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NOTICE AND GROUNDS OF APPEAL.

Filed.

NEW JERSEY SUPREME COURT.

GEORGE F. HEWSON, *Prosecutor,* *vs.* THE CITY OF NEWARK and WILLIAM J. EGAN, City Clerk of the City of Newark, *Defendants.*	*On Certiorari.* *Notice and Grounds of Appeal.*

To Jerome T. Congleton, Esquire, Attorney of Defendants:

Take notice that the prosecutor appeals to the Court of Errors and Appeals of the State of New Jersey, from the judgment entered in this case, upon the following ground:

That the Supreme Court erred in giving judgment that the findings, determination, order and proceedings under review in this case be affirmed, instead of giving judgment that the same be set aside.

EDWIN G. ADAMS,
Attorney of Appellant.

Dated November 5, 1920.

Due service of a copy of the within notice is hereby acknowledged, November 5, 1920.

JEROME T. CONGLETON,
Attorney of Defendants.

WRIT OF CERTIORARI.

NEW JERSEY, *ss.*

The State of New Jersey to the City of Newark and to William J. Egan, City Clerk of the City of Newark, GREETING:

We being willing for certain reasons, to be certified, of certain findings, determination, order and proceedings adopted, made, had and done by Alexander Archibald, as Director of the Department of Revenue and Finance of the City of Newark, whereby the said Alexander Archibald as Director aforesaid, did claim and exercise the power and authority to dismiss and remove from office one George F. Hewson as a member of the Board of Assessment and Revision of Taxes of the City of Newark, hereby command that you send, to our Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, on the 14th day of April, next, the said findings, determination, order and proceedings, with all things touching and concerning the same, as fully and entirely as they remain before you, together with this Writ, that we may further cause to be done what of right and according to law ought to be done.

WITNESS, William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this 25th day of March, 1920.

ENOCH L. JOHNSON,
Clerk.

EDWIN G. ADAMS,
Attorney.

Allocatur. The writ not to operate as a stay.

WM. J. GUMMERE, *C. J.*

New Jersey State Library

Return.

RETURN.

In obedience to the command of the within writ directed to me, I, William J. Egan, City Clerk of the City of Newark, do hereby certify and send to the Honorable The Justices of the Supreme Court of Judicature of the State of New Jersey, certain findings, determination, order and proceedings adopted, made, had and done by Alexander Archibald, as Director of the Department of Revenue and Finance of the City of Newark, whereby the said Alexander Archibald, as Director as aforesaid, did claim and exercise the power and authority to dismiss and remove from office one George F. Hewson as a member of the Board of Assessment and Revision of Taxes of the City of Newark, with all things touching and concerning the same, as fully and entirely as they remain before me, together with the said writ, as within I am commanded.

THE CITY OF NEWARK,

By WILLIAM J. EGAN,
City Clerk.

Resolution adopted by the Board of Commissioners of the City of Newark, November 20, 1917.

Commissioner Archibald offered the following resolution:

RESOLVED, That the Common Council of the City of Newark, the Board of Street and Water Commissioners, the Board of Health, Trustees of the Newark City or Parental Home for Boys, Trustees of the Free Public Library, Board of Assessment and Revision of Taxes, Board of Commissioners of Assessments for Local Improvements, Sinking Fund Commission, Insurance Fund Commission, the Board of Police Commissioners, the Board of Fire Commissioners, the Board of Excise Commissioners, the Board of Recreation Commissioners, the Board of Shade Tree Commissioners, City Plan Commission and City Zoning Commission be and the same are hereby abolished and the term of the members of the above named boards and commissioners is hereby terminated.

Charles P. Gillen,
A. Archibald,
Thomas L. Raymond,
William J. Brennan,
John F. Monahan.

Return.

The roll being called the resolution was declared adopted by the following votes:

Yeas—Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen.

Resolution adopted by the Board of Commissioners of the City of Newark, November 20, 1917.

Commissioner Archibald offered the following resolution.

RESOLVED, That the Director of the Department of Revenue and Finance of Newark shall be substituted for the Comptroller, Treasurer of Accounts, Receiver of Taxes, Board of Assessment and Revision of Taxes, Commissioners of Assessments for Local Improvements, Sinking Fund Commission and Insurance Fund Commission; shall be vested with all the authority, power and rights now or heretofore vested in said Comptroller, City Treasurer, Auditor of Accounts, Receiver of Taxes, Board of Assessment and Revision of Taxes, Commissioner of Assessments for Local Improvements, Sinking Fund Commission and Insurance Fund Commission; and shall perform all the duties now or heretofore imposed upon said Comptroller, Treasurer, Auditor of Accounts, Receiver of Taxes, Board of Assessment and Revision of Taxes, Commissioners of Assessments for Local Improvements, Sinking Fund Commission and Insurance Fund Commission.

A. Archibald,
Charles P. Gillen,
Thomas L. Raymond,
William J. Brennan,
John F. Monahan.

The roll being called the resolution was declared adopted by the following votes:

Yeas—Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen.

Resolution adopted by the Board of Commissioners of the City of Newark, November 20, 1917.

Commissioner Raymond offered the following resolution:

WHEREAS, Chapter 275 of the Laws of 1915 authorized this Board of Commissioners to delegate the judicial power of hearing charges against any employee of the City Government to the head of the department in which said employee is in service.

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RESOLVED, That from and after the passage of this resolution the Directors of the respective departments shall, whenever charges are preferred against any officer or employee of this city, conduct the trial of said employee and render judgment thereon which judgment, upon the filing of a memorandum with the City Clerk, shall become the judgment of this Board, and it is further

RESOLVED, That each of the trials of accused employees conducted in any of the departments of this city a member of the Law Department shall be present to advise the Commissioner or Director conducting said trial and to advise the accused employees who are not represented by counsel, of their legal rights.

Charles P. Gillen,
Thomas L. Raymond,
A. Archibald,
William J. Brennan,
John F. Monahan.

The roll being called the resolution was declared adopted by the following votes:

Yeas—Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen.

Resolution adopted by the Board of Commissioners of the City of Newark, December 5, 1917.

RESOLVED, That a Board of Assessment and Revision of Taxes, consisting of three members, be and the same is hereby created, under the Department of Revenue and Finance, and charged with the duty of making all assessments of real and personal property within the city, for the purpose of taxation in accordance with the laws of the State relating to taxation.

Charles P. Gillen,
Thomas L. Raymond,
William J. Brennan,
A. Archibald,
John F. Monahan.

The roll being called the resolution was declared adopted by the following votes:

Yeas—Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen.

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Resolution adopted by the Board of Commissioners of the City of Newark, December 5, 1917.

RESOLVED, That George F. Hewson be and he hereby is appointed as a member of the Board of Assessment and Revision of Taxes of the City of Newark, at an annual salary of three thousand dollars, to be paid semi-monthly as other salaries are paid, and the City Clerk is hereby directed to place his name on the pay roll.

Charles P. Gillen,
Thomas L. Raymond,
William J. Brennan,
A. Archibald,
John F. Monahan.

The roll being called, the resolution was declared adopted by the following votes:

Yeas—Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen.

Resolution adopted by the Board of Commissioners of the City of Newark, October 9, 1919.

Commissioner Monahan offered the following resolutions:

WHEREAS, The City of Newark, as successor of the Mayor and Common Council of the City of Newark, has a certain interest in land in the City of Newark, by virtue of a final decree entered in the Court of Chancery of New Jersey, on the 3rd day of November, 1917, in a cause therein pending wherein Frederick F. Guild and others, executors, etc., were complainants, and the Mayor and Common Council of the City of Newark, and others, were defendants, and also under certain deeds made to said the Mayor and Common Council of the City of Newark by parties defendant in said suit, which said lands are situated in the City of Newark, and are more particularly described as follows:

BEGINNING in the westerly line of Broad street at the southerly corner of land of Charles S. Macknet, deceased, thence along said street south 29° 30′ west 33 feet to the middle of the partition wall between the house on the premises hereby conveyed and house adjoining on the south, now belonging to William T. Carter; thence about north 60° west through the middle of said partition wall and along a fence in continuation thereof 250 feet to a point distant southerly exactly 33 feet from the southerly line

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of said Macknet's land, parallel with Broad street; thence north 29° 30′ east 33 feet to said Macknet's land; thence along same south 60° east 250 feet to the BEGINNING; and

WHEREAS, Said lands are not suitable or convenient or needed for public use by said the City of Newark;

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of the City of Newark, that by virtue of the authority of Article 18, Chapter 152 of the Laws of 1917, of the State of New Jersey, said interest in the City of Newark in the lands above described be sold, at public sale, to the highest bidder, after public advertisement given in a newspaper circulating in the municipality, at least once a week, for two weeks, prior to such sale, and,

BE IT FURTHER RESOLVED, That the Director of the Department of Parks and Public Property of the City of Newark, be and he is hereby authorized to offer the interest of said the City of Newark in said above described lands for sale to the highest bidder, and to report said sale and the terms thereof to this Board for confirmation.

John F. Monahan,
William J. Brennan,
Charles P. Gillen,
A. Archibald,
Thomas L. Raymond.

Resolution adopted by the Board of Commissioners of the City of Newark, October 30, 1919.

Commissioner Monahan offered the following resolution:

WHEREAS, by resolution adopted by this Board on October 9, 1919, the Director of the Department of Parks and Public Property of the City of Newark was authorized to sell, at public sale, to the highest bidder, certain lands and premises in the City of Newark, Essex County, New Jersey, described as follows:

BEGINNING in the westerly line of Broad street at the southerly corner of land of Charles S. Macknet, deceased; thence along said street south 29° 30′ west 33 feet to the middle of the partition wall between the house on the premises hereby conveyed and the house adjoining on the south, now belonging to William T. Carter; thence about north 60° west through the middle of said partition wall and along a fence in continuation thereof 250 feet to a point distant southerly exactly 33 feet from the

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southerly line of said Macknet's land parallel with Broad street; thence north 29° 30′ east 33 feet to said Macknet's land; thence along same south 60″ east 250 feet to the BEGINNING, and

WHEREAS, In accordance with said resolution the Director of the Department of Parks and Public Property did expose at public sale the interest of said The City of Newark in said lands, and did receive therefor a bid of $32,600, said bid being made by McAllister, Carton & Stultz Corporation, a corporation, and did accept said bid:

THEREFORE BE IT RESOLVED, By the Board of Commissioners of the City of Newark that the action of the Director of the Department of Parks and Public Property in accepting the aforesaid bid, be and the same is hereby ratified and confirmed and the Mayor and the City Clerk of the said The City of Newark are hereby authorized and directed to execute a bargain and sale deed, with covenant against grantor's acts, to the purchaser of said land or any interest therein owned by said The City of Newark.

John F. Monahan,
A. Archibald,
Charles P. Gillen,
Thomas L. Raymond,
William J. Brennan.

The roll being called, the resolution was declared adopted by the following votes:

Yeas—Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen.

Extract from minutes of meeting of the Board of Commissioners of The City of Newark, held January 15, 1920:

"Newark, N. J., January 15, 1920.

A regular meeting of the Board of Commissioners of Newark, N. J., was held on the above date in the Council Chamber, City Hall, Newark, at 11 o'clock A. M.

Present: Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen.

The minutes of the meeting of January 8th, 1920, were read and approved.

Mr. William H. Parry appeared before the Board and made the following statement: I appear in a somewhat dual capacity. In

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the first place, as attorney for Mr. William E. Cavanagh, who is a taxpayer and resident of this city, and also appear in the capacity as a member of the committee of which Mr. Cavanagh is also a member. I am appearing as counsellor for that committee in presenting formal charges, which have been brought to the attention of the public against two members of the Board of Assessment and Revision of Taxes of this city. We are here this morning for the purpose of presenting formal charges, made by Mr. Cavanagh as a taxpayer and resident of the city, against two members of that Board. At the outset I might perhaps read the charges themselves."

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

William E. Cavanagh, of full age, being duly sworn upon his oath, deposes and says:

1. That he is a taxpayer of the City of Newark in the County of Essex and State of New Jersey and resides at No. 10 Kenmore avenue in said city.

2. That he is also chairman of a committee of the Federation of Improvement Association of the City of Newark, an association not for pecuniary profit, of the State of New Jersey, which has been investigating certain charges made against George Hewson and John Howe, members of the Board of Assessment and Revision of Taxes of the City of Newark.

3. That at the time or times hereinafter mentioned, in which certain charges are enumerated against the said George Hewson, and from thence hitherto, the said George Hewson has been a member and still is a member of the Board of Assessment a Revision of Taxes of the said City of Newark; that as such member, it became and was his duty, to use his said office solely in the interest of the said City of Newark, and not for his private emolument or gain.

4. That on different dates and times, during the calendar year 1919, and more particularly on or about the first day of March, 1919, and at divers other dates or days in the year 1919, the said George Hewson, while in the office provided by the City of Newark or the governing body thereof for the use of the members of said Board of Assessment and Revision of Taxes and for the use

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of taxpayers of said City, having business with said Board, solicited business from persons having business with said office, for his personal business, to wit, that of a dealer in real estate or the member of a firm, dealing in real estate, to the best of deponent's information and belief; that the said George Hewson at the times hereinbefore mentioned handed out cards, bearing his own name or the name of the real estate firm of which he was a member, for the purpose of soliciting business from persons having business with said Board of Assessment and Revision of Taxes; that at the times hereinbefore mentioned, he solicited business from representatives of Maas & Waldstein Co., a company which is a large taxpayer in said city; and also from Tonks Brothers, a firm or company, which pays taxes to the City of Newark, and also solicited business from other taxpayers in said city; that all of said solicitations hereinbefore referred to were made with persons having business to do with the said Board of Assessment and Revision of Taxes.

5. Deponent further says that the said George Hewson does not devote his time exclusively to the work of said Board of Assessment and Revision of Taxes, but is engaged in the real estate business in said City of Newark, that the persons from whom he solicited business as aforesaid were either the owners or the representatives of owners of property, which the said George Hewson would be called upon to assess or assist in assessing for the purposes of taxation for the City of Newark.

6. Deponent further says that as a member of said Board of Assessment and Revision of Taxes, it became and was the duty of the said George Hewson to be courteous and civil to persons having business relations with said Board.

7. Deponent further says that the said George Hewson at different dates in the year 1919, from on or about March 1, 1919, to December 1, 1919, to the best of deponent's information and belief used insulting language to persons appearing before said Board of Assessment and Revision of Taxes concerning assessments and taxes.

8. Deponent further says, that to the best of his information and belief, the said George Hewson, on or about the first day of November, 1919, insulted one Frank I. Liveright, a representative of the firm of L. Bamberger & Co., a taxpayer of the city of Newark, when the said Liveright appeared before said Board, by using the following language:

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"All department stores are profiteering and Bamberger's is the worst one;" and addressing the said Liveright personally said to him: "As a merchant you are a piker."

9. Deponent requests that the said George Hewson be tried on the charges hereinbefore enumerated and that if the facts proven against him should warrant it, that he be removed from office as a member of the Board of Assessment and Revision of Taxes of the said City of Newark.

WILLIAM E. CAVANAGH.

Sworn and subscribed to before me at Newark, N. J., this 15th day of January, 1920.

WILLIAM E. HAMPSON,
A Master in Chancery of New Jersey.

Commissioner Raymond moved that this meeting be continued on Monday morning, January 19th, 1920, at 10:30 o'clock, and that the City Counsel in the meantime be requested to give us an opinion as to whether or not this Board has the power to hear the charges; that the City Counsel also be requested to formulate whatever charges he deems necessary against the two members of the Board of Assessment and Revision of Taxes so that we can proceed with the trial without delay.

The roll being called the motion was declared adopted by the following votes:

Yeas—Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen.

Abstract from minutes of the meeting of the Board of Commissioners of the City of Newark, held January 22, 1920.

An adjourned meeting of the Board of Commissioners of the City of Newark, N. J., was held on the above date in the Mayor's office, City Hall, at 10:30 A. M.

Present: Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen.

Mayor Gillen: This meeting, as I understand it, is for the purpose of receiving the opinion of the City Counsel as to the

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power of this Board to hear the charges preferred by Mr. William E. Cavanagh against Tax Commissioner John Howe and George Hewson.

The Clerk then read the opinion of the City Counsel as follows:

CITY COUNSEL'S OFFICE.

JEROME T. CONGLETON,
City Counsel.

Newark, N. J., January 16, 1920.

Subject: Opinion *Re* procedure against members of the Tax Board, against whom charges have been filed.

The Board of Commissioners of the City of Newark.

Addressed:

Gentlemen:

You have asked my opinion as to who should hear the charges preferred by Mr. William Cavanagh, a taxpayer of the City of Newark, against Mr. John Howe and Mr. George F. Hewson, members of the Board of Assessment and Revision of Taxes, which charges involve their conduct as members of said Board.

In order to arrive at a clear understanding of the situation it is necessary to set forth, as briefly as possible, a statement of the legislation bearing upon the subject and the construction placed thereon by the courts.

When the Walsh Act was originally passed in 1911, section 4 thereof provided as follows:

> "4. The Board of Commissioners shall have and possess all administrative, judicial and legislative powers and duties now had and possessed and exercised by the Mayor and City Council and all other executive or legislative bodies in said city, and have complete control over the affairs of the city adopting the provisions of this act. The executive, administrative and legislative powers, authority and duties in such city shall be distributed into and among five departments * * * ."
>
> "The Board of Commissioners shall determine the powers and duties to be performed by each department and assign such powers and duties to the appropriate departments, and they shall prescribe the powers and duties of all

officers and employees, and they may assign particular officers and employees to one or more departments and may require any officer or employee to perform duties in two or more departments, and make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city." * * *

"The Board of Commissioners shall at the first meeting or as soon as may be after organization, create such subordinate boards and appoint such officers as it may deem necessary for the proper and efficient conduct of the affairs of the city. Any board created may be abated, or any officer or employee appointed by the Board of Commissioners may be removed from office at any time for cause, after public hearing, and such Board of Commissioners shall be the sole judge of the sufficiency of the cause of such removal."

"* * * *."

While the law was in this situation, a police officer was placed on trial before the Board of Commissioners of Atlantic City, found guilty, and was, by resolution of the Board, dismissed from the force. Prior to this trial there had been adopted by the Board of Commissioners an ordinance, section 1 of which provided as follows:

"Officers and members of the police and fire departments of Atlantic City shall be appointed and removed by the Director of the Department of Public Safety, removal being had upon charges, in writing, served upon the person accused, and after hearing thereon, as provided by law."

This case, *Herbert* v. *Atlantic City,* was to the Supreme Court, and is reported in 87 N. J. Law, 98.

It was argued on the part of the dismissed police officer that the Board of Commissioners were without jurisdiction to hear and determine the charges because of the ordinance above referred to, and that the trial should have been before the Director of the Department of Public Safety. The Court disposed of this contention as follows:

"A complete answer to this contention is to be found in the act of 1913, amendatory to the act of 1911, P. L., p. 836.

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This act clearly contemplates a trial by the Board of Commissioners.

Section 4 of the act expressly provides that: 'The Board of Commissioners shall have and possess all administrative, judicial and legislative powers and duties now had and possessed and exercised by the Mayor and City Council and all other executive or legislative bodies in said city * * *.'

'The executive, administrative and legislative powers, authority and duties shall be distributed into and among the five departments.'

It is to be noted that the judicial powers vested in the Board of Commissioners is not included in this distribution of the exercise of powers and duties and it must be assumed that the legislature clearly intended that such judicial powers should be retained by the Commissioners, as a Board, and not to be delegated by it.

It therefore follows as a logical result that no resolution or ordinance adopted by the Board of Commissioners of Atlantic City could lawfully transfer these judicial powers to the Director of the Department of Public Safety or of any other department.

These views lead to an affirmance of the proceedings of the Board of Commissioners, with costs."

After this decision, section 4 of the original act quoted above was amended by inserting the word "judicial" in the second sentence, after the word "administrative" and before the word "and," so that the sentence, as amended, now reads as follows:

"The executive, administrative, judicial and legislative powers, authority and duties in such city shall be distributed into and among five departments * * * *."

This, I think, fully describes the state of law at the time the Walsh Act was adopted in the City of Newark.

At the organization meeting, held November 29, 1917, the Board adopted the following resolution:

"Resolved, That the Director of the Department of Revenue and Finance of Newark shall be substituted for the Comptroller, Treasurer of Accounts, Receiver of Taxes, Board of Assessment and Revision of Taxes, Commissioners of Assessments for Local Improvements, Sinking

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Fund Commission and Insurance Fund Commission; shall be vested with all the authority, power and rights now or heretofore vested in said Comptroller, City Treasurer, Auditor of Accounts, Receiver of Taxes, Board of Assessment and Revision of Taxes, Commissioner of Assessments for Local Improvements, Sinking Fund Commission and Insurance Fund Commission; and shall perform all the duties now or heretofore imposed upon said Comptroller, Treasurer, Auditor of Accounts, Receiver of Taxes, Board of Assessments and Revision of Taxes, Commissioners of Assessments for Local Improvements, Sinking Fund Commission and Insurance Fund Commission."

At the same meeting the following resolution was adopted:

"WHEREAS, Chapter 275 of the Laws of 1915, authorizes this Board of Commissioners to delegate the judicial powers of hearing charges against any employee of the City Government to the head of the Department in which said employee is in service;

RESOLVED, that from and after the passage of this resolution the directors of the respective departments shall, whenever charges are preferred against any officer or employee of this city, conduct the trial of said employee and render judgment thereon, which judgment, upon the filing of a memorandum thereon with the City Clerk, shall become the judgment of this Board, and it is further

RESOLVED, that at each of the trials of accused employees conducted in any of the departments of this city a member of the law department shall be present to advise the Commissioner or Director conducting said trial and to advise the accused employees who are not represented by counsel, of their legal rights."

At a later meeting, held on December 20, 1917, the Board of Assessments and Revision of Taxes, as we speak of it, was created by the following resolution:

"Resolved, That a Board of Assessment and Revision of Taxes consisting of three members, be and the same is hereby created, under the Department of Revenue and Finance, and charged with the duty of making all assessments of real and personal property within the city for the purpose of taxation, in accordance with the laws of the State relating to taxation."

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At the same meeting, by separate resolutions, Mr. Howe and Mr. Hewson were appointed members of said board.

After the amendments of 1915, above referred to, which gave the Commission the power to distribute into the various departments the judicial powers vested in the Board of Commissioners upon its organization, a police officer of the City of Orange was charged with violating one of the police rules and was tried on the charge by the Board of Commissioners, found guilty and dismissed from the force. This case went to the Supreme Court, and the Supreme Court held that the Board of Commissioners, sitting as such Board, was without jurisdiction to try the police officer, and the proceedings was set aside. The City of Orange was dissatisfied with the decision of the Supreme Court and carried the case to the Court of Errors and Appeals, which opinion is recorded in *Foley* v. *Orange,* 91 N. J. L., 554.

In this case the Court, speaking by Mr. Justice Garrison, sustained the Supreme Court, and held that the Board of Commissioners was without jurisdiction, and that the police officer should have been tried before the Director of Public Safety. This opinion is so strong in its statements that I feel I should set the same forth in full, which I accordingly do:

"GARRISON, *J.*

"The question to be decided is whether the jurisdiction to try charges against a police officer of a city governed under the Walsh Act (P. L. 1912, p. 643) was taken away from the Board of Commissioners by the amendment of the fourth section of such act (P. L. 1915, p. 494). Prior to such amendment all of the judicial power of the Board of Commissioners was vested in the Board itself, which by reason thereof was in effect a judicial tribunal of a somewhat anomalous character. This situation arose from the fact that while the parent act distributed among the several departments created by it all of the executive and administrative power and authority of the city government, it omitted to make a similar distribution of the judicial power. The amendment of 1915 supplied this omitted provision by the insertion of the word 'judicial' among the powers that 'shall be distributed' to any among the several departments which placed the judicial power appropriate to any one of such departments, upon precisely the same

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footing as the executive and administrative powers, *i. e.,* to be exercised by the commissioner of such department and not by the Board itself as a body. The legislative will thus declared was imposed upon the municipal agent without regard to its concurrence or dissent, which would be as nugatory in the one case as it would be futile in the other. The statute being imperative and importing absolute obligation was self-executing, a rule that lies at the root of all legislative supremacy. 'The presumption,' said Mr. Justice Trenchard in Haythorne *v.* Van Kauren, 79 N. J. L. 101, 'is that the word "shall" in a statute is used in an imperative and not in a directory sense. If a different interpretation is sought, it must rest upon something in the character of the legislation or in the context which will justify a different meaning.' In the present case, the context is the declaration by the supreme legislative authority of a state that the governmental powers granted by it shall be exercised in a particular manner. Such a declaration from such a source upon such a subject, *ipso facto,* distributed the judicial power in accordance with the legislative mandate. The contention that thereafter the judicial power remained where it was before such distribution must rest upon the notion that words have no settled meaning or that language is powerless to express thought.

The judgment of the Supreme Court is affirmed, with costs."

I also call your attention to the case of *Brennan* v. *Jersey City,* 104 Atl. Rep. 90, where the Board of Commissioners of Jersey City had adopted a resolution similar to the one adopted by you at your organization meeting, delegating to the individual commissioners as directors of their respective departments, the judicial authority to try their subordinates. In this case the Court disposed of the contention that the person upon trial should have been tried before the entire Board and not before the Director of the department of which the person under charges was a member, as follows:

"With the claim that the director had no jurisdiction we find no difficulty. * * * The powers of the Police Board passed upon the adoption of the Commission Government Act to the Board of City Commissioners. It was

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held in Herbert *v.* Atlantic City, 87 N J. L., 98,—93 Atl. 80, that the clause (Section 4) of that act as first enacted, relating to distribution of powers among the individual commissioners, did not include the judicial power, but this was amended in 1915 (Public Law, p. 495), so that the appropriate commissioner may act alone, and it appears that a formal resolution delegating to the several commissioners as directors of their respective departments the judicial authority to try their subordinates was duly passed by the Board. This resolution provided that the Directors of the various departments, should, whenever charges should be preferred against the officer or employee of the city conduct the trial of said employee and render judgment thereon, which judgment upon the filing of a memorandum thereon (*sic*) with the City Clerk, should become the judgment of the Board * * *. We consider that it endowed the Director of Public Safety, as the head of the Police Department, with the necessary authority in the premises."

See also, to the same effect, *Apple* v. *Atlantic City,* 103 Atl. Rep. 89; *Crane* v. *Jersey City,* 103 Atl. Rep. 678.

In view of the action heretofore taken by you at your organization meeting, and of the decisions of our courts construing section 4 of the Walsh Act, as amended, it is my opinion:

1. That the Board of Assessment and Revision of Taxes as created, is a part of the Department of Revenue and Finance.

2. That the judicial power relating to this department is vested in the Director of the Department of Revenue and Finance.

3. That the jurisdiction to try the charges preferred against Mr. Howe and Mr. Hewson is vested in the Director of the Department of Revenue and Finance, and not in the Board of Commissioners, as a whole.

Yours respectfully,

JEROME T. CONGLETON,
City Counsel.

* * * *

The following resolution offered by Commissioner Raymond was then read by the Clerk:

WHEREAS, at a meeting of this Board held on January 15, 1920, charges were prepared by William Cavanagh, a taxpayer of the

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City of Newark, against John Howe and George F. Hewson, members of the Board of Assessment and Revision of Taxes, involving their official conduct as members of said Board; and

WHEREAS, this Board has been advised in writing by the City Counsel that the Director of the Department of Revenue and Finance alone is vested with jurisdiction to try said parties upon said charges;

THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the City of Newark, that the charges filed with this Board by William Cavanagh involving the official conduct of John Howe and George F. Hewson as members of the Board of Assessment and Revision of Taxes be and the same are hereby referred to Commissioner Alexander Archibald, Director of the Department of Revenue and Finance, to take such action with respect thereto as to him may seem fit and proper.

THOMAS L. RAYMOND,
A. ARCHIBALD,
WILLIAM J. BRENNAN,
CHARLES P. GILLEN,
JOHN F. MONAHAN.

* * * *

The roll was then called for the vote on the resolution presented by Commissioner Raymond, which was declared adopted by the following votes:

Yeas—Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen.

Mayor Gillen: I vote aye with the understanding that this Board take up after the trial matters pertaining to the whole taxation question.

WHEREAS, William Cavanagh, a taxpayer of the City of Newark, has preferred and made formal charges to The Board of Commissioners of the The City of Newark against George F. Hewson, a member of the Board of Assessment and Revision of Taxes, charging him with neglect of his duty as a member of said Board; with using his official position as a member of said Board for his private business; with being discourteous and uncivil to persons having business relations with him as a member of said Board; and with using insulting language to persons appearing before him as a member of said Board; and

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WHEREAS, the City Counsel has rendered an opinion to the effect that the jurisdiction to try said George F. Hewson upon said charges is vested in the Director of the Department of Revenue and Finance; and

WHEREAS, upon receipt of said opinion The Board of Commissioners of The City of Newark, did, by resolution refer the charges filed with them against the said George F. Hewson to the Director of the Department of Revenue and Finance to take such action with respect thereto as to him should seem fit and proper:

NOW THEREFORE I, ALEXANDER ARCHIBALD, Director of the Department of Revenue and Finance of the City of Newark, do hereby entertain said formal charges and do hereby fix Wednesday, the fourth day of February, 1920, at ten o'clock in the forenoon, as the time, and the Board of Commissioners' Chambers, in the City Hall, Newark, New Jersey, as the place of the hearing and determination of said charges, and the trial thereon of said George F. Hewson, by me, Alexander Archibald, Director of the Department of Revenue and Finance of the City of Newark, and I do hereby direct that a copy of said charges and of this Order, certified to by the City Clerk, be served upon said George F. Hewson, a member of the Board of Assessment and Revision of Taxes, personally, by the messenger of The Board of Commissioners of The City of Newark, on or before the twenty-second day of January, 1920, and that said George F. Hewson appear before the Director of The Department of Revenue and Finance at said time and place, to answer to said charges and be tried thereon.

(Signed) A. ARCHIBALD,
Director of the Department of Revenue and Finance of the City of Newark.

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AMENDMENTS TO THE CHARGES AGAINST GEORGE HEWSON.

First: That the time in the charges already preferred against him be enlarged to include the calendar year 1918 as well as the year 1919.

Second: That the said George Hewson has on numerous occasions during the years 1918 and 1919 handed out his business cards to persons having legitimate business before the Board of Assessment and Revision of Taxes.

Third: That he has on numerous occasions solicited business from persons interested in and endeavoring to secure reduction of taxes, among others, from Joseph M. Riker, Arthur Hart of the Joseph M. Byrne Co., Dr. Walker of the Maas & Waldstein Co., and other persons, such solicitations being both at the tax office in the City Hall and at the office of the County Tax Board.

Fourth: That on several occasions during said years, he has unfairly raised the assessments of citizens or business enterprises because of their failure or unwillingness to contract personal business with the said George Hewson, or the firm of which he is a member, as for instance, Walsh's Sons & Co. on personal property at 295 Passaic street; Richard Stockton, on his residence at 423 Ridge street; the personal property of Maas & Waldstein at Doremus avenue and on Riverside Ave.; New Jersey Machinery Exchange, at No. 21 Mechanic St., and Tonks Brothers, at 227 High street.

Fifth: That he has during said years attempted to raise to an unfair figure the taxable valuations of business enterprises in the City of Newark on the ground of personal spite or spleen, or to satisfy or requite the spite or spleen of himself, or his partners, as, for example, the property of the Newark Evening News and the Newark Sunday Call.

Sixth: That he has during said years treated discourteously and in an insulting manner persons appearing before the Board or having business at the office to such an extent as to demonstrate the fact that he is an unfit person to occupy his position, among others being Frank A. Liveright of L. Bamberger & Co., Moses Plaut and James E. Mullaney of L. S. Plaut & Co., Isidore Kraushear of 63 Market street, H. M. Anderson of the Great

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Atlantic and Pacific Tea Co., Robert Metzler, Nathan Bilder and Bramley.

Seventh: That he has during said years unfairly reduced, or caused to be reduced, tax assessments in cases where he has received business or profit from the persons for whom reductions were made, among others being assessments against Tonks Brothers.

Eighth: That he has during said years acted as agent for the sale of lands belonging to the City of Newark, of which he is an employee, and has received a commission from the proceeds of the sale, thereby depleting the proceeds of such sale received by the city, although he was not employed by the city to act as such agent. Under this specification, reference is made to the sale of property formerly belonging to the estate of the late Alice Hayes on Broad street, north of Kinney street.

WILLIAM E. CAVANAGH.

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

MICHAEL SMITH, of full age, being duly sworn according to law, says that he is messenger of the City of Newark under the direction of the City Clerk of said city; that on the twenty-first day of January, 1920, this deponent served the annexed orders and resolution and charges on John Howe and George F. Hewson respectively by delivering true copies thereof to each of them personally, at the same time informing them of the contents thereof.

MICHAEL SMITH.

Subscribed and sworn to before me this
22nd day of January, A. D. 1920.

GEO. E. CARPENTER,
Master in Chancery of New Jersey.

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WHEREAS, William Cavanagh, a taxpayer of the City of Newark, has filed amendments to charges heretofore filed against George F. Hewson, a member of the Board of Assessment and Revision of Taxes;

NOW, THEREFORE, I, ALEXANDER ARCHIBALD, Director of the Department of Revenue and Finance of the City of Newark, do hereby entertain said amendments to said original charges and do hereby fix Tuesday, the 17th day of February, 1920, at 10 o'clock in the forenoon, as the time, and the Board of Commissioners' Chambers, in the City Hall, Newark, New Jersey, as the place of the hearing and determination of said amendments, together with said original charges and the trial thereon of said George F. Hewson, by me, Alexander Archibald, Director of the Department of Revenue and Finance of the City of Newark, and I do hereby direct that a copy of said amended charges and of this Order, certified to by the City Clerk, be served upon said George F. Hewson, a member of the Board of Assessment and Revision of Taxes, personally, by the messenger of the Board of Commissioners of the City of Newark, on or before the 9th day of February, 1920, and that said George F. Hewson appear before the Director of the Department of Revenue and Finance at said time and place, to answer to said charges and amendments thereto and be tried thereon.

A. ARCHIBALD,
Director of the Department of Revenue and Finance of the City of Newark.

Opening.

In the Matter of the Hearing of the Charges Preferred against George F. Hewson, a member of the Board of Assessment and Revision of Taxes.

Transcript of shorthand notes of testimony, &c., taken before Hon. Alexander Archibald, Director of the Department of Revenue and Finance, at the City Hall, Newark, N. J., on Wednesday, February 25, 1920, at ten o'clock A. M.

Appearances:

For the Director, Jerome T. Congleton, Esq. (city counsel).

For the Federation of Improvement Associations (prosecutor), William H. Parry, Esq.

For George F. Hewson, Edwin G. Adams, Esq.

For John Howe, William P. Hurley, Esq.

Director Archibald. We will proceed with the charges filed against Mr. Hewson. For the purpose of the record, will you admit service of the charges against Mr. Hewson?

Mr. Adams. We will admit service of the charges and of the amended or supplemental charges.

Director Archibald. And the order by me as Director fixing this time for the hearing.

Mr. Adams. Yes.

Director Archibald. Do you desire that the order of procedure be read or that it be considered as read?

Mr. Adams. I consent that it be considered as read.

Director Archibald. The procedure will be as follows in this case, and, as in the other case, the testimony will be confined to the charges:

First. That the charges be prosecuted by Mr. Cavanagh or by his counsel.

Second. That said George F. Hewson may be represented by counsel if he so desire.

Third. That said George F. Hewson appear before the Director of the Department of Revenue and Finance and plead to the said charges, either in person or by his counsel.

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Fourth. That Mr. Cavanagh or his attorney then proceed to examine witnesses and produce evidence to substantiate the said charges.

Fifth. That the said George F. Hewson or his counsel may address the Director of Revenue and Finance in opening his defense and then proceed to examine witnesses and produce such testimony in defense as he may desire.

Sixth. After the said George F. Hewson shall have completed his defense, either party may produce such evidence or testimony in rebuttal as the Director of Revenue and Finance shall adjudge competent.

Seventh. After the testimony is closed the said George F. Hewson shall be heard in his defense, either in person or by counsel, and the prosecution shall be heard in reply.

Eighth. All questions upon the admission or rejection of evidence arising during the hearing shall be decided by the Director of Revenue and Finance.

Ninth. The hearing may be adjourned and continued from time to time until the same shall be concluded.

Mr. Adams. I have one or more motions that I desire to make. Without any reflection upon the personnel of this tribunal, but for the purpose of what I conceive to be the legal rights of my client, we object to the jurisdiction of the Director of the Department of Revenue and Finance to try the charges which have been presented against him, upon the ground that no such jurisdiction is legally vested in the Director. I would ask for a ruling on that.

Director Archibald. I am proceeding in this matter upon the opinion rendered by the city counsel, and, therefore, I will have to overrule the objection.

Mr. Adams. I have certain objections to make to the charges as they have been presented; I have formulated these objections in writing, and in order that they may appear on the record in the form which I have prepared I will read them and hand a copy of the objections to the stenographer.

I object to the following charges being entertained and move that the same be stricken out or dismissed upon the following grounds:

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1. The attempt in the first paragraph of the amendment or supplemental charges to enlarge the time or times specified in the original charges, upon the ground that the said paragraph is vague and indefinite and fails to specify in any manner the charges which respondent is called upon to meet thereunder.

2. The charge contained in the second paragraph of the amended or supplemental charges, upon the ground that the same is vague, indefinite and uncertain as to time, occasion, place and persons involved, and fails to apprise defendant of the case which he is called upon to meet.

3. The charges contained in the third paragraph of the amended supplemental charges, upon the ground that there is no specification therein of time or place as to the soliciting of business; nor any specification of time, property, assessment or application for reduction of assessment as to the endeavoring of the persons therein named to secure reductions of taxes; and therefore these charges fail to apprise respondent of the case which he is called upon to meet.

4. The charges contained in the fourth paragraph of the amended or supplemental charges upon the ground that there is no specification therein of time, nor of the particulars of the alleged unfair raising of assessments, nor, as to New Jersey Machinery Exchange or Tonks Brothers, as to the property involved. Also upon the ground that the charges in this paragraph fail to specify any particulars whatever as to or concerning the alleged failure or unwillingness of the taxpayers therein named to contract personal business with respondent or his firm, nor as to the relation between the alleged raising of assessments and the alleged failure and unwillingness of such taxpayers to so contract. Upon the further ground that the charges contained in this paragraph amount to a charge of malfeasance in office, and that this respondent is entitled to be apprised of the definite charge which he is called upon to meet.

5. The charges contained in the fifth paragraph of the amended or supplemental charges upon the ground that the same are vague, indefinite and uncertain, and fail to specify the time, the property and the unfair figures referred to; fail to specify wherein the alleged attempts to raise assessments were unfair, fail to specify the personal spite or spleen referred to, fail to specify in each case whether the alleged personal spite or spleen

was that of respondent or of other indefinite, unnamed persons, therein referred to as his partners. Also upon the ground that no taxpayers are named therein, the names specified being names not of taxpayers, but of newspapers. Upon the further ground that these charges also amount to charges of malfeasance in office, and this respondent is entitled to be apprised of the definite charge which he is called upon to meet.

6. The charges contained in the sixth paragraph of the amended or supplemental charges upon the ground that there is an entire absence of specification of the offenses sought to be charged save only the names of persons; and this respondent is not apprised either of the time of any of such alleged offenses nor of the alleged occurrences claimed to constitute discourtesy and insults, and is not informed as to the charges sought to be proved against him under this paragraph.

7. The charge in the seventh paragraph of the amended or supplemental charge upon the ground that there is no specification of time, of property, assessment, reduction of assessment, of business or profit therein alleged, nor of respondent's connection with any of these matters; and respondent is not apprised of the nature of the charge sought to be proved thereunder.

8. The charge contained in the eighth paragraph of the amended or supplemental charges upon the ground that the said charge does not allege any misconduct in office and does not allege the violation of any statute, ordinance or rule affecting this respondent in his said office.

Director Archibald. I will ask the city counsel to state my conclusions as to the objections made by Mr. Adams.

Mr. Congleton. At the request of Director, I would state his conclusions with respect to the objections just made.

As to the objections dealing with all of the charges except the eighth, it is the Director's opinion that there is sufficient in the various charges upon which he can receive certain testimony.

He will deal with objections to specific testimony as it is offered and objection made thereto.

The Director will not strike out the various charges upon the reasons stated.

As to the objection to the eighth charge, it is his opinion that evidence introduced under this charge could be received under the seventh section of the Walsh Act.

Joseph M. Riker, direct.

JOSEPH M. RIKER, sworn.

Direct examination by Mr. Parry.

Q Mr. Riker, what is your occupation? A I am a banker.

Q You are president of the Merchants National Bank of this city? A Yes, sir.

Q Did you go to the tax office in reference to property you owned on Lincoln Park? A I appeared as agent for some property on Lincoln Park, and also I think I said something about my own property.

Q Do you recall about the time that you called there? A I have called there very frequently.

Q With reference to this Lincoln Park property? A I think in the fall of 1918; also later, in the fall of 1919.

Q At the time that you went to the tax office, was it the purpose of your visit to complain about an assessment? A It was.

Q And while there did you have a conversation with Mr. Hewson? A I had a conversation with the board of which Mr. Hewson was one of the board.

Q And at that appearance which you made before the board, did you recite that you were willing to sell the property in question for less than the assessed valuation? A I did.

Q Did Mr. Hewson say anything to you at that time? A Mr. Hewson, as I remember, asked whether I was willing to sell it at the figure I named and whether he might sell it.

Q He asked you if you would sell it? A That is to the best of my memory; yes.

Q It was right at the meeting of the board itself? A At the meeting of the board.

Q Was anything said about a commission in case of a sale? A Nothing.

Q Did he tell you that he was a real estate agent? A No, sir.

Q Did you know that fact already? A I did not. I think it was the first time I had ever met Mr. Hewson.

Q What was your understanding from what he said?

Mr. Adams. I object to his understanding.

Director Archibald. Objection sustained.

Q Just what did Mr. Hewson say? A He asked whether he might sell it at that price; that is as I remember it. I want to

say that this is quite a while ago, and it made no impression on my mind of any importance.

Q Did he tell you at that time who he was? A I was introduced to him as Mr. Hewson, but not as a real estate agent.

Cross examination by Mr. Adams.

Q Was this in 1918 or in 1919? A 1918.

Q And you were seeking a reduction in an assessment on real estate? A On real estate, 13 Lincoln Park.

Q Real estate that you were willing to sell for less than the proposed assessed valuation? A Yes, sir.

Q Did you state what the figure was? A I did.

Q Did Mr. Hewson ask you whether you would sell the property at that figure if he got the buyer for it? A That is what I understood.

Q Did you say you would? A I said I would, or any other agent.

Q This was in the presence of the board? A In the presence of the board.

Q Did you understand from that that Mr. Hewson asked you to put the property in his hands? A I wasn't sure whether he was trying to do that, or whether he was trying to find out whether I was telling the truth about my willingness to sell, or whether it was—

Q Isn't that the impression it made on you, it was testing your good faith in seeking a reduction? A It made very little impression on my mind at all.

Re-direct examination by Mr. Parry.

Q Didn't you afterwards complain about the action of Mr. Hewson in asking for the right to sell your property?

Mr. Adams. I object on the ground that he is seeking to discredit his own witness.

Q Did you meet Mr. Howe the following day? A I don't remember whether I did or not, but I met Mr. Howe quite frequently; I don't remember.

Q Do you remember saying to Mr. Howe the next day that you thought it was pretty cheeky of a member of the tax board asking you for permission to sell your house when you had ap-

peared before the board in the matter of an assessment? A I don't remember.

Q Do you remember having some conversation of that sort? A I do not.

PHILIP WALSH, sworn.

Direct examination by Mr. Parry.

Q Mr. Walsh, what is your occupation? A Merchant.

Q And with what concern are you connected? A Walsh & Sons & Company.

Q And where is your plant located? A 795 Passaic street.

Q Do you know whose district it was in when the city was divided prior to January 1st, 1920, into three taxing districts? A No.

Q Do you know that there was a subdivision of the city into three taxing districts? A No, I don't.

Q You had no knowledge of that fact? A I presumed it, though I rather presumed it; I had some faint recollection of that being the method, but I was without positive knowledge of it.

Q Your plant is on Passaic street? A Yes.

Q What ward? A The First Ward—it might be in the Eighth Ward.

Q Did you appear before the tax board in reference to assessments on buildings belonging to your company? A Not to that company; no.

Q You did appear at the office of the tax board? A Yes.

Q What was the purpose of your visit? A To have them rectify what we thought was an over-assessment on property.

Q Where was that property located that you thought was over-assessed? A Well, the first property was meadow land which I called to see Mr. Howe about. The assessment had been trebled from one year to the next; rather an unusual increase; so I called to see Mr. Howe, I should judge, about two years in reference to that, and his explanation of it was that we were not being assessed any more than anyone else; not any more than our neighbor; a satisfactory explanation, which was accepted, and that subject was dropped at that time.

Q Did you appear later in reference to some other assessments? A Yes.

Philip Walsh, direct.

Q And what were they? A Assessments on property belonging to the Federal Real Estate Company, which is practically the Walsh estate.

Q Where is that located? A 81 Clay street.

Q And what was the objection to the assessment on that? A An increase of 100 per cent. from one year to the other, and no other property in the neighborhood increased either that year or the year before. It was deemed an unfair increase, and it was presented to the board to reconsider it.

Mr. Adams. Just a moment. May I ask under what charge this testimony is being offered?

Mr. Parry. This is in the fourth charge.

Mr. Adams. Is this the property which the witness has just described, to which your testimony is about to relate?

Mr. Parry. That is one of them. I don't know whether there are any more of them or not.

Mr. Adams. I object to it on the ground that the property specified is the personal property of Walsh & Sons on Passaic street, and the testimony seems to relate to the property of the Federal Real Estate Company. I also want to object to any testimony being received under this fourth paragraph upon the ground which I have already stated. I believe that the Director's ruling, as stated by the city counsel, leaves me in the position that I must object to the testimony when it is presented in order to preserve my rights.

Director Archibald. That seems to be the better way in order to protect your rights.

Mr. Adams. I object to this testimony on the ground that I have already stated, that it relates to property not specifically mentioned in this charge, and I object to any testimony under paragraph 4, on the ground that we have not been apprised of the charge that we have to meet under that paragraph.

Mr. Parry. As far as this particular charge is concerned I think I would ask leave to supplement the charge by inserting the words "Federal Real Estate Company." Mr. Walsh is a representative of the company, and he is the one who has charge of the matter.

Director Archibald. I do not want to be too technical, but I do not see why I should strike this out if it relates to Walsh property. I overrule the objection.

Q You say the Federal Real Estate Company is virtually the Walsh estate? A Yes.

Q And formerly belonged to the Walsh estate? A No, it is practically an unincorporated form of the Walsh estate.

Q Are you an officer of the company? A Yes.

Q What office do you hold? A Secretary-treasurer.

Q Mr. Walsh, did you make an appeal to the county board of taxation on any of the assessments that you had? A Yes.

Q And which did you appeal upon? A An appeal upon the property which is occupied by Walsh & Sons & Company, but is owned by the Brothers Realty Company.

Mr. Adams. I object to any evidence on that. We are not apprised of any charge relating to any such property as that.

Q Where is the property located? A 295 Passaic street.

Q What is the connection of Walsh & Sons? A One is a mercantile institution with the incorporated name of Walsh & Sons & Company, and the other is a real estate company known as the Brothers Realty Company, with the owners and officers identically the same.

Q Are you an officer in both companies? A Yes, sir.

Q Are the officers the same in both companies? A Yes, sir.

Q It is virtually the Walsh estate that owns the two companies? A No; those companies are separate and distinct from the Brothers Realty and Walsh & Sons & Company. The Walsh estate is practically the Brothers Realty Company.

Q What was the ground of appeal on this property last referred to? A The personalty at 295 Passaic street?

Q Yes. A Why, the assessment was jumped there from $7,500 to $25,000.

Q What was the result before the county board? A I do not think that went before the county board. We presented it to that board and it was reduced to $10,000; instead of increasing it to $25,000 they increased it from $7,500 to $10,000, which was acceptable to the company.

Q Do you know who made the recommendation for the increase from $7,500 to $25,000? A No, I do not.

Q Upon your appearance before the board it was fixed at $10,000 instead of $25,000? A Yes, sir.

Q This was a personal assessment? A This is personalty, yes.

Q Did you appear before the board on the other property? A Yes, sir.

Q What was that? A That was the real estate at 295 Passaic street.

Q What was done with that assessment?

Mr. Adams. I object; there is no such charge relating to any such property in the specifications served upon us.

Q This real estate was owned by whom? A The Brothers Realty Company.

Q That is an affiliated company of your concern? A Yes.

Q What was the raise on that? A From $13,300 to $28,800, if I recall the figures correctly.

Mr. Adams. May I have a ruling on my objection?

Director Archibald. Objection sustained.

Q The property that you just referred to is the property at 295 Passaic street? A Yes, sir.

Mr. Parry. He has specifically mentioned the property in paragraph 3, Walsh & Sons & Company, personal property at 295 Passaic street.

Mr. Adams. You had testimony on that. You are now asking about real estate.

Mr. Parry. I ask that this be brought in under the fifth charge.

Q Is this the business concern at 295 Passaic street? A Yes, sir.

Q What is the nature of the business? A Iron, steel scrap.

Q Did you have any conversation with Mr. Hewson in reference to the purchase of a house? A Yes.

Q And when was that? A I presume a couple of years ago.

Q Tell us the nature of that conversation. A Well, the conversation was over the telephone. I tried to buy a house from Mr. Hewson and I didn't succeed. Because of something I thought nothing of at the time—a difference of opinion as to the value.

Philip Walsh, direct.

Q What was the difference of opinion? A The difference of opinion was $15,000.

Q Just where was the house that you were having a conversation about? A Clifton avenue.

Q And what was the nature of the conversation? You attempted to buy a house? A Yes.

Q And Mr. Hewson was the agent? A I don't know.

Q Just tell us what your conversation was? A The conversation was, I inquired of him the price of the house; he told me, and I declined to pay the price. Whether I made an offer unsolicited or whether he asked me to make an offer, I don't know, but he did ask me to make an offer, and we couldn't agree, and the subject was dropped.

Q How soon after your refusal to agree to the price that he asked for the house were the assessments raised on these properties? A I can't tell you that.

Q Approximately how soon? A Possibly within six months or a year.

Q The next time the assessments were made? A I should imagine so.

Q Did you make any inquiry as to whether the neighboring assessments were changed at the same time? A Yes.

Q What was the result of your inquiry? A The first one, 81 Clay street, which was the only one increased for the year, and none of them in that neighborhood had been increased the year before. That was the one where the increase was 100 per cent.

Q How about 295 Passaic street?

Mr. Adams. The property at 81 Clay street belonged to the Federal Real Estate Company?

Witness. Yes.

Mr. Adams. May I have it understood that my objection goes to this entire line of examination without having to state my objection to the questions as they come along? I object to being tried upon the charges of which we have had no notice. Now, they are bringing in properties of which we have had no notice whatsoever. I want to know whether I should object each time or whether the Director's ruling on the original question will stand?

Mr. Parry. The property at 295 Passaic street, so far as it relates to personalty, is mentioned.

Q Did you make any comparison as to the personal assessment on the adjoining properties at 295 Passaic street? A No.

Q Did you as to the realty? A No.

Q When the assessment was raised from $7,500 to $25,000, was that an excessive raise, as far as the true value was concerned? A I think so.

Q When the assessment was raised from $13,300 to $28,800, was that an excessive raise so far as true value was concerned? A As far as I know, yes, sir, very.

Mr. Adams. Which real estate is that?

Q That is at 295 Passaic street, is it not? A Yes.

Q In the case of the $25,000 personal assessment, was that very much in excess of true value? A Well, in our business it is a purely speculative business; you never know what you have until the goods are sold and the money is in your bank. Our own value of that as set forth on our books at that time was $10,000. We received this notice, which was postmarked Saturday, and, of course, received in the mail Monday, notifying us that we would have eight days from that Saturday, date of mailing, to appear before the board to present our records and make our plea to have that reduced, if it was excessive. Those papers I gave to Commissioner Archibald that following Monday or Tuesday, something like that.

Q Did you make complaint to Commissioner Archibald? A Well, I would hardly call it in the nature of a complaint. I called his attention to the fact that this was a phenominal raise, and it was unfair, in our opinion, and unjust, and I submitted it to him.

Q Did you find any evidence to indicate that you had been singled out for a raise over the other people in that section?

Mr. Adams. I object.

Q Did you make any inquiry as to whether you had been singled out—

Mr. Adams. I object.

Q —among the people in that section of the city—

Philip Walsh, cross.

Mr. Adams. I object upon the ground that it calls for hearsay testimony.

Director Archibald. Objection sustained.

Mr. Parry. I will ask for the production of the records of the tax office later on on that point.

Cross examination by Mr. Adams.

Q What year was this that you say you received a notice of the $25,000 personalty assessment? A I think it was 1918.

Q And your concern did not have $25,000 of personalty at that time? A I don't know what we had. We never know.

Q 1918, that was for the 20th day of May of that year. Would you say that you didn't have $25,000 of personalty? A No, I wouldn't say that.

Q This notice that you received was a notice of what they call a tentative assessment, was it not? A It was not so described.

Q It was a card, a printed card, from the tax board, signed by John Howe's name, assessor? A I don't recall the signature; but the description of the card is approximately correct.

Q And you appeared before the board? A I think I did.

Q All three members were present? A I couldn't tell you that. I don't recall that very clearly.

Q Was Mr. Hewson present? A I don't remember that occasion; I had several occasions in reference to taxation. I don't remember that particular instance.

Q Did you know Mr. Hewson at that time? A Yes.

Q Was Mr. Hewson present when you appeared before the board? A I can't tell you that. I don't recall.

Q Was Mr. Fettinger? A I remember the incident.

Q You went there, did you not, and discussed with them the question as to what was a fair figure for the assessment of the personal property? A I don't recall that. My memory of that is that I didn't go before the board; that I presented that to Commissioner Archibald, and I asked his opinion over it, or submitted the paper to him, and also discussed it with Mr. Howe over the telephone.

Q The assessment? A Yes. I told him the situation which we were in. That our own judgment of that upon our books

would be $10,000, and that is the same which was set forth in our books for that year.

Q Then all you know about this matter of personal estate is that you received notice from the tax board of personal assessment of $25,000? A Yes.

Q You took the matter up with Commissioner Archibald and talked with Mr. Howe over the telephone, and your assessment was fixed at $10,000? A Yes.

Q And you never came in contact with Commissioner Hewson in regard to that at all, as far as your recollection goes? A As far as my recollection goes, no.

Q Will you look at this card and tell me if your recollection is that the notice that you received it substantially in that form? A I should say so. That is my opinion. It was about the same as it is.

Mr. Adams. This card that I have here is admitted to be one of the blank cards that was used.

Q Mr. Walsh, with regard to this telephone conversation that you had with Mr. Hewson, when you set about to buy a house, or when you inquired about the price of a house, do you remember how you came to call him? A What do you mean?

Q Is it true that your attention was directed to the fact, I mean, that he had this house for sale, or either from seeing advertisements in the newspaper or seeing a sign on the house? A Probably so. It came in in some way; some way in that manner.

Q You and Mr. John Howe are very old friends? A Yes, sir.

Q And very warm friends? A Yes, sir.

JAMES E. MULLANEY, sworn.

Direct examination by Mr. Parry.

Q What is your occupation? A General office manager.

Q What concern? A L. S. Plaut & Company.

Q How long have you held that position? A Twelve years.

Q Did you go to the tax board or start for the tax board in reference to an assessment on an automobile? A Yes; I started down Broad street to come down to the board and I met Mr. Hewson on the street.

Q How long ago is that? A That is about, I should judge, around April or May of 1919.

Mr. Adams. This is offered, I take it, under the sixth paragraph of the amended or supplemental charges?

Mr. Parry. Yes.

Mr. Adams. I would like to state now that I object to any testimony being received under the sixth specification upon the ground which I have already stated. We are not informed as to the time or as to the nature of the charge. This amounts to what would be a charge of disorderly conduct under the Disorderly Persons Act. This proceeding is, as a matter of fact, a proceeding no less than under that act, it has been repeatedly held by the Court. No conviction can be predicated upon a complaint which does not specify not only the time and the place, but the precise language that is used, under that statute. It makes the disorderly conduct the use of indecent, abusive or offensive language.

Mr. Parry. I would like to get the date first.

Mr. Adams. We have no opportunity to prepare for cross examination. If I had an opportunity to prepare I might be able to show on cross examination that it could not have occurred on any such date.

Director Archibald. I will take it, and give you an opportunity, if you are surprised, to take it up at a later time.

Q What is the date of this occurrence? A I couldn't specify the date.

Q About the date? A It was about two weeks after I received my tax bill.

Q In 1919? A Yes, sir.

Q And you think it was about what month? A Well, about the latter part of April, the first day of May, around that time.

Mr. Parry. I will move that that charge as far as it relates to James E. Mullaney, of L. S. Plaut & Company, be amended to read as of on or about the 1st of May, 1919, so as to specify the date as to this particular complaint.

Mr. Adams. I object to any such amendment being allowed at this time on the ground that we have received no notice of it, and that it is too late to change these charges now. The amendment does not specify the offense, anyway.

Q What was the nature of your conversation with Mr. Hewson? A Why, I entered his office and—

Q How did you come to enter his office? A I saw him going up the street and I followed him right up, and I spoke to him on the street, and I said, "I want to see you." And he said, "Come right upstairs," and I walked upstairs.

Q What happened? A I spoke to him about the assessment I had received, and he said to me, "Let me have that bill, and I will look it right up." He changed the conversation on a matter that was outside, to some controversy that he had had with Mr. Moses Plaut.

Q This is a conversation that you had in reference to Moses Plaut? A I had no conversation. He upbraided Mr. Moses Plaut in violent language.

Q Tell us exactly what he said about Moses Plaut.

Mr. Adams. I object upon the ground that the charge is treating discourteously and in an insulting manner persons appearing in the tax board, and it appears this occurrence was in Mr. Hewson's private office.

Mr. Congleton. Your objection is this, because it took place somewhere other than the tax board in the city hall?

Mr. Adams. I object upon the ground that it is not the charge that is alleged. The charge is, treating discourteously people appearing before the tax board. It appears that this was a conversation in Mr. Hewson's private office.

Director Archibald. I think the testimony is perfectly proper, even under that charge.

Q Who is Mr. Moses Plaut? A Vice-president and general manager of the firm of Plaut & Company.

James E. Mullaney, direct.

Q What did Mr. Hewson say in reference to Moses Plaut at this conversation? A I know what he said, but the language I didn't—

Q Just repeat the language, whatever it was? A Well, he called Mr. Moses Plaut a God damned something, that son-of-a-bitch. He said, "I would like to see Moses Plaut," and I said, "All right, I will fix it for you." I said, "I will have you see Mr. Moses Plaut." I said, "He will explain this to you." I said, "You are talking about something you don't know anything about."

Q What was the rest of the conversation? A I left the office; I made the arrangement.

Q Was the subject of taxes brought up between you and Mr. Hewson? A At that time?

Q Yes. A Absolutely not.

Q Didn't you go there in reference to an assessment? A That was after my matter was settled with Mr. Hewson that this other matter came up.

Q Tell us exactly what was said by Mr. Hewson? A I am after repeating that.

Q Just from the beginning, if you do have to repeat it a little. Tell us everything he said, so as to have the connected story, exactly all that was said. You first went there about an assessment on your automobile? A Yes.

Q Just follow along and tell us exactly all that Mr. Hewson said to you and anything that you said to him. Give us the full conversation. A All I can do is to repeat what I have said.

Q Did you give us all the conversation? A I remember well I entered his office; I presented my question to him, and he took my tax bill, and he says, "I will look that up," and took the tax bill, and he turned the conversation right away then into his controversy with Mr. Moses Plaut.

Director Archibald. I want to get what connection this has, what it brought up. If it doesn't pertain to the city's business we have no interest in it.

By Director Archibald.

Q You say you went there about a tax bill and he said he would take the matter up, as I understand? A Yes.

Q Right out of a clear sky, did he? A Yes, sir.

James E. Mullaney, cross.

By Mr. Parry.

Q You notified Mr. Plaut of this conversation? A Yes.

Mr. Congleton. We want to know the connection.

Mr. Parry. We want to connect it up later with Mr. Plaut.

By Mr. Congleton.

Q With respect to the interview that Mr. Mullaney had with Mr. Hewson, did it relate to tax matters on the Plaut end of it and not your end of it? A No, sir.

Mr. Congleton. If by reason of that he brought Mr. Hewson in contact with Mr. Plaut, Mr. Plaut is the man to tell us, unless the witness was present.

Q You reported to Mr. Plaut this conversation? A I did.

Q Is Mr. Plaut here? A No; Mr. Plaut is away.

Q Has anyone seen you with reference to testifying here today? A No, sir.

Q Do you know where Mr. Plaut is? A Yes, I do; he is at Glen Springs, New York.

By Mr. Congleton.

Q When did he go away? A He went away the week that the thing started, that Saturday; he was scheduled to go away.

Mr. Congleton. Our messenger from the City Hall has been searching for Mr. Plaut and has been unable to locate him.

Witness. He will be back around the 8th of March.

By Mr. Parry.

Q Do you know whether Mr. Plaut went to the tax office? A Yes, he did; he came around here to see Mr. Hewson at my request.

Cross examination by Mr. Adams.

Q He came down to see Mr. Hewson at your request about this personal matter that you have mentioned? A Yes.

Q It wasn't in reference to any tax matter? A No, sir.

Isidore Kraushaar, direct.

Mr. Adams. May I ask at this point to have all of this witness' testimony stricken out from the point where he stated that Mr. Hewson said that he would take up this matter relating to the assessment on his automobile; all the conversation regarding Mr. Plaut.

Mr. Parry. I think that might be well to reserve that until the possibility of Mr. Plaut being reached in the case, and see if there is any connection between the two.

Mr. Adams. Unless this is connected up I don't care to cross examine, but if I do, may I recall Mr. Mullaney?

Mr. Archibald. Yes.

ISIDORE KRAUSHAAR, sworn.

Direct examination by Mr. Parry.

Q What is your business, Mr. Kraushaar? A Clothes, suits, drygoods.

Q Where is your place of business? A 603 Market street.

Q Did you go to the Newark tax board in reference to an assessment? A I did.

Q When did you go? A I have a little memorandum here. I go there about October, 1918.

Q And whom did you see? A I see the board—Mr. Hewson, Mr. Howe and another gentleman there.

Q Did you have any conversation with the board? A I did.

Q And what was the object of your visit there? A Because at the time I was over-assessed, at the time, and I went around there and I asked to kindly reduce it at the time, because my stock wasn't worth the amount. I offered the stock for sale for $2,500 at the time.

Q What was your assessment? A I couldn't tell, practically $3,500 or a little more; I can't tell; I can't remember that because—$3,500, I think.

Q What was the notice that you received; how much? A I believe it must be $3,500.

Q Did you receive a card like that (showing witness card)? A I did.

Q And was the amount fixed on that card? A The first card was $3,500—I mean the first was $2,500; then later it was

$3,500 or something—I could not remember exactly how much it was.

Q While you were there did Mr. Hewson say anything to you? A Well, he asked me where I bought by goods, and I have told him I buy of some manufacturers and some auctioneers, and so on. He says, "What kind of goods do you keep?" I said, "Dry goods, clothes and suits." He said, "Where you buy your goods?" I told him, "I buy by auctioneers and manufacturers." He said, "What kind of a fence do you keep?"

Q What? A He says, "What kind of a fence do you keep?" I said, "Commissioner, I am many years here and I never kept a fence in my life, and I have been always honest."

Q What do you mean by a "fence"? A Buy stolen goods, something like it.

Cross examination by Mr. Adams.

Q Did you know Mr. Hewson before? A Never see him before.

Q Never saw him before? A Until I see him the time when I came up to the office.

Q How many commissioners were there when you called? A Well, Mr. Howe was there, and another gentleman; Mr. Hewson was there.

Q Had you known Mr. Hewson before? A I knew him from before; yes.

Q How long have you known Mr. Howe? A It might be a year before.

Q How long was it? A Well, a year; it might be two years; I couldn't remember that exactly, but a short time, because I am here only four or five years.

Q How did you come to know Mr. Hewson? A I think Mr. Howe has been in my store to examine with another gentleman—to look over the stuff.

Q When was that? A I couldn't tell you; it might be at least a year or two.

Q Did you know Mr. Fettinger, as third commissioner? A No; I did not.

Q You saw him there that day? A No.

Q This gentleman sitting over there; do you recognize him? A Well, maybe he has been there; I didn't see him. It might be my son was there.

Q Have you ever seen Mr. Hewson since that time? A No; I did not.

Q Until today? A Up here; yes.

Q You recognize him here today, don't you? A I did.

Q You don't recognize Mr. Fettinger here today? A No; it might be a gentleman that was there; I can't exactly recognize him.

Q Who else was present, that day, do you know? A A few gentlemen was there at the office.

Q Do you know Mr. Fitzsimmons, the secretary of the board? A No, I don't.

Q Were there any property owners appearing before the board? Do you know whether there were other taxpayers before the board that day? A I seen a few gentlemen on the side, but I don't know if anybody was there for that,

Q Did you have to wait until they saw the board? A I did; yes.

Q How long did you wait? A I was waiting about twenty minutes; something like it.

Q And how long were you in there in the room with the board? A About twenty minutes.

Q Who did you tell this story to first? A Story, what?

Q About Mr. Hewson asking you what kind of a fence you kept? A I went up to see Mr. Jay and told him something about it.

Q When? A The same time, when I left that office.

Q When did you tell Mr. Howe about it? A I haven't spoken to Mr. Howe about it at all.

Q You haven't talked with Mr. Howe at all? A I haven't.

Q Who has been to see you about asking you to testify here? A Who has been seeing me? I can't remember who has been in to see me to testify.

Q Who has been in to see you about testifying ? A I guess Mr. Howe has been there, but I haven't seen Mr. Howe personally.

Q Why do you guess that he has been there if you didn't see him? A My son seen him.

Q When was that? A It might be a month ago, something like that.

Q A month ago? A I couldn't remember the date.

Q Within the last month? A Yes; it must have been.

Q And your son talked with you about it, did he? A Gave his opinion; that is all.

Q Did your son say that Mr. Howe had come to the store? A I haven't seen Mr. Howe.

Q What is the name of your son? A Benjamin Kraushaar.

Q Is he at the store with you? A He is.

Q (Indicating Mr. Fitzsimmons.) Did you see him? A I seen this gentleman here today.

Q The secretary of the board? A I haven't spoke to the gentleman; I seen him there.

Q Did you see him in the room where the members of the board were? A Yes, sir.

Q Was he there when you were discussing this matter of your assessment in the board? A Yes, he was there.

Q What was done with your assessment? A I couldn't remember exactly how much it was; $3,500, something like it.

Q Did the board reduce it on this day when you appeared there? A When I got home I found another assessment for $10,000.

Q What did the board do on that day? A They said they are going to investigate it, and all at once when I came home the same day I got another assessment for $10,000.

Q This was in 1918, wasn't it? A Two years ago; 1918.

Q What is that card that you are looking at? A I just took a memorandum there when the time was.

Q When did you make that memorandum? A This morning.

Q What did you make it from? A Just to think over when it happened.

Q You made it out of your head? A Because I have been sick and my memory is—

Q May I see the memorandum? A Sure.

Q You wrote that down this morning? A My son did.

Q Your son wrote that for you, did he? A He did.

Q So that you could testify from it? A No; I remember it from the time that I was there in the board.

Q You remember it or your son wrote it down? A I remember it now when I see the card.

Q You remember it now. Do you remember the date before your son wrote it down on this card? A I couldn't.

Q So you fixed the day by the fact that your son wrote this out on this card this morning? A He did, yes.

Q Your son wrote on the card, "Mr. Howe was here about the 15th of October, 1918." A Yes.

Q And then he wrote on the card, "I was to office about 20th of October, 1918," did he? And then he wrote after that, "assets $3,500." A Yes.

Q That is what your son wrote, is it? A He did.

Q That was so you could testify to those facts when you came here today? A He did.

Q And you don't remember this, only he wrote them on a card this morning? A Yes, sir.

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

Q From his writing on the card, "I was to office about 20th of October, 1918," does that indicate to your mind that your son was at the office that day? A What office?

Q What office does that mean? A I was in the office down there.

Q What office? A I was there in the office.

Q When your son wrote down "I" he meant you, did he? A That meant me.

Q Did your son also remind you that Mr. Howe asked you what kind of a fence you kept? A No.

Q Didn't remind you of that? A No.

Q You talked that over with him? A No.

Q When he told you that John Howe had been up to the store to see you within the last month, did you and your son talk about what was said by Mr. Hewson on that day at the tax board? A We did not.

Q Have you talked with anybody about it in the last month? A No, I didn't.

Q You didn't talk with your son? A Oh, my son.

Q Yes, about what Mr. Hewson said to you at the tax board? A When I came to the tax board he know about it; I talk with him.

Q Have you talked with your son within the last month? A A I didn't talk about it, just exactly what happened; he know what happened; he told me about it.

Q Who told you that Mr. Howe wanted you to come here and testify today? A I came voluntarily to testify.

Robert J. Metzler, direct.

Q He told you that Mr. Howe wanted you to come here and testify to it, didn't he? A He told me to come up.

Q Your son told you that Mr. Howe wanted you to come here and testify to that—that Mr. Hewson asked you what kind of a fence you were keeping? A Yes.

Q He is employed at your store? A Yes, sir.

Q He is there all day. A He is there.

By Mr. Parry.

Q You say that you went to Mr. Jay after you appeared at the tax board. Who is Mr. Jay? A Jay & Jay, real estate office; they keep a real estate office right here on Broad street.

Q You mean Frederick Jay, the lawyer? A Not the lawyer —the real estate people.

Q The brothers of Fred Jay? A Two brothers.

Q Did you tell them what was said to you here? A I did.

Q Did you go directly from the tax office to the office of Jay & Jay? A I did.

Q As I understand it, you received a card like this, the blue card, such as is used by the tax office, fixing your present assessment at $10,000? A I did.

ROBERT J. METZLER, sworn.

Direct examination by Mr. Parry.

Q What is your business connection? A I am the treasurer of the New Jersey Machinery Exchange, dealers in new and second-hand machinery.

Q Where is your place located? A 21 and 23 Mechanic street.

Q What was the assessment on your plant for 1917 and 1918? A 1918 it was $20,000; in 1917 it was either that or $10,000.

Q What was it in 1919? A $500,000.

Q (Showing witness card.) Did you receive a card like this? A I didn't receive it. At the time that card came, as it must have come, I was away in Buck Hill Falls, in the Poconos.

Q But you were informed that your assessment had been raised to $500,000? A I was informed by my secretary over the phone. He told me he had received a card for $50,000, and at the request of somebody over the phone in the tax office—

Mr. Adams. Objected to as hearsay.

Q At any rate, you received notice that your assessment had been raised to $500,000? A Yes, sir.

Q What is the nature of your plant? A Principally second-hand machinery.

Q How large is the plant itself? A It is the old Roe & Conover building in Mechanic street.

Q How much frontage do you have on Mechanic street?

Mr. Adams. Don't you want to make this clear, whether it is realty or personalty?

Witness. I don't own the building.

Q The assessment was on the personalty alone? A Yes; I should judge so.

Q You don't pay the taxes on the land? A No.

Q So your assessment then is purely a personal assessment? A Yes, sir.

Q What is the size of the lot that the building is on? A The lot proper is, I should judge, 40 by 80, but there is a ten-foot driveway. The store is thirty feet.

