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New Jersey Court of Errors and Appeals

NEW YORK TELEPHONE COMPANY,
Prosecutor-Appellant,
vs.
THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, *et al.*,
Respondents.

On Appeal from Supreme Court.

Brief of Harry Kalisch, Attorney of Respondent.

The present appeal brings up for review an assessment of $22,500. against the property of the appellant, New York Telephone Company, for the opening and widening of Branford place, in the City of Newark, County of Essex.

This case involves some of the same questions which were raised in the case of *Richard C. Jenkinson, et al., prosecutor,* vs. *Tyler Parmly, Comptroller of the City of Newark, et al.,* respondents, which was in the Supreme Court, and was decided at the November term of that court in 1916, a copy of the opinion being attached to this brief.

The questions which were argued in the Jenkinson case will not be reargued in this case,—only those which are peculiarly applicable to the case at bar will be discussed.

There are twenty (20) reasons assigned in the present case. For the purpose of convenience, they may be grouped.

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Reasons 1, 2, 3 and 7, pp. 10-11, State of Case, Vol. I.

These reasons may be argued together, as they involve the same question. They are as follows:

(1) Because the real estate of the prosecutor is not benefited to any extent whatsoever by the opening and widening of Branford place.

(2) Because, at all events, the property of the prosecutor is not peculiarly benefited by the said improvement to the extent of the assessment imposed.

(3) Because the improvement was made for the purpose of providing a new street hor heavy traffic east and west and for the relief of traffic of Market street, and was a general improvement for the public at large, the cost of which should be paid by the city at large.

(7) Because the said assessment is inequitable and the benefits from such improvements, if any, are prospective at the present time and the assessment made is speculative.

In these reasons, the appellant contends that its property is not peculiarly benefited by the opening and widening of Branford place. This, of course, is a fact question, and if the Commissioners were guided by proper legal principles in making the assessment, the mere fact that the Court's opinion as to the amount of benefit which the prosecutor received differs from the opinion of the Commissioners, is not a sufficient ground for setting aside the assessment.

This principle is recognized by the courts of this State, and is declared, in the case of

Heggeman vs. *Passaic,* 22 Vroom, page 109, and *Humphreys* vs. *Bayonne,* 31 Vroom, page 408. In the latter case, the Court says:

> "An assessment will not be set aside because the commissioners might have reasonably reached a conclusion different from that at which they arrived. It must appear affirmatively that their conclusion is erroneous. It is their judgment of the amount to which the property has been benefited, and not that of third persons who are called as witnesses, which is controlling."

In *Van Riper* vs. *North Plainfield,* 14 Vroom, pages 352 and 353, it is said that a report of Commissioners is not conclusive before confirmation. It is not denied that there is an evidential presumption in their favor, so that it stands as an official act until overthrown. This rule is well settled.

I might quote, with benefit, from the opinion of Judge Adams, in confirming the report. He says:

> "The remark is again pertinent that a judge in a case like this does not sit as a commissioner, any more than he sits as a juror when he reviews a verdict. In the one case there is a presumption in favor of the verdict; in the other case there is a presumption in favor of the report. The inquiry in each instance is whether the presumption has been overcome, not whether the verdict is the best possible verdict, or whether the report is the best imaginable report; not whether the judge, if he had been a commissioner, would have signed that precise report, or whether the judge, if he had been juror, would have approved that particular verdict. More specifically

> the question now is whether it has been satisfactorily shown that the commissioners employed an incorrect method or in particular instances reached results inherently unfair or irrational."

In the present case, we have a conflict of opinion between witnesses. First of all, we have the testimony of Mr. Harrison R. Van Duyne, one of the Commissioners, who signed the report, and who was called as a witness in behalf of the New York Telephone Company, and who testified as follows, on page 19 of the State of Case:

> Q Mr. Van Duyne, I am examining you in behalf of the telephone company, and as the representative of the assessment commissioners. What was the amount of peculiar benefit placed by your commission upon the telephone company property?
>
> A In the judgment of the commission the enhancement of market value of the telephone company property due to the opening and widening of Branford place was $22,500.

Frank J. Bock, a witness called by the respondents, testified as follows, on page 189, State of Case, Vol. I.

> Q No, Mr. Bock, have you considered what the value of that land is since and as a result of the opening and widening of Branford place?
>
> A Yes.
>
> A What is it?
>
> A Oh, I think it is worth $25,000. more.
>
> Q Making about $146,000.?
>
> A Yes, approximately.
>
> Q Then do you think that an assessment of $22,500. as peculiar benefits resulting

from the opening and widening of Branford Place is an unreasonable or a reasonable and fair assessment?

A Fair.

His qualification as an expert on real estate values was admitted by counsel for the prosecutor. See p. 187, Vol. I, State of Case.

Opposed to the foregoing testimony is that of the witness produced in behalf of the prosecutor, who testify to various figures, as representing the value of the benefit received by the prosecutor. Mr. Berry, on page 69, line 24, of State of Case, placed it at $8,500; and then, line 27, by reference to Mr. Paul's computation, places it at $10,066.58. Of course, Mr. Paul's evidence, by stipulation, was made a part of the evidence in this case. (See page 78, State of Case, Vol. I.)

Another witness, William C. Fiedler, produced in behalf of the prosecutor, on page 138, line 24, testifies as follows:

Q I ask you first, did you come to any amount?

A $12,039.58.

From these witnesses, it is apparent that there is a difference of opinion as to the value of the benefits, between the Commissioners and the witnesses, amounting in figures to about $10,000.

It is not remarkable, in considering the market value of such a valuable piece of real estate, to have a difference of opinion represented by $10,000., and we insist that the foregoing objections are without substance, and cannot afford a basis for setting aside the assessment.

Reason 4, p. 11, State of Case.

It is next objected that the assessment was not made upon all the land and real estate in the City of Newark peculiarly benefited, in proportion as nearly as may be to the advantages which the property is deemed to have acquired. This reason has no merit, for if the first four reasons are determined in favor of the respondents, namely the New York Telephone Company, prosecutor, was not assessed beyond its peculiar benefits, then the mere fact that others were not so assessed cannot be a basis for the setting aside of the assessment.

In the case of *Righter* v. *Newark,* 16 Vroom, at page 109:

> "I think it results that there was inequality in the assessment. But is the prosecutor in a position to complain? Had the whole amount of the expense been placed upon property, this unequal assessment would place the prosecutor in a position to attack it successfully, because a proper re-adjustment would result in relieving him from a portion of his burden. Where, however, a surplus representing the amount of the assessment above the benefit is placed upon the city, another question arises, and that is whether the inequality results from the insufficient assessment of the other property or the excessive assessment of the property of the prosecutor.
>
> "He cannot complain of the inadequate assessment of his neighbor unless it peculiarly affects him. It could affect him only if by placing a proper assessment upon all the property that should be assessed, it would operate to place upon this property all the assessment made against the city,

> and also place upon this property a part of the amount assessed against the prosecutor in order to make the assessment an equable one. Now, while I think inequality appears, and I may say here that I also think that it appears, that some unassessed properties which were clearly unassessed properties which were clearly benefited should have been included, yet I do not see how an increase and extension of the assessment could wipe out the $22,635.18 assessment against the city. I do not think that this result from a proper assessment is contended for or could be reasonably apprehended. The prosecutor's right to complain must rest upon his contention that his property was assessed more than it was benefited."

So, in *Raymond* v. *Rutherford*, 26 Vroom, page 446, (Affirmed, 27 Vroom, page 340) it is said:

> "Assuming that these parcels should have been assessed, $75 would have been the utmost assessment for the whole four of them, and the assessment against the borough at large was greater than this, and therefore no injury has arisen to the prosecutors by this omission."

In the present case there is nothing to show that it has suffered as a result of the failure on the part of the Commissioners to assess other properties for benefits.

Reason 5, p. 11, State of Case.

The prosecutor here contends that the assessment for the improvement against the real estate of the prosecutor was not made fairly, legally and equitably, but in an arbitrary, unscientific and illegal manner, and not according to the best of their skill and ability, and was not made in accordance with the peculiar benefits to said property, and was based on a fictitious value of said lands.

These points were discussed in the Jenkinson case and in the discussion of Reasons 1, 2, 3 and 7.

Reason 6, p. 11, State of Case.

It is here contended that discrimination was exercised in the making of said assessment as between the properties of prosecutor and of other owners similarly situated, and that the assessment against the property of the prosecutor is relatively larger than that made against said other properties upon and near said Branford place.

This point is disposed of in the discussion of Reason No. 4.

Reasons 8, 9, 10 and 11, pp. 11-12-13, State of Case.

These reasons raise the question as to whether it was necessary for the Commissioners to consider the telephone company property in a class by itself, and assess it, not upon the basis of the increased market value, but upon the basis of the increase in value of the use of said land for public telephone purposes.

In disposing of these contentions, I cannot do better than refer to the opinion of Judge

Adams in confirming the report in which he says as follows:

> "The brief is largely devoted to the first ground of objection; namely, that the property should have been assessed solely on the enhanced value of its use, and not on the increase of market value due to the opening and widening of Branford place.
>
> It is established law in New Jersey that railroad property used solely for railroad purposes is assessable, not on the increase of market value due to a local improvement, but on the extent of actual benefits thereby conferred on such land for railroad purposes; in other words, on the enhanced value of the use. *New York Bay R. R. C.* v. *Newark,* 53 Vroom, 82 L., 591.
>
> A remark by Mr. Justice Swayze, in *Simmons* v. *Millville,* 46 Vroom, 75 Law, 177, at page 178 (affirmed on opinion in 47 Vroom, 76 Law, 821), suggests that this rule may in some instances be extended to cover property other than railroad property. In that case an assessment had been laid according to benefits from sewers. Churches, factories and railroad property were altogether omitted. The opinion says:
>
> > 'We cannot doubt that both churches and factories and perhaps the railroad, are benefited in their use, if not in the market value of the properties, by the construction of the sewers.'
>
> The question now is whether the rule which applies to railroad property should in this case be extended to a piece of factory property, for that is the class to which the property of the New York Telephone Company belongs. The general rule, to which there are some exceptions, was laid

down in the *Foster Home case,* 6 Vroom, 35 Law, 157, 166, 167, a case subsequently reversed on another point. In this case it was held that, in making municipal assessments,

> 'the present use of the property and the purpose of the owner, in relation to its future enjoyment, must, as a general rule, be laid out of view, the only safe and practical course being to consider what will be the influence of the proposed improvement in the market value of the property.'

In this case two assessments had been imposed on the land of a charitable institution, one for opening Summer avenue and the other for grading, curbing and flagging Second avenue, in the City of Newark, and the objection was distinctly made that this land should not have been assessed for benefits on the same principle as that on which lands of other owners were assessed. The Court, in dealing with this question, said this:

> 'But it is further objected on the part of the prosecutors, that even if their charter does not contain the exemption which they claim, these assessments are wrong, and ought to be set aside on another ground, namely, that the property of the society was not benefited as much, relatively, as the property of other land-owners on the line of said streets, and should not have been assessed for benefits upon the same principle.
>
> 'The cases relied on to support this objection were, *Matter of the Mayor &c.,* 11 Johns. R. 77, and *Matter of Albany St.,* 11 Wend. 150. These cases are referred to by Mr. Justice Bronson,

In the Matter of William and Anthony Sts., 19 Wend. 678, who, in delivering the opinion of the court in that case, says with reference to a similar objection: "As a general rule, in making these estimates and assessments, the present use of the property and the purpose of the owner in relation to its future enjoyment, must be laid out of view. The only safe and practical course, the one which will do equal justice to all parties, is to consider what will be the influence of the proposed improvement on the market value of the property. What is it now fairly worth in the market, and what will be its value after the improvement is made? *Furman St.*, 17 Wend. 668.

"In the case of churches and lands which can only be used for a cemetery, a different rule has been laid down. *Matter of Mayor*, 11 Johns. R. 77; *Albany St.*, 11 Wend. 150. But it should be remarked in relation to these cases, that they proceed on the ground that the owner cannot apply the property to any new or different use. Where the owner has the unrestrained power of alienation, and the property may be converted to any new use at his pleasure, it is difficult to see upon what principle an exception can be made to the rule regarding only the market value. After the owner has escaped what would otherwise be a just burden, on the ground that he does not intend to use the property in a way which will make the improvement beneficial, he may change his mind, throw the property into the mar-

ket, and realize advantages for which others have been made to pay.''

'The rule as here stated by Judge Bronson, we understand to be the correct one. The assessments against the prosecutors in this case appear to have been made in conformity with this rule, and the objection that they are wrong in principle is therefore not sustained.'

In *State, Morris and Essex R. R. Co. Pros.* v. *Jersey City,* 7 Vroom, 36 Law, at p. 5, Mr. Justice Depue said that the case in 19 Wendell is undoubtedly correct as a statement of the general rule.

It is well to notice at the outset that the inquiry as to market value is broader than the inquiry as to enhancement of the value of use. The inquiry as to market value overlaps and includes the injury as to use. The inquiry as to use is mainly an inquiry as to accessibility. The inquiry as to market value embraces many considerations, of which the subject of accessibility is only one. It is by no means true that two lots which are equally accessible are equally valuable. Of these two values — market value and the value of use—market value is the more comprehensive, and takes account of more elements in the calculation. To select the other as the criterion rather than market value would be to prefer the exclusive to the inclusive, the narrow to the wide, the partial to the complete.

It is said on behalf of the New York Telephone Company that its investment in the lots on which this assessment has been made is very large; that it has put up there a building designed to serve as the local center of its business; that the company does

not wish to move its headquarters, and that, while it is true that this property has a market value which is at least approximately ascertainable, yet the situation is such that the company could never by a sale of its premises realize any benefit which could reasonably be ascribed to the opening and widening of Branford place, because the loss incident to moving its quarters would wipe out such benefit ten times over. All this may be admitted, but how does it follow that the basis of assessment should not be increased of market value? The argument, so far, proves too much, for it is equally available to any very large concern.

Take, for example, some of our institutions which are in this class: the Prudential Insurance Company, the Mutual Benefit Life Insurance Company, the vast establishment of Hahne & Company, Proctor's Theatre, any one of half a dozen huge breweries. Each, like the New York Telephone Company, has a market value which can be ascertained; each, like the New York Telephone Company, has expended great sums on its plant; each would find it very inconvenient to move; and no one of them all could probably realize, as the net result of a sale, the increment of market value such as is attributed to the opening and widening of Branford place, of which an assessment is assumed to be the equivalent. Will it be urged that these great enterprises are to be assessed differently from their neighbors; that is, on a different principle? Such a claim would strike the legal profession as an entire novelty.

But, it may be said, this is not the whole of the argument on behalf of the New York

Telephone Company. That company is a *quasi* public corporation, and enjoys a public use. True, but what is a *quasi* public corporation? Our Court of Errors and Appeals prefers to use the expression, 'corporation affected with the public interest.' *Attorney General* v. *Firemen's Ins. Co.,* 4 Buch., 74 Ep. 372, 376, 377, 378. This definition requires itself another definition, which is thus supplied by Chief Justice Waite:

> 'Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use and must submit to be controlled by the public for the common good to the extent of the interest he has thus created.' *Hunn* v. *Illinois,* 94 U. S. 113.

Fire insurance companies were held in the New Jersey case above cited to be corporations affected with a public interest. A telephone company, is, no doubt, in this class. So is a telegraph company. So is an express company. So is a hotel company. Here, again, the argument proves too much. Is the Court to be told that all the telegraph and express and hotel companies who own land used in their business in the zone of assessment are to be assessed differently from other persons? Well, no, perhaps it will be said, not exactly that, but there must be a combination of business and public interest. The question at once arises, How big? Is the modest office of the Western

> Union Telegraph Company, at 749 Broad street, large enough? If not, would the rule be different if the building were twice as wide and four times as high, or twice as high and four times as wide, or as large as the Western Union offices on Broadway, in New York City? And are such questions to be left to commissioners? It is easy to imagine into what refinements and complexities the matter might run, and how the labors of a board of commissioners, already troublesome enough, might become more of a puzzle than ever."

Reasons 12, 14 and 18, pp. 13-14, State of Case.

These reasons have reference to the legality of the ordinances and resolutions passed by the Board of Street and Water Commissioners of the City of Newark, and the Common Council of the City of Newark, providing for the opening and widening of Branford place. It is too late at this time to raise any question as to the legality of these resolutions or ordinances, and Justice Swayze, when the application was made for the writ of certiorari in the Jenkinson case, said that "he would not review such ordinances or resolutions."

