as it was bought, it is not comparable.

The Court: I do not think it is proper redirect examination.

Mr. Matthews: No, because it would be very harmful to allow this person to give it in this record even on cross examination, which this man could revert to on summation, that this was a price given. It is not competent or material unless it is a price paid for similar acreage.

The Court: I think that is correct. You will have to show it was still comparable at the time of the sale you are now talking about.

Mr. Matthews: Yes, your Honor, that is my objection.

The Court: Here is a piece that was testified to as being comparable at one stage of its existence. Now you are showing a sale at a later time, and it seems to me that in order that that be evidence that there must be a foundation laid to show the then condition of the property.

Q. Well, now, you made a sale to a Dr. Mosig or something of that sort, of Paterson, didn't you? A. We did.

Q. Between the time that you bought the 11½ acres and the time you sold a piece to Dr. Mosig, what had taken place that changed the character of the 11½ acres? In the first place, you had cut off the brush perhaps?

H. G. Hershfield—Recalled—Cross.

Mr. Matthews: I object to that, if your Honor please.

The Court: He puts it in the form of a question. He is asking it to save time.

Q. Had you cut off the brush before you sold to Dr. Mosig? A. And other things.

Q. You had cut off the brush? A. Certainly.

Q. What else had you done? A. We had put in a macadam road, we had parked the centre strip; we had arranged for light and water to be put on the place.

Q. You did not have any light on the place? A. Only on the road contiguous to us.

Q. It was there when you bought the property, wasn't it, on the road contiguous to it? A. I am not sure whether it was or not.

Q. You had not put in any water when you sold to Dr. Mosig? A. The water was promised.

Q. You had not put any in? How was it promised? A. By my personal word.

Q. Word of mouth? A. Certainly, also—

Q. It isn't in your deed to Mosig? A. Not in my deed, I believe in the letter that went with it, in which in consideration of his buying the lot we agreed to do certain things for him.

Q. What else had you done? A. We cleared the land, plotted it, and put certain restrictions on beneficial to the property, and in other words parked that tract.

Q. Those restrictions did not appear in the deed you gave to Dr. Mosig? A. Mr. Mosig took my word for it.

Q. All that he got in his deed was a plain conveyance of a certain lot of land? A. An average deed.

H. G. Hershfield—Recalled—Cross.

Mr. Hunt: I submit that nothing had taken place meanwhile.

The Court: I submit a great deal has taken place. I think it is entirely incomparable. Here was a development that took place, a park in the middle of the street, the road macadamized and certain representations made to the purchasers that induced him to buy it as a home site with roads, with water—

Mr. Hunt: Your Honor, I think—

The Court: I don't care what is in the deed. He says that there would not have to be anything in that deed with respect to the street, there would not be anything in the deed with respect to the park right strip, there would not be anything in that deed with respect to the time that the water is going to be delivered on the place. This witness says that that was part of the transaction and was part of the inducement that caused the doctor to buy it, and therefore, of course, it reflected in the price, and in my judgment makes it incomparable.

Q. You sold to Dr. Mosig on the 20th of August, 1925, didn't you?

Mr. Matthews: I object to it as immaterial what he sold to Dr. Mosig, if it is incomparable property.

The Court: Objection sustained.

Mr. Hunt: I thought your Honor would just give us a chance to check up on what he said.

The Court: He has said he sold it, and he stated the conditions under which he sold it,

which makes it immaterial and irrelevant as to when it was.

Mr. Frazer: Certified copy of the deed with the date on it. It is ridiculous.

Mr. Matthews: And it does not save time.

Q. Now do you know anything about the sales made by the Ringwood Company at Tice's Pond or Lake Erskine during the past summer?

Mr. Matthews: I object to this unless they are made of the territoy and terrain as was at the time of this condemnation.

M. Hunt: Yes, they are, your Honor.

Q. You know what Tice's Pond is, don't you, Mr. Hershfield? A. I know what it was and what it is.

Q. And Tice's Pond is a pond that has existed much longer than the period of your residence in New Jersey, and lies—

Mr. Frazer: It is off the map.

Mr. Matthews: I am prompted to tell you it is not on the map.

The Court: We will take a recess while you are looking for Tice's Pond.

Mr. Frazer: It is not on the map. It will take them all day to find that.

RECESS.

AFTERNOON SESSION, 2 P. M.

HENRY G. HERSHFIELD, resumed.

CROSS EXAMINATION CONTINUED BY MR. HUNT:

Q. Mr. Hershfield, at the time we recessed I was asking whether you were aware of the existence of the old body of water known as Tice's Pond, or Tice's Lake, which lies off the taking line at a distance of some 800 feet or thereabouts to the east of the tract marked 85-B? A. I know of Tice's Pond.

Q. You have known of that for a good many years? A. I fished it fifteen years ago.

Q. Now, in the Fall of the year 1924 did you happen to observe that the timber was being cut and removed from an area of land surrounding the pond?

Mr. Matthews: I object to that as immaterial to this issue, if your Honor please.

Mr. Hunt: If your Honor wishes me to state the whole matter that will make its materiality appear so as to let you know what I am speaking of, I will be glad to do it step by step.

The Court: What was the question? Did he notice whether timber lands being taken down upon Tice's Pond?

Mr. Hunt: Around the margin of the pond for a considerable area in the Fall of 1924.

The significance of the date being that this proceeding was not commenced until March, 1925.

The Court: Well, I do not quite see the materiality now of it, but I will allow it subject to be stricken out if proved to be immaterial.

The Witness: I knew the pond was being raised; I do not remember exactly when it was raised.

Q. I see. From what you saw there in the Fall of 1924, or some time prior to the commencement of this proceeding, you knew that work was under way towards the raising of the pond? A. Yes, sir.

Q. And now you know that the work of increasing the height of the dam has been finished, do you not?

Mr. Matthews: I objec to that as immaterial, if your Honor please, unless it is shown that the work was finished prior to March, 1925, the condemnation date.

Mr. Hunt: That could not be done because that is not the fact; but I fancy if we undertake a thing six months before the proceeding is commenced, we are not deprived of the benefit of that property simply because in the natural course—

The Court: Your point is that the mere fact that there was some work being prosecuted there had effect on values?

Mr. Hunt: No, it is not that, sir; but the fact that that work was being prosecuted there six months prior to the commencement of this proceeding indicates, in the first place, it had nothing to do with this proceeding and, therefore, leaves it competent for us to show what values existed there in that area which the witness has admitted is within about 800 feet of the taking line.

I want to ask the witness whether he knows about values that have been demonstrated to

exist there by sales made during the past Summer.

Mr. Matthews: Just what we are objecting to, if your Honor please, as immaterial to this issue and incompetent to this issue, because it is the land as was on the condemnation date that we must consider.

Moreover, this is not cross examination. This is their direct case. It seems to me, if your Honor please, that there should be a limit put to this character of cross examination.

And, moreover, at this time, if your Honor please, I would be entitled that every one of these steps, if it is construed as cross examination, to cross examine at that point on the basis—

The Court: As to comparability?

Mr. Matthews: But it seems to me this is totally immaterial.

The Court: I think that is correct. I do not believe this is proper cross examination.

Mr. Hunt: Now, your Honor, may I put it this way: The witness has testified to a considerable number of purchases and sales, not only within the immediate lines of the taking, but also scattered throughout this area indicated by pins, for the purpose of letting the jury determine how much his opinion is based on those transactions his worth, I would like to call his attention to transactions taking place up here 800 feet from the line of taking.

The Court: But the point is that is not proper cross examination. This witness has testified to nothing with respect to that particular piece that you are speaking of, and we do not know whether it is comparable or is

not; and wouldn't it be a more orderly procedure for you on your own case to show the value of that; and then Mr. Matthews may put Mr. Hershfield on in rebuttal of that.

Mr. Hunt: No, your Honor will permit me to explain my position a little further. I think the situation is this: I will deal with round figures to make it easy. The witness has testified to, let us say, 100 purchases and sales within an area or range shown by these pins, and says that it is in consideration of those purchases and sales that he has appraised this property at $450,000, or whatever his figure is.

Now, I think I should be entitled, on cross examination, to show that within the same area approximately, and of course, the closer I can keep it to the very lines of this taking, the better for me, but to show that within the same area there are another 100 transactions that he has not referred to on his direct examination, but of which he is aware, and of the prices paid of which he is aware. Then, bring out from him what those prices were; and then let the jury determine whether his opinion, formed on the 100 that he did testify to, is not brought into question, perhaps, its value destroyed by the other 100 transactions that he knew of but did not testify to on his direct examination.

The Court: If we should permit that, it would be necessary, it seems to me, before the testimony would be worth anything that he be examined with respect to the comparability of the property—

Mr. Hunt: I will do that first, if your Honor wishes. Now, as to the location—

The Court: —because that may be the reason that he was not asked about those pieces on direct examination.

Mr. Hunt: Yes. As far as the mere geographical location is concerned, would your Honor wish me to examine around 800 feet is comparable as regards the location?

The Court: I do not think it is so much the proximity. That is only feature, one element.

Mr. Hunt: I will go into the others.

The Court: But the nature of the property itself, I think, is important.

Mr. Hunt: I will go into that.

The Court: Just a moment.

Mr. Matthews: There is another point, your Honor please, which vitiates this testimony besides its not being cross examination, and not being comparable property, and that is the question of whether or not this was market value or fake market value, and that not be brought out on the redirect examination or on cross examination, rather. That is part of his case. He is attempting by this witness to get everything that he wants a witness to testify about in this man's cross examination.

The point is this, Judge Porter, if you will bear with me for a moment. First of all comparability, your Honor, takes that point well. In the second place, here is value which is created in June, 1924, and the work on which he says was completed after the time of this taking. He says to appreciate property that was appreciated in value after this taking and, therefore, destroys comparability, even though there may be comparability of terrain, there is no comparability of purchase conditions.

The Court: If the property is as it was; if it is comparable and there has been no change, I think then it is proper cross examination, because if the witness testifies as an expert and points out 20 pieces of property on the one block that he knows the value of and knows the sales and omits to testify about several others that he also knew about that were comparable property and there has been no change in it, certainly it would be proper to test his credibility, if for no other reason in asking him on direct examination about these other pieces, right there, that he did not testify about. Now, if that is the purpose of this question I will allow it subject to have it stricken out and will stop you, if I find that it is not competent because of the facts not being comparable. Now, I cannot anticipate that at this time. Mr. Matthews knows the situation and I do not, and he therefore jumps two or three steps ahead.

Mr. Matthews: Will you just bear with me one moment? The proper question, on cross examination as I construe it, and in fact I am in agreement with Mr. Frazer, would be: "Do you know of such a sale, and if you do, why didn't you testify about it?" That would be contradiction of his testimony, but to go and pick out a situation, and pick a terrain and different sales and ask him about it, that is not cross examination.

The Court: In effect he is asking practically that when he asks him about these other pieces of property. What is the difference whether he says, "Why didn't you testify about this?" I would rather imagine Mr. Hershfield will

tell us before he gets through why he did not. I do not know that he will, but I rather think he will, and if he does not you can bring it out on redirect.

Mr. Matthews: Will your Honor allow me a technical objection that it was incompetent?

The Court: Certainly, you may have an exception.

Q. Well, now, as to comparability, Tice's Pond is about 800 feet from the taking line along here (indicating), isn't it, to Lake Erskine, as it is now called— A. I do not know how far it is from the taking line, but it is a mile, about a mile by road from the main line to the dam of the pond.

Q. Main line of what? A. The main road.

Q. From the main Greenwood Lake Turnpike? A. Yes, sir.

Q. Now, the main Greenwood Lake Turnpike, as it runs through Tract 85-B is where I point to here (indicating)? A. Yes, sir.

Q. And do you follow me as I describe the line of Cupsaw Brook as it flows through Tract 85-B? A. Yes, sir.

Q. Now, you are aware that Tice's Pond lies eastward of the course of Cupsaw Brook, aren't you? A. In a general direction, yes, sir.

Q. And that it is formed by a number of small streams which empty into the pond?

Mr. Matthews: I object to this as not examination as to camparability.

The Court: I think he is leading up to it; trying to identify the location of Erskine Lake or Tice's Pond.

Mr. Hunt: I have to have the witness say first he knows where this pond is.

Mr. Frazer: He already said that three times.

The Court: He said it was a mile from the Greenwood Lake Road and Mr. Hunt asked wasn't it 800 feet from the property. I assume Mr. Hunt is trying to more clearly identify it in distance because of the dispute between them. I assume that. I do not know.

Mr. Hunt: That is true, your Honor; yes, sir.

The Witness (walking to map): Tice's Pond is located here.

The Court: I am not asking you anything.

Q. Will you point out Tice's Pond on Exhibit C-4; will you please? A. (Indicating.)

Q. I ask you to draw a circle around it with this red pencil. A. (Indicating.)

Mr. Hunt: Witness draws a circle in red pencil around Tice's Pond as shown on the Water Supply Commission's Exhibit C-4.

Q. Will you put your initials alongside, Mr. Hershfield? A. (Indicating.)

Mr. Hunt: And puts initial letter "H" in a capital alongside.

Q. Now, Mr. Hershfield, just step down to C-1 once more, won't you? The scale of C-1 is 400 feet to the inch, is it not? A. Yes, sir.

Q. Now, I lay this rule on C-1 and as nearly as I can a right angle from the intersection of the Greenwood Lake Turnpike? A. The upper end of the Conklintown Road.

Q. (Continued) And ask you whether the distance to the edge of the taking line is not approximately 11 inches, representing 4400 feet?

Mr. Matthews: I object to that measurement, if your Honor please, as coming from map to map, and the engineer would have to testify whether or not that is a fair measurement.

The Court: Mr. Hershfield said it was 11 inches, and I do not suppose it takes an engineer to point out 11 inches.

Mr. Hunt: The scale is printed on the map.

Mr. Matthews: That pond—to compare the distance of the pond on the two maps.

Mr. Hunt: No, I do not want to do that at all, your Honor.

The Court: I did not understand it so.

Mr. Hunt: Not at all, sir. I simply want to confine myself to C-1 the map which shows the property taken.

Q. Mr. Hershfield, you agree this is approximately 11 inches, representing 4400 feet, do you not? A. The only thing I am accurate on is, according to the speedometer on my car, it is a mile from the dam to the road.

Q. Come up to the map. Put the scale on this map with one end at the intersection of the Greenwood Lake Turnpike and the Conklintown Road. Hold it perpendicular to that and tell me the distance in inches to the taking line? I asked you the number of inches, never mind the scale. A. I will have to find out the scale.

Q. No, I gave you the inches. Has anybody got an ordinary two-foot ruler? I want to know how

many inches it is there? A. Approximately 11 inches.

Q. If the scale of this map is admitted 400 to the inch, that represents 4400 feet, doesn't it? A. Right.

Q. I ask you if it is not true that Tice's Pond was about 800 feet to the east of this taking line and you say you don't know, but that it is about one mile from this Greenwood Lake? A. By road, yes, sir.

Q. Now, if we add 800 feet to 4400 feet, we have 5200 feet, haven't we? A. Yes, sir.

Q. And one mile is 5,280 feet, is it not? A. Yes, sir.

Q. Now, do you recognize Tice's Pond as lying about 800 feet to the eastward of this taking line, of Tract 85-B? A. It runs in that vicinity, I cannot localize it.

Q. What causes Tice's Pond to be filled with water?

Mr. Matthews: I object to that as immaterial to this issue.

Mr. Hunt: I want to show the proximity of Tice's Pond area to the area being taken, your Honor.

Mr. Matthews: How can that be? We haven't any lakes in this terrain that is being taken, and here we have an artificially created lake now, and they want to give shore value to that.

Mr. Hunt: The witness admits Tice's Pond has been in existence there ever since he had known the property, and he has pointed out on the map which bears the date—if I can find it—

The Court: He says he fished in it fifteen years ago.

Mr. Hunt: Yes.

The Court: Therefore it has been there for at least fifteen years.

Q. All right. Fifteen years ago when you fished in it what was it that caused the pond to have water in it? A. The water.

Q. What stream? A. I do not recall any feature, or spring.

Q. Two or three little springs, heh? A. I have never known anything but springs.

Q. Nothing but springs? A. Yes, sir.

Q. Whereabouts are the springs with relation to the pond? A. I believe underneath the surface of the pond. I am not accurate on that. It is simply hearsay.

Q. The 2453 acres being taken contain springs at many different points, don't they? A. I presume so.

Q. Now, isn't it true that on one side of Tice's Pond the land rises in quite a high hill? A. On the easterly side.

Q. Northeasterly side, I would say? A. It is a sheer slope.

Q. Well, now, it is not a sheer slope. You have walked up it many times?

Mr. Matthews: I object to the statement of counsel. He is only permitted to ask questions.

Mr. Hunt: I will ask to strike out the assertion and say, you have walked up it a number of times?

The Witness: I would say it is a steep hill.

Q. As that hill runs down near to the ocean, the hill is less steep? A. Yes, it flattens.

Q. And there it is rather a gentle slope? A. Yes.

Q. And that is a wooded slope, is it not? A. That slope—all slopes are wooded.

Q. The steep hill is also wooded? A. Yes.

Q. On the opposite side of the point to the one you have been talking about there is a reasonably level area partly covered with what one might call woods, and partly covered by what I call, perhaps you have the same name for it, a growth of cedars and Indian grass? A. Yes, pampas grass I call it.

Q. Tall grass that becomes purple in Fall, and has cedars spatted here and there through it? A. Yes.

Q. I have always thought in my part of the country—

Mr. Matthews: I object, that he thought in his part of the country, and ask all that speech be stricken out. I do not know what they call it in Trenton.

The Court: Strike it out.

Mr. Hunt: I do not live in Trenton. I live in a small village of Hunterdon County called Lambertville.

Mr. Matthews: Where they grow strawberries and sand.

Q. Isn't it true, in your experience and observation, that where you find that growth of cedars and Indian grass that marks an old farm where there was once cultivation and the cultivation ceases and the cedars and Indian grass came in?

Mr. Matthews: I object as calling for a conclusion, this witness is incompetent to do it.

The Court: I do not know whether he is or not. If he is not competent of course he won't answer it.

Mr. Matthews: It is immaterial to this issue.

The Court: It may be. I do not know that it is. If it is I will allow it. You can answer it.

The Witness: I generally find where farms have been abandoned for any amount of years, what I call pampas grass grows on it and it turns copper color in the Fall, and also you find small cedars grew up.

Q. And they are around Tice's pond on the side opposite the hill? A. In the westerly side that condition obtains over Elephant Back or Bench.

Q. And the land on which this growth occurs rises, perhaps, sloping upwards from the line of the water to the height of 50 or 60 feet above water? A. No, more than that; I should say call it 75 feet.

Q. In what lateral distance? A. Probably five or six hundred feet.

Q. And the land that so lies can be used as sites for modest homes, to use the phrase that you used in your direct examination, could it not?

Mr. Matthews: I object. This is not material. This is not comparable, and not within the takings.

Mr. Hunt: He has testified 569 acres suitable as sites for modest homes. I want to see whether this is not that kind of lands too.

Mr. Matthews: This is not cross examination as to comparability of this terrain at all,

if your Honor please. The fact that he has given market value to the acreage for that specific commercial purpose, this is not comparable of this terrain.

Mr. Hunt: Now he says in the taking there are 569 acres of land fitted to use as sites for modest homes, and I want to ask him whether here, 800 feet off the taking, is not still more land. If he says yes, then it would seem to me comparable in that respect.

Mr. Matthews: He is 800 feet off the taking in a place where there was raised some year and a half ago a dike or dam.

Mr. Hunt: We haven't come to that yet, your Honor.

The Court: We haven't come to that.

Mr. Matthews: I realize that, but we are coming to that, if we admit this immaterial or irrelevant testimony.

The Court: It does not strike me that it is immaterial or irrelevant at this time.

Mr. Matthews: All I can have is an exception.

The Court: You may have an exception.

Mr. Hunt: Read the question, please, Mr. Kestenbaum.

(Question read.)

The Witness: Yes, it could.

Q. Now, in the 2354 acres being taken we find a good many acres of hillside approximately as high and approximately as steep as the hill that lies on the easterly side of Tice's Pond, do we not? A. We find the terrain the same, but not the view, because this one faces the lake. There is no lake in the balance of the taking.

Q. In the 2354 acres being taken we find a good many acres that carry this growth of what you call pampas grass and I call Indian grass and cedars, do we not? A. Not so many.

Q. Well, some? A. I should say possibly 100.

Q. It is quite characteristic of this northern New Jersey region? A. Well, there are abandoned farms.

The Court: What do you mean by "100"?

The Witness: Approximately 100 acres.

The Court: Acres?

The Witness: Yes, sir.

Q. And in the 2354 acres—strike that out, please—

Now, from the outlet of Tice's Pond as it existed at the time you used to go fishing there, and continued to exist until any changes recently made, and which I have not yet come to, there flowed, did there not, down into the line of the taking a stream that eventually joined Cupsaw Brook somewhere within the lines of the taking? A. I do not recall the outlet of Tice's Pond.

Q. Well, you know there is a stream flowing away from Tice's Pond, do you not? A. I know they must have an outlet, but I don't recall its course or where it leads.

Q. And aren't you sufficiently familiar with the topography of the country to know it must lead to Cupsaw Brook? A. No; it could come in by Spook Rock.

Q. You are quite sure it had an outlet, and there was water flowing away from it? A. I presume it had an outlet, but it never interested me.

Q. And you know that today it has an outlet and water flows away from it, do you not? A. I know

there is a spillway to the dam; and ten days ago I saw water running over the spillway; that is all I know.

Q. Did that water that ran over the spillway stand back of the dam so that it created another lake, or did it flow away? A. Presumably it flowed down a gulch toward the west.

Q. In all events, it did not form another body of water below the lake? A. No, it flowed away.

Mr. Hunt: Now, if the Court please, I submit we are in a geographic location, 800 feet from the taking here. We are in topography having hills, steep in some places, less steep in others, ground like the 569 acres, or some parts of it, small stream flowing away, just as we have small streams through the 2,354 acres being taken. I submit this is a situation comparable in every respect.

The Court: As of what time?

Mr. Hunt: As of the time in 1924 when he saw timber being cut there. Now, I must go on with that. I had forgotten I had not covered that.

Q. Can you, Mr. Hershfield—

Mr. Matthews: Wait a minute, please. It is not in any way comparable. I want to show that the incomparability of it is established. That is just like saying, "That man has a wonderful head, nose, two eyes, and is the same as the other man, except he is black." Here is a situation, without wonderful hillsides and slopes. But it is the view. In the Tice's Pond section they have a view, bearing on the lake,

and in our terrain we have our sheer hillsides with a view of nothing except the sky.

Mr. Hunt: I thought yesterday, your Honor, I heard the witness say that there was a value of $500 an acre in his opinion up in here, because of the fact that over there towards Miller's Creek and the Miller Road there was a falls in it. Does your Honor expect me to take the witness over the 2354 acres and examine for every twig and leaf? Isn't it known to every man, including this jury, that in a country area there is a change of view in every direction which you look and a change of view almost at every step you take? On my farm I can walk 100 yards and change my view, and I could not for the life of me tell which of these beautiful views are the most beautiful.

Mr. Matthews: That would not add anything to the value, and it would be just his imagination, and he would probably add it if he was selling the farm. The proposition is this: Here is a place off the taking that in 1924, about six months before this taking, and has an artificially built dam on its premises—Mr. Hershfield said that the terrain around there was wooded in part. It rises in a sheer slope of 75 feet in height. He said there is a view here of a lake, it abuts a lake. This is a circuitous attempt to bring Lake Erskine in, and it is not the measure of damages for a sale of these wild woods of the Ringwood property, and I think it is incompetent and irrelevant and immaterial to this issue, because it is not comparable terrain, if your Honor please. It is a development that is sought to be introduced here now, called Lake Erskine.

The Court: If that is the purpose of the question, I think that is correct, Mr. Hunt. If you want to show it in its original condition before any development, and you can show that it is comparable, I think it is comparable.

Mr. Hunt: I understood, your Honor, that the very answer to the question that the witness has made, related to the state of affairs when he used to go fishing there 15 years ago, as he said, and the state of affairs that continued down into some time in 1924. He could not fix it exactly, and that he showed complete comparability at that time. Now I must confess that I forgot to go on since 1924. With the court's permission I will go on.

Q. Now you said that some time in 1924, at a time you cannot remember, you did see timber cut off around the margins of the lake as it then existed? A. They were cutting back from the shores of the old pond.

Q. Cutting back from the shores of the old pond. Yes. They were clearing the land? A. Yes, preparatory to raising the lake 17 feet.

Q. Now they did after that time set to work to increase the height of the dam, didn't they? A. Yes, they did.

Mr. Matthews: I object to it as not the time of the taking.

The Court: I will allow it.

Q. You have been there and seen it? A. They did build—

Q. They did raise the dam, you say, 17 feet? A. So I am told.

Q. You saw it ten days ago? A. Not the dam; but they raised the height of the old pond 17 feet.

Q. Yes; and you were there ten days ago and saw the water flowing over the spillway of the raised dam? A. Yes.

Q. Now isn't it true that the change which the raising of the dam produced there was to make the lake larger by lifting the water to a higher point on this hillside and by flowing a part of the area on the opposite side which you described as covered with cedars and Indian grass?

Mr. Matthews: I object to this as immaterial to this issue, because that was done after March, 1925, and therefore creates an artificial situation which cannot be the measure of market value as of the time of the filing of the lis pendens.

Mr. Hunt: The witness has admitted it was commenced before March, 1925.

The Court: That is true. We are not concerned with what has happened after that time. I will allow him to testify with respect to the original condition. I think it is incompetent with respect to the comparability of this property after this lake has been raised and its development has taken place.

Mr. Hunt: May I argue that just a moment?

Mr. Matthews: I ask that the jury be excluded.

Mr. Hunt: I do not ask to have the jury excluded. It is not an extended argument.

The Court: Yes, you may have a moment.

Mr. Hunt: Remember all that is so far before the court—all that has been done has been raising the dam, as the witness says, 17 feet,

thereby increasing the area covered by water to an extent not yet made to appear. Now I submit that that is not such a substantial change as removes or destroys the comparability of this property with the other property. In principle that is no change at all.

The Court: Yes.

Mr. Hunt: He admits there was a lake there before that he fished in, so it was big enough to fish in.

Q. How many acres was it when you fished in it?

Mr. Matthews: I object to this question, after the 24th of March.

The Court: He is asking the size of the lake when he fished it.

Q. How many acres was it when you fished in it? A. Without being positive, I would say it was around 15 or 20 acres possibly.

Q. How many acres is it now?

Mr. Matthews: I object to it as immaterial, if your Honor please. That is a circuitous way of arriving at the conditions that have been ruled against.

The Court: This witness has said there has been a raising of the lake 17 feet.

The Witness: So I am told.

The Court: So he is told; and even though he were to tell the increased size of the lake, I think that it is incompetent. Now if nothing had happened, Mr. Hunt, except the raising of this water and making the lake larger

and the necessary felling of trees in order to accomplish that purpose, it might be that it would be proper to show the comparability of the situation because of those slight changes, but what he testifies before—

Mr. Hunt: What evidence is there of any other changes before the court? I have not heard any.

The Court: There has not been anything testified to here, but there has been some talk in my presence, and I don't remember where I got it if I did not get it right here in court, that there is now a real estate development there. Perhaps I got it when I was on the ground.

Mr. Matthews: I said Lake Erskine.

Mr. Hunt: I don't know what your Honor calls a real estate development. The development that has taken place there is precisely what the witness had described, the raising of this pond. In addition, on the existing road which led into the property there has been dumped some broken refuse stone belonging to my clients, some mine tailings from the Ringwood minings belonging to my client; around the margin of the pond similar dumpings have been made—not to make a road, because there was a road there already.

Mr. Matthews: I object.

Mr. Hunt: But to make a road that was already there more easily passable than it was.

The Court: Let us assume then, if that is all that happened, if in addition to that there have been lots sold because of the increased size of the lake, because of the increased facilities for getting there—improved facilities for getting there, the improvement of the road, then I say

it is not comparable and is not competent in my judgment, because all of this took place after the taking of this property.

Mr. Hunt: No, your Honor. The planning of it and the beginning of the execution of the plan, the first steps, which is cutting the timber—

The Court: I understand that, and I am going to allow Mr. Hershfield to testify with respect to the difference in value, if you ask him, at the time that this property was taken.

Mr. Hunt: Yes.

The Court: Considering the condition that existed on Lake Erskine property at that time, not now.

Mr. Hunt: But you see, your Honor, no sales took place until this last summer.

The Court: I understand, and that is the very reason I am not going to let you testify with respect to the price in the sales, or the value of the property last summer.

Mr. Hunt: Your Honor has permitted testimony as to sales made since the commencement of the condemnation proceedings.

The Court: Yes, but where the conditions were the same. If I have done otherwise I will recall it if I can.

Mr. Matthews: We will consent to have all stricken out from our testimony that may be after, unless in the same condition, because I know there have not been any.

Mr. Hunt: I have not asked to have them stricken out, because I object to its being stricken out.

Mr. Matthews: There aren't any, Mr. Hunt.

The Court: All right.

Mr. Hunt: The witness has said, your Honor, that the point of distinction upon which he relies in saying that this property is not comparable with the property being taken is a matter of view and only the matter—

The Court: Yes, I understand that. I am not concerned with the fact, because he didn't speak about the view that was to be had of the Miller Falls from some of the land adjacent to the Miller piece.

Mr. Hunt: Yes.

The Court: And he has also said that with respect to other pieces throughout the taking that the view that was had had some bearing on the price that he appraised it at. Now then on this Lake Erskine property he does speak about the view, and the bigger the lake the more you will see, I suppose, and the better view, if you like a big view. If you like a small lake in your view, you get a small view. It depends on the man's taste.

Mr. Hunt: I speak with all respect to your Honor, that it is for the jury to hear all the facts and then say for themselves whether the view is the distinguishing factor or whether or not there is any distinguishing factor.

The Court: That is true up to the time I had reference to.

Mr. Hunt: Then I understand your Honor to exclude the testimony (strike out the testimony). I understand your Honor to exclude the cross examination of this witness respecting his knowledge of sales made at Tice's Pond during the past summer?

The Court: Yes.

Mr. Matthews: May I interrupt the court and ask that your Honor have the objection to your ruling put on the record without any understanding put on the record?

The Court: Why, I don't object to it. He seems to know what the ruling of the court will be in case certain questions are asked. He is entitled to know if my view of the matter that any property that has been changed materially is not comparable and is not evidential of the value of the property at the time of its taking. That is the reason for my ruling, and I think it is improper and incompetent, and not a proper measure of value.

Mr. Hunt: Yes, your Honor. May I rise to what might be called in a Legislative body a point of personal privilege, and say that I am sure that the court realizes that every remark that I address to the court is addressed with the utmost respect and is only in the interest of trying to properly try the case and bring out the facts.

The Court: I have not complained, Mr. Hunt.

Mr. Hunt: No, and your Honor will complain if you see reason to complain?

The Court: I am apt to. I have not this colored hair for nothing.

Mr. Hunt: I have been living with that same colored hair for 14 years and I know it is capable of complaining when—

The Court: If it were not your wife I would commisserate with you.

Mr. Hunt: May an exception to the court's ruling be allowed?

The Court: You have your exception, certainly.

Q. Now Mr. Hershfield, are you familiar with the sales made by the Ringwood Company at the village or townsite called Awosting on Greenwood Lake? A. Only as they have been referred to on the property here by Mr. Bugg and others.

Q. Now that is four miles perhaps from the northerly end of the taking?

The Court: Just let me interrupt you. I assume from the fact that you stopped the inquiry about Erskine Lake, that there were no sales prior to last summer? I do not want the jury to think I stopped you from anything that might be proper to be asked.

Mr. Hunt: My clients inform me, your Honor, that they do not recall any sales on Lake Erskine or Tice's Pond prior to the commencement of the condemnation proceedings. We will look into that, and if we find any—

The Court: I only thought it fair to the jury to know that you had stopped that line of examination because of my ruling, and further because there was nothing more you could bring out.

Mr. Hunt: Yes, sir. If I find there were any sales there prior to the comemncement of this proceeding I will return to the subject and recall the witness, if I may.

The Court: Very well. That is within your province.

Q. Are you familiar with the sales on Awosting? I think that is the question? A. I heard it testified to in prior proceedings.

Q. Now you are aware, are you not, that as the Village of Awosting is laid out the lots do not run down to the margin of the lake; the land along the margin of the lake and a certain distance along the edge of the water is kept in the ownership of the company for the benefit of all the lot owners? Do you know that?

Mr. Matthews: I object to it as immaterial to this issue. No matter what the character of the lake front is at Awosting, unless it can be shown that these premises are comparable in terrain to the place under condemnation, all of this is incompetent. Awosting is a village. Awosting has streets, post office, all of the other things. I think the court will take judicial notice of it and ride through it, that there cannot be any comparability between that property and this wild terrain.

The Court: Do we go through it to get to your property?

The Witness: No, no.

Mr. Matthews: No, but I think your Honor will be told upon examination that Awosting is a settled village. We certainly should not have to waste time.

The Court: Well, I assume there is some materiality or Mr. Hunt would not have asked it, but I do not see myself just what it is.

Mr. Hunt: The Witness has admitted that Awosting Village belonged to the same owner and is about four miles from the land under condemnation. I think that the jury has a right to determine—

The Court: Has he said that?

Mr. Hunt: I understood him to say that. I put the question and I thought he said yes. Didn't you say—

Mr. Matthews: I object to the question.

The Court: I don't think he said that. I think you asked him if he knew it and if he knew the value of the property, and he said only as he had heard it testied to in this proceeding.

Q. Didn't you say it was about four miles from the northerly end of the lands under condemnation on this proceeding? A. It is.

The Court: Did you so state here?

The Witness: Yes, sir.

Mr. Matthews: I think he said it this way, when objection was made.

The Witness: I was napping.

Mr. Hunt: Here is my point. Here is land at Awosting, admitted by the witness to belong to the Ringwood Company, four miles from the land being taken. I think it is competent for the jury to know what the Ringwood Company gets for land at Awosting, and I will not confine my question to lands fronting on the lake, but I will go way back of it, in order that the jury may determine whether the same owner with these lands in the taking, if permitted to have and enjoy its property instead of being compelled to yield it up, could get out of it. After all, I think it was Judge Dixon who remarked in one of his opinions—I think it was that United New Jersey Railroad & Canal Company against Laing opinion—that in most of these questions that arise in cases of this

kind the jury are just as competent as the real estate expert to form an opinion as to what can be done with the land when it is available, what it is capable of, and what it is worth in view of those capabilities and availabilities.

The Court: The only point in my mind up to this point—I don't know what Mr. Matthews is on his feet to propose,—is that you have not shown yet that it is comparable.

Mr. Hunt: Well, in point of geographical location—

The Court: The mere fact it is four miles away and the mere fact of its being close to Greenwood Lake does not of necessity make it comparable. You might develop the comparability a little more and then we can pass on it.

Q. Well, Mr. Hershfield, this land at Awosting has had the trees cut off, or enough of them so that those that are left are just sufficient for nice shade, and so forth? A. It has been very beautifully treated, the Awosting Village.

Q. Now any of this woodland property of the Ringwood Company that lay similarly as to contours could likewise have part of its trees cut off and be just as beautiful, couldn't it?

Mr. Matthews: I object. That being something added that makes it comparable is something that it is incomparable with before the taking, just as we had about Tice's Pond—another one of their developments, because, forsooth, Ringwood developed Tice's Pond or tried to develop it—the condemnation preceeded that. It is not comparable. Now at Awosting we have a high class, restricted village, in

which we have streets, water, and frontage on Greenwood Lake. There is no similarity of frontage on the lake, so there is not any comparability. If we went out to it we can determine it immediately.

Mr. Hunt: Now so far I was not going to point to the lake. I asked him about cutting some trees or brush out of the way.

The Court: That is true, but if it is practically on the shores of Greenwood Lake, with all of the facilities of that beautiful lake, that in itself would make it incomparable with most of this land, would it not, Mr. Hunt?

Mr. Hunt: No, your Honor, because we shall show, if we are permitted to show that within the lines of this taking we can produce three or four ornamental lakes, not as large as Greenwood, but just as attractive.

The Court: Oh, you might, but you have not.

Mr. Hunt: We will show that before this condemnation proceeding was commenced we had the requisite permission from the State Board of Conservation and Development.

Mr. Matthews: I object to this as prejudicial.

The Court: I know exactly what you are going to say.

Mr. Hunt: Perhaps your Honor does not follow me the whole way.

The Court: Yes, I do.

Mr. Hunt: We had the plans already drawn.

The Court: Yes. I understand all that, Mr. Hunt, too. I still maintain that the mere fact of the proximity of Greenwood Lake takes this property out of the consideration as far as being comparable to the property that Mr. Hershfield has stated. Now as you develop your case

and we get along, the ruling of the court will be that you can flood this area and show the picture of how it would look when flooded and get the values of the place that would thus be created, then we will go back to this situation.

Mr. Hunt: All right, sir.

The Court: I will give you permission then to recall Mr. Hershfield.

Mr. Hunt: Yes. All right. I will pass along then.

The Court: But unless you do—unless the ruling of the court is along those lines, I fail to see the materiality of this testimony, because of its incomparable nature.

Q. By the way, Mr. Hershfield, when you were forming your opinion of the value of the property being taken for the purpose of testifying in this case, did you take into consideration its value for the purpose of producing water storage?

Mr. Matthews: I object, if your Honor please, as immaterial to this issue, because it would import a condition that is not existent at the time of the taking, and would be predicated upon artificalities as incompetent if he proves it in this case.

The Court: I am inclined to allow that question to be answered, did he take that into consideration, yes or no.

Mr. Matthews: Exception.

The Court: You may have an exception.

A. I knew of no water—

The Court: No; answer yes or no, whether you took that into consideration in fixing your

figures—in appraising the value of this property.

A. I am not qualified by experience or education to value water powers.

The Court: Then you did not take it into consideration, did you?

The Witness: No, sir.

The Court: Eh?

The Witness: And there wasn't any there to consider.

The Court: Very well.

Q. Now, Mr. Hershfield, I read from your testimony in this case before the Condemnation Commissioners at page 111; by me:

"Q. I am asking you to state every use to which you conceived this property could possibly be put when you set out to appraise its value, and I will continue to ask you that until you say you are absolutely done, that there is no other use to which you can think of."

Did I put that question to you? A. I presume you did.

Q. Did you answer as follows: "A. There are minor possibilities." A. I may have answered that. If it is in the record presumably I answered it.

Q. Did I put to you this question: "Q. I want to know the ones that you took into consideration when you arrive at the opinion that this property was worth $470,000?" Did I put that question to you? A. I presume so, if it is in the record.

Q. And did you answer: "A. I also considered its value to the State of New Jersey for this great public work." Did you so answer? A. Yes.

Q. He says yes, Mr. Kelley? A. Yes, sir.

Q. Now, "You did, eh?" Did I put that question to you? A. Possibly. That sounds like you.

Q. And did you answer, "Yes, sir." A. Probably.

Q. Did I then put to you the question: "Q. What did you consider to be its value for that purpose?"

Mr. Matthews: I object, and if I were there I would have objected to it. It is incompetent.

The Court: Objection sustained.

Mr. Hunt: If the court please, I am only impeaching him by showing—

The Court: I will let you ask him whether you asked him that.

Mr. Hunt: That is what I am asking him.

The Court: But I am not going to let you give the answer he gave, because I conceive it to be incompetent and immaterial, because that question might have been asked in another proceeding and answered without objection is no reason why I should allow it to be asked here over objection.

Mr. Hunt: Your Honor, this witness now says that he does not consider himself competent to value it for such a purpose.

The Court: Yes.

Mr. Hunt: If I show out of his own mouth that at the former trial of this case he asserted himelf to be competent and did undertake to value it, I have a right to do so.

The Court: I say I will allow you to ask him the question as to whether he did. You ask him that question.

Mr. Hunt: Yes, I will put that.

Q. Did I not then put to you the question: "Q. What did you consider to be its value for that purpose?" A. Probably. I have not the minutes befor me.

Q. I will show you the minutes.

Mr. Matthews: We will admit it is in the minutes.

The Witness: We will admit it is in the minutes.

Q. Your answer is yes. Did you then give the following answer—

Mr. Matthews: I object now, because the following answer is value, and this answer in this book is not value. It is the same value he gave according to the correct canons of his testi mony, and it is a circuitous way, and to my mind an unethical way of arriving, and if the jury can be excluded—

The Court: It is quite clear to my mind that it is not proper, even on the theory of discrediting him, because it seems to me that anything that was improperly asked before should not again be asked on the ground of discrediting him.

Mr. Hunt: There is no suggestion, your Honor—

The Court: If you will ask him this question without giving the figures, without giving the answer verbatim, I will allow it, because in my judgment if you develop from this witness, for instance, that he did before take into consideration those things and did add them to his value, that will discredit him and have that

effect, but I will not allow you to read into the record the answer that he might have given as to the amounts.

Mr. Hunt: Your Honor, I think that is the only way and the best way that I can discredit him. Now, your Honor, I call your attention to the fact that this evidence cannot be said to have been improperly admitted at a former proceeding. There was no objection made to it then. There it is.

The Court: But there are a lot of things that go in that are improper if no one objects.

Mr. Hunt: How can it be designated improper.

The Court: Because I am designating it as improper now. That is the only way.

Mr. Hunt: Your Honor now designates it as improper solely because the witness has now said in these proceedings he does not consider himself competent to testify to such a matter, and I submit that I have a right to show that at the first trial of this proceeding he asserted himself to be competent by undertaking to do it.

The Court: Very well; I am going to let you do that if you keep the figures out. That will discredit him.

Mr. Hunt: May I have an exception to your Honor's ruling excluding the figures?

The Court: You may.

Q. Then I put the question to you, at the trial of this case before the Condemnation Commissioners, did you or did you not undertake to put a value on this property for water supply purposes?

Mr. Matthews: I object to that as not a quotation of the question.

The Court: I will allow it and grant you an exception.

Mr. Matthews: Yes.

(Question repeated by stenographer.)

A. If I did I dismissed it as having any value from my standpoint.

Q. Are you aware of the fact that Pine Island in Greenwood Lake was sold on July 13th, 1925?

Mr. Matthews: I object to it as immaterial to this issue, if your Honor please. Pine Island in Greenwood Lake is not comparable terrain and cannot be evidence of market value of this property.

The Court: I will make the same ruling with respect to the development on the shores of Greenwood Lake, again giving you the right to open it up if we get into that situation.

Mr. Hunt: All right, sir.

The Court: I might say at this time, Mr. Hunt, that my notion, my present notion is that that Morris Dredging case has stated the law on that point.

Mr. Matthews: The Manda case.

The Court: Particularly that other case. I am telling you that, because you may see how my mind is working, and it may be proper to change it if you can.

Mr. Hunt: Would you Honor permit me—it will only take me thirty seconds—to make one request about that case.

Mr. Matthews: May we have that argued in the absence of the jury?

Mr. Hunt: It will be a request. If it involves the sending out of the jury I would not ask you to do it.

The Court: If you tell me it won't prejudice them, I will permit it.

Mr. Hunt: I do not see how it can, because it relates only to a question of law.

My understanding of the ground of decision in the Morris & Cummings Dredging Company case is that the improvements which the owner proposed to show might be made or could be made and therefore gave the property a poten-- tial value because they might or could be made, could not be undertaken without legislation and the appropriation of money both by Congress and the State Legislature.

The Court: I understand. Now here is an analogous situation. Perhaps it does not go quite so far, but it is analogous up to a certain point. It seemed to me that the whole philosophy of the Manda case and the Dredging Company case and some others is that we must disassociate our minds of speculative values.

Mr. Hunt: Absolutely.

The Court: And that there was a line beyond which we could not go. Now just where that line should be drawn I am rather inclined to think is a matter for honest difference of opinion; but my opinion up to this point is that if the fact is that this great tract of land has lain in the same condition for a long time, that it is too late now to say we could do this and we could do that and we could do the other thing. Now if you tell me, and if the facts bear it out, that you have all sorts of governmental permits, with the permission of this body—

Mr. Hunt: Permits from the State Board of Conservation and Development, those are the only ones.

The Court: I say if the situation is that you have started all these things or planned them, it may change the situation. I don't know the facts up to this point.

Mr. Hunt: No.

The Court: But I am just throwing this out so that you may see why my notion is as it is at present.

Mr. Hunt: I would make just one more request of your Honor, that in reading or thinking about the Currie case your Honor will always remember that Currie could not build a railroad.

The Court: Oh, yes.

Mr. Hunt: He had not a franchise, and he had not the length of the right of way required. He just had his own little piece of land. In the Boom case, Paterson could not build the boom.

The Court: Yes, I appreciate that.

Mr. Matthews: May I just ask your Honor also to remember this, that the strategic value can be taken advantage of by the individual as against an individual, but never against the public want or need.

The Court: Yes, I know that. One of the Justices of the Supreme Court said in an opinion that I read last night—I can't tell you the case, because I have forgotten it—that that value is not the value to the taker, but the value to the man who owns the property.

Mr. Hunt: No, the value of the market, not the value to either, if your Honor please—not

the special value even to the man that owned this property. This property might be worth for some personal reason a hundred million dollars to us.

The Court: The test of the Supreme Court, laid down, as I recall it very distinctly, and I do not mean to quote the language of the distinguished Judge who wrote it, was that the test was, what has the owner been deprived of, rather than, what has the condemnor gotten.

Mr. Hunt: Oh, that is true, but when you—

The Court: I did not express it clearly before.

Mr. Hunt: Lewis, if I recall it, has given a whole paragraph, a sub-head, devoted to this question, that the value is not the value to the taker, not the value to the owner, but the value in the market to anybody, considering all the circumstances.

The Court: That of course is true.

Mr. Matthews: Must be a commercial value.

The Court: Yes.

Mr. Matthews: And not sentimental or historical.

Q. At what price did you value the old Stone house used as a tea house on the Greenwood Lake Turnpike within the lines of the taking? A. $12,000.

Q. Are you aware of the fact that that house was rented at $1,500 a year at the time the Ringwood Company turned over possession of the property to the Water Supply Commission?

Mr. Matthews: I object to that as immaterial, if your Honor please, because unless it

is shown that at that time that that value was not created for the purpose of the taking,—now as I understand the situation, this is a stone house which he has valued as so much as of the date of this condemnation. If this lease was in existence then and was not predicated upon the circumstance of the taking, that might be competent to test the credibility of his value, because leasehold increment means value.

The Court: I assume that is the reason.

Mr. Hunt: Yes. The fact is that we had rented this house for $1,500 and when we turned the property over to them they commenced to collect the rental and have been collecting it ever since.

The Court: I will allow it.

A. The tenant told me that she paid that.

Q. Well, did you take that into consideration in fixing the value of $12,000? A. Rental do not—

Q. Did you or did you not? A. I did not. Rentals do not make values.

Q. Are you aware of the fact that the Borough of Pompton Lakes has recently sold the property called Pompton Lakes Electric Plant?

Mr. Matthews: I object to it as immaterial to this issue. This is not comparable property.

The Court: Is it comparable?

Mr. Hunt: I think it is. It is a little water power and we are going to bring testimony showing the value of water power on our property.

Mr. Matthews: We object to this as not cross examination.

Mr. Hunt: I asked him if he took the value of water power on our property into consideration, and I think he said he did, and he figured it worth nothing.

The Court: I don't think you asked him about water power.

Mr. Hunt: I think I did, sir. I will ask him now then.

Mr. Matthews: I object to that.

The Court: I allowed him to ask the other question and I will allow him to ask this. You may have asked it. I thought you just asked him the general question, for water purposes.

Mr. Hunt: I think I asked him water power especially, because I have the subject separated in my notes.

The Court: I will allow it.

Q. Did you in valuing the Ringwood Company property at the price you have testified to here take into account the capabilities that the property offers for the production of water powers?

Mr. Matthews: I object to it as incompetent, as it shows that it is a situation that must be created and you must needs come to that ruling when that point actually is argued. If it is going to be argued today I will be glad to be heard.

The Court: I think I will exclude it for the present.

Mr. Hunt: May I say that the Circuit Court of the United States on November 5th of this year, in refusing to grant a writ of certiorari in the case of Ford Hydro-Electro Company against Janet Mealey, affirmed a decision of the

Circuit Court of Appeals of Indianapolis—I forget whether that is the Seventh Circuit—holding that such an inquriy is a proper one—the capability of the property to produce water power, that is it, not the fact it is doing it.

The Court: Inasmuch as we have reserved two or three other things along the same line, I think that I will reserve this and take it up later.

Mr. Hunt: All right, sir.

Q. How many acres has the Water Supply Commission already acquired within the general taking line as shown on Exhibit C-1? A. About 1500, roughly.

Q. 1500 roughly. You have negotiated all those purchases for the Commission? A. All but one or two.

Q. Well now, do the 1500 that you refer to include the Edward R. Hewitt property? A. No, sir; including the Japanese tract and E. R. Hewitt we would have about 2500 acres.

Q. In other words, including everything marked in red on Exhibit C-1 and this large tract or perhaps two tracts marked in green and this tract marked in blue or whatever it is— A. Call it purple.

Q. —that is 2500 acres? A. Approximately.

Q. What is the total cost involved in the acquisition of those 2500 acres?

Mr. Matthews: I object to it as totally immaterial to this issue. It is framed to prove value by relativity of the balance to the whole and approximate that on the total cost. That is argumentative and is not the measure of

market value, because in this consideration there was $500 inconvenience in many sales. That is not evidential of market value, and it is entirely immaterial.

The Court: It might not be comparable to this property. It probably is, but it might not be. In the Japanese tract it may all be $500 an acre property. In the green pieces it may also be the highest type of property, for all we know.

Mr. Hunt: I withdraw the question for the moment, then, your Honor.

The Court: Very well.

Mr. Matthews: Then we have buildings of various character.

Mr. Hunt: I will withdraw the question for a moment, your Honor.

Q. I draw your attention to the Japanese Tract as marked and described here "Fujita Tract 15-G-264.65 acres", and ask what the Commission paid for this?

Mr. Matthews: I object a condemnation proposition. It is a proposition of payment made in condemnation.

The Court: It is not their market value that governed that transaction is what Mr. Matthews says in effect, as I understand it.

Mr. Matthews: It is a property that was acquired, not by his sale; it was acquired by condemnation proceedings, and after the condemnation proceedings the award was accepted by the property owners. Mr. Hershfield had no more to do with that, nor does he know the minds of these Commissioners any more than I

know the minds of the Commission that made the award in this case.

Mr. Hunt: I will follow that up a little further, if the Court will permit me.

Q. The Commissioners were the same Commissioners that tried this Ringwood case, were they not?

Mr. Matthews: It is totally immaterial to the issue.

The Court: It seems to me that it is not material.

Mr. Hunt: I do not think we are concerned with what the Condemnation Commissioners in this case or in the Japanese case or in the Hewitt case found. I mean, because it is not necessarily evidence of the market value which we are concerned with here.

Mr. Hunt: Of course, the function of the condemnation Commissioners is to find market value.

The Court: I understand that, but suppose they did not.

Mr. Hunt: All right, now, I will try to develop, if I may be permitted, how the minds of the parties viewed the transaction. I will ask this gentleman whether as head of the Real Estate Department of the Water Supply Commission, he advised the taking any appeal from the ward of the Commissioners in this Fujita case.

Mr. Matthews: I object as immaterial.

The Court: Objection sustained.

Mr. Matthews: That is prejudicial—those statements. Counsel knows they are not mate-

rial, and if it were not, if your Honor please, because of the length of this case already, I would ask for a mistrial on the continued conduct of counsel. I cannot afford a mistrial, however.

Mr. Hunt: Your Honor permits me an exception?

The Court: You may have an exception.

Mr. Hunt: May it be understood I put the same questions and have the same exception with reference to the Edward R. Hewitt property?

The Court: Yes, and this mouse-colored one you overlooked there.

Mr. Hunt: No, your Honor, that is under appeal here. That is the Miss Sarah Hewitt property and there are appeals there by both parties, as there are here.

Mr. Matthews: This is an appeal on the part of the Hewitt family that are in court. Of course, that ought to be dated.

Q. Are you able to tell the amount paid by the Water Supply Commission for the approximate 1500 acres acquired by it and shown on the map in red?

Mr. Matthews: I object as immaterial to this issue.

The Court: I do not see the materiality of that. I understand that your proposition is, if a certain percentage of it has already been acquired by purchase, what is the average per acre of that land as compared with the average per acre of the land that we are now taking, and if that is your purpose, and it seems to be

the only purpose, you might have in that, I think it is immaterial and irrelevant, because many, many things may be present on those other pieces that are not present here.

They are not all comparable, all of them cannot be comparable. There may be so many things of a divergent nature and conditions that prompted the closing of sales between the Commission and the owners in many of those tracts; they may be so far afield with conditions that we meet with in property under condemnation here that I think it is clearly irrelevant and immaterial, and would not be evidence, and for that—

Mr. Matthews: One final word, if your Honor please. There was one piece of property that Mr. Hunt asked him on cross examination about, didn't you say at the last hearing that you bought this in order to prevent the Hewitts from building a lake up there, and he pronounced yes, I gave a thousand dollars more than they would offer. So that total would be freighted with that abnormal and unmarketable value.

Mr. Hunt: I think I will just go to that part of the territory that Mr. Matthews has referred to in his last—

Mr. Matthews: You referred to it. I am quoting you, Mr. Hunt. We will be glad to have you go, because we cannot understand why you brought it out. It would help us so.

Q. Just step down here to C-1, Mr. Hershfield. Mr. Matthews has just referred to the Miller property here on C-1 that you bought for the Commission for $25,000. That is correct, isn't it? A. Yes, sir.

Q. Now, just point out to the jury right there in that same area a piece of seven-eights of an acre which you bought from Smith—Mr. Bugg tells me it is marked here "63"? A. Here it is right here (indicating).

Q. Fred M. Smith. Could the jury see where he pointed to? Now no pond built by the Ringwood Company anywhere on this nearby property would flood that Smith property, would it? A. Not that I know of.

Q. So that the reason which prompted you to give Mr. Miller, as you said you did, $17,500 to keep the Ringwood Company out, was not existant in the purchase of the Smith property, was it? A. No, sir.

Q. Now, on the Smith property of .63 of an acre there is a little frame house? A. There are three or four buildings.

Q. All right. Old Mr. Miller sold that property about 15 years ago, didn't he?

Mr. Matthews: May we not have the witness on the chair, your Honor?

Mr. Hunt: Yes, I am willing to have him go there now.

A. I do not know.

Q. You do not know he sold it to a man named Muir or something of that sort? A. I never followed the chain of title.

Q. And your familiarity with real estate transactions in this valley does not extend to that property?

Mr. Matthews: I object to that as immaterial.

A. I have nothing to do with the title. There are men employed for that purpose. I am not one of them.

Q. At any rate there was a shack about 18 by 25 having a small porch there? A. I do not know that.

Q. Look at your notes? A. I haven't them here.

Q. You had them here this morning? A. No, sir, not the Smith notes.

Mr. Hunt: Will the Court permit me to recall this witness. I hoped to get through with him by all means today, but he comes without his notes, or only partial notes.

Th Witness: I cannot carry 500 pieces with me. I bring the ones Mr. Hunt asks for. I cannot bring six vertical filing cabinets.

Q. This is not a sale that you referred to on direct examination? A. No, sir; it is entirely too small.

Q. How could I ask you to bring those notes? A. I say you did not ask me.

Q. I ask you now to bring them tomorrow. A. Yes, sir; I will bring them tomorrow. Will Mr. Dawes please make a note to bring the Smith title.

Q. Have you got with you your notes regarding the purchase of the Watson property? A. No, sir.

Q. Just step down to the map now until we identify the Watson property. A. The Watson property is a piece of 5 and 1-5 acres known as 109-A on our map.

Mr. Matthews: On C-2?

The Witness: On C-2.

Mr. Hunt: C-1.

The Witness: That also had several buildings on it.

Q. Now, the location of that property is such that it would not be flooded by any dam built by the Ringwood Company which might flood part of the Miller place? A. That is true.

Q. So that the consideration that induced you to pay $17,500 in purchasing the Miller place does not exist in regard to the Watson place? A. No, sir.

Q. Now, are you able to say that the improvement on the Watson place, the original improvement, is a three-room house, building of frame construction, about 15 by 20 feet in size? A. When I get my notes I will give you the details.

Q. All right. Perhaps you are able to tell us without the notes what you paid for the Smith property? A. In the neighborhood of $6,000; I don't recall whether it was more or less.

Q. $6,000? A. Beg pardon.

Q. $6,000, in that neighborhood? A. Yes, sir; in that neighborhood.

Q. Are you able to tell, without your notes, about how much of that represented the value of the improvements? A. No, sir.

Q. What did you pay, if you recollect, for the Watson property? A. Roughly, $7,000; that may be a thousand dollars one way or the other.

Q. Well, it was $7,500? A. I don't recall; I haven't my figures.

Q. Are you able to say how much of that represented your opinion of the value of the improvements? A. Not without my field notes.

Q. Then, you bring those notes tomorrow, and I will also ask you to bring your notes regarding any and every other purchase that you made for the Water Supply Commission, or for any other person in the near neighborhood of this taking, because I may want to ask you about them at any time? A. Will you furnish a truck?

Mr. Matthews: That was just what I was going to suggest.

The Witness: You better hold a session up in my office, then.

Mr. Hunt: We have a truck at the mines, and if you require a truck to bring this down we will send it for you.

The Court: Now, what is the necessity of that, Mr. Hunt?

Mr. Hunt: Just, your Honor, to enable us to save time. If the witness does not have his notes here—

The Court: You were only mentioning three or four pieces, I think, now.

Mr. Hunt: I do not see that he needs any truck for that.

The Court: He does not. If you want him to bring what you ask for, for all other transactions he has had in this vast area, he says it would take a truck. My judgment is after he got it on the truck he probably could not find it, and my judgment further is if he brought it down here with the truck, the chances are very much in favor of your not asking any further questions pertaining to any one, and I therefore would suggest that it would seem to me very much more practical to ask him for specific pieces as you find you need to, and we

will put him on, if need be, out of order when those situations arise.

Mr. Hunt: What I asked him for, was the detail of his transactions within this taking line in the immediate neighborhood of the taking line, and apparently he had here the other day all that stuff. They are marked in red. He testified about those for Mr. Matthews, because he read off time after time from his notes, such a house and such and so and so.

The Court: Mr. Matthews told him what to bring, and he brought it.

Mr. Matthews: He only had 17 properties. That is all I have got. I have got 10 more now on redirect that you have opened me up for; that will be 27 altogether.

Q. Well, you will have the two I have just referred to here tomorrow? A. Beg pardon?

Q. I say you have the two I have referred to here tomorrow? A. The Watson and the Smith. I will have those details.

The Court: One more. There seems to me to be three.

Mr. Hunt: I mentioned only two, your Honor.

The Court: Very well.

Q. Oh, yes; and bring all the map that was given you by the Ringwood Company. A. Yes. May I speak to my man. Dawes, the illegible Ringwood map.

Mr. Hunt: And Mr. Dawes also the Ringwood legible map, if any.

Mr. Matthews: With the accent on the "if any."

Mr. Hunt: And also the aerial map from which Mr. Fay testified, if that is in your possession.

Mr. Matthews: I object. We have got the map right here, and any map that was previously marked in the previous proceedings we will not produce as prejudicial, but we give you a copy, literatum from the same negative, and negatives cannot lie. We offer it in book form. May I present it to you. This is easily handible. The other one was so big it would engulf you and me. May I hand it to Mr. Hunt, your Honor?

The Court: He hasn't it, Mr. Hunt.

Mr. Hunt: Now, your Honor, may I make a counter offer? I am ready to produce, at their request, or your request, a map or document of any character that I produced in the former proceeding. I will have it here the moment it is asked for.

The Court: The point is made by counsel for the Water Commission this would be prejudicial because of the marks on it, and they offer a map that has no marks on it, if you want it, for your information to help you in examining. I have no doubt they will give it to you, but if you want to put in evidence the other they will object to its being marked in evidence because of the prejudice that might go to them because of the marks that are on it. Is that the point?

Mr. Matthews: And another point, that it was marked in the last hearing by the Commissioners who allowed it to be marked contrary

to the legal requirements in such cases. In other words, it was a lot of illegal doings with that map, contrary to the rules of evidence that we will object to in this trial.

The Court: Very well.

Mr. Hunt: The map I want, your Honor, is a map produced by them upon which their witness, Fay, at my direction under cross examination traced with red ink the outline and certain area. Their witness, with his own hand, traced these areas, and I should like very much to have it produced before the members of the jury. I, myself, take the view in this case that nothing that throws light upon facts is prejudicial to truth, and truth is the final inquiry here.

Mr. Matthews: And it is because it is, and because we know they didn't get it at the last hearing that we are having a new trial and before a Court whose concern is to see that we get only the truth, and we offer him not only the map, but Mr. Fay to trace on this map, with the same red ink, if possible, out of the same bottle, the same lines for the same purposes, so we do not want to be outdone in generosity of producing exhibits, but we do want to get at the truth, but the legal truth, not the sentimental truth.

Q. Mr. Hershfield, would the 2350 acres being taken in this proceeding, in your judgment, be more or less valuable if, instead of being all held in one ownership, they were held in 100 different ownerships, each owner owning 23 acres?

Mr. Matthews: I object as irrelevant and immaterial to this issue, if your Honor please,

whether holdings all in one or in individuals. I do not see how this man would be competent to reflect the market value. In other words, it makes no difference whether the Ringwood Company owns now, either by purchase or holding, 2400 all in one lot, or whether they own 10 here and 15 there. If that were the measure of market value, all a man would have to do, when a public improvement is coming along, would be to have everybody sell to him within a year or two of the filing of the condemnation or lis pendens and urge that as a reason why market value should not attach. It is the character and commercial availability.

The Court: If this witness says it does, however, it may be evidence. I will allow it.

Mr. Matthews: An exception on the ground that it is incompetent.

The Court: You may have it.

Mr. Hunt: Read the question, please.

(Question read.)

The Witness: If the 2300 acres that the State is taking were contiguous holdings I might say it would, yes, have some plottage value, but it is scattered all over the tract, six or seven miles long, by a mile and a half wide, and there is no sameness or contiguousness to the holdings. Consequently, you cannot claim, as it is, it is in one purpose. There is no relationship certainly between the ground at the north end and that at the south end; nor conversely, between the land near Miller's Falls with that toward Lake Erskine. There is no physical, political or economic connection.

Mr. Matthews: You mean civic or political?

The Witness: Civil, political or economical connection. I mean by that, they are not even in the same local political zone.

Q. Not in the same township, you mean, make it plain? A. Yes, sir.

Q. The lands lie in two townships? A. Two or three.

Q. Two? A. No, I would say Ringwood, West Milford Township, Ringwood Borough and Wanaque Borough.

Mr. Hunt: If the Court please, we would have to have an amendment of the proceedings, because we have a petition that operates to land in the Boroughs of Wanaque and Ringwood.

Mr. Matthews: Does he apply? We would be very glad.

Mr. Hunt: No, I am just suggesting. I would like this proceeding to be finished and done with when it is done, and have no jurisdictional difficulties.

Mr. Matthews: Well, if there are any it would vitiate anything we have done.

Q. So when you look at the yellow on the map you say that the situation on those various areas and the size of the respective areas is such that the land has no plottage value? A. Not as a whole. Certainly, there is not 2300 acres to whom the enhancement of plottage can be added, because there is no plottage.

Q. Now, Mr. Hershfield, in your direct examination in justifying the valuation that you put on this property, why did you fail to refer to the Valois,

Sherman and Meyer and other properties in these little places that I will show you, which you bought at prices which reflect land values after deduction is made for your improvement valuation of round figures of $5,000 or $6,000 per acre? A. Because when I was valuing a tract of 2354 acres, I did not take as a unit of value an isolated lot sold of one-tenth of an acre. I tried to get comparable properties in acreage of 50 acres or more.

Q. I see. A. Or such similar pieces immediately contiguous to the shed. I did not take one-tenth of acres as being comparable to this.

Q. I point you to the Valois lots, that is surrounded on three sides by lands of the Ringwood Company? A. Yes, sir.

Q. And the Ringwood Company's lands for a distance of approximately 1200 feet to the north on the west side of the Wanaque River bear exactly the same relation to the river as the Valois house? A. No, sir, they do not.

Q. They do not? A. No, sir, they fall off.

Q. They fall off, all right. A. The Valois lot is one of the choicest lots in the entire tract.

Q. Now, the Ringwood Company tract on the east side of the Wanaque River from this bend in the river opposite the Mary Meyer lot, up to the crossing of the Hook Road, or almost through, are of substantially the same character as the ground embraced in this Valois and Meyer lot? A. By no means; they are 25 or 30 feet lower, consequently are subject to flooding of the river.

Q. Then, the difference between the lands embraced in these lots that you bought and the contiguous Ringwood lands is so great as to account for the difference in value equal to the difference

between $6,000 per acre in the one case and $500 in the other case?

Mr. Matthews: There is no testimony about $6,000 in the Valois lot. The witness negatives this when he says he sold this as a lot. It was not even comparable on an acreage basis.

The Court: What Mr. Hunt says is that would be at so much per acre, at the rate of so much per acre.

Mr. Matthews: It would be if the acreage was all the same, all through its acreage, and there isn't any proof of that.

The Court: That is correct.

Q. Well, Mr. Hershfield, the Valois lot which is 50 by 100, isn't it— A. 100 by 100.

Q. That is a little less than one-quarter of an acre, isn't it? Whatever it figures up; yes, sir, 10,000 feet. There are 43,000 feet to an acre.

Q. 43,560 to an acre? A. Yes, sir.

Q. Now, if we just carry the side lines of the Valois lot far enough north we would have close to 43,560 feet, we have an acre which is just like the lot? A. If we did what?

Q. If we carried the side lines of the Valois lot far enough north to get the lot an acre instead of a quarter of an acre why, then, we would have an acre of the same kind of ground, wouldn't we?

Mr. Matthews: Now, if your Honor please, that is argumentative, because the Valois lot has river frontage.

Mr. Hunt: This is a question, and not argumentative.

Mr. Matthews: Of course, because you say if we carry it back a certain number of feet we

have an acre, and we would have an acre of similar ground. Now, that is not so. The frontage of that land gets its value on the river, and as you carry it back you cannot carry the front back to the river.

The Court: He is not carrying it back. He mentioned side lines. He is carrying it along parallel with the river, and the question whether if, that were done, whether or not it would not be an acre of land, comparable with the small beginnings, the lot itself. That is not objectionable.

Mr. Matthews: He is making an acre out of plots, and this was not an acre. This was a lot and was a lot when it was sold as a lot, and here we are dealing with acreage. You cannot take a lot and build an acre out of it. They bought that lot because it was a lot, and not an acre. In other words, this market value must be created as is. The Valois lot did not exist as an acre when it was sold. It existed as a lot, but this is acreage, consisting of acreage, and we are taking it as acreage. It is unfair to take a lot and then say it compares with the acreage value of the entire tract. In other words, it is artificial in one case and actual in the other.

The Court: What do you say to that, Mr. Hunt?

Mr. Hunt: I say it is all wrong. It is not worth the time that would have to be spent in answering it.

The Court: Very well, then you withdraw it?

Mr. Hunt: No, sir.

The Court: Then I rule that it is incompetent because it was taken as acreage value, and

not lot value, and you are turning lot value into acreage value, and it is not comparable.

Mr. Hunt: May I have an exception?

The Court: You may.

Q. Whatever the size was of the Valois property, whether lot or farm, you bought it? A. Yes, sir.

Q. It contained 10,000 square feet? A. As I recall, yes.

Q. What did you pay for it, $2,950, didn't you?

Mr. Frazer: He has already testied to it. Why should he continue to repeat these questions?

The Court: I think there is probably a purpose. I do not object to it.

Mr. Frazer: It is such a waste of time to go over the same testimony.

The Court: Yes.

The Witness: $2,950 for the lots, bungalow lot, and the attendant inconvenience.

Q. Yes; how much was inconvenience?

Mr. Matthews: That has been testified to.

A. Approximately $500.

Q. How much was improvement? A. Approximately $1500.

Q. Anything left for land? A. About $600.

Q. $500 and $1500 is $2,000, when I take that from $2950 I get $950? A. Now, hold on. Let me do a little figuring. $600 for the land—

Q. Now, start with the improvements.

Mr. Matthews: No, now, start with what he wishes, if you are going to question his figures The way to do it is to go from the bottom up. He is going the reverse, and I think that is good figuring.

The Witness: $600 for the land, $500 for inconvenience, $1500, roughly, for the building. That is $2600 I make it.

Q. All right, how do you get the other $350? A. There is a difference still of $350.

Q. Yes. A. Well, that was for the personal work the man did around the place.

Q. That was not for his wife's inconvenience?

Mr. Matthews: His what?

Mr. Hunt: For his wife's inconvenience?

The Witness: No.

Mr. Matthews: There is no proof that this man had a wife, that is, a permanent one in that bungalow.

Q. You say the bungalow was worth $1500? A. I say it was insured for that, and in my opinion, it was worth that.

Q. I am going to subtract $1500 from $2950, you say that leaves 1450 that you paid for that land?

Mr. Matthews: I object to what he says, and ask that it be stricken out.

Q. (Continued) Or for the acreage you say—

The Court: He is asking whether, according to that calculation, $1,450 is for the land. That is a proper question, if that is the question, and I will allow it.

The Witness: The man cleared the lot, trimmed it up, and did some planting, built steps to the water, built outhouses and other things, brought water in there, all those things go to make valuation.

Q. I suppose you figured the value of his bungalow on about the same basis as you figured the value of Mr. Sherman's bungalow? A. At what the men themselves valued it.

Q. Sherman valued it at $962 plus labor of two weeks of his own, and valued it at $1,700.

Mr. Matthews: I object. Here is a question baiting the witness, and he wants to correct the witness. I think he is entitled, when he says Sherman valued it at $962, he is baiting him. Now, he is coming back to tell him what Sherman told him. I think this is incompetent.

The Court: The question was not finished. Finish the question, please.