Q How high is the store? A Four floors.

Q You occupy all of the four floors? A I do.

Q What would you say as to this assessment of $500,000, was that a fair assessment? A Ridiculous.

Q Ridiculous in what respect? A All the fire insurance I carry on my books is $50,000. I am a large borrower of money at the banks in Newark, and my statements at the banks that year—naturally I would want to make my stock as much as possible—is $100,000; the most I ever appraised my stock to the banks is $40,000.

Q Previous to this jacking up of the assessment, did you have any conversation with Mr. Hewson about buying real estate? A Never met the gentleman in my life.

Q Did Mr. Hewson have any relations with your concern in reference to leasing property? A None at all.

Q Did the firm of C. P. Gillen & Company have any relations with your concern? A (Indicating a man in the audience.) If that is Mr. Gillen, who is a member of this firm, I remember a couple of years ago his coming to me in regard to selling me some real estate.

Q You indicate Mr. John J. Gillen. What was the nature of that transaction?

Mr. Adams. I object. Any transactions that he had with Mr. John J. Gillen are not admissible against this respondent.

10 *Director Archibald.* Objection sustained. I don't think that any conversations with Mr. Gillen are competent.

Mr. Parry. Subject to being connected later.

Witness. If I may say something, in fairness, I didn't know at the time that Mr. Gillen came to me that he was associated with Mr. Hewson. I never knew who Mr. Hewson was at that time.

Director Archibald. I don't think that has anything to do with the case.

20 Q Did you go to the tax office? A Yes, I did.

Q And who did you see there? A Being away, first, I told my secretary to have my lawyer go there and I was kind of worried when he informed me that the card of $50,000 had been withdrawn and a card for $500,000 substituted in its place. I told him to go to my attorney, Mr. Bilder, and see what the trouble was, and he personally went there.

Mr. Adams. I object.

Witness. When I returned from Bucks Hill Falls and
30 I went to see Mr. Bilder, and he said, "I think—"

Q Did you ask Mr. Bilder to go to the tax board in reference to your assessment? A I told my secretary to tell him.

Q At your direction Mr. Bilder was instructed to appear before the tax board? A Yes.

Q Did you go to the tax board yourself? A Yes, sir.

Q And who went with you? A Mr. Bilder.

Q What happened while you were there? A Why, we had quite a lengthy discussion. I came there not having known any
40 of these gentlemen previously, and I was certainly in a sort of an excited state.

Mr. Adams. When was it, Mr. Metzler?

Witness. I think some time in November. I won't swear as to the date.

Q 1919? A Yes, this past year. And I met Mr. Fettinger and Mr. Hewson and Mr. Howe, and Mr. Howe only stayed in the room a short while, and while I was there Mr. Hewson seemed to be the spokesman of the proposition, and I had all of my conversation with him, and at the time I took Mr. Hewson for Mr. Howe, thinking, he being the spokesman, he was president of the board, and afterwards I corrected that mistake through having been introduced to Mr. Howe afterwards. I thought, "Why, this is Mr. Hewson." He told me, "No, that was Howe," and in discussing the thing with Mr. Hewson he seemed to be very emphatic about his knowledge of machinery, and he acted in a very aggressive mood. I didn't come there to have a quarrel with him; I came there to try to reason with him and try to have a fair adjustment.

Q Tell us just what he said? A He said, "Why, you don't think you can put anything over on this board?" So I said, "That is not my intention, Mr. Hewson; my intention is to be fair. I am a business man here, and I own quite a lot of property and am interested in other concerns, and this is the first time in my life I have ever come before any tax board to have any adjustment made. I said, "It is a very embarrassing situation, but," I said, "you have got this whole thing wrong." I said, "either you haven't got any judgment of machinery or somebody has deceived you." And he said, "I know everything about machinery and I know you have got so much stuff there." And I said, "The party that told you that must have been a fool," and I said I wouldn't take my hat off to anybody on the appraisement of machinery. "And I know what I have got." I said, "You can look at my books. I have an accountant, Puder & Puder. I render my reports regularly to my banks. I carry insurance, and you are welcome to investigate this thing." He said, "I don't want to investigate anything. You have got to pay this assessment, there is nothing to it, and you will stand for that." I said, "There is something wrong here or else somebody is a fool." And he got kind of nasty about the thing, and I said, "There is no use of arguing this thing one way or another." I said, "The only thing, I am going to bring a statement, and I am going to stand or fall on it, because I wouldn't pay one cent more than that statement says."

Q What do you mean by his getting nasty? A I said that "I was a booster for Newark ever since I have been here. I have

kept a great many concerns in business and reorganized them and paid taxes on them." And he said, "You are here for the love of Newark, are you?" And I said, "I am here just as much for the love of Newark, just as much as any other man. My self-interest may be selfish, just the same as any other man, but after that I am a booster for Newark." He said, "We are not looking for your kind in Newark, and Mr. Bilder said, "That is a very wrong remark to make." And Mr. Bilder said, "We had better get out of here, Bob," and we walked out.

Q Did Mr. Bilder ask to speak before the board? A Yes.

Q What was said? A I think he was told that it was not necessary for him to make any remarks. I know he didn't speak before the board. He came down there to say something, and he saw there was no need to say anything and he thought it best to leave.

Q Did he ask permission to speak? A I remember the reason that Mr. Hewson gave, that it was very ridiculous, and Mr. Bilder said that he could inquire the way I was considered in the community, he could take my word for anything, and he said, "If you don't want to take my word, I will advise him as his attorney," that I would give him any statement, prove my books, do anything that would satisfy the board to arrive at a fair assessment on my holdings.

Q What was said to Mr. Bilder by Mr. Hewson? A I don't know of anything further. I was so annoyed at what was said to me that I don't think I observed just what was said to Mr. Bilder.

Q Do you know whether or not Mr. Bilder was refused the right to speak as your representative? A Well, I think it was intimated it was no use of his saying anything, that they knew their business, and there was no use of saying anything.

Q Who intimated that? A As I say, Mr. Hewson did most of the talking; Mr. Fettinger once in awhile said some little thing, just in co-operation, but I don't think he brought up any remarks. Mr. Hewson ran the argument.

Q Did you make a statement? A Yes, I went there a second time and brought a statement. I brought a letter from my bank.

Q What was your assessment finally fixed at? A It wasn't fixed at all. I don't know.

Q It must have been fixed. A No; I don't know.

Robert J. Metzler, cross.

Mr. Congleton. He means he has not got his bill yet.

Q This was for the 1920 tax? A Well, it is supposed to be assessed September 30th.

Q What was the amount of your statement, I mean? A We had our auditor go over it, and I think it was around $61,000; I wouldn't swear it was that, but it was in that neighborhood, in round figures.

Q Did any of the firm of Charles P. Gillen & Company attempt to lease any property to your concern before this? A I wouldn't want to swear on that. (Indicating.) I know this Mr. Gillen came to see me quite a few times, but I don't think it had any connection, because in my mind I never knew he was connected with Mr. Hewson.

Q This gentleman, Mr. Gillen, you say he came to see you several times? A That was quite awhile ago; that was since this matter. I wouldn't say how long ago it was.

Q How long ago was that? A Perhaps a year ago—

Mr. Gillen. Yes, it is over a year and a half ago. In fact, you got in touch with me through another person; I didn't go to see you personally.

Q What was the nature of your dealings with Mr. John Gillen? A He wanted to try to sell me some property on Frelinghuysen avenue.

Q For what purpose was the property to be used? A For warehouse purposes, for my own business.

Q Instead of the plant you now occupy on Mechanic street? A No, in addition.

Cross examination by Mr. Adams.

Q This $61,000 that your statement shows you finally sent down, that was the net amount of your personalty after the debts of your concern were adjusted, was it not? A No.

Q There was no deduction for debts made? A There was an adjustment in the account; that was taken off the merchandise; that was taken off any accounts receivable, and notes receivable, and then naturally our accounts payable and notes payable, and that had nothing to do with the merchandise item. The merchandise stands there net.

Robert J. Metzler, cross.

Q Do you remember what the total amount of your personal property and your accounts was? A I wouldn't say that. I had no more to do with my books than you have.

Q You saw that statement? A I saw that statement and swore to it.

Q I ask you what that total amount was? A The total amount was somewhere around $61,000.

Q You don't remember what the total amount was without the deducting of debts? A I know the merchandise item was somewhere around $48,000.

Q Do you know what book accounts are? A I wouldn't want to give offhand a statement as to that. I really have not primed myself to come here.

Q This notice that you received was one of these blue cards? A As I told you, I wasn't there when that blue card came.

Q You saw it? A Why, no, I didn't see it, because they had returned it to this board, because I wasn't here at the time. When I came back there was no card there at all.

Q The time that you received this was in the late fall of 1919? A I was away at Buck Hill from October to November, and it was in that time, between the 17th of October and the 18th of November.

Q And it related to the 1920 assessment; is that right? A Yes.

Q And as far as you knew that assessment had not been fixed; you had not received any notice of it? A No.

Q You say that when you appeared before the tax board with Mr. Bilder you were somewhat excited? A I got excited through the reception I received.

Q You were all somewhat excited, weren't you? A No, I won't say excited; I keep my head even through excitement, but I thought I was appearing before the Grand Jury instead of talking business to men who were administering the business affairs of the city. Instead of that it was an aggressive way, and I am rather aggressive myself. I came to talk business, and I was received as a ruffian.

Q The first thing you did say was to assert that this proposed assessment was perfectly ridiculous. That is what you asserted to the board when you came in? A Yes, sir.

Q And then you and the members of the board had a more or less heated discussion about it? A I don't think the mem-

bers of the board; I think the whole discussion was between Mr. Hewson and myself.

Q And Mr. Fettinger joined in occasionally? A I think Mr. Fettinger did a few times. I directed some of my remarks toward Mr. Fettinger, but I don't think he said anything more than perhaps agree with some of the things. "Well, we will see about it," such like remarks that passed no point.

Q You were endeavoring to have these proposed assessments fixed at a much lower figure than was suggested? A Not a much lower figure. I was attempting to show what my worth was, and what my assessment should be. I wasn't there to arbitrate anything.

Q And that was a much lower figure than suggested? A Absolutely.

Q And the position of Mr. Hewson was to endeavor to get as large an assessment as possible? A I don't know whether it was to get as large an assessment as possible. He seemed to be very opinionated, and he wouldn't brook any light on the proposition. I claimed that I knew more about the stock than he did, and I said that I would do anything possible to throw light on it.

Q Confine your answers to the questions. Up to that time you hadn't made a statement to the board? A No, I hadn't made a statement.

Q Didn't you decline to allow appraisers selected by the board to go through your plant? A Yes, because he sent some of my former office boys there.

Q The statement you finally made was made at a later date? A Yes, and I was advised not to make it; I was advised by Mr. Hewson not to make it.

Q Won't you please answer the question? A Yes; at a later date I made that statement.

Q Of these appraisers that were sent there, Mr. Hill, the manager of the Fairbanks Company was one? A I didn't see Mr. Hill; he may have been there. I think there were a couple of gentlemen from Mr. Fairbanks. The first man they sent was a man by the name of DeWitt, and a man by the name of McManus, and both were my office boys formerly. But instead of coming to do business they were fooling and joking about the thing, and they stayed there one morning about ten or fifteen minutes fooling with my employees, and so on, and then left and didn't show up again.

Robert J. Metzler, cross.

Q Mr. Hill came later? A So I understand, from my bookkeeper; yes.

Q Somebody else came with him, another man, the assistant manager of the Fairbanks Company? A I wouldn't say; I judge they were there.

Director Archibald. You don't know?

Witness. I know through hearsay. My bookkeeper told me that two gentlemen were there.

Q They were not allowed to go through your plant? A It wasn't that they were not allowed, but after that experience I left instructions not to let anybody in my place unless I was there. I was the master in my own place.

By Mr. Parry.

Q Did you afterwards let appraisers sent by the tax board go through your place? A Yes, sir.

Q Do you remember the names of those assessors? A Yes, sir.

Q What were their names? A Samuel DeWitt and Frank McManus.

Q Was one of those appraisers a competitor of yours? A Both of them.

Q Both engaged in the same line? A Yes, sir.

Q With whom were they connected? A One was connected with a former employee of mine, and Mr. Charles, of the Newark Second-hand Machinery Company, and another former employee of mine, known as the Sun Machinery Company.

Q Did they make an appraisal of the plant? A Not as I know of.

Q When were they there? A It must have been after I had my interview with Mr. Hewson.

Q And you gave them an opportunity to make an appraisal and examination of your plant? A Yes, sir.

By Mr. Adams.

Q Did you receive a letter from the board after you filed that statement notifying you that they had fixed your assessment for 1920 at $150,000? A Absolutely not.

Q And you never knew that? A No, sir.

Robert J. Metzler, cross.

Q That the assessment was fixed at $150,000? A No; if it were I would have still come down.

Director Archibald. The assessment has been fixed at $150,000 in the books for 1920.

Witness. I never received a notice of it. My lawyer has been to get information.

Mr. Parry. He is here. He will testify.

Q These two men that you say went through your plant, this was after you filed this statement, wasn't it? A I think it may have been; I won't swear.

Q And it was after the first time that you appeared before the tax board? A Oh, yes.

By Mr. Parry.

Q Both of those appraisers were competitors of yours? A Yes, meaning the way you mean, competitors, but they had to get someone who was a competitor, who, logically, knows the value of the stuff. I realize that. I feel that I could be fair to another man, and I don't see why they couldn't be fair to me. As a matter of necessity they would have to send a competitor.

By Mr. Adams.

Q At times you have on hand very valuable property, have you not? A Yes, sir.

Q Hundreds of thousands, have you not? A I haven't got it on hand in the store. My principal business, I think you know, Mr. Adams, is purchaser of plants. I purchased plants from you. When I purchased those plants I don't put them in stock. I liquidate the machinery where they are, and the residue I use as a storage house. The business of second-hand machinery is absolutely secondary with me.

Q Your plant is pretty well filled? A With certain stuff that is hard to get rid of.

Q During 1919 second-hand machinery has been quite high? A Not as much so as 1918. My 1918 stock was far in excess of my 1919 stock.

Q Will you say that on October 1st, 1919, you didn't have as much as $150,000 of personal property? A Absolutely not.

Q Including your book accounts? A There is no use in talking about it. My books will show, and my statement, that

Nathan Bilder, direct.

I rendered to the Federal Government, and I render statements to my bank of my books, and I am a borrower of two or three million dollars, so I couldn't falsify my statements very well.

NATHAN BILDER, sworn.

Direct examination by Mr. Parry.

Q Mr. Bilder, you are a counsellor-at-law of this state? A Yes, sir.

Q And have been for some years? A Fifteen years.

Q And you are the attorney for Mr. Metzler's concern? A The New Jersey Machinery Exchange, yes.

Q Did you go for Mr. Metzler to the tax board of Newark? A I did.

Q About how many times did you go before the tax board? A I think on two or three occasions before the time I went with Mr. Metzler.

Q Tell us about the first occasion before Mr. Metzler went with you, what happened while you were there?

Mr. Adams. This was in the fall of 1919?

Witness. Yes. Why, I brought with me to the tax office the card which shows, I think that the assessment has been raised to $500,000; it had been $50,000, I think, the previous year, and I asked someone in the office there whether there had not been a typographical error in putting a cipher on the amount, and I was told that it was not, that that was the proposed assessment.

Q Did you see Mr. Hewson while you were there? A I am not quite sure whether I did on the first occasion. I know Mr. Fettinger was there and I think Mr. Hewson was there, too, but I am quite positive that Mr. Hewson was there.

Q Do you recall any conversation that you had with Mr. Hewson on your first visit? A I can't recall any specific conversation; I can't tell you anything but the substance. I can't give you the exact language that was used. The substance of it was that I contended, after I had talked with my client, that it was grossly excessive. Now, whether it was that first or second visit, I can't tell which, but Mr. Hewson said that he had some information that the property of the New Jersey Machinery Exchange was worth at least $500,000, and he said it in a very

positive way. And I told him at that time, I think it was on that occasion, that Mr. Metzler, who was the one who knew more about the affairs of that company, than anyone else, was still up in the Pocono Mountains and had been up there for several weeks, and wasn't able to come down and make a statement. Mr. Hewson suggested that a statement be made. Well, Mr. Hewson said that that wasn't so, because he had information that Mr. Metzler was around there the day previous. Well, I said, "I know you can't have any truthful information about that, because I have received letters from Mr. Metzler from the Poconos, and I know as well as I am here that he is up there." That matter was disputed by Mr. Hewson.

Q What did he say? A Well, he said he had the information that Mr. Metzler was there and it was pretty good information, and there was general talk about the assessment. I told him that I thought it was pretty high and he insisted that it was a perfectly fair assessment he knew that he had the property there, the corporation, that he had gotten some information from outsiders that we were lying to him; that there was a large amount of property there. I told him the matter could easily be demonstrated, the value could easily be demonstrated by an examination, but he wanted me to agree to an assessment of $200,000, or something like that—I don't know whether it was $200,000 or $250,000. I told him that I didn't want to agree to any such sum, that I knew it was largely in excess of what I knew the property was. Now, these conversations, or this talk that I am giving you, was the result of two or three vists that I made to the offices of the tax board.

Q Did you go with Mr. Metzler? A Yes.

Q When Mr. Metzler had returned from the Poconos? A Yes, sir.

Q Tell us what happened there on that visit? A I think the entire board was sitting at that time, and Mr. Metzler made the statement, a verbal statement, of the position that he took with regard to the assessment. He was respectfully listened to by the board, and it was determined at that time that a statement should be filed. That statement was afterwards made by the New Jersey Machinery Exchange to the board and nothing happened after that that I know of.

Q Did you ask for permission to speak before the board on this occasion? A I don't recall that I did. I think I did say

a few words, but it was merely supplemental to what Mr. Metzler said, because he was very well able to present the matter himself to the board.

Q Were you refused permission to address the board by Mr. Hewson or anyone else? A I don't recall any such incident.

Q Are you connected with the company itself? A No, I am not; I am not, except as attorney.

Q Did Mr. Hewson ask you if you were connected with the company? A Well, I think he did; one time he did ask me; that was at one of the previous interviews; it wasn't at this hearing before the full board. He asked me whether I was in any official position with the company, and he stated that he wanted a statement from some official of the company. It was then, I think, that I told him that Mr. Metzler—the reason we couldn't give him any statement was because Mr. Metzler was ill.

Q Well, at that time were you refused permission to speak before the board in reference to the claims of the New Jersey Machinery Exchange? A No.

Cross examination by Mr. Adams.

Q You have told us all that you recollect of what occurred on the occasion when you and Mr. Metzler went before the board? A I think I have.

HENRY M. ANDERSON, sworn.

Direct examination by Mr. Parry.

Q What is your occupation? A General superintendent of stores, tea stores.

Q Which chain of stores? A Great Atlantic & Pacific Tea Company.

Q And you are located in Newark? A Yes; I have my offices here in Newark at 75 Springfield avenue.

Q And you have charge of the stores in this city? A This city, Jersey City and the Oranges.

Q How many are under your supervision? A 244.

Q Did you go before the Newark tax board in reference to an assessment? A I did.

Q And when was it you made that visit? A Why, I answered a letter of the president of that board to call at the

office. I should say it was in the fall of the year. I don't know the exact date.

Q This last year? A Yes, sir; October, 1919.

Q And who did you see at the tax board? A Why, Mr. Hewson and Mr. Fettinger and Mr. Howe were there.

Q Did you receive a card like this? A No, I received a letter.

Q What was the nature of the letter? A It was simply stating, requesting me to call on such and such a day at the tax board, signed by the board, Mr. Howe, president, regarding the taxation for that year. I called at that time.

Q At this visit did you have any conversation with Mr. Hewson? A Why, it was principally with Mr. Hewson; yes, sir; most of it. However, Mr. Fettinger and Mr. Howe—

Q But the meeting that you had was with the board as a whole? A That is right.

Q In the course of this meeting or conference with the members of the board what did Mr. Hewson say to you and what did you say to him? A Why, I told him the reason I felt that our taxes ought not to be any higher, or the amount that we were taxed for should not be any higher, I explained to him the nature of our business, the fact that we handled it considerably different. We were going to considerable expense to reduce the stock in the stores; we were making two deliveries to these stores every week, and we carried the merchandise in the warehouse at Jersey City, and various other ways of cutting down the shelves and reducing them. We carried at one time a very large stock, but we have gotten them down to a very small amount, principally because of the larger amount that was involved, to cut down the working capital, and Mr. Howe and Mr. Fettinger, they questioned me regarding the nature of the business and how we conducted our business. However, Mr. Hewson seemed to know all about the business and seemed to know just how we handled our business and he became very aggressive.

Q Tell us just exactly what he said? A Well, he said, "I know just all about your business; you can't tell me anything about the grocery business, I know it from A to Z." I told him that I wanted to be perfectly candid in the matter, and "now," he said, "you used that word three times before." And I said, "Mr. Hewson, I am going to use it once more." I said, "I am going to be perfectly candid, I didn't come here to put anything

over; I came here to tell my story. That is all." He got very excited and walked up and down and called us profiteers, and said, "You are a damned lot of profiteers." I think it was Mr. Howe made the suggestion that we possibly had benefited the community some by the stores that we have opened up. Mr. Hewson, in answer to that, stated that they started out that way, but what they really did was to drive the little fellow out of business, and in the stores they have one man where before they employed two or three. He mentioned purchasing peas at a ridiculously small amount and selling them at the price that we did. That was about all the conversation. He got so excited, that finally the president of the board reminded him that if he had a personal grievance against the tea company it wasn't just the right thing to take it out of we men; we had been invited there to discuss this particular matter, and it wasn't just the right thing, and at that he got very excited and began to throw things around the place; picked up a paper cover of some kind and threw it across the table, and it was all done in such a loud voice that the entire people on the outside that were waiting to get inside of that tax office heard us, of course, and we walked out of there like two thieves caught in the act.

Q Do you remember the telephone book? A Having a telephone book while I was there?

Q Did you see him throw that telephone book? A I saw him pick up something. There was so much excitement there and he seemed to get so considerably perturbed, and I am not very clear to what he threw, but I know he threw it upon the table and walked back and forth by that table where we were sitting.

Q There was so much noise and confusion that you didn't notice what it was? A No, I know that the secretary was kind enough to close the door.

Q Were you there with regard to the taxes on the stores of your company? A Yes, sir.

Q Stores in the City of Newark? A That is right.

Cross examination by Mr. Adams.

Q What assessment was it that they proposed to make on your stores? A A thousand dollars per store. $85,000 for the eighty-five stores.

Q That was what they informed you when you came there or had you known that before? A No, I think that was dis-

cussed while we were there; that was a suggestion made by Mr. Hewson.

Q What had been your assessment the previous year? A I am under the impression it was $800 per year.

Q And that was 1918? A Yes, sir.

Q Do you know what it was the year before that? A I believe it was a little bit less than that; I am not personally clear on that; I couldn't say from memory.

Q Then you figure you were seeking to have your tax remain at the figure it was the previous year? A Not exactly, but didn't feel that it ought to be increased to $200 per store, considering the fact that we handled our business the way we did.

Q You had an argument principally with Mr. Hewson? A It wasn't an argument. I stated the fact. He was the man that got excited and he was the man that was arguing.

Q Did he have an argument with you on the question of whether your assessment should be increased to $1,000 a store? A Yes, sir.

Q Did he tell you that other chain stores were assessed at $1,200 and $1,500 a store? A No; I don't recall him saying that; I do recall him saying that other chain stores were being assessed for more than that.

Q He also reminded you that your merchandise had increased in value from 50 to 100 per cent. in the last few years? A He said that; yes.

Q And you were excited, were you not? A No, I don't think I was.

Q You were excited enough so that you didn't know what he picked up, whether he picked up a telephone book or something else? A Yes; that was nearly the end of it; that was nearly the conclusion.

Q You were quite excited? A I should say not; no.

Q You asserted that the goods in your store were not worth more than $800 in each of your stores? A I said that I didn't think they were, under the plan that we had been working to reduce that stock.

Q That you didn't think you had over $800 of personal property in any of your stores, or on the average—they didn't average $800? A That was the statement.

Q And Mr. Hewson took positive exception to that statement? A That is right.

Henry M. Anderson, cross.

Q And that is what he got excited over? A Well, he got excited from the start. I thought it was a personal matter; this man became aggressive from the outstart, and Mr. Fettinger and Mr. Howe were there and questioned me about that matter, but they did it in a kind way, as a gentleman would speak to a gentleman.

Q Did you afterwards receive a notice of what your investment was fixed at? A I have not, no sir; I might state in answer to that question that Mr. Fitzsimmons enlightened me on that matter some time afterward. I was in the tax office and he stated that each store had been taxed at a thousand dollars.

Q You have been informed that they fixed that amount? A Yes, from him, but not any written notice.

Q You say that the president of the board reminded Mr. Hewson that he should not treat you as he was doing, something to that effect. Who did you mean when you said the president of the board? A I meant Mr. Howe.

Q And Mr. Howe and Hewson had some words over this matter, didn't they? A Yes, I think they did—yes, I know they did.

Q And Mr. Hewson said to Mr. Howe that he, Mr. Hewson, was representing the City of Newark, and if he, Howe, represented you, he ought to go around the other side of the table? A He asked me questions and he asked him, "Who the hell are you representing, the City of Newark or the Great Atlantic & Pacific Tea Company?"

Q He asked that of Mr. Howe? A Yes.

By Mr. Parry.

Q What was it that led up to that remark that you just gave us? A Why, Mr. Howe stated to Mr. Hewson, he said, "Well, I don't really think that we ought to make a personal matter of this. If you have a personal feeling against the tea company I don't think you ought to take it out on this man. They have come here in answer to our summons." Of course, that was the thing that got him mad.

Q At the time that Mr. Hewson got the remark referring to Mr. Howe as representing the Great Atlantic & Pacific Tea Company and himself representing the City of Newark, had Mr. Howe said anything about the amount of the assessment itself? A Yes, he had talked to me, and he had quizzed me regarding it.

Robert J. Metzler, further cross.

Q Had he made any statements as representing the Great Atlantic & Pacific Tea Company? A No, sir; he was certainly on the side of the City of Newark, and he quizzed us, and he quizzed us in the right manner, and he said, "Do you realize the price has gone up retail," and he certainly did it as a member of that board ought to have done it. He went into it very thoroughly.

Q The only thing which Mr. Howe said which led up to this remark was with reference to the personal grievance? A Saying, why, it seems that Mr. Hewson had a personal grievance against the tea company and he was taking it out on the representative of the tea company who had called there in answer to this letter.

By Mr. Adams.

Q Mr. Howe spoke in a loud and excited tone, did he not? A No, sir; he didn't; both Mr. Fettinger and Mr. Howe, they were at all times quiet; I didn't see them get at all excited; they were calm and cool and collected, and it was only, as I stated, at the conclusion when Mr. Hewson made this charge, that Mr. Howe got a little bit excited and possibly spoke a little bit louder than he had therefore.

Q But when Mr. Howe pressed Mr. Hewson with reference to that fact, that he must have a personal grievance, did he say that in a loud and angry voice? A No, he said it in a moderate tone of voice.

Q Answer the question, whether Mr. Howe didn't become excited and didn't lose his temper at all? A No, not until the conclusion.

Q How long had you known Mr. Howe? A I had only met Mr. Howe the year before. I didn't know him until I got there that particular time.

Q That was the year before? A Met him that once.

Q And this was the second occasion that you had ever met him? A That is right.

ROBERT J. METZLER, recalled.

Further cross examination by Mr. Adams.

Q (Showing witness paper.) Mr. Metzler, that is the statement that you made to the tax board, is it not? A Yes, sir.

Frank I. Liveright, direct.

Q And I show you a carbon copy of a letter addressed to Mr. Robert J. Metzler, 21 Mechanic street, city, dated January 15, 1920, which is taken from the files of the tax board, and which purports to be a copy of the letter addressed to you by the tax board. A Never received it.

Q Did you receive such a letter? A No, sir; I will swear to that.

Mr. Adams. I will offer the statement at this time.

FRANK I. LIVERIGHT, sworn.

Direct examination by Mr. Parry.

Q Mr. Liveright, what is your occupation? A Merchandise manager of L. Bamberger & Company.

Q How long have you held that position? A Twenty-one years.

Q In the fall of 1919 did you call at the office of the Newark tax board? A I did.

Q What was the occasion of your visit? A I had received a notification of an increase in the personal assessment of our business. The increase was a sixty-six per cent. flat increase, and last year the increase was fifty per cent., and I had heard that last year some of the other department stores had not been increased in proportion, so I came down to the tax board to inquire whether the action of the board in increasing our assessment was uniform in the city or whether they had singled us out particularly to make the increase.

Q After you arrived at the tax board just tell us who was there, in the first place? A Well, I had to sit out in the anteroom for awhile; there were several people there, and finally Mr. Fitzsimmons came out and told me to come in. I went in and Mr. Hewson and Mr. Fettinger and Mr. Howe were there.

Q Just tell us what was said between you and any of the members of the board while you were there at that conference. A The moment I came into the room Mr. Hewson turned around and said, "Are you here again?" He said, "Department stores are all profiteers, and Bamberger's is the worst one." I replied that the statement he made was a lie; that he had no right to make it; then he proceeded to make other statements regarding the business, which were also untrue.

Q What other statements did he make? A The first statement he made, "Why, in your furniture department you charge three or four hundred per cent., and everything else in accordance. I told him he didn't know what he was talking about, that he sounded like some of the cheap politicians up on the Hill when they were making speeches; he had no right to make that remark or those statements regarding any concern. He then proceeded to abuse me personally."

Q What did he say? A I don't remember all that he said; one of the remarks he made when I had asked him how he knew so much about the business, if he knew so much we would give him a position, and he said, "As a merchandise man you are a joke; nobody believes anything you say," and I protested to the other members of the board, and after that Mr. Fettinger and Mr. Howe interrupted and tried to make him stop, but during the entire interview he kept up abusing me. Finally I got up, and then Mr. Fettinger and I walked over to the window, and Mr. Howe interfered and stopped the whole proceedings.

Q Did you state anything about Mr. Bamberger's status as a merchant in this city, a merchant that the city could be proud of—anything of that sort? A I made a statement regarding the business, that the city ought to be proud to have an enterprising firm in the business.

Q What reply did Mr. Hewson make at that time? A I don't know what he replied at the time. I told him we had contemplated building, and I wondered whether they were going to assess our new building in the same way, and the answer was, "We will assess you whatever you do there."

Q Did anyone use the expression "piker" there during this conversation? A The expression wasn't a piker; it was a joke. Mr. Hewson made the statement that as a merchandise man I was a joke.

Q Are you connected with the concern that owns the building at 859 Broad street? A Yes, sir.

Q What is the name of the company? A Mack Realty Company.

Q Are you an officer of the company? A I am.

Q Did you ever have any conversation in reference to taxes with Mr. Hewson? A No.

Frank I. Liveright, cross.

Q Or anyone else connected with Mr. Hewson's firm? A No; the matter of the Mack Realty Company has never been brought up or discussed with anyone.

Cross examination by Mr. Adams.

Q You say the moment you went in the board Mr. Hewson said, "You're here again. What do you want? The department stores are all profiteers, and Bamberger's is the worst one." Is that right? A That is exactly the statement he made.

Q He said that before you said a word? A Before I said a word.

Q The moment you came in the board? A The moment I came in the board.

Q You had received a notice of a tentative assessment, had you not? A Yes.

Q One of these blue cards? A Yes.

Q What was the amount of the proposed assessment? A One million and a quarter.

Q What had been your assessment for the previous year? A $750,000.

Q That is for 1919? A The year before.

Q May 29th, 1919, as you understood it? A The card was delivered in the fall of the year.

Q So that this tentative notice that you received was for the proposed tax for 1920? A Yes, sir.

Q And your tax as of October 1st, 1918, had been $750,000? A Well, it is the year before. I don't know how the year starts.

Q And before that it had been $500,000, hadn't it? A Yes.

Q And it has been $500,000 for a good many years?

Mr. Parry. I object. That is irrelevant.

A I think that was two years. I don't remember that.

Q You didn't come to the board that day and assert that the personal property of L. Bamberger & Company was not worth the amount of this proposed assessment? A I didn't make any statement.

Q But you came in to protest against the assessment, the proposed assessment? A I did not. I came in to find out whether we were treated any different than the others.

Q And you asserted that you had been? A I didn't assert that at all. I came to inquire whether we were—

Q But didn't you assert that your store had been increased in greater proportion than the other department stores? A Yes, I made that statement. I thought we had.

Q And you were somewhat excited during that conversation, were you not? A Not particularly so.

Q You were offensive to Mr. Hewson, weren't you? A I certainly was not, Mr. Adams. I didn't make any statement to Mr. Hewson or against him.

Q You said that all three commissioners were there and Mr. Fitzsimmons was there? A He was not there in the beginning. He had just come out for some books, and he came in in the course of the conversation.

Q You mean he went out before you came into the room? A He came out and told me to come in, and he came in a few minutes after.

Q How do you know he went out for some books? A Because he came in and told us to come in; and I saw him go over to the desk and come in a few minutes after with the book.

Q A few minutes after you had this discussion you noticed that Mr. Fitzsimmons came in with some books? A Yes, sir.

Q Were the books used with reference to your company? A I don't recollect, but possibly.

Q You don't recollect that they were? A Possibly they were; I don't know.

Q Didn't you tell Mr. Hewson at the beginning of this conversation that you had been told that Mr. Hewson had said what he was going to do to you? A I did not.

Q Didn't make any such remark? A Didn't make any such remark, because I never heard any remark of that kind.

Q Do you remember discussing with Mr. Hewson what annual profits your concern made? A Certainly not.

Q And his saying that you made a profit of at least twelve per cent. on your capital stock, and you said he didn't know what he was talking about? A No statement like that was ever made.

Q No such thing as that was said at this time? A Not at this time or any other time.

Q Did you receive a notice of your assessment afterwards? A I don't think I received any further notice. I haven't seen any.

Frank I. Liveright, cross.

Q You don't know what it was fixed at? A It was agreed at the time that it was to be left the way it was, that is, the increase they stated at the time. Mr. Howe said—

Q A million and a quarter? A A million and a quarter, but the others had been increased and ours was, too.

Q Didn't Mr. Howe say to you at that hearing that it was reported that you had a stock of $3,000,000 in there? A I don't remember that he stated that. In fact, I don't remember any figure was mentioned like that.

Q Do you say he didn't? A I won't say whether he did or did not.

Q How long have you known Mr. Howe? A About eighteen years.

Q You know him personally quite well? A Quite well.

Q When this dispute between him and Mr. Hewson broke into the public print a short time ago, your name was mentioned in the newspapers at that time in connection with this very matter, was it not? Mr. Howe talked with you about it at the time? A Not at the time, no.

Q Call you up on the phone about it? A No.

Q Before there was newspaper publication of it? A No. The only time that I have had a conversation was this week. I want to correct that in one way. This conversation a few days after my interview here, I met Mr. Fettinger on the street and I protested to him regarding my treatment, and he told me that he was very sorry that such a thing had occurred, and he was not responsible. The next day Mr. Howe came in and apologized for the tax board, for my treatment at the City Hall, and said that he was very sorry that it occurred, but that he was not responsible for the individual actions of the taxing members, and I said then that I thought it was a disgrace and I intended to protest against the assessment. I did that by coming down to the City Hall and protesting to Mr. Archibald.

Q You mean Mr. Howe came up to your store, this was at the store? A Yes, this was several days after, and apologized for the action of the board.

Q When was it you saw Mr. Archibald about it? A Well, it was a short time after that. I came down to give him a check for the Victory Celebration, or whatever it was, our subscription, and I went to his office and complained to him. That was last fall.

Charles H. Burgesser, direct.

Q What do you mean a short time, a few days or a few weeks or a few months? A I couldn't answer. I had no idea that this was coming up and I didn't keep any accurate memorandum.

Q What is your best recollection of it? A Well, it was possibly within a couple of weeks after, probably within a couple of weeks after.

By Mr. Parry.

Q When you met Mr. Howe at the Bamberger store after this wasn't Mr. Howe in the restaurant? A I couldn't recollect that at the time; I have seen him in the restaurant several times.

Q You use the restaurant yourself? A Yes. The time that he apologized he came up to the office and apologized to me. That was within possibly three or four days after it occurred.

By Director Archibald.

Q When you came to see me it was previous to any newspaper notoriety, wasn't it? A This was within a couple of weeks after. There was no talk then, anything in the newspapers. There is one other thing—I don't know whether it is relevant or not—last week I went into that room (indicating) and Mr. Hewson came in. I went in there to telephone, and he made a remark to me; he said: "I am very sorry that this has occurred. There is no concern in the city that I have a higher regard for." And he said, "I am sorry that I let any personal feelings interfere in this."

By Mr. Adams.

Q That was the day you were called here as a witness in the case against Mr. Howe? A Yes.

Q And it was just after you had testified? A That was when I asked if I could telephone for my attorney.

Q It was after you had been on the stand and had declined to testify until you consulted your counsel? A It was.

CHARLES H. BURGESSER, sworn.

Direct examination by Mr. Parry.

Q Have you been connected with the Newark tax office? A Until last October.

Q And in what capacity? A As assistant assessor.

Q And how long were you connected with the tax office? A Nearly fifteen years.

Q Do you recall an incident of a man coming to the tax office, when a conversation took place between this gentleman and Mr. Hewson in reference to insurance? A Not insurance, no.

Q In reference to a reduction of taxes? A Yes, sir.

Q Tell us about the date of that conversation, as near as you can recall it? A In June, 1919, I was called into Mr. Fitzsimmons' office. There was a man there to make a complaint about his taxes and Commissioner Hewson came in and Mr. Fitzsimmons turned him over to Commissioner Hewson. Commissioner Hewson says to the man, "Oh, yes, I know you. You was here last year with a complaint."

Mr. Adams. I object unless it relates to some specific charge.

Mr. Parry. This is under the third supplemental charge and also under the sixth. The specific individual is not mentioned.

Mr. Adams. I object to that because we have had no notice of any such thing. If they can make a blanket charge they can bring in any number of charges under under the guise of that charge. It does not give us any notice whatever. We don't know out of how many property owners in the City of Newark they are going to say we insulted.

Mr. Parry. We will give ample opportunity of any reply or answer to those charges.

Q Will you tell us of these conversations between Mr. Hewson and this gentleman who appeared before the tax board? A So Commissioner Hewson said, "O, yes, I know you; you were here last year and made a complaint. When you have something to complain about you know where to come, but when you want to buy any real estate you don't come around to see me."

Q What did the gentleman say? A The gentleman said he came here to make a complaint about his personal taxes.

Q Do you know who that individual was? A I don't know the name of the gentleman, but he was manager of the New York Liquor Store, at the corner of West Kinney street and Broome street; I don't know what his name was.

Charles H. Burgesser, cross.

Cross examination by Mr. Adams.

Q You have been assigned to the Vailsburg district in the making of assessments, have you? A Not at that time; no, sir.

Q You had been for a good many years? A Yes, sir.

Q How many years? A Six or seven years.

Q And you were transferred by the board to another district? A Yes, sir.

Q When? A 1918.

Q And you resigned your position when? A October, 1919.

Q And Mr. Hewson was instrumental in having you transferred from the Vailsburg district? A I don't know anything about that.

Q It was done by Mr. Hewson and Mr. Fettinger? A I couldn't tell you.

Q You had no unfriendly feeling against Mr. Hewson? A No, sir.

Q You haven't any now? A No.

Q Who asked you to come here to testify? A I was subpoenaed.

Q But who talked with you about it? A (Witness pauses.)

Q Why do you hesitate—don't you know? A Commissioner Howe told me that I had heard some remarks.

Q You told him this before that, didn't you? A No, sir.

Q You hadn't told Mr. Howe that? A No, sir.

Q When was it Mr. Howe said this to you? A About a month ago.

Q Where did this conversation occur? A In the City Hall.

Q Where? A In the tax office.

Q What were you doing in there? A I had been there to see some of the men.

Q And who opened up this subject between you and Mr. Howe? A Commissioner Howe saw me and he called me in and he asked me—he said he had been informed that I knew something about this.

Q And you told him this story that you have just testified to? A Yes, sir.

By Mr. Parry.

Q Before you told this to Mr. Howe had you spoken to the clerks in the office about it? A When this happened I went

back into the office and told some of the clerks sitting around me of the remark that had been made.

WILLIAM E. SANDMEYER, sworn.

Direct examination by Mr. Parry.

Q You are a member of the Essex County Board of Taxation? A I am.

Q And you have been for how long? A Approximately three years. I succeeded Mr. Congleton.

Q Do you know Mr. Hewson? A Yes, sir.

Q Has Mr. Hewson been before the Board of Taxation? A Many times.

Q Did you ever see Mr. Hewson hand out business cards at a meeting of your board? A Yes.

Q On how many occasions? A I cannot testify to that. I remember him doing it, but I haven't any definite memory of it; I should say once or twice, maybe more or maybe less. I don't want to testify to that because my memory is very hazy.

Q Were those cards given out to people having business to do with the board of taxation? A They were.

Cross examination by Mr. Adams.

Q Is that all you remember about it? A My memory is very hazy about it, yes.

Q How many times did you see him give out cards? A I wouldn't want to swear the number of times.

Q As many as two? A I would say as many as two. I am certain of one, and I have a recollection of more than one.

Q You wouldn't say three times? A No.

Q Do you know under what circumstances they were given? A No; I haven't a very clear recollection.

By Mr. Parry.

Q Did Mr. Hewson, when he was before the board, ever ask anyone having business to do with that board whether they would allow him to sell their property, as you recall? A I can't recall any specific instances of it, no.

Q Do you recall anything about putting the agreements in writing? A Yes.

Q What do you recall about that? A Why, lots of times when property owners would appeal from the assessments on their real property the members of the county board or members of the city board asked them what they were willing to sell their property for, and many times they would name a figure lower than the assessment, and Mr. Hewson—I have heard him say several times—asked them several times if they would put that in writing. I have heard also members of the county board say the same thing.

JOHN FITZSIMMONS, sworn.

Direct examination by Mr. Parry.

Q You hold what position in the Newark tax board? A Tax bureau supervisor.

Q Will you give us the records of the tax board belonging to Walsh & Company or to the other concern at 295 Passaic street? A What year? I would have to get the book. This is the first notification I have had of it.

Q For the years 1917, 1918, 1919 and 1920. We want the real and personal assessments, both, for 295 Passaic street and 81 Clay street, and also the assessment for Richard Stockton, on Ridge street, both real and personal. Were you present when Mr. Liveright appeared before the board? A I was in and out. I wasn't in any length of time, but I was there and I was in and out.

Q Did you hear any conversation between Mr. Hewson and Mr. Liveright? A I heard a great deal of noise; that is about all.

Q Just tell us what the general situation was, so far as it came under your observation? A All I can remember is that there was an argument between Mr. Hewson and Mr. Liveright, and they were both talking very loud, that is all.

Q Did it attract attention outside of the board? A Well, I don't think so, because the door was closed and it is a heavy door.

Q Did you close the door? A Yes, we closed the door when anyone comes in, most every taxpayer that comes in there before the tax board I close the door so as to have it private.

Q Were you present when Mr. Anderson was there? A Yes.

Q Did you hear what Hewson said to Mr. Anderson? A Well, not enough to recall. I know there was an argument about the value of the stock in the chain stores, about the value having enhanced very much over former years. Mr. Anderson argued the same as taxpayers that go there argue.

Q Did you close the doors that time also? A Oh, I don't remember that particular instance, but I close the door in most cases, and when a man comes in there that represents a firm I usually close the door, especially if there are people waiting outside.

Q Will you also bring us the personal assessment for the New Jersey Machinery Exchange? A I have that here.

Q Just give the record of the New Jersey Machinery Exchange? A The New Jersey Machinery Company in 1917 was assessed $10,000 for personalty. 1918, $20,000; 1919, $50,000, and 1920, $120,000.

Q Was there a notice sent out for the 1920 tax? A Yes, sir.

Q What was the amount of the notice? A $500,000.

Q What is the amount that has been finally determined upon? A $150,000.

Q Do you know whose suggestion it was that the amount be fixed at $500,000? A I think Mr. Hewson and Mr. Fettinger visited the place and after visiting the plant and inspecting it they suggested that it be put at $500,000.

Q Will you give us the personal assessment for Maas & Waldstein, both on Doremus avenue and Riverside avenue, for the years 1917, 1918, 1919 and 1920? A In the meadow plant the assessment of 1917 was $250,000; 1918, $300,000; 1919, $200,000; 1920, it was eliminated because they had sold out. And in the uptown plant for 1917 was $75,000; 1918, $85,000; 1919, $85,000, and 1920, $100,000.

Q Do you know the amount of the notice that was sent out for Maas & Waldstein in May, 1918? A No.

Q Have you any records to show that? A No.

Q Have you October, 1918? A No. Whatever it was the notice sent out was merely tentative. We probably have the cards down in the office.

Q You may look up the records on that this afternoon. Give us the personal assessment of Tonks Brothers for 1917, 1918, 1919 and 1920, and also the real. A I have the personal here; I would have to go down to the books to get the real.

John Fitzsimmons, cross.

Q Give us the personal now, if you have it. A Tonks Brothers, personal for 1917 was $25,000; 1918, $25,000; 1919, $25,000; 1920, $25,000.

Q Now, the real assessment at 227 to 231 High street. A 1917, $68,400; in 1918 it was $59,300; in 1919 it was the same and in 1920 the same—$59,300.

Q Do you know whether there was any tentative increase for the 1918 tax or not? A No, there wasn't on this property; no, sir.

Q A tentative increase? A No, sir; no tentative increase on that property. Tonks Brothers has a piece of property next door on which there was an increase.

Q Tell us about that? A 219 to 221, in 1917, $19,200; 1918, $26,200, and 1919, the same, and in 1920 the same.

Q Do you know of any reduction from a tentative assessment in 1918 on this property? A No, sir.

Q On the real estate? A No, sir.

Cross examination by Mr. Adams.

Q On this real estate at 227 to 231 High street, do you know whether the board visited these premises and inspected the premises in 1918 before fixing the assessment? A Yes, sir, they did.

Mr. Hurley. Real or personal?

Witness. Real.

Q Do you know upon what basis it was fixed? A It was assessed at 10.9 per cubic foot in 1917, and in 1918 it was reduced to nine cents per cubic foot.

Q Was that in accordance with the uniform practice which the board adopted this year in making assessments this year on property of this character? A In 1918 the board inspected a great many factories and commercial buildings and they put a value on each one that they thought was fair; some higher than nine cents and some lower than nine cents.

Q Was nine a low value? A It ran from nine to ten. I know that for a fact, because I was with the board that day.

Q Is that true at the building 229 High street? Was that inspected by the board in 1918 also? A Yes, sir; I was there with the board.

Q And that assessment was fixed by the board after that inspection, was it? A Yes, sir.

At this point a recess was taken for one hour.

ARTHUR J. HARDT, sworn.

Direct examination by Mr. Parry.

Q Mr. Hardt, what is your occupation? A I am with Joseph M. Byrne.

Q In what capacity are you engaged there? A Well, I am assistant secretary of the Joseph M. Byrne Company, and manager of their real estate department.

Q Did you appear before the Newark City Board of Taxation within the last year or two? A I did.

Q What was the date, as near as you recall, of your appearance? A I appeared before the board regarding the assessment on the Byrne building for the year 1918.

Q And where is the Byrne building located? A 776 Broad street.

Q And who did you see when you made your appearance before the board? A I walked in the board room and the full board was there and Commissioner Howe says, "Well, what can I do for you; what is on your mind?" I told him I was down there representing Joseph M. Byrne regarding the assessment on the Byrne building, that our income was so much money, that our expenses were so much, and I asked for a reduction, and Mr. Howe said, "The land value is established; we can't do anything on that, but on the building, well, will $5,000 help you out?" I said, "It is not a question of whether $5,000 will help me out; it is up to you and your entire board to tell us what you can do." And Mr. Hewson said, "By the way, Arthur, you haven't rented your first floor yet?" I said, "No, we have not yet." He said, "Why don't you give me a chance to rent it for you?" And I said, "I will be in to see you in a day or two." Commissioner Hewson said, "I recommend $10,000 for the Joseph M. Byrne Company," and I thanked him and walked out.

Cross examination by Mr. Adams.

Q You are in the real estate market? A Yes, sir.

Q Do you know Mr. Hewson as a fellow real estate broker? A I have never had any dealings with him.

Q How long have you known him? A Seven years.

Q You see him almost daily, don't you? A I collect his rent every month.

Q You and he have been on specially friendly terms? A Very.

Q And it didn't strike you as unusual that he should ask you about the renting of the first floor of your building? A Well, I don't know.

Mr. Parry. That is really a conclusion.

Q Do you mean to say that Mr. Hewson asked you to give him an opportunity to rent this first floor, and you said all right, you would be in and see him, and he immediately moved that the assessment on your building be reduced? A Yes, sir.

Q Without any further conference with the others? A No; without any further conference.

Q Didn't confer with the others? A He just said, "I recommend $10,000 on the Byrne building."

Q And the others voted in favor of it? A Yes, sir.

Q There was no further discussion of it? A No; I thanked them and walked out.

Q He knew you well enough to call your Arthur? A He certainly did.

Q Had there been an assessment fixed at this time or had there been what they call a tentative assessment? You received a card, a notice? A Well, that I don't remember. I remember our assessment in 1917 was $293,300, and our assessment for 1918 was $283,000.

Q What time of the year was that? A That I can't remember.

Q Do you know Mr. Fitzsimmons, the clerk of the board? A Yes, sir.

Q Was he present? A He was.

Mr. Parry. I desire to offer a certified copy of the last will and testament of Alice W. Hayes.

Mr. Adams. No objection.

ALFRED F. SKINNER, sworn.

Direct examination by Mr. Parry.

Q Judge Skinner, you are a practicing counsellor of this city? A Yes. sir.

Q Are you the administrator with the will annexed of the estate of Alice W. Hayes? A I am the sole remaining trustee under that will, having concluded the executorship.

Q (Showing witness paper.) This is the will which I herewith show you? A I have no doubt it is. This is undoubtedly the estate and I have no doubt this is a correct copy of the will.

Q Did the estate of Alice W. Hayes own property on the westerly line of Broad street at the southeasterly corner of the Charles W. Macknet, deceased, property, known, I think, as 797 Broad street? A Yes, sir.

Q Did you, as surviving trustee of that estate, pay a commission at the time that that property was sold? A Yes.

Q And have you the check showing the payment of such commission? A Yes (producing paper).

Q Have you it with you? A Yes, sir.

Mr. Parry. I desire to offer this check in evidence.

Mr. Adams. No objection.

Mr. Parry. This is a check for $1,012.50 dated December 23, 1919, on the National Newark & Essex Banking Company, pay to the order of Charles P. Gillen & Company, $1,012.50; Alfred F. Skinner, estate of Alice W. Hayes, deceased."

Q To whom did you give this to? A I am not sure whether it was given to anyone in person, or went by mail, I can't recall about that.

Q Did you see Mr. Hewson in regard to the transaction? A Yes, sir.

Q Did you arrange with Mr. Hewson as to the amount of commission? A Yes.

Q Judge Skinner, as the trustee of that estate, can you tell us if the parties who had a life interest and the remainder-men in said estate deeded their interest to the Mayor and Common Council of the City of Newark? A The parties who had a life interest did. I would hardly want to say yes to the rest of your question, calling them remainder-men, because I don't think their

interest was quite that of remainder-men. Under the will of Miss Hayes there was no estate in remainder given to anybody. There was a gift of all of the residue of her estate, after those life estates that you have referred to, to the City of Newark, that is, they were to be held in trust by the trustees until the termination of the life estates, and then the properties were to be turned over to the City of Newark for park use. In the suit that was had in Chancery, Vice-Chancellor Stevens brought out the point that that use and that gift might not be accepted by the city, in which case Miss Hayes would have died intestate and the property would have gone to her heirs-at-law, and as to personal property, to next of kin, and it was those possible next of kin and heirs-at-law that did execute deeds as life tenants to the Mayor and Common Council of the City of Newark.

Q So at the time this particular property was sold the Mayor and Common Council of the City of Newark had the absolute title to the property? A They did not, oh, no.

Q Not at that time? A No.

Q When were those conveyances made, if you know?

Mr. Adams. What conveyances?

Mr. Parry. The conveyances by the life tenant and the heirs at law of Alice W. Hayes.

Mr. Congleton. Having been engaged in this matter as city counsel, I can say approximately, it was the last of November, 1917, one of the first things that I had to do with as city counsel, meeting Judge Skinner and getting the money to pay to the life tenants and some of the other parties that he has described. I should say it must have been the last of November or the first of December, 1917.

Witness. The decree of the Court of Chancery was dated November 2nd, 1917, and this transfer which you speak of was at or about that time.

Mr. Adams. If it becomes material the record can be examined.

Mr. Parry. I have a copy of the final decree in this case wherein Frederick F. Guild, *et al.,* executors, are complainants and the Mayor and Common Council of the City of Newark are defendants, and I offer that in evidence.

Alfred F. Skinner, cross.

Q Was the check offered here the total amount of commission? A Yes, $1,012.50. I think it was at the rate of 3½ per cent. on the first $20,000 and 2½ per cent. on the excess.

Q That was 3½ per cent. on what amount? A 3½ per cent. on the first $20,000 and 2½ per cent. on the excess.

Cross examination by Mr. Adams.

Q As the executor and trustee of this estate, you have power to sell under the will? A Yes, sir.

Q And you have been from time to time selling real estate of this estate? A Yes, sir.

Q And you had parcels of real estate, or some of them, listed with brokers in the City of Newark? A Yes, sir.

Q And was the firm that Mr. Hewson is connected with, C. P. Gillen & Company, one of them with whom you had this property listed? A I can't say from recollection. I can't say it is likely; I can't say that I recall ever having them listed. I know that Mr. Hewson came to me about this particular property, and I don't really recall whether he came about any other property.

Q Do you recall that you had this property and some others listed with Mr. Hewson, particularly before he was connected with the Gillen concern? A I don't recall it; I think it is quite likely.

Q There was litigation in Chancery which terminated in the decree which has been offered in evidence? A Yes, sir.

Q And under that decree I understand that certain life interests were acquired by the City of Newark, or conveyances were to be made by the life tenants to the City of Newark; is that right? A Yes.

Q And was consideration to be made to the life tenants for those premises? A Yes, sir.

Q And was the consideration paid? A Ultimately, yes.

Q Who paid it? A The estate did. Understand, I have not been the only trustee. I am the remainder trustee. There were others with me.

Q Was this made by the trustees out of the funds in their hands? A Yes, under the direction of the Court contained in that decree.

Q How did this transaction of Mr. Hewson's arise, what was the first you know of his connection with any prospective sale of this property? Did he come to you or did you go to him?

Alfred F. Skinner, cross.

A Why, I think he came to me.

Q When he came to you didn't he tell you that he was selling the adjoining property? A Yes, I remember that.

Q And said that he had an opportunity to sell the adjoining property if you could sell this? A Yes, sir.

Q And asked you your price? A Yes, sir.

Q And he entered into negotiations with you? A Yes, sir.

Q And those negotiations eventually resulted in a sale? A Yes, sir.

Q Or in an agreement of sale? A Yes.

Q The buyer was McAllister, Carton & Stulz, a corporation? A Yes.

Q You entered into an agreement of sale with them? A Yes, sir.

Q And it was made with them by yourself as trustee? A Yes, sir.

Q Have you the agreement with you? A Yes.

Q You received the consideration of the purchase price of this sale? A Why, ultimately, yes.

Q You took a purchase money back for part of the purchasing price? A I took a purchase money mortgage back for part. The cash deposited at the time of signing the agreement as part of the cash payment at time of the closing and remitted him a cash payment that had been made at a public sale

Q And out of the proceeds you paid this commission to C. P. Gillen & Company? A Yes, sir.

Q Your administration of that estate is not closed? A No.

Q And will not be for some time? A I wouldn't like to believe that.

By Mr. Parry.

Q The proceeds of this sale, the net proceeds, were paid over to the Mayor and Common Council of the City of Newark? A No.

Q Under the terms of the will the money belongs to the City of Newark, does it not, eventually? A So much of it as is left of it after doing certain things with it. A little of this money went as a payment—I can't identify this particular money as having gone to that particular person. I can only say that subsequent to the making of the payment—of the payment of $500 on account to me as trustee by the purchasers, I paid Mrs. Pen-

nington, one of the life tenants, the balance due her under the decree, and did that out of funds in my hands that had been swelled by that $500 payment.

Director Archibald. It all went in together?

Witness. Yes.

By Mr. Congleton.

Q When this decree was made, and the life tenant and the people that have been referred to as the remainder-men, which may not be the correct term, when the agreement was entered into between them for the City of Newark to purchase their interest, whatever it might be, in the neighborhood of $3,000 or a little more, in order to raise that money, instead of the city going out and borrowing it, you, as trustee of this Hayes estate, borrowed the money or part of it, from the bank upon securities belonging to the estate? A Part of it, yes.

Q And the initial payments were made and from time to time as you have sold either securities or real estate, you have paid the life tenant what was due them until now they are practically all paid? A Yes.

Q So until that was done there would be no money coming to the City of Newark in cash, but ultimately all the money left in your hands will be turned over to the City of Newark to be put back into parks under the decree that has been offered in evidence? A Yes, sir.

By Mr. Parry.

Q If there had been no commissions paid in this particular case the additional $1,012.50 would have gone to the City of Newark? A It would have gone into the funds that is ultimately to go to the City of Newark.

By Mr. Adams.

Q As you have said, you have some obligations to pay, have you not? You borrowed some money as trustee to pay for this life estate? A Something over $100,000 is owing to the bank.

Q You have to pay that out of the money that comes into your hands before anything goes to the City of Newark? A Yes.

Alfred F. Skinner, cross.

Q In the matter of your disbursements and the expenses that you incur, do you consult the municipal authorities at all? A Why, no, I can't say that I do, as to the expenses.

Q Do you consult them in the matter as to whether you can pay commissions on real estate? A I don't know as I ever have.

Q You didn't consult them with reference to this commission? A No, I don't think I did. I have no recollection of it.

Q When you sell property, has your practice been to fix the price yourself or do you do it after a conference with the municipal authorities?

Objected to.

Q Did you fix the price on this property? Did you do it yourself or after conference with anybody representing the City of Newark? A I did it after a conference.

Q With whom? A I know I consulted Mr. John Howe, and I am not sure whether I consulted with Judge Congleton or not.

Q In what connection did you consult Mr. Howe? A In the early stages of my attempt to sell the property, the real estate that was in this trust I had, I think, asked the city to designate someone that should be a guide to me in the determination of what price I ought to get for those properties, and I think it was Mr. Congleton told me that Mr. Howe was the one that was to be consulted, and I think I got from Mr. Howe, and another real estate expert, appraisals on the property, all of them, and then afterwards as a sale came along, or an opportunity for sale, I would consult Mr. Howe to see whether he thought that since the time of his appraisal there had been any change in value. And so it was in connection with this sale that I remember speaking to Mr. Howe and asking him what he thought about the price, that was all.

Q And that was for the purpose of informing yourself whether it was a fair price? A Yes, sir.

Q And determined the purchase price, did you not, that should be accepted? A Yes.

Q And then I understand that in this case and in the cases of the other property that you sold for the State you went through the form after that of having a public sale by the City of Newark. Can you tell us why that was? A I will have to go back a little. First, we have to start with the time of the

settlement of the Chancery suit. That settlement was put into the decree that is presented to the Court as one that had been agreed upon between all the parties and then was embodied in the Court's decree, and it provided that upon the delivery to me of the deed, these life tenants and the various other contingent holders and sort of contingent interests that had been litigated—of deeds from them, I should pay them certain sums of money, and the decree described the deeds as running to the Mayor and Common Council of the City of Newark, and they were so drawn and so ran. Then when I made the first sale that came under the scrutiny of the Fidelity Trust Company, that company raised the question as to the deeds to the city, that thereby some interest had been vested in the city that could only be extinguished by a deed out of the city, and I remember debating that with the Fidelity officers. I think I had some correspondence with them about it, trying to persuade them that under the decree and under the will of Alice Hayes, that I had the power to sell, that I was selling for the purpose of raising money as provided by the decree to pay the interests and therefore didn't need to get the consent of the city or have them join in the deed. I had the Court order, but I wasn't successful in persuading the Fidelity, and they had the last say when it came to determining whether they would guarantee the title, and I thought the easiest way was to meet their view and get a deed from the city. So I took it up with Judge Congleton, and he agreed that was the thing to do, and brought the matter before these commissioners, and resolutions were passed, and the deed was, I think, actually executed. Then came the further objection from the Fidelity that it would be no conveyance by the city except by public sale, referring to some recent statute, and that I reported to Judge Congleton, and we talked it over, and we agreed the only thing to do to satisfy the Fidelity and perhaps to make the title beyond any question, would be to have such a public sale, so that thereafter every time I made a sale I would make it as trustee for the Hayes estate without regard to the City of Newark as having any interest in the matter until it came to the time of closing—I mean, the time of actually closing out the bargain, getting ready to prepare the papers. Then I would say to the buyer, "Now, if you take this property and get a contract from me, there will have to be a clause in it that there is to be a public sale by the City of Newark, and that your clients,

or the purchaser himself, will obligate himself to go to that sale and bid the amount that you have agreed to pay me. If any competition comes that you must face, and if you don't care to go any higher then you may withdraw from this contract and have your money back." That is the clause that went into this particular agreement, so under that plan, as Judge Congleton and I raised it, a public sale was made of this property.

By Mr. Parry.

Q I will read you a clause from the agreement of sale and ask you if that is correct? (Reads.) A You are reading from the agreement. Yes.

Q At the closing of the title of this property there was also a deed from the Mayor and Common Council of the City of Newark? A Yes, sir.

By Mr. Adams.

Q Do you remember when you first informed Mr. Hewson of this transaction that a deed from the city would be required and the date the sale would be held? A I can't answer that from memory. I can only say as I did before, that my usual way was to say nothing about the city's deed until the purchaser had closed with me or was ready to close, and then I would say, "I will accept your offer and give you a contract of sale, but it must have in it this clause for this kind of public sale, and it must be conditioned upon your being the purchaser at that sale."

Q There is nothing which impresses it on your mind that you followed any different form in this transaction than in the others? A No.

Q You made the arrangement with Mr. Hewson, or Mr. Hewson made the arrangement with you, for the commission? A Oh, yes.

Q You referred to the fact that there has been some records made of the heirs-at-law and remainder-men. Is it true that these persons who have been referred to in this way were heirs at-law of Alice Hayes, who took nothing under her will unless the City of Newark failed to accept the gift to it, that is, as far as the will is concerned, but some of whom had made threats at different times to upset the will. Is that a correct statement—

that is, to upset the will, threatened to take proceedings to establish some rights? A It is correct, but not complete.

Q Complete it. A There were others I think that were heirs-at-law—I am not sure of this—heirs-at-law of David A. Hayes. That part of your statement is correct, that in the contemplation of the trustees under the will of Alice Hayes, these people had no interest at all and were parties because attorneys representing them made claims upon the trustees or served notice upon them that they disputed the validity of the will. I recall one party was no heir-at-law of heirs, but was the Yale University. Yale University was to have all of the Howard Hayes estate if Alice Hayes failed to exercise the power of appointment which Howard Hayes' will gave her, and we concluded as trustees, that if these people were notifying us that the will was not any good, and figuring that all we could do was to make them toe the line and make good their claim, we took the initiative and we engaged Mr. McCarter to institute proceedings to construe the will. That suit was decided against every contention that was set up by any of these parties and in favor of every provision of Alice Hayes' will and completely sustained, and I thought, and still think, that the titles that were in the trustees by her will, passing her own property to us, using the power of appointment that she had under Howard Hayes' will to pass to us his property, on the same trust and passing to us interest that she had as heir-at-law of her neice, Mary Hayes Pennington, subject to the life estate of Mr. Louis Pennington. Vice-Chancellor Stevens, however, brought out the point that the city of Newark had not yet accepted this gift, and might not, it might not be put to the determination whether it should perhaps, after these life estates had terminated, possibly twelve, thirteen, fourteen or fifteen years after, and that therefore these people who had been making the claim that the will was no good, while they had no such interest as they set up, did have this possibility that they might come in in case the city rejected the gift.

By Director Archibald.

Q Did the city accept it? A No, sir; didn't accept the gift. What the city did was to extinguish all possibility that these people might ever object if the city, instead of accepting the gift, literally, were to vary it It was thought best not to have

a park where Miss Hayes had said there would be. It had been advised that it was a poor place for a park, and the city wanted to get freedom from that provision and locate the park somewhere else, and that they get a reverter in case of a rejection.

Q Was it determined in the suit that the trustees of the estate of Alice W. Hayes had a power of sale? A That is my recollection.

Q You told me that the other day? A The decree will show. It did appear by the decree that the city had neither accepted nor rejected the gift.

ARTHUR T. VANDERBILT, sworn.

Direct examination by Mr. Parry.

Q Mr. Vanderbilt, you are an attorney-at-law of this State? A I am.

Q And have been for some time? A A few years.

Q You were attorney for Tonks Brothers? A I am now yet.

Q They have a building at 227-231 High street, Newark? A They have a building at High street and Boyden place; I think that is the number of it, the number you gave, a factory building. In fact there are a dozen factory buildings.

Q All located on the same block? A Yes.

Q The one at 227 and 231, do you recall which that is, what number? A No, I don't. In fact, there are three of them. Two of them, I think, front on High street and circle a fire house there, and the other is at the rear of Boyden place.

Q This is the building on the corner? A I don't know them by individual buildings. They are all covered by one mortgage and all operated from the same power place.

Q Did you go to see Mr. Hewson in reference to a lease on the loft in that building? A No.

Q Did you go to see him with reference to the tenant on this property? A No, the only thing I ever did with respect to any of the property of the Tonks Brothers was to go down one time to the board with Mr. Thomas Tonks, the president of the company.

Q What was the date of that? A I can't give you the date. It was at the time of the sending out of the little blue card telling the assessment; I can't fix the date. I can't fix the year.

Q Was it last year? A It might have been last year or it might have been the year before. I haven't it distinctly in mind. There was only one occasion I was down there.

Q At this time that you went down there did you find that the assessment had been raised from nine cents per cubic foot to fourteen cents per cubic foot? A That I can't recall. Mr. Tonks came into my office and had his card with him and said their assessment had been very considerably raised, as he put it. I think nearly double, and wanted to know if I would arrange an appointment with the board through Mr. Fitzsimmons and come down and state their case.

Q You did come down? A Yes.

Q What happened when you got there? A As I recollect, Commissioner Fettinger and Commissioner Hewson were there and Mr. Fitzsimmons was in the room. Mr. Tonks did most of the talking, complained of the increase and Mr. Fitzsimmons seemed to have the figures on his finger tips and gave him the various rates on their buildings and on their factory building across the street, and as a result of the conference some of the buildings were increased, and some decreased, as I recall it, but the net result was a decrease on the proposed assessment. In that conference Mr. Fitzsimmons did most of the talking.

Q Did you make any investigation at the time as to whether there had been a similar increase in the property in the same neighborhood? A No, we took the statements which Mr. Fitzsimmons had there. He told us that they had. I can't give you the exact figures, but they had raised the rate per cubic foot on all factory property of this same sort, and that this raise was merely in proportion and that they put some of the properties up and others down, and they compared, as I recall it, with that factory building which is directly opposite on High street.

Q This was in the year, 1918? A I can't tell you. That was my recollection. I would say it was for the year 1918.

Q Did you compare it with the other buildings in that district? A No, I did not.

Q You made no comparison yourself? A No; Mr. Fitzsimmons made the statement there and I took his word to be the truth. He seemed to know what he was talking about.

Q Did you speak to Mr. Fitzsimmons in reference to the lease of that loft in that building which had previously been rented by Feist? A I never had anything to do with any lease

in that building at all. I never had anything to do with any leases.

Q Did you make a statement in the presence of Mr. Howe to a number of gentlemen about making such a statement? A No.

Q Did you make a statement of this sort—

Mr. Adams. I object to it as evidence against Mr. Hewson.

Mr. Parry. This is simply for the purpose of refreshing the recollection of the witness.

Q Did you make a statement of this sort: "I had a client who had a loft to let on High street and he said Hewson tried to lease it, but before he succeeded Feist secured a tenant, and when this other fellow finally came along he was very much put out, and the first thing they knew they received a notice that the assessment on their buildings had been increased to fourteen cents a cubic foot." A No, I don't think I made any statement like that. The reason I say that was because I didn't know and still don't know, that Feist did rent any loft in that building.

Q You don't recall that particular conversation? A I don't recall that conversation, no.

Q Do you recall any conversation on that line? A Not along that line.

Q Did Tonks Brothers mention any motive to you as being the reason for an increase?

Mr. Adams. I object to what the witness' client told him. I don't know how that can be evidence against Mr. Hewson.

Director Archibald. No, it cannot be.

Mr. Hurley. I think we ought to have a right to go into it.

Q Do you know whether or not as a matter of fact the assessment was raised from nine cents to fourteen cents per cubic foot at that time? A As I told you before, I can't give you the figures. I know there was a substantial increase and it was for that reason that Mr. Tonks asked me to come down and we had this conference with Mr. Tonks and the secretary.

Q Where is Mr. Tonks today? A I can't tell you where he is today. I know where he will be in a few days.

Q Where is he? A On his way to California.

Q When did he leave, if you know? A I can't state positively, but I think he went Saturday.

Q Do you know when he is coming back? A Why, I suppose as soon as his winter vacation is over. He goes away every winter for four or five weeks. I might say that he has been down here for several days, I have known that. And this trip has been planned for a long time.

Q He is under subpoena in this case? A Yes, sir; he has been here at least on three occasions, I think.

By Mr. Hurley.

Q Was there any advice given as to paying an additional commission to agents? A No.

Q There was not? A No.

Mr. Parry. At this time I would like to show on the record the transaction in reference to the sale of the Alice Hayes property. On page 35 of the minutes of the Board of Commissioners for October, 1919, there is a copy of a resolution. Mr. Adams, do you ask for the production of the book or do you accept the resolution as printed in this book?

Mr. Adams. I would suggest that you offer the original records. You need not produce them at this time. I have no objection to your using a copy.

Mr. Parry. On page 35 of the October minutes it reads as follows: "Whereas, The City of Newark, as successor of the Mayor and Common Council of the City of Newark, has a certain interest in the land in the City of Newark, by virtue of a final decree entered in the Court of Chancery of New Jersey, on the 3rd day of November, 1917, in a cause therein pending wherein Frederick F. Guild, and others, executors, etc., were complainants, and the Mayor and Common Council of the City of Newark, and others, were defendants, and also under certain deeds made to said Mayor and Common Council of the City of Newark by parties defendant in said suit, which said lands are situated in the City of Newark, and are more particularly described as follows:

Record Re-sale of Hayes Property.

"Beginning in the westerly line of Broad street at the southerly corner of land of Charles S. Macknet, deceased; thence along said street south 29 degrees 30′ west 33 feet to the middle of the partition wall between the house on the premises hereby conveyed and house adjoining on the south, now belonging to William T. Carter; thence about north 60 degrees west through the middle of said partition wall and along a fence in continuation thereof 250 feet to a point distant southerly exactly 33 feet from the southerly line of said Macknet's land, parallel with Broad street; thence north 29 degrees 30′ east 33 feet to said Macknet's land; thence along same south 60 degrees east 250 feet to the beginning; and,

Whereas, said lands are not suitable or convenient or needed for public use by said the City of Newark;

Therefore, be it resolved, by the Board of Commissioners of the City of Newark, that by virtue of the authority of Article 18, Chapter 152 of the Laws of 1917 of the State of New Jersey, said interest in the City of Newark in the lands above described be sold, at public sale, to the highest bidder, after public advertisement given in a newspaper circulating in the municipality, at least once a week, for two weeks, prior to such sale; and,

Be it further resolved, that the Director of the Department of Parks and Public Property of the City of Newark, be and he is hereby authorized to offer the interest of said the City of Newark in the said above described lands for sale, to the highest bidder, and to report said sale and the terms thereof to this board for confirmation.