Reason 13, p. 13, State of Case.

This objection is disposed of in the Jenkinson case, and need not be here re-discussed.

The balance of the reasons, viz. No. 15, No. 16, No. 17, No. 19 and No. 20, are without merit.

Respectfully submitted,

HARRY KALISCH,
Attorney for Respondents.

New Jersey Supreme Court.

NOVEMBER TERM, 1916.

RICHARD C. JENKINSON, et al., Prosecutors, vs. TYLER PARMLY, Comptroller of the City of Newark, et al., Respondents.	*On Certiorari.*

Before Justices Swayze, Minturn and Kalisch.

For the prosecutors: Coult &. Smith; Stein, Stein & Hannoch.

For the respondents: Harry Kalisch, City Attorney.

Per Curiam:

Property owners were assessed for benefits resulting from the extension of Branford place to High street, public streets in the City of Newark.

Upon the coming in of the report of the commissioners, written objections were filed by landowners to assessments against their lands contained in the report. The report was confirmed.

The chief objection made against the confirmation of the report was that the lands assessed derived no special benefit beyond that of the general public. There were numerous other objections which involved matters requiring careful consideration, all of which have been thoroughly and ably discussed and disposed of in an elaborate opinion by Judge Adams, sitting in the

Essex Circuit, in confirming the assessments, which opinion expresses the views of this court.

The main contention of counsel for the prosecutors to support their allegation of illegality of the assessments under review is that the commissioners arbitrarily fixed an area of benefits in that the report of the commissioners shows that the lands of the objectors were without the zone in which it could be fairly said that the lands assessed are specially benefited.

Whether or not the lands assessed were so benefited and to what extent depended upon the judgment of the commissioners. This inquiry involved in its determination a mixed question of law and fact. The general legal principle to be extracted from *Hat* v. *Newark,* 79 N. J. L. 548. is that only lands which are specially affected by the opening or closing of a street are to be considered. But whether lands are more or less affected or specially benefited must always remain a question of fact, the solution of which rests with the commissioners. It is the judgment of the commissioners which must determine, under all the circumstances of the case. whether the lands are specially benefited or not.

We think the reasoning in *Hart, et al.,* v. *City of Omaha, et al.,* 105 N. W. Rep., is peculiarly applicable to the matter before us. In that case on page 546 the Court says:

"It is charged that the assessment is unjust and oppressive. The charge appears to be based solely on the fact that the appellant's property being about three-quarters of a mile from the boulevard cannot be specially benefited thereby; but whether property is thus benefited, is a question of fact which must depend on the facts and circumstances in each case. On such questions the distance of the property from the boulevard

would undoubtedly have an important bearing. But this court is now asked to say, as a matter of law, that because the property is three-quarters of a mile from the boulevard it received no special benefit therefrom, and inferentially that the assessment thereof for the purpose stated amounts to fraud, gross injustice, or mistake. This the Court, acting within its constitutional bounds, is unable to do. We do not mean to be understood to say that the distance might not be so great in a given case as to enable the Court to say as a matter of law that the property was not specially benefited. That question stands open. What we do hold is that this Court cannot say, in view of all the facts and circumstances, that because the property is three-quarters of a mile from the boulevard, it derives no special benefit from such thoroughfare."

And so in the present case we cannot say, in view of all the facts and circumstances, that because some of the lands assessed are 3,200 feet from the Branford place extension into High street that such lands do not derive any special benefit.

We cannot say as a matter of law that a proper area of assessment would be upon the blocks of land between the opened street and the next parallel streets. Nor can we fix as a matter of law the area of assessments by metes and bounds, by declaring where such area shall begin and where it shall end. In other words, we cannot substitute our judgment for that of the commissioners, unless it clearly appears that the judgment of the commissioners was without any basis whatever. As was pointedly remarked by Dixon, *J.*, in *Jeliff* v. *Newark,* 48 N. J. L., on p. 109: "The area of special benefit is so largely a matter of opinion that the judgment of the

commissioners must stand, unless very convincing evidence be adduced against it."

We are not prepared to say from the undisputed facts alone, namely, the widening and extension of Branford place to High street, thus linking High street and intersecting streets with Board street, in the very center of the city, might not in the opinion of reasonable men be justly regarded as a special benefit to the owners of land in the area fixed by the commissioners.

For the reasons given, the judgment of the Essex Circuit Court confirming the assessments under review will be affirmed, with costs.

New Jersey Court of Errors and Appeals

NEW YORK TELEPHONE COMPANY, *Prosecutor-Appellant,* *vs.* THE MAYOR and COMMON COUNCIL OF THE CITY OF NEWARK, *et als.,* *Respondents.*	*On Appeal from Supreme Court.*

Brief of Charles T. Russell and Day, Day, Smith and Slingerland for the New York Telephone Company.

Statement of Facts.

On June 7, 1917, the Supreme Court granted a rule dismissing a writ of certiorari which was allowed by that court at the opening of the June term, 1916, to review an assessment for benefits against lands owned by the New York Telephone Company by reason of the opening and widening of Branford Place in the City of Newark. At the said June term other objectors joined together and also obtained a writ of certiorari to have their assessments reviewed. As a great many of the records contained in the state of case printed by them relate also to the case of the New York Telephone Company it was stipulated between the prosecutor and the respondent in this cause to include in their state of case only such matters as did not appear in the state of case of *Richard C. Jenkinson, et al., prosecutors,* vs. *Tyler Parmly, Comptroller of the City of Newark,*

et al., respondents, and designated hereafter as Vol. II, State of Case.

It was also stipulated between the parties that the New York Telephone Company should receive the benefit of any testimony pertaining to it that may appear in the case of *Jenkinson, et al.* vs. *Tyler Parmly, Comptroller, &c., et al.*

The testimony appearing in the present state of case includes that taken in the Essex County Circuit Court, and before Supreme Court Commissioner Herbert W. Knight

A map has been prepared (Exhibit 1) in which there is outlined in colors the New York Telephone Company property and those properties with which it is compared by Mr. Paul in a schedule which he has drawn (Exhibit 2), and to which we desire to call the court's special attention. We desire to call the court's attention also to an error in Mr. Berry's testimony appearing in page 73, *et seq.* (Vol. I, State of Case) in regard to the value of the Telephone Company property which he subsequently corrected on pages 98 and 99 (Vol. I, State of Case).

The property of the New York Telephone Company, which was assessed for benefits derived from the opening and widening of Branford Place, is located on the southwest corner of Washington Street and Branford Place. It has a frontage of two hundred and five feet on Branford Place, and of ninety-six and forty-six one-hundredths feet on Washington Street, and continues at that depth for about one hundred and sixty-five feet on the southerly side of Branford Place and then extends, by an ell, about forty feet on Branford Place to the depth of twenty-five feet. The building of the Tele-

phone Company covers the entire area excepting that at the ell, which is vacant land.

Prior to the improvement the New York Telephone Company was already fronting on Washington Street, a main thoroughfare, and was accessible from Broad Street through Camfield Street, and from Market Street by way of Washington Street. The only additional access that was added by reason of the improvement was from the west, from Springfield Avenue.

The first Commission, whose report was rejected by the Circuit Court (pages 71-72, Vol. II, State of Case), assessed the New York Telephone Company property for benefits at the sum of $30,000. The second Commission, whose report (page 65, Vol. II, State of Case) is now up for review by this court, assesses the same property at the sum of $22,500; or exactly 25% less than the amount imposed by the former Commission.

The New York Telephone Company now appeals from the rule affirming the said assessment against its property.

Specifications of the Grounds of Appeal.

(1) Because the real estate of the prosecutor is not benefited to any extent whatsoever by the opening and widening of Branford Place.

(2) Because, at all events, the property of the prosecutor is not peculiarly benefited by the said improvement to the extent of the assessment imposed.

(3) Because the improvement was made for the purpose of providing a new street for heavy traffic east and west and for the relief of traffic

on Market street, and was a general improvement for the public at large, the cost of which should be paid by the City at large.

(4) Because the assessment was not made upon all of the land and real estate in the City of Newark peculiarly benefited, in proportion, as nearly as may be, to the advantages each property owner is deemed to have acquired.

(5) Because the assessment for such improvement against the real estate of the prosecutor was not made fairly, legally and equitably, but in an arbitrary, unscientific and illegal manner, and not according to the best of their skill and ability, and was not made in accordance with the peculiar benefits to said property and was based upon a fictitious value of said lands.

(6) Because discrimination was exercised in the making of said assessment as between the properties of prosecutor and of other owners similarly situated, and that the assessment against the property of the prosecutor is relatively larger than that made against said other properties upon and near said Branford Place.

(7) Because the said assessment is inequitable and the benefits from such improvements, if any, are prospective at the present time and the assessment made is speculative.

(8) Because the property of the prosecutor is worth less for the purposes for which it is used, when upon a corner of two intersecting streets, than when upon the inside of a block.

(9) Because the land on which said assessment was made was acquired by said company in the business center of the City of Newark for telephone purposes and is in actual and sole

use for that purpose and has been appropriated to such special use as the permanent location and principal office of said company in said city. The building erected thereon, in good faith and before the extension of Branford Place was projected, is a modern steel structure of the type best adapted to the needs of the telephone service, and is not readily adaptable to general office or commercial business, the elevators and stairways being located on the Branford Place side of the building, so that entrance from Branford Place cannot be opened and utilized without an entire reconstruction of the steel work of said building from cellar to roof, at a prohibitive cost. Said building has therein the company's conduits, cables and other appliances for the furnishing of telephone service to the City of Newark and elsewhere. Said company is a public service corporation, and is limited by charter to a telephone business, and has devoted said land and building wholly to the public use. It does not deal in real estate except by way of purchase for permanent occupation and use, and the extension and improvement of Branford Place in no way add to the market value of said property, and said company in no way derives any peculiar benefit therefrom. Said company has no intention of putting said property in the market or of converting the same to any other than its present use, and thus has no means of obtaining, by sale or otherwise, the benefit of said Branford place opening and widening. That the expense of removing its business from its present building to another would exceed $500,000. Wherefore, said assessment should be reduced to a nominal amount.

(10) Because the said commissioners failed to examine or view said property, and neglected and refused to consider the special and public use to which said land and building had been dedicated.

(11) Because the assessment under review is erroneously based on increase in market value of said land, whereas it should have been based on the enhancement, if any, of the use of said land for public telephone purposes, occasioned by the opening and widening of Branford Place.

(12) Because the commissioners refused to consider the objections filed by the prosecutor at such hearing, contrary to right and justice.

(13) Because such assessment and the levy and collection proposed is contrary to the constitution of the State and of the United States, and the said assessments are in effect the taking of property without compensation and also the taking of the same without due process of law and without proper adequate compensation therefor.

(14) That the said assessment is in many other respects illegal, unjust and unauthorized.

Argument.

Point I.

The assessment for benefits was laid upon an incorrect legal principle, to the prejudice of the Telephone Company.

A. In assessing property for peculiar benefits derived from a local improvement the Commissioners are bound by the general principle that the power to assess the costs and expenses

of public improvements on property peculiarly benefited is limited in amount to the extent of the benefit conferred.

Tidewater Co. vs. *Coster,* 3 C. E. Gr. 18 Eq. 518.

State, Agens vs. *Newark,* 8 Vr. 37 L. 415.

The Commissioners in this case arrived at the extent of the peculiar benefit conferred by the improvement upon every class of property within the zone of assessment, by ascertaining "the present benefit immediately accruing to the land from the improvement," the measure of which was the increase in the present market value of the land. See pp. 19-23, Vol. I, State of Case.

State, New Jersey, &c., R. R. Co. v. *City Elizabeth,* 8 Vr. 37 L. 330.

B. In applying this rule to the property of the New York Telephone Company, the Commissioners have erred in that they have ignored the general principle stated above, and their act has resulted in the taking of property without just compensation.

Tidewater Co. vs. *Coster, supra.*

State, Agens vs. *Newark, supra.*

For it is urged that the extent of the peculiar benefit derived by the Telephone Company property cannot be properly measured by ascertaining the present increase in the market value of the land.

In a note in 35 L. R. A. 39 it is stated:

"V. The essential feature of the assessment for local improvement upon railroad or other quasi-public corporation property is that it shall be based upon the benefits

which such property derives from the contemplated improvement," citing

New Haven vs. *Fair Haven & W. R. Co.*, 38 Conn., 422.

C. Our decisions indicate the following instances where the rule of the increase in market value of the land is inapplicable:

(1) Church properties devoted exclusively to religious purposes.

In re Mayor, &c. of N. Y., 11 Johns. 77.

(2) A reservoir.

The Owners, &c., the Mayor of Albany, 15 Wend. 374.

(3) Where an owner is restricted in the power of alienation by force of conditions in the title deeds. All of the above cases are cited and approved in

State, Morris & Essex R. R. vs. *Jersey City*, 7 Vr., 36 L. 56.

(4) Cemeteries where lots have been conveyed and used for sepultures:

Cemetery Co. vs. *Newark*, 21 Vr. 50 L. 66, 71.

In this case the assessment was set aside where it was levied on burial lots in which interments had been made.

(5) School District and other public property:

In *Hartford* vs. *West Middle District*, 45 Conn. 462, the assessment against a school district was set aside because the school property used for school purposes did not derive any immediate, direct or special benefit from the laying out of the street.

In *Worcester* vs. *Worcester,* 116 Mass. 193, the assessment against land of a county was set aside because public lands were exempt from all taxation on the ground of public policy.

(6) Properties of railroads used solely for railroad purposes: *State, Morris & Essex R. R.* vs. *Jersey City, supra,* and *New York Bay R. R. Co.* vs. *Newark,* 53 Vr. 82 L. 591, where the principal cases are reviewed.

In the above cases the assessments upon the properties concerned were limited to the extent of the actual benefit conferred upon them by the improvement, for there use, and it is submitted that this should have been the criterion in the assessment of the New York Telephone Company property.

These cases are not cited to sustain the position of the New York Telephone Company as is stated in the opinion of Justice Swayze in the court below, (page 215, Vol. I, State of Case) but only to explain more fully the rule of assessment that should be applied in the case of its property.

D. The reason for the application of this rule in the above cases, and particularly in the case of railroad property, is based on two grounds:

(1) Land acquired under a Legislative sanction that implies its permanent devotion to a public use cannot, without a violation of such public use, have a market for any other purpose, and hence, as such a violation will not be presumed, such land has, in legal contemplation, no market value to be enhanced.

(2) It is highly improbable that the owners on account of the use of their properties, would

put in the market such of their lands as they may hold in fee, as a means of obtaining by a sale of such lands the benefit of local improvements, the cost of which has been borne by others.

In *State, Morris & Essex R. R. Co.* vs. *Jersey City, supra,* after reviewing *Protestant Foster Home* vs. *Newark,* 6 Vr., 35 L. 157, upon the assumption that it is most improbable that the railroad company would ever sell its land, it was ruled by the court that the assessment made by the City for an improvement in the vicinity of the depot should be merely nominal.

On page 59 Justice Depue cites:

In the Matter of Mayor, &c. of N. Y. supra, and quotes from the opinion of the court in that case as follows:

> "As the church property is not, nor is likely soon to be either appropriated to renting or exposed to sale, but is devoted exclusively to religious purposes, the benefit resulting to it by the improvement of Nassau Street must be small in comparison with that of other property, and it, therefore ought not to contribute in the like proportion. It may be considered possibly as benefited by rendering the access to the church more convenient and the places more pleasant and salubrious by the freer circulation of the air. This may have some influence on the pew rents and the ground may become permanently more valuable. These, however, appear to be small and remote benefits to property so circumstanced, and to charge the churches equally with the adjoining private property is unreasonable and extravagant."