Q. (Continued) Now, I say, Mr. Sherman said he paid to third persons $962 and some cents for labor and material that went in his bungalow, and in addition, he put in two weeks' work on it himself. You said you valued his cost of reproducing his bungalow at $1,700. Now, does your valuation of the Valois bungalow relate to the cost of the bungalow as paid for by the owner, or as represented by the work put in by the owner in the same manner in the Valois case as it does in the Sherman deal? A. Exactly the same in both instances. The owners wrote me what they valued the property at.

Q. Don't read anything anybody has written to you. A. I have a letter from Mr. Sherman which I will introduce in evidence with Mr. Matthews' and the Court's permission, showing he himself valued the bungalow at approximately $3,000.

Mr. Hunt: I object to what the witness stated Mr. Sherman, who was selling the bungalow, valued it at, and I object to introducing any letter he has in evidence.

Mr. Matthews: We are going to introduce it on the redirect to save time, because the door is opened to that evidence.

Q. At least, you said you had allowed nothing whatever for consequential damage to the Ringwood lands adjoining the taking, but not taken? A. If I could see any I would have allowed it.

Q. Now, is it your idea that the Wanaque Reservoir will at all times be full of water after it has once been filled up?

Mr. Matthews: I object as calling for a conclusion that he cannot testify to, nor can the engineers, at the present moment.

Mr. Hunt: I want to show on what basis his mind worked for not allowing us any consequential damages.

Mr. Matthews: That is a thing he cannot visualize, whether the reservoir is always going to be full of water, and he cannot tell it, and certainly we cannot tell it.

The Court: But the question is why didn't he give consequential damage, and he said he did not because he could not see any. Now, the question is what is the conception that you

have of what this will be when it is finished, when it is full of water? This witness must have some concept of what this would be when it was finished in order to have concluded there was no consequential damages to the balance of the property, and on that theory I think he might be asked what his notion about that was.

The Witness: It will be a beautiful lake somewhat larger than Lake Hopatcong, irregularly—

Mr. Hunt: I ask that that be stricken out as not responsive.

The Court: Oh, it is. What was your question, whether water would ever go down?

Mr. Hunt: Read it, please.

(Question read.)

Mr. Matthews: That is incompetent, but if he said—

The Court: I think the question that I put might be competent.

Mr. Matthews: And I agree with you.

The Court: The one that you put is, I think, incompetent because it has that purview of this witness's knowledge, or perhaps any one else—

Mr. Hunt: No, we will prove what the fact will be, your Honor. Reservoirs are built to be drawn down. If there was always the same amount of water running downstream you would never have a reservoir. You have reservoirs to give you a reserve supply of water when the dry time comes, and you draw it down, and when you do that you have mud flats and breed mosquitoes.

Mr. Matthews: There will be no mud flats and mosquitoes.

The Court: If this witness knows, do you know, Mr. Hershfield?

The Witness: I know what the engineers said.

Mr. Matthews: I object to hearsay evidence.

The Court: But you do not know of your own knowledge?

The Witness: I do not know of my own knowledge.

The Court: Very well.

Q. Mr. Hershfield, suppose that the Wanaque Reservoir, through the six dryer months of the year, would be drawn down to various depths, it might be as deep as 40 feet, do you know what fractional part of the area within this flow line as it is depicted on the map, that would leave exposed to the eye and the nostril; do you know?

Mr. Matthews: I object as incompetent about this reference to the nostril for that reservoir, and it is slanderous, for the engineering department of your State is in control of it. I do not know what they have in Lambertsville, but we will have nothing like that in Wanaque.

The Court: The question is whether he knows or does not.

Mr. Hunt: That is it.

The Witness: I do not know.

Q. Suppose it were the fact, Mr. Hershfield, that about the first of July in an average year, the reservoir would begin to be drawn down and begin to show mud flats, and that about the middle of Sep-

tember in an average year from 50 per cent to 65 per cent of the entire bottom of the reservoir were free of water and exposed to the eye, in your opinion as a real estate expert, would or would not such a state of affairs tend to depreciate the value of the adjoining remaining lands of the Ringwood Company?

Mr. Matthews: This is not cross examination, if your Honor please. It is his direct case, if he could prove it. This witness is incompetent to testify.

The Court: He is giving a hypothetical question.

Mr. Matthews: He is giving an impossible question.

The Court: It may be an impossible question, and if it is you can show it.

Mr. Matthews: It is based on no facts with the hypotheses, your Honor.

The Court: There are no facts in this case on which those hypotheses could be based.

Mr. Hunt: I am just asking him to suppose it.

The Court: It is not, therefore, strictly a hypothetical question, but I do not see any objection to the question if that should happen what would the situation be.

Mr. Matthews: Except to state that it is prejudicial to the jury to imagine such a condition, and we shall never answer it, because it would be folly to suppose we would spend millions of dollars to create such a condition.

Mr. Hunt: I supposed they were spending millions of dollars to get a reservoir, to get a reserve supply of water. When you draw

water out of a reservoir in which you are holding, you draw from the reservoir, and that is why you draw it. That is all. And afterward, you show the bottom, and that is so. Still more, the newspapers plainly disclosed what the situation was at the Great Kensico Reservoir which is ten times the size of theirs, up until six weeks ago.

Mr. Matthews: On the showing of the bottom of the reservoir, we are quite certain it will not have the aspect that this gentleman says it will.

The Witness: If it was drawn down to the degree you suggest, the land would be then just as it is now. We do not add anything to the bottom of the reservoir. We simply fill it as it is.

Q. My question related to our adjoining lands, whether that condition would tend to depreciate their value? A. It would be just the same as it is today. Low grounds would still be low. The stuff actually covered with water would, as now, be uncovered with water. We are not changing the bottom of the reservoir. They are simply filling it.

Q. I will ask you to visualize, if you can, a house built in here along the Greenwood Lake Road in tract No. 80, where you placed some of your $500 highest class building sites—see what I am pointing to? A. I can see, yes, sir.

Q. I call your attention to what you said about the value that the view had that you added to the property an hour or two ago, and I ask you whether the value of that property I pointed to would tend to be increased or diminished by reason of the fact that in view of the property in the Wanaque Val-

ley there existed a situation that existed prior to the Water Supply Commission ever having gone there, or the situation that will exist in case the reservoir is drawn down in the manner supposed by the previous question.

Mr. Matthews: That is incompetent, because the property talked of is property flooded. It cannot exist, and not exist at the same time. How can it make any difference to the value? We are condemning for reservoir purposes.

The Court: If the property you pointed to is property that would be flooded, I think the objection is well taken.

Q. I will come up here, out of that, and on to our remaining lands not taken, but that would overlook that area.

Mr. Matthews: Will you point to that so Mr. Hershfield can find it?

Mr. Hunt: You have not shown our remaining lands on this map. Oh, here they are. Mr. Hershfield, step down to the map here.

The Witness: I can see from here.

Q. And show us where the river is now in your sight—

The Court: How many questions along that line have you in mind?

Mr. Hunt: This is all. I think I am about done.

Q. (Continued) I want you to show me some places on the lands of the Ringwood Company

which are not taken in this proceeding which now have a nice view or outlook over the Wanaque Valley? A. Presumably on this (indicating); presumably along this (indicating).

Q. You point to the area just west of tract 87, and the area just east of the northerly part of tract 88? A. Yes.

Q. That will do for an example. Now, you say in those areas that you pointed to, at the time before the Water Supply Commission ever commenced its work on the Ringwood Company lands, there was a nice view out over the Wanaque Valley? A. There is yet.

Q. Now, suppose that instead of the view that existed before the Water Supply Commission entered upon the Ringwood lands there comes to be such a situation as described in the previous question where the Wanaque Reservoir is drawn down and mud flats exposed, will that change in conditions tend to increase or decrease the value of these lands outside of the taking which you have just pointed to?

Mr. Matthews: It is just as incompetent to say if an earthquake happened and turned it upside down. There is no reason for this hypotheses.

The Court: I will allow it.

Mr. Matthews: An exception on the ground that it is incompetent.

The Court: You may have it.

A. If those flats were exposed for any length of time I would say it might detract from the property, but if it is just an occasional seasonal change I would not say it would affect it. I will give you an instance in Pompton Lakes, for three years—

Q. I have not asked you for instances.

Mr. Matthews: We can hardly get hypotheses, unless we get some facts.

Mr. Hunt: I object to the witness telling a story.

The Court: He is giving a reason for his answer. You have known of a similar situation where it did not depreciate their value?

The Witness: In 1900—

The Court: No, is that true.

The Witness: Yes, sir, that is true.

The Court: We do not want details of it. You based your answer on personal experience.

The Witness: Personal knowledge.

The Court: Personal knowledge in Pompton Lakes?

The Witness: Yes, sir.

The Court: Very well.

Q. How big is this body of water in Pompton Lakes from which your knowledge is derived? A. Approximately 150 acres.

Q. While the area of the Wanaque Reservoir will be how many hundred acres? A. I don't know the area flooded; I don't know as I ever heard.

Q. The area flooded by the Wanaque Reservoir when filled is about 2000 acres? A. Yes, but not all visible from any one point. There are arms, peninsulas and bays, so you cannot see the entire reservoir, and that is what makes it such a beautiful lake.

The Court: We will take a recess now until one o'clock tomorrow, and members of the jury

will you please have your lunches before you come, because we will adjourn until one, and then we will sit until four.

Mr. Hunt: If the court please, may I say I think I finished with Mr. Hershfield—no, no, he has some notes he is to bring in tomorrow. I thought I could excuse him, but he is to bring in some notes.

The Court: All right.

(Recess to January 11, 1927, at 1:00 o'clock P. M.)

FIFTH SESSION,

PASSAIC CIRCUIT.

Appeal from the Award of Commissioners, in the Matter of the Application of the North Jersey District Water Supply Commission for the appointment of three Commissioners to fix the compensation to be paid for certain lands of the Ringwood Company, situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, State of New Jersey, to be taken and condemned for public use.

Paterson, N. J., January 11, 1927.

Before—Hon. NEWTON H. PORTER, *Judge,* and a struck jury.

APPEARANCES:

For the Owner: EDGAR W. HUNT, Esq., and WILLIAM I. LEWIS, Esq.

For the Condemnor: SPAULDING FRAZER, Esq., and JOHN A. MATTHEWS, Esq. BERNARD L. STAFFORD, Esq., of Counsel.

H. G. Hershfield—Recalled—Cross.

HENRY G. HERSHFIELD resumed.

Mr. Matthews: Mr. Hershfield,—

The Court: Mr. Hunt is not through, I think.

Mr. Hunt: Mr. Hershfield was to bring some notes.

FURTHER CROSS EXAMINATION BY MR. HUNT:

Q. Have you brought the notes of your appraisal of the Smith property, Mr. Hershfield? A. I have.

Q. Would you object to my looking at them? A. Not at all. If Mr. Matthews has no objection. (Produces papers and hands to Mr. Hunt.)

Q. Is this all of them? A. There may be some pencil memoranda here and some letters.

Q. Well, the pencil memoranda would be earlier in date than this paper that I hold in my hand, would it not? A. No, sir; subsequent. They are predicated on the field information that that detailed appraisal sheet sets forth.

Q. When was the ink writing placed upon the paper which I hold in my hand?

Mr. Matthews: I object to that as immaterial, if your Honor please,—a courtesy extended to counsel cannot be made the subject of cross examination, it seems to me. What is the materiality of when the ink was placed on this memorandum?

The Court: I suppose the point about it is he wishes to know whether it was—whether it is an ancient document or otherwise.

Mr. Matthews: Then he hasn't any right to use that document that he asks from the witness for courtesy purposes. We are not offer-

ing this document. We are offering his testimony that is being cross examined.

Mr. Hunt: I wanted to see whether the papers he brings are the proper papers for him to refresh his recollection from. They would be proper if they were made out before the time of the information.

The Court: Why don't you ask him that.

Mr. Matthews, Without the paper, we submit.

Mr. Hunt: May the question be answered?

The Court: No. I will let you ask when he made it.

Q. When did you make the ink writings on the paper which I hold in my hand? A. I did not make them.

Q. Who did make them? A. Mr. Jacobs.

Q. Who is he? A. Mr. Jacobs is the Mayor of Pompton Lakes and also is employed as one of the field men in the real estate department of this Commission.

Q. Did you tell him what to write on here in ink? A. I did not.

Mr. Matthews: I object to this examination. I think that he is only entitled to cross examine him as to when, how, and so forth, the memorandum was made, and then object to his using that memorandum; not to take the memorandum out of courtesy of the witness and then use it for cross examining him.

The Court: What do you say to that, Mr. Hunt?

Mr. Hunt: I think I have a right to examine concerning the time when the writing which

appears on this printed form was made and by whom it was made, to see whether this is a proper document from which this witness's recollection may be refreshed.

The Court: This witness has not said it was a proper document. He has not said he needed to refer to the memorandum to refresh his recollection. He has not offered the memorandum.

Mr. Matthews: I object to having the document taken away from the witness and subjected to the scrutiny of any assistants.

Mr. Hunt: I had not intended to subject it to any scrutiny, but simply turning to the record as— With regard to the Smith property, which is the property to which the memorandum refers, I asked him yesterday: "Are you able to tell without your notes about how much of that (that is the purchase price of the building he had testified to) represented the value of the improvements? A. No, sir."

With regard to the Watson property there was the same question and answer except he said: "A. Not without my field notes."

The Court: It does not appear, Mr. Hunt, that the paper that you have had in your hand, about which you have been asking him questions, is the note he spoke about yesterday. He said that, it is true yesterday, that he could not testify without his field notes, and he has handed you a paper, but it has not developed yet that that is the paper that he himself used to refresh his recollection, and if that is the situation, then I think it is proper for you to examine him with respect to that particular paper before he may be permitted to testify

from it. But that is not the situation, I take it, we are confronted with now.

Mr. Matthews: Except he would be bound. He asked him to produce these notes to testify from, therefore he is bound by them.

The Court: Not necessarily, Mr. Matthews. Mr. Hershfield said he could not testify without reference to his notes, and Mr. Hunt said to bring his notes; and before Mr. Hunt asks that they be produced for the purpose of evidence he wishes to know whether they are competent to be used. Isn't that your point?

Mr. Hunt: That is the point, yes. May I say—

The Court: I think that is all right.

Mr. Hunt: May I say, if your Honor understands as just stated, what the immediate situation is is correct, my own is incorrect. May I ask the stenographer to read the first question I put to the witness?

The Court: You asked him whether the ink on this paper was—when it was put on.

Mr. Hunt: No. If I remember correctly, my first question was, "Have you brought your notes?" "Yes." "May I see them?" "Yes." He hands me this, and I ask, "Is that all," and then there was some answer that I don't remember.

The Court: I think that is correct. He said the other notes were made subsequent to the notes on that paper.

Mr. Hunt: So this is what he has handed me in response to my question, "Is this your notes?"

The Court: Now you wish to examine him with respect to when these notes were made,

so that you may know whether to object or not to his using them. I will allow that.

Mr. Hunt: Whether these notes he prepared, he has a right to refer to.

Q. May I see the notes, Mr. Hershfield?

Q. Now, you said the ink writings on this paper that I hold in my hand were not put there by you, but by another person? A. Yes.

Q. Well, when did you first see them? A. On or about—subsequent—immediately subsequent to the date on the appraisal sheet.

Q. Is that the date 5/12/26 that I point to here? A. Yes, sir.

Q. When were the pencil notes put on this paper that I hold in my hand? A. After I received the paper from Mr. Jacobs.

Q. Who put the pencil notes on? A. They are my notes.

Q. Are they in your handwriting? A. Yes, sir.

Q. Are they based upon observations and measurements made by you on the premises? A. They are based upon my examination of the property, and the description furnished me by Mr. Jacobs.

Q. Now, what other notes have you relating to the Smith property? A. Mmorandum made by Mr. Jacobs himself, in his handwriting, some computations that I made.

Q. When was this memorandum made by Mr. Jacobs made? A. Prior to his reducing it in ink on the formal detail sheet. Those are probably his field notes.

Q. And the third paper that you have handed me is calculations made by yourself? A. Sometime when I talked it over with him, and also based on my recollection of the property.

Q. These are your figures, made by you? A. Yes, sir.

Q. Now, I call your attention—

Mr. Hunt: Just mark this paper, will you, for identification?

(Memorandum sheet marked Exhibit XO-4 for identification.)

Q. Is this one of the papers that you will wish to refer to to refresh your recollection, which is the paper marked Exhibit X-4 for identification? A. It is part of my computations.

Q. When were the lead pencil figures that appear on that paper put there? A. After I received the detail sheet from Mr. Jacobs.

Q. Were they not put there yesterday, Mr. Hershfield? A. No, sir; they may have been some added to it that I looked over.

Q. All right. Just take a red pencil which I hand you, and with a red pencil draw a line which will separate the figures added last night from the figures set down before last night. A. I don't recall that any of those were put on last night.

Q. Is it or is it not true that some of those were put on last night? A. I don't believe it is true.

Q. Do you know? A. I do not recall I figured on that sheet at all. I had completed the appraisal. I didn't need to do any more figuring. I already had done my work.

Q. Let us not use the word "recall," but "no." Do you know whether or not any of the lead pencil figures that appear on this paper were put there yesterday? A. To the best of my knowledge and belief this paper has not been touched for some months by me, except in handling.

Mr. Hunt: I ask the answer be stricken out and the witness be required to answer yes or no.

Mr. Matthews: I object to all this meticulous examination about the paper.

The Court: I will allow it to stand. No possible question could be in the mind of anybody after that question as to whether or not he put figures there last night.

Q. Mr. Hershfield, do you declare that you didn't put any figures on this piece of paper which I hold in my hand, Marked Exhibit O-4 for identification, within the last twenty-four hours? A. I do.

Mr. Matthews: I object to that.

The Court: He has answered it, and I will let it stand. He says he does.

Q. And do you swear that you have not done so within the last twenty-four hours?

Mr. Matthews: I object to the swearing. He is under oath. He cannot reiterate the oath.

Q. Do you state that you have not done so within the last forty-eight hours?

Mr. Matthews: I object as immaterial.

The Court: I will allow it. It has already been answered, as I understand it.

A. I have not touched that paper, except with my fingers, since those computations were made, and how long ago they were made I do not know. The

paper is not dated. They were presumably made at the time I arrived at my figures to report this case to the Board.

Mr. Hunt: May that be stricken out, if your Honor please, as not a responsive answer, and that a responsive answer be directed to be given.

Mr. Matthews: I submit it is an answer.

The Court: It is an answer, excepting that he does not know when the appraisal was submitted to the Board.

Mr. Matthews: There is a date on the paper.

The Court: I do not think there is any date on the paper. How recently, Mr. Hershfield, did you make any figures or any marks at all on that paper?

The Witness: On that paper?

The Court: Yes.

The Witness: Not within three or four months; five months; I have not touched that paper since I made my report, on the date of my report. Now, the date of my report indicates when I closed that case, as far as I was concerned, and that was about June, 1926. I have not had occasion to do anything. The case was closed as far as my department was concerned.

The Court: Very well.

Mr. Hunt: May I have marked for identification the second paper that he handed me, being half a yellow sheet, the figures on which he says were made by the other person.

The Witness (Interposing): The field man, Mr. Jacobs.

(Memorandum sheet marked Exhibit O-5 for identification.)

Q. I hand you O-5 for identification and O-4 for identification and ask you whether you care to explain to the jury why the figures on O-4 and the surface of the paper on O-4 appear so much fresher and cleaner than the figures on O-5 and the surface of the paper on O-5? A. The reason is that this paper was carried around.

Q. Referring to O-5? A. O-5 was carried around by Mr. Jacobs in a book that he probably carried in his hip pocket and, naturally, it received more severe usage than a sheet of yellow legal cap, after I made my computations, I put in the folder and never exposed it in use or abuse.

Q. Have you a rule in your pocket, Mr. Hershfield? A. A rule?

Q. Yes, sir? A. Yes, sir.

Q. Will you get it out, please? A. (Produced.)

Q. Will you take the dimensions of O-5 and state them? A. Do you want that exact?

Q. Oh, if it is within a tenth of an inch that will be sufficient, or even a quarter of an inch.

The Court: Do you want a longer ruler?

The Witness: I would appreciate it, your Honor.

A. It is 5¼ inches in depth, by—

Q. Please don't muss it any more than you can help.

Mr. Matthews: I object. It is our memorandum.

A. (Continued) Eight and a half inches in width. Do you want the thickness?

Q. No. Now, I hold it up, Mr. Hershfield, so that you can see it and the jury can see it, and I ask you if it shows any evidence of ever having been folded?

Mr. Matthews: I object to that as immaterial to this issue.

The Court: I will allow him to tell.

A. Not to my knowledge.

Q. It does not appear to you to have been folded? A. No, sir.

Q. But you ask us to believe that the condition of that paper and the writing on it is probably due to the fact that this man whom you mention—I forget his name— A. Mr. Jacobs.

Q. —Mr. Jacobs carried it in his hip pocket for a time? A. He has a folding book probably four by six inches. He also has a portfolio. I do not know where he carried it. I do not examine his clothes.

Q. Well, you said he carried it in his hip pocket, and that is why I ask for its condition? A. I said I don't know where he carried it. I know he gave me that paper. I asked for all the data he had, and we put it in the folder and put it away.

Q. When did he give you this paper? A. Probably at the time we closed this case.

Q. Since this trial started? A. Oh, no; months ago.

Q. You say he has a folding case four by six inches? A. Yes, sir.

Q. Would you suggest it was carried in that case? A. It might have been, or in a book that he carried in the pocket of his overcoat.

Q. You think this paper was carried in a four by six folder and does not show any—

Mr. Matthews: I object to that. That calls for a conclusion.

A. (Interposed) With one end protruding that could be carried in a four by six case.

Q. What did you say the dimensions were? A. I gave them to you. I have forgotten. Shall I measure them again?

Q. Oh, no. A. They speak for themselves.

Q. What is the size of his portfolio? A. I don't remember. I think he has several. He is quite a wealthy man.

Q. Does he carry the portfolio in his hip pocket? A. When he wants to. I don't follow his habits.

Q. Have you seen him carry it in his hip pocket? A. Oh, I have seen him carry numerous things in his hip pockets.

Q. Now, are you able to state from your recollection or from your memorandum that of all the structures on this Smith property, the oldest one is a shack about 18 by 25 feet with a small porch? A. I would not call it a shack.

Q. Well, I will say a building about 18 by 25 feet with a small porch, then? A. The smaller building was 24—

Q. I asked about the oldest building? A. I think they are about of equal age.

Q. I asked about the building which from its appearance seems to be the oldest or which you from any knowledge that you possess know to be the oldest? A. I haven't any knowledge of the age of any of the three buildings on this plot.

Q. Then, there is a building about 18 by 25 with a small porch, is there? A. My notes show one building 24 by 24; and another building 24 by 19

with a 9 by 15 porch, rubberoid roof, and that building—the porch is on two sides of the house, the porch is larger than the house proper.

Q. Is that building lined in any way? A. No, sir; it is—

Q. Lathed and plastered? A. No, sir, simply summer construction.

Q. Any cellar under it? A. No, sir.

Q. Any heater in it? A. No, sir.

Q. Building built of—what is the siding? A. Novelty siding.

Q. Novelty siding? A. Yes, sir.

Q. The largest timbers in that building are two by fours, aren't they? A. I don't recall.

Q. Don't your notes show? A. No; I don't make those meticulous measurements when we buy the property. It is only when we go to litigation.

Q. Are there any improvements in that building? A. No, sir.

Q. What did you value that building at? A. Do you mean the smaller of the two?

Q. The one we have just been talking about? A. About a thousand to twelve hundred dollars.

Q. One thousand to twelve hundred dollars? A. Yes, sir.

Q. That was built about fifteen years ago, to the best judgment you can form by looking at it? A. I have no knowledge as to when it was built.

Q. To build a building of that kind fifteen years ago would not have cost $1,000 to $1,200, would it?

Mr. Matthews: I object as immaterial. We are only concerned with replacement values.

The Court: Oh, I think I will allow it.

A. No, I do not belive it would.

Q. About 40 per cent. of that sum, probably? A. No, I would say probably 60 to 70 per cent. of that sum.

Q. Now, you said there was a second building there? A. Yes, sir.

Q. What is the dimension of the second building? A. According to these notes—

Q. And you know nothing about it except as those notes tell you? A. Except I have been in the building several times.

Q. Yes. A. I have examined the building.

Q. Without those notes you could not tell me the size or the type of these buildings? A. No, Mr. Jacobs is hired to give me the details. I have no time to get it.

Q. What is the size of that building? A. 24 by 24.

Q. What is that built of? A. Novelty siding.

Q. Throughout? A. As I recall, yes.

Q. Well, do you recall? A. To the best of my knowledge and belief, the exterior weathering is Novelty siding.

Q. Does it set on a foundation? A. On spiles.

Q. On posts, heh? A. Yes.

Q. Is the character of construction the same as the other building? A. Approximately.

Q. What did you figure the value of that building? A. $1,300 to $1,500.

Q. $1,300 to $1,500? A. Yes.

Q. Any other buildings on the property? A. There is a very substantial garage.

Q. Yes. What is that built of? A. That is dug into the side hill and it has three sides, size 18x24, and it has—the walls are all faced stone, three sides.

Q. Yes. That was the conversion of an old foundation standing on the property into a garage, wasn't it, by digging into the side hill and putting doors on the front of the foundation, and putting a roof over it? A. The appearance of it doesn't so indicate to me.

Q. Yes. You think then that the person who improved the property by two frame buildings—those buildings were for human habitation, I suppose? A. Yes.

Q. You think that the person who improved the property by erecting on it for human habitation two such frame buildings as you have described further improved it by erecting a garage, three sides of which were built out of cut stone? A. I don't think any thing about it. I found that amount of material and labor indicated on this foundation, and I valued it.

Q. Don't you know that is an old foundation that has stood there before either of these frame shacks that you have testified to was erected?

Mr. Matthews: I object to the word shacks.

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

Q. You don't know that, eh? A. I never heard that mentioned by anybody until you produced it now.

Q. Is it your belief that the stone garage was built from the ground up at the time or later than the building of either or both of the frame buildings? A. The construction of it and its being tied into the bank would indicate to me that if it was not built for a garage it is very happily suited for a garage.

Mr. Hunt: May I have that stricken out.

The Court: Strike it out as not responsive.

(Question repeated by stenographer.)

A. I don't know when it was built or what it was built for. I simply—

Q. I asked about your belief? A. My belief is that it is there, and I don't know how it came to be built. I simply know it is there.

Mr. Hunt: May I have that stricken out as not responsive, if the Court please, and the witness required to state his belief.

The Court: He is giving his reason for it, for having no belief.

Mr. Hunt: I didn't understand him to say that he had no belief, sir.

The Court: I understood him to say that he didn't know. That is correct?

The Witness: I don't know how the building came to be there. I simply found it there and valued it.

Q. Yes. Have you no belief about it formed upon what you have seen there, Mr. Hershfield?

Mr. Matthews: I object to these questions, if your Honor please. If a man does not know he has no belief. Psychologically that is the only process.

The Court: I suppose that is his answer, but evidently Mr. Hunt is not satisfied with it. I will allow him to proceed with it further.

Mr. Hunt: I might remark that a number of things one does not know but believes in.

The Court: I will allow you to ask the question.

Mr. Matthews: They are all supernatural and not physical.

(Question repeated by stenographer.)

The Court: The question is, have you a belief about this garage as to whether it was built before the other buildings on the land?

Mr. Hunt: As to whether the sides were there before the other buildings were built?

The Court: All right.

A. I have no information that would lead me to believe anything except that that was built for a garage.

Mr. Hunt: He is taking refuge in no information. May I ask that that be stricken out? I have no information when that hill I see out of this court room window came to be there. Man might have placed it there with derricks, but my belief is that it came there at the time of creation or at the time of some of the great upheavals that followed creation. That is my belief. I asked him his belief as to whether these three stone walls were put there after the erection of these two frame buildings or stood there before the frame buildings.

The Court: What materiality has it anyway? You are asking for this witness to guess.

Mr. Hunt: No, sir. I am asking him to state a belief.

The Court: It amounts to the same thing. If he says that because of the appearance he might guess that was there before the wooden

building. He might say so, but what good will it do you if it is. What evidence is that? How is that going to help us?

Mr. Hunt: The point is, I am trying to get at how he paid for this land after making due allowance for the improvements on it. Now, if it appears to the jury that these three substantial stone walls, made of dressed stone he has testified to, were put there by a recent owner of the property as a garage, then the very considerable sum of money that those stones—that those walls must have cost could be considered a proper building addition, and therefore a deduction from the value of the land.

The Court: I understand that.

Mr. Hunt: May I finish?

The Court: Yes.

Mr. Hunt: If it appears that is an old barn foundation, for example, or an old house foundation that was converted into the garage by the mere expedient of digging out the earth between the walls as deep as might be necessary, and roofing it over, then the jury could justly say that the presence of that structure does not warrant much of a deduction on account of an improvement there; but that the money paid must be considered as attaching to the land bought.

Mr. Matthews: I object to that reason.

The Court: All of that being so, what difference does it make what this man guesses about it. He doesn't know, he says, and he said it repeatedly. He says he found it there.

Mr. Hunt: Yes. Here is a man, however, whom I submit will appear at the end of the

case to have been one of the most important witnesses on behalf of the condemning party to appear before the jury. I think the jury is entitled to know what kind of a man this is; to know whether he is a sincere witness, whether he is a man who gives utterance to an honest opinion or not.

Mr. Matthews: I object to such an argument. That is for the jury to say, and if I will be permitted for a moment to venture a suggestion, I think the jury will understand he is a persecuted witness on the question of belief and knowledge—not yet a martyr.

The Court: I think that he has answered the question. If you feel it is important, ask it again.

Mr. Hunt: I would like to ask what his belief is.

The Court: All right.

Mr. Hunt: Upon the fact whether those three stone walls were there before the erection of either of these frame buildings, or whether they have been placed there by one of the recent owners of property originally for garage purposes.

A. My belief is, which is based on examination of this garage and its peculiar location, so that a car comes in from the main road at easy grade; of the fact that it is of the usual garage dimensions, 18x24; by the fact that it is so happily formed to house cars that it was built as a garage. That is my belief.

Q. All right; your belief is what I wanted, Mr. Hershfield, and after ten minutes we have got it. What did you value this garage at? A. From $400 to $600.

Q. $400 to $600. So that your total value for the improvements on this place is what? A. You want me to detail them?

Q. No; just add it together. I make it $2,700 to $3,300. Is that correct? A. I have not followed your figures.

Q. Well, I just put down this. You said the first frame building, $1,000 to $1,200; the second one $1,300 to $1,500; the third one $400 to $600, and I make the total of those $2,700 to $3,300. A. That is just those items. There are other items.

Q. What others? A. There is a privy, a stone privy vault, valued at $125.

Q. $125? Yes. A. There is a fence around the property that I valued from $100 to $150.

Q. $100 to $150, all right. A. There is a frontage on the public road.

Q. I don't want that. I want any buildings or improvements. A. I valued the piping from the spring to the house at $100. Those total roughly $3,900. That is including the land and road frontage.

Q. Leave out the road frontage. A. Well, then deduct—

Q. I want improvements now. A. Then deduct, if you will, $510 from that figure of $3,900, and it would give approximately—

Q. All right; now I have got a figure of $3,900. A. I am giving it to you. My figures, of course, are based on totality; I have not subdivided it as you have.

Q. Now, Mr. Hershfield, where you said $1,000 to $1,200 I set it down. A. What did you set down?

Q. Just doing likewise. A. Which figure did you set down?

H. G. Hershfield—Recalled—Cross.

Q. That is your value of the first building? A. Which of the two figures did you set down?

Q. I set down both. A. Then of course I don't know which you are getting at.

Q. Well, I am getting at both. I show you how I have done it. You do it the same way, please. A. Yes. Wait until I have some paper, please.

Q. I will give you some. A. I have some, thank you. What is the first item?

Q. Please do not put it on that, because that has been marked as an exhibit or marked for identification. A. This?

Q. Yes. A. These have not been marked. They are blanks.

Q. Then you are going to write on one that has been marked for identification. A. Yes. What do you want?

Q. Put down the first building, the first building you described, $1,000 to $1,200. That is the way to put it down. A. Yes, sir.

Q. The second building you described, $1,300 to $1,500.

Mr. Matthews: That is right. I will correct him, Hershfield.

A. $1,300 to $1,500.

Q. Garage, $400 to $600. A. Thank you.

Q. Privy and vault, $125, and I put them down on the left hand column under the similar figures.

Mr. Matthews: Put it under both.

A. I am putting it under both.

Q. Fence, $100 to $150.

Mr. Matthews: Right.

H. G. Hershfield—Recalled—Cross.

A. Yes, sir.

Q. Piping, $100.

Mr. Matthews: Right.

A. Yes, sir.

Q. That is all the improvement you gave me. Now add up your two columns. A. The garage we haven't got.

Q. Yes, we have. $400 to $600. A. In the higher—

Q. Just a minute; I will ask you. A. Please, just a minute. Let me figure. Yes, sir.

Q. Have you added them up? A. I make one column $3,025 and the other column $3,675.

Q. I make it $3,575.

Mr. Matthews: You are wrong.

Mr. Hunt: That is right; I omitted $100. Right you are.

Q. Now you would say that the improvements on that property are valued at one or the other of those sums or at some sum in between them, wouldn't you? A. Within that range.

Q. Yes. What did you pay for the property?

Mr. Matthews: I object, if your Honor please. He said the improvements, and Mr. Hershfield has at counsel's insistment, left out the road frontage appreciation.

Mr. Hunt: I do not understand that road frontage appreciation is an improvement, your Honor. There is a road there, that is all.

The Court: You have asked what he paid for the property, and I suppose he bought the land.

Mr. Hunt: Bought the land, yes, and there were these buildings on it, and he valued the buildings at this much. I want to see what the balance is.

The Court: Then the witness has not yet given the value of the land, has he?

Mr. Hunt: I want him to give the consideration he paid. That is what I asked him.

A. There was another element that you—

Q. What consideration did you pay for the property? A. I paid for more than what you have detailed.

Q. What consideration did the Water Commission pay to the person named Smith from whom it bought this property, for everything that it bought? A. Including—

Q. All together? A. Including—

Q. The total amount paid? A. Including the 20 per cent. we add—

Mr. Hunt: I ask that that be stricken out, if your Honor please.

The Court: Strike it out.

Mr. Matthews: Pardon me.

The Court: It is not responsive.

Mr. Matthews: May I object to the question then, because the Water Commission, as he knows and as he has heard frequently in testimony, in order to get property has paid a percentage to the owner for inconvenience, and he wants to forestall this in this proposition, so it is not land value.

Mr. Hunt: I asked him how much money the Water Commission paid.

The Court: I understand, and the witness will be permitted to tell at the proper time

whether this was the proper land value or whether it was not.

A. We paid $4,500 for the property.

Q. Mr. Hershfield, the difference between $3,025 and $3,675 is $650, isn't it? A. I didn't follow you. Yes, the difference between those two totals are $650.

Q. The difference between which, the high and low, is $650? A. Yes.

Q. I am going to split that 50-50 for the purpose of trying to arrive at your average, and suppose that the value of the improvements in your best judgment was $3,025, the lower figure, plus one-half of $650, which makes $3,350. Now, if the Commission paid $4,500 for the property, that leaves $1,150 to represent the value of the land, doesn't it? A. It does not.

Q. Well, the difference between your estimate of the value of the improvements and the sum of money which the Commission paid the seller, is $1,150, isn't it? A. Yes, sir; but that is represented by other things but land.

Q. I ask that that be stricken out.

The Court: He says yes. Strike out the rest.

Q. Yes. What area of land did the Commission buy from this seller? A. 64/100 of an acre.

Q. Now I call your attention to the Watson property. How many acres did the Commission buy from Mr. Watson? A. Are you through with this matter?

Mr. Matthews: Through until I come to it Mr. Hershfield.

A. 5.22 acres.

Q. What was the total amount of money paid by the Water Commission to Watson for the property that it bought from him? A. For everything that we bought and paid for, $7,500.

Q. What buildings or other artificial structure were on the property bought from Watson? A. There was a half a mile of heavy wire fencing, there was one spring—

Q. One minute now. What did you estimate the value of the fencing to be? A. 20 cents a running foot or $500.

Q. By the way, what allowance did you make for the wire fencing on the Ringwood places and where does that appear in the Ringwood values as you aggregated them? A. It appears in the values I gave to the land—I could not—where I found it.

Q. You put it in the land. I see. What is the next improvement on the Watson place? A. One spring with its attendant piping.

Q. I asked for building or other structures. A. A spring that is piped, that is an improvement on the land.

Q. Do not mention the pipe. Did you want to give me the pipe? A. All right.

Mr. Matthews: I object. A pipe without a spring would be a pipe that would be useless.

The Court: And the spring might have been very ornately built up or housed in a masonry house.

Mr. Hunt: Yes. If the Court please, there is a house erected over the spring, even if the spring is curbed or laid up with a dry stone wall, as they used to do in the country years ago, I am perfectly willing to have that estimated, but I do not ask the witness to put any value on the spring itself.

The Court: I did not understand he had.

Mr. Hunt: I thought he had.

The Court: I think you are mistaken.

Mr. Hunt: All right.

A. There is a rock grotto where the spring is together with a flight of steps.

Q. Was this rock grotto built by man's hands? A. Apparently.

Q. Apparently, all right. What did you value the rock grotto at? A. I bought it all in with the spring and piping and the steps laid to it coming down from the house.

Q. Let me get that. Rock grotto. Leave out the spring, because I do not want that valued. Piping and steps coming down from the house.

Mr. Matthews: I submit a rock grotto, piping and steps would have no value unless the spring were there.

Mr. Hunt: A spring is part of the land.

The Court: I think the spring is not an improvement. Therefore when he speaks of the spring I suppose he is talking about the appurtenances to the spring.

Mr. Matthews: Tied into it though as a spring.

The Court: Exactly. If he is talking about the water itself and the place in the earth from which it bubbles, we do not want it.

Mr. Matthews: No.

The Court: Is that correct? A. We don't want the water. We just want the appurtenances of the spring,—the pipe and that structure or house and the steps that lead to it.

H. G. Hershfield—Recalled—Cross.

Q. Is this spring covered over? A. No.

Q. No. All right. Is it walled up? A. Yes.

Q. By the hand of man or hand of nature. A. I should judge that man had something to do with it. The rocks being regularly set there and there is a flight of steps, probably 75 feet in length, leading to the spring.

Mr. Hunt: May I request that the jury be shown this spring on the next excursion, to see whether it is walled or not?

Mr. Matthews: I object.

The Court: If you give me a memorandum so I don't forget it.

Q. What value did you set down for the improvements that you call the rock grotto? A. I did not differentiate. I said this spring and piping, $250.

Q. You said also the steps from the house? A. I tied that all in with the spring.

Q. Rock grotto, piping, steps from house? A. Grotto is rather a dignified name to attach to that. There was stone—

Q. How is that? A. Grotto is rather a dignified name to call it.

Q. I have not called it that. That is your word, not mine. A. Will you please let me explain? There is the spring flowing down the hill, a cavity or excavation was made in the side hill presumably by man; stone was brought and that enclosure was made very pronounced. I called it a rock grotto. Maybe you wouldn't.

Q. At any rate, you valued the whole thing. A. I valued the whole shebang at $250.

Q. $250? A. Yes, sir.

H. G. Hershfield—Recalled—Cross.

Q. What value did you put on the springs of the Ringwood property? A. I don't remembering seeing anywhere—

Q. Now—

Mr. Matthews: Just a moment. May we not have the answer from the witness?

A. (Continued) I do not remember seeing any springs on the Ringwood property where they were as important as this spring which furnishes an overflowing flow of water at a temperature of 40 degrees and where the owner of the property laid great stress on, that he had pure water at a uniform temperature all the year around, and he laid great stress upon that living spring on his property. I agreed with him that it did lend considerable value to his property, as it did away with the water problem particularly as his house was on the side of a hill, and this spring was close to his house and an ever-flowing spring.

Q. Now, will you state the next improvement or structure produced on the place by hand of man? A. A bungalow. The first bungalow.

Q. The first bungalow? A. Yes, sir.

Q. All right. A. A stone foundation. The inside dimensions of the cellar are 16.5 by 22.5. Had dirt floor with six feet head to the floor beams.

On the main floor was a dining room 17 by 11 feet two; a living room 17 by 11 feet 8; a bedroom on the second floor 14 by 12.2. The porch, which was 10 by 22 was screened.

The roofs and building were shingled. There was also an open porch 4 feet 2 by 10 feet 4; a brick chimney in the house running from the basement through the roof.

A kitchen range; also running water and an enameled sink in the kitchen.

There was a force pump outside. A tank in the building; and all windows and doors were screened.

There was a rustic porch. French doors opening from the living room to the porch.

The building was sheathed inside, and not only sheathed but sealed.

It had a beam ceiling in the living room.

The house was in A-1 condition, and is yet.

I valued that house at from $2,000 to $2,200.

Q. How much? A. From $2,000 to $2,200.

Q. $2,000 to $2,200? A. Yes, sir.

Q. Now, then, have you got the dimensions there that will enable me to cube that house? A. The main house—I have not the dimensions of the exterior.

Q. Have you the cubic capacity of the house there? A. No, sir.

Q. Now, what is the next improvement? A. The next was a small bungalow, one-story hip roof, eight feet nine by ten feet four. It consisted of but one room. There was, in addition to that, a porch 42 by 10 feet 4. This building and its roof was shingled and had sheathing; and in addition, building paper was in between. I valued that one room bungalow at from three to five hundred dollars.

Q. What is the next improvement built by hand of man? A. There was a tool house; also used as a garage in not very good condition. I valued that at $50.

Q. The next one? A. A privy in good condition, $25.

Q. What is the difference between that and the privy on the other place that you valued one at

$25 and the other at $125? A. The one on the other place was attached to the garage. It had a stone vault. In addition to that, better materials were employed in its construction.

Q. What is the next improvement built by hand of man? A. That is all I can see now.

Q. That is all? A. Yes, sir.

Q. Your figures in the two columns, for check-up; fence $500—$500; spring and so forth $250—$250; first house, $2,000 to $2,200? A. Just a minute.

Q. The second house, $300 to $500? A. Yes, sir.

Q. The tool house and garage $50—to $50? A. Yes, sir.

Q. Privy $25 to $25. Now, let us see whether we can agree on these totals. A. A difference of $400 in the two columns.

Q. That is right. If we averaged it it would be $3325? A. I have not checked it yet.

The Court: I find one thing that you gentlemen agree upon, and that is addition.

Mr. Matthews: At this time we agree on addition, before Mr. Hunt was $100 wrong in his favor.

A. (Continued) $3325 average.

Q. Now, if we deduct $3325 from $7500 we have an amount representing the land, haven't we? A. Partly.

Q. Which you said was five acres? A. No, only partly.

Q. 5.22 acres, is that right? A. I don't follow you.

Q. Didn't you say the land was 5.22 acres? A. Yes, sir.

Q. And you say the difference between $7500 and $3325 is $4,175? A. That is not for the land alone.

Q. Are there any other structures produced by the hand of man except those you have named? A. No structures; but elements of value.

Q. Are there any apple orchards? A. No, only ornamental trees on this tract.

Q. Grape vines? A. No, sir.

Q. Any other structures built by hand of man? A. Roads.

Q. Public or private? A. Public.

Q. Any other structures built by hand of man and being the private property of Watson who sold to the Water Supply Commission? A. None that I recall.

Q. Did you bring that map that you said the Ringwood Company had sent you and was illegible? A. Yes, sir.

Q. Let me see it, please. A. It is over there somewheres. Mr. Dawes has it. (Produced.)

Q. Is this that you handed me the map that you referred to? A. Yes, sir.

Mr. Hunt: I ask it be marked for identification.

(Map marked Exhibit O-6 for identification.)

Q. Is it in the same condition now as when you received it? A. Yes, sir, it has been kept in our map vault.

Q. You made some use of it in the meanwhile, so that it shows some wear and tear?

Mr. Matthews: I object to it.

The Court: I will allow it.

A. I tried to use it and I found I could not. I wrote the company to ask them to send me a better map, one that I could read.

Q. Is this the map that you referred to as showing lakes on the property?

Mr. Matthews: I object to this. If this is an attempt to get this map, which has a development on it, in evidence by a roundabout way. He was asked to produce this map to show a lake there down in the Ryerson Furnace, and you remember, all during it, if your Honor please, other lakes were brought in, and I immediately objected. Now, this is a circuitous attempt to put that development proposition before us. They have a million imaginary lots on that map that never existed, and never will.

The Court: Is the question withdrawn?

Mr. Hunt: No, sir.

The Court: What is the purpose?

Mr. Hunt: I want to show for identification—

The Court: He has identified it as the map he spoke of yesterday.

Mr. Hunt: Now, I ask whether it is the same map that he referred to as showing lakes on the property.

Mr. Matthews: And I object on that ground, if your Honor please. The only lake being discussed, and under your Honor's ruling allowed to be discussed, was the one that they said was attempted to be made by the Ryerson Dam.

The Court: That is the one he is referring to now.

Mr. Matthews: He says lakes.

The Court: Isn't this the one?

Mr. Hunt: This shows Ryerson Lake, as well as several others.

The Court: I will allow the question simply for the purpose of identifying the map, and for no other purpose. You may answer, Mr. Hershfield.

The Witness: This map I referred to, when I said a lake was indicated by the shoulder, or pond was indicated by the shoulders of the Ryerson Dam.

The Court: Very well.

Q. When did you receive this map?

Mr. Matthews: I do not thing that is material, your Honor.

A. I have a letter complaining of its condition. I must have received it a day or two before that.

Q. Have you that letter with you? A. I have a copy of it.

Q. Let me see it, please. A. (Produced.) The letter is dated August 19, 1924.

Q. Let me look at it a moment, please. A. (Handing letter to counsel.)

Q. This letter contains no copy of the signature that was appended to it; by whom was it signed? A. By me.

Q. It is addressed to the Hewitt Realty Company? A. Yes, sir.

Q. Who is the Hewitt Realty Company? A. Well, their billhead, or letterhead, shows Erskine Hewitt, President, and Charles G. Hewitt, Treasurer, and Charles Farenbach, Secretary.

Q. What have these people to do with the Ringwood Company? A. I do not know, except they

were writing me on the Hewitt letterhead, and I addressed them that way.

Q. Is all the correspondence that you received from the Ringwood Company written on letterheads of the Hewitt Realty Company? A. I don't remember it.

Mr. Matthews: I object to that as immaterial.

The Court: I will allow it.

The Witness (Interposing) Here is one letter that has. Here is a second one that has.

Mr. Hunt: Well, I would admit myself, Mr. Hershfield, if you agree that I myself have never seen a letterhead with the Ringwood Company on it.

The Witness: I do not recall it.

Q. And you know that these same gentlemen that you have named are officers of the Ringwood Company? A. I believe they are interlocking corporations.

Q. And when you addressed yourself to the Hewitt Realty Company you were writing about Ringwood property? A. I was writing the people that wrote me, that is, the Ringwood Company.

Q. You say this is a copy of the letter which you actually signed and sent? A. Yes, sir.

Mr. Hunt: I will admit, on behalf of the Ringwood Company, that this letter addressed to the Hewitt Company is good delivery to the Ringwood Company.

Mr. Matthews: We do not want that concession.

Mr. Hunt: With the Court's permission, I will read the letter.

Mr. Matthews: I object. It is his case.

The Court: Sustained.

Q. What is the date of the letter, Mr. Hershfield? A. August 19, 1924.

Q. Is that the date that you signed and sent it? A. I judge so.

Q. To the best of your knowledge and belief? A. Yes.

Mr. Matthews: Do you want to mark it for identification?

Mr. Hunt: All right, if you will please mark it for identification?

The Court: You might better offer it in your own case.

(Letter marked Exhibit O-7 for identification.)

Mr. Hunt: This map, I am informed by Capt. Crockett, shows the Ryerson Dam—

Mr. Matthews: I object. If he has any further questions he ought to ask the witness, because we cannot examine Captain Crockett. We will, when the time comes.

Mr. Hunt: The Court will permit me to correct an erroneous statement. The Court will permit me to correct an erroneous statement?

The Court: You have stated that the map contained the pond that was referred to yesterday and other lakes.

Mr. Hunt: Yes, sir. Now, I say it contains only one that was referred to Thursday; I think it was, instead of yesterday, the one at the site of the old Ryerson Furnace.

Now, for the purpose of permitting the jury to determine for itself whether the witness correctly characterizes this map as an illegible map, I offer it in evidence. I beg permission to have it marked as an exhibit and submit it to the jury.

Mr. Matthews: It cannot be offered in evidence.

The Court: You may offer it now for identification, and when it comes your turn to offer evidence, you may, at that time, offer it.

Mr. Hunt: It has been marked for identification. I would like to ask this witness, first, a certain question concerning it.

Q. Now, I place Exhibit O-6 for identification before you and ask you whether you are not able to see the lines here, two parallel lines, which are marked "Hook Road"? A. It is upside down the way you handed it to me.

Q. Well, turn it right side up and see if you can read it? A. Yes, that says Hook Road.

Q. Hook Road is printed there in print of the same size as the words "Hook Road" are printed at the same spot on Exhibit C-1? That is true, isn't it? A. I don't recall what size that print is.

Q. Well, come down and look at it. A. (Witness walks to map.) Approximately.

Q. All right, now take the chair. Now, look to the northward of the Hook Road and tell the jury whether you cannot see the outlines there of a lake that would be caused by the closing of the dam being put in there above the Hook Road that you testified to the other day, using Exhibit C-1?

Mr. Matthews: I object, because that shows a situation that was not existant at the time of the Condemnation, if your Honor please.

Mr. Hunt: The examination is being conducted on the map which, according to the witness's own evidence given five minutes ago, came to him in August, 1924.

The Court: I will allow it.

Mr. Matthews: May I argue a moment on this proposition, your Honor?

The Court: Yes.

Mr. Matthews: He is asked now to say that this map that these people made with lots sticking all around it, does not show the lake that these people made—

Mr. Hunt: In August, 1924.

Mr. Matthews: In August, 1924, or any month in 1924. If your Honor please, it must be terrain as is, not as contemplated. There is no lake at that time.

The Court: But the map shows the place.

Mr. Matthews: But that is a vicious circle. The map shows something that ain't, as Josh Billings says.

The Court: I will allow it.

Mr. Matthews: Your Honor will allow an exception, not to what Josh Billings said.

The Court: Yes.

Mr. Matthews: I think the witness is allowed to say—I think he ought to testify not with his naked eye, but with the thing he had in his hand before.

The Court: He is not using the thing now.

The Witness: There is no dam indicated.

The Court: No, a lake.

The Court: There is no lake indicated.

Mr. Hunt: Can I have Mr. Anderson step up here to assist me?

The Court: Yes; he may step up. Point it out to him, Mr. Anderson.

The Witness: 235 means nothing to me.

Q. 235 means elevation to you on a contour map?

A. Yes, but 235 does not mean that is the outbounds of the pond.

Q. You testified in the Marini case that you knew the old pond was 235, didn't you?

Mr. Matthews: I object to that, unless the testimony be pointed out to him.

The Court: Sustained.

The Witness: You showed me a line with "235".

Mr. Anderson: I showed you the outlines of the map.

Q. You say he showed you a line with "235" printed on it?

The Court: Mr. Anderson is not now testifying. I do not want his testimony put on the record. I only allowed Mr. Anderson to come up and point something out on the map. He has done so, and Mr. Hershfield says that did not indicate to him a lake, but simply the line "235".

Mr. Matthews: I think Mr. Anderson should be asked to sit down now.

The Court: That is all he was asked to do, at the time, Mr. Anderson.

Mr. Hunt: I will withdraw the question.

Q. Now, Mr. Hershfield, as Mr. Anderson pointed out to you on that map Exhibit O-6 for identification an irregularly curving and meandering line along which, at intervals, is printed the figures "235"? A. He only showed me one figure.

Q. What figure did he show you? A. I did not see it. I heard him say it was "235" on it.

Mr. Hunt: Come back and show it to him, will you, Mr. Anderson?

(Mr. Anderson indicates on map to the witness.)

The Witness: With the help of Mr. Anderson and the glass, and by turning the map upside down, I can discern, with the help of my magnifying glass the figure "235" in lead pencil.

Q. Is your magnifying glass of such a character that you can read figures when they are upside down or right side up? A. I did not read them upside down. I reversed the map to be able to read them. They were upside down, in the manner in which you handed me the map.

Q. Perhaps you would like to show them to the jury?

Mr. Matthews: No, I object to that.

The Court: Objection sustained.

Q. Now, those figures "235" have a meaning to them, Mr. Hershfield? A. Absolutely nothing, except that is the 235 contour line.

Q. Ah, that means to you that is the 235 contour line? A. At that point.

Q. And you are able to follow that pond which is marked 235 all around the plotted area on that

map through a number of turns and convulations and meanders? A. I might be if Mr. Anderson—

Q. If you cannot, I will ask Mr. Anderson to come up and trace it for you with his finger.

Mr. Matthews: I object; this is immaterial. This map was only produced for the purpose of testing his credibility as to whether or not he had knowledge there was a lake at Ryerson Dam contemplated in 1924.

The Court: He says not. He says now he has had pointed out to him a figure 235 which means something to him, and he told what it means, and he says he could undoubtedly, with the help of Mr. Anderson, trace its course on the map. Now, that being so, now, what more is material or relevant, Mr. Hunt? Suppose he did. He has said he could, with Mr. Anderson's assistance,—why take the time to have him do it?

Mr. Hunt: Well, if he admits he can—

The Court: He says he can, if Mr. Anderson will help him.

Mr. Matthews: And if he has a glass.

The Court: And you have a glass.

The Witness: I have a glass; yes, sir.

Q. You could, without Mr. Anderson's helping you, if you had a glass, couldn't you, Mr. Hershfield? A. I suppose I could follow that contour line around.

Q. You are accustomed to following contour lines on a map? A. When they are legible, and not a jig-saw puzzle like this.

Q. If your eyesight were good enough you could come to this map, Exhibit O-4 and trace the contour lines?

Mr. Matthews: We object to that because that map was not introduced in evidence for contour lines but simply for geographic location.

The Court: What is the materiality of that; testing his eyesight?

Mr. Hunt: I want to know if he can read a map, that is all.

The Court: Suppose, then, you refer to the other map.

Q. Well, if your eyesight was good enough you could read the contour lines on that map? A. If they were legible I could read them.

Q. If your eyesight was good enough? A. My eyesight is good enough to read a legible map.

Q. If your eyesight was good enough you could read the contours on C-4, couldn't you? A. I can read them.

Q. Oh, you can read them? A. Yes, sir.

Q. Even on the steep hillsides where they are close together? A. Within reason.

Q. Now, does your eyesight permit you to see that on this Exhibit O-6 for identification, that came to your hands, as you say, in August, 1924, there are laid out and indicated by lines a large number of lots?

Mr. Matthews: I object to that, if your Honor please, as immaterial to this issue, because lots laid out on that map are only paper. Just a minute, Mr. Hershfield,—and not competent or provable in this issue. Those lots were laid out on that map in 1924, and that point has not been argued with your Honor, but I think I see your Honor's ruling so far

to be that that market value is not what Ringwood builds in contemplation or speculation, but what their terrain is. That is all. This questioning is not to test his credibility, but unfairly, circuituously and by backhand route to seek to get these lots before the jury and make a foundation so they can offer that map in the future. Those lots were not existant at the time of this condemnation and, therefore, they cannot be considered as part of the damage in this proceeding, I humbly submit.

Mr. Hunt: If the Court please, I do not understand upon what ground the Water Supply Commission would prevent us, prior to the 19th of March, 1925, when it commenced this proceeding, from doing what we pleased, within the law, on our property and with our property.

I understand that an owner of property is perfectly within the law when he lays it out in lots, and when he prepares a map to show where the lots lie on the ground. I understand that to be the common way of owners in developing property. It is a provable fact. This witness knows it, because he has bought some of the lots for the Water Supply Commission—

Mr. Matthews: I object to this statement as not a fair argument.

The Court: You can exclude the jury if you wish.

Mr. Hunt: I do not think that is necessary.

The Court: I do not think so either. Do I understand your point to be that you owning a farm near Lambertville if you now, without contemplation of selling it, having said yesterday you would not sell it under any cir-

cumstances, if you plot that now into building lots and lay that aside, that you can bring it out in the future and say that farm should be taken at values, not acreage, but building lots, because, forsooth, you had foresight and the knowledge or what not to have at this time plotted it?

Mr. Hunt: I would have to prove just one more thing, your Honor,—there was a market for lots, as lots.

The Court: At that time?

Mr. Hunt: No, at any time, at the time when the proceeding was commenced against me.

The Court: I do not understand the law. I will exclude the testimony from this witness at this time, without excluding you from bringing it up a little later on when we are going to decide some other legal questions that will, of necessity, come up. If I should then change my ruling I will give you the right to introduce the testimony. I do not think that you need to introduce it from this witness, anyway. I question very much whether this is proper cross examination.

The only point about this map is, was it testified to by this witness yesterday as being illegible? Now, I do not think you can, in cross examining this witness on the map, go into all of the things that this map shows. The Court would rather have you bring it in on your own direct case.

Mr. Hunt: I must except to your Honor's ruling; but since there is so much detail and so much to remember, and so much that I may forget, will your Honor permit me to make an

offer and get at an exception on the record so that I may be safe in that respect?

The Court: Certainly.

Mr. Hunt: I say, therefore, that I offer to prove by testimony—that I propose to elicit from this witness, based on the map Exhibit O-6 for identification, that he admits came into his possession in August, 1924—

Mr. Matthews: I am sorry to object, but at this point there is no proof coming from Mr. Hunt. It is not his case, therefore, an offer to prove cannot be accepted from him.

The Court: He wishes to ask this witness—

Mr. Matthews: But he offers to prove.

The Court: Whether or not this map does not show things. That is all about that. I say I will permit him to do that because he wishes to take an exception to my ruling.

Mr. Matthews: He says he offers to prove, and going to point out to the Court, unless I take exception to this language to the Court's permission refusing him to prove at this time —he has no right to prove now. His time will come, if he can.

The Court: He means he is going to ask this witness a question. That is the purpose of it.

Mr. Matthews: I submit, if that question has to do with any artificiality of construction on that map, the jury should be excluded during its being propounded, because it would lead them astray.

The Court: The jury have already heard this map shows some plotting or building lots. Nothing that Mr. Hunt can say will enlarge or detract from that statement, and I do not wish him to state any more than that.

Mr. Hunt: Your Honor understands my purpose is only to get my exception on the record in concise language.

The Court: Understand, do not, in your question that you are now framing for the purpose of the record, refer in any more detail to what the map shows, except that it shows building lots plotted thereon.

Mr. Hunt: Now, I have forgotten what I said. May I have it read to me?

The Court: You better start all over again.

Mr. Hunt: I was trying—I offer to elicit from this witness, and beg the privilege of being permitted to do so by reference to the map Exhibit 0-6 for identification which he admits came into his possession in August, 1924, that at an prior to that time the Ringwood Company, as owner of the premises shown on the map, had formulated a plan—

Mr. Matthews: I object to this as prejudicial, and I ask the jury be excluded.

The Court: That is not the situation, Mr. Hunt.

Mr. Matthews: He offers to prove a map.

The Court: The only thing that I think would be proper would be for you to say that this map did show thereon building lots.

Mr. Matthews: It is not filed.

The Court: When you say that the Ringwood Company had laid out a course of action—

Mr. Hunt: It also shows the lake, your Honor.

Mr. Matthews: I object to that statement.

Mr. Hunt: May I be permitted to put it once through without interruption?

The Court: Yes, and the jury will retire.

(The jury thereupon retired.)

Mr. Hunt: May I have that read, what I started to say before?

(Statement read.)

Mr. Matthews: May I object?

Mr. Hunt: Will the Court permit me to finish the question?

Mr. Matthews: I know, but this man has been rambling long enough with this map. Here is a map that has been prepared by one of their engineers, and we are being asked questions about it with reference to what it contains along lines of lots and plottage, when there is absolutely no testimony that the area itself covered by this map had anything done with it physically, to lay it out further than that. There is no registration of that map. It is not an official document. It has none of the accoutrements or acts of legality that would predicate rights to lay out lots. Therefore, these questions are incompetent and immaterial.

The Court: That is not the point, and I am not permitting the question to be answered. The question is only being re-stated now for the purpose of the record. I will allow Mr. Hunt to make his question or his statement.

Mr. Hunt: Will your Honor admonish counsel at this time to permit me to finish the statement?

The Court: The jury is not here now.

Mr. Hunt: Now, please read out loud enough so the Court can hear it the last question as far as I had put it.

(Statement read.)

Mr. Hunt: —for producing on the premises shown on the map a lake or pond, and had laid out on the premises shown on the map lots abutting upon and surrounding and extending back from the lake or pond with property provided with roads to afford access. I also offer to elicit from this witness, and beg the privilege of doing so, that he is aware of the fact that some of the lots thus shown on the map had actually been sold, or contracted to be sold, prior to the commencement of this condemnation proceeding.

Mr. Matthews: And we object, if your Honor please, to that evidence being allowed on the ground that it is incompetent; on the further ground that it is not at all cross examination, which is sufficient for the present discussion, without going into the law.

The Court: The question will not be permitted, and you will be allowed an exception.

Mr. Hunt: That is all, your Honor.

The Court: Now, bring in the jury.

Mr. Matthews: Will your Honor please excuse me just for one minute?

The Court: Yes. Bring in the jury.

(The jury then returned to the court room.)

Q. Mr. Hershfield, I call your attention to the point on Exhibit C-1 at which, earlier in your examination, you placed your initial in black lead pencil, surrounded by a circle as marking the approximate site of the Ryerson Furnace Dam? A. Yes, sir.

Q. That you told us about? A. Yes, sir.

Q. And I ask you to inform the jury how much you valued the lands lying along both sides of the Wanaque River in that part of the taking and land that was, or land that was not susceptible of being divided into lots for building purposes?

Mr. Matthews: I object to that, if your Honor please, as incompetent.

The Court: Objection sustained.

Mr. Hunt: You see, it simply calls for yes or no; did he or did he not.

The Court: I understand that. If it is incompetent, what difference does it make?

Mr. Matthews: That incompetency must be raised to this answer. If he were to say yes then, if your Honor please, it would be a predicate for testimony on the theory of contradicting him.

The Court: That is as I understand it.

Mr. Hunt: Your Honor does not permit him to answer, and we may have an exception?

The Court: Yes, you may have an exception.

The Court: Read me that last question, Mr. Kestenbaum?

The Stenographer: (Reading.) "Mr. Hershfield, I call your attention to the point on Exhibit C-1 at which earlier in your examination you placed your initial in black lead pencil surrounded by a circle, as marking the approximate site of the Ryerson Furnace Dam? A. Yes.

"Q. That you told us about? A. Yes.

"Q. And I ask you to inform the jury how much you valued the lands lying along both sides of the Wanaque River in that part of the taking as land that was or land that was not

susceptible of being divided into lots for building purposes."

The Court: Well, the witness has testified that is the $500 land, wasn't it?

Mr. Hunt: Most of it he described as $20 land, as I recall it, swamp at $20.

Mr. Matthews: Therefore this question would anticipate artificialities for making a swamp into a lake creating the lots.

The Court: Under the Manda case that is objectionable, and that is the thought I had in mind when I ruled, but I wanted to be sure that the question was as I understand it. You may note an exception to the ruling.

Mr. Hunt: Your Honor bear with me just a minute.

The Court: Certainly.

Mr. Hunt: May it be understood, your Honor, that my objection to your re-ruling or your confirmation of your ruling is entered once more and an exception allowed?

The Court: Certainly.

Mr. Hunt: That is all, your Honor.

REDIRECT EXAMINATION BY MR. MATTHEWS:

Q. Mr. Hershfield, let us come back to the Smith tract, which, as I understand Mr. Hunt, you said you paid $4,500 for in its totality, the mother earth, and the appurtenances that were artificially thereto. You divided that price for him by saying that there was $3,025 or $3,675 of artificial improvements made by the hand of man, and then you wanted to give some other values that you took into consideration before you made your total of

$4,500. Now give those other values? A. I valued the 64/100 of an acre at the rate of $500 an acre.

Q. Will you give us the elements that you deducted from the totality of your $4,500 in order that we may be able to divide for the jury in summation the total acreage into the total land price that will produce $500? You understand me? $4,500 is the total price you told Mr. Hunt you paid for everything? A. Yes.

Q. You paid $3,025 or $3,675 for two buildings and garage and privy and vault, fence, piping, and so forth? A. Yes, sir.

Q. Now what other things did you take into consideration besides that? A. Add $320—

Q. I didn't get that. A. Add $320 for the value of the lot, being 64/100 of an acre, at $500 an acre.

Q. How do you get at that, so we can come down from $4,500? A. I am going to add that, and that will be a total of $4,500.

Q. All right.

Mr. Hunt: What did it make for the value of the lot, $300?

Mr. Matthews: Just a minute.

A. $320 for the lot. There was 190 feet frontage on public road.

Q. All right. A. $1.00 a foot, $190.

Q. So that is added to the $3,675; is that right? A. Yes. Now those items, according to my tables, aggregated $3,900 and $35.

Q. Yes. A. Then following the rule that the Commission authorizes me to employ, we added arbitrarily a one-fifth surprice or bonus because we were driving these people from their homes; that was $787; that brought a total of $4,722 on one

table, and $4,542 on another; and we offered him $4,500, which he took.

Q. In that way you say you arrived at the 64/100 of an acre as being worth what? A. At the rate of $500 an acre.

Q. Or $320 for the land value of that particular Smith piece. A. Yes, sir.

Q. Now will you go to the Watson piece and tell us what did you give as land value for the Watson piece? A. That was contiguous to the Smith piece; same character of land, in my opinion.

Q. Yes. A. 5.22 acres at $500 an acre, $2,610.

Q. Yes. Now in addition to what you gave Mr. Hunt, namely, a half mile of heavy wire fencing at $500, a spring at $250, a bungalow at between $2,000 and $2,200, a second bungalow at between $300 and $500, a tool house at $50, and something else at 25— A. Privy.

Q. —a privy; what else did you add to that value before you finally arrived at land value? A. Those totalled $5,935.

Q. That totalled what? A. $5,935.

Q. Well, if your original addition was correct— A. Well, I don't know which—

Q. —they totalled $3,525 at the highest figure? A. Yes. Now add to that the value of the land, $2,610.

Q. Yes; all right. A. That brought it up to $6,135.

Q. Yes. A. Now add the arbitrary bonus paid by consent of the Commission, which amounts to approximately $1,187.

Q. Yes. A. That brought it up to $7,122, not counting the road appreciation, and there were 1397 feet of road frontage on this property on three separate roads.

Q. 1397 feet, and you appreciated that at how much? A. Well, if I had appreciated it it would have amounted in the aggregate to $8,898.

Q. Yes. A. He consented to take $7,500, so we gave it to him.

Q. Therefore the land value, as I understand you, in the Watson tract was how much per acre? A. $500, the same as the Smith.

Q. Now in the acreage in the Ringwood land that you figured 100 acres is best land at $500 an acre, is it or is it not true that where that acreage faced on the Wanaque River or the different creeks, brooks or roads, that you allowed frontage for it and that you added that frontage appreciation to the acreage value? A. By the application of my unit tables that value would be demonstrated. In some cases the Ringwood Company would be receiving $1,200 or $1,300 an acre for their land.

Q. Let us take one by type. Take an acre of land of the best land, that would front on the Wanaque River? A. Well, take that strip running north and south—may I go to the map?

Q. Sure, go ahead. A. Take that strip running north and south between the main river and the Hook Road.

Q. Yes. A. What I call, some of their best land, and where they have built 11 or 10 bungalows.

Q. Yes. A. That would be this strip here (indicating on map). I would value that ground raw at $500 an acre. Then I would add $2.50 a foot for the river frontage.

Q. How much is an acreage footage, if I may call it such? A. Figuring an acre at 150 feet deep, that would be roughly 300 feet frontage.

Q. And your Wanaque appreciation was $2.50 a waterfront foot, wasn't it? A. Yes.

Q. $300, that would make $750, would it not? A. Yes. Then there would be an appreciation, if that lot extended from the river, or that tract—that acre extended from the river to the road, there would be an additional appreciation of $300, or a dollar a foot on the road.

Q. For the road frontage, so that would be added to the $750, which would make $1,050 road and waterfront appreciation. A. Plus the—

Q. Plus the original? A. The value of the ground. That acre of ground, according to my tables, would be $1,500.

Q. $1,550 to be exact, would it not? A. Yes.

Q. And would the same appreciation be added to the $250 acreage where that acreage fronted on the brooks or rivers or roads that you allowed appreciation values for? A. Yes.

Q. Can you point out just a specimen piece, any $250 acre that would have such appreciation of road or river or creek frontage? A. Up north of the piece we bought from the Pompton Reform Church on the tract 85-B, I figured that was worth, the upland there in some place, $250 an acre; that would be appreciated $2.00 a foot by being on the main road.

Q. Let us figure that out a minute. If you had an acre of that land, of that $250 value, that had an acreage frontage, if I may use the term again, on the road, and that frontage you had valued at $1.00 a front foot— A. $2.00 a front foot.

Q. —$2.00 a front foot, then you add to that, $250 acreage value the acreage frontage value, $600, making that acre $850 an acre? A. Yes.

Q. When you gave me the figures on direct examination, these were the kind of figures you gave

me in each one of those instances? A. That is my method of valuing terrain of this kind.

Q. All right. You may go back and sit down. Now let us come for a moment to these Tri-County pieces, the 32 acre piece and the 11 acre piece that much ado has been made about your being president of the company that bought— A. 30 acres.

Q. 30 acres, all right. Will you give us the elements of value that went into the purchase price of the 30 acre tract? A. The first element of value was that that 30 acre tract has rights on the lake.

Q. On what lake? A. On Pompton Lake.

Q. I see. A. That would be—of course, I cannot differentiate between the 30 and the 12 acre tracts; they are both in the same owner and the value of one is reflected on the other.

Q. All right. Then you may take both together and tell me if their values are the same, and if the elements of value are the same what those elements of value are, in order that you may tell us why you paid the price you did pay. A. The elements of value are first—

Q. I can't hear. A. I say the elements of value are first, it being about 7 or 8 miles from Paterson, the property being on two improved roads.