John F. Monahan,
William J. Brennan,
Charles P. Gillen,
A. Archibald,
Thomas L. Raymond.

The roll being called, the resolution was declared adopted by the following votes:

Yeas — Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen."

Record Re-sale of Hayes Property.

Page 91 is the second resolution:

"Commissioner Monahan offered the following resolution:

"Whereas, by resolution adopted by this Board on October 9, 1919, the Director of the Department of Parks and Public Property of the City of Newark was authorized to sell, at public sale, to the highest bidder, certain lands and premises in the City of Newark, Essex County, New Jersey, described as follows:

Beginning in the westerly line of Broad street at the southerly corner of land of Charles S. Macknet, deceased; thence along said street south 29 degrees 30′ west 33 feet to the middle to the partition wall between the house on the premises hereby conveyed and house adjoining on the south, now belonging to William T. Carter; thence about north 60 degrees west through the middle of said partition wall and along a fence in continuation thereof 250 feet to a point distant southerly exactly 33 feet from the southerly line of said Macknet's land parallel with Broad street; thence north 29 degrees 30′ east 33 feet to said Macknet's land; then along same south 60 degrees east 250 feet to the beginning; and

Whereas, in accordance with said resolution the Director of the Department of Parks and Public Property did expose at public sale the interest of said The City of Newark in said lands, and did receive therefor a bid of $32,600, said bid being made by McAllister, Carton & Stulz Corporation, a corporation, and did accept said bid;

Therefore, be it resolved, by the Board of Commissioners of the City of Newark that the action of the Director of the Department of Parks and Public Property in accepting the aforesaid bid, be and the same is hereby ratified and confirmed; and the Mayor and the City Clerk of the said The City of Newark, are hereby authorized and directed to execute a bargain and sale deed, with covenant against grantor's acts, to the purchaser of said land or any interest therein owned by said The City of Newark.

John F. Monahan,
A. Archibald,
Charles P. Gillen,
Thomas L. Raymond,
William J. Brennan.

The roll being called, the resolution was declared adopted by the following votes:

Yeas — Commissioners Archibald, Brennan, Monahan, Raymond, Mayor Gillen."

JEROME T. CONGLETON, sworn.

Direct examination by Mr. Parry.

Q Mr. Congleton, you are the city counsel of the City of Newark? A I am.

Q And you were in the month of October, 1919? A Yes, sir.

Q Did you draw or supervise the drawing of a deed from the Mayor and Common Council of the City of Newark to the McAllister, Carton and Stulz Company, property at 979 Broad street, Newark, New Jersey? A I gave instructions for its preparation to my stenographer.

Q And by whom was that deed executed? A By Mayor Charles P. Gillen and William J. Egan, City Clerk, is my recollection.

Q And the deal was closed with this company for a consideration of $36,600? A Yes, it was closed, as Judge Skinner said. I did not attend the closing. I had the deed executed. On the day of sale—I attended the sale with Commissioner Monahan and the purchaser paid a further deposit on that day. After the sale had been confirmed by the Board of Commissioners I had the deed executed, and I sent the deed and a check which had been paid down on the day of sale to Judge Skinner, and he attended to the closing and received the rest of the money.

Q Were you present at the hearing of the charges against John Howe recently tried before Director Archibald? A Yes, sir.

Q And did you hear the testimony of Mr. Hewson on cross examination as shown on page 136 of the transcript of that case? A Why, yes, I presume I heard it. I was here during all the trial.

Mr. Adams. What is the idea of reading that?

Mr. Parry. I want to prove who the officers of the corporation were.

Mr. Adams. We will admit that.

Jerome T. Congleton, cross.

Mr. Hewson. President, Mr. Charles P. Gillen; vice-president, myself; secretary-treasurer, Mr. John J. Gillen.

Mr. Adams. You are also general manager?

Mr. Hewson. Yes.

Cross examination by Mr. Adams.

Q You sent the deed and a check to Judge Skinner, you say? A Yes.

Q Whose check was it? A Well, I can't say whether it was the check of the purchaser or a check that they used, but it was a check given to Commissioner Monahan in lieu of cash.

Q To whose order was it drawn? A It was drawn to the order of the City of Newark.

Q And was it endorsed? A It was not endorsed, because the Commissioner of Revenue and Finance will never endorse any check drawn to the City of Newark. It must be banked, in this case, as we have done in one or two other similar sales. The check was certified, as I recollect, and held until the day of closing, and sent to Judge Skinner, and he then gets the purchaser to give a new check in lieu of this one, so it does not appear in the city books until such time as we get the funds in our hands to deal with.

Q And none of the money representing the purchase price came from the city at all? A No.

Q It all went into Judge Skinner's hands? A Yes, and the bills for the publication were sent to Judge Skinner to pay?

Q He paid all the expenses? A He did.

Q And you heard his testimony? A Yes.

Q And what he said with reference to the reason for having a deed made by the city and having a sale is true, so far as your knowledge goes, is it not? A Yes.

By Mr. Parry.

Q Prior to the execution of this deed by the Mayor and the City of Newark, did the City of Newark receive deeds from the life tenants and those having an interest in the estate of Alice W. Hayes? A Yes.

Q And those deeds had all been executed and received prior to this deed that was made to the McAllister, Carton & Stulz Corporation? A I don't remember the date of that. There were

numerous ones that were printed, and we took up the first ones, as I stated, shortly after I became corporation counsel on November 26, 1917. This matter was in process of settlement when I assumed office. The decree had been made and one of the first things that I had to attend to was to meet with Judge Skinner and arrange for his taking up of the deeds running to the Mayor and Common Council of the City and paying them over the money.

Q As I understand it, at the time that the deed was given by the Mayor and Common Council of the City of Newark or by the Board of Commissioners under the authority of the resolution on page 91, October, 1919, minutes, the City of Newark had cleared the interest of all life tenants and all of the parties having any possible interest in view of the decision made by the Court of Chancery, and therefore the title had been perfected in the City of Newark. A Yes, that is so—I mean so far as the one that Mr. Parry is speaking about.

By Mr. Adams.

Q You don't mean the City of Newark had a good title in fee simple in this property, do you? A I don't think that we are entitled to the property until the Judge has carried out the trusts created under the will. I don't know how nearly completed they are. My recollection is that some of the life tenants had not yet received the full amounts due them. The Judge says they have been paid in full. What more there is to it I don't know.

Q You know that he borrowed the money from the bank? A I know he did. I heard him say that he paid it back.

Q No, he said he owes about $100,000. A For which there are securities of the Alice Hayes estate of as collateral. I know he put them up the day we borrowed the money. He spent a long, long time fixing it up. I think he was over in the bank until six or half-past six o'clock.

JOHN FITZSIMMONS, recalled.

Direct examination by Mr. Parry.

Q Will you give us the records that were asked for this morning? A I will first give you the records of property 293, 295 Passaic street, in the name of the Brothers Realty Company.

It is 295-305; it was spoken of as 293-295. In 1917 the real estate assessment was $14,400, and the personal assessment $7,500. In 1918 the real estate was raised to $28,400, and $9,800 was remitted by the County Tax Board, reducing the assessment to $18,600. The buildings were measured that year by the clerks in that district, and we recommended a reduction. The personalty that year was $7,500. In 1919 the real estate is assessed $18,600, the same as it was reduced to in 1918, and the personal assessment was $10,000, an increase of $2,500. In 1920 the real estate was $18,600, and the personal $10,000, the same as 1919. In 1920 a tentative assessment was sent to the Walsh's Sons & Company, increasing their personal assessment to $15,000, and it was reduced to $10,000, left at the same figure as it had been in 1919. The assessment at 81 Clay street—there is no personalty there, it is all real estate—in 1917, that property was assessed at $12,300; in 1918 it was raised to $15,700, an increase on the building; in 1919 it was $15,700, and in 1920 the same, $15,700.

Mr. Adams. What was the name?

Witness. Federal Real Estate Company.

Q Is there any record of a tentative raise on those assessments in 1918? A No, not for 1918, but I have them for 1919.

Q What other records have you there? A I was asked to get the record of the Richard Stockton assessment. In 1917 Mr. Stockton is assessed for personalty $200 at his residence, 218 Mt. Prospect avenue. In 1918 he moved to Ridge street, where he purchased a house, between 1917 and 1918, and the real estate is assessed at $12,850.

Q What is the assessment for 1917, 1918, 1919, 1920 on the Ridge street property? A 1917 Mr. Stockton didn't own it.

Q We want the assessment for those four years. A In 1917 the property 423-427 Ridge street was assessed at $10,900; 1918 it was raised to $12,850, and there was no personal assessment. There was $200, on, and he was allowed to take it off on account of being a veteran. In 1919 the assessment is the same as it was in 1918, $12,500; no personal assessment. In 1920 the real estate is raised to $13,700, an increase of $850 on the building.

Q What was the tentative assessment on the Stockton property? A I don't know.

John Fitzsimmons, direct.

Q Can you give us the tentative assessment for 1918? A No.

Q Did Mr. Stockton come to the tax board in reference to the 1918 assessment on that property? A I don't remember about that. I couldn't recall so far back Mr. Stockton was in to see me several times He comes in every year in regard to his personal assessment.

Q Do you recall his coming to see you on his realty assessment? A No, I wouldn't do anything on his real estate assessment. I would refer him to the board. On his personal, I would take his personal and allow him that which is allowed by law.

Q Take the real estate assessments of 1917 and 1918 on the same block with the Richard Stockton property and see if there was the same proportion of increase on other houses on that block. A The property next door in 1917 was vacant land, and was assessed at $6,050; in 1918 it was raised to $10,700. That is 413 to 421.

Q Does that tell how large a tract that is? A 110 by 73. That is for the land only.

Q What was the Stockton raise, on the land or on the building? A Some on the land and some on the building.

Q How much on each? A $2,000 on the building and $450 on the land.

Q That was the assessment as it was finally fixed? A Yes.

Q Were there any increases of assessments on the building adjoining the Stockton property? A Well, there is only one building adjoining on one side, and that wasn't increased.

Q Now, the other side. A That was vacant land.

Q The nearest buildings to the Stockton property on that block. A No, there is only two buildings on that block on that side of the street, Stockton and the one next to it.

Q Aren't there other houses on that block on the other side? A There are only two houses on that block.

Q How about across the street? A Here is one property across the street was reduced, the building was reduced; the land was raised $900, and the building reduced $900.

Q Whose property was that? A John McKean.

Q What is the other property nearby there? A The property next door owned by John L. Swayze. The land was increased, but the building wasn't increased.

George W. Jagle, direct.

Q Will you look along that street and see if there are any buildings other than the Stockton building which were increased in 1918 over the 1917 assessment? A I don't know anything in the neighborhood which seems to have been increased.

Q Then as far as you can tell us from the record, there is no increase in any building in that immediate vicinity? A Not on that side of the street.

Q Just one other question. During your membership as supervisor of the board did you ever notice Mr. Hewson give out business cards to parties having business with the board? A I think I have seen him hand them over the counter.

Not cross examined.

GEORGE W. JAGLE, sworn.

Direct examination by Mr. Parry.

Q Mr. Jagle, what is your occupation? A I am a paint merchant.

Q And with what concern are you connected? A Hockenjos and Company.

Q Did you have a building belonging to your father-in-law for sale? A You have reference to the Iffland property?

Q Yes. A Yes, sir.

Q When was that for sale? A I believe that was last spring.

Q Did you come to the tax board in regard to that property?

Mr. Adams. Under what charge is this?

Mr. Parry. That is under the fourth paragraph of the supplemental charges. The parties are not particularly named.

Mr. Adams. I object to this on the ground that we have had no notice of any such charge.

Mr. Parry. We ask to amend the complaint to add the name.

Director Archibald. That will be permitted.

Q Mr. Jagle, did you have any conversation with Mr. Hewson about the sale of the Iffland property? A Not to my knowledge.

Q Did you have any conversation about insurance? A Not that I remember. I didn't personally, no.

George W. Jagle, direct.

Q Who had charge of the sale of this property? A The sale of the property laid with the heirs, but I was acting with the attorney, Mr. Zine, and we conferred on the matter. At that time the property was assessed, I think, at one hundred and seventy-two thousand or eight thousand, I am not sure exactly, and the rent that was offered made a net return of about one and one-quarter per cent. to the estate, and we consulted with each other, and I went down to the tax board and I asked if they couldn't possibly reduce the tax value on that property.

Q Who did you see in reference to it? A I believe I saw—I don't know whether it was the board or an individual member. I had originally spoken to Mr. Howe and he said, "Come to the board and make the complaint." We got no satisfaction from the city board, and we appealed it to the county board, and they took off $10,000 on the building.

Q What was the personal assessment of Hockenjos? A When?

Q What year was it that you were selling the Iffland property? A Last year.

Q What was your personal assessment for Hockenjos? A $20,000.

Q Was there an increase in that assessment? A To $50,000.

Q Did you appear before the board in reference to those figures? A Yes, sir.

Q Who did you see in regard to it? A Mr. Hewson and Mr. Fettinger and Mr. Howe were present.

Q Did you have any conversation with Mr. Hewson with regard to it? A Plain business conversation. I told him I had a jump of $30,000, it was too much, and after two or three minutes' conversation we agreed that $40,000 would be fair. I understood it was to be left that way.

Q Did you have any conversation about using the Iffland building with Mr. Hewson? A You mean specific—

Q With reference to leasing the Iffland building. A None, except that they had a sign on the building, the same as there was three or four real estate men had their signs on there to rent.

Q Did you have any conversation on that subject when you appeared before the tax board? A No, sir; that never entered into it.

George W. Jagle, direct.

By Mr. Hurley.

Q Did you speak to Mr. Hewson about a raise in your assessment? A Which do you have reference to?

Q The assessment on your personal property. A On our personal property?

Q Yes, Hockenjos & Company. A Yes; I spoke to both of them; they were both present.

Q Did Mr. Hewson make the remark to you, "Why don't you go to Feist to get your reduction"? A No.

Q You don't remember that? A No.

Q Do I understand you to say that Mr. Hewson never spoke to you about insurance? A Not at that time.

Q At any time? A He asked us one time if we had a line open, if we couldn't give him any insurance, but I wouldn't think that anything in particular because we had that application practically every week from some broker.

Q What was your conversation with him and when was it about insurance? A Some time last year or the year before; I can't tell you exactly; I don't remember that exactly.

Q What did you tell him when he asked you for insurance? A I don't know exactly what we told him. I told him if we had an open line we would give him some.

Q Do you remember the conversation with me that you had standing by the rail here three or four days ago in connection with insurance? A You mean about insurance for us?

Q Yes. A He never asked us about any insurance, Mr. Hurley.

Q Who did? A Mr. Hewson never asked me personally about insurance.

Q Do you remember a conversation you had with me in this room a few days ago about it? A No, I don't.

Q Didn't you just say that Hewson asked if you had a line of insurance open that you could give him?

Mr. Hurley. I will ask that the stenographer read the answer.

(Answer read as follows: "He asked us one time if we had a line open, if we couldn't give him any insurance, but I wouldn't think that anything in particular, because we had that application practically every week from some broker.")

Q Is that correct, that he did ask you at one time if you had a line open that you could give him? A Yes.

Q Then he did speak to you about insurance? A Exactly the way I am stating it to you, but he never got any.

Q What conversation did you have with him at the time about insurance? A No more than as I told you. He asked us if we had any line of insurance open, and I said we didn't have any.

Q Did you ever give him any insurance? A No, sir.

Q Did you tell him at the time that you thought it was inadvisable for you to do it on account of his connection with the tax board? A No; I never remember that.

Q I will ask you again, Mr. Jagle, if you didn't have a conversation with Mr. Hewson in which he stated Mr. Feist's name? A That was hearsay evidence. It wasn't done in my presence.

Q In whose presence was it said?

Mr. Adams. You mean something that somebody else told you?

Witness. Something that somebody else had repeated to me. I wasn't present when that took place.

Q Who was present? A I don't know.

Q From whom did you hear it? A I heard it from Commissioner Howe—only what I heard that was repeated.

Director Archibald. Only what you know yourself.

Witness. I wouldn't say that; it wouldn't be fair to go into hearsay evidence.

Q How many sources did you hear that story from?

Objected to.

Objection sustained.

Q Did you say you heard the story from Mr. Howe? A Yes, sir.

Q Who was there when you heard the story from Mr. Howe? A Mr. Howe, I think, repeated it to me.

Q Isn't it a fact that you told the story to Mr. Howe and he not to you? A Oh, no; how could I tell a story when I wasn't present?

Q But I am asking about the incident of you mentioning this thing in the conversation with Mr. Howe, and isn't it a fact that

you made the statement and not Mr. Howe? A No, I don't remember that I did.

Q Where was the conversation that you had had with Mr. Howe—where was it held? A I don't remember.

Q You don't remember? A No.

Q How long ago was it? A I don't know.

Q Was it in the Down Town Club? A You have reference to that Saturday night?

Q I have reference to this particular conversation, Mr. Jagle. You remember at the time you had a conversation with Commissioner Howe, you were at that time applying for a reduction in the valuation of the Iffland property assessment. A I think it was after I appeared before the board, if I am not mistaken.

Q The matter about Mr. Feist, do you still say you didn't make the statement at that time? A Yes.

Q You do? A Yes.

Q You still say that Mr. Hewson didn't make any such remark to you? A He didn't make it in my presence, Mr. Hurley.

Q Do you know in whose presence he made it? A No, I do not.

Q You have just said that Commissioner Howe told you this story. Are you still sure that he did? A To my knowledge, yes.

Q Are you certain about it? A Yes.

Q Do you remember now who else was present at the conversation? A No, I don't remember.

Q Don't remember how long ago it was? A Well, I think it was last—it was after the time I appeared before the tax board. Now, when that exact time was I don't know. It was last spring some time, I think.

Q Did you not have a conversation at that time—that is, were statements made by you at that time of the leasing of the Iffland property in connection with taxation? A No.

Q Are you sure about that? A I think so; yes.

Q Are you sure, I am asking you? A I only asked the tax board to reduce the value on that property, and there was no talk about any insurance or any leasing or anything else. Now, that is all.

Q Did you see Mr. Hewson before you went before the tax board? A No, sir.

Q Or after? A Not to my knowledge.

George W. Jagle, direct.

Q Never had any conversation with him about the taxes? A Only asked him to see what he could do to give us a fair valuation on that property.

Q When did you see him? A I don't know exactly.

Q Where did you see him? A I think I met him on the street one day.

Q And you asked him to give you a fair valuation on the Iffland property; is that the idea? A Yes, sir.

Q What did he say in reply to that? A I should appear before the board.

Q Did he make any reference at that time to Mr. Feist? A Not that I remember.

Q Did he make any admission to you that he had some feeling about Feist having leased the building or about he leasing the building? A He didn't say anything to me that I remember.

Q Did he make any reference to the lease at that time? A Not in my presence.

Q Where did you say the conversation was, on the street? A Yes, sir.

Q Do you remember how long ago it was? A No.

Q Couldn't fix the date? A No.

Q Had your taxes on the property been increased? A No, they had been the same—I think they had been the same as the year before, the valuation.

Q Did you give any reason why a reduction should be made? A We didn't give him any reason before that board, but we gave them the reasons before the county board, because at the time we didn't look at the valuations of the adjoining property.

Q The conversation which you had with Mr. Hewson in the street, you and Mr. Hewson only were present at that conversation? A To my knowledge, I think he was.

Q Did you stop him on the street or did he stop you? A I think I stopped him.

Q You say that he made no further statement to you except to appear before the board? A As near as I can remember, yes; that is all he said.

Q How long were you talking with him? A I don't think a minute and a half; possibly two minutes. It don't take long to say that.

Q And that is all that was said? A Near as I can remember, yes, sir.

JOHN HOWE, sworn.

Direct examination by Mr. Parry.

Q You are the president of the Board of Assessment and Revision of Taxes of the City of Newark? A I am.

Q And have been since its organization in November, 1917? A Yes.

Q Mr. Howe, were you present perhaps a month ago, at a meeting held in Mr. Archibald's room, at which a committee, of which Mr. Cavanagh was chairman, Mr. Rauth, Mr. Schlesinger and Mr. Judge and myself were also present, when the members of the tax board as the board was constituted prior to January, 1920? A I was.

Q Where Mr. Hewson and Mr. Fettinger and yourself were also present? A Yes, sir.

Q At that conference were you asked in reference to a statement that had appeared in the public press in reference to Mr. Hewson giving out some business cards? A I was.

Q Did Mr. Hewson at that conference make a statement in regard to giving out cards? A He did.

Q What did he say? A In answer to a question by one of the committee, "Did you give out your business cards to people seeking reductions from assessments before your board or the county board?" his answer was, "I remember on one or two occasions of having given out my card to people at the county board, but I don't recall having given out my business card to anyone appearing before the city board, except to those who requested them." I want to correct that—"except where it was requested."

Q During your membership in the city board did you ever see Mr. Hewson hand out his card to persons having business to do with that board? A Oh, yes.

Q On one occasion? A Oh, yes.

Q Can you mention the name of any party to whom he gave cards? A Most conspicuous of all was Dr. Henry V. Walker, of the Maas & Waldstein Company.

Q Will you give the circumstances under which that was done? A Dr. Walker had telephoned to the office, asking for

an opportunity to appear before the board, to take up the matter of their assessment on their personal property at the meadow plant on Doremus avenue.

Q Just tell us what happened at the time that Dr. Walker appeared before the board on that occasion? A I happened to meet Dr. Walker. He was standing with other people waiting for an opportunity to come before our board, and I said, "Doctor, we will be able to take care of you in a moment or two." He said, "All right." I said, "What is the object of your visit?" "Why," he said, "I want to take up the matter of reduction." He said, "You know, we are quitting our plant down below and I think that we are entitled to some reduction." When the opportunity was afforded him to come in he appeared before the board and stated his case, saying that they had reduced their help almost to but a few people.

Director Archibald. What year?

Witness. This was for the 1919 assessment. He explained to us that the two factories that they had there were to be sold; that they were going to resume business at the old place. As proof of that fact he announced that the two plants were advertised in two New York newspapers, mentioning the New York World and The Herald.

Q How long did Dr. Walker remain in the tax board at that time? A I imagine he was there for at least fifteen minutes or so.

Q Was that the occasion on which Mr. Hewson gave him the card? A Yes.

Q Now, just tell us in detail how that came about? A I asked him, I said, "You are not going to continue in business down there?" He said, "No, I have stated that our two buildings are for sale." I said, "One is a new building, is it not?" He said, "Yes, it is hardly completed; we are finishing it now so as to make it salable." Mr. Hewson remarked, "You say your two buildings are for sale?" "Yes, they are for sale, and I have stated that I am advertising those buildings." He said, "Doctor, will you send me the particulars concerning the two buildings?" He said, "Well, Mr. Meyer, of the Schlesinger agency, has those two buildings for sale." He reached down in his pocket, took a card, handed it across the table to Dr. Walker,

and said, "Will you have Mr. Meyer send me the particulars?" Dr. Walker said, "I will speak to Mr. Meyer about it." Whereupon Mr. Hewson remarked, "Well, in view of what Dr. Walker has said, I think he is entitled to some consideration," to which, of course, we all agreed, and he recommended that a $100,000 reduction be made.

Q Who made the recommendation? A Mr. Hewson.

Q Whose district was this plant in? A In my district.

Q Did you afterwards see the card itself? A Dr. Walker happened to be waiting outside. I went out to get a book out of the rack, and he was standing there, and I said, "Doctor, are you waiting for something or have you been all fixed up here?" And he said, "Oh, yes." I said, "What did you do with that card you got?" He had a book in his inside pocket; he took it out. He said, "I have it here."

Q Did you look at it? A Well, he held it up.

Q Did you see what was on the card? A Why, it was Mr. Hewson's business card.

Q Prior to this time did you have any conversation with Mr. Hewson in reference to the Maas & Waldstein assessment? A That was for 1918.

Q What was the 1918 transaction? A 1918—it had been our custom for one or two years, we decided to send a notice to the Maas & Waldstein Company to come into the office to take up the question of taxes for the year, and the secretary was instructed to write Dr. Walker to come in for that purpose. The following day I received a telephone call from Dr. Walker asking for me on the 'phone, and one of the clerks said, "You are wanted on the 'phone." I went to the 'phone. He said, "This is Dr. Walker." I said, "Yes, what can I do for you?" He said, "What are you trying to do with us, put us out of business?" I said, "Why, no; what do you mean?" He said, "My assessments have been doubled up." I said, "No, they have not; nothing has been done with your assessments yet." He said, "Well, I beg to differ with you." I said, "What we did yesterday at the meeting of the board, the secretary was instructed to send you a notice requesting you to appear before the board to take up the matter of your personal assessment for the year." He said, "Well, when can I see the board?" And I said, "You can come right down here now." I said, "Mr. Fettinger is here, and probably the other gentleman, the other commissioner, will

come in." In a short time he appeared. In the meantime Mr. Hewson had not entered the office yet, and Mr. Fettinger and I took up the assessment. He had his card that showed that his meadow assessment had been increased from $250,000 to $350,000 and his Riverside from $75,000 to $150,000. I asked Mr. Fettinger if he knew how these cards came to be sent out. I said, "You recall yesterday we requested Mr. Fitzsimmons to have a letter sent to this firm asking them to come in to take up their assessment." He said, "Yes, but after you had left Mr. Hewson thought it would be a good idea to send them a notice of a specified amount, and that is how the cards evidently were sent out." We discussed the matter with him; Mr. Fettinger and I, and we finally reduced that assessment from $500,000 to $300,000, which was an increase of $50,000 over the year previous. The other assessment we reduced from $250,000 to $185,000, which Dr. Walker and I thought was fair. That was an increase of $10,000 over the year before, and he left the place with the understanding that those assessments were to stand.

Q Did you have a conversation with Mr. Hewson afterwards in regard to that assessment? A I said, "Dr. Walker was in here about his personal assessment on these two plants"; and I said, "He was raising hell about it." He said, "To hell with him; why should I worry about him? When he wanted to buy a house did he come to my office"? He said, "No, he went around to Schlesinger, the Jew." I said, "We have adjusted those assessments, $50,000 increase on one and $10,000 on the other." "Well," he said, "that all helps." That was the end of the conversation.

Q The cards that went to the Maas & Waldstein Company for this tentative assessment of $500,000, were they sent out by the board itself? A No.

Q Were they sent out with the knowledge and consent of the board as a whole? A No, not with my knowledge, because I had to ask Mr. Fettinger how these cards came to be sent out, because they were sent out after I left and the meeting was over for the day. Mr. Fitzsimmons had taken up his papers and gone into his own room and the meeting was apparently adjourned.

Q Did you ever meet Mr. Riker, the president of the Merchants National Bank, who testified here this morning, at which he registered any complaint about Mr. Hewson? A Yes.

John Howe, direct.

Mr. Adams. I object unless Mr. Hewson was present.

Q Mr. Hewson was not present at the time the statement was made by Mr. Riker. Were you present when Mr. Riker appeared before the board with reference to the assessment of property in Lincoln Park? A I was.

Q Will you tell us just what happened there?

Mr. Adams. Was Mr. Hewson present?

Q Was Mr. Hewson present? A Yes. Mr. Riker appeared before the board in reference to the assessment on the Riker property, No. 13 Lincoln Park, which was owned by his father-in-law. He objected to the assessment on the property on the ground that it was in excess of the value that he had personally placed upon it, and I remarked to him, "Well, there is a land value along there that has been established, and if you care to file a complaint with us the board will take up the matter of the assessment." He said, "I would sell it for less than it is assessed." I said, "Would you sell it for less than it is assessed?" And he said, "Yes." And I said, "That will be taken into consideration." And he said, "John, you get me a buyer and I will show you how quickly I will sell it." With that Mr. Hewson said, "Mr. Howe does not sell houses. Give me the sale and I think I can get you a buyer for it."

Q Is that all that was said at that time? A That was all at that time. It was the next day, at the meeting of the Commercial Casualty Insurance Company, when Mr. Riker said to me, as soon as he came in the meeting, "John, Mr Hewson"—

Mr. Adams. Objected to.

Director Archibald. Objection sustained.

Q At the time was there anything said about giving a card or done about giving a card on this appearance of Mr. Riker before the board? A No.

Q There was no card in connection with that at all? A No, sir.

Q Were you present when Mr. Walsh appeared before the tax board in reference to assessments on some of these properties that he was interested in? A The first knowledge I had that Mr. Walsh's personal property had been assessed was one day he stopped at the counter and received information from

the clerk at the counter stating that his personal property and his real property had been increased. Then he came in, and he said, "Gentlemen, I understand that"—

Mr. Adams. Was Mr. Hewson present?

Witness. No.

Q Did you have any talk with Mr. Hewson in regard to the Walsh assessment? A Yes.

Q When and where was that? A In the tax office.

Q What was the conversation and the approximate date, if you recall? A I guess it was the 1918 assessment.

Q What did Mr. Hewson say to you in regard to that? A I said, "Phil Walsh was in here, and he is going to take his case—he is going to take the matter up with the county board. He says he has been singled out because he wouldn't"—something about a house. Mr. Hewson says, "Oh, hell with him; he is the cheapest son-of-a-bitch in Newark. He can never forget that he is a junk man. When he wants to buy a new house he wants to pay the same price for it that he does for old iron, junk price."

Q Was that all that was said? A I said, "Well, he is going to the county board, and he is going to the limit in this case." He said, "Let him go; let him do a little running. He gave me a chance to do some running."

Q Were you present at a time when Richard Stockton appeared before the board? A I was in the private office, that is, in the commissioners' office. He appeared outside and I didn't see him. He spoke to Mr. Fitzsimmons about his assessment being increased.

Q Did you talk to Mr. Hewson about Mr. Stockton having been there? A Yes.

Q And what was the nature of that conversation? A I asked him if he knew Mr. Stockton. He says, "Yes, I know him." I said, "He was in here to see Jim, and he spoke about his assessment, and I think we had better go and look at that place." I said, "I am afraid he is going to make quite a fuss." He said, "To hell with him; he did me out of a commission and I will make it cost him more than he saved on it."

Q Do you recall when that conversation was that you had with Mr. Hewson? A It was at the time that his property was increased.

John Howe, direct.

Q Did you make any investigation as to whether there was any increase made in Stockton's assessment at that time? A Why, he demanded—he inquired outside about that.

Q Did you look up the records yourself to see what the records showed? A Yes, sir.

Q What did the records show? A There wasn't any other property on that block that was increased, that is, any house.

Q By whom was the recommendation for the assessment made on that property? A Why, I didn't know anything at all about it or what had been done.

Q By whom had the recommendation been made? A I suppose Mr. Hewson, on that district.

Q Whose district is that? A Mr. Hewson's.

Q Did Mr. Hewson ever say anything about the assessment of the Sunday Call property? A Yes.

Q When and where was that? A In the tax office.

Q For what year? A 1918.

Q What was the conversation that you had with him on that? A That day we were sitting there looking through the Classified Industries, and he asked Mr. Fitzsimmons, who had the book before him, when we got to the newspapers, Mr. Fitzsimmons said, "Go to the newspapers"—we were going along the line, that is the way we used to do, taking the industries separately, and he said, "What is the Evening News assessed?" And Fitzsimmons said, "$100,000." And he said, "It ought to be a million." And asked what the Sunday Call was assessed, and I think it was about $25,000 or $30,000; I can't recall now; and he said, "That ought to be half a million." I said, "What is the idea?" He said, "Well, they are making lots of money and they ought to pay it." I said, "This is a case of assessing on personal property," and he said, "No matter." I said, "Well, now, we have got to have a better method than that to base an assessment on." He said, "Those two papers think that they can say what they want about anybody." I might add that that is the first difference Mr. Hewson and I had in the board, and I went on to say that neither of those two papers had ever said anything unkind about him, and he said, "Well, they do talk about other people." Well, I told him I didn't think he should take up anybody else's fight; he wasn't going to reward anybody's friends or punish anybody's enemies while I was a mem-

ber of the board, and that settled that argument. A few more words passed.

Q Did you have any conversation with Mr. Vanderbilt in reference to the Tonks Brothers assessment? A I did.

Mr. Adams. Was Mr. Hewson present?

Witness. No.

Mr. Adams. I object.

Director Archibald. Objection sustained.

Q Were you present when Mr. Anderson appeared before the tax board? A I was.

Q And what was the occasion of his visit there? A Why, we had written him a letter requesting him to appear before our board to take up the matter of the personal assessment of the Atlantic & Pacific Tea Company's different stores throughout the city, which had been our custom for several years.

Q During this appearance of Mr. Anderson before your board will you tell us just what was said by Mr. Hewson on the one hand and Mr. Anderson on the other, and yourself, if you had anything to say? A Why, when he came in he started off—I started the conversation and said, "Mr. Anderson, the object of our sending for you is to discuss the matter of the taxes for the year. Now, we are going to increase the assessment, the different stores. We are increasing, in fact, all personal property throughout the city, and I think that you people should pay more money this year because the value of your goods has increased since last year." During the conversation that took place between Mr. Anderson and the different members of the board—we were all trying to get an increase in personal property, trying to raise their average assessment in different stores—why, Mr. Hewson started off by saying, "You folks came to Newark here with the object in view to reduce the cost of living, but the only thing that I have seen that you have done is drive the little stores out of business. You buy Wisconsin peas for 10 cents a can and you come here and you sell them for 16 cents a can. You are certainly a band of profiteers." He was very much excited and used pretty strong language, excitable, and he jumped up, and there was a telephone book there and he slammed it down. The door was open over at the side, and the noise was so loud

that people came in, and Mr. Fitzsimmons had to get up and go to the door and close the door.

Q Did you make any remark yourself? A Yes, I said: "Mr. Hewson, don't make this a personal matter. If you have any grievance against this man don't make it a board matter," whereupon he fumed and hollered at me, "You have no right to make any such remark as that. If you are representing the City of Newark you should not say that. If you are representing the people that come in here you ought to go on the other side of the table." With that I had to apologize to those gentlemen, sorry that it occurred, and he got up and went out.

Q While Mr. Anderson was speaking to Mr. Hewson and addressing the board in general, did he use any ungentlemanly language—did Mr. Anderson use any ungentlemanly language? A Well, I know he did.

Q I say, did Mr. Anderson use any ungentlemanly language on his part? A Oh, no; he seemed to be very quiet and reserved. I think he was frightened, to tell you the truth.

Q Was there anything in Mr. Anderson's conduct or demeanor that was subject to censor? A Oh, no; no more gentlemanly man ever appeared before the board. Of course, he, like all the rest of them, he was sparring for the best assessment that he could get on his property, and we were, in turn, everyone of us, were trying to do just the opposite and get all we could for the city.

Q Did Mr. Hewson, in talking to him, use the ordinary conversational tone of voice? A No, you could hear him all over the place.

Q Were you present when Mr. Liveright called in reference to Bamberger's? A I was.

Q Tell us just what happened after Mr. Liveright came in? A Mr. Liveright came into the office and he had a card announcing the increase in their assessments. When he came in he said, "Gentlemen, what does this mean?" I said, "I guess that means that your personal property has been increased." He said, "Has everybody else been increased in the city?" I said, "Mostly." And he said, "I mean, in my line?" And I said, "Yes," and he said, "I don't suppose we have any kick coming, then." Mr. Hewson said, "I don't see where you come in to come down here and kick. You have got no kick coming." He said, "If you had your just deserts you would be assessed double

that." So Mr. Liveright and he got into a conversation that got quite heated.

Q Did you hear any remarks that Mr. Hewson made to Mr. Liveright? A Yes. Mr. Liveright contended that Bamberger & Company were merchants that anybody could be proud of. Then the subject shifted to Mr. Liveright personally, and Mr. Hewson said, "Well, as a merchandise man you are a joke."

Q Was there anything said about profiteering or profiteers during the course of this conversation? A Oh, yes; they went on and he said to him, "You don't know the value of our stock." Mr. Liveright said to Mr. Hewson, "You don't know the value of our stock. How do you know what we have got?" He said, "Well, I pass in and out of it, it wouldn't be hard to figure it out. You can take the different departments and figure them up, and you will find that you have got a lot more than we have got, more than we have assessed you." He said, "As a merchant man I can't do that. It is enough that you can." So after that Mr. Liveright got quite excited at that time and he said, "I want to repeat that Mr. Bamberger is a merchant that this city or any other city can be proud of." And Mr. Hewson said to him, "As a merchant man you are a piker."

Q Did he say anything about prices? A He said something about marking up the cost three or four hundred per cent.

Q Just tell us what it was that each said, what you said and Liveright said? A Mr. Hewson accused them of marking up their prices two or three hundred per cent., and he said, "All you department store men are profiteers, and Bamberger is the worst of them all."

Q Is the man who testified here this morning, who formerly was employed in the tax office, Mr. Burgesser. At the time that Mr. Burgesser was transferred from Vailsburg, by whom was that transfer made? A By the board.

Q By the unanimous action of the board? A Oh, yes.

Q Were you present when Mr. Kraushaar appeared before the board? A I was.

Q The witness who testified this morning? A Yes.

Q Tell us what happened on that occasion? A He had received a notice for $3,500, I think it was, for his assessment on his store, and he called down at the office and insisted that the contents of the store wasn't worth $3,500; he couldn't sell it for $3,500, and Mr. Seiler inspected his store and he took us through

it and showed us through and convinced us that about all he had was about $3,500, so we were going to assess him at the $3,500, when later on, without my knowledge, he had received a notice for $10,000 on the same store. He called at our office with his card and we were all seated at our table when he came in, and he explained that the contents of his store, stock and fixtures and everything he had would not exceed over $3,500, and Mr. Hewson said to him, "Do you mean to say that your stock and fixtures are not worth over $3,500?" And he said, "Not one penny over $3,500." And he remarked that—Mr. Hewson said, "Do you mean to say"—getting up and looking at him and shaking his fist—"that your goods are not worth more than $3,500?" He said "No." He said "Where do you buy your goods, in fences?" The man said, "What?"

Q What do you understand about the phrase, "in fences"? A A "fence" is a place when stolen goods are kept.

Q Were you there when Mr. Metzler appeared before the board? A Yes.

Q Just tell us what happened? A He had received a notice for $500,000. I was not there the first time that he was there. I was there the day he came in with Mr. Bilder, the lawyer, and we had sent him out a notice, or a notice had been sent to him for $500,000. I believe the reason for sending that was that Mr. Fettinger and Mr. Hewson had visited his place and said that the place was well stocked with machinery and they thought that they could get a pretty good raise out of the assessment for that year. He came in and was very much excited over it and thought there was a mistake. And during the conversation, why, he thought he had been singled out and he and Mr. Hewson got into a discussion, and it was getting quite lively, when a gentleman put his head into the door that wanted to see me, and I stepped out of the door, and Mr. Hewson and he continued the conversation.

Q What part of the conversation did you hear? A I didn't hear much of it. I just heard the loud talk because I was standing just outside of the door in the other room.

Q Did you make any investigation of this plant yourself at 21 Mechanic street? A No. Two of the men that Mr. Hewson had secured to inspect the place and report to us were men that were supposed to know the business. One was a former book-

keeper and the other was a competitor, a man, I believe, that had formerly been employed by him.

Q Do you know what the result of that appraisal was? A Why, the first of these two men came back, and the smaller one of the two, that is, the competitor, he said he wouldn't go on with that job. He said, "Why, he hasn't got $500,000 worth of stuff over there; he hasn't got a hundred." Then later on we decided to get two other men. We got a man connected with the Fairbanks Scale Company and some other man to go to this place. I believe when they got to the place they wouldn't allow them to go in and inspect the place, with the result that when they reported to us the board decided to make a permanent assessment on the property. It was eventually fixed at $150,000.

By Mr. Congleton.

Q When you made this assessment of $150,000 did you have before you their sworn statement? A Yes. The reason for the board making it $150,000 was the fact that this man had refused to permit anyone to go through his office—or through his building—and they thought that possibly $150,000 would be nearer right than $51,000, as shown in his statement.

Q You didn't subpoena them to produce their books and ask them to appear before you, on the theory that you were dissatisfied with their sworn statement, did you? A No, we didn't.

By Mr. Parry.

Q Wasn't there a subsequent investigation made? A No, not to my knowledge. I stated that two men that the board sent there were refused admission to the place.

Mr. Congleton. There were two different groups of appraisers that went there.

Q The one pair was refused admittance? A The first pair that went there were admitted to the place.

Q But the second pair were not? A They were not.

Q But the first pair had made an inspection and reported back to the board? A Yes, reported back to the board and said they were not permitted to enter the place. No one had made an inspection of the place.

Mr. Congleton. The first ones did, didn't they?

Richard Stockton, direct.

Witness. Yes, the first ones went there and said they didn't have anything. The first two men were permitted to enter the place and go through it.

Q And did they make a report of what they saw there? A They did make a report. One of them said they didn't have $100,000 worth in the place. The second two men were not permitted to go through the place.

Adjourned until Friday, February 28th, 1920, at ten o'clock A. M., at the same place.

SECOND DAY.

Friday, February 27, 1920.

In the matter of the hearing of the charges preferred against George F. Hewson, a member of the Board of Assessment and Revision of Taxes.

Continued pursuant to adjournment.

Appearances as before stated.

RICHARD STOCKTON, sworn.

Direct examination by Mr. Parry.

Q You are a counsellor-at-law in this city? A Yes, sir.

Q And you are also a former commissioner? A I served at one time as United States Commissioner in Newark.

Q Where is your residence? A Ridge street, Newark.

Q What number Ridge street? A 423.

Q That property belongs to whom? A Mrs. Stockton.

Q When was that property purchased? A February, 1918.

Q Prior to the purchase of that house did you have any conversation with Mr. Hewson? A Prior to the purchase of the house I had.

Q When was the first time that you saw Mr. Hewson in connection with the house at 423 Ridge street? A Two years before that.

Richard Stockton, direct.

Q Whom did the house belong to? A Dr. Riley—F. Edsal Riley.

Q At the time you purchased the house through what agent was the deal consummated? A A stranger to me, a broker named Ham. I can't remember his first name. I have seen him once since.

Q Bertram Ham? A Bertram Ham. Only have seen him once since.

Q Well, about the time that this deal was closed did Mr. Hewson call to see you? A Yes, but he didn't butt in. It was me that got him in through his brother-in-law, John Gillen.

Q Just explain the whole circumstances relating to that. A Two years before that I told Mr. Gillen that Mrs. Stockton was about to purchase a house, and he said that his brother-in-law had a Ford car, and would take us around the city. He took us around. I felt very kindly to Gillen, and I do yet. I tried to land the commission for him, and it was I who forced them into it, and I was pretty sorry I couldn't do it. Then the matter dropped about two years. Then I called John Gillen up again. I think John Gillen thought it would fizzle out again; he did not pay very much attention to it. I called him up on the phone two or three times, and I thought it was going through, and Mrs. Stockton had her mind set on this particular house, but the owner of it was asking far above the market value, and that gentleman tried to see if he could get it down to a reasonable figure. The next thing I know Mr. Hewson comes in in a very friendly way and tries to work the deal, but it fizzles out, and Hewson gets mad at me because I was trying to work him in, he got mad at me.

Q Just tell what was said between Mr. Hewson and yourself. A You see, this was February, 1918, and the conversation that ensued, my anger died down with the day. I practically didn't think about it again for five or six months, until July, 1918.

Q You are speaking of after the sale was consummated, five or six months later, July, 1918, was after the sale was consummated? A Yes, sir; the sale was consummated in February.

Q At the time that the deal was put through was Mr. Hewson present at the time of closing the deal? A No.

Richard Stockton, direct.

Q Was he the agent that received the commission? A I don't know about that. You know, the seller pays the commission.

Q You had nothing to do with the paying of the commission? A No, sir.

Q You never made any agreement with Mr. Hewson to pay any commission as a buyer? A No, sir.

Q Did Mr. Hewson say anything to you about this deal going through or about his commission in the matter? A Oh, yes; that was the whole point.

Q Just tell us that—give us that conversation. A I will tell you, I don't think it is fair to him for me to try to recollect the exact words that he and I used.

Q Give the gist of them. A As I said before, he was angry because I wouldn't horn him in.

Q That is a conclusion. Give us the best of your recollection just exactly what was said. What did Mr. Hewson say which indicated to you that he was angry? A He came in one morning, said he had just come from Dr. Riley—

Q Dr. Riley was the owner? A Yes; he was living in the house.

Mr. Adams. When was this, February or July?

Witness. Oh, this was in February, possibly the last part of January, but I think it is the first part of February. I can give you the exact date. It was the first part of February, Mr. Adams. He said Dr. Riley didn't seem to think there was anything doing, that Dr. Riley had another broker; he wanted me to call up Riley and tell him that I wouldn't take the house unless Mr. Hewson was the broker. I said this to him, I said, "John Gillen is the broker in the matter." He said, "It is the same thing. You know they are partners, my brother-in-law," something to that effect. "It is all right."

Q So I understand you to say that he told you that he wanted you to tell Dr. Riley that you wouldn't buy the house, you or Mrs. Stockton, unless he was worked in as the broker? A Oh, yes; unquestionably.

Q So as to get the facts straight as you tell them. A I told him I couldn't do it. Mrs. Stockton was the one buying it. He called up Mrs. Stockton, said "Hello," and asked her to do it,

and it is my recollection Judge Boettner and John Manning came in the room to see me, and Mr. Hewson went out and came back an hour or two after that, and said he had called up Mrs. Stockton and she wasn't interested in any broker, she wanted the house; she didn't care about the broker, something like that; there was nothing doing with her, and then he wanted me—I think he wanted me to again call up Riley and tell him he was the broker, and I told him I couldn't do that, and one word led to another, and we were both a little impatient. We had a little squabble there. I can give you my impressions, but I hate under oath to say the exact words, because I don't remember.

Q Give us the best of your recollection as to what was said. A The gist of it was that it would be cheaper for me to deal through him and make money if I did deal through him than if I let it go through the other broker. He said the property was assessed at $10,000; it was very much below the assessed value, and it was below the purchase price; there is no question about that.

Q What I want to get at is exactly what Mr. Hewson said about this matter of assessment, as far as you can recollect it. A If I wasn't under oath I would tell you my recollection, but under oath I don't care to do it. It was in the nature of just an angry man, one of his usual outbursts.

Q Just confine it to the facts, as near as you can recall them; just what was said. We don't want the conclusions; we want the conversation. A I would have to give you my last answer on that.

Q Well, to the best of your recollection you recall this conversation? A I remember he said this, "Take a pencil and paper and put down so many thousands of dollars and divide it by four," and I did it, and he said, "What is the answer?" I said, "Four hundred and seventy-five"—six—something like that, and he said, "Well, now, that is the broker's commission. Between John and me, we want two hundred and fifty dollars—we would be satisfied with that; we don't want the full broker's commission; we will do this for two hundred and fifty dollars," and we had some conversation about the tax, the assessed value.

Q What about the taxes and assessed value? A Word for word?

Q As near as you recall. A Just what I said—he gave me this inference, that strong impression that he would see that the

assessed value would be raised; that if I had dealt with him it would not. That is the impression I got, but his exact words I can't say.

Q After this conversation with Mr. Hewson when did you next see him? A Within two or three days after that I became very ill, indeed. I had pneumonia—near to pneumonia—and influenza and everything else under the sun for three or four months, and I had to go to Lakewood, and naturally the thing went right out of my mind. I didn't think it was of any importance. The next thing I thought about it was on July 5th we received a notice that this property had been assessed for $11,350. I said, "That is not so bad."

Q (Handing witness card.) That is the notice you received? A That is the notice we received. Here is the envelope for it. Then on July 9th, four days afterward, we got another notice for $11,350. I threw it aside, and I got thinking about it, thinking that there was something funny about it, two notices exactly the same, and I was not surprised that the records were not $11,350, but $13,350. When I got down to the City Hall and I saw George Porter I thought I would find something like that, and I asked Mr. George Porter of the tax board if it was necessary to send two notices, and he said, "No, it is very unusual, and furthermore, the books show $13,350, and they should send you notice for that amount." He said, "I would like to talk with Mr. John Howe, who is in there now." And I said, "No, I would rather talk to Mr. Fitzsimmons, whom I know." And he said, "All right," and he called Mr. Fitzsimmons out and Mr. Fitzsimmons said, "I don't understand it at all; it is $13,350." And he said, "Do you want to make a complaint?" And I said, "No, Mrs. Stockton owns the house and she don't want to make any complaint, but," I said, "she wants to call attention to the fact that she is the only person who has been discriminated against in that neighborhood." I wrote a very polite letter calling their attention that she had been raised $3,000 better than on the other four."

Q Will you read us the carbon copy of the letter? A In response to that letter—

Q Suppose we get that letter as we go along. A (Reading.) "July 18, 1918. Block 630, Lot 5. Board of Assessment and Revision of Taxes, City Hall, Newark. Dear Sirs: Confirming my interview this afternoon with your secretary, Mr. Fitzsimmons, I

would say that I feel that there must be some clerical error in the assessment of Mrs. Stockton's property, 423 Ridge street. I do not want to think that she has been singled out and discriminated against through the animosity of any member of your board. The building value of her property has been raised from $7,000 to $9,000 from 1917 to 1919, although Mr. Kirkpatrick's building value for 424 Ridge street remains the same as last year, which was $5,000; these two houses are equal in price. The Murray house, next door to Mrs. Stockton, is assessed for $8,000 building value for 1917, and the same for 1918, though his house is much wider than Mrs. Stockton's, being two rooms deep and costing $3,200 more. Mrs. Stockton's house is only one room deep and on a lot only seventy-three feet deep, and with a frontage of eight feet less than Mr. Murray. I will be very much obliged to you if you will inform me why the house of Mrs. Stockton was raised $2,000. Respectfully yours, Richard Stockton."

Q That is the letter that you mailed to the board? A Yes. I would like to have it appear on the record that we made no complaint then or now. Mrs. Stockton never made any complaint, and she is perfectly satisfied to pay the assessment. She is not kicking at it. I may be bragging her up some. She never made any complaint to them—just called the board's attention. In response to that Mr. Howe, the president of the board, told me that the assessment on the property would be reduced $1,000, but that was not done, but they did lop off $500, and Mr. Howe told me—he told me later why I didn't get the $1,000 credit, that the figures were juggled in the board, according to him, or something to that effect. He can tell you better than I can.

Q Did you receive a letter from Mr. Hewson in regard to the sale of this property? A Oh, yes.

Q Have you the letter with you? A Yes.

Q I will ask you if you will produce the letter? A I don't think so; it is just a polite letter, just explaining—

Mr. Adams. We have no objection to the letter.

Witness. It is a polite letter from John Gillen telling me— (producing paper).

Q This is the letter you received dated February 27, 1918? A Yes.

Mr. Parry. I offer this letter in evidence.

Q This is the envelope that this letter came in? A Yes.

Mr. Parry. I offer this notice in evidence also.

I want to read this letter. It is on the letterhead of Charles P. Gillen & Company. (Reading.) "Mr. Richard Stockton, 218 Mt. Prospect avenue, Newark, N. J. Dear Sir: I have been led to believe that you purchased the residence of Dr. Edsall Reilly on Ridge street, which Mr. Hewson and myself took you to see some time ago, and you seemed to be very much interested at that time. We also showed you several other houses in that vicinity.

I have learned from Mr. Hewson that you purchased this property without his knowledge. I also noticed in the Sunday Call where title was transferred to you I understand you received the benefit of the broker's commission in the purchase price, and that being the case, I wish to ascertain from you at your very earliest convenience what your attitude in this matter is going to be.

If we were doing business with people we did not know, we, of course, would take the necessary means to protect ourselves prior to showing any property to them, but having known you so long and well and also knowing Dr. Reilly, we came to the conclusion that if a deal was made you would see to it that we were amply protected.

I sincerely hope and trust this matter may be adjusted amicably in the near future. Very truly yours, John P. Gillen."

Q After you received that letter, did you consult with C. P. Gillen & Company; did you make any effort to get a commission for the firm of Gillen & Company or Mr. Hewson in connection with that sale? A No; that letter was received at a time when I was almost unconscious, and I didn't read it until months afterwards.

Q Did you make an effort to see that they got a commission from Dr. Riley? A I saw Mr. Charles Gillen on a street car and I told him I was very sorry I couldn't work him in as a broker—that things broke wrong—sorry that George Hewson got so angry about it, and I told him I was very sorry he hadn't landed it.

Q Did you see Mr. Hewson after this? A I see him all the time.

Q Didn't you have some altercation with him after this? A No; it was on the street once; it was after I had been to the tax office; it was in October, 1918. I met him on Broad street, near Green street, and he spoke in a threatening manner to me.

Q Tell us what he said and did? A I didn't see him coming. I was taking testimony in the City Hall and was thinking about it and had it under my arm—a Supreme Court matter—and I suddenly saw somebody in front of me, and he said, "I would like to punch your damned head off, if you make any more complaints," or something to that effect; and I said "Ssh-sh," and I turned it off, didn't ask him what it was at all. I said, "Don't talk like that"; and went on. That was all there was to it.

Q At the time you had a large transcript of testimony under your arm? A Yes.

Q Larger than this (showing witness book of testimony)? A Yes, sir.

Q So that your arms were practically used for the carrying of testimony? A I think it was; I think I had something in each hand; there was quite a lot of testimony.

Q So far as your arms or hands were concerned, you were not able to protect yourself, were you? A I would have sidestepped, even if I didn't have anything under my arms; I didn't want any altercation on the street.

Q Did he call you names? A Yes, he called me names pretty regularly; yes.

Q Just tell what they were, to add to the gayety of nations. A Just the words of an angry man.

Q Mention one or two. A I don't know—punch my damned head off; that is what I got principally out of the situation.

Q That was one feature of the controversy, but what did he call you? A I don't think he called me anything that day.

Q Did he at some other time call names to you? A He used names to me, but I don't remember them; what difference does it make what the names are.

Mr. Parry. I think it is relevant, Mr. Director, in this inquiry, that the names should be used.

Witness. When I am hearing a divorce case and the witness says, "He called me a whore," I say to them,

Richard Stockton, cross.

"You mean he used indecent language, no matter whether it was a straightaway or any other kind of a whore."

Q Indecent language is a conclusion. If you tell us what was said the Director can draw his own inference. A I couldn't say.

Q Did he ever use improper language to you in reference to this Ridge street matter? A It is my recollection that on both occurrences on the street and that time at the office he called me some names.

Q An improper name?

Mr. Adams. That might be a matter of opinion.

Witness. The next question would be, "Are you that?"

Q Did you ask Mr. Hewson to leave your office on one occasion? A I think he left it without my asking.

Q Did he chase you through the corridor in the building there? A He chased me?

Q Yes. A No; how in the world could he chase me in my office; was I running out of my office from him?

Cross examination by Mr. Adams.

Q Mr. Stockton, you have testified to inferences and strong impressions? A Yes, sir.

Q And the meaning of what Mr. Hewson said? A Yes.

Q As a lawyer, I suppose you realize that it is quite important to have the facts? A Yes.

Q And not impressions or inferences. Do you mind telling us whether or not Mr. Hewson said that the assessed value of this property would be raised, but that if you dealt with him in buying it it would not be raised? A I will only repeat what I said several times to that—that I can't remember his exact words.

Q Did he say that to you? A The same answer.

Q Are you willing to swear that Mr. Hewson told you that the assessed value of this property would be raised, but that if you dealt with him in buying it it would not be raised? A I will only repeat what I said several times to that—that I can't remember his exact words.

Q Did he say that to you? A The same answer.

Q Are you willing to swear that Mr. Hewson told you that the assessed value of that property would be raised, but that if

you dealt with him in buying it, it would not be raised? A He said those exact words?

Q Are you willing to say that he said that to you? A I have said repeatedly that I wouldn't be able to tell just what exact words he used.

Q The most you are willing to say, that is the inference which you drew from the conversation? A Yes, and the strong impression; it is a strong impression.

Q What? A Strongly.

Q Will you tell us what was said from which you drew that inference—that strong impression? A That is the same question which he asked me; I cannot.

Q So, then it gets down to the fact that you can't tell what occurred, but only— A The impression I can—

Q —your impression; is that right? A Take the oath away from me and I will tell you what my recollection is, but I don't want to swear to it under oath.

Q In other words, you recognize the frailties of human memory? A Yes, and, as I said before, I became very ill for several months two or three days after and I dropped the matter entirely out of my mind for six months, and I don't want to injure Mr. Hewson and say absolutely he said this and I said that. I am willing to say that if I didn't have to do it under oath.

Q Then you are not willing under oath to tell us any more regarding that conversation than what you have told us and just as to what your impression is? A I remember words here and there, but that is the gist of it, the strong impression I got; my understanding.

Q Had you known Mr. Hewson before you sought out John Gillen and told him that you wanted to purchase a house a year or two before this? A Yes; Mr. Hewson had been very kind to me, and so had the Gillens, in political matters and everything; and that is the reason I turned this over to them—treated me very nicely, indeed.

Q You had been on very good terms? A Yes, we had.

Q And you said you were trying to do business through them? A A return favor, as it were.

Q You sought them out as brokers? A Yes, sir.

Q When you wanted to buy a house? A Well, not in those words; no. There was another broker in the matter, and I wanted

to see if they couldn't beat the other broker to it and get better terms.

Q The first time the matter came up with John Gillen a year or two before there wasn't any other broker in it, was there? A Yes, before I told John Gillen about the matter there was four or five or six brokers showing Mrs. Stockton; and I didn't know who they were and what they were showing. It was her money and paddling the canoe, and when she said, "I am going to buy a house," I saw John Gillen on the street. This was one day in 1916. I said, "I would rather like to see you get the commission than other brokers I have ever heard of." That is when she was going around. She didn't have enough money to buy it at that time; that is, we looked at the Riley house, and after the brokers had shown her the Riley house; and Gillen and Hewson had not been the first ones to show her the house; she had seen it before. I had never seen it before, and that is the reason we went in that day, so I could see what she had already been shown by the brokers. I looked at it in a general way outside; didn't go upstairs.

Q Who took you there? A In 1916 Mr. Gillen, Mrs. Stockton and Mr. Hewson and I.

Q Nothing was done about purchasing this house at that time? A Pardon me. This was about the last of 1915. Various houses were looked at, and this price was away beyond us, and we only took a glance; we passed by the house, and Mrs. Stockton said, "Let us go back and look at the house; I want you to see how pretty it is inside." Mr. Hewson and Mr. Gillen didn't show me the house at all; it was Mrs. Stockton. Am I clear about that, Mr. Adams?

Q Yes. Then the matter was dropped for a year or two? A Two years, even.

Q And then you again took it up with Gillen? A Again stirred him up.

Q You talked to him over the 'phone? A I told him it looked like ready money this time; Mrs. Stockton seemed to have more money; and as a result of that Mr. Hewson came to see me.

Q Then he undertook to negotiate between you and Dr. Riley, the owner? A Yes, and at my solicitation he saw Dr. Riley and came down to report to me there was nothing doing, there was another broker in the matter.

Richard Stockton, cross.

Q And then you and he had differences as to whether you ought to help him— A He wanted me to tell Riley that I wouldn't take the house unless he was the broker.

Q You have said that, and that is what you meant by your differences? That is what he got angry about? A Yes, that started it.

Q Then you and he had this discussion at his office regarding which you can only give us your impression? A You said his office—my office.

Q His office. At the time you met him on the street did you say that was on Broad street? A Broad street, near Green.

Q When was that? A October 24th. I wrote the date down.

Q Of what year? A 1918. It was two or three weeks after I made the complaint in the tax office—not the complaint; just wrote the tax office. It was longer than that—

Q Where did you write down the date? A That is the only way I remember it. On a piece of paper, the back of an envelope. It is only a pencil memorandum. I didn't notice it until just this morning.

Q You mean on the back of an envelope which relates to this matter? A I just went to the tax office on that day and I wrote "The occurrence on October 24th." I thought he was very angry at me and he was going to do all kinds of things, and I made the note.

Q So the memorandum you made was "The occurrence of October 24th"? A Yes; on the slip of the tax office.

Q What did you do with that memorandum, did you put it in the papers in this matter? A Yes. It is something from the tax office—no, here is what happened. It is a small matter, but I happen to recall the details. When I came back to the office loaded with this testimony in my hands I thought, "Goodness me, Hewson has commenced a campaign against me; I don't know what he is going to do." So I yanked out this paper folded up in my pigeon hole and I wrote "Occurrence October 24th."

Q You had not just come from the tax office? A No.

Q And this paper that you have the memorandum on the back of, you picked out of a pigeon hole in your desk? A But before that I got it in the tax office.

Q But not that day? A No; I hadn't been to the tax office. I had to take this testimony.

Richard Stockton, cross.

Q The fact that it was written on a blank from the tax office reminded you of the fact that it happened at the office? A No, I didn't say that. I had been taking testimony.

Q You were on your way to the court house? A Whether I went to my office before I went to the court house to file this testimony I don't remember; whether I went to the court house first or my office, I don't know; one of the two.

Q And you had several books of testimony under your arm? A I had several books; it was one of these Nugent meadow land things. I was taking the testimony of the civil engineer in the front office, meadow land expert. You know what those meadow lands are.

Q You had several books of testimony under your arm? A Yes.

Q Counsel has tried to show that you were unable to defend yourself. Did you feel the necessity of defending yourself from impending assault? A Yes, I was trying my best to get away.

Q You thought Hewson was going to hit you? A Yes, I thought he was. I put up my hand this way (illustrating) and said, "Ssh-sh."

Q You don't mean that he drew back his arm as if to hit you, do you? A I think if you want me to I will show you exactly.

Q Just stand up and show us? A I was coming up from the City Hall on the right side of Broad street and suddenly saw a man coming as close as that to me, and I naturally went back; his face was like that and his hand clenched; his face was as close as that, and you can imagine the rest (illustrating). I said, "Oh, quiet, quiet."

Q Where was this, on Broad street? A Right near Green street.

Q I suppose a crowd collected, didn't it, around you? A No, I suddenly side-stepped. I remember saying, "Oh, don't talk like that," and tried to pacify him. I believe a couple of men stopped.

Q A couple of men did stop? A Yes.

Q What? A I think so.

Q Did two men stop? A I think so.

Q You think so. I want to know whether they did or not. Do you remember the two men stopped? A I remember the two men stopped, for this reason, because I thought possibly he

was going a little bit further and I watched to see who was passing by to see if there was anyone I knew.

Q You were watching Hewson to see that he didn't hit you and you were side-stepping and watching for passers-by? A Yes, it took twenty seconds altogether.

Q You were not armed, were you, to defend yourself against this terrible assault? A I wasn't afraid of it; I just wanted to avoid it; I am not afraid of any man living, and I don't want you to get that impression.

Q All he said was that he was going to punch your damned head off if you made any other complaint, is that right? A Yes, sir; I am almost positive those are the words.

Q And was that after you got this notice that your assessment was going to be fixed at $11,350, you went to the tax records and found that your assessment was $13,350; what record do you refer to? A The final record that George Porter of the tax office brought out and showed me.

By Mr. Congleton.

Q Were they in a book? A In a regular book.

By Mr. Adams.

Q A regular book? A A regular book. I remember saying at the time, "I don't understand that."

Q And that showed $13,350, did it? A Yes.

Q What was your ultimate assessment for that year? A Just as I have testified. Mr. Howe said the board ordered a thousand dollar reduction. I emphasized that because I think it was too late for them to give me a reduction, and I only got $500.

Q In 1918? A In 1918.

Q How much did you pay for that property?

Mr. Parry. I object.

Witness. I refuse to answer, too.

Mr. Parry. I don't think that is relevant to this inquiry at all.

Mr. Adams. I don't know of any better evidence than the value of the property, that it brings at a sale, and the charge is that Mr. Hewson raised this assessment.

Witness. Pardon me! I didn't say on the direct examination that, very positively; there is no question but that the assessment was below the real value. As an attorney in the matter I refuse to disclose the real purchase price.

Q Let me ask you: Did you pay at least $12,850 for the property?

Mr. Parry. That is irrelevant.

Witness. It is answered. Yes.

Director Archibald. We will allow it.

Witness. Yes.

Q Now, then, you said on this occasion at the tax board you saw Mr. Fitzsimmons? A Yes.

Q Did you see any member of the tax board at that time? A No.

Q And then you wrote a letter subsequently? A Yes.

Q A copy of which you have produced here? A Yes.

Q Your letter to the tax board? A A polite letter just calling their attention to it.

Q I say, the letter seems to be quite polite. And later on Howe told you that you would get a reduction of a thousand dollars? A Yes, sir.

Q Where did you see Howe? A (Addressing Mr. Howe.) When did you tell me that?

Q Oh, no. Where did you see him? A (Addressing Mr. Howe.) Did you tell me that?

Q This may not be serious to you, but it is an exceedingly serious matter to Mr. Hewson, and what we want from you is your recollection and not Mr. Howe's recollection transmitted through you? A Pardon my levity! I remember that Mr. Howe told me that last week at my office.

Q Last week at your office? A Yes, sir.

Q And Mr. Howe told you last week at your office that you were to have gotten a reduction of a thousand dollars, but somebody juggled with the figures afterwards and made it $500? A Stronger than that. The board ordered a thousand dollars.

Q The first time you heard that was last week at your office; is that right? A I think it was. I don't think I had heard it before.

Richard Stockton, further direct.

Q When did you first talk with Mr. Howe about this matter of your testifying against Mr. Hewson, or the proposition that you testify against him? A Last week.

Q When he sought you out at your office? A Yes.

Q How many houses are there in the block where your house is, on the same side of the street? A Four.

Q Four houses in that block? A Yes.

Q On your side of the street? A Yes.

Q I thought the testimony of Mr. Fitzsimmons was that there were two? A He didn't count the corners.

Q In 1918 how many were there when you bought that house? A Just the same. He didn't count the corners and I did.

Q Two in the middle of the block, one beside you? A Yes, sir.

Q Your house and that house are not dissimilar? A In outward appearance, but built by the same man.

Q How about the size of it? A The house is much larger.

Q The other house is much larger than yours? A Yes, two rooms deep, and our house is only one room deep.

Q Have you been in the other house? A Yes. Dr. Riley can tell you. He is here today.

Q Have you been in the other house? A No; Harry Murray lives there. I only knew him slightly.

Q Did you know that it was two rooms deep? A Yes. They have an extension and we haven't any extension in the rear. It is one of those old, thin, narrow Colonial houses; their extension does not go the whole length of their house, but the greater part of it.

Q The two rooms deep is including the extension? A To be more clear, I haven't gone over their whole house and I don't know how far their extension extends. It is a better house, cost more money than ours, I think.

By Mr. Parry.

Q You said that after you had received these notices fixing the assessed values tentatively for the year 1918, that you went down to the tax board, because you had a feeling, as I recall it, that there might have been some error or something wrong with the cards.

Q What caused that impression to arise in your mind? A A suspicion. I just kind of—

Richard Stockton, further direct.

Mr. Adams. I object to that. We have had enough suspicion and inferences and hearsay testimony from this witness.

Q What conversation, what individual act caused you to do it, and that caused the suspicion?

Mr. Adams. I object unless it relates to a conversation or act of Mr. Hewson.

A No conversation. I just had a hunch.

Q Was this after the conversation that you had with Mr. Hewson in your office? A Oh, yes; five months.

Q At this conversation with Mr. Hewson in your office do you recall Mr. Hewson referring to the assessed valuation of that property? A Oh, yes.

Q You recall that distinctly? A Yes.

Q That is not mere impression, you distinctly recall the fact that he mentioned to you the assessed valuation of that property? A Yes, at several different times.

Q Just see if you cannot refresh your memory and tell us the several different times in that conversation which he referred to the assessed valuation, just the manner he brought it out? A I remember this: When he first came in he told me what he said to Dr. Riley about the house.

Q What was that? A He says, "I told Dr. Riley that he probably knew me, knew of me, that I was on the tax board." And Dr. Riley said, "No, that he had heard the name recently and he had never known me before. And he said, 'Yes, I am on the tax board,' and he said, 'Of course, I know about the properties you own here in Newark.' And he says, 'This Ridge street property you are now living in is assessed for $10,000—ten thousand and some odd dollars,' He said, 'That is a very low assessment,' and Dr. Riley agreed with me. Dr. Riley said, 'Yes, I know that is a low assessment,' " and Hewson said, "I didn't go any further than that with him. He is a wise guy; he understands."

Q Mr. Hewson said that to you? A Yes, in a conversation about Riley.

Q What else did Mr. Hewson say? A You asked me when he mentioned these assessed valuations; I recall that positively.

Richard Stockton, further direct.

Q You recall that part positively; that is no vague impression, that is a distinct recollection? A Yes.

Q In what other way was the matter of assessed valuations brought up by Mr. Hewson? A Other than I testified before?

Q Other than this one you have just referred to, about repeating this conversation with Dr. Riley. A That is the point, that I didn't care under oath to say the exact words of it. He mentioned it. He told me the property was assessed too low at $10,000 and if it was assessed at $15,000 or $18,000 it would be all out.

Q Did he say anything about their raising the assessed valuation under any other conditions that might arise? A That is what I am trying to avoid in this testimony, in justice to him; I tell you my impression is, my strong impression is that, that is what I got.

By Director Archibald.

Q In justice to yourself, Mr. Stockton, do you or do you not recall the words of these conversations? A Not positively; I have said that over and over again.

By Mr. Parry.

Q You do recall the gist of the conversation? A Yes.

Q That is all that witnesses ever recall in testifying? A Yes, sir.

Q When they are testifying before you as special master you ask for the gist of it, as far as they recall? A No, sir; I try to do what you are trying to do to me.

Q Isn't it a fact that what they try to do is to just recall the gist of it? A I don't let them do it, because that is the conclusion of the witness.

Q Isn't it a fact, and isn't it always the case, that no one ever has a stenographer present to recall the testimony? A I always ask, "What did you say to him and what did he say to you?"

Q "To the best of your recollection"? A If they can't say positively, I let them give the general impression.

Q Give us the best of your impression, discounting the fact that you may not recall the exact words as to just what was said? A No; that is what I declined to do at first; I don't remember the exact words. I could run it out in a story for you, but it

wouldn't be fair to him. I have said that so often this morning.

Q Was there anything said about increasing the assessment if this commission wasn't paid? A That is the same question in another form.

Q Was anything said about that by Mr. Hewson? A I tell you that there was; there was talk along those lines, but I can't remember the exact words.

Director Archibald. We do not want to prolong this. We want to get at the bottom of it. Give us anything that you know. Do not repeat anything that you don't know, we do not want to hear it. You must have some idea of the conversation with Mr. Hewson, by inference, if by nothing else.

Q To the best of your recollection did Mr. Hewson say that if this deal didn't go through him, that he got the commission, that the assessment would be raised on the property? A On, unquestionably, but maybe not in those words.

Q Was there anything said about taxing you out of town? A Yes, he made that remark.

Q That he would tax you out of town? A Out of the city—yelled it out.

Director Archibald. Who did this, Mr. Hewson?

Witness. Yes, sir.

Q Mr. Hewson yelled out in your office that he would tax you out of the city? A Yes; some remark to that effect.

Q Did anyone else connected with that firm of C. P. Gillen & Company come to see you in reference to the commission? A No. I was taken sick a day or two after that. I don't know whether they did or not. They didn't see me, anyway, except that one occurrence of John Gillen.

By Mr. Adams.

Q You told us a little while ago that you were taken sick a day or two after that and that for five months this whole thing went out of your mind? A Yes, practically.