On pages 60 and 61 Justice Depue says further:

> "In the case now before the court, the prosecutors are restrained in the exercise of their corporate functions, to the line of operation they selected in the location of their route of railroad. They cannot leave that line and enter the market as sellers of land used in the operation of their road, without being deprived of the benefits of their franchise. It is physically and legally possible for every canal company in the State to fill up its canal and basins and for every railroad company to remove its rails, and put in the market such of their lands as they may hold in fee, but it is highly improbable that that course will ever be pursued as a means of obtaining, by a sale of such lands, the benefits of local improvements, the cost of which has been borne by others.
>
> The lands assessed were acquired by the prosecutors for a public use under Legislative authority. It has not been suggested that they were acquired for any other ulterior purpose in fraud of the powers granted, or that there is the remotest probability that they will ever be converted to any other use. The expense of reclaiming, which gives to the premises their value, was incurred in preparing them for use in the transaction of the company's business, and they are used solely for that purpose. Lands acquired for a public use by a corporation under Legislative powers, and in good faith held for that purpose, must be regarded, for purposes of taxation, as devoted to that public use. This principle

> has uniformly been adopted in the application of clauses of exemption from taxation, in determining whether property taxed is within the exemption. This company is exempt from taxation, except such as is an equivalent for benefits derived from local improvements. In assessing lands so circumstanced for such benefits, the enhancement of their present market value is not the proper basis of assessment. If not benefited in their present use, the assessment, as was said by Savage, *C. J.*, in the case cited from 15 Wend., should be made on a valuation depending on the probability that they may hereafter be converted to other uses than those to which they are now appropriated."

In the case of the *New York Bay R. R. Co.* vs. *Newark, supra,* a city lot owned by a railroad company, which was vacant and not in use for railroad purposes and not within the present or proposed lines of the company's right of way, nor necessary at present for the enjoyment of its franchises, was assessed for benefits derived from a street improvement, though the land was acquired by the company with the intention of using it some time in the future for additional tracks when required by the exigencies of its business. The lot in question had a frontage of seventy-five feet on the street improved. Its depth was one hundred feet.

Justice Garrison for the Court of Errors and Appeals in setting aside the assessment said, on page 593:

> "The determination that lands are used for railroad purposes, which in the case of general taxation removes them altogether

from local assessment, in the case of local improvements permits such lands to be assessed to the extent of the actual benefit conferred upon them for their present use, *i. e.* for railroad purposes.

The practical effect, therefore, of the rule in question is to eliminate the enhancement of the market value of the land included in a railroad right of way, either as a ground for its assessment for local improvements or as a basis for estimation of benefits. *Morris & Essex R. R. Co.* vs. *Jersey City, supra.*

The sound reason upon which this rule rests is that land acquired under a Legislative sanction that implies its permanent devotion to a public use, cannot, without a violation of such a public use have a market for any other purpose and, hence, as such a violation will not be presumed, such land has in legal contemplation no market value to be enhanced. Of course, if such land is actually put to an alien use the rule in question does not apply."

Furthermore, the power of condemnation is not to be taken into consideration. The entire right of way may be acquired by a railroad company by gift or purchase and thus become permanently established without recourse to this power; in other words, the power of condemnation is given, so that reluctant land owners may not obstruct a great public improvement.

A fair reading of Justice Garrison's interpretation of the rule in the case of New York Bay R. R. Co. vs. Newark, supra, clearly shows that the benefit of a Legislative grant and the right to condemn are only important because they

create an implication that property obtained in that manner is to be permanently devoted to a public use.

It is essential, therefore, that the Commissioners consider not the manner in which the land is acquired, but to what use it is devoted. If they find that the property is devoted exclusively and permanently to a public use and the nature of the enterprise thereon makes it highly improbable that the property will be sold in order that advantage may be taken of the present increase in market value, it is their duty to assess the property according to the enhanced value of the use, and not the present increase in the market value of the land.

E. The same legal implication that the property is to be devoted permanently to a public use exists in the case of the New York Telephone Company as that in the case of railroads; hence the rule used in ascertaining the peculiar benefit derived by railroad properties from local improvements, viz.: the enhancement of the use, rather than that of the market value of the land, applies with like force to the property of the New York Telephone Company.

This legal implication is created:

(1) By the fact that the New York Telephone Company, as in the case of railroads has the Legislative sanction to acquire private property by condemnation for its right of way. (Compiled Statutes Vol. 4, Sec. 8, page 5314.)

(*a*) It is submitted, that because the property in question was acquired by purchase, does not distinguish it from railroad property since the latter can also be acquired by either purchase or gift without varying the rule of assessment applied to it.

(2) By the fact that the New York Telephone Company is obliged by statute to maintain an office every twenty miles traversed by its lines. (Compiled Statutes Vol. 4, page 5314, Sec. 6.)

(3) By the fact that it is a public service corporation in the same sense that a railroad company is, and it is limited to the business of supplying telephone service to the public.

(4) By the very nature of its business and the kind of building constructed on the premises in question.

(*a*) The site, as interior property between Market and William Streets, was carefully selected as the telephone center of the city in 1905, before the opening of Branford Place was contemplated.

(*b*) The building is a massive steel and brick structure, nine stories in height, capable of sustaining four further stories. It is the main building of the Company and is wholly devoted to the uses of the Company, and is designed especially for the needs of the New York Telephone Company and as the main central point of business of the Company for fifty or more years to come.

(*c*) From the subway in Washington Street there enter into the building 45 underground cables, each containing 1,000 wires, so that 45,000 wires, or 22,500 pairs, enter the building.

(*d*) In the building are established four switchboards known as "Market," "Mulberry," "Newark Toll Board" (for long distance purposes) and the "Operators School Board," and provision is made for five or more departments regulating the traffic and business of the Com-

pany. On this point Mr. Crane testified as follows on page 40, Vol. I, State of Case:

"Q What business does the Newark toll board switchboard handle?

A That handles the toll business between points in New Jersey, for instance, Asbury Park wishing to communicate with Paterson, the connection would be made at the Newark toll board; in other words, in the Newark toll board trunk lines from the various New Jersey offices terminate and can be connected together, so that one Jersey office can be connected with any other Jersey office.

Q So that it handles the suburban and long distance wires?

A It handles the suburban wires connecting points in New Jersey and the long distance wires which are assigned to New Jersey for use."

(*e*) In order to gain the benefit of the improvement it would be necessary to remove the Company's business to a new building to be especially erected, at great expense, and the mere cost of the removal of switch-boards and other apparatus would involve an expenditure of $693,307.50. (See p. 39 *et seq.*, Vol. I, State of Case).

F. The application of the rule set forth above to the lands of the New York Telephone Company is not an extension or a modification of it, as is intimated in the opinion of the Essex County Circuit Court (See pp. 150 and 144, Vol. I, State of Case).

1. The same elements which necessitated the application of the rule to railroad property exist in that of the Telephone Company and

are absent from the properties enumerated in the said opinion.

Justice Swayze in the opinion of the Supreme Court below (page 217, Vol. I, State of Case), states:

> "It may be that in fact that it is always likely to remain the best site in Newark for a telephone exchange, and that the company is never likely to move; it may be that the investment is so large that the loss due to a removal would be prohibitive; it may be that it is fitted up for the special business of the company. All these considerations would probably be applicable to any large business, to a bank, an insurance company or office building, a hotel; a factory or a department store."

These considerations just enumerated are also applicable to railroad properties and are cited and are important only to point out that the property in question is being devoted entirely to the business of the New York Telephone Company, and from the manner of its construction, is to be devoted permanently to that business.

2. None of the companies enumerated in Justice Swayze's opinion (p. 217, Vol. I, State of Case) are public service companies in the same sense as a railroad or a telephone company, or are their properties devoted to a public use in that sense, and there is nothing from the nature of their business or properties from which there can be implied at law or otherwise that they are to be devoted permanently to a public use.

These elements are the reasons for the adoption of the rule of assessment that is applied

in the case of railroad property, and are all present in the case of the New York Telephone Company property.

It is true that the Telephone Company property in question, or part of it, can be sold for a private use, but so can that of a railroad without its business necessarily being affected. The fact pointed out in the said opinion of Justice Swayze that the Telephone Company has been known to abandon its telephone exchange and dispose of its property in the City of Newark, does not affect the contention of the New York Telephone Company that for the purposes of special assessment by reason of local improvement, its property is to be placed in the same category as railroads.

There are instances where railroads have abandoned their terminals for new ones and disposed of parts of their property for private purposes without affecting the special rule of assessment.

It is submitted that the position of the New York Telephone Company property devoted to its business is parallel in every way with that of railroad property.

a. The 50,000 wires coming into the building from conduits under the street may be readily likened to tracks extending into a railroad terminal, and the building, with its switchboards and offices to the terminal itself.

b. Either the railroad, or the Telephone Company, in order to take advantage of the improvement in any way, would have to tear up the tracks in the one case, and the wires in the other. They would have to condemn for new rights of way, find new, suitable locations, if possible, erect specially designed buildings, and alter their old ones.

G. The amount of benefit conferred upon the Telephone Company in its business by reason of the improvement is nominal.

The Company does not deal in real estate except for permanent use and occupation. By its Charter it is limited to a telephonic business. Being a public service corporation, the public must come to it; and the Branford Place improvement does not in any way add to the market value of the property, nor is the relative value for telephone purposes improved by the accession of business activity in that neighborhood. Whatever benefits have been noted in the testimony are of a general and none of a peculiar nature. (See pp. 41 *et seq.*, 62, 63, 64, 80, 81, 142, Vol. I, State of Case).

On page 142, Vol. I, State of Case, Mr. Fiedler testified:

> "Q In your judgment is the peculiar benefit accruing to the Telephone Company the amount which represents the difference between the market value prior to the opening and the market value subsequent to or at the time of the opening? Or should one take into consideration the fact that the Telephone Company cannot get the benefit of the market value by moving or selling as other private property owners might because of the great expense; what have you to say on this head?
>
> A. Judging it from that point of view, of course the assessment should be nominal, if anything at all. * * * Judging it as a public utility corporation I would place it in the same category as the New Jersey Central Railroad, and I would go a little farther. While I don't believe the Central

Railroad has been benefited to any great extent, I believe the Telephone Company has received even less for this reason: There are two or three railroad offices in Newark and anyone desiring to leave, has the option of going two or three ways, but there is only one Telephone Company and wherever they are you have got to go; and I don't see where, figuring it as a public utility proposition, they have gained anything at all."

And on page 80, Vol. I., State of Case, Mr. Berry testified:

"A. I don't think that the Telephone Company by reason of its being a public utility corporation, that it is in a position to avail itself of any increased valuations by reason of this improvement.

Q Did you base your judgment on the testimony given by Stephen D. Crane in the court below?

A I heard Mr. Crane's testimony and I will say that it adds force to my own views upon the matter.

Q In view of that, what would be the amount of benefits to be assessed against the corner land owned by the Telephone Company?

A Practically nominal."

In *State, Morris & Essex R. R. Co.* vs. *Jersey City, supra,* Justice Depue, on page 58, states:

"Depositions have been taken by the prosecutors under the provisions of this statute touching benefits. They are full and clear to the point that the company's lands considered as depot grounds will not be benefited in the least by the improve-

ment of the street. No counter-proof was made by the city, and it must be taken to be an established fact that if the lands are viewed solely in the light of the uses for which they were acquired by the company and to which it is intended that they shall in the future be applied, no benefit has been realized from the improvement. Supposed benefits arising from the probable increase of business in consequence of increased facilities of access to their depot cannot be made the basis of an assessment of this character." Citing *Old Colony & Fall River R. R. Co.* vs. *County of Plymouth,* 14 Gray, 156. *Boston & Maine R. R. Co.* vs. *County of Middlesex,* 1 Allen, 324.

H. It was the duty of the Commissioners in making their assessment to consider the use made of the Telephone Company property.

That point was expressly called to their attention, as an element in the case, before their report had been completed and filed in this court.

Failure to do so was the cause for the setting aside of the assessment in the cases above enumerated.

Such a consideration will not increase the burden of the Commissioners unduly, particularly when their attention is called to the facts; nor will it open up an extended field of inquiry, for the special properties affected, viz., railroad, church and telephone and other special properties, are comparatively few in any area.

To do otherwise would cause an infringement of *Tidewater Co.* vs. *Coster, supra,* and *State, Agens* vs. *Newark, supra.*

The failure to produce cases involving a consideration of Telephone Company properties is due primarily to the fact that it has been only recently that conditions have compelled these companies to use buildings exclusively for their own use. And as this need has arisen by reason of the increase in the demand for these utilities by the public, these buildings, especially in the case of the Telephone Company, have been located in the very center of communities, where the opening and widening of streets is a rare occurrence.

It is submitted, therefore, that the assessment upon the property of the New York Telephone Company was laid on a wrong legal principle. It should have rested solely upon the consideration of the increase in the value of the property as used for the purpose of the telephone business. The benefit of the improvement is nominal, and the assessment should be referred back to the Commissioners to re-assess under instructions of the Court as to the proper rule to be applied in this particular case.

Point II.

The assessment by the Commissioners, of $22,500, as the amount of increase in the market value of the Telephone Company lands by reason of the improvement is grossly excessive.

A. This fact is proven by great preponderance of evidence.

The testimony on this point for the prosecution is as follows:

Mr. Fiedler, on page 139, Vol. I, State of Case:

> "Q The Commissioners of Assessment fix the sum of $22,500 as being the peculiar benefit; that is, the immediate increase in market value by reason of the opening and widening of Branford Place. Have you given consideration to that figure?
>
> A Yes, I have carefully gone into that and endeavored to arrive at some method or basis, and I cannot discover any way by which they could fix that benefit of $22,500. It does not agree with any rules that I have ever used, and it looks to me like a very poor guess at best.
>
> Q You consider that amount unjustifiably large so far as the Telephone Company is concerned?
>
> A It is unfair, unreasonable and unequitable."

And Mr. Berry, on page 83, Vol. I, State of Case:

> "Q You were present before the court at the time that I examined Mr. Van Duyne, one of the commissioners, to ascertain the method or basis by which the Commission

arrived at the assessment of $22,500 upon the Telephone Company property?

A I was.

Q Did he give any such basis or method in his testimony?

A He did not.

Q As an expert, do you know of any standard or recognized basis of computation in matters of this kind which would account for the sum of $22,500 imposed upon this property by the Commission?

A I do not.

Q What, in your judgment, was the effect of this assessment of $22,500—whether it was reasonable and fair, or not?

A I think it was an unreasonable assessment."

It is admitted by the respondent that the lands of the Telephone Company were assessed for taxes just prior to the improvement at $86,400 and immediately after, at $98,000, showing a gain of only $11,600 in value by reason of the opening and widening of Branford Place (See Stipulation on p. 176, Vol. I, State of Case).

The manner in which this amount of $11,600 was arrived at by the Tax Assessors of Newark is explained by Mr. Berry on page 86 *et seq.* (See also stipulation on p. 176, Vol. I, State of Case) as follows:

"Q I show you a printed card and ask you what it is?

A That is the card issued in the name of the Board of Assessment and Revision of Taxes, Newark, New Jersey.

Q For what purpose and showing what?

A It is printed on the card 'Per cent of unit value for lots of various depths' and exhibits the methods adopted by our

local taxing authorities in measuring values.

Q Do you know, as a matter of fact, whether that unit value is observed by the city in cases of the kind under discussion?

A I know that these rules as printed upon the card, are observed by the city.

Q How is your knowledge gained?

A By almost daily contact with the Tax Office, and by actually computing values according to the methods printed on the card and ascertaining their correctness.

Q Have you ascertained from the city officials whether the method indicated by that card was applied in the re-assessment of tax values on the Telephone Company property after the opening of Branford Place?

A I have ascertained the facts as to the New York Telephone Company property from the city.

Q Did you ascertain that the city had followed that card in making the new tax values on that property?

A I did. * * *

Q Give the figures by which the city arrived at the additional value of $98,000 from $86,400?

A Yes, sir.

Q You ascertained the facts from the City Hall?

A Yes, sir.

Q I call your attention to the shape of the plot.

A Yes, sir. The plot owned by the New York Telephone Company at the corner mentioned is somewhat irregular. By that I mean to say that the 25 feet are substantially 25 feet on the corner, extend

along the line of Branford Place for about 205 feet, or, perhaps, 206 feet; the remaining 71 feet, or frontage upon Washington street extend westerly for a distance of 165 feet. Now, the city adopts a unit for its basis of taxation, if the land did not exceed 100 feet in depth, of $700 per foot, and the city adds a percentage according to the fixed rule, the rule referred to on this card, which is printed and circulated by the Tax Board. And for the distance of 165 feet the city would add 26%; for the distance of 205 feet the city would add 33 or 34%; so that in measuring the value of this land we follow the city's basis rule.

Q From what you stated you would say that they used the unit figure of $700 per foot, and then added 26% for the additional depth of the lot; making a total of $882 per foot, and an aggregate value of $62,887.