Q. Yes. A. There being an electric light there, and the imminency of water, the fact that it has 2500 feet roughly speaking frontage on Pompton Lakes, a well known and established lake where property values are known; in addition to that there is a stand of hemlock there which the Department of Forestry of the State of New Jersey has expressed themselves as being the finest stand in the state of New Jersey; and in addition to that another element of value that induced my company to pay those prices was the fact that I per-

sonally owned 50 acres or 55 acres directly across the lake, and I wanted to protect that acreage against a despoilation of this side of the lake.

Q. How do those two tracts of the Tri-County, the 30 and the 11, differ from the Corning tract that is across the street, and for which only $100 an acre was paid? A. The Corning tract has an elevation of, or has a frontage, you might say, of 12 or 15 acres from which houses erected thereon may see the lake; the balance of the 300 acres roughly fronts east and away from the lake; the balance of that land is mostly suitable for a lake —another lake to be put there. There is no comparability except on that shoulder of ground that faces Pompton Lakes.

Q. Is there a house on the Tri-County 12 acre tract? A. There is one house we are now building.

Q. What was the value of that house on the Tri-County 12 acre tract? A. The contract calls for approximately $8,500 for that brick house without the lot.

Q. Did I understand you to say that there is no comparability between the Corning tract and the 32 and 12 acre tract, except as you have stated, the one part of it or knoll or shoulder that has a view to the lake? A. That has a view to the lake. The other tracts—the 12 acre tract and approximately 2000 feet lake frontage. It was ripe for development—level ground; it lay between the lake and the road. The hemlock hill tract has approximately 2000 feet road frontage. That is all ready for development on two improved roads.

Q. Let us come again from the sublime and pretty 32 acre tract to the pig pen and will you tell me, Mr. Hershfield, when was the last time the pig pens had pigs? A. According to the best information I can glean, within two or three years. The pigs—

Q. Have you made an investigation of the occupancy of those premises and the ownership of the pigs which were in the pens? A. I have secured information from the man who, while not an authority on piggery, claimed to know about the occupation by the pigs.

Q. Who owned those pig pens there? A. The ground, I am told, belonged to the Ringwood Company. I am told that Mr. E. R. Hewitt built the pens under some arrangement with the Ringwood Company.

Q. Did you make an investigation as to the number of pigs that were kept there? A. My information is that there were from 100 to 150 pigs kept during the regime of E. R. Hewitt. After he abandoned the pig business or the farming business, one of the tenants of the house across the way kept the pigs, and he moved away a year or so ago, as I recall.

The Court: Did he keep them in the same pens?

The Witness: Yes, sir, but not as many pigs.

The Court: When you speak of the occupation, you did not mean the occupation of the pigs but of the pens.

The Witness: Of the pens. I meant physically.

Mr. Matthews: From illiteracy it is difficult to find whether it is the pens with the pigs or the pigs with the pens.

Q. At any rate, I understand that there were 150 pigs very frequently together in those pens, but

now there are more pens than pigs, in fact now there are only pens and no pigs? A. I don't remember the exact number, Mr. Matthews. I am told there were from 100 to 150 pigs kept there at the time Mr. Raycraft acted as boss farmer for Mr. E. R. Hewitt.

Q. That is the place you said was up wind from a certain part of this taking? A. At times.

Q. As to the German Village, Mr. Hershfield, and particularly the Sherman property therein, you told Mr. Hunt on cross eamination that the owner himself had valued the appurtenances of that in a letter to you. A. Yes, sir.

Q. And Mr. Hunt did not accept your proffer of the letter. Have you that letter? A. It is in evidence in another case, but I believe—

Q. In the Marini case. A. That record is here. I think the stenographer has it in his possession.

(The stenographer sent to his office for the letter.)

Q. Mr. Hershfield, while we are waiting for that Sherman letter, and dealing now specifically with the German Colony, the Valois and Minna Meyer and Sherman and other properties,—what elements of value entered into those properties besides the bungalows on the property? A. The value of the land.

Q. Yes. A. And what I construed as an element of value, the inconvenience the people were put to by being compelled to move ahead of the time they expected to move.

Q. The inconvenience of the people being compelled to move? A. Yes.

Q. Is that applied to every one of those properties on the German Colony? A. Where there were domiciles there.

Q. Were there any that had no domiciles on? A. No—I believe the vacant lots were attached to a bungalow on the next lot.

Q. Have you the detail of the bungalow purchases in the German Village colonies? A. I have letters from the owners—I did not make any detailed valuation of them.

Q. Well, they would all be incompetent except the Sherman one that the door has been opened for. You haven't anything else besides those letters? A. I have letters from the owners and my opinion at the time I examined them, as to what they were worth, in addition to the insurance memorandum of the policies that were carried at the request of the owners, also the statement of Mr. Josiah Ricker, one of the Commission's field men, and my own impressions.

Q. Was it from those letters from the owners and the insurance that was placed with your concern or with your knowledge— A. Yes.

Q. —that you arrived, together with your other data, at the value that you put on the bungalow? A. My valuation is a consensus of opinion of four people.

Q. Who are those four people? A. Mr. Josiah Ricker, one of our field men, Mr. Arthur T. Riedel of my office, who examined the buildings prior to placing insurance on them; the owners themselves, who generally expressed themselves in a letter to me which I have, and my own opinion.

Q. I see. A. Based on my experience.

Q. Now, Mr. Hunt asked you in the cross examination if you had ever spoken before about the

inconvenience payment to these different tenants. Had you? In previous testimony? A. I did not get that question.

Q. Had you in previous testimony, either before the Condemnation Commission or at any other time, spoken of this matter of inconvenience payment? A. I so expressed myself repeatedly in the prior trial.

Q. Did you testify at page 2281 on the hearing in condemnation before the Condemnation Commission, as follows: "You have told about the insurance policy? A. No; I have not shown you his letter.

"Q. He was here to testify? A. We paid Sherman $500 or $600 for his trouble in being beguiled into coming there and having to go off. That is the same reason we are offering 20 per cent to the Hewitts more than the appraised value."

Did you so testify? A. I did.

Q. Is that so? A. It is.

Q. Now on your last direct examination, after I had queried you concerning some 17 properties, I asked if there were other purchases by you in the field or the contiguous section of the watershed property with which you had had connection either as broker or appraiser or with the knowledge that comes to a man in the real estate business, and you told me there were several others, but you could not recall them. A. Yes.

Q. I asked you then between the time that you were directly examined and my redirect, to look up the data for these properties? Have you done so? A. I have.

Q. Now in order to expedite matters, will you please start in and give us as many of those, first,

as you can recall from memory, properties comparable in character of terrain to the acreage that we are condemning, and the acreage in totality, the number of acres, and we will divide it for the acreage value? A. The summation I made of those, you have the only copy.

Q. I have the only copy of the summation? A. Yes. I kept no copy of it.

Q. You do not remember the names without being prompted from the summation you prepared? A. I can recall the names, but I do not remember the acreage or the price in each case.

Q. Do you remember a Ricker transaction of 174 acres, and can you indicate it on the map? A. The Estate of Christopher Ricker.

Q. Will you indicate that on the map? A. That is this piece here (indicating), tract 50-B, plus another tract, aggregating as I recall 175 acres—the two tracts.

Q. Is it contiguous to the Ringwood taking? A. It is in the middle of two of the Ringwood takings.

Q. Comparable in terrain? A. The same natural ground.

Q. Time of purchase approximately? A. Within two years.

Q. The acreage, 174, as you remember correctly? A. Approximately.

Q. Do you recall what the price for that acreage was? A. I think it was $85 an acre.

Q. Your notes show $14,000 total and $80 per acre. Do you wish to correct that? A. My notes are correct, but I do not rely on my memory for figures.

Q. Wel, now, can you point to the Marozileono property? A. That was a piece of wodland along the Blue Mine Road.

Q. Comparable in terrain to the Ringwood? A. It had a very good stand of timber on it, the best timber—

Q. Answer the question. Comparable to the Ringwood? A. Yes; a little better than the average side hill of the Ringwood.

Q. Contiguous to the Ringwood? A. Wait until I locate it.

The Court: What is the name of the piece?

Mr. Matthews: Marozileono.

A. It is surrounded on three sides by the Ringwood tract No. 79.

Q. Therefore comparable in terrain, I take it? A. Yes, except better stand of wood on it.

Q. All right. Comparable but better. How many acres was that? A. Roughly 50 acres.

Q. Have you the price? A. No. You have it.

Q. I have a total price on the memorandum you gave me of $3,185, or an acreage price of $63. A. That would be correct, $63 an acre.

Q. You remember Crowley piece? A. Yes, that is tract No. 46, containing approximately 17½ acres, and being here (indicating).

Q. Comparable in terrain to Ringwood—any part of Ringwood? A. It was the average of all that—this tract.

Q. And the price paid was $1,000, was it? A. You have it, Mr. Matthews.

Q. If your notes show it was $1,000 and $60 an acre, is that correct? A. It would be, yes.

Q. The Travato property? A. Trovato.

The Court: How many acres in the Crowley piece?

The Witness: 17 acres at $1,000.

A. What is the number of that Trovato tract?

Q. I don't know. You gave me the name and 27 acres. A. Guiseppi Trovato.

Q. There is only one Trovato here, so it must be Guiseppi. A. But it is in two names—Antonio Axalio and Guiseppi Trovato.

Q. Do you remember the price now? A. Yes.

Q. It was 27 acres, was it not? A. The map shows 29.

Q. You paid $1,710, according to your notes, or $63 an acre; is that correct? A. If that says it.

Q. That is the legend. The Price piece?

Mr. Hunt: If the Court please, wouldn't it be better if the witness had the memorandum?

The Court: I think perhaps it would.

Mr. Hunt: Than have counsel putting words in his mouth.

Mr. Matthews: I would gladly answer the objection that I were leading him and would cease to do it, except counsel made a memorandum of his own and the analysis on it, and if I did submit it to the witness he would put it into the hands of Mr. Hunt. If he objects I am leading, I will have to desist and will have to ask him to produce a copy of his memorandum tomorrow.

Mr. Hunt: I do not want to do anything to delay the proceeding. It seems to me before the witness was told by counsel what price he paid, he should be asked to say whether he remembers it.

Mr. Matthews: I am willing to do that.

Q. Have you located it? A. Yes. That belonged to Edward Livingston Price, former City Counsel of Newark. There were two tracts.

H. G. Hershfield—Recalled—Redirect.

Mr. Lewis: If your Honor please, at this point it is understood, of course, this is an opening up of their direct examination of the witness. It is not redirect. So we will have an opportunity to cross examine on these points.

Mr. Matthews: It is understood simply as an opportunity for me to bring into evidence what I asked Mr. Hershfield to testify to at the first hearing, and he said he did not have the data of it. They are, of course, entitled to cross examine.

Mr. Lewis: We cannot cross examine until it is in.

Mr. Matthews: We are glad to have them cross examine.

Q. Have you the Price piece without any prompting from me? A. Yes.

Q. What is his acreage? A. One tract was 31 acres plus and another one was 7 plus; roughly there were 40 acres there. We bought that for $40 an acre.

The Court: What number?

The Witness: No. 47-B for one tract, 47-A for another, aggregating scant 40 acres.

The Court: What is the Trovato property on the map?

The Witness: 49.

The Court: The Marozileono?

The Witness: That is No. 51.

The Court: The Ricker?

The Witness: The Ricker—there are two tracts in the Ricker tract I refer to; one is No. 50-B, and the other was 50-A.

H. G. Hershfield—Recalled—Redirect.

The Court: The Crowley is 46?

The Witness: Crowley 46, yes.

Q. With your bad writing I read Ferra Lasco or Terra Lasco, do you remember such? A. Leonardo Ferra Lasco.

Q. You remember that tract? A. Yes.

Q. Where was it? A. No. 43.

Q. Acreage? A. 55½ acres.

Q. Do you remember without being prompted from the notes that you gave me what the acreage price paid for that was? A. I don't recall.

Q. There were 53 acres, and the total price according to your notes was $4,740 or $90 an acre? A. Very good land.

Q. Is that comparable in any part to the Hewitt properties? A. Very good land, an average with the best land in the taking in this section. There are two brooks and a road—Blue Mine Road.

Q. The Garbarino tract, do you remember that? A. Yes, Louis Garbarino. That was No. 26-D, contained 29 acres plus.

Q. Do you remember the price? A. I do not, no, sir.

The Court: Which one was that?

Mr. Matthews: We have gone from Ferra Lasco.

The Court: How much an acre?

The Witness: $90.

The Court: Now the next one?

The Witness: Louis Garbarino.

The Court: How much was that an acre?

Mr. Matthews: He does not remember.

The Court: What number is that on the map?

The Witness: 26-D.
The Court: And the acreage?
The Witness: 29 acres plus.
The Court: All right.

Q. You have exhausted your memory and do not know these prices, and your notes show me $1,300, or $43 an acre; is that correct? A. My figures are correct.

Q. There is another piece of Louis Garbarino, 25 acre tract? A. Yes.

Q. Where is that located, what number on the map? A. No. 36-C. The map shows it 28 acres plus.

Q. Do you remember the price of that? A. I do not.

Q. Your notes show $1,925 total, or $73 per acre; is that correct? A. My figures are correct.

Q. And the terrain just the same as the Hewitt or comparable, rather, as the Hewitt-Ringwood terrain? A. It is all in the same basin.

Q. A. Dondero, where is that? A. That is tract No. 34-B.

Q. How many acres was in that tract or were in that tract? A. Scant 23 acres.

Q. Do you remember what the price of that scant 23 acres was? A. I do not, sir.

Q. Your notes show $1,650 or $71 an acre. I understand you to say that in each instance that I quote to you your figures are correct? A. Yes, sir.

Q. Mr. Bravante, where, what number, how many acres? A. Frank Bravante, 42-A, 15¾ acres.

Q. Do you remember the price? A. I do not.

Q. Your notes show $680; is that right? A. My figures are correct.

Q. About $45 an acre you have got; is that correct? A. Yes.

Q. All right. Mr. Biggio, where, what number? A. Estate of John Biggio—what is the number, please?

Q. I have not the numbers. You gave me the acreage, 26 acres. A. Tract 33—22 2/3 acres.

Q. Well, if your total price was $1,630 on this memorandum, and you gave me a total of 26 acres, then your acreage value is incorrect, and I do not want this record to show it. A. The figures that I have given you are from my field notes. They do not always correspond, at least they have not apparently in this case corresponded with the map.

Q. Therefore, Mr. Hershfield, in order that we may put on this record only a value that shall be fair in computation, if $1,630 is your note for the total value of that acreage, and the acreage is 22 instead of 26, dividing 22 into $1,630 you would have about $74 an acre; isn't that right? A. If your figures are correct.

Q. I am multiplying mentally and challenge contradiction. Mr. Gardella? A. That is the tract No. 41-B, approximately 19 acres.

Q. Yes. Do you remember the total price on that? Here your acreage is correct, 19? A. I do not.

Q. $1,110, your notes show, and you have figured it at $57 an acre. The Granda property, do you locate it? A. Yes, 40-A.

Q. Acreage on the map? A. 46½ acres.

Q. Your notes show 45. However, we will let it stand at 46, Mr. Hershfield. Your total price, do you remember? A. I don't remember.

Q. $2,125, and your notes show $47 an acre. Inasmuch as that is in favor of the land owner we will allow it to stay for your cross examination, which we will correct only with further evidence. The Murchio, where is that? A. There were two Murchio tracts.

Q. Give me one first, 28 acre tract, if you have such a tract, and if you have not, see if both aggregate it. A. Serafino Murchio, tract 25-C, 29 acres plus.

Q. That you have 28 acres, and your total price is $2,200. Therefore your $2,200 will have to be divided by 29 instead of 28, isn't that right? A. Yes.

Q. Again we will allow it to stand, because your notes show $78 an acre for the Serafino Murchio tract. Mr. Cabell? A. There are two Murchio tracts.

Q. I shall not ask you for anything I have not on my notes, because I don't know anything about it. A. The Cabell tract is known as 7-A, and consists of 94 acres plus.

Q. You have 93 acres on your notes, and your total price is $6,150 and your acreage price is $50. But again it is in favor of the land owner and we will allow it to stand subject to cross examination.

Mr. Lewis: 66 on here.

The Witness: 66 on here.

Q. The Moss tract of 50 acres, will you locate that? A. That is No. 20-A.

Q. What did you pay for those 50 acres, do you know? A. That is 50 acres including 20-A and 20-B. We paid roughly $2,100 for that, as I recall.

Q. You recall $500 more than we paid, because your notes show $1,600, with an average acreage price of $32. A. That is right. We paid the two thousand and odd dollars for the real estate and the improvements that were then on. What ever the figure was is correct.

Q. The Brown Estate of 84 acres, do you find that? A. Yes; that is known as tract No. 16-B, and 16-A, aggregating 85 acres roughly.

Q. Your notes show 84 acres, and a price of $10,500, or $122 plus per acre. A. Yes.

Q. The Lyons property, will you locate that? A. The Lyons property was next to the paper mill.

Q. Yes. A. The Lyons Estate, tract No. 31, 47 acres.

Q. What acreage did you give me for Lyons? A. 47 scant.

Q. You have 50 actual on your notes, and inasmuch as you have a price of $2,700 or $54 an acre, you will have to increase that, will you not? A. There may be a small tract—and that may have been what they claimed at the time I examined.

Q. What is the acreage on this map? A. Let's call it 46 acres to be fair to the owner.

Q. I cannot multiply that so quickly now, so we will say the price is 46 acres divided into $2,700; is that right? A. Yes.

Q. The Stone property? A. The Stone property lies here (indicating). No. 74, 41 acres plus, according to the map.

Q. How many acres? A. 41 according to the map.

Q. As you have 40 on your notes and $1,800 for the total price, we will let $40 stand for your

cross examination. $40 an acre. Vanderbeek property? A. No. 62, scant 46 acres.

Q. That is what you have on your notes. You have price of $2,000 and the acreage is 43 acres plus. A. Yes.

Q. The Ringwood Company's sale, where is that? A. That consisted of an irregular tract known as 78-B, consisted of a scant 196 acres.

Q. Yes. A. We paid them $50 an acre by agreement.

Q. When was that sale with the Ringwood Company that they took $50 an acre for? A. Why, I should judge within three years.

Q. Will you point out with reference to the present acreage? A. It is this, this, this, this (indicating).

Q. The Mullen sale? A. Tract No. 119, scant 48 acres.

Q. Yes; and your notes show $2,208 for those 48 acres, and you have made that an acreage value of $46 per acre. The Thorne Estate? A. Thorne was the last piece we bought—recently.

Q. Yes. A. That is 13½ acres, No. 75.

Q. 13½ acres, you say? A. Yes.

Q. Your notes show 13 and $750 total value, and $58 as the acreage value? A. Yes, sir.

Q. Now will you take the chair a minute. In all of these land prices per acre that you have given me, does that represent as Mother earth and not with the addition of artificialities of buildings or otherwise? A. Nothing except the land itself, as I recall.

Q. Were there on any of these places properties in addition to the land? A. Then there were dwellings and other improvements on some of

them, but I have excluded those from these valuations.

Q. Therefore each one of those instances shows the land value after the buildings have been taken off? A. Yes; just the naked land.

Q. Now you spoke of the paper mill, and on Mr. Hunt's cross examination of you with reference to the paper mill, we had much ado and to do about the machinery, the description of which I cannot give you, not being a paper mill man, machinery that was affixed to the freehold, and you gave the price that was paid for that paper mill property? Will you tell us how much was paid for the land at the paper mill property?

Mr. Hunt: That is objected to on the ground that this witness testified previously he is not competent to value the machinery in that mill.

The Court: You did not ask the question, however, as to the price of the land, for the land. Mr. Hershfield, I gathered from the examination that you made of him on cross examination, was in possession of the information that would have enabled him to answer that if you had asked him, and you did not ask him, and I supposed it was intentional on your part. He said that he had to do with the land value or the building value, but nothing to do with the machinery. That is as I recall it. If the witness knows what the land value of that property was it is competent to be testified to.

Mr. Hunt: As I recall, the witness testified that $500,000 was paid for the property, but he did not know how much of that was paid

for the machinery and other personality. Now I submit that arithmetic works the same both ways, and if he was not able to tell me how much of the $500,000 represented personal property, property other than land, he cannot now tell how much of it represented land. If he does not know the one element in the problem, he assuredly does not know the other.

The Court: No; that does not necessarily follow. You did not ask him whether he knew what the land value was; you only asked him about the machinery and it may be other things beside machinery and land involved in that.

Mr. Hunt: He testified, as I recall it, the transaction involved land and personal property.

Mr. Matthews: A business worth $200,000 a year.

The Court: The good will of the business.

Mr. Hunt: He did not say any good will was purchased.

The Court: No, he was not asked that, but he did intimate and I got the impression from what he said that there was a consideration for the goodwill. I may have been wrong.

Mr. Matthews: Mr. Hunt even said: "Does your Commission pay so and so for such and such;" as much as to say we would have to observe the rules of condemnation in buying property.

Mr. Hunt: If the witness is prepared to state what items or elements entered into the aggregate of $500,000 paid by the Commission to the Paper Company, and the amount of

money properly attributable to each item, I have no objection to his testifying.

Mr. Matthews: We are asking no questions but land value. We don't care about it.

The Court: Just a minute, Mr. Matthews.

Mr. Hunt: If he is going to testify to one item or element and then take refuge in lack of knowledge, incompetency, or what not, to avoid testifying to others, then I object to his being permitted to testify upon the subject at all.

The Court: Very well. I will allow him to testify with respect to the land values, if he knows.

Mr. Hunt: Subject to being stricken out in case he then declines to state the other values?

The Court: Not at all. If he does not know he cannot answer, and if he says he does not know anything about machinery and was not engaged with respect to that, which he has already said as I understand it, he cannot be made to testify to something that he doesn't know about; but if he does know about the land values because of information that he has, I shall allow him to testify with respect to what he does know.

Mr. Hunt: As I recollect his testimony, he testified the other day he did not know how many acres were involved in the sale. May it first be made to appear then whether he now knows that, because he cannot very well testify to an acreage price until he knows how much acreage there is.

Mr. Matthews: This is all cross examination.

The Court: Perhaps he is not going to be asked with respect to the acreage price. I don't know. The qustion he is now asked is—

Mr. Hunt: He just testified to about 20 transactions according to the acreage price.

The Court: That is true. I don't know that that is the question now.

Mr. Hunt: I submit it would be of no value to this jury or any investigating tribunal to know how much was paid for a piece of land unless they also knew how many acres were in the piece.

Mr. Matthews: I object to him trying my case. If it is of no value to the jury, that is my fault; but I will try the case. I will get the value to the jury. I want to know, if your Honor pleases—the question is objected to, but no legal reason is given, what was the value given for the land of the paper mill property. If that don't bring it out, that is my dumbness.

Mr. Hunt: I object on the ground that it does not appear and he does not know the area of land bought from the Paper Company, and I insist that a proper foundation for the question to which I object requires a statement of the area.

Mr. Matthews: If your Honor please, because I have not given the multipulication in the problem he wants to deduce that it has no purpose and he objects to the question.

The Court: If the acreage is not developed it will not be very helpful to the jury. That is not the test that I apply but rather the legality of the subject matter that is to be brought out, and if this witness knows what the land was, what the price paid for the land was, it is competent. Whether the jury can make any intelligent conclusion from that I am not concerned with.

Mr. Hunt: I respectfully insist there is a legal basis for my objection, because the present situation is not that it does not appear whether or not the witness knows what the area of the land conveyed was, but it appears affirmatively by the witness' own admission that on the day that I examined him about this, three or four days ago, he did not know what the area was.

The Court: He may have found out since.

Mr. Hunt: If he knows a certain price was paid for a certain transaction but does not know the area involved, I submit his knowledge of the price is absolutely incompetent and worthless to any investigating body.

The Court: I will allow it and grant you an exception.

Mr. Hunt: All right, sir.

Q. What was the price of the land, is the question a short time ago? A. I don't remember, Mr. Matthews.

Q. Have you any data from which you can give us the price of the land? A. No; all my notes in that transaction were filed in Newark. I don't know what became of them.

Q. Do you know from memory the price of the land? A. No, sir, I do not.

Q. What else went into the paper sale? A. Why, the principal asset of the company was the value of the—

Q. I don't want to know the assets of the company, and I consent to have that stricken out. An-

swer the question. I do this with favor to my opponent. It is not competent to say what the assets of the company were. I want you to tell us what was the value at that place there and the price paid for it? A. A group of very substantially built brick and frame buildings.

Q. Yes. A. A power unit to supply such power as might be needed; paper making machinery essential to a business doing the volume they did.

Q. You said something to Mr. Hunt and he did not query you further concerning the good will or profits of that business during the year which was taken into consideration at the time of this purchase? A. Yes.

Q. What were the profits that were taken into consideration, if you know them? A. I only know them by talking with the former owner, Mr. Carter.

Q. Mr. who? A. Robert D. Carter.

Q. From that talk—

Mr. Hunt: I object to anything that Mr. Carter told him.

The Court: Sustain the objection.

Mr. Matthews: The door was opened to it. I would not be entitled to this at all, but I have not moved to strike it out; I move to take advantage of it. It seems to me, if your Honor please, that since the door is opened to me with reference to this transaction—Mr. Hunt trying to leave with this jury that we paid a half a million dollars for a small point of land up there, all information that I may bring to this jury, no matter whence it came from as long as it is the property of this man now, I am entitled to receive on redirect examination, having had the door opened.

The Court: I am not sure that what he testified to on cross examination in response to Mr. Hunt's question was based on hearsay. He did have some knowledge of it. He was engaged in some parts of this appraisal. Now he says in answer to the question you have just given him, that he doesn't know of his own knowledge, and even though the door is open that ought not to be permitted.

Q. Do you know, Hershfield, from any of your appraisal of this property, what the Water Supply Commission paid for the good will of that business?

Mr. Hunt: I object until I have an opportunity to cross examine to see whether he does know.

Q. Do you know?

The Court: He is examining him on that himself.

A. I cannot say, Mr. Matthews, I know. I just have a belief.

The Court: Just a belief.

Q. Were you the appraiser at the time? A. Not of the good will of the property. I was their real estate agent.

Q. Were you the man who made the dicker with the concern? A. No. Frank—

Q. Who was? A. It was done between my employer as a Commission, and Mr. Carter and Judge Cabel, the vice-president of the mill, and his attorney. There was so much machinery there I con-

fess I was unable to value it, and they thereupon hired men who were qualified.

Q. But do you know of your own knowledge that the machinery that you could not appraise because of its character and the good will of the business, was taken into consideration at the time of the sale? A. It was the controlling factor in making the valuation.

Q. When was the smallest item in the sale that was taken into consideration, if you know? A. The land.

Q. Now, Mr. Hershfield, I think I asked you whether or not you had any detail of the bungalow purchases in the German Village, and I think you told me you did not other than what you had given Mr. Hunt; is that right? A. Except that Sherman exhibit.

Q. Yes. Oh, that is what is sticking in the back of my poor memory.

(Paper produced by the stenographer.)

Mr. Hunt: I make a general objection to the offer of any letter.

Mr. Matthews: I am offering nothing yet.

Mr. Hunt: Of a third person, not a party to this proceeding. I don't know what he has got there, but I want to guard myself in time.

Mr. Matthews: The purpose of this examination, your Honor, is to show this witness a letter written to one party by another and referred to by this witness on the examination by Mr. Hunt, concerning the value of the Sherman property. Mr. Hershfield proferred at that time that he had the letter, which was a statement of the office value, and offered it to Mr. Hunt, and Mr. Hunt did not want it. I

submit that since that has been testified to and allowed to stand, that the witness had the letter and Mr. Hunt did not move to strike it out, that I have a right to comment and offer this letter, have it identified, presented to my opponent to observe it, and to cross examine as to the fact that it is the letter, and then to offer evidence to establish that fact.

Mr. Hunt: How this letter could have been offered to me by this witness when Mr. Kelley said it was in his possession as testimony offered in another suit, I do not understand.

Mr. Matthews: I did not offer you the physical letter.

Mr. Hunt: If I may look at the letter, it may be that I haven't any objection.

Mr. Matthews: I make the offer, as the rule is, in order I may have my preliminary examination. If your Honor please, I desire to ask the witness, did you or did you not have in your possession a letter, which letter I have offered to produce for Mr. Hunt, and which show the owner Sherman's statement of his own value of the Sherman property.

A. I had such a letter.

Q. I show you this letter, and just answer me yes or no, is that the letter? A. Yes.

Mr. Matthews: I now show—first of all I now ask to have it marked for identification.

(Paper marked Exhibit C-6 for identification.)

Mr. Matthews: With the permission of the court, I wish to show it to my opponent, because I wish to offer it in evidence for the purposes I have stated.

(Mr. Hunt examines the exhibit.)

Mr. Hunt: May I ask whether it is proposed to put the letter in evidence for all purposes?

Mr. Matthews: How can I put it in any other way?

Mr. Hunt: If it is proposed to put it in for all purposes, I have no objection.

Mr. Matthews: I put no restrictions on the letter, and if anyhing is attempted to be done with it afterwards, I will object properly, as he has a right to do. I offer it in evidence.

The Court: Let it be received.

(Letter from J. S. Sherman, dated September 9, 1925, previously marked Exhibit C-6 for identification, was then received in evidence.)

Mr. Matthews: With the permission of the Court, the letter being short, I will read it to the jury.

On the stationery of the Holand Butterine Company.

"Sept. 9th, 1925.

Mr. Josiah Ricker,
Midvale, N. J.

Dear Sir:

"In reference to our conversation last week about my summer home at Wanaque, I have reconsidered the matter and will positively not take less than $2700. for my house and lot, this only takes in the first lot purchased.

If you wish to consider the house and both lots I must ask $3000.00, as the additional lot cost me $300.00—"

The accent is mine and is not in the letter—

"and I have already paid taxes and have had expenses cutting down trees at an expenditure of $25.00 This is really putting in the extra lot at less than cost value.

The house that now stands on the first lot is the best built summer home and this bungalow has 2 x 8 floor beams, and 2 x 6 rafters and the uprights are 16″ or better, whereas the other places are built of lighter material and the uprights are two feet or more apart.

Since conferring with you I have had another party who is anxious for a summer home, therefore feel that if I allow you twenty days for final disposition feel that this is very liberal.

If you wish to know anything further in reference to the property, in question will be very glad to make an appointment or you can call me on the 'phone and I will be very glad to give you any information you may desire.

Thanking you for your interest in this matter, I remain,

Yours truly,

J. S. Sherman."

Q. Mr. Hershfield, is that the Sherman and is that the property that you testified to Mr. Hunt about on cross examination? A. It is.

Q. Mr. Hershfield, I show you a map and ask you to look at it page by page and tell me if it is a fair representation of this acreage of Ringwood at the time of the year that is indicated by the picture? A. It is a photograph taken from an aeroplane at an elevation that I am not conversant with, of the whole terrain and some of the outlying land in the proceeding.

Q. Now, look at it closely and tell me from an inspection of this map, are you able to point out the wooded sections of the taking from it, and where the sparse areas are, where the cleared areas are? A. What areas?

Q. Sparse, I would call them, or cleared. I am not able to be real estatically technical, but I mean they should not have any trees on them? A. Yes, sir.

Q. It does? A. This photograph, taken from an altitude that clearly evidences the different types of ground in the taking.

Q. And will you look to see whether or not it represents the entire taking as shown in C-1? A. I believe it does; only it has been changed.

Q. Well, look at it and see, because if it has been changed I cannot offer it on this theory of proof? A. This southern end of the taking, including the dam—this tract here shaded in green on the outline is the tract No. 79 at the upper left hand corner. That is, this map in this case, that would be the yellow tract. The next section is the tract opposite the west of the heart of the village or borough of Midvale. That would take in tract, the northern extremity of tract 79. This sphere here, and it would take in the Josiah Ricker—or the Christopher Ricker estate. That is this here irregular arrow-shaped farm, No. 50, or wood land. This photograph continues in a northerly direction until it takes in Tract 83, which contains the Miller place. This is a division. For the benefit of the jury, this is the Belcher farm we looked at the other day. This is the Miller tract.

Q. Will you tell me, at this point, why is the yellow superimposed on what would be the green? A. I believe to accentuate the Ringwood holdings in this proceeding.

Q. That is not part of the terrain? A. No; wherever it is shaded green are within the Ringwood holdings.

The Court: And the photograph has been mutilated, has it not, and plotted; for instance, here is a piece cut out, and the reason that was cut out was because it had nothing to do with the taking?

The Witness: It had nothing to do with the taking.

The Court: And the photograph was of that part of the property?

The Witness: That was a piece between the Ricker farm and the Miller place. This white expanse corresponds to the one that Mr. Matthews is pointing out.

The Court: And these figures on the photograph are not part of the photograph and the lines, but have been put on since, and do they conform to the marks that are on the map Exhibit C-1?

The Witness: The lines are the same as the lines on that map, and the numbers are the same tract numbers.

Q. As on C-1? A. As on C-1.

The Court: In other words, this is the same as C-1, except, instead of being a map, it is a photograph?

The Witness: It is a photograph of the same territory.

The Court: And it takes in all of the property depicted on that map?

The Witness: I have not gone to that extent yet, your Honor.

The Court: All right.

The Witness: The next tract, or sheet, whatever it is, Sheet 3, takes in the Trinchieri piece, not in these proceedings. This is the railroad right of way. This outline in green would be Tract 84. That one there, the southern end of it. This section here is the southern end of Tract 80. Sheet 4 of the photograph takes in Tract 87. That is the Board Mountain tract. This yellow here is a division of Ringwood branch where it leaves the main line of the railroad. That is the Y there, Mr. Matthews. That piece in there a little north of where you pointed to the right, that piece, that is this tract. All this here depicted by the photograph is in tract 85-B. That large thousand acre tract corresponds to this. Sheet 5 of the map shows Tract 90. That is this tract here. This dark spot here is probably a cloud.

The Court: What does this parallel line in ink represent?

The Witness: I think the right of way of the railroad.

The Court: All right.

Q. The railroad runs through here (indicating)? A. And plate 6 shows the upper end to the right of the Forge Pond Road or Slotesbury Road.

Q. The what, Slotesbury? A. Well, look at Tract 92; the yellow underneath the green.

Q. Yes, underneath the green. I cannot see it. A. No, that is Miss Sally Hewitt's property. No, right where you are.

The Court: Look at 85-B.

Mr. Matthews: The 85-B is right here (indicating). Yes. That is here (indicating). 88 here (indicating).

The Witness: No, 85-B, the Forge Pond tract.

Q. There is an 88 number here? A. Well, 88 is the Forge Pond tract number.

Q. Yes, here is Forge Pond. A. You see, this is looking north (indicating). This photograph is a photographic reproduction taken from an aeroplane which photographs embrace all of the property in this proceeding.

The Court: And everything on that map except the mouse-colored tract at the norhern end of the map C-1?

The Witness: Yes, sir, that is not in this proceeding.

Mr. Hunt: I think it only shows the Ringwood lands.

The Court: No; it shows more than the Ringwood lands. It shows practically everything, as I understand the witness, that is on that map, except the mouse-colored tract at the northern end of the map.

Mr. Matthews: And because of what it shows, and because it is testified it is a fair representation of the terrain when verdured, and because it is a correct representation of the map C-1, and similar in all details except in the Trinchieri matter, I offer it, because of its helpfulness to the jury.

The Court: Let it be received. Is there any objection to it?

Mr. Hunt: I should like to ask when these photographs were taken, your Honor.

The Court: You may.

The Witness: The legend on the map recites "October, 1925."

H. G. Hershfield—Recalled—Redirect.

By Mr. Hunt:

Q. And that was approximately six or seven months after the Water Supply Commission had been given access to the Ringwood property?

Mr. Matthews: I object to this as immaterial, as not cross examination as to the offer.

The Court: What was the question?

(Question read.)

The Court: I think the only thing that you might ask with respect to the admissability of this map is with respect to when it was taken.

Mr. Hunt: I do not want to exclude the map at all, but if it is the fact, as it is the fact that it was taken six or seven months after the Water Supply Commission had entered upon our property, I would like the jury to know that, so that they can see the gashes of trees taken out here and there.

Mr. Matthews: We will be glad to tell you about those gashes.

The Court: And the witness has said when it was taken, and there will be before the jury the date of the taking, of course, and the date that the Commission took possession of the lands.

Mr. Hunt: In the Spring of 1925, the Water Supply Commission took possession of our land and began to build a new grade for the railroad.

Mr. Matthews: I object to this. If the map is to be cross examined on the offer it should be cross examined as to whether or not there is any change in the character.

H. G. Hershfield—Recalled—Redirect.

The Court: I will allow it at the proper time. I do not think this is the time, Mr. Hunt.

(Aerial map received in evidence and marked C-7.)

Mr. Matthews: I do not think I can finish the witness now because I have to take him into the Moss tract for about four or five questions.

The Court: Very well. We will take a recess until to-morrow at 10.

(Whereupon a recess was taken to January 12, 1927, at 10 o'clock in the forenoon.)

Q. Mr. Hershfield, are you familiar with the Fox property? A. I made an appraisal of it.

Q. It is not on C-1, is it? A. It is on the State map.

Q. All right. Will you go down with a pin, our colored pins, and pin the point where the Fox property is? And make this pin an American flag, will you, because that will indicate redirect or cross, whereas the others indicate direct?

Mr. Hunt: I think, your Honor, this is the first mention of the Fox tract, therefore it is not on redirect or cross examination as far as that property is concerned.

Mr. Matthews: It is correctly objected to and I will withdraw it.

The Court: Very well.

Mr. Matthews: I would like to show it, but we cannot legally.

Mr. Hunt: We have no objection to showing it, but instead of it being marked by a token that would identify it as referred to on cross examination, it should be marked by the same token that has been used in your direct examination. We have no objection to having it referred to, if he wants to.

Mr. Matthews: We do not care what they mark it with. We will be very glad to give the testimony if we be allowed to.

The Court: There is no objection to it being given if you mark it with the same kind of pin that the others were marked on direct examination.

Q. All right, Mr. Hershfield, go ahead and point to the Fox property. A. (Witness indicates) The

Fox property which consists of some 700 acres or 800 lays relatively—that would be approximately the centre of the tract.

Q. Put a circle around the pin like you did on direct on the other pins. A. (Witness complies) It comprises the headwaters of the West Brook. Want me to initial that?

Q. The same as you did on direct examination, Mr. Hershfield; I have forgotten. A. We were given the numbers. I will give this an arbitrary number.

Q. That 18 is the one you had. A. The last one here is 21.

The Court: Give it 51.

Q. Put a legend then on the side to show what 51 is.

The Court: Because according to my notes it is the 51st piece of property that you have described, including those that are on the other map.

A. 51, Fox tract.

Q. Now go back to your chair. Now the property that you have pinned and legended, Fox property, you said you appraised it. A. I went up there and advised on two or three separate occasions; examined it personally, closely.

Q. Describe the property for the purpose of showing its comparability, if such exists, between it and the property under condemnation? A. It is a piece of acreage consisting of numerous assembled farms; lays on the road from the—in West Milford Township—from the Village of West Milford to Upper Macopin on the improved road. The prop-

erty consists of an undulating terrain; from the major portion of it an unobstructed view north may be had showing Greenwood Lake at one of its best vistas. There are numerous orchards on the place. Probably two or three miles of private road. Locations for one lake of 150 acres.

Q. Is the lake existent? A. No, sir; only on paper.

Q. Give us the terrain as is? A. Valleys in which a lake might be put—

Q. No; I will ask that that be stricken out as not responsive to my question. Describe the property as is? A. The property as is consists of two valleys, roughly running north and south, with the elephant's back in between pretty well cleared. There are two springs or two creeks on the property, one of them the headwaters of the West Brook, the other a brook I don't recall by name that runs north to Greenwood Lake. The West Brook runs southerly into the Wanaque River. The property had one eight or ten room house on it in good condition, another house not in such good condition, a large barn and numerous outbuildings.

By the Court:

Q. How far from the Young property? A. The Young?

Q. The Wart man—I forget his name? A. Oh, Dave Miller.

Q. Miller, Miller? A. I would have to measure on the map.

Q. Well, approximately how far, a matter of five or ten miles? A. Less than that. It is up the same road; it goes by the Miller place.

Q. That is what I supposed. A. Up the West Brook Road, or on the main part of the West Brook Road.

The Court: All right.

By Mr. Matthews:

Q. Did you tell the Court how far up that road it is from the Miller property? A. The beginning of this road from the David Miller property along the West Brook Road, I think would be less than three miles along that road.

Q. The end of the property? A. Might be a mile and a half further.

Q. Four and a half miles? A. Yes, it would average about three and a half miles.

Q. Does any or all of the acreage on this Foxcroft assembled tract compare with any or all of the acreage in the Ringwood tract? A. It is about the same terrain, except that there are more farms, that is, the land shows signs of more recent cultivation.

The Court: What do you mean by "terrain"?

The Witness: About the lay of the land.

The Court: I looked up "terrain", and found it was a battleground, and I was wondering whether you were using it because of this litigation.

The Witness: I think it is a very apt employment of the term.

The Court: Well, it means surface of the ground?

The Witness: Yes, sir, surface of the ground?

Mr. Matthews: The French of it is terri, and gives it just as the lay of the ground. Natu-

rally, lay, that is the sense in which I asked the question with the word terrain.

The Court: You had no idea of battle in mind?

Mr. Matthews: I always have the idea of battle, but at that time I had not actualized that idea.

The Court All right.

Q. Mr. Hershfield, please, sir, from your appraisal of this property, were you able to put a value upon the property?

Mr. Hunt: Well, I object to appraisal made by this witness of a property, if the property has been sold that is one thing.

The Court: I do not know whether it is or not.

Mr. Hunt: Well, unless it is I do not see any reference to it is material here.

The Court: What do you say to that, Mr. Matthews?

Mr. Matthews: I say, if your Honor please, that I shall show a section of the property has been sold, and as to that section of the property only, I suppose the evidence is strictly competent. However, I will show further that where an expert has appraised property in the vicinity and comparable, that appraisal, subject to cross examination as to the character, is competent evidence to reflect value.

The Court: Of course, this witness has testified as to what his appraisal was of the Ringwood property, and he has said what his appraisal was because he is an expert, and presumably, if he were competent to appraise the

Ringwood property, he was competent to appraise this Foxcroft property which lay over the hill from this property.

Mr. Matthews: Well, I would only hold him, however, because of the objection, to any knowledge he has of a sale of Foxcroft acreage, its total acreage and its acreage price.

The Witness: The—

Mr. Matthews: Just a minute, before you go. Let me ask you a question in order that my opponent might object:

Q. Do you know whether or not there has been a sale of any or all of that acreage; yes or no? A. Yes, sir, I do.

Q. How much of the acreage? A. I do not know how much now has been reduced to title. It is all under written option for which money was paid to the owner.

Mr. Hunt: I object to any option which is not a sale. The cases are very clear on that point, all collected in Lewis on Eminent Domain; an option is in no better case than an offer, and an offer is not admissible, neither is an option in any better case than the asking price, and the asking price is not admissible.

Mr. Matthews: An option, if your Honor please, of the property which has been appraised by a man—which option has been made a contract by the payment of a part of the purchase price is evidential.

The Court: If that has been reduced to a contract-sale, a binding contract to sell, he takes it out of the class of options that you have referred to, Mr. Hunt.

Mr. Hunt: But I still object that contracts of sale are not evidence of value. We might have contracted to sell some part of the remaining 20,000 acres of our land for $100,000 an acre. Would the contract be evidential here?

The Court: It would be evidential, but it would not fool the jury very much, in my judgment, at that price.

Mr. Hunt: For the same reason, I object to the jury being fooled about the option on the site to be referred to.

The Court: I will hear you both on the question, if there is any doubt about it. My judgment would be that if it was an honest contract, and there had been a consideration for the contract, that it is evidential and is distinguishable from an option. Now, if you can show that these phoney contracts—

Mr. Hunt: I submit that the honesty of the contract, if there be a contract, cannot be established in the absence of the contract before me and one or more of the parties to the contract before me, in order that I may examine them.

Mr. Matthews: I will withdraw that.

The Court: The question is withdrawn.

Q. In the Foxcroft property, do you know of any acreage that has been sold and a price paid for it? A. Yes, sir.

Q. Are you able to testify as to the number of acres sold and the price per acre; yes or no? A. Yes, sir, I am.

Q. How much acreage in the Foxcroft property was sold? Now, not contracted for, Mr. Hershfield, but actually sold, that you are familiar with?

Mr. Hunt: I suppose he should show when before he comes to price.

Mr. Matthews: We will. It is just how much, first of all.

A. I know of approximately 116 acres that were sold, including a ten-room house; another house and large barn, and a smaller barn. This was what I designated as the key to the property. It was on the main road.

Q. Wait a while before you go any further. When was that sale? A. Within a year, as I recall.

Q. Locate the 116 acres that you call "property key"? A. On the main road, on the improved road, a scant half mile southerly from the village of West Milford.

Mr. Matthews: In fairness to my opponent I turn you over to him for cross examination as to your knowledge of this sale, because I do not know about it. Do you wish to cross examine him as to how he knows the value and the acreage value?

PRELIMINARY CROSS EXAMINATION BY MR. HUNT:

Q. What was the name of the seller? A. Van Dien.

Q. What is his first name? A. I only know his initial, A.

Q. How do you spell Van Dien? A. V-a-n D-i-e-n.

Q. What was the name of the buyer? A. Either he took it personally or in the nam of Tomlinson, or the Foxcroft Estates.

Q. What is the first name of Mr. Tomlinson? A. His initials are C. F.

Q. C. X.? A. F., as I recall it.

Q. Who was the buyer, Mr. Tomlinson or the Foxcroft Estates? A. I don't know, one of the two.

Q. Do you know whether or not the deed has been delivered? A. I am told by him that he has the deed, has paid for the property, and is living on it and is in possession.

Q. Is that the only knowledge you have concerning it? A. That is all I have.

Mr. Hunt: I submit it is not competent.

Mr. Matthews: It could not be any fairer, if the man is living on the property, that they have a chance to rebut it if it is not so. My proposition is this: I offer this expert on this particular piece of property with the knowledge that has come to him as it must necessarily come to real estate men who are in the general business.

The Court: I do not understand that we are held down to the strict rules of hearsay when we are dealing with experts. I understand the rule to be, if a real estate man knows through the usages of the trade, of transactions he may testify. I will allow it and grant you an exception, Mr. Hunt.

Mr. Hunt: Thank you.

REDIRECT EXAMINATION (resumed)
BY MR. MATTHEWS:

Q. Then, Mr. Hershfield, will you give us the acreage price—strike that out—

Q. First of all, give us the comparable features between this 118 acres and the Hewitt property.

The Court: He has already done that. You mean the Ringwood property?

Mr. Matthews: Ringwood property.

Mr. Lewis: Not of the 118. It was six hundred something.

Mr. Matthews: I do not want it unless it squares with our property.

The Witness: This 118 acre tract has on it an eight-room dwelling in good condition; another large dwelling in not so good condition,—poor, in fact. A very large barn and an orchard of 100 bearing apple trees. The ground has recently been as intensively farmed as any ground in that section is. That is, the fields have been used for grass and pasturage. The ground of the 116 acres is what I term the key to this whole accumulation of this six or seven hundred.

Q. You have said that? A. Beg pardon?

Q. You have said that? A. Yes, sir.

Q. What acreage of the Ringwood tract would compare with it? A. To some of the best acreage of vacant land that the Ringwood Company has.

Q. What was the price of the 118 acres, or what was the acreage price, if you know? A. With all improvements, including the orchard and buildings, $7,500.

Q. What was that per acre? A. Well, I have not valued separately the buildings on it. I could not reduce it to acreage value, because I never valued the buildings separately, but the buildings, ordinarily, in my experience I would say were worth at least $5,000.

Q. That the buildings were worth $5,000 out of the $7,000? A. The buildings and their improvements on the ground were worth at least $5,000.

Q. Would that mean $2,000 then for the land, in your estimation? A. If my deduction as to the value of the buildings is correct, it would.

The Court: But your subtraction in that case would be bad, because $5,000 from $7,500 is not $2,000, but $2,500.

Mr. Matthews: I took $7,000.

The Court: I understood him to say $7,500.

Mr. Matthews: Your Honor is correct.

Q. Then, the acreage value would be 118 divided into $2,500, is that right? A. Less $1,500 for the value of the orchard. There was 100 bearing trees there in good condition.

Q. And this 118 acres, you say, is the key piece of the entire Foxcroft property? A. Yes, sir, it is on the main road controls the principal approaches to the property.

Q. Now, Mr. Hershfield, come once more to the German Village. You have been asked about the value of the properties and of the improvements, land, on the Valois, the Sherman, the Minna Meyer and other German Village tracts? A. Yes, sir.

Q. And you have been asked concerning the value of the bungalows on those tracts? A. Yes, sir.

Q. Have you any detail of communication between you and the owner as to these values of these tracts? A. I have letters from them.

Q. Now, don't tell anything of the contents. Your answer is you have letters from the owners? A. Yes, sir.

Q. Will you just, first of all, tell us letters with reference to what tracts or lots, and go no farther than my question so that it may be objected to, if necessary. A. I have a letter—

Q. Now, do not give the contents. A. No, from Miss or Mrs. Minna Meyer.

Q. Relating to the Minna Meyer land or improvements? A. To both.

Q. What did you testify on Mr. Hunt's cross examination the value of the improvements on the Minna Meyer property were? Do not look at any memorandum now, except the memorandum of your own in the making of the value. A. Approximately $300, of which $100 was inconvenience.

Q. $300 was what, land value or improvement value? A. $300 for the improvements.

Q. $100 was for inconvenience? A. Yes—no, $300 was improvement and inconvenience.

Q. I see. In arriving at this figure do I understand you to use not only your own observation of the premises, but the statements of the owners? You told Mr. Hunt that. A. Yes, and letters—

Q. Have you those statements of the owner in written communication to you? A. I have a letter from the—

Q. Don't say anything about it? Have you? A. No, sir; not to me. To Mr. Ricker, one of my associates.

Q. I don't care for it. Have you any letters direct to you? A. No, sir.

Mr. Matthews: That is all. Cross examine him.

Now, Mr. Hershfield, you may give Mr. Hunt that memorandum, if you wish, that you prepared, if you have a copy of it, that detail of my 23—

Mr. Hunt: I don't want it.

Mr. Matthews: All right, thank you. Keep it yourself.

RECROSS EXAMINATION BY MR. HUNT:

Q. Mr. Hershfield, you were saying that on the Fox property there were valleys in which a lake—and then Mr. Matthews interrupted you and told you to go no further. Just finish that statement, won't you?

Mr. Matthews: I object, because I asked that it be striken out as not responsive, and it was so.

The Court: It was stricken out.

Q. On the Fox property are there any valleys in which a lake could be produced?

Mr. Matthews: I object to that as immaterial to this issue, if your Honor please, and not cross examination, because he gave Fox values according to value standards he recited to me in my direct, and I expressly excluded that, because I did not want any values created by artificial means.

The Court: Objection sustained.

Mr. Hunt: If your Honor please, the sense of that objection is that everything the witness testified to on direct examination is to be conclusively presumed to be true and not to be subjected to the test of cross examination. That is the practical effect of such a ruling.

Mr. Matthews: It is not my objection.

The Court: No, the objection is that it is not proper cross examination, because it was not touched on in the direct examination, and that the testimony was not directed towards that in any way, shape or manner. That is correct?

Mr. Hunt: According to my notes the witness was asked on direct examination to describe the terrain. Your Honor has used that word.

The Court: And he did describe the terrain.

Mr. Hunt: I would like to ask him some further particulars about the terrain, expressly: Is there in that Fox tract a valley or more than one valley susceptible of the creation of a lake or pond, body of water?

Mr. Matthews: I object now to that in addition to it not being cross examination, it is immaterial, because it is not offered for artificialities but for the actual condition of the ground, and it is seeking to open the door to cross examination. If in his case he thinks he can offer that by his witness, then we would object to it, forsooth, but it would be his case.

Mr. Hunt: I think I can make my position perfectly clear, your Honor. If there is in the Fox property such a valley it is conceivable at some time in the future this Commission, for example, or some other public body, will be wishing to acquire that property for a reservoir. Most assuredly, if there were not within this taking valleys in which lakes of water could be impounded, the Commission would not be seeking it. I have not seen the Water Commission seeking tidal marsh on the Hackensack River nor flat lands in Middlesex County south of New Brunswick along the Raritan, nor Big Mountain tops within this taking. They are all excluded. What they are taking here is valley, and they are taking it because it is fitted by nature as a cup to hold water. Now I want to show whether there is anything in the Fox area fitted by nature as a cup to hold water, and I think I have a right to show it.

Mr. Matthews: It is immaterial to this issue, because we are not taking the Fox plot, and we only offered the Fox terrain for showing an acreage similar. Even if that man has a whole valley, he is not holding anybody up for it, or public necessity.

The Court: I think it is immaterial.

Mr. Hunt: May I have an exception.

The Court: You may.

Q. You testified that the average value of the 23 tracts to which you gave evidence yesterday was about $65 an acre, did you not? A. Yes, sir.

Q. All of those 23 tracts were acquired by you for the Water Supply Commission, were they not? A. Yes, sir.

Q. Now what is the average value of all of the tracts that you have at any time acquired for the Water Supply Commission?

Mr. Matthews: I object to it as not cross examination and as immaterial to this issue.

The Court: I did not get your last question. Did he testify yesterday that the 23 tracts he mentioned averaged so much an acre?

Mr. Hunt: He did this morning.

Mr. Matthews: He did this morning under my questioning. He added all the acreages of yesterday and gave me an average acreage value. The question now is what is the average acreage value of all that he has acquired for the Water Commission. I say it is not material and it is not cross examination, your Honor. On cross examination of this witness he must be confined to what his redirect was. He testified to average on redirect. Just as I

would withdraw my question, if your Honor please, on the Fox property if it was not direct examination, and they permitted me. That is the only reason I pressed the proposition. This is an attempt to do what could not be done under cross examination on my original direct. If I had asked Mr. Hershfield a question on the averages for more than a specific amount, then that cross examination would be competent.

The Court: Mr. Hunt's point, I take it, is that when you asked him the average price of 23 tracts in this taking, that is to say, the large taking, that you opened the door for him to ask the average of the remaining tracts.

Mr. Hunt: That is it.

The Court: Is that the point?

Mr. Hunt: That is the point.

The Court: I do not think it is well taken, and I will sustain the objection, because it is not in my judgment proper cross examination of this redirect, and as I recall it I previously ruled on the question denying the admissibility of it. You may have an exception.

Mr. Hunt: Yes. Note the exception then, please, Mr. Kelley.

Q. I believe you said you had made an appraisal of the Fox plot property. A. I didn't say—I went up there to look at it. I said that.

Q. Did you or did you not say you had made an appraisal of it? A. I had made an appraisal, yes.

Q. You made an appraisal? A. But at the time I was up there the property had already been bought.

Q. But in spite of your having made an appraisal you are unable to inform the jury of the value of the

buildings standing on the 116 acres conveyed? A. They were relatively infinitesimal portion of the value of the tract.

Q. Answer the question, please.

(Question repeated by stenographer.)

A. I valued the buildings at $5,000, and have so testified.

Q. You call $5,000 an infinitesimal portion of $7,500? A. No, sir. That 700 acres which was accumulated at $60 an acre.

Q. Well, Mr. Matthews asked you to value the buildings standing on the 116 acres which you said had been conveyed? A. Yes, sir.

Q. I understood you to say you could not do so? A. I said I had not done so. From my recollection I would say that that eight or ten room house, the big barn, the additional house and the small barn were worth at least $5,000.

Q. I see. That is what you call an infinitesimal part of the $7,500 consideration paid for the whole 116 acre tract with its improvements? A. I didn't say that at all.

Q. I thought you did. A. I said it is an infinitesimal part of the whole acreage which was accumulated at $60 an acre.

Q. Now I point out to you on Exhibit C-1 the tract which is marked 138 containing 11/100 of an acre, owned by Walter Haverman. Did you purchase that for the Water Supply Commission? A. Yes, sir.

Q. What is the size of it?

Mr. Matthews: This is hardly recross of my redirect, but I won't object to it if it has any value—they are establishing a value.

The Court: Very well.

A. 50 x 100.

Q. What was the whole amount of money paid by the Water Supply Commission to Mr. Haverman at the time that lot was conveyed by him to the Commission? A. $600 including the improvements.

Q. What were the improvements on Walter Haverman's lot?

The Court: How much was paid, Mr. Hershfield?

The Witness: $600 for the lot and what was on it.

A. Apparently a foundation and such clearing as may have been there.

Q. Describe the foundation. A. I cannot. I have no notes of it, Mr. Hunt.

Q. Are you sure there is a foundation on it? A. In my letter to the Title—

Q. I don't want you to read from the letter.

Mr. Matthews: I submit he is entitled to answer.

A. In my letter—

Mr. Hunt: I object.

The Court: Do not read from it, Mr. Hershfield. Just tell why?

Mr. Hunt: May the question be read to him. I have not asked him the question why.

The Court: I thought you asked him about the foundation, and he is telling you why he said there was a foundation there.

Mr. Hunt: I did not ask him for any reason.

(Question repeated as follows:

"Q. Are you sure there is a foundation on it?")

A. I am sure there was one. I don't know what is there now.

Q. What kind of a foundation was it? A. A wooden one, as I recall.

Q. A wooden one? A. Yes.

Q. Just explain to the jury what you mean by a wooden foundation? A. Spiles with the foundation for a tent or portable building.

Q. How far apart were the spiles? A. I don't recall.

Q. Were they driven so as to be touching each other? A. No.

Q. What was the area of the piece of ground marked out by the spiles or enclosed within the spiles? A. I don't recall.

Q. Well, look at your notes and tell what value you placed upon the spiles? A. $300 in addition to the value of the lot for whatever was on the lot. I refer to it here as a foundation, and the owner refers to it as a wooden structure.

Mr. Hunt: I ask that that be stricken out. It does not answer the question.

Mr. Matthews: He said to look at your notes, and the notes consist of the owner's letter and whatever detail he has, and I submit he is entitled to give the information.

Mr. Hunt: I don't care how much he looks at his notes. Repeat the question.

(Question repeated by stenographer.)

A. I did not differentiate—

The Court: Strike out the last answer. Now answer it over again, Mr. Hershfield, and answer it responsively.

A. I placed no specific value on the spiles at such.

Q. What other structures stood upon the property except the spiles? A. As I recall, a platform and other improvements.

Q. Do you recall that? A. Possibly an outhouse and the clearing to the ground.

Q. Now actually an outhouse or not? A. I don't recall, Mr. Hunt.

Q. You don't know. How much of the ground had been cleared? A. Presumably—

Q. Not presumably. Actually? A. All that was necessary to make it—

Q. Well, as a matter of fact, Mr. Hershfield, it was cleared ground to begin with down in here on one of the benches along the Wanaque Valley, wasn't it? A. No, sir; there were trees there.

Q. Yes; there is here and there a tree, about as many as you would want to surround your little house if you were going to build one there; isn't that so? A. No, sir. You have to clear to get the house before you could have it surrounded.

Mr. Hunt: If the court please, I ask that the Haverman lot be pointed out to the jury on the next inspection, and this witness be directed—

Mr. Matthews: I object to these requests, your Honor. You have continually told him if he made them in private you will have it pointed out.

The Court: I now suggest that if you remind me of it or have some one make a memorandum so we don't forget it, I will be very

glad to do so. I have not made any memorandum of your various requests, and have told you before I shall not charge my mind with it. I will be very glad if you will call it to my attention when the next view is made, all the various pieces, if one of your assistants will jot that down.

Mr. Lewis: It is in the evidence.

The Court: It will be very difficult to find it.

Mr. Hunt: If the court will permit me to say it, night by night I read the evidence and I mark the points I want to refer to again either on the view or in the court room, and that is the reason for putting it this way, if your Honor will permit me to make a memorandum.

The Court: I haven't any objection, Mr. Hunt, and it is a very good reason for making it so you may refer to it when the testimony is written.

Mr. Hunt: If I may say it, it is a hard job to try this case and a hard job to examine this witness, and I would like to lighten my labor as much as I can by some little system.

The Court: I suppose I have the easiest job of all, but in spite of that I am not going to make notes.

Mr. Hunt: I do not blame you for that. Now to complete my memorandum on the record, I would like the witness to point out to the jury the location of any improvements existing on the Haverman lot at the time the Water Commission purchased it, but which have since been removed.

Q. Now, Mr. Hershfield—

The Court: Did you ask that?

Mr. Hunt: That is my own guiding memorandum.

The Court: All right.

Q. Just come down here to the map, please. Will the court permit the jury to draw near to the map if they wish to, because this refers to rather a small piece of property?

The Court: Yes. The jury may, especially the man on this end, crowd over if they wish, so they can see. Is that the point?

Mr. Hunt: That is the point, if they need to in order to see.

Q. Now, Mr. Hershfield, I point out to you the Fred M. Smith lot of 63/100 of an acre, numbered on the map 110-A. Can you see it plainly? A. Yes.

Q. Now you testified yesterday on redirect examination that one item of your valuation of that property was 190 feet frontage on a public road. A. Yes.

Q. I want you to show the jury any public road on which that lot fronts and point out the extent of the frontage? A. The public road is not shown on that map. It is what is known locally as the Vail Road, that goes from the Miller house road in a southerly direction past the old Carrington Cemetery and back to a farm in here somewheres (indicating). It is known locally as the Vail Road. It is not shown on the map, but it is a road that is traveled and I have been over it several times.

Q. Is it an improved road? A. Only as a dirt road would be. If it had—

Q. Is it a public road? A. If it had traffic on it the road itself would sustain ordinary traffic.

Q. Now is it a public road or what we call in our part of this State a drift road?

Mr. Matthews: I object to that. He cannot be told to answer what Mr. Hunt calls them in his part of the State.

Q. All right. Is it a public road. I strike out the rest. A. As far as I know it is.

Q. Do you know whether it is or not? A. I have no knowledge except as would be indicated by the fact that it is substantially fenced on both sides and it is probably 30 feet wide between the fences.

Q. Do you know whether it is worked by the public authorities? A. There are very few worked except County and State roads—

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

A. I don't know whether it is worked or not. I know I have been over it.

Q. Just answer the question. I did not ask you whether you had been over it or not. Will you make a note on the record that I would like this road shown to the jury by the witness when we next view the property? A. Shall we take the bus over it, your Honor? We can.

Q. I am perfectly willing to. A. We can take the bus over it.

Q. I am interested in the truth of whether there is 190 feet of public road frontage there or not.

The Court: All right. You might take the stand, Mr. Hershfield.

Mr. Hunt: May he come back to the map, your Honor.

The Court: Yes.

Q. Now, Mr. Hershfield, I believe you stated the other day that you allowed no plottage value for the 2354 acres being taken for the reason that the tracts were separated one from the other? A. There is no continuity in the taking.

Q. No continuity, yes. Just step down, please.

Mr. Matthews: If your Honor please, at this time I arose as quickly as I could, because I was disconcerted on the other side of me. There is no testimony as to plottage values, and I objected to plottage values on cross examination and I asked him nothing on direct examination, so I submit that any questions having to do with plottage values on this is objectionable for two reasons, first of all, it is not recross examination of my redirect, and in the second place, it is not comparable.

The Court: What would you say, Mr. Hunt, with respect to what you had asked him previously?

Mr. Hunt: I asked him previously on cross examination whether there was any plottage value, and he said no, as he just now repeated, because there is no continuity between the tracts. I must confess and throw myself upon the mercy of the court to having forgotten to pursue in my cross examination that subject, which I intended to pursue further. If the court will permit me, I would very much like to carry it a little further. It won't take me five minutes' time.

Mr. Matthews: In order that the court can be merciful I would withdraw the objection, so the court won't find it difficult, but my objection goes further, that it would not be comparable. If this witness testified to values I must have been asleep, because I objected—

The Court: I will allow it, if you do not pursue it any further than you stated, subject to being stricken out when the questions may be ruled on later.

Q. Now just step here and go fast. I ask the same privilege that the jury come closer to the map if they wish. I point you to the yellow Ringwood land marked 80 towards the southern end of the taking, and to the Ringwood holding marked 83 in yellow. Do you see them? A. Yes, sir.

Q. Read to the jury the inscription on this map on the white space in between these two? A. It says, "Ringwood Company".

Q. That belongs to the Ringwood Company, doesn't it? A. I don't know.

Q. Now to move on, I point you the yellow 83 and to the area to the north of it, and ask you how that is marked? A. Says "Ringwood Company".

Q. Now that joins up with Ringwood Company in tract 80, doesn't it? A. Yes.

Q. Now I point you to 100-B adjoining tract 80, and then to the piece to the left of 100-B; what is that marked? A. Marked "Ringwood Company".

Q. Yes. Then I point you to the area in the north and northwest of the tract 84 and ask you whether you don't know that the Ringwood Company owns a lot of land there? A. I do not—

Mr. Matthews: I object to it as immaterial whether they own a lot of land in there, and calling for hearsay and a conclusion.

Q. Don't you know that part of the more than 20,000 acres owned by the Ringwood Company lies right in here where I am pointing on the north and northwest side of tract 84? A. I know that the Ringwood Company has a vast acreage, I don't know where it is.

Q. Now, I point you again to Tract 80 and to the white area marked Ringwood Company to the north of Tract 80, and ask you to follow me as I come through that area,—first west and then south, that brings me right into Tract 79 of the Ringwood Company, doesn't it? A. Yes, sir.

Q. You know that the land of Edward R. Hewitt was deeded to him by the Ringwood Company, did you not? A. I so believe.

Q. You looked into that? A. I did not.

Q. And you know that Edward R. Hewitt's deed contains a reservation—

Mr. Matthews: I object to this. The deed is the best evidence. "You know the deed does attach," I object to any hearsay testimony on it. It is incompetent, and it is not that promised recross in five minutes of continuity.

Mr. Hunt: My five minutes are not up yet.

Mr. Matthews: It is not a question of time.

Mr. Hunt: I allowed you to ask a thousand questions on these different things without objection.

Mr. Matthews: I have not asked a thousand questions in this case yet, and you know it.

Q. You know the deed contains a reservation in behalf of the Ringwood Company permitting the Ringwood Company to build roads wherever it will over the Ringwood property?

H. G. Hershfield—Recalled—Recross.

Mr. Matthews: I object.
The Court: I will allow it.

A. I know nothing in the deed. I never heard it before.

Q. Didn't you hear it referred to in the Edwad R. Hewitt condemnation case in which you were a witness?

Mr. Matthews: I object.
The Court: Sustained.

Q. Now, I point you to Tract 85-B and this point (indicating) and Tract 88, coming over to the northeast of this white area in between, and ask you whether you don't know that the Ringwood Company owns this white area down to the line of land of W. Dudley Carleton? A. I don't know who owns that white spaced property. I don't know the Ringwood property at all except what we are taking, except they have a big acreage in that section, and part of it in New York State.

Q. Now, I point you to the northwesterly corner of Tract 88, and from that I describe a line out through this white area up the north end of the map, and curling around into Tract 90, and ask you whether you don't know that the Ringwood Company owns all the land lying on both sides of the line I have just described? A. I don't know they own all; I know they have land in that direction.

Q. So that by going over their own land they can pass from Tract 88 to 90? A. Not if that corner comes to a point.

Q. Not if that corner comes to a point; except for that they can, can't they? A. That is enough.

H. G. Hershfield—Recalled—Recross.

Q. And I am right in saying, if the Ringwood Company has the right to build a road over the Edward R. Hewitt place, it makes no difference—

Mr. Matthews: I object to that as argumentative and calling for a conclusion.
The Court: Oh, I will allow it.

A. If you are right, then, of course, they can't cross that land. I do not know whether you are right or not.

Q. I read from your redirect examination a question put yesterday by Mr. Matthews and answered by you as follows, at page 828:

"Q. What was the value of that house on the Tri-County 12-acre tract? A. The contract called for approximately $8,500 for that brick house, without the lot."

Now, do you mean, Mr. Hershfield, that at the time the Tri-County Company bought the 12-acre tract there was a brick house standing on it? A. No, sir.

Q. As a matter of fact, there was no house standing on it? A. That is true.

Q. No other improvement of any kind, no building of any kind? A. No, sir.

Q. And the brick house thus referred to in your answer, is a house that the Tri-County Company has contracted to build since it became the owner of the property? A. It is just being finished now.

The Court: I might say, Mr. Hunt, that the jury saw that property when it went on its tour of inspection.
Mr. Hunt: I see, I am very glad of that.

Q. Now, just come back to the map once more, Mr. Hershfield.

The Court: Suppose counsel come up here for a moment.

(Conference of counsel with the Court.)

Q. Now, come back to the map, please, Mr. Hershfield.

(Witness approaches map.)

Q. (Continued) Now, Mr. Hershfield, you know the Ringwood Company disposed of a tract of 190 acres to the Water Supply Commission— A. Yes, sir.

Q. Is that the tract which I now point to, 78-B? A. That is part of it, I believe.

Q. Now, will you stand here alongside of the map and trace the outlines of that 195-acre tract for the jury, going carefully now, so they can see it? A. Shall I describe it for the record?

Q. All right, describe it for the record, if you want to, by reference to the other tracts that it passes? A. I am trying to get a point to begin with: Beginning at the approximate center of the easterly line of Tract 26-D belonging formerly to Serafine Murchio; thence easterly, approximately 400 feet; thence southerly, approximately a thousand feet; thence northerly approximately 600 feet; thence westerly—southerly approximately 62,000 feet; thence northerly approximately 2,000 feet; thence--continue that last line southwesterly 1600 feet; thence easterly 2,000 feet; thence around a couple of corners, 800 feet; thence northerly 600 feet; thence westerly—easterly, 800 feet; thence

northerly 1500 feet; thence west, southerly, 1500 feet; thence northerly or westerly 500 feet; thence southerly 500 feet; thence easterly a thousand feet; thence southerly 300 feet; thence westerly a thousand feet; thence southerly 400 feet; thence westerly 2600 feet; thence northwesterly 3200 feet. Well, take out the last correction. Thence northerly northwesterly, 2400 feet; thence westerly 600 feet. Do you want this too (indicating)?