Q You told us that you couldn't remember anything that was said and you told us that you could only testify to your impression. Now, do you remember that? Do you remember unquestionably what Mr. Hewson said? A Not his exact words,

but unquestionably that was the impression, the general drift of the conversation.

Q In testifying as you just have, are you still giving us your impression of what was said to you? A Yes.

Q And you have been giving us only your impression? A Oh, yes; no question about that.

Q How long was he in your office that day? A Two trips, ten minutes each, five minutes each; something like that.

Q You said this was in February, didn't you? A Yes, February, 1918, the first part.

Q Who else was in your office? A The first time, Judge Boettner and John Manning.

Q I mean when Mr. Hewson was talking to you? A No one at all. I closed the door.

Q You and he alone? A Yes.

Q No one in the outer room? A In the outer room there possibly Miss Daly, my stenographer, was—no, there wasn't anyone in the outer room when he went out, because as he went out of the door I went to it and there was no one there.

Q On the occasion of each call? A On the occasion of the second I am talking about. The first call John Manning and Judge Boettner were waiting to see me, standing in the doorway, and I said to Hewson, "Go and telephone Mrs. Stockton while I see Frank Boettner and John Manning about their matter." The second time, I thought you were referring to.

Q The deal had been closed—you had closed the deal with Dr. Riley that time, hadn't you? A Oh, no.

Q Before this conversation? A This was before the deal was closed.

Q Before the deal was closed? A Yes, sir.

Q Before the agreement was signed? A Yes, sir.

Q When was the agreement signed? A February 5th, 6th, 7th; this was a day or two before.

Q Hadn't you at that time closed by word of mouth? A No.

Q Now, you say Mr. Hewson usually used loud tones while talking with you? A Yes.

Q On both calls? A No; I was talking about the second call.

Q Only on the second call? A Yes, sir.

Richard Stockton, further cross.

Q And that is when there was nobody near your office? A Right.

By Mr. Parry.

Q Mr. Stockton, you told us that you gave us your impression of what was said. By impression, you mean your distinct recollection? A No; my distinct recollection of the impression of the conversation, yes.

Q The best of your recollection of what was said? A I am not going to answer that any more.

Q Did you receive a notice of an increase in your personal assessment? A Yes.

Q What was the notice of increase in that? A He raised it a thousand dollars, from two hundred dollars.

By Mr. Adams.

Q What do you mean by that? A Paying on $200, then he raised it to a thousand.

Q Who raised it to a thousand dollars? A The tax board.

Q I thought you said "he"? A I did.

Q Why did you say "he"? A On account of the rest of the story.

Q What do you mean by "he" raised it to a thousand dollars? Do you mean you received a notice for a thousand dollars? A I did; yes.

Q Were you assessed on a thousand dollars? A I was not. I got the tax board to reduce it $500 and I swore it off, as a war veteran, which right I had never exercised before.

Q You know that the board sends out notice of a tentative assessment? A A tentative assessment of $1,000.

Q You mean the tentative assessment? A Yes.

Q When you say it was reduced to $500, you mean it was eventually fixed at $500? A Yes, sir.

Q What year was that? A 1918. I objected to it. Harry Murray lived next to me, and Harry Murray only had $500, and if I had as much money and stock as Harry Murray I would want to know it. They made me the same as Harry Murray.

Q You go down every year to the tax board, don't you, on your personal assessment? A No; I can't answer that directly. I never went to the tax board before to—I go down every year, of course, to make the affidavit.

John Howe, direct.

Q On your personal assessment? A Why, certainly.

JOHN HOWE, resumes the stand.

Direct examination (continued) by Mr. Parry.

Q Was your attention called to the fact that Richard Stockton had been to the office of the tax board? A Yes.

Q When was that, as near as you recall? A In 1918.

Q And after your attention had been called to that incident, did you have any conversation about Mr. Stockton's visit? A Yes.

Q And what was that conversation with Mr. Hewson? A I told him that Richard Stockton had been in here complaining about an increase on his house; he had spoken to Mr. Fitzsimmons; that I personally had not seen him, and said he was in here and making quite a fuss about the increase, about his assessment on his house in Ridge street.

Q What did Mr. Hewson say? A He said, "To hell with him; he did me out of a commission; I will make it cost him more than he saved."

Q Did you have to look up at that time the personal and real assessments on the property where Mr. Stockton lives? A At the suggestion of Mr. Fitzsimmons, it was decided that the board should go and inspect the property, which we did.

Q Mr. Stockton has testified a notice was sent out for $11,350. Did you have anything to do with ordering such a notice being sent out? A I wouldn't know about that; it is not in my district.

Q Do you know what the tentative assessment was fixed for for the year 1918 on the Richard Stockton property? A Well, I know the house was increased to $9,000.

Q What was the final assessment that was reached, if you recall? A Mr. Fettinger, Mr. Hewson and I visited the property; we went in and inspected the house. We saw Mrs. Stockton there, but we didn't see Mr. Stockton, and when we came out we walked around the adjoining house, which I was informed was owned by Harry Murray, and we decided to reduce the assessment on his house from $9,000 to $8,000.

Q Do you know who made the representation for the tentative increase from seven to nine thousand dollars on the Mrs.

Richard Stockton house? A I imagine the commissioner of that district.

Q Whose district was that? A Mr. Hewson's.

Q According to the custom of the board, he would make the original recommendation for a tentative increase? A Yes; the commissioner of the respective districts.

Q Which in this case was whom? A Mr. Hewson.

Q Who ordered the cards sent out? A Why, the recommendations are made and the secretary has the stenographers send out the cards.

Q And who makes the recommendation? A The commissioner of the district.

Q Is it customary to send out more than one notice for one particular property? A Oh, no.

Q Did you also make any examination of the record of the tax office to see if the personal property of the people living on that same block had been raised for the year 1918? A I did not.

Q Mr. Howe, do you recall what the assessment on Hahne & Company was fixed at for 1920? A Tentative?

Q First off, what was the tentative assessment? A $1,000,000.

Mr. Adams. 1920?

Witness. 1920.

Q Did Mr. Hewson have anything to say before the board in reference to the Hahne assessment for 1920? A Not at the time that it was made. The recommendation for $10,000,000 came from Mr. Hewson, being in his district.

Q After that original recommendation, did he say anything about the Hahne assessment? A Not until a representative of Hahne & Company came in to take up the question of assessments, and Mr. Welsh, I believe, called in reference to it.

Q Just tell us what happened? A Why, while Mr. Welsh was in there he asked the usual question, if the firm had that much property, and he said, of course, that he didn't know exactly what they had, but it was quite a large increase, from $600,000 to $10,000,000, and thought the board ought to give him some consideration, and he left after he had been informed that the board would consider his call, and thanked him for calling.

Q After he left did Mr. Hewson make any other recommendation about that assessment? A Not at that time.

John Howe, direct.

Q Did he at a later time? A At a later time Mr. Hewson came and said, "About that Hahne business, Hahne assessment, I think by comparison Hahne & Company are assessed too high." I asked him what he thought would be fair. He said, "I think they would be satisfied with $800,000." Thereupon Mr. Fettinger said, "I think a million dollars is little enough. I know that store pretty well, and I think that ought to stand." Of course, the board discussed the matter pro and con, and we made comparisons with the different department stores, and there was a question; Mr. Hewson held out for $800,000 and Mr. Fettinger thought we ought to leave it where it was, basing it on floor space in comparison with Bamberger's. So that matter was discussed for quite some time there; in fact, there seemed to be more time spent on that assessment than on most any assessment, and then we decided to compromise the assessment, and I then said, "Well, let us get somewhere; let us make some compromise, so that we can arrive at some assessment." Mr. Hewson insisted on $800,000, Mr. Fettinger on a million. I said, "Let us get somewhere; let's split it up. What shall we do, split it in half or not?" Whereupon Mr. Fettinger said, "If that is the best we can do," and the assessment went at $900,000, which was a compromise assessment on a tentative assessment.

Q Do you know anything about the plant of the Newark Sunday Call, as to its value? A I discussed it with Mr. Hannoch; both with Mr. Hannoch and with Mr. Ehlers, of the Sunday Call.

Q Do you know what the contents of the plant are? A Well, I know that they don't print their papers there; I know the paper is printed in the Newark Evening News office.

Q Do you know whether or not they have any presses there of their own? A Why, the information that I received from both Mr. Ehlers and Mr. Hannoch was that they had not—didn't have any.

Q In your opinion, would $500,000 be a fair valuation of the value of the Sunday Call plant? A Oh, no; that would be away in excess—many times in excess of the value.

Q And what would you say as to a million dollars being a fair valuation for the plant of the Newark Evening News? A That also would be excessive.

Q In fixing the valuation on the Richard Stockton house, did you consider that $8,000, which was the assessment finally fixed

on the building, a fair valuation of the building itself? A I thought so by comparison with other houses.

Cross examination by Mr. Adams.

Q Mr. Howe, the present tax board came into being in November, 1917, did it not? A It did.

Q And from that time to this you and Mr. Fettinger and Mr. Hewson have constituted the board? A Yes.

Q Up to January of this year? A Yes.

Q You have been a member of the tax board for some sixteen years? A I have.

Q And Mr. Hewson and Mr. Fettinger were new to the tax board when the new board was created in 1917? A They were.

Q As far as you know, neither of them had served as a tax commissioner before in Newark or anywhere; is that right? A That is my impression.

Q From the beginning you and they have had some differences of opinion, have you not, in the matter, particularly of increasing personal property assessments? A Why, differences of opinion have always arisen in the tax board—in all boards.

Q But I am asking you about this board? A Oh, yes.

Q In the matter of increasing personal assessments, quite often you were against the increase which the other two members favored, were you not? A I have never been against increases that I considered were fair or in comparison with similar assessments.

Q You know that does not answer my question, don't you?

Mr. Parry. I don't see the relevancy of that in this case.

Mr. Adams. I would like to state the object. It seems to me it was obvious that there have been these differences and how this situation was brought about.

Witness. I will not evade any fair question that you ask me.

Q I have not intimated that. I mean by this question whether it has been not unusual for you to be on one side in this question and Mr. Hewson and Mr. Fettinger on the other in the matter of the increase for personal property assessments? A Very often.

Q In other words, they two were inclined to favor larger assessments for personal property than you were in a great many cases; is that not so? A **That is a fact.**

Q And that began with the first year's assessment upon which they worked, did it not—1918? A It did.

Q And has continued more or less ever since? A Up to to-day, wherever I thought the assessment was excessive or out of proportion.

Q All that I mean is, and all that I want to find out from you is whether there were not differences of opinion between you and whether you did not find that they were frequently aligned on one side and you on the other on the question of this proposed increase on personalty? A Very often.

Q And very often you felt that the amount of increase which they proposed was excessive? A Very often.

Q And sometimes you generally had more or less discussion over it? A Quite often.

Q Now, during the period that the notices of tentative assessments are sent out and the fixing of the final assessment, the board is in session practically every day hearing taxpayers upon the proposed assessment, it is not? A That is a fact.

Q And practically the entire day; I mean the morning and afternoon session? A Oh, yes, very often.

Q And during that period you frequently have from fifty to one hundred taxpayers a day come in before the board? A Well, I guess we have had fifty in a day on different occasions.

Q And perhaps a hundred? A I don't think we ever had a hundred.

Q Or some of them disposed of by Mr. Fitzsimmons or by the clerks without coming before the board? A An automobile assessment might be adjusted or an assessment where a man claimed exemption on account of being a veteran.

Q I don't mean to say adjust them, but I mean some of them come for information, I presume? A Many of them.

Q Many of them are disposed of before they get into the board, are they not? A (No answer.)

Q Some of those that call, is what I mean. A Yes.

Q The tax board has received as many as fifty in a day? A They have, I guess.

Q And when notices have gone out of increases, and particularly of considerable increases in tentative assessments, you

frequently have had taxpayers come in there indignant, feel very indignant, have you not? A Yes.

Q And many of them have been in quite a belligerant mood? A Occasionally.

Q In other words, you meet all classes of people and you have to deal with all classes of people? Some of them come in and act courteously and some of them are extremely rude; isn't that so? A That is true.

Q And you do find that your patience is sorely tried by the taxpayers? A I will help you out by saying yes.

Q All I want is the truth? A You are getting it when I say yes.

Q It is not a question of helping me out; it is a question of telling us just what the situation is. Quite often the commissioners frequently find themselves sorely tried, that they can't get any true valuation on their assessments? A It is very hard to get the truth out of a great many of them.

Q You just referred to a representative of Hahne & Company there, and you said, "We asked him the usual question, whether they had personal property of that value," the value of the tentative assessment, and as I recollect it he said he didn't know about that. A He didn't know exactly what the value was.

Q He didn't know exactly what the value was, but he thought the increase was very considerable from last year's assessment. Now, isn't it a fact that usually the representative of the taxpayer who comes before the board does not know the value, or represents that he doesn't know the value of the property you are proposing to assess? A They very often claim they do not know.

Q In other words, you find it very difficult to get any definite information from the taxpayer as to the real value of the personal property? A Very often.

Q And usually the taxpayers, or frequently, I will say, the taxpayer is seeking to get a reduction of the assessment or the proposed assessment without giving the tax board the information which the tax board desires as to the real value of the property? A They usually try to drive the best bargain they can.

John Howe, cross.

Q Isn't it true that taxpayers in the discussion sometimes become angry and lose their tempers with some of the members of the board? A I have seen them do that.

Q During your whole sixteen years' experience—you have said? A Every one.

Q And have you sometimes lost your temper with the taxpayers under such circumstances? A Well, I have been often sorely tried, had my patience sorely tried.

Q Perhaps sometimes you have not been able to restrain yourself from expressing your real opinion of it, an expression of your own opinion? A I usually couch it in gentlemanly language.

Q I gather that you said Mr. Hewson sometimes lost his temper on some occasions? A I think it was proven by the testimony.

Q Do you know? Answer the question. A Oh, yes.

Q We are talking about your recollection now of these events? A Yes.

Q And those occasions, were they not, were usually when the taxpayer was seeking to procure a reduction? A Very often.

Q Well, the discussion with taxpayers were usually over the question whether the proposed assessment was, or an assessment, was too great. You didn't have any taxpayers complain about anything else, did you? A Very rarely. One or two have.

Q They never got highly indignant because they were under assessed? A No, but I guess in sixteen years might have had sixteen people come in.

Q But they were not angry about it? A Oh, no.

Q Now, in regard to the Maas & Waldstein assessment for 1918, you have testified that Mr. Fettinger and Mr. Hewson sent out a card for a tentative assessment on which they set forth an amount different from the one upon which the board had agreed? A I didn't say that.

Q I don't want to misquote you. A I will repeat what I said, if it will help you any.

Q You need not repeat it. You said that the board had fixed the valuation on the meadow property at $300,000 and on the Riverside plant at $85,000? A Yes.

Q And that Dr. Walker came in with a card showing the meadow property fixed at $500,000 and the Riverside plant at $150,000. A Let me get that clear. You allowed me to think

that the board had decided on those assessments of $300,000 and $85,000 and that afterwards these cards were sent out. Is that your impression?

Q That is my impression of your testimony. A You are wrong there. I will correct it.

Q What did happen? A What did happen was this: At the meeting of the board the day previous to Dr. Walker's visit to our office the secretary was instructed to send a letter to Dr. Walker, representing the Maas & Waldstein Company, to call at our office to take up the question of assessment on their personal property for that year. I understood that was to be done. The following day—my testimony will show there—if my memory serves me right, was that Dr. Walker called up and asked for me and I was called to the phone, and he said, "This is Dr. Walker of Maas & Waldstein. What are you folks trying to do to us, drive us out of business?" I said, "Why, what has happened, Doctor?" "Why," he said, "I received two notices, one for each factory, increasing my assessment 100 per cent." I said, "That is a mistake, because at our meeting yesterday the secretary was instructed to write you a letter requesting you to call at our office to take up the question of taxation for that year." He said, "Well, I have two cards specifying the amount to which our assessment has been increased." "Well," I said, "if you care to you can come before the board." And he said he was then at his factory, and on his way up—he was going up to the bank—he would stop in. When he stopped in at the bank—when he left the bank and came to our office Mr. Fettinger and I were both in there and he had the cards with him." I said, "Doctor, I don't know anything about these cards." My impression when I left the board yesterday was that the secretary was to write you a letter requesting you to come in. Now, I will ask Mr. Fettinger about that." And Mr. Fettinger was sitting at his desk writing, and I said, "Mr. Fettinger, this is Dr. Walker. Do you know anything about these cards?" "Why," he said, "after you had left yesterday George suggested that we send out a tentative assessment on those two plants." And that is how those cards came to be sent out. We invited him to take a seat and Mr. Fettinger and Dr. Walker and I discussed the matter with him, and I said, "How does this compare with your personal property?" He said, "In both instances it is excessive," so I said, "What do you think would be fair; we want to treat you fair;

we don't want to drive you out of business, as you suggested." He said, "If you increase the lower plant from $150,000 to $300,000 you will be assessing me full, and if you increase the upper plant, which is the Riverside plant, to $85,000, I think that would be fair," and we decided on that, Mr. Fettinger and I.

Q That was not only decided upon by the board, but what you usually referred to as a compromise with the taxpayer? A Yes, that is what it really is.

Q That was the amount that he agreed upon? A Yes.

Q The cards that were sent out were only tentative? A Yes.

Q And these cards indicating tentative assessments were sent out by the board frequently for the purpose of having the taxpayer come in and discuss the matter that you may fix an amount which seems to be fair? A Yes; or, in other words, we take it for granted that we are satisfied with it, and it stands.

Q Invariably? A Yes; hundreds of cards go out.

Q The primary object, however, of the card, is to assist the board in getting at a fair valuation by indicating to the taxpayer a valuation which the board regards as at least adequate and enabling the taxpayer to come in and show the board that it is excessive; isn't that right? A In every instance when we send those cards out, if the party who receives them fails to respond, that assessment remains the assessment for that year.

Q But the point is that the time the card is sent out the board has not fixed that as an assessment? A No, but, as I explained, if they fail to come in and face us that the assessment is excessive, that is the assessment for the year.

Q The tentative assessment that is indicated in those cards is usually fixed by the commissioner for that particular district? A Yes.

Q And the secretary has those cards sent out at the suggestion of that commissioner? A Not in this case.

Q You understand the question, don't you? A Yes.

Q We are talking about the usual custom. A Yes.

Q The exception that you have taken to this incident is that you three gentlemen, the board, have determined to have a letter sent to Dr. Walker or to Maas & Waldstein, asking them to call? A Yes.

Q Before the board? A Yes, sir.

Q Instead of that Mr. Fettinger and Mr. Hewson had these cards for tentative assessment sent? A That is what happened.

Q This is your criticism? A That is what happened.

Q You think he shouldn't have done that without conferring with you, in view of the fact that the board had determined to send that letter; is that your criticism? A Why, I think that we could have just as much—

Q Is that your criticism? A Oh, yes; I don't think it was right. I had never done it to either of them.

Q The whole board fixed the Stockton property in 1918? A Yes.

Q And fixed the assessment? A Yes.

Q And fixed the assessment after the inspection? A Yes.

Q When was this conversation that you say you had with Mr. Hewson about the Stockton matter, before or after that inspection. A Before the inspection.

Q The assessment had not been fixed as yet? A Not permanently; no.

Q Did you know at that time that Mr. Stockton had received a card or cards indicating an assessment of $11,350? A I never knew it until today.

Q When Mr. Fitzsimmons reported to you that Mr. Stockton had called and complained about the matter, what did you know about the assessment? A I knew nothing about it.

Q Did you know what the amount was? A No.

Q And did Mr. Fitzsimmons tell you anything about the card being a different amount that the amount in the book? A He did not.

Q Did he tell you that Mr. Stockton was angry or indignant? A He said, "I think the board better go up and inspect it; this fellow may make a fuss over it."

Q This is what Mr. Fitzsimmons said? A Yes.

Q Did he say that he had made quite a fuss with him? A Well, he didn't say that. He said that he came in to speak to me about—Mr. Fitzsimmons said it had been this man's custom to come in, and he was a soldier, and make a statement, and while he was in, he learned from someone there that his assessment had been increased. I said, "I think the best way to do about that, so as to avoid any fuss, would be for the board as a whole to go up and inspect the place."

Q That is what Mr. Fitzsimmons said? A Yes, sir.

Q You are sure that Mr. Hewson didn't make the suggestion that the board go up and inspect the property? A No, Mr. Fitzsimmons said that to me before I had seen Mr. Hewson.

Q I don't understand from your testimony that there was ever any tentative assessment on the Sunday Call for any $500,000? A It was a suggestion.

Q There was no such tentative assessment fixed by anybody in the board? A I never said there was.

Q There was no motion made by Mr. Hewson that the assessment of the Sunday Call be fixed at $500,000? A No, he said it should be.

Q And there was no motion made by Mr. Hewson that the assessment of the Newark News be fixed at a million dollars? A No more than I said he said it should be.

Q And no such tentative assessment fixed by Mr. Hewson? A No.

Q This was a conversation which you and Mr. Hewson had in which he said that the News ought to be assessed a million dollars and the Sunday Call $500,000, is it not? A Yes.

Q Have you been through the plant of the Sunday Call? A I have never been in where they have the linotype machines.

Q Have you been in the plant of the Sunday Call within the last five years? A I have been in the reporters' department.

Q Have you been in the mechanical department? A No.

Q Do you know whether they have any presses there or not? A I have been informed by Mr. Hannoch—

Q Do you know? A I do not.

Q The only information that you have about the personal property of the Sunday Call is a conversation that you had with Mr. Hewson and with Mr. Ehlers? A In the tax office.

Q Is that right? A In the tax office. Both conversations were had in the tax office.

Q That is the only information you had? A That is all I had.

Q And Mr. Hannoch is the business manager of the Sunday Call? A I believe that is his title.

Q Or advertising man or something like that? A Business manager.

Q And Mr. Ehlers is a reporter? A City editor, I believe, is his title.

Q He has been a reporter for a good many years, has he not, on that paper? A Yes.

Q Commissioner, how long have you known Mr. Liveright? A Quite a while; a good many years.

Q You and he are very good friends? A Yes.

Q And have been for a good many years? A Yes.

Q And you have visited him at his apartment in New York? A Never.

Q Never been there? A Never been anywhere with Mr. Liveright in my life, and I want to make that clear, except in their own building.

Q You had no social relations with him? A None whatever.

Q Now, isn't it a fact that Mr. Liveright came into the tax board on this occasion in a very belligerent mood? A I should say not, just the contrary.

Q He was very courteous, was he, and deferential? A He surely was. He came in with a postal card in his hands. He said, "Gentlemen, what are you doing, sending me a Christmas present?" He was all smiles.

Q And this outburst from Mr. Hewson, then, was like a thunderbolt out of a clear sky, was it? A Well, they got into a pretty heated argument.

Q Did Mr. Liveright become excited during the argument? A He surely did.

Q Did you become excited? A Not at all. No occasion at all for me to become excited.

Q Only Mr. Liveright and Mr. Hewson? A That is all.

Q And they talked very plainly to each other, didn't they? A They certainly did.

Q Mr. Liveright just as plainly to Mr. Hewson as Mr. Hewson did to Mr. Liveright? A Yes.

Q And it was during these heated discussions that these things were said by Mr. Hewson to Mr. Liveright about which you have testified? A Yes, sir.

Q Did Mr. Fettinger become excited? A No.

Q He never does? A He never does, I will say that for him.

Mr. Adams. I do not think of anything else that I want to ask of Mr. Howe at this time, but I might want to recall him.

William E. Cavanagh, direct—cross.

By Mr. Parry.

Q There has been some testimony with reference to the sending out of cards and letters to taxpayers; will you just explain what the custom is on that?

Mr. Archibald. That has been gone over quite thoroughly.

WILLIAM E. CAVANAGH, sworn.

Direct examination by Mr. Parry.

Q Mr. Cavanagh, you are the formal complainant in these proceedings? A I am.

Q Where do you live? A 10 Kenmore avenue.

Q Newark? A Yes, sir.

Q Are you a taxpayer in this city? A I am.

Q In making these charges, you made them on information and belief? A I did.

Q As the result of a complaint which was made to Mr. Howe in your presence? A A statement made by Mr. Howe in my presence?

Q Yes. A Yes.

Q Was that the meeting which was held in Mr. Archibald's room at which you were present and the three commissioners were present, the three members of the tax board? A Yes. I asked Mr. Howe if the allegations made in the Ledger story of a week previous was substantially correct. He said they were, that he would take them up before the proper authorities.

Q During the course of this meeting did Mr. Hewson make any statement about giving cards? A My recollection is that he did on two occasions before the county board.

Cross examination by Mr. Adams.

Q I don't understand that. Your understanding was what? A That on two occasions Mr. Hewson stated that he recollected, or recollected that he had on two different occasions, given out cards on matters coming before the county tax board.

F. Edsal Riley, direct.

F. EDSAL RILEY, sworn.

Direct examination by Mr. Parry.

Q Doctor, what is your occupation? A Dental surgeon.

Q Where do you live? A I am living at the present 636 Mt. Prospect avenue.

Q Did you formerly own the property on Ridge street, Newark? A My wife did.

Q Did you sell that property at 423 Ridge street? A I did.

Q To whom was it sold? A Mrs. Richard Stockton.

Q About when was the deal consummated? A About two years ago, 1918, I think.

Q Did you have a real estate agent who figured in on the deal? A Yes, the customer was introduced to me through Mr. Bertram Ham.

Q Mr. Ham received the commission for the sale? A He did.

Q Did Mr. Hewson come to see you in reference to that sale? A He did.

Q When did he first come? A Just a few days before the sale was made. The sale was completed later.

Q What did Mr. Hewson say? A He said that he had a good prospective purchaser for the house, and that it was Mrs. Richard Stockton. I told him that Mrs. Stockton was already negotiating for the house through Mr. Ham, and that I would have to sell the house through Mr. Ham under the circumstances. He said Mrs. Stockton would not buy the house through anybody except him. I said, "If Mr. Stockton bought the house through him, as Mr. Stockton's representative, that he would have to look to Mr. Stockton for his commission, that I was under obligation to Mr. Ham and would pay Mr. Ham, as he had introduced the purchaser, and he said Mr. Stockton wouldn't buy the house."

Q Was that your only conversation with Mr. Hewson? A That is all I remember.

Q At that conversation was there anything said about the assessed valuation of the house? A No, sir.

Q That wasn't discussed? A Not with me. After the sale I was called to the telephone; C. P. Gillen wanted to speak to me, and the voice over the phone said it was Mr. Hewson, and Mr. Hewson wanted to know if the sale had been consummated.

I told him as he was Mr. Stockton's representative I would refer him to Mr. Stockton for his information.

Q Was there anything else said in this conversation? A No, sir.

Q Have you had any other conversation with Mr. Hewson since? A No, I never saw Mr. Hewson, to my knowledge, until I saw him here the other day.

Q You never paid him the commission for the sale? A No, sir.

Q He never brought a suit in court as to whether he had a right to a commission or not? A Not as far as I know.

Not cross examined.

Mr. Parry. Our testimony is closed with the exception of Dr. Walker.

Mr. Adams. He is to testify as to the cards?

Mr. Parry. Yes.

Adjourned until Wednesday, March 3rd, 1920, at ten o'clock A. M., at the same place.

THIRD DAY.

Wednesday, March 3rd, 1920.

In the Matter of the Hearing of the Charges Preferred against George F. Hewson, a member of the Board of Assessment and Revision of Taxes.

Continued pursuant to adjournment.

Appearances as before stated.

HENRY V. WALKER, sworn.

Direct examination by Mr. Parry.

Q Doctor, where do you reside? A 191 Ballantine Parkway, Newark.

Q Are you connected with the Maas & Waldstein Company of this city? A I am.

Q And what is your official connection? A I am president.

Q Did you go before the Newark Board of Assessment and Revision of Taxes in reference to the 1919 assessment of that company in the fall of 1918? A Why, I appeared before the board a great many times. What would be the time?

Q Do you recall an occasion when you stated that two of your buildings were for sale? A That was for the 1919 assessment.

Q Do you recall that particular visit to the board? A I do.

Q When you went there was the board in session? A Yes.

Q Who were present, what members of the board? A Mr. Howe, Mr. Hewson and Mr. Fettinger, and I don't know whether Mr. Fitzsimmons was in the room or not.

Q Do you recall just what you said when you appeared before the board? A Not the exact words.

Q The general gist of what you said? A Why, as I recall it, the occasion of my visit was an increase in the assessment of our Avenue R property, and I laid before the board that that plant at that time was either shut down or about to be shut down.

Q What was the amount of the tentative assessment that you had received? A I don't remember.

Q Was it $300,000? A I don't remember what it was.

Q It had been increased? A That is my recollection.

Q And in the course of the conversation or statement that you made before the board, you made reference to the fact that two of your buildings were for sale? A Yes, sir.

Q Did Mr. Hewson say anything at that time? A Why, there was a discussion by all the members of the board. Mr. Hewson, as I remember it, joined in the discussion.

Q Do you remember what he said? A Why, I think he and the other members of the board thought that the facts that I stated were material in determining the amount of the assessment.

Q Did Mr. Hewson say anything to you about your sending in the particulars concerning these two buildings which were for sale? A Not until the matter of the assessment had been disposed of.

Q What did he say then? A Why, he asked me if the buildings were suitable for a particular purpose. I said I didn't know, but perhaps they might be.

Q Did you tell him that the matter was in the hands of Mr. Meyer, of the Schlesinger agency? A Yes, I did.

Q Did Mr. Hewson give you his business card at that time? A Why, the statement that he did has come to me from so many sources that I suppose perhaps he did; my recollection on that point is not very clear. I may say, however, that Mr. Hewson made no effort whatever to connect the assessment with the sale of the building. His office had been in communication with me on that subject long before I appeared before the board, and the taxing matter had been disposed of before there was any discussion of the sale.

Q Did you put this business card in a book in your inside pocket? A I don't recall whether I did or not.

Q Do you recall meeting Mr. Howe afterward and showing him the card? A No.

Q To the best of your recollection, did you receive a card while you were there at the tax board from Mr. Hewson? A Why, Mr. Hewson asked me if the buildings were suitable for a particular purpose. I said I didn't know, that perhaps they would be. I told him that his office had been in communication with me in regard to the building several days before, that Louis Schlesinger's office had the exclusive sale, but I had no doubt

they would be glad to work with him the same as they would with any other broker, and he asked me; he said, "You might ask them to send me the dimensions," the same as any other broker.

Q Do you remember that a card was given? A The card made no impression on me; I have little or no recollection. I knew Mr. Hewson was in the real estate business; it wasn't necessary for me to have a card.

Mr. Parry. Inasmuch as we cannot get Mr. Tonks here, and we do not know when we can get him, and in order not to delay the proceedings, the prosecution rests.

JOHN COPPERSMITH, sworn.

Direct examination by Mr. Adams.

Q You are connected with the tax office? A Yes.

Q In what capacity? A Assistant assessor.

Q How long have you been connected with that office? A Fourteen years.

Q What districts do you cover as assistant assessor? A Well, the last I covered was the 8 B.

Q What district is that, generally; what part of the city? A It takes in Forest Hill and Woodside.

Q Does that cover the premises on Ridge street? A Yes, sir.

Q Which belonged to Mrs. Richard Stockton? A Yes, sir.

Q Did you have to do with the assessment in 1918 on those premises? A Yes, sir, for 1917; I didn't after that.

Q The assessment of 1918? A Yes, sir.

Q Have you there the assessment book of 1918? A Yes, sir.

Q What were the assessments against that for those premises in 1917? A 1917, the assessment was $10,900.

Q And how much of that was on the building? A $10,000.

Q Now, what was it for 1918? A 1918, it was $12,850.

Q How much of that was on the building? A $8,500.

Q Do you know how that assessment on the building was figured for that year? A It was figured in 1917 at seventeen cents a cubic foot.

Q How was it figured in 1918? A 1918; I haven't got it here.

Q And in 1920. Will you look at 1920? A Twenty-one cents.

Mr. Hurley. What is the total assessment?

Witness. The total assessment in 1918?

Mr. Adams. 1920, you are speaking of?

Witness. 1920 assessment.

Mr. Adams. That twenty-one cents was 1918.

Mr. Hurley. He said 1920.

Q This is the 1918 book you have here? A Yes.

Q Take your 1920 book. A The total assessment there is $13,700.

Q How much of that is building? A $9,350; the cubic foot there is fifty-one cents.

Q That is for 1920. In 1918 it was less than twenty-one cents but more than seventeen cents? A Yes, sir.

Q Will you tell me what the assessment on the Harry Murray house on that street was for 1917?

Mr. Parry. Where is the Harry Murray house?

Witness. Next door.

Mr. Adams. That is the one that Mr. Stockton testified about.

Witness. That premises was then assessed $12,300; the building was assessed at $8,000.

Q On what basis was the assessment for the Murray house in 1917 figured? A At twenty-five cents a cubic foot.

Q That is for 1917? A 1917.

Q That is the year the Stockton house was seventeen cents? A Yes, sir.

Q In 1918 what was the Murray assessment? A That was figured then at twenty-six cents; there was an increase then of $500 on the land—not on the building. There was a change made here. Somebody refigured that and made it twenty.

Q What was the total assessment? A $12,800.

Q What was the assessment on the house? A $8,000.

Q What was it for 1920? A A The total assessment, $15,800.

Q And the building? A The building $9,000.

John Coppersmith, cross.

Q You have been assessing in that district for some years, have you? A Yes, sir.

Q Are you familiar with the Kirkpatrick house across the way? A Yes, sir.

Q Can you tell me how that house compares with the Stockton house? A There is no comparison at all.

Q What is the difference? A The difference in the cost is, well, at least one-third less, if not fifty per cent.

Q That is, the Kirkpatrick house is that much less than the Stockton house? A Yes, sir. If my recollection bears me out the Kirkpatrick house, the contracts on it were about $5,600.

Q When was it built, Mr. Coppersmith, about when? A Possibly seven or eight years ago.

Mr. Parry. I object to his testifying as to the contract. The contracts will speak for themselves.

Mr. Congleton. The testimony shows that the tax office gets transcripts of the contracts.

Q Where do you get those figures, from your records? A From our records; yes, sir.

Q Did you have any such records on the Stockton house? A I believe we have.

Q Are they both frame houses? A No, sir.

Q What is the Stockton house? A The Stockton house is a tract fifty-one by twenty-five.

Q What is the Kirkpatrick house? A The Kirkpatrick house is a frame, thirty-five by thirty-seven, two and a half.

Q Two and a half what? A Two and a half stories; they are both two and a half stories.

Q The Stockton house, apparently, from your figures of ratio of cubical contents, is a larger house than the Murray house? A Yes, sir.

Q Do you know that? A Yes, sir; the Murray house is forty by twenty-two and nineteen by nine; two story high.

Cross examination by Mr. Parry.

Q If you take the main body of the Murray house, forty by twenty-two, and add to that the extension, isn't that a larger house than the Stockton house? A No, sir.

Q How much difference in cubic feet is there? A There is a difference of over ten thousand cubic feet.

John Coppersmith, cross.

Q Did you tell us that the Murray house is forty by twenty-two? A Yes.

Q Plus an addition of nineteen by nine? A Yes.

Q Isn't that much greater in cubic area than fifty-one by twenty-five, which you say— A You have got an eighteen by twelve in the Kirkpatrick house.

Q I am not questioning you about the Kirkpatrick house; I am asking about the Murray house and the Stockton house. See if we have got these figures right. You said, as I understand it, the Stockton house is fifty-one by twenty-five; is that right? A Fifty-one by twenty-five.

Q Now, you say the Murray house is forty by twenty-two? A Yes.

Q Plus nineteen by nine? A Nineteen by nine.

Q Isn't the Murray house having more cubic feet than the Stockton house? A I don't make it so. I make it 29,678 feet, unless I am mistaken.

Mr. Adams. Maybe we can straighten this out if we can find out who fixed this price per cubic foot.

Mr. Congleton. It is a matter of mathematical computation.

Witness. There is a twelve by eighteen garage on the Stockton house.

Q That is a garage, you mean? A Yes.

Q Is this nineteen by nine an addition to the house? A That is an addition to the house.

Q That is not the garage? A No, sir.

Q I am not talking about garages. A Well, we take the total.

Q I am comparing the buildings. A I understand. I will take that garage and figure it with the building, just as we do the building and additions.

Q The question I asked you is if it is not true that the Murray house has more cubic feet than the Stockton house, because the Stockton house, as you have told us, is fifty-one by twenty-five, while the Murray house is forty by twenty-two in the main body of the house, with a nineteen by nine extension? A Yes.

Q Therefore, doesn't that make the Stockton house a smaller house than the Murray house; isn't that true? A Maybe.

Q What is the assessment for 1919 on the Murray house? A When you buy a house you buy a house and the garage.

John Coppersmith, cross.

Q I am not asking you to argue it; I am asking you a question. A Go ahead.

Q What was the assessment in 1919? A $8,000 for the building.

Mr. Hurley. And in 1918 it was not raised?

Witness. Yes.

Q And that is the house next to the Stockton house? A Yes, sir.

Q And 1917, what was the assessment on the Stockton house? A $7,000 on the house.

Q What was the assessment on the Stockton house in 1918? A $8,500.

Q And that assessment of $8,500 was the assessment which was finally fixed by the board; it was not the tentative assessment; isn't that correct? A Yes, sir.

Q So the Stockton house has increased $1,500 on the building? A Yes, sir.

Q While there was no increase in 1918 on the Murray house, next door? A No, sir.

Q Will you turn to the house adjoining the Murray house, the next house to it? A Adjoining the Murray house?

Q Yes. There must be some house somewheres near the next house to the Murray house. A The next house would be the corner house on Berkeley avenue. It is not in this book.

Q Have you the book here? A No, sir. We can show you the house on the corner of Abington avenue, but that was not built; that was only finished in 1919.

Q Will you produce that book later, showing the next house which comes after the Murray house, on the corner of Berkeley avenue? Have you the book there which shows the next house to the Stockton house going the other way? A Yes, sir.

Q Have you that here? A Yes, sir.

Q What house is that? A John D. Homerque.

Q What is the street number of that house? A 413 to 421.

Q What was the assessment on the building for that house for 1917? A That building wasn't finished until 1919.

Q What is the next house beyond that going in the same direction?

John Coppersmith, cross.

Mr. Congleton. There are only two in the block, it has been testified to.

Q Is this the corner house? A Yes, sir.

Mr. Congleton. There are two houses on each corner of that block?

Witness. There is only four houses on the street.

Q In 1917, were both corner houses in existence? A Ferguson's was the only corner; that is on the corner of Berkeley avenue.

Q The Ferguson house, you will give us that later? A Yes, sir.

Q Do you know what the tentative assessment for 1918 was on the Stockton premises?

Mr. Parry. I would like to cross examine before he answers on that.

By Mr. Parry.

Q Don't you have a record of tentative assessments? When a tentative assessment is made isn't there a record of that? A You have got me, Mr. Parry.

Mr. Parry. I think we should produce the record and not have the witness testify from recollection.

Mr. Fitzsimmons. That was the final assessment; we don't make any tentative assessments on buildings.

By Mr. Adams.

Q In answer to Mr. Parry's question you said that this assessment of $2,500 in 1918 was less than the tentative assessment. Do you know what the tentative assessment was? A I didn't understand the question if that is the case.

Q You didn't mean that then? A No.

Q Do you know anything about what the tentative assessment was for that year? A No, sir.

John Fitzsimmons, direct.

JOHN FITZSIMMONS, sworn.

Direct examination by Mr. Adams.

Q Mr. Fitzsimmons, will you tell us whether the city levied an assessment for taxes against the premises No. 997 Broad street for the year 1919? A Yes, sir.

Q And on whom was the assessment levied as the owner of the premises? A Against the estate of Mary A. Hayes.

Q They have been assessed against that estate for the previous years? A Yes, sir.

Q Have you any record here showing whether the taxes for 1919 were paid? A Yes, sir.

Q They were paid? A Yes, sir.

Q Do you know by whom? A I don't know by whom, no, sir. Paid on May 28th, 1919.

Mr. Adams. I didn't call Judge Skinner because Mr. Parry will agree to this; I would like to state on the record that Judge Skinner has furnished me with the tax receipts on those premises for 1917 and 1918, and that he said that the tax receipts for 1919 he had turned over to the purchaser, to McAllister, Carton & Stulz Corporation, and I have obtained the receipts from them, and I have them here. Judge Skinner informed me that he, as trustee, has paid the taxes for three years. Will you, gentlemen, take that statement instead of calling Judge Skinner?

Mr. Parry. We will admit that the taxes for 1917 and 1918 were paid by the estate of Mary A. Hayes; 1918 was paid by the McAllister Corporation. Wasn't that it?

Mr. Congleton. As I understand that situation, it was paid by Judge Skinner as the trustee, but he gave it to them. There is no doubt about it. I know about it. I had the conversation with Judge Skinner about it.

Mr. Parry. We will admit that then.

Mr. Adams. It is admitted. I offer the three tax receipts formally in evidence.

Q Mr. Fitzsimmons, is it customary for the taxing authorities to levy assessments for taxes on property belonging to the City of Newark?

Mr. Parry. I object to Mr. Fitzsimmons testifying to that. I think that should be a matter of law rather than a matter of custom.

Mr. Congleton. Isn't it a fact that it is assessed and put in the exempt column?

Mr. Parry. I think that is a matter of law. We could call Mr. Congleton as to that. I will accept Mr. Congleton as a witness as to the law in the matter.

Mr. Adams. I am offering the fact, not the law.

Mr. Parry. I object to that, as to that being the custom, as being irrelevant. The custom could not possibly control the true state of facts.

Mr. Adams. To save time I will withdraw the question.

Q Mr. Fitzsimmons, have you the book here covering the district in which the Memorial Building site belonging to the City of Newark is located? A Yes, sir.

Q And will you show me what, if any, record there is with regard to that property? A Yes, sir.

Q What book is this that you have? A This is in the Ninth Taxing District.

Q Field book? A Field book, yes.

Q In which the assessments are entered, is it? A Yes, sir.

Mr. Parry. This has nothing to do with property at 979 Broad street.

Mr. Adams. No.

Mr. Parry. I object to this as irrelevant.

Mr. Adams. The object of it is to show that the property belonging to the Mayor and Common Council of the City of Newark is not assessed.

Mr. Congleton. I think the Director will take judicial notice of the fact that property belonging to the City of Newark is, under, the law, exempt from taxation.

Mr. Adams. I want to show what the custom is.

Mr. Congleton. What difference would it make, whether it was or was not, if the law says it shall not be assessed?

Mr. Adams. I want to show that the municipal authorities have not regarded this property as belonging to the City of Newark.

Mr. Parry. I object to this as being irrelevant on the ground that it is entirely based on custom, what the custom may be of any official member of the tax board. The law controls.

Director Archibald. I do not see any objection to proving it if you want it in.

Mr. Adams. I want to prove the method of handling property belonging to the city.

Mr. Congleton. Why don't you ask one of the assessors what they do?

Mr. Adams. Because Mr. Fitzsimmons is virtually the custodian of the records.

Mr. Congleton. I think Mr. Parry's objection is that it ought to be proved by one of the assessors rather than by Mr. Fitzsimmons. This is only one piece. You would have to go into each piece if you want to dispute the custom.

Mr. Parry. We will concede that the city property, as far as the City Hall and property that the city has control of, is not ordinarily subject to taxation. It is not a matter of custom. I don't think there is any dispute about that.

Q Will you turn to that record and tell me whether there is any record on the field book as to the Memorial Building site? A Oh, yes, there is a record.

Q What does the record show? A What is the nature of it? A That the property is in the name of the Mayor of the City of Newark.

Q And gives the street number and identifies the property? A Yes, sir.

Q Is there any valuation? A No, sir.

Q And the entry is in red ink, is it? A Yes, sir.

Q Is that in red ink for any purpose? A To show that it is exempt. Red ink in field books denotes exemption.

Q Is that the way that properties belonging to the city are ordinarily treated on the tax books? A That is the way they are treated on the field book, and then we have an exempt property book.

John Fitzsimmons, direct.

By Mr. Congleton.

Q All the properties are gathered in one place as required by the statute, to show the properties? A Yes, sir; this is the way they are treated on the field book.

Q Will you turn to the field book of 997 Broad street and tell me whether the assessment on that property is on the same basis as the adjoining property? A Yes, I know that it is.

Q Is it? A Yes.

Q Is it on the front-foot basis? A Yes, front foot basis.

Q About how many individual assessments are there in Newark, Mr. Fitzsimmons? A Counting the poll tax, there is about 175,000.

Q And eliminating the poll tax? A About 100,000; from 100,000 to 110,000, I think.

Q You are familiar with the Walsh property at 81 Clay street? A I am only familiar with the records; I am not familiar with the property itself.

Q You are familiar with the assessment against that property? A I have the records showing what the assessments were and are.

Q Will you get out your records for 1917 and 1918. What was the assessment on the building and on the land for 1917? A $12,300.

Q And on the buildings? A The land is $5,650 and the building is $6,650.

Q Do you know on what basis that building was figured? A It was figured at five cents a cubic foot.

Q What was the assessment on the building for 1918? A 1918 the building was increased to $10,100.

Q Do you know how it came to be increased, who increased it? A Why, the board inspected the property and increased it.

Q In that year, 1918, isn't it a fact that the three members of the board made a tour of the city— A Yes, sir.

Mr. Parry. Did you go with the board?

Witness. Yes, sir.

Q —and inspected all commercial and factory buildings? A Yes, sir.

Q And increased the assessments against a great many of them? A Yes, sir.

Q And that assessment was increased by the board as after an inspection of that property? A Yes, sir.

Q You accompanied them when they inspected this property? A Yes, sir.

Q What was the character of the building? A As I recall—I am not so sure of it—as I recall it is up to date—that is, there are two structures, one is comparatively new and up to date, good factory building, and the building in the rear was an older structure, not quite so good; that is my faint recollection of it.

Q What is the general character of the buildings in that neighborhood? A Well, the other buildings are much older than this newer building.

Q Most of the buildings in the rear are old buildings? A Most of them are in the neighborhood of Clay and Ogden streets.

Q Isn't this one of the newest buildings in that section? A Yes, sir; I think it is.

Q How was the basis of the 1918 assessment fixed? A Eight cents a cubic foot for the front building and six cents for the rear building.

Q And the assessment for 1920 were the same as 1918, were they not? A Just the same.

Q Mr. Fitzsimmons, if you can tell me, what was about the average assessment per cubic foot on buildings of this type throughout the city? A It ranges from eight cents and eleven cents; in some instances as high as seventeen; but eight to ten.

Q Eight cents was low? A Eight cents was low for a building of that type, that is, for the front; six was a very fair assessment for the rear.

Q Will you give me the figures on 295 Passaic street, the real estate? What was the building assessed at for 1917? A 295 Passaic street in 1917, the building was assessed—the value of the building, you mean?

Q Yes. There are several buildings. A $7,000.

Q Do you happen to remember, did the land valuation remain the same? A Yes, the land remained the same.

Q I think it did. Give me the buildings and the land, each one separate? A In 1917 the land was $7,400 and the building $7,000, making a total of $14,400.

Q On what basis were the buildings figured? A Two cents a cubic foot.

Q What was the assessment in 1918? A In 1918 the buildings were raised from seven to twenty-one thousand.

Q What about the land? A The land was left the same.

Q On what basis were the buildings assessed in 1918? A They were assessed at six cents a cubic foot; in 1918 they were raised from two cents to six cents. I will say in connection with that assessment that the owners took an appeal to the county tax board, and the assessment was reduced.

Q They applied first to the local board for a reduction, did they not? A Yes, they applied to the local board.

Q And the local board refused it? A Yes, sir.

Q And then they appealed to the county board? A No, they applied to the local board and the local board had the buildings remeasured, at that time it was then too late for the local board to make any adjustment in the value because returns had been made to the county board, but the local board recommended to the county board that a reduction of $9,800 be granted.

Q That was after the remeasurement of the building? A Yes, sir.

Q And the county board made that reduction? A Yes, sir.

Q On what basis was that reduced assessment figured? A Well, there were three figures put in; they were figured, two cents, four cents and five cents, because some of the buildings were very, very old, nothing more than sheds, and they decided to allow them to remain at two cents per cubic foot.

Q Was the original assessment of 1918 fixed by the whole board after an inspection of the buildings? A Yes, sir.

Q The New Jersey Machinery Exchange, did you testify for the prosecution as to the assessment? Can you tell me who fixed the final assessment of $170,000 for 1920? A That was fixed by the board, by the present board.

Q That is the new board of five? A Yes.

Q And you produced here the other day a copy of a letter dated January 15, 1920, addressed to Metzler, and purporting to be signed by the president of the tax board. I show you a copy of it. Do you know whether that letter was sent? A Oh, I am positive that letter was sent, because I mailed it myself; dropped it in the box myself.

Q How did you happen to be so particular about it? A Because I anticipated a contest before the county tax board and

I dictated the letter myself and took it out in the hall and dropped it in the box myself so as to be sure it would go out.

Q Did the appraisers sent by the board ever make a report to the board? A There were two appraisers sent to the place. I don't recall the date. They spent about one-half day at the place; then they came back from the place and they acted—one of them acted a little, I will say, queer or funny. At any rate, Mr. Hewson thought that it would be better not to have them go on with the appraisal. I will tell you who one of those fellows was, if you want to know. He is Samuel DeWitt, who is now on trial in New York, one of the Socialistic assemblymen, in New York.

Q He is one of the office boys that Mr. Metzler referred to, former office boy, I mean? A I don't know about that. At any rate, it was decided not to let him go on continuing to make the appraisal.

Q Did he make any report, that is what I want to know, to the board? A I don't recall that he did. He was in there and he was talking. I don't know as I recalled. He talked in a very guarded way, as if he didn't want to tell what there was there. I think he said something about being a competitor of this man and after he got on this job, I believe, as I would take it, he felt that it would be better not to go on with it, being a competitor of Metzler's. At any rate, the board decided not to let them go on.

Q When you say they spent half a day there, do you mean that is what they said? A Yes.

Q That is all you know about that part, as to the time they spent there? A That is all.

Q Were you present when Mr. Metzler and Mr. Bilder came before the tax board in November, 1918? A Yes, I was present—that is, I was in and out. I was there part of the time; part of the time I wasn't.

Q And what was Mr. Metzler's attitude to the board? Did he come in in a mild manner, friendly way, or did he come in with a belligerent attitude? A I wouldn't say that it was a belligerent attitude. Mr. Metzler is a good talker and he talked a good deal, and he resented very much the statement that they had half a million dollars' worth of goods there, and he said he would be perfectly willing to have any appraiser that we had or

that we cared to send there; very willing to have them make an appraisal of all the stock in the place.

Q Did he and Mr. Hewson talk to each other at all in an aggressive way? A Well, he and Mr. Hewson argued.

Q Did you hear Mr. Hewson make any offensive remarks to him? A No; I can't say that I did.

Q Did you hear him say anything like this: "We are not looking for your kind in Newark"? A No, I can't say that I heard that.

Q And did you hear Mr. Bilder say, "That is a very wrong remark to make; we had better get out of here, Bob," to Mr. Metzler before they went out? A No, I didn't hear that.

Q Did they seem to go out in a huff? A I don't think so. Mr. Howe and Mr. Fettinger were there at the time.

Q How did the matter terminate, do you remember? A Mr. Metzler brought a statement in—

Q But at this session? A I don't recall.

Q Didn't they say they would submit a statement? A I believe they did.

Q That was the finale? A He said they would submit a statement, and they did submit a statement later on.

Q Do you remember the Atlantic & Pacific Tea Company assessment and do you remember Mr. Anderson appearing before the board? A Yes, sir.

Q That was 1919? A Yes, sir; last fall.

Q What was the discussion about? A The discussion was about the value of each store, the value of the stock and fixtures in each store.

Q And a tentative notice had been sent? A No, no notice; we notified them to come in.

Q Was there any suggestion made as to what they proposed to assess him in 1919 for the next year? A Well, the value was first taken up—the value of the stock and fixtures—before there was any valuation fixed as to what the assessment would be, any figure named, rather.

Q What was said about that? A Well, Mr. Hewson told him that it was his opinion that the valuations were much greater than former years because of the enhancement in value of all the goods that they carried, and he said that he thought their stock was worth from twelve to fifteen hundred dollars, as I recall it,

and Mr. Anderson told them that a value of $800 which was placed on them in 1918 would be very fair.

Q Was there any suggestion made as to what the assessment should be by any of the board? A Yes; I think Mr. Hewson suggested a thousand dollars.

Q Mr. Anderson contended against that? A Yes; Mr. Anderson argued for $800.

Q And they had considerable discussion about it? A Yes; quite some discussion.

Q Did you hear Mr. Hewson say to Mr. Anderson, "You are a damned lot of profiteers"? A Well, I think there was something said about profiteering, but I don't recall his saying that, "You are a damned lot of profiteers."

Q What did he say, as near as you can recollect, with reference to his company? A Why, the question of the bank account was discussed, and Mr. Anderson informed us that they had no bank account in Newark, and of course that matter was gone into. Mr. Hewson, as I recall, called his attention to the fact that they took their bank account—took all the money that they got out of Newark, and I think he said something about driving the native grocerymen out of business.

Q Was that after a statement had been made by Mr. Anderson as to how much the stores had done for Newark? A Yes, sir; Mr. Anderson said something about what a benefit they were to the community.

Q And Mr. Hewson told him that he didn't regard them as of any particular benefit to the community and gave him the reasons for it? A Yes, sir.

Q And one of those was this reason as to the bank account? A Yes, sir.

Q Did he also tell him about driving the small dealers out of business? A Yes; something about driving the native groceryman out of business.

Q Who finally figured the assessment of $1,000 against this company? A The board; the whole board.

Q Isn't it a fact that this was fixed after the board had taken up the assessments against all chain stores and they were all fixed on the same basis? A Yes, sir; that was after we had had conferences with representatives of several of the big chain stores.

John Fitzsimmons, direct.

Q Do you remember whether any of them gave you any figures which differed from Mr. Anderson's as to the average value of the stock in these chain stores? A Yes, sir.

Q What were those figures? A The president of the Mutual Grocery Company, he put the valuation—I think he put it at $1,100 or $1,500—and a representative of the Union Pacific Tea Company put it at, I think, from ten to twelve hundred dollars; something like that; they were both over a thousand, anyhow.

Q The board finally fixed it at that? A One thousand for all the chain stores with the exception of some others that carry meat.

Q Have you looked up at our request the matter of finding out whether increases had been made on other houses in the vicinity of the Stockton house in 1918 and 1919? A Yes.

Q And have you a memorandum before you of what you found in the books? A Yes.

Q Will you tell us what house in that immediate vicinity had been increased? A Yes.

Q For what year and how much? A I first better give you a list of the houses. This was a list that was furnished by Mr. Hewson, in which he asked me if I would show the increase on those properties in 1917, 1918, 1919 and 1920.

Q I don't understand it—you say he gave you a list of the houses? A Yes, sir.

Q You didn't look up to see what houses had been increased; you only looked at the ones that had been increased? A In fact, Mr. Coppersmith gave it to me and said Mr. Hewson wanted the raise on those buildings.

Mr. Parry. If you are going to go into any question of this sort we should not pick out any isolated cases. We should take the adjoining property. Here is a list gotten up by Mr. Hewson.

Mr. Congleton. We will take it for what it is worth.

Mr. Parry. And not pick out the houses here and there.

Mr. Congleton. It clearly appears that this is a list that Mr. Hewson handed to him.

Director Archibald. If you want any others you can have them.

Witness. First, I had better take what the list is.

Q If you will, yes. A It is a list showing the houses in the vicinity of the Stockton house on Ridge street, some above and some below. The first house is 309 and 311, owned by a man named Morris.

Q Ridge street? A Yes; these are all Ridge street. The next is 313 and 315, owned by Cosgrove; next is 373 and 377, owned by Dickenhorst; the next is 383 and 385, owned by Bedell; the next is 423 to 427, owned by Stockton; then the next is 429 to 433, owned by Murray; the next is 513 and 517, owned by Hobbs, and 543 and 545, owned by Shaw. In 1918 Stockton's house was increased $1,500, and there were no increases on any of these other houses that year. Now, in 1919 the Morris house—

Mr. Parry. What is the object of this?

Mr. Adams. I am going to show that the Stockton house was raised in the year it was sold and that when the property was sold and a new price was fixed for sale, the assessment was raised.

Witness. Do you want the 1919?

Mr. Congleton. Yes.

Witness. 1919, Morris was not raised. In 1919 Cosgrove's house was raised $2,300 and Dickenhorst was raised $2,000, and most of those increases were remitted by the county tax board, so that the assessment was put back to where it had been in 1918. The same year, 1919, Bedell's house was raised $1,500, and in 1919 Stockton's house was not raised; Murray's house was not raised; the Hobbs house, at 513 and 517, in 1919 was raised $2,000, and the Shaw house, 523 and 525, was raised $500.

Q What was done in regard to these various houses with regard to the assessment of 1920; were they increased? A They were all increased for 1920; 309 and 311, the Morris house, in 1920 was raised $1,900; the Cosgrove house was raised $800; the Dickenhorst house was raised $2,800; the Bedell house was raised $650; the Stockton house was raised $850; the Murray house was raised $1,000; the Hobbs house was raised $600, and the Shaw house $700.

Q Do you know whether or not there had been sales of any of these properties during this period? A I don't know except the Stockton, what I have heard, the Stockton case; that is all.

Q You don't know anything about the others? A I don't know anything about the other. I think the Cosgrove house was purchased, but I am not sure; I think it was purchased in that time.

By Mr. Congleton.

Q These assessments that you have given relate to the buildings? A Yes, sir.

Q You have only given the increase on the buildings? A Yes, sir.

By Mr. Adams.

Q The figures you gave were only as to the buildings? A Where the land was raised the entire value was raised.

Q Mr. Stockton produced two cards that he received in 1918 from the tax board? A Yes, sir.

Q You saw that, didn't you? A I didn't see them, but I heard it spoken of here.

Q Will you tell us how those cards are usually sent out—by whom? A They are sent out by the girl from our office.

Q Those are the cards indicating the tentative assessment? A Yes, sir.

Q The tentative assessment, I believe, you have testified, or somebody has, is fixed, by one of the commissioners—by the commissioner from that district, ordinarily? A Yes, ordinarily, unless it is a big matter.

Q Unless it is a matter that the whole board takes up? A Yes, sir; for instance, apartment houses; all the board takes that up.

Q Did the commissioner give you a list of these tentative assessments? A No; he goes over the books with the clerk in that district and fixes up the assessment with the clerk, and then the clerk turns in a list to the office and the stenographer sends out notices.

Q Have you any idea how two cards happen to have been sent to Mr. Stockton that year? A I think I can tell how that happened. Of course, in the first place, sometimes duplicate cards are sent out. In 1918 we re-assessed all the commercial and factory buildings in the City of Newark, and there were a good many cards to be sent out. I just mention that because it is possible that a duplicate might be sent out. In that case I

think it happened that way—that the land value was raised first in Ridge street and that the notice was sent to Mr. Stockton involved the increase in the land. The building was raised a little later, and I think the purpose was to send a new card showing the new valuations, but in some manner or another a card was sent showing the same valuation that had been sent before.

Q The increase on the building was $2,000? A Yes, sir; that was the first increase made; then the board inspected the property, and they decided on $1,500.

Q That was decided by the board? A Yes, the full board visited the place.

Q Mr. Stockton came down to see you at the tax office after he had received these cards, did he not? A Yes, sir.

Q And asked you about it? A Yes; he called my attention to the fact that he had a very substantial raise on his building, and he said that—do you want to know what he said?

Q Yes. A He said he had some little trouble with George Hewson over the sale of the property, and he thought perhaps Mr. Hewson was getting square with him, and I told him that he didn't need to have any fear along those lines—that I would submit the matter to the board, and I would have the whole board go and visit the property, and if it was assessed too high that it would be lowered.

Q Have you told practically all he said? A That is about all, the substance of it.

Q Do you recall anything more? A No; I don't recall anything more.

Q What did you do about it? A I then reported the matter —I think I reported it to Mr. Howe, and I told him that the board ought to go up and visit that property—that Mr. Stockton was a little bit peeved—and he seemed to think that there was a little personal feeling between himself and Mr. Hewson that caused it.

Q Was Mr. Hewson there when you reported it? A I don't recall that, but I do remember speaking to Mr. Howe about it. It is possible that Mr. Howe just came along in that time. I know I told it to the board before they went up.

Q Did you tell Mr. Howe that Mr. Stockton was making quite a fuss about it or you were afraid that he was going to make a

fuss? A I didn't say that I was afraid he would make a fuss, because there wasn't anything to be afraid of.

Q He was pretty well fussed about it? A Yes, he was a little agitated about it; he seemed to think that Mr. Hewson was getting square with him.

Q The board inspected the house later? A I believe they did, but I wasn't with them at that time.

Q And they fixed the increase at how much—$1,500, you say? A Yes, the valuation was fixed at that, $8,500; I presume that they fixed it that way. I don't recall just what the decision was; they inspected it and agreed on the amount. The next I saw it it was increased $1,500 instead of $2,000.

Q Mr. Fitzsimmons, will you tell me what the assessment against the Newark Evening News plant was for 1917, 1918 and 1919? A The assessment against the Newark Evening News for 1917 was $100,000; 1918, $150,000.

Q And what is it for 1920? A In 1919 it was the same—it was $150,000—and in 1920 it was raised to $250,000, and then adjusted at $175,000.

Q And whose district is that in—in the district of what commissioner? A Mr. Hewson's.

Q And he fixed the tentative assessment? A Yes.

Q Do you know whether the tentative assessment for any of those years was any larger than the figures you have given? A Well, I don't recall 1918. There wasn't any increase in 1919, and the assessment was raised in 1918 $50,000. I can't recall now what the tentative assessment was, but it was fixed at $150,000, but I do know 1920, because that is a recent occurrence.

Q In 1920 Mr. Hewson fixed the tentative assessment at $200,000? A It is in his district.

Q That was the tentative assessment—$200,000? A Yes, sir.

Q And the board didn't fix that, so far as you know? A Well, the board went over all of these assessments.

Q I know it did afterwards, but the tentative assessment? A That I couldn't say, but I think that was fixed by Mr. Hewson. I am not positive of that; I would have to refer to the sheets.

Q And somebody from the News appeared before the board? A Yes, sir.

Q Who was it? A Eugene Farrell.

Q And the board assessed it at $175,000? A Yes, sir.

Q Do you recall whether all the members of the board were there and agreed to it? A I think they did; I am not positive that they were all there, but I think they were; I remember Mr. Farrell being there.

Q There wasn't any excitement over that assessment for any of those years? A No, sir.

Q What is the Sunday Call assessment; what has it been? A In 1917 it was $20,000; 1918 it was raised to $40,000; in 1919 it was raised to $40,000, and in 1920 it was raised to $50,000.

Q Tentative? A Tentative, and then put back to $40,000.

Q After somebody had appeared before the board? A Yes; Mr. Hannoch appeared before the board.

Q Do you recollect that that was finally fixed at $40,000 by all three members of the board? A Yes, sir—well, I say, yes, sir—it is my impression that they were all present. They might have been in and out; a majority, anyway.

Q You don't remember anything out of the ordinary in those years in fixing the amount of it? A No.

Q Can you tell me what the Hahne assessment was in 1917—Hahne & Company? A Hahne & Company in 1917 was assessed at $500,000.

Q Do you recollect offhand whether they had about that assessment for some years? A Yes.

Q In 1918? A 1918, $500,000; 1919, they were raised to $600,000; in 1920 they were raised to $900,000. The tentative assessment for 1920 was one millon, but it was adjusted at $900,000.

Q In whose district is that? A That is in Mr. Hewson's district.

Q Do you happen to know who fixed the tentative assessment for 1920? Was that by Mr. Hewson or by the board? A I think the department stores were left open and the board went over them; the board fixed them.

Q And the tentative assessment was a million dollars? A Yes.

Q Do you remember who appeared before the board for the 1919 assessment? A No; I don't remember who appeared for the 1919 assessment. There was a man, I think, named Mr. Welsh, appeared for the 1920 assessment.

Q And the 1920 assessment was finally fixed at what figure? A $900,000.

Q And was that by all three members of the board? A Yes; it was decided on by the board.

Q After hearing the recommendation of Hahne & Company? A Yes.

Q Can you tell me what the total increase of ratables for 1920 was over 1919? A Between forty-four and forty-five million.

Q About what part of that was upon real estate and what part personalty? A There was about thirty million real estate and between thirteen and fourteen million on personalty.

Q Was that increase in personalty at all unusual? A Yes, it was the largest increase that the city has ever had on personalty with the exception of one year that the deferred dividend fund of the Prudential was put in.

Q And afterwards it was taken out? A Yes, sir.

Q Aside from that it is the largest increase that the city has ever had on personal assessment? A Yes, sir.

Q About what has been the normal increase in assessments? Real and personal; average from year to year? A Well, there was a difference between the average assessment and the normal assessment. The average assessment is what the increase would show for a certain number of years, whereas the normal assessment, as I take it, is just the natural growth without any special effort on the part of the tax board.

Q What is the normal average increase in this case? A Well, I will say about $10,000,000; I will say the normal would be.

Q Both on real and personal? A Yes. If you go back for twenty years the average would be a little more than that.

Q So that the increase for this year is about $45,000,000 more than the average? A Well, it is about $25,000,000 more than the normal.

Q And the figure in the tax rate on $45,000,000 would be what point?

Mr. Congleton. What difference does it make? It depends every year on our budget; I don't see how that makes a particle of difference.

Mr. Adams. Taking the tax for the present year, it is only for comparison, and it is somewhat argumentative.

Director Archibald. If you care to have it in you may do so.

John Fitzsimmons, cross.

Q On the basis of this year's tax rate, about how many points would that amount to? A You can't figure it on this year's assessment, because the tax rate is not fixed yet, and you would have to take it on last year's.

Q 1919. A Based on the 1919 calculations, it takes about $1,300,000 to make one point in the tax rate. That is the 1919 tax ordinance.

Director Archibald. That is the trouble. You have got to take so many things into consideration.

Cross examination by Mr. Parry.

Q Mr. Fitzsimmons, when a property is sold by deed, you receive a transcript from me at the Register's office, do you not? A Yes.

Q In the tax office? A Yes, sir.

Q And you make a new entry on the records? A Yes, sir.

Q When a will is filed in the Surrogate's office you don't receive any copy of that will, do you? A No, not as a rule; sometimes we do and sometimes we don't.

Q Isn't it unusual to receive a copy of a will filed in the Surrogate's office? A Yes, it is unusual to receive a copy.

Q So, as a matter of fact, when a property goes by will or devise you receive no notice of it, of the change of ownership, from the Surrogate's office or anyone else? A When a property is changed by will one of the interested parties usually come in.

Q But you receive no official notice from any official? A No; we get an official copy; one of our men goes and makes a copy of the will.

Q Nobody sends you any copy of the change of ownership by will? A No, sir.

Q This property at 81 Clay street; are you familiar with the property yourself? A No; I only saw it once; I have seen it a number of times, but I only inspected it once.

Q Which year did you inspect it? A I was there with the board in the spring of 1918.

Q That is the only time you went there with the board itself? A Yes, sir.

Q Did you look up the records to know whether the other buildings in that neighborhood were increased in 1918? A Yes, sir; I looked them up.

Q And your records show that there had been no increase in the other buildings in that neighborhood? A No increase in the buildings in that neighborhood except the one across the way, but no increase in the immediate neighborhood.

Q Are you familiar also with the property at 295 Passaic street? A Yes, sir; that is, in a general way.

Q Did you go with the board when they inspected that property? A Yes, sir.

Q How many times did you go? A Just that once; just that same day.

Q That was in 1918? A Yes, sir.

Q In that case, as I recall your testimony, the building was increased from $7,000 to $21,000 for $1918; is that correct? A Yes, sir.

Q And that tentative assessment was recommended by Mr. Hewson? A Well, I wouldn't say that it was by him any more than the board. The full board, as I recall, made the inspection and decided on it.

Q Who made the first tentative assessment of that property? A Well, I am just telling you, as far as I can recall.

Q Wasn't there a tentative assessment made before that time? A I will tell you how that was done. We made inspections in the spring of 1918. We had the figures with us for the previous year and the prices at which the buildings were assessed per cubic foot. After inspecting the property the board decided what figure to put on per cubic foot, so it decided to make that six cents per cubic foot.

Q Was that for all the buildings? A Yes.

Q Or only for the buildings in front? A What one are you speaking of?

Q 295 Passaic street? A That was for all of the buildings.

Q Both front and rear? A Yes, sir. They had been assessed at two, and we assessed the whole business at six.

Q Have you the records showing the tentative assessment for that building for 1918? A No more than the book shows that.

Q When a card is sent out is there any record made of the amount that was sent out on the card? A The record is right in the book.

John Fitzsimmons, cross.

Q The records on your book shows the final assessment as fixed? A The tentative assessment on that property is the same as the final assessment.

Q Is there a record in this book which shows what the tentative assessment for 1918 was? A Yes, sir.

Q And what the final assessment for 1918 was? A They were both the same.

Q Supposing there is a difference; does your book show that? A In some instances it does.

Q Doesn't it in others? A No.

Q You have really no records kept of the tentative assessment which is made; you only keep your records as to the final assessments; is that correct? A In some instances we have both.

Q Turn to 295 Passaic street and see what you have on that? A 1917, the building was assessed at $7,000; the tentative assessment for 1918 on that building was $21,000.

Q Where does that show on your records here? A And the final assessments in 1918 was the same, $21,000.

Q Whose handwriting is that? A The clerk in that district.

Q When was that tentative assessment fixed of $21,000? A In the spring of 1918.

Q Do you know of your own knowledge just when it was made, whether it was before the inspection or after the inspection? A It was after the inspection.

Q Do you know that as a matter of fact? A I know, because I was with them at the time, and we decided to raise the buildings from two cents to six cents per cubic foot.

Q In reference to the New Jersey Machinery Exchange, you say you were present some of the time when Mr. Metzler was there? A Yes, sir.

Q Well, during the time that you were there did Mr. Metzler use any ungentlemanly language? A No.

Q Perfectly gentlemanly in all his talk and manner? A Yes; he is a nice talker—a good talker; he wasn't ungentlemanly.

Q You were in and out part of the time? A Yes.

Q So you didn't hear all the conversation that ensued? A No.

Q The appraisers that were sent to look at the New Jersey Machinery Exchange property reported back to the tax office after they had been there, as I understand it? A Yes.

Q And didn't they report back that they didn't find $100,000 worth of property there? A No.

Q What was the report that they made? A Well, the report, as I remember it, was that they didn't care to go on with the job, that they were competitors of this man—well, they just acted as if they didn't care to continue on the job.

Q Is that the first or second set of appraisers? A That is the first set.

Q How about the second set; did they report back? A They wrote a letter to Mr. Hewson to the effect that they had gone to the New Jersey Machinery Exchange Company with our letter of introduction and were refused admittance.

Q When Mr. Anderson, of the Atlantic & Pacific Tea Company, came before the board, were you there when he first came in? A Well, I was there while he was there. I don't recall whether I was there or not when he first came in. It was a very busy season of the year and the office was filled with people, and I usually admitted those people.

Q At a time like that, when people were coming before the board, you virtually, as secretary of the board, would go to the people in the outside room and then introduce them in to the tax board? A Yes, sir.

Q You let them know when it was their turn to go in? A Yes, sir.

Q So you were constantly in and out? A Yes, sir.

Q You would only hear a small part of the conversation that ensued between the person appearing before the board and the board itself? A It depends on how long the person was in there.

Q You were following more closely the people on the outside and looking as to when to introduce them than you were to following the conversation that took place on the inside? A No; I was interested in both.

Q In the case of Mr. Anderson, will you say that you were not inside when Mr. Anderson first came in? A No, I won't.