A Yes, sir.

Q The plot at the westerly end of the Telephone Company property is 23 feet wide, is it not?

A 23 feet deep on Branford Place.

Q And they included 2 feet as a part of that corner lot?

A Since the city computes 25 feet as the frontage, the city took 2 feet from 71 feet and added it to the 23 feet upon the corner, and then added the city percentage upon the corner plot.

Q They added this 26% and then they also added in respect to that 2 feet, because it was part of the corner, a further percentage; making altogether $1,323 per front feet, of $2,646 aggregate?

A That is the aggregate.

Q Now, that still left 23 feet, or 23 feet 2 inches, as the balance of the corner, with an estimated depth of 200 feet. Using the same $700 as a unit, they added 34%, as I understand it, and so brought the value of 23 feet up to $1,407 a foot, an aggregate of $32,595.

A That is correct.

Q And that aggregate of figures makes up the $98,000 as the taxed value after the opening of Branford Place.

A It makes it, to be precise, $98,118. The city struck off $118, leaving it at $98,000.

Q That is, at present?

A Yes, the present assessment on the land.

Q That is the method pursued by the city at arriving at that value?

A That is the city's methods, and these are the city's figures.

Q *And these are the same methods that you pursued in arriving at your amount of peculiar benefits?*

A Yes, sir."

The testimony of Mr. Berry and Mr. Fiedler, the prosecutor's expert, shows that in ascertaining the amount of benefit derived by the lands in question from the improvement, they used substantially the same method that was employed by the Tax Assessors in Newark, and in other large municipalities in such cases, and *reached approximately the result as the Tax Assessors.*

Mr. Berry, on page 84, *et seq.,* Vol I, State of Case:

"Q Treating the corner property of the Telephone Company as property of private

owners, subject to sale and exchange, and adopting the rule of the present increase on market value as determining how much the peculiar benefit was, do you recall what figure you stated in your testimony before Judge Adams? What is your estimate, based on these conditions?

A My estimate of the amount of peculiar benefits that are attached to the property of the New York Telephone Company on the northwesterly corner of Washington street and Branford Place is $12,300 and not exceeding that figure.

Q Did you, and do you now arrive at that figure by haphazard or by the application of any recognized standards?

A I did not arrive at it in any haphazard fashion, but sought to do it correctly by the application of a rule in such cases; as I understand—

Q What rule do you refer to?

A I followed the rule adopted by the larger municipalities and in vogue in our own City of Newark, and also pursued by our local taxation authorities.

Q Is that rule known as the rule * * * the tables of Hoffman?

A It follows substantially the Hoffman-Neill table.

Q Is that table recognized largely as the standard in matters of this kind?

A It is. * * *

Q Is the rule or standard, as indicated by this card, that which governed you in arriving at the benefit of the New York Telephone Company, which you fixed at the sum of $12,300?

A Yes, sir.

Q Please show in schedule form the method by which you arrived at that figure.

A I placed upon the most northerly 25 foot frontage of the land of the New York Telephone Company, for the benefit accruing to it by reason of the opening of Branford Place, $10,000; and I based that action upon the fact that this opening made of that lot a corner, and I added to that land what I deemed to be a percentage of the increase upon it, this having been made a corner, and that does not exceed $10,000. I took the lot adjoining on the south and I added to it, for peculiar benefits, $1,000. I took the next 25 feet southerly and I added to it $800 and I took the remaining 21 feet and a fraction thereof and I made that $500 and that in my judgment represents the full peculiar benefits accruing to that property because of that improvement."

Mr. Fiedler, on page 138, *et seq.*, Vol. I, State of Case:

"Q Have you given careful consideration to the peculiar benefits derived by the land of the Telephone Company, shown on Exhibit 1, by reason of the opening and widening of Branford Place, and if so, to what conclusion have you come; at what figure would you place that peculiar benefit?

A I am going to consult my figures here.

Q I ask you, first, did you come to any amount?

A $12,039.58.

Q By what method did you arrive at that figure?

A I considered that the fact of making the most northerly 25 feet of the Telephone

Company a corner, that that corner influence added an additional 25% to the value of that 25x205 feet, now the corner of Branford Place and Washington street.

Q Proceed.

A In my opinion that is the maximum charge that should be assessed against the Telephone Company property as far as the corner 25 feet are concerned. Of the figure that I have stated, $8,333.33 represents 25% of the value of that 25 feet prior to the opening, and to that extent I am of the opinion that that property has gained in value.

Q That, then, makes $8,333.33 as the peculiar benefit?

A Peculiar benefit, increased value, enhancement of value affecting the most northerly 25 feet by 205 feet.

Q Then you did something more?

A Yes. The balance, amounting to $3,706.23 is 5% of the value of the immediate 71 feet fronting on Washington street, having a depth of 165 or 166 feet. This additional 5%, however, in my opinion, is more or less speculative.

Q In reaching this estimate of peculiar benefits are you using methods and standards that are well recognized in the City of Newark and other municipalities?

A Yes, sir."

The testimony of Mr. Berry and Mr. Fiedler, as to their ascertaining the amount of peculiar benefits derived by the lands of the New York Telephone Company from the improvement, shows that their calculations were the result of a complete and thorough investigation. They not only made a systematic study of the par-

ticular lot, but also acquainted themselves with the values of the adjoining properties and made comparisons; thus enabling themselves to arrive at an accurate estimate. (See pp. 60-72, 105-106, 136-142, Vol. I, State of Case.)

On page 105 (Vol. I, State of Case) Mr. Berry, on *cross examination,* testified as follows:

> "Q Is there anything, Mr. Berry, bearing upon the subject that you have not taken into consideration?
>
> A Well, I am not infallible, but I have tried to measure everything that would shed true light upon the subject to the extent of my ability."

B. It is submitted on the other hand that the testimony of the respondent on this point is not worthy of acceptance. The personal knowledge of the Assessment Commissioners in regard to the land values, which Mr. Van Duyne testified was what they relied upon, was entirely inadequate to assess "fairly, legally and equitably" the lands for benefits derived from the improvement.

The burden of defending the report against the various objections filed against it has fallen wholly upon one of the commissioners, the other two commissioners merely following his lead; none of the commissioners referred to being a real estate expert (see p. 885, Vol. II, State of Case), and the one commissioner referred to being a surveyor, and admittedly having only a limited knowledge of real estate values. It is testified to that others were conferred with, but the name of none is remembered or given excepting Mr. Bock, who was only consulted con-

cerning the property of the Halsey Estate. (See pp. 886 and 889, Vol. II, State of Case.)

The commissioners did not learn what the land in question was assessed at. Mr. Van Duyne, the only commissioner who testified, said, on page 886 (Vol. II, State of Case), in answer to the following questions:

> "Q Did you make any examination of the assessed value for taxing purposes of any of these pieces of property in the determination of the market value?
>
> A Not to my recollection.
>
> Q Did you have a list of these assessed valuations before you?
>
> A My recollection is that we did not. I don't remember such a list."

They made no comparisons with the adjoining property, or properties, in the vicinity. (Page 30, *et seq.*, Vol I, State of Case.) Mr. Van Duyne, on page 289 (Vol. II, State of Case).

> "A We didn't compare the amount of peculiar benefit conferred on any one particular property with the amount of benefit conferred upon any other particular property. Each one was taken by itself and assessed according to the peculiar benefits which we felt were conferred upon it."

They were not acquainted with any recent sales in the neighborhood. They simply observed the land in question, isolated it entirely and apparently without any guide, arrived at the $22,500 as the amount of peculiar benefit acquired by the land in question.

Mr. Van Duyne, on page 885 (Vol. II, State of Case), says:

"Q How did you arrive at the market value of these properties? Did you have any method of determining it?

A The Assessment Commission is made up of men who have lived in Newark practically all their lives, who have been on the streets of Newark a great deal in following their business, and we felt that we were, without necessarily being real estate experts, fairly familiar with Newark property, and to a great extent we arrived at the market values by carefully considering the property, by inspections on the ground and from the judgment of men, perhaps even more familiar than we were as to those values.

Q You say to a great extent you arrived at it in this way. In what other way did you arrive at it, if any?

A I think I have covered the ground.

Q You said 'to a great extent.' Is there any other way in which you arrived at it other than you have stated?

A I think that that covers the ground.

Q What were the men on whose judgment you relied to any extent in the determination of these market values?

A They may have been real estate men, some, and—

Q I do not ask you that. Who were they?

A I cannot remember who the men were.

Q *You mean that you cannot remember or cannot tell me any men on whom you and your brother commissioners placed reliance—in whose opinion you and your*

brother commissioners placed reliance—in determining the market value of these properties?

A No, I don't remember.

Q You don't remember?

A I don't remember."

On page 888, Vol. II, State of Case, Mr. Van Duyne testifies further:

"Q Mr. Van Duyne, at what figure did you ascertain the market value of the Telephone Company property?

A I do not recollect, Mr. Day.

Q Either before or after the opening?

A I do not recollect.

Q Did you employ any expert or confer with any expert at the time of the opening as to the assessed values of the property other than Mr. Bock?

A *I don't recall on this particular property conferring with an expert. We may have done so, but I do not recollect.*

Q Is there any specific property in the zone of assessment upon which you ascertained the market value according to your present recollection? Can you pick out any property and state what the market value that you ascertained was?

A Well, I answered that question to Mr. Smith, Mr. Day. I cannot.

Q You cannot?

A No.

Q Did you not confer with people in the Taxing Department of the city as to the market value?

A Not to my recollection.

Q There was no guiding spirit there that you relied upon?

A No."

The fact that $22,500 was exactly 25 per cent. less than the amount assessed, was explained by Mr. Van Duyne as being merely a coincidence. (See p. 29, Vol. I, State of Case.)

Mr. Van Duyne carefully avoids giving any basis or guiding principle by which the amounts were arrived at. His testimony is lacking in candor, and contains serious contradictions; facts that should have been remembered were forgotten and practically in every emergency the witness falls back upon the stereotyped expression that every property had been considered separately with reference to its increase in market value. His evidence throughout left the conviction that he was unwilling to submit to criticism the method adopted by the commissioners, and that important facts were carefully concealed. (See p. 19 *et seq.*, Tel. Co. State of Case and Prosecutor's brief in Jenkinson Case.)

Mr. Frank J. Bock, the only other witness for the respondent, testified that prior to the improvement he valued the New York Telephone Company lands at $121,000, and after the improvement at $146,000, showing an enhancement of $25,000 in value (p. 189, Vol. I, State of Case). *When requested to give in detail the manner in which he ascertained these values he reached the result which increased his estimates by $20,000, swelling the estimate for benefits to $45,000, and the value of the land to $166,200; approximately twice the amount of the Tax Assessors' figures.*

The following is his testimony on this point in part, on p. 197 (Vol. I, State of Case):

> "Q Taking the aggregate of your estimate, what is the total value of the plot, in your judgment?

A I have not attempted to assemble them. I stated, I believe, the property is worth * * *

Q Will you do that, Mr. Bock?

A Yes. (Witness proceeds to calculate.) I think it amounts to $166,200.

Q *$166,200? Let's get it right.*

A *Yes, $166,200.*

Q Why do you allow a value of only $3,500 on that lot which is 40x25?

A 24.

Q 25, I think. Following the city schedule, how much value are you putting on that little plot?

A At the rate of $500 it would be $20,000.

Q How much would you take off according to the city plan by reason of the depth of only 24 feet?

A That would make it $10,000.

Q You made it $3,500?

A Yes, and I am free to say $10,000 is an entirely unreasonable price, to put it moderately.

Q Whereas $3,500 is perfectly reasonable?

A In my opinion.

Q $166,200 as a total for the Telephone Company property is also reasonable?

A *In attempting to describe the method of arriving at the price by piece-meal, I think that price is a reasonable price.* I lumped it, however, and did not attempt to arrive at the price, with the result of the price that I appraised it as one parcel.

Q There is quite a difference between $146,000, according to one lumping arrangement, and $166,200 according to that method.

A That is true. It simply adds $20,000 for the benefit from the street opening.

Q *So, that instead of the $22,500 you think it should have been $42,500?*

A *If my figures are correct, that is true.*

Q What do you say as to the ratio of assessments to real valuations in the City of Newark?

A The law provides they shall be assessed in full.

Q Is that law carried out according to your practical experience?

A No.

Q Did you find any ratio which does exist?

A No absolute ratio.

Q What do you mean by that?

A By that I mean, some properties are assessed at lower percentage of the full valuation than others.

Q Is there a general average?

A No.

Q There is supposed to be, is there not?

A I have not talked it over with the Assessment Commissioners recently. They are supposed to assess it somewhere at 70 or 80%, but I think there is a marked difference in the percentage in the City.''

Assuming that Mr. Bock's statement that properties are assessed at 70 per cent. of their true value by the Tax Assessors is correct, his calculations still show that he has erred to the extent of $26,200. A careful analysis of his testimony discloses that his calculations are based on the most cursory kind of investigation, thus losing its quality of expertness, and is at best a mere guess.

ESTIMATED VALUATIONS ON
TELEPHONE COMPANY PROPERTY.

	Value prior to Improvement.	Value after Improvement.	Enhancement in Value.
For New York Telephone Company:			
Newark Tax Assessors'	$ 86,400.	$98,000.	$11,600.
Mr. Berry's	100,000.	112,000. to 115,000.	12,300.
Mr. Fiedler's	108,000.+	120,000.	12,039.58
For Defendant City of Newark.			
Com. Van Duyne's	Did not know	Did not know	22,500.
Mr. Bock's	121,000.	146.000. and 166,200.	25,000. and 45,200.

Point III.

The assessment of $22,500 is inequitable.

Equitable assessments require comparisons and the co-relation of one property to another, yet none was made.

Commissioner Van Duyne testified, on pages 238 and 242 (Vol. II, State of Case) that he does not understand what an equitable assessment is.

On page 289 (Vol. II, State of Case) he states as follows:

"A We did not compare the amount of the peculiar benefit conferred on any one particular property with the amount of benefit conferred upon any other particular property. Each one was taken by itself and assessed according to the peculiar benefits which we felt were conferred upon it.

Q I take it, then, Mr. Van Duyne, that in making this assessment you made no attempt to make equality in the matter of assessments as between various property holders.

A The report will show that. That may be determined by an analysis of the report."

And on page 359 (Vol. II, State of Case) he says:

"Q There was no attempt made to proportion the benefits between the property holders; that is to say, being proportionate as between one another?

A I don't know what you mean.

Q Well, properties similarly situated should be assessed proportionately—in the same proportion?

A No, each property was assessed separately."

See also pp. 30, 31, 32 and 33, Vol. I, State of Case.

Serious inequalities have resulted in consequence and appear in Exhibit 2, Vol I, State of Case, from which we note the following comparisons of the New York Telephone Company property with other properties fronting on Branford

Place. (See also Map, Exhibit 1, Vol. I, State of Case.)

Lots No. 4, 7, 8, 32, 33, 34 and 35 in Block 75 are assessed at the rate of 52% of the assessment of the Telephone Company plot, which, at this rate should be assessed at $10,066.58.

Lots No. 29, 28, 24 and 26 in Block 75 are assessed at the rate of 44% of the assessment of the Telephone Company plot, which, at this rate should be assessed at $9,725.34.

Lots No. 12 and 13 in Block 75 are assessed at the rate of 37% of the Telephone Company plot, which, at this rate should be assessed at $8,360.38.

Lots No. 4, 7, 8, 32, 33, 34, 35, 12, 13 and 29 in Block 75 are assessed at the rate of 47% of the assessment of the Telephone Company plot, which, at this rate should be assessed at $10,578.44.

Lots 105, 106, 107, 108 and 109 in Block 57, having a frontage on Branford Place of 172.88 feet were assessed at $4,875, at which rate the Telephone Company plot should be assessed at $4,606.74.

In reference to this particular plot Mr. Fiedler testified on page 140 (Vol. I, State of Case) as follows:

"Q What have you to say about that?

A In comparing the assessment made by the Commissioners against that property with the assessment of $22,500 against the New York Telephone Company there seems to be—

Q How does the inequality impress you?

A The inequality is startling. As I figured the value of the Osborne Realty Company property, comparing it with the

value of the Telephone Company and considering the great benefit that the Osborne property has received as a result of the opening of Branford Place, my opinion of the assessment, comparing it with the assessment of the Telephone Company is that it should be many times greater than it is, and then after I took my figure that I used, my method of adding 5% on the value of the interior 71 feet of the Telephone Company, there is no doubt but that the Osborne Realty Company enjoys greater benefit."