Q. Yes. A. Thence northerly 500 feet; thence westerly 200 feet; thence northerly 300 feet; thence easterly 700 feet. Again, easterly, but a little north 300 feet; thence northerly 800 feet; thence easterly 400 feet; thence northerly 150 feet; thence westerly 700 feet; thence northerly 400 feet to the point or place of beginning.

Mr. Hunt: Now, if the Court please, that is so complicated an outline of this tract, so peculiar, that I will appreciate if you will permit the witness to trace a line with a yellow crayon on this map, because I would like the jury to see afterwards what the outlines are.

Mr. Matthews: I object to that. If anybody should be asked to do that, he should not be asked to do it. I want to object to Mr. Hershfield using the thick, yellow pencil on a map that is 400 feet to the inch, made by our engineer to mark the outline of our property. It is unfair, and it is not competent to do it.

Mr. Hunt: I only make the request that the outlines of this tract be marked on Exhibit C-1.

The Court: Is there any objection to having the engineer marking it?

Mr. Matthews: None, if it is marked engineeringly instead of Hershfieldingly.

The Court: Is that the—

Mr. Matthews: Of course, it is already marked.

The Court: I understand that, but so that it might stand out as a sore thumb.

Mr. Matthews: All right, we will put the sore thumb on it. If our engineer is here we will do it at the recess.

The Court: That is your suggestion, Mr. Hunt?

Mr. Hunt: Yes, sir, as long as it is done before the case goes to the jury.

Mr. Matthews: We have, apparently, a day and a half to do that, yet.

Q. Now, within the exterior lines of the tract that you have just—

The Court: Just a moment. Mr. Hershfield, that map does not contain distances on the various courses, does it, the fact?

The Witness: Only approximated.

The Court: Therefore, you gave the distance it was in your approximation?

The Witness: Yes, sir.

Mr. Hunt: And I state now for the record that it was only a rough approximation and I will concede it to be an accurate rough approximation.

Mr. Matthews: Thank you for that concession, but we do not accept it, because we will have the engineer put it on.

Q. I point out to you a white space on this map marked 77, Charles K. Smith, and enclosed by the

exterior line of the plot which you have just described. Do you see it? A. Yes, sir.

Q. Does that white tract belong to the Ringwood Company? A. Not to my knowledge.

Q. No, never did to your knowledge, did it? A. No, sir.

Mr. Matthews: I object to the "never did."

Q. Now, I ask you to trace for the jury, if you can, on Exhibit C-1, a route over a public road by which any part of the tract which you have just outlined can be reached? A. I know of no public road there. There are one or two roads that I have been over that are in that tract.

Q. Then, you tell me there is no public road reaching to this tract? A. Those roads may be public, but I don't know of them.

Q. Is there or is there not a public road leading into or abutting upon the tract of land which you have just described and outlined on this map? A. There is a road. I have been over it, and over which teams have been.

Mr. Hunt: May that be stricken out as not responsive?

Mr. Matthews: Well, he has answered whether it be public or not he does not know.

The Court: I will let the answer stand.

Q. Whether it is public or not, you do not know? A. I don't know, but I have walked over it.

The Court: As I understand it, Mr. Hershfield—

Mr. Matthews: That would not make it public.

The Witness: No, sir.

The Court: (Continuing)—the general location of that property that you have been asked to describe on the map is down in close proximity to the big dam, is it not?

The Witness: Yes, sir.

The Court: And when you speak of roads you have reference to the roads that were there prior to this dam being built?

The Witness: Yes, sir.

Mr. Hunt: And I referred to roads being there prior to this proceeding.

The Court: Roads that were there prior to this time.

The Witness: The roads I referred to were roads I walked over before that dam was started, and on which wood was taken out and carting done.

Q. Now, show the jury on the map, and I hand you a yellow pencil with which to mark it, where the roads to which you have referred as being in this tract comes into.

Mr. Matthews: I object to any marking by this yellow pencil, and ruining our map. If there is any road it may be indicated by a small cross, but to mark the road with that pencil, we will object to that, because the scale is 400 feet to the inch.

Mr. Hunt: That is a good liberal scale, and I submit the map won't be ruined by having the road marked on with a pellow pencil. A mark made of this road with a yellow pencil will be a mark the jury can see afterwards. That is the reason I want to use the yellow pencil.

Mr. Matthews: I would like to have it marked on, not traced.

Mr. Hunt: And I want it traced.

Mr. Matthews: And I object to it being traced, unless it is done by the engineer.

Mr. Hunt: I should like to have it traced by the witness who has been over it. It may be that an engineer has not been over it.

The Court: I will allow him to indicate it with his ruler or his pointer, but I do not think it ought to be marked over the objection of the Commission, because they may have a reason for it, which is not disclosed. I mean by that, they may have other uses for this map that would be more or less destroyed by the marking of this road. If the engineer, when he marks the outline of the tract that you have referred to can, in addition to that, trace the road, there is nothing to that. I think that might be done.

Mr. Matthews: We will be glad to have him do it in red ink, but not with a lumpy pencil.

Mr. Hunt: I will gladly pay out of my own pocket for an exact reproduction of the map for counsel on the other side, if you will allow this witness to indicate in a permanent manner the course of the road that he says he has been over to get to this tract, because I want the jury to go over and see if the road is there. It is a big tract of land, and if the road is there it may be all right. Won't your Honor permit that?

The Court: I will allow him to indicate it with a pointer, but I do not think I should be asked to have this map mutilated or defaced, in view of the objection of the owners of the map.

That is the ruling, especially in view of the fact that the Commission say that they will have the engineer mark in a way that will not deface the map or render it useless for other purposes, the course of this road.

Mr. Hunt: But no engineer has testified to such a road.

The Court: But, if the engineer does testify and can point it out, he will do so.

Mr. Matthews: It has not been testified to as to the tract, but we will have it pointed out in Mr. Hershfield's presence, if they want it, and we do not want Mr. Hunt's money for a new map.

Mr. Frazer: We will submit the engineer for cross examination.

Mr. Hunt: I do not understand there is objection to cross examination of the witness they now offer. He says there is a road, and he has been over it. I respectfully request he be required to mark on this map the location of the road.

The Court: And the objection is that this witness is not an engineer, that this map is drawn to scale, that he could not accurately do it, under the circumstances. And, particularly with a broad, yellow crayon, or even a sharp yellow crayon, or even with ink, and I think the objection is well taken, and I will not permit it.

Mr. Matthews: If they want to contradict him they can put a witness on and have a map of their own, instead of buying it for us, they might buy it for themselves.

Mr. Lewis: You might ask the witness whether he can do that. He already said he can read maps.

Q. Mr. Hershfield, is it possible for you to outline on this map the approximate course of the road by which you say you have entered this tract? A. There are two roads.

Q. All right, either of them? A. I can, yes, sir.

Q. Both of them? A. In a general way, yes, sir.

Q. Will you do so, using any pencil or pen that the Court and the opposing counsel wish you to use?

Mr. Matthews: We have no objection to the location by point, but we have every objection to tracing by line. He says he can locate them approximately. I submit, if your Honor please, this is meticulous. If he wants to contradict this road, he can put a point at the beginning, and the middle and the end of that map.

Mr. Hunt: That is perfectly agreeable to me. Just mark this road anyway.

The Court: Very well, let it be marked that way.

Mr. Matthews: Take the road, Mr. Hershfield, at the beginning, and the end and in the middle.

The Witness: There was a road—

Q. You are going to mark it now and not talk about it. A. I will do both.

Q. Mr. Hershfield, the Court will tell you that you respond to my question. My question is, please indicate on this map one of the two roads that you have referred to as leading to this tract.

The Court: That is exactly what he was starting to say.

Mr. Hunt: No, sir, he was starting to talk.

The Court: If you want him to indicate on the map, very well, but I got the impression from the question, and evidently Mr. Hershfield did, that you meant indicate by more than one method. If you want him just to make crosses I will instruct him accordingly.

Mr. Hunt: I would like him first to make crosses, and after that he can describe the location or course of the crosses in any way he pleases.

The Court: Very well.

Mr. Matthews: Be careful of that map. With your Honor's permission, I warn him.

Mr. Frazer: That would be single crosses.

(The witness indicated on map.)

Q. Have you marked them? A. I marked three crosses.

Q. I want your crosses to be sufficient in number, and so placed as to connect this road up with the existing public roads.

Mr. Matthews: I object. We consented to have one at the beginning, one at the end, and one at the middle, and any more would be simply a line of crosses, instead of a line.

The Court: That all depends on the course of the road. If the three crosses will not indicate the course of the road, I think he might put some more, without making it a direct line.

Mr. Matthews: I submit they do indicate it.

The Court: Now, let us see. Mr. Hershfield, with your pointer now trace the road that you have indicated with crosses and show where each cross is.

The Witness: The first cross on the south.

The Court: No, take your pointer.

The Witness: Is on the southeasterly—wait a minute—northeasterly end of Tract 78-B. That is near where that tract meets the westerly line of Tract 73, formerly owned by Bob Butler. Then, the next cross is on the northerly side of the Robert Butler tract; and the third cross is off of the taking, and south of tract 78-B.

The Court: Now, begin at the beginning, and put your pointer at the first cross, and trace the course of the road to the last cross.

The Witness: Roughly, the easterly and south; then, roughly, southerly and east. I have been over both of those roads, and seen hauling.

The Court: But you have only described one road.

The Witness: There are two roads. One meets the other. I call those two roads. One comes down from the mountains and the other meets the road going out by the old Ringwood Mines and the Lake Iosco tract, formerly Price's. I have been over that road and seen wood hauled.

Mr. Hunt: Now, will your Honor permit me to put a question or two?

The Court: Yes, sir.

Q. Mr. Hershfield, in what manner do your crosses indicate whether or not this road that you speak of connects up with any public road? A. At that time they did. I don't know what they do now.

Mr. Hunt: I ask that the witness be required to put on other crosses showing the point or points where these roads connect with any pub-

lic, road, because a road that is simply in Robert Butler's property, not a public road, is no good to me to reach my property.

The Witness: This road eventually met the Blue Mines Road at or near Price's Falls.

Q. Please mark the place? A. Price's Falls is over in this direction.

Q. It does not appear on this map? A. No, sir; it does not appear on this map.

Q. So that you say this road at one time met the Blue Mine Road at Price's Falls? A. No.

Q. Near Price's Falls? A. No; the Blue Mine Road. Here it is (indicating). The Blue Mine Road is here (indicating). Now, this road and this cross (indicating)—you come from here (indicating), via Price's Falls over to the Blue Mine Road. I have walked it.

Q. The road as you have described here passed for a distance of about 800 feet through property marked on this map as property of "Robert M. Butler Tract 73", does it not? A. That is true.

Q. And it passes off into the white, in property whose ownership is not indicated on the map? A. In a general direction towards Iosco Lake Road.

Q. Now, Mr. Hershfield, please follow my pencil as I describe through the white paper at the south of the colored portions of the map a line which follows roughly the southerly boundaries of this irregular tract that you have outlined on the map, and I ask you whether it is not a fact that the Ringwood Company owns no land whatever along the line that I have just traced, but that the ownership of that land is in other persons? A. That I do not know.

Q. You do not know? A. I never did.

Q. Well, now, you do know that the reason that the Water Supply Commission wanted this—strike that out, please—I want to get a short term, Mr. Hershfield. Haven't we always spoken of that as the irregular tract?

Mr. Fraser: The isolated tract.

Q. Now, you negotiated the purchase of that isolated tract from the Ringwood Company for the Commission? A. For a specific purpose.

Q. And that purpose was that there was a certain Standard Oil pipe line which had to be moved? A. Yes, sir.

Q. And you had to get this tract in order to conveniently move it? A. Yes, sir.

Q. It also had to be moved at a point where it ran on to this isolated point as shown on the map? A. No.

Q. The pipe line had to be moved from within the boundaries of the isolated tract, but also out of the boundaries of this white area tract?

Mr. Matthews: This is all immaterial to the issue.

The Court: I will allow it. I do not know how material it might be.

A. From here is where it had to be moved (indicating), because this drained into the reservoir shed and we had to bring it south in case there was a break so it would not drain into the watershed.

Q. It was moved over into this area (indicating)? A. No, just moved sufficiently so that in case the pipe line burst it would not flood the river.

Q. You recall, in the negotiations that you carried on with my clients for the purpose of this property, we told you—

Mr. Matthews: I object to what he told him. It is immaterial. He cannot take the stand, if he is ethical in the trial of causes in which he is counsel, and any conversation about this property at his office is immaterial, and we lawyers would not try cases and try to inject it in in this manner. I submit it is immaterial and unethical.

Mr. Hunt: I won't use the word "we", and I won't refer to any negotiations that took place in my office. I will ask the witness whether at the office of the Ringwood Company Mr. Erskine Hewitt did not tell him—

Mr. Matthews: I object to what Erskine Hewitt told him in his office at the Ringwood Company as immaterial to this issue, and incompetent, and not cross examination.

The Court: Objection sustained.

Mr. Hunt: May we have an exception?

The Court: You may.

Q. Mr. Hershfield, at the time you were negotiating for the purchase of the isolated tract, you learned, did you not, that in the opinion of the Ringwood Company—

Mr. Matthews: I object to that question as calling for a conclusion from this witness, and as an opinion of the Ringwood Company, as not cross examination and incompetent. Moreover, if your Honor please, as an attempt on the part of this man to put a question that your Honor has just ruled out of this cause.

The Court: What do you say, Mr. Hunt?

Mr. Hunt: I do not think the objection is sound, your Honor.

The Court: I do, and so rule.

Mr. Hunt: May we have an exception?

The Court: You may.

Q. Mr. Hershfield, you know, do you not, that of all the holdings of the Ringwood Company shown on Exhibit C-1, and all the holdings formerly possessed by the Ringwood Company and shown on that exhibit, the isolated tract was the least desirable, least available for any useful purpose, and least valuable? A. Do I know that?

Q. Do you know that? A. I would say it was the same as this (indicating).

Q. Do you know that, or do you not? A. I would not say that I knew it. I bought similar property to that in the taking.

Q. How is the surface of the isolated tract—you may take the stand again—strike out the pending question, please.

Q. I show you a blueprint marked "Map of Haskell Tract, Ringwood Company, dated July 2nd, 1923"—

Mr. Matthews: I object to reading the legend on this map, unless the purpose of showing this witness this map is cross examination of my redirect, I want to object to it. I am entitled to know.

Mr. Hunt: The question is whether this map correctly shows the outlines of this isolated tract.

Mr. Matthews: I object as immaterial. This is their case. They have a right to prove it in their case. He is not entitled to ask that

question on cross examination. The isolated tract was brought into this as a sale from the Ringwood Company to us at an acreage value, vastly in excess of what they are demanding now.

He wants to make out now that this isolated tract is of such an isolation that they could not sell it to anybody else, and sold it to us at that price. They cannot inject that when they have no one to prove it and cannot identify it.

Mr. Lewis: It occurs in every trial.

Mr. Matthews: Probably the lawyer did not know his job, and I know mine.

Mr. Lewis: These are new rules that you are trying to introduce.

Mr. Matthews: No, I appreciate your silence. I think it is silence of wisdom.

Mr. Hunt: No matter what the witness's answer is, whether it be yes or no, I will ask to have that marked for identification. That is the only use I want to make of it at the present.

Mr. Matthews: We have no objection to that.

The Court: Your question is whether this shows the outline of the isolated tract?

Mr. Hunt: That is it.

The Court: I will allow the question.

Mr. Matthews: Your Honor will allow an exception on the ground it is not cross examination?

The Court: You may have it.

The Witness: It seems to be approximately my recollection of that tract.

Mr. Matthews: You see the difficulty of that. May I renew my objection.

Mr. Hunt: Will you mark it for identification?

The Court: Let it be marked for identification.

Mr. Matthews: My objection is there may be contained in this map undoubtedly something more than outlines of this tract. It may be offered for that purpose and in that way they might get in artificialities of this property.

The Court: And we will take care of those things when we meet them, if they are present.

Mr. Matthews: That lets me out.

(Blueprint marked Exhibit O-8 for identification.)

The Court: What was the acreage in that isolated piece?

The Witness: Approximately 195 acres.

The Court: All right.

The Witness: 196, roughly.

Q. What is the character of the surface of the isolated tract? A. It was a piece of undulating ground.

Q. Was there much rock on the surface? A. A great deal of rock, yes, sir, and it was—

Q. Could you visualize it?

Mr. Matthews: Can we not have the balance of the answer?

The Court: He has not finished. "It was" what?

A. (Continued) Partly covered with wood, and other places where it had a good stand of timber.

Q. Could you visualize it as being fitted for the erection of modest homes as you said the 569 acres of the property were?

Mr. Matthews: I object as immaterial to this issue because its use is not cross examination, because this piece of property has been brought in evidence solely to show values in that vicinity, according to the character of the terrain that has been testified to.

Now, that has been testified to on re-direct, and it is not recross examination of it to try to say does he visualize a condition that does not exist. If he asks the question is it comparable with the acreage in the taking that you have dubbed as fit for reasonable home sites, I have no objection.

The Court: I think the question is unobjectionable, because as I understand the question, it is practically that.

Mr. Matthews: Then I must have misunderstood it, and I am sorry.

The Court: Maybe I did, but that is as I understand the question.

Mr. Hunt: That is as I understand it.

Mr. Matthews: Then I am the only misunderstanding one, and I will withdraw the objection.

The Court: Very well.

Q. Answer it. A. What is the question, please?

The Court: Read it.

(Question read.)

The Witness: Only very small portions of it.

Q. If we had not sold it to the Water Supply Commission, but it was being condemned along with the other property, you would classify only a very small portion of it at $250 an acre?

Mr. Matthews: I object as calling for a conclusion, and a state of facts that does not exist.

The Court: I will allow him to answer, because there again, it is practically asking him how does this compare with the rest of the property that you have described.

Mr. Matthews: He will tell him that.

The Court: I think that is the only way he can answer it.

The Witness: There are several high spots, that is, high, speaking in altitudes on this tract which a house could be happily situated, where a good view could be obtained, not only of the reservoir lake, but also of Lake Iosco, but the average of this property is not good. It does not compare favorably with the average of the balance of your land that we are taking.

Q. That is very interesting. Now, perhaps you will answer my question.

Mr. Matthews: I object to the comment "it is interesting."

The Court: I will allow it to stand as responsive.

Q. How much of this isolated tract would you classify in the $500 classification of the lands under condemnation? A. Oh, possibly not more than four or five acres.

Q. Don't you think rather more than that? A. I do not think so, no, as I recall it.

Q. Now, you mean to say then that there in the isolated tract reachable in such a manner as you have shown the jury, there are four or five acres worth $500 an acre as compared with acreage here along the Greenwood Lake Turnpike in Tract 85-B 150 feet back from the Turnpike, valued by you at $250 an acre? A. I believe that people who wanted cloister seclusion would pay $500 an acre for some of that 200 acre tract.

Q. And some of that isolated tract has a larger market value, in fact, double the market value of land in Tract 85-B situated 150 feet from the Greenwood Lake Turnpike? A. Yes, sir, because a good deal of that is swamp.

Q. Well, that which is swamp in 85-B, you did not value at $150 an acre, but $20 an acre? A. Yes, sir.

Q. Now, I refer to land in 85-B, 150 feet back from Greenwood Lake Turnpike which you valued at $250 an acre without any addition on account of its proximity to the Turnpike? A. Yes, sir.

Q. And I ask you whether it is true that, in your opinion, here in this isolated tract such distance as that is from any public highway from any improved road, there is land worth double that that I have referred to in 85-B? A. I would say again that there are sections of that isolated tract that some people would be glad to pay $500 an acre for on account of being in a secluded place.

Q. It has a market value of $500 an acre? A. I would not say it has a market value, but I say people do pay to get away from the main arteries, occasionally.

Q. Now, Mr. Hershfield, turning your attention to the yellow on C-1, tell the jury how much of the rough mountain land there pictured and which you valued at $50 an acre, really has a value of $500 an acre because of its desirability to persons seeking seclusion? A. What is the number of the tract, please?

Q. Well, anywhere in the taking. You said in the taking there were 1450 acres of wooded land which you valued at $50 an acre, and as you pointed it out on the map it was on the slopes and on tops of mountains. Now, I ask you whether we should not understand a great deal of that 1450 acres is worth $500 an acre on account of its attractiveness to people who seek seclusion.

Mr. Matthews: That is not market value. It is only a market for the cloistered secluders, and they are only few and far between.

The Court: I understand the question embraced that element.

Mr. Hunt: Certainly.

Mr. Matthews: Visualizing the market value to cloistered, secluded people?

The Court: Yes.

Mr. Matthews: No objection to that.

The Court: This is going over the same ground we have already plowed, harrowed, sowed and not yet harvested, perhaps, the cross examination of the direct case.

Mr. Matthews: You forgot the fertilizer. They are probably doing that now, your Honor.

The Court: And I do not think we ought to have it without limit, Mr. Hunt.

Mr. Hunt: No.

Q. Well, now, briefly, can you tell us how many of those 1450 acres you desire to change to the $500 classification? A. I do not desire to change it. I say, of your 459 acres there were unquestionably many isolated sections that people would be glad to pay $500 an acre for certain purposes.

Q. Turning to the letter—

The Court: What do you mean by certain purposes?

The Witness: Road houses and stills.

The Court: And stills?

The Witness: Yes, sir.

The Court: Very well.

Q. How many of them? A. As many as the demand for the product of the still warranted.

Mr. Matthews: I object to his telling the number of bootleggers in this county.

The Court: He may qualify.

Mr. Matthews: Not on the bootleggers. We could not patronize them all.

The Witness: No, sir; I have tried it. I am only a retailer yet.

The Court: Proceed, please.

Q. Just refer to Mr. Sherman's letter to you which was put in evidence yesterday and point out wherein Mr. Sherman in the letter made any claim for inconvenience? A. I don't recall that he did.

Mr. Matthews: It speaks for itself and it is not redirect. It was offered for the purpose of showing Sherman's value of the property.

Q. The letter demanded $3,000 for the house and both lots, didn't it? A. Yes, sir.

Q. The letter did not mention inconvenience? A. No, sir.

Q. Whereabouts is the—you paid him $3,000, didn't you? A. The State did, yes.

Q. Yes. Whereabouts did the arbitrary bonus come in here, when he demands $3,000 and you paid $3,000? A. We do not give all the people demand. I figured the house was not worth $3,000, but—from a direct real estate standpoint—but I figured the inconvenience and the house and lot was worth $3,000.

Q. Who do you think had the greater expense in cutting down trees, Mr. Sherman on his lot 100x100, or Minna Meyer, on her lot 50x100? A. I don't recall the number of trees on either lot before they were cut down.

Q. Do you notice that Mr. Sherman in his letter estimates his expense of cutting down trees at approximately $25?

Mr. Matthews: I object to that. The letter does not say that.

A. I don't remember.

Q. I will read it: "And I have already paid taxes and have had expenses cutting down trees at an expenditure of $25."

Mr. Matthews: He doesn't say all of the expenses. He said he had an expense, and he had two lots, and one of them he said was $300 in value.

Mr. Hunt: Previously he stated the additional lot and so on and so on.

The Court: It speaks for itself.

Q. Now, Mr. Hershfield, tell the jury without going into any details of construction, what valuation you put on each building on the Irving Stone property?

Mr. Matthews: That is not recross of my redirect, and I think, if your Honor please, while I don't want to forestall him on objections, the court and jury and counsel is exhausted in this. We have not used the Irving Stone property on redirect.

Mr. Hunt: Mr. Matthews yesterday afternoon, at page 844 of the record, after having finished asking Mr. Hershfield about the Lyons Estate, then said: "The Stone property—"

Mr. Matthews: All right. I withdraw the objection.

A. I haven't any notes here regarding Irving Stone.

Q. Why not? A. Because I was not directed to bring them.

Q. Well, you testified to Irving Stone on direct examination yesterday? A. I testified as to the value of his acreage. I can, if it pleases you, and the court so directs, bring the notes I have on the Irving Stone. I have not them with me. I will look again to be sure, but I had no reason to bring them.

Q. Didn't you expect me to cross examine you about the Stone property? A. I rather presumed you would.

Q. Then why didn't you bring the notes? A. Because I don't know when you were going to do it, whether today or next week.

Q. Did you suppose, Mr. Hershfield, I was going to keep on examining you all this week, if I could

help it? A. I have reason to believe you will be here July asking me the same question and getting the same answer.

Q. Have you got your notes on the Stone property? A. No, sir. I will get them if the court so directs.

Q. Bring it with you the next time you are here.

The Court: Very well.

A. Pardon me. Thank you.

The Court: Perhaps, Mr. Hunt, he may be able to answer that question about the Irving Stone place without his notes.

Mr. Hunt: I would rather have his notes. I examined him about it before and I called in Stone to show what the true facts may be. He knows. We have been all through it before.

Well, I will let the witness go then, with the permission of the court in examine him further on the Stone property, and also upon the question whether his 30 acre Tri-County purchase and possibly his 12 acre, I am not sure about that, do have rights in a lake. He asserted yesterday they did.

Mr. Matthews: I object to this question. These questions ought to be asked now. I am going to get through with Mr. Hershfield.

Mr. Hunt: I thought I had a certified copy of the deed, but I have not. If the court will bear with me until I send to the Clerk's office for the record, I will go on with it now.

Mr. Matthews: That is part of his direct case.

Mr. Hunt: The Stone matter I cannot finish until he has the notes. Does your Honor wish me to send to the Clerk's office?

The Court: You can show it on your own case.

Mr. Hunt: I think I have a right to show it out of the witness's own mouth on his case.

The Court: You have asked him and he has testified, has he not, about it?

Mr. Hunt: Yes; he said he had rights on the lake.

Q. What rights has your property got on a lake, your 30 acre tract of the Tri-County Realty Company—strike it out, please, Mr. Kelley.

In what lake did the 30 acre tract purchased by the Tri-County Company of Corning, have any rights? A. Not directly on the lake, but inasmuch as the same owners owned 2500 feet of lake front, with each sale that may be made of the 30 acre tract a right of way will be given over the other tract to the lake.

Q. Now, in what lakes does the Tri-County Realty Company own any rights? A. We have 2500 feet of shore front on Pompton Lakes.

Q. On Pompton Lakes? A. On that side.

Mr. Matthews: What?

The Court: On that side.

A. On that side.

Q. By virtue of a conveyance from whom? A. From the owner of the lake.

Q. What is his name? A. Edwin Corning.

Q. Now is that a separate conveyance from the deed for the 30 acres and the deed for the 11½ acres? A. The deed for the 11½ acres, as I recall, calls to the shore of the lake.

Q. The deed for the 30 acres does not call for the shore of the lake? A. No, sir, but inasmuch as the ownership—

Mr. Hunt: May he be admonished to answer the question and then quit. I want to ask him another question, and if his counsel wants to re-examine he may.

The Court: Haven't you answered the question?

The Witness: No, sir.

The Court: The testimony may be read. What is his answer?

(Testimony repeated by stenographer.)

Mr. Hunt: He can bring that out on his examination.

The Court: I think "No, sir," is the complete answer to it.

Q. Yes. As a mater of fact between the 30 acre and the lake a public road intervenes, doesn't it? A. True.

Q. And on the other side of the public road from the 30 acres the private ownership of the land is in other persons than the Tri-County Realty Company, is it not? A. That is not true.

Q. Is the title on the opposite side of the public road in the Tri-County Realty Company? A. Yes, sir, by deed.

Q. By deed from whom? A. Mr. Edwin Corning, the former owner of it.

Q. Then you mean to say that the Tri-County Realty Company owns the land on both sides of the public road? A. Yes, at that point.

Q. For what distance along the road? A. To the end of their holdings, I should say to within a couple of hundred feet of the dam on the westerly—

Q. Well, the deed of the Tri-County Company—A. Please let me finish. On the westerly side of the—the easterly side of the lake they own to approximately 200 feet of the dam. On the opposite side of the lake, as I recall, they own to the dam. We have or had 5000 feet frontage on the lake, roughly.

Q. Mr. Hershfield, was the 11½ acre tract conveyed by Corning to the Tri-County Realty Company by deed dated January 1, 1925, and recorded in Book V-31, page 188 of the deeds of this county?

Mr. Matthews: If your Honor please, that is not a necessary question in examination. The records of this county can be brought here. How can this man know?

The Court: I don't know.

Mr. Hunt: May the Clerk go down and bring up Volume V-31?

The Court: If he knows, I will allow it.

Mr. Matthews: That is his direct case, Volume V-31.

The Court: I will allow him to answer it if he can. Do you know?

A. I believe it was.

Q. I hand you what I am told by Mr. Houman is a correct abstract of the description of the 11½ acres—

Mr. Matthews: I object.

Mr. Hunt: Mr. Clerk, go down and bring up the record book, please, V-31. The Court

will understand, of course, I am trying to take up as little time as possible.

The Court: I understand.

Mr. Hunt: But with the constant interruptions it is impossible to make any progress.

Mr. Matthews: I want—

Mr. Hunt: My purpose was to ask the witness whether he recognized that that is the correct description of the land. If he said yes, I would not have to trouble to have the book, but as long as counsel does not permit I will have to send for the book. Will you send, please, for V-31 of deeds of this county?

Mr. Matthews: I want to say, if your Honor please, as long as we are in a lull that these interruptions are necessary in order to protect my client's interest. If I did not interrupt I would have bungalows built on mountain tops and lakes where arid Sahara now is.

The Court: Will you go down and get V-31 of deeds, and tell the Register you want it for this court.

(Interruption.)

Mr. Hunt: Perhaps I can make a little progress while we are waiting for the record book.

Q. Mr. Hershfield, it is true, isn't it, that the property that the Tri-County bought from Corning was subject to a mortgage of $25,000 at the time of the conveyance? A. There was a blanket mortgage over 600 or 700 acres of ground. We own that mortgage ourselves.

Q. Now will you answer the question. A. I have.

Mr. Hunt: I ask that the answer be stricken out as not responsive.

Mr. Matthews: I object.

The Court: Yes.

Mr. Matthews: "Subject to a mortgage" gives him latitude. It would indicate, if he said yes or no, that a different situation existed.

The Court: I will allow the answer to stand. I think it is responsive to a certain point.

Q. Who owned the mortgage at the time the Tri-County Realty Company bought the property? A. I believe the Title Company here connected with the Citizens Trust Company. I cannot recall the name of it.

Q. The Tri-County Realty Company did not own it, did it? A. No. We bought it afterwards. We own the mortgage.

Q. How much did you pay for it?

Mr. Matthews: I object to it as not showing value.

A. The price of the mortgage—it was $22,500.

The Court: I will allow it.

A. It was $22,500, and in order to obviate the trouble of getting releases as we resold, we bought the mortgage on our own property.

The Court: The question is, how much did you buy it for?

The Witness: The face of the mortgage, $22,500.

Mr. Hunt: Now with the Court's permission I will go to another subject in order to occupy the time until this deed book comes.

Q. I suppose that each one of the deeds by which the 29 properties, I think it was, to which you referred in your redirect examination yesterday— A. 23.

Q. 23, all right. —was conveyed to the Water Supply Commission, was the ordinary form of deed expressing a certain consideration and not stating on its face that so much of the consideration was for lands and so much for other things?

Mr. Matthews: I object.

Q. Am I correct in that?

Mr. Matthews: I object, if your Honor please, the deeds are the best evidence, and this witness cannot be cross examined, and it is not redirect in any sense on re-cross in any sense of the word. This is simply dust thrown in the eyes of the jury. Doesn't everybody know that when we paid for it we got a title and we have paid for that title? That is the market value of that property. If they had anything to contradict it—we say it is market value—let them produce the instruments in answer to our call. This is to try to indicate to the jury that we paid for something we did not get. Not so as you would notice it, in our department, if your Honor please. I object to it as immaterial and incompetent to ask this witness what deeds show.

The Court: That may be so, but there may be some materiality that I cannot fathom.

Mr. Matthews: I think you will have to know then.

The Court: I will let you answer the question, what did the deeds show with respect to the properties.

(Question repeated by stenographer.)

A. I don't know. I never saw any of the deeds; had nothing to do with it.

Q. Do you assert that the deeds stated so much was paid for an apple tree, so much for a grapevine and so much for a barn or bungalow? A. I am not asserting anything. I never saw the deeds.

Q. This method of determining that the value of the land was so much by excluding the estimated value of certain structures and certain growing things is just a method that you followed in your appraisal, isn't it? A. It is the computations I deduced from my notes made in the field at the time I made the appraisal.

Q. Yes. A. I valued the property in its entirety; then I deducted the detail of the improvements thereon, and the remainder left the value that naturally would follow the acreage.

Q. That was for your own information and that of your employer, the Water Supply Commission? A. I so reported in my reports to the Water Supply Commission.

Q. Yes. Now I show you Volume V-31 of Deeds for this county, page 188, and point to deed No. 302594, Edwin Corning and wife to the Tri-County Realty Company, conveying 11.5 acres—

Mr. Matthews: I object, if that is going to be offered in evidence we would like the book to speak. I would like to find out the reason for it being offered.

Q. Strike out conveying. I ask you whether that is the deed for the 11½ acre tract that the Tri-County Realty Company bought from Mr. Corning? A. I presume it is. I never saw the deed. Read it.

The Court: You never saw the deed?

The Witness: No, sir; it went to my attorney, Mr. De Yoe of this city, and it went to my office and I presume it is in one of the safe deposit boxes, your Honor. I don't recall I ever saw the deed.

Q. Please tell us whether it is the deed for the property?

Mr. Matthews: I object, on the ground that the witness says he doesn't know whether it is the deed, because he has never seen it; therefore, though this document may be the deed for that property as far as this record goes, and we all know it, it is a part of his direct case. He is only trying to use it to contradict this man, and he cannot, because this man has never seen the instrument, and I think that puts him out of the class of identifying it.

The Court: What do you say?

Mr. Hunt: I say he owns the land and he knows the description of the land he is entitled to and should be required to read that description and tell whether it describes his land. The objection is perfectly absurd.

Mr. Matthews: His objection that my objections are absurd, when your Honor has sustained me perhaps 90 per cent. of the time, do not insult me, but take time. My objection is

this, that if he has never seen the instrument, if it was sent to his lawyer and the lawyer examined it and it was sent to the office and put in the safe deposit box, how can he tell that it is the same description as in the deed?

The Court: I don't know how, but he might be able to. He may have other descriptions. He may have the description by heart from the contract or from some expert knowledge, but I do not see any objection to his telling us whether that record correctly describes his property.

Mr. Matthews: That is metes and bounds, yes. I suppose there are covenants in there.

The Court: He is asking him only about metes and bounds.

Mr. Matthews: I have no objection to metes and bounds. That is not what he wants.

The Court: I don't know whether it is or not, but that is what he asked.

A. The description, according to my recollection, is correct, approximately.

Q. Then with your Honor's permission I will read the description.

Mr. Matthews: I object, if your Honor please. It is not his recollection. It is ours.

The Court: What is the purpose of reading it, Mr. Hunt?

Mr. Hunt: For the purpose of showing that he has testified in what is not a correct manner regarding it.

The Court: About the description?

Mr. Hunt: About the description.

The Court: What has he said about the description of the land?

Mr. Hunt: He said it gives him rights to the lake.

The Court: Oh, no, that cannot be in the description at all. The description is describing the 11 acres.

Mr. Hunt: Yes. That is the very point.

Mr. Matthews: Which point I objected to. That is his purpose, he who thinks me absurd.

The Court: You may do it on your examination, not now.

Mr. Hunt: May I have an exception?

The Court: You may. Do you want the book marked for identification? I do not think that is necessary.

Mr. Matthews: We can get it any time.

Mr. Hunt: I should hardly think it is necessary.

The Court: Suppose it be taken back then.

Q. I turn your attention to the conveyance by Granda to the Water Supply Commission, to which you testified yesterday. Did Granda convey a free and unencumbered title to the whole premises?

Mr. Matthews: I object to that as a conclusion of law.

A. I never saw the deed.

Q. Don't you know that the Granda property was conveyed to the Water Supply Commission subject to a certain exception contained in the deed made by Edward Cooper and wife, and Abram S. Hewitt and wife, to John P. Bromley, dated April 1, 1874, and recorded in Book V-5, at page 554 for Deeds in Passaic County? Don't you know that?

Mr. Matthews: I object to it as immaterial, what the restrictions are. We have offered this as market value. If they can contradict it, let them do it. But this way it creates the doubt. They will never produce it, because they know that if those restrictions exist, none of their fairy dreams of lakes could be created.

The Court: I will allow it.

Mr. Matthews: I ask an exception on the ground it is incompetent.

The Court: The question is whether he knew it, not what the restrictions are.

Mr. Matthews: I beg pardon.

A. I never heard of it until Mr. Hunt just mentioned it. I have nothing to do with the titles.

The Court: You said that repeatedly, Mr. Hershfield. That is one reason I allowed it.

Q. If the Ringwood Company, as the successors in interest to the Peter Cooper and Abram S. Hewitt, own mineral rights and rights of way in the Granda property, would that affect its market value? A. Yes, it would.

Q. And suppose that the company in the same manner owned similar rights in others of the properties shown in red on C-1, already acquired by the Commission by purchase from the owners, would that affect their market value? A. All rights have some value. That is the reason they are called rights.

Q. But at the time you were valuing these properties you did not know whether or not the Ring-

wood Company did possess such rights in any of the properties?

Mr. Matthews: I object.

Q. Did not take that fact into account, did you?

Mr. Matthews: I object to whether they did or not. I want to say to the Court at this time in this objection, if they had any it would never have been sold without them asserting it, and I should think the Court would take judicial notice of that. If they have not, they are foreclosed or lost them by prescription. They never let a right go that they own. If we bought it we got it all.

The Court: I will let the answer remain.

Mr. Matthews: I ask an exception on the ground it is incompetent.

(Question repeated by stenographer.)

A. If I had heard of it, I would not attach much value to mining rights in that section.

Q. Did you take that fact into account in valuing any of these properties that you bought for the Water Supply Commission? A. Where it was divulged to me I did. The only case that I recall where it was divulged was in the Irving Stone case.

Q. There you took it into account, did you? A. Not particularly. The mining rights there to my mind are ridiculous.

Q. How much did you deduct on account of the existence of those rights from the consideration that you paid Stone? A. Nothing.

Q. Nothing, no. A. If you have them you still can be paid for them.

Q. Mr. Hershfield, did I understand you correctly in regard to all these properties that you bought for the Water Supply Commission you only know the amount of the purchase price finally agreed upon; you don't know what kind of a deed was given, or in many cases you don't know whether the deed has actually been given or not; is that correct? A. Mr. Hunt, I have stated a good many times that I know nothing regarding the deeds. I simply value the property. After the Commission accepts my valuation and the owner does, it passes out of my department. I don't know of my own knowledge whether any deed has ever been reduced to recording.

Q. Now in general that is true of the other transactions that you have testified to in which the Water Supply Commission was not a party, isn't it? A. Unless I was personally interested in the purchase.

Q. In how many of these transactions that you testified to were you personally interested? A. In those connected with the—

Q. Tri-County ones? A. The Tri-County, the Three Rivers, the Hershfield Realty Company, and other things that I may have been interested in.

Q. Mr. Hershfield, you offered me at the beginning of the session this morning a copy of the memorandum from which Mr. Matthews examined you yesterday, and I said I did not need it, but now I would be glad to have it.

Mr. Matthews: Having been refused, if your Honor please, we have no longer it for production. The witness had been closed with with the exception of the Stone details and the Tri-State proposition. I objected when he

said the Tri-State proposition, and he said to the Court, "I will take that up." He did not ask us for that detail at that time, because he was going to bring Hershfield back another day and rehash all over this. We gave them their opportunity. Let them conduct their examination. We object.

The Court: The offer is withdrawn, Mr. Hunt.

Mr. Hunt: All right: I will have to get along without it then.

Q. Now, Mr. Hershfield, you stated yesterday that the price which you paid on behalf of the Water Supply Commission for tract 50-B plus another tract aggregating 175 acres for the two, was at the rate of $85 an acre? A. Yes, sir.

Q. What did you pay for that property, everything that was conveyed?

Mr. Matthews: That is the Ricker property, the first one we mentioned.

A. I think it was $14,000.

Q. You paid $14,000? A. I believe so. 174 acres, $14,000.

Q. Well now, I want to know the entire complete sum of money paid by the Water Supply Commission to the seller of that property? A. Well, to my recollection it is $14,000, for two tracts.

Q. You paid maybe more than that, didn't you? A. Not that I recall. My figures—

Q. As you figured that yesterday—were there two buildings on that tract? A. There was foundations of a building that had burned down, and I believe there was an old barn of negligible value.

Mr. Matthews: We have submitted that as acreage value, if your Honor please. They may contradict it, if they wish. That is acreage value, not building value.

The Court: $14,000, and that makes it a little less than $80—$80 less in the aggregate.

Q. We go to the Marozileono property. You said that was surrounded on three sides by the Ringwood tract 79 and contained 50 acres? A. Just a moment.

Q. Were there any buildings on that? A. Yes; there was a very good house.

Q. What was the total amount of money paid by the Water Supply Commission to the seller of that property? A. I will have to look it up. Approximately $8,000.

Q. I want to know exactly. A. I have not exact figures here.

Q. All right. $8,000 approximately? A. Yes.

Q. Now set down the $14,000 and the $8,000. I want you to make an addition after awhile.

Mr. Matthews: I object to that as not redirect examination, and I think the witness ought not to be made to make additions between different properties.

Q. The Crowley case.

Mr. Matthews: I object, and I want my objection on the record. Why should the $8,000 value in the Marozileono be set aside the $14,000 record in which there are no buildings, while in the Marozileono there is a big building?

The Court: There was nothing in the aggregate asked on direct examination, Mr. Hunt.

Mr. Hunt: Yes. If your Honor will bear with me, there was. This morning he was asked what the aggregate was on these 23 pieces, and he testified what it was.

The Court: Per acre.

Mr. Hunt: No, sir; the aggregate sum of money. I think he said it was $77,000.

Mr. Matthews: $77,663 for the acreage value, and then the average value per acre. If they want to contradict that, this is not cross examination, I submit, if your Honor please. If they want to contradict that they can do it in their direct case. However, except for the interminability of it we have no objection, but I do not think we ought to keep the witness with lists of figures in front of him.

The Court: What was that figure?

Mr. Matthews: $77,163, 1194 acres, giving us $65 per acre that we paid the people all around here for this land.

Mr. Hunt: Now I want to learn what they did pay the people for their property.

The Court: I see no objection to the examination along this line in view of that testimony, and neither do I see any objection to Mr. Hershfield making the computation as requested.

Mr. Matthews: Withdraw the objection.

Q. Now the Crowley property, Mr. Hershfield.

The Court: $14,000 on the Ricker porperty, and about $8,000 on the Marozileono.

Mr. Matthews: They must be in different columns.

The Witness: This is Marozileono, $8,000. That was for the house and all the improvements on the place, outbuildings.

Q. Now the Crowley property, tract 46, 17½ acres, what was the total consideration paid for that property? A. Approximately $3,700.

Q. Why can't you give us the exact amount? A. Because in some cases I have $50 or $60 one way or the other.

Q. Now I read from your examination by Mr. Matthews yesterday, page 835, Crowley property: "Q. Comparable in terrain to Ringwood—any part of Ringwood? A. It was the average of all that—this tract. Q. And the price paid was $1,000, was it? A. You have it, Mr. Matthews. Q. If your notes show it was $1,000 and $60 an acre, is that correct? A. It would be, yes." You so testified, didn't you? A. Yes.

Mr. Matthews: He testified that as to the land.

Q. Now you told Mr. Matthews that you cannot tell the exact amount that was paid for the Crowley tract, but it was approximately $3,700. A. I have the acreage detailed exactly and the five variations of the ground totalled $1,000.

Q. I see. A. When it comes to adding improvements, the chicken coop, the privies, orchards, sometimes I value a privy differently on different days—now I find an item of $500 marked out for that reason, I am saying that it is around $3,700.

Q. You couldn't tell how much was paid for the Crowley property, but it was around $3,700? A. Yes.

Q. All right. Pass to the Trovato property. A. Shall I put that down?

Q. Yes, put down the $3,700.

Mr. Matthews: In the column all improvements and land.

The Court: He was only asked to put down one column so far.

Mr. Matthews: But he has $14,000 in the Ricker property.

The Court: $8,000 in the Marozileono property.

Mr. Matthews: $14,000, the improvements are not given.

The Court: Neither are the improvements given in the Crowley and Marozileono properties.

Mr. Hunt: I have not asked him for figures.

The Court: He is asking for the total consideration, I presume. Perhaps when he gets through we may start then with another tabulation of the value of the improvements on each property as distinguished from the unimproved acreage; I don't know.

Mr. Matthews: At this time we have got the total consideration right in the Ricker property.

The Witness: $14,000, as I recall. We rather disregarded the buildings.

Q. Now the Trovato property? A. Just a minute. The last one was Crowley, is that right, $3,700.

Q. Now the Trovato 27 acres, or the map shows 29 acres you remarked. What did you pay for it? A. Roughly $5,500.

H. G. Hershfield—Recalled—Recross.

Q. Now I read from your direct examination yesterday: "Q. (By Mr. Matthews) You paid $1,710, according to your notes, or $63 an acre; is that correct? A. If that says it." Did you so testify yesterday? A. I don't recall the record. If I did it was true.

Q. Now the Edward Livingston Price tract. A. $40 an acre, 40 acres.

Q. What was the total price paid by the Commission for the Price property? A. Roughly $1,600. I remember that without looking at my notes.

Q. Now the Ferra Lasco property— A. Am I supposed to put this down?

The Court: Yes.

Mr. Matthews: I will do it for you, Mr. Hershfield.

Q. You do it too, please, Mr. Hershfield.

The Court: Trovato is $5,500, and the E. L. Price is $1,600.

A. Trovato $5,500 and Price $1,600.

Q. Now Leonardo Ferra Lasco, No. 43. A. Leonardo Ferra Lasco, approximately $13,490.

Q. Thirteen thousand what? A. $13,500.

Q. Now I read from the examination by Mr. Matthews yesterday— A. Just a minute. There is several pages on this summary. I want to correct that. I find an additional item of value here —another group of buildings—$17,600.

Q. All right, sir. Now I read from your direct examination by Mr. Matthews yesterday in reference to this property, page 839: "Q. There were 53 acres, and the total price according to your notes was $4,740 or $90 an acre? A. Very good land." A. For the land.

H. G. Hershfield—Recalled—Recross.

Q. That is correct, isn't it? A. For the land, yes.

Q. Your answer was "Very good land," wasn't is? A. Yes.

Q. I show you the record.

The Court: He says yes.

A. I say yes. You don't need to get excited.

Q. Now the Garbarino tract, 26-D, 29 acres. A. Who?

Q. Garbarino. You said, "Yes, Louis Garbarino," A. There are two of them.

Q. Well, you said "26-D, 29 acres plus." A. There are two tracts, Louis Garbarino.

Q. Go to 26-D, 29 acres, please. A.26-D, I have it 30 acres, $1,300. There were no improvements on it. 30 acres for $1,300.

Q. Were those 30 acres conveyed by separate deed or were they included with something else? A. I have never seen any deed. I don't know.

Q. I see. Now there is another piece, you said, or Louis Garbarino, 25 acres. A. 25 acres, yes, No. 36-C.

The Court: 26-C.

Mr. Hunt: 36-C, according to the stenographer's notes.

The Court: According to my notes 26-C.

Mr. Matthews: Let us see on the map.

Q. Now then do your records show the price paid for each of these Garbarino tracts separately or both together? A. They were separately appraised.

Q. Then what price did the Water Commission pay Garbarino for No. 26-D, which contained 29

acres plus? A. According to my records, $1,300 for 30 acres.

Q. Now I read from your direct examination yesterday:

"Q. The Garbarino tract, do you remember that? A. Yes, Louis Garbarino. That was No. 26D, containing 29 acres plus.

"Q. Do you remember the price? A. I do not, no, sir.

"The Court: Which one was that?

"Mr. Matthews: We have gone from Ferra Lasco.

"The Court: How much an acre?

"The Witness: $90."

Now do you mean that $90 for the Louis Garbarino tract? A. No.

Mr. Matthews: I object to that as a stenographic misinterpretation, because I never would have let that go by. I would never have divided even mentally 30 into 1300 and get $90. Therefore, that is the Ferra Lasco value, which is up above, and the stenographer mistook the witness' testimony.

Mr. Hunt: I am only asking the witness.

A. May I correct it.

The Court: I will allow the question to be asked that is being asked.

Mr. Matthews: The record is wrong.

Q. Which is right for the Garbarino tract, 26-D, what price? What was the total amount of money

paid for 26-D, bought from Garbarino? A. I will just figure it up here.

Q. Do not figure; just look at the sum and tell me the total amount of money? A. $1,300.

Q. That is all the money that the Commission paid to Garbarino for 26-D and everything on it and in it, is it? A. According to my record, yes.

Q. All right. Now turn to 36-C, as the stenographer has it, or 26-C as the Court understands it it to be, which you said was shown on the map to be 28 acres plus, belonging to Garbarino. A. Yes.

Q. What amount of money was paid by the Watter Supply Commission to Garbarino against the conveyance of that tract with everything on it and in it? A. Approximately $11,000 for the tract with all the buildings on it.

Q. All right. Now I read from your testimony yesterday, page 840, with regard to this tract:

"Q. (By Mr. Matthews) Do you remember the price of that? A. I do not.

"Q. Your notes show $1,925 total, or $73 per acre; is that correct? A. My figures are correct."

A. For the acreage.

Q. You so testified yesterday? A. For the acreage, yes.

Q. Now, Mr. Hershfield, was there anything in the answer you gave yesterday that would have led this jury to even remotely suppose that you paid Mr. Garbarino $11,000.

Mr. Matthews: I object to that and I object to the inference.

The Court: Objection sustained.

Mr. Matthews: That we intended to mislead this jury. That is your land value we went over. Bring out your buildings. We will show you every stick of them, like you did. You claimed $175,000 for buildings or shacks on this thing here. Put it in your value. Put them in here.

Q. Now turn to the Dondero property, No. 34-B, 23 acres. A. Yes.

Q. What was the total amount of money paid by the Water Supply Commission to the owner of that property? A. What is the number please.

The Court: 34-B on the map.

A. 34-B appears to be the 23 acre ground here.

The Court: Dondero.

A. Antonio Dondero, $1,650 I should judge.

Q. What was the total amount of money paid by the Water Supply Commission to Dondero? A. According to my field notes, $1,650 for this tract.

Q. Well, for everything they got from him in or on that tract? A. We bought another tract from him under a different caption. That had buildings on it.

Q. I see. Well, you have testified to that already direct, have you? A. No, sir; it was only the five acre tract. I testified to nothing except tracts of around 50 acres, unless they were immediately contiguous.

Q. All right; just give me the details about that five acre tract, only do not carry the amount into your calculations.

Mr. Matthews: I object to it as not cross examination on the redirect. He can cross—just a minute, may I please finish my objection to the Court. I object to it as not redirect, because, if your Honor please, on my redirect I had permission of my opponent, when I asked him the question first on his first direct, are there other properties that you bought for this Commission that you have notes about? "Yes." "Can you testify to it without your notes? Can you bring them so I may redirect you on them." He brought them and I redirected on them. If we are going to have further cross examination that I redirected on, I have no objection, but I object that I did not bring out any property of Dondero, any five acres. It is not in my list, and I do not think he is entitled to go into it.

Mr. Hunt: Do you mean he can testify about one piece bought from Dondero and I cannot ask him about an adjoining piece?

The Court: He did not say it was an adjoining piece.

Q. It is the adjoining piece? They adjoin, do they not? A. I don't recall.

Q. Come and look at the map. Tell the Court how far apart they are.

Mr. Matthews: I object to him coming to look at the map. I think it is immaterial and incompetent whether they do or not.

The Court: The objection is that it is not proper cross examination, Mr. Hunt.

Mr. Hunt: The map shows this is an adjoining tract.

Mr. Matthews: I object to that statement of counsel, because the map is 400 feet to the inch.

The Court: The objection is directed to the question on the ground it is not proper cross examination. In the face of that objection I think that it is properly taken. I do not mean to say that you cannot bring it out in your own case if you wish, but inasmuch as the property in question was not testified to on redirect, I think that Mr. Matthews is well within his rights in objecting technically to its being gone into on cross examination. I will sustain it.

Mr. Hunt: I submit with all respect to your Honor, that when this witness has testified to 23 or 29, I forget which, pieces within this taking and I call his attention to a piece that adjoins a piece brought from the same owner that he has testified to and ask him why didn't you testify to this omitted piece—what are the facts with regard to this omitted piece—I am entitled to have an answer.

The Court: I have ruled against you.

Mr. Hunt: All right, sir. May I have an exception?

The Court: You may.

Q. What did you pay for Dondero 34-B, that is the one now that you mentioned in your direct examination?

Mr. Matthews: He just told you $1,650 for everything.

A. $1,650.

Q. Do you know whether these two Dondero properties were conveyed to the Commission by separate deeds or by the same deed? A. Again I say I have never seen a deed to the Commission.

Q. Well, have you set down the $1,650 in your column there? A. No.

Mr. Matthews: I am doing that for him.

Mr. Hunt: I want him to do it. He is the one that is under oath and under cross examination.

The Court: Is that the $11,000?

The Witness: $11,000, and this one previous.

The Court: Garbarino.

The Witness: Garbarino was $1,300.

The Court: And this last Louis Garbarino tract, 26-C, was $11,000. Have you that?

The Witness: No, sir.

The Court: Now put your Dondero down, $1,650.

The Witness: Garbarino $11,000.

The Court: $11,000.

Q. Now, Mr. Hershfield, does that give a total of nine items in your column so far? A. Yes, sir.

Q. Now, Frank Bravante, 42-A, 15¾ acres, what price did the Water Commission pay for what was conveyed to it by Mr. Bravante? A. What is the number of the tract?

The Court: 42-A.

A. Bravante had several tracts.

Mr. Matthews: Refer to the copy you had with me yesterday. I think that will help you.

A. We paid for the acreage—

Mr. Matthews: That will refer you to the property.

The Witness: No, it wouldn't. There are several Bravante.

The Court: 15¾ acres.

Mr. Matthews: Yes.

The Witness: Lot 42-B, was it?

The Court: 42-A, as I have it at any rate.

Q. That is the one I asked you about, 42-A, 15¾ acres, Frank Bravante? A. Would not 42-B do?

Q. 42-A, Frank Bravante, owner, 15¾ acres. A. I have got it. 10, 12, 13½, 16½ acres.

Mr. Matthews: You had 17 on your list to us.

The Witness: I am trying to tie it in. I have it marked lot 61. That covers 1, 2—there are two houses on that.

A. Apparently $11,000 approximately.

Q. Approximately $11,000. Now I read from your testimony yesterday at page 840, question by Mr. Matthews:

"Q. Mr. Bravante, where, what number, how many acres? A. Frank Bravante, 42-A, 15¾ acres.

"Q. Do you remember the price? A. I do not.

"Q. Your notes show $680; is that right? A. My figures are correct."

A. For the land.

Q. You so testified yesterday? A. For the land, yes. That is all.

Q. What did you say—what was said in that exchange of question and answer from yesterday's record that I just read that referred to land as distinguished from anything else?

Mr. Matthews: I object, if the Court please. When I examined this man I examined him from a paper as to acreage only, and this continued inference that either he or counsel would delude this jury is resented by me. It was said by me, if your Honor please, acreage value and land value. We never intended to camouflage the building value at all. And here is our question: "About $45 an acre you have got; is that correct?" You did not read that, sir.

Mr. Hunt: But that does not refer to this at all.

Mr. Matthews: "About $45 an acre you have got; is that correct?" You said on page 841, "Yes. All right." So we were talking about acreage and not about buildings, and I resent the insinuation from our unfair opponent.

The Court: Very well.

Mr. Hunt: As I go through life, your Honor, I permit who it pleases to resent what he pleases with regard to what I do. My duty is to do what I conceive to be right.

The Court: Very well.

Mr. Hunt: I will do it, and he who will resent may.

Mr. Matthews: As I go through life, if your Honor please, I find different types, but I

found a new one this time and it does not square with my idea of a gentleman.

The Court: Very well, proceed.

Q. Now, the Biggio property, Mr. Hershfield—strike that out, please. Is there another Bravante property within the taking? Just say yes or no? A. Yes.

Q. Did you testify to it yesterday? A. If it was in the neighborhood of the 50 acres I did.

Q. Well, did you testify to it yesterday? A. I don't recall until I see. I can tell you.

Q. Wait and see when we come to it. Now turn to the Biggio property, tract 33, 22 2/3 acres. A. 26½ acres I have it here in my field notes.

Q. Your answer yesterday said, "Tract 32, 22 2/3 acres." A. That is probably what is on the board.

Q. What was the whole amount of money paid by the Water Commission to the Estate of John Biggio for what it conveyed to the Commission? A. For land and improvements approximately $10,100.

Q. $10,100. Now I read from the record of yesterday all that was said in your direct examination about the Biggio property:

"Q. (By Mr. Matthews) All right. Mr. Biggio, where, what number? A. Estate of John Biggio—what is the number, please?

"Q. I have not the numbers. You gave me the acreage, 26 acres. A. 33—22 2/3 acres.

"Q. Well, if your total price was $1,630 on this memorandum, and you gave me a total of 26 acres, then your acreage value is incorrect, and I do not want this record to show it. A.

The figures that I have given you are from my field notes. They do not always correspond, at least they have not apparently in this case corresponded with the map.

"Q. Therefore, Mr. Hershfield, in order that we may put on this record only a value that shall be fair in computation, if $1,630 is your notes for the total value of that acreage, and the acreage is 22 instead of 26, dividing 22 into $1,630, you would have about $74 an acre; isn't that right? A. If your figures are correct.

"Q. I am multiplying mentally and challenge contradiction."

Do you remember anything else having been exchanged between you and Mr. Matthews yesterday about the Biggio property? A. Why was it necessary? I was only testifying to acreage.

Mr. Hunt: I ask that that be stricken out and the witness answer the question.

The Court: Yes or no.

A. I don't recall saying anything more than the value of the acreage.

Q. All right.

Q. Now, you paid Biggio $10,100. Now, the next property that you testified to yesterday is the Gardella property, Tract 41-B, approximately 19 acres? A. What is the number, please?

The Court: 41-B.

Mr. Hunt: 41-B.

A. The Estate of John Gardella, that was 18.8 acres, according to my notes.

Q. Yesterday you said approximately 19 acres? A. Yes, sir, 18.8.

Q. What was the total amount of money paid by the Water Supply Commission to persons who sold this Gardella property? A. 1110; no building, just a vacant piece of property.

Q. Now, the Gronda property, 40-A?

Mr. Matthews: The witness has been asked to square his testimony, and I take it this is for the purpose of contradiction to his record of yesterday?

Mr. Hunt: That is the same as he testified to yesterday.

Mr. Matthews: That is all right, if he stipulates it is the same as he testified.

Q. Now, the Gronda property. A. 45½ acres; the owner claims 46½.

Q. 46½ acres, tract 40-A, isn't it? A. My record shows 45½ acres. We paid Mr. Gronda for his house and buildings.

Mr. Hunt: I have not asked you any question, Mr. Hershfield. I ask what he volunteered be stricken out.

The Court: Very well, strike it out. Now, ask him something.

Q. What was the total amount of money paid by the Water Supply Commission to the person who conveyed this Gronda property to it? A. I haven't it here, because after I made my appraisal, I had to dicker with him for some years. To the best of my knowledge and belief it was $9,000, because I remember I pinned nine one thousand dollar bills to my undershirt when I was looking for him to make a tender.

The Court: Is it still there?

The Witness: No, sir, I changed my shirt.

Q. Set down the $9,000 in your list, then. A. Yes, sir; that is only a recollection. It may be $8,000; but I think it is nine.

Q. Then, if you wish it eight we will make it eight? A. No, I think nine is safer.

Q. Does that make thirteen items you have down in your list so far? A. Yes, sir.

Q. Now, I am going to read the exchange between yourself and Mr. Matthews yesterday with regard to the Granda property.

Mr. Matthews: I object to the "exchange". Make it testimony.

Mr. Hunt: All right, make it testimony.

"Q. The Gronda property, do you locate it? A. 40-A.

"Q. Acreage on the map? A. 46½ acres.

"Q. Your notes show 45. However, we will let it stand at 46, Mr. Hershfield. Your total price, do you remember it? A. I do not remember.

"Q. $2,125, and your notes show $47 an acre. Inasmuch as that is in favor of the land owner we will allow it to stay for your cross examination, which we will correct only with further evidence."

Now, with further evidence we have corrected it to $9,000? A. We have not.

Mr. Matthews: I object. That is a statement of counsel that is absolutely untrue.

The Court: Objection sustained.

Q. Now, the next is the Murchio property. You say there were two Murchio tracts? A. Yes, sir.

Q. Then you were called on for the Serafino Murchio tract, 25-C, 29 acres plus. Now, look for your detail on that, will you? A. Lot 25-C, 28.6 acres.

The Court: What lot number?

The Witness: 25-C. That was a lot that had a stone fort on that I called your Honor's attention to, where the walls were five feet thick in the basement.

The Court: I remember it.

Q. All right. What was the total amount of money paid by the Water Supply Commission for that property? A. We paid him $25,000 for everything he owned in the shed. Now, I am not exact on that figure. I may be a thousand dollars out of the way. My field notes would not indicate that.

Q. Did he have any more tracts besides Tract 25-C? A. Yes, sir; he had a tract further up the valley contiguous to some of the Ringwood holdings, on the Lower Hook Road.

Q. Well, now, the property to which I direct your attention is 25-C? A. Yes, sir.

Q. Of 29 acres, plus, and no other property? A. Yes, sir.

Q. You may say that $25,000 was paid for that? A. And the other one, and all the improvements thereon, consisting of one house which probably contained 2200 yards of concrete.

Q. Well, now, I am going to read all that was said between you and Mr. Matthews yesterday in regard to the Murchio property. Page 848, in the middle of the page, by Mr. Matthews:

"Q. The Murchio, where is that? "A. There were two Murchio tracts.

"Q. Give me one first, 28 acre tract, if you have such a tract, and if you have not, see if both aggregate it. "A. Serafino Murchio, Tract 25-C, 29 acres plus.

"Q. That you have 28 acres, and your total price is $2,200. Therefore your $2,200 will have to be divided by 29 instead of 28, isn't that right? A. Yes.

"Q. Again we will allow it to stand, because your notes show $78 an acre for the Serafino Murchio tract."

Now, do you recall any further questions an answers having passed between you and Mr. Matthews yesterday in regard to any Serafino Murchio tract? A. That is what we paid for the land. That is all I was being queried about.

Mr. Hunt: May this be stricken out and the question answered?

The Court: I will allow it to stand.

Mr. Hunt: All I seek to get, your Honor, is whether, in yesterday's several hundred pages of testimony, the witness can point me to other testimony that related to the Murchio tract.

The Court: I understand it, but the inference that you are seeking to put into your questions, as I get them, is that there is a difference between what the witness testified to yesterday and what he is testifying to to-day.

Mr. Hunt: I think there is a difference.

The Court: And because of that, I shall allow him to explain, as he has been repeatedly explaining, that he was testifying yesterday with respect to land values only.

Mr. Hunt: Yes, of course. It is for the jury to determine whether the separation between land and buildings that he has made is proper and a fair separation, and is not—

The Court: Absolutely.

Mr. Hunt: But I think the purpose in my last question was misunderstood. I put this question entirely in fairness to the witness, not wishing to stop at what I read about the Murchio property. If he tells me that he thinks there is something else in the testimony relating to the Murchio tract—

Mr. Matthews: He is not fair at all about it.

The Court: I will allow the answer to stand. While it is more than responsive, I will allow it to stand in its entirety for the reason I have given.

Q. Mr. Hershfield, I am willing to look all through the several hundred pages of testimony given yesterday if you tell me you think there is other testimony there by yourself that relates to the Murchio tract? A. No, I only referred to tracts of approximately 50 acres, and the other tract was a small one.

Q. Only approximately 50, eh? Well, most of these we have been talking about on this cross examination for the last hour have been less than 50, haven't they? A. The ones I testified to yesterday averaged 48 acres per tract.

The Court: We will take a recess now until 2 o'clock.

Recess.

Afternoon Session, 2 P. M.

HENRY G. HERSHFIELD, resumed.

RECROSS EXAMINATION CONTINUED BY MR. HUNT:

Q. Mr. Hershfield, the last item I have on my notes of what we have been getting down in Serafino Murchio tract 25-C, $25,000; have you that down? A. That would not be correct to put down because that included a tract I did not refer to.

Q. Well, I will read from your testimony under Mr. Matthews' examination at page 842—

The Court: You did this morning, Mr. Hunt.

Mr. Hunt: Not this, your Honor. By Mr. Matthews:

"Mr. Cabell"—that is turning the witness to another tract.

The Witness answers:

"There are two Murchio tracts."

By Mr. Matthews:

"Q. I shall not ask you for anything I have not on my notes, because I don't know anything about it."

Now, it is true, is it not, that the second Murchio tract to which you just referred was not on the notes from which Mr. Matthews was examining you? A. Was marked, or was not.

Q. Was not? A. It was not on the notes; no, sir.

Q. Then, I direct your attention to the Murchio tract shown on these notes, namely, Serafino Murchio tract 25-C, 29 acres plus, and I ask you the total amount of money paid by the Water Supply Commission to the owner of that property. I un-

derstood you to say $25,000? A. I mentioned that figure, but that was for all the property and improvements thereon.

Q. All right. Then, tell me the amounts? A. There was no subdivision made of each tract, except I may have one here. Yes, I have, of the land.

Q. Now, just a moment, I want you to confine yourself to the Murchio tract concerning which you testified in response to questions by Mr. Matthews as follows:

"The Murchio, where is that? A. There were two Murchio tracts.

"Q. Give me one first, 28 acre tract, if you have such a tract, and if you have not, see if both aggregate it. A. Serafino Murchio, tract 25-C, 29 acres plus.

"Q. That you have 28 acres and your total price is $2,200. Therefore your $2,200 will have to be divided by 29 instead of 28, isn't that right? A. Yes.

"Q. Again we will allow it to stand, because your notes show $58 an acre for the Serafino Murchio tract."

Then he asked you about Mr. Cabell.

Now, I wish you to state the amount of money paid by the Commission to Serafino Murchio in consideration of Tract 25-C, 29 acres plus, consisting of land and whatever was standing upon the land and passed with the land from Murchio to the Commission? A. We made no distinction between the two tracts.

Q. Then, how were you able to tell Mr. Matthews that $2200 was the proper figure for Tract 25-C, 29 acres plus? A. Because my notes made in the field on March 21, 1919, have that tabulation on, $2200 for 27 acres of ground.

Q. Now, I want to know how much money the Water Supply Commission paid Mr. Murchio for Tract 25-C consisting of 29 acres plus with whatever stood upon it? A. We paid him $25,000 for that tract, and all that was on it, and another tract we did not distinguish.

Q. How much of the $25,000 was for what you now referred to as another tract? A. I have not differentiated it. We paid him $25,000 for everything he had that we wanted.

Q. How many acres were there in the other tract that you have just referred to? A. I will try and look that up if you wait a moment.

Q. Perhaps you can find it on the map C-1? A. I could tell you from the map better. I don't seem to be able to get it here. (Witness walks to map.) Here it is 20 1/5 acres, tract 25-A.

Q. That is the other tract that you referred to, is it? A. Yes, sir.

Q. And just while you are there, point out Tract 25-C. A. The original one? This one here (indicating).

Q. 25-A or 20¼ acres, heh? A. Whatever the legend calls for.

Q. Any buildings on 25-A? A. Not any—you mean the last one?

Q. Yes, sir. A. Not as I recall.

Q. What do your notes show as to your appraisal of the land value of the 20¼ acres in Tract 25-A? A. I am looking that up, Mr. Hunt. I, apparently, have no notes in this book, except on the house lot, the tract that contained the large amount of value.

Q. Well, now, just step down to the map again, will you? A. Yes, sir.

Q. Now, I point out Tract 25-A and ask you whether it is not enjoined on two sides by Tract 80 of the Ringwood Company? A. It is.

Q. And you say 25-A has no buildings on it? A. There was a building on one of two tracts. I think it was on the Garberino tract.

Q. You just said your notes did not indicate any building on 25-A? A. My notes indicate nothing on that tract.

Q. Aren't you able to inform the jury of the approximate value of the land in 25-A? A. 25-A would be the Murchio tract.

Q. Yes. A. Yes; I remember the land. It is on the easterly—westerly side.

Q. What would you say the 20 1/5 acres were worth? A. The land sloped easterly from the road—

Q. I did not ask you that. A. I am telling you how I recall.

Mr. Hunt: Will the Court instruct the witness to answer my questions so I can get along more rapidly.

The Court: Tell us what it is worth.

The Witness: I should say that that land, without the road appreciation, would probably be worth $60 an acre.

Q. $60 an acre for 20 1/5 acres, that would be $1212? A. Without the road appreciation, which I would add.

Q. Do you want to add something to that for road appreciation? A. Yes, sir; whatever the road appreciation is.

Q. Well, then, come to the map? What would the road appreciation be? A. One dollar a foot, or approximately $600.

Q. Then we have $1200 and $600 or $1800? A. Yes, sir.

Q. Then, if we deduct that from the $25,000 we will have the consideration paid for 25-C, wouldn't we? A. I would so state now.

Q. Will you make the deduction, please? A. What is it?

Mr. Matthews: $1800.

Q. $1800, $1812, if you wish to be exact? A. That would be $23,200, roughly.

Q. $23,288.

Mr. Matthews: $188, it ought to be.

Mr. Hunt: Right; $23,188.

The Court: Will you put that down on your list?

The Witness: I have it down as $23,200.

Mr. Hunt: All right, I will change mine.

Q. May I ask whether that makes fourteen times in your list so far? A. Yes, that is fourteen.

Q. Now, the Cabell tract, known as 7-A, and consisting of 94 acres plus— A. Yes, sir.

Q. What amount of money did the Water Supply Commission pay to the sellers of that tract? A. For everything?

Q. The total amount of money paid? A. $10,000 for 94 acres of ground and buildings.

Q. $10,000, all right. A. Now, wait, until I verify that.

Mr. Hunt: While we are waiting, may I request the clerk to have from the County Clerk's Office Volume X-28, Deeds?

The Court: You may have it.