Q You don't remember whether you were inside or outside? A I think I was; I was there; I don't recall just whether I was inside, but I won't say I wasn't there.

Q And you heard some of the conversation between Mr. Anderson and the board? A Yes, sir.

John Fitzsimmons, cross.

Q And Mr. Anderson was gentlemanly before the board? A Yes, very gentlemanly.

Q Anything that you heard was objectionable? A I won't say objectionable, because Mr. Hewson took exception to it, but there was nothing offensive.

Q Nothing offensive in his remark? A No.

Q Do you think there was some mention made about profiteering? A Yes, sir.

Q And that was made by Mr. Hewson? A Yes, sir.

Q And you also heard him say that the Atlantic & Pacific Tea Company were driving the local groceryman out of business? A Yes, sir; that they had driven a number of local or native grocerymen out of business; yes, I heard him say that.

Q You have made an examination of the records of the properties on Ridge street within the last few days which you have testified to? A Yes, sir.

Q This list of eight houses which you have given us—have you given us all the houses on Ridge street? A No.

Q You just picked out a house here? A No; I just picked out the houses that were on the list. I had nothing to do with the making of the list.

Q This list that you gave us were just the houses that were submitted to you by Mr. Hewson? A Yes, sir.

Q Are there other houses on Ridge street that were not raised as much as the houses you have given us?

By Director Archibald.

Q I would like to ask a question; does this list run along or is it a house here and there?

By Mr. Parry.

Q The first house you have given us is 309 Ridge street and the last house you have given us is 523 Ridge street. Will you give us the houses that you have skipped between those numbers?

Mr. Congleton. Are those all odd numbers? Are they on one side of the street?

Mr. Adams. They are all on the east side.

Witness. Which years do you want me to look at, 1918; I don't think any of them were raised.

John Fitzsimmons, cross.

Q Will you just tell us from the record whether any house on Ridge street between 329 Ridge street and 523 Ridge street, except the Stockton house, was increased in 1918?

Mr. Congleton. On that side of the street.

Q On the east side of Ridge street; that is, the odd numbers? A What year do you want?

Q I just want the year 1918, if there is any increase of assessment from the 1917 assessment on the building—the 1918 assessment—just the building. A Yes.

Q Just read them off; just read these buildings as you find them? A John C. Eisele—that was not raised.

Q That was not raised?

Director Archibald. What is the number of that?

Witness. 321 and 323. The next is Van Duyne; that was not raised.

Q Who was that? A Harrison R. Van Duyne. The next is Herbert Boggs—that was not raised. The next is Oscar Kohn—that was not raised; the next is Ralph Van Duyne—that was not raised. The Bedell house, I believe, that was raised $300.

Q Was that for 1918? A Yes, sir. The Corwin house, at 387—that was not raised. The trustees of the Presbyterian congregation, which is the next house—that was not raised; and the Stockton was the next; you have that—that was raised.

Q That was raised how much on the building? A It was raised $15,000.

Q Can you give us the tentative assessment? A $2,000 was the tentative, and then when it was fixed the final raise was $1,500.

Q These houses that you have already given us, was there any increase in the tentative assessment? A No, not at all; no increase at all. The Murray house was the next, and that was not raised. The Alden is next, Johnson, Stinson and Richards, those four houses were reduced $300.

Q Give us the number. A The Alden house is 465 and 467; the Johnson house 469 and 471; the Stinson house is 473 and 475, and the Richards house is 477-479. Those four houses were reduced $300. The next is the Hobbs house; that was not raised, and the next is the Shaw house; you have that, I believe; that was not raised.

Q That was the last house? A Yes, sir.

Q Mr. Fitzsimmons, you were at the tax board when Mr. Stockton came to the board in reference to the 1918 assessment? A Yes, sir.

Q Did he show you the card indicating that his assessment had been raised to $11,350? A I think he did.

Q And then, by looking at the book, do you find that instead of the real increase being $11,350, that the tentative increase had been fixed at $13,350? A Yes, sir.

Q And that was the first knowledge that Mr. Stockton had of the $2,000 difference, when you showed it to him on the books? A That was the first knowledge that he had from me; I don't know what other knowledge he had.

Q Did he say that was the first? A I don't recall now, but he had seen it out on the counter before he came in to me.

Q Do you recall what time it was that Mr. Stockton came to the board—what month? A No, sir.

Q Did he tell you at that time that he had some trouble with Mr. Hewson about a real estate deal? A Yes, sir.

Q And he thought because of that that Mr. Hewson had jacked up his assessment? A Yes, sir.

Q And you called that matter to the attention of the president of the board? A Yes, sir.

Q Did you also call it to the attention of Mr. Hewson? A I called it to the attention of the entire board when they were going out to make an inspection. I don't recall that I called it to Mr. Hewson's attention himself, but I do recall that I called it to the attention of the board when they were going out that day.

Q Did Mr. Hewson say anything to you about it? A I don't think he did.

Q The inspection that was made by the whole board was made after Mr. Stockton had been to your office, was it not? A Yes, sir.

Q And therefore the final assessment for 1918 fixed on this building at $8,500 was made after the complaint made by Mr. Stockton? A Yes, and after the inspection by the board.

Q It was after the complaint had been made? A Yes; they didn't inspect it until after the complaint.

Theodore S. Fettinger, direct.

THEODORE S. FETTINGER, sworn.

Direct examination by Mr. Adams.

Q You are a member of the Board of Assessment and Revision of Taxes? A Yes, sir.

Q Of the City of Newark? A Yes, sir.

Q And you were appointed at the time that the new city government was organized in 1917? A Yes, sir.

Q At the time that Mr. Howe and Mr. Hewson were appointed? A Yes, sir.

Q And you three men have constituted the board down to January 1, 1920? A Yes, sir.

Q You and Mr. Hewson had, neither of you, served on the tax board before the time you were appointed in 1917? A No.

Q Is it not a fact that you and he have endeavored to raise personal assessments?

Mr. Parry. I object to that.

Mr. Adams. Question withdrawn.

Q Mr. Fettinger, do you remember the Joseph M. Riker incident, that Mr. Riker testified about? Were you present when Mr. Riker came in? A I recall Mr. Riker coming in, but it didn't impress me particularly. It was rather a short session; something about his old buildings there, that were to be torn down, as I remember.

Q Mr. Riker? A Yes; Mr. Riker of the bank.

Q This is about Lincoln Park property. Do you recall his saying that he would sell for less than the appraised value? A Yes, sir.

Q Do you remember anything that was said by Mr. Hewson or Mr. Howe in regard to getting a buyer? A I do not. Those incidents were of everyday occurrence—discussions about real estate in general.

Mr. Parry. I think the witness should be confined to answering the questions, and not giving his general observation.

Q Was it unusual for one of the members of the tax board to say, when a man said he would sell for a less amount, to ask him any questions about it?

Mr. Parry. I object. We ought to limit ourselves to the particular question involved and not go into general matters.

Director Archibald. I think so.

Mr. Adams. I can't show that except in a general way.

Director Archibald. I think you ought to confine yourself as to what happened to Mr. Riker and not a general proposition.

Mr. Adams. This is not to contradict Mr. Riker, but it is to show that the members of the board frequently asked a question of this general nature, that is, as to whether the property owner would sell at a certain figure. It was designed to tax the good faith of the taxpayer, and that was not an unusual occurrence.

Director Archibald. You can ask that.

Mr. Adams. That is offered with reference to a great many incidents that have been testified about.

Director Archibald. I think you may go into that.

Q (Question read.) A No, it was not unusual.

Q And was it unusual for one of the members of the board to ask whether he would sell for the amount which he stated his property was worth? A That was an everyday occurrence.

Q Can you tell us anything more specific? Can you tell us now more in detail? A He was frequently challenged to put it in writing, that he would sell for a certain amount.

Q With reference to this board, was that frequently said by each one of you, or was it confined to Mr. Hewson? A I would think more particularly to Mr. Hewson.

Q Did Mr. Howe ever say that? A I think Mr. Howe did, at times. I wasn't so likely to say it, because I wasn't so interested in real estate.

Q You mean you were more interested in personal assessments? A Yes, sir.

Q And they paid more attention to real estate than you? A It would be more in their line than it would be in mine.

Q Have you ever heard the county board members do that?

Mr. Parry. I object. We are not bound by the county board.

Director Archibald. Objection sustained.

Q Do you remember the premises 81 Clay street, regarding which Mr. Walsh testified? A Yes, sir.

Q And do you remember the increase in the assessment against that building? A You mean the amount?

Q You remember that there was an increase in the assessment against that building in 1919 over 1917? A I believe so.

Q And do you recall how the increase came to be made? A We visited the property.

Q The board? A Yes; looked over it and came back and made the assessment.

Q What was the character of the building, do you remember? A Part of it was a new structure and some of it old shacks, of various sorts. We tried to figure on the two.

Q And it was figured on the cubical contents basis? A I believe so.

Q How did the board happen to inspect this particular building? A Well, it was in line with the work we were doing generally. We went to see all sorts of factory buildings that were assessed at five cents or under.

Q What did you do—did you increase a great many of them? A Oh, yes.

Q And what were you endeavoring to do—endeavoring to establish some uniformity? A To equalize them.

Q This was the first year that the board was in operation? A I believe so.

Q 1918 was your first assessment? A Yes.

Q And did the board attempt to show some standard of assessments based upon cubical contents? A Yes, sir.

Q And that differed in the figure per cubic foot according to the structure? A The general location and so on, whether it was brick or it was stone, whether it had elevators in, and so on.

Q Do you remember the premises 295 Passaic street? A What was that?

Q That is where the Walsh junk shop is? A Yes, I remember that.

Q Do you remember that there was an increase made on the buildings there in 1918 over 1917? A I believe so.

Q And that, do you recall, as a result of the inspection by the board, do you remember inspecting it? A Not distinctly. I know we were down there and included that. I believe, among other properties visited on that day. Some times we visited so many of them it didn't make a distinct impression on my mind.

Q Now, the New Jersey Machinery Exchange, do you recall the fact that there was an increase in the assessment against that property? A Yes, sir.

Q For 1919? A It was not on the building; that was on the personal.

Q Do you recall that there was a tentative assessment of $500,000? A Yes, sir.

Q Who fixed that amount? How did it happen to be fixed? A Mr. Hewson and I recommended it after a visit to the building.

Q Mr. Hewson and you? A Yes, sir.

Q In whose district was that? A Mr. Hewson's, I believe.

Q Do you remember how you happened to go there? A We were inspecting other properties on Mechanic street, the Egbert Company, the Roe Company. That machine company was listed to be inspected, and others; it was one of a number on Mechanic street.

Q What did you find there in the way of personal property? A Four floors, I believe, very much crowded with machinery, new and second-hand. We estimated that it was worth perhaps $125,000, judging by other machine shops.

Q Did you actually believe that it was worth in the neighborhood of $500,000? A In a general way, thought it would be.

Q And you and he agreed upon that as a tentative assessment? A Tentative assessment recommended to the board and the card was sent out.

Q Mr. Bilder appeared before the board afterwards and then Mr. Bilder and Mr. Metzler together? A Yes, sir.

Q And do you recall the occasion when Mr. Metzler appeared and Mr. Bilder? A Yes, sir.

Q Do you recall Mr. Hewson saying anything to him that appeared to be offensive?

Mr. Parry. I object to that. He should limit his question to what was said.

Q I am going to do that. I thought you would not object to calling his attention to anything that Mr. Metzler overlooked. I will ask you this: Do you recall anything offensive? A No.

Q Do you recall Mr. Hewson saying, "You don't think you can put anything over on this board"? A I don't recall that.

Q And "We are not looking for your kind in Newark"? A I don't recall that.

Q Mr. Metzler was somewhat excited, was he? A I wouldn't say he was excited. He is rather a calm sort of an individual. He was putting up an argument that the machinery wasn't worth what we thought it was, and he submitted a statement, I believe.

Q Not at that time? A That came later yet.

Q Mr. Hewson argued with him, did he? A Yes. Mr. Metzler professed to be very honorable and he like to be questioned as to his statement of the value; he thought they were accurate and he didn't like to be questioned about it.

Q He wanted the board to take the figure he gave without being cross examined on it; was that it? A Apparently so.

Q What was the result of the conference? A I think he suggested that we send experts there, to which he agreed.

Q Do you recall whether he agreed to it? A I believe he did.

Q And the assessment was finally fixed at one figure? A I think $150,000.

Q The record will show. A $150,000.

Q Do you remember whether the appraisers made any report? A Yes; two others came in and one of them seemed disinclined to go ahead.

Q Did they make any definite report as to the value of that property? A At that time I believe not.

Q Did they at any time, the appraisers? A I believe not, except that one of them in a private conversation made a report.

Q A private conversation with whom? A Mr. Hewson.

Q You were not present? A No, sir; he didn't want to go on with the inspection because of the conduct of the other man, I believe.

Q Do you remember an occasion when Arthur Hardt appeared before the board? A Yes, sir; a couple of them.

Q You remember two occasions, you say, that he appeared there? A Yes, sir.

Q Do you remember that he appeared there with reference to an attempt to have an assessment on the Byrne Building reduced? A I don't recall the Byrne Building so much as the Byrne personal.

Q You remember he appeared there with reference to the Byrne personal assessment? A Yes, sir.

Q Did you on either of these occasions hear Mr. Hewson say anything to him with reference to whether he had rented the first floor of the building? A I don't recall that.

Q Nothing occurred on either of those occasions that made an impression upon you? A Not particularly.

Q That Mr. Hewson was seeking to obtain the rental of that floor? A Nothing, except a general conversation about real estate.

Q You have known Mr. Hardt for some time? A Yes, sir.

Q Was the conference formal or informal in character when he appeared there? A Rather informal; very pleasant, everybody was.

Q You saw this man Kraushaar there, didn't you? A Yes, sir.

Q Do you remember his appearance at the board office? A I don't recall it at all.

Q Don't remember anything of the kind? A No, sir.

Q Do you remember Mr. Hewson ever saying to any property owner, "What kind of a fence do you keep"? A No, I don't remember that.

Q Or anything of that sort? A No.

Q And there was nothing in the man appearing before the board that made any impression on your mind? A Not at the time, apparently; I didn't recognize him at all.

Q Do you remember Mr. Anderson of the Atlantic & Pacific Tea Company coming before the board with reference to the 1920 assessment? A Very distinctly.

Q And do you remember the character of the discussion? Will you tell us what you remember about that incident? A We entered into a general discussion of the chain stores; what they contained, the fixtures, stock; referred to the fact that groceries had advanced very materially, consequently these stores should be worth a little more, and we were disposed to raise it. Mr. Anderson's contention was that in view of the reorganization of their system they were making more frequent deliveries to

these stores, consequently they didn't carry quite as heavy stocks. Mr. Hewson referred to the fact that they had succeeded in driving a great many grocery men out of business by lowering the price of certain staples that they selected, and after having accomplished that they had restored some of the old prices.

Q Do you remember anything else of that conversation? A Well, it was quite an extended discussion.

Q Did anybody assert that the Atlantic & Pacific Tea Company stores were a benefit to the community? A Not that I know of.

Q Mr. Anderson said something like that, did he? A Mr. Anderson may have.

Q Or Mr. Howe? A I don't recall it.

Q Do you recall Mr. Hewson saying anything about their having money outside of the city, not banking it here? A He may have. That is often referred to because of the city being infested with chain stores that do no banking here.

Q When you say "often referred to," what do you mean? A In our discussions. They themselves brought it up because they were using that as an argument against being taxed, that they had no bank account or book accounts.

Q You are talking about chain stores generally? A Yes, sir; and this one particularly, of course; they all apparently did their banking in New York.

Q Did Mr. Hewson say to him, "You are a damned lot of profiteers"? A I don't recall that.

Q Do you recall the word "profiteer" being used in that discussion? A I don't remember that discussion particularly. I have heard it used.

Q In discussions with taxpayers? A Yes.

Q Do you recall that Mr. Howe and Mr. Hewson had some words about the matter finally? A I believe they did.

Q Do you remember what they were? A Something about who was representing the city.

Q And whether Howe was representing the company or the city, words to that effect? A Yes.

Q Mr. Hewson asked him that? A I believe so.

Q Do you recall what Mr. Howe had said or done before Mr. Hewson asked him that? A I wouldn't attempt to quote just what was said.

Q Had he been arguing in favor of the taxpayer on this proposition? A Well, I wouldn't say. He may have been friendly in the statements he made.

Q The assessment was finally fixed, Mr. Fitzsimmons has testified, at a thousand dollars on all these chain stores of this character? A That is right.

Q Do you remember Mr. Liveright coming before the board last fall? A Yes, sir; very distinctly.

Q And you are familiar with the matter of the assessment against Bamberger's, are you not? A Yes, sir.

Q There had been a tentative notice sent to them of $2,000,000? A No.

Q What was it? A A million and a quarter, I believe.

Q In a general way are you familiar with the Bamberger store? A Yes, sir.

Q And when you and Mr. Hewson came on the board what had it been the practice to do? A Half a million when we came on the board; had been for five years.

Q And after the new board came in it was increased? A Quarter of a million.

Q For 1918? A 1918, yes, I believe. The 1919 was not increased.

Q 1919 was the same as 1918? A Yes.

Q Then it was increased this year from $750,000 to a million and two hundred and fifty thousand?

Mr. Fitzsimmons. In 1919 it was increased. In 1918 it was not increased.

Mr. Parry. 1917 and 1918, $500,000; 1919, $750,000, and 1920, a million and a quarter.

Q When Mr. Liveright came in on this occasion he had received the notice of this increase of half a million dollars, had he not? A Yes.

Q In the discussion before the board what was his attitude? Was it a friendly attitude or did he seem to be annoyed about the proposed increase? A I wouldn't say he was annoyed particularly.

Q What was his attitude? A He wanted to know whether they were all being treated alike, and his attitude, if I may speak in a general way, Mr. Parry, was as a rule, rather belligerent, particularly when he and Mr. Hewson came in contact.

It is a little like striking flint. Evidently one has the same liking for the other. It is simply one of those cases where two natures conflict.

Q You had him before the board before? A Yes, sir.

Q Are you speaking of the observation when he appeared before the board of the previous occasion? A Pretty much the same all the day.

Q Do you know Mr. Liveright—have you known him outside of appearing before the board? A I have known him, not so much personally; seen him quite often.

Q He has rather an aggressive personality, hasn't he? A Yes.

Q And he might be characterized as some one opinionated?

Mr. Parry. I object to that as a conclusion.

Q When he appeared before the board on this occasion he and Mr. Hewson got into an argument? A Yes, sir.

Q And they both got excited? A Yes, sir.

Q And they talked to each other in loud tones? A Yes, sir.

Q Pretty plainly? A Mr. Hewson always talks in a loud tone, more or less.

Q Did each of them appear to be angry with each other? A I would say it was fifty-fifty.

Q Do you recall whether Mr. Hewson said anything to him with reference to department stores being profiteers, and if so what do you recall? A I believe there was some such word used. Just how he put that statement I don't recall. I think he said that all the big stores were profiteering and Bamberger's about the worst of all.

Q Did he say they were all profiteering? A He may have put it that way.

Q As a matter of fact, wasn't that common rumor at that time?

Mr. Parry. Objected to.

Mr. Adams. That is a matter that Mr. Hewson asserted, that it was common rumor that all department stores were profiteering, and it was a fact that it was a common rumor.

Director Archibald. I do not think it has any bearing on this question at all. This is a public official on trial for misconduct.

Q Do you remember his telling Mr. Hewson that he was a cheap political agitator, or something to that effect? A I don't recall.

Q You recall his saying something of that sort? A I recall something.

Q Can't you recollect? A I can't recollect just what was said. I won't attempt to quote it because it is not clear to me.

Q Do you remember Mr. Hewson asking anything about the profits that Bamberger's was making? A No.

Q Did anybody attempt to ask Mr. Liveright what the value of the stock of Bamberger's was? A Yes.

Q And did he tell you? A He said it might be—just who, I don't know—somebody sounded him; I don't know who it was; somebody put the question, said that the stock was worth $3,000,000, and he said it might be, perhaps it was.

Q He didn't give you a statement of what their personal estate was worth, did he? A No.

Q I mean, he didn't state it verbally? A No, beyond that admission.

Q Is there anything more about that conversation that you recall at that occurrence? A Except Mr. Hewson's report, that he was reputed to be a piker merchandiseman.

Q What did he say in this connection? A Probably in reply to something that he had said to Mr. Hewson that angered him; I don't recall just what that was.

Q Do you recall what Mr. Hewson said to him? A Just as I have stated it.

Q What? A You are reputed to be a piker merchandiseman, or words to that effect.

Q Wasn't that after he told Mr. Hewson that he was a cheap political agitator? A Possibly; I don't remember that statement.

Q Can you tell me how the assessment of Bamberger had been increased? Had it been a matter of discussion in the board? A Yes, sir; I insisted upon it repeatedly.

Q And what attitude did Mr. Hewson take?

Mr. Parry. I object to directing attention to the attitude of Mr. Fettinger and Mr. Hewson towards raising the assessment of Bamberger's store. I don't think that is the issue in this case, and it is probably irrelevant.

Mr. Congleton. I think the attitude of Mr. Hewson in his controversy with Mr. Liveright must be relevant.

Director Archibald. That refers to this increase of Bamberger's; I think it is relevant.

Q What attitude did Mr. Hewson take in the board? A The same attitude that I did, that it should be increased. Mr. Hewson is somewhat familiar with dry goods stock, just as I am. Knowing that they had a quantity of goods very much in excess of that assessment, we were both agreeable. Mr. Howe never opposed it particularly.

Q And in the discussion with Mr. Liveright, wasn't it Mr. Howe who asserted that they had a stock of goods worth $3,000,000 there? A It may be; I don't know who made the statement. It brought out the response at all events, that perhaps they had.

Q Do you remember Mr. Hewson telling him that they made ten or twelve per cent. on the capital stock, or something to that effect? A I can't recall.

Q Do you recall some talk about what profits Bamberger's made? A I think there was some such talk. In the course of a day a good many things were talked about.

Q Did Mr. Liveright say to Mr. Hewson, when Mr. Hewson made the statement about the profits they made, "You are crazy"? A I don't recall that now. I believe he said he made three per cent., or something to that effect.

Q That is Mr. Liveright's reply? A Yes.

At one o'clock P. M., a recess was taken for one hour.

Q Mr. Fettinger, do you recall any discussion which the members of the board had had with reference to the proposed assessment against the Newark Evening News and the Newark Sunday Call plants? A Yes, sir.

Q Did Mr. Hewson ever suggest assessing the News at a million dollars and $500,000? A No.

Q Or anything like any of those figures? A No. He made an offhand remark, "The News ought to be a million and the Sunday Call half a million"; but I call that a figure of speech; I didn't suppose he was serious about it, and if he had been he wouldn't have been so far off as to the two.

Theodore S. Fettinger, direct.

Q What do you know about the personal property that the News has at the plant? A Do you mean the quality or the value?

Q Both. A I know a great deal about all these plants.

Q What do you know about the News? A The News has a perfecting press, the Webb presses, very large presses, typesetting machines, besides a great quantity of type, stocks of paper, heavy book accounts and a heavy bank account.

Q Do you know anything about the value of these perfecting machines? A They run up to $60,000, $70,000; now you can't get them at any price.

Q Do you know anything about the value of the other machines there? A The typesetting machines are worth about $4,000 apiece.

Q What else? A The type, I couldn't estimate that. The book account is probably $200,000, $250,000 at any time.

Q You had no information as to their bank account, as to what it is? A I have a little idea what it is; I would say in the neighborhood of $100,000 almost any time. As a matter of fact, the News plant, I suppose, would inventory close to three-quarters of a million.

Q You know nothing about what debts they may have? A No.

Q And what is your idea of what the Sunday Call would inventory? A Very much less; the Call don't have their own presses; they have the typesetting machines, type and the paper, book account and bank account, and, of course, they have not the other mechanical equipment. They have not the presses or the stereotype machines; that is all done at the News office for the Call.

Q Were the tentative assessments for those two properties for several years fixed by Mr. Hewson or by the board? A By the board. I was as much an advocate of increases as anybody, because I had a more intimate knowledge of the plant. Mr. Hewson was an advocate of increasing assessments the same as I was. I wouldn't say he singled them out, because we increased the Star along with the rest of them. The Star was never mentioned in any adverse way.

Q Were the tentative assessments any greater than Mr. Fitzsimmons testified today? A I think not; $200,000 on the News, I believe.

Q That was for 1920? A 1920. Mr. Farrell came in and had a talk with him; Mr. Howe and I settled that case; Mr. Hewson wasn't there.

Q You settled it at $175,000? A Yes, sir.

Q In 1918, when the assessment was increased from $100,000 to $150,000 on the News, do you recall that there was any tentative increase, anything greater than the $150,000? A I don't recall whether the tentative increase was greater or the same. I might explain that one reason why we didn't take the absolute values of those properties for assessment purposes was the fact that they were public institutions; they serve the public in different ways than other enterprises.

Q The board fixed the assessment after discussion in each case? A Yes; I would say that the final assessment was fixed by Mr. Howe and myself, and, of course, Mr. Hewson was told of it afterwards.

Q That was the final assessment for 1920? A Yes, sir.

Q Now, with reference to Hahne & Company, you recall, do you, what their assessment was at the time you came on the board, 1917? A Half a million, I guess.

Q You have some general knowledge of department stores? A Yes, sir; I worked in them for twenty years.

Q You are familiar in a general way with Hahne's store? A Yes.

Q Bamberger's store? A Yes, sir.

Q Which do you think carries the larger stock? A Bamberger's store.

Q And which the more valuable stock? A The Bamberger store.

Q And would you say that $900,000 and a million and a quarter for Bamberger were proportionately correct? A It would be a reasonable ratio, although I held out for a million for Hahne & Company.

Q When the Hahne & Company assessment was finally fixed for 1920 the board itself figured between $800,000 and a million, did it? A I don't recall the $800,000 discussed. I heard that mentioned here the other day, but the proposition was to make it $900,000. The tentative assessment was a million.

Q And who had fixed that tentative assessment? A Between ourselves. I don't know just who made the proposition; it was a board proposition.

Q Had Mr. Welsh, of Hahne & Company, come before the board? A Yes; had a very brief session; simply came in and talked in a very informal way and said he would leave it to the judgment of the board. He didn't make any plea at all, as I recall it; he didn't make any objection or present any reason why.

Q And the board discussed it later? A Yes, sir.

Q Do you know what attitude Mr. Hewson took on it? A I think Mr. Hewson thought it ought to be a little less; it was his proposition, I believe, that brought it to $900,000. We finally agreed upon that, as we did the year before; we agreed on the lesser assessment for Hahne & Company.

Q Do you recall his saying that he thought they would be satisfied with $100,000, or anything like that? A No; as I say, I don't recall anything about the $800,000 proposition. The only figure I recall is the tentative assessment of a million and the final one of $900,000; I don't remember any discussion of $800,000, because I would not have listened to that myself.

Q About this Stockton property, do you remember anything about that incident other than the board inspecting the property? A Except Mr. Fitzsimmons said he had been in and was raising a fuss, and seemed to have some complaint about Mr. Hewson's attitude, and I recall, I said that if there was anything personal we could not tolerate anything of that sort, and we all agreed to go up and view the property.

Q And you all three went up together? A Yes, sir, inside and out; we were also considering their personal assessment, I believe, at the time.

Q And the board fixed the assessment after the inspection? A Yes, sir.

Q Do you recall whether the assessment fixed by the board was an increase on the previous year? A I believe so.

Q Do you recall the figure? A I don't recall the figure.

Q Was this for the 1918 assessment? A I believe it was. It was made in comparison with the property next door—the Murray property, I believe.

Q Did the board inspect the Murray property? A Externally; we didn't go inside; it was locked up, I believe.

Q And you fixed the assessment having the Murray property in mind? A Yes, sir.

Q And in the fixing of assessments on personal property the board for the last two years has been endeavoring, has it not, to increase the personal assessment, so far as they felt that they could properly? A We found, when coming into the board, that there had been some neglect, apparently, of personal assessments, and we saw in that a most fertile field for increase, and decided, while there was no coalition—there was no combination, as I claimed before, between Mr. Hewson and myself or Mr. Howe and myself, or anybody else; it was common agreement that personal should be increased very materially, and we proceeded on that plan, and, as you know, raised $14,000,000.

Q And with reference to large personal estates, like department stores and large manufacturers, you didn't make the entire increase in any one year? A We started the first year; the second year we couldn't do anything because of the closeness of the second assessment; the third year we were in good working order and we did good work.

Q And that year you attempted to increase them further where you thought the increase was justified? A Yes, sir.

Q Did you have a good many property owners come in and protest against the proposed increases? A Practically all that we increased.

Q And during the season, following the sending out of the notices for the tentative assessments, you had a good many property owners come in every day? A Yes, sir.

Q Attempting to have the assessment reduced? A Yes, sir.

Q And the board discussed the matter with them? A Yes, sir, very fully.

Q And, as Mr. Howe has said, a good many of them were unreasonable in their arguments? A Some were very nasty.

Q And very few of them would give you any real information as to the value of their property? A They all sidestepped them just as you saw them up here the other day.

Mr. Parry. This is an irrelevant inquiry.

Director Archibald. I do not see that it does any harm.

Q In the discussions with the taxpayers who were attempting to have their assessments reduced, what was Mr. Hewson's general attitude toward them?

Theodore S. Fettinger, cross.

Mr. Parry. I object to the general attitude. We ought to confine ourselves to the specific cases. That would leave us in the position that we would have to rebut this.

Mr. Adams. What we want to do is to show how Mr. Hewson discussed the matter with them, and that they have simply gotten a few property owners, who were offended because of his attitude.

Mr. Adams. We are not confined to specific cases. The prosecutor was allowed to bring in cases not specifically mentioned.

Mr. Archibald. My understanding is that we do not want a general inquiry.

Q In the hearings before the board and in the discussions and arguments with the taxpayers, did Mr. Hewson assume any more of a belligerent attitude than any of the other commissioners? A In the matter of manner, yes; he is more aggressive in his manner. For instance, Mr. Howe says I never get excited. I may be as much excited as Mr. Hewson, but I don't demonstrate it the same way.

Q What about the tones of his voice? A Mr. Hewson's normal talk is rather loud. When he talks over the telephone he talks loud, and you might think he was very angry sometimes when he was not at all.

Q He usually talks in a loud tone of voice? A Yes. If you heard it out in the other room you might think it was a scrap, which it wouldn't be.

Cross examination by Mr. Parry.

Q When did you first visit the property at 81 Clay street? A I don't recall the date, Mr. Parry.

Q Do you recall the year? A I think it was 1918.

Q Have you visited it more than once? A I am not so sure about that.

Q Do you recall just what kind of a building it is? A Not in detail, because it is one of these conglomerate propositions.

Q Can you describe for us in just a general way what the buildings consisted of? A Not very well.

Q In a general way, what kind of a building was it? A I don't like to tell you. I don't like to attempt to do these things that I am hazy on.

Q You have a vague recollection of that particular property? A Yes, sir.

Q Do you have any recollection of visiting the plant at 295 Passaic street? A Just about the same as I have of the other one, knowing that we did visit it.

Q That is about all you do recall, that you did, according to the best of your recollection, visit those plants in connection with a number of other assessments at the same time? A Yes.

Q But there is nothing about either of those buildings which has left any impression, particularly, on your mind? A Not especially; no.

Q And during that same year you made several thousand other inspections in the same way? A Yes, sir.

Q Then there was nothing to distinguish these two from the other several thousand? A I wouldn't say so.

Q In the case of the New Jersey Machinery Company assessment, were you there when Mr. Metzler came in? A In the shop?

Q Were you at the tax board when Mr. Metzler came before the board? A Yes, sir.

Q His manner before the board, did he use gentlemanly language? A I thought so.

Q Nothing out of the way at all in the argument he presented to the board? A No.

Q Did Mr. Hewson use a loud tone of voice when he was talking to Mr. Metzler? A Nothing unusual; nothing that I paid much attention to.

Q Nothing unusual for Mr. Hewson, but was it louder than the average person uses? A No, I wouldn't say so.

Q Did Mr. Hewson get more or less excited during this talk with Mr. Metzler? A I don't think he was excited.

Q Do you have any distinct recollection of that conversation between Mr. Metzler and Mr. Hewson? A Not if I were to quote it in proper order, except that Mr. Hewson insisted that there must be great values there, just as I felt about it, and his estimate of the cost was not what we thought it ought to be.

Q Did Mr. Hewson say, "We are not looking for your kind in Newark"? A I don't recall any such statement.

Q You won't say that he didn't say that? A I would pretty nearly say that he didn't say it, because I would recall a thing of that sort.

Theodore S. Fettinger, cross.

Q You say you don't recall Mr. Kraushaar at all? A No; we had hundreds; we had everybody from Springfield avenue down here, and Market street, so I don't recall him.

Q You do recall Mr. Anderson of the Great Atlantic & Pacific Tea Company? A Yes, very distinctly.

Q Mr. Anderson in his manner was very gentlemanly, was he not? A Yes.

Q And you recall most of the conversation that Mr. Anderson had with Mr. Hewson in a general way? A Yes.

Q Mr. Hewson talked to him in rather a loud tone of voice? A Not unusual.

Q Louder than you use? A Likely.

Q Much louder than you were using on that same occasion? A Yes, sir.

Q Did Mr. Hewson say to Mr. Anderson, "I know just all about your business, you can't tell me anything about the grocery business, I know it from A to Z"? A I believe he did say something of that sort. Very naturally he should.

Q Did Mr. Hewson say, "You are a damned lot of profiteers"? A I don't believe so.

Q Did you hear the word "profiteers" used? A Not that I recall, in connection with that case.

Q You have heard the word "profiteers" used by Mr. Hewson? A Yes, sir; a very common word these days.

Q Did you hear Mr. Hewson using it to men coming in the tax board in regard to tax assessments? A I heard it in Mr. Liveright's case.

Q Have you heard it in other cases? A Not that I can recall.

Q Did Mr. Hewson pick anything up and throw it across the table? A Mr. Hewson frequently got hold of the telephone book, that was his plaything, but there was nothing more vicious about it than that he picked it up and let it drop. This thing of throwing things around, I did not notice it. He might pick up a book or he might pick up a paper knife, and when he gets through talking, rather in emphasis of something, he rather throws it down.

Q On the occasion of Mr. Anderson's visit did he throw down the telephone book? A I wouldn't be surprised; he did that often.

Theodore S. Fettinger, cross.

Q Was there quite a little noise and confusion while Mr. Anderson was there as a result of what Mr. Hewson was saying? A Not to any extraordinary amount, that I recall. They both got fussed up a little about the thing, because Mr. Anderson was denying and Mr. Hewson was asserting.

Q And was Mr. Hewson asserting in a rather vociferous manner? A He was emphasizing rather what he thought was the value of goods in those stores.

Q In the case of the machinery belonging to the Newark Evening News, when did you make an inspection of that? A I wasn't through the plant. I have occasion to visit it very often.

Q Do you know of your own knowledge of the cost of these perfecting presses? A Through general conversation. Of course, I have been out of the business a long while, but I have been in contact with people in the business.

Q Have you purchased any presses yourself? A No, sir, but I heard discussions of the cost.

Q You have no first-hand information as to the market price of perfecting presses? A Not beyond what I get from people who buy them.

Q You have no knowledge of your own as to the prices of typesetting machines? A Oh, yes; the general knowledge of the cost of them.

Q How old are these presses in the News? A One of them is pretty old; the other is comparatively modern.

Q How old are they? A There is one thirty years old, and the other I don't know exactly; one is a very modern one, a Duplex press.

Q What is the price of a new perfecting press? A They vary according to capacity.

Q The one used by the News? A The Duplex press is worth $100,000.

Q Do you know that? A I estimate that.

Q Have you ever bought a $100,000 press? A No, sir, I have not.

Q Then you have no actual knowledge of the cost of these presses? A No.

Q And some of them are at least thirty years old? A One of them.

Q Did you ever go over their book accounts and check up their book accounts? A No, sir.

Q Then you have no knowledge of your own of what they amount to? A Pretty general knowledge of what they amount to.

Q Did you ever go over them? A No, sir.

Q Then how can you tell if you have never been over them? A Just as a business man can about things in that business.

Q But you don't know anything of your own knowledge as to what those book accounts show? A That sort of knowledge.

Q Do you keep their bank books for them? A No, sir.

Q You told us about how much their bank accounts are? A There are ways of knowing those things which I can't explain.

Q Did you ever check up their bank account? A No, sir.

Q You have no personal knowledge of their bank accounts? A No, sir; not the kind of knowledge you speak about.

Q As to the Sunday Call, have you been in their plant? A Yes, sir.

Q Their machinery is not worth very much, is it? A The typesetting machines are worth a great deal.

Q How old are their typesetting machines? A Various ages; putting them in all the time, you know.

Q Do you know when they were bought? A No.

Q Aren't they all old machines? A I don't think so.

Q What machines have they that have been bought within the last two years in the Sunday Call office? A I couldn't say.

Q You have no personal knowledge of any machines that have been bought in the last two years? A No, sir.

Q When the Hahne assessment was brought up before the board isn't it true that you insisted on a million dollar assessment? A Yes, sir.

Q And didn't Mr. Hewson ask to have the assessment cut down? A I believe so.

Q And it was really against your protest that the assessment was reduced from a million dollars? A Yes, sir.

Q Isn't the merchandise in Hahne's store, as of October 1st, 1919, worth at least double $900,000? A I would say so; yes.

Q When did Mr. Fitzsimmons call your attention to the fact that Richard Stockton had been in and made a fuss about his assessment? A I don't recall when it was.

Q It was after that that you suggested that the board itself go to his place and visit it personally? A I believe so.

Q When you made the appraisal yourself, did you go along Ridge street and inspect each house on Ridge street? A There

was no occasion. I think the Murray house came into question, and it was used as a comparison of values.

Q The only house then that the board looked at was the Stockton house and the Murray house? A As far as I recall at that time.

Q And there was no attempt made by the board to in any way attempt to change the assessment on any other house on Ridge street? A The Stockton house became conspicuous, I suppose, because of Mr. Hewson's connection with the sale of it.

Q The only reason for making that particular change was because Mr. Hewson had recommended a tentative increase of $2,000 on that building? A I don't know what the recommendation was. The suggestion was made that it was too low compared with other properties.

Q And that suggestion was made by Mr. Hewson? A I believe so.

JOHN FITZSIMMONS, recalled.

Direct examination by Mr. Adams.

Q Were you here the other day when Mr. Kraushaar testified? A Yes, sir.

Q Do you remember his appearance before the board? A No, sir.

Q Do you recognize the man? A No; I don't recognize him.

Q Do you recall the occasion before the board when Mr. Hewson said to any taxpayer, "What kind of a fence do you keep"? A No, I don't remember that.

Q Or anything like that? A No, sir.

Cross examination by Mr. Parry.

Q You are not always present during conversations before the board, are you? A Not always.

Q You are very frequently out of the room? A No, I am more in than out.

Q But oftentimes you are out when these conversations are going on? A I am oftentimes out, yes, sir.

JOHN J. GILLEN, sworn.

Direct examination by Mr. Adams.

Q Mr. Gillen, you are a member of the corporation of C. P. Gillen & Company? A Yes, sir.

Q With which Mr. Hewson is connected? A Yes, sir.

Q And that concern is in the real estate brokerage business in Newark? A It is, sir.

Q How long has Mr. Hewson been connected with it? A In January, I believe, or February, 1918.

Q Do you know Mr. Richard Stockton? A I do.

Q Do you recall his speaking to you several years ago about the fact that his wife wanted to purchase a house and saying he would like to buy it through you, and so forth? A Yes, sir.

Q About when was that? A That was in the spring of 1917.

Q And at that time did you tell him that you would have your brother-in-law, Mr. Hewson, look at a house with you for him? A No, I couldn't say so, because Mr. Hewson is not related to me by blood or marriage.

Q You didn't refer to Mr. Hewson as your brother-in-law? A No, sir.

Q Did you tell him that Mr. Hewson had a Ford car? A I couldn't say that, because Mr. Hewson had a Reo car.

Q You didn't tell him that Mr. Hewson had a Ford car? A No, sir.

Q But you did take up the matter with Mr. Hewson of finding a house for Mr. Stockton? A Mr. Stockton called at my office in reference to the purchase of a house in Forest Hill for his wife, and I didn't have what suited Mr. Stockton, so Mr. Hewson was adjacent to me, his office in the Ordway Building, and I asked Mr. Hewson if he had anything up there that would meet the views of Mr. Stockton, and he said he thought he had, and so we made an appointment to meet Mr. Stockton and his wife at their residence in Forest Hill; he lived on Mr. Prospect avenue at the time, and we took Mr. Stockton to see several places; I can't recall the number of places we took him to see, but I know we showed him houses on Parker street, Berkeley avenue and some on Ridge street, and finally Mr. and Mrs. Stockton agreed that the only place that they saw that would be interesting to them was the Dr. Edsal Riley house. I introduced him to Mrs. Riley. He had never met her before, neither had Mrs. Stockton, and he said they would give it consideration; and so the time passed and they didn't purchase, and I think I met Mr. Stockton from time to time on the street and discussed the purchase of the property quite often. He said he couldn't pur-

chase it, but that his wife was purchasing it, and that he would give it consideration later on.

Q Well, now, at this time, then, in 1917, when you spoke to Mr. Hewson about it, were you and he associated in business? A No, sir.

Q You had offices adjoining in the Ordway Building; is that it? A Yes; they were adjacent to one another.

Q And when you went out to look at the houses did you take the Stocktons around in the car? A We did.

Q Whose car was it? A Mr. Hewson's.

Q What kind of a car? A A Reo car; a Reo seven-passenger.

Q Where did you introduce Mr. and Mrs. Stockton to Mrs. Riley? A In Mrs. Riley's home, Ridge street.

Q Did you understand at the time that they had not seen that house before, it had not been shown to them before? A I asked him if he had ever been through the house or if he had ever had any negotiations for it, and he said he didn't know it was for sale; Mrs. Stockton had never met Mrs. Riley, and Mrs. Stockton told me they didn't know it was for sale.

Q And they went through the house with you? A They did.

Q When was the matter taken up again? A Why, it drifted along until the latter part of 1917, and he didn't show any desire to purchase, kept saying that he thought the price was too high, and then—of course, it is quite some time ago—I can't recollect what other negotiations I had with Mr. Stockton, but I think I wrote him a letter asking him what he is doing in the matter, and I then heard that he had purchased the Edsal Riley house in 1918 from Dr. Edsal Riley.

Q Before that had he told you that his wife had made up her mind to purchase that and that they wanted to do it through you? A There was some talk to that effect. I can't recollect the exact conversation.

Q Did you speak to Mr. Hewson about it at that time? A I believe I did.

Q Do you know whether or not Mr. Hewson took it up with the Stocktons? A Yes, Mr. Hewson was in touch with Mr. Stockton right along.

Q You had nothing more to do with it? A I had nothing more to do with it until after I heard the sale was perfected.

John J. Gillen, cross.

Q After you heard the sale was made did you communicate with Mr. Stockton in any way? A I did.

Q In what way? A By letter and by phone.

Q With relation to what? A With relation to his acting in the matter.

Q In what way? A I asked him why he hadn't purchased the house through me and Mr. Hewson, who had taken him through the house, and he made so evasive replies; I can't remember what replies he made.

Q Did you say anything about charging him for your services and Mr. Hewson's? A There was something to that effect. I believe I had some conversation one day over the phone. The matter was sort of disgusting to me. I didn't care to pursue it very far because of the way Mr. Stockton acted about it.

Q Had you and Mr. Stockton been friends at all? A I knew him casually.

Q You were not particular friends? A No, sir.

Q Political friends in any way? A I met him once or twice at a political meeting, I think.

Q Had you had any relations with him that were particularly friendly in a political way? A No, sir.

Cross examination by Mr. Parry.

Q When was the first time that Stockton spoke to you about a house? A In the spring of 1917, I believe.

Q And when was it called to your attention that the house had been sold by Riley to Stockton? A I think it was in the spring of 1918, a year afterwards.

Q From the time that you went to the house in the spring of 1917, did you communicate with Dr. Riley or go to see him until the house was sold? A No, I didn't. Mr. Hewson did.

Q You didn't yourself? A No.

Q When a property is sold isn't it the custom among real estate men to look to the seller for the commission, not to the buyer? A Well, yes.

Q Did you ask Dr. Riley for a commission for the sale of this house? A I did not.

Q You never brought suit against Dr. Riley for the commission on the house? A I did not.

Q And made no attempt to collect from him? A No, sir.

Q Nor did the firm of Charles P. Gillen & Company? A The firm of Charles P. Gillen & Company did not exist at that time.

Q Did the firm of Charles P. Gillen & Company exist in the spring of 1918? A Yes.

Q This sale being made, as I recollect it, was in February, 1918, at that time your firm was in existence then? A In 1918, yes.

Q Did the firm of Charles P. Gillen & Company ever make any demand for commission? A Mr. Hewson had the property for sale. He had the property for sale and I had a client.

Q When you sent your letter to Mr. Stockton you sent it on the letterhead of Charles P. Gillen & Company? A Yes, sir.

Q And it was signed by yourself? A Yes, I believe I did.

CARMILLO LA VECCHIA, sworn.

Direct examination by Mr. Adams.

Q Did you serve a subpoena today? A I did.

Q On whom did you serve it? A Richard Stockton.

Q Where? A At his office, Prudential Building.

Q (Showing witness paper.) And is that the subpoena that you served? Does it look like it?

Q Do you know Mr. Stockton? A No, sir.

Q You hadn't seen him before? A No, sir.

Q You went to his office in the Prudential Building? A Yes, sir.

Q And where was the man that you saw? A In an inside office.

Q Anybody else in the office? A No, sir; there was a man standing outside in the other office.

Q And the man that you served, what was he doing? A Writing.

Q At a desk? A Yes, sir.

Q What did you say to him? A I asked him could I see Mr. Richard Stockton? A And he said, "Right here."

Q He said, "Right here," and then what? A I said, "Here is a subpoena from the City Hall," and handed it to him with fifty cents.

Q Did he say anything? A He read it.

Q And said what? A "Again"? That is what I understood him to say, and he laughed.

Carmillo La Vecchia, direct.

Q Did he say anything more? A No; he laughed; he just laughed.

Q Did anything else occur? A No, sir.

Q What kind of a looking man was he? A Wore glasses, with a small mustache of a gray and black mixture.

Q How tall? A He was sitting down.

Q Was his face full or thin? A I would say medium.

Q A man about how old? A Forty-five, fifty.

By Mr. Congleton.

Q Did you notice whose name was on the door of the room where you went in? A Richard Stockton, I think, John Manning, and there were several other names.

Q Did he make any statement whether he would or wouldn't honor the subpoena? A No, sir.

Q That was just this morning? A Yes.

By Director Archibald.

Q What hour? A 12:30 noon, noon hour.

Q You are sure as to the time—was it after twelve o'clock? A It was after twelve; I would say between twelve and twelve-thirty.

Mr. Adams. It was around twelve o'clock that I sent the subpoena out.

Director Archibald. They told me that he left Newark before twelve o'clock.

Q Could you identify the man if you saw him? A I think I could.

By Mr. Adams.

Q Where are you employed? A Public Bath Department.

Q City of Newark? A City of Newark.

Q Where are you located? A All over; in these baths.

Q Where are your headquarters, or don't you have any? A Don't have any.

Director Archibald. I would like to have this statement on the record. After leaving the hearing at one o'clock, or a few minutes after, when I reached my office in the City Hall, a rather stout-faced gentleman inquired if I

was Director Archibald of my secretary, and as I passed him my secretary said, "Here is the Director." He handed me this subpoena with fifty cents and told me that he was acting for Mr. Stockton in Mr. Stockton's absence, in a business way, some manufacturing enterprise that they were interested in; I believe he said the Kenilworth Manufacturing Company; I wouldn't be sure, though. He said, "This subpoena had been left on the desk in the office and Mr. Stockton had left for Lakewood before twelve o'clock," giving me the impression that it had been left after Mr. Stockton had left the office, and rather than have any trouble, that he was returning it with that explanation to me.

By Director Archibald.

Q Are you sure about the time? A I think it was twenty after twelve.

Director Archibald. I might say that I am not going to permit Mr. Stockton or anyone to try and make a farce of this investigation. It is a matter of very serious moment for Mr. Hewson and also for myself. I have tried to conduct it as fairly and as decently as I can. I have allowed leeway, and had I wanted to be technical I would have ruled out some things. If it is proven to my satisfaction now that Mr. Stockton has evaded this subpoena I shall use every effort legally at my command to bring him before this hearing. He may consider it a joke, but I do not.

Mr. Adams. In regard to the time, Mr. Director, I would like to say that, while I did not consult my watch, it was somewhere around twelve o'clock. I wrote out the subpoena during the hearing and asked Mr. Hewson to take it out and get somebody to serve it, and he informed me that he gave it over to Mr. John J. Gillen, and Mr. John J. Gillen gave it to Mr. La Veechia, and before that he had a young lady in his office to call up Mr. Stockton to see if he was there. I have just sent for her to come over and testify. She said that somebody answered the telephone and said that Mr. Stockton was there.

Director Archibald. The man that brought it in said that it did not arrive there until after twelve o'clock.

Witness. I was in the hall here at twelve o'clock with the subpoena.

By Mr. Adams.

Q It was before you went up there? A Yes, sir, with the subpoena; about twenty minutes after twelve, and the young lady came to the door, and she says, "Right inside."

Q There was a young lady in the outer office? A There was a young lady in the other office, and I was in the waiting room, and she said, "Who do you want to see?" And I said, "Mr. Richard Stockton." And he was right inside sitting at the desk writing.

Director Archibald. The man who gave me the subpoena said his name was Hardy and he was connected with the Kenilworth Company.

Mr. Adams. I would like to have the subpoena marked. You will notice that I changed the hour to two o'clock.

ANNA OWENS, sworn.

Direct examination by Mr. Adams.

Q Where are you employed? A The Mayor's office.

Q And some time around noon did Mr. John Gillen ask you to telephone Mr. Stockton's office? A He did.

Q Do you know what time? A About eight or ten minutes after twelve.

Q Tell us what you did on the telephone? A Well, I asked the party that answered if he was Mr. Stockton, and he said yes, and I asked him if his office was in the Prudential Building; I asked him if he would be there for twenty minutes; I told him there was a party coming over to see him on a matter of business.

Q That was all that was said? A Yes, sir.

By Director Archibald.

Q You are sure of the time? A Yes, sir.

George F. Hewson, direct.

By Mr. Adams.

Q And did you look him up in the telephone book for the number? A Yes, sir.

Q Under what name did you look? A Stockton.

Q What was the first name? A I don't remember.

Q Was it Prudential Building? A Yes, sir; 763 Broad.

By Director Archibald.

Q Were there any other Stocktons in the book? A Yes, sir; there were several others.

Q How did you know he was the one that was wanted? A Well, there was "lawyer" after his name.

GEORGE F. HEWSON, sworn.

Direct examination by Mr. Adams.

Q Mr. Hewson, you are the respondent in this proceeding? A Yes, sir.

Q And you have been a member of the Board of Assessment and Revision of Taxes since November, 1917, have you not? A Yes, sir.

Q What is your business? A Real estate broker and operator.

Q Doing business in the City of Newark? A Yes, sir.

Q How long have you been in the real estate business in the City of Newark? A About twelve years.

Q You were in that business at the time you went into the tax board? A Yes, sir.

Q And you have continued in that business ever since? A Oh, yes.

Q Now, do you remember the occasion when Mr. Joseph M. Riker appeared before the tax board? A I do.

Q In the fall of 1918? A Yes, sir.

Q With reference to some property in Lincoln Park? A Yes, sir.

Q Tell us what was said with reference to his statements as to the value of the property? A Why, at that time Lincoln Park property was at a very low par, and Mr. Riker called relative to the reduction of the assessment, and in the course of his conversation he said two or three times, "I will sell the prop-

erty''—I believe the property was assessed for somewheres around $1,500 to $1,600, to the best of my knowledge; he said he would sell it at $13,000. ''And I authorize anyone of you gentlemen to sell it at that figure.'' Mr. Howe laughingly said, ''Well, Mr. Riker, you know I don't sell houses; Mr. Hewson sells houses; I never sold a house in my life.'' That was all that was said on that particular point. I think I said to Mr. Riker, ''Then, you authorize me to sell it at $13,000,'' testing his veracity.

Q That was all? A That was all.

Q Did you follow it up in any way? A No, sir.

Director Archibald. You never sold the house?

Witness. Never sold the house.

Q With reference to the Philip Walsh incident. You heard Mr. Walsh's testimony the other day, did you not? A Yes, sir.

Q Do you recall his calling you up at some time about a house, asking you about a house at Forest Hill? A Yes, the house was at 450 Clifton avenue. To the best of my recollection, that was owned by a man named Mackey, and the house was advertised by us, and Mr. Walsh called and asked the price.

Q When you say ''called'' what do you mean? A Called on the telephone, and asked the price of the house, and to the best of my knowledge, I answered the 'phone. Generally, if I am not busy, these matters are referred to me, and I answered the 'phone, and he said, ''What about that house in Forest Hill?'' And I said, ''The price is $10,500. He said that he would take Mrs. Walsh to see it, but that he didn't consider the house worth over $9,000, and that he wouldn't pay any more for it. ''Well,'' I said, ''Mr. Walsh, if that is the case there is no use of our talking about it.'' That ended the conversation.

Q That was all there was with reference to this house? A That is all there was with reference to this house.

Q You know the premises 81 Clay street? A Yes, sir.

Q They were assessed in the name of the Federal Real Estate Company? A Yes, sir.

Q And you have heard it testified here by Mr. Fitzsimmons that the building was assessed at $6,650 in 1917, and at $10,000 in 1918. Will you tell us by whom and how that assessment for 1918 was fixed? A When I came into the board I found that there was a number of commercial buildings at various prices

of cubical contents. For instance, we would find one building was a three-story building, and we would find one a two-story building. One would be assessed at two cents a cubic foot and the other would be assessed at six or five, as the case may be. So in talking the matter over with the board we came to the conclusion that to equalize the assessment it would be good policy for the board to examine all these commercial buildings, of the commercial and factory type, and put them all on a uniform basis. For instance, if the basis was eight cents or six, put them in a certain class—anything under five cents a cubic foot—and in pursuance of that general policy we inspected the Walsh or the Federal Real Estate Company buildings and agreed to the raise.

Q And what about the increase in the building at 295 Passaic street from $7,000 in 1917 to an assessment of $21,000 in 1918? A That was called to my attention particularly by the assessor of that district, calling my attention to the fact that that building was only two cents a cubic foot, and the board inspected that at the time. Mr. Edward Dougherty made the recommendation; he was the clerk.

Q Made what recommendation? A Made the recommendation that we raise that, and afterwards the board inspected it.

Q And that inspection was fixed by the board after the inspection? A Yes, sir.

Q And that is the assessment upon which the board recommended a reduction after an appeal had been taken to the county board? A Yes; I believe there was a mistake—in fact, I know there was a mistake in the measurement; the factory didn't have the proper measurement—the building—and we found that out. We generally make an examination when there is a complaint made to the county board, we make a re-examination of every building, so that we will be able to present our defense of our assessments; at that time we found that the building was not measured properly.

Q And also in reducing it you change the basis per cubic foot in the assessment? A That is the only way; we ascertain cubical contents in every case for the purpose of equalizing and making comparison.

Q With reference to the Walsh assessment, you remember Mr. Howe saying to you at some time in the tax board in 1918, or with reference to the 1918 assessment, "Phil Walsh was in here

and he threatened to take this case to the county board; says he has been singled out because he wouldn't—something about a house." And you said, "Oh, to hell with him, he is the cheapest son-of-a-bitch in Newark. He can never forget that he is a junk man. When he wants to buy a new house he wants to pay the same price for it that he does for old iron—junk price"? A Mr. Howe said something about Phil Walsh making a complaint and was going before the county board, and I said—I didn't use that language. I said, "Let him go to it; he has a perfect right to go before the county board, and we will meet him over there," but not with the other language. Never used it.

Q Did he say anything about the Walsh building, that he had been singled out because he wouldn't "something about a house"? A I don't remember Mr. Howe ever mentioning that to me; never mentioned that to me.

Q Did you say with reference to his going to the county board, "Let him go; let him do a little running; he gave me a chance to do some running"? A No, sir; that would be impossible. I didn't do any running.

Q Now, you remember the New Jersey Machinery Company? A Yes, sir.

Q The matter of their assessment? A Yes, sir.

Q You remember that a tentative assessment for 1919 of $500,000 was sent to them? A I do; yes, sir.

Q How did that happen? A In making inspection of other plants for the purpose of personal assessments we visited the plant of the New Jersey Machinery Company about the same time that we visited the Egbert plant, which we raised, and the Roe plant, and the Aetna Machinery Company plant, adjoining, and found a four-story brick building, measuring approximately about 40 by 80, four story and basement, and it was full of machinery, a lot of new machinery, made up principally of various kinds of machines, lathes and shavers and automatic milling machines; some very large milling machines; the tags were on most of the machines, as they were sold; character prices on them. We came back and sent them a notice for $500,000. In response to that notice Mr. Bilder called the first day and he took the matter up with me. We were taking the taxpayers one by one at that time because the rush was so great that we each had to take one, and consequently it was up to me—I happened to get hold of Mr. Bilder, and Mr. Bilder began telling me $50,000 as an

assessment on the plant, and I told him that it was ridiculous, and if he didn't care to get somewhere near the assessment, or somewhere near what I considered a fair figure, he would have to make a statement. Well, he said at that time it was impossible for him to make a statement, as Mr. Metzler was up in the Poconos and it was very hard for him to get down. Well, I said, "Have you got another officer of the company?" and he said, "No, Mr. Metzler is the only man who knows anything about it." So he left, with the understanding that he would get Mr. Metzler and make a statement. He came in the following day, and I also saw Mr. Bilder at that time, and he said that Mr. Metzler would be down on a certain date to make the statement. Following that, about five or six days after, Mr. Metzler came into the office and went over the same matter as Mr. Bilder had gone over before, and said that under any conditions that he didn't have over $60,000 worth of machinery there, and I took the argument, in view of the fact that I had made the inspection, and, it being my district, I simply let him have the argument that if he went into a statement that he would have to show a very much larger percentage of valuation than he was willing to show. The talk was along friendly lines. He simply advanced the argument that he was interested in public affairs of the City of Newark, and he was a booster for Newark, and so forth, and so on. I told him I was glad to see him in that respect, but in view of the fact that we had seen the machinery he would have to show us by a sworn statement that it didn't exist. So, the next thing I knew he came in and made a sworn statement, and that was all there was to it, except that we didn't make any statement at the time. We sent two men, one named Samuel DeWitt, who is a Socialistic assemblyman now, on the legislative ticket of the State of New York, and he has been tried for sedition, and another man, named McManus—Joe McManus, I think, of the Sun Machinery Company—and I asked Mr. DeWitt before he took the job of making this appraisal whether he had any feeling about making it, and whether he knew any machinery men in Newark, because I didn't want to have any complications, and I wanted to have the appraisal made properly, and he said no, he didn't, and McManus said he knew about it; he knew the New Jersey Machinery Exchange, but that didn't preclude him from making a fair appraisal of the property. DeWitt and McManus went over to make this appraisal, and at that time—

at about that time—McManus called me on the phone. He said, "Now, Commissioner, I don't want to see you get in bad on this case, but," he says, "this fellow is not playing square; he is playing with Metzler, and he is putting in machines that cost $00 for less than $200." I came back and reported that to the board, and we called off the appraisal. Then I asked some machinery men, who were the best men to make an appraisal of the property, and they told me that Fairbanks' man would be the next best man; that he handled new machinery, and that he was a very competent man, and would be able to handle the appraisal, and we called Mr. Holt, who is the Fairbanks manager, and another man went there to make the appraisal, and Mr. Metzler wouldn't let them go into the plant; Mr. Holt came back and reported to us that Mr. Metzler wouldn't allow him to make the appraisal, and we again sent him a notice—for the board in conference subsequently agreed to send him a notice for $150,000, and a letter setting forth the reason we were doing it.

Q When you say sent him a notice, do you mean that the board fixed the assessment at $150,000? A Yes, sir.

Q And was that the new board? A That was, I believe, the new board; that was after January 1st.

Q Would it be possible for appraisers to get very far into an assessment in fifteen minutes in that plant? A It would only be a general estimate. Mr. McManus, in giving his estimate to me over the phone, said that they had from $200,000 to $250,000 worth of goods there.

Q Which one was McManus? A McManus was one of the first two, and I believe McManus said the same thing at the tax office when he came in with DeWitt.

Q Did he make any report on the value of the property there? A He said he didn't think the property would run anywhere near the figure that we put it down for. I don't remember him making any report as to any figure.

Q Do you remember your saying to Mr. Bilder, when he said that Mr. Metzler was in the Poconos— A Yes, sir.

Q Do you remember your saying something to the effect that he couldn't be there because you knew he was in town the day before? A I was having lunch at the Round Table in Achtel-Stetter's the day before when Mr. Bilder came in. This was the second time he came in. There were some machinery men in

there, and I asked one of them sitting at the table if he had seen Mr. Metzler yesterday, and he said, "Yes, I just saw Bob yesterday in front of his place." So, when I talked to Mr. Bilder I called his attention to that fact, that I understood Mr. Metzler was in Newark.

Q What were you and Mr. Bilder discussing with reference to Mr. Metzler? A He didn't want Mr. Metzler to come and make a statement in the first place; he thought I should have taken the statement from him, and that was the reason that I expressed the fact that he was in Newark yesterday.

Q When Mr. Metzler appeared before the board do you remember his saying anything about that he was a booster for Newark, and did you say, "We are not looking for that kind in Newark"? A No, sir.

Q Anything like that? A Positively not. I was interested in getting the best assessment. I didn't have any argument with Mr. Metzler, except to argue from the city's standpoint.

Q Was there any suggestion at all by you or any member of the board that the board wouldn't hear Mr. Bilder? A No suggestion whatever. We had spent, I think, about three-quarters of an hour on the case, listening to the arguments pro and con.

Q Do you remember Mr. Arthur Hardt coming before the board on some occasion in 1918 with reference to some Byrne assessments? A Yes, sir.

Q Do you remember your saying anything to him about the ground floor of the Byrne building or the renting of it? A In 1919 or 1920?

Q This was an 1918 assessment, that he appeared before the board on the 1918 assessment. Do you remember your speaking to him at any time to the effect that the first floor—in the tax office—when he was there in reference to any assessment, whether they had rented the ground floor of the Byrne building? A I had some talk in 1919 with him before the 1920 assessment. He came in on the personal assessment of Joseph M. Byrne. He was an annual candidate for reduction and he had asked three or four times when he could see the board. I met the man on an average of once a day and sometimes three or four times, and he is the agent for my building, and I very often meet him in the halls and various offices, and then I meet him on the street on my way about the city, and the only time that I recall his coming to the board in this particular case was in 1919 for the

1920 assessment, and I was busy with a manufacturer that was making a statement, and I turned him over to Mr. Fettinger. Mr. Howe was not in the room at the time, and I said to Mr. Fettinger, who was at the end of the big table, "Mr. Fettinger, will you take care of Mr. Hardt, of the Joseph M. Byrne Company?" And Mr. Fettinger said, "Yes," and he told his story at that time to Mr. Fettinger. That was on the personal assessment. When he got through with Mr. Fettinger and was going out we had some friendly words, and this store was on our books for four or five months, it had been vacant, and every broker in the town had it for rent, and as he was going out I said, "Arthur, did you rent your first floor?" And that was all there was to it, and the assessment had been fixed.

Q Are you sure he was not there on the assessment on the Byrne building? A Positively not, because we were listening to personal assessments, listening to appeals on personal assessments.

Q You saw Mr. Kraushaar here the other day? A Yes, sir.

Q And you recall the occurrence when he came before the board? A I do not; never saw the man in my life.

Q You don't remember ever seeing him? A No, sir.

Q Do you remember saying to anybody who fitted his description, I mean any merchant from that section up there—something to the effect, "What kind of a fence do you keep?" or "Where do you buy your goods, in fences?" A I never used the word in my life.

Q What word? A Fences. I didn't use it that time, I am sure.

Q With reference to the Anderson matter, Mr. Anderson, of the Atlantic & Pacific Tea Company, do you remember the occasion when Mr. Anderson came in? A Yes, sir.

Q And that he has testified about? A That was 1919, for the 1920 assessment.

Q Will you tell us what you recollect of this matter before the board and the discussion? A Mr. Anderson had been seated at the table, and the other two commissioners had been listening to his complaint before I got there—Mr. Fitzsimmons, Mr. Fettinger and Mr. Howe—and when I got there they introduced me to Mr. Anderson and told me he was from the Atlantic & Pacific Tea Company, and he went over matters of his company; that is, he kept back and forth going over the same subject. That is,

he began to tell us how candid he had been, how he wanted to tell everything, how he knew that the firm had benefited the community to such a large extent, and among other things I got from him the fact that he didn't keep his bank account in Newark, and he wouldn't give us any description at all of his stock—his stock he didn't know a thing about; he couldn't tell whether it ran $8,000 or whether it ran $1,800 or whether it ran $2,000. His talk was all evasive, and he finally admitted that he would pay $50 advance. His assessment had been $800, and, based on information that I had and had obtained from other authorities, I figured that his stocks were worth from $1,500 to $1,800 on the average—his stores—taking one with the other. The particular reason I knew about the Atlantic & Pacific is because they carry a lot of goods, perishable goods, fruit and druggists' sundries, like witch hazel and a stock of ammonia and such stuff, that the other chain stores do not carry, and I have often seen as many as—this last year I saw twenty-five sacks of potatoes outside of the stores. The other chain stores don't handle those goods, and consequently I thought that the Atlantic & Pacific should pay at least $1,000. Not only was I trying to get the assessment for the Atlantic & Pacific, but so that the other stores might be put on the same basis; that meant that we might possibly reach 190, 200 stores in Newark, maybe more. Concerning the statement made by Mr. Anderson, that I said they were a band of profiteers; I didn't make use of any such language. The only thing I said, "Well, of course, you people were all right when the regular grocers were doing business, you people cut the prices. Now that you have all the regular groceries out of business, you don't seem to be so keen about cutting prices," and some question was raised about a certain brand of canned goods, and I said, "It is a little peculiar that the City of Newark can sell canned goods for twelve cents and make money and you people are charging eighteen cents a can."

Q And did you make any reference to the fact of his being a profiteer? A I did not.

Q Did you and Mr. Howe have some arguments while Mr. Anderson was there? A Yes. That is what caused the loud talk. Mr. Howe took the side of the Atlantic & Pacific in the entire conversation.

Q Tell us what he said. A He brought out the fact that they had been a cutter of prices and had helped the community to

some extent. After this argument occurred—the conversation—I reiterated the fact that they had not still showed me that they should be assessed less than a thousand dollars apiece, based on the fact that the market had risen, their goods had appreciated in value to that extent, and I didn't feel disposed to consider their assessment less than $1,000. Mr. Howe reached over and said, "I think, George, you are making a personal matter out of this." And that was the time I told him to go to the other side of the table, that I proposed to represent the City of Newark, and if he was representing the Atlantic & Pacific there was the place for him. That was the only loud talk that was used in the conference.

Q The board ultimately fixed the assessment at $1,000 on these stores, did it not? A Yes; I might say in addition to that that several of those merchants—Mr. Peters of the Union Pacific, Mr. Altman of the Mutual Grocery, Mr. Lehman of the American Food Company and Mr. Ward of Aaron Ward & Company—all came in and agreed without question to make their assessment $1,000. Mr. Lehman told us that his stock would run anywhere from $1,500 to $1,800 a store. Mr. Peters told us that his stock would run $1,500 to $2,000, and he also showed us that his fixtures—he cited the case of an icebox, a four-hole Alaska icebox that they used to buy for $90. He said, "Today they are worth $180 for the same box." Neither one of these stores came up to the Atlantic & Pacific in the matter of the stock of merchandise carried by them.

Q In reference to the Liveright matter, do you remember that Mr. Liveright called? A Yes, sir.

Q In the fall of 1919? A Yes, sir.

Q It has been testified that a notice had been sent that their assessment was to be raised from $750,000 to $1,250,000? A Yes, sir.

Q And he came in in answer to this notice? A Yes.

Q Will you tell us what occurred? A Why, Mr. Liveright came in—

Q All the commissioners were there, were they not? A Commissioner Howe and Mr. Fettinger and myself and Mr. Fitzsimmons part—I am not so sure he was there—well, he was there part of the time. Mr. Liveright came in and he was very—he held up the card, I believe, in his hand, and he spoke something about sending him a Christmas gift, and he talked a little

while about it, sat down, and he said, "Now, gentlemen, what are you going to do with the other stores?" And we told him that we had raised in proportion to his the other stores. So Mr. Fettinger started about department stores, about their profits, about their goods and the prices paid for some merchandise, and he cited the case of the furniture department, and then we went into the profits of L. Bamberger & Company, and he said—somebody raised the question about profiteers; I did not; it was either Mr. Fettinger or Mr. Howe raised the question about profiteering. I said to him, "You know, Mr. Liveright, it is generally reported that all the department stores are profiteering"; and he turned to me and said, "That is not so; we are not profiteering." And that led to something else, and the first thing you know, he said, "You are crazy; you don't know what you are talking about." And he seemed to single me out, and he kept that up for possibly five or ten minutes; and we walked over to the window. Then the question of the amount of profits that Bamberger made—at least that they made on the merchandise—net profit was gone into, and he turned to me and he said, "What profit do you think we make, now that you know so much about it?" I said, "I think you make at least twelve per cent. per annum on the capital invested." He said, "You are crazy" the second time. Then he said, "You know this year especially the government tax is getting heavier all the time on our goods." "Why," I said, "Mr. Liveright, your customers pay the tax on your goods; you don't have to pay that; the customers pay that; that is a part of your overhead." He turned to me and he said—he called me some political agitator and he likened me to something like a Bolsheviki." And I said to him, "Well, now, Mr. Liveright, I see you are making a personal matter of this, and I will answer you in kind." He said, "Yes, I was told what you were going to do to me." Everybody was joining in the argument; he was arguing with everybody; sometimes he would argue with Commissioner Fettinger and another time he would argue with Commissioner Howe. He was just as much in the argument as any of the others were, but he seemed to pick on me. So I said to him, "Now, you are making a personal matter out of this and I will hand to you in kind." I said, "It is reported on the outside in the trade that as a merchandise man you are a joke." The reason for that was that that is his position; he is the

merchandise man in the L. Bamberger & Company. He passes on the merchandise that the various buyers purchase, and he is supposed to know how much profit goes on the things after they are purchased—supposed to pass on the bills and so forth—so that he is a merchandise man. That is all that I said, and Mr. Howe asked me; he said, "Now, I think the assessment on the Bamberger stables"—Mr. Howe turned to me and said, "Now, do you want to put the Bamberger stables"—which was another assessment; he had another card—"in with the general assessment after this?" I said, "Yes, we will include them all together." And Mr. Liveright wasn't angry when he left. He asked us what we were going to do with the new building when they erected the building, and I said, "We will assess the building on its cost just as other buildings are assessed—no more nor no less," and that is all that was said. He left, and said "Goodbye," and was sorry for any argument, and so forth. He left in a friendly way. That assessment was finally fixed—that is, it wasn't fixed at that time. We told him we would let him know; we would take up the matter in conference and would let him know.

Q You heard Mr. Burgesser's testimony? A Yes, sir.