And Mr. Berry, on page 66 (Vol. I, State of Case):

"Q In your judgment is the assessment imposed upon the Telephone Company property inequitable as compared with that property on Broad street and Branford Place?

A The assessment against the New York Telephone Company's property as compared with that of the Osborne Realty Company on the southwesterly corner of Broad street and Branford Place is, to my way of thinking, conspicuously inequitable.

Q The relative benefit acquired by the property at the corner of Broad and Branford Place is greater in your judgment than that on Washington street and Branford Place?

A I feel very certain of it."

Point IV.

The Commissioners did not adopt a just, uniform and proportional rule of assessment, i. e., established some certain standard of assessment, as it was their duty to do.

State, Gains v. *Hudson County Avenue Commission,* 37 L. 12-19.

This is shown by the testimony of Commissioner Van Duyne, where he testifies on page 317 (Vol. II, State of Case):

"Q Didn't you determine on any principle before you began to figure the benefits on each piece of property?

A Not any settled principle that I recollect."

And by the testimony of Mr. Berry on page 81 (Vol. II, State of Case):

"Q In your judgment did the Commission, or did it not show discrimination and inequality of assessment to the detriment of the Telephone Company?

A I think the Commissioners' actions were irregular and, as I have before stated, almost erratic."

The results were:

(a) That property located on the northwest corner of Branford Place and Washington Street, directly opposite that of the New York Telephone Company, having the same frontage on Washington Street and Branford Place and a larger area, and being on the north side of Branford Place, which in itself, as appears by

the testimony, added at least 25% to the value of the land, and nearer Market Street, and hence more valuable, was assessed $5,400 less than the New York Telephone Company property. (See pp. 61, 62, 139 and 140, Vol. I, State of Case.)

(b) It is not controverted that the point on Washington Street where the Telephone Company property is located, by reason of the access had therefrom prior to the opening to Broad, Market and William Streets, represented the area of least relative value of the improvement of widening and opening of Branford Place, and that the benefit of the improvement is felt most by properties at Plane, Arlington, Shipman and Nicholson Streets to the west, by reason of the opening of the new thoroughfare easterly and westerly, and by the properties to the east of Halsey Street, and to the greatest extent by those on Broad Street where the vehicular and pedestrian traffic finds its outlet; yet the assessments are relatively much higher at Washington Street than at any of these points, to the manifest prejudice of the Telephone Company.

This will appear by comparisons prepared by Mr. Paul, set forth in his Telephone Company Exhibit No. 2, Vol. I, State of Case; which was referred to and quoted from, above, and in connection with which we call attention to the testimony of Commissioner Van Duyne on pages 24, 25, 26 and 27 (Vol. I, State of Case), and of Mr. Berry on page 65, which is as follows:

> "Q Considering Branford Place as a whole from Broad Street to Springfield Avenue, what, in your judgment, is the area

of least relative peculiar benefits by reason of this improvement?

A I think probably right at the spot that we are dealing with, Washington and Branford Place.

Q Why?

A For the reason that Camfield Street and Branford Place as opened between Halsey and Broad extended right to this property, and therefore—

Q At the time of the improvement?

A Prior to the improvement this property had access not only through Washington Street, if you please, but likewise through Branford Place, as it has been and is today, between Halsey and Broad, and Camfield Street as it then was, led to the door of the Telephone Company, so that Branford Place in its extension westerly from Washington Street opened, it is true, from that point new territory, and, to my way of thinking, the territory most benefited was what we would call interior land, meaning by 'interior land' lots which were most remote from cross streets. Branford Place has brought those properties into the limelight, so to speak, whereas the property of the Telephone Company had already been more or less conspicuously placed.

Q And Washington Street is a conspicuous street, too, with a trolley line running through it?

A It is a 66 foot street, an important thoroughfare.

Q Then, what, in your judgment, are the areas of greatest benefit?

A Well, those, as stated, where interior lands have been opened to the new street, and probably then at either end of the new

street, the values have been most peculiarly enhanced."

And of Mr. Fiedler, on page 141, as follows:

"Q What is your judgment as to Washington Street and Branford Place representing large area of peculiar benefit by reason of the opening and widening of Branford Place?

A I believe, with reference to the peculiar benefit that the Telephone Company enjoys as the result of the opening of Branford Place it is less there than anywhere else.

Q Does your judgment coincide with Mr. Berry's as stated in his testimony?

A I read his testimony, and I agree with him absolutely."

none of which has been controverted; and we also call attention to the other evidence in these proceedings to the benefit of which the Telephone Company is by stipulation entitled..

Point V.

The Commissioners did not exercise a right judgment in ascertaining the amount of benefits, but arbitrarily fixed the assessment.

It was testified to by Mr. Van Duyne that the report of the former Commissioners was not considered in "any shape, form or manner" and that a reduction of 25% in the amount imposed by the first Commission was a mere coninci-dence. (See pp. 29 and 30, Vol. I, State of Case). *This, however, does not explain the three thousand reductions of exactly 25% that appear on comparing the two reports. It is*

inconceivable that such a state of affairs is merely a coincidence.

It must inevitably lead to the conclusion, despite any evidence to the contrary, that the Commissioners did not use their own judgment, which they were compelled to do, Sinclair vs. *West Hoboken,* 58 N. J. L. 129, *but without any further consideration than of the report of the First Commission they fixed the assessment of $22,500 arbitrarily.*

Point VI.

Conclusion.

The testimony of Mr. Van Duyne, the only Commissioner who testified, shows:

(1) That no plan or method was adopted by the Commissioners in assessing the amount of benefit received by the lands in question from the improvement.

(2) That none of the Commissioners was a real estate expert or had knowledge of any sales in the neighborhood.

(3) That they did not know what any properties were assessed at for taxing purposes, and they did not consult the assessment rolls or anyone in the Tax Office concerning the values of the properties in question.

(4) That they could not remember the names of any experts whom they consulted, nor did they recollect consulting anyone in regard to the New York Telephone Company property.

(5) That no comparisons were made of the properties in the assessment zone.

(6) That the report of the first Commission was not considered in any "shape, form or

manner" and that a reduction of the assessments of the first Commission of 25% in the case of three thousand plots is explained as a coincidence.

It is submitted, therefore, that the presumption of "fairness, legality and equitability" given to the report of the Assessment Commissioners has been clearly overcome by the facts in the case as disclosed in the testimony.

In the case of *Hegerman* vs. *Passaic,* 22 Vr. 51 L. 109, the report of the Commissioners was affirmed. In that case, however, it appeared that in addition to the report "the Common Council have ratified their action, and they are sustained by witnesses who had experience in selling real estate and estimating its value and advantages of location."

It is submitted further that the expert testimony of Mr. Berry and Mr. Fiedler in regard to the enhancement in the present market value of the land of the New York Telephone Company, which the former places at an outside figure as not over $12,300 and the latter at $12,039, and that of the city authorities, which closely corresponds, is the only evidence in this regard which should be considered by the court; that testimony standing wholly uncontroverted save by the wild guessing and unscientific evidence of Mr. Bock in these proceedings.

It is our insistment, further, that the Commissioners cannot, by constant repetition of a partially correct legal doctrine, justify this assessment which they did not pretend to explain; and one is driven to the conclusion that they did not discharge their duties aright, and that

they did not pursue just methods, or arrive at just conclusions such as to command the acceptance of their judgment by the court.

It is our insistment, further, that the property of the Telephone Company has been assessed on an incorrect legal basis; that discrimination has been shown; that the amount assessed is so large as to cause palpable injustice; that the amount should be nominal and that in no case should it exceed the sum of $12,300.

On the foregoing grounds we respectfully submit that the assessment under review should be set aside and pray that any further relief in the matter which the court may deem just may be granted to the prosecutor.

DAY, DAY, SMITH & SLINGERLAND,
CHARLES T. RUSSELL,

Attorneys for and of Counsel
with the Prosecutor-Appellant.

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Stipulation.

New Jersey Supreme Court.

NEW YORK TELEPHONE COMPANY, *Prosecutor,* *vs.* THE MAYOR & COMMON COUNCIL OF THE CITY OF NEWARK, *et al.,* *Respondents.*	*On Certiorari, &c.* *Stipulation.*

It is stipulated between the parties to this cause that the state of case herein shall be regarded as supplemental to the printed state of case of *Jenkinson, et al.,* v. *Tyler Parmly, Comptroller of the City of Newark, et al.,* and that the records and testimony pertaining to this cause which appear therein shall not be reprinted, but shall be regarded as part of the state of case in this cause.

HARRY KALISCH,
Attorney for Respondent.

EDW. A. & WM. T. DAY,
Attorneys for Prosecutor.

Writ of Certiorari.

Allowed June 6, 1916.

NEW JERSEY, *ss:*

The State of New Jersey to our Essex County Circuit Court, the [L. s.] Mayor and Common Council of the City of Newark, the Comptroller and the Board of Street & Water Commissioners of the City of Newark.

GREETING:

We be willing for certain reasons, to be certified of a certain order made by the Essex County Circuit Court on the sixth day of May, 1916, confirming, in part, the report and assessment of benefits made by the Commissioners of Assessments for local improvements of the City of Newark, on the 20th day of September, 1915, assessing, among other properties, the premises known and designated as 281 Washington street, owned by the New York Telephone Company, for peculiar benefits alleged to have been derived by the said lands from the opening and widening of Branford place, in the said City of Newark; and of the said ordinance, report and assessment.

We do command you that said order, report and assessment, together with the record and proceedings before you, and all things touching and concerning the same, as fully and entirely as before you they remain, to our Supreme Court of Judicature at Trenton, the 28th day of June, 1916, you certify and send, together with this writ, that therein may be done what is right and according to the laws of the State of New Jersey.

Writ of Certiorari.

Witness, William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton, this sixth day of June, in the year of our Lord One thousand nine hundred and sixteen.

WM. C. GEBHARDT,
Clerk.

EDW. A. & WM. T. DAY,
Attorneys.

Allocatur, June 6, 1916.

F. J. SWAYZE,
J.

Return.

Return.

Filed June 26, 1916.

In obedience to the command of the within writ directed to me, I, Tyler Parmly, Comptroller 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, the report of assessments for benefits made by Harrison R. Van Duyne, Harry B. O'Connell and Michael DeVita, Assessment Commissioners of the City of Newark, for the opening and widening of Branford place in said city, from Halsey street to Springfield avenue, together with the maps and schedules thereto attached and all proceedings had thereunder, which assessments were confirmed against property of the New York Telephone Company, known as number 281 Washington street in said City of Newark, and the order of the Essex County Circuit Court confirming certain of said assessments, dated May 6th, 1916, together with all schedules and returns filed with me; together with the resolution adopted by the Board of Street and Water Commissioners of the City of Newark on January 23d, 1913, and approved by the Mayor January 24, 1913, fixing the amount required for the opening and widening of said Branford place; and the resolution of the said Board of Street and Water Commissioners, adopted January 23, 1913, approved by the Mayor January 24, 1913, directing publication of notice of its intention to cause said improvement to be made; and the resolution adopted by the Common Council of the City of Newark on February 7, 1913, approved by the Mayor on February 10, 1913, authorizing the issue of

temporary loan bonds for said opening and widening; the resolution of the Common Council of the City of Newark, adopted August 7, 1914, and approved by the Mayor August 8, 1914, authorizing the issue of temporary loan bonds for said opening and widening; and the resolution of the Common Council of the City of Newark, adopted October 2, 1914, and approved by the Mayor October 3, 1914, ascertaining and declaring the total costs and expenses incurred in making said improvement, and the proceedings taken by William Dimond, Joseph Heisler and Adolph Holzner, Assessment Commissioners 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.

In Witness Whereof, I have hereunto set my hand and seal this twenty-sixth day of June, A. D. Nineteen hundred and sixteen.

TYLER PARMLY,
Comptroller of the City of Newark.

First Report of Commissioners, Dated December 12, 1914.

See p. 71, State of Case, in *Jenkinson, et al.*, v. *Tyler Parmly, Comptroller, et al.*

Second Report of Commissioners, Dated September 20, 1915.

See p. 65, Jenkinson's State of Case.

Objections to Report.

Filed October 15, 1915.

Essex County Circuit Court.

In the Matter of the proposed assessment for benefits for the opening and widening of Branford Place.	*Objections of New York Telephone Company.*

To the Judge of the Essex County Circuit Court.

The New York Telephone Company, a corporation of the State of New Jersey, hereby objects to the assessment made by Harrison R. Van Duyne, Harry B. O'Connell and Michael Devita, Commissioners of Assessment of the City of Newark, against it, on property owned by it situated on the westerly side of Washington street at what is now the southwesterly corner of that street and Branford place as extended, and being known as Lot 60, Block 73, Nos. 66 to 80 Branford place, which said assessment amounts to the sum of Twenty-two thousand five hundred dollars ($22,500) for benefits alleged to have been received by it for the opening and widening of said Branford place, from the westerly line of Halsey street to the southerly line of Springfield avenue in the said City of Newark, for the reasons as follows:

(1) Because the real estate of the objector is not benefited to any extent whatsoever by the opening and widening of Branford place.

(2) Because, at all events, the property of the objector is not peculiarly benefited by the

said improvement to the extent of the assessment proposed.

(3) Because the improvement was made for the purpose of providing a new street for heavy traffic east and west and for the relief of traffic on Market street, and was a general improvement for the public at large, the cost of which should be paid by the city at large.

(4) Because the assessment was not made upon all of the land and real estate in the City of Newark peculiarly benefited, in proportion, as nearly as may be, to the advantages each property owner is deemed to have acquired.

(5) Because the assessments for such improvement against all real estate concerned was not made fairly, legally and equitably, but in an arbitrary manner and by an unscientific scale, and were not made in accordance with the peculiar benefits to each separate and respective property, and were based upon fictitious values of lands; and the benefits and advantages, if any, of such improvement vary as to the various lots and parcels of land.

(6) Because discrimination was exercised in the making of said assessments as between the properties of the various owners, and that the assessment against the property of the objector is relatively larger than that made against other properties in the vicinity of said Branford place.

(7) Because the said assessment is inequitable and the benefits from such improvements, if any, are prospective at the present time and the assessment made is speculative.

(8) Because the building occupied by the objector on Washington street was erected at that location for the express purpose of secur-

ing a position near the business center of the city, with quiet and absence of vibration; that such building was erected before the said opening and widening of Branford place, and has therein its conduits, cables and other appliances for the furnishing of telephone service to the City of Newark and elsewhere, and has also in use in its said building delicate and fine apparatus and machines in great number, which should be operated in quiet and without vibration; and that the opening and widening of Branford place and the consequent use thereof for heavy traffic of all kinds will be of no benefit to the property or business of the objector, but will prove a damage and detriment thereto, will necessitate expense and seriously affect the proper conduct of its business.

(9) Because the property of the objector is worth less for the purposes for which it is used, when upon a corner of two intersecting streets, than when upon the inside of a block.

(10) Because the land on which said assessment was made was acquired by said company for telephone purposes and is in actual use for that purpose and has been appropriated to such special use as the permanent location and principal office of said company in the City of Newark. The building erected thereon, in good faith and before the extension of Branford place was projected, is a modern steel structure of the type best adapted to the needs of the telephone service, and is not readily adaptable to general office or commercial business, the elevators and stairways being located on the Branford place side of the building, so that entrance from Branford place cannot be opened and utilized without an entire reconstruction of

the steel work of said building from cellar to roof, at a prohibitive cost. Said company is a public service corporation, and is limited by charter to a telephone business, and has devoted said land and building wholly to the public use. It does not deal in real estate except by way of purchase for permanent occupation and use, and the extension and improvement of Branford place in no way add to the market value of said property and said company in no way derives any peculiar benefit therefrom. Said company has no intention of putting said property in the market or of converting the same to any other than its present use. and thus has no means of obtaining, by sale or otherwise, the benefit of said Branford place opening and widening. Wherefore, said assessment should be reduced to a nominal amount.

(11) Because the said assessment is in many other respects illegal and unauthorized.

Dated October 15th, 1915.

NEW YORK TELEPHONE CO.,
Objector.

EDW. A. & WM. T. DAY,
Attorneys.