A. (Continued) No, I see I had it listed and indexed as the Decker Farm instead of Cabell. That threw me off. We paid $10,000 for the property, consisting of 94 acres, or 93 acres, and improvements.

Q. Now, I am going to read the questions and answers exchanged between you and Mr. Matthews yesterday in reference to this property.

"By Mr. Matthews:

"Mr. Cabell?"

Answer by you:

"The Cabell tract is known as 7-A and consists of 94 acres plus.

"Q. You have 93 acres on your notes, and your total price is $6,150 and your acreage price is $50. But again it is in favor of the land owner and we will allow it to stand subject to cross examination."

Those questions and answers passed yesterday between you and Mr. Matthews, yesterday, did they not? A. Yes, sir.

Q. Now, I call your attention to the Moss tract No. 20-A? A. That, what I said yesterday, referred solely to the acreage, not to the improvements.

Q. All right. Now, the Moss tract, No. 20-A, 50 acres; how much was paid by the Water Supply Commission to the persons who sold it that property? A. Herbert Moss, 134. There were two tracts there, one of 4.16 acres, and the other of 45.93 acres. I call them roughly 50 acres.

Q. And they were numbers 20-A and 20-B, were they? A. Yes, sir.

Q. All right. A. We paid for both tracts with the improvements $3,135 for 50 acres of ground, and the improvements thereon.

Q. Now, I read what passed between you and your counsel yesterday:

"The Moss tract of 50 acres, will you locate that? A. That is No. 20-A.

"Q. What did you pay for those 50 acres, do you know? A. That is 50 acres including 20-A and 20-B. We paid roughly $2,100 for that, as I recall.

"Q. You recall $500 more than we paid, because your notes show $1,600, with an average acreage price of $32. A. That is right. We paid two thousand and odd dollars for the real estate and the improvements that were then on. Whatever the figure was is correct."

Did you so testify? A. Yes, sir.

Q. Now, the Brown Estate of 84 acres? A. Yes, sir.

Q. 16-B and 16-A, 85 acres? A. William Jacob Brown, 53.

Q. That is 16-A, and 16-B, 85 acres? A. Yes, sir. That is, I don't recall your question, but it was in two tracts.

Q. I say, is that 16-A and 16-B aggregating 85 acres roughly, or according to your notes, 84 acres? A. It was roughly 84 or 85 acres.

Q. What was the total price paid by the Water Supply Commission to persons who sold it that property? A. $11,500 for the land, and the two old buildings that were on it, and other improvements.

Q. Now, I will read what passed between you and counsel for the commission yesterday in regard to this property:

"Q. The Brown Estate of 84 acres, do you find that? A. Yes; that is known as Tract No. 16-B and 16-A, aggregating 85 acres roughly.

"Q. Your notes show 84 acres, and a price of $10,500, or $122 plus per acre? A. Yes."

A. Again, I say that is what we paid for the aver-

age. I only added a thousand dollars for the improvements.

Q. The Moss property, by the way, that you testified to a moment ago. It is true, is it not, before the Water Commission bought all the property, the house on it had burned down? A. The house had burned down, but a very good barn remained, but also there were some other outbuildings, a foundation of the house, stone wall, and an orchard and other things that did not burn.

Q. And for that you allowed $1535 as the value for those improvements, didn't you? Oh, never mind; if you have to look at your notes— A. No, let me tell them. I allowed $50 for concrete pigpen. I allowed—

Q. Just state the total amount that you allowed for the buildings that were left on this farm which had no house? A. I allowed for a two-story shingle roof frame barn five years old, 18 by 26, $400.

I allowed for a chicken-house, 10 by 12 in bad condition, $10.

A combination woodshed and tool-house, in fair condition, 10 by 16, $50.

One frame rough board one and a half story shack, good lumber, $150.

One frame 6 by 5 toilet dirt vault, $15.

One stone well, 21 feet deep with well house, $115.

One old foundation, 36 by 14 feet, good condition, stone and concrete, $200.

Nine good apple trees, at $40, $360.

Five good cherry trees at $25 each, $125.

Six young peach trees at $10 each, $60.

That was the detail.

Q. What is the total, that is what I asked you? A. roughly, $575 for the improvements.

Q. You mean $1575? A. Oh, $1575.

Q. Now, the Lines property? A. Lines?

Q. Yes, No. 31, 47 acres? A. No. 1.

Q. No. 31. A. Yes, sir. Page 1 on my field book. We gave Mr. Lines for his property, including two houses and a garage—

Q. Oh, tell me what you paid him, the total amount? A. $13,425.

Q. Now, are you still putting these down on your list? A. No, I confess I forgot it. I stopped at 14.

Q. All right, the next item, according to my notes and your counsel will check me if I am wrong, is $10,000? A. What is that, please?

Q. That is Cabell. The best one is Moss, $3,135? A. For item 16.

Q. The next is Brown, $11,500? A. Yes, sir.

Q. The next is Lines? A. $13,425.

Q. And that is No. 18? A. Yes, sir.

Q. Now, the Stone property; what is the total price paid Irving Stone? A. I haven't those figures, Mr. Hunt. I haven't seen them since the original trial. They have been sent for to Newark.

Q. At that time it was $10,000? A. Yes, sir.

Q. Have you increased it since then? A. No, sir.

Q. Then, you say, it is $10,000? A. Yes, sir, for building and land.

Q. I want the total amount. A. 19 would be Stone, $10,000.

Q. By the way, that included a few apple trees at $25, per tree, didn't it? A. I don't remember the details; there was an orchard there, though.

Q. Three grape vines at $10 each, that included— A. I don't remember the detail.

Q. You heard Mr. Stone testify as to the cost of his buildings, the amount of money paid for his

buildings, and the amount of labor of his own put into their construction, did you not? A. He did so testify.

Q. And you know his total came to several thousand dollars less than your total valuation of the building?

Mr. Matthews: I object to this. He is entitled to be confronted with the testimony.

Mr. Hunt: The witness is answering.

The Court: I will strike it out if he has.

Mr. Hunt: All right, I will withdraw it, your Honor.

Q. The Vanderbeck property, No. 62, a scant 46 acres, as you describe it? A. Yes, sir.

Q. What was the total amount paid for the Vanderbeck property? A. $2,000.

Q. That is the total amount of money paid? A. Yes, sir; there was nothing on it, just a piece of vacant ground.

Q. Now, the Ringwood Company—

The Court: Will you put down the $2,000 before we forget it?

The Witness: What is the number, 20?

The Court: 20, I think it is, yes.

The Witness: Vanderbeck, $2,000.

Q. Now, the next one is the Ringwood Company isolated tract that you traced on the map this morning? A. Yes, $50 an acre.

Q. What was the total amount paid for that? A. Whatever 50 times the acreage is, 194 acres, I think.

The Court: 196 acres you testified to.

Mr. Matthews: 196 acres.

Q. 195.74, to be exact? A. Call it $9800. Four times $50 less than $10,000.

Q. That had no buildings on it? A. Nothing.

Q. Now, the Mullen sale, Tract 119, a scant 48 acres, in your words? A. I am trying to check it. It was 48 times $46. There were 48 acres at $46 an acre, whatever they total.

Q. $2,208? A. I did not check it. Is that right, Mr. Matthews.

Mr. Matthews: That is right, Mr. Hershfield.

The Witness: The amount, please.

Mr. Matthews: $2208.

Q. Have you put that on the list? A. Yes, sir.

Q. Is that No. 22 for you? A. Yes, sir.

Q. The Thorne Estate? A. That was 13 acres for $750 as I recall.

Q. What was the total amount paid? A. $750, as I recall.

Q. Well, are you sure you are right? If you are not, look at your notes. A. That is right, 13 acres, $750, or $58 an acre.

Q. Is that the total amount of money paid by the Commission to persons who sold them that property? A. Yes, sir; that was a piece of vacant property.

The Court: And the Mullen property had no improvements?

The Witness: No, sir, that was vacant.

The Court: Very well.

Q. Now, that is the 23 properties that you testified this morning totalled $77,163, isn't it? A. I didn't follow them; I presume it is.

Q. I see. Well, now, add up the column of 23 figures that you have before you, please. A. I have got two different totals. I am tired of adding. I will accept either of you gentlemen's figures.

Q. Our total is $181,578, reached by separate calculation of Judge Lewis, Mr. Bugg and myself.

Mr. Matthews: I join in that, having done it alone.

The Court: I join it without any help at all.

The Witness: Well, I will accept the Judge's figures of it.

Q. Now, Mr. Hershfield, with the exception of what you described this morning, I speak only in approximate terms, is the Stone building, with walls five feet thick, practically all of the buildings that, according to your method of figuring, make up the difference between $77,163 and $181,578 actually paid by the Commission for these properties been torn down and destroyed so the jury cannot see them; isn't that so? A. All except one or two houses, the major portion of which were concrete. Those walls are still standing.

Q. With those exceptions they are gone? A. No, the Gronda house, the brick house, is still standing. We looked at that the other day, back near Crowley's lake, and one of the Garbarino houses, the foundations are still standing. The Murchio house stands, three stories high, of concrete, the walls, and there may be four or five other concrete structures that have not as yet been blasted.

The Court: There was a very thin house, one row deep, that was still standing that you said had been used as an Italian boarding house; is that it?

The Witness: Yes, sir, the Quintina Gronda house that is still standing there.

Q. By the way, what valuation did you put on this house? A. Of Gronda's.

Q. This house that is still standing that the jury has seen. A. Do you remember the number of that case?

The Court: 40-A on the map.

Q. Yes, that is right. Would you object to my looking at the notes of the Gronda piece, Mr. Hershfield?

Mr. Hershfield: I object to his looking at the notes.

The Court: Objection sustained.

Mr. Hunt: May I enter an objection? He is going to testify to it.

Mr. Matthews: He cannot now, at least, at this stage of the proceedings say I want to look at that.

Mr. Hunt: I think at any time that I make the request I am entitled to see memorandum to which the witness is referring to for the purpose of testifying from it.

Mr. Matthews: He is only entitled to cross examine whether the memorandum was made at the time and it is for your Honor to determine whether or not he is competent to use it. I have no objection to his cross examining as

to when the memorandum was made, and have him exclude it as to the others, because I am going to use it on redirect.

Mr. Hunt: I cannot understand the reason why counsel does not want me to see the memorandum from which this witness is going to testify.

Mr. Matthews: I will answer.

Mr. Hunt: I am speaking, if you please. He said, yesterday, his eyesight was poor. Now, these figures might be rubbed and smeared in some way, and he might possibly, by inadvertence, read wrongly. I think I have a right to see that from which he proposes to say—

Mr. Matthews: Now I will answer. The reason I do not allow counsel to see the memorandum is because he seeks then to have it marked in evidence, to take an unfair advantage of the witness.

Mr. Hunt: I will promise, if the witness reads correctly from the memorandum, that I will not have it marked in evidence.

Mr. Matthews: I will have no objection, as Mr. Hershfield reads the figures, for Mr. Hunt to see that figure, to see that it is read correctly. I object, because of our previous experience with his use of our memoranda.

The Court: Very well.

Mr. Hunt: Then I am permitted to see the memorandum?

The Court: Yes.

The Witness: Shall I read the memorandum?

Q. No, read the value of the house? A. The house contained—

The Court: No, no.

A. (Continued) $3,600.

The Court: Let Mr. Hunt see that figure.

(Witness permits Mr. Hunt's examination of paper.)

Q. Now, Mr. Hershfield—

Mr. Matthews: That figure is all that is necessary. Will you turn your book closed?

Mr. Hunt: The Court will understand, of course, that it is impossible for me to look at that figure with the rest of the page being exposed, even if I did not wish to do it, without seeing the rest of the page.

Mr. Matthews: Then I submit, I will withdraw my offer, if that is the case.

Mr. Hunt: Will the Court permit me to finish?

The Court: You may finish.

Mr. Hunt: I perceive the figure "$3600" was arrived at by adding several figures together. I could not see what relation any of the figures had to produce that total. I saw one of them had relation to a certain number of swamp lands. I may be mistaken.

The Witness: Oh, let me read and cut it short, Judge.

The Court: No.

The Witness: Let us go home. I have a family. The figure of $3600—

The Court: Wait a moment. There is no question.

Mr. Matthews: No, Mr. Hunt is inspecting.

Q. State how the $3600 for the brick house is arrived at.

The Court: Very well.

A. The figure of $3600 was arrived at by my calculation that there were 13,500 cubic feet of masonry in the construction of that house. Deducting—dividing 13,500 cubic feet by 27, gave me the number of yards that were in the house. 500 cubic yards at $7 a yard is $3500, plus $500 for carpentry, made $4,000, the gross value of the house, less 10 per cent depreciation, $400, left $3600.

Q. I see. A. That is how I arrived at the value of that house.

Q. So, in valuing that house you supposed it to be worth the present day, that is as of that time when you were valuing it, present day reproduction cost, minus 10 per cent for depreciation? A. A masonry house does not depreciate very much.

Q. This was a brick house? A. It was brick and masonry. We can see that when we take our next junket up there.

Q. Now, when you valued the Ringwood properties, the Ringwood buildings, what average rate of depreciation did you apply? It was about 60 per cent, roughly speaking, wasn't it? A. In some instances more than that; in some instances less. The Ringwood—

Q. When I speak of—

Mr. Matthews: Wait a minute until he finishes.

Q. (Continued)—average, it was 80? A. No, I don't recall many figures as high as 60, except on barns that were only held together by sentiment.

The Court: Held together by what?

The Witness: Sentiment, association.

Mr. Hunt: I think that is a witticism, your Honor.

The Court: I suppose so.

The Witness: Well, we will look at those, your Honor, also.

Q. Mr. Hershfield, I show you a letter and ask you whether that is your signature that appears on that letter? A. Yes, sir.

Mr. Hunt: May I have the letter marked for identification?

(Letter marked Exhibit O-9 for identification.)

Q. As a matter of fact, that is the original of the letter which you furnished me a copy of yesterday? A. I do not remember whether that is it. It is an original of the letter I wrote on my office paper.

Q. Now, this is the letter sent by you to the Ringwood Company saying that the map it had sent you—

Mr. Matthews: I object. This is not recross of my redirect, if your Honor please.

The Court: I do not think it is very objectionable, however, Mr. Matthews.

Q. You say it is. That is the letter in which you complained to the Ringwood Company that the map sent you was indiscernable, is the word you used there?

The Court: Illegible.

Mr. Hunt: Indiscernable was what he said.

The Witness: Well, it was both.

Mr. Matthews: May he not inspect the letter to see if he cannot identify it, and read it to see whether it is the same one or not without addenda?

The Witness: This is the letter I sent. Whether it is a copy of the one—

Q. It is a letter you sent to the Ringwood Company, the original letter? A. Yes, sir.

Q. And it is dated August 19th, 1924, isn't it? A. Correct.

Q. Do you recollect whether the Ringwood Company replied to it under date of August 20th? A. I had numerous replies to letters I sent.

Q. I hand you another paper—

Mr. Matthews: I object to this getting in of carbon correspondence. If they want any letters their right procedure is to subpoena the original.

The Court: Correct.

Mr. Matthews: And I think it is incompetent and immaterial to this issue to put the direct case in on cross examination, and that is all this letter can be, the reply of the Ringwood Company.

Mr. Hunt: I have never understood, your Honor, that when a witness was on the stand he had to be subpoenaed to appear to testify whether a certain letter addressed to him had been received by him. I have always understood he could be shown a copy and asked whether he did not receive the letter of which

this is a copy, and I want to put that question to him.

The Court: The point Mr. Matthews makes is that this is not proper recross examination, and I think that he is quite right.

Mr. Hunt: May I make the offer so it is intelligible, what I will try to do. I offer to prove by correspondence exchanged between this witness and the Ringwood Company in the month of August, 1924, after he had complained of one map being illegible or indiscernable, as he puts it, the Ringwood Company sent him another map, a blue-print of the property—

Mr. Matthews: I object to that as immaterial, and not redirect on my cross of this witness.

The Court: I do not know when this happened, but this witness did say that he had a map that was illegible, that he complained about, and got no new one, and if that be true, this is proper cross examination on that point.

Mr. Matthews: Well, it should have been taken advantage of on the cross.

The Court: Perhaps it is out of turn in that respect, but I will allow it, because it is proper cross examination.

Mr. Matthews: If that were the only letter, that would be a fair proposition—I do not mean fair—it would be a proposition within the legal purview of your discretion to allow, but there may be other letters, if your Honor please.

The Court: That may be.

Mr. Matthews: And therefore this letter, to bind him would not be fair.

The Court: He is just asking to have it marked—

Mr. Matthews: For identification. I have no objection. He can mark the whole file if he wants to.

Mr. Hunt: Well, I will see if he can identify it before I have it marked for identification.

The Court: Yes.

Q. Mr. Hershfield, are you able to identify the paper I hand you as a copy of a letter received by you from the Ringwood Company bearing date August 20, 1924? A. I may have got it; I don't recall it. I received a great many letters from the Ringwood Company.

Mr. Matthews: I submit then, that is not a proper identification.

Mr. Hunt: May that be marked for identification?

The Court: I will allow it to be marked for identification.

The Witness: (Interposing) I may have gotten it. I do not recall it.

(Letter marked Exhibit O-10 for identification.)

Q. I show you another paper, and ask you whether you are able to identify that as a carbon copy of a letter addressed to you and signed by Charles E. Hewitt, and bearing date August 20, 1924?

Mr. Matthews: I object to this as immaterial and not cross examination.

The Court: I do not know whether it is material or not. I will allow him to answer that question.

A. I may have gotten it, but I cannot identify this letter from the carbon copy.

Mr. Hunt: May I have this marked for identification?

The Court: You may.

(Letter marked Exhibit O-11 for identification.)

Q. Now, Mr. Hershfield, I show you another paper, and I ask you whether you recognize that as a letter signed by yourself, dated August 21, 1924, and addressed to the Hewitt Realty Company?

Mr. Matthews: I object to this as immaterial and not cross examination.

The Court: I will allow it.

A. I signed that letter and probably dictated it.

Q. Do you know that Mr. Charles E. Hewitt is this gentleman sitting here in the front row of benches, or in a chair just in front of the rail, and an officer of the Hewitt Realty Company? A. I know Mr. Hewitt. I do not know what office he holds in the Realty Company.

Q. You know him as an officer of the Ringwood Company, do you not? A. I know Mr. Hewitt is an important man in the Ringwood organization; which office he holds, I don't know.

Q. You frequently talked with him about the Water Supply Commission's—

Mr. Matthews: I object as immaterial.

Q. (Continued) —acquisition of the Ringwood Company property?

Mr. Matthews: I object to that as immaterial.

The Court: What is the materiality of it?

Mr. Hunt: I want to identify the person who signed this letter.

The Court: The letter you show the witness is one he signed himself. He admitted that he sent it.

Q. I notice, by the way, your letter that you identified is marked "Attention Charles E. Hewitt."

Mr. Matthews: I object to what is on the letter. It cannot be used.

The Court: Objection sustained.

Mr. Hunt: May that be marked, please? May we have an exception, your Honor? What I would like to do is to connect the person mentioned in the letter with the person sitting in view of the witness in the court room.

The Court: He has already done that.

(Letter marked Exhibit O-12 for identification.)

Q. Now, Mr. Hershfield, the letter signed by yourself and addressed to the Hewitt Realty Company has been marked Exhibit O-12, and I ask you to read it.

Mr. Matthews: I object, if your Honor please.

The Court: Objection sustained.

Q. The court sustains the objection to your reading it. I ask whether you will grant me permission, with the Court's consent, to read the letter to the jury?

Mr. Matthews: I object to such a question "to the jury". Now, it is only scenery. I object to that kind of tactics, as if to impress upon the jury we were unwilling. You read it in your own case.

The Court: Objection sustained.

Q. Mr. Hershfield— A. Sir?

Q. —you produced a map here yesterday, I believe, or at some earlier day in this proceeding, which you said was the illegible map sent you by the Ringwood Company? A. It is in evidence, I believe.

Mr. Matthews: It is for identification.

The Witness: What is that?

Mr. Matthews: Marked for identification.

The Witness: Marked for identification.

Q. I ask you whether or not, in the month of August, 1924, you did not receive from the Ringwood Company a blueprint showing the same land which is depicted on that so-called illegible map that you say is marked for identification?

Mr. Matthews: I object, if your Honor please, as not redirect of my cross examination, not recross of my cross examination.

The Court: It is cross examination, however, and I cannot be sure, at this time, whether it was asked—

Mr. Matthews: I will withdraw it, then.

The Court: —on direct examination or redirect. I will allow it.

A. I did.

Q. You received one? A. I received a roll, as I recall, of five or six blueprints.

Mr. Hunt: May the witness's answer be read, please?

The Court: Yes, read it, please.

(Answer read.)

Q. Now, those blueprints showed the same land which is shown on the illegible map marked—what you called illegible, marked for identification, and also other lands belonging to the Ringwood Company, did they not? A. The blueprints covered a vast terrain, and showed lines indicating thousands of lots. That is all I can tell you about it.

Q. Now, you have not answered my question.

Mr. Hunt: May it be read to him?

The Witness: I remember the blueprints well, Mr. Hunt. They showed lots running up sides of the mountains.

Q. I asked you whether one of the blueprints showed the same land shown on the map that you said was illegible; did it? A. I don't recall it.

Mr. Matthews: I object, unless it is shown—

The Court: He has answered already. His answer has already been given, he does not recall, and I will allow it to stand.

Q. You do not recall? A. What is the question?

The Court: You have answered it.

The Witness: I do not recall whether it was in the same scale, or covered the same land.

Q. I have not asked you that, whether it was in the same scale. I say didn't one of those blueprints show the same land which was shown on the map that you said was illegible?

Mr. Matthews: I object, if your Honor please, unless it is a map showing the same land, in the same condition as at the time of the taking. Those statements that have been volunteered and now sought to have stricken out would indicate this was a development map.

Mr. Hunt: It was eight months before the taking, and might have been totally different; we might have built a row of eight-story apartment houses before the taking commenced on this land.

Mr. Matthews: The map may be different, because the map would then lie about the land, as far as market value goes.

The Court: I will allow it.

Mr. Matthews: Your Honor will allow me an exception on the ground that it is incompetent?

The Court: Yes. I am allowing it on the ground that it is proper cross examination with respect to whether or not he received a further map after having testified at one stage of the proceedings that he received an illegible map, and as I recall it, he said he never got another one. That was the only one he got.

The Witness: Of that tract.

The Court: I understand. But now this is brought in for the purpose of discrediting your former answer, when it is sought, if it is to introduce those blueprints for some other purpose, I will then rule on the admissibility of them, if that time comes. I am allowing it now on the other theory.

Mr. Matthews: On that theory, I will withdraw my objection.

The Court: Very well.

Q. Answer it, then, please? A. May I have the question read?

Q. The question is didn't one of those blueprints show the same land that was shown on the map that you said was illegible? A. No, sir; several of them may have shown it, but not any one.

Q. But altogether, within the bunch of blueprints, that land was shown? A. I presume it was altogether, with much more land.

Q. As a matter of fact, substantially all of the Ringwood lands shown on Exhibit C-1, and other Ringwood lands shown, were shown on this roll of blueprints sent to you? A. I could not read the blueprints, Mr. Hunt.

Q. Ah, you could not read them? A. They were also blotted and faded out when I got them.

Q. Now, Mr. Hershfield, I ask you to bring those blueprints here to-morrow. A. I can have them here in an hour.

Mr. Hunt: All right.

The Court: That will be too late.

Mr. Matthews: The only thing it will save us from putting him on tomorrow. Can you have them here any sooner?

The Witness: No, it is 20 miles to my office and back to the court house.

Mr. Matthews: I would object for any other purpose than to offer to contradict him.

Q. Now Mr. Hershfield, I lay before you today Book X-28 of Passaic County, opened at page 301 at which begins the entry of the record of Deed No. 185,937 by Antonio Dondero and others to the North Jersey District Water Supply Commission. Now, will you look at that and see whether that is the deed by which Tract No. 34-B, as it appears on Exhibit C-1 was conveyed by Dondero to the Water Supply Commission? A. I could not tell it.

Q. Well, now we will see. I think you are a very intelligent man, and by reading this description—

Mr. Matthews: I object to this compliment to the witness on account of its source.

Q. (Continued) —and by turning to the documen, you can see it—

Mr. Matthews: I do not think it is meant, and it is not fair.

The Court: I will allow it.

Q. It is perfectly sincere; I believe him to be an intelligent man, your Honor.

The Court: I am allowing it to stand.

The Witness: May that be on the record?

The Court: It is on the record.

Q. Now, Mr. Hershfield, to be a little more specific, perhaps I can help you. I point to the fourth

tract in this deed, and ask you whether that is not Tract 34-B, as it appears on Exhibit C-1?

Mr. Matthews: I object to that as immaterial, that that tract is in that general deed.

Mr. Hunt: It will appear soon to be very material.

The Court: I will allow it until I find out what the materiality is. If I find it is not material, I will strike it out.

The Witness: This subdivision of the deed contains the same amount of acreage, namely, 23 and a fraction that I testified to as being Tract 34-B.

The Court: 34-B?

The Witness: Yes.

Mr. Matthews: I submit, if your Honor please, that he is not competent to testify, if all he can recognize is the acreage, and the record is the best evidence. If he was to contradict him, he may use it in his own direct case.

Q. Now, you say the acreage is the same, do you? A. Yes, sir.

Mr. Matthews: I object, if your Honor please. The question is—

Q. Now, step over to the map—

Mr. Matthews: I object.

The Court: There are no questions before the witness. The book is before the witness.

Mr. Matthews: The book is before the witness, and he is proceeding with the question, and this is not proper cross examination.

The Court: I will allow it for a while.

Q. Now, you said the fourth tract, as described in this deed, as far as it refers to acreage of 34-B —just point to 34-B on the map, won't you? A. (Indicating).

Q. Take notice of the names of the owners of the adjoining property; take a mental note of them. A. I am.

Q. Now, then, read—

Mr. Matthews: Wait. While I cannot hear that mental note, it was uttered, and I object. There was an utterance.

Mr. Hunt: My point is, your Honor, to have the witness look at this map which indicates the names of the adjoiners and the courses and distances—if he will lay the scale on it, and then to read the description of this fourth tract as set out in this deed, and see whether it does not correspond to 34-B on the map?

Mr. Matthews: I object to the reading of that. It is not in evidence.

Mr. Hunt: I do not ask him to read it aloud; to read to himself.

Mr. Matthews: I object to his using a document that is not in evidence.

Mr. Hunt: What is it that is not in evidence?

Mr. Matthews: The document that you ask him to read.

Mr. Hunt: This deed book?

Mr. Matthews: I submit it is not proper in that fashion to get this evidence before the jury, out of a document that is not in evidence.

Mr. Hunt: It has been a great many years, your Honor, since I have had occasion to read the Conveyance Act, or the Evidence Act—

Mr. Matthews: That is why—

Mr. Hunt: —but throughout the twenty-five years I have practiced in the courts of this State, I have seen deed books brought in and used as evidence, and will—

The Court: The point Mr. Matthews makes is, this is part of your case, and not proper for cross examination.

Mr. Hunt: In that, he is mistaken. This is a means of impeaching this witness.

The Court: I understand.

Mr. Hunt: And this means, if the Court will permit me of further establishing a right which the Court this morning deemed I did not possess, of compelling the witness to testify respecting the other Dondero tracts because if the Court will permit me to open the matter, it appears that there is no deed whatsoever from Dondero to the Water Supply Commission.

Mr. Matthews: I object to this statement, "no deed whatsoever." He can subpoena our records. I object to it as prejudicial. If he wants to open this I ask the jury be excluded.

Mr. Hunt: —for 34-B.

The Court: I understand your point, and you may discredit this witness. In your own case, you may ask him anything that you please. At this time this is not proper cross examination to confront him with something that is not now in evidence and cannot now be put in evidence, because it is not offered by the Commission.

Mr. Matthews: May I just confine myself to the close to twenty years of practice that I have had, that I have never seen that done before, and I have looked at my evidence books first in the preparation of this case.

The Court: There is no question, Mr. Hunt, that you are quite right that that is good evidence, when properly brought in, but it cannot be introduced now. It can be marked for identification, and in putting in your case, of course, you may show by evidence that you will then introduce, documentarily or verbally, that this witness should be impeached because he testified to things that are not proper, that the evidence can be rebutted; but out of his own mouth, you cannot do it, if you have to resort in doing it to something that is not now in evidence, and cannot now be put in evidence under the rules of evidence.

Mr. Hunt: Your Honor, I do not want to be too persistent, but it seems to me impeachment is twenty times of value if it comes from the witness's lips himself, than when it comes from others, and there is the County Deed Book, the public record of the County.

The Court: Yes.

Mr. Hunt: This witness identified—

The Court: I understand the situation exactly, Mr. Hunt, and this witness has also testified he has not seen any of these deeds; he knows nothing about the deeds; he had nothing to do with the deeds; you do not even show him deeds.

Mr. Hunt: I show him what the law says is a certified copy.

The Court: That is true, but when the witness testified he had no knowledge of the deed, and does not know anything about it, I do not think it is a proper way to confront this witness, aside from the reason I have already given.

Mr. Hunt: Is it not possible, however, your Honor, that the Court has failed to recall one bit of the witness's testimony which is, that this tract 34-B—and it constituted page 840 and several pages of the record—it may be referred to, and this is the deed he is especially concerned with, and as I understand it, he said the conveyance of Tract 34-B constituted separate transaction, for which separate consideration was paid. Now, I submit I have a right to put the record book before him, and by means of the record and the map to demonstrate to him the fact that that is not true.

Mr. Frazer: Will Mr. Hunt point out to me at page 840 where that statement is made that he made to the Court?

Mr. Matthews: I do not need the record. I know the statement was not made.

Mr. Hunt: On page 840, the record says: "Dondero, where is that? A. Tract 34-B."

Mr. Frazer: Where do you find this statement that this is not a transaction related to the other?

Mr. Hunt: May I ask which counsel is conducting this case?

Mr. Matthews: I am and Mr. Frazer is helping me just now.

The Court: I am not concerned with what the record says about that. It does not help

the situation a bit, even though he may testify. I do not, personally, recall his having so testified. I am not disputing your recollection that he may have done so. On the contrary, this witness has repeatedly said he had nothing to do with the transactions after he had appraised, or after he had made the bargain that the matters respecting the conveyance of deeds were all done by others, and if he has said there was but one deed given in this tract—

Mr. Hunt: I did not say that. I am insisting he said there were two.

The Court: Or that there were two. I do not think it makes a bit of difference, as far as evidential value at this time, under the rules of evidence, are concerned. I am not saying you cannot show it. As I said before, you may do that in your own case to impeach him, and you may cross examine now to your heart's content with respect to those things, but not by confronting him with something that is not in evidence and cannot, as I understand the evidence act be at this time introduced in evidence. It can be marked for identification, however, and be put in by you at the proper time. It may be well to continue Mr. Hershfield on that point, for Mr. Matthews to put him back on the stand, and at that time, if that happens, you can cross examine him then.

Mr. Hunt: Your Honor, to have a more concise record made, I make the formal request for leave to put the question to the witness, and I beg the right of privilege of requiring the witness to read the description of the fourth tract described in the deed from An-

tonio Dondera and others to the North Jersey District Water Supply Commission, recorded in Book X-28 of Deeds for Passaic County, at page 301; and then to go to the map, Exhibit C-1, and state whether the fourth tract described in the mentioned deed is not the land which is depicted on the map as Tract 34-B of 22.92 acres, owner A. Dondero.

Mr. Matthews: I object on the ground it is using a document not in evidence, or one that can be put in evidence or should be put in evidence at this time, and upon the further ground that it is comparing a document with a document that is not in evidence.

The Court: The objection is sustained and an exception allowed. I think, if you are through with the book for the present, it better go back to the office, Mr. Hunt.

The Court: That is all, your Honor.

Mr. Hunt: That is all, Your Honor.

Mr. Matthews: In order that Mr. Hunt may cross examine you and finish with you completely on the Irving Stone property, I hand you notes which I have produced from the offices of the Commission where they were an exhibit in the previous case, and I ask you to use them for whatever questions Mr. Hunt may have.

The Court: Is that all, Mr. Matthews?

Mr. Matthews: Oh, no. I want to examine on the detail of the building costs.

Mr. Hunt: Do you want me to proceed at once with the Stone property?

The Court: What do you want?

Mr. Matthews: If he wishes he may continue, or wait until I am through.

The Court: Why not finish now?

REDIRECT EXAMINATION BY MR. MATTHEWS:

Q. Now, Mr. Hershfield, expeditiously take your notes, and by the way, did you make notes with reference to the detail of the buildings on these 23 tracts that you testified about at the time that you were going to buy the tracts? A. Yes, sir; approximately.

Q. In other words, the buildings were standing at the time; they had not been destroyed? A. No, sir.

Q. Just put those down a minute, and let us go to this question: Will you take each property, item by item, that you have on the list which Mr. Hunt had you write down the total moneys paid by the Commission, beginning with No. 1 of those items, the buildings and appurtenances in each tract; give the detail of your cost of each, and total, and put it down, then I will add it up. A. The first item was $14,000.

Q. Yes. A. I did not allow anything for the buildings. That is all expressed for the land. There was some building value, but it was practically negligible.

Q. Well, take the Maragliano? A. Guiseppe Maragliano. Do you want me to read my description?

Q. I want you to go over your notes made at the time, the detailed buildings and the total building cost that you allowed and the values. A. That was on tract 51. My field notes made February 28th, 1919, in the morning show as follows: A two story rock basement barn, 15x35 feet, peaked shingle roof, a two story wood shingle lean-to, novelty siding, 18 inch walls and foundation, a concrete toilet 6x6 with a shingle roof, a 12x10 board and

shingle room chicken coop, seven 25 foot rustic grape arbors, eight cherry trees. Seem to have down here six parrot trees—I think that is a mistake. No, six assorted trees. 25 trees all together, that is, fruit trees. Two story novelty siding and peak roof shingle house 22x32 feet, concrete filled walls, filled four inches to the plate or eave; three rooms and hall on the ground floor; on the second floor there are four rooms and hall; the attic has one room not finished; the house is plastered and sheathed and has standard trim; there is a porch 20 feet by 6 feet; one chimney; no water or set range; dirt floors, 2x10 beams in cellar, one-half of the house—the cellar is one-half of the house. The house is of heavy construction, 16 inch walls, 8 feet head. There is one rock cool room 10x10. The house has been built 10 years. There is 50 acres of ground. The tenant's name is Stephen Brocco, who pays $40 a month, with a lease with 30 day breaking clause. The house has $3,800 insurance. No mortgage. The land contains 35 acres of wood, 10 acres of pasture, 5 acres of house lot and garden. No well. Only uses spring. No cesspool. There are 800 feet private road. There was one living spring on the property. The owner valued the property by letter at $16,750. My valuation of the property was $7,970.

Q. Have you given me the total items inclusive of land that went into the value of $8,000 that you paid Maragliano? A. My detail of the appraisal is as follows: 17 acres of land with good timber, $1,700. 18 acres of land with scrub timber at $20 an acre, $360. 15 acres under cultivation at $75 an acre, $1,125. I valued the barn at $500, the toilet at $50, the chicken coop at $10, the grapevines at $400, fruit trees at $100, cooling house at

$100, the dwelling at $3,000, the private road at $400, and the fences at $1,000, making a total detail of approximately $8,000.

Q. So that the balance between $8,000 and $3,185 was the improvement value, was it? A. Yes.

Q. All right. $4,815 I subtract, subject to being checked up by my opponent. A. I have a memorandum here that the owner's son-in-law said he paid $1,000 for that 50 acres of ground.

Q. Well, I have not asked for that, but it is interesting and not objected to. Now will you go to the next piece, Crowley. This time you can save a little time by going particularly to the items of improvement and give me the amounts, and if so, I can subtract them and get the land value by this method of proving—to check it, that is all. A. My description made March 5th, 1919, is, the owner claims 30 acres, but the map shows 17.

Q. Yes. A. That the property is assessed for $700. That there is a lake and swamp on the property of about three acres, spring fed; that there are four acres of wood, three acres of good ground, two acres in potato field, one acre garden, and then an acre about the house and barn, and six acres of pasture, and that the soil is good. There are 30 to 35 green fruit trees on the premises, which I marked as being in good shape, and apple. The house, a two story composition roof, 24 feet 4 inches by 28. It was built in 1910. We bought it nine years later. There are four rooms on the first floor and four rooms on the second. It is arranged for two families, and the other family pays $210 a year rent. The house is plastered, has a wainscoted kitchen, one-half cellar with 7 foot head; has an earth bottom on the cellar, and rock foundation. There is water in the kitchen. There

is a well in the cellar, driven well, 24 feet deep. The attorneys for the owner are Messrs. Ward & McGinnis. The owner's valuation is $5,000. He claims to have been offered that by a Mr. Harry Zarn, manager of the Arrowhead Inn in New York. He carries $1,200 insurance on the house, $300 on the barn. The premises are free and clear. There is one well. There is a barn 32x20 feet 4 inches, shingle and composition roof, in poor condition. There is a good living spring. There is also a chicken coop 10x12 with a 7 foot rubberoid roof. A small pigpen. An old wagon shed of no value, and a yard toilet.

Q. Now have you given me all the details of improvements on that property? A. Yes, except the value of it.

Q. You paid $3,700 total? A. For everything, $3,000—

Q. $1,000 for the land? A. $1,000 for the land, house $1,700, barn $300, orchard $600, chicken coop $35, and for the spring $100.

Q. That is $2,735? A. For the improvements on the property.

Q. Yes. All right. Take the Travato piece now. A. Travato?

Q. Yes. Just explain and spin right along. Tell us what was on it. There is $35 in the bag, I think, on that other one. There was 17 acres, and we called it even $60. It is probably because he did not divide the acreage even. Try and be systematic about it. Say a house and barn, and get going quickly. A. There was a house, barn, a chicken and pigeon coop, one building, a yard toilet, a pig pen, a feed bin, a small chicken coop, an open wagon shed.

Q. Will you value the house quickly? A. $2,400. Want me to describe that?

Q. Yes, you better, because I want to show— A. Two and a half stories, mansard roof dwelling, two dormer windows, frame construction, 20 x 27.6; first story concrete, second story clapboard, mansard shingle, tin roof; no water in house, but G. W. D., that is George Washington Davis reports 45 cases of beer in the cellar. I mean that is in my notes and I am reading it.

Q. Do not read that.

The Court: Did you verify it?

The Witness: I did not.

The Court: All right.

Mr. Matthews: Some of us it makes lonesome and others it makes anxious.

A. I mean that is in my notes and I presume the record must be read.

Q. What else was there that had value? A. George Washington Davis. On the first floor there are four rooms—no, three rooms on the first floor and four on the second; there is an open attic; there is a centre wall on both stories, I mean a division wall between the two sections of the house. There is an enclosed stairway to the second floor.

Q. Was it in good condition at the time you examined it? How old was it? A. It was not in very good condition, no, sir. The house had a barrel spring in the yard. No improvements in the house, but there were two chimneys, both running to the cellar. The barn was 40 feet by 24 feet, with 26 feet head to the ridge. There was a shingle roof in fair condition. Chicken and pigeon coop with asphalt roof, 36 x 12, all in poor condition. Yard toilet. A shingleroof, clapboard sid-

rooms and storerooms, and also the same number of rooms on the third floor. The house has a seven foot head in the cellar, concrete foundation, and a floor, 24 inches wide; there are 2x10 floor beams, 12 inch centered, also catted. There is water there from a tower that was in the rear. The house is decorated, that is, cold water paint employed. There is metal ceiling in the dining room. Two chimneys running to the cellar. Every room had acetylene lights from a 50 light machine. The house had clapboards and sheathed, and also hung shutters. The summer kitchen was solid concrete. That is still standing. 24x16 feet 6 inches, about 10 feet head to the ceiling, one story. There is a composition asphalt roof. The ceiling was ceiled. There was a concrete floor. There were two sets of wooden washtubs, and a fixed dresser, that is a dresser fixed to the real estate. There was water there, and the walls were 10 inches thick. There was a water tower containing 750 gallons with an Essex tank, that is, a tank made by a man named Essex in New York; it was 20 feet high and it was well braced upon 4x4 braces, they in turn being on 10x10 concrete foundation. This tank was fed by an engine. There was a small engine house. There was 1¼ inch pipe and there was 300 feet of pipe. There was an icehouse on the premises, a shingle roof, clapboard sides, 12.6x12.6, it was 6 feet below grade, and also had concrete foundation.

The acetylene gas house was frame construction 6x6 feet with a shingle roof, and it had a 50 light pilot machine in it. There was a double toilet 6x8, shingle roof, made of shiplap, with stone vault, laid dry.

There was a cement walk, two feet or two feet six. There was one 2 deck house, to which I attached no value. There was one grape arbor, a double grape arbor 21x8, 10 feet high.

There was a main barn 24 feet by 32 feet, two story shingle roof, tongued and grooved, shiplapped, spar-deck.

There was a barn extension 30 feet by 20 feet of the same construction. Stone foundation, 63 feet long by 6 feet high, laid roof and cemented. There were eight stalls there and also an open wagon shed below the barn.

Q. Now what did you give them for the hotel and what did you give them for the barn, the big elements in that item? A. I gave them for the hotel, $8,000.

Q. Yes. A. For the summer kitchen $425, the water tower, $200, the icehouse $300, for the gas house and machine $250, the double toilet $65, the cement walk $15, the grape arbor $25, the main barn $800, and the barn extension $200.

Q. Just a minute. A. Making a total of $16,070, for the improvements, not including the lake on the property.

Q. All right, then the balance between improvements that you have itemized and the total figure you gave Mr. Hunt was your land value; is that it? A. Yes; and that detail had two acres of No. 2 wood at $75, $150; four acres of No. 3 wood at $50, $200; six acres of pasture at $60, $360; seven acres of bog hay land at $40, $280. There was a two acre lake there that I valued at $500; a dam to hold back the lake, 200 feet long by 8 feet high, revetted, and with concrete core, also with a big leak in it, as I remember it, $750. There were 32½ acres of good land at $100.

Q. All right, go ahead. Next one, please? A. which one is it?

Q. L. Garbarino. Be careful that you get the right one. The 30 acre tract. Well, I guess there is no improvement on it. A. That is $1,300 land and $1,300 total.

Q. Yes. Go to the next one, the 25 acre tract, and explain to the court why the payment of $9,000 and odd additional above the land was made. A. Louis Garbarino extension, made March 13th.

Q. What year? A. 1919.

Q. Notes made at that time? A. Yes, sir.

Q. All right. A. That consisted of 25 acres of ground with what I call the home lot. There were 10 acres of good cleared land at $100 an acre.

Q. Give the improvements, not the land. A. The improvements are two story and basement stone and stucco boarding house, 19 feet 6 by 24 feet, walls 18 inches thick. I have got that marked as the original house. There were four individual cellars, 7 feet head each, with dirt floors. The extension to the original house was 37x28 feet, two stories high. And also the second extension to the original house was 18 feet by 39 feet and was built of stucco on lath, two stories, one dormer window, with 30 feet by 15 feet porch on arched concrete and stone foundation, very heavily built, 7 feet centers, and piazza upstairs, and roofed, but not ceiled, tar paper roof. There were five chimneys on this building running to the ground. The building had eight rooms on the first floor, 12 rooms on the second floor, and no improvements except a pump in the kitchen.

Q. Give us the values now. You have showed us enough stuff on it. Give us the values that go to make that up. A. I valued that building—

Q. What building? A. The one I have just described. It was all one building.

Q. I see. A. At $6,514.

Q. You valued that in 1919? A. Yes.

Q. When you sold it? A. Yes.

Q. What do you know about the change in building values as of 1919 and now? A. Well, I should say that material and labor had averaged 30 to 35 per cent increase in that time.

Q. So if you were valuing those same buildings today it would be greater? A. Yes—unless, of course, the attendant additional depreciation offset it.

Q. Would depreciation on the buildings that you have described and are to describe offset the increased cost, or would the depreciation be greater?

Mr. Hunt: I object to that as leading, if the court please.

The Court: Objection sustained.

Q. What would be the depreciation percentage on these buildings that you have testified about thus far? A. Well, on this last building the depreciation is determined by knowing the occupancy. I would say 3 per cent a year would be fair depreciation for a hotel of this character.

Q. Would that depreciation of 3 per cent a year be equivalent to the increased labor cost that you just spoke of?

Mr. Hunt: I object to it as leading.

The Court: I will allow it.

A. It would.

Q. Or not? A. It would not be as much as the increased labor cost.

Q. Is that statement true of all the buildings you have described thus far in the list I have gone over with you? A. No; because where I have to allow a larger percentage of depreciation on a hotel than I would on a private house.

Q. Then do I understand in all of the other buildings except the hotel the depreciation would be more or less? A. Less.

Q. Than the increased labor cost? A. It would be less than the increased labor cost.

Q. All right. Go ahead now with your improvements. $6,000 for that property that you just described. Is that what you told me? A. My figure on it was $9,700 less 33 1/3 per cent depreciation, bringing it to $6,500 net.

Q. The other figures that you have given me, have you taken off depreciation? A. Where it was of an amount to assert itself.

Q. All right. Then go to the next one, Dondero? A. I have not finished with this.

Q. Oh, I beg your pardon. A. I mean if you want it.

Q. Yes, I want all the items that went to make up the other $10,000 or $9,000 and odd. A. I valued a private road they had there at $50. I valued the frontage on the Hook Road at $150. There was a cesspool at $25; summer kitchen at $75, chicken house and pigeon coop, $25; stone barn, $100; chicken house $30; chicken house on posts $20; two single toilets in good condition $20; 102 running feet of grape arbors, strongly built, $204; 26 varied fruit trees $300. I valued the dwelling house on the property which was additional to the hotel at $3,400, which I arrived at by cubing its contents, which were 36,000 cubic feet, and then multiplying by 10 per cent unit value, then taking off

10 per cent for depreciation brought it down to $3,302. A summer kitchen $25; a bowling alley $100, chicken coop $5, yard toilet $10, retaining wall $100, a concrete retaining wall $100, a small arbor $4.00; well, 30 feet, driven, $30; another well $10, a cesspool $30, 10 feet deep.

Q. Is that everything? A. That is all the detail I have here.

Q. That is enough.

The next one, A. Dondero. Well, you have 23 acre tract, $1,650 for the total, and $1,650 land.

Take Ravanti, 17 acres, which you gave me the land value of $680, a total value of $11,000, and tell us how you account for the $10,220 or $320 additional? A. Ravanti?

Q. Yes, 17 acre tract. If you would hurry a bit I would appreciate it. A. I am trying to hurry. What was the acreage on that tract?

Q. 17, according to my notes, but there were more, because I recall I have a correction.

The Court: And 15¾ according to the map.

Mr. Matthews: Yes, 15¾. The tract that you said you gave us $680 for the land, and you told Mr. Hunt $11,000 we paid for the premises.

The Court: You had trouble finding it before. You wanted to give us 42-B instead of 42-A.

A. There are three Ravantis.

The Court: You finally found it.

A. This has three separate houses on this tract.

Q. Where did you get the $11,000 figure from that you gave to Mr. Hunt? You got it from those

notes. That is why I am cross examining. A. Yes. I have it lot 61, Cecelia Ravanti, Franks wife.

Q. I don't know whose wife she was. How many acres? A. 10, 12, 16, 17½ acres.

Q. Yes.

The Court: That is it.

A. That is the one. There was apparently three houses on that tract. The first house was occupied by Serafino Garbarino as a tenant, who paid $22.50 rent and had been there 10 years. The house was 28x22 feet. Three rooms on the first floor, three rooms on the second floor, and three rooms on the third. It consisted of two and a half story frame clapboard shingle roofed dwelling with outside hung blinds, a porch 6x26 feet, shingled and sheathed, and on brick piers.

There was a 6x4 kitchen extension with a shingle roof. There was one brick chimney running to the cellar.

There were leaders and gutters, plain trim, and 1¼ inch doors, no improvement in the house. A full cellar with 7 feet head and a dirt floor. There were 2x10 beams set in a heavy foundation.

Q. What did you allow for that house? A. $2,100.

Q. Anything else? A. There was a barn 24x20, novelty siding, shingle roof, 2x6 beams with finished loft.

Q. How much? A. Wait a minute. $450.

There was a well with a pump attached. I allowed $125. There was a summer kitchen 8x10, $15; an open shed $10, a chicken coop $15, a bunch of varied buildings, $5.00 apiece.

Q. All right, come to the next large item? A. The next large item is house No. 2, occupied by John Traverso, who paid $35 a month, had been two years in possession. The house was 33x30 feet on sills.

Q. How much did you allow for it? A. $2,100.

Q. Was there another house besides that? A. Yes, and a summer kitchen and a barn.

Q. What was the other house and summer kitchen and barn, if they are large items? A. The summer kitchen was $40; a barn 36x19 feet, allowed $500.

Q. Was it a real barn as your description shows? A. My description was two story ship-lapped shingle roofed barn, 36.4 by 19 feet, with stone foundation laid dry.

Q. Go ahead. Go to the next house. $500 satisfies me. My opponent can go into it if he wants to. A. The next house was two and a half stories frame, novelty siding, shingle roofed house, with outside blinds; rented for $12.50 a month.

Pantry extension 12x6, concrete cellar of 7 feet head, floor beams 2x10. On the second floor—there were two rooms on the first floor and three rooms on the second.

Q. What did you give for that house? A. $1,500.

Q. All right. What other large items? A. There was a vineyard, $300; 37 bearing fruit trees, $400. There were no other items except the ground.

Q. All right. Do your notes show you have accounted in items you have given us or totals for $9,320? A. I did not total them, except the aggregate. We gave them, I recall, around $11,000 for them.

Q. Just a minute. My totals are only $7,500, Mr. Hershfield, and if that were true and $11,000 was

the total, you would have unaccounted for $1,500, and you only gave a land value of $680. I do not mind you being $100 out of the way, but I do mind you being $1,000. A. I gave a land value of $1,600.

Q. Well, my notes show and I think the court will by his notes show $680, and I think the record will show it. A. Well, my detail shows 10 acres of pasture at $65, $650; two acres of swamp and swale at $25, $50; 1½ acres including 300 feet of road frontage, $600; 3 acres of land under cultivation at $100, $300. That totals $1,600.

Q. All right. A. That accounts for the $1,000.

Q. Then I understand you wish to correct your testimony given to me on redirect as to the 17 acres of the Ravanti property which you gave as $680 and corrected to $1,680? A. That is true.

Q. All right. A. $1,680.

Q. $1,680. A. Yes.

Q. All right.

The Court: That means instead of $45 an acre it is almost $100 an acre.

Mr. Matthews: $100 an acre.

Q. With that correction of your land values I won't go further into the improvements. Mr. Biggio's property, you gave $1,630 for the land and $10,100 you told Mr. Hunt for the total property. Will you give me the details of the other eight thousand four hundred and odd dollars or three hundred and odd dollars? A. My description reads, five acres and house plot that has about 50 feet frontage on the Hook Road, terraced, a good view of the valley, reservoir basin.

Q. Give me the improvements? A. I am giving it. There is a two and a half story frame dwelling

with a three story circular tower 12 feet in diameter; that was 37 x 42 feet with a slate roof; it had a porch on two sides 7 x 43 feet, also 7 x 49 on the other side; there was stone piers 8 feet centers; there was a tin deck over the porch, the porch was ceiled, had outside hung blinds; there were gutters and leaders, clapboards siding, and was also sheathed, slate roof; a divided double cellar under the full house, 8 feet head, 2 x 8 beams catted; stone foundation 18 inches wide. There were two brick chimneys running up from the bottom of the cellar to the roof. The house was plastered, had standard trim, 1¼ inch doors, closets in every room, water in one kitchen; had a centre hall, and on the second floor there were box stairs; wainscoted dining room, and the house partly piped for gas. There were 5 rooms on the first floor, 8 rooms on the second floor, and an open attic with six dormer windows in it.

Q. What did you value that property that you have just described? A. $7,700, less 20 per cent. depreciation, or $6,160 net.

Q. All right. What else went into your computation of value in the Biggio property besides that building? A. There is a summer kitchen with mansard roof—clapboard and shingle roof of mansard style. Stone foundation. $275. The other items of any moment were a Queen Anne yard toilet, I have got it here.

Q. Is there anything— A. At $100.

Q. Is there anything of any particular value in the name you have insinuated? Pardon my inquisitiveness. A. That is a rather unusual amount to allow for a toilet. I presume I figured it to be due to the architecture. $125 for the main barn. $225

for the new shingle garage, 16 x 18 feet, with concrete floor and foundation.

Q. How much was that? A. $225.

Q. Mr. Hershfield, is that a garage you can get for $225? A. We got this one for that.

Q. Do you know the builder? A. I know what they cost now, but I say we got this one for that. There was another garage, not so ambitiously designed, we got that for $110, 10 x 20.

There is a third garage we got, 14 x 16 feet, for $110. There was 120 feet, running feet of road wall, I valued at $200. There was two feet concrete gate posts; there was a walk 160 feet long made by four feet planks 8 inches wide, 2 inches thick, with a 2 inch rustic oak side rail. $50 I valued it. It was in poor condition.

There was $225 worth of retaining wall. This Biggio property was on a terrace and there had to be a series of retaining walls to keep the land in. There were 59 grapevines. I valued those at $125.

There was a water tower valued at $150. A well, $125. 16 apple trees, $125. Private road, I have given that included in the land value.

Q. You have given us all the large items on that? A. Yes.

Q. Go to the next one then, that Wardell. That is the same land. A. Wardell?

Q. Nothing on that? A. No.

Q. Go to Granda. You paid $2,125, you told me, for the land, and you told Mr. Hunt you paid him $9,000 for everything. Please account therefor for the difference? A. I don't remember whether it was eight or nine.

Q. Well, all right, find it.

The Court: Was this where you had the First National Bank pinned to your shirt?

The Witness: Yes, sir; Quintino Granda.

Q. How many thousand did you have pinned on you?

Mr. Lewis: $10,000, he said.

The Court: No, he said nine, but he thought it might have been eight.

The Witness: I am not sure.

Q. Quintino Granda. A. Two and a half story stone house, brick and stone, 16 feet by 42.4, shingle roof, hanging gutters, no leaders, brick cornering, also brick stepping around windows; walls 20 inches thick; cellar 24 inches thick, 8 feet head.

Q. I guess that is enough? A. They will see that.

Q. What did you give? A. I allowed that house, less 10 per cent depreciation, $3,600 net. There was a barn there, $300; an icehouse $175; a wagon shed $100; summer kitchen $50; pavilion $30; a spring house with 635 feet of one inch galvanized pipe leading away from the spring to the concrete vault near the house, and I valued that complete at $300. There were 25 matured apple trees, I valued at $10 apiece, $250. The private road on the property $200.

Q. When did you make that appraisal for Granda? A. March 21st, 1919.

Q. At the time you made that appraisal was it then that you closed with Granda, or how soon after? A. No; Granda could not see this figure, and I imagine it was two years after that before we closed with him, maybe three.

Q. Did he see it then? A. See what?

Q. The figure? A. Not this figure, no. We gave him either $8,000 or $9,000 for this property.

Q. All right; that is what I want you to tell me. Did you give Granda more when you did sell to him than the amount you appraised his property at there? A. Yes.

Q. All right. What is the difference then? Is there any more than $2,125 in his land value? If there is, I want him to have the benefit of it. A. We had no quarrel over the land. We had considerable quarrel over the value of his business. He did a picnic business there in the summer, and he claimed he was being put out of business, and each time he told me his story we added a few hundred dollars more. There was no quarrel about anything except the improvements on the place and the fact he was being put out of business.

Q. What was the total improvements that you have given me? A. The difference between—you mean my figure here?

Q. Actual appraisal figure? A. My total appraisal figure was $7,200 for that property.

Q. $7,200?

The Court: Including the land?

The Witness: Including the land.

Q. Then do you wish to correct your testimony of this morning that it was $8,000 or $9,000? A. No, sir.

The Court: No; this is the figure he appraised it at.

The Witness: But I say we gave him more.

Q. All right. $7,200 was your appraisal figure for land and building? A. Yes, sir.

Q. And you paid him what? A. Either $8,000 or $9,000.

Q. And you say that in addition to the building cost that you have detailed in your appraisal, the extra amount above $7,200 was paid because of the business that he conducted there? A. That was his contention for insisting—

Q. What was your reason to our Commission? A. That was my recommendation, that that should be given consideration.

Q. All right.

The Court: Now we cannot finish this witness tonight, so we might as well stop now as later. We will recess until tomorrow morning at ten o'clock.

Adjourned to January 13th, 1927, at 10:00 o'clock A. M.

SEVENTH SESSION.

PASSAIC CIRCUIT.

Appeal from the Award of Commissioners, in the Matter of the Application of the North Jersey District Water Supply Commission for the appointment of three Commissioners to fix the compensation to be paid for certain lands of the Ringwood Company, situated in the Boroughs of Ringwood and Wanaque, in the County of Passaic, State of New Jersey, to be taken and condemned for public use.

Paterson, N. J., January 13, 1927.

Before—Hon. NEWTON H. PORTER, *Judge,* and a struck jury.

APPEARANCES:

For the Owner—EDGAR W. HUNT, Esq., and WILLIAM I. LEWIS, Esq.

For the Condemnor—SPAULDING FRAZER, Esq., and JOHN A. MATTHEWS, Esq.; BERNARD L. STAFFORD, Esq., of Counsel.

HENRY G. HERSHFIELD, resumed.

REDIRECT EXAMINATION BY MR. MATTHEWS:

Q. Mr. Hershfield, yesterday afternoon we stopped at the Murchio tract. Will you please give

me the detail or value in the Murchio tract that makes up the difference between $2,200, which you told me was the price of the land, and $23,200 which you told Mr. Hunt was the total value? You told him $25,000 was the total value, but you took one piece off. A. Reading from my field notes, under date of March 21st, 1919, I describe this property as being a three full story stone house stuccoed on the exterior. Size of the main house 43 x 37 feet 4. It had a tin deck. Porches were 45 feet 4 inches by 6 feet 7 inches. Another porch 19 feet by 6 feet.

Another porch 19 feet by 6 feet.

The porches were ceiled. Set on posts 8 feet centers, which in turn were braced by wooden sills on piers. There were outside blinds, and leaders to the roof gutters. On the first floor were three large rooms, on the second floor six rooms, and on the third floor six rooms. There were portable partitions on the main floor so that the first floor rooms could be made into six rooms if necessary.

There was a centre partition wall running from the cellar to the roof, 27 inches thick.

The outside walls on the first and second stories were 34 inches thick, and on the third story the walls were 27 inches thick.

There was an open stairway, and there were catts on one side of the cellar.

The Court: There were what?

A. That is a building expression, your Honor. That means the beams were catted, that is braced. I don't mean the animals; I mean it is called catts. I think there were cats on both sides of the cellar of the other kind. The side walls were plastered with a

finished coat, and all the ceilings—there was a sealed roof; that is, the interior of the air chamber above the third story was sealed, and the rafters were 3 x 8 in size and doubly braced. There was a full cellar of heavy stone four feet thick, flared walls and revetted 60 to 48 inches and to a nine foot head.

There were oak beams 3 x 10 inches, one-half catted. The half of the cellar was concreted, the balance was cut out of native rock. The cellar about an eight foot head, and the footings were five feet thick. There was a 30 inch air chamber in the roof. There was acteylene gas in all rooms; a Colt 100 light machine furnishing it.

Three sinks, one to each floor, and running water in the kitchen.

Q. What is the price of that building? A. I valued that house, after cubing it and allowing 15 cents per cubic foot for its construction, at $8,000.

Mr. Hunt: How much?

The Witness: 15 cents a cubic foot on account of its extra heavy construction, $8,591.

Q. What else was there in the $23,200 besides that? A. There was a summer kitchen of masonry, with walls 19 inches thick, 8 feet head. The size of kitchen was 18 x 18 feet. It had a shingle roof, a wooden floor, just one room, no improvements. And there were chimneys in the wall. There was an open shed extension in addition attached to the building 11 x 18 feet.

Q. What price? A. I valued that at $400.

Q. What next? A. One story bungalow 17 x 33 feet, board partitions, novelty siding, tar roof, stone foundation, four rooms in it.

Q. How much? A. Chimney, $350.

There was an ice house 10 x 10 feet, 16 feet below grade, 8 feet above grade, stone construction, about 20 inches thick. I valued that at $300.

There was a woodshed with an old auto for pumping water—autoengine. I valued that at $75.

Two separate toilets, 5 x 5, stone vaults, laid dry, six feet deep. I valued those both at $30.

A corn crib on piers valued at $20.

A barn 46 feet 10 inches by 20 feet 4 inches. The first story was of stone. There were 20 inch walls, that is, the walls were 20 inches thick, with nine feet head. Had a full cellar partitioned, wall.

The east side of the basement wall of this barn makes retaining wall and is four feet thick spar deck, hand hewn and heavily braced, 20 inches on center—I am sorry I read that, because I have a note here, "No allowance for this except carpentry work."

A barn extension, $25.

Chicken coop $10.

Well 24 feet deep of stone laid up, $100.

A second well between the house and the summer kitchen, 28 feet deep, $100.

A third well in the front of the house 26 feet deep laid in stone, $100.

There was a fourth well back of the woodshed, 24 feet deep, and tiled, three feet wide, and I valued that at $125.

There is a cesspool I valued at $50, 4 x 7 feet, 8 feet deep, laid, that took the drainage from the house.

There were 55 varied fruit trees, apples and cherries, all bearing. I valued those 55 trees at $500.

There was 183 feet of retaining wall of stone averaging 3 feet above the ground, laid dry, the aver-

age width was 12 to 16 inches. I valued that wall at $150.

A concrete walk 39 feet by 6 feet wide, I valued at $30, because I have it marked here that it was cracked.

The gas house valued at $75.

That seems to be all of my detail of that house, Mr. Matthews, or on the two houses.

Q. Mr. Hershfield, you gave the value of $23,200 as the total value to Mr. Hunt, and the improvements you have added so far total, if my additions are correct, to only $11,031, and as your land value was $2200, as far as I am concerned, you have only accounted for $13,231, and there is $10,000 in the kitty. Have you anything to explain that or shall we add it to the value of the land, and make the land dearer? A. Well—

Q. Remember, there were two Murchio tracts, and one of those is described by you yesterday as furnishing a land value of a certain amount. Do you remember what that was? A. I think I figured that price of vacant ground at $60 an acre.

Q. Yes. A. Plus the road appreciation, whatever it was.

Q. What is that? A. I will have to look it up on the map. (Witness approaches map.) About 550 feet on one side of the road, I note maybe there is 200 feet on the other side of the road, but that is not very deep. It does not average more than 75 feet deep.

Q. That was at a dollar a foot, if I remember rightly, yesterday? A. On that road, yes, sir, a dollar a foot.

Q. That is $750 is to be added to the land value as appreciation of the acreage value? A. Yes, sir.

Q. What was the acreage value, if you remember? I am having it looked up in the testimony? A. $60 an acre, as I recall.

Q. And how many acres were there? A. The map shows 20 1/5 acres.

Q. Twenty times $60 would be $1200, and one-fifth of sixty would be twelve. That is right. You gave that yesterday $1212, so that would make $1962? A. Approximately.

Q. Well, if your value is still correct that you gave Mr. Hunt for your total property value, you are still $8,000 out of the way. Now, we must add that either to land or buildings. I want it added to one or the other in order that we may test your $78 per acre value of the Murchio tract? A. I have my land detailed.

Q. Give me that. A. Made at the same date, of this tract; 10 acres of No. 2 wood at $75 an acre, $750.

There were 10 acres of farm land at $100 an acre, $1,000.

Four acres of pasture at $75 an acre, $300.

Two acres of swamp at $25, $50.

And one house lot, $100.

Now, that totals 27 acres aggregating $2200.

Q. Yes, that is correct, Mr. Hershfield. A. Yes, sir.

Q. But if you paid Mr. Murchio, as you told Mr. Hunt you did, $25,000 for both Murchio properties, and you took them both together, and one of those properties amounted, in land and improvements, to $1962— A. Yes, sir.

Q. And your balance for the one property that we are now discussing was $23,200, and your improvements only total up, as I total them, $13,231, where is the excess? A. The excess is the difference

in opinion as to the value of the improvements between the Murchio family and myself.

Q. I see.

The Court: The testimony that Mr. Hershfield gave yesterday, according to my recollection and my notes, was that in the Murchio tract there were—23 and 25-C on the map, contained 29 plus acres which, on direct examination, he valued the land at $78 an acre.

Mr. Matthews: Yes, your Honor.

The Court: And in the cross examination Mr. Hunt brought out the value of this piece and another piece was $23,200.

Mr. Matthews: Yes, your Honor.

The Court: Not $25,000. That is as I have it. I may be wrong.

Q. All right, then, Mr. Hershfield—

Mr. Matthews: Will the Court and jury pardon me a moment until I recast my figures?

Mr. Hunt: May I suggest this to your Honor: I do not assert it to be the fact, but I think perhaps that $23,000 is arrived at from deducting from the $25,000 this sum of $2200 that the witness mentioned a few minutes ago, from the acreage.

The Witness: That is it.

Mr. Hunt: So Mr. Matthews is approximately correct when he says there is some $8,000 to be accounted for. To be exact, I make it $7,769.

Q. What do I understand your explanation to be of the fact that there is an excess of something around $8,000—put it that way—as between your

described property values from your notes, appreciative property on the realty? A. There are other items of value that I have not detailed.

Q. Will you give them to us? A. 500 foot frontage on the Hook Road and 1200 feet frontage on the Blue Mine Brook, where there was a nine foot fall on Murchio's own property. Murchio claimed, and also his children, that they intended to put an ice pond in there. Murchio also had a well-defined and quite freely used gravel bed on his property.

The reason I did not extend this matter was, that after I had taken the details Murchio told me he wanted $60,000 for everything he had. I quit right there and said I would go no further. They kept coming back at me year after year.

Q. Don't have them come back each time. A. No; but they came back at me, but finally, for family reasons, the boys got together and said they were going to persuade their father to sell, and asked me what I thought was a fair price for the property. I recall, I said, if they got $22,000 or $23,000 they would be getting full. Finally, they compromised at $25,000 after numerous family conferences, and I suggested to the Board to let it go through.

My detail would certainly total far more than the figures that I have given you, but they would not total $60,000 which the old gentleman said he insisted on having, and I said there is no use my wasting my time with you.

Q. All right. You mean to say your figures detail more? A. They will if I extended them. There are items that I have not extended.

Q. Will you please extend them? A. I cannot do it now without going over my notes, and figuring these values, because you can see, and my field notes show, I did not carry many of these items out.

Q. What are some that are typical items that would not be carried out? A. The frontage on the Hook Road, value on the ice pond with the nine foot fall, the gravel bed which was well used and opened on the Hook Road. The possibility—the house—there is no question that could not be built for the figure I cubed it at, but it was of such an impossible construction that obsolescence came in.

Q. Then, I understand your explanation of the Murchio total value of $23,200 to be the items that you have given me, plus the land value that you have given me, and plus other matters that were in dispute as between you and the Murchios, and they were compromised at that figure that you gave? A. Yes, sir.

Q. Do I or not understand you right? A. That is my contention. The reason—

Q. Yes. Is your answer yes? A. My answer is yes.

Q. Then, let me ask you this question: The appraisal you made of the properties, the items which you have given, that is so say, additions to the building, were made in March, 1919? A. Yes, sir, made in March, 1919.

Q. You also gave me the detail, of the land prices and broken up with farms. Were those made at the same time? A. Yes, sir.

Q. Then, the price of $2,250 is not the price you have valued for these proceedings, but a price that you valued at negotiations between you and Murchio? A. Those are the figures.

Q. That is six or seven years ago. Has there been any appreciable increase of that Murchio acreage between then and now? A. No, I would not say that land in the Hook is worth any more today than it was worth then.

Q. Very well. Go to the next property. The next property is the Cabell, property, 93 acres. The land value given of $6,150? A. I examined this property on April 24, 1920, accompanied by Mr. William Mullen, a builder, of Midvale.

I find the total as follows:

One story shingle roof store-house, 14 by 23 feet, in poor condition, weather-boarded, with a peak roof, $400.

Another composition roof, tongued and grooved, vertical siding cow-shed, open front, that is, not provided with doors, condition good, 12 by 16 feet, $100.

A two-story open shed and granary, heavy frame, 18 by 24 feet inside, shingle roof, partitions for feed and bins upstairs, $800, new, less 50 per cent depreciation, approximately $450.

A composition roof frame shed, 8 by 16 feet, old and in poor condition, $150 new; $40 then.

A one-story novelty siding, shingle roof tool house, 16 by 22 feet, in fair condition. I figured its new value $500, less 30 per cent depreciation, $350.

An open well, stoned, 22 feet deep, with a wooden well-house, $125.

The house was a two and a half story novelty siding, slate roof dwelling, 23 by 32 feet. It had a high basement, brick on the south side, with a two-story extension 16 feet with sloping tin roof. That is, the sill of the house, the ground dimension of the house was 23 by 32 feet times a two-story extension 16 by 16 feet.

There was a covered front porch 23 feet by 4 feet, with a bay-window on the south side, and the side porch on the south side 16 feet by 5 feet.

The house had gutters and leaders with a concrete back railed steps, 20 by 3 feet.

Q. You have given enough to justify our visualizing for value? A. Yes; three rooms and hall on the first floor, also with back stairs. There is a 9 foot head in the house, two chimneys, folding doors, standard trim and plastered throughout.

On the second floor five rooms, plastered throughout, 9 feet head, standard trim. Closets in every room.

Q. How much? A. $4,030.

Q. Anything else? A. The land.

Q. All right. A. 65 acres of land at $75 an acre, $4,875.

Five acres of land at $25 an acre, $125.

23 acres of rough land at $50 an acre, $1,150, making a total of $6,150 for the land, or, for 93 acres, averaging 66 an acre.

Mr. Hunt: May I point out he has previously stated what he declares to be land value, and land value per acre in all these cases, and it is only repetition to have him state it again.

Mr. Matthews: Well, I want the repetition, and I am very little repetitious, it seems to me, and I am entitled to it.

Q. Mr. Hershfield, you gave me a land value on your list that I directly examined you from as $6,150 which coincides with your notes? A. Those are my field notes.