Q In June, 1919, did a man come into Mr. Fitzsimmons' office and complain about taxes, and did Mr. Fitzsimmons turn over to you a man whom he afterwards identified as the manager of the New York Liquor Store, on the corner of Broome street and West Kinney street? And you said, "Yes, I know you; you were here last year and made a complaint. When you have something to complain about you know where to come, but when you want to buy any real estate you don't come around to see me." Did any such thing as that occur? A I don't recall—I have never said it. I didn't know the man; as a matter of fact, had never met him in my life except once before in the assessment of the New York Liquor House, and we raised their assessment, and that is the time that we had met him first.

Q Do you know who is or was the manager of this store? A Mr. DeWork.

Q You had no such conversation as that with him? A No such conversation as that; positively not.

Q With reference to Mr. Howe's testimony that when you were going over the list of classified industries and came to newspapers, you asked what the assessment on the News was;

when he said $100,000, you said it ought to be a million and that you said the Sunday Call ought to be half a million. Do you recall any such statement as that? A I do not; no, sir.

Q Did you say anything like that at all? A No, sir.

Q The News and the Call were in your district? A Yes, sir.

Q Did you ever attempt to fix any tentative assessment at any such amount at all against them? A Absolutely not.

Q Or either one of them? A No, sir.

Q Did you at that time have any conversation with Mr. Howe to the effect that "those two papers think they can say what they want about anybody"? A No, sir.

Q And didn't he say he wasn't going to reward anybody's friends or punish anybody's enemies while he was a member of the board? A Absolutely not.

Q Will you tell us what has occurred since you have been on the board with reference to the assessment against the Call and the News? A The only conversation that I remember, in conference about the News and the Call, was the information that Mr. Howe imparted to us, that the Republican County Committee, some time prior to that, had offered the News $2,000,000 or two and a half million for their plant; that they refused it; that was the only information I ever had for any conference relative to the assessment of the News or the Sunday Call.

Q Was the tentative assessment in fact each year fixed by the board or by you? A It was fixed by the entire board. Last year I consulted Mr. Fettinger because Mr. Howe wasn't in and it was time to send out the tentative notices, and I consulted Mr. Fettinger before I sent the notice out.

Q And that is the time you and he fixed it up, $200,000 the News? A Yes, sir, it was a tentative assessment.

Q In reference to Mr. Stockton's testimony How did you first have anything to do with looking up a house for Mr. Stockton? How did you come to do it? A Some time in the spring of 1917 Mr. John Gillen came into my office and told me that Mr. Richard Stockton wanted a house and he made an appointment with Mr. and Mrs. Stockton and we took them out and showed them a number of houses.

Q Let me ask you: At that time you were not associated with Mr. Gillen in business? A No, sir; I was in business for myself.

George F. Hewson, direct.

Q You became associated in business with him when? A January 1st, 1918.

Q Go on. A And we called at Mr. Stockton's residence on Mt. Prospect avenue, between Third and Bloomfield avenues, on the east side of Mr. Prospect avenue; I don't just recall the number he lived at that time. We showed him several houses. We showed him the George Astley house; we showed him the McKinnon house at 440 Parker street; we showed him the George Knight house at 530 Parker street, and several others, and quite a few on Ridge street and finally got down to the Astley house or the Riley house. We also showed him Riley's; I forgot to testify that we also showed him the Riley house and went through the house and inspected it. This house is of tapestry brick construction, with a living-room about thirty feet long by about forty feet wide, approximately, with a very large sun parlor, making all together ten rooms and three baths, high-class construction, with copper leaders and Spanish title roof, and the price quoted on the house was somewheres about $18,000 or $18,500. Mr. and Mrs. Stockton liked the house very much, and Mr. Stockton came to me after looking the house over and said they liked the house very much, that Mrs. Stockton wasn't quite ready to buy at present, that she didn't have enough money, and she felt that she wanted to pay pretty nearly all cash for the house. So I said, "All right, Mr. Stockton, when you are ready to buy let us know. If the house is in the market you can buy." So the year had elapsed and I had seen Mr. Stockton on numerous occasions and he asked me from time to time if the Riley house was still on the market, and I told him it was, that I hadn't heard anything about its being sold, and he said, "I like that house and I want to buy it, and just as soon as Mrs. Stockton is ready I will get to it." Somewheres about in the month of February he called me up one night in my home and he said, "George, I want you to get on the job and get that house of Riley's for us. My wife likes that house and she would like to buy it." I said, "Well, Dick, you know the price. What will you pay?" He wanted to get that understood. So he said, "I will pay $16,500 and perhaps I might pay $17,000." I said, "All right, I will see Dr. Riley in the morning." So on my way downtown in the morning I saw Dr. Riley at his home about nine or nine-thirty o'clock. Riley said, "Yes, the Stocktons were here," and he says, "They were here with another broker." I am a

little ahead of my story. He told me that he had seen the house with another broker prior to my seeing Riley in the morning, and I said, "Wasn't that a little strange; why did you go there with another broker?" He said, "This fellow was showing Mrs. Stockton some other houses and the first thing she knew she was in the Riley house." I said, "Did you tell Dr. Riley when you went in that I had showed it to you?" And he said, "Yes." Anyway, I went down to see Dr. Riley and I told him that his wife knew that I had the Stocktons there a year prior to that, and he says yes, his wife had told him something about it, but there were so many people going to the house and a number of brokers had it listed that he didn't take any stock in it at the time, but not being near the sale he didn't give it any attention. The upshot of it was that Dr. Riley wanted $17,000, and that meant that I should get my commission above the $17,000. So I came back to the office and I called up Stockton and told him that the best net price I could get was $17,000. The commission would be somewheres around two and a half per cent. above that; the commission amounts to $450 or $459, I forget just what the exact amount of it was. So Stockton says, "Well, I am very busy now, I will take it up with you this afternoon." I said, "All right, what time will you be in?" He said, "I have got a hearing on at 2:30 or 3 o'clock." So I went to Stockton's office in company with Mr. John Gillen—he was going over as far as the Scheuer Building to see Mr. William E. Lehman about a matter—and I went over to Stockton's office and Stockton was in and he said in the course of the conversation, which was absolutely friendly, he said, "My wife won't pay any such price for the house. We can buy it through this other broker for $17,100." I said, "Do you mean by that that the broker will take $100 for his commission?" He says, "Yes." "Well," I said, "if that is the case, I am out of it." "Well," he said, "that is not definitely settled. We will have a meeting with the Rileys tonight and I will go over this matter with them and I think we can fix this matter up yet. I want to see you put the deal through." I said, "Mr. Stockton, Mr. Riley has told me that he would recognize the broker who would be first to bring the deposit, and if you really mean that you want me to put the deal over, all you have got to say to Riley is that 'Hewson put the deal through and pay the price.'" He said, "Mrs. Stockton won't pay any such price as that," and suggested my calling her up. So I went back

to the office and called Mrs. Stockton up and she said that whatever Mr. Stockton did it was all right with her. So that is all I heard about it—I found out from Dr. Riley subsequently that Stockton had bought the house. Not having any written agreement with Riley at the time, only an oral agreement, I could not sue Riley or hold him for my commission. He knew that. I had a listing card of the property with a signed contract, but when I came to look it up I didn't have the contract—I had lost it in moving from the Ordway Building to 828 Broad street. I had mislaid it in some way.

Q Did you at his office, at any time, with reference to this matter, say to him anything to the effect that you would see that the assessed value of this property would be raised, but that if you dealt with him it would not be? A Absolutely not. I didn't know if the property at that time was assessed for $5,000 or $10,000 or $20,000.

Q And did you say at any time in his office anything to the effect that you would tax him out of the city? A Absolutely not.

Q Anything of a similar meaning? A Absolutely not.

Q Now, at the time you saw him at his office that you are speaking of, did you know that he was going to buy the property? That is the time that you talked to him at his office? A Yes, sir.

Q Was the sale closed at that time? A The sale wasn't closed.

Q You understood that no agreement had been signed? A No agreement had been signed.

Q And from whom did you ultimately learn that a sale had been closed, an agreement of sale had been closed? A I learned it, I think, from Dr. Riley.

Q You didn't learn it from Mr. Stockton? A No, sir. I simply felt that I had gone as far as I could in the matter and that it was one of those cases where I couldn't go any further.

Q After that did you personally see Mr. Stockton about the matter or about your commission? A No, sir; I saw Mr. Stockton in the car afterwards, but he always either walked away or didn't see me.

Q You didn't talk to him about it? A No, sir; I didn't talk with him.

George F. Hewson, direct.

Q Did you do anything to compel Mr. Stockton to pay you for your services? A Yes, sir; I placed the matter in the hands of Mr. Edward C. Caffrey as attorney and I consulted with him about the advisability of bringing a suit for services, for the time that I spent in the matter.

Q Did he report to you that he had taken it up with Mr. Stockton? A He did, yes.

Q You heard Mr. Stockton testify about an occasion that he met you on Broad street, which he said was October 24, 1918? A Yes, sir.

Q Do you remember an occasion when you met him on Broad street, near Green? A The only time that I met Mr. Stockton on Broad street near Green was this last year, either October or November; most likely October or November. It was the taxing. I remember that day we had some big matter to take up and I was hurrying around to the City Hall when I met him.

Q Did you stop him? A He spoke and I stopped, and I said—he stopped, yes.

Q What did you say to him? A I said, "Mr. Stockton, I understand you are going around making slanderous statements about me, and you have said that unless people buy their property from the Gillen concern that their taxes would be raised." When I stopped him he got very much wrought up over it—

Q Did you threatend him in any way? Did you say you would do anything to him? A No, sir.

Q Did you say you would punch him in the face? A I wouldn't be guilty of it; it might mean murder.

Q That is all that was said? A I told him if I heard any more of it I would begin a suit for slander against him.

Q With reference to the taxes on his property for that year, do you recall that Mr. Fitzsimmons reported that Mr. Stockton had been in as to the notice of the tentative assessment? A Mr. Fitzsimmons reported that Mr. Stockton was in. I didn't see him.

Q He reported it to whom? A He reported to us that he had been in to the board.

Q Did you know anything about two cards having been sent out? A Yes, that year we raised the foot valuation on the various streets.

Q You mean the land values? A The land values, and that street in Forest Hill had been raised and in fact throughout the

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city in the residential sections and that was the reason we raised the land value. We sent a card out with a notice setting forth that we had raised the land values and then when the raise in the buildings came along, of course, it necessitated sending out another card. That is how those two cards were sent out.

Q Do you know how the cards happened to be sent out for the same assessment? A It is simply a clerical error, that is all.

Q You don't know anything about it? A No.

Q After Mr. Fitzsimmons reported that Mr. Stockton had been there complaining what was done, the board went up and inspected the place, did they? A I suggested myself that we go and inspect the building. I suggested it to the board, and we went up and inspected the building. I showed the board the difference between the two houses. He cited the case of Harry Murray. Harry Murray's is a very much smaller house; has very much smaller rooms. The extension is only out over the kitchen, and it don't amount to very much, and it has only two bathrooms, and the third floor is very much smaller because the roof pitches, and then Harry Murray's house is only bricked up as far as the water table; the balance is stucco on frame. One is worth three or four thousand dollars more than the other, and then, besides, Riley's house had a garage, which Murray's house didn't have.

Q Do you know how it came that the assessment on Stockton's house was increased that year? A Yes. In all cases where the board has knowledge of sales we always raise the assessment if it is out of comparison.

Q And this appears to be out of comparison to the sale price? A Yes; appears to be out of comparison. The property was assessed for $11,000 and it sold for $17,500, which is the best evidence of value; established value.

Q In the general neighborhood, can you tell me of any houses, properties, that you know of that have been sold in the last two or three years and tell me the assessments on them and tell me how the assessments compare with the sale prices? A Yes, the property at 485 and 491 Mt. Prospect avenue was sold for $25,000 to William J. Wallace; it is assessed at $22,900. The property at 389 to 391 Parker street—I made these sales myself, so I am testifying from my own knowledge.

Q All these sales were made by you? A Yes. Property 389 Parker street was sold to Edwin Allegaert for $12,000; it is

assessed for $10,800. The property at 349 to 351 Parker street was sold to Thomas F. Delaney for $13,000, and I might state in that connection that the owner afterwards spent $300 more in putting in new floors that had sagged; that sold for $13,000; it is assessed at $11,400. The property at 746 to 750 Parker street was sold for $11,000; it is assessed at $9,600. The property at 752-754 Parker street was sold to George R. Sharpless for $7,800, and a portion of that was in Liberty bonds, and it was sold for $7,800, and it is assessed for $7,400. The property 756-758 Parker street was sold to Ida Stengel for $8,500; that is assessed at $8,100 and sold for $8,500. The property at 761 to 762 Parker street was sold to Francis N. Goodwin for $7,750; it is assessed at $7,700. The property at 733-755 Parker street was sold to Frank Tyndall for $7,750; it is assessed at $7,900. The property at 749 to 751 Parker street, sold to Norman W. Potter for $7,500, and was assessed at $7,300.

Q For what year are those assessments? A Those are for the last two years.

Q And these are all sales that you made? A Yes, sir.

Q Within what period? A Stengel's was the furthest back, and that would go back perhaps four years, but the others are all inside of three years.

Q You heard Mr. Fitzsimmons testify to this list of properties on Ridge street, where the assessments on the buildings, the valuations on the buildings, had been increased in 1918 and 1919? A Yes, sir.

Q A list of eight properties, which list you had given him and asked him to look up the figures. How many of those properties have you sold within the last two or three years? A The property of Morris at 309 to 311 was sold by John C. Carey to Morris. It was sold at either $14,000 or $15,000.

Q Which one has been sold? A Cosgrove's house; Dickenhorst's house.

Q And Morris? A Morris wasn't sold.

Q Were any of these sold? A Bedell built an extension, that is why that increase was put on there, and the house was too low; and the Hobbs was entirely too low, and that happened to be made that year; Shaw was too low, and we raised it.

Q And those that were sold, do you know what year they were sold? A Last year.

Q Subsequent to the 1918 assessment? A Yes, sir.

Q And it was following those sales that the increases were made for the 1918 assessment? A Yes, sir; where we raised land values, unless we happen to know that there is a sale made in the neighborhood, we don't raise buildings—that is, we don't raise buildings unless there is a big variance between the assessed valuation and the sale price.

Q Is John Gillen any relation to you? A No relation whatever.

Q Do you drive a Ford car? A No; never drove a Ford car in my life.

Q What car did you take Mr. Stockton in? A It was in the Reo; seven passenger.

(At this point the witness is temporarily withdrawn.)

JOSEPH DEWORK, sworn.

Direct examination by Mr. Adams.

Q Where do you reside? A 217 West Kinney street.

Q What is your business at present? A Now, I have no business at all.

Q What was your business? A Well, I used to be in the liquor business.

Q Where were you in business? A 217 West Kinney street.

Q Is that at the corner of Broome street? A Yes.

Q What was the name of the concern there? A New York Wine & Liquor Company, used to be.

Q Were you manager of that store? A Yes, sir.

Q How long were you manager of that store? A About six years.

Q Until when? A Since prohibition put us out of business.

Q Since prohibition put you out? A No, the year before.

Q You were there until the store closed? A Yes, sir.

Q Did you appear at the tax office with reference to the taxes against that store? A Yes.

Q On how many occasions? A Only once I appeared before the board. We are out of business, and I don't see why they should tax us.

Q Have you appeared any other year at the tax board? A No.

Joseph H. De Work, cross.

Q Did anybody else come down before the tax board representing that store except you? A I did; yes.

Q You were the only one? A Yes, sir.

Q Did you ever see Mr. Hewson at the tax board—this gentleman here (indicating)? A Well, I have seen him here; yes.

Q Did he, when you were down there, say to you, "Yes, I know you; you were here last year with a complaint. When you have something to complain about you know where to come, but when you want to buy any real estate you don't come around to see me"? A No, sir.

Q Did he ever say anything like that to you in the tax office? A No, sir; I didn't know the man, and he didn't know me.

Cross examination by Mr. Parry.

Q How many times have you been before the tax board? A Only once.

Q What year was that? A It was, I guess, in 1919; it was May; I can't remember.

Q How many years ago? A Two years ago.

Q Or three years ago? A No, it was a year ago; a year and a half; I don't remember exactly the date.

Q Who does that store belong to? A New York Wine & Liquor Company.

Q Who are the officers in the company? A Well, the officers is Izzy and Philip Simon.

Q When did you quit working there? A I worked there until we closed up.

Q When was that? A Well, last July, you know, we closed out all our goods; we closed up.

Q You have not been working there this last year? A No; we didn't have no business down there, but we had to stay there until we shifted everything out.

Q Have you gone into any other business since? A Yes; I went in the rubber tire business.

Q When did you commence the rubber tire business? A Just about two years ago.

Q And since the year 1919 you were in the rubber tire business, were you? A Yes, sir.

Q You were not up at the New York Wine & Liquor Company's store since last year? A I sometimes used to go in there.

Joseph H. De Work, cross.

Q Who was running the store last year? A Well, my wife used to run the store there.

Q Who else was there besides her? A Nobody there.

Q How about this Philip Simon? A Philip Simon, he didn't bother with it.

Q What connection did Philip Simon have with it? A He is secretary.

Q And he is still secretary of the company? A No; the company is out of existence.

Q At the time the company went out of existence was Philip Simon the secretary? A Yes, sir.

Q And who was the president? A Well, first it used to be Isidore Simon; used to be president.

Q You were not down this last year about the taxes at all, were you? It is two years ago since you were down? A Where?

Q You were not here this last year about the tax before the board? A I don't remember exactly what time.

Q It was two or three years ago when you were down? A Oh, no, not as long ago as that.

Q It wasn't this last year? A It must be about a year and a half, something like that; I don't remember exactly what date. I simply went and told them we were out of business.

By Mr. Adams.

Q When you came down you say you told them you were out of business? A Yes, sir.

Q And was it about the time the store had closed down that you were down here? A Not yet. We had to stay there until we sold all the fixtures and different things and barrels. You couldn't sell it all at once.

Q You were doing business there all through 1918? A Yes, sir.

Q Until 1920? A Oh, 1918, we didn't do any business.

Q But you didn't close out until June of 1919? A June of 1918.

Q You said June, last year, didn't you? A Yes; we rented the store.

Q When did you rent the store? A Last July.

Q That is when you closed out your business? A The business was before closed out; we didn't buy anything; we didn't

sell anything; we closed all our accounts; we couldn't exist under the circumstances.

Q Wasn't that the time you went to the tax board? A Yes, sir. I told them we were out of business; we got to stay there until we close out everything; sell out the tables and different things.

Q Do you know of anybody else going to the tax board at or about this time? A No, sir.

Q Did you go with anybody else to the tax board? A No; I went there myself, you know.

By Mr. Adams.

Q You were the only one that looked after the affairs of the company, were you not? A Yes, sir.

Q And you would know if anybody else went down to the tax board on that matter, wouldn't you?

Objected to as leading and as calling for a conclusion.

A I was the only one that came that time before the board and told them about it. It was only a small matter. I told them simply that we don't have to pay no tax because we were out of business, and I was answered by the board, well, they would let me know, and they did let me know by mail they can't do any different, and I got to pay my tax, and I paid the tax, and that is all there is to it.

Q When did you pay it? A At that time; I can't remember.

Q Was that the last tax you paid? A Sure; the last tax.

By Mr. Parry.

Q You said that your store went out of business in June, 1918, that is right, a year and a half ago? A I didn't say so; it was June, last year, 1919.

Q Which is right? A But we stopped doing business a year before that.

Q You quit business a year before that? A Yes; we rented the store last July.

Q Did you quit business in June, 1918, or June, 1919? A No, 1918 we quit business. We didn't buy anything; we didn't do any business. We decided to stop business.

Q And it was June, 1918, when you stopped business, when you came down to the board? A Yes, I think so; I don't re-

Helen E. Daly, direct.

member exactly what date. You see it didn't come to me to remember this.

Q You appeared before the whole board? A Yes, sir, and they refused me that time.

By Mr. Adams.

Q Whom did you talk with when you got to the tax office? A To the board.

Q What men? Do you know who they were? A I can't recollect. I see the man there (indicating).

Q Did you see Mr. Hewson, that gentleman there (indicating)? A Mr. Hewson I have seen only in the assessors' rooms, I guess, where they pay the tax.

Q Did you see this gentleman here, Mr. Fitzsimmons? A Maybe I did.

Q You don't remember? A I don't remember exactly.

Q And that is the only time you have been there at the tax office? A That is the only time.

Adjourned until Wednesday, March 5, 1920, at ten o'clock A. M., at the same place.

FOURTH DAY.

Friday, March 5th, 1920.

In the Matter of the Hearing of the Charges Preferred against George F. Hewson, a member of the Board of Assessment and Revision of Taxes.

Continued pursuant to adjournment.

Appearances as before stated.

HELEN E. DALY, sworn.

Direct examination by Mr. Adams.

Q Are you a stenographer in the office of Mr. Richard Stockton, Prudential Building? A Yes, sir.

Helen E. Daly, direct.

Q And you have been connected with his office how long? A Almost four years.

Q Were you there the day before yesterday, on Wednesday? A Yes, sir.

Q Was Mr. Stockton there? A No; he wasn't there on Wednesday.

Q (Indicating Camillo La Vecchia.) Was he there on Wednesday, this man? A I don't remember.

Q Was Mr. Stockton there on Wednesday at all? A No, sir.

Q (Again indicating Camillo La Vecchia.) Do you see this young man there? A Yes, sir.

Q Did he come to the office on Wednesday? A I don't remember him.

Q Did you see him? A I don't remember him.

Q Did you see him come in the office? A No, sir.

Q When was Mr. Stockton last in the office? A The last I saw him was Tuesday afternoon.

Q What time did you see him on Tuesday noon? A I left first; I don't know what time he left.

Q You left at what time? A I left at about twenty-five minutes past twelve.

Q What time did you return on Tuesday? A I returned at a quarter after two.

Q Is there any other young lady stenographer in the office? A Not for him. There is another stenographer, Miss Allen.

Q Miss H. H. Allen? A Yes, sir.

Q She has her office there? A Yes, sir.

Q Were you there on Wednesday morning? A Yes, sir.

Q Until what time on Wednesday? A Five o'clock.

Q And Mr. Stockton wasn't there on Wednesday afternoon at all up to five o'clock? A I didn't see him that day; I haven't seen him since Tuesday noon.

Q You are sure about this? A I am positive of it.

By Mr. Congleton.

Q Miss Daly, you said two minutes ago that the day before yesterday was Tuesday. Does that help you now in saying positively whether it was Tuesday or Wednesday? A I know positively it was Tuesday; I didn't see him all day Wednesday.

Helen E. Daly, direct.

Q What is it that fixes it in your mind? A Oh, no; it was Wednesday.

Q You are sure now that it was the day before yesterday? A He was there Wednesday.

Q He wasn't there yesterday, which was Thursday? A He was there Wednesday until noontime.

Q He wasn't there at all yesterday? A No, sir.

Q He wasn't there the day before after noon? A Yes, sir.

Q He was there when you went out to lunch? A Yes, sir.

Q And you are sure that you went out to lunch at 12:25? A Yes, sir; I am positive of that.

Q Just before you went out to lunch did this young man (indicating Mr. La Vecchia) come in and ask you if Mr. Stockton was in, and you said, "In the next room"? A I don't remember now. He may have come in; I don't remember now. I remember Mr. Hardy was there, and Mr. Stockton, when I left.

Q He was there the last day that you saw Mr. Stockton? A Yes, sir.

Q And you left both of those gentlemen there when you went to lunch? A Yes, sir; Mr. Hardy was there off and on during the morning examining books there.

Q And are you sure now it was Wednesday? A Yes, sir.

Q Did Mr. Stockton leave any word in the office that he was going to be away; he was going to be away a day or two? A No, he didn't say anything.

Q Did you try to find out anything from his house? A No, sir; I didn't try to find out anything.

Q You are quite positive you don't recognize this man? A I don't remember him. There are so many coming to the office; I don't remember him.

Q Did Mr. Stockton, either before you left for lunch or the day before, say anything to you about being away? A No, sir; not a word. He has not been in the office any afternoon this week.

By Mr. Adams.

Q You are his personal stenographer? A Yes, sir.

Q Is there anybody in charge of his office while he is away? A No, sir.

Q You are the only one? A Yes, sir.

Helen E. Daly, direct.

Q You haven't received any word, directly or indirectly, from him as to when he would be in the office? A No, sir.

Q Or what to tell people that have inquired for him? A No.

Q Has he had any hearings set down? A I don't know.

Q Don't you know about his private affairs? A I can't get into the room; he has the key. He has two rooms, for himself, and the one that is locked is just his.

Q (*By Mr. Congleton.*) No one else has access to that? A No, sir.

Q (*By Mr. Adams.*) That has not been opened since he left the office the day before yesterday? A Not while I was there it wasn't opened.

Q What do you tell people who come to the office as to when he is coming back? A I tell them I don't know where he is; I don't know when he is coming back.

Q You have had no word, Miss Daly, directly or indirectly? A No, sir.

Q Mrs. Stockton hasn't telephoned to you? A No, sir.

Q Gave you any message? A No, sir.

Q Did Mr. Hardy tell you? A No, sir.

Q Was Mr. Hardy there in the afternoon? A Mr. Hardy came back about two o'clock, and he asked for Mr. Stockton, and I said, "He is not in; he is out for lunch"; this is the last I saw of Mr. Hardy.

Q You think it was about two o'clock? A I think it was. It was when I came back from lunch; I came back about quarter to two.

Q Mr. Hardy came in at that time and asked for Mr. Stockton? A Yes, sir.

Q He told you that he hadn't seen him? A Yes, sir.

Q He didn't tell you that Mr. Stockton had gone to Lakewood? A No, sir.

Q Did he tell you that he had been down to Commissioner Archibald and told Mr. Archibald that Mr. Stockton had gone to Lakewood? A He didn't tell me anything.

Q What is Mr. Hardy's name? A Harry P. Hardy.

Q Where does he live? A Jersey City.

Q What is his business? A I don't really know what his business is. He was formerly secretary and treasurer of Charles E. Reicht Company.

Edwin C. Caffrey, direct.

Q That was the concern that had a plant at Kenilworth? A Yes, sir.

Q Do you know the address of Mr. Hardy? A It is on the Boulevard.

Q Has he an office anywhere that you know of? A I don't think he has; I don't know.

Q But he makes Mr. Stockton's office his headquarters? A I don't think he does; he just comes in once in awhile on the affairs of the company.

Q What do you mean by once in awhile? A Whenever he seems to be in Newark he comes in.

By Director Archibald.

Q Every day? A No; not every day.

By Mr. Congleton.

Q Has he been in since Mr. Stockton has been away? A No, sir; only that day, about quarter to two on Wednesday.

By Mr. Adams.

Q And you say you were there until five o'clock that day? A Yes, sir.

Q And that Mr. Stockton hadn't come in during that time? A Yes; I thought he had gone to lunch; he always leaves a little after I do for lunch.

Q Did you tell anybody that Mr. Stockton had gone for lunch and hadn't returned yet? A I thought he had gone to lunch. When I left he hadn't left, and he hadn't returned yet; I thought that was where he had gone, because he didn't tell me anything to the contrary.

Q You haven't reported to the police of his disappearance? A No, sir.

Q Are you worried about him? A No, sir; I don't see why.

EDWIN C. CAFFREY, sworn.

Direct examination by Mr. Adams.

Q Mr. Caffrey, you are an attorney and counsellor-at-law of New Jersey? A Yes, sir.

Q Did Mr. Hewson come to you and ask you to represent him on a claim against Mr. Stockton for his services, in relation to his services to Dr. Riley?

Mr. Parry. I object to the form of the question. Any conversation he had with Mr. Hewson wouldn't be a self-serving declaration.

Mr. Adams. I have not asked him the conversation; it is purely introductory.

Mr. Parry. If it is purely introductory there is no objection to it.

A I don't know whether you would call it asking me to represent him.

Q Did you, as representing Mr. Hewson, or Mr. Hewson's firm, see Mr. Stockton with reference to Mr. Howe's claim—a claim which Mr. Hewson asserted against him for services with reference to the purchase by him of this Riley house? A Yes, sir; some time ago. I don't remember the exact date.

Q Can you tell us about when that was? A Some time in the fall of 1919, about.

Q And did you see Mr. Stockton on more than one occasion? A I can't recall that. I know I saw him on one occasion. I asked him about Mr. Hewson's claim.

Q Did you see him on more than one occasion? A I wouldn't be sure; I probably did; I know I saw him once.

Q Did he dispute the claim? A Yes, sir.

Q Did he at any time tell you that Mr. Hewson had made any threat to him with reference to any matter of assessment against this property, or taxes against this property, if Hewson didn't get commission?

Mr. Parry. I object to this.

Mr. Congleton. There was no foundation laid for it.

Mr. Adams. I intended to lay the foundation by further cross examination of Mr. Stockton, whom we have not been able to get here as yet. The only object of it is to show that Mr. Stockton made no such assertion at that time.

Mr. Parry. If Mr. Adams had said either on direct examination or cross examination, "Did you or did you not

make such a statement to Mr. Caffrey," then you would have laid a foundation.

Director Archibald. I think that we ought to take the testimony in view of the fact that we have not been able to get Mr. Stockton.

(Question read.)

A No.

Cross examination by Mr. Parry.

Q When did you have this conversation with Mr. Stockton? A Some time in the fall of 1918.

Q And you made a demand upon Mr. Stockton, who was the purchaser of the property, for a commission on its sale? A No, I didn't make any demand.

Q You never made any form of demand for a commission? A No, sir.

Q And representing the firm of C. P. Gillen & Company, or Mr. Hewson— A Mr. Hewson.

Q I say, representing the firm of C. P. Gillen & Company or Mr. Hewson, did you ever commence suit against Mr. Stockton? A No, I didn't know the Gillen firm had anything to do with this; if the Gillen firm was organized at that time.

Q You never made a demand for commission or started a suit against Mr. Stockton for the commission? A No, I simply talked to him; I asked his version of it.

Q Asked him if he owed a commission? A Yes, and he explained that he didn't owe a commission.

Q And you agreed with his version? A I agreed, yes, from a legal point of view.

GEORGE F. HEWSON resumes the stand.

Direct examination (continued) by Mr. Adams.

Q Mr. Hewson, you have heard the testimony with reference to the sale of real estate, 997 Broad street? A Yes, sir.

Q You were the broker in that transaction, were you not? A I was.

Q Will you tell us how you came into the matter and how the transaction came about? A In the latter part of 1914 or '15 I had some business with Judge Skinner; I was selling his prop-

erty at the corner of Lincoln avenue and Delevan at that time; I subsequently sold a piece of property for him on Sumner avenue, number 607, and in the course of the negotiation Judge Skinner told me about having this Hayes estate, being trustee—co-trustee with Fred Guild, former prosecutor, in this Hayes estate matter—and he gave me a list of a number of pieces; among one of them was this property at 997 Broad. There were several pieces of property scattered throughout the city, some down in Wilson avenue, some in Amsterdam street, some in Paris street; scattered throughout the city were a number of pieces of property. He told me at the time that in the will of—

Mr. Parry. I object to any conversation between this witness and Judge Skinner with reference to the will. The will is in evidence. It is the only proper evidence before the director, as to the contents of the will. It is a public record.

Mr. Adams. It is a question of the good faith of this respondent, and he is entitled to testify just as to what the entire transaction was. He can testify as to what Judge Skinner told him.

Director Archibald. What Judge Skinner told him in reference to this property at 997 Broad street?

Mr. Adams. Yes, sir; in regard to the same of this particular piece of property. Certainly, on this charge, he is entitled to go into the entire transaction.

Mr. Parry. He is telling what Judge Skinner said the will said. It has been probated in the Surrogate's office and everybody has access to it.

Mr. Adams. It is a pretty technical thing, when a man, a member of the tax board, when he is dealing with a man of Judge Skinner's reputation, cannot take Judge Skinner's statement. The whole thing is a question of good faith on the part of the respondent.

Witness. He told me that he and himself were the trustees and they had power to sell and they would make very liberal terms; they were very anxious to dispose of these properties at the time, and I tried to sell the Wilson avenue property subsequently. I also tried to sell another piece of property; I don't recall just where it was, but I think it was on Mechanic street, number 5 Mechanic street.

I didn't succeed in selling either one of them. I interested the McAllister, Carton & Stulz Corporation. After looking at various sites on Broad street I interested them in the Carter property, 995, adjoining the Hayes estate property, and also the Halsey street property, adjoining that, the property owned by Pennington, one of the Hayes estate heirs adjoining. The McAllister concern would not consider the property unless it was the Hayes estate adjoining, it would have enough room for the building they proposed to erect, and I went to see Judge Skinner about it and quoted a price, I believe, of $35,000—I am not clear on that, but I think that was the figure—and after considerable negotiation back and forth, the price was agreed upon at $32,500. The agreement was made and the question was afterward raised—the Fidelity Trust Company had raised an issue that the City of Newark may have an interest, and that being the case, it would be better to get a quitclaim deed from the City of Newark, and we had to redraft all agreements bearing on this property and on the adjoining property, and to put a clause into those agreements, because they wouldn't take one piece without taking all of the property, and consequently that was put into the agreement after. In several conversations I had between the time that clause was to be put in the agreement and the time the sale was made by the City of Newark, I had several conversations with Mrs. Steele, who was Mr. Guild's former stenographer and who continued managing the Hayes estate property, and I complained about the delay in getting that clause in the agreement setting forth the fact that I was going to lose the sale if they didn't hurry it along, and she several times told me, "Mr. Hewson, it is not our duty to bother with that. Our deed is perfectly good. That is simply a technicality that the Fidelity Company raises." And Mr. Pennington, in the course of my conversation with him also—he was in my office—and he also said the same thing, that the trustee had full right to sell and that simply was a technicality which the Fidelity Trust Company was raising. I talked with Judge Skinner about it. The question was never raised. I could just as easily have gotten my commission

on the other side if there was any doubt that Judge Skinner had full right, I could have just as well gotten my commission on the other side, there wouldn't be any question about it because I was dealing with very fine people, and the question of a thousand dollars more or less didn't make any difference.

Q Do you know anything about the city's interest in the Hayes estate property other than what you have just told us during the time of these transactions? A No, sir; I did not.

Q Calling your attention for a moment to the Byrne Building assessment, you testified the other day of an occasion that you spoke to Mr. Hardt when he was in there on a personal assessment— A On a personal assessment, I think, of Joseph M. Byrne for the property at Lincoln Park or either at his business—

Q Wait a minute until I finish my question. With reference to the Byrne Building, do you recall that in that year there was a reduction there of the tentative assessment made on that building? A There was not a tentative assessment fixed for the Byrne for that year.

Q There wasn't? A No, sir.

Q Do you recall Hardt coming before the board in regard to the assessment on the Byrne Building at any time? A It is a faint recollection of mine that he was before the board on that assessment; I think he was, but I can't fix the time. Some time during the taxing period.

Q You said you didn't remember the board reducing the assessment from the tentative assessment? A No, there wasn't any tentative assessment.

Q Are you familiar with the Byrne Building? A Yes, sir.

Q Is it an office building? A Yes, sir.

Q Is it a new or old building? A It is a very old building.

Q Is there anything else that you had in mind? A If the Commissioner please, I would like to make a little general statement bearing on this subject, if I may.

Mr. Parry. I object to any general statement. He can answer any definite question asked him. This is no time for argument; this is the time for testimony.

Mr. Adams. On what matter do you want to speak on?

Mr. Congleton. Anything relating to these charges?

George F. Hewson, cross.

Mr. Parry. There is no objection to any definite statement being made.

Cross examination by Mr. Parry.

Q Mr. Hewson, I call your attention to the field book for 1918, tentative list number two, and will you tell us what it says in reference to the Kraushaar assessment at 63 Market street? A Yes; fixed by the board at $3,500; fixed by the board, in Mr. Howe's handwriting.

Q What occupation is given on the book? A Cloaks and suits.

Q And I also call your attention to the 1919 book and ask you what the records show for I. Kraushaar & Company, 63 Market street, for 1919? A The same amount.

Q $3,500? A Yes, sir.

Q And the name as of record is I. Kraushaar & Company? A I. Kraushaar & Company.

Q The address is 63 Market street and the occupation cloaks and suits? A Yes, sir.

Q You saw Mr. Kraushaar on the stand here? A I saw him on the stand; yes, sir.

Q And you say that is the first time you ever saw him? A The first time I ever saw him in my life.

Q When Mr. Kraushaar made this statement that he appeared before the Board of Assessment and Revision of Taxes about October, 1918, and there was asked the following question by you: "Well, he asked me where I bought my goods and I have said I bought of some manufacturers or auctioneers," and so forth, was that a true statement? Mr. Kraushaar said that you said, "Where do you buy your goods?" Did you ask such a question of him at all? A I don't remember the transaction at all, Mr. Parry. I never saw the man before in my life and I have no recollection of him.

Q Mr. Kraushaar says that he said, "I buy by auctioneers and manufacturers," and you said, "What kind of a fence do you keep?" Did you make such a statement? A No.

Q Did Mr. Kraushaar lie under oath when he made such a statement? A I don't know, I am sure. I am sure he did, as far as I am concerned, yes.

George F. Hewson, cross.

Q You have known Philip Walsh for some time? A I have not. I do not know Philip Walsh today, except from seeing him here. I knew who he was, but I had no acquaintance with him.

Q Isn't Philip Walsh a well-known man in the city here? A I wouldn't say so.

Q Was he a former assemblyman? A I don't know.

Q Didn't you know him by sight and have for years? A I knew him by sight, but I never knew him personally.

Q You knew there was a Walsh & Sons Company? A I knew there was such a concern on Passaic street, but I didn't know the name until I went down to Passaic street.

Q What was the nature of the business there? A Junk and linoleum. Linoleum, I knew that.

Q You had some conversation with him about the purchase of a house? A Yes; what I have testified to.

Q That is what I am asking you. A No, sir.

Q You had no conversation with him about the purchase of a house? A Absolutely not.

Q Whom did you have this conversation with in reference to the purchase of a house on Ridge street? A Who did I?

Q Yes. A No; I testified to Mr. Walsh talking over the telephone about this house on Clifton avenue, not on Ridge street.

Q You did have a conversation over the telephone about the purchase of a house? A Yes, sir.

Q And you tried to sell him a house? A Yes, sir; that is my business.

Q And you disagreed on terms? A No.

Q When the assessment was fixed for 1918 on the personalty at 295 Passaic street, who fixed it in the first place, the tentative assessment? A The recommendation was made by Mr. Dougherty, Mr. Edward Dougherty, who called my attention to the fact that Walsh & Company had a big stock of linoleums there and a big stock of junk. Based on that information we sent them a tentative notice of $25,000.

Q How much of an increase was that over the former assessment? A The former assessment was $7,500.

Q How much of an increase did you recommend for the realty in that case? A The realty was based on the cubical contents as applied to all the commercial buildings at that time.

George F. Hewson, cross.

Q That had not been the first time that you visited these buildings, had it been? A Well, yes, the first time I visited them.

Q You had not been there before yourself? A No, sir.

Q You knew the property before? A I knew where the property was.

Q You knew that the buildings in back were not as good a character as the buildings in front? A I didn't know that, looking at the maps.

Q Didn't you know it from looking at the buildings rather than at the maps? A I did after I inspected them.

Q At the time that you went to 295 Passaic street, how many places did you visit that day? A That was on Saturday morning—no, pardon me! I am speaking of the time we made the second inspection; that was not on Saturday morning. The time that we looked at this building we looked at other buildings; we looked at a building at the corner of Crane street and Summer avenue, the Banister building; we looked at the Cawley & Clark building; we looked at the Standard Oil building, corner of Fourth avenue; we looked at Seaton Leather Company building—

Q Did you make two inspections of the property at 295 Passaic street? A Yes, we made an inspection on the personal and we made an inspection of the buildings for the purpose of putting the cubic value as applied to the buildings.

Q And after those valuations had been fixed Mr. Walsh came before the board and made a complaint? A Yes, sir.

Q And you had some conversation with Mr. Howe in regard to it? A No, I had a conversation with the board in regard to it.

Q And Mr. Howe was present at the time? A Mr. Howe was present; it was an open meeting.

Q And did Mr. Howe say, "Phil Walsh was in here, and he is going to take the matter up with the county board"? A Not at that time. Mr. Walsh called the first time and made a complaint about his assessment to Mr. Howe; he didn't come before the full board with it, and then the board took it up and we showed Mr. Walsh whatever buildings in that vicinity were assessed at.

Q Then Mr. Walsh did appear before the whole board? A He did; yes, sir.

George F. Hewson, cross.

Q Did you have a conversation with Mr. Howe in regard to that assessment? A Not particularly at that time; it was an open meeting.

Q Did you say to Mr. Howe, "He can never forget that he is a junk man"? A Never.

Q Did you say, "When he wants to buy a new house he wants to pay the same price for it that he does for old iron—junk price"? A Never used it.

Q Did Mr. Howe lie under oath when he made that statement? A I suppose he did.

Mr. Adams. I object to that.

Director Archibald. Strike it out.

Q Just what did Mr. Howe say? A I don't remember his saying anything—well, I do. He said, "Phil Walsh was in. He is going to take this matter to the county board."

Q What did you say? A I said, "That is his privilege. We will meet him there."

Q What else did you say? A I didn't say anything else.

Q What was said about his being a junk man? A Nothing that I know of.

Q Wasn't the phrase "junk man" used at all during that conversation? A No, sir.

Q How much was the tentative assessment of $25,000 that you had made reduced by the county board? A The personal assessment never went to the county board; the assessment on the building at 295 Passaic street, that was reduced.

Q How much was it reduced? A By reason of the fact that we discovered that complaint had been made to the county board that the building had not been measured properly.

Q What was done with the tentative assessment on the personalty? A We reduced that after inspecting the premises; found he didn't have as much stock as Mr. Dougherty had reported to me.

Q You know Mr. Metzler? A Oh, yes.

Q How long have you known him? A Since he came to the tax board relative to his assessment last September.

Q You were present when Mr. Metzler objected to this tentative assessment of $500,000? A Yes, sir.

Q And you and he got into a little argument over it? A I wouldn't say any particular argument. I was just as positive

about that he had the amount that I stipulated as he was that he didn't have it. His amount was very much more ridiculous than my figure. He offered to pay on $60,000, and we thought it ought to be $500,000.

Q Did you say to Mr. Metzler while he was before the board, "We are not looking for your kind in Newark"? A Not at all; no, sir.

Q What did you say of that nature? A I don't remember having said anything of that nature. I simply argued along the lines of the machinery that he had, a certain amount of machinery there, and I felt that we ought to get it, and I told him that he was offsetting his interest in the plant, because he also has an interest in the Faber plant, and I told him he was offsetting his machinery stock with the debts of the Faber plant.

Q Did Mr. Metzler say he was a booster for Newark? A Yes, sir.

Q What did you say? A I said, "That is the way I want to see you."

Q Is that what you said? A That might not be the language. I said I was glad to hear that, words to that effect.

Q Is that what made him so angry when you said you were so glad to hear that? A Mr. Metzler wasn't angry at any time. He is a long talker, and he has a lot to say. We listened to him for three-quarters of an hour, I think.

Q You heard Mr. Metzler testify that you said, "Why, you don't think that you can put anything over on this board"? What was the language which caused you to make such a statement? A There was no such language used.

Q There was no loud talk? A No, sir.

Q You talked in a low tone? A Well, I always talk in a distinctive tone. Some people may consider it loud.

Q Didn't you say to Mr. Metzler, "You don't think you can put anything over on this board"? A No, sir.

Q Nothing like that? A Nothing like that at all. Most of the conversation was along the line of machinery. He insisted that he didn't have that amount, and whoever suggested that he had that amount was twisted; that he had that amount was a fool; that was the language he used.

Q You were present when Mr. Anderson appeared before the board? A Yes, sir.

George F. Hewson, cross.

Q Mr. Anderson was a perfect gentleman in all that he did and said? A Yes, I would say he was. He was a Southern gentleman, and they have very polished manners.

Q There was nothing that Mr. Anderson said that gave offense to you or any of the members of the board at the time he called? A No, except his length of time in going over the same subject that was thought unnecessary.

Q Did you walk up and down while Mr. Anderson was appearing before the board? A I did not. I sat where I always sit, on the third chair.

Q Did you at any time get up from your chair while Mr. Anderson was in the room? A Yes, sir.

Q You heard Mr. Anderson testify, and he said that you said to him, "You are a damned lot of profiteers." Did you make that statement? A Never made use of the language; never used it in that—never used that language at all.

Q Did you use the word "damned"? A No, sir.

Q Did you mean to say you didn't use the word "damned" at any time that Mr. Anderson was there? A Yes, sir.

Q Do you mean to say that you didn't use the word "profiteer"? A I used the word "profiteer."

Q You did use the word "profiteer"? A I happened to know that the Atlantic & Pacific prices are as high as any other grocery at the present time. They started in to cut prices and started to drive independent grocers out of business. Having succeeded in that they now come back and say, "We want certain things," and I didn't seem disposed that they should be considered less than a thousand dollars in their assessment.

Q You told Mr. Anderson just what you have told us when he appeared before the board; isn't that right? A I might have said something similar.

Q And you did say that "You are a bunch of profiteers"? A No, sir; I did not.

Q You said you did use the word "profiteer." In what sense did you use it? A That might have been in another sense. I told him about the prices that they sold goods at. I told him it was very strange that the city could sell goods at ten cents a can when his concern was charging eighteen cents, although he had previously boasted that they had lowered the cost of living to an appreciable extent.

George F. Hewson, cross.

Q How much were other grocery stores selling peas for at that time? A They were selling about the same prices. Most all the chain stores have the same prices.

Q I am not asking about chain stores. The independent stores, were they selling any lower or higher? A I would not say they were selling any higher.

Q Were the independent stores selling lower than the chain stores? A Yes; some articles.

Q Articles that we are talking about, were they selling lower in other stores? A Yes, sir; I have seen good peas selling at fifteen cents.

Q Did you tell him that? A No, sir.

Q Are you familiar with the grocery business? A Yes, sir.

Q How long were you in the grocery business? A About five years.

Q Were you not a little touchy on the subject of chain stores? A No, sir; I had three stores myself at one time.

Q Didn't you say to him at that time that all the chain stores did was to drive the little fellows out of business? A No, sir; I didn't use that language.

Q Did you say anything of that nature? A No, sir.

Q Did you say that the chain stores drove the native grocery man out of business? A I didn't use the "native grocery man" —independent grocers.

Q You did say to him then that "Your stores drove the independent grocers out of business"? A No; I said that they had started to cut prices to put the independent store out of business, and now that they had succeeded, now their prices are just as high as the independent was before, or words to that effect; that is substantially what I said.

Q Did you pick up a paper cutter while Mr. Anderson was there? A No, sir; there was no paper cutter on the desk that day.

Q Did you pick up a telephone book? A I don't remember.

Q Do you oftimes pick up a telephone book and slam it on the table? A Yes, sir; very often I may pick up a telephone book to look for a number or something else.

Q While Mr. Anderson was there did you pick up a telephone book? A It is possible.

George F. Hewson, cross.

Q Did you pick up a telephone book? A I don't think so. There might be during an argument some number that I had to call.

Q Did you pick up anything? A I don't remember.

Q Did you pick up anything? A No, sir; not a thing. Commissioner Fettinger was sitting there and Commissioner Howe was sitting at the table.

Q From the time that Mr. Anderson came in and went out you sat in a chair? A Yes, sir.

Q Never picked up a paper cutter or picked up a telephone book or anything? A No, sir.

Q Only spoke in a natural tone of voice? A Only the time that Commissioner Howe charged me with being personal, making it a personal matter.

Q Did he charge you with being personal? A He didn't exactly charge me. I think he said, "You are making a personal matter out of this." It grieved me that he should have said it in front of a taxpayer.

Q What did you say in reference to that? A I said I was representing the City of Newark in this case, and that if he was representing the Atlantic & Pacific, or any other corporation, his place was the other side of the table.

Q What did Commissioner Howe say? A He didn't say anything.

Q Isn't it a fact that Commissioner Howe said, "You are making a personal matter out of this"? A No, sir.

Q How did he use the words, "You are making a personal matter out of this"? A He said, "You are making a personal matter out of this."

Q Is that all he said? A That is all.

Q And what had you said just before that which caused him to make that remark? A I was simply emphasizing the fact that I wouldn't consider, on the basis of what I knew about the A. & P. stores, I wouldn't consider anything less than one thousand dollars, and they had been assessed too low the year previous, because their products had advanced fifty per cent., the same as other products.

Q Was there anything said before that? A Not a thing.

Q Do you mean to tell us that you said nothing that caused Commissioner Howe, who is a mild-mannered gentleman, to say, "You are making this a personal matter"? A Not a thing.

Q And Commissioner Howe said, sitting there in a perfectly calm way, "You are getting personal in this matter," with no basis at all for it? A This was the basis for it: Anderson sat there and he went over the facts, "We are candid and we are saving the people money." I drew from him the fact that he didn't keep his bank account here, and I also drew from him the fact that he kept so much money here daily, which we could tax. Mr. Howe was putting in arguments, leading arguments, taking his side of the case all the time.

Q Tell us what Mr. Howe said. A Mr. Howe said repeatedly, "Of course, you people serve the community. You cut prices to citizens of Newark."

Q What did you say when Mr. Howe said that? A I didn't say anything.

Q You sat there quiet all the time? A Oh, yes.

Q If you sat there quiet, not saying anything, why did Mr. Howe say to you, "You are getting personal"? A I couldn't tell you that, Mr. Parry.

Q While Mr. Howe himsef was doing all the talking— A He wasn't doing all the talking.

Q Who did the talking? A Mr. Anderson did pretty nearly all the talking, and Mr. Fettinger chimed in once in awhile.

Q What did you say that caused Mr. Howe to make this remark? A I don't know of anything that I can add.

Q Didn't Mr. Howe say, "If you have any grievance against this man don't make it a board matter"? A Never used that language.

Q He did use the word "personal"? A He did use the word "personal," and I took umbrage at it.

Q What did he say to you beside the word "personal"? A Nothing else.

Q He just used the word "personal"? A I challenged him right away on that; he didn't get very far with that.

Q That is all he said, "You are getting personal"? A Yes, sir.

Q How long did Mr. Anderson stay? A I think he stayed altogether half an hour; fully that.

Q And during that whole half hour, from the time he came until he left, notwithstanding all this conversation between Mr. Anderson and you and Mr. Howe, you sat there in your chair, never got up, never picked up a telephone book, you sat there

mildly and gently? A I wouldn't say mildly and gently. I asserted just as positively that he should pay on a thousand dollars, and in justice to the City of Newark we couldn't accept anything less.

Q Was there any noise or confusion there? A No noise; there were a lot of people waiting outside.

Q That was the noise heard on the inside by the people waiting on the outside? A The door was open during most of the conversation, because when the conversation stopped—

Q When the conversation got too warm someone closed the door? A Mr. Fitzsimmons was sitting near the door and he shut the door.

Q That was when the conversation was getting too heated? A When I made those remarks to Commissioner Howe.

Q So Mr. Fitzsimmons did get up and close the door? A I believe that he did. I think that the door had been opened by somebody. The door was generally shut, but someone had gone out and left the door open in the meantime.

Q Mr. Anderson was there when you made the remark to Mr. Howe to take a seat on the other side of the table? A Yes, sir.

Q You know Mr. Liveright? A Yes, sir.

Q And how long have you known him? A About twenty-one years.

Q You were there when he came in this last year to inquire about the Bamberger assessment? A He came in relative to the Bamberger assessment.

Q When he came into the room did he come in with a grouch on or a smile on his face? A I wouldn't say that he had a grouch on.

Q Just what did he say when he came in? A He came in rather pleasant.

Q What did you say after he had greeted the board? A I didn't say anything. Mr. Howe and Fettinger were over at their own desks attending to some personal business of his, as he was doing five-sixths of the time, and he was over at his desk doing some writing, and Mr. Liveright came in and sat down on a chair that Mr. Fitzsimmons usually sits in at the end of the table, and he started to talking and took up the argument. He took up the first argument with Commissioner Fettinger, and Commissioner Fettinger said, "We have been all over Springfield avenue and we have raised a lot of them up there, and there is not a

small merchant that has not come down here and called our attention to Bamberger's assessment."

Q What did you say? A Didn't say anything at that time.

Q Later on, when you first got into the conversation, what was your introductory remark? A He talked about the tax of—asked about Bamberger's assessment, and whether or not the stores were raised. We told him they had been. He wanted to know in what proportion. I said, "In about the same proportion as yours."

Q Then what happened? A Then talked about Bamberger's assessment, and how they were up against the stocks, how they could not get goods in a great many cases, and went into the question of profits.

Q What did you say about profits? A He asked me, he said, "Well, what profit do you think we make?" And I said, "About twelve per cent. per annum on the capital stock," which was a turnover of possibly—turned over his merchandise three or four times a year.

Q What was his answer to that? A That I didn't know what I was talking about.

Q What percentage did he say they were making? A He said something about three or four per cent.

Q When was the word "profiteer" first used while Mr. Liveright was there? A Profiteering was used by me—no, I think Mr. Fettinger was the first one that brought up the word "profiteering."

Q So it is Commissioner Fettinger that is responsible for the use of the word "profiteering"? A Yes.

Q What did Commissioner Fettinger say about the word "profiteering"? A He said, "You people are all put down as profiteering."

Q You didn't say that? A I did not.

Q You never used that expression? A I said, "You know, Mr. Liveright, it is generally reported that all department stores are profiteering."

Q Did you say it or did Mr. Fettinger say it? A Mr. Fettinger first said it, about profiteering.

Q So Commissioner Fettinger said the Bamberger's and the other department stores were profiteering? A No; he spoke about profiteering in some way. I don't recall the conversation,

because it was general, and everybody was putting in a remark, and it was very hard to follow what everybody had to say.

Q And Mr. Fettinger was the first one to use the word "profiteering"? A Yes, sir.

Q And he accused Bamberger of being a profiteer? A He didn't accuse Bamberger specifically; he just mentioned it in a general way.

Q And you said, "It is reported that they were profiteering"? A No; I said, "It is generally reported that all stores are profiteering."

Q What did you say about Bamberger's? A Not a word; I made no reference to Bamberger's personally at all.

Q Didn't you say, "All the department stores are profiteering"? A No, sir; absolutely.

Q Do you deny that? A I deny that absolutely.

Q Didn't you hear Mr. Fettinger say, referring to you, "I think he said that all the big stores were profiteering, and Bamberger's about the worst of all"? A I might say he was mistaken.

Q Then you didn't make that statement that Commissioner Fettinger said you did? A Absolutely not.

Q And which Mr. Liveright said you made? A Yes, sir.

Q And both Mr. Liveright and Commissioner Fettinger are mistaken and you are right?

Mr. Adams. I object. I didn't understand that Commissioner Fettinger said that Mr. Hewson said Bamberger's was the worst of all.

Q You did say to Mr. Liveright, "You are reputed to be a piker merchandiseman," didn't you? A Not "piker," no, sir; I never used the word.

Q Didn't Mr. Fettinger say that that was the phrase that you used?

Mr. Adams. I object.

Q Didn't you hear Mr. Fettinger testify? A I don't recall it.

Q Using that language that you used to Liveright, "You are reputed to be a piker merchandiseman"? A No, sir; I never used the words.

George F. Hewson, cross.

Q I am asking you whether you heard Mr. Fettinger testify to that? A I don't recall it.

Q If he did so testify was Mr. Fettinger correctly giving what you said?

Mr. Adams. I object. Mr. Liveright and Mr. Howe have testified that what he said was, "As a merchandiseman you are a joke." Mr. Fettinger used the word "piker." Mr. Hewson has said that he said, "It is generally reported that as a merchandiseman you are a joke." Now, he picked out Mr. Fettinger's testimony. I don't see where we are getting, anyway.

Mr. Parry. For the purpose of testing the credibility of the witness it seems to me that this line is entirely relevant.

Mr. Adams. He has denied that he used the language.

Mr. Congleton. You have a perfect right to cross examine him to almost any limit, but when he has stated what he said I do not think it is necessary to ask him, "Did you hear what Mr. Fettinger said"? The record will have to speak for itself.

Q You know Mr. Burgesser? A I do; yes, sir.

Q And how long have you known him? A Since he came to the tax office.

Q He was on the board some years before you came here? A He was up in Vailsburg and he left his mark there.

Mr. Parry. I move that that be stricken out.

Director Archibald. That will be stricken out; that was not asked for; that was not necessary.

Mr. Adams. Just answer the question.

Q Mr. Burgesser has testified that in June, 1919, he was in Mr. Fitzsimmons' office, and that while there a man came in to make a complaint about his taxes; that Mr. Fitzsimmons turned this man over to you, and you said to him, "Oh, yes, I know you; you were here last year with a complaint." And then that you also said, "When you have something to complain about you know where to come, but when you want to buy any real estate you don't come around to see me." You heard that testimony as given by Mr. Burgesser, didn't you? A Yes, sir.

George F. Hewson, cross.

Q Were you present in the tax board when such a conversation took place between you and some other man? A I was present when the man that testified here the other day came in relative to the assessment of the New York Wine and Liquor Company, as I remember it, and he said—he made his statement—I was the commissioner in the office at the time, so he could not come to anybody else. Mr. Fitzsimmons brought him in. It wasn't in my district at all; it was in Commissioner Fettinger's district.

Q When was it that this man was in the office that you are now referring to? A It was in the taxing period of 1918, I think, for the 1919 assessment.

Q And that was about what time? A That was about October, 1918.

Q That was in October, 1918? A Well, that was the taxing period. I wouldn't state the date; I wouldn't attempt to fix the date.

Q But the time that you had the conversation with the man who testified here the other day, to the best of your recollection it was in October, 1918? A I wouldn't fix the date; it was sometime during the taxing period of 1919. That was made October 1st.

Q Did you ever make a statement to anyone, no matter whether connected with the New York Liquor Store or what he is connected with— A No, sir; never used it.

Q —that "When you have something to complain about you know where to come, but when you want to buy any real estate you don't come around to see me"? A I never used the words.

Q Will you say that that entire statement is false? A Absolutely as false as can be made.

Q Who was it that mentioned to you that this man was objecting to his assessment and turned him over to you? A Mr. Fitzsimmons brought in the gentleman—came in with him—and said, "This man has a business at West Kinney and Broome streets," as I remember it, and he said, "He is out of business." Burgesser happened to have the district—he was a clerk in that district—and we sent for Burgesser. He said, "I will get Burgesser to bring up the book"; and Mr. Burgesser brought up the book. We looked up the amount of the assessment, and I suggested that in view of the fact that this man was going out

of business, for Mr. Burgesser to go up there and find out if he had been out of business before we remitted his assessment.

Q You had frequently looked up matters when Mr. Burgesser was present, had you not, looked up assessments when Mr. Burgesser was there? A I very seldom had any dealings with him, because he wasn't my assessor after he left the Vailsburg district.

Q When did he change? A The first year after I was on the board, I think, from the Vailsburg district, the assessment for the year 1918, he left that section and we changed him to this West Kinney street section as a promotion for faithful service.

Q You were present when Arthur Hardt appeared before the board with reference to the assessment on the Byrne Company building, were you not? A I don't recall the date, but my impression is that I was.

Q Did you say to Arthur Hardt when he appeared before the board in reference to the Byrne Company assessment, "By the way, Arthur, you have not rented your first floor yet"? A No, sir.

Q Do you deny that you made that statement? A I deny that I made that statement.

Q And do you deny that he answered, "No, we have not yet"? A No, sir.

Q And then did you say right at the meeting of the board, "Why don't you give me a chance to rent it for you"? Do you deny that? A I surely do; it is too ridiculous to need a denial.

Q You say that that statement by Mr. Hardt is absolutely false? A Absolutely false.

Q And immediately after that did you recommend a reduction of $10,000 to be made in the Joseph M. Byrne Company? A I did not at that time. The reduction was made by the entire board in session, and nobody else had authority to make any reduction in any buildings except it was a board matter.

Q Mr. Hardt is a business man of this city? A I wouldn't say he is a business man; no.

Q Wouldn't you say he is a real estate man? A I wouldn't say—

Q What is his business? A He is a clerk and has charge of two buildings.

George F. Hewson, cross.

Q Isn't he manager of the real estate department of Joseph M. Byrne & Company? A There is not any such thing.

Q Don't you pay your rent to him? A I do for the Maxwell Realty Company.

Q So that you have personal knowledge of his collecting rents? A I know that he is agent for that building. I know his former partner owned it before Mr. Liveright owned it.

Q When the assessment of Hahne & Company was brought up this last year Mr. Fettinger recommended that the assessment be fixed at $1,000,000? A I made the recommendation originally.

Q And you afterwards asked to have it reduced $800,000? A No, I didn't ask.

Q What did you say about reducing it to $800,000? A I said, "In comparison to Bamberger's assessment, I think there ought to be a difference of $350,000 between the two stores."

Q The Hahne & Company store is in your district? A Yes, sir.

Q When you asked or recommended that it be reduced to $800,000 Mr. Fettinger objected to it? A I didn't recommend it; I simply talked of $800,000 and Mr. Fettinger talked of a million, and we agreed on $900,000.

Q You say that you didn't recommend $800,000, but you say you simply talked of it? A I might have talked of it in the general discussion.

Q In what way did you talk of $800,000? A In the course of events we talked of $800,000. We might have talked of $800,000,000 on the same occasion. That wasn't the assessment fixed by the entire board.

Q Didn't you say $800,000 was about right for it? A I may have said so; I don't remember.

Q And did Mr. Fettinger stick out for $1,000,000 assessment? A I don't remember that either. If Mr. Fettinger testified to it I presume it is right.

Q Was there a representative of Hahne & Company before the board? A Yes, sir.

Q At the time he was before the board what was said then in his presence in reference to the assessment? A Why, he said, "Very well." He said, "Gentleman, whatever the board does will be satisfactory," and we liked his spirit in the matter.

George F. Hewson, cross.

Q At that time did you mention $1,000,000 as being the proper amount? A He had received his notice for a million at that time.

Q What did you say while he was there at that conference? A I didn't say anything, only that we would take it up at a later time, the same as we did with every department store.

Q What was it finally fixed at? A $900,000.

Q And wasn't that a compromise between Mr. Fettinger and you? A I wouldn't say it was a compromise. I said it was an amount agreed upon based on Bamberger's assessment.

Q As a matter of fact, didn't Mr. Fettinger say $1,000,000 and didn't you say $800,000, and didn't Mr. Howe suggest that you compromise on $900,000? A It might be so; I don't remember; I don't remember the exact words in the transaction. I am glad that one time I was on top, anyway.

Q Coming to the property belonging to the Alice Hayes estate, you received the check for $1,012.50, or your firm received it? A The firm received it through the mail.

Q And that check of $1,012.50 was cashed by Charles P. Gillen & Company? A I presume it was deposited in our account; yes.

Q Of whom does that company consist?

Mr. Adams. He has already testified to that.

Q Of whom did the Charles P. Gillen Company consist at the time the check was received of $1,012.50? A It consisted of myself, Charles P. Gillen and John K. Gillen.

Mr. Adams. It is a corporation?

Witness. It is a corporation.

Q There are only three members of the corporation? A That is all.

Q What are the respective offices of each in the company? A Charles P. Gillen, the Mayor, is president, and I am vice-president and general manager. I transact all the business for the office. John K. Gillen is secretary and treasurer.

Q What city positions do the three members of that company hold?

Mr. Adams. I object. That has no bearing on this.

Mr. Parry. I think it has a very pertinent bearing.

Director Archibald. I think it is proper.

Q What is the official position for each member of the firm? A Charles P. Gillen is Mayor of Newark; John K. Gillen is Deputy Director, and I am Tax Commissioner.

Q Is this Charles P. Gillen Company a business corporation or is it an association for pecuniary profit of public officials banded together for the public good? A I don't remember what are in the by-laws, Mr. Parry.

Q You are not prepared to say whether you are a business corporation or whether you are not an association for pecuniary profit? A Oh, we are a business corporation.

Q You were present at the sale at the City Hall when this property was sold by Director Monahan, were you? A I was; yes, sir.

Q That was a public sale by the City of Newark? A Yes, sir.

Q And you heard the bid made by the McAllister Corporation for thirty-two thousand and some odd dollars? A And others.

Q Others bidded besides that company? A Yes, sir.

Q Who else bid on it? A A man named William Cross and a man named Lowy bid.

Q That was a public sale? A Yes, sir.

Q There were at least three bidders? A There were at least three bidders.

Q And the McAllister concern was the highest bidder? A Yes, sir.

Q What was the amount of their bid? A I think it was $32,600.

Q What was the nearest bid to that, if you recall? A The nearest bid, as I recall, was $32,500.

Q How long have you known Richard Stockton? A About five years.

Q Mr. Stockton belongs to the same political party that you do? A He ran for Senator; that is how I happened to know him.

Q On the Democratic ticket? A Yes, sir.

Q And you are a member of the same political party? A I am; yes, sir.

Q And in that way you became acquainted with him in a political way? A Oh, yes.

George F. Hewson, cross.

Q When did you first see Mr. Stockton in reference to the purchase of the house on Ridge street? A Some time in the spring of 1917 or the fall of 1917.

Q Where did you see him? A I saw him first, I believe, at his house. He had come to the office of John J. Gillen to talk to him about a house, and John don't deal in that class of property very much, and he turned him over to me—at least, he made an appointment to take him out and show him some houses.

Q You took him to the Dr. Riley house? A Among others; yes, sir.

Q Was that the only time that you went to the Dr. Riley house? A No, I went to the Dr. Riley house subsequently, a year later or so, when the deal was closed—before the deal was closed.

Q When you went to the Dr. Riley house on your second visit did you have a conversation with Dr. Riley? A I did; yes, sir.

Q Did you say to Dr. Riley, "Mrs. Stockton will not buy this house through anybody but myself"? A I did, because he had assured me of that.

Q When had he assured you of that? A Several times prior to that.

Q How many days prior to your going to Dr. Riley had he assured you that he would not buy the house unless you got the commission? A Assured me the night before.

Q Isn't it a fact that what Mr. Stockton said was that he would rather see you get the commission? A No; he assured me that he wouldn't buy the house unless I was in it. Those are the words he used.

Q Did you call up his wife? A I called up his wife on the day I have already testified to.

Q Which day was that? A The day that this conversation, supposed conversation with Mr. Stockton, when he agreed to it.

Q Was that the day that you went to Mr. Stockton's office? A Yes, sir.

Q And while you were at his office you called up Mrs. Stockton? A No; I didn't from his office. I came back to my own office to call her up.

Q And she told you that she was going to buy the house, no matter who got the commission? A She told me that whatever was done, whatever Mr. Stockton did was all right for her.

George F. Hewson, cross.

Q Mr. Stockton was familiar with this house before you took him there? A No, sir.

Q Never saw the house before? A Never saw the house before, except he might have seen it going by.

Q As a matter of fact, didn't Mr. Stockton tell you that he wanted to buy that particular house? A No; he didn't. I have testified here that I showed him five other houses; perhaps ten.

Q Were you the first agent that showed the house to him? A Yes, sir.

Q You were the agent through whom he and Dr. Riley were brought together? A He and Mrs. Riley were brought together. Dr. Riley wasn't home at the time I brought him.

Q You said that you never sued Dr. Riley for a commission? A Yes.

Q That is true? A That is true.

Q Did you ever make a demand on Dr. Riley for a commission? A I did not; not after the day I had a conversation with Dr. Riley.

Q Why did you never made a demand on Dr. Riley for a commission? A Because I had no legal right to it. I had no written agreement at that time and could not sue without a written agreement.

Q Don't you know that notwithstanding the statute abroad that a broker could recover for services? A Later that law was passed.

Mr. Adams. That is a question of law.

Q You were never employed by the Rileys to sell the house? A Yes, I was.

Q Then there was an employment between Dr. Riley and you to sell the house? A Oh, yes; I wouldn't attempt to submit it unless there was.

Q Notwithstanding that, and the fact that you secured him the purchaser, you never put in any claim for commission? A I didn't.

Mr. Adams. Other than what you have told?

Witness. Other than what I have told.

Q It was before the sale was consummated? A Before the sale was consummated.

George F. Hewson, cross.

Q When you went to Mr. Stockton's house in reference to the deal going through you asked Mr. Stockton to call up Dr. Riley and tell him that Mrs. Stockton would not buy the house unless the commission was paid to you? A Well, I told him that if he wanted to recognize me as a broker that is what he would have to do.

Q Did you make a request or demand upon Stockton that he do that? A I do not remember making any such demand or request.

Q But you did make the suggestion? A I did make the suggestion.

Q That Stockton call up Dr. Riley and told him that Mrs. Stockton wouldn't buy the house unless you got the commission? A Yes; I think I made that suggestion.

Q Did Stockton refuse to do it? A No; he said he would see Dr. Riley that night and have the whole thing fixed.

Q Did you leave Stockton's office right away? A I didn't spend over four minutes in Stockton's office that day.

Q As soon as Stockton said, "I will see Riley tonight," you left Stockton's office? A I left Stockton's office.

Q You never saw Stockton again until some time after the house had been sold? A I heard that the house was sold the following day.

Q Did you see Stockton immediately afterward? A I didn't.

Q Did you go to see him? A No, sir.

Q How soon after this was it that you next saw Stockton? A I might have seen Stockton two weeks later; it might have been two months.

Q And from the time that you left Stockton in his office and he said he was going to see Dr. Riley that night, you never went to see him or called on him or went to see him? A I made an attempt to see him several times—that is, I attempted to get him on the telephone several times, and he evaded me.

Q What month was this? A This was February, 1918.

Q Did you say in October, 1918, that you consulted Mr. Caffrey about it? A I don't remember the date.

Q It was the fall? A No; it was the spring.

Q You heard Mr. Caffrey on the stand here this morning, did you not? A I think—I am not sure—I don't just recall the time.

Q In which he said that to the best of his recollection in the fall of 1918 that you consulted him? A I don't remember his saying that.

Q It was in the fall of 1918 that you first saw Mr. Caffrey in reference to that? A I don't remember the date. I haven't anything to fix it by.

Mr. Adams. Mr. Caffrey said it was in the fall that he took it up with Mr. Stockton.

Q When you were at Stockton's office that day you discussed the amount of assessment on that property? A No, sir; I had never known the amount of it. I didn't know at that time and did not look at it until months later, until the taxing period.

Q What month did you look at it first? A The taxing date was changed that year. It was in the month of April, or May, perhaps.

Q In April or May of 1918 you looked up the assessment? A Yes, sir.

Q You made a recommendation that he be raised $2,000? A Well, the property was sold. I gave the price of the sale, as I generally do, to the clerk in the district.

Q How did you know the particulars of the sale? A Based on the figures that I had.

Q Whenever you sell a property do you immediately go to the tax board and tell the price that the property is sold for? A Most generally.

Q So anyone who deals through you as an agent, where you have knowledge of your own as to the price, you immediately report that price to the tax board? A Not exactly always, but if it came up—if it happened that the assessment was too low I would as a matter of obligation of my oath of office.

Q You have testified here to certain sales that you had made. In all these other sales, did you immediately upon the sale being consummated, report to the tax board the purchase price? A I didn't have to report to the tax board; I am one of the tax board myself. I may have given the lists, as I have done in any number of cases of sales that were made from time to time.

Q You reported the sale to yourself and not to the tax board? A I made a memorandum on the assessors' book.

George F. Hewson, cross.

Q In the case of these other sales that you made did you make a memorandum on the tax book? A If it was too low; yes, sir.

Q I am asking you whether you did in every case? A Yes, I did in some of the other cases.

Q Are those recommendations still on the books? A No, they are pencil recommendations and they would be wiped out.

Q Will you tell us how many there are where you acted as agent of the sale? A I couldn't tell you offhand; I could look it up.

Q Can you tell us any recommendations that you made on the knowledge that you acquired as an agent at the time the sale was made? A Yes.

Q Just tell us what instances you have recommended of increase based on your personal knowledge as agent. A I haven't got the data before me now. I can't recall just what the dates are, but I can get them.