Opinion of Frederic Adams, Judge of Essex Circuit Court, on Confirming Report, as to Prosecutor.

See p. 148, Jenkinson's State of Case.

Order of May 6, 1916, Confirming Assessment as to Prosecutor and Others, and Referring Back as to Same.

See p. 174, Jenkinson's State of Case.

Reasons.

Filed July 12, 1916.

New Jersey Supreme Court.

NEW YORK TELEPHONE COMPANY, *Prosecutor,* *vs.* THE MAYOR & COMMON COUNCIL OF THE CITY OF NEWARK, *et al.,* *Respondents.*	*On Certiorari.* *Reasons.*

New York Telephone Company, a corporation of the State of New Jersey, by Edward A. and William T. Day, its attorneys, comes and prays that an assessment made against its property by the Assessment Commissioners of the City of Newark for benefits alleged to have been conferred on said property by reason of the opening and widening of Branford place in said city, which assessment was confirmed by the Circuit Court of Essex County on May 6, 1916, may be set aside and for nothing holden, or may be reassessed according to law as the determination and nature of this action shall require, for the following

REASONS.

(1) Because the real estate of the prosecutor is not benefited to any extent whatsoever by the opening and widening of Branford place.

Reasons.

(2) Because, at all events, the property of the prosecutor is not peculiarly benefited by the said improvement to the extent of the assessment imposed.

(3) Because the improvement was made for the purpose of providing a new street for heavy traffic east and west and for the relief of traffic on Market street, and was a general improvement for the public at large, the cost of which should be paid by the city at large.

(4) Because the assessment was not made upon all of the land and real estate in the City of Newark peculiarly benefited, in proportion, as nearly as may be, to the advantages each property owner is deemed to have acquired.

(5) Because the assessment for such improvement against the real estate of the prosecutor was not made fairly, legally and equitably, but in an arbitrary, unscientific and illegal manner, and not according to the best of their skill and ability, and was not made in accordance with the peculiar benefits to said property, and was based upon a fictitious value of said lands.

(6) Because discrimination was exercised in the making of said assessment as between the properties of prosecutor and of other owners similarly situated, and that the assessment against the property of the prosecutor is relatively larger than that made against said other properties upon and near said Branford place.

(7) Because the said assessment is inequitable and the benefits from such improvements, if any, are prospective at the present time and the assessment made is speculative.

(8) Because the property of the prosecutor is worth less for the purposes for which it is

Reasons.

used, when upon a corner of two intersecting streets, than when upon the inside of a block.

(9) Because the land on which said assessment was made was acquired by said company in the business center of the City of Newark for telephone purposes and is in actual and sole use for that purpose and has been appropriated to such special use as the permanent location and principal office of said company in said city. The building erected thereon, in good faith and before the extension of Branford place was projected, is a modern steel structure of the type best adapted to the needs of the telephone service, and is not readily adaptable to general office or commercial business, the elevators and stairways being located on the Branford place side of the building, so that entrance from Branford place cannot be opened and utilized without an entire reconstruction of the steel work of said building from cellar to roof, at a prohibitive cost. Said building has therein the company's conduits, cables and other appliances for the furnishing of telephone service to the City of Newark and elsewhere. Said company is a public service corporation, and is limited by charter to a telephone business, and has devoted said land and building wholly to the public use. It does not deal in real estate except by way of purchase for permanent occupation and use, and the extension and improvement of Branford place in no way add to the market value of said property, and said company in no way derives any peculiar benefit therefrom. Said company has no intention of putting said property in the market or of converting the same to any other than its present use, and thus has no means of obtaining, by sale or otherwise, the benefit of said Branford place

Reasons.

opening and widening. That the expense of removing its business from its present building to another would exceed $500,000. Wherefore, said assessment should be reduced to a nominal amount.

(10) Because the said Commissioners failed to examine or view said property, and neglected and refused to consider the special and public use to which said land and building had been dedicated.

(11) Because the assessment under review is erroneously based on increase in market value of said land, whereas it should have been based on the enhancement, if any, of the use of said land for public telephone purposes, occasioned by the opening and widening of Branford place.

(12) Because the notice of intention of the proposed passing of the ordinance for the opening and widening of Branford place was not legally given or given in the manner and for the time required by law, nor was such ordinance legally passed.

(13) Because the Commissioners of Assessment were never legally authorized to proceed with the making of said assessment.

(14) Because the resolution of the Board of Street and Water Commissioners of the City of Newark, approved January 24th, 1913, certifying to the Common Council that the sum of one million dollars was necessary for the opening and widening of Branford place, was not based upon an estimate of the amount which, in their judgment, was necessary for the said opening, but was based upon an estimate of the value of the land and real estate needed for

Reasons.

said opening and widening, and said resolution was not legally acted upon.

(15) Because the Commissioners did not duly and legally deposit their report with the city clerk, and advertise and give notice of time and place, and at the same time and place legally and regularly hear and determine and levy the said assessment in compliance with the law.

(16) Because the Commissioners refused to consider the objections filed by the prosecutor at such hearing, contrary to right and justice.

(17) Because the Commissioners did not duly and legally file and advertise the notice of filing of their report with the Circuit Court and of the hearing thereon.

(18) Because the authority of the Commissioners for proceeding with the improvement is based upon an ordinance for the opening and widening of Branford place, which, in turn, is based upon a resolution of the Common Council of the City of Newark, authorizing the issuance of bonds to pay for the same and objection is made to this proceeding because the said resolution was not legally passed and the subsequent action in relation to said assessment is irregular because, under the act to provide funds to be used for the opening, widening and vacating of streets and highways in cities of the first class, in this State (Public Laws of 1912, page 169, Chapter 121), provision is made by its second section that the Board of Street and Water Commissioners must in addition to stating the amount of money necessary for said opening, certify and state to the Common Council the information upon which the judgment of the Board of Street and Water Commissioners is based in requesting said The Mayor and Com-

mon Council of the City of Newark to authorize the issuance of bonds for said improvement, and there was no certificate or statement of the facts, estimate and information upon which the Board of Street and Water Commissioners based their judgment, presented to The Mayor and Common Council of the City of Newark upon the passing of said resolution, which was approved February 10th, 1913, and therefore the Mayor and Common Council of the City of Newark were without authority, jurisdiction or power to pass said resolution, and all subsequent proceedings taken for the opening and widening of Branford place, were, therefore, illegal.

(19) Because such assessment and the levy and collection proposed is contrary to the constitution of the State and of the United States, and the said assessments are in effect the taking of property without compensation and also the taking of the same without due process of law and without proper adequate compensation therefor.

(20) That the said assessment is in many other respects illegal, unjust and unauthorized.

Dated July 11, 1916.

EDWARD A. & WILLIAM T. DAY,
Attorneys for Prosecutor.

Exhibit 1 on Behalf of Prosecutor.

Map of part of the assessed area. This is a large map showing each individual piece of property in this part of the area. It contains, in the middle of each block, the block number; at the front of each lot and within the lines of the lot, the lot number, and between this num-

ber and the front line of the lot is the number of feet front; in front of the lot in the street, is the street number of each property. It also contains the name of the owner against whom the assessment for the property is made, and in white figures the amount of the assessment according to the second report of the Commissioners, the one in review in this case. The properties outlined in colors include that of the New York Telephone Company and the other properties with which it is compared by Mr. Paul in Exhibit 2.

Exhibit 2 on Behalf of Prosecutor.

Schedule prepared by Mr. Paul, comparing the property of the New York Telephone Company with other properties along Branford place in regard to the amount of the assessment for peculiar benefits.

Exhibit 3 on Behalf of Prosecutor.

The Hoffman Table printed by the Board of Assessment and Revision of Taxes of the City of Newark in 1916 showing the percentage of unit value of lots of various depths.

Exhibit 1 on Behalf of Respondent.

Letter of the New York Telephone Company to the Board of Street and Water Commissioners of the City of Newark, New Jersey, dated July 20, 1916, and written by William McHarg, general agent for the New York Telephone Company.

Stipulation.

NEW JERSEY SUPREME COURT.

NEW YORK TELEPHONE COMPANY, *Prosecutor,* *vs.* THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, *et al.*, *Complainants.*	*On Certiorari.* *Stipulation.*

IT IS HEREBY STIPULATED AND AGREED between the parties herein that the testimony and exhibits taken and introduced by New York Telephone Company and by stipulation before the Essex Circuit Court in the matter of the opening and widening of Branford place, or such portions as the parties may deem relevant, may be put in and included in this cause and printed, and used herein with the same force and effect as if the same constituted part of the evidence taken in this cause, and that the opinion rendered by Hon. Frederic Adams, Judge of said Circuit Court, may also be printed as part of the record herein, if the said parties so desire.

Dated June , 1916.

EDW. A. & WM. T. DAY,
Attorneys for Prosecutor.

HARRY KALISCH,
Attorney for Respondents.

Opening.

Essex Circuit Court.

Friday, November 19, 1915.

In the Matter of the Report of the Commissioners of Assessment of the City of Newark Assessing Benefits for the Branford Place Opening and Widening.

On Objections to Report.

Before Hon. Frederic Adams, *J.*

For the City of Newark, respondent, appears Harry Kalisch, Esq., City Attorney.

For objectors appear Messrs. Coult & Smith, by William A. Smith, Esq.; William T. Day, Esq.; Harry Campton, Esq.; Alfred F. Stevens, Esq.; Alonzo Church, Esq.; Fred Prout, Esq.; Leo Stein, Esq.; George D. Mulligan, Esq.; James R. Mulligan, Esq.; Ernest C. Lum, Esq.; Saul Cohn, Esq., and Henry L. Grosken, Esq.

The Court. It has been agreed heretofore that argument on the preliminary questions made on behalf of any one party will be available to others. Is a similar agreement to be made as to the effect of testimony? For instance, I understand that Messrs. Coult & Smith propose to examine the commissioners as to their methods. Is that testimony to be available to other objectors?

Mr. Smith. As far as we are concerned, it can be. It is rather a matter for the city and the other objectors, I suppose.

Mr. Kalisch. I have not any objection to having it apply to the other objectors.

The Court. So far as it is general in its character and naturally applicable to the cases of other objectors, I see no reason why it may not, by agreement, be considered. It will save the trouble of taking the testimony over and over again. So far as it is specific, of course, it would not apply.

Friday, January 7, 1916.

Mr. Day opens for objector.

HARRISON R. VAN DUYNE, recalled in behalf of New York Telephone Company, objector.

Direct examination by Mr. Day.

Q Mr. Van Duyne, I am examining you in behalf of the telephone company and as the representative of the assessment commissioners. What was the amount of peculiar benefit placed by your commission upon the telephone company property? A In the judgment of the commission the enhancement of market value of the telephone company property due to the opening and widening of Branford place was $22,500.

Q Upon what basis or by what method did you arrive at that figure? A We arrived at that figure after a study of the situation, and it represented, as I said, the increase or enhancement or market value—

Q Yes. I am asking you the principle by which you arrived at that amount? A In the first place, the telephone property had a frontage on only one street, that being Washington

street. By the opening and widening of Branford place this property was made a corner property. Now, that was one of the elements that we took into consideration.

Q Is that as nearly as you can state the method, or basis, by which you arrived at that figure? A Aside from being made a corner property, it was made a corner property on a new and important thoroughfare, and the amount which represented the increase of market value, in the judgment of the commissioners, was the amount of the assessment.

Q Is that the only answer you can make to my question, which is directed at the method, or basis, by which you arrived at that precise figure? A Yes, the figure represented the judgment of the commissioners after a careful study of the situation.

Q Then you are unable to state the method, or basis, by which you figured that amount? A Beyond the fact that the property was made a corner property, I can only say we took into consideration its size and shape and its location, and after a careful study of the old situation and the new, in our judgment, the amount that we arrived at, $22,500, represented its increase in market value.

Q You have stated that. Did you take into consideration that this was the main building of the New York Telephone Company, and that the company is a public service corporation permanently located at that corner, and for that reason did you apply any different rule of assessment? A We considered all the property, and whether it was vacant property or whether it had buildings on made no difference in arriving at the amount of the assess-

ment. The assessment was on the land and not on the building.

Q And you did not take into special consideration the use of the building on the land? A We did not.

Q And you, therefore, treated it upon the same basis as all private property? A Yes, sir.

Q Was that true, also, Mr. Van Duyne, as to the two church properties that were within the zone of assessment? A Yes, sir.

Q Did you adopt any different rule with reference to those church properties?

Mr. Kalisch. I object to that. I do not know what church property you mean.

Mr. Day. There were two properties owned by churches within the zone of assessment, were there not, Mr. Van Duyne?

Witness. Why, there were a number of properties in the zone of the assessment owned by churches.

Mr. Day. The St. Paul's and First Presbyterian churches were the two that I had in mind.

Mr. Kalisch. Well, I object to the question. I do not see the bearing it has on the methods that were employed in assessing this property. It is not a fair comparison at all.

The Court. I will allow the question as tending to throw light on the methods pursued by the commissioners.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Witness. My recollection is that we assessed them in the same method; that is my recollection.

Q That is true as to the academy that was also in the zone of the assessment—the Newark Academy?

Mr. Kalisch. I object to that. It opens up a wide range of inquiry, I think, comparing it with individual properties.

The Court. I make the same ruling.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q (*By the Court.*) Is that true of the academy? A That is my recollection.

Q (*By Mr. Day.*) How with reference to the Central Railroad Company property that was assessed, did you use the same rule; namely, enhancement in market value?

Objected to on the same ground.

The Court. I will allow the question to be answered.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A I believe, Mr. Day, in my former testimony that my recollection was that we had, but I wish to explain this: that after I left the stand my attention was called to the fact—of course, the assessment commission is not made up of lawyers—my attention was called to the fact that at the time that the Central Railroad assessment was made the legal phase of it, that we could not assess the Central Railroad in exactly the same way that we did the others, was brought to our attention, and then I recalled

that assessment, and while we were considering that assessment, we considered it from the point of view of accessibility for railroad purposes, and that was in our minds at the time—that is, for railroad uses, I should say—and that was in our minds at the time that that assessment was made; so that there was a difference in assessing the Central Railroad property.

Q In other words, you assessed that differently and on the basis of it being railroad property and the peculiar benefit derived by that property for railroad purposes? A For railroad purposes.

Q Did you make any investigation of the building that stands upon the telephone company property? A No, sir.

Q Of the building itself? A No, sir.

Q Did you note the solidity of its construction? A I made no examination of the building; the commission, I think, did not—the commissioners.

Q Did you make any investigation of the use of the property by the telephone company? A No, sir.

Q You do not know the interior arrangement, how many switchboards there are, how many cables enter the building, or details of that kind? A I do not.

Q Do you know anything as to the relation of the telephone company building with reference to the branch offices known as Waverly and Branch Brook? A I do not.

Q None of the points to which I have just called your attention was taken into consideration in ascertaining the enhancement of market value to the telephone company property? A The enhancement in market value applied to the land.

Q And the other points were not considered? A Were not considered.

Q The property at the time of the widening and opening of this street was interior land, was it not? A Well, it had a frontage on one street.

Q Well, but it was interior land, as we understand it; that is, it was in the block bounded by Market street and William street and Plane street and Washington street, and in that respect was interior property? A Yes, sir.

Q And directly opposite was Camfield street, was it not, or nearly so? A Diagonally opposite.

Q And that street led into Branford place and Branford place into Broad street? A Yes, sir.

Q So that the telephone property had access to Broad street in that manner? A Yes, through narrow Camfield street into Branford place.

Q And then it also had access northerly to Market street, did it not? A It did.

Q And southerly to William street and the southerly part of the city? A Yes, sir.

Q For those reasons did the telephone company reap the same relative benefit that interior property did on Plane street and the streets west thereof? A I cannot compare two different pieces of property, Mr. Day. Each one was considered separately and the conditions were considered separately.

Q Well, by the opening of Branford place westerly from Washington street to Springfield avenue, Plane street, Arlington street, Nicholson street and Shipman street properties there acquired two new modes of access, did they not, one from Broad street and the other from

Springfield avenue, that they had not formerly had? A Yes, sir.

Q And that was a great benefit to those properties, was it not? A Unquestionably.