Q. You gave Mr. Hunt $10,000 for total property value for Cabell. The improvement that you have given me I have added to make $5,465? A. Yes, sir.

Q. If I add improvements to the land I will get $11,615? A. Yes, sir.

Q. That is $1,000 in there of his. How do you explain that? A. Well, I valued the buildings accord-

ing to these details, and they said they would take $10,000 for it, so we paid it and bought it for less than I figured.

Q. That is once we got a bargain; is that it? A. I don't call it a bargain. It was fair value.

Q. All right. Thank you. A. I may say, your Honor, that is one of the buildings—groups of buildings still standing and the jury may inspect this place.

The Court: I think we did see it.

The Witness: No, we did not. We may have seen them across the field. It is on the easterly side of the railroad.

The Court: Isn't this former Judge Cabell's place?

The Witness: It was his wife's property.

The Court: Then we saw it from the distance.

The Witness: Yes, sir.

Q. Mr. Moss' property, 50 acres, land value $1,600 in my examination, total value $3,135 in Mr. Hunt's. Will you explain therefore the $1,400 or $1,535 excess? A. I examined that property on June 19, 1920. My description of it is as follows: 45.93 acres on the west of the Hook Road; land mainly rough, although some good pasture on road, and two small cleared pieces on side hills. This was formerly known as the Ene Jenkins place. The home burned down two years ago. There was $1,200 insurance on it.

There is a good stand of No. 2 lumber on about 35 acres of this tract.

There is a two story shingle roof frame barn, with shingle roof, 18 x 26 feet in good condition. Barn is five years old.

There are 40 acres of rough mountain land which I valued at $20 an acre.

There is one pig pen 16 x 16 feet. I valued that at $50. A small building at $10.

A combination woodshed and tool house in fair condition, valued at $50.

There is one frame, roof board, one and one-half story shack, 16 x 20 feet in good condition, $150.

There was one frame 6 x 5 toilet with dirt vault, $15.

One stone well, 21 feet deep, with well house, $115.

One old foundation where the house formerly stood, 36 x 14 feet, in good condition, stone and concrete, I valued at $200.

Nine good apple trees at $40 apiece, $360.

Five good cherry trees at $25 each, $125.

Six young peach trees at $10 each, $60.

I valued the land, one and one-half acres about the house, $150; two acres on the side hill at $75, $150; one acre of side hill, $50; three acres along road, $225; and then the additional tract not connected physically with this of four acres which I described as being on the Stonetown Road and on West Brook, having about 350 feet frontage—

(Mr. Hunt walks toward the witness.)

Mr. Matthews: Just a minute, Mr. Hershfield. Keep your notes to yourself and not for the inspection of my opponent.

A. About 350 feet on both sides of the road, well timebered ground but rough. I valued this land at $50 an acre, being on both brook and road, $225.

That made a total of $3,125 for everything.

Mr. Hunt: Now, if your Honor please, I ask the liberty to look at the notes of the witness that he has just been reading from, to see whether what he read is there.

Mr. Matthews: I object to him interrupting my cross examination. I am using the notes for redirect examination that were brought out by Mr. Hunt on his cross examination. He said, "Where do you get these values from," and he said, "I get them from field notes made at the time." Therefore, if your Honor please, he brought out from his field notes the total values. I now ask the witness to bring out from his field notes the elements that go to make up the total value. And this is my examination. If he has anything he thinks is crooked on these notes or anything, he can by legitimate questions ask it on cross examination.

The Court: I suppose Mr. Hunt at this time wishes to look at them in order to save time in going over it later on. I don't know. If you wish to examine him on them later, in view of Mr. Matthews' objection that you do not break in now, I will allow you to look at them in order to see whether they are what Mr. Hershfield represents them to be.

Mr. Hunt: May I just see them now to get the number of each page or anything to give me a clue?

Mr. Matthews: You can tell him the number of the page, if you wish. I have no objection.

The Court: There is a page and an index.

A. This is page No. 134 of my field book, No. 12, dated June 19, 1920.

Q. Now, continue, Mr. Hershfield, please, with that Moss value? A. That is all there was.

Q. All right.

Now what was the next property—the Brown Estate? You gave a value of land to me at $10,500, and a value to Mr. Hunt of $11,500 of total. Where is the $1,000 in that? A. I can tell you that quickly. There was an old house and an old barn on that place where the Ringwood Borough new school now is, and I valued those with the well and the other appurtenances that went to that place at $1,000.

Q. That is sufficient.

Go to the Lines property. Your value here was $2,700, and you gave the total value of $13,425. Will you explain the $10,725 difference? A. I examined that property on February 27, 1919.

Q. Yes. A. My field notes show that it was inspected by the full Board, except Mr. Abram Feist. At that time we had a Board of four appraisers. We walked out—

Q. Never mind what you did. Give me the value? A. Yes. The property is 50 acres, 25 acres in wood and stone, wood second growth and not heavy; 15 acres of low ground liable to flood. Mr. Lines says he cuts one ton of hay—

Q. Never mind. A. I am only reading my notes, because it is interlarded here.

Q. Take the notes and read it for me. A. There is a main house two and a half stories, slate roof, 14 x 26 feet, with two story extension 12 x 12 feet, also a pantry extension 5 x 6 feet, one story high.

There are two chimneys to the house.

Steam heat in the house.

One of the chimneys runs to the furnace and the other to the kitchen stove.

There is a concrete cellar with six feet head.

The attic is unfinished.

Electric lights throughout with fixtures.

There were three rooms on each floor.

A pump in the kitchen.

Property was built in 1901, and condition is very good and clean.

Carries $1,400 insurance on the house, $400 on the barn.

Property has three strand barbed wire fence around it, say a half a mile in all.

One tiled well 21 feet deep by 2 feet 6 inches diameter.

Q. Give the the house now, the value? A. I haven't got to it yet.

The house has 2400 feet frontage on Wanaque River through low lands. No ownership in water rights and claims none.

Plastered throughout the house.

Concrete walks 3 feet 9 inches, 83 feet long.

One cesspool laid dry.

26 varied bearing fruit trees.

6 bearing grapevines, arbor in good condition, 30 feet by 10 feet.

One galvanized iron garage 14 feet by 16 feet, two cars, tin peak roof.

6 small chicken coops.

One outhouse of wood.

One woodshed of wood.

Main barn on the property is 26 x 36 feet with two story spar deck with extension story 18 x 21. Both of them have slate roofs, good condition.

A wagon shed 15 x 18 feet with peak tar paper roof, fair condition.

Shed 12 x 16 with shingles, poor condition.

Corn crib.

Outhouse.

There is another house on this same property which is designated as the tenant house. This house

has 26 x 26 feet of two and a half story—consisting of two and a half story, clapboard siding. The east extension to this building is one story high, 12 x 20 feet. The west extension is two stories high, 15 x 26 feet, with one story pantry extension in addition 10 x 10 feet.

Cellar under the entire house of 6 feet head.

Slate roof.

Q. That is enough. How much are those properties worth? A. The garage $200, the fences $1,000; three cesspools and two wells, $400; 25 acres of woodland $1,250; 15 acres of low ground $750; eight acres of cultivated ground at $100, $800; two house sites at $200 each, $400. I valued the main house at $3,500, the main barn at $1,500, the other outbuildings at $400; the tenant house at $2,500, the attendant outbuildings at $100, and for the fruit trees and arbor $475, making a total for everything of $13,425.

Q. That is all right. Go to the next property—the Stone property. You gave a land value to me of $1,600, and a total value to Mr. Hunt of $10,000. Will you account for that $8,400 excess? A. These are the papers that were taken out of the record yesterday from Newark.

Q. All right. Are the records that you made at the time? A. They are records made—descriptions made by Mr. Dawes of my office, and the valuations were put on by me after I had made two personal examinations of the property.

Q. About when did you put them on? A. Approximately—on or about October 12th, 1925.

Q. All right. Now give me what you can from memory. If you cannot do it from memory, refresh your notes from the memorandum.

Mr. Hunt: If the court please, I would like to test whether he has a right to refresh his notes from the memorandum made October 12th, 1925.

Mr. Matthews: No objection to testing it.

RECROSS EXAMINATION BY MR. HUNT:

Q. That was while this case was being tried before the Condemnation Commissioners, wasn't it? A. No, sir. This case did not start, as I recall, until November 30th, 1925.

Q. That is true. A This was made Columbus Day two years ago.

Q. Where were you at the time you made the entries on the notes? A. Why, I was at Mr. Stone's house.

Q. You did it there? A. Some times, and then I—after I examined the property and talked it over with Mr. Fay and Mr. Dawes, and cubed the dimensions I had, I probably made some notes in my office, that is, some of the computations there.

Q. All right.

REDIRECT EXAMINATION BY MR. MATTHEWS:

Q. All right, Mr. Hershfield. A. I valued the fence on this property—that fence was steel wire in good condition—$600.

One well laid stone, concrete curb, $100.

Eight apple trees 17 years old in good condition, $25 apiece, $200.

Three grapevines, $30.

I valued the house at $5,000.

H. G. Hershfield—Recalled—Redirect.

The description of the house was a frame house 26 x 32 feet, cellar under the entire house, all laid stone. Sills and floor beams of dressed timber.

Height at eaves 16 feet.

Wood shingle roof, tin gutters, level or flush cornice.

Two brick chimneys.

No shutters.

Ground floor three rooms and pantry.

Is plastered.

The kitchen is ceiling boards, metal ceilings.

There is an enclosed porch.

Second floor, four rooms and a hall, all plastered, hard pine trim, painted, and all in good condition.

There are no improvements in the house.

Three rooms on the first floor and four on the second.

In addition to that there was a grannery 10 x 12 feet, novelty siding, shingle roof, which was valued at $150.

One chicken house 10 x 24, with cellar, concrete floor, walls of masonry, siding shiplapped vertical shingle roof, valued at $75.

Hen house, 14 x 22 feet, built in bank, 6 feet stone walls, that is probably 6 feet high. Roof frame, a tar paper roof, valued at $125.

I valued the woodshed 12 x 20 feet, light frame construction, sheet iron siding, paper roof, $75.

There was a barn there 34 x 32 feet timber construction, morticed and tennoed, shingle roof, with a wagon shed and workshop attached 14 x 24 feet, frame construction, that Mr. Dawes valued at $2,800, but I only put it down at $2,000.

The remarks show that the buildings are in good condition and repair.

H. G. Hershfield—Recalled—Redirect.

Q. All right. That accounts for the difference. The Vanderbeek property? A. The Vanderbeek property had no improvements on. It was simply a piece of acreage.

Q. That is right. Neither did the Ringwood property? A. No, sir.

Q. Neither did the Mullen property? A. No, sir.

Q. Neither did the Thorne Estate property? A. No, sir.

Q. Now all of these properties that you have given me the appraisals of that were appraised by you and valued by you and sold by you for us in 1919 and thereafter up to the last, would you add anything to the land value because of the appreciation as between then and now. A. There are certain sections where the land has gone up. That is applicable to all portions of Northern New Jersey.

Q. All right. Then do you want to add anything to Ricker's $14,000 as the value of the piece? A. I would not. That is a piece of—

Q. Want to do anything to the $3,185 of Mariglioni as the value of that piece? A. No, sir.

Q. Anything to Crowley's $1,000? A. Well, there was a lake. There might be a little more demand for that three acre place—with the three acre pond on it, but just for woodland or side hill—

Q. Wait, Mr. Hershfield. Keep to the one question. What do you want to add to Crowley's $1,000 for 17 acres? A. I think there might be more demand for that place now.

Q. Would it double? A. Possibly—no, I wouldn't say double. Maybe 50 per cent. more.

Q. All right then; $1,500 would be the Crowley land today by reason of the greater demand for it? A. Greater demand for stuff.

Q. Add anything to the Travato $1,710? A. No.

Q. Add anything to the Price $1,600—visualizing the Price as is. A. Price was a piece of undulating ground—

Q. Yes or no? A. —with a good stand of pin oak on it. Today it is not worth any more.

Q. Add anything to the Ferra Lasco $7,040? A. I am trying to visualize the Ferra Lasco. That is Linaldo Ferra Lasco?

Q. Yes. A. That ground might be worth more. It had, as I recall, 50 acres, of which 20 or 30 of them were on the Hook Road and Blue Mine Brook Road; that might be worth a little more, because that would not be what I would call mountain land or wild land. That might be worth 100 per cent more.

Q. All right. How about the Louis Garbarino 30 acre tract of $1,700? A. That was vacant, I think.

Q. How about Louis Garbarino 25 acre tract? A. Well, that had some buildings on it. It was in the centre of the—

Q. You don't understand me. I am asking you for the land value that you have given being appreciated any? A. Yes; because that was in the centre of that colony there, and were that property to remain undisturbed, that little village in there I think would be worth more, but not the side hills.

Q. How about Dondero, 23 acres? A. That was in the heart of that colony. He was known as the King of the Valley, and he occupied the castle.

Q. The King's property would increase how much? A. I have never been on speaking terms with royalty. I can't tell.

Q. Give us your speaking terms with your profession and leave the royalty where it belongs, in the middle of the valley. A. I should say the ground there where he has five buildings, in the heart of

that colony, would be worth twice as much today as it was then.

Q. All right.

The Court: With the buildings?

The Witness: No, sir; where the buildings were. He had two tracts.

Q. Just the land. Twice as much as the land value that you gave here? A. Yes.

Q. How about the Ravanti property? A. Well, that also was in the centre of the best portion.

Q. Would you give it 100 per cent increase? A. I would give 100 per cent. increase to the ground that had the house on it.

Q. I see. A. Not to the residue where it ran up hills and down dales.

Q. Well, I mean the land as land? A. The land and the curtilage to the house is worth more, but the stuff—Ravanti had a couple of odd-shaped tracts. The rear end of those, to my mind, is not worth anything more today than it was then.

Q. And by the way, Mr. Hershfield, in the paper that you gave me to examine you from, you have $680 for the value of the Ravanti land, and $40 an acre for that value. I find in adding your totals that you made $77,163 more. You added the total of Ravanti as if it had $1,680 instead of $680, and in cross examining you yesterday and making up your totals of that I found that you had made a mistake of $1,000. Will you look at your notes and tell me whether or not you wish to correct your testimony first given on direct as to the value of the 17 acres of Ravanti, which you gave as $680 or $40 an acre, to $1,680, and which would be $90 and some odd an acre? A. My figures for 16½ acres are $1,600. If I have got $600 there—

Q. You have $680. Now I am asking you after looking at your field notes made at the time, do you wish to change your testimony as to the 17 acres of Ravanti from $680 to $1,680? A. I want to correct it to the figures made at the time, $1,600.

Q. Now I ask you, has that property appreciated beyond that $1,680—not the property, but the land? A. I would not say appreciably.

Q. How about the Biggio property. You gave that $1,630 land value. A. The Biggio property is a piece of terraced side hill fronting the river. I would say if that had been left undisturbed it would be worth more, because it had a noble view up the valley.

Q. How much would you add to that, Mr. Hershfield? A. Oh, possibly 100 per cent to that value of the land.

Q. And the Gardella property that you bought at $1,110, 19 acres? A. That don't amount to very much.

Q. The Granda property, $2,125. A. That was so far back in the hills it has not appreciated any.

Q. And the Murchio property of $2,200, that you talked with Murchio about and paid him more than your appraisal shows you considered it worth at the time? A. The house where the—big concrete house walls are still standing, I would say that that land there is worth more, because it again was in the centre of that colony.

Q. How much? A. Oh, give him 100 per cent more.

Q. $4,400 instead of $2,200 would be the Murchio value today? A. Approximately.

Q. The Cabell property that you paid $6,150 for 93 acres? A. No. That is just a piece of farm land.

Q. Moss property, $1,600? A. That is a piece of mountain land. It has not appreciated.

Q. The Brown Estate that you paid $10,500 for? A. Well, that tract has every element of value in the valley,—river frontage, railroad frontage, road frontage on two roads, probably 70 per cent of it is land that had been cultivated. I would say—

Q. You gave him $10,500 and he had nothing but a $1,000 shack or two shacks on it in 1919? A. Yes.

Q. How much has it increased beyond 1919 in value? A. Well, I have valued similar lands of the Ringwood Company—lands similar to that—I do value them today at $250—say $250 an acre for that similar land.

Q. So that your testimony with reference to the 50 acres of Moss at $1,600 is the testimony of what Moss sold you, and you valued it at at that time? A. That is the value as of that date.

Q. All right. A. In my opinion.

Q. Brown has nothing? A. Brown, yes.

Q. Now Lines property, $2,700, 50 acres. A. Well, the Lines property consisted of two well kept houses.

Q. We went all over that. A. I am telling you, but it was in the—close to the paper mill, near the Catholic Church, and near the Catholic school there, and the little secluded colony close to the main road, and also close to the, I think it is the Methodist Church there.

Q. Outside of being well churched, what other values would you have added to it? A. I think that section in there today would probably bring more, because it was within a few hundred feet of the main road of the town, main street of the town.

Q. So that you think it would be increased probably 100 per cent in value? A. Yes; I would say easily 100 per cent, the ground—that is, not the

piece of meadow land and swamp land in the rear, but I mean the stuff that could be used for human habitation.

Q. Yes. Well, the purpose of my question to you, Mr. Hershfield, is to show the court and jury that while you may have purchased that for $40 an acre in 1919, that nevertheless you do realize that today it may be worth $80 an acre? A. Yes, it may be.

Q. All right.

Q. Now, how about the Vanderbeek property? A. That is a piece of God-forgotten property. It never was worth much, and it has not changed now.

Q. How about the Stone property? A. The Stone property is a piece of sidehill farm that Irving Stone has spent fifty years of his life working on. It has a secluded situation and reasonably good view.

Q. Well, we bought it for $40 an acre. What is it worth today in the market? A. I would say that stuff is worth that today.

Q. No more? A. I would not say any more.

Q. Vanderbeek, you told me, no more? A. No, sir.

Q. The Ringwood Company land of 196 acres for which we paid $9800 at the time you appraised it and they sold it, is it worth any more today? A. It was not worth that then, but we had to have it.

Q. All right; the Mullen property; we bought for $2,208; is that worth any more today? A. Mr. Mullen only paid $5 an acre for that a couple of months before we bought it, and you can see what the former owner valued it at. I went to him and said we had to have that piece. He said "What will you pay for it?" And I said "I don't care what you paid for it. Someone may have given it to you. I will give you what we average through there for

it." And I said "That was around $45 an acre, that is what we have been paying in that section."

Q. Is Mr. Mullen subpoenaed in this cause? A. Beg pardon?

Q. Is Mr. Mullen subpoenaed in this cause? A. He is here, yes, sir; and Mr. Mullen considered that a fair profit for three months' ownership,—900 percent, and he took it.

Q. The Thorne Estate; any increase in that? A. No.

Q. $750? A. No, that is a piece of wild mountain land.

The Court: Mr. Hershfield had been asked by Mr. Hunt and you a series of questions with respect to the value of the property today. Is there any difference between the value of the property today to which you have just testified, and the value of the date of taking?

The Witness: I think if anything, your Honor, based on my experience in real estate, and based particularly on an hour's conversation I had last night with Mr. James Mooney of Montclair, who came to see me to consult me about some stuff he had, with Mr. Ernest Hink, former Mayor of Montclair, who was waiting for me at my office,—I do not think acreage today in our section of New Jersey is worth as much, or is there as much demand for it as there was a year ago. We had a flurry, but the people who bought have still got acreage, and Mr. Mooney himself—

The Court: You have answered it.

Q. Then, in order that I may take advantage of that question, for my own record, do I understand

you to say as between the condemnation date of March, 1925, and now, there has been no increase? A. I would say there is less demand for acreage today than there was a year ago.

Q. So that the corrected price of land values that I asked you about today would be just as applicable as of the date of condemnation? A. Or less.

Q. Or less. All right. Now, Mr. Hershfield, you were asked by Mr. Hunt on your re-cross examination: Why did you give those figures of land values to me, and why didn't you mention that you paid higher prices for the property? A. I did.

Q. Now, do you recall testifying at page 845 of the testimony as follows:

"Now, will you take the chair a minute. In all of these land prices, per acre, that you have given me, does that represent mother earth, and not by addition of artificiality of buildings, and otherwise? A. Nothing, except land itself, as I recall."

Do you remember testifying that way? A. That was my intention and that is what I stated, that the values originally given were for the land, without any improvements on them.

Q. Now, Mr. Hershfield, in valuing these buildings, as you have been doing apparently from 1919 on, you have used certain methods of valuation, have you not? A. I would use the methods I have employed for the last twenty or twenty-five years, the standard methods of appraisal.

Q. And you have at that time used assistants, have you not, in the form of builders and otherwise, or have you done it all yourself? A. From time to time when there has been a technical proposition, I have employed a specialist, or asked the specialist.

Q. In valuing the Ringwood Buildings in this taking, have you followed the same principle of valuation that you did in valuing buildings in 1919? A. Yes, sir; and in addition, the Commission secured the services of a well-known builder to testify specifically on the buildings. In other words to check me.

Mr. Matthews: Now, you may have the witness.

RECROSS EXAMINATION BY MR. HUNT:

Q. Now, Mr. Hershfield, we will come back to this mother earth phrase which was employed by you and Mr. Matthews a minute ago. Will you just tell the jury what accounts for the difference of approximately $8,000 between the sum that you paid for the Murchio property and the aggregate of the items of land value and building values that you built up for the property? A. The difference between, is the idea of the improvements, the value of them, and the amount. He would not admit obsolescence in the building, and I contended that that building while it unquestionably cost a great deal more than I had valued it at, at the same time no one would buy it. It was a curio, and he said it was good enough for him, and he wanted to get what it would cost—

Q. Somehow or other? A. I have not finished yet.

Q. All right. A. So for three or four years that was the bone of contention between the family and myself. My claiming that the cost might be there, but the value was not there, and his claiming that he should get what it was worth irrespective of the style of architecture or whether suited to the locality.

Q. Now, you said you had two items in your notes in the Murchio property that you had not extended. What do you mean by "extended"? A. Valued; put in a value on it.

Q. All right, now, just put a value on those two items as you mentioned them, the value of the ice pond, with a nine foot fall, and the value of the gravel bed? A. I haven't any data whereby I might visualize that condition.

Q. Haven't you ever seen an ice pond with a nine foot fall, or a gravel bed? A. I saw the gravel bed. It was a well-opened and used bed, and on the Hook Road.

Q. In justifying yourself to your employers in recommending them to pay approximately $8,000 more than the sum total of your items for the valuation of the property— A. I didn't say that.

Q. What additional value did you say that the gravel bed added?

Mr. Matthews: I object to that. There is no testimony he justified himself with his employer.

Mr. Hunt: I will withdraw the question.

The Court: The question is withdrawn.

Q. When you went to your employer's and recommended to them to pay a sum of $8,000 in excess of the total valuation of the property, you had to make some justification or explanation of that excess payment?

Mr. Matthews: I object. That is not the case. It would be immaterial if he did.

Mr. Hunt: I am asking whether it is the case.

Mr. Matthews: I object to the testimony of this witness, subject to cross examination. It is this: I frankly told him there was $8,000 unaccounted for. He told of the family difficulty, and had to pay $8,000 to get the property. There was a gravel bed open, and there was a fall of the land. He did not carry out the figures, and did not value that at all. I submit if this was sincere cross-examination to test his credibility—he did not point to that—but this has another purpose of making him say there was not this gravel bed on the premises, and there was not this ice pond. Therefore, you valued it, and therefore that will be an argument for us of building lakes and ice ponds on our property.

The Court: I will allow it.

Mr. Hunt: I have not put this question for the purpose of testing his credibility, because that has been tested satisfactorily to me. I am satisfied. I am putting this question to see what allowance he made for the availability that this property offered for the production of an ice pond, and see what allowance he made because of the existence of the gravel bed on this property, and I submit I have a right to do it.

The Court: And I told you you might.

Mr. Matthews: Your Honor will allow an exception that it is incompetent, because there is no testimony that he considered value for availability of an ice pond.

The Court: You have it, and he already testified he did not carry that out.

Q. What value did the property possess for its availability for the production of an ice pond? A. I never figured it out.

By no means. The place may cost $10,000 to build, but it may be of such a type of construction, that after a man has spent $10,000, it may not be worth five.

Q. Then, as you have employed the words 'appraisal" and "valuation" in testifying here, they have had a different meaning? A. To me, at times.

Q. Now, what does appraisal mean? A. What I value the property at for the Commission to purchase.

Q. Yes. What does valuation mean? A. Valuation means what the cost of the property is—the replacement cost.

Q. Well, you don't know what the cost of the Murchio land was, do you? A. The land?

Q. Yes. A. No, I don't know what he paid for it.

Q. And you don't know what the cost of the Murchio buildings were, do you? A. I know it was a great deal more than I appraised it at.

Q. We will look at one item. What was the size of that stone ice house which you said you valued at $300? A. It was an ice house 10 by 10. It was 16 feet below the grade, and 8 feet above the grade.

Q. Yes. A. It was 24 feet deep,—that is, it was stone construction, 20 inches thick.

Q. Yes. A. In other words, it was a 10 by 10 building built of stone 24 foot high.

Q. And with walls how thick? A. 20 inches thick.

Q. Dry wall or mason? A. Mason wall.

Q. You appraised that at $300? A. Yes.

Q. And that is the same figure at which you appraised the spiles driven on the ground on the Haverman lot?

Mr. Matthews: I object. That is not the testimony. It is labor and everything that went into the proposition.

The Witness: (Interposing) And the inconvenience.

Q. And the inconvenience? A. Yes, sir.

Q. And that is the same price at which you appraised the spiles, cutting down trees, and inconvenience expended on the Haverman lot which I have asked you to show the jury on their next inspection of the property? A. I figured $300 worth of labor, material and inconvenience.

Q. And I asked you if the sum is not the same in both cases? A. The items are the same.

Q. In regard to the Haverman lot, was it appraised or did it have a valuation of $300? A. Appraisal.

Q. And with regard to the stone ice house on the Murchio place, was that appraisal or valuation? A. I should say that might be both, in that case.

Q. Now, the Lines house on which he carried insurance of $1400, you valued at $3500, didn't you? A. Yes, sir.

Q. And the barn on which he carried insurance at $400, you valued at $1500? A. Your figures are correct.

Q. Now, did you hear me examine Irving Stone before the Condemnation Commissioners in this case at Newark on the 29th of April, 1926? A. I did.

Q. Did I put the following question to him, and did he make the following replies?

Mr. Matthews: At what page?

Mr. Hunt: 3785:

"Now, Mr. Stone, just tell us what your ground is like, and how big it is, and what it is built of, and so on".

Mr. Matthews: I object, if your Honor please, as immaterial to this issue. He cannot contradict this man with Stone's testimony in the previous proceeding, even though he heard Stone testify. He can produce Stone. This is his own case, again. I have got to have Stone to cross examine him.

The Court: What do you say to that, Mr. Hunt?

Mr. Hunt: Only the other day when I did the same thing with another witness's testimony—I do not remember at the moment whose it was—the witness answered without objection being made.

The Court: But that may be, if there was no objection made. Now, objection is made, and I think it is well-founded.

Mr. Matthews: That was one of the thousand times I did not get up, your Honor.

Mr. Hunt: Very well, I will withdraw the question.

The Court: Very well.

Q. When was work started on the Wanaque Dam?

Mr. Matthews: I object to that as not cross examination.

The Court: Objection sustained.

Mr. Hunt: An exception, please.

The Court: You may have it.

Mr. Hunt: May I state the purpose of it, your Honor? This witness has been examined this

morning in chief as to whether or not there has been any increase in land values in that valley since appraisals he made in 1919, or purchases he made in 1919. Now, I think I have a perfect right to show that in 1919 the preliminary work was undertaken. Everybody knew that there reservoir was coming there and, therefore, the great reason—

The Court: He gave his reason, Mr. Hunt, did he not, for the testimony that he gave as to why there had been an increase.

Mr. Hunt: Well, I think I have a right to test him to see whether there are not other factors that have a bearing on whether it would be natural to expect an increase.

The Court: What do you say to that?

Mr. Matthews: The Ringwood Company knew they were coming, and they do not believe us in their estimate of values.

Mr. Hunt: Our claim is we are entitled to just the same value that would have accrued there if this work had not been started ten years ago.

The Court: Inasmuch as this witness testified to a different value now and then, and has given his reasons, I think that may be proper cross examination with respect to the building of the dam.

Mr. Matthews: I would not have any objection to that question.

The Court: The reason I sustained your objection was because I could not see the relevancy of it, but now that he has explained it, I think it is relevant, and I will allow it.

Mr. Hunt: Read the question, then, please, Mr. Kestenbaum.

(Question read.)

Mr. Matthews: If he knows.

The Witness: I do not know.

Q. Well, approximately? A. There were borings made and soundings taken; the actual breaking of the ground was six years ago.

Q. What was the earliest date at which you appraised or valued property for the purpose of assisting in its acquisition by the Water Supply Commission as a part of the reservoir property? A. The first appraisal that I made, although I was on call—

Q. Give me the date. A. Please let me answer. The first appraisal I made was February 27, 1919.

Q. And for how long a time before that had you been employed by the Commission and been getting ready to make appraisal, one year, two years, three years; what? A. Approximately a year or a year and a half before that I had been on call and subject to their demands.

Q. One year or one year and a half before February 19th, 1919, heh? A. As I recall, I had no appraisals in that time.

Q. Who is Mr. Hink, or Fink, that you mentioned? Is he a former member of the Water Supply Commission? A. He was one of the Water Supply Commissioners, about three or four years ago.

Q. What is the name of the other man from Montclair that you mentioned? A. James Mooney.

Q. What connection does he have with the Water Supply Commission? A. Absolutely none.

Q. What connection has he previously had with it? A. None.

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

Q. Real estate? A. He is probably the best known developer in Northern New Jersey.

Q. Mr. Mullen that you mentioned a while ago and said was here under subpoena, is an employee of the Water Supply Commission engaged in the collection of rents and so on, is he? A. I believe he does collect rents where there is any rent. I would not call him an employee.

Q. You think he does it as a voluntary service?

Mr. Matthews: I object as immaterial.

A. What difference does it make what I think, to you?

Q. I only want to find out why you don't call him an employee? A. Because employee carries with it, to my mind, service of full time.

Q. Are you an employee of the Commission? A. I am not.

Q. Mr. Mullen is not, in the same sense that you are not? A. He is not in the same sense that I am.

Q. Now, having regard to the distinction between appraised and valued as you stated a few minutes ago that you observed in your work, I ask you whether the figure that you have testified to here as the aggregate of the sums that you added together in connection with this Ringwood property, is your appraisal of the property or your valuation of the property? A. It is my appraisal.

Q. It is your appraisal?

Mr. Matthews: Just a minute. May we not have the answer? I cannot hear it.

A. (Continued) It is my appraisal. It is not my value, because I do not think it is worth what I appraised it at.

Q. What did you say appraisal meant in your mind? A. What I would recommend, appraised for the purpose of these proceedings.

Q. And your appraisal was how much, in money? A. Four hundred and ninety-two thousand and some dollars, as I recall.

Q. And yet, as I recall, you said yesterday that you recommended and made an actual offer of $600,000? A. In order to have this litigation.

Q. In order to save this litigation? A. And its attendant expenses, and following the same procedure that the Commission has employed for years, we tendered approximately 20 per cent. more than I appraised the property at.

Q. Now, do you think the expense of this proceeding to the Commission is $108,000? A. I have no means of determining it.

Mr. Matthews: I object as immaterial, whether he thinks the amount is $108,000, or what it is. All we say, in protest, is that God knows it is enough.

The Court: I will allow the answer to stand.

Q. Now, so far as you know, you, Mr. Ricker, Mr. Fay and Mr. Kilgus, who all deal with one phase or another of real estate valuation, including building valuation, are the only persons engaged in this proceeding on behalf of the Water Supply Commission who are not regular employees paid by the year; isn't that true?

Mr. Matthews: I object to that as immaterial.

The Court: What is the materiality?

Mr. Hunt: I want to see whether he is justified in saying he offered $108,000 to save expense of this litigation. I want to show where it comes in.

The Court: He says he does not know.

Mr. Hunt: All right. Just to give the jury a chance to determine if he answers this question—

The Court: I do not see what relation this question has with the question you previously asked.

Mr. Hunt: All right, sir, I will withdraw it.

The Court: Very well.

Q. Now, you testified yesterday, and further this morning, in regard to these 23 properties which you first mentioned under redirect examination from Mr. Matthews? A. Yes, sir.

Q. And in all the detail that you have given under his examination and under my examination, I don't recall having heard you mention, with respect to any of the properties, any sum paid by way of 20 per cent bonus, or any sum paid for inconvenience. Now, is my recollection right in that? A. It was reflected in the prices in my appraisal.

Q. Well, why didn't you, in detailing those appraisals set down a certain item such as in the Sherman case your item of $500 for inconvenience? A. Because in every one of those cases I paid far more and we bought the property for more than it was worth. In one instance we paid five times what the man had bought the same land for. There was the Marigliani. He bought it for $20 an acre, and we gave him $100 an acre.

Q. How much of that was for inconvenience? A. The difference probably between what the land was worth and what we paid him for it.

Q. Why didn't you say so then when Mr. Matthews asked you about the appraisal, or whatever you call it?

Mr. Matthews: I object to that. If the witness volunteered that to my question I would strike it out as irresponsive, which Mr. Hunt frequently does.

The Court: Objection sustained. He may not have been asked that, Mr. Hunt.

Mr. Matthews: He was not.

The Court: I do not think he was either.

Q. I want him to explain to the jury how it is that although in respect to every one of the transactions to which I now point on C-1, being this little plot of lots numbered 133-A at one end and 137 at the other end, he had in his field notes, as he calls them, an item, so much money for inconvenience in all these 23 transactions to which he testified for Mr. Matthews in his redirect examination, although he read his field notes, he did not read a single item of inconvenience. I would like him to explain that. A. Well, that is easy enough.

Q. All right, explain it. A. The people accepted my values, and consequently did not raise any issue of being forced off. In many cases those people thanked me for the price we offered, and consequently—

Q. And in 1919—

The Witness: Won't you direct him to let me talk?

The Court: If you have not finished, I will let you finish.

A. (Continued) In many cases the people thanked me for the price we offered, and said they were thoroughly satisfied with it. Under these circumstances, why should we add anything when they did not demur at giving up their homes? They knew we had given them big prices.

Q. Sherman did not demur at giving up his home? A. The price he asked for it indicated a demurrage.

Q. The price he asked for it indicated a demurrage? A. Yes, it did, if you like the term.

Q. I do not like the term at all. I consider demurrage is something that has to be paid for a delay in unloading a car and ship. A. There was delay in unloading his property.

Mr. Matthews: Was there any water involved?

The Witness: I beg your pardon.

Mr. Hunt: I am examining this witness, if you please.

Mr. Matthews: This is the first time, and I am sorry.

Q. Look again at Exhibit C-1? A. Yes, sir.

Q. Tell the jury how many of the 23 properties which you first mentioned on redirect examination have any frontage on the Wanaque River? A. The Lines, 1600 feet or 2,000 feet, the Lines property.

Q. All right, what other one? A. Just a minute, please, until I verify that statement.

Q. What? A. I say if I don't verify that statement you will have somebody up there with an inch rule checking me. The house has 2,400 feet frontage, the land has, on the Wanaque River.

Q. Whose? A. The property.

Q. What property? A. Lines.

Q. Yes. I have asked you what other one? A. The Jacob Brown up to your right. That has a frontage, as I recall, on the river.

Q. How much? A. Probably 2,000 feet.

Q. Come down here to the map. A. I am only looking at it from here. You can measure it as well as I can.

Q. Come to the map.

Mr. Matthews: Don't be lazy.

The Witness: I am not lazy. I am worn out.

Q. Show the jury where the 2,000 foot frontage on the river of the Brown property is. In the first place, tell the jury what the scale is? A. 400 feet.

Q. Do not use that thing.

Mr. Matthews: I object. Hershfield knows the attorney well enough to be accurate.

The Witness: I would like to find a fine tooth comb, if your Honor please.

Mr. Matthews: There isn't anything of that character on the map. It may be near it, but not on it.

The Court: We cannot hear you, Mr. Hunt.

The Witness: You are not losing much, your Honor.

Mr. Hunt: I request, if the Court please, that this witness be instructed not to be impertinent to me.

Mr. Matthews: I think he is only arguing in self-defense.

Mr. Hunt: And he be instructed to answer the question that I put to him.

The Court: I will insist that he do so at all times, and I think that I have, and I will continue to do so, but when you have a whispered conversation there I must ask you to desist from it, because we wish it in the record.

Mr. Hunt: I am not having any whispered conversation here, your Honor.

The Court: Well, I thought you were having a talk with him that I could not hear. I thought I heard your voice.

Mr. Hunt: My voice certainly was not in a whisper.

The Court: Well, I could not hear it, and perhaps it was not a whisper, but it was too low for me to hear, or the stenographer to hear.

Q. Step up here, please. Follow the line of this pencil as I move it over the map. That is about an inch frontage on one side of the river? A. Over an inch.

Q. All right, an inch and an eighth, perhaps? A. Perhaps.

Q. And that would be 450 feet, wouldn't it? A. Yes, sir.

Q. And on the opposite side of the river there is perhaps six-tenths of an inch, isn't there? A. Approximately.

Q. And that would be 240 feet? A. Yes.

Q. But that frontage of six-tenths on the west side of the river has a depth of no more than 40 feet back from the river? A. I should judge 40 to 50 feet.

Q. You could not call that as valuable as though you had your standard depth of 150 feet? A. I have not so designated it.

Q. Now, come here and follow this curve place with frontage on one side of the river alone? A. Yes, sir.

Q. And it is about 1200 feet at the utmost? A. Yes, sir.

Q. Now, come here. Here is a frontage of 300 feet at the utmost on one side of the river? A. I would call it 400.

Q. You called that an inch along here (indicating)? A. Yes, sir.

Q. With the depth not exceeding 60 feet? A. I say it is more than 50.

Mr. Frazer: May we know what property he is referring to?

The Court: I think it is the Brown property. Is that correct, Mr. Hunt?

Mr. Hunt: I will withdraw my last question. I had read the map wrong myself.

The Court: Very well.

Q. That is all the river frontage on the Brown property? A. Approximately.

Mr. Hunt: Mr. Stenographer, please add up the additions.

Mr. Matthews: I object to that.

The Court: Objection sustained.

Mr. Matthews: With all due respect to you, Mr. Stenographer.

The Court: The stenographer has troubles enough without adding.

Mr. Hunt: That is all.

Mr. Matthews: One final question.

The Witness: Thank you.

BY MR. MATTHEWS:

Q. In the 23 properties that you valued for me and gave me and gave me land, and then later

building costs, wherever your owner sold you willingly for your appraisal price, you sold to him, did you not? A. Where he set a price that I considered fair, we did not argue, I gave him his price.

Q. Therefore, in the Murchio case which was the only one that you had excess of buildings over land, it was because he would not settle and claimed greater inconvenience and greater value, that you paid him more? A. He was insistant.

Q. Was it or was it not? A. It was.

Mr. Lewis: I object to that.

Mr. Matthews: That is all.

The Court: Anything more?

Mr. Matthews: I take it this witness is concluded with. If not, we have all the data for cross examination. I am through with him, and I do not wish to recall him for cross examination. If Mr. Hunt wants him he must make him his witness.

The Court: Is there anything you want from this witness?

Mr. Hunt: I think I am through with him.

The Court: Has he all the data that you asked him to bring?

Mr. Hunt: He has not produced the blueprints that he promised yesterday to bring.

BY MR. HUNT:

Q. Have you brought them? A. I have.

Mr. Hunt: May they be marked for identification after they are produced?

(Maps produced.)

The Court: Let them be marked.

How many maps are there?

H. G. Hershfield—Recalled—Recross.

The Witness: Eight.

Mr. Hunt: It has been suggested that I better look at the blueprints before he leaves the stand, your Honor, and see the numbers.

The Court: Very well.

BY MR. HUNT:

Q. Are these all the blueprints that you can find, Mr. Hershfield? A. That is all you asked for. I have another one I found in the Ringwood file.

Mr. Matthews: I object to anything else, except what was sought for the purpose of contradicting him. That is all these maps were asked to be produced for. The original contention was there was one illegible map. Mr. Hershfield said there were other maps sent out afterwards, and Mr. Hunt brought out, for the sake of argument, here is a map that was sent out, and we have produced all the maps, purely for the sake of substantiating that testimony. That cannot be offered in evidence, but only marked for identification.

The Court: But Mr. Hunt now asks whether this comprises all of the maps.

Mr. Matthews: In his testimony, but not all he had from the company.

Mr. Hunt: Counsel's statement, if true, would be very interesting, but the fact is the particular map sought in his examination is not among these eight maps. There is one more. I would like to ask him where the one more is. He says he has one more there. If I can see that, perhaps that is it.

The Court: Mr. Matthews' point is these are maps you called for.

H. G. Hershfield—Recalled—Recross.

Mr. Hunt: Mr. Matthews says yes, but the witness has not been exhausted on that point.

The Witness: These are maps that are referred to.

Q. You say you have another map of the Ringwood Company. Will you let me see it, please?

The Court: Not yet, Mr. Hunt.

A. These were the maps that were sent to me after I had stated the original map was indecipherable and illegible. These are the ones referred to by the Ringwood Company, presumably, taking the place of that map.

Q. Are these all of them? A. All that were sent to me.

Q. How many are there here? A. Eight, I recall.

Q. Were there nine sent to you? A. You have a letter referring specifically to eight maps that you sent me.

Q. No, I have not seen any letter referring to the eight maps. A. There is, or I have a letter referring to the eight maps.

Q. I wish you would bring it in. A. I beg your pardon.

Mr. Hunt: May the witness be held for the purpose of producing the letter referring to the eight maps specifically?

Mr. Matthews: I object. This is an attempt to bring in something—

The Court: Have you such a letter with you?

The Witness: I have in my Ringwood correspondence.

Mr. Matthews: May he get the letter now out of the correspondence? Get the letter now out of your correspondence, and take your time.

Mr. Hunt: May he also be told to get out the other Ringwood map?

Mr. Matthews: No, I object to that.

The Court: No, not yet. Wait until we get to that.

Mr. Matthews: This is simply an attempt to have the maps marked now, and then allege in their case that they should go to the jury to show Hershfield's incredibility.

Mr. Lewis: We have a right to do that, I suppose.

Mr. Matthews: Yes, over my dead body.

Mr. Lewis: To go before the jury.

The Court: There were letters marked yesterday; were they not the letters you have reference to?

The Witness: No. This was an original.

The Court: Was the copy marked for identification yesterday?

The Witness: I do not think so, your Honor.

(Witness makes examination of his files.)

The Court: We will take a recess for a few moments.

(A short recess was then taken.)

(After Recess.)

By Mr. Hunt:

Q. Did you find the letter for which you were looking, Mr. Hershfield? A. I have.

Q. What is its date? A. August 29th, 1924.

Q. Was it marked for identification yesterday? A. No, sir.

Q. Is it the letter written by the Ringwood Company to you? A. Letter written by the Ringwood Company, signed by Mr. Anderson per somebody else.

Q. Are you willing to have it marked for identification?

Mr. Matthews: I object to this, if your Honor please, unless it is for the purpose of showing that there are any more than eight maps. That is all that is asked for.

Mr. Hunt: It is of course for that purpose.

Mr. Matthews: There is no objection, and I will instruct the witness, if it refers simply to that, to allow it to be marked for identification at this time.

The Court: Let it be marked.

(Letter marked Exhibit O-13 for identification.)

Mr. Hunt: May the witness be instructed to produce the ninth map which before recess he admitted having received from the Ringwood Company and having in one of his portfolios?

Mr. Matthews: I object, because there is no evidence that he received a map in response to the request with reference to what this map question involved, namely, the Lake and dike at Ryerson.

Mr. Hunt: I ask that the witness be instructed to produce the map in order that it may appear from the map itself whether it does not show the lake and dike at Ryerson.

The Court: The theory is, as I understand it, that the question was with respect to the maps that were sent in exchange for the illegible map, and you asked for this, and he produces

that and says that these eight maps are the ones that were called for by you and which were in question on his cross examination and which supplanted the earlier map. Now you bring in another map that was apparently subsequently sent to him, without any relation, as far as I can see, to the eight maps, and counsel objects to this, to the production of the ninth map, and I think properly so at this time.

Mr. Hunt: May I say that your Honor is wrong in saying that the ninth map was subsequently sent to him. The letter which the witness has just produced—

Mr. Matthews: I object to the use of this letter even with respect to the court.

Mr. Hunt: Will the court permit me to finish?

The Court: You may finish. There is no impropriety in my seeing the letter.

Mr. Matthews: No, but the letter itself is not in evidence now. I want him to be bound by it on direct. He would not be on cross.

Mr. Hunt: The court used the word subsequently. May I point out—

The Court: I did not see the letter.

Mr. Hunt: May I point to the fact that the letter which the witness has produced—

Mr. Matthews: I object to his stating—

Mr. Hunt: —and was marked for identification, is dated August 29th, while the copy of a letter signed by Charles A. Hewitt and addressed to the witness, marked yesterday, is dated August 20th, and the original of the witness' letter addressed in reply to Mr. Hewitt's, marked yesterday, is dated August 21st. Now I request that the witness be required to pro-

duce the additional map which he has admitted he received from the Ringwood Company and now has in his possession in one of these portfolios, in order it may be seen whether or not it is not the very map which the witness in his letter of August 21st admitted he received.

Mr. Matthews: He produced it.

Mr. Hunt: I beg to refresh the court's recollection, if I may do it, that the witness stated yesterday that none of that roll of blue prints —he described them yesterday as five or six; they appeared this morning to be eight—which had been sent to him, was identical with what he called the illegible map.

Mr. Matthews: He stated yesterday that these eight maps made up in totality the acreage of the original map, and it is pure subterfuge. The witness has produced, and it is only for the purpose of contradicting him, the map which is illegible, and he said the five or six others contained the same territory in their totality, although not individually. Any other maps they may subpoena on direct testimony. It only has to do with the map showing the Ryerson Dam. This is another attempt to get in the imaginary bungalows.

Mr. Hunt: I think the situation is this briefly stated, that the witness complained of an illegible map. That illegible map has been marked for identification. He was then asked about other maps and produced eight which have been marked for identification. Incidentally, while on the stand this morning, he has made the statement he has in his possession in one of these portfolios still another map received by him from the Ringwood Company,

and in this letter marked in identification admits the receipt of another map, the ninth. It is prior to the receipt of the eight maps. Now I ask that he be required to produce the map in his portfolio, so it may be seen whether that map is a duplicate of the illegible one or a map that shows what was sought to be shown by what he called the illegible one. I think it is only fair that all the maps come out.

Mr. Matthews: They can subpoena them and produce them. The proposition is this: There are only two maps involved in this discussion, and they are offered for the purpose of testing his credibility. This is not competent or cross examination at all. Any letter he may have that mentioned another map has nothing to do with this. He produced the illegible map. He says that is illegible, and it is for the jury to say whether it is or not. He says they sent me eight other maps.

The Court: In place of that.

Mr. Matthews: In place of that. He has produced them.

Mr. Hunt: He did not say in place of that. That is the trouble. He says eight, or five or six as he described them yesterday, were not in place of that. Here is what he said yesterday in the record. It is pretty long, because of the interruptions, as I recall. There were so many interruptions it goes along ten or twelve pages of testimony.

Mr. Matthews: And there are so many answers by Mr. Hunt that it takes up two-thirds of it.

Mr. Hunt: "Q. Now those blue prints—" He had just said he had received a roll, as I recall, of five or six blue prints—

"Q. Now those blue prints showed the same land which is shown on the illegible map—what you call illegible, marked for identification, and also other lands belonging to the Ringwood Company, did they not? A. The blue prints covered a vast terrain (if I pronounce it correctly), and showed lines indicating thousands of lots. That is all I could tell you about it.

"Q. Now you have not answered my question."

"Q. I asked you whether one of the blue prints showed the same land shown on the map that you said was illegible, did it? A. I don't recall it."

"Q. You do not recall? A. What is the question?"

(Then there was some colloquy.)

"Q. I have not asked you that, whether it was in the same scale. I say didn't one of these blue prints show the same land which was shown on the map that you said was illegible."

Then an objection and a long colloquy; the question is read again, and the answer is:

"A. No, sir; several of them may have shown it, but not any one.

"Q. But all together, within the bunch of blue prints, that land was shown? A. I presume it was if together, with much more land.

"Q. As a matter of fact, substantially all of the Ringwood lands shown on Exhibit C-1, and other Ringwood lands shown, were shown on this roll of blue prints sent to you? A. I could not read the blue prints, Mr. Hunt.

"Q. Ah, you could not read them? A. They were also blotted and faded out when I got them."

Now that is the testimony with regard to the blue prints. Now he has admitted this morning he has another map received from the Ringwood Company, and I request that he be required to produce that map.

The Court: But what is there to show that the other map was referred to by him in his testimony yesterday? You asked him to produce these maps for the purpose of showing their illegibility,—in other words, to discredit his testimony, and there is not anything before me, it seems to me, that, in the presence of this witness' testimony, that these are the maps that he was talking about yesterday and which he was referring to yesterday. It seems to me, if that be so, and I correctly understand this witness—

That is your testimony, isn't it, Mr. Hershfield, that the maps you produced are the maps you had reference to yesterday?

The Witness: The ones they sent me—a request to my getting one hat I could read, they sent me that roll of eight maps which is verified by the letter.

Mr. Matthews: The maps that were referred to in your testimony yesterday?

The Witness: Yes, sir.

Mr. Matthews: Did you have any reference in your testimony yesterday to this single map that was in your portfolio?

The Witness: I didn't know I had that single map until Mr. Dawes, whom I directed to dig up these maps from my map vault, produced

those maps, and a single map. May I add, your Honor—

The Court: No; that answers it.

The Witness: And that I brought the single map down here thinking it might be of use to the proceedings.

The Court: Yes.

Mr. Hunt: I think it would be of use if the witness will produce it and we can see the map.

The Court: I will not allow him to produce it, because I do not think it is proper now under the testimony that the witness has given. These maps having been called for for the sole purpose of discrediting him because of the testimony that he gave about the illegibility of the map, and he did not refer to this single map at that time, and now he says hat he did not even know of its existence yesterday, and of course if he did not know of its existence yesterday he could not have had it in mind when he testified as he did.

Mr. Hunt: May I ask him whether he had not seen it previously to yesterday?

Mr. Matthews: I object to that as immaterial.

The Court: I do not think it is competent or relevant, because it does not make any difference.

Mr. Hunt: You see, your Honor, I am at a disadvantage in that I am not permitted to read the letter from Mr. Hershfield to Mr. Hewitt that was marked for identification yesterday, but I can lay it before your Honor.

The Court: I saw it.

Mr. Hunt: I should like to ask the witness whether the map now folded up in his brief case is not the map he refers to in the letter.

Mr. Matthews: I object to that as immaterial. The letter is not before the court.

The Court: I think that is immaterial.

Mr. Hunt: And might I ask the court to impound the map he has now with him, so it will be available?

Mr. Matthews: If your Honor please, these tactics and prejudicial statements are preposterous.

The Court: I do not think it is intended to be prejudicial, Mr. Matthews, and I have no doub, in view of what Mr. Hershfield has said, that he brought it here for the purpose of assisting in the trial of this case, that Mr. Hershfield will retain it, and I will therefore ask him to keep it so that if Mr. Hunt wishes to produce it in his case it will be available.

Mr. Matthews: The word impound means that he or we would sequester the map and neither of us have any such thought.

The Court: I do not think Mr. Hunt means that. Mr. Hershfield hands it to me, and I am handing it back to him, because I have sufficient confidence in Mr. Hershfield to know that he will produce it when you want it.

Mr. Hunt: He has said so.

The Court: He has said so. Is that correct?

M. Hunt: His answer was yes.

Mr. Matthews: I take it it is not impounded?

The Court: It is not impounded.

Mr. Hunt: Nothing else.

Mr. Matthews: Then I understand Mr. Hunt is finished with Mr. Hershfield on all cross examination?

The Court: I so understand.

Mr. Matthews: Leave the stand.

HENRY G. HERSHFIELD, recalled.

DIRECT EXAMINATION BY MR. HUNT:

Q. Mr. Hershfield, please produce the map which I last week requested the Court to impound, but which the Court left in your custody. A. Your Honor, I left that map for safe keeping in the Surrogate's office. May I be excused to go downstairs and get it?

The Court: Yes, sir, unless you could send somebody else for it.

The Witness: No, sir, I suggested that ne give it to nobody but me.

(Witness leaves court room.)

Mr. Hunt: I have some letters to look over in the meantime.

The Court: Very well.

(Witness returns to the court room and resumes stand.)

Q. Have you got it? A. I have.

Q. Let me see it, please. A. (Produced.)

Q. Is this the map that you had with you the other day? A. It is.

Q. It is the only map sent you by the Ringwood Company which you had with you the other day? A. It is.

Q. Have you no other maps with you in your possession sent you by the Ringwood Company? A. No, sir, I didn't know I had that until I was

searching for the roll of blueprints and that was found in the same compartment. I brought it down thinking it might be of some help.

Q. What date did you receive that map? A. I have no recollection; I don't remember ever receiving it.

Q. Have you any entry or memorandum or any letter of any kind that would refresh your recollection or aid it? A. No, sir.

Q. Read the legend on this map, please. A. Layout—

Mr. Matthews: Don't read it out aloud, please.

Mr. Hunt: Oh, yes, I am going to offer this map in evidence, and the Court needs to know what the legend is.

Mr. Matthews: Well, don't read it until it is offered.

Q. What does it say?

Mr. Matthews: I object.

The Court: Objection sustained.

Mr. Hunt: I offer the map in evidence.

Mr. Matthews: We want a chance to argue on that.

Mr. Frazer: May it be marked for identification?

The Court: It may be marked for identification.

(Map marked Exhibit O-57 for identification.)

The Court: Now, we are up to the point where you might argue all of these questions.

Mr. Hunt: No, I have some other questions to put to the witness, if the Court will permit me. Your Honor sees the description and the date and the character of the map (Handing map to Court).

The Court: Yes, sir.

Mr. Matthews: I take it, your Honor, we will offer this map with the others, in the absence of the jury?

The Court: That is correct.

Mr. Hunt: They wish to have your Honor's ruling on the admission of this map temporarily reserved them?

The Court: Yes.

Mr. Hunt: Now, I must show the map to the witness:

Q. I want you, Mr. Witness, to read to yourself, not aloud, the description of this map and give the map a sufficiently careful study to permit you to say what it is—to permit you to know what it is—what it shows and what it covers.

Mr. Matthews: I object until the map is in evidence.

The Court: I do not mind his studying it. That is all he is asking now to do, to look at it and get it in his mind.

Mr. Matthews: And to say.

The Court: No, I did not understand that.

Mr. Matthews: That is the only part I objected to.

The Court: I won't permit him to testify with respect to anything on it until it is in evidence.

Q. Now, I show the witness Exhibit O-13 for identification, being a letter, the original letter, addressed to the witness by the Ringwood Company

and signed "Ringwood Company, by James P. Anderson"; I believe you admitted last week the receipt of that letter? A. Yes, I brought it down with me.

Mr. Hunt: I offer that letter in evidence.

Mr. Mathews: Before objecting to the admission of this letter on the ground of its relevancy and being self-serving, may I present it to the Court? (Handing letter to Court.)

Mr. Hunt: My purpose in offering the letter is to clearly identify the things which are mentioned in the letter, your Honor, so that those things have no connection with the thing I am now seeking to get in evidence.

Mr. Matthews: That is irrelevant to this issue, if your Honor please, totally irrelevant.

The Court: I do not know whether it is yet.

Mr. Hunt: I offer the letter in evidence.

The Court: I will let it be received in evidence subject to being stricken out if it develops it is not relevant.

Mr. Matthews: Your Honor will allow an exception on the ground that it is irrelevant?

The Court: Yes. I understand it has to do with these maps?

Mr. Hunt: Yes; we have now a number of maps here, and I want to separate one from the other.

The Court: Why wouldn't it be proper, Mr. Hunt, rather than to admit them in evidence at this time, simply to mark it for identification?

Mr. Hunt: It has been marked for identification on the 13th of January.

The Court: It will then be before the Court for the purpose of argument on the maps, which will be done in the absence of the jury.

Mr. Hunt: Your Honor, I want the jury to know what maps the letter that I have in my hand refer to. There has got to be a process of eliminating some maps as immaterial and irrelevant.

The Court: But doesn't that open up the whole package?

Mr. Hunt: Your Honor will not be able to rule on the admission or rejection of the map I am now seeking to get in, unless you know what the answer is with respect to the maps mentioned in this letter. Now, they need not be afraid.

Mr. Matthews: We are not afraid.

Mr. Hunt: I am seeking to get some maps out of the case and not put them in.

The Court: My only thought is you might have the entire discussion of these maps in the absence of the jury, rather than just part of it.

Mr. Hunt: I do not know how the jury is going to pass on my case unless they hear relevant evidence. This is relevant. This witness produced some maps the other day, eight of them, and they were marked for identification. He also produced and had marked for identification a letter which I hold in my left hand. Now, I want to show whether the letter and these particular maps are either connected or disconnected, one thing or the other.

Mr. Matthews: Your Honor will recall it was to test Mr. Hershfield's credibility, and had no relevancy to this issue and, therefore, your Honor's ruling that the discussion of these

maps might be in the absence of the jury is not only equitable, but in my mind, will save a lot of time, because it is not relevant to this issue how many maps were produced or not produced. It is relevant to the issue to prove that Hershfield did or did not tell the truth, and we have no objection of showing that.

Mr. Hunt: That is why I am going to let the jury see now—

The Court: All right, I will allow it.

Mr. Matthews: Your Honor will allow an exception?

The Court: You may have it.

(Exhibit O-13 for identification was then received in evidence).

Mr. Hunt: I will now read the exhibit to the jury. It is on the letterhead of the Hewitt Realty Company and dated August 29th, 1924, and it reads as follows:

"Mr. Henry G. Hershfield:
"Pompton Lakes,
"New Jersey.

"Dear Sir:

"We have forwarded under separate cover blueprints showing lot layouts of various sections of the Ringwood Company property, such maps being dated August 26th, 1924, and numbered and lettered as follows: 220-D, 216-D, 212-D, 220-E, 216-E, 212-E, 220-F, 216-F.

"Very truly yours,

"Ringwood Company,
"By James P. Anderson,
"M. S. J."

And marked by the stenographer "O-13 for identification, 1/13/27."

Q. I show you eight blueprints and ask you whether they are the blueprints mentioned in the letter I just read? A. They sound like them.

Q. Answer the question, please. A. I believe they are; they have been in your custody since I left them here.

Q. Look at them and see whether they are.

The Court: As a matter of fact they were supposed to have been marked for identification.

Mr. Hunt: Mr. Kestenbaum says we adjourned for the day about that time, and they were not marked.

The Court: Very well.

The Witness: They look like the ones, Mr. Hunt.

Q. Tell me whether they are the ones? A. I had no mark on them to identify them as such. I can only say they look like the ones.

Mr. Matthews: If they be in the custody of the other side, we will admit they are the ones.

Mr. Hunt: It is admitted that they are the eight blueprints mentioned in the letter I have just read.

Mr. Matthews: No; the ones he produced.

Q. The question is, whether these are the eight blue prints mentioned in the letter I just read, which is Exhibit O-13, in August?

Mr. Matthews: If he knows.

A. To the best of my knowledge and belief they are.

Mr. Hunt: I offer that in evidence.

Mr. Matthews: I object, if your Honor please, and ask to argue it on the same ground.

The Court: Very well. Let it be marked now for identification, as long as they were not marked before.

(Eight blue prints marked for identification O-58, O-59, O-60, O-61, O-62, O-63, O-64, O-65 for identification.)

Q. I show you Exhibit O-11 for identification, purporting to be a carbon copy of a letter by Charles E. Hewitt to you, dated August 20th, 1924, and ask you, did you receive that letter of which this is a copy? A. I would have to look in my file to see whether I have it.

Q. I show you Exhibit O-11, being the original of a letter by you to Hewitt Realty Company, attention of Mr. Charles E. Hewitt, dated August 21st, 1924, and ask you whether that enables you to answer the preceding question? A. May I see the date on that, please? This is apparently an answer to that letter.

Q. Then you did receive the letter of which Exhibit O-11 is a carbon copy, did you? A. Apparently. I have acknowledged it.

Mr. Hunt: Then I offer Exhibit O-11 for identification in evidence.

Mr. Matthews: We would object, if your Honor please, that it is irrelevant and incompetent, and particularly object because it purviews conditions contrary to the rulings of the court thus far. And I might say at this time—

Mr. Hunt: I can save time by withdrawing the question.

The Court: Withdrawn.

Mr. Hunt: Withdrawing the offer.

Q. I show you Exhibit O-12 for identification and ask you whether that is your signature on that letter? A. It is.

Q. Is that a letter written by you in answer to Exhibit O-11 for identification? A. Apparently it is. I cannot say positively. There is no reference to any specific letter, but I imagine it would be in answer to the original of this letter.

Q. The letter written to you purports to be dated August 20th, doesn't it? A. Yes.

Q. And your reply is dated August 21st? A. Yes, sir.

Q. And your reply acknowledges receipt of a letter dated August 20th, from the person who signed O-11, does it not? A. Apparently it would indicate a reference to that letter.

Mr. Hunt: All right. Then I offer Exhibit O-11 and O-12 for identification in evidence.

Mr. Matthews: Same objection, if your Honor please. This is a surreptitious attempt, to my mind, to undo the court's ruling thus far.

The Court: I will not rule on that until we have argued the maps.

Mr. Hunt: I cannot proceed with my examination until they are ruled on.

The Court: Then I will rule it out.

Mr. Hunt: May I have an exception?

The Court: Grant you an exception.

Mr. Hunt: Your Honor, will you be good enough to read this letter?

The Court: I know exactly what they are. They have reference to maps that show a layout

of lots on this land, and under the Manda case, my present notion is they cannot go in.

Mr. Hunt: I am very sorry that your Honor has read it erroneously, but they do not refer to any layout on the maps whatever.

The Court: The other map did, and I suggested you argue, or suggested inasmuch as we were going to argue the question of the admissibility of those maps, that it would be a more seemly proceeding to wait until we had had that argument, until we could clear the air with respect to their admissibility, before we went into these letters, and you said that you could not go on with your argument until you laid a proper foundation, and I allowed you to proceed, rather against my own judgment, because of your insistment, and then I discovered that the very map that you had reference to and which the letter referred to that I allowed to go in evidence, had reference to a map that contained a development of real estate lots. Now I am assuming, and perhaps improperly so, that these letters also refer to the same kind of a map.

Mr. Hunt: Well, if your Honor will read the letters, your Honor will see that your assumption is incorrect.

Mr. Mathews: Refer to lakes.

The Court: The same principle applies.

Mr. Hunt: Does your Honor mean to suggest then that the Ringwood Company in 1924 had no right to lay out the property in lots?

The Court: That is a question I prefer to discuss in the absence of the jury, because it may be I am premising by thoughts on the wrong premise; but as I understand the Manda

case and other cases, you must do something more than plot lots out on a map, before you can show the—

Mr. Hunt: I thought that was not to be discussed in the presence of the jury?

The Court: I am discussing it, and my rules do not apply to what I might say, and I should not think you would object because of your previous insistment that the jury ought to know what it is about, and I told you that I would protect you so that no improper inference could be drawn by the jury, and it is only in your protection that I made that remark, so that the jury may know about it. I had intended, either at the end of the discussion or in my charge to the jury, to be perfectly fair and to let the jury know that what you said in your opening was not said improperly, but that if anything that you said in your opening you propose to prove and did not prove was not proven because of adverse rulings of the court, and the remark I just made I do not think you should take an exception to, because it seems to me that it goes along that same line.

Mr. Hunt: With all due respect to your Honor and for all courts I hope I entertain the highest respect, I felt that I was prejudiced by your Honor making the statement that indicated a view adverse to my contentions upon a point which has been ruled should not be discussed in the presence of the jury, before I had been heard in argument.

The Court: That is true, and if my views are not that, when we have finished, there can be no prejudice to you, because of what I have just said, and especially is that true because

what I have just said is in accord to my ruling heretofore.

Mr. Hunt: I offer Exhibits O-11 and O-12 for identification in evidence.

Mr. Matthews: That has been offered and objected to and your Honor has ruled already.

Mr. Hunt: The objection is sustained.

The Court: I will not sustain the objection unless you insist on it, but would rather withhold my decision until after we had the argument.

Mr. Hunt: I beg for a ruling upon the offer.

The Court: I reject them and grant you an exception.

Mr. Hunt: I pray an exception.

The Court: An exception, subject to being allowed in evidence later if I should after your argument change my view.

Mr. Hunt: But at present I have an exception to the sustaining of the objection?

The Court: Certainly.

Mr. Hunt: I offer in evidence the eight blue prints which have been marked for identification by numbers from 59 to 65 inclusive.

Mr. Matthews: I object on the grounds they are incompetent, and we ask that we be heard in argument in the absence of the jury.

Mr. Hunt: I ask for a ruling.

The Court: I will suspend my ruling as to whether they are competent to be admitted into evidence or not until I have heard counsel as to their admissibility in the absence of the jury.

Mr. Hunt: Mr. Kelley, may I ask where the map is that was produced by the witness this morning?

The Court: Right under here; right under those, Mr. Hershfield.

(Map produced.)

Mr. Hunt: I offer in evidence O-57 for identification.

Mr. Matthews: That has already been offered and objected to as incompetent, and we ask to be heard in the absence of the jury.

The Court: I will rule on its admissibility after I have heard counsel.

Mr. Hunt: Will you hear counsel now, your Honor?

The Court: Yes, in the absence of the jury.

Mr. Hunt: May I have an exception to the exclusion of the jury?

The Court: You may. The jury will now retire.

Mr. Hunt: I have not finished with the witness.

The Court: Oh, just a moment.

Mr. Hunt: Of course, if the jury is going out, I cannot, no.

The Court: If there is anything more you wish to ask the witness with respect to the argument on the admissibility of the maps, I do not object to your doing it at this time.

Mr. Hunt: Yes. I will ask him a question then.

The Court: Come back, please.

(The jury return to the jury box and the witness to the witness stand.)

Q. I show you Exhibit O-11 and O-12 for identification, and I show you Exhibit O-57 for identification, and ask you whether O-57 is any part of the subject matter referred to in the letters which have been marked O-11 and O-12?

Mr. Matthews: I object to it as calling for a conclusion upon the reading of the exhibits that your Honor has asked to have read in the absence of the jury. That question, therefore, being on the record, is not prejudicial, but may be renewed when the jury return.

The Court: If it is for the purpose of identifying this map with the letters, and just that purpose, as I anticipate it is, and for no other purpose, I see no objection to it. That is the purpose, isn't it, Mr. Hunt?

Mr. Hunt: To get these letters, maps and documents clearly identified, so that confusion is avoided.

The Court: I will allow this question to be answered, that being the purpose.

Mr. Matthews: We will withdraw the question, the purpose of which is stated by the court.

A. It is not.

Q. It is not. Now I show you Exhibit O-13, which has been admitted in evidence and read to the jury, and I ask you whether it is not true that Exhibits O-59 to O-65 inclusive for identification constitute the subject matter, the entire subject matter and the only subject matter mentioned in Exhibit O-13?

A. To the best—

Mr. Matthews: One minute. I object, if your Honor please, unless it is for the purpose of tying up—

Mr. Hunt: The same purpose.

The Court: The same purpose.

Mr. Matthews: Tying up this letter and the argument on the map.

The Court: I will allow it for that purpose.

A. To the best of my knowledge and belief these eight blue prints are the ones referred to in that letter.

Mr. Matthews: He has already stated that once before.

Q. I ask you to examine Exhibit O-57 for identification and Exhibits O-58 to O-65 inclusive for identification, and state whether or not any of them constitute the subject matter mentioned in your letter of August 21st, 1924, to Mr. Charles E. Hewitt, which has been marked Exhibit O-12 for identification?

Mr. Matthews: I object, unless for the purpose of tying up—

Mr. Hunt: Same purpose.

The Court: Same purpose, same ruling.

A. Apparently not.

Mr. Hunt: Now, I think I finished with the witness for the present.

The Court: Very well. No questions?

Mr. Matthews: No questions.

Mr. Hunt: Of course, if the Court's ruling permits me to proceed I shall wish the witness back again.

The Court: Certainly. The jury may retire.

Mr. Hunt: So the witness is to remain in Court, of course?

The Court: Yes.

(The jury then retired.)

Mr. Hunt: Who proceeds first, your Honor, me, in stating the reasons why these things are

admissible, or the other side in stating why they are not?

The Court: Why, I do not know that I care.

Mr. Hunt: I think it would perhaps tend to clarification and perhaps acceleration in progress if I may be permitted first to state why I offer the documents.

The Court: Very well.

Mr. Hunt: For one thing, this goes back to a time much earlier in this trial, when the witness said he had received a map that he described in his letter as "Indiscernable". That incident, however, is not the only reason, nor the major reason for the effort now made to put in these maps and letters and to clearly identify before the jury, and for the information of the jury, the maps to which the various letter relate, and the letters to which the various maps relate.

The Court: The map that was referred to as illegible. It has been offered, has it not, or has it just been marked for identification?

Mr. Hunt: I believe it was marked for identification.

The Court: And is that here?

Mr. Hunt: I do not know, your Honor. It is not involved at this particular moment, and I think we have got enough here to make quite a complication anyway, so—

The Court: That map, then, was then—

Mr. Hunt: I would assume that map was not in question at the moment.

The Court: You are not seeking to have that introduced in evidence?

Mr. Hunt: No, sir; no, sir.

The Court: Very well.

Mr. Hunt: Not at the moment. I am not waiving the right to have it in.

The Court: I understand.

Mr. Hunt: I will eventually ask to have it in, and I think the Court will be able to rule very easily on that after having heard argument on this.

The Court: You are directing your argument now to the examination of Mr. Hershfield, not these nine maps, or the four?

Mr. Hunt: I have now had marked for identification nine maps which lie before your Honor, and some letters, and one of those letters has been admitted in evidence, being Exhibit O-13. I read it, as follows:

"Dated August 29, 1924.
"Henry G. Hershfield,
"Pompton Lakes,
"New Jersey.