Q Give us the names of the properties that were sold. A There is one 50 Elwood avenue.

Q What property is that? A Property of Conway.

Q And what was that sold for? A Sold for $6,700.

Q What year was that? A That was in the year 1917.

Q And what was the prior assessment on that? A I could not tell, except that I raised the assessment to what it ought to be.

Q Did you raise any other assessment on the block that year beside the Conway? A Yes, sir.

Q So you made a general raise in the assessments, as you recall, on that block? A Not on all of the houses. Some of the houses were very old.

Q Therefore, you didn't single out the Conway house for the raise? A No, sir.

Q And left the other houses as they were? A No, sir.

Q What other houses besides Conway's house that you have raised have you made the sale yourself? A 281 Woodside avenue.

Q Whose property is that? A The property of one Bierman.

Q And when was that sold? A That was sold two or three months ago.

Q Was that sold by you or by your firm? A It was sold by me originally. It wasn't the last time; it was sold again.

George F. Hewson, cross.

Q And have you made a note of the price of the sale on the books? A Yes, sir.

Q And you raised the assessment? A Yes, sir.

Q Did you raise the assessment on the other houses of that block at the same time? A Yes, sir; all raised at the same time.

Q All others were raised at the same time? A Yes, sir.

Q What others besides that? A I don't recall any others offhand. I will give you a list of them.

Q How many sales of real estate have you made in the City of Newark since you have been a member of the firm of Charles P. Gillen & Company, including the sales made by you and the company? A I couldn't tell you.

Q Have you made a thousand? A Oh, yes.

Q Five hundred? A At least.

Q The firm of C. P. Gillen & Company has made at least five hundred sales in the City of Newark? A Yes, possibly; that would be an approximation.

Q These two are the only ones you remember where you raised the assessment? A I remember several of them. They were all raised, as I remember it. Some of them might have been too high when I sold them; I might have sold them for less than what their true value was; there wouldn't be any occasion to sell them. I cited cases where they were sold at their assessed value or less.

Q Those sales were not 1918 sales? A Pretty nearly all; maybe some earlier and maybe some later.

Q You didn't give us a list of those 500 sales? A No, sir.

Q You just picked out some cases that looked favorable to your side of the case? A No, sir.

Q Why did you pick those out? A Because those are the ones I remember at this time.

Q How many sales did you make in 1918? A I couldn't tell you.

Q Could you give us an approximate number? A No, sir.

Q Do you think you made a hundred? A I don't know.

Q Seventy-five? A I don't know.

Q Fifty? A I don't know.

Q Did you make any sales in 1918? A I certainly did.

Q You certainly have some recollection? A I certainly can't carry them in my head.

Q Did you file an income tax return? A Yes, sir.

George F. Hewson, cross.

Q Don't you have to give the number of sales and the commission you received? A Yes, sir.

Q And by recalling the fact that you made your income tax return can't you give us the approximate number of sales you made? A I cannot.

Q Would you say fifty? A I don't remember.

Q Would you say it was as much as fifty? A I don't remember; I remember making the sales.

Q Did you make more than one sale? A I can't tell you.

Q Did you make as many as forty? A I don't remember.

Q You don't remember making forty? A I couldn't tell you. I couldn't tell you the exact amount.

Q Were all those sales that you speak of in the last year? A No, sir.

Q How are they divided? A Made in two or three years.

Q When did you first make a sale for Charles P. Gillen? A I couldn't tell you.

Q What month? A I couldn't tell you.

Q In 1918 what houses did you raise that you sold during that year? A I don't remember.

Q You don't remember any at all? A I don't remember particularly the years.

Q How did it happen, then, that you picked out the Stockton house to raise that? A Because a sale had been made there, and the sale had been made so much above the assessed value that in my opinion I had nothing else to do but recommend an increase in the assessment.

Q You didn't make any other raises on other houses on that street at that time, did you? A I did, yes; some of the other houses.

Q What other houses on that street did you raise for the buildings in 1918? A I raised the Hobbs house and I raised the Shaw house.

Q How much did you raise it in 1918? A I raised the Hobbs house $2,000 because it was assessed too low, in my opinion.

Q Where is it located? A A block north of Stockton's house.

Q Where? A On Ridge street. I think that is what the records show.

Q Raised that $2,000? A Yes.

George F. Hewson, cross.

Q What other house did you raise? A I raised the Shaw house in 1918 or 1919.

Q We are talking about 1918. You testified that you raised the Hobbs house $2,000 in 1918. Is that right, just the same year that you raised the Stockton house? A It might be 1918 or '19.

Q Yes, but we are not asking about 1919; we are asking about 1918. A I cannot tell from memory. I can tell from looking at the books.

Q We had the books here the other day, and didn't the books show that not a single house had been raised on Ridge street in a radius of two or three blocks except the two or three hundred dollars' raise in Bedell's house because of a new garage; isn't that true? A No, it wasn't a garage. There was an addition; there was a sun parlor.

Q The $300 was because of an addition to the building? A There was Bedell's and Morris' and Dickenhorst and a party named Gregory. These were all named.

Q 1918, I am talking about. A 1918 or 1919.

Q I am asking you to answer the questions as to 1918 alone. A I don't remember any.

Mr. Adams. I don't think it is fair to ask him from his memory as to these figures when they are all matters of record.

Q Isn't it true that in 1918 there wasn't a single building on Ridge street except the Stockton building and the Bedell building which were raised— A It is not true. There might be fifteen of them.

Q —from 309 to 923 Ridge street, on that side of the street; isn't that true? A It is not true.

Q (Referring to paper.) This is a list that you made up yourself, isn't it? A No, I didn't make it up. I asked Mr. Fitzsimmons to give me a list—

Q You gave Mr. Fitzsimmons these names? A Yes, sir.

Q These are houses on Ridge street? A Yes, sir.

Q And in every one of these cases isn't it true that there wasn't an increase in the building except in the Stockton building for the year 1918? A I don't remember any just now in that block.

George F. Hewson, cross.

Q Isn't it true that there were four houses whose assessments were reduced $300 on Ridge street between 309 and 523 in 1918? A It might be possible. Mr. Howe had some complaints up there about over-assessments.

Q How much did you recommend the percentage of increase on the Stockton house to be? A $2,000.

Q Why was the card sent out for $11,350? A We have explained that—Mr. Fitzsimmons and myself have explained that.

Q What is your explanation? A We agreed to raise the land in Forest Hill—

Q I am not asking why two cards were sent out; I am asking why the card was sent out for $11,350? A Because that had in the tentative raise, taking the original assessment and the raise of the land.

Q When a card is sent out to a property owner or a taxpayer that is supposed to be the amount which is fixed on the books of the tax board as the tentative assessment, is it not? A Not always. I have seen numbers of errors.

Q Isn't that supposed to be the rule, that when a card is sent out that is supposed to represent— A That is supposed to represent—

Q —the tentative assessment for that building? A Yes.

Q And the purpose of sending out that card, is it not, is to let the taxpayer know that such is the assessment on that building for the purpose of registering a complaint? A That is correct.

Q Why was it in the case of Richard Stockton, although two cards were sent out, each showing $11,350, the books show $13,350? A Because the assessment on the land value had been increased on that block, and all blocks south of Elwood avenue, and when the assessment is sent out—when the first assessment of $11,350, I think was the amount, was sent out—that took in the increase of the land as well as the building.

Q Was there a $2,000 increase in the land on the Stockton assessment? A No, sir.

Q How much was the increase for the land? A I couldn't tell you.

Q Isn't it a fact that the increase for the land was only $450? A No, more than that.

Q How much more?

Mr. Fitzsimmons. It is in that neighborhood.

Witness. It is somewhere around there.

Q How would you explain a difference of $2,000 in the notice that was sent out and the amount that was fixed on the books? A Mr. Parry, I can't explain to you about the clerical error of the office or how that came about; it was simply an accident. I have nothing to do with the clerical part of the office.

Q You yourself fixed the tentative assessment of $13,350, did you not? A I presume I did. I fix all tentative assessments in my district.

Q Did you know that a card had been sent out for $11,350? A I did not; no, sir.

Q When was that first called to your attention? A When Mr. Fitzsimmons told me about Mr. Stockton's coming in. Now, he didn't call my attention to the fact that he had received two cards. I didn't hear that until Mr. Stockton testified.

Q I am not asking you why two cards were sent out. When was your attention first called to the fact that there was a difference of $2,000 in the amount on the card which he received and the amount which was shown on the books of the tax board? A I have not recollection of hearing anything about it until Mr. Stockton testified to it that he had received two cards.

Q What did Mr. Fitzsimmons tell you about Mr. Stockton being in there? A He told me that Mr. Stockton was in there with reference to the increase on his property.

Q What else did he say? A He didn't say anything else. I said it would be a good idea for the board go up and see it.

Q Mr. Fitzsimmons said it? A He may have said other things; I do not remember the exact verbiage he used.

Q Did he tell you of the complaint Mr. Stockton had made? A He said he had complained of his assessment.

Q Then why did Mr. Fettinger remark, "We can't let personal matters interfere in the board," when nothing had been said by Mr. Fitzsimmons? A I told Mr. Fettinger afterward; I suggested, "I will go up to see it," because there was an impression that some member of the board had made a personal matter out of it.

Q Didn't you just tell us that all that Mr. Fitzsimmons said about it was that Mr. Stockton had been there and complained about it? A You asked me about Mr. Fettinger.

Q Yes. A Now you are going back to Mr. Fitzsimmons.

Q Wasn't it Mr. Fitzsimmons who called the board's attention to Mr. Stockton having been there? A Yes, sir.

Q And you told us that Mr. Fitzsimmons simply said that Mr. Stockton had been there to complain about an over-assessment?

Mr. Adams. I don't think he said that.

Q Then why did Mr. Fettinger remark, "We can't let personal matters interfere," when Mr. Fitzsimmons simply said that Mr. Stockton had been there and complained about that assessment? A I talked the matter over there, and I suggested going up and seeing the place.

Q You don't explain why it was that Mr. Fettinger made the remark, "We can't let personal matters interfere," when nothing had been suggested by Mr. Fitzsimmons. A I said to Mr. Fettinger, and Mr. Howe said, I think, "This man Stockton has been down here and has made some remarks about certain members of the board having something personal."

Q How did you know that? A Because Mr. Fitzsimmons told me.

Q I thought you told me a minute ago that all that Mr. Fitzsimmons said was that Mr. Stockton had been there to complain of an over-assessment. A I said that Mr. Fitzsimmons had met Mr. Stockton and had said that Mr. Stockton had said that some member of the board had some personal grudge against him.

Q Then Fitzsimmons did tell you that Mr. Stockton had said that he thought some member of the board had a grudge against him? A Yes, sir.

Q And he told the whole board? A No, sir.

Q Did Mr. Fitzsimmons tell you what member of the board it was that had a grudge against him? A I knew about it; he didn't have to tell me.

Q Oh, you already knew about it? A Yes, sir.

Q What did you know? You said you already knew about it. How did you know and what did you know? A Because Mr. Fitzsimmons told me.

Q All you knew was what Mr. Fitzsimmons had told you? A Yes.

George F. Hewson, cross.

Q Because Mr. Fitzsimmons had told you that a man had been there because of an over-assessment— A I didn't realize it. I heard some talk before.

Q You had some talk with someone else? A Yes, sir.

Q What was the talk that you heard? A The talk was what I testified to the other day.

Q You were the one, and not Mr. Fitzsimmons, who told the board there was a personal feeling in the matter? A Mr. Fitzsimmons might have told the board, but I brought the matter up.

Q Did Mr. Fitzsimmons tell the board that Mr. Stockton was going to make a fuss about it? A No, he didn't—I don't remember—he might have told the individual members of the board, but he didn't tell it in front of me.

Q Wasn't it then that Mr. Fettinger said that "We don't want personal matters to enter into this," or something of that sort? A Mr. Fettinger said that when I spoke to him in the board room and suggested that we go up to visit the Stockton house.

Q Did you ask which member of the board was suspected of having a personal grudge? A I did not.

Q You knew? A I knew.

Q What did you say to the board in reference to it? A I said, "We will go up and look at the property."

Q Did Mr. Fitzsimmons suggest that you go up and look at the property? A He did not, not to the board.

Q Didn't you tell me just a moment ago that Mr. Fitzsimmons was the one who suggested that you go up and look at the property? A Mr. Fitzsimmons brought the attention of the board to the fact that Mr. Stockton had been there.

Q Didn't you just five minutes ago say that Mr. Fitzsimmons was the one who suggested that the board go over and look at the property? Isn't that right? Didn't you say that five minutes ago? A No, sir.

Q You didn't say that here five minutes ago? A No.

At one o'clock P. M. a recess was taken for one hour.

George F. Hewson, cross.

After recess.

GEORGE F. HEWSON, resumes the stand.

Cross examination (continued) by Mr. Parry.

Q Mr. Hewson, were you present at the closing of the deal when the Alice Hayes property was sold? A No, sir.

Q Did you ever give out your individual business cards or the business cards of the Gillen Company at the county tax board? A Yes.

Q That was when you were appearing as a member of the Newark city tax board in reference to assessments? A I wasn't defending assessments.

Q When the assessments are appealed from the city board to the county board members of the Newark board frequently appear there to uphold the city assessments? A Always.

Q And when you have been there on occasions of that sort you have handed out your individual or firm business cards to people having business with the board? A After the business was transacted, yes.

Q Have you also handed out your business cards over the counter in the tax office in this city? A I might have, on one or two occasions handed out cards because I had changed my office from 207 Market street to 808 Broad. There were numbers of people coming to see me who didn't know where I was located.

Q Do you remember when Dr. Walker came before the board in reference to the Maas & Waldstein assessment? A I do; yes, sir.

Q And at that time did you hand him one of your cards? A I am not quite clear; I might have; I don't remember clearly.

Q Have you one of the cards with you of the style which you have handed out on these different occasions? A I have not; no, sir; now now.

Q Was this a card bearing the name of Charles P. Gillen Company? A I am not quite sure whether it was my personal card or my firm.

Q At any rate, the card referred to the business you were engaged in as a real estate dealer? A That I do not know.

Q You know the kind of cards that you have used during the last two or three years? A I used some personal cards and I used some with my business.

George F. Hewson, re-direct –further cross.

Q The cards that you handed out with your address on mentioned the fact that you were in the real estate business? A Some do and some do not. Some would show "George F. Hewson, 828 Broad." Others were my regular business card.

Q What other business are you engaged in besides real estate? A No other business.

Q Aren't you also in the insurance business? A Yes, sir; we are in the insurance business.

Q The firm of Charles P. Gillen Company also handles insurance? A Yes, sir.

Q Does it handle insurance in your imaginary taxing district? A I don't think so. It may possibly. I do not know. I haven't got a record before me, so I don't know.

Re-direct examination by Mr. Adams.

Q You say that Mr. Liveright owns the building in which you have your office? A Yes, sir; Mr. Liveright's company, the Maxwell Realty Company, of which Mr. Liveright is a member.

Q And Mr. Hardt is the agent of that company in the collection of rents? A Yes.

Q Under what circumstances did you hand out cards to anybody at the county board? A An applicant for reduction would come in, as I recall the case, and when I first represented the city Mr. Macksey was president of the board—Mr. William P. Macksey.

By Director Archibald.

Q Of the county board? A Of the county board, and there were numbers of applicants would often say, "I will sell to any one of you gentlemen." Mr. Macksey, on one or two occasions —I don't know whether it is more than one—called attention to the fact, "Here is a good real estate man; he will sell it for you." And I would simply, just to avoid talking about the business, say, "Well, send me particulars of the property." That is all there is to it.

Q How many times did that occur, to the best of your recollection? A I remember one case, and my impression is that there may be two.

Further cross examination by Mr. Parry.

Q Mr. Macksey is now a member of the County Tax Board, or formerly was? A He was a former member.

George F. Hewson, further cross.

Q What is his present position?

Mr. Congleton. He doesn't hold any official position.

Q Hasn't he any position? A No.

Q Isn't there a Macksey in the city employ? A Yes; two of them.

Q But the Macksey who was on the tax board now holds no city position? A No city position.

By Mr. Hurley.

Q You have stated that when Mr. Liveright came in Mr. Howe was attending to personal business? A Yes; he was over at his desk reading a letter.

Q What time of the day was this? A I should judge it was somewhere about twelve o'clock.

Q Around twelve o'clock? A I would judge so; I am not clear on that.

Q You say he was reading a letter then? A Yes, sir.

Q Do you know whether it was personal? A I do not; no sir.

Q Why do you say he was attending to his own business? A Because that would be the only business that would take him over to his desk.

Q Would it be a board matter—you don't know? A I don't know.

Q You don't know whether he was attending to his own business or not? A I say I don't know whether it was a personal matter or not.

Q But he was reading a letter? A Looking over a letter; yes.

Q And you say this was around twelve o'clock? A My best impression is that it was around—I am not clear on that, however. It might be later.

Q The board was in session? A The board was in session at that time all day.

Q But you are not certain whether he was attending to personal business; isn't that true? A It wasn't any business concerning the board, I am sure.

Q Why do you say you are sure? A Because Mr. Fettinger and myself were listening to cases all along; there were a number of applicants outside and they were coming in very fast, and

we were working fast. I wouldn't consider it a board matter, because if it were a board matter it would concern all of us.

Q What time does the mail come into your office? A Early in the morning, before nine.

Q Is that the only delivery? A I do not know.

Q Did you see anybody bring that letter in? A I did not.

Q You were sitting in the room? A Yes, sir.

Q Did anyone come in with the letter? A I don't remember.

Q Your idea is that he got up at twelve o'clock and read a letter that was there at nine? A I have no idea of the letter, except that he was reading it when Mr. Liveright came in; over at his desk.

Q When Mr. Liveright came in he asked you whether you had sent in a Christmas present, didn't he? A I don't recall the exact words.

Q Did he say that—whom did he say it to? A He may have said it to the entire board.

Q Didn't he say it to Mr. Howe? A I don't recall it.

Q Didn't Mr. Howe ask him what was the object of his visit? A No; he didn't stop at Mr. Howe's desk at all. Mr. Howe was at his desk, and Mr. Fettinger and myself were seated at the table. Mr. Liveright had been announced previously by Mr. Fitzsimmons. He walked right up to the table and took the end chair.

Q You had just finished listening to another applicant? A Yes.

Q Did Mr. Howe sit at the table while you were talking to the other applicants? A I think not.

Q You think not? A I think not.

Q How long had he been over at his desk? A I couldn't say; possibly about half an hour.

Q The substance of it is then, you say, he was reading a letter? A Yes, sir.

Q And you don't know whether the letter was personal? A I wouldn't say the letter was personal or in connection with any business. I am not sure.

Q But you did say this morning that it was in personal business? A I meant to say private business.

Q Now you say you don't know whether it was personal or private? A I am not sure; no.

Richard Stockton, recalled.

Q If it was a city letter it wouldn't be private business, would it? A It would be; yes.

Q You heard Mr. Fettinger say that Mr. Liveright came in and they asked him what he wanted, and he said they had sent him a Christmas present; isn't that true? Did Mr. Howe continue at his desk while Mr. Liveright was there? A No; he came over to listen to Mr. Liveright's complaint. He did talk from his desk over. The first word he said—at least, when Mr. Liveright began to talk about his assessment, Mr. Howe talked from his desk over.

Q Before anything else was said? A Yes. "Our assessor is here and it is reported to me that you have $3,000,000 worth of property there—merchandise."

Q What was the first thing said to Mr. Liveright when he came in? A I don't recall. It is hard to remember a conversation like that.

Q Who was the first one that spoke to Mr. Liveright? A I think it was Mr. Fettinger spoke to him.

Mr. Adams. With reference to the minutes of the Board of Commissioners which Mr. Parry offered in evidence on February 25th, it is stipulated that the original minutes offered by him are in evidence. The minutes appear in the typewritten transcript of the proceedings on pages 128 to 132, inclusive.

RICHARD STOCKTON, recalled.

Witness. I am going to be a boomerang for the prosecution. I got my dates twisted; that is the reason I am here today. If you fellows know what condition I was in Tuesday you wouldn't blame me.

By Mr. Adams.

Q Mr. Stockton, you testified the other day to an occurrance in your office on February 18, 1918, when Mr. Hewson was there. A Yes, sir.

Q And you said that you went away how soon after that? A I went away—you mean, went away on account of illness?

Q Yes. A I was sick for two months before that, roughly speaking, and several months afterward, sick in the house with throat trouble and other complications more serious, but less

Richard Stockton, recalled.

annoying, and I figure it is about two months. I was first taken sick and I was away for several months afterward—down at the office for a few days and back again at bed. You mean, how long I was actually out of town? Two months.

Q You went how soon after this occurrence that Mr. Hewson was at your office? A It would be impossible to fix that. I was so sick at the time that I didn't pay any attention to dates.

Q You said before that that one or two days after that you became very ill, indeed, "I have pneumonia, nearly pneumonia and everything else under the sun for three or four months, and I had to go to Lakewood." A Yes.

Q What I want to know is, does that mean you went to Lakewood right after? A I have been to Lakewood several times since, and this is the only time that I didn't get there, and I was there off and on from August to January—this is not answering the question, I realize that—figuring backwards—twice before that between those trips. My general health ever since the Spanish War has been very poor.

Q Did you go away because of a nervous breakdown within a few days after this occurrence in your office? A I didn't mean to say that. I had no nervous breakdown. Throat trouble and heart trouble.

Q You did go away for several months after that, didn't you? A I can't say that with any definiteness.

Q Then it wasn't a nervous breakdown? A No.

Q And you haven't said it was a nervous breakdown to anybody? A No; it was throat trouble, the only trouble I have had. Every now and then I get heart trouble with it.

Q Weren't you in a highly nervous condition on that day when you say Hewson was in your office about this matter? A Yes, sir; that is what I told Brunetto.

Q And weren't you physically in a very much rundown condition? A Exactly as I told Brunetto; yes.

Q Is that true, and were you not sufficiently excited so that you have no recollection of what occurred on that day? A Well, I didn't attempt to specify anything. They asked me my impression. That is the point that I was worried about.

Q You wouldn't undertake to testify to anything that occurred on that day? A No.

Q And you have been attempting to give us only your impression, is that it? A Absolutely. Will you let me say something?

Richard Stockton, recalled.

Q Yes. A What I said to Mr. Hewson, I had forgotten about the incident until Fitzsimmons of the tax board telephoned about it, and that was what was worrying me; I thought I had done an injustice to Mr. Hewson. If I had forgotten about it and Mr. Fitzsimmons in the fall of 1918, when I went down and said I thought I was taxed too high, and so forth—the conversation I gave; it is on the record—it is unimportant—but he said, "Didn't you have some trouble with Commissioner Hewson?" I remember saying "No." He said, "I think you did." I remember now saying that I forgot, that maybe I had, something like that. If I had forgotten it after six months my impressions couldn't have been what I said they were. That is what I said to Mr. Adams the day after the hearing.

Q When Mr. Fitzsimmons first asked you about it in the fall of 1918— A I told him no.

Q —you told him, "No, I didn't have any trouble with Mr. Hewson"? A Yes.

Q Isn't it a fact that Caffrey took up the real question of whether Hewson had any claim against you for services in connection with this transaction of the Riley house? A Ed saw me in Judge Adams' court one day and he said, "What the hell do you mean, having a row with such a good scout as George Hewson?" I said, "I haven't had any row with him." I said, "He is disappointed over brokerage." How long afterwards it was I don't know—it was three or four months—time is awfully indefinite, and he said—he consulted me about it—he said, "You know I am his attorney." This is Edwin C. Caffrey and I know him very intimately, too, very fond of him. He has consulted me as his attorney.

Q You didn't tell Mr. Caffrey about Mr. Hewson having made any threat against you with regard to increasing the assessment of this property in case he didn't get his commission, did you? You didn't telll Mr. Caffrey any such thing as that? A No. The conversation with Caffrey—

Q You have told us that you didn't. I just want to know. You didn't say anything about that? A No.

Q This conversation was very short? A Very short in Judge Adams' court.

Q Did you only have one conversation with him about it? A Yes. Is that an important point?

Richard Stockton, recalled.

Q No, I don't think it is important. He said he only recalls one conversation. You said the other day that you see Mr. Hewson almost every day; you said, "I see him all the time." A All the time.

Q Do you see him every week practically? A No, he stopped speaking to me for the last year or two.

Q During 1918, when you were seeing him, did you meet him on an average of once a week? A 1918 I was attending to business.

Q During such times as you were in Newark attending to business? A I couldn't answer positively, Mr. Adams, one way or the other—wait a minute. I did have a conversation with Caffrey at a certain lawyer's office—I won't mention the name, what lawyer—I don't know whether he can verify it. It was after the taxes were raised. I would like to say this, but I don't want it to get into the paper. Caffrey said, "Don't be like Colonel Righter, don't go down and make a complaint in the tax office." He said, "Write them a polite letter." He said, "Have you got anything against this man Hewson?" I said, "Certainly not. I never heard a word against him in the City of Newark. I never knew of him stealing any money." I said, "I have got nothing against him at all. Why in hell did he raise my taxes?" I said, "I think it is an inopportune time for him to have done that." Those are words, not exact translation. I eulogized Mr. Hewson; I said, "I never heard a word against him. I don't know how the dickens we ever got in a fight." That is the boomerang against the prosecution.

Q You testified that the occurrence on the street was October 24, 1918, and you produced a memorandum on which you had written "Occurrence of October 24." Do you remember producing a piece of paper? A I don't remember what was written on it.

Q "Occurrence of October 24" is what the record shows you testified to. Are you positive it was October 24, 1918, and not October 24, 1919? Didn't that occur last fall? A I don't think I had seen Mr. Hewson for six months. I am quite positive it was October, 1918.

Q You haven't the memorandum here with you now? A No, but it lasted about three seconds. I came from New York State.

Richard Stockton, recalled.

By Mr. Parry.

Q Mr. Stockton, when did you go to the tax office where you saw Mr. Fitzsimmons? A Some time—let's see how we will fix that—I think it must have been the time of those two notices. That was when we paid the taxes, whenever they are assessed, that is when it was.

Q That was in 1918? A When did I buy the property again?

Q You bought the property in February, 1918? A Yes.

Q In the fall of 1918 you went to the tax office? A No.

Q You went to the tax office here in the City Hall when you saw Mr. Fitzsimmons? A Yes, sir.

Q When you arrived in there you told Mr. Fitzsimmons about Mr. Hewson raising your assessment? A I replied to that before for Mr. Adams. I forgot to say that the other day. I said, "Someone thinks I am wealthy," something like that. These words are not exact. And I said, "We are the only people raised on that block. That is a dickens of a note, to be discriminated against like that." I said, "Who is the tax assessor?" At that time I remember I used the word "assessor" instead of commissioner. He said, "You are in Commissioner Hewson's district."

Q Then you returned to this brokerage transaction in your conversation with Mr. Fitzsimmons? A Mr. Fitzsimmons said, as I recall it, "Didn't you have some row"—as I recall that—"with George Hewson?"

Q Did you suggest it to him rather than Mr. Fitzsimmons mentioning it to you? Didn't you tell Mr. Fitzsimmons that you had some trouble with Mr. Hewson in reference to a brokerage deal? A Whether he told me or I told him is foolish for me to attempt to remember under oath.

Q Isn't it a fact that Mr. Fitzsimmons had no knowledge whatever of any relations between you and Mr. Hewson until you mentioned it to him at the tax office? A I don't think so. My recollection is just as I told Mr. Adams a moment ago.

Q What did Mr. Fitzsimmons say? A You will make me repeat just what I said.

Q Just tell us so that we will get the facts straight. Tell us what you said and what Mr. Fitzsimmons said. You told Mr. Fitzsimmons that you thought you had been discriminated against; that is right? A Yes, sir; general language.

Q What did Mr. Fitzsimmons say? A I remember him saying this, "Don't worry, no cause for alarm. I will have the full tax board look at it." I said, "That is satisfactory to me. All I want is a fair show, and if the tax board considers this I don't care whether they reduce it or not, so that I know it is not prejudice."

Q Mr. Fitzsimmons didn't tell you at that time that he had heard anything of your trouble with Mr. Hewson? A That is my recollection. If he says differently I will change.

Mr. Hurley. Why don't you call Mr. Fitzsimmons?

JOHN FITZSIMMONS, recalled.

Direct examination by Mr. Parry.

Q Mr. Fitzsimmons, do you recall Mr. Stockton's visit at the tax office? A Yes, sir.

Q What did Mr. Stockton say to you? A As near as I can recollect now, he had his cards with him and he complained about the assessment being increased, and he said he had had a little trouble or misunderstanding or something like that with George Hewson and he was charging that he was trying to get square with him.

Q At that time had you heard anything about the trouble between Mr. Hewson and Mr. Stockton? A Never knew of it until Mr. Stockton mentioned it.

Q And the first information you had of it was when Mr. Stockton called on you at your office? A That time I told him he need not worry about it, I would have the whole board look at it.

Q And you suggested that the board go up there? A Yes, sir.

Q And the suggestion first came from you to look at the property? A Yes, I was the first one, but I remember Mr. Hewson and Mr. Fettinger and Mr. Howe spoke of it, too.

Q You were the first that suggested it? A I suggested it. I don't know whether I was the first one that suggested it or not, but I suggested it.

Richard Stockton, recalled.

RICHARD STOCKTON, resumes the stand.

By Mr. Parry.

Q Mr. Fitzsimmons' recollection of that conversation refresh your memory as to what happened there? A No. When I was testifying a minute ago I was testifying as to my best recollection, and that was my best recollection, and I can't remember him saying that particular thing differently. I tried to impress on you that it is hazy.

Q Is it possibly true that Mr. Fitzsimmons' version that he has just given us is true? A It is true. I think it is very likely to be true. He is a very accurate man.

Q Between the two do you think that Mr. Fitzsimmons' recollection is more to be relied upon than your own? A Absolutely. I would rather take his any day than my memory.

Q You said you met Mr. Caffrey some time after this? A I remember talking twice to Caffrey, but I can't give you the dates at all.

Q Did Caffrey say that he had a claim against you from either George F. Hewson individually or Charles P. Gillen Company, a corporation, for a commission for brokerage? A No.

Q Just answer the questions as I ask them. Did he make a formal demand upon you for the commission for the transfer of a house that you bought or that Mrs. Stockton bought on Ridge street? A No.

Q Did he say that the Hewson Company or the Charles P. Gillen Company were considering bringing suit against you? A No.

Q So this was simply a casual conversation between you and Mr. Caffrey? A In Judge Adams' court, in the Circuit Court.

Q This was in Judge Adams' court room in the Circuit court? A Yes, sir.

Q And at that time that you said to Mr. Caffrey that you hadn't heard anything about Mr. Hewson you had the full knowledge of all that you have told us about this controversy between Mr. Hewson and yourself in your mind, did you not? A That is what we were talking about, Mr. Caffrey and another lawyer.

Q Wasn't it your intention not to slander Mr. Hewson that you told Mr. Caffrey that you had heard nothing against Mr. Hewson's reputation? A Just as I said. He said, "Why do you and such a good scout as George Hewson quarrel? He has

always been a friend of yours." I will try and repeat again what I said before, and I said, "Yes, I have always felt friendly to him and I feel friendly now, but why the dickens he raised my taxes—"

Q You didn't in that conversation tell Mr. Caffrey anything about this trouble that you had with Mr. Hewson or the conversation that had ensued between Mr. Hewson and yourself at your office? A I don't think I told him at the time, no.

Q You never referred to that to him? A No.

Q You simply passed that incident over and didn't mention it to Mr. Caffrey? A In Judge Adams' court I had the conversation, in the other office, when he told me not to be like Colonel Righter.

Q Why did Mr. Caffrey tell you to write a polite letter to the tax board? A Why?

Q Yes. A Ask him.

Q What led up to his asking you to write a polite letter to the tax board? A He said, "Don't be like Colonel Righter, just write them a polite letter."

Q In your conversation with Mr. Caffrey you had simply told him that your assessment had been unduly raised; is that correct? A The last answer is correct. It was the appeal, the county board, that was it.

Q He told you to write a polite letter to the county board? A I am trying to get the polite letter out and see what he said. We were talking about the county board and it never occurred to me from that day to this. That is when he ran the colonel in. "Don't go down there," he said. "There is no use." The polite letter belongs to some other conversation. There couldn't have been any polite letter there.

Q At the time you had this conversation with Mr. Caffrey you didn't tell him about this incident on Grove street where Mr. Hewson threatened to knock your damned head off; you didn't mention that to Mr. Caffrey, did you? A No, I didn't mention that to Caffrey. That incident was after both conversations with Caffrey. I can even fix this conversation, because it was the time to appeal, don't you see? It was September, one conversation with Caffrey, about whatever time to appeal starts. The tax board fixes it in August, and in September you have got to get busy because you only have up to December. I would say the conversation with Caffrey was in September, 1918, and

Richard Stockton, recalled.

the first conversation I would say about two or three months after February.

Q Although you didn't mention this incident which happened in your office to Mr. Caffrey you have mentioned it to other people, have you not?

Objected to.

Q As I understand it, Mr. Caffrey did suggest to you that you write a letter to the county tax board asking for a reduction of the assessment? A No, you will have to chop the polite letter. He said, "Don't go before them."

Q He said, "Don't go before the tax board"? A That is what Mr. Caffrey said, "Don't go before the tax board?" A Yes; "Don't bother about it," or something to that effect.

By Mr. Hurley.

Q You say your recollection is that Mr. Fitzsimmons said that Commissioner Howe had told him something about the row with Mr. Hewson? A That is my recollection.

Q Had you ever met Mr. Howe before that? A No.

Q How do you suppose he found out about that?

Objected to.

A I said I would rather take Mr. Fitzsimmons' recollection on anything than my own on incidents.

By Mr. Adams.

Q Would you attempt to set up your impressions of what happened when you say Hewson was in your office now as being a fact? The other day you said you had a strong impression that Mr. Hewson had made certain threats against you in your office; you said you couldn't remember the words that you used; you couldn't remember the substance of it, and today you said you couldn't remember anything at all that happened in your office. A I remember I said both days I couldn't remember what happened.

Q All I want to know is would you undertake to say that the impression you testified to today represents what actually happened in your office? A No; I have already corrected that testimony. That is why I sent word to you about it the day after the hearing.

Richard Stockton, recalled.

Q That is not on the record, what word you sent to me? A Yes, it is, because I said a few minutes ago—I will say it over again.

Q I have no objection to your saying it. A I told Brunetto that I thought my testimony had been unjust to Hewson; I was very much worried about it, because I recall but one little fact, and that is that I had forgotten all about the incident up to when I saw Mr. Fitzsimmons at the tax board, and, therefore, how could it impress me as much as I said it did? I thought he was in Mr. Adams' office. He called at my office on another matter. I said, "Please tell Mr. Adams that I think, in justice to Mr. Hewson, I should go," and later he called at my office and said, no, Mr. Adams said—said he didn't want me. I want to say, I reiterate—

Mr. Congleton. The subpoena was for the defense, and you have been very easy about it.

Witness. I am very much against the spirit of these proceedings. This should be staged in a vacant lot down neck.

Mr. Parry. I ask that that be stricken out.

By Mr. Parry.

Q You were here in this hearing the other day? A Oh, yes.

Q You testified under oath? A Yes, sir.

Q And you were asked this question: "To the best of your recollection did Mr. Hewson say that if this deal didn't go through him, that he got the commission, that the assessment on the property would be raised." And you said, "Unquestionably, but maybe not in those words." That is true, isn't it? A The impression I got; yes.

Q And that is still true, isn't it? A That is the whole point of this testimony. No; after I got away from here, I said, "How could I have had that impression when three months afterward I had forgotten about the incident?" That is the whole point of my being recalled.

Q By refreshing your memory, isn't it true that what you testified under oath here that that was the unquestionable impression you had in your mind? A When I testified under oath here the other day that was my best impression of the recollection, and I was worried afterward that it might not have been my impression.

Richard Stockton, recalled.

Q You were also asked this question: "Was there anything said about taxing you out of town?" And you said, "Yes, he made that remark." "Q That he would tax you out of town?" "A Out of the city—yelled it out." That is true—that is your testimony? A That is my recollection.

Q And that is your recollection that that is what happened at your office when you were there? A Yes, sir.

By Mr. Adams.

Q Do you mean to say that Mr. Hewson said he would tax you out of the city? A I remember Hewson at the board yelling out something which to the best of my recollection is something like that. I said, if you will look at the testimony which Mr. Parry is reading, I said, "Unquestionably he did."

Q Did you think he would tax you out of the city? A That is my recollection of something that he said.

Q You didn't tell that to Caffrey? A I don't think I told much to Caffrey.

Q You didn't tell that to Mr. Fitzsimmons when he talked to you about this matter? A I couldn't tell you.

Q Did you recollect it at that time? A No; I had forgotten the whole incident.

Q Did you recollect it when you talked to Mr. Caffrey? A It didn't impress me very much, even if Mr. Hewson did say it.

Q Will you say positively that Mr. Hewson did say it? A That is what I said the other day. I don't want to change my testimony; he said something to that effect; he went to the door. I wasn't paying very much attention. I was suspended. We didn't have any fight or any quarrel. He didn't call me any names. I felt sorry for him. I wanted to land it for him. I felt sorry, and at the door he yelled something.

By Mr. Parry.

Q That he would tax you out of the city? A Just what I said before.

Q He said just what you said before, but you won't undertake to say just what you said he said? A That is my best recollection.

Q You have already told us that you haven't any recollection of what occurred in your office on that day, haven't you? A No recollection.

Richard Stockton, recalled.

Q Yes, of what occurred in your office on that day. A No; I said I haven't any recollection of the exact words that were said that day.

TESTIMONY CLOSED.

Mr. Adams sums up.

Mr. Parry sums up.

Director Archibald. I have listened with careful attention to all that has been said by both counsel. The charges are quite serious, and particularly the one relating to insulting and discourteous language used to taxpayers. There is such a serious difference in the testimony that I will reserve my decision until I have read over the testimony, and I will decide the matter as soon as I possibly can. I will notify you when I have reached my conclusion.

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EXHIBIT P. 1.

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK F. GUILD, *et al.*, executors, &c., *Complainants,*

and

THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, *et al.*, *Defendants.*

On Bill.

Final Decree.

This cause coming on to be heard in the presence of George W. C. McCarter and Robert H. McCarter, solicitors for the complainants; Edward A. Day, solicitor for Yale University; Albert C. Wall, solicitor for Louis Pennington and Mary V. Pennington; Richard Boardman, Joseph F. Randolph and Gilbert Collins, solicitors for Anna H. Condict; Queen & Stout, solicitors for S. Howell Jones and Mary P. H. Jones, executrix under the will of S. Howell Jones, deceased; Randolph Barrett, solicitor of the guardian of Lydia Woodmancy Bullock and of the administrator of said Lydia Woodmancy Bullock; and Spaulding Frazer, solicitor for the Mayor and Common Council of the City of Newark; and the pleadings and briefs having been read and testimony having been taken and the argument of the respective counsel having been heard and considered, and the court having duly considered the said pleadings, briefs, testimony and arguments, and it appearing to the court that Alice W. Hayes died unmarried on the 23rd day of March, A. D. 1914, seized and possessed of, and entitled in law and equity to a large estate, real and personal, in the City of Newark, and elsewhere, in her own right and was seized and entitled in expectancy, after the death of Louis Pennington, to other real property, of which her sister, Mary A. H. Pennington, died seized, possessed or entitled in law or equity.

And it appearing that the said Alice W. Hayes, in her lifetime, made and executed her will and codicil thereto annexed, in due form of law, in and by which she did appoint the complainants, the Executor and Trustees thereunder, which will and

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codicil were duly admitted to probate by the Surrogate of Essex County, New Jersey; that said Surrogate did issue to said complainants, as Executors under said will, letters testamentary, all as set forth in the bill of complaint herein; that since the filing of the bill herein, Frederick F. Guild, one of the complainants, has departed this life, and Sophie W. Downer, one of the complainants, has resigned as such Executor and Trustee;

That Caroline D. Hayes, widow of David A. Hayes, devised and bequeathed to her children, Howard W. Hayes and Alice W. Hayes, large properties, real and personal, for their several lives with power of appointment in the survivor of them; that said Howard and Alice were the only heirs at law of said Caroline D. Hayes, and that Alice W. Hayes survived her brother, Howard W. Hayes, and effectively exercised said power;

That Mary A. H. Pennington died in the year 1894, seized and possessed of and entitled in law or equity to certain real property in the City of Newark and elsewhere, the undivided one half interest in the title thereto has since vested in Alice W. Hayes, subject to the life estate of Louis Pennington, and the other undivided one-half interest in which said Howard W. Hayes died seized of, subject to the life estate of Louis Pennington, and

That said Mary A. H. Pennington died also possessed of certain personal property, which now belongs to Louis Pennington;

That Howard W. Hayes died in 1903, seized and possessed of and entitled in law and equity to a large estate, real and personal, in the City of Newark and elsewhere, and by his last will and testament devised and bequeathed the same to his sister, Alice W. Hayes for her life, and after her death, to such person or persons, corporation or corporations as she said Alice W. Hayes should, by her will in writing, appoint, and in default of such appointment, then to Yale University, and that by the will of Alice W. Hayes, she did effectively and according to law, exercise the power of appointment given her by the will of said Howard W. Hayes, in favor of Mary V. Pennington for life, and in remainder to the trustees named in her will upon certain trusts therein expressed, in favor of the Mayor and Common Council of the City of Newark.

And it further appearing to the court that by her said last will and testament the said Alice W. Hayes did establish a certain trust affecting certain lands in Newark and other lands

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and personal property in favor of the Mayor and Common Council of the City of Newark for the purpose of creating and maintaining a certain park in the City of Newark, to be known as "Hayes Park", and said property affected by said trust being in part from the estate of said Alice W. Hayes and also in part from the estate of said Howard W. Hayes, her brother, and from the estate of Caroline D. Hayes, her mother, under and by virtue of powers of appointment contained in the wills of said Howard W. Hayes and Caroline D. Hayes, said trust estate being constituted of all of the residue and remainder of the real and personal property of the said Alice W. Hayes, Howard W. Hayes and Caroline D. Hayes, (including the interest in the real property of Mary A. H. Pennington which had passed to Alice W. Hayes and Howard W. Hayes), after provisions for certain annuities and specific bequests in the will of said Alice W. Hayes contained and subject as to so much thereof as formerly belonged to Mary A. Hayes Pennington to the life tenancy in Louis Pennington, as the surviving husband of Mary Abbott Hayes Pennington and as to so much thereof as formerly belonged to Howard W. Hayes to the life tenancy of Mary Vanderpool Pennington, widow of Howard W. Hayes, deceased; and that the legal title to all of said property vested in the executors and trustees named in the will of Alice W. Hayes, subject to said life tenancies, and is now so vested in the said Alfred F. Skinner as the surviving executor and trustee under said will, with power to sell, convey and transfer any or all of said real or personal property, except the tracts of land described in the ninth clause of the will of said Alice W. Hayes specially set apart for park use, but subject to said life tenancies; and that the legal title to the personal property whereof Howard W. Hayes died possessed or to which he was entitled is now vested in said Mary Vanderpool Pennington as substituted administratrix under the will of the said Howard W. Hayes.

And it further appearing that said Alice W. Hayes at the time of her death, left the following heirs and next of kin her surviving, that is to say: On her father's side her cousin, Anna H. Condict, only child of Caroline P. Hudson, a first cousin of said Alice; and on her mother's side, her first cousins, Alice Jones Williams, Mary Howell Jones, Susan E. Jones Carpenter, wife of George W. Carpenter, Richard W. Jones, S. Howell Jones, (since deceased, leaving his widow, executrix and de-

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visee, Mary P. H. Jones) and Ellen E. Jones Phillips, wife of George B. Phillips, and her cousin, Lydia Woodmancy Bullock, (since deceased), daughter of Anthony Bullock, deceased, a first cousin of said Alice, and Mary B. Powers and Ellis B. Powers, children of Caroline Bullock, deceased, a first cousin of said Alice;

And it further appearing that the said Mayor and Common Council of the City of Newark has not accepted the terms of said trust and that question has arisen on the part of said Mayor and Common Council of the City of Newark as to whether the said trust is of advantage to the people of the City of Newark, by reason of the outstanding life tenancies and of the location of the lands specifically dedicated to park purposes under the terms of said will of Alice W. Hayes and the restrictions contained in her will as to the use of said lands; and that the title which would be acquired by the Mayor and Common Council of the City of Newark to the said lands and estate, should said Mayor and Common Council of the City of Newark accept the burden of the trust, would be a qualified fee and ownership, which would revert to the heirs or next of kin of the donor, or, in respect to the estate of Howard W. Hayes, would go to Yale University, in the event that such trust should hereafter prove so onerous that the particular use provided for by the will of Alice W. Hayes should be discontinued or said lands used for other purposes;

And it further appearing that the several devisees and heirs at law and next of kin who would be entitled to said lands and estate, upon the discontinuance of the use specified by the will of Alice W. Hayes, desire to effectuate the intent of the said Alice W. Hayes to establish in the City of Newark, a park or parks to be known as "Hayes Park" and desire that said park or parks may be so established that they shall be of the greatest value to the people of the city of Newark, and that to that end the said devisees, heirs at law, and next of kin who would be so entitled to the reverter in said lands and estates, have tendered to the Mayor and Common Council of the City of Newark, for the use and benefit of the people of Newark, in the name of "Hayes Park" or "Hayes Parks", their deeds covering all their reversionary interest and rights and title in and to all of the property, real or personal, in the City of Newark and elsewhere, of which Caroline D. Hayes, Mary A. H. Pennington,

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Howard W. Hayes and Alice W. Hayes, and each or any of them died seized or possessed or to which they or either of them were, at the time of their death, entitled in law or equity, with full power to lease, sell, mortgage or exchange any part of said property, real or personal, free and clear of said trust, and to shift said trust to the proceeds of such lease, sale, mortgage or exchange in accordance with the grant contained in said deeds, already executed but not yet delivered, which deeds are severally to be delivered to the Mayor and Common Council of the City of Newark, upon payment of the sums of money herein respectively decreed to be paid to the said devisees, heirs at law, next of kin and life tenants;

And it further appearing that by virtue of the outstanding life estates hereinbefore mentioned, of the said Louis Pennington and of the said Mary Vanderpool Pennington, the establishment of the public park contemplated in the will of said Alice W. Hayes would, under the terms of said will, be postponed during the lives of the said Louis Pennington and Mary Vanderpool Pennington; and that the said Louis Pennington and Mary Vanderpool Pennington have tendered their deed releasing their life estates upon the payment to them of the stipulated value thereof, to wit, the sum of Seventy five thousand dollars ($75,000.) to the said Louis Pennington in full payment of all his right, title and interest in and to the real property of the estate of Mary Abbott Hayes, deceased; and of the sum of One Hundred and Fifty Thousand Dollars ($150,000.) to Mary Vanderpool Pennington, in full payment of all her right, title and interest in and to the real and personal property of the estate of Howard W. Hayes, deceased;

And it further appearing that said devisees, heirs at law, next of kin and life tenants above mentioned upon the payment to them of the respective sums hereinafter set forth, are willing and desirous that the said Mayor and Common Council of the City of Newark may forthwith proceed to establish one or more parks or public places to bear the names of Hayes.

And it further appearing that the Mayor and Common Council of the City of Newark have neither rejected nor accepted the trust provisions in the will of the said Alice W. Hayes, but are desirous of carrying out the intent of the said Alice W. Hayes for the establishment of a public park or public parks, in the City of Newark, consisting in whole or in part of such lands,

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or such part thereof, as may seem to said Mayor and Common Council available and desirable therefor, but for the reasons above set forth believe that the specific provisions of said will in regard thereto are so onerous as to be a burden and not a benefit to the City of Newark, and are desirous of taking advantage of the offers of all persons in interest in said estate whereby the intent of the said Alice W. Hayes may be effectuated in a manner advantageous to the City of Newark and the citizens thereof, and to that end are desirous of not accepting the trust provisions of said will without modification in the details of the trust as provided in said deeds, and are desirous that by this decree of this court they may become vested with title to all the residue of said estates, after the payment of all debts and legacies and all expenses of administration of said estate and provision is made for the payment of the annuities mentioned in said will, and after making payments of the sums of money in this decree provided to be made, to use the same and the income thereof and thereon accrued and the proceeds of sale thereof for public park purposes for the use and benefit of the people of Newark in the name of "Hayes Park" or "Hayes Parks", with full power to lease, sell, mortgage or exchange any part of said property, real or personal, free and clear of said trust, and to shift the trust to the proceeds of such trust, lease, sale, mortgage or exchange, in accordance with the grant contained in said deeds hereinabove referred to and not yet delivered;

And it further appearing that S. Howell Jones, one of the defendants herein, has died pending this suit, and that Mary P. H. Jones as Executrix of the last will and testament of said S. Howell Jones, deceased, has been made a party defendant by order of this court, and that Halsey M. Barrett was, by order of this court, appointed guardian *ad litem* of the defendant, Lydia Woodmancy Bullock, otherwise known as Lena Hayes Bullock, an idiot, and that the said Lydia Woodmancy Bullock, idiot, otherwise known as Lena Hayes Bullock, has died pending this suit, and that Samuel A. Atkinson, her administrator, has been made a party defendant by order of this court.

And it further appearing that certain property located at Perth Amboy, New Jersey, was acquired during her lifetime in the name of Caroline D. Hayes, administratrix of David A. Hayes, and that the said property was so acquired in foreclosure proceedings of a mortgage, held by the estate of the said David

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A. Hayes, and that the moneys expended in the acquisition of said property belonged to the estate of said David A. Hayes, and that said property and the proceeds of sale thereof made by consent of all parties in interest rightfully belonged to the estate of David A. Hayes, and that an interest in certain property at Perth Amboy was taken in the name of Louis Pennington, who makes no claim thereto;

And it further appearing that Sophie W. Downer and Alfred F. Skinner were, by order of this court, appointed receivers of the properties belonging to the estate of Caroline D. Hayes, and that all of the estate of said Caroline D. Hayes passed by the will of said Alice W. Hayes, and by the exercise of the power of appointment given to the said Alice W. Hayes; that the Mayor and Common Council of the City of Newark is willing that a single accounting be made for the estates of Caroline D. Hayes and Alice W. Hayes, and that the said receivers, so appointed by this court, should transfer the properties of the estate of Caroline D. Hayes, so held by them to Alfred F. Skinner, sole remaining executor and trustee of the estate of Alice W. Hayes without account as such receivers, except as herein provided.

It Is, on this second day of November, 1917, on motion of McCarter & English, solicitors for the complainants, and by consent of all of the parties in interest herein, ORDERED, ADJUDGED and DECREED:

I. That the legal title to all of the real property whereof Caroline D. Hayes, Alice W. Hayes and Howard W. Hayes and Mary A. Hayes Pennington died seized is vested in the said Alfred F. Skinner as surviving executor and trustee under the will of Alice W. Hayes (Subject as to so much thereof as formerly belonged to Mary A. Hayes Pennington to the life tenancy of Louis Pennington, and as to so much real estate as formerly belonged to Howard W. Hayes to the interest of Mary Vanderpool Pennington as his widow and under the will of Alice W. Hayes), with full power in said trustee to sell, convey and transfer any and all of said property except the two tracts described in the ninth clause of the will of said Alice W. Hayes specially set apart for park use; and that any conveyance or transfer of any of said real property made by the said Alfred F. Skinner as such surviving trustee shall vest in the grantee all

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the right, title and interest formerly of the said Caroline D. Hayes, Mary A. Hayes Pennington, Alice W. Hayes and Howard W. Hayes, and all the parties to this suit subject, as to so much thereof as formerly belonged to Mary Hayes Pennington, to the life tenancy in Louis Pennington, as to so much thereof as formerly belonged to Howard W. Hayes, to the life tenancy of Mary Vanderpool Pennington.

II. That the title to all of the personal property of the said Alice W. Hayes or to which she was entitled vested in the executors and trustees appointed by her in her will above mentioned, and is now vested in said Alfred F. Skinner as surviving trustee with full power to dispose of and transfer the same, and that upon payment of the sum of $150,000, as hereinafter mentioned, the said Mary Vanderpool Pennington, substituted administratrix under the will of Howard W. Hayes, shall account for and transfer to the said Alfred F. Skinner, surviving trustee as aforesaid, all the said personal property of the estate of said Howard W. Hayes, so far as the same consists of corpus or principal.

III. That the receivers of the estate of Caroline D. Hayes do transfer and set over unto the said Alfred F. Skinner, as executor and trustee of the estate of Alice W. Hayes, all the real and personal property of the said Caroline D. Hayes, and that upon said transfer, the said receivers be, and the same are hereby discharged from further obligation by virtue of said receivership, and

IV. It is further ordered, adjudged and agreed, that the properties located at Perth Amboy, New Jersey, title to which were taken in the name of Louis Pennington or of Caroline D. Hayes, as administratrix of the estate of David A. Hayes, were purchased with funds belonging to the estate of said David A. Hayes and that the title thereto or the proceeds thereof now belong to said Alfred F. Skinner as executor and trustee under the will of Alice W. Hayes.

V. It is further ordered, adjudged and decreed, that the said Alfred F. Skinner, executor and trustee as aforesaid, do first pay out of the principal funds in his hands all transfer and inheritance taxes due to the State of New Jersey, and to any other States or sovereignties, and that he do pay to the

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following named persons respectively the following sums of money respectively, viz:

(a) To the personal representative of Frederick F. Guild, deceased, the sum of three thousand five hundred dollars in full for all commissions as executor and trustee under the will of Alice W. Hayes, to Sophie W. Downer the sum of three thousand, five hundred dollars in full for all commissions as such executor and trustee; to Alfred F. Skinner the sum of ten thousand dollars on account of his commissions as such executor and trustee, subject to further allowance to be hereafter made.

(b) To the personal representative of the Estate of Frederick F. Guild, deceased, Sophie D. Downer and Alfred F. Skinner, as receivers of the Estate of Caroline D. Hayes, deceased, the sum of six thousand dollars as and for their commissions as such receivers;

(c) And that he do pay counsel of the respective parties herein as follows:

1. The McCarter & English, of counsel with the complainants, the sum of five thousand dollars;

2. To Albert C. Wall, of counsel with Louis Pennington and Mary V. Pennington, the sum of fifteen hundred dollars;

3. To Edward A. Day, of counsel with Yale University, or personal representative of the sum of fifteen hundred dollars;

4.

5. To Queen & Stout, of counsel with S. Howell Jones and Mary P. H. Jones, Executrix under the Will of S. Howell Jones, the sum of fifteen hundred dollars;

6. To Richard Boardman, Joseph F. Randolph and Gilbert Collins, of counsel with Anna H. Condit, the sum of fifteen hundred dollars;

7. To Randolph Barrett, of counsel with the Guardian and also the Administrator of Lydia Woodmancy Bullock, otherwise known as Lena Hayes Bullock, the sum of five hundred dollars.

VI. That he, said Alfred F. Skinner, do retain in his hands as Trustee under the will of Alice W. Hayes, the sum of Twelve Thousand Dollars ($12,000) as a fund to invest and pay to Margaret Gannon from the income thereof, or from the principal

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thereof if the income is not sufficient, the annuity due her, as provided by said will of Alice W. Hayes, and upon her death, that the said fund be, by said Alfred F. Skinner, paid to said Mayor and Common Council of the City of Newark;

That he, said Alfred F. Skinner, do retain in his hands as Trustee under the will of Alice W. Hayes, the sum of Twelve Thousand Dollars ($12000.) as a fund to invest and pay to Clara L. West from the income thereof, or from the principal thereof if the income is not sufficient, the annuity due her, as provided by said will of Alice W. Hayes, and upon her death, that the said fund be, by said Alfred F. Skinner, paid to said Mayor and Common Council of the City of Newark.

That he, said Alfred F. Skinner, do retain in his hands as Trustee under the will of Alice W. Hayes, the sum of Twelve Thousand Dollars ($12000.) as a fund to invest and pay to Mary Howell Jones from the income thereof, or from the principal thereof if the income is not sufficient, the annuity due her, as provided by said will of Alice W. Hayes, and upon her death, that the said fund be, by said Alfred F. Skinner, paid to said Mayor and Common Council of the City of Newark.

Said Alfred F. Skinner is hereby given leave to make such payment in commutation of said annuities, or any of them, or such purchase of annuities from some reputable life insurance company as may be consented to by them and the Mayor and Common Council of the City of Newark.

VII. To pay the following sums of money to the various persons hereinafter mentioned upon the delivery by all of them to the Mayor and Common Council of the City of Newark, of deeds duly stamped, conveying to said Mayor and Common Council of the City of Newark all of their estate, right, title and interest in and to the estates of Caroline D. Hayes, Howard W. Hayes and Alice W. Hayes Pennington as the case may be, to wit:

To Mary Vanderpool Pennington, One Hundred and Fifty Thousand Dollars ($150,000).

Louis Pennington, seventy-five thousand dollars ($75,000).

Yale University, thirty thousand dollars ($30,000).

Anna H. Condit, twenty thousand dollars ($20,000).

Alice Jones Williams, three thousand, two hundred and fifty dollars ($3,250).

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Mary Howell Jones, three thousand two hundred and fifty dollars ($3,250).

Susan E. Jones Carpenter, three thousand two hundred and fifty dollars ($3,250).

Richard W. Jones, three thousand two hundred and fifty dollars ($3,250).

Mary P. H. Jones, administratrix aforesaid, three thousand two hundred and fifty dollars ($3,250).

Ellen E. Jones Phillips, three thousand two hundred and fifty dollars ($3,250).

Samuel A. Atkinson, administrator of Lydia W. Bullock, deceased, two thousand two hundred and fifty dollars ($2,250).

Ellis B. Powers, one thousand six hundred and twenty-five dollars ($1,625).

Mary B. Powers, one thousand six hundred and twenty-five dollars ($1,625).

VIII. (a) To account in this court to the said Mary V. Pennington and Louis Pennington for the income of said property to which they may be entitled up to the date of this decree, and to pay to the said Mary V. Pennington and Louis Pennington the sum found due on such accounting:

(b) To account to The Mayor and Common Council of the City of Newark in this court for principal and income of said property and estate remaining in his hands after the payments and reservations aforesaid, and the payment of the expense of the management of said property and estate, in the meantime, such accounting aforesaid may be affected by arrangement with said Mary V. Pennington and Louis Pennington and said Mayor and Common Council of the City of Newark respectively by a private accounting and such accounting and the transfer to said Mayor and Common Council herein ordered shall discharge the said Alfred F. Skinner as such executor and trustee, except as to such sum or sums of money as may be retained by him for the annuities above mentioned.

IX. To transfer, convey and pay to the Mayor and Common Council of the City of Newark:

a. All the remaining real and personal property of the estate of Alice W. Hayes;

b. All the remaining real and personal property of the estate of Caroline D. Hayes;

Exhibit P. 1.

c. All the remaining real and personal property of the estate of Howard W. Hayes.

In trust nevertheless, to use the same and the income thereof or thereon accrued, or the proceeds of sale thereof, for public park purposes for the use and benefit of the people of the City of Newark in the name of "Hayes Park" or "Hayes Parks" with full power to lease, sell, mortgage, or exchange any part of said property, real or personal, free and clear of said trust, and to shift the trust to the proceeds of such lease, sale, mortgage or exchange; and

It is further ordered, adjudged and decreed, that upon the making of the payments aforesaid, the delivery of the deeds above mentioned and the entry of this decree, the said The Mayor and Common Council of the City of Newark, shall be vested with full and complete title to all of the property of said estate above mentioned so transferred to them in trust as aforesaid, with full power to lease, sell, mortgage or exchange any part of said property, real or personal, free and clear of said trust, said trust being shifted to the proceeds of said lease, sale, mortgage or exchange; and

It is further ordered, adjudged and decreed, That the parties hereto may hereafter apply to this court for further instructions, and pending such application, all further equity is reserved.

E. R. WALKER,
C.

Respectfully advised,

Frederic W. Stevens,
V. C.

Exhibit P. 2.

EXHIBIT P. 2.

THIS AGREEMENT, made this 16th day of September, nineteen hundred and nineteen, BETWEEN ALFRED F. SKINNER, as sole remaining Trustee of the Estate of Alice W. Hayes, deceased, and McALLISTER, CARTON & STULZ CORPORATION, a corporation of the State of New Jersey, WITNESSETH:

That the said Trustee for the consideration hereinafter mentioned agrees to sell and the said corporation agrees to buy premises known at 997 Broad Street, Newark, New Jersey, the same being the building on ground 33 feet by 250 and situated on the west side of Broad Street, 135 feet northerly of West Kinney street, dimensions more or less, in the City of Newark, State of New Jersey; the full price to be paid by the said corporation is to be thirty-two thousand, five hundred ($32,500) dollars, to be paid as hereinafter specified.

It is expressly understood and agreed that the City of Newark, New Jersey, has an interest in the above property, and it is further understood and agreed that on or before the closing of the title hereunder the City of Newark, New Jersey, will hold a public sale at which the said City, in conformity with the statutes in such cases made and provided for, will expose for sale at public action all its right, title and interest in the above-mentioned and referred to property and sell the same to the highest bidder; and

It is further understood and agreed that the McAllister, Carton Stulz Corporation agrees that it will attend the said sale as above provided for and thereat bid not to exceed thirty-two thousand, five hundred ($32,500) dollars. If the said McAllister, Carton & Stulz Corporation shall not be the successful bidder and the property shall be sold to some one offering more than said corporation, then the sum of five hundred ($500) dollars paid on this contract as herein set forth is to be returned to the purchaser and this agreement cancelled. If the said McAllister, Carton & Stulz Corporation shall be the successful bidder it shall receive a conveyance of said property by deed from the City of Newark, as well as the deed in the usual form from the said Trustee, the five hundred ($500) dollars paid as aforesaid to be credited to McAllister, Carton & Stulz Corporation on account of said bid.

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The price to be paid as aforesaid shall be paid as follows:

Five hundred ($500) dollars in cash at the time of the execution of this agreement, the receipt of which is hereby acknowledged;

($500.00) dollars by payment to the City of Newark of that amount at the time of auction sale as herein provided, and the balance of said purchase price, less twenty-five thousand ($25,000) dollars, in cash at the time of the delivery of the deed and closing title;

The balance of twenty-five thousand ($25,000) dollars to be secured by mortgage made by said McAllister, Carton & Stulz Corporation to said Trustee, payable in one year from the date hereof at 5%.

The closing and passing of title hereunder shall depend upon the obtaining of a deed from the City of Newark at or prior to the closing of this title which shall take place not later than the 15th day of October, 1919, at 12 o'clock noon at the office of Pitney, Hardin & Skinner.

The title to be given shall be a good and marketable title in fee simple, free of all incumbrances, including assessments, but subject to existing tenancies.

The conveyance to be in the usual form of a Trustee's deed.

The said corporation agrees to pay so much of the 1919 taxes assessed against the above mentioned premises as may be apportioned as of September 15th, 1919, the said corporation, after taking title, to have the privilege of removing the building now on said premises and erecting a structure suitable for its own purposes; and

It is further understood and agreed by the parties to these presents that said corporation, its successors and assigns shall enter upon the said land and premises on the said day of the passing of title next ensuing the date hereof and from thence take rents, issues and profits to itself and its successors.

And for the performance of all and singular the covenants and agreements aforesaid, the parties do bind themselves and their successors, administrators and assigns.

In witness whereof, Alfred F. Skinner, as sole remaining Trustee of the Estate of Alice W. Hayes, deceased, has hereunto set his hand and seal, and McAllister, Carton & Stulz Corporation, has caused these presents to be signed by its President, and at-

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tested by its Secretary and its corporate seal to be hereunto affixed, the day and year first above written.

McALLISTER, CARTON & STULZ CORPORATION,

By Jas. B. McAllister, President.

Attest: W. E. Carter,
Secretary.

(L. S.)

Alfred F. Skinner, Sole Remaining Trustee of the Estate of Alice W. Hayes, deceased.

State of New Jersey,
County of Essex, } *ss.*

On this day of September, in the year one thousand nine hundred and nineteen, before me, personally came and appeared Alfred F. Skinner, as sole remaining Trustee of the Estate of Alice W. Hayes, deceased, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

Findings.

FINDINGS.

Before Alexander Archibald, Director of the Department of Revenue and Finance of the City of Newark.

In the Matter of Charges preferred against George F. Hewson, a member of the Board of Assessment and Revision of Taxes of the City of Newark.	*Findings.*

On January 15, 1920, charges were filed with the Board of Commissioners of the City of Newark by William Cavanagh, a taxpayer of the City of Newark, against George F. Hewson, a member of the Board of Assessment and Revision of Taxes in the Department of Revenue and Finance of the City of Newark, complaining of the official conduct of said Hewson, as a member of said board. Thereafter, at a meeting of said Board of Commissioners, held on January 19, 1920, acting upon an opinion of the City Counsel, the said Board of Commissioners, by its resolution adopted on that day, referred said charges to me, as Director of the Department of Revenue and Finance, to take such action with respect thereto as to me might seem satisfactory and proper. After the passage of the resolution last referred to, I, as Director of the Department of Revenue and Finance of the City of Newark, entertained said charges, officially, and, by an order in writing, fixed Wednesday, February 4, 1920, at ten o'clock in the forenoon, and the Board of Commissioners' Chambers, in the City Hall, Newark, New Jersey, as the time and place of hearing said charges and the trial thereon of said George F. Hewson, and caused a copy of said charges, together with my order fixing the time and place of said trial, duly certified by the City Clerk, to be served upon said George F. Hewson.

On February 4, 1920, at the time and place fixed for said trial, the said George F. Hewson appeared before me, together with his counsel, at which time amendments to the charges theretofore filed against said George F. Hewson were also filed with me by the said William Cavanagh, which amendments I deemed it proper to receive, and thereupon adjourned the trial upon said original charges and amendments thereto to Tuesday,

Findings.

February 17, 1920, at the time and place as fixed in my said order of February 4, 1920, and caused a copy of said amendments to the original charges, duly certified by the City Clerk, to be served upon said George F. Hewson; that on February 17, 1920, the trial upon said charges was further adjourned to February 25, 1920, to take place at the same time and place theretofore fixed; that on said 25th day of February, 1920, the said George F. Hewson appeared before me, with his counsel, Edwin G. Adams, Esquire, and entered a plea of not guilty to said charges, whereupon the trial proceeded, and Mr. Hewson offerred himself as a witness and testified at length with respect to the various charges filed against him. Other witnesses were offered and testified on behalf of the prosecutor of said charges, and also on behalf of Mr. Hewson, all of whom were subjected to examination and cross examination by Edwin G. Adams, Esquire, counsel for said George F. Hewson.

The original charges and amendments thereto in many respects overlap each other or enlarge upon one another, but when analyzed, resolve themselves into seven separate and distinct heads, as follows:

1. That the said George F. Hewson used his official position as a member of said board for soliciting business for his private business.

2. That the said George F. Hewson neglected his duty as a member of said board.

3. That the said George F. Hewson was discourteous and uncivil to and treated in an insulting manner persons appearing before the Board of Assessment and Revision of Taxes having business at the office of said board, to such an extent as to demonstrate the fact that he was an unfit person to occupy such a position.

4. That the said George F. Hewson unfairly raised the assessments of citizens and business enterprises because of their failure or unwillingness to contract personal business with the said George F. Hewson, or the firm of which he is a member.

5. That the said George F. Hewson attempted to raise to an unfair figure the taxable valuations of business enterprises of the City of Newark, on the ground of personal spite or spleen.

Findings.

6. That the said George F. Hewson, during the time in which he has been a member of said board, unfairly reduced or caused to be reduced tax assessments in cases where he had received business or profit from the persons for whom reductions had been made.

7. That the said George F. Hewson, during the period in which he was a member of said board, acted as agent for the sale of lands belonging to the City of Newark, and as such agent received commissions from the proceeds of such sale, thereby depleting the amount received by the city therefrom.

The trial upon said charges and the arguments of counsel for prosecutor and said George F. Hewson were concluded before me on March 5, 1920, at the close of which I reserved my decision. I have now carefully read and studied the evidence in the case, and I am ready to make known my findings.

The charges covered by subheads 1 and 4 of these findings are of a very serious nature, but the only direct evidence tending to substantiate the same was given by Richard Stockton, Esquire, a member of the Bar of this State. While I believe that some effort was made by Mr. Hewson to use his official position for his private business in his transactions with Mr. Stockton, the testimony with respect thereto was given in such an unsatisfactory way that it is my opinion Mr. Hewson should be found not guilty thereon.

I therefore find him not guilty of the charges made against him and specified in subheads 1 and 4.

There is certain testimony bearing upon the various charges treated in subheads 2, 5 and 6, as specified in these findings, but in my opinion there is not sufficient to substantiate the same, and Mr. Hewson should not be found guilty of these charges.

I therefore find him not guilty of the charges made against him and specified in subheads 2-5-6 of these findings.

With respect to the charges covered under subhead 3 of these findings and covered by the charges contained in the 8th charge of the original charges, and in charge 6 of the amendments to the original charges, a very different situation is created. These charges allege, on the part of Mr. Hewson, discourteous and uncivil treatment of and the use of insulting language to persons transacting business with him in his official capacity. The evi-

dence, to my mind, clearly demonstrates that Mr. Hewson was both discourteous and insulting to Mr. Frank Liveright, of L. Bamberger & Co.; Mr. Isidore Kraushaar, Mr. H. M. Anderson, representing the Great Atlantic & Pacific Tea Co., and Mr. Robert Metzler, representing New Jersey Machinery Exchange. This is testified to by each of these parties with positiveness, and their testimony is corroborated by other evidence offered on the part of the prosecutor of these charges. It is true that Mr. Hewson denies having treated the parties mentioned in the manner testified to by them, but he admits in practically each one of the cases that some part of the remarks testified to by the witnesses on the part of prosecutor were made by him, and he attempted to explain them away. The witnesses on the part of prosecutor are further corroborated by the testimony of Mr. Fettinger, a member of the Board of Assessment and Revision of Taxes, who was called as a witness by Mr. Hewson. While it is true that Mr. Fettinger does not testify to all of the details that the witnesses on the part of the prosecutor testified to, he does in almost each case corroborate the essential parts of their testimony. From all of the evidence I am satisfied that Mr. Hewson did treat the parties mentioned in the manner complained of, and I therefore accordingly find him guilty of the charges covered by subhead 3 of these findings and specified in charge 8 of the original charges and charge 6 of the amendments to the original charges. This finding is based upon charge 8 of the original charge, in so far as it relates to Mr. Liveright, and upon charge 6 of the amendments to the original charges, insofar as it relates to the other persons mentioned above.

It is high time that persons holding official positions should realize that they are mere servants of the taxpayers, and that they should no more be discourteous to them than they would be to their private employer. When a person holding an official position finds that his temperament is of such a nature that he cannot act in such a manner, he should, for his own self-respect and the dignity of the office, resign his position.

The charge embraced under subhead 7 of these findings deals with the 8th charge in the amendments to the original charges. It accuses Mr. Hewson of having acted as agent for the sale of land belonging to the City of Newark and having received a commission from the proceeds of such sale, thereby depleting the amount which would have come into the city treasury, and speci-

fied the sale of property formerly belonging to the estate of the late Alice W. Hayes.

The facts in reference to this sale and the title thereto vested in the City of Newark are fully set forth in the testimony. No one, in my opinion, can read the same without coming to the conclusion that the city had a substantial interest in this property, and that Mr. Hewson had knowledge thereof. The testimony shows that a resolution, signed by all of the members of the Board of Commissioners of the City of Newark, was adopted on October 9, 1919, authorizing Commissioner Monahan to make sale of the city's interest, a public sale, to the highest bidder; that the property was duly advertised, and that the sale took place on October 30, 1919; that Mr. Hewson attended such sale; that thereafter Commissioner Monahan reported said sale at the sum of $32,600 to the Board of Commissioners, and that said board, by its resolution adopted on October 30, 1919, signed by all of its members, confirmed said sale, and directed the Mayor and the City Clerk of said city to execute a deed in the name of the City of Newark to the successful bidder at said public sale. Such deed was duly executed by the Mayor and City Clerk, and after the passing of title a check was given to the firm of which Mr. Hewson was a member for $1,012.50, representing the commission agreed upon for said sale. There is no explanation given with respect to the acceptance of this commission, except by Mr. Hewson, who testified that he did not know that the city had a substantial interest in the property. This seems to me inconceivable, and I can reach no other conclusion from the evidence than that Mr. Hewson disregarded his official position with the city and accepted a commission in a transaction which, under the law, he was forbidden to participate in, and that he knew or should have known that it was a violation of the law.

I therefore find him guilty of the charge made against him and referred to in subhead 7 of these findings and specified as charge 8 in the amendments to the original charges filed with me.

Now, therefore, I, Alexander Archibald, Director of the Department of Revenue and Finance of the City of Newark, do hereby find George F. Hewson, a member of the Board of Assessment and Revision of Taxes of the City of Newark, in the Department of Revenue and Finance of the City of Newark, guilty of being discourteous and uncivil to and treating in an insulting manner Mr. Frank A. Liveright, of L. Bamberger & Co.; Mr.

Findings.

Isidore Kraushaar, Mr. H. M. Anderson, representing the Great Atlantic & Pacific Tea Co., and Mr. Robert Metzler, representing New Jersey Machinery Exchange, persons appearing before the Board of Assessment and Revision of Taxes and having business at the office of said board, and by reason of this finding I do, by virtue of the power and authority vested in me by law, hereby dismiss the said George F. Hewson as a member of said the Board of Assessment and Revision of Taxes of the City of Newark, in the Department of Revenue and Finance of the City of Newark, and hereby declare said office vacant, to take effect upon the filing of these findings with the City Clerk of the City of Newark, and do direct the City Clerk upon the filing of these findings to strike the name of said George F. Hewson from the payroll of the city.

I do further find the said George F. Hewson, a member of the Board of Assessment and Revision of Taxes of the City of Newark, in the Department of Revenue and Finance of the City of Newark, guilty of having acted as agent for the sale of lands belonging to the City of Newark, to wit, property known as #997 Broad street, in the City of Newark, and of having received a commission from the proceeds of such sale, thereby depleting the amount received by the city, all in violation of the law, and by reason of this finding I do, by virtue of the power and authority vested in me by law, hereby dismiss the said George F. Hewson as a member of said the Board of Assessment and Revision of Taxes of the City of Newark, in the Department of Revenue and Finance of the City of Newark, and hereby declare said office vacant, to take effect upon filing of these findings with the City Clerk of the City of Newark, and do direct the City Clerk upon the filing of these findings to strike the name of said George F. Hewson from the payroll of the city.

Respectfully submitted,

A. ARCHIBALD,
Director of the Department of Revenue
and Finance of the City of Newark.

Dated March, 1920.

REASONS.

NEW JERSEY SUPREME COURT.

GEORGE F. HEWSON, *Prosecutor,* *vs.* THE CITY OF NEWARK and WILLIAM J. EGAN, City Clerk of the City of Newark, *Defendants.*	*On Writ of Certiorari.* *Reasons.*

The prosecutor, by Edwin G. Adams, his attorney, gives the following reasons for setting aside the findings, actions and proceedings of the Director of the Department of Revenue and Finance of the City of Newark attempting to deprive him of his office, position or employment held by him:

1. Because the said Director of the Department of Revenue and Finance of the City of Newark was without legal authority to try the prosecutor upon the said charges and to remove him from his said office or employment.

2. Because the findings upon which the said Director pretended to remove the prosecutor, do not constitute misconduct in office or other grounds justifying the removal of said prosecutor.

3. Because the certificate of findings of the said Director of the Department of Revenue and Finance does not contain the substance of the evidence upon which his action in attempting to remove the prosecutor from office was based.

EDWIN G. ADAMS,
Attorney of Prosecutor.

OPINION.

Filed October 19, 1920.

NEW JERSEY SUPREME COURT.

JUNE TERM, 1920.

GEORGE F. HEWSON,

vs.

CITY OF NEWARK,

Submitted June Term, 1920. Decided October 19, 1920.

Certiorari.

Before Justices Swayze and Black.

Edwin G. Adams, for prosecutor.
Jerome T. Congleton and Merritt Lane, for defendants.

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

On January 15, 1920, charges of official misconduct were made against Hewson as a member of the Board of Assessment and Revision of Taxes of Newark. He was tried before the Director of the Department of Revenue and Finance and found guilty on some of the charges. The findings of fact are set forth in detail by the Director and are justified by the evidence, a stenographic transcript of which is returned with the record. Two legal objections are raised: (1) That the Director alone had no jurisdiction since the hearing ought to have been before all the Commissioners of Newark; (2) The findings of the Director do not contain the substance of the evidence upon which his action was based.

1. The prosecutor recognizes that there has been a change in the statute since the decision in *Herbert* v. *Atlantic City,* 87 N. J. Law, 98, which has been construed by the courts in *Brennan* v. *Jersey City,* 104 Atl. 90; *Crane* v. *Jersey City,* 90 N. J. L. 109; *Apple* v. *Atlantic City,* 104 Atl. 89, affirmed on opinion, 103 Atl. 1051. *Foley* v. *Orange,* 91 N. J. L. 554. The attempt is to distinguish the present case upon the ground that Hewson

had been appointed by the Board of Commissioners and could only be removed by that Board which was made by statute sole judge of the sufficiency of the cause of such removal. The basis of the argument is that the act of 1915 (P. L. 495), is not applicable to officers appointed by the whole Board of Commissioners. It is, however, plain that the legislature meant that the judicial power of the commissioners should be distributed among the five departments and we see nothing in the act to indicate that the legislature meant that the judicial power should be further subdivided according to the source of the appointment of the officer to be tried. The act of 1915 was meant to supersede the earlier provisions in this respect.

2. The next objection is that the findings do not set forth the evidence, and we are referred in support of this contention to the well known cases. The prosecutor has over-looked the act of 1914 (P. L. 419, Supp. to C. S. 117). This provides for a return of the stenographer's transcript of the evidence, where as in the present case it has been reported stenographically, and expressly enacts that the stenographer's transcript shall constitute a part of the state of the case and be considered by the reviewing court upon the argument of the writ of certiorari as the evidence given at the trial. This act was approved immediately after the argument of *Mullane* v. *South Amboy*, 86 N. J. L. 173, and may well have been meant to cure the difficulty that arose in that case.

The conviction is affirmed with costs.

Rule for Judgment.

RULE FOR JUDGMENT.

NEW JERSEY SUPREME COURT.

GEORGE F. HEWSON, *Prosecutor,* *vs.* THE CITY OF NEWARK and WILLIAM J. EGAN, City Clerk of The City of Newark, *Defendants.*	*On Certiorari.* *Rule for Judgment.*

The Court having inspected the transcript and proceedings returned with the writ of certiorari in this case and the reasons for setting aside certain findings, determination, order and proceedings adopted, made, had and done by Alexander Archibald as Director of the Department of Revenue and Finance of the City of Newark, whereby the said Alexander Archibald as director aforesaid, did claim and exercise the power and authority to dismiss and remove from office one George F. Hewson as a member of the Board of Assessment and Revision of Taxes of the City of Newark, and having heard the argument of counsel therein, and having duly considered the same;

It is on this third day of November, 1920, ORDERED that the said findings, determination, order and proceedings aforesaid under review in this cause be and the same are hereby affirmed, with costs.

Entered November 3, 1920.

On motion of:

JEROME T. CONGLETON,
Attorney of Defendants.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

GEORGE F. HEWSON, *Prosecutor-Appellant,* *vs.* THE CITY OF NEWARK and WILLIAM J. EGAN, City Clerk of the City of Newark, *Defendants-Appellees.*	*On Writ of Certiorari.*

BRIEF OF EDWIN G. ADAMS, OF COUNSEL WITH PROSECUTOR-APPELLANT.

Facts.

The City of Newark, in the fall of 1917, adopted the commission form of government provided by the so-called Walsh Act, P. L. 1911, p. 462, and its supplements. December 5, 1917, its Board of Commissioners created by resolution a Board of Assessment and Revision of Taxes, consisting of three members, under the Department of Revenue and Finance, charged with the duty of making assessments of real and personal property for the purpose of taxation (case, p. 4). On the same day the prosecutor-appellant was by resolution of the Board of Commissioners appointed a member of said board (case, p. 5). In January, 1920, written charges were made against the prosecutor-appellant by one Cavanagh, charging misconduct in several particulars (charges, p. 8; amendments, p. 20). The charges were filed with the Board of Commissioners and were by them referred to the Director of the Department of Revenue and Finance (case, pp. 17-18). The said Director proceeded, after notice to the prosecutor-appellant, to try the prosecutor-appellant and took the testimony of many witnesses, and finally convicted the prosecutor-appellant of certain of the charges, and removed him from his said office. The record of conviction, entitled "findings," is found on pages 305-310 of the state of the case.

The prosecutor sued out a writ of certiorari to review the conviction. The Supreme Court, in an opinion by Mr. Justice Swayze (case, p. 313), affirmed the conviction.

Reasons.

The reasons assigned by the prosecutor-appellant in the Supreme Court were:

1. Because the said Director of the Department of Revenue and Finance of the City of Newark was without legal authority to try the prosecutor upon the said charges and to remove him from his said office or employment.

2. Because the findings upon which the said Director pretended to remove the prosecutor do not constitute misconduct in office or other grounds justifying the removal of said prosecutor.

3. Because the certificate of findings of the said Director of the Department of Revenue and Finance does not contain the substance of the evidence upon which his action in attempting to remove the prosecutor from office, was based.

POINT I.

The Director of the Department of Revenue and Finance was without jurisdiction to try the prosecutor-appellant on the charges and remove him from office.

When he was placed on trial before the Director of the Department of Revenue and Finance, the prosecutor-appellant objected to the jurisdiction of the Director upon the ground that he was not vested by law with power to try the prosecutor-appellant (case, p. 24, ll. 25-33).

The City of Newark is governed by the provisions of the Walsh Act (P. L. 1911, p. 462) and its several supplements and amendments. The question of where the power resides to try and remove the prosecutor-appellant is to be determined by the provisions of section 4 of said act as amended by P. L. 1915, p. 494.

After the organization of the city government under the Walsh Act, and on December 20, 1917, a Board of Assessment and Revision of Taxes, consisting of three members, was created under the Department of Revenue and Finance by resolution of the Board of Commissioners; and at the same meeting, by separate resolutions, the prosecutor-appellant and two other individuals were appointed members of said board (case, pp. 4-5). It is to be noticed that *these appointments were made by the Board of Commissioners of the city, and not by the Director of the Department of Revenue and Finance.*

The municipal authorities, in determining that the authority to try the prosecutor-appellant and to remove him from office was vested in the Director of the department and not in the Board of Commissioners, relied upon *Foley* v. *Orange,* 91 N. J. L. 554; *Brennan* v. *Jersey City,* 104 Atl. 90; *Apple* v. *Atlantic City,* 103 Atl. 89, and *Crane* v. *Jersey City,* 90 N. J. L. 109. A brief survey of the legislative history and development of section 4 of the Walsh Act, and a consideration of the cases above referred to will, we submit, reveal that *the question here presented was not determined in those cases,* and that the power to try and remove the prosecutor-appellant was vested solely in the Board of Commissioners.

Section 4 of the Walsh Act is a lengthy section, comprising seven paragraphs and substantially four printed pages in the pamphlet laws. The cases above cited deal only with the *first and second paragraphs* of section 4, both as originally enacted and as later amended. As will be shown, these paragraphs cannot be considered in this case except in connection with *the fourth paragraph* of section 4.

Section 4, as originally enacted, P. L. 1911, p. 465, provided in the *first and second paragraphs* thereof as follows:

> "The board of commissioners shall have and possess all administrative, judicial and legislative powers and duties now had and possessed and exercised by the Mayor and City Council and all other executive or legislative bodies in said city, and have complete control over the affairs of the city adopting the provisions of this act. The *executive, administrative and legislative powers, authority and duties in such city shall be distributed into and among five departments,* except that in any city having but three commissioners, three departments shall be designated and provided by the consolidation of the first and third departments and the fourth and fifth department as follows:
>
> 1. Department of Public Affairs.
> 2. Department of Revenue and Finance.
> 3. Department of Public Safety.
> 4. Department of Streets and Public Improvements.
> 5. Department of Parks and Public Property.
>
> The board of commissioners shall determine the powers and duties to be performed by each department and assign such powers and duties to the appropriate departments, and they shall prescribe the powers and duties of all officers and employees, and they may assign particular officers and employees to one or more departments and may require any officer or employee to perform duties in

two or more departments, and make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city."

The *fourth paragraph* of said section 4 then read as follows (P. L. 1911, p. 465):

"The board of commissioners shall at the first meeting, or as soon as may be after organization, create such subordinate boards and appoint such officers as it may deem necessary for the proper and efficient conduct of the affairs of the city. Any board created may be abated, or any officer or employee appointed by the board of commissioners may be removed from office at any time for cause, after public hearing, and such board of commissioners shall be the sole judge of the sufficiency of the cause of such removal."

In 1913, section 4 was amended (P. L. 1913, p. 836). No change was made in the *first and second paragraphs,* except to insert in the second paragraph a provision that duties might be assigned to any officer or employee in two or more departments provided the work required in each department was similar in character. The *fourth paragraph* of said section 4 was changed by substituting the following for the second sentence in the original paragraph:

"Any board created may be abated; or any officer or employee *appointed by the board of commissioners* may be removed from office *by them* at any time for cause, after public hearing, provided their action shall be taken in accordance with the civil service and tenure of office acts in municipalities where such acts have been adopted, and such action shall be subject to review by the courts as heretofore."

In 1915, section 4 was further amended (P. L. 1915, p. 494) by adding the word "judicial" to the list of powers distributed among the five departments in *the first paragraph,* so that the second sentence of said first paragraph now reads:

"The executive, administrative, *judicial* and legislative powers, authority and duties in such city shall be distributed into and among five departments."

The *fourth paragraph* of the section was not changed, but *was re-enacted in the precise language of the 1913 amendment above quoted.*

The result of this legislation is that at the time of the appointment of the prosecutor and at the time the charges were made against him on January 15, 1920, section 4 of the Walsh

Act, in *the first paragraph* thereof distributed among the five departments "the executive, administrative, *judicial* and legislative powers, authority and duties in such city"; and in *the fourth paragraph* thereof authorized *the board of commissioners* "to create such subordinate boards and *appoint such officers* as it may deem necessary," and provided that "*any* officer or employee *appointed by the board of commissioners* may be removed from office *by them,* at any time for cause, after public hearing."

Now, the prosecutor-appellant was a member of a subordinate board, the Board of Assessment and Revision of Taxes, *created by the Board of Commisioners* (case, p. 4), and he was *appointed by the Board of Commissioners* (p. 5). Since the statute gives express power to the Board of Commissioners to remove any officer or employee appointed by them, and no such express power is given to the Director of the department, it would seem clear that the board and not the Director has the sole power of removal. Any other construction is possible only by giving to simple language an unnatural and distorted interpretation, or by refusing to give any meaning whatever to the plain and simple mandate of the Legislature. The distribution of the judicial powers of the board into five departments, as provided in the first paragraph, must necessarily be read in conjunction with this later paragraph of the same section, and effect given to both paragraphs, if possible. This effect, so far as relates to the removal of officers, is readily attained by construing section 4 to mean that officers or employees *appointed by the director* of a department are removable by him, while those *appointed by the Board of Commissioners* are removable only by *the board.* This would seem to be the plain meaning of the statute.

It is true that the cases above referred to hold that the director of a department of public safety under the Walsh Act has power to try on charges and to remove, *a police officer.* Two of these cases are determinations of the Court of Errors and Appeals.

In *Crane* v. *Jersey City,* 90 N. J. L. 109, affd. 103 Atl. 1051, Kalisch, *J.,* sustained the power of the director of public safety to remove a member of the police department, citing *Brennan* v. *Jersey City,* 104 Atl. 90, as authority for the power of such director to exercise "the judicial powers exercised by him." The Court of Errors affirmed Justice Kalisch's opinion for the reasons therein expressed (103 Atl. 1051).

In *Apple* v. *Atlantic City,* 104 Atl. 89, the Supreme Court, *per curiam,* citing *Crane* v. *Jersey City,* held that under the Act of 1915 distributing the judicial powers, the board of commissioners was without authority to try delinquent police officers, the power being vested in the director of public safety.

In *Foley* v. *City of Orange,* 91 N. J. L. 554, the Court of Errors held that under the act of 1915 the power to try police officers is taken from the board of commissioners and vested in the director of public safety.

None of these cases is authority against the prosecutor-appellant in this case because

(1) In none of them does it appear that the policeman removed by the Director was appointed by the Board of Commissioners and not by the Director himself.

(2) There is no discussion of, consideration of, or reference to the *fourth paragraph* of section 4 of the Walsh Act, but only of and to the language of the *first paragraph* distributing the judicial powers of the board. It is apparent from the opinions in each of these cases that the attention of the Court was not called by counsel to this fourth paragraph. Otherwise the Court must at least have discussed the meaning of this paragraph in connection with the first paragraph of the section.

It would seem to be obvious either that the fourth paragraph was not involved in these cases because the policemen were not appointed by the Board of Commissioners, or that the Court's attention was not directed to this paragraph. Certainly, if in *Foley* v. *Orange,* the Court of Errors had been considering the fourth as well as the first paragraph, and the contention there had been made that the Board of Commissioners was not the proper tribunal to try an officer or employee *appointed by them,* there would have been a different application of Justice Garrison's statement in the final sentence of the opinion:

> "The contention * * * must rest upon the notion "that words have no settled meaning, or that language "is powerless to express thought."

Although the foregoing argument, under this Point I was made in the Supreme Court, the opinion of that Court (case, p. 313) does not discuss the meaning or effect of the *fourth* paragraph of section 4 of the statute. All that the opinion says on this point is:

> "The prosecutor recognizes that there has been a "change in the statute since the decision in *Herbert* v. *At-*

> "*lantic City,* 87 N. J. L. Law 98, which has been construed "by the courts in *Brennan* v. *Jersey City,* 104 Atl. 90; "*Crane* v. *Jersey City,* 90 N. J. L. 109; *Apple* v. *Atlantic* "*City,* 104 Atl. 89, affirmed on opinion, 103 Atl. 1051; *Foley* "v. *Orange,* 91 N. J. L. 554. The attempt is to distinguish "the present case upon the ground that Hewson had been "appointed by the Board of Commissioners and could "only be removed by that board which was made by "statute sole judge of the sufficiency of the cause of such "removal. The basis of the argument is that the act of "1915 (P. L. 495) is not applicable to officers appointed "by the whole Board of Commissioners. It is, however, "plain that the legislature meant that the judicial power "of the commissioners should be distributed among the "five departments and we see nothing in the act to indicate "that the legislature meant that the judicial power should "be further subdivided according to the source of the "appointment of the officer to be tried. *The act of 1915* "*was meant to supersede the earlier provisions in this* "*respect.*" (The italics are ours.)

It is respectfully submitted that the Supreme Court erred in saying that "the basis of the argument is that the act of 1915 is not applicable to officers appointed by the whole Board of Commissioners." The act of 1915 not only added the word "judicial" to the list of powers distributed among the several departments in the *first paragraph* of section 4 of the Walsh Act, but *expressly re-enacted* the *fourth paragraph* of that section, providing that any officer appointed by the board of commissioners was removable *by them;* and the basis of our argument was and is that these two paragraphs must be read together and effect given to both, if possible; and that the natural effect as well as the plain intention of the Legislature, is that where the power of appointment lies with the director of a department, there the power of removal lies, but that where the officer is appointed by the board of commissioners the power of removal is exercisable only "*by them.*"

If, as the Supreme Court says, "the act of 1915 was meant to supersede the earlier provisions in this respect" (*i. e.,* so as to give the power of removal in all instances to the director of each department), would not the Legislature naturally have manifested such intent by altering the *fourth paragraph* of section 4, so as to restore this section as it originally existed in the Walsh Act (P. L. 1911, p. 465) by striking out the words "*by them*" after the words "may be removed from office," instead of re-enacting this paragraph *in haec verba* of the 1913 amendment?

And does not the fact, that the Legislature, having before it the original paragraph of the 1911 act providing that any officer appointed by the board might be removed for cause, with no specification as to the tribunal which should have the power to remove, and also having before it the amendment of 1913 of this paragraph (P. L. 1913, p. 836), providing that any officer appointed by the board of commissioners might be removed *by them* for cause, failed, in providing for the distribution of judicial powers among the several departments, to disturb the unquestioned power bestowed by the 1913 act upon the board to remove officers appointed by them, indicate a plain legislate intent not to re-enact the 1911 statute, but to qualify the distribution of the judicial powers exactly as the 1913 act expressly provided?

It is submitted that the legislative intention in enacting the amendment of 1915 is readily ascertainable. On February 18, 1915, the Supreme Court decided in *Herbert* v. *Atlantic City,* 87 N. J. L. 98, that a policeman *appointed by the director* of the department of public safety could not be removed by the director, because of the omission of the word "judicial" in the distribution of powers in the *first* paragraph of section 4 of the Walsh Act. On April 13, 1915, the Governor approved the amendment of section 4 which the Legislature had previously adopted, and which is the amendment hereinbefore referred to (P. L. 1915, p. 494). Clearly the intention of the Legislature was to relieve the board of commissioners in cities governed by the Walsh Act from the necessity of trying charges against policemen and other subordinate officers appointed by the director of a department, and to give the power for that purpose to the director. That was the result plainly aimed at by the Legislature. If the Court is now to hold that, in doing this, the Legislature, although in the same act re-enacting the provision that officers appointed by the board of commissioners should be removable *by them,* intended that every officer appointed by such board should be removable only by the director of the department with which his duties were connected, it would seem that heretofore well-recognized rules for the construction of statutes must be either ignored or overruled.

In *Steel* v. *Board of Chosen Freeholders,* 99 Atl. 318, 89 N. J. L. 69, this Court said:

> "The cardinal principal for the construction of stat-
> "utes is that they are to be so construed that, *if possible,*
> "*full effect shall be given to all parts of the statute. State,*

"*Morris & Essex R. R. Co.* v. *Comrs. of Railroad Taxa-*
"*tion,* 37 N. J. L. 228."

"The statute ought upon the whole to be so construed
"that, if it can be prevented *no clause, sentence or word*
"*shall be superfluous, void or insignificant. James* v. *Du*
"*Bois,* 16 N. J. L. Law 268."

In *West Shore R. Co.* v. *State Board of Taxes, &c.*, 92 N. J. L. 332 (affirmed in this court on opinion below, 92 N. J. L. 648), Justice Minturn recognized and applied these two rules of construction:

1. The Legislature, in passing a law, is presumed to be conscious of the legal effect and operation of existing law.

2. In case of doubt or ambiguity, such a construction should be adopted as *will make all the provisions of the statute consistent with each other* and with the pre-existing body of the law.

And in *Barnaby* v. *Bradley & Currier Co.*, 60 N. J. L. 157, in this court, Justice Depue said:

"A statute which is amended is thereafter, for all acts
"subsequently done, to be construed as the statute stands
"after the amendments are introduced."

These two provisions are in this statute, the one distributing generally the judicial powers of the board of commissioners among the several departments; the other directing that officers appointed by the board of commissioners shall be removable "by them." It is submitted that they are not antagonistic or irreconcilable provisions, but that effect can readily be given to both.

It is perhaps worth considering what effect the principle embodied in the decision of the Supreme Court in this case would have upon other provisions of the Walsh Act. If distributing the judicial powers among the several departments takes away from the board of commissioners all judicial powers including the power, expressly given, to remove officers appointed by them, then it would seem that the distribution in the same sentence of the statute of the executive, administrative and legislative powers among the several departments must of necessity deprive the board of commissioners of all executive, administrative and legislative powers, and the weekly meetings of the board, required by section 5 of the Walsh Act, would become mere social "functions." Among the provisions thus rendered abortive, is that requiring ordinances to be enacted by a vote of one more than a majority of all members of the board (sec. 6).

POINT II.

The findings upon which the Director pretended to remove the prosecutor-appellant do not constitute misconduct in office or other grounds justifying his removal from office.

The attempted removal of the prosecutor-appellant from office is based, according to the determination of the Director, in the conviction filed by him and entitled "findings," upon two grounds:

(1) That he was discourteous and uncivil to and treated in an insulting manner certain named individuals who appeared before the board of which he was a member (case, l. 38, pp. 307-308, l. 38; l. 39, pp. 309-310, l. 18);

(2) That he was guilty of having acted as agent for the sale of certain lands belonging to the city, and of having received a commission from the proceeds of the sale, in violation of the law (case, l. 39, pp. 308-309, l. 38; p. 310, ll. 18-35).

As to the *first ground,* discourteous remarks to individuals, these were covered by paragraph 8 of the original charges (case, pp. 9 and 10), and by the sixth paragraph of the "amendments to the charges" (case, p. 20). Charge 8 of the original charges set forth specific language alleged to have been uttered to one Liveright on or about November 1, 1919. The sixth charge of the amendments alleged discourteous and insulting treatment of certain named persons, but *failed to specify dates, language, or any particulars of the alleged occurrences.* Objection was made before trial by the prosecutor-appellant to this sixth charge upon said grounds (case, p. 26, par. numbered 6).

The Director in his certificate ("findings") expresses himself as satisfied that the prosecutor-appellant did "treat the parties mentioned *in the manner* complained of" and accordingly finds him guilty of the charges "specified in charge 8 of the original charges and charge 6 of the amendments" (case, p. 308, ll. 24-32).

Nowhere in his record of conviction or "findings" does the Director determine *what the discourteous and insulting treatment was.* He merely determines that the prosecutor-appellant "did treat the parties mentioned *in the manner* complained of" (case, p. 308, ll, 24, &c.), that is, in a discourteous and insulting manner.

This is no determination. It may well be that what the Director considered treatment in a manner discourteous and insulting would not so appear to this Court; but unless *the facts found* by the Director as set forth, the Court is not in a position to say

whether they constitute discourteous and insulting treatment, *particularly as the charges did not set forth the facts, but alleged only the conclusion that certain persons had been treated in a manner that was discourteous and insulting.*

An application of the well-established rule, for which authorities are cited under Point III of this brief, that the record of conviction in a summary proceeding must set forth all the facts necessary to show a legal conviction, would render the conviction of the prosecutor-appellant on these charges invalid.

As to the *second ground* of removal, that the prosecutor-appellant acted as agent in the sale of lands belonging to the city, and received a commission therefor, the conviction or "findings" of the Director fails to set out the evidence. It sets out only his conclusions of fact from the evidence (case, l. 40, pp. 308 to 309, l. 35). In this statement of his conclusions of fact he omits all reference to the important testimony of Alfred F. Skinner, which shows that Judge Skinner, as executor and trustee, held legal title to the fee, subject to an estate held by the city for the lives of two individuals (case, p. 78, &c.); that Judge Skinner had a power of sale of the premises under the will of his testator (p. 80); that the prosecutor-appellant, Hewson (who was in the business of real estate broker), had negotiated with him as executor for the sale of these premises (p. 81); that he entered into a contract of sale with Hewson's client (p. 81); and that he then informed the purchaser that the contract would be subject to a public sale by the city, at which the purchaser must bid the contract price, or more if there was any higher bid (p. 85); that he (Judge Skinner) had arranged with the prosecutor-appellant during the negotiations to pay him a commission on the sale (p. 85); that the total purchase price was paid over to him as executor and trustee (p. 81), and that he took back a purchase money mortgage for part of the purchase price (p. 81), and that he paid by his check as executor to the prosecutor's firm, Charles P. Gillen & Co., the commission for such sale (p. 78). It further appeared that, ultimately, when the estate is entirely settled, the remainder of funds in the trustee's hand will go to the City of Newark; and that *the city has been regularly assessing this property for taxes against estate of Mary A. Hayes as owner, and that the executor has regularly paid the taxes to the city on these premises; and that these premises never have been treated by the city as municipal property, exempt from taxation* (pp. 160-162).

It is submitted that the record of conviction ("findings") of the Director does not set forth the offense of which the prosecutor-appellant was found guilty (case, pp. 308-309); and that the Director in attempting to set forth the testimony deliberately omitted the foregoing important testimony. He fails to show that the prosecutor's transaction was entirely with Judge Skinner as trustee, that a deed was (of necessity) given by Judge Skinner and that the latter paid the commission to the prosecutor-appellant. On this last point the Director says only: "After the passing of title a check was given to the firm of which Mr. Hewson was a member" (case, p. 309, ll. 24, &c.).

It appears to be the contention of defendants-appellees (although not so set forth in the record of conviction) that in this transaction the prosecutor-appellant violated section 7 of the Walsh Act (P. L. 1911, p. 469), which provides:

> "No officer or employee, elected or appointed in any city, shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for the city," &c.

We submit that this statute was not intended to apply to the situation here, because the prosecutor's services as a real estate broker were performed for the executor and not for the city. The words "directly or indirectly" qualify the verb "interested" and not the verbs "furnished and performed." He was *directly interested* in the services. The services were *performed directly* for the executor, although it might be argued that they were *indirectly* performed for the city because ultimately the city will receive the benefit of the sale, after debts of the estate are paid. But the statute was plainly designed to reach the *indirect or hidden interest of a public officer in contracts* with the city, and not an open and notorious interest like this in a contract with an executor, in the proceeds of which the city would some day have an interest.

POINT III.

The certificate of findings of the Director, convicting and removing prosecutor-appellant from his office, constitutes a common-law conviction in a summary proceeding, and fails to contain the substance of the evidence upon which his action was based.

The recitals pertaining to the two grounds upon which the Director based his action are found in the state of the case on pages 307 (l. 38) to 309 (l. 38). On the first ground, discourteous treatment, there is no attempt to specify the particulars of the charges, much less to state the substance of the testimony. On the second ground, accepting a commission on the sale of property in which the city had an interest, there is no statement of the substance of the evidence, but only of the Director's conclusions of fact from the evidence. *He refers to the testimony of no witness,* but prefaces his conclusions of fact with the words: "The evidence shows" (case, p. 309, l. 11).

These "findings" of the Director constituted *a conviction by a statutory judicial tribunal proceeding in a summary manner.* Such a *conviction* must contain *a recital of the evidence* upon which it rests; otherwise it will be set aside.

Mullane v. *South Amboy* (E. & Ap.), 86 N. J. L. 173.

In the case cited, the Supreme Court had sustained the conviction of the prosecutor, an overseer of the poor, who had been removed on charges by the City Council. The Court of Errors reversed the Supreme Court and set aside the conviction, upon the ground that the resolution of the City Council convicting and removing the officer failed to contain the substance of the evidence upon which such action was based, in order to enable the reviewing Court to judge of its sufficiency.

The cited case applies directly to this case. The deficiency in the conviction (findings) is not cured by returning all the testimony of all the witnesses, because:

(1) As the Chief Justice pointed out in the last few lines of the opinion in *Mullane* v. *South Amboy, "the proper way* of informing the Supreme Court upon this latter matter" (*i. e.,* whether *inter alia,* "the proofs submitted in support of the charges at all sustain them"), is by *a recital in the conviction,* of *the substance* of the testimony upon which it is based.

(2) The decision in the Mullane case was obviously made in face of the fact *that the testimony was returned to the Supreme Court in that case.* This is apparent from the last paragraph of the opinion in the Supreme Court by Mr. Justice Bergen, in which he says: "Upon the question of *the sufficiency of the evidence,* I am of opinion that the action of the Common Council does not indicate bad faith, nor is there a total absence of testimony supporting the charges; on the contrary, *there is evidence of misconduct and incompetency*" (p. 18, state of case, N. J. Court of Errors and Appeals, *Mullane* v. *Mack, City Clerk, and City of South Amboy,* appeal filed August 8, 1913).

(3) Even with all the evidence returned, the Court has no way of knowing *upon which evidence the conviction is based.* The Court is left to hunt through the printed testimony and exhibits and endeavor to now construct from the evidence a case justifying conviction. If it succeeds in doing that, it has no means of knowing whether the case as determined by the Director was based on the same evidence as that of the Court. The Court would still fail to have in the record of conviction *the substance of the evidence upon which the summary conviction was rested,* which is essential to an affirmance of such conviction, according to Mr. Justice Garrison in *Marter* v. *Repp,* 80 N. J. L. 530; aff'd 82 N. J. L. 531, and according to *Mullane* v. *South Amboy, ante.*

In the instant case the Supreme Court held (case, p. 313) that the act of 1914 (P. L. 1914, p. 419; supp. to C. S. 117, Sec. 4) may have been meant to cure the difficulty that arose in *Mullane* v. *South Amboy, ante,* and, since it affirmed the conviction in this case, that such difficulty was so cured. The act of 1914 referred to is a supplement to the act entitled "An Act relative to the writ of certiorari (Revision of 1903)." It provides that in all cases of writs of certiorari where the evidence given at the trial or proceeding under review shall have been reported stenographically it shall be sent to the reviewing Court as part of the return to the writ, and "said evidence shall constitute a part of the state of the case and be considered by the reviewing Court upon the argument of said writ as the evidence given at said trial or proceeding."

The question to be determined is whether this statute operates to change the common-law rule that the *conviction* in a summary proceeding shall contain the substance of the evidence upon which the conviction is rested, a rule which is recognized and applied in *Mullane* v. *South Amboy, ante; Marter* v. *Repp, ante;*

Pell v. *Newark,* 49 N. J. L. 594 (Magie, *J.*); *Preusser* v. *Cass,* 54 N. J. L. 532 (Magie, *J.*); *Kolb* v. *Boonton,* 64 N. J. L. 163 (Gummere, *J.*); *Esping* v. *Elizabeth Soc. P. C. C.,* 79 N. J. L. 357 (Parker, *J.*). It is submitted that if the legislature had intended to abolish the common-law requirement, it would have done it in the simple and unquestionable manner in which it has previously accomplished such a purpose as to convictions for violation of local health ordinances (2 C. S., p. 2671, Sec. 40), for violations of the fish and game statutes (2 C. S., p. 2560, Sec. 269), and as to convictions by Police Courts in cities of the first class (3 C. S., p. 3993, Sec. 85), by either prescribing the precise form of the conviction, as in the first two instances above cited, or by expressly providing that the conviction need not set forth any part of the testimony, as in the third instance. The act of 1914 does neither of these things. It relates to any proceeding brought up by writ of certiorari, and may have some distinct purpose as to proceedings other than summary convictions; and as to the latter, it may well have been intended to permit the prosecutor to point out, that, notwithstanding the recital in the conviction, there was no evidence whatsoever of any essential fact or facts set out in the conviction as proven.

The common-law rule enforced in *Mullane* v. *South Amboy* has always been recognized by the courts of this State, and the act of 1914 does not directly change it, and, it is submitted, does not permit a change of such rule by indirection, when the Legislature had on previous occasions evinced a clear and proper method of abolishing the rule in given cases, which method was not adopted in this statute.

The Supreme Court seems to have lost sight of the meaning of the word "conviction" with relation to a summary proceeding. The conviction is the final formal record made by the magistrate or other tribunal setting forth *the substance* of the entire proceedings from the complaint to the judgment and including always the substance of the evidence. In *Preusser* v. *Cass,* 54 N. J. L. 532, at 534, Justice Magie described it as follows:

> "In the absence of legislation requiring such magistrate "to keep a record or docket of his proceedings such as is "required in courts for the trial of small causes, no of- "ficial character can be attributed to any record or docu- "ment so kept; for such *summary proceedings have been "long known to the law,* and the adjudications of magis- "trates in such convictions have been required *to be made "up in a record called a conviction."*

"A *conviction* in this sense is the record of the summary "proceedings upon any penal statute before one or more "justices of the peace, or other persons duly authorized, "in a case where the offender has been convicted and sen- "tenced. *Bosc Pen. Stat. 7.*"

"Such a conviction should contain *the substance of* the "complaint or information, so as to show jurisdiction in "the magistrate; the process whereby the alleged offender "is brought before the magistrate; his appearance and "defense or confession; and, if no confession is made, *the "evidence presented,* so that a reviewing court may dis- "cover the grounds *on which the adjudication of the "magistrate was made,* and, lastly, the judgment." (The italics are ours.)

If, as is contended by the other side here, and as the Supreme Court seemed to view it, the substance of the evidence on which the conviction is grounded by the magistrate need not appear in the conviction where the entire evidence taken is returned, why need the substance of the complaint and of the process be set out in the conviction since the full complaint and process can be and usually is returned? Because the recital of such substance is a necessary part of a legal conviction. So is a recital of the substance of the evidence. The conviction itself is *"the record,"* as Justice Magie pointed out, and it must contain in itself *"the substance"* of everything necessary to justify the judgment.

Wherefore, it is respectfully submitted that the judgment of the Supreme Court should be reversed, and the conviction and removal of the prosecutor-appellant from his office aforesaid should be set aside.

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New Jersey Court of Errors and Appeals

GEORGE F. HEWSON, *Prosecutor-Appellant,* *vs.* THE CITY OF NEWARK and WILLIAM J. EGAN, City Clerk of the City of Newark, *Defendants-Appellees.*	*On Appeal.* *On Writ of Certiorari.*

BRIEF OF APPELLEES.

The Case.

The writ of certiorari removed the proceedings which culminated in a finding by the Director of the Department of Revenue and Finance of the City of Newark that the prosecutor, George F. Hewson, a member of the Board of Assessment and Revision of Taxes of Newark, was guilty of certain charges made against him and that he should be removed from his office.

The Supreme Court, in an opinion by Mr. Justice Swayze (p. 313), affirmed the proceedings whereupon this appeal was taken.

The reasons assigned attack the proceedings upon the grounds:

1st: That the Director of the department was without legal authority to try the prosecutor.

2nd: "Because the findings upon which the said Director pretended to remove the prosecutor, do not constitute misconduct in office or other grounds justifying the removal of said prosecutor."

3rd: That the certificate of findings of the said Director of the Department of Revenue and Finance does not contain the substance of the evidence upon which his action in attempting to remove the prosecutor from office was based.

Under Point 2 it was not argued but that, if the prosecutor had been guilty of the discourteous and insulting treatment of taxpayers charged against him and found by the commissioner in his findings, page 308, to have been proven to a point of demonstration by the evidence, such conduct was not sufficient cause to warrant his removal.

The prosecutor in reality relied upon but two points: (1) That the commissioner had no power to try the charges, and (2) that the findings are insufficient because they do not set forth the substance of the evidence, and this latter in face of the fact that the evidence is returned with the writ, and under the provisions of the statute, hereinafter to be noted, is a part of the return. No attempt is made to justify the prosecutor from the evidence.

I.

The Director of the Department of Revenue and Finance had jurisdiction to try the prosecutor on the charges and to remove him from office.

Newark is operating under the Walsh Act, P. L. 1911, Chapter 221, as amended, Compiled Statutes of New Jersey, 1st Supp., title "Municipal Corporations," sec. 262, p. 1087. That act provides, sec. 4: "The executive, administrative, judicial and legislative powers, authority and duties in such city, shall be distributed into and among five departments" * * *. "The board of commissioners shall determine the powers and duties to be performed by each department and assign such powers and duties to the appropriate departments, and they shall prescribe the powers and duties of all officers and employees, and they may assign particular officers and employees to one or more departments * * *."

On November 20th, 1917, the commissioners adopted a resolution substituting the Department of Revenue and Finance for the comptroller, city treasurer, auditor of accounts, receiver of taxes, Board of Assessment and Revision of Taxes, commissioner of assessments for local improvements, sinking fund commission and insurance fund commission (p. 3). On the same day they adopted a resolution reciting the act of 1915, chapter 275, and resolving as follows: "Resolved, that from and after the passage of this resolution the directors of the respective departments shall, whenever charges are preferred against any officer or employee of this city, conduct the trial of said employee and render judgment thereon, which judgment, upon the filing of a memorandum thereon with the City Clerk, shall become the judgment of this board" (p. 4). On December 5th, 1917, the commissioners created a Board of Assessment and Revision of Taxes under the Department of Revenue and Finance, charged with the duty of making assessments of real and personal prop-

erty within the city for the purpose of taxation (p. 4). On December 5th, 1917, the prosecutor, George F. Hewson was appointed a member of the board (p. 5).

By the express provisions of section 4 of the Walsh Act the commissioners were directed to determine the powers and duties to be performed by each department, and to assign particular officers and employees to one or more departments. By the same section they were obliged to distribute into and among the five departments—the executive, administrative, judicial and legislative power. Under a further provision of this section no employee can be removed except for cause after public hearing. The power exercised in adjudicating upon charges filed against an employee is, therefore, judicial in character, and under the express terms of section 4 it was the duty of the commissioners to distribute such judicial power into the five departments. Prior to the appointment of the prosecutor and on the 20th of November, 1917, the commissioners had delegated the judicial power of hearing charges against any employee to the head of the department in which such employee is in service. Subsequent thereto the board of commissioners created a Board of Assessment and Revision of Taxes under the Department of Revenue and Finance and appointed the prosecutor, George F. Hewson, a member of such board. The prosecutor, therefore, became an employee of the city assigned to the Department of Revenue and Finance, and when charges were preferred against him it was the duty of the head of that department under the statute and the resolutions adopted in pursuance thereof to hear and determine the charges.

In *Herbert* v. *Atlantic City,* 87 N. J. L. 98, the Supreme Court held that charges against employees of the city operating under the Walsh Act must be heard before the commissioners in a body. This for the reason that as the statute then stood it provided that only the executive, administrative and legislative authority and duties should be distributed into and among the five departments.

After this decision the statute was amended so as to include among the powers to be distributed into five departments, certain powers, among others, the judicial power, P. L. 1915, p. 494.

Since this amendment there have been several cases decided by the Supreme Court and by this Court which hold that the director of the particular department has power to hear charges against employees assigned to that department, and also that

his power is exclusive, and that the commissioners as a body have no authority to exercise the judicial power. The statute having directed that the whole judicial power *shall be* distributed, and the legislative mandate *ipso facto* distributing it, nothing of the judicial power is left to the commissioners as a board.

In *Foley* v. *Orange,* 91 N. J. L. 554, this Court, Garrison, *J.,* said:

> "The amendment of 1915 supplied this omitted provision by the insertion of the word 'judicial' among the powers that 'shall be distributed' to and among the several departments which placed the judicial power appropriate to any one of such departments upon precisely the same footing as the executive and administrative powers, *i. e.,* to be exercised by the commissioner of such department and not by the board itself as a body." And further: "In the present case the context is the declaration by the supreme legislative authority of a state that the governmental powers granted by it shall be exercised in a particular manner. Such a declaration from such a source upon such a subject, *ipso facto,* distributed the judicial power in accordance with the legislative mandate. The contention that thereafter the judicial power remained where it was before such distribution must rest upon the notion that words have no settled meaning or that language is powerless to express thought."

In *Brennan* v. *Mayor and Aldermen of Jersey City,* 104 Atl. 90, the Supreme Court said:

> "It was held in Herbert *v.* Atlantic City, 87 N. J. L. 98, 93 Atl. 80, that the clause (section 4) of that act, as first enacted, relating to distribution of powers among the individual commissioners, did not include the judicial power, but this was amended in 1915 (P. L., p. 495) so that the appropriate commissioner may act alone, and it appears that a formal resolution delegating to the several commissioners as directors of their respective departments the judicial authority to try their subordinates was duly passed by the board. This resolution provided that the directors of the respective departments should, whenever charges should be preferred against any officer or employee of the city conduct the trial of said employee, and render judgment thereon, which judgment, upon the filing of a memorandum thereon (sic) with the City Clerk should become the judgment of the board * * *. We consider that it endowed the Director of Public Safety, as the head of the Police Department, with the necessary authority in the premises."

We draw attention to the fact that the resolution considered by the Supreme Court in the Brennan case is almost in *hac verba* with the resolution distributing the judicial powers in the case at bar.

The Brennan case was followed by *Crane* v. *Jersey City,* 90 N. J. L. 109, and was therein referred to. The Crane case was affirmed by this Court in 92 N. J. L. 248, upon the opinion below which had cited Brennan *v.* Jersey City, so that this Court has approved what the Supreme Court said in the Brennan case.

In *Apple* v. *Atlantic City,* 104 Atl. 89, the Supreme Court said:

> "Atlantic City has five departments. Each department is under the direction and supervision of a commissioner. By virtue of section 4, as amended, of the act above referred to, the jurisdiction formerly vested in the full board of commissioners to try delinquents in the Police Department become vested in the commissioner of the Department of Public Safety."

In that case there had been a trial before the commissioners. The Supreme Court set aside the judgment of conviction upon the ground that the trial should have been before the commissioner in charge of the particular department.

It is now argued that both the Supreme Court and this Court in the cases above referred to, in using the very sweeping language contained in the opinions, overlooked, either because its provisions were not involved in the case, or because the Court's attention was not directed to it, the fourth paragraph of section 4 of the Walsh Act, which is as follows: "The board of commissioners shall at the first meeting, or as soon as may be after organization, create such subordinate boards and appoint such officers as it may deem necessary for the proper and efficient conduct of the affairs of the city. Any board created may be abated; or any officer or employee appointed by the board of commissioners may be removed from office by them at any time for cause, after public hearing, provided their action shall be taken in accordance with the Civil Service and Tenure of Office Acts in municipalities where such acts have been adopted, and such action shall be subject to review by the courts, as heretofore."

At the time of the decision of the above cases this paragraph was in the statute as it now is, and it is hard to conceive that had the Supreme Court or this Court thought that the provisions of the fourth paragraph prevented the delegation of the power

of removal of an officer appointed by the board to the head of a department the Judges would have used the broad language that they did. The language of the cases is to the effect that the judicial power, which is the power involved in the hearing of charges, must be by the commissioners distributed into the several departments.

The language of the fourth paragraph may be reconciled with the remainder of the section without difficulty. The fourth paragraph gives the board of commissioners power to create such subordinate boards and appoint such officers as they may deem necessary for the proper and efficient conduct of the affairs of the city. Under this provision they have the power to appoint all kinds of officers, including police officers. It is then provided that any officer or employee appointed by the commissioners may be removed from office by them at any time for cause, after public hearing. This clause gives the power of removal, and while standing alone it might seem as though the power of removal was given to the board as such, the provision does not stand alone, but is tied up to the first paragraph of section 4, which provides that the judicial power shall be distributed into and among the departments, and paragraph 2, which provides that the board of commissioners may assign particular officers or employees to one or more departments. Where the term "removed by them" is used in paragraph 4 it does not mean removed by them sitting as a board. It must be construed to mean removed by them in the manner prescribed by law. The manner prescribed by law is after public hearing and for just cause. This requires the exercise of a judicial function, but as this Court has twice said, *all* of the judicial power vested in the commissioners *must* be distributed into the departments. The removal "by them" contemplated, therefore, by paragraph 4, section 4, is a removal by the director under whose jurisdiction the particular officer comes, in this instance, the Director of Revenue and Finance. It is not to be assumed that, if there was the clear distinction contended for by counsel for the prosecutor, the many judges of this Court who have sat in these cases would have overlooked it, or would have refrained from adverting to it, even if the precise question was not involved in the particular case.

II.

While the prosecutor makes two points of the subject matter covered by Points Two and Three, in reality his argument is confined to endeavoring to show that, as a matter of law, the findings are insufficient, because they do not contain the substance of the evidence upon which the action of the commissioner was based.

The answer is two-fold: (1) That the findings need not contain the substance of the evidence, and (2) that they do contain sufficient of the evidence to sustain the conviction.

Although no argument has been made with respect to the merits I shall treat the merits of the conviction under a separate head.

A.

The findings as such need not contain the substance of the evidence.

Reliance is placed by the prosecutor upon the case of *Mullane* v. *South Amboy,* 86 N. J. L. 173. In that case there were proceedings against an Overseer of the Poor upon charges of misconduct or incompetency, which resulted in a resolution of the council convicting him and removing him from office. The Supreme Court had affirmed the resolution, and an appeal had been taken to test the validity of that judgment. This Court said, after stating that it agreed with the Supreme Court in every particular, save one:

> "The exception relates to the contention of the prosecutor that the resolution of conviction is fatally defective, because it does not recite the substance of the testimony against the prosecutor, upon which his conviction and removal was rested, and so enable a Court sitting in review to judge of its sufficiency." The Court then cited *Marter* v. *Repp,* 80 N. J. L. 530, and said: "The resolution now under review, which declares the conviction of the prosecutor of misconduct and incompetency in his office and removes him therefrom, fails to contain any of the evidence upon which that conviction was based, and is, therefore, under the reasoning of the case cited, fatally defective, and should have been set aside by the Supreme Court."

Referring then to the suggestion that the view of the Court of Appeals is in conflict with the holding of the Supreme Court

in *Devault* v. *Camden,* 48 N. J. L. 433, which was to the effect that no formal procedure is necessary to be observed in the hearing of charges brought against municipal officers, this Court said that it considered the dissonance rather apparent than real.

> "That case held that in proceedings for the removal of municipal officers and employees the same formalities are not requisite as have been prescribed for inferior criminal prosecutions. To this we agree. But it was also there declared that, in such proceedings, justice required that the officer against whom charges were made should have a fair and public trial upon such charges, after due notice, and with every reasonable opportunity to make a defense; and further, that the province of the Supreme Court was to see that these rights had been secured to him. But, in order to enable the Supreme Court to see that such rights have been afforded to the officer charged with dereliction of duty, it is necessary that, *in some way* (italics mine), that tribunal shall have before it so much of the fundamentals of the proceeding below as will enable it to determine whether or not these rights have been afforded to him, and especially whether the proofs submitted in support of the charges at all sustain them. What the case of Marter *v.* Repp holds is that the proper way of informing the Supreme Court, upon this latter matter, is by a recital, in the conviction, of the substance of the testimony upon which it is based."

Marter v. *Repp,* 80 N. J. L. 530, affirmed 82 N. J. L. 531, was a case where a license had been forfeited under section 10 of the Bishops' Act, and the judgment of forfeiture contained nothing which indicated upon what testimony the forfeiture had been made.

And so with respect to the other cases cited and decided in this State.

Esping v. *Elizabeth Society P. C. C.,* 79 N. J. L. 357, was a conviction under the act for the prevention of cruelty to children.

Lyons v. *Spratford,* 14 Vr. 377, was a conviction under the Disorderly House Act.

Keeler v. *Milledge,* 24 N. J. L. 142, was a complaint for a violation of a city ordinance.

Pell v. *Newark,* 49 N. J. L. 594, was a complaint for violation of a city ordinance.

Buck v. *Danzenbacker,* 37 N. J. L. 359, was a conviction under the act for the preservation of deer and other game.

Orange v. *McGonnell,* 71 N. J. L. 418, was a proceeding to recover a penalty for violation of a city ordinance.

Kolb v. *Boonton,* 64 N. J. L. 163, was a conviction under a city ordinance.

Salter v. *Bayonne,* 59 N. J. L. 128, was a conviction for the violation of an ordinance.

For the first time this Court in *Mullane* v. *South Amboy,* indicated that a resolution or finding which had the effect of removing a municipal employee must comply with a rule governing summary convictions.

As the Supreme Court had said in *Devault* v. *Mayor of Camden,* 48 N. J. L. 433, approved by this Court in *Mullane* v. *South Amboy:*

> "In proceedings for the removal of officers and employees in police departments of cities, under the act of March 25th, 1885, the same formalities are not requisite as have been prescribed for inferior criminal prosecutions. It is sufficient if the directions of the statute are substantially observed."

It is necessary that the Supreme Court should have before it so much of the fundamentals of the proceedings below as will enable it to determine whether there has been a fair and public trial upon the charges, after due notice, with every reasonable opportunity to make a defense, and whether the proofs submitted at all sustain them. The object of the rule is to place before the Supreme Court the evidence upon which the conviction is founded.

As was said in *Kolb* v. *Boonton,* 64 N. J. L. 163:

> "The common law rule is that in such proceedings the conviction must contain, among other things, *the evidence presented, so that the reviewing Court may discover the grounds on which the adjudication of the Magistrate was made.*"

In *Keeler* v. *Milledge,* 24 N. J. L. 142, the Supreme Court said:

> "It should set out the offense charged, and show what ordinance, or section of an ordinance, was alleged to have been violated. It should show not only legal notice given, but also whether the defendant was present or absent; and if present, that the complaint was read to him, and his answer to it. It should set out not only the names of the witnesses examined, but *at least* the substance of the testimony, that the Court above may judge of its sufficiency to convict."

And see 24 American & English Encyc. of Law, 1st Ed. title, "Summary Proceedings," p. 508.

It has never been questioned but that if *all* of the evidence was returned there would be a full compliance with the rule. The courts hold that *at least* the substance must be returned in case of summary convictions. It has never been held that if the inferior tribunal makes part of its record *all* of the evidence that the rule is not fully satisfied.

When the rule was first promulgated there were no typewritten transcripts so that there was no way by which the reviewing Court could be informed of the testimony taken below save by its inclusion in the judgment of conviction.

By statute of this State it is provided (title Certiorari, 1st Supp. Compiled Statutes, 117, sec. 4) that in all cases of writs of certiorari where the evidence given at the trial or proceeding under review shall have been reported stenographically the official or Court making return to said writ shall send the transcript to the reviewing Court as the evidence given at said trial or proceeding and as a part of the return to said writ, and the evidence shall constitute a part of the state of the case and be considered by the reviewing Court upon the argument of the writ as the evidence given at said trial or proceeding.

In the case at bar the testimony was taken stenographically, and is returned as a part of the record, and under the express provisions of the statute becomes a part of the state of the case. The statute provides that the evidence shall constitute a part of the state of the case and be considered by the reviewing Court upon the argument of the writ as the evidence given at said trial or proceeding.

It is stated in the brief of counsel for the prosecutor that the return of *all* of the evidence does not satisfy the rule because the Court is left to hunt through the printed testimony and exhibits and endeavor to now construct from the evidence a case justifying conviction, and that if it succeeds in doing that it has no means of knowing whether the case as determined by the Director was based on the same evidence as that of the Court. And then counsel says: "The Court would still fail to have in the record of conviction the substance of the evidence upon which the summary conviction was rested, which is essential to an affirmance of such conviction, according to Mr. Justice Garrison in *Marter* v. *Repp,* 90 N. J. L. 530, affirmed 82 N. J. L. 531, and according to *Mullane* v. *South Amboy, ante.*"

This argument is disingenuous. The rule is *not* that the substance of the evidence *must* be returned, but that *at least* the substance of the evidence must be returned. In the early cases it is stated by the Supreme Court that *the evidence* must be returned. Thereafter the rule was replaced so as to permit a return of the substance.

The argument is further disingenuous because a reference to the findings will show that the Director of Revenue and Finance has specifically referred to the particular testimony upon which he based his judgment of conviction, to wit, to the testimony of Mr. Liveright, Mr. Kraushaar, Mr. Anderson, Mr. Metzler and Mr. Fettinger, upon one branch of the charges (see p. 308) and with respect to the other branch of the charges there is the testimony of Mr. Skinner and the official records referred to in the findings (page 309).

In many cases involving removal from office it has been held, where the testimony is taken stenographically and returned with the writ, that there is no necessity for anything more than a formal finding of guilty.

In *Brennan* v. *Mayor and Aldermen of Jersey City,* 104 Atl. 90, the record was as follows: "Patrolman John Brennan. Charge, not properly patrolling. Plea N. G. Finding G. Sentence 60 days' pay."

In *Crane* v. *Jersey City,* 90 N. J. L. 109, the Court considered the evidence sent up with the writ as will appear from an inspection of the record. If the Court does not consider the actual testimony taken at the hearing and returned with the writ in accordance with the provisions of the statute, then this will be, it is urged, in direct conflict with the holding of the Supreme Court in *Devault* v. *Mayor of Camden,* 48 N. J. L. 433, that formality is not required in these proceedings, and, provided simple justice is done, provided that a public hearing be had and the respondent accorded an opportunity to defend himself and there be some evidence justifying the conviction, the Court will not interfere.

In his argument in this Court attacking the reasoning of the Supreme Court, counsel overlooks the purpose of the rule requiring that the substance of the evidence should be contained in the record of conviction. It is that the Court may have before it the facts upon which the inferior tribunal acted. If the Court has before it all the evidence, that purpose is certainly achieved.

B.

The findings contain sufficient of the evidence to justify the conviction.

The charges against the prosecutor upon which he was found guilty are in reality two in number (1) that he was discourteous, uncivil and treated in an insulting manner persons appearing before the board to such an extent as to demonstrate that he was an unfit person to occupy such a position, and (2) that during the period he was a member of the board he acted as agent for the sale of lands belonging to the City of Newark and as such agent received commissions from the proceeds of such sale, thereby depleting the amount received by the city therefrom.

The commissioner says in his findings (p. 307): "The evidence, to my mind, clearly demonstrates that Mr. Hewson was both discouteous and insulting to Mr. Frank Liveright, of L. Bamberger & Co.; Mr. Isadore Kraushaar, Mr. H. M. Anderson, representing the Great Atlantic & Pacific Tea Co. and Mr. Robert Metzler, representing New Jersey Machinery Exchange. This is testified to by each of these parties with positiveness, and their testimony is corroborated by other evidence offered on the part of the prosecutor of these charges. It is true that Mr. Hewson denies having treated the parties mentioned in the manner testified to by them, but he admits in practically each one of the cases that some part of the remarks testified to by the witnesses on the part of prosecutor were made by him, and he attempted to explain them away. The witnesses on the part of the prosecutor are further corroborated by the testimony of Mr. Fettinger, a member of the Board of Assessment and Revision of Taxes, who was called as a witness by Mr. Hewson. While it is true that Mr. Fettinger does not testify to all of the details that the witnesses on the part of the prosecutor testified to, he does in almost each case corroborate the essential parts of their testimony. From all of the evidence I am satisfied that Mr. Hewson did treat the parties mentioned in the manner complained of, and I therefore accordingly find him guilty of the charges covered by subhead 3 of these findings and specified in charge 8 of the original charges and charge 6 of the amendments to the original charges."

The commissioner in his findings states the substance of the testimony of Liveright, Kraushaar, Anderson and Metzler, to wit, that Mr. Hewson was discouteous and insulting to them. He

also says that the witnesses are corroborated by the testimony of Fettinger, a member of the Board of Assessment and Revision of Taxes, and that Mr. Hewson while denying having treated the parties in the manner testified to by them, admits in part the making of the remarks testified to by the witnesses. The commissioner says that these persons having business with the tax office testified that they were treated both discourteously and insultingly by the tax commissioner, a public servant.

To go further than this would necessitate a recitation of the evidence itself. The commissioner refers to the fact in his finding that he had read over the testimony and he refers to the particular testimony which becomes a part of his findings.

Liveright's testimony is found on page 64 of the record. It is to the effect that in the fall of 1919 he went to the office of the board to see about a tax assessment and then "The moment I came into the room Mr. Hewson turned around and said, 'Are you here again?' He said, 'Department stores are all profiteers and Bamberger's is the worst one.' * * *" The witness recites a statement made by Hewson to the effect that "as a merchandise man you are a joke; nobody believes anything you say."

This man represented Bamberger & Company, which had been assessed for the year preceding for $750,000.

Kraushaar's testimony is found on page 41 and it was to the effect that he went to the board in the fall of 1918 to see about his assessment and he was asked by Hewson what kind of goods he kept and he stated that he kept a dry goods shop and Hewson asked him where he bought his goods, and he told Hewson that he bought from auctioneers and manufacturers, and Hewson then said, "What kind of a fence do you keep?"

Anderson's testimony is found on page 58 and is to the effect that in the fall of 1919 he went to the board and saw Hewson, when other members of the board were present, and Hewson then started in to abuse the Atlantic & Pacific Tea Company to him, Anderson, and said, "You are a damned lot of profiteers." Hewson referred to purchasing peas at a ridiculously small amount and selling them at the price the Atlantic & Pacific Tea Company did, "and it was all done in such a loud voice that the entire people on the outside that were waiting to get inside of that tax office heard us, of course, and walked out of there like two thieves caught in the act."

Robert M. Metzler's testimony is found on page 46. It is to the effect that when he went to the tax board in the fall of 1919

to see about an assessment, Hewson says, "Why, you don't think you can put anything over on this board?" And he further says: "We are not looking for your kind in Newark," and language to the same effect.

The testimony of Fettinger, another member of the board, page 183, was as favorable to Hewson as Fettinger could make it. His testimony is to the effect that he does not recall certain of the language stated to have been used. He does recall, however, the charge against Bamberger's as a profiteer (p. 191); a reading of his testimony indicates that he is endeavoring to shield Hewson. It is corroborative, however, of the testimony of the other witnesses.

As stated by the commissioner, the testimony of Hewson is unsatisfactory from the standpoint of innocence. He does not recall certain things. He remembers certain things, but does not remember the incriminatory part.

The testimony of Howe, another commissioner, pages 104, 137, is important. He corroborates all of the other witnesses. And see the testimony of James E. Mullaney, page 39, to the effect that when he went to the tax office to complain about some taxes Hewson upbraided Moses Plaut in violent language.

A consideration of this testimony will indicate that the commissioner acted properly in finding that Hewson was discourteous and insulting to persons who appeared before the board, having business at the office, to such an extent as to demonstrate that he was an unfit person to occupy such a position. Indeed, it is not argued but that the evidence justifies the finding. Neither under Point 2 nor Point 3 is it argued but that sufficient evidence existed to convict Hewson of the charges, nor is it argued but that the conduct of which he was found guilty was sufficient to warrant his dismissal.

While the Director of Revenue and Finance dismissed the charges bearing upon the use of his official position for soliciting business for his private business, nevertheless the Court's attention is invited to the testimony of Charles H. Burgesser, page 69 and page 70, in which Commissioner Hewson is reported as saying to a person who appeared before the tax board: "Oh, yes, I know you; you were here last year and made a complaint. When you have something to complain about you know where to come, but when you want to buy any real estate you don't come around to see me."

To the testimony of Hardt, page 76, who says that when he complained with respect to an assessment the following took place: "And Mr. Hewson, said, 'By the way, Arthur, you haven't rented your first floor yet?' I said, 'No, we have not yet.' He said, 'Why don't you give me a chance to rent it for you?' And I said, 'I will be in to see you in a day or two.' Commissioner Hewson said, 'I recommend $10,000 for the Joseph M. Byrne Company,' and I thanked him and walked out." And to his testimony, page 77. "Do you mean to say that Mr. Hewson asked you to give him an opportunity to rent this first floor, and you said all right you would be in and see him, and he immediately moved that the assessment on your building be reduced? A Yes, sir."

To the testimony of Stockton, pages 121, 134, to the testimony of Howe, page 137, to the effect that Hewson said with respect to Stockton: "To hell with him; he did me out of a commission; I will make it cost him more than he saved."

To the testimony of Walker, page 152.

While as we have above stated, the Director declined to find the defendant guilty of the charges to which this testimony was specifically directed, it may be considered as indicating the general attitude of the prosecutor and as bearing upon the truth or falseness of the charges upon which he was found guilty.

From the evidence referred to by the Director in his findings he was perfectly justified in finding that the prosecutor when taxpayers came to complain about assessments treated them with discourtesy, cursed and swore at them, referred to them as damned profiteers, insinuated with respect to one at least, that he was conducting a fence and otherwise humiliated them and that this conduct was to such an extent as to demonstrate the fact that he was an unfit person to occupy such a position.

With respect to the second charge upon which prosecutor was found guilty the evidence is conclusive and it is set forth in the commissioner's findings.

Under the will of Alice W. Hayes and a decree made in the Court of Chancery in the suit of Frederick F. Guild, *et als.*, agaist the Mayor and Common Council of the City of Newark, *et al.* (p. 290), Newark was entitled to moneys arising from the sale of certain properties, after payment of certain specific sums provided to be paid by the court. The decree was made November 2nd, 1917. In pursuance of the decree certain of those who might be residuary legatees transferred their interest in the

property to the Mayor and Common Council of the City of Newark (p. 79). It was necessary under the law that when the property was sold by the trustee there should be a sale of the rights of the city at public auction (pp. 84-85). Newark was interested in the property as above indicated and Mr. Skinner consulted with Mr. Howe, one of the members of the tax board, with respect to what price should be obtained at sales. The members of the tax board were the logical persons to go to. Skinner says (p. 83): "In the early stages of my attempt to sell the property, the real estate that was in this trust I had, I think, asked the city to designate someone that should be a guide to me in the determination of what price I ought to get for those properties, and think it was Mr. Congleton told me that Mr. Howe was the one that was to be consulted, and I think I got from Mr. Howe and another real estate expert appraisals on the property, all of them, and then afterwards as a sale came along, or an opportunity for sale, I would consult Mr. Howe to see whether he thought that since the time of his appraisal there had been any change in value."

On October 9th, 1919, the city commissioners adopted a resolution directing the Director of Parks and Public Property to make sale of the city's interest of the land at public sale to the highest bidder. The sale took place on October 30th, 1919. The prosecutor of this writ, Hewson, was the agent for Judge Skinner in the sale of the property and had arranged to obtain a commission from him (p. 82). Hewson attended the sale. Thereafter the sale was reported to the commissioners for the price of $32,600, and the commissioners by resolution adopted October 30th, 1919, confirmed it, and directed the execution of a deed in the name of the city to the successful bidder. The deed was executed and thereafter a check was given to the real estate firm, of which Hewson was a member, for $1,012.50 commission. This money, if it had not been paid for commissions, would have gone to Newark (p. 82, l. 35). The prosecutor, Hewson, was a member of the firm, and actively participated in the transaction. Hewson attended the sale; talked to Judge Skinner with respect to the necessity for the sale (p. 85), and the Director was perfectly justified in holding that it was inconceivable that he did not know that the city had a substantial interest in the property. The explanation of Hewson (pp. 242, 261) is disingenuous. He admits that he knew that it was necessary that the city give a deed, and that there should be a public sale; he admits that he

was present at the sale at the City Hall, and that he heard the bid upon the property at that sale, nevertheless, he would have one believe from the testimony on page 243 that he did not know that the city had a substantial interest in the property. The Director was fully justified upon the evidence in finding that the prosecutor disregarded his official position and accepted a commission in a transaction which, under the law, he was forbidden to participate in.

Section 7 of the Walsh Act, 1st Supp. of New Jersey, Comp. Statutes, 1094, provides: "No officer or employee, elected or appointed, in any such city, shall be interested, directly or indirectly, in any contract or job for work or materials, or the profits thereof, or services to be furnished, directly or indirectly." The City of Newark had a substantial interest in the property. The amount that the City of Newark would receive was diminished by the amount paid to the prosecutor. The prosecutor was a member of the very board whose duty it was to look out for the interests of the city. That the prosecutor was interested at least indirectly cannot admit of question. The evidence with respect to this charge is set forth in the findings, and the conviction upon this charge alone warrants the action taken by the Director in discharging the prosecutor.

It will be observed that the Director made two separate and distinct findings of guilty, and that he acted under the conviction on each one of the charges separately, so that if his findings on one of the charges be sustained his act in discharging the prosecutor from the service of the city must be sustained.

III.

There was sufficient cause shown for removal.

The statute provides that there should be no removal except "for cause." Dillon on Municipal Corporations, 5th Ed., Volume 2, page 798, sec. 477, says:

> "The cause must be personal to the office, and implying an unfitness for the place. It means some substantial shortcoming which renders continuance in office or employment in some way detrimental to the discipline and efficiency of the service, and something which the law and a sound public opinion will recognize as a good cause for his no longer occupying the place."

In 19 Ruling Case, title "Municipal Corporations," sec. 234, the author says:

> "The case must be one touching the qualifications of the officer or his performance of his duties, showing that he is not a fit or proper person to hold the office."

What is cause for removal and whether the cause exists is generally for the determination of the body having the power to remove. 19 Ruling Case Law, secs. 233 and 234; 28 Cyc., p. 437. In 28 Cyc., p. 437, the author says:

> "In the absence of statutory specification the sufficiency of the cause for removal is to be determined with reference to the character of the office and the qualifications necessary to fill it."

The prosecutor was a member of the tax board. That board and the members thereof come in close contact with the taxpayers. The members are charged with the duty of levying assessments. Taxpayers are entitled to a respectful hearing before the board and the respectful attention of its members. The members of the board come in daily contact with the taxpayers. There is probably no position in the city's employ where more courtesy, tact and sound judgment is required. One of the charges against the prosecutor upon which he was convicted was that he was insulting and discourteous to taxpayers to such an extent as to demonstrate that he was unfit to hold the office. The testimony is abundant to the effect that he was insulting and discourteous, not only to one, but to many taxpayers; that he did not content himself with ignoring them or their requests, but actively and viciously assaulted them with words. He seemed not only to look upon any person who appeared before the tax board as a thief, but he did not hesitate to indicate to the persons appearing his feelings. Nor must there be overlooked the evidence that he very often handed out his business cards to those who had business before the tax board, nor must the Stockton incident be overlooked. Conduct such as the prosecutor was guilty of indicated that he was unfit to hold this particular office, whatever his qualifications might be for holding another office which did not bring him in daily contact with the taxpayers. He was not only useless in the office that he held, he was postively detrimental to the interests of the city.

The Director was not only justified in removing him, as he did, upon this charge, but was required to, having due regard to the interests of the city.

With respect to the second charge it is a conceded fact that the prosecutor received moneys as commissions upon a real estate deal which moneys would have gone for the benefit of the city had he not acted in the transaction. Whether his conduct in this particular came within the prohibition of section 7 of the Walsh Act is not decisive. There is no doubt but that it did to our mind. But even if it did not it indicated such a careless, to say the least, disregard of the proprieties and of his duties as a member of the Board of Taxation as to warrant the Director in finding that he was unfit to occupy the office.

As stated in Cyc. (28 Cyc., p. 437):

> "In the absence of statutory specifications the sufficiency of the cause for removal is to be determined with reference to the character of the office and the qualifications necessary to fill it."

With respect to the tax board, it is not only necessary that a person be honest, but that he have a reputation for absolute fair dealing. When the prosecutor accepted this commission, the amount of which reduced the amount ultimately coming to the city, he performed an act which, irrespective of the statute, detrimentally affected his power for usefulness in the particular board of which he was a member.

His good faith is no defense.

People against *New York,* 5 N. Y. Supp. 538, affirmed 126 N. Y. 621.

Barrett v. *Atlantic City,* 85 N. J. L. 134.

The rule is fundamental, of course, that the Supreme Court will not weigh the testimony:

Ayres v. *Newark,* 49 N. J. L. 170;
Cavanaugh v. *Hoboken,* 59 N. J. L. 412;
Reilly v. *Jersey City,* 64 N. J. L. 508;
Alcutt v. *Trenton,* 66 N. J. L. 173;
Dodd v. *Camden,* 56 N. J. L. 258;
Marian v. *Common Council,* 61 Atl. 13.

The conclusion of the Supreme Court on the facts is a finality:

Moran v. *Jersey City,* 58 N. J. L. 653;
Vreeland v. *Bayonne,* 60 N. J. L. 168;
Suburban Land Co. v. *Vailsburg,* 68 N. J. L. 311.

Conclusion.

The only point argued below which may be said to be meritorious is that the Director of Revenue and Finance had no power to try the case.

In view of the fact that the testimony was taken stenographically and is returned as a part of the record, the contention that the findings should set forth the evidence of the substance thereof is not meritorious. We have before indicated that the prosecutor does not argue but that the evidence, if considered, warranted the Director of Revenue and Finance in dismissing the prosecutor from the service.

The judgment should be affirmed.

Respectfully submitted,

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Rouen