Q And relatively greater than the benefit to the telephone company property, which already had access from three directions and simply had the new access of Branford place opened to it? A In making the assessment—

Q Now, answer my question: whether as a relative proposition that is not true? A Well, I cannot answer that as a relative proposition, because the assessments on those different properties were separately made, and the assessment on the telephone company property represented the enhancement of market value and the peculiar benefit to that particular piece, and the properties in the neighborhood of Shipman street and Nicholson street were separately considered, and the amount assessed was the amount, in our judgment, that they were peculiarly benefited. We did not make comparisons, and I cannot make them now.

Q Now, do you consider that an answer to my question? A Yes, sir.

Q You do? A Yes, sir.

Mr. Day. I would like to have the question repeated, and I would like to have the witness instructed to answer it, if not as a commissioner, as an expert. You know a great deal about real estate, and you can give your opinion on that point.

Mr. Kalisch. I object to his answering as an expert. He is not qualified.

Mr. Day. Then as a commissioner.

(The stenographer reads from the record as follows: "Q And that was a great

benefit to those properties, was it not? A Unquestionably. Q And relatively greater than the benefit to the telephone company property, which already had access from three directions and simply had the new access of Branford place opened to it?")

Q That is my question, and it seems to me that you can answer yes or no; whether the relative benefit was not greater to the properties on Plane, Arlington, Shipman and Nicholson streets.

Mr. Kalisch. Your honor, I think the witness has stated that he cannot answer the question any differently than what he has answered it; that he did not make comparisons when they made the assessments, nor can he make them now. I do not think the witness ought to be prodded to make an answer which he says he cannot make.

The Court. If the witness, after hearing the question again and upon further consideration, is able to answer it, he may do so.

A Generally speaking, if all other conditions are similar, the property with four means of access and egress has a slight advantage over a property with only three, provided all the other conditions were similar and equal, as I stated.

Q You say that the increase is slight when no access had previously existed from Broad street or Springfield avenue, both important thoroughfares—do you say slight? A No.

Mr. Kalisch. He did not say "slight."

(Former answer read as follows: "Generally speaking, if all other conditions

are similar, the property with four means of access and egress has a slight advantage over a property with only three, provided all the other conditions were similar and equal, as I stated.")

A I wish to eliminate the word "slight" from my answer, as not being what I intended to say. Has an advantage, all other conditions being equal.

Q The advantage, you would say, was very great? A I prefer to stand on "an advantage," Mr. Day.

Q What was the amount of the assessment made by the former commissioners of assessment?

Objected to.

The Court. The question is whether the former report is not the best evidence on that subject.

Mr. Day. Yes, it would be.

Q You have examined the former report, and did not the former commissioners of assessment fix $33,000 as the assessment for peculiar benefits on the telephone company property?

Mr. Kalisch. I object to that. I think, in the first place, the best evidence of what is contained in the report is the report itself, and, secondly, I do not see that it has any bearing on what the other commissioners fixed as the peculiar benefits.

The Court. I agree with you that the former report is the best evidence of its contents. Inasmuch as the former report was sent back for correction, and so, presumably, and, I may say, admittedly, was examined by the commissioners who made

the present report, and who were instructed to make another report as to the same property, I think that a comparison of figures is proper.

Mr. Kalisch. Well, your Honor, the report was not sent back because of any particular property, and if these present commissioners have made the same assessment on the telephone company property, that would not be a ground for setting aside that particular assessment, merely because the old report was sent back for revision and they had not revised it. It was sent back, as I understand it, because of some general irregularity in the form of the report.

The Court. I did not know that you wanted to be heard again, Mr. Kalisch.

Mr. Kalisch. I beg your pardon! I thought your Honor had finished.

The Court. I have already ruled on this matter. If you want to scrutinize the report itself, it can be produced.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Day. I would like to have it produced. I thought it was an exhibit in the cause.

The Court. Your present assessment is shown on the map, I suppose?

Witness. Yes, sir; $22,500.

Mr. Day. $22,500 is the correct amount.

(Former report produced.)

Q I show you the report of the former commissioners, and ask you what their assessment

on the telephone company property was (shown to witness)? A $30,000.

Q That amount your commissioners of assessment took into consideration in arriving at their assessment? A We did not.

Q Your amount is twenty-five per cent. less than the former. Was not that the way in which you arrived at your figure? A No, sir.

Q How did it happen to be exactly twenty-five per cent? A I do not know.

Q You were not governed, then, by the former report? A In no way, shape or manner.

Q And it was pure accident that it happened to be exactly twenty-five per cent. less; is that right? A Yes.

Q And that same accident covered a multitude of properties in the zone of assessment, did it not? A The old report, Mr. Day, was not before us in any way, shape or manner when we made the new assessment.

Q That is not an answer to my question, Mr. Van Duyne. A I have not worked out any percentages on this area at all.

Q Now, answer my question. It was pure accident, then, that in the case of hundreds of properties the amount was exactly twenty-five per cent. less than the former amount; is that right? A I do not know that it was that, no.

Q If so, it was an accident?

Mr. Kalisch. I object to that. The witness says that he does not know as a fact that it was that. Now, Mr. Day says, "If it was so, it was an accident?"

The Court. Well, it is for the witness to say whether he can answer the question or not.

A Why, I think, your Honor, that I answered it in saying that the old report was not before us in any way, shape or manner when we made this new assessment.

Q Then how do you account for the fact that so many properties were assessed by you precisely twenty-five per cent. less than by the former commissioners? A I do not know that they were.

Q You have no other explanation to make? A No, sir.

Q Now, how did your assessment of $22,500 correspond with reference to your own assessments on other lands along Branford place?

Mr. Kalisch. I object to that. That takes in the comparison of all the lands on Branford place, and each property separately assessed stands by itself.

The Court. That is quite true, and yet I think a comparison of assessments is not improper.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A I can only refer you to the report, Mr. Day.

Q Did you make any comparisons as between properties on Branford place in arriving at your assessment? A Each property was separately assessed.

Mr. Day. Answer my question, please, yes or no.

Q (Question read.) A I do not recall comparisons.

Q In your report to the Court you state that you had made the estimates and assessments fairly, legally and equitably. Now, is it pos-

sible to arrive at equitable assessments without comparisons? A I think it is. I think that the estimated market value of a piece of property along the line of Branford place before the opening and the estimated market value of that same piece of property after the opening, showing the peculiar benefits and the rise in market value, eliminates that property, and you are then ready for the next.

Q But your intention was to make the various properties relatively equal in the matter of assessments for benefits, was it not?

Mr. Kalisch. I object to that.

The Court. Just what is it that you object to?

Mr. Kalisch. He is assuming something that is not so and that does not appear.

(Question read.)

Mr. Kalisch. In interpreting the word "equitable," I gather that the meaning is that all properties should be assessed according to their peculiar benefits, and that that is an equitable assessment; that each one should be assessed not more than its peculiar benefit, that is equitable; but not to make the assessments equal. That is quite another proposition, and there is no fact that indicates that that was the case. The word "equitable" that appears in the report—the only inference that you could draw from that is that each property was assessed in the same way; namely, increase in market value, increase in market value to each particular property. That is the particular peculiar benefit that each one enjoyed, and that is an equitable apportionment, or assessment.

New Jersey State Library

The Court. I do not see any objection to the question. See if you can answer it, Mr. Van Duyne.

(Question read.)

Mr. Kalisch. That is what I object to.

The Court. I overrule the objection.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A The properties along the line of the opening and widening—

Q Please answer my question directly. A May I answer it in my own way?

The Court. I do not think the witness is bound to answer yes or no. It is a technical matter. He may answer it in his own way.

Witness. The property along the line of the opening and widening and in the vicinity of the opening and widening—the property that is peculiarly benefited is made up of a great number of lots that differ in size and shape and in general dimensions, and all these things—in taking into consideration one particular lot all these things had to be taken into consideration, and in arriving at the peculiar benefit in that one lot, the measure of it is the increase in market value on that lot. Then in the next lot different conditions may be apparent—an odd size and different shaped lots. Those things have to be taken into consideration, too. Now, just how a comparison of those two lots will stand I cannot say.

Q But, as a matter of fact, did you not consider one property in relation to another prop-

erty, so that your assessments should be relatively equal? A Well, I think that the report answers that question, Mr. Day.

Q I am asking you now what the commissioners did. A The commissioners considered each lot separately and assessed for peculiar benefits according to the rise in market value of the property.

Q You have stated that. I am asking you now whether you did not consider one property with relation to the other, so that relatively they should be equal in the matter of assessments?

Mr. Kalisch. May I ask what is meant by "equal," in dollars and cents or by method? I think the witness is entitled to know what is meant by that.

Mr. Day. I will change the word "equal" to "equitable."

The Court. The question is whether you considered one property with another for the purpose of reaching an equitable result?

A My answer to that is that we considered each property separately. It is only an analysis of the report that will answer that question.

Q Then it was not one of the guiding principles of the commission? A A guiding principle of the commissioners, do you mean, to take three or four properties and compare them and—

Q Considering the properties on Branford place with relation to each other, so that their several assessments should be equitable? A Well, I think the assessments are equitable.

Mr. Day. I think I am entitled to an answer, if your Honor please.

The Court. I think, if I understand the witness, he has distinctly said that he considered the properties separately.

Mr. Day. Then he can say that they did not use the method of comparison or the relation of one property to the other, but he does not say that either.

The Court. He said that he did not recall any comparison.

Mr. Kalisch. That is what he said.

Q Then, by way of comparison, take the property at the northwest corner of Branford place and Washington street, designated as block 73, made up of lots 54, 40 and 50 (indicating on a blueprint produced by objector).

Mr. Day. Does your Honor see that property on the opposite corner, an irregular shaped property? It is across the street from the telephone company property.

Witness. And on the same side of Washington street.

The Court. I have it here.

Q That property indicated by the red lines embraces an area somewhat greater in square feet than that of the telephone company property, and has the same number of feet, or practically so, on Branford place, and the same number of feet, or a little more, on Washington street. What was the total assessment put upon the three plots embraced in that outline? A (After referring to map Ex. B.) $17,500.

Q No, I think you made a mistake. It is $19,500. A $19,500.

Q Precisely $3,000 less than the assessment made upon the land of the telephone company, is it not? A Yes, sir.

Q But property on the north side of the street is estimated by experts as worth more than that on the south, is it not? A Well, I do not know what experts may estimate; I believe it is worth a little more.

Q It is usually considered twenty-five to thirty per cent. more, is it not, Mr. Van Duyne? A Well, I—

Q I ask you for your knowledge. If you do not know, you can say so.

Mr. Kalisch. I object to the question. He is not an expert.

Mr. Day. If he has the knowledge, and he ought to have it.

Witness. I am not prepared to say.

Q That property is of greater relative value than the telephone company property, owing to its proximity to Market street, is it not?

Mr. Kalisch. I object to that question.

The Court. I will allow it.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A Front foot values may increase as you approach Market street.

Q And therefore it is of greater value relatively than the telephone company property, is it not? A Well, there are three separate pieces of property under different ownerships in the tract that you have indicated on the north side of Branford place.

Q But the plot as a whole is of greater relative value than the telephone company property, because on the north side of Branford place the line goes nearer Market street? A It is not one plot; it is three plots.

Q I have designated an area that agrees very closely with the telephone company property, and that plot as a whole, I ask you whether it is not of greater relative value than the telephone company property, because nearer Market street and on the north side of Branford place? A Do you mean, Mr. Day, if that plot which you have outlined in red, which includes these three separate properties, was under one ownership, would it be more valuable than the telephone company property?

Q Yes, put it that way, then. A Well, it is so different in size and shape that it would take a careful analysis of that by real estate experts to determine that question. I am not prepared to do that.

Q As commissioners, did you not consider those things? A We did; we considered everything.

Q Then how do you account for an assessment of $3,000 less upon that property than the telephone company property, when it ought to be from $3,000 to $5,000 more? Which was the correct principle which you have adopted? A I cannot compare—I have testified before, Mr. Day, that I cannot compare two assessments. Each one was considered separately, and all the conditions were taken under our consideration, and the peculiar benefit was represented by what, in our judgment, was the rise in the market value due to the opening and widening—the enhancement.

Q Now, then, what was the basis upon which you arrived at that conclusion with reference to the property at the northwest corner? A We considered its size and shape and its location with regard to the improvement, and we

assessed it what, in our judgment, was its enhancement in market value. We appraised its value before the opening and came to a conclusion of its value before the opening and after the opening and widening, and the difference between those two was the measure of the peculiar benefit.

Q That you have stated. Now, I am trying to get at the principle, or rule, that governed you in your figures on one corner and the other corner. Will you please state— A I cannot compare; I do not remember.

Q Where was the center on Branford place of the greatest benefit from the widening and opening of the street, or, reversing it, where was the center of the least benefit? A I am afraid I cannot answer that question. A very careful study of the report, I think, is the only way that it could be answered.

Q Would not the greatest benefit be derived by property on Broad street down to which the vehicular and pedestrian traffic would chiefly go? A That involves a comparison, and that I am not prepared to answer, because each one of these properties was considered separately.

Q Would not the greater amount of benefit relatively attach to the properties which theretofore had been interior and now have the benefit of access east and west on Plane, Arlington, Nicholson and Shipman streets? A By "interior" do you mean with no frontage or—

Q Having no access east or west, and therefore interior? A The greatest benefit would be to property that was absolutely interior property; that is, with no frontage whatever. If that was given frontage, that is all you could do for that property. There would be the greatest benefit.

Q Then the greatest relative benefit would be as to property on Branford place at Plane and Arlington and Nicholson and Shipman streets? A No, the property which formerly had no frontage whatever on any street.

Q I am confining myself now to the line of Branford place. A I may have misunderstood your question, Mr. Day.

Q (Question read as follows: "Then the greatest relative benefit would be as to property on Branford place at Plane and Arlington and Nicholson and Shipman streets?") A I have not analyzed the report in that way since it was made. I think that an analysis of it would answer your question. I cannot answer it.

Q For the reason that the telephone company property had already access to Broad, through Camfield street and Branford place, and to Market street and William street, would not that point indicate the area of least advantage relatively from this improvement? A No, that would determine—all those conditions would determine its market value before the opening, and the result of those conditions would probably be the comparatively high value of the property before the opening; but immediately after the opening it was different; it was made a corner property on a brand new thoroughfare and an important one.

Q And that it only had one more method of access added; whereas the properties on Plane, Arlington, Nicholson and Shipman streets had an entirely new access to their properties, both east and west, so that relatively those latter properties received the greater benefit? A The benefit, Mr. Day, is represented by the increase in market value.

Q That is your only answer? A That is my answer to that.

CROSS EXAMINATION WAIVED.

STEPHEN D. CRANE, sworn in behalf of New York Telephone Company, objector.

Direct examination by Mr. Day.

Q You are the division plant engineer of the New York Telephone Company? A Yes.

Q Where is your office? A At 281 Washington street, Newark.

Q In the property under review in this matter? A Yes, sir.

Q How is the plot of land occupied at the southwest corner of Washington street and Branford place? A A nine-story building has been built on it. The building is used—

Q No, not its use yet. Just describe the building. How much does it occupy? A Nine stories.

Q How much does it occupy? A Practically the whole lot; a little space at the northwest corner of the property which is not covered by the building, a little yard.

Q Otherwise, this nine-story building occupies the entire premises? A Yes.

Q And what is the construction of the building? A Steel frame, brick, fireproof construction.

Q Heavy construction also? A It is exceptionally heavy, on account of the purpose for which the building was designed.

Q And that purpose was what? A Primarily to contain the telephone switchboards and associated apparatus operated by the telephone

company in the central part of the city of Newark.

Q Now, describe the contents of the building. You have mentioned switchboards. How many of them are there? A The building contains four switchboards; the switchboard known as Market, the switchboard known as Mulberry, the switchboard known as the Newark toll board, and a switchboard which is called the operators' school, used for the purpose of training operators.

Q What business does the Newark toll board switchboard handle? A That handles the toll business between points in New Jersey; for instance, Asbury Park wishing to communicate with Paterson, the connection would be made at the Newark toll board; in other words, in the Newark toll board trunk lines from the various New Jersey offices terminate and can be connected together, so that one Jersey office can be connected with any other Jersey office.

Q So that it handles the suburban and long distance wires? A It handles the suburban wires connecting points in New Jersey and the long distance wires which are assigned to New Jersey for use.

Q Then there are a number of offices in the building, are there not? A Yes.

Q And how are they occupied? A The building, besides containing the switchboards I mentioned, is also used as the division headquarters for the plant department, the commercial department, the traffic department and the revenue accounting department; the supply department has a store room in the basement, and the real estate department uses some space.