"Dear Sir:

"We have forwarded under separate cover blueprint showing lot layouts of various sections of the Ringwood Company property, such maps being dated August 26th, 1924, and numbered and lettered as follows: 220-D, 220-E, 220-F, 216-D, 216-E, 216-F, 212-D, 212-E.

"Very truly yours,

"Ringwood Company,
"By James P. Anderson
"M. S. J."

I submit that the Ringwood Company has a right, on the 29th of August, 1924, and prior thereto, to lay its property out in lots, to make

maps showing that it has laid them out in lots and that, regardless of whether or not the Water Supply Commission had any knowledge of these layouts having been made, the Ringwood Company would have the right to prove the facts in this proceeding for whatever the jury might consider it worth, especially have they that right in view of the fact admitted by the Water Supply Commission's chief real estate agent in this letter admitted in evidence that he had received the maps informing him of the fact.

To proceed to a second point: It appears that on August 20, 1924, the Ringwood Company, or its treasurer, Mr. Charles E. Hewitt, wrote a letter, a copy of which is here and marked Exhibit O-11 for identification, addressed to Mr. Hershfield and reading as follows:

"Enclosed herewith please find blueprint showing the location of lakes on the Ringwood Company property.

Will you kindly acknowledge receipt and oblige."

And by Exhibit O-9 for identification written on the letter head of the Hershfield Agency, real estate and insurance, dated Pompton Lakes, New Jersey, August 19, 1924—no, excuse me, I am referring to the wrong letter—go back to where I said Exhibit O-9, and make it instead "by Exhibit O-12 for identification written on the letterhead of the Hershfield Agency, real estate and insurance, dated Pompton Lakes, New Jersey.
August 21, 1924.

Adressed to the Hewitt Realty Company, attention of Mr. Charles E. Hewitt, and signed by Henry G. Hershfield", as he has admitted

on the stand, Mr. Hershfield acknowledged the receipt of the letter of which O-11 is a copy, and acknowledged the receipt of the map referred to in that exhibit in the following words: "My dear Mr. Hewitt:

I beg to acknowledge receipt of your favor of the 20th inst."—

That is Exhibit O-11.

"together with enclosure therein of blueprint showing proposed lakes on your property." Hershfield denied last week that he had ever seen a blueprint showing lakes on our property. We had a right, and prior to August 20, 1924, to contemplate, plan, project, produce lakes on our property. If we had taken any steps towards doing that, I submit we would have the right to put evidence of those steps before the jury. Our right is emphasized and strengthened by the reason of the fact that the chief real estate man and the agent of the Water Supply Commission in this condemnation case had notice in August, 1924, and had a map in August, 1924, showing our proposed lakes.

I submit it is our right to put that in as matter of substantive evidence. Certainly also, it is our right to put it in to discredit the man Hershfield who said he could not visualize any of these lakes.

He writes, over his own signature on the 21st of August, 1924, he had received a blueprint showing the proposed lakes on the property. It is curious he could not visualize them.

The Court: Do you state in addition to that he said he did not receive those maps?

Mr. Hunt: He denied that he had received at any time any map that showed any lakes on the property. I had thought—

Mr. Frazer: What page of the testimony, Mr. Hunt?

Mr. Hunt: I could not tell you. I make that statement.

Mr. Matthews: He said he could not decipher the lakes.

Mr. Hunt: He said this blueprint he had tucked away in his brief case was the one that showed the lakes, but this is not, that is Exhibit O-57 for identification that I am now referring to, and this is the third point I am making distinct from the two foregoing.

This is a third matter that we have a right to lay before this jury. Here is a blueprint produced by Hershfield at my demand, acknowledged by him to be not the subject matter of any of these other letters—any of these letters that have been read—but which is entitled "Lot layout of Wanaque Glens, scale one inch to 100 feet, May, 1924, Ringwood Company property" in this taking.

Moreover, as will appear later, this is the very lot layout from which we sold lots that had been deeded and conveyed by us to others prior to the commencement of this proceeding, so that the Water Supply Commission had to purchase those lots from other people or will have to bring condemnation proceedings to get them where it cannot purchase them.

Now, there again, is a double purpose, impeachment of a man who said he knew nothing of any lots on the Ringwood Company property, and proof that the Ringwood Company, prior to the commencement of this condemnation proceeding, had laid out part of its property in lots, which is a material fact, but a fact whose value is emphasized by the further fact

that the agent of the Water Supply Company in this procedeing knew it.

The Court: Is this the property where the bungalows were along the river which Mr. Hershfield speaks of as the German Village?

Mr. Hunt: No, that is not. That is another part of the property, but there have been sales made there, as we shall prove, of property, which, to the best of my knowledge, the Water Supply Commission has not yet acquired. I would refer specifically to the McLernon property.

I therefore submit that every letter, every carbon copy of a letter, every map offered by me this morning is admissible in evidence.

Your Honor understands that refers not to the maps we were examining on yesterday afternoon, but to these old ones now before you, and I would suggest that we separate these from the others, because these are tied up and connected with the letters, while the others, of course, are not.

Mr. Matthews: In answer to the statements of counsel which are not argument, I want to say first of all, if your Honor please, that the information concerning these maps was elicited from Mr. Hershfield on cross examination for the purpose of testing his credibility. Then Mr. Hunt tried to offer the maps in evidence.

Your Honor will recall at that time a subterfuge was apparent. I want to call it such on the record, because he now says, thinking perhaps the use of the law school term "substantive evidence" might delude us. I want to offer these on two grounds: First, as substantive evidence of what they entirely contain. Therefore, entirely violating the Manda case doctrine; and in the second place, to test Hershfield's credibility.

Now, let us look at it. The first letter offered in evidence, O-11 for identification, the letter of August 29th, 1924, the reading of which "Enclosed please find blueprint showing location of lakes on the Ringwood property. Will you kindly receipt and oblige", he says he has two purposes in offering this letter. One as "substantive evidence" to show that the Ringwood Company in 1924 purviewing contemplation of imaginary lakes on these premises, and the second, and incidental and not at all serious purpose, of discrediting Hershfield's testimony which he says was that he never knew there were to be any lakes on that property.

Now, if your Honor please, it is totally immaterial to this issue whether or not the Ringwood Company purviewed lakes in 1924.

What is the issue here before your Honor? It is: What is the market value of this land at the time of the taking as contemplated by the decision in the Manda case,—the land as it is. O-11, therefore, is first of all irrelevant to the issue and if, forsooth, it is said that the second purpose of testing Hershfield's credibility is the real purpose, or is a serious purpose of it, I submit the evidence does not show any statement by Hershfield that this letter is a contradiction of, and before this argument is decided, I would like to have the testimony read to your Honor.

We will suppose, however, in this argument that the letter does show Hershfield's testimony to be contradictory. There cannot be admitted in evidence, if your Honor please, a document which contains substantive value at the same time that it will discredit the witness. There may be put upon the evidence that part of the letter, or a statement or explana-

tion of the receipt of the letter which would have brought him that information. That is the rule of law, and as I said before, his credibility is attacked sufficiently, and at the same time no harm is done to the ruling of the Court.

Let us come to the second letter, O-12. This is where the clear subterfuge of this manner of trying a cause is apparent to the Court, even to one who is not as ancient as his opponent.

Exhibit O-12: "I beg to acknowledge receipt of your favor of the 20th inst., together with enclosure therein of blueprint showing proposed lakes on your property."

Pardon me for putting it to your Honor that way.

There is a letter, if your Honor please, which this man says he offers for a double purpose,—the substantive value of it as evidence, value rather as substantive evidence; and in the second place, and this is the subterfuge lugged in, to discredit Hershfield, to discredit him with the jury.

Your Honor realizes the mere reading of that letter is harmful under your Honor's ruling, and contradictory because of your Honor's ruling, because, forsooth, Hershfield's laying out lakes on that property at that time has absolutely nothing to do with the market value of this land as is.

Now, let us look at it from another angle: Hershfield is the agent buying and selling this property. What materiality has it to this issue that he knew, in 1924, within a year of the filing of our condemnation papers, that they were plotting lakes or lots, and they cannot be serious, because they visualize this situation, that adds anything to the value, because that would do away with the very purpose of

eminent domain. Every man could say, a year before, he could write a letter for instance, and tell another man he was going to do this, that and the other thing to this property, therefore, they had intention.

We are not paying them for intention. We are paying them for the market value of the land as is, without artificial change. We are paying them not for lakes in their fertile mind, fertile in the sense of imagination. We are paying for lake-sites as is with the shores running along them. We are paying for appreciation of property by reason of existent circumstances and benefits on the property.

So I say this letter, O-12, is simply another attempt on their part to pull in the back door of this proposed lake development; and as far as the testing of the credibility of Hershfield, again I challenge the statement of counsel. I challenge it with all I can make that word mean, saying that is not his testimony.

Now, let us look to the next letter that is offered in evidence—O-57—these are the maps alleged to have been received by Hershfield by reason of a letter which is marked in evidence O-13.

Now, your Honor will recall that when O-13 was offered in evidence, I made the objection to your Honor that it was irrelevant, and it was irrelevant just the same as the others, because it shows layouts of various sections of the Ringwood property in August, 1924, layouts on paper. Therefore, these layouts that these maps show, and this letter that describes those layouts, they claim they are offered for substantive evidence as well as to discredit Hershfield.

I frequently found in my opponent's remarks here that his purpose is disclosed by the use of

a not every-day word in reference to legal terms. It was apparent in yesterday's argument to the evidence feature that was discussed then, and this term "substantive" betrays his purpose. He is offering these eight maps and these letters for the substantive purpose of proving layout on these premises, and then that letter O-13 and those maps, how do they both contradict Hershfield's evidence? Hershfield simply said I got a letter from them. I got certain maps from them, The first thing was, I got an illegible map. Well, he tumbled him around on the illegible map, and then he said, yes, I got some other maps from them, but I could not make anything out of them. The little map here with the layout of lots, I never got from them at all. There is no evidence that he did. That is a map that he had in his own possession. He picked it up at the last trial and brought it here, and when he offered that Mr. Hunt's usual purpose was whenever anything was produced, he imagined it was his own property that someone had surreptitiously taken.

When that map was produced, he wanted it immediately impounded. Now, he finds out it was not the one he wants, but wants it in evidence for the purpose of substantive evidence to discredit Hershfield.

These maps cannot be offered for purposes of substantive evidence, because they are irrelevant and incompetent in that regard. The maps cannot be offered to contradict a witness because, forsooth, they do not contradict the witness. The letters cannot be offered except for the purpose, if your Honor please, and with the statement that Hershfield did receive the letters that would indicate a contradiction of his testimony, if such is apparent; but first of all,

before that is conceded by the Water Commission, the Water Commission challenges the statement of counsel that Hershfield said he never got any maps showing lakes on the property, or that he ever got any maps showing lots on the property.

If I have forgotten anything with reference to this I want permission of the Court for Mr. Frazer to conclude this, but I do say this: First of all, there is a dual purpose in the offering of this evidence, and candidly admitted first of all, "I offer them as substantive evidence." That is incompetent and immaterial. Second, "I offer them to contradict the witness." In contradicting the witness those maps cannot be offered, and those letters only within the purview of the actual contradiction of the actual statement which I challenge my opponent to produce.

The Court: Do you wish to reply, Mr. Hunt?

Mr. Hunt: In one sentence, your Honor, the concluding statement by counsel is that he challenges the statement that Hershfield ever got any map showing any lakes on this property.

I read Hershfield's letter of August 21, 1924, Exhibit O-12, addressed to the Hewitt Realty Company, attention Mr. Charles E. Hewitt:

"My dear Mr. Hewitt:

"I beg to acknowledge receipt of your favor of the 20th inst., together with enclosure therein of blueprint showing proposed lakes on your property."

The Court: But Mr. Matthews says that Mr. Hershfield did not say, in his examination, that he never received any map.

Mr. Hunt: Well, of course, that must be a matter of the Court's recollection for the moment, unless you wish time to read the whole

record. My own recollection—I do not want to make a positive assertion of fact about those things—my own recollection is that he did say so. I certainly meant to ask him about that and I think I did. So I press my offer of these various letters, carbon copies of letters and maps which have been marked for identification and which I previously offered in evidence. I renew the offer of each and every of those maps, letters and copies of letters which I have heretofore offered this morning.

The Court: The ruling of the Court is that under the ruling of the Manda case, as the Court understands it, and as the Court has previously indicated his understanding of it, the maps and the letters are not competent and will not be admitted.

Mr. Hunt: We pray an exception.

The Court: You may have an exception. With respect to your other reason for admitting them, namely, the contradiction of Mr. Hershfield, the Court is not of the opinion that Mr. Hershfield did testify as you say he did, that he never had a map showing the layout of certain lakes, and if you disagree with that and can show me the testimony wherein Mr. Hershfield has testified contrary to the letter that you have had marked for identification, then I will again take up the question of permitting it to go in, and only that letter, on the theory that it discredits Mr. Hershfield's testimony; but there is no necessity, nor will under that ruling permit the map to go in that is referred to, but if it is true that Mr. Hershfield has, in his examination, said he had received no map showing the layout of lakes, then I will permit the letter marked for identification O-12 to go in.

I cannot recall, of course, all of the testimony any more than the rest of you can, and if you can show me at a later time that Mr. Hershfield did so testify, then my ruling will be that may go in. Now, with respect to the letter that has been received and marked in evidence O-13: I permitted that to go in under a misapprehension at the time and I will now strike it out.

Mr. Hunt: To that we pray an exception.

The Court: You may have it.

Mr. Hunt: And to the remainder of your Honor's ruling we pray an exception.

The Court: Certainly.

Mr. Hunt: And I beg liberty to ask in case I should avail myself of the opportunity kindly given by the Court to seek in Hershfield's testimony for assertions on his part that he had never received a map, and if I should find that he had testified that he had never received a map showing lakes on the Ringwood property, then as I understand the Court Exhibit O-12 for identification will be admitted in evidence?

The Court: Without the map.

Mr. Hunt: Without the map.

The Court: And only for the purpose of discrediting his testimony.

Mr. Hunt: And you won't permit me then to press the witness to produce the map, the receipt of which is acknowledged in O-12?

The Court: No, because as I remember O-12 it identifies the maps showing lakes on the property, and the only purpose that I would permit it would be to discredit the statement that you say he made that he did not know there were lakes on the property, or that he had never received maps showing lakes on the property. That would be the only purpose and

that letter itself in its terms would be refutation of the statement you say he made and would discredit him as completely as though there were a thousand maps introduced in evidence.

Mr. Hunt: You won't allow me to press him to produce the maps which he says he had not received?

The Court: No.

Mr. Hunt: You won't permit me, in the case of his failure to produce that map to introduce a copy of that map?

The Court: No.

Mr. Hunt: Then I do not think it is worth my time to take the opportunity that your Honor gives me, because I think Hershfield is sufficienly discredited already.

The Court: Very well.

Mr. Hunt: And certainly, if untruthful statements discredit a witness I hardly need any more from Mr. Hershfield.

Mr. Matthews: I take it the statement of counsel on the record cures any possibility that he may have in mind about your Honor being wrong, because if it is sufficiently discredited already, it cannot be harmed, your Honor, because he thinks against him.

The Court: Now, let us go to the next maps.

Mr. Hunt: Your Honor, may I just assemble my thoughts for a moment?

The Court: Certainly.

Mr. Hunt: Even pray the Court's assistance to see whether I have got my exceptions taken. Here we have one letter marked for identification that I have not offered in evidence. The Court, of course, will reject it in line with the rejection of the others. I offer in evidence Exhibit O-9 for identification.

The Court: Very well, the ruling will be the same and you may have an exception.

Mr. Hunt: And I pray an exception. I offer in evidence Exhibits O-11, O-12 and O-13.

The Court: I think O-13 was the one that I admitted and then struck it out?

Mr. Hunt: Yes.

The Court: You offer it again?

Mr. Hunt: I am just making sure I am right. And O-57 and O-58 to O-65, I offer all those in evidence.

Mr. Matthews: Counsel objects for the reasons stated in the argument.

The Court: And the ruling is that the objection is sustained for the reason given.

Mr. Hunt: And I pray an exception.

The Court: And you may have an exception.

Mr.Hunt: Well, yesterday afternoon I was endeavoring to put in proof of the map by Mr. Anderson; I am ready to proceed with that if the other parties are ready.

Mr. Frazer: There are three other maps, I believe.

Mr. Hunt: I prefer to take the maps one at a time. I offer only one.

The Court: Very well. Suppose we take No. 1 first, the one that was referred to yesterday.

Mr. Hunt: May I step out for just a moment. I have no objection to the proceeding going on.

The Court: Yes. Don't you think we better follow the same procedure as we did before, have you to state the reasons you were offering it and then I will hear the other side as to their objections? I do not mind taking a recess for a moment, if you like to step out before beginning.

Mr. Hunt: Yes.

(A short recess was taken.)

Mr. Hunt: Has the map upon which I was examining Mr. Anderson yesterday been marked for identification, Mr. Kelley?

The Court: My recollection is that all four of them were, that and three others.

Mr. Frazer: I think there was only the one marked yesterday.

The Court: Let us mark the first one now and the others as we take them up.

Mr. Hunt: This is the map from which I was examining yesterday and which we call the consequential damage map, and I ask to have it marked for identification.

(Map marked Exhibit O-67 for identification.)

Mr. Hunt: The consequential damage map is marked O-67 for identification. Now does your Honor wish to have these others that I am going to offer marked?

The Court: I think so.

Mr. Hunt: I am going to offer them one by one.

The Court: I understood you to say you preferred to argue one by one. That being so, let us have the others marked as we come to them, and we will take this one up now. You might explain to me so I might understand it thoroughly, what it is all about.

(Map O-67 for identification placed on easel.)

Mr. Hunt: There are some inscriptions on this map outside the developed area of the map, if I may use that term. For the purpose of saving time I will say that if there is any objection to any such inscription, I have no objection whatever to its being scratched out,

painted out, cut out with scissors or dealt with in any other manner whatsoever.

The Court: You have reference to the legend?

Mr. Hunt: There is a legend, "Map of Wanaque Reservoir development," and there is the inscription up there referring to certain things that the Ringwood Company is compelled to do by reason of these lands being separated by this taking, but all that can be put in by testimony. If they want to take scissors and cut holes in the map where any of these inscriptions are, I have no objection whatever. Your Honor I think will remember my detailed examination of Mr. Anderson yesterday in connection with this map, so I need only briefly recall the substance of what was said concerning the character of the map and its purpose.

The Court: What is the number for identification?

Mr. Hunt: O-67. It was testified by Mr. Anderson that the basic data for this map were taken exactly, by a mechanical process, so as to insure accuracy, from the map furnished the Ringwood Company by the Water Supply Commission in the year 1925, but that inasmuch as that Water Supply Commission map did not show contours above a certain elevation, think it was 340, we had to put in contour lines to show higher elevations, and that they were put in by engineers acting under Mr. Anderson's directions and supervision, and that they are substantially accurate, and that in any event they are only 100 feet contours, so that precise accuracy is of no material importance. The purpose of the contours is simply to enable it to be seen whether at a given point on this map the elevation is that approximately of the streams or the level lands surrounding the

streams or approximately that of the mountain tops or approximately that of the intermediate slopes between the montain top and valley.

The map is laid out, as your Honor, sees, in different colors, and has drawn in upon it, colored in blue, the outline of the Wanaque Reservoir of the Water Supply Commission when filled up to flow line 300,—is it, Mr. Frazer?

Mr. Frazer: Yes.

Mr. Hunt: Yes, 300 feet; and that outline or flow line is described on this map in the same manner identically as described on the map which the Water Supply Commission gave us and which showed the contour line 300.

Our only addition in respect of the showing of the reservoir to their base map, from which we made this, is that instead of merely drawing or photographing in the contour line 300 along with all the other contour lines, we detailed in blue all the land that lies between contour line 300 on the east and the west sides of the river. That is plain to your Honor, isn't it?

The Court: Yes.

Mr. Hunt: That is just to make it more graphic. Now our reason for painting certain Ringwood lands is green and certain other Ringwood lands in pink is for the purpose of showing what our contentions are with respect to the Ringwood lands outside the taking, which are damaged by the taking; and the two colors are used because in our opinion and as we shall undertake to prove if permitted, the damage in one place is of one kind or one extent or for one reason, and therefore we put it in one color, and in another place it is of an-

other extent or for another reason and we put it in another color.

The Court: Might I ask at this time what is the blue projection from the top of the map, over towards the other end, the same color as the reservoir?

Mr. Hunt: That is Tice's Pond, Mr. Anderson?

Mr. Anderson: Yes, or Lake Erskine.

The Court: Is that the enlarged area of Tice's Pond?

Mr. Anderson: Yes, it is.

Mr. Hunt: I have no objection to the scissors being used and Tice's Pond being taken out completely, with the witnesses permitted to testify that on March 19th, 1925, the existing Tice's Pond to be of such a size, as shown by the photograph admitted in evidence yesterday. Now with regard to any other details that might be considered objectionable, I have no objection to it being thus dealt with.

I offer this map, Exhibit O-67 for identification, for the purpose of showing the location, extent, topography and general character of lands owned by the Ringwood Company lying outside but adjoining the taking or near to the taking, and their relation to the lands within the taking, for the purpose, first, of enabling the jury better to determine whether or not the taking works any damage to the Ringwood Company's lands not taken; and, second, for the purpose of enabling the Ringwood Company's witnesses to testify respecting the location, extent, the topography and the general characteristics of the lands which we claim are damaged by the taking, and to clearly identify those lands and distinguish those of one kind

or of one location or those of another kind or location.

I submit it is much better than having the witness take a pointer and point it out on Exhibit C-1, as I was compelled to do by the objections of the Water Supply Commission in the cross examination of Hershfield and Fay, the pointer leaving no permanent mark or index to which the jury can refer afterwards.

So I offer this map in evidence.

The Court: I will hear Mr. Frazer.

Mr. Frazer: I hate to go into the elementary principles of evidence, may it please the court. This map is not a map. It is a conclusion, and it is the type of exhibit which is admitted only by consent of counsel. Sometimes counsel feel that certain things, certain conclusions which are self-evident, may properly go before the jury by consent to save time. Never, however, have I in my experience heard of an offer of conclusions drawn from evidence to be given being offered as an exhibit in the case except by consent of counsel.

Now considering this not as a map, but as a series of conclusions, let us look at it. In the first place, Mr. Hunt himself is starting out with the idea that the map as submitted by him is subject to the very defects which I have mentioned, and he says he will strike out our title, "Showing lands of Ringwood Company and consequential damages thereto."

The question of whether there be consequential damages by the taking in this proceeding is a question of fact for the jury to determine, not a conclusion of law.

So that as the map stands that recital here on the map without other defects is sufficient to exclude it.

Along the same line of reasoning, Mr. Hunt is taking water on the subject of certain smaller epithets which appear on the map under the name of "Norvin H. Green." There appears this statement: "Electric line as it will have to be constructed on account of the building of the Wanaque Reservoir; length 8500 feet, excess over other line $10,500 feet."

Mr. Hunt: It has already been constructed, I might say to the court, and had to be in order—

Mr. Frazer: I don't care whether it was constructed. We are dealing with conditions in March, 1925, and at that time that line was not constructed, and the conclusion appears here, "as it will have to be constructed." Mr. Hunt again says we will now strike that out, admitting before argument its impropriety.

We come down under the green tract labelled for 127.9 A. C., we find this statement: "Electric line to Lake Erskine as it would have been constructed if Wanaque Reservoir had not been built, length 8000 feet." Another clearly improper statement.

"Connection with present power lines to mines." Now we come down to the map itself. It is stated that this is a copy of a Commission's basic map. The Commission's basic map of which this is a copy has not been produced.

Mr. Hunt: To save time, I have it here. Would your Honor like to have it in now?

Mr. Frazer: No; I am making the statement. Mr. Hunt. I do not think it will be necessary.

Mr. Lewis: It would be better to argue it as though that map were in, if we can produce it.

Mr. Hunt: May we have it in now?

Mr. Frazer: The map has been offered, which I have no doubt was used as the basis of this,

and the map probably was originally in the files of the Commission, but it was a tentative map, not given in 1925 as Mr. Hunt has stated, but some years before that, when real estate negotiations were in progress, and was inaccurate.

Mr. Hunt: This was a Commission's map, wasn't it? And you say it was inaccurate?

Mr. Frazer: I say it was inaccurate, yes. It was a tentative map for the purpose of making land studies before the surveys had been made. This is what I say. And we have proven here by an engineer who supervised the surveys and under whose direction Exhibit O-1 was made an accurate map. That map is not used as the basis of this study, and it shows, if the two be compared. very marked differences in the lands of the takings, in the extent of the Ringwood property, in various of the properties lying within the area painted in blue here and indicating the Wanaque Reservoir. The contours do not agree with the contours shown in the proven contour map. They are different. In all those respects this map is not a true picture of the conditions existing on the land. In addition to that, we have certain tracts painted in green. Those do not indicate the holdings of the Ringwood Company. They indicate holdings which the witness will assert are injured by the taking. A pure conclusion. Not an existing fact on the land, which might properly be shown by a map for convenience, but a conclusion drawn by some witness as to what in his opinion are the injuries, or are the land which will suffer injury by reason of this creation of this reservoir. For all those reasons I respectfully submit that the map is inadmissible.

I would call the Court's attention to the decisions in New Jersey, which seem to be few, but on this general subject. There is a case of Capola vs. Granda, which is reported in 88 New Jersey Law, 324, and 96 Atlantic, page 67, which was an instance of an alleged breach of contract growing out of a building contract. They produced on the stand an architect in that case to testify as to the points wherein the building as erected failed to comply with the plans drawn, and for that purpose the architect prepared a new set of plans indicating the errors in construction.

"The last ground of appeal," the Court says, "argued by counsel for appellant in his brief, relates to the exclusion of a plan or drawing in evidence, prepared by an architect, which it was alleged showed an error in the construction of the front of the building. The plans or drawings were prepared for the appellant by the witness after the contract was signed and the buiding in process of erection. The testimony was incompetent and properly excluded. The court permitted the witness to testify from his personal observation and knowledge as to any defect in the construction of the front of the building."

And there is the clear limitation. If a witness of proper expert qualification takes the stand and testified that certain lands in their opinion are injured and show the reasons why they are injured, that is competent testimony, but it is not competent to summarize in advance, too, but even after getting that testimony, it is not proper to summarize upon a drawing, picturing conditions which this witness testifies would be created, and turn that over to the jury as a summary of the testi-

mony, unless it be consented to by counsel, and counsel does not so consent, and therefore objects to the admission of this map in evidence.

The Court: With respect to the part of the map which you point out as being objectionable because of the legend there, we can correct that by taking them out.

Mr. Hunt: I consent to that.

The Court: That was consented to by Mr. Hunt at the beginning. Now is it feasible to delete from that map all such objectionable matters?

Mr. Frazer: No, sir; because the main objection to this map is that the conclusion which here appears in these green tracts that that much land is damaged—

The Court: Yes, but that anticipates, as you have stated, what the witnesses will testify to.

Mr. Lewis: Exactly.

The Court: If the witnesses are going to testify to that, I do not see any objection to the map being submitted, if it is an accurate map otherwise, and if the objectionable parts other than those green spots that you speak of, are taken off. In other words, the mere fact that the area of the reservoir may not be correct and that the contour lines may not be correct in itself, in my judgment, ought not to eliminate this map, because it can be understood and can be admitted with reservations, that it is not accurate in those respects, perhaps; in other words, that could be pointed out. You can point out, perhaps, that it shall be understood that the boundaries of this reservoir as shown on that map were made from a preliminary study by the Commission, and

Mr. Hunt: What do you want cut out?

Mr. Frazer: I want this whole legend—everything below Ringwood Company and this cut out, because it doesn't show the lands, it only shows part lands.

Mr. Hunt: Do you want the scale cut out?

Mr. Frazer: No; the scale is perfectly proper. That is perfectly legitimate.

Mr. Hunt: Want the word "map" cut out?

Mr. Matthews: Mr. Wright says that the word 1926 indicates it was the condition in 1926.

Mr. Frazer: It is not material.

Mr. Hunt: What do you want cut out next?

Mr. Frazer: I want "Norvin H. Green" cut out.

Mr. Hunt: I seem to have missed one letter or part of a letter.

Mr. Frazer: Well, substantially, Mr. Hunt. If you leave an "a" or "f" or something like that, I won't mind.

Mr. Hunt: What next?

Mr. Frazer: This little thing down here.

Mr. Hunt: I want testimony relating to it. What next?

Mr. Frazer: I want this out.

Mr. Hunt: The words "connection with our line"; want that out?

Mr. Frazer: Yes.

Mr. Hunt: Do you want the area of Lake Erskine reduced?

Mr. Frazer: Is that the way it was or the way it is?

Mr. Hunt: It is not all on there. There is a width of—

Mr. Frazer: That hasn't any consideration in this map at all. This map is not offered for the purpose of showing Lake Erskine.

Mr. Hunt: Offered for the purpose, among other purposes of showing the consequential damages at Lake Erskine.

Mr. Frazer: It was not colored in green. I understood the offer, colored in green.

Mr. Hunt: No, I said the part colored other colors.

Mr. Frazer: Then I think Lake Erskine should come out, because it doesn't show.

Mr. Hunt: Now we will try to reduce Lake Erskine to the size as it existed.

Mr. Frazer: March 19th, 1925.

(Capt. Crockett marks on map.)

Mr. Hunt: All right. Is that agreeable?

Mr. Frazer: Cut it a little more strenuously.

Mr. Hunt: Don't be alarmed.

Mr. Frazer: There is no special point in making a hole the same size as the lake that is removed.

(Mr. Hunt cuts a hole in the map.)

Mr. Frazer: Now there is a proposed power line that goes through there. The name is off, but I submit the testimony in relation to that should be elicited from those maps.

Mr. Hunt: I am going to offer testimony of the witness in relation to that and have him illustrate it by this map, if the court permits it. I suppose when we come to that the court will rule on it.

Mr. Frazer: I think the court ought to rule on it now in advance to what this map is offered for, and to what extent it may be used.

Mr. Hunt: The map is the consequential damage map, and one element of consequential damage is a change in order to get electric current from one part of our property to another part of our property where we intended

when this condemnation commenced to take it. We were compelled to build a longer line because of separating our land into parts than if we had retained our ownership and the line had been built straight across. It is a trifle. It is a few thousand dollars.

Mr. Frazer: That line does not exist.

Mr. Hunt: Does not exist?

Mr. Anderson: Part of it.

Mr. Frazer: Not in March, 1925.

Mr. Hunt: No.

The Court: We will leave that until we come to it. Now have you examined it carefully?

Mr. Frazer: I have examined it as carefully as I can.

The Court: Suppose we have this understanding at this time, that if during the course of the use of this map you should find anything there other than that you have seen now, that should be deleted, we will take it up then.

Mr. Hunt: I have no objection. Now may I put the witness back on the stand?

Mr. Frazer: Now of course, I have an exception to the court's ruling, even with the map thus mutilated?

The Court: You may have it.

Mr. Frazer: Are we going to have the other maps?

Mr. Hunt: May I return the witness to the stand? I should prefer to examine with respect to each of the maps separately.

The Court: Do you waive the presence of the jury while that is being shown?

Mr. Hunt: No; I would have to have it here.

The Court: All right. Bring them in.

H. G. Hershfield—Recalled—Direct.

(Jury returns to the court room.)

The Court: Now just a moment. Mark that map in evidence.

(Map marked Exhibit O-67.)

Mr. Hunt: Now the map has been admitted subject to certain reservations. May it be marked?

The Court: It has been marked.

Mr. Hunt: It becomes O-67?

The Court: Yes.

Mr. Hunt: Mr. Anderson, will you take the stand, please.

HENRY G. HERSHFIELD recalled.

Mr. Matthews: Mr. Hershfield is now recalled, if your Honor please, for the purpose of correcting his testimony with reference to the Murchio tract, and with the permission of the court I would like to re-open to the extent of having him testify to what he has found in his field notes that he did not have at that time, and I will present the documents to show that he has found the document, and that this is not his imagination. If your Honor will give me that permission I would like to.

The Court: You may do so.

Mr. Matthews: Also in the Kreisel estate there will be a question concerning title which is rebuttal, because they claim there was no transfer there.

DIRECT EXAMINATION BY MR. MATTHEWS:

Q. Mr. Hershfield, since you were last on the stand, did you at my request make a further

search of your field notes and data concerning the Murchio transaction? Yes or no? A. Yes.

Q. Did you find any data that was coeval with the search? A. I do not get the word coeval.

Q. Contemporaneous with it? A. I have found contemporaneous data, yes.

Q. Have you got that data with you? A. Yes, I think I have, sir.

Q. In order that I may examine you on it, you may look at it, and I want to show it to my opponent.

(Witness produces papers.)

Q. You handed me some papers, Mr. Hershfield. Is this the data? A. It is, yes, sir.

Mr. Hunt: Now there were two Murchio tracts that were referred to. Can I ask which one this is?

Mr. Matthews: You can ask him and examine him on it.

Mr. Hunt: I have enough of him.

The Witness: Ditto for the sake of the record.

Q. Mr. Hershfield, there is no objection to your refreshing your recollection concerning the Murchio tract from the data I have given you. You recall, Mr. Hershfield, in your direct examination and in cross that you had $7,000 unaccounted for as values in your buildings and land? A. I do; approximately that amount.

Q. In the search of the record that you have made in your office, the result of which is the documents before you, did you find the acreage was

more or less than you had testified to originally? A. I found it was more.

Q. What was the original acreage you testified to? A. As I recall, 27 acres. I can check that, 27 and possibly more in another tract. I do not recall any testimony.

Q. What is the acreage now, Mr. Hershfield? A. According to my memory 85.13 acres in four tracts.

Q. Did you find any other discrepancy in your field notes or addition to that, from the data you have now before you? A. I do not find any discrepancy. I stated when I was examined before that my field notes had not been extended, because when Mr. Murchio, Senior, insisted on getting $60,000 for the property, I quit right there and said I would do nothing further.

Q. All right. A. Until he arrived at a more reasonable figure, and I did nothing further, my field notes were not even added. Then when I went to look in the folder on the case I discovered that I had made my appraisal and had had my conversations with Mr. Murchio in March, 1919, March 21st, and then the next thing that I find, in a chronological order, is a letter from the Commission to me—

Q. Don't give me all that data. A. —telling me to get busy on the case.

Mr. Hunt: I understood Mr. Hershfield was to be recalled to answer eight specific questions which have been written down.

Mr. Matthews: I have only asked three. I am trying to save time.

Q. And my third question I ask you now did not refer to the letters. A. What shall I say.

Q. I don't know what you shall say. A. What shall I answer?

Q. My question now is, did you discover anything further besides the discrepancy in acreage? A. I discovered an additional amount of property and an additional house that we bought.

Q. What was that in amount? A. In amount, a difference between what I testified to and 85.13 acres and an additional house.

Q. What was the value of the house? A. According to my recollection, and it is purely recollection, it was $2,000.

Q. Then what was the acreage value of the Murchio tract at your purchase price based upon 85 and a percentage of acres? What was the acreage value? I will turn you over to Mr. Hunt then. That is my seventh question. A. After deducting the value of the improvements from the $25,000 paid, it would leave $11,269 for 85 acres of good land in the Hook, or $132 per acre.

Q. My eighth and final question, the case being re-opened with your Honor's permission for that purpose, is to testify to one other sale, immediately contiguous, and I turn him over to Mr. Hunt for cross examination as to comparability. It is the sale that he made to or from the East Jersey Company.

Mr. Hunt: That is part of the direct case and should have been brought out.

The Court: That is true, but he asked leave to do it.

Mr. Hunt: I will withdraw the objection.

The Court: I will hear you.

Mr. Hunt: No.

Q. Was there a sale? A. There was a sale from the East Jersey Water Company to the Water Supply Commission of two farms on the Hook Road.

Q. Give us their price and acreage? I thought I could get it in eight questions. You are making me ask the ninth. A. I am sorry. The acreage of the two farms on the Hook Road was 144 acres, and the Commission paid $10,000 for them, or $70 an acre.

Q. That is all, you may cross examine. A. That included buildings. That included buildings and everything on the farms.

CROSS EXAMINATION BY MR. HUNT:

Q. How many acres did you take, Mr. Hershfield? A. 144 acres.

Q. Does that include the 60.79 acres constituting tract 28-A on the Water Supply Commission's map? A. I couldn't tell you, as I did not make—

Q. Come and look at the map and see.

Mr. Matthews: Let the map be brought up here.

(Map placed on easel.)

Q. I will hold it here for you. Does that include that 60 acres? A. What is the object of this? Yes, it does.

Q. Do you know that 60 acres today? A. I know where it is.

Q. Do you know the condition of the land? A. I only know it is—yes, I know the general condition of the land.

Q. Well, the general condition of the land is that the Water Supply Commission has taken the sand

NEW JERSEY COURT OF ERRORS
AND APPEALS.

RINGWOOD COMPANY,
Appellant,

v.

NORTH JERSEY DISTRICT WATER SUPPLY
COMMISSION,
Respondent.

ON APPEAL.

SUPPLEMENT TO APPELLANT'S BRIEF.

With apologies, and the statement that circumstances beyond the control of counsel for the appellant caused an entanglement that resulted in omissions from its main brief, we beg leave of the Court to file this supplemental brief covering the omitted matter, which we shall deal with in as short a manner as possible.

The point headings follow consecutively after those in appellant's main brief.

X.

THE COURT ERRED IN ADMITTING EVIDENCE AS TO THE PRICE PAID FOR SHARES OF STOCK IN A CORPORATION—A STRANGER TO THIS PROCEEDING—AND IN PERMITTING THE JURY TO CONSIDER THIS AS EVIDENCE OF THE MARKET VALUE OF THE LAND OWNED BY THE CORPORATION AND, THEREFORE, AS HAVING PROBATIVE FORCE UPON THE QUESTION OF THE VALUE OF APPELLANT'S LANDS UNDER CONDEMNATION.

Under this heading we argue grounds of appeal Nos. 56, 57(a)-(s), 58, 59, 60 and 61, which read as follows:

56. The Court erroneously permitted respondent's witness, Clifford F. McAvoy, on direct examination, to testify regarding purchases by himself and others of shares of stock of a corporation owning a property called "Rotten Pond," over an objection made by appellant, which the Court consented might stand as "a general objection to this line of testimony," and appellant duly excepted.

Reg. p. 823 l 18

57. Erroneously, and over objection of appellant, which duly excepted to the ruling admitting each question, the Court permitted respondent's witness, Clifford F. McAvoy, on direct examination to make answer to the following questions, each covered by the "general objection" permitted by the Court:

Obj. " 809 " 8
Ruling " 823 " 18

(a) "Q. And yourself and your associates own the majority stock of that corporation. What is the corporation called?"

(b) "Q. And what did it consist of?" (The question referring to a property described in the preceding question as the territory known as Rotten Pond.) Reg. p. 824 l 7

(c) "Q. Did you purchase the assets of that corporation? Answer yes or no." " " " " 18

(d) "Q. Did you make an investigation as to what the assets of that corporation were? Answer yes or no." " " " " 23

(e) "Q. Did or did not the assets of that corporation consist of anything else besides lands and buildings thereon?" " " 825 " 17

(f) "Q. In the year 1924, did or did you not purchase the stock or any part thereof of the Ramapo Park, Inc.?" " " " " 27

(g) "Q. At that time that you purchased the 700 of the thousand shares, did you or did you not cause a search to be made of the title of the property that was the assets of this company?" " " 826 " 2

(h) "Q. Your counsel had a conference with them, and as a result of that, was there a title search made?" " " 827 " 17

(i) "Q. Did I understand you to say that you bought 70 per cent of the stock?" " " " " 27

(j) "Q. And since that time have you held the property?" " " 828 " 1

(k) "Q. Have you, since 1924, acquired any of the other stock of the company?" " " " " 10

(l) "Q. In addition to yourself, Mr. McAvoy, who are the owners of the balance of the stock of that Ramapo Park, Inc.?" " " " " 23

(m) "Q. At the time that you bought the property, Mr. McAvoy, were there any liabilities of any kind against the property?" " " 829 " 4

(n) "Q. Mr. McAvoy, what did you pay in " " 837 " 6

1924 for the 70 shares of stock that you bought —70 per cent of the stock?"

(o) "Q. What did you pay for the shares you bought last year in addition?"

(p) "Q. Who were the other stockholders?"

(q) "Q. Then I understand that you have 725 shares out of how many?"

(r) "Q. And that you bought 700 in 1924, and 25 in ——"

(s) "Q. What was the total amount you have paid for the 725 out of a thousand shares?"

58. The Court erroneously overruled the following question put by appellant to respondent's witness, Clifford F. McAvoy, on cross-examination, and appellant duly excepted, namely:

"Q. Are the conditions of the title of that property of such a character that I can go up there and buy a half an acre and build a bungalow on it?"

59. The Court erroneously overruled the following offer made by appellant during its cross-examination of respondent's witness, Clifford F. McAvoy, to prove by the public records of Passaic County certain material facts respecting the title of said Rotten Pond property, and appellant duly excepted, the offer being as follows:

"Mr. Hunt: Moreover, your Honor, upon the theory that this Rotten Pond property was offered as a comparable property to that under condemnation as of the date of March 19th, 1925, I now offer the deed contained in Book Q-31, Passaic County, showing the existence of restrictions with regard to the Rotten Pond property of such a character that the jury would be permitted to draw the inference that the restrictions served to depreciate the value of the property."

60. The Court erroneously refused to charge the jury as prayed by appellant in its fifteenth request to charge, and appellant duly excepted, said request being as follows:

"The jury, in determining the fair market value of the property taken in these proceedings, should not take into consideration any evidence given on behalf of the condemnors as to what sum of money was paid by Mr. McAvoy, or any one else, for shares of stock in the Ramapo Park Land Company, the company owning the property known as Rotten Pond."

61. The Court erred in charging the jury as follows, and appellant duly excepted, namely:

"Evidence was given as to Mr. McAvoy's purchase of corporate stock in the company which was the owner of the so-called Rotten Pond tract. Mr. McAvoy testified as to what the assets of the company were, its liabilities, and all the conditions at the time when he purchased the stock. He also testified the price that he paid for the stock, and the number of shares he received, as well as the proportion of the entire stock issued by the company which he had thus acquired.

This testimony was given for the purpose of showing in effect the market value of that property at that time.

I allowed it as being evidential on that point. You, however, are to give it such weight as you may consider it to have in view of all the testimony given by Mr. McAvoy or anyone else as to the details of that transaction."

For a narration of the facts giving rise to these rulings we beg leave to refer to the abstract or statement of the case contained in appellant's main brief (beginning with the second paragraph on page 22 and continuing to the end of the abstract on page 26).

For the moment we lay aside grounds Nos. 58 and 59, which must be separately treated.

As to all the other grounds included under this point, we respectfully submit that it was utterly improper and without precedent in this State or elsewhere to admit evidence concerning the price paid for corporate stock as evidence of the value of real estate owned by the corporation, and hence, by inference, evidence of the value of real estate under condemnation, situated ten or fifteen miles distant. In *Laing v. United N. J. R. R. & Canal Co.*, 54 N. J. L. 576, this Court, holding that evidence as to *sales of land* is competent as indicating the value of the land under condemnation, says:

> "But such testimony is received only upon the idea that there is *a substantial similarity* between the properties. The practice does not extend and the rule should not be applied to cases where conditions are so dissimilar as not easily to admit of reasonable comparison."

In *Lewis on Eminent Domain* (3d Ed.), Vol. 2, p. 1143, the principle is stated that:

> "To render proof of sales competent, they must be for money and not by way of exchange in whole or in part, or in payment of debt, and should be voluntary and not forced sales." (Citing cases.)

The subject-matter of the McAvoy transaction was the *purchase of corporate stock.* There is no

"substantial similarity" nor similarity of any kind between corporate stock and land. True, respondent sought to show that the corporation owned nothing except a certain tract of land and that this was free of encumbrances and that it owed no debts; thereby attempting to make it appear that the purchase of the stock was the same as the purchase of the land would have been. The vital defect in this kind of reasoning resides in the fact that the purchaser bought only, in one transaction, 700 shares, and, in another transaction, 25 shares out of 1,000 shares of the corporate stock outstanding. Therefore, if the analogy sought to be established would in any case be good, in this case the stock purchased would not represent the purchase of land, but only the purchase of two fractional interests in land at two different times.

Aside from this, a landowner ought not to be exposed to the danger of having to take the simple word of the purchaser of corporate stock regarding the corporation's property holdings, debts. etc. Such matters should be proved by the production of the corporate books, with an opportunity to the landowner to test by search and cross-examination the truth of the word of mouth statements concerning the corporation's affairs.

Turning now to grounds Nos. 58 and 59, for present purposes it must be assumed that had this question and offer of proof not been overruled, appellant would have made it appear that the land owned by the Rotten Pond Corporation was subject to restrictions that tended to depreciate its value and that the conditions of the title were of such a character that the purchaser could not "go up there and buy half an acre and build a bungalow," which would be a seriously depreciating factor to that kind of property in that part of the State. Certainly, if it was

proper to show the things that were shown in the face of exceptions 56 and 57 and to charge the jury as was done under exception 61, it was likewise proper to permit the opposite party to show the existence of title restrictions depreciating the value of the property.

The effect of all the rulings discussed under this point, if they are not reversed, is this: That hereafter, in a condemnation case, (1) the value of the property of A may be proven inferentially by showing the price paid for part of the stock of corporation B, and this without the production of books to prove the condition of corporation B at the time; and (2) if proof of this character has been admitted, A may not refute harmful inferences sought to be drawn from it by the condemnor by showing that (for example) there is serious impairment in or cloud upon the title of corporation B; or that its lands are so restricted by covenants in the deeds that they cannot be used for many purposes, which, in the given neighborhood, constitute the ordinary use or the most valuable use for lands.

Merely to state these propositions is to condemn them; but unless this judgment be reversed they become the law of this State.

We respectfully submit that upon these grounds alone the judgment ought to be reversed.

XI.

THE COURT'S RULINGS UNLAWFULLY DEPRIVED APPELLANT OF THE RIGHT TO OPEN AND CLOSE.

Under this heading we argue grounds of appeal Nos. 1 and 2, reading as follows:

"1. The Court erroneously denied appellant's motion, made at the beginning of the trial, for leave to open and close in the presentation of evidence and argument to the jury, and, over appellant's objection, permitted respondent to open and close. Appellant duly excepted to this ruling."

"2. The Court erroneously overruled appellant's renewed request (made at a time near the close of the case when the Court was planning the closing procedure) to be permitted to make the closing argument to the jury, and appellant duly excepted."

As the reason for these rulings the Court referred to the fact that (R. p. 70, l. 17): "It was made known to the Court that in the trial of the case before the Condemnation Commissioners, the North Jersey District Water Supply Commission against its objection, had been forced on the insistence (*sic*) of the Ringwood Company, to open and close, but notwithstanding this the Ringwood Company insisted that it was entitled to open and close in the trial of the appeal at the Circuit." Whereupon, the ruling followed (R. p. 70, l. 34) that: "It being a matter of discretion with the Court, the ruling is that the State will open and close in these proceedings, to which objection is made and exception allowed."

An initial hearing before Condemnation Commissioners presents quite a different situation from the trial of an appeal in the Circuit Court. Presumably, the law and its functionaries will do justice to a landowner and pay him the just compensation to which the Constitution entitles him, even if he does not present a word of evidence. Therefore, it was altogether fitting and proper that this landowner should insist before the Condemnation Commissioners that the condemnor show its hand and give its

testimony concerning the value of the land under condemnation, before it was put to the burden, with its accompanying labor and expense, of proving what it conceived to be its value. (Perhaps it is permissible to remark that one of the counsel signing this brief has actually had the experience of hearing witnesses for the condemnor, in submitting testimony before a Board of Condemnation Commissioners, testify to acreage values higher than the owner itself was prepared to claim.)

In making the ruling under discussion the Court referred to *Bonnell v. Morris & Essex R. R. Co.* (Supreme Court, 1871), 34 N. J. L. 474, 479. This is, so far as counsel are aware, the only case in this State on this point. All that the Court says on the point is this:

> "A question of practice was also submitted, whether the appellees—the landowners—should have the opening and reply in the management and conduct of the case. This is a matter of discretion, but it is important to have uniformity of practice. *The landowner being entitled to the value and damages, and the issue being only of amount, the affirmative of it is more properly upon him, if he appears, than on the company. That was the ruling at the Circuit in this case, and I think should be followed.*"

In most of the other States the rule is that the landowner is entitled to open and close, and the reason for it is as stated in the above excerpt from the Bonnell case, namely, that since the issue is substantially one of value, and the owner avers that the value is greater than the sum the condemnor is willing to pay, this gives him the affirmative, with its resultant right to open and close. See 20 *Corpus Juris,* page 982, Sec. 386, point 1, note 43; *Ibid,* page 1,011, Sec. 404, notes 26-29.

See also:

Farmers' Nat'l. Bank v. Gaskill (1886), 9 N.J.L.J. 204. De Maris v. Cramer, 70 N.J.L. 682, Rule 158 of Supreme Court (1926 reprint). Practice Act 1912, sec. 32. 1 Thompson on Trials, sec. 226. Huntington v. Conkey, 33 Barb. (N.Y.) 218-228. 2 Lewis on EMINENT DOMAIN (3d Ed.) sec. 645.
All of which indicate that it was reversible error to deny Appellant the

XII.

THE COURT ERRONEOUSLY EXCLUDED EVIDENCE CONCERNING THE GRANT BY THE STATE TO APPELLANT, LONG PRIOR TO THE COMMENCEMENT OF THE CONDEMNATION PROCEEDINGS, OF AUTHORITY TO CONSTRUCT FIVE DAMS AND THEREBY PRODUCE FIVE LAKES UPON THE LANDS INVOLVED IN THIS PROCEEDING.

Reg. p. 110 l 23
" " 168 " 33
" " 174 " 2

The grounds of appeal involved under this point are Nos. 5, 6 and 7. To avoid duplication we beg to refer to them as printed at pp. 4-7 of Vol. 1 of the State of the Case and to refer to the short explanation of the manner in which these questions arose, set forth at pp. 5 and 6 of our main brief.

The point of the matter, briefly stated, is that the consent of the State (acting formerly through the State Water Supply Commission—now State Board of Conservation and Development) is necessary (under P. L. 1919, p. 83) to the damming of streams for the production of lakes. This consent was given with regard to six dams within the lands under condemnation. These consents were granted at various dates from May 10, 1923, to September 14, 1923, whereas the condemnation proceeding was not commenced until March 19, 1925. Appellant was permitted to show the facts with regard to one of these dams, the construction of which was carried nearly to the point of completion prior to the commencement of the condemnation proceedings. It was not permitted to show the facts with respect to the other dams, although work preliminary to their construction, such as drawing plans, making test borings for foundations, clearing land of timber and brush, etc.,

had been done before the condemnation proceeding was commenced. (See testimony of Dr. Henry B. Kummel, beginning at Vol. 1, p. 104.)

Appellant's purpose in seeking to put these facts in evidence was to show, first, that the necessary consent had actually been obtained; and, secondly, that the lands, in their natural state and condition, were of such a character and so situated as to permit the production of the lakes. Appellant's theory was that these natural capabilities of the land, coupled with the fact that the State's consent had actually been obtained, were circumstances which the jury might properly take into account as tending to enhance the value of the land through showing that it offered the capability of producing lakes, adding ornamental features to the landscape and affording facilities for boating, fishing and bathing, and enabling also the production of hydro-electric power to serve a local community. As to this the Court said (R., last line of p. 126): "You do not need to put in any testimony, it seems to me, to show that (*i. e.,* that the land could be used for a reservoir site), or propose to show that by a series of small dams along the streams that run through there, that you could make a series of small ponds or lakes * * *."

The Court seemed to feel that to admit the questions would be to do violence to the *Manda* case (82 N. J. L. 686), and that the inquiries were speculative. Counsel for appellant, being permitted by the Court to state his argument at length, said (among other things), (R. p. 145, l. 25): "The rule limits the proof to *uses to which the land is naturally adapted.* If I may be permitted to say so, I think that your Honor has experienced a certain difficulty from failing to observe a clear distinction between existing improvements—which was a phrase you

used in addressing me after the other counsel had finished addressing you—failing to observe a clear distinction between existing improvements and existing *capabilities.* I do not propose at this stage of the case * * * to refer in any manner whatsoever to any improvements that were not existing on the 19th day of March, 1925. I do propose to refer to capabilities of this land that existed on that date—capabilities that existed on that date that enabled the land as it was on that date to be used either then or at some future time in some manner in which, except for those capabilities, it never could be used." And further (R. p. 148, l. 16): "All I want to show is that in the physical sense the land is capable to permit the building of those dams, and that in the legal sense, of course, the State's body, given jurisdiction in that regard, has approved the building of dams. That is all."

Counsel then cited the *Miss. & Rum River Boom Co.* case, *supra,* and *Mitchell v. U. S.,* 267 U. S. 345, both holding that: "The special value of land, due to its adaptability for use in a particular business, is an element which the owner of land is entitled, under the 5th Amendment, to have considered in determining the amount to be paid as the just compensation upon a taking by eminent domain." (Of course, also, under the 14th Amendment and under State law.)

Counsel then quoted from the *Currie* case and said (R. p. 149, l. 22): "There is nothing in this (evidence sought to be introduced) to violate the principle that the public must not be mulcted, and I declare here once more my adherence to that principal. I do not want to mulct the public of a dollar. I want them to have this land for its value. I do not want to mulct the Commission of a dollar, but I am determined to prevent the Commission from mulct-

ing my client of a dollar if I can avoid it." And (R. p. 150, first line): "The capability of these lands for the production of these ponds is due to natural situation, not to the necessities of the Commission, not to anything done by the Commission, not to anything done by the hand of man, but purely to natural situation. * * * We are entitled to prove what the natural situation of this land is and what advantages flow from its natural situation." Counsel concluded his argument by saying (R. p. 153, l. 10): "If the lay of the land and the flow of the rivers in their natural state as they were before the Water Commission ever commenced its proceeding, was such as to permit the rivers being dammed and ponds formed, then the value might be one thing; and if it was *not* such as to permit it to be done, then the value might be another thing. So the jury is entitled to know whether it can be done, and if so, to what height the water will be flowed, in order that they may then see from the Water Commission's contour maps what area will be covered by the impounded waters. That is all. Your Honor understands this is not a potable water supply development, that is all (not at all), but simply the ornamental ponds that were talked about the other day —small ornamental ponds."

Appellant rests its argument here upon the foregoing extracts from the argument addressed to the trial Judge. Bearing in mind that the condemnor itself treated appellant's lands as possessing no value *save only for real estate development purposes* (as demonstrated by their producing only real estate experts as witnesses to the value), it became a matter of first importance to appellant to make it clear to the jury what capabilities the land possessed for *high class* real estate development; and it is a

fact known to everybody and of which the Court will take judicial notice, that in the suburban areas of New Jersey lands upon which ornamental lakes, useful also for fishing, boating, bathing and power purposes, can be produced, offer an opportunity for a higher class residential development (accompanied by higher land values) than lands not possessing these advantages

We submit that it was the right of the appellant to show the natural characteristics of its land and to show that the State had granted permission, under the statute, to build the dams necessary to realize the advantage of these natural characteristics.

Respectfully submitted,

WILLIAM I. LEWIS,
JOHN MILTON,
EDGAR W. HUNT,
Of Counsel for Appellant.

VOLUME 3

ADDENDUM

ROBERT E. CROCKETT, recalled.

Direct examination.

By Mr. Lewis:

Q. Capt. Crockett, was your attention called to the excavation for the garage that has been testified to by Major Pratt?

A. Yes.

Q. Did you explore below the bottom of the excavation then existing for the garage for the purpose of determining the contents of the soil beneath?

A. Yes.

Q. And what did you find?

A. I found that when I went down five feet from the floor of the garage through approximately the same kind of sand as Major Pratt mentioned, a fine sand, I ran out of that fine sand and encountered a gravel. We dug down two or three feet below that, and at that point was stopped by water, but we sampled the gravel from that two or three feet and found out that the gravel at that point ran higher than in any other test that I had made, namely, it ran 71 per cent of the total, and only 29 per cent sand.

Q. Did you sell some stone or rock to the Winston people who are putting down the railroad?

A. As a representative of the Ringwood Company, yes.

Q. And can you tell us why the rock was used?

Mr. Frazer: I object.

Q. (Continued.) Instead of a sand and gravel on the driveway, and did you have any conversation with the contractor upon that subject?

Mr. Frazer: Now, there are six questions there, and I do not know which one I object to. I suppose I object to them en masse. I object to all of them. Will you pick one out?

Mr. Lewis: That is just about what I expected that he would do.

Mr. Frazer: I am glad not to have disappointed you.

Q. But please tell us, did you have a conversation with Winston, the railroad contractor, on the sale of the rock to him?

A. Yes, with the general superintendent of the Winston Company.

Q. And what did he state ——

Mr. Frazer: Now, I object to the form of the question.

The Court: Do not lead him.

Q. All right, tell us the conversation.

Mr. Frazer: Now, I object to it as being purely hearsay and immaterial.

The Witness: (Interposing.) It was direct negotiations ——

The Court: Just a moment. What is it?

Mr. Lewis: That is not hearsay. I am asking him to state a fact. That is, the conversation between him and Winston who was erecting the railroad and running this drive, and who bought the rock from him instead of using gravel.

Mr. Frazer: As reasons why the contractor is doing certain things.

Mr. Lewis: And he stated his reason.

Mr. Frazer: That is decidedly hearsay, because what we are here to prove, what is trying to be proved is the reason of the contract. Now ——

The Court: And the evidence is what somebody told this witness, and that makes it within the hearsay rule.

The Witness: (Interposing.) Your Honor ——

The Court: No.

Mr. Lewis: All right, sir. That is all.

The Court: Any cross-examination?

Mr. Frazer: No questions.

Mr. Lewis: That is all, Capt. Crockett.

The Court: That is all. You tell it to the Judge.

(The witness approaches the bar.)

The Court: You wish to say something, and I won't let you because it would not have been proper, but my point is I haven't any objection to your telling Judge Lewis what you had in mind.

The Witness: Your Honor, I only recognize one Judge at the present time.

The Court: All right.

Mr. Lewis: If your Honor please, we are now at the end of the evidence concerning the gravel for the present, and we won't resume it until Monday. In the meantime, Mr. Hunt will proceed with another branch of the case.

The Court: Well, let us take a recess now until five minutes of 2.

ROBERT E. CROCKETT, recalled.

Mr. Matthews: If your Honor please, I have been waiting to cross-examine Mr. Bugg, inasmuch as I asked the indulgence on Thursday to get away early, I suppose it must be for the convenience of our opponent, that the case is going on in this disorderly manner. Mr. Bugg was examined almost entirely directly; our cross-examination is becoming days old, and while it is new in my memory I do not want to offer that as an excuse, but it does seem to me that we should have an opportunity to cross-examine him. It is a new phase of the case coming in now.

The Court: I do not know that that is so.

Mr. Hunt: This is no new phase of the case. What I am doing is gathering up my loose ends. I am almost sure they will have an opportunity to cross-examine Mr. Bugg tomorrow. I could not finish his direct examination this afternoon.

The Court: Very well.

Direct examination.

By Mr. Hunt:

Q. Capt. Crockett, have you made a calculation from the data shown by the Water Supply Commission on the Commission's map, Exhibit C1, of the total acreage embraced within the lines of the taking?

Mr. Frazer: That was a question which, if I remember rightly, was directed to Mr. Captain Crockett in the opening of the case, and was ruled out by the court.

Mr. Hunt: That was directed to Mr. Hershfield on cross-examination and your Honor held that I was not entitled to compel him to do the labor, and now I have had my own witness do it.

The Court: And the materiality of it, Mr. Hunt?

Mr. Hunt: It shows the jury how many acres they are taking all together, and the jury is informed how many acres are taken from us. I think the relative size of the taking from us is a matter of more or less importance, might be.

Mr. Frazer: I cannot see that the relativity of the two takings has anything to do with the market value of the lands we are taking. We may take 100,000 more acres, it doesn't make these lands more valuable.

Mr. Hunt: At present they are not taking 100,000 more. They are taking to the line they have put on this map.

The Court: I will allow it. It may be material.

Mr. Frazer: I will ask an exception

The Court: On the ground it is material.

Mr. Frazer: Exception.

The Court: You may have it.

A. I have made such a determination.
Q. What is the total acreage within the exterior lines of the entire taking as shown on Exhibit C1?
A. 5,846 acres, very closely, because one or two small plots did not have the areas indicated on that map, but I could estimate those acreages within an acre or two.

The Court: What was the total?

A. The total according to that estimate is 5,846.
Q. Now it was testified by the witness for the Water Supply Commission who put this map in evidence, that the lands within the taking line colored in red had already been acquired by the Water Supply Commission. Have you added up the total acreage of the lands thus shown in red?

A. I have.
Q. What is that?
A. 1734 acres. There is one plot shown in red on there which I believe has not been taken as yet.
Q. Which plot is that? Come down to the map and indicate it?
A. I might mention the Epstein property; I believe that has not yet been taken, but is colored in red as being taken.

The Court: How did you figure it, as being taken or not?

The Witness: I am taking the map as correct. I am protecting myself to that extent.

Q. How many acres are there in the Epstein tract?
A. 6.29.
Q. For this purpose you are assuming that the map is correct and that 6 acres has been acquired?
A. Yes.
Q. On that basis the total acquisitions as shown on that map are 1,734 acres?
A. Yes, sir.
Q. Is that right?
A. That is correct.

Mr. Hunt: Now, if the court please, I beg leave to read from page 287 of the North Jersey District Water Supply Commission's report, dated 1925, table No. 27, or that item set forth in table No. 27 which states the amount of money paid out to June 30th, 1925, for property for the Wanaque Reservoir and aqueduct, including land surveys and other expenses of acquisition ——

Mr. Frazer: I object to that.

The Court: Objection sustained. What materiality would that have, Mr. Hunt? Suppose they paid somebody three times what it was worth, or somebody ten times what it was worth, an area in there, that would not be evidential of the market value of this part taken, even assuming that the figures are quite correct on that, and to deduce from those figures the rate per acre, the value of the Ringwood Company, if that is your purpose, by comparison.

Mr. Hunt: Yes.

The Court: Because we cannot know what was the basis of the figuring of some of them. They may have overpaid some of them, they may have underpaid some of them, they may have driven bad bargains or good bargains. I do not think that is evidential.

Mr. Hunt: Well, I am somewhat embarrassed to argue with your Honor, because I have got a kind of a bad throat and I cannot get a start quick on a word, and the objection came before I finished the question, and then I did not want to interrupt.

The Court: If that is the purpose of the offer ——

Mr. Hunt: No, sir.

The Court: If I have indicated the purpose of it.

Mr. Hunt: No, sir.

The Court: I think it is not evidential, and therefore not material, but if you will tell me ——

Mr. Hunt: You have not indicated the purpose of it and I have not finished the question.

The Court: Very well.

Mr. Frazer: There was no question. He started to make a statement of what he was going to do, and as he had finished, I thought, I rose to object to an offer.

Mr. Hunt: And also to read from page 24 of the same volume, table 5, that item which sets forth the estimate as finally adopted and now under construction in the Wanaque project of real estate and land damages for the entire project. The purpose of making this request being that these figures, as I assert, lay a foundation for an argument, and permit the jury, if in its wisdom that should be the proper course, to draw the inference that the Commission has a motive in endeavoring to obtain lands for less than their value, because the expenditures already made in the acquisition of 1734 acres out of 5846 acres, overrun by a certain amount the estimated cost of acquiring the entire 5846.

The Court: I understand the rule to be that what the condemnor received for other lands is not evidential of the value of the lands sought to be taken, and that would be violative of that rule.

Mr. Hunt: I do not offer it for that purpose, your Honor.

The Court: I think that is where you will wind up.

Mr. Frazer: Of course, part of this land was a

part of the condemnation. We have frankly come here and shown what we paid for land where they were not under condemnation. The open market sales we have shown them. Where it was under condemnation the law does not permit us to show it, and these figures which Mr. Hunt has thus elicited or endeavors to elicit are made up of combinations of both kinds.

Mr. Hunt: Will your Honor permit me just a word?

The Court: Yes.

Mr. Hunt: Might I ask counsel to indicate what tracts colored in red on Exhibit C1 have been acquired by condemnation, or to state any other tracts acquired by this Commission up to June 30th, 1925, and up to that date paid for, that were acquired by condemnation? If I remember correctly Mr. Hershfield's testimony, he pointed—I won't say to several of these red tracts, but almost to every one of them—a great many of them—as tracts he had bought, and I would just like to know whether any of that red was acquired by condemnation, and if it was not, then I would like to know whether this item of payments up to June 30th, 1925, for land acquired includes one dollar paid for land acquired by condemnation?

The Court: I do not mean to say that it is so, because I don't know anything about it, but suppose they were under contract to buy some at the time those figures were compiled, and that is a cash proposition and only has reference to the moneys that had at that time been paid; suppose there were a lot of other lands that had been agreed—where the

price had been agreed upon but which had not yet been paid for—there again it would show the danger of using that table to get at what you wish to have deduced from it.

Mr. Frazer: Frankly I do not carry in my mind the dates of the various condemnations. I can think of the Epstein case as one of the cases of condemnation. What the date of it was I do not know. I can think of the Fujita tracts; I can think of the Edward R. Hewitt tracts; I can think of a number of them on the pipe lines, the dates of which I do not bear in my mind, but I cannot see that it has any materiality to this question. The question of what an estimate may have been on the part of the Water Supply Commission for the purchase of land is certainly of no materiality here whatsoever, and if we are going to say that an estimate can be made the basis of a motive to deprive a land owner of the fair compensation, when the Commission has gone to the process which the law assures every land owner in order that he may obtain a fair compensation, no question of motive can possibly enter.

The Court: I am not concerned with that part of the record that Mr. Hunt has in mind, that has to do with the estimate. It is quite clear to my mind that that would not be evidential and I would not permit it, but the other question, the other reason rather than he wishes to show is the difference between the price paid for a certain quantity of land with respect to the bearing that may have on the Ringwood Company's land, is another story, and I am of the opinion that that is not evidential for the reasons that I have stated, because you cannot know what may have happened, and it may be, as I

stated, that the Commission have overpaid or underpaid.

Mr. Hunt: I do not suggest it is evidential as to value, your Honor. I only claim that if it be a fact that in the acquisition of 1734 acres the estimate of the cost of acquiring 5846 acres has been overrun, that is a fact we are entitled to have before the jury for the weight it has on the motive that animates the Water Supply Commission in coming in and saying this land is worth only $450,000 although they offered $600,000.

Mr. Frazer: That is the silliest thing I have heard. It has been frankly admitted a relatively small plant, which had manufacturing buildings on it, and it was a going concern which was making a profit of a quarter of a million dollars a year, and a half million was paid for a relatively small tract. Now he says for 57 acres a half million was paid, and then multiply that 57 into 5700 and say therefor we have to pay $50,000,000 and $60,000,000 would be the value of the rest of the land on that basis of computation. That is the silliest argument I have heard.

Mr. Hunt: The red herring is being drawn across the trail once more. I do not say I am getting in evidential value on the question of the value of that property, but it is a matter of motive. When they made this estimate they knew the Wanaque Paper Company—that is the tract they have referred to, for which they paid a half a million—they knew it was there, they knew they had to get it, they knew they had to pay for it. If that is one of the things that helps them overrun their estimate—I don't care whether it is that or the property of any one of

those numerous small owners there at the southern end of the taking.

The Court: Assume all that may be true, Mr. Hunt, suppose they did make an estimate, it was only a guess?

Mr. Hunt: Surely. I only say it for what it is worth.

The Court: Suppose they guessed wrong?

Mr. Hunt: Yes.

The Court: I do not see how that will help us any. I do not see how you can deduce anything from the fact that they have made a bad estimate, if that be so.

Mr. Hunt: Here is the point, your Honor—suppose that they estimated ours in this estimate along with the other, and the indication of how they probably estimated ours is given in the sworn testimony of their two witnesses they put forward as experts. Now if in estimating everybody's they arrived at such a situation that in the acquisition of less than a third they spent more than the whole of their estimate, that is a fact from which the jury is entitled to draw an inference that they have a very strong motive for holding down damages on the remainder of their acquisition.

Mr. Frazer: May I take exception to Mr. Hunt's statement, because that is a gross misstatement of fact. On the page he is trying to read from, and he is trying to give a false impression as to what the actual facts on that page are, and I object to the

whole line of discussion on this basis: Your Honor has said that as far as motive was concerned, there was no merit in his construction. Mr. Hunt has said that, for he does not himself consider it evidential on the question of value, but comes back to the question of motive, and then puts in that kind of a statement, which is absolutely unwarranted under the facts.

Mr. Hunt: I would be glad to put the whole of the pages I have referred to in evidence. I will be glad to have the whole book in evidence.

Mr. Frazer: He would be glad to have anything. I object to that.

The Court: I cannot see the materiality of it, Mr. Hunt, and I will therefore rule to sustain the objection and grant you an exception.

Mr. Hunt: Will your Honor give us an exception.

The Court: You may have it.

By the Court:

Q. I take it, Capt. Crockett, the difference between 1734 and 5846, which is more than the holdings of the Ringwood Company, is made up in the other tracts that have not yet been acquired, Miss Hewitt, for instance, and the ——

A. That is according to this map over here.

Q. Of course, you are just testifying from the map?

A. Yes.

Q. That is what makes the difference, isn't it?

A. Yes; that includes the Fujita, the Hewitt and various other properties not colored.

The Court: I understand.

A. And Edward Hewitt.
Q. Yes.
A. Yes.

By Mr. Hunt:

Q. Capt. Crockett, are you able to point me to any place in this report where the Water Supply Commission speaks of the immediate needs for ——

Mr. Frazer: I object to any more.

Q. For the further development of water supplies for the district served by the Commission?

Mr. Frazer: If your Honor please, he is making a statement now in the form of a question, which is another effort to bring out before the court the contents of this book, which the court has time and again ruled out. I think I have a right to interrupt the question when I know the question itself is unfair in its framing. He is asking Capt. Crockett to point out in the book where a certain thing will be found, which he is about to state.

The Court: Well, I cannot pass on it intelligently until I know what it is, except, as I have already ruled, that the book is not evidential of anything.