Q Is any portion of the building rented out to private parties? A No.

Q It is entirely used for telephone purposes? A Entirely.

Q Was it also designed entirely as a telephone company business building? A Yes.

Q Are there telephone wires that enter the building? A Yes.

Q From what point? A From Washington street.

Q From an underground— A From an underground subway.

Q Located at that point? A Located in Washington street.

Q In front of the building? A Yes.

Q How many wires are there that enter from the subway? A At the present time there are forty-five underground cables entering the building. These cables aggregate 45,000 wires; they contain 45,000 wires in all.

Q Do any of the wires enter from Branford place? A No.

Q Would it be feasible to have them do so? A Why, there would be absolutely no object in it. They now enter permanently from Washington street; there would be no advantage in rearranging them.

Q And it would be a large expense also? A It would be very expensive.

Q Now, has any material advantage or peculiar benefit been added to the property by the opening of Branford place, in your judgment?

Mr. Kalisch. I object to that, because peculiar benefit involves the question of increase in market value, and for that purpose, I take it, it would be necessary to

qualify this witness as an expert on real estate values.

The Court. I will take the witness's answer to the question as framed.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A The telephone building, at 281 Washington street, was constructed and designed for a special purpose, and fully conforms to that purpose. The opening, or the cutting through, of Branford place from Washington street to Springfield avenue absolutely adds nothing to the advantages of the building for that purpose, for the purpose for which it was designed.

Q The building faces on Washington street? A Yes.

Q Has it any opening upon Branford place? A It has windows.

Q But it had light and air before, had it not—before Branford place was opened? A The windows began at the fourth floor, and they overlooked the roof of the adjoining building; there were no windows below the fourth floor.

Q The opening of Branford place affords some advantage of access to your property, does it not? A It shortens the distance to the property, to this building, from any point along Springfield avenue or near it.

Q Whom would that affect other than your employees living to the west of Washington street? A Only that portion of the public living in that vicinity which has occasion to visit the building.

Q And that number is small? A I do not know how much it would amount to, of course. It is only a part of the City of Newark.

Q They would have to come to you whether Branford place existed or not, would they not? A Why, from the nature of our business—it is a public service corporation—people have to come and do business with us wherever we are located. Of course, we would locate centrally.

Q Well, was your location arrived at after a careful study? A Yes, a very careful study.

Q Why? A The location of the telephone central office, to be proper and economical, must be at the telephonic center of the area which it is designed to serve; that is, it must be located at the point that gives the shortest average distance from the central office to every telephone; it has to be at the center of the telephone distribution.

Q And to be of value to the telephone business it must be just about where it is now? A Yes, sir.

Q Is that my understanding? A Yes.

Q So that the location of the building was arrived at after a careful investigation of all other sites in the central part of the city here? A It was.

Q When was the building erected and put into use? A I recollect that the construction was commenced in 1909, and the first switchboard put in it was put into service in 1910.

Q Then you have other central offices in this city, or branch offices? A Yes, we have two others in Newark.

Q Which are they? A The office known as Branch Brook, which is located on Bloomfield avenue opposite High street, and the office known as Waverly, located at the corner of Avon avenue and Hunterdon street.

Q Could either of those offices be substituted for this central office, or building? A No, for two reasons; in the first place, their locations are not proper for serving the central part of the city, which is now served from 281 Washington street, and, in the second place, they are not large enough to contain the additional apparatus which would be necessary if they took over the area served from the Washington street building.

Q Is your company's business located permanently in this building at the southwest corner of Washington street and Branford place? A Yes.

Q To what extent or for what period of time, if you can tell? A For a very long period of time, as far as we can see in advance, fifty or one hundred years. As the amount of telephone business in the area now served from that building grows we can relieve the switchboards by two ways; one, by adding additional stories to the building, for which the frame was designed, and, secondly, by establishing a new central office in a building at some other point in the central office area—for instance, the eastern part of Newark—and transferring part of the area now served from Washington street to the new building; that is, Washington street will always serve an area, and as the business increases that area will be gradually diminished, but we will always require a switchboard at 281 Washington street.

Q How many additional stories can be erected? A Four.

Q Making the height thirteen stories? A Yes.

Q And so you could add another central office to the east, just as in the case of Waverly, you have one to the south, and Branch Brook to the north? A Yes.

Q And still keeping Washington street as the telephonic permanent center? A Yes.

Q Now, as to the expense of moving away from this building, in order that you may get the benefit of the enhancement in market value to which Mr. Van Duyne, the commissioner, has testified. Is that feasible? A The cost of moving would be prohibitive.

Q Describe why. Supposing there were a building just south of you on Washington street, of the same size and construction, and so on, could you not move into that, and so devote your present building to commercial purposes, or else sell it, and so get the benefit of the increase in market value? A The cost of such a change would be so great that any possible enhancement of market value would be absorbed in the cost of the change. The company would lose a great deal of money by any change like that. The primary consideration in that matter is that the telephone company must furnish continuous service; the service cannot be interrupted for a week, a month or six months. The result of that is that, in order to change the location of the central office, it would be necessary to install in the new location—in the building put up in the new location—a complete duplication of the existing apparatus. That would involve, in the case of the switchboards the size of those contained in the present building, probably one year of installation and manufacturing work to complete. Towards the end of the completion of the switchboard work in the new building ex-

pensive changes would have to be made in the subways and underground cables in the vicinity to connect them to the new switchboard, and then when all was ready, at a certain time when the traffic was very light, usually about midnight on a Saturday night, the lines could be transferred in a very short time, about half a minute, by special arrangement, from the old board to the new board. Then the old board would have to be dismantled and removed. Its recovered value would be only a fraction of its first cost.

Q What would be the cost of the new equipment in a new building, including new subway construction? A A rough estimate of the net cost of such a change would be about $600,000.

Q Have you scheduled it? A Well, that would be made up of a net cost of about $587,000—

By Mr. Kalisch.

Q Are you reading from a memorandum made by you? A Yes.

Q You made this memorandum yourself? A Yes.

By Mr. Day.

Q Proceed. A The net cost of the switchboard changes I estimate at $587,000, and of the outside subway and cable changes, $96,750, or a total of $683,750.

Q And it is for that reason that you say that the cost is prohibitive? A It is not conceivable that the enhancement of value would come anywhere near such a figure.

Cross examination by Mr. Kalisch.

Q Mr. Crane, was this property that is now the subject of investigation purchased by your

company, or was the property condemned before you acquired it? A Condemned for the opening of the street?

Q No, I mean did you acquire title to this property through condemnation proceedings or did you buy it? A My impression is that we bought it; there were no condemnation proceedings, to my knowledge.

Q It was purchased by you from the former owner? A Yes.

Q You have not got the deed, have you, to that property handy or with you at all? A No, I have not.

Q Is it in a place where you can get it? A No, it is probably in our archives in New York City.

Mr. Day. I will admit that the property was acquired by private purchase.

Mr. Kalisch. What was it, an ordinary warranty deed?

Mr. Day. One or two deeds, I think, for the entire tract of 96 feet and a fraction on Washington street.

Mr. Kalisch. If I could get the book number I could get a copy made; I could get it from the register's office.

Mr. Day. The only memorandum I have is the deed from the New York & New Jersey Telephone Company to the New York Telephone Company, which is dated September 22, 1909, and is recorded in Book U 45 of Deeds, page 292, and that deed states that it is the same premises conveyed to the New York & New Jersey Telephone Company by Joseph Oschwald and Pauline Oschwald by deed recorded in Book Y 38,

pages 207 and 209. Does that give you all that you require?

Mr. Kalisch. Yes, thank you.

Q Now, you have stated that there was none of that space in that building rented out to persons. That is correct, is it? A Yes.

Q Are there any telephone booths in that building? A Telephone booths?

Q Yes. A In the hall?

Q Yes. A In the lower hall there is a battery of booths for public pay stations; they are equipped with automatic.

Q That is, any of the public may use that by simply depositing a coin? A Yes.

Q I have noticed on the steps of the building that there was a newspaper man, with magazines and newspapers. Does he pay for that privilege, or does he— A I do not know; I have often wondered myself. He has been in my way coming out. I do not know what arrangement he has there.

Q Has he an arrangement? A No, not to my knowledge; I do not know anything about it.

Q Is there any way of finding that out? A Why, I imagine that our real estate department would know of any arrangement, if it existed.

Mr. Day. I can ascertain and let you know, Mr. Kalisch. I do not think it is material, but I have not objected to it.

Witness. The business that this dealer does is almost exclusively with our employees. I imagine that is the cause of his being there.

Q You have stated that you do not get the benefit of the market value of the property; that is what you have said in substance. That is cor-

rect, is it not? A What I stated was this: that our building was designed and erected for certain special use, and there is no enhancement of the use and no benefit increasing the value of that use to us by this new street.

Q You make out annual reports of your company, do you not? A You mean as to—

Q As to the financial condition of the company. A Oh, yes.

Q Like every corporation? A Yes.

Q Do you know whether that building is put in as an asset? A Yes.

Q What? A Undoubtedly. I do not make the report myself, but—

Q But you have seen the reports that they issue yearly, the annual reports? A It appears as an asset under the subheading "Real Estate" I imagine.

Q The figures that appear in that report opposite the word "Real Estate" represent the market value of the property, do they not? A No, it represents first cost to us.

Q The cost of the property? A Yes.

Q Now, have you any other property in the city besides the Washington street property which is not used for telephone buildings or for telephone purposes?

The Court. Any building owned by the company?

Mr. Kalisch. Yes.

The Court. Property owned by the company?

Mr. Kalisch. Yes.

A Do you mean by the words "telephone purposes" the purposes connected with actually operating switchboards or the more general term of conducting the business?

Q For the business of the telephone company? A No, all the property that we own in the City of Newark is used directly in connection with its business, which is furnishing telephone service.

Q Do you rent any of it out for other purposes? A Not to my knowledge, no.

Mr. Day. I object, your Honor.

Q Did your company own the property on Market street known as the Telephone Building?

Mr. Day. If your Honor please, it seems to me that we are far afield from the special inquiry before the Court. I have no particular objection; I do not want to be technical, but I do not see what relevancy it has to the assessment upon the Washington street property.

The Court. I think the question is allowable as following up a property which was once telephone property.

A We formerly owned the property at 160 Market street.

Q And while you owned it was that rented out to third persons not in conjunction with, but separate from the business of the telephone company?

Mr. Day. I object to that, if your Honor please.

A Yes, we had a gradually decreasing number of tenants in that building; as our business grew we gradually forced them out. There were tenants in it at one time.

Q There were tenants in it? A Yes.

Q Which had no connection at all with your telephone business? A No.

Q Do you occupy all of the building of the telephone company on Washington street, or is there vacant space? A No, we occupy every floor. I could put in evidence the use that each floor is put to.

Q It is the telephone company's use? A Yes.

Q Every floor? A Yes.

Q The basement also? A The basement also.

Q This real estate department that you speak of—that is in the basement I believe you said? A Yes—well, let me explain. What I meant by the real estate department, it is really the janitor's force, the people who run the elevators and the heating plant and the general janitor work in the building. I describe it as the real estate department because that is our organization; they report to the real estate department.

Q Where is the real estate department? A You mean the headquarters of the real estate department?

Q No, the part that you deal with locally? A Why, the division janitor's office is in 281 Market street.

Q Is that a separate company? A No.

Q A real estate company? A No.

Q How do you conduct your real estate transactions, directly or through a real estate company? A Directly.

Q And when you spoke of the real estate department you simply meant the janitor's force? A Yes, I merely meant the department whose function is to handle matters pertinent to real estate—that is, the maintenance of our real estate, our building—just as another department, which is called the commercial, which has the duty of conducting—which is in charge of

the relations of the company with the public, the selling relations, selling service, and the traffic department has the function of furnishing the service, operating the switchboards; another department, called the plant, constructs and builds the plant. They are merely departments created for the convenience of operation; it is all the same company.

Q Do you know what the market value of that property is? A No.

Q Can you give me an idea of what the market value of that property was before the opening and widening of Branford place?

Mr. Day. I object to that as not cross examination.

The Court. Do you think this is cross examination?

Mr. Kalisch. I think it is; yes, sir.

Mr. Day. Nor is he the proper witness by which to bring out such information.

Mr. Kalisch. Mr. Day has endeavored to prove that this property acquired no peculiar benefit—

Mr. Day. No, no, you mistake me. On the contrary, I admit peculiar benefit, but I say that enhancement of market value is not the measure, any more than it is with reference to the Central Railroad. That is my legal insistment.

Mr. Kalisch. Well, then, we differ on the legal proposition, which we will probably argue out when all the evidence is in; but in supporting my own view of the legal situation, I desire to ask that question. I do not suppose your Honor wants to determine the question as to whether the telephone

company property is to be assessed like other property at this time.

The Court. I am considering the objection, which is that inquiry as to market value is not cross examination. You think it is?

Mr. Kalisch. Yes.

The Court. Why do you think it is?

Mr. Kalisch. Well, I think it is because he testified that there was no benefit from the opening of Branford place.

Mr. Day. No, no advantage in the use of the property by reason of it, or very slight.

The Court. The phraseology was that advantages were not added by the opening of Branford place. How does that make inquiry as to the market value competent?

Mr. Kalisch. Well, I think that one of the advantages to any business is the increase in market value of its real estate that it owns.

The Court. I sustain the objection.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Have you ever looked at the charter of the telephone company, the certificate of incorporation? A No.

Q You do not know whether there is any provision in it which permits the telephone company to hold real estate and sell real estate? A I do not know anything about the charter.

Q You never saw it? A I never examined it.

Q Never examined it? A No.

Q But your company has in the past been in the habit of renting out some of its property that it did not use to third persons for various kinds of businesses? A The only instance I ever heard of of that practice was the one that you brought out, referring to 160 Market street; I never heard of it elsewhere.

Q Do you think that the opening of Branford place, making this property a corner property, has made the telephone building a more prominent building? A What do you mean by "prominent?"

Q Well, more prominent, let us say, to people who use Market street? A No.

The Court. You mean more conspicuous?

Mr. Kalisch. More conspicuous.

Witness. No.

Q You do not think that the building is more conspicuous as a corner property than it was as an interior property? A No, I would say I do not. The building loomed up above everything else in the vicinity even before Branford place was opened, and it is no more conspicuous now than it was before.

Q And you do not think it is more easy of access on account of the opening of Branford place? A Only in so far as that the distance from this building, for instance, from points along Springfield avenue to the location at Washington street is shortened probably 500 feet, I guess.

Q Persons coming from South Orange avenue and Springfield avenue and the other streets that are west of High street, are they not afforded a more easy and convenient means of access through Branford place than they for-

merly had? A They are afforded a shorter means of access by about, I should say, 500 feet.

Q And are the people on Broad street not afforded a more convenient means of access through Branford place? A No, I think not. Camfield street and Branford place have ever since the construction of the building afforded direct access to Broad street.

Q But Camfield street was never a street which was devoted to very much traffic, it always being a narrow street? A It was narrower than the present street, but it had a good brick pavement and—

Q It was not very much used, was it? A Why, it was used—

Q To the same extent that it is now? A No, because the traffic west of Springfield avenue comes through it; it has increased the traffic—the change; there is no doubt of that.

Q And the traffic going west as well? A Well, I am not so sure. I never saw much traffic going west. Isn't there some kind of a traffic rule relative to the jitney buses? Or probably it is a fact that the jitney buses stick to Market street on the west course to pick up traffic; perhaps that is it. But the eastward traffic is a good deal heavier than the westward since the opening.

Q Is Branford place used for eastward traffic which eventually turns into Washington street south? A I imagine it must be; I never observed very much of it.

Q Is there some of it? A Undoubtedly I should say.

Q That brings it directly past the telephone building, does it not? A Oh, yes.

Q Is there any traffic that turns up Branford place from Washington street that has come from William street? A Why, I imagine there must be some of it.

Q Now, as a matter of fact, since the opening of Branford place has there not been a greater amount of traffic passing the telephone building than passed it theretofore, before the opening of Branford place, as a general proposition? A Speaking of the new street, it is obvious that there must have been an increase there. I do not know about the other part of that street that existed previous to the opening.

Q Has not a great deal of the traffic that formerly went down Market street been diverted into Branford place? A The eastward traffic, I should say that some of that had been diverted; I don't know about the westward traffic.

Q