Mr. Frazer: Then he has no right to read it and for Capt. Crockett to read it or point out its contents.

The Court: Except he perhaps wishes to ask a question for the benefit of the record, and if that is the purpose I shall allow it.

Mr. Hunt: Just a minute; do not answer yet. I do not want to do anything to go beyond what the court said at the time of my general offer of the book was excluded. The court then said, "I think it might be evidential—some things that might be in that book might be evidential, I don't know. Mr. Frazer: I do not either, sir. The Court: And if Mr. Hunt will point out specifically something that he wishes to introduce it for, I will rule on the admissibility of it for that purpose. There may be, and probably are things in that report that are not evidential." So now I am seeking to point out specifically some things that I wish to introduce it for.

The Court: Very well. Now the question will be read, Mr. Kelley.

(Question repeated by the stenographer.)

Mr. Frazer: I object to that question as quite immaterial to this issue.

The Court: I think it is, and I will sustain the objection and grant you an exception.

Mr. Hunt: Yes. I offer the book once more for those parts of it which are pertinent for that purpose, for the purpose of showing what the estimate of the North Jersey District Water Supply Commission is with respect to the needs of the district or the communities served by it for the taking of steps immediately or in the immediate future for the provision of further water supplies than the supply which will be provided by the Wanaqua Reservoir.

Mr. Frazer: I object to the offer.

The Court: Objection sustained.

Mr. Hunt: We have an exception?

The Court: Exception allowed.

Mr. Hunt: I also offer that portion of the report for 1925, of the North Jersey District Water Supply Commission which deals with the quality and the purity of the waters of the Wanaque shed, including the lands under condemnation.

Mr. Frazer: I object on the same ground.

The Court: Objection sustained. You may have an exception.

Mr. Hunt: Yes.

Q. Can you state what percentage of all the lands within the general taking of the Water Supply Commission for the Wanaque Reservoir is being taken from the Ringwood Company?

Mr. Frazer: I object on the general principle that it is a mere matter of calculation.

The Court: I will allow it.

A. My memory is that it amounts to—from the Ringwood Company only about 41 per cent.

Q. Do you know what is the percentage of lands

owned by the Ringwood Company plus the lands of others over which the Ringwood Company owns the flowage rights?

Mr. Frazer: I object to that as calling for a conclusion from this witness as to what lands the Ringwood Company owns the flowage rights over.

The Court: Objection sustained.

Mr. Hunt: I direct those questions to those lands only which have been proved by deeds put in evidence without objection—namely, the Edward R. Hewitt, Sarah Hewitt, Marini. They are in evidence by deeds which were submitted without objection.

The Court: Very well.

A. I will leave Marini out of my answer, because we do not possess flowage rights to elevation 300.

Mr. Frazer: I object.

A. 53 per cent.

Mr. Frazer: Now he is qualifying his answer on certain elevations, but not in the question at all. The whole thing is a matter of conclusion. In the first place, it is an interpretation by this witness as to what the meaning of the flowage rights may be. The instruments are for this court to construe as to their legal effect, it is then for the jury to determine, upon the construction which this court has placed upon the instruments, what this percentage is. It is a mere matter of calculation. This witness is neither qualified nor is it proper for him to testify

to the extent of these flowage rights, what the acreage covered thereby may be. It is all a question of legal interpretation by the witness.

Mr. Hunt: I think the court will hold that the witness is qualified to make a calculation.

The Court: He can answer it on the assumption that there are flowage rights. Assuming that there are flowage rights, as he understands it from this instrument, and I will allow him to answer.

Q. Your assumption will be that there are flowage rights on the Edward R. Hewitt and Sarah Hewitt lands, but not on the Marini lands?
A. That is what I stated.
Q. All right, then. What is the percentage?
A. My answer is, slightly in excess of 53 per cent.
Q. Cross-examine.

Mr. Frazer: No questions.

New Jersey Court of Errors and Appeals

RINGWOOD COMPANY, Appellant, vs. NORTH JERSEY DISTRICT WATER SUPPLY COMMISSION, Respondent.	On Condemnation On Appeal from Passaic Circuit Court.

BRIEF FOR RESPONDENT.

FOREWORD.

In view of the foreword to the brief for appellant, we believe that by way of introduction the attention of the Court should be directed to the essential misconception by counsel as shown in this summary of appellant's position in regard to the law relating to market value in condemnation proceedings.

We will subsequently develop in somewhat detailed analysis the law as laid down in our decisions and in relevant decisions from the United States Supreme Court and other jurisdictions. But lest a hurried reading of appellant's foreword should lead to the impression that testimony concerning the market value of the lands in question was excluded, we wish specifically to direct the Court's attention to the exact wording of this op-

ening indictment of the Trial Court, namely, that the jury was compelled to determine the value of 2354 acres of land condemned for water supply purposes "without having heard a single word of testimony concerning *its market value for that purpose.*" Similarly, in the second paragraph the indictment is made that no "single word of testimony concerning the *value* of the property by reason of its containing beds of sand and gravel" was permitted. In this charge counsel ignores completely the idea of market value as the basis of recovery in condemnation proceedings.

I.

The Law as to Market Value.

The major portion of appellant's brief is devoted to instances where offers of testimony alleged to be material and relevant on the question of the market value of the lands in condemnation were excluded by the Trial Court.

As the principles underlying these points are essentially the same, it may be well, prior to a discussion of the testimony, to analyze in some detail the decisions of this State and of the United States courts and, in a lesser way, of some of our sister jurisdictions, where they are illuminating upon the question here under consideration.

We take it that it is conceded that in determining the amount to be paid under condemnation but two elements enter, first, market value of the lands with improvements taken, and, secondly, the damage, if any, sustained by other lands of the owner by reason of their severance from the lands taken.

In the case at bar no question has arisen on the latter factor of damage and we shall, therefore, confine our analysis to an ascertainment of what, under our decisions and those of other courts, has been held to be relevant upon the question of market value.

The case in our jurisdiction chiefly relied upon by the appellant is that of *Currie v. Waverly, etc., Railroad Company,* 52 N. J. L. 381. We take no exception to the law as laid down in that case. It is essentially the uniform rule of all jurisdictions. It is sometimes more and sometimes less broadly stated. In the Currie case the Court states it as follows:

"The rule of law applicable to the condem-

nation of lands to these quasi public uses is that its owner shall be given by way of compensation for his land its fair *price* for any use for which it has a *commercial value* of its own in the immediate present or in reasonable anticipation in the near future."

The underlined words are impliedly a statement of the market value as the true criterion, and the limitations of evidence permissible in the establishment of its market value are clearly set forth in the same opinion in the following words:

> "Upon the trial of the appeal a line of proof was offered by the landowner which was overruled, and a bill of exceptions allowed. The offer was to prove, in respect to the lands taken, a number of matters tending to show that it possessed a special value for railroad purposes generally, irrespective of its individual advantages to the defendant in error. Some of the matters thus offered were purely speculative opinions, while others were conclusions from undisclosed facts. Such offers were properly overruled."

The Court, proceeding, makes this contrast of this class of evidence property overruled with other types of evidence which the Court held should have been admitted:

> "There were, however, offers which we think were improperly rejected. Among other things, the landowner offered proof upon the following points: First, that more than two-thirds of the land in Hudson County, lying upon the New York Bay, was occupied as a railroad termini; second, the situation of the land in question in relation to this water front; third, the width of the territory thus available; fourth, the relation of the land in question to that portion of New York Bay as yet unappropriated for railroad purposes."

The clear implication from this case so greatly relied upon by the appellant is that the value of the property in the market is the only issue in a condemnation cause. It appears from the facts in the Currie case that the whole section was being used intensively for railway terminals, which were extending, and that relatively little property available for that purpose was left. There was presented an economic condition which would naturally be taken into consideration by anyone contemplating the purchase of the Currie tract and would have direct bearing upon the market value. This criterion as to market value is clearly set forth by the Court of Errors and Appeals in *Manda* v. *Orange,* 82 N. J. L. 686, where, citing with approval the Currie case, the Court says that the fair price referred to in the earlier case

> "Concerns the present market value having the reasonably anticipated uses in view, quite a different matter, however, from laying out the property in lots upon a map, estimating the costs of putting upon it the improvements of a city and calculating what the value would be if such improvements were actually made * * * * . The rule limits the proof to the present condition of the land and uses to which it is naturally adapted but excludes speculative and possi-

ble uses if improvements and changes are made."

The Court in that case, therefore, held that

> "The exclusion of testimony to show what expense would be necessary to drain the property in order to render it suitable for building purposes and the cost of building streets through it, including grading, macadamizing, sewering, guttering and flagging,"

was error.

Similarly *In Re Morris and Cummings Dredging Company,* 96 N. J. L. 248, certain evidence admitted was thus described by the Court and its impropriety commented upon in the following language:

> "In the present case the testimony admitted, however, went far beyond any necessity to show to the jury the situation and surroundings of the land in question and the purpose for which it was available. To have admitted the testimony of the possible improvements, such as piers, dry docks and storage warehouses, which could be placed upon the property and to show by drawings and plans the details thereof was permitting the land owner to create in the minds of the jury a value for the property which was not a value in the immediate present or in reasonable anticipation in the near future, but a prospective value dependent upon many contingencies, such as the enactment of laws by the Federal Government necessary to commence and consummate the suggested plan of port development, the co-operation

> of the railroads, without which the proposed piers and warehouses would be valueless, the securing of the necessary funds by the Government and railroads for so vast an undertaking. The failure of any one of the contingencies mentioned, or others not mentioned, would prevent the fruition of the project. * * * While in the present case the cost of the proposed port development was not given, the effect of the testimony which was given regarding the development and the drawings and plans offered and received in evidence would tend to lead the jury to find the value of the property as if the improvements had been made."

The clear basis for the exclusion of such testimony is that it does not have any direct bearing upon the price which would be offered in the market and in this regard it is wholly in harmony with the rule of law as stated in *Chicago, Burlington and Quincy Railroad Company* v. *Chicago,* 149 Ill. 457, where it is laid down that while the value of the lands condemned may be estimated not only with reference to uses to which they are then actually applied but also with reference to those to which they are specially adapted, such latter uses must be shown to be such as enter into and affect the value in the market.

Moreover, on this question of the affect of special adaptability upon the market value, it is well established that such special adaptability is merely a factor and may not be made the sole basis of the estimate of value and that an estimate of the value of property for a specific purpose without reference to the general question of market value is erroneous. *Moulton* v. *Newburyport Railroad Company,* 137 Mass. 163.

This distinction will become important in view of the efforts made to obtain expert testimony as to the value of lands here under condemnation for specific purposes, such as water supply, hydro-electric development, and sand and gravel mining.

Indeed, these specific elements of value have in several of our New Jersey cases been inveighed against. Not only may the special capability of the land not be considered apart from its influence upon the general market value, but special resources in the lands may not be specially valued. Thus in *Manda* v. *D. L. & W. R. R. Company,* 89 N. J. L. 327, it was held that the value of top soil and trees upon the condemned property could not be estimated separate and apart from the land but must be considered merely as an element of general value entering into and determining in part the market value of the land as a whole. This case was cited with approval in *Ross* v. *Interstate Park,* 90 N. J. L. 461, where effort was made to prove the value of rock alleged to be suitable for quarrying upon the premises in question. The Court there stated as follows:

> "The stone in place is a part of the land. It cannot be valued separately and apart from the land. To what extent, if any, the value of the land is enhanced by the stone may be shown. The value of the land as stone land suitable for quarrying is a proper subject of consideration both by the witnesses and the jury in fixing the amount of just compensation to be awarded, but not the value of the stone separately and apart from the land. The value of the land is not measured by such facts. The stone is a component part of the land."

Turning to cases of other jurisdictions we shall, as we did in regard to the New Jersey decisions, discuss first the case upon which chief reliance is placed by the appellant, to wit, *Mississippi and Rum River Boom Company* v. *Patterson,* 98 U. S. 403. The case is cited by appellant as authority for the proposition that special adaptability for specific uses may be shown as an element of damage. As a general proposition of law we do not dispute this statement, but insist that this case, when viewed in the light of its facts and in conjunction with other decisions of the same and other courts limiting the broad statements, is no authority for the type of evidence which appellants sought below to introduce and which was rejected. In the Boom Company case it appeared that the lands were specially adapted for boom construction and owing to this adaptability had reasonably a special value in excess of that of adjoining lands. It appears that the State Legislature thereafter granted a charter to the Boom Company which was exclusive in character and effectively prevented the owner of the lands from using them to such an end. The concrete proposition before the Court was, then, whether by the grant of this exclusive right the value inherent in the lands by reason of their peculiar suitability and which was an element existing prior to the chartering of the company might be destroyed in the hands of the landowner by the granting of the charter. The Court properly held (at page 409) in the portion cited by appellant (at page 113 of his brief) that these elements of value might not be taken from the land owner by the grant of exclusive privileges to the company since such value was "previously possessed." "We do not think," said the Court, "that the

owner by the charter of the company lost this element of value in his property."

To exclude the consideration, as an element of damage, of an existing adaptability, the use of which in the hands of the owner was affected only by an exclusive franchise granted to a private corporation, would be in effect transferring the property right of one private interest to another without compensation and is a very different thing from an effort to capitalize the necessities of the respondent in an undertaking of a public nature which involves, in fact, the principle of "strategic value" disallowed in the case of *U. S.* v. *Chandler Dunbar Water Company,* 229 U. S. 53.

The facts in that case were that the United States had determined to construct a waterway in the St. Mary's River and for that purpose required certain lands, including water powers. The Chandler Dunbar Company claimed to be entitled to special compensation by reason of alleged water power capacity, which the Supreme Court denied on the ground that the St. Mary's River was a navigable river and therefore no title to such alleged water power capacity inhered in the Chandler Dunbar Company. While it is true that the Court made a distinction between riparian owners on a navigable stream and those upon a non-navigable stream on the question of water power, the contention quoted from the opinion on page 131 of the brief for the appellant would be directly applicable to the claim of the appellant herein to special damage by reason of the capabilities of the lands for water supply purposes. In that citation the Court holds that the subordinate interest of the owner of fast lands upon the shore of a navigable river is subordinate to the needs of navigation and cannot be asserted as against the right of the Con-

gress to improve the stream for that purpose. Similarly, the inability of the appellant to appropriate the waters of the Wanaque River for potable water supplies as against the sovereign control of the State over these supplies brings that phase of the case in exact parallel with this phase of the Chandler Dunbar case. We will discuss this matter more fully in connection with cases dealing specifically with water supply acquisitions.

The other matter raised in the Chandler Dunbar case was the right of the St. Mary's Power Company, another of the claimants whose claim was passed upon in the same opinion, to be allowed as part of the damage for what was called the "strategic value" inherent in an island growing out of the extent to which it might control or block the most available development by upstream owners. The Court below said:

> "Owing to its location this property had and always has had a strategic value with reference to any general scheme of water development in the river and because it must be included as a tailrace site if not otherwise in any completely efficient plan of development of any owner, private or public. This value is denied. It is, as government counsel would say, 'of the hold-up character.' "

Accordingly, the allowance of $15,000 for this so-called strategic value was upheld by the lower court. Criticizing this finding, Mr. Justice Lurton, speaking for the United States Supreme Court, says:

> "This allowance has no solid basis upon which it may stand. That the property may

have to the public a greater value than its fair market value affords no just criterion for estimating what the owner should receive. It is not proper to attribute to it any part of the value which might result from a consideration of its value as a necessary part of a comprehensive system of river improvement which should include the river and the upland upon the shore adjacent. The ownership is not the same. * * * The 'strategic value' for which $15,000 has been allowed is altogether speculative. It is based not upon the actual market value for all reasonable uses and demands but the possible worth of the property to the government. A 'strategic value' might be realized by a price fixed by the necessities of one person buying from another free to sell or refuse as the price suited, but in a condemnation proceeding, the value of the property to the government for its particular use is not a criterion."

To what point this idea of strategic value may be pushed and to what degree it is limited by the decisions of our highest Federal tribunal, is shown in three other cases in that Court, two of which deal directly with water supply problems in the creation of the great Ashokan Reservoir for the City of New York. The other is a park condemnation case.

Shoemaker v. *the United States,* 147 U. S. 282, properly excluded from consideration sales of property adjoining the boundaries of the park about to be created on the theory that the contemplated creation of the park necessarily increased the value of the surrounding lands and made them

no longer comparable in character, and further directed the Commissioners that they were not

> "at liberty to place a value upon these lands upon the basis of what one might be willing to pay at some time for purely speculative purposes; nor can they consider the value given them by establishing the park;" the concrete question being "what would any one needing lands for residences, agriculture or any other purpose pay for them in cash."

This case, it will be seen rejects any idea of special availability of given lands for park purposes as an element in market value.

Turning now to the two Ashokan Reservoir cases, a brief history of them in their progress from the condemnation commission to the United States Supreme Court will be illuminating.

The McGovern case—*McGovern* v. *New York,* 130 App. Division, 356; affirmed on Memorandum 195 N. Y. 573; affirmed 229 U. S. 363—was a case started before the condemnation commission for the acquisition of a tract of land to form part of the reservoir.

Before the commissioners testimony was given by Mr. Vermeule (one of the witnesses in the case at bar), developing by a complicated mathematical calculation what he was pleased to call the "intrinsic value" of the land from which, by a process of reasoning not revealed, he arrived at a so-called "market value" amounting to 40 per cent of the so-called "intrinsic value." The factors entering into the intrinsic value were the special adaptability for reservoir purposes of the whole tract being developed for the great reservoir as compared with other possible sites, the reasonable value

of the water delivered to the city for city uses, the cost of its delivery, the value of the whole Ashokan Reservoir, based upon its capacity, the reasonable market price of water delivered at the furthest city, the storage capacity of the property in question as compared with the total storage capacity of the reservoir. From all these factors the intrinsic value was deduced to be $248,200.00 and the market value, at 40 per cent thereof, as $99,280.

It is interesting to note that after the admission of this testimony, on motion to strike it out, the commission struck it out, and the commissioners found the actual value of the land to be $3,800.

It was not unnatural, under the circumstances, that an appeal was taken to the Appellate Division by the land-owner, where Justice Sewell, writing for that court, held that the striking out of the testimony as to value "based upon the value in conjunction with other lands included in the reservoir site, upon the value of the reservoir itself, upon the feasibility and cost of conveying the water to the city and the value of the water itself to the city," was not error "for those matters have no bearing on the *market value* of the property at the time it was taken. Such estimate of value is in the highest degree uncertain and speculative."

It will be noted here that the language of the New York Court is in close harmony with the language in the Currie case, cited earlier in this brief. Proceeding, the New York Court said:

> "The question, therefore, is not whether the property is peculiarly adapted for a special use but whether purchasers can be found who would pay more for it because of its adaptability. It is only where it is shown that the chances or probability of a sale for

> some special use *have affected the price which the property would bring in the market that its availability or adaptability can be considered in determining the market value.*"

The rule is then summed up by Mr. Justice Sewell as follows:

> "It is to be noted that this evidence did not tend to prove the present market value of the property or its value at the time it was taken but its probable value after other property is acquired and millions of dollars are expended in the construction of a reservoir which may or may not be built. In determining the question of value it is proper to show the condition of the property and its surroundings, the uses to which it has been applied, and its capacity for other uses, including that for which it is required, and then the witness can give an estimate of its value in consideration of all the uses and elements of value; but he cannot *give an opinion of its value for any special use.* The value of property is not limited by the present use or the use for which it is sought as either may be more or less than its market value. For example, land may be valuable, abstractly considered, for reservoir purposes, but its market value would depend upon a demand for such a purpose. If no one desired the property for a reservoir its value might be much less than for any other purpose. * * * * *It is substantially undisputed that the value 'for reservoir purposes' is entirely due to the fact that the city has determined to build the reservoir and*

that the owner is now seeking to make the necessity of the city his opportunity."

This summary by Mr. Justice Sewell is a complete picture of the situation at bar. Appeal to the Court of Appeals of New York and thence to the United States Supreme Court resulted in an affirmance by Mr. Justice Holmes on the ground that the plaintiff in error had not shown that he had been denied due process of law and that at the most, conceding all the contentions of the plaintiff in error, it could only be said "that the commissioners and courts of New York adopted too narrow a view upon a doubtful point in the measure of damages."

While appellant would minimize the importance of Mr. Justice Holmes' opinion on the ground that this decision was based as above stated, the opinion itself, if read, goes far beyond this narrow point of decision. Following thereafter the Court said:

> "It is conceded 'that the owner is not permitted to take advantage of the necessity of the condemning party' and it would seem that it well might be that the commissioners regard it as too plain to be shaken by evidence, on the public facts, that the value of the land for a reservoir site could not come into consideration except upon the hypotheses that the City of New York could not get along without it, and that its only means of acquisition was voluntary sale by owners aware of the necessity and intending to make from it the most they could. *It is just this advantage that a taking by eminent domain excludes.* * * * * The enhanced value of the land as part of the Ashokan

> Reservoir depends on the whole land necessary being devoted to that use. There are said to have been hundreds of titles to different parcels of that land. If the parcels were not brought together by a taking under eminent domain the chance of their being united by agreement or purchase in such a way as to be available well might be regarded as too remote and speculative to have any legitimate effect upon the valuation (citing cases). The plaintiff in error was entitled to be paid only for what was taken from him as the title stood, and could not add to the value by the hypothetical possibility of a change unless that possibility was considerable enough to be a practical consideration and actually to influence prices. *Boston Chamber of Commerce* v. *Boston,* 217 U. S. 189 (at p. 195). In estimating that probability, the power of effecting the change by eminent domain must be left out. * * * *The plaintiff in error relies upon cases like Mississippi and Rum River Boom Company* v. *Patterson,* 98 U. S. 403, to sustain his position that while the valuation cannot be increased by the fact that his land has been taken for a water supply, still it can be by the fact that the land is valuable for that purpose. *The difficulty in the way of such evidence and the wide discretion allowed to the trial court are well brought out in Sargent* v. *Merrimac,* 196 Mass. 171."

Before passing to the second of the water cases we would, by way of digression, reply to the criticism of the appellant of the case of Sargent v. Merrimac, cited at the conclusion of the last excerpt

from the McGovern case. Appellant's reading of the case would indicate that the excluded questions involved collateral inquiries which were properly within the discretion of the trial court to exclude. Similarly a consideration of the evidence in the case at bar would show that most of the questions overruled were collateral in character. The most of the contention of appellant's counsel is directed to the establishing of implications from which, by some unrevealed rule of thumb, the jury might draw conclusions as to enhanced value. When one considers that the case itself before the jury took some 25 court days to try, the imagination pales at the thought of how many days would have been required had evidence been permitted of the establishment of non-existent water powers, the creation of water supply reservoirs, the methods of mining and loading and the cost of transporting sand and gravel from the territories in question in comparison with similar undertakings elsewhere.

Our reading of the Sargent case does not lead us to the opinion expressed by counsel for the appellant—that it is in direct opposition to the New Jersey case of *Ross* v. *Palisades Park,* supra. The holdings of the Sargent case are sound law. They reaffirm the primary principle that the owner of land taken for water purposes is entitled to receive its fair market value, made up of the value of the land apart from its special adaptability for water supply purposes plus such sum as a purchaser would have added to that value on the chance that the land might some day be used as a water supply; that the exclusion of expert testimony as to the value of the land for water supply purposes or what the value was for all the uses to which it was adaptable was proper, as was the exclusion of

inquiries as to the value of the water in the land, the fair value of the land and water because of its special adaptation as a source of water supply. There were likewise excluded questions involving assumptions that there was no other source of water supply sufficient for the needs of the community except under more disadvantageous circumstances, as well as inquiry into the value to the town of the land and water as a source of supply over another source requiring filtration and treatment. The case held that the value could not be increased by the mere fact that it was being taken for that purpose and that it was irrelevant to inquire in what municipalities or cummunities the water thus developed could be used. Nowhere do we find any conflict in this opinion with the Ross case, nor do we see how the citation from *Smith* v. *Commonwealth,* 210 Mass. 259 made at page 123 of appellant's brief overrules in effect the decision in the Sargent case. The instruction in the Smith case was that its availability as a source of water supply should be entirely disregarded. In the Sargent case the instruction was that in determining market value consideration should be given to what enhancement of price a purchaser would make by reason of such adaptability. The Court above in the Smith case, in holding the instructions below erroneous, reaffirmed the doctrine of the Sargent case in the statement:

> "If the property is so specially fitted for municipal water supply and the necessity for such use is so imminent as to add something to its present value in the minds of buyers, that element may be considered."

Such was the ruling in the Sargent case signed by Mr. Justice Holmes.

The holding in the Sargent case was reannunciated in the case of *San Diego Land and Town Company* v. *Neale,* 11 L. R. A. 605 (Colorado Supreme Court), where comment is made upon the impropriety of the Trial Court's permitting collateral issues to spring up and multiply to an extent which would tax the jury with facts and figures throwing no further appreciable light on the question in hand, namely, the ascertainment of market value.

In ascertaining this value the same court held that the necessities of the public are not to be taken into consideration as an element, nor the proportion which defendant's land bore to the remainder of plaintiff's reservoir, nor the calculation of the value of the land by consideration of the costs of development and the probable income and profit resulting therefrom, nor the especial need of the particular tract on the part of the condemning agency, nor estimates based on speculative improvements, increase of population, extension of water systems or profits resulting from sale and distribution of water.

The whole doctrine of availability and the extent to which it may be shown was well reviewed in an article in *29 Harvard Law Review 429,* commenting upon the Sage case, which we are about to discuss.

The limitation deduced from the decisions by the writer were that if the possibility that the land may be wanted for the purposes in question by purchasers not armed with compulsory powers is such as to affect the value of the lands in the market, such adaptability may properly be shown "but where," continues the writer,

> "as is certainly the case in constructing railroads and must generally be in the case

> of constructing a very large reservoir, the market value is not appreciably affected by such a possibility, this reasoning fails." (Citing the Currie case and Lewis on Eminent Domain (3d Ed.) par. 707)

In a footnote to this discussion, the Boom Company case is cited as being an instance where the possibility was such as to enhance the value of the lands in the market, the true ground of the decision although "This case has been widely interpreted, however, as standing for a broader doctrine. See *U. S.* v. *Chandler-Dunbar,* 229 U. S. 53, and *Webster* v. *Kansas Railway,* 116 U. S. 114."

Passing on to the next of the New York Water Supply cases—*New York* v. *Sage*—the matter was presented to the Court in precisely the opposite order, namely, on appeal by the city from what it considered an unfair and exorbitant award. In that case a special judgment was made by the condemnation commission allowing an additional sum of $4,324.45 for reservoir availability and adaptability over and above the general award for lands and buildings. The case, having been taken into the state courts was removed on grounds of diversity of citizenship to the Federal courts and is reported in 124 C. C. A. 251 and 239 U. S. 57. Mr. Justice Holmes again wrote the opinion for the Supreme Court.

> "It appears to us * * *" says the Court, "that their report does not mean that the claimant's land had a market value of $11,948.90—that it would have brought that sum at a fair sale—but that they considered the value of the reservoir as a whole and allowed what they thought a fair proportion

of the increase, over and above the market value of the lot, to the owner of the land, subject to the opinion of the Court upon the point of law thus raised. Upon that point we are of the opinion that they were wrong * * * . What the owner is entitled to is the value of the property taken and that means what it fairly may be believed that a purchaser in fair market conditions would have given for it in fact—not what a tribunal at a later date may think a purchaser would have been wise to give, nor a proportion of the advance due to its union with other lots. The City is not to be made to pay for any part of what it has added to the land by thus uniting it with other lots, if that union would not have been practicable or had not been attempted except by the intervention of eminent domain. Any rise in value before the taking not caused by the expectation of that event, is to be allowed, but we repeat, it must be a rise in what a purchaser might be expected to give."

The opinion just cited from was a reversal of the opinion of Judge Lacombe, sitting below, who, after citing from an opinion in another case given by the Appellate Division of the New York Supreme Court wherein it was held that the appellant had not proven or attempted to prove that the value of the property had been increased by its adaptability or availability for reservoir purposes and that there was no evidence of any prior demand for such purpose, stated:

> "Such evidence has we think been given in the case at bar, evidence from which the presumption flows almost as a conclusion,

> that with the increase of population in the valley of the Hudson the Ashokan site would evidently be appropriated if not by New York then by some other city or group of cities."

Clearer renunciation of the theory of availability of the Ringwood lands for water supply purposes, in view of this language by Judge Lacombe adopting the theory, could not be found in Mr. Justice Holmes' reversal of the lower court.

It may be noted throughout these cases and others which we will later cite that the uniform principle of the value of the property in the market is the deciding factor. It is this principle which distinguishes the availability for railway purposes in the Currie case from the availability for water supply, hydro-electric or gravel digging in the case at bar. In the instant case we are confronted with development purposes of such magnitude as substantially to require the interposition of public funds and, so far as the water supply user is concerned, requiring the assent of public agencies under a well defined State policy for the conservation of its potable waters. As Mr. Justice Sewell said, speaking for the Appellate Division of New York in the McGovern case, from which we have already quoted:

> "It therefore appears that the opinion of the witness—Mr. Vermeule—as to the value of the premises in question was based upon its value in conjunction with other parcels included in the reservoir site, upon the value of the reservoir, the feasibility and cost of conveying in pipes or aqueducts to the City of Newark and the value of the water to the city. It is to be noticed *that this evidence*

> *did not tend to prove the present market value* of the property or its value at the time it was taken, but its probable value after other property is acquired and millions of dollars are expended in the construction of a reservoir which may or may not be built. It was simply his opinion of the value based upon the necessity of the land to the city or what the city could afford to pay rather than do without it."

Following this vein of thought, Mr. Justice Sewell quotes as follows from *Boston* v. *H. T. & W. R. Co.*, 22 Hun, 176:

> "The situation of hills and streams often determines as a matter of necessity where a public road must be built. If it must go through some narrow pass where the land is owned by one person he must be made to give up his land for the public benefit. All that he can have is compensation. Now, if the railway companies are to pay what the piece of land is worth 'for railway purposes' and if the road must be built through that pass, then they must pay any sum which the prospects of a successful railroad will warrant. For the land to be worth for 'railway purposes' any sum, however large, but not actually preventing the building of the road, such a law would do away with nearly all the benefit of the compulsory power of eminent domain. It would be giving more than compensation."

The foregoing analysis clearly shows that the cases of our courts and of other jurisdictions are in substantial agreement as soon as the occasional

broad statements are checked in the light of the facts of the specific case. (See citations at the foot of page 116 and top of page 117 of the brief for appellant.)

The principles to be deduced from these decisions we will briefly summarize:

(a) The fundamental and underlying principle is that it is the market value and the market value alone which is at issue. In determining this market value special availability for special uses may be shown wherever that availability is of such a character as to have appreciable influence upon the market price or value; but valuation for specific uses is not permitted;

(b) Such alleged availability may not be shown where no appreciable effect on market value is proven to result;

(c) No appreciable effect upon market value results (1) where compulsory power of condemnation is required to realize the availability, (2) where proof of the availability involves changes in the character of the lands taken, calculation of costs of such charges and of profits resulting from the development, (3) because of public need for the specific use, or by reason of its value in the hands of, or necessity to, the condemning agent (strategic value), (4) by proof of the commercial value of portions of the land when severed from the soil (topsoil, trees, stone, sand and gravel).

We believe that under one or the other of these four classifications all of the testimony, the exclusion of which has been complained of, will fall.

II.

Availability for water supply was permitted to be shown.

The general availability of the lands for water supply purposes in conjunction with other lands was implicit throughout the whole proceeding. The very fact that the respondents would acquire such lands for an undertaking of the magnitude of the Wanaque development clearly showed their availability. The size of the tract taken, its proportion to the whole reservoir, its favorable location upon the Wanaque River, all appear time and time again in the evidence. It was to the exclusion of none of these subjects that objection is specifically addressed. They were shown time and time again.

The attention of Mr. Vermeule was directed, and in view of the offer and rejection of testimony along the same lines of Mr. Horton and Mr. Potts, the testimony of these two latter engineers (it must be presumed) would have been directed, to the value in dollars and cents of the property under consideration for water supply purposes.

As to the suitability of the lands for water supply, Mr. Vermeule had ample opportunity to spread himself. At page 717 of the Case and the following pages he specifically sets forth the natural advantages of the land—its freedom from population, the composition of underlying rocks, favorable to softness of water, its freedom from lime and magnesia, hardening elements, its coverage by forest, the shape of its valleys lending itself readily to the storage of water, and the large single ownership making control easy; and, in addition, he stresses it accessibility to point of demand, the growing population requiring more water, its superiority to the Ramapo on account of population and the inability of New Jersey properly to control the purity of the Ramapo, an interstate stream, the enhancement in value due to proximity of the land to the market, its long consideration by municipalities as to possible sources of supply—all of these matters showing the special value, in general terms, of the lands for water supply purposes were fully and fairly submitted to the jury.

At this point counsel fully argued Mr. Vermeule's qualifications to place a monetary value upon the advantages which he had thus described.

What the nature of the excluded evidence was appears very fully in the questions addressed to Mr. Vermeule, on page 743 of the Case, and immediately following. Such questions fall well within the type of inquiry held in the citation above made from the Currie case to be properly overruled as being speculative or based on undisclosed facts.

The first question addressed to Mr. Vermeule after the argument asked his opinion as to the market value of the lands, bearing in mind their water supply capabilities—nowhere in the evidence had it appeared that Mr. Vermeule knew anything about the value of the lands from a monetary standpoint. He pointed out certain engineering advantages. This question having been overruled on the ground of his lack of qualification, the next one stated hypotheses wholly contrary to existing conditions, namely, if there were no commission and if there were no condemnation proceeding, whether there would be a demand from other sources, corporate or municipal. Af-

ter extended argument, the next question addressed to the witness inquired whether the existence of the Water Commission affected the value of the acres under condemnation. The next question was directed again to the circumstances giving the land special value, to which Mr. Vermeule replied that they had this "from their peculiar adaptability for the purposes and from the large demand in the near neighborhood of the supply after such a water supply." (Case, p. 759.) Two or three other questions were excluded, including one directed to the distance from the source of demand of another hypothetical water supply; another as to whether another such water supply could be located as near at hand and a third as to where the City of Newark and other cities would have to turn after the development of the Wanaque and of possible development of the Ramapo Valley which, concededly, is as close as the Wanaque.

It will be seen in all of this evidence that nowhere has Mr. Vermeule shown any knowledge as to market value. As to the availability of the lands for water supply development, as to the character of the supply there capable of being developed, as to demand and proximity to demand, all of these matters were fully brought out in his testimony, and, as we have already noted, were, in any event, implicit in the very proceedings themselves.

All of this testimony was permitted despite the fact that before any use could be made for water supply purposes consent of the State to the diversion of its waters must be obtained, a condition equally true whether the development be by public authority of the Water Commission or a municipality or by private authority of the water companies. Upon the granting of this right to divert the whole value of the land for water supply purposes depends; and here again is seen a marked distinction between the special damage in the *Mississippi and Rum River Boom Company* v. *Patterson* case and the water supply situation. In the former instance an availability prior to the granting of an exclusive charter existed in private ownership, an availability which has a direct effect upon the market value of the lands in question. In the present instance of water supply no such availability existed, for the waters of the State of New Jersey are a public trust administered by the State for the benefit of its inhabitants, and at no time did there exist in private ownership the right to divert these waters for the purpose of commercial enterprise and profit beyond the limited right of riparian user except with the consent of the State.

In *McCarter, Attorney General* v. *Hudson County Water Company,* 70 N. J. Eq. 695, Mr. Justice Pitney, in an extended opinion and exhaustive analysis, after reviewing the history of legislative grants and interstate rights on the question of the exportation of waters of New Jersey to New York State, sums up the situation:

> "There is in all of this legislation no general purpose, much less any specific enactment, that changes the ruling of the common law so as to make the waters of our streams and lakes the subject matter of commerce in the ordinary sense."

After setting forth the nature and control by the State, in its sovereign capacity as representative of and for the benefit of the people in common, of the running waters in natural streams and in

lakes and ponds having outlets to such streams, the Court points out:

> "The common low recognizes no right in the riparian owner as such to divert water from the stream in order to make merchandise of it, nor any right to transport any portion of the water from the stream to a distance for the use of others."

The whole so-called availability of these lands for water supply purposes is postulated either upon an ignoring of the public rights in our running waters or upon the assumption of a public grant to use them.

III.

Ryerson Grant and Hydro-Electric capabilities.

It would appear from the offers of counsel for the appellants that one Jacob M. Ryerson in 1837, on the conveyance of certain tracts of land to be overflowed upon the relocation and elevation of the dam at Greenwood Lake, reserved to himself certain water rights which had theretofore been enjoyed by him, to wit, the right of drawing from the reservoir and intermediate streams sufficient waters for all the necessary purposes of a forge with two fires and a sawmill with one saw at the site of a then existing forge and sawmill. Such reservation is primarily limited so that no more water shall be drawn than shall be really necessary for such forge and sawmill or other works not requiring a greater quantity of water and with the additional right of using the water thus drawn upon *"any intermediate work which he shall erect between the dam of said reservoir and said Long Pond forge."*

The theory upon which the proof of this reservation was sought to be injected into the case was, that granted the right to control the flow from Greenwood Lake, the waters thus drawn for the purposes stated in the reservation would necessarily pass down the stream and would increase the flow in lower-lying riparian lands of the Ringwood Company. Certain facts must be emphasized in this connection:

First, the point where this water under the reservation may be used is above and wholly unaffected by the takings in this case;

Second, the amount of said flow is indefinite in

quantity in view of the destruction of the existing mill and forge although efforts were made and were properly excluded to show by the testimony of one Whitham what, in his opinion, this flow would amount to;

Third, that the cases cited in support of the proposition that a grant of a certain quantity of water at a given place and for a given purpose is not restricted to the particular place and purpose so long as the user of the water is not essentially different in character and amount from the user provided in the grant do not apply to the case at bar. In the first place, the reservation itself indicates an intention on the part of the parties thereto to limit the place of user though not the character of user. It will be noted that the forge and sawmill are established as a criterion of quantity only. This appears from the language that the water shall be used *"for such forge and sawmill or other works not requiring a greater quantity of water."*

If, then, the insistment were that in order to avail itself of this reservation the present owner thereof would have to erect a forge and sawmill, such insistment would be untenable; but later language in the reservation shows clearly that the place of user was intended to be clearly defined and not to be below the undisputed point of location of the old forge and mill. This follows from the assertion of an additional right, to wit, that of *"using the water to be drawn as aforesaid upon any intermediate work"* and erected *"between the dam of said reservoir and said Long Pond forge."*

The ordinary rule of *inclusio unius exclusio alterius* here comes into full operation to show that the parties had no intention of user below the site designated.

In addition, the cases cited all have reference to a *grant* of a water right. Taking the citation in appellant's brief (pages 33-34) from *Asbury Fountain* v. *Perth Amboy,* 60 N. J. L. 410, it will be noted that the language of the Court is "that when the easement is of a certain quantity of water the *grantee* is not restricted to use in a particular manner." Similarly, in *Iszard* v. *Mays Landing, etc., Company,* 31 N. J. E. 511, the reference is to a *grant* of the use of water. The same may be said of other cases cited. The distinction here lost sight of involves a fundamental and elementary rule of construction, to wit, that in a grant by any party other than the State, which, as representing the public, is presumed to grant no more than the strict language of the instrument will convey, the grant is to be construed in favor of the grantee and against the grantor. Had the so-called Ryerson reservation been not a reservation but a grant from the owner of the title to Ryerson of a right, the construction would be just the opposite from that in the instant case where it is not a question of a grant but of a withholding from a grant of a certain easement. Ryerson was the owner of the lands conveyed and in granting them withheld to his own use certain rights therein affecting the flow of water below the dam. Ryerson was the grantor and as the grantor must be presumed to have expressed in the reservation from the grant the full extent of the right which he retained. In short, the reservation must, under elementary principles of law, be construed most strictly against Ryerson and his assigns and not with the liberality which would have been the fact had he been receiving instead of reserving the right.

The construction which we have above contended for is unavoidable unless all claim to the Ryer-

son right is to be yielded by the appellant. The right is either a right appurtenant to the land, (offer of proof of the devolution of which was made) or it is a right in gross—personal property—which did not pass to the Ringwood Company by the deeds offered. If it be appurtenant to the land, its use was incident to that land and the use of the right was in no way affected by takings of other lands. If, on the other hand, it be contended on the authority of Asbury Fountain v. Perth Amboy, *supra,* and similar cases that the right may elsewhere be used it must be on the theory that Ryerson had reserved in himself a right in gross to be exercised hereafter as he might please and for the exercise of which he might call upon the proprietors of the dam to supply sufficient quantities of water. To such a right the Ringwood Company has made no offer of showing title.

If then, as we believe, the evidence in relation to the Ryerson right was properly excluded, it follows as a necessary corollary, that the testimony of Mr. Whitham (the offer was made on pages 671-2 of the case) as to what in the opinion of that witness would have been the quantity of water required for power necessary to operate the works mentioned in the Ryerson reservation was properly excluded. Indeed, counsel's statement on page 670 shows that his primary purpose was by indirection to bring before the jury the Ryerson reservation already excluded from its consideration. Counsel stated at page 670 of the case:

> "This is another effort, your Honor, in another manner and by means of another witness, to get into the evidence in this case the so-called Ryerson reservation."

As to the offer excluded above referred to, it was

to prove by the witness Whitham the quantity of power which, in conjunction with the Ryerson reservation, could be produced on the land under condemnation and other lands of the Ringwood Company upon which, by reason of this taking, it became impossible to produce as much power or produce it as economically. It will be noticed that the full implication of this offer necessitates the comparison of various conditions of water power development, a comparison of the respective amounts of power thus to be developed and the relative economy of such development. Any such offer necessarily is predicated upon a complete scheme of power development and the opinion of the witness in that regard, both as to means of production and as to costs thereof. Nowhere was there any offer made to show any demand for such power or that the suitability of the lands physically for its development would in any way affect the market value of the lands. Such an offer, transforming as it does, undeveloped territory into power plants with their incidental equipment, wholly disregards the rules laid down in the Manda and Morris and Cummings Dredging cases above analyzed. In addition, the testimony which it was sought to adduce from Mr. Whitham was based upon studies of ancient documents and the indefinite words of the Ryerson reservation: "for all the necessary purposes of a forge with two fires and a sawmill with one saw at the site of the present Long Pond forge." Such testimony falls well within the Currie classification of speculative opinions and conclusions deduced from undisclosed facts, and within the rulings in Sargent v. The Town of Merrimac, *supra,* that such evidence, even though relevant, involves the trial of collateral issues and lies within the discretion of the trial judge.

IV.

Sand and Gravel.

It is complained that certain testimony affecting the market value of the lands by reason of the existence of large areas of sand and gravel upon the premises was improperly excluded. Let us bear in mind in opening the discussion of this portion of the case the decisions in Ross v. The Interstate Park, *supra,* and Manda v. The Delaware, etc. Railway Company, *supra,* the one holding that the value of rock from the premises and the other that the value of top-soil and trees upon the premises might not be separately proved, but might be taken into consideration only as possible elements affecting the market value. In the light of these decisions we turn to the testimony of Mr. Felix G. Pettit, on page 602, who testified as to the quality of the gravel as compared with other gravel pits in the vicinity of Paterson and to the approximate annual demand for such material in that vicinity. Practically the whole of his testimony was admitted. Similarly the witness Gage, an employee of the State Highway Department, at page 636 and following, testified as to the quality of the sand and gravel, while by other witnesses the existence of large areas of this material was proven and no effort made to controvert that proof.

We, then, have the location, quantity and quality of the gravel before the jury.

It is not until we come to the testimony of the witnesses Gallagher, Neff and Shaw that we are confronted with the cry of the appellant that the character of his land was not permitted to be shown.

These three men, whose testimony appears, respectively, at pages 765, 651 and 789 of the Case, were all dealers in sand and gravel.

Mr. Gallagher dealt in Long Island sands and gravels. In reply to a question at page 774, "Do you find a large market for it?" he answered "Well, I never went in particularly on the market like this but if I had enough of it I would find a market for it."

In answer to a question on the next page, "Did you ever buy any land in New Jersey?" he answered, "No, sir, I never have."

> "Q. Did you ever buy any lands that were removed from the water shore?
>
> A. Yes, I have.
>
> Q. On Long Island? A. Yes.
>
> Q. How far from the water shore?
>
> A. Three miles.
>
> Q. Contiguous with other lands of your company?
>
> A. Beg pardon—
>
> Q. Were they contiguous with other lands of your company?
>
> A. No—a highway in between them.
>
> Q. A highway in between them?
>
> A. And a railroad.
>
> Q. Had you ever mined any of that?
>
> A. No, we hold it for reservation.
>
> Q. Hold it in reserve until such time as your water portion traffic is exhausted?
>
> A. No, I would not say that—until we need it. We do not know when we will need it.
>
> Q. How many years have you held it?
>
> A. Oh, fifteen.
>
> Q. Do you know anything about purchase

of sand and gravel in this section around Wanaque?

A. Around where?

Q. Around the section on the map.

A. I have never bought any in that section.

Q. Do you know of any sales there?

A. No, sir, I do not."

On page 777 the Court ruled, in the exercise of its discretion, that Mr. Gallagher was not qualified as to values.

On the question of quality his testimony was again admitted without objection.

In addition to the foregoing the following offer of testimony to be elicited from Mr. Gallagher was made at page 784:

> "We will offer to prove the sand and gravel is delivered from Long Island in Newark, at prices which the sand and gravel at Ringwood can undercut in price in the same market." * * * "And that there is a volume of a million tons per year from Long Island into Newark."

Such offers do not go to prove what the lands are worth in the market or what a willing purchaser, seeking lands of that character, would be willing to pay. They are in effect efforts to show by means of alleged comparison with cost of production elsewhere that sand and gravel may be mined and sold in competition at a profit, from which, by a purely mathematical calculation of the cubic yardage removed, would be presented to the jury an astounding figure of value wholly independent of the question of market value.

Following him (Case p. 789) Mr. Shaw showed

experience in other sections of the country, was permitted to go into a discussion of the decrease in the crushed stone business by reason of the entry into the market of sand and gravel, but, again, was held by the Court not to be qualified on the question of value.

This disqualification, lying wholly within the discretion of the Court, is not here a proper subject for review.

The same statement may be made as to the examination of Mr. Neff except that his experience in practical operations seems to have been confined to South Jersey and to examinations of sand and gravel properties in various other portions of the country which seem not to have resulted in any purchases. (Case, pages 651 and 654.)

Analysis of the appellants brief on the subject of sand and gravel shows, at page 88, admission that the Court permitted to be proven all the essentials bearing upon market value, to wit, that there were large deposits, that the deposits lay alongside both water and tracks of an existing railroad, the existence of three sidetracks and suitable sites for others, the geographical situation in relation to points of demand.

Exclusions specifically complained of relate, first, to a question addressed to the witness Neff as to whether the character of the ground was such as to enable it to be worked under most economical circumstances. This question was markedly improper as calling for estimates of cost of production uniformly held not to be admissible as merely collateral issues; another question addressed to this witness appears on page 664 of the Case where counsel asks, "Assuming that the jury would find that there are approximately 22,000,000 cubic yards of sand and gravel upon this property,

what would you say the property was worth?"—a question properly overruled by the Court; still another question postulated the hypothesis that the 450 acres of land had no value except for sand and gravel purposes and the witness was then asked what his opinion of their value was. It may be noted that in no case was his attention directed to the market value of the land and nowhere did he show any qualification as to value.

A fourth question was addressed to Mr. Neff as follows, "Can you tell us from your experience and inspection of the Ringwood lands whether those lands are so located as to be useful in the establishment and carrying on of a sand and gravel business?" Such a question is clearly not directed to market value, the only relevant inquiry.

It might well be that such a property would be useful in a limited degree as it has been shown in the case at bar to have been useful in supplying materials for the dam of the Wanaque reservoir. It might be that it would be useful to a concern as a reserve supply similar to that purchased by his concern under the testimony of Mr. Gallagher, above referred to, and which had been held in reserve for fifteen years. Its utility to a business must be such a utility as would directly affect the market price by causing a larger sum to be paid for it than would have been paid had the deposits not existed. The object of the question was clearly by implication from an affirmative answer that the lands were so located as to be useful in the gravel industry to deduce from the lips of a witness held to be unqualified on the question of market value, an enhancement in market value. A proper question to have been addressed to Mr. Neff in this connection would have been, "Do you know of any demand in the sand and gravel indus-

try for these lands?"—for until there be a demand sufficient to affect the market value of the lands the possibility of their utilization for a given need is not evidential of value.

It will be noted throughout all of the testimony of these experts that no question of demand for this or the other large areas of sand and gravel shown to exist in that general vicinity was proven.

The other offers, such as the rates of transportation from Ringwood compared to other sections, the comparative cost of working gravels in Ringwood and Long Island, are so clearly collateral and involve the calculation of costs and profits to such an extent as to fall directly within the rulings of the cases already cited.

We submit that all testimony relating to sand and gravel, in addition to the bare proof of its existence, the geographical and topographical location of it, its quantity and quality, is wholly immaterial to the issue until there be established by testimony of competent witnesses that there was such a demand for the property for that purpose as materially to affect values.

V.

Evidence of Possible Profits to Newark from sale of Wanaque Water was properly excluded.

By the Fourth Point appellant objects to the exclusion by the Trial Court of evidence relating to the amount of profits which the City of Newark might make by the sale of water from the Wanaque project when completed.

In the case of *San Diego Land and Town Company* v. *Neale,* 11 L. R. A. 605, a decision by the Colorado Supreme Court, the owner below was allowed to show estimates based on speculative improvements, increase of population, extension of water systems and profits resulting from the sale and distribution of water.

The Court in that case distinctly held that the calculation of the value of land condemned by considering the necessary costs of putting it into condition for certain purposes and the probable income and profit which would result from these uses is improper. Indeed, so elementary is the principle and so fundamental to the law of condemnation that only as conditions upon the land are shown to have affected the actual value of the property in the market can they be proven. The elaborate argument set forth on pages 45 to 50 of the appellant's brief with no supporting citation constitutes in itself a strong argument for the support of the trial court's rulings in this case.

The proposition is wholly a novel one in the New Jersey law of condemnation and in our opinion is not worthy of further consideration or discussion.

VI.

Exclusion of Commission's Report.

Offer was made at the trial to place in evidence a volume issued in 1925 by North Jersey District Water Supply Commission as its report upon the Wanaque work and the water resources of the territory. The theory upon which this offer was made was that it constituted an admission against interest on the part of the Commission. The offers show that the report was produced for the purpose of showing the estimate of the Commission with respect to the needs of the district or the community served by it to take steps immediately, or in the near future, for the provision of further water supplies than the supply which will be provided by the Wanaque reservoir, and, further, to show the quality and purity of the waters of the Wanaque shed. It is respectfully submitted that all of this evidence, had it been admitted, would be irrelevant as to the market value of the lands in condemnation. As we have elsewhere pointed out, the needs of the public for water supply are not comparable with those needs of private organizations for additional lands, referred to in the Currie case. The development of water supplies is a matter wholly under State control and can have no bearing upon the value of the lands suited to that purpose.

In addition, the report is in no sense an admission of fact by the Commission. It is a mere expression of opinion based upon engineering data

which as far as relevant might be produced independently. All the facts in relation to the purity of the water, to the distance of the shed from point of demand were fully presented. The mere summary of these elements for the purpose of a public report by a public body cannot relieve the landowner of the necessity of making proof in due course of such portions of the report as, considered as evidence, would have been relevant.

VII.

Evidence of Quantity and Price of McAvoy Stock was properly admitted.

At page 63, *Supplemental* Volume of the State of the Case, the witness Hershfield testified on direct-examination and without objection, that he knew of a sale (not made by him) of approximately two thousand acres of property in the same territory as appellants, that used to be called Rotten Pond and is now known as Lake LaGrande (p. 63, ll. 20-35). He likewise testified without objection that this land is almost contiguous to the Ringwood buildings and that the sale was made within three years (State of Case Supplemental Volume, p. 64, ll. 17-23). He further said, without objection that the price paid for this acreage was $260,000, or approximately $130. per acre, (Supplemental Vol. p. 65, ll. 7-10).

On cross-examination it was evident from the very outset that appellant's attorney knew there was no deed transfer of this Rotten Pond property. Nevertheless he attempted to entrap the witness into making the positive statement that there was such a deed transfer, paving the way as we shall see later for the Houman testimony which was offered to prove that there had been no deed sale of the Rotten Pond tract for over fifteen years.

It may seem a bit of a task to impose upon the Court to ask you to read all of Hershfield's cross-examination on this point by appellant's attorney, but it is vital to a real understanding of the "*McAvoy* transaction" testimony, and it is our contention that this cross-examination together with

Houman's testimony and a statement by appellant's counsel during Houman's cross-examination, opened the door to the testimony of McAvoy and that if there were any doubt of the relevancy or materiality of McAvoy's testimony, it is entirely dissipated upon a full reading of the cross-examination on this point (Supplemental Volume, State of Case, page 130, l. 34 to p. 147, l. 18) and of Houman's testimony (State of Case, Vol. 2, pp. 674-697).

Such a reading reveals that the only knowledge Hershfield had of the McAvoy transaction was from third parties. He advised appellant's attorney that information about the property could be gotten by "calling up Clifford F. McAvoy, of Newark, who is the principal owner of the property" (Supplemental Vol. p. 132, ll. 27-30), that the president of the Company (Ramapo Park, Inc.) had stated that the company had a good title, which meant to Hershfield "a salable title", though it might not mean a warranty deed title.

All through this cross-examination appellant's attorney inquired intimately into the price paid for the property, the encumbrances on it, and in every detail acquiesced in its comparability for purposes of value.

This cross-examination took place on January 5, 1927. It was not until January 27, 1927 that the witness Houman was called by the appellant. Certainly there was plenty of intervening time to investigate everything concerning the McAvoy transaction and Hershfield in his cross-examination had suggested that McAvoy could disclose the whole situation. These facts and dates are mentioned in order to combat the argument that surprise at and inability to contradict the later McAvoy testimony operated a legal injustice to appellant.

One of the first questions asked Houman on direct-examination was whether he had examined the "State of the title to a certain piece of property mentioned by the witness for the Water Commission, Mr. Hirshfield, as the property formerly called Rotten Pond, now called Lake LaGrande," and whether this examination disclosed if there had been "any recent conveyance of that property by any body to any body." (State of Case, Vol.. 2, p. 674, ll. 27-36).

Argument in objection to these questions brought forth this comment by Court and Counsel which is quoted in full as showing that appellant's counsel, when he found that he could not after exhaustive cross-examination of Hershfield (*supra*), and subsequent investigation over a long period of time, wipe out the comparative value of the Rotten Pond tract, sought to leave the impression with the jury that, since there was no deed on record for this McAvoy transaction Hershfield had lied about it, and that there was no such conveyance of property at all. This was the colloquy between Court and Counsel (State of Case, Vol. 2, 675-676).

> Mr. Hunt: No, but Mr. Hershfield testified the sale was approximately two years ago, although that might be wrong by six months in either direction. I submit it is competent for the jury to draw the inference if there was no deed on record there has been no conveyance as long ago as 18 months to thirty months.
>
> The Court: It might prove that, and it might not.
>
> Mr. Hunt: I say the jury could draw such

an inference because it is a fair inference that the purchaser of a property for which the sum of $260,000 is paid would not run the risks that adhere in leaving a title stand in the cellar during all this period.

Mr. Frazer: There are very many things which might not appear of record as far as the real estate conveyance is concerned. The title to this property was in a corporation. There is more than one way of purchasing corporate property. It is not necessarily done by the transfer of a deed. It might very well be stated that a sale was made, as far as a real estate expert is concerned, if there were a transfer of the corporate stock of the corporation.

The Court: I think it is competent, however, for the purpose that it has been stated that it has been offered for.

Again at page 679 State of Case, Vol. 2, ll. 8-22, Houman testified as follows:

"Q. In other words, out of the 1900 acres conveyed to the Ramapo Park Corporation in 1909, it has conveyed one tract of 32 acres more or less and nine other tracts of five acres each, and it retains the title to the remainder of the 1900 acres?

A. With the exception, I would like to state, that the 1900 acres is an approximation of the acreage, that is correct.

Q. Well, I was just using that approximate sum. Has your investigation been of such a character as to enable you to say with assurance that this is the very property mentioned by Mr. Hershfield as the Rotten Pond or Lake LaGrande property?

A. I am satisfied that it is from my examination."

Now, on cross-examination of Houman an effort was made to show that, while the deed records showed no transfer of Rotten Pond, nevertheless the witness Houman knew that Mr. McAvoy had obtained control of the corporation owning the property. For this purpose we asked him at page 692, Vol. No. 2, State of Case, ll. 1-3

"You know that Mr. McAvoy within recent years obtained control of the stock of the Ramapo Park, Inc., don't you?"

There was immediate vigorous objection to this. The colloquy between Court and Counsel will show that appellant's counsel with full knowledge of the McAvoy transaction tried to use a technicality to make a liar of Hershfield and further that by this examination and objection to cross-examination of Houman he was opening wider the door for the later examination of McAvoy as a rebuttal witness.

The colloquy referred to is at pp.692, 693, State of Case, Vol. 2.

"Mr. Hunt: I object to that as incompetent and immaterial. What if he did? My point in putting on the witness and bringing out these facts was to show *it was not true as testified by Hershfield that the property had been sold.* I have never heard in a condemnation case where inquiry was into the value of land a witness might predicate the value of the land being taken upon the sum which somebody has paid for a block of stock less than the whole, and considerably less than the whole in the stock of a corporation which owns some lands elsewhere in the

county but whose debts, whose other property ownerships, whose difficulties or advantages of one kind or another are not before the Court at all.

The Court: That is not the purpose of the question as I conceive it. There has been testimony in here with respect to who owned the property, and the purpose of the question is to show what was meant by the witnesses when they said so and so owned the property. I think it is competent to show by this testimony if it tends to show that what the witness had in mind, perhaps, when he made that statement was with respect to the ownership of the corporation, and in that sense, and if that be the situation, I think it is a competent question.

Mr. Hunt: But if the Court please—

The Court: It does not go, as I understand it, Mr. Hunt, to the question of value at all at this stage.

Mr. Frazer: Simply for the purpose of showing there had been a transfer in interest of this company, that a real estate agent may talk about the sale of property instead of an actual deed which carries the transfer.

The Court: I do not think it has anything to do with the value.

Mr. Hunt: No, but it goes strongly to the credit of the witness Hershfield—"

Finally, if there were any doubt as to the competency, relevancy and materiality of McAvoy as a witness it was absolutely and forever removed by the offer of Appellant's attorney at pp. 694, 695, Vol. 2, State of Case, as follows:

"Now, that is the witness swearing 1960

acres sold for $260,000, and I say he cannot get out of it by attempting to show now that somebody bought a block of stock in a corporation that own the 1960 acres, and paid something for the block of stock. When you buy stock in a corporation that is not buying land. If the corporation owned a piece of land and nothing more, and it was free of debts, except as they were mortgage debts as attached to the land, and you bought every share of the stock of the corporation, then, I suppose, you might say that the transaction was a purchase of the land; but in the absence of proof of that kind, this examination is utterly incompetent. I may say that from what I understand of the transaction it will be impossible for Mr. Frazer to prove—*I am perfectly willing to have Mr. McAvoy brought here. He is one of the Water Supply Commission contractors, or I would bring him myself. I do not want to bring any more of these people than I have to. I am perfectly willing to have him brought back here to inquire what percentage of that stock he bought and whether $260,000 was all that he paid for it, and how much burdened that stock was for which he paid the sum that he did pay, but until that be done it is impossible to attempt to save Mr. Hirshfield's credibility by trying to assimilate this purchase of a part interest in a corporation to what he described, under oath, in plain language two or three times as a sale of 1960 acres for $260,000.*

What was left to do in the face of this challenge of willingness on the part of appellant's attorney

that McAvoy be produced? Here was the principal witness for the Water Commission sought to be proved a liar and a challenge hurled to produce McAvoy to prove the contrary. Did not this not only open the door to McAvoy in rebuttal of Houman's testimony, but did it not further allow us to ask the specific questions that appellant's counsel said he was "perfectly willing" that we should ask?

And may we now urge respectfully upon the Court to observe closely that the only questions asked of Mr. McAvoy on rebuttal were the very ones in the challenge of appellant's counsel, namely, "What percentage of the stock he bought," "Whether $260,000 was all that he paid for it," and "How much burdened that stock was *for which he paid the sum that he did pay.*"

Mr. McAvoy testified that in 1924 Ramapo Park Inc. owned the territory known as Rotten Pond; that it consisted of 2006 and 7/10 acres; that he purchased the assets of that corporation; that he made an investigation of what the assets were; that the assets consisted of nothing besides land and buildings theron; that in 1924 he purchased 700 of the 1000 shares of the stock of Ramapo Park Inc.; that at that time he caused a search to be made of "The title to the property that was the assets of this company"; that he had the title examined by the Essex Title Guarantee Company of Montclair before making the purchase; that he purchased 70% of the stock of the Company and has held it since that time; that he bought 25 shares more of the company last summer; that at the time he bought the property there were no liabilities *of any kind* against it; and that when he bought the property the same buildings were on

it that are there now. (State of Case, Vol. 2, pp. 827, 828, 829.

Again McAvoy testified as to the amount he paid for the stock; that in 1924 he paid $87,500 for 700 shares of stock; that he paid 100 dollars a share for the 25 additional shares he bought; that $90,000 was the total he paid for the 725 shares of stock. (State of Case, Vol. 2, pp. 837-838).

Such then in necessarily none too brief outline is the background as well as the essence of the McAvoy transaction. McAvoy was called as a rebuttal witness to contradict Houman and to accept the challenge and offer of appellant's attorney. We contend that not only was the door opened to this testimony by our opponent's cross-examination of Hershfield and his offering Houman as a witness but we could not do other than to produce McAvoy when appellant's counsel said he was "perfectly willing" that he should be produced for the very questions for which we produced him.

McAvoy's testimony disclosed that he and his associates purchased 725 out of 1000 shares of stock of a company that owned 2000 acres of land *similar* and *contiguous* to the appellant's land. This land with its appurtenances was absolutely unencumbered and constituted the sole assets of the corporation which had absolutely no liabilities. This transaction was purely a purchase for $90,000 of 72½% of the unliabilitied assets of that corporation which consisted of land and its appurtenances. Now even supposing that this testimony were not admissible in rebuttal of Houman and because of the "perfect willingness" of appellant's counsel that it should be introduced, by what figment of the imagination can we say that this purchase as outlined was not indicative of the market value of this land. What difference

whether a deed was made out for the land to McAvoy or that the name Ramapo Parks Inc. was kept and the land was transferred by stock transfer. How frequently in the course of business in order to avoid the necessity of a wife's signature does a man dealing in real estate incorporate himself to sell a tract and call himself Doe, Inc. Suppose that he wants to sell that tract and the purchaser wants to keep the corporate name will it have any greater or less market value if John Doe gives a deed for the tract to James Roe than if James Roe buys the land assets of the corporation and shares of stock in Doe Inc.

In a word our contention is that the McAvoy transaction was a real earnest of the market value of the land and since the land was similar and contiguous why was it not competent even apart from other considerations? Always, however we must remember that this testimony was unobjected to when Hershfield was on the stand; it was cross-examined; it was sought to be refuted by Houman's necessitating rebuttal and it was approved yes invited by appellant's counsel.

Now as to Grounds 58 to 59, these are literally nugatory. The title restrictions that appellant sought to show by the introduction of the deed that was not admitted were restrictions that were put on after the McAvoy purchase. What our testimony showed was the purchase price paid by McAvoy in 1924 for similar land, similarly situated. In objecting to the introduction of this deed it was frankly stated to the Court that there was no objection to showing any restrictions that existed at the time of purchase. Certainly, however, whatever restrictions may have been placed by the McAvoy group as a result of development present or contemplated of the property were not relevant as

an earnest of the value of the property in its virgin state.

Finally the McAvoy testimony was properly the subject of the Court's charge in view of its inherent admissibility as well as its invited admission and we respectfully submit that the Court's charge was in all respects legal. If, as we contend, on account of the challenge of appellant's attorney to produce McAvoy, any question of the competency or relevancy of the price paid for the stock was waived, the Court properly refused to charge the jury that it should ignore the testimony and properly in his own charge directed the attention of the jury to the McAvoy transaction, limited by the statement, "You, however, are to give it such weight as you may consider it to have in view of all the testimony given by Mr. McAvoy or anyone else as to the details of that transaction."

Assuming the propriety of the admission of the testimony itself—and this in view of the challenge cannot be questioned—the propriety of the Court's action in refusing to charge and in charging as it did must follow as the necessary corollary.

VIII.

The Order of Opening and Closing Case lies within Court's discretion.

At the trial of the case dispute arose as to which party should have the right to open and close. This right was claimed by both sides. As appears from the argument of counsel contained in the state of the case (pages 70-71) the matter was fully discussed in Chambers before the Court and these facts appeared—that at the trial of the cause before the Commissioners in Condemnation, counsel for North Jersey District Water Supply Commission had urged that the practice in the past had been for the landowner to submit evidence of value and for that evidence to be met by the condemning agency; that, under this practice, counsel insisted that the Ringwood Company should first undertake the proof of values; that counsel for the Ringwood Company objected and that the Commissioners sustained the objection and compelled the Water Commission to proceed with the trial. Such being the case, and both parties having appealed, upon the trial before the Circuit Judge and struck jury counsel for the Water Commission insisted that the same procedure be followed on appeal as was followed below.

Our decisions, as far as we are able to ascertain and, apparently from the brief of counsel for the appellants, as far as appellants are able to find, contain but one case where this question has been discussed, to wit, *Morris and Essex Railroad Company* v. *Bonnell,* 34 N. J. L. page 474, at page 469. The relevant paragraph is cited in full in appellant's brief. The italicization of counsel for appellant, however, is somewhat different

from that which we would make. We would italicize the following words: "*This is a matter of discretion but it is important to have uniformity of practice.*" It is an elementary rule that matters of discretion are not grounds of reversible error. One may concur in the advisability of uniformity of practice but where this uniformity is a matter of discretion circumstances may change the importance of uniformity. Under the circumstances, in the case at bar, where, contrary to objection of counsel a case is tried before commissioners by the insistment of opposing counsel as to the rights of his clients, it is only fair to assume that a similar insistment will be made when the case is tried on appeal. The result is that the condemning agency in this case was put upon notice by the action of counsel below that it would be expected to open and close the case. Such being the facts, the case would naturally be prepared with this situation in mind. To cause, at the last moment, in a case of this complexity and involving the large sum of money involved herein, a complete change in the method of trial would have placed upon the appellant Water Commission an unfair burden which the Court, in the proper exercise of its discretion, under all of the circumstances, wisely and properly refused to place upon it.

It should be further borne in mind that while a cross-appeal was filed by the Ringwood Company such cross-appeal was not filed until after the appeal was filed by the Water Commission, and the general rule that the appellant carries the burden of proof might here be invoked as a further sound reason why the Circuit Judge followed the procedure below.

We therefore respectfully submit that there was no error in this exercise of discretion on the part of the trial judge.

IX.

The evidence in relation to consents of the Board of Conservation and Development to the erection of certain dams on the condemned property was properly excluded.

By Chapter 44 of the Laws of 1919 (P. L. 1919, page 83) it is provided that no municipal corporation, corporation or person shall, without the consent of the State Water Supply Commission, build any reservoir or construct any dam on any river or stream which will raise the waters more than five feet above their usual mean low-water height, nor make repairs, alterations or improvements upon existing dams which shall raise the water, unless the drainage area above the dam shall be less than one square mile, provided, that if the water surface created by such dam shall be less than one hundred acres in extent, the necessity for obtaining the approval for the making of a repair on a dam which would raise the water less than eight feet above the surface of the ground shall not be necessary unless complaint be made in writing to the commission raising a question as to the security and safety of the existing structure. The proviso to this act clearly shows the purpose of it, namely, to prevent the erection or alteration of dams which, on account of faulty construction, may be a menace to lands lying below them in the event of their breaking.

The actual construction of this act by the department upon which duties are imposed by it is shown by the testimony of Dr. Kummel, at page 106, where he states that the rules require plans showing details of construction with specifications, the plans to be of sufficient detail to permit the engineers to analyze them and determine whether they provide for safe construction; that they must be of sufficient detail so that engineers can analyze strains and stresses which may be set up in the structure, and determine whether the construction, if carried out in accordance with those plans and specifications, will give a structure which will be safe and prevent any possible damage to life or property by failure of the dam.

The construction of a dam on any stream is always possible; whether it be feasible from the standpoint of cost is another question. Certain characters of river bed and of adjoining shore would require special structures to maintain a safe dam and might be highly costly if built in such a way as to insure safety. With these questions of cost the Department of Conservation and Development has nothing to do. Plans might be submitted to it of economically wholly unfeasible construction but which, from the engineering standpoint, were sound. The mere granting of a permit by the Board to erect a given dam can, therefore, have no bearing upon the question of the practical availability and the resulting enhancement in value to neighboring lands growing out of the erection of a dam. The permissions are mere approvals of proposed structures and it would be as reasonable to assert that the approval of a city building department of plans for the erection of a costly office building could be evidential of the suitability of the land upon which such building was, by the application, proposed to be built.

In the case just cited it is obvious that plans for such a building in a section of a city unsuited could not indicate a non-existent suitability or adaptability. Similarly, it is the experience that

many plans are submitted to building departments which are never realized. This rational distinction was made by the Court between the various dams for which permits had been applied. It appeared that one had actually been acted upon and was in course of construction when condemnation proceedings halted further work upon it. As to this dam, evidence was submitted and testimony given as to the layout of lots about the shores of the lake which would have been created had the dam been finished.

To have permitted at the same time evidence of a consent to the erection of other dams which may or may not have been economically feasible in conjunction with the admission of evidence of a dam which was economically feasible would have been to assume the economical feasibility of all of them. It would have been to raise in the minds of the jury a picture of non-existent conditions which might or might not be capable of realization but which, even though capable of realization, would involve in their proof questions of structure, costs, and resulting benefits. Such evidence is wholly in opposition to the fundamental principles in the Manda and similar cases heretofore so frequently cited.

For the foregoing reasons the Judgment of the Circuit Court should be affirmed.

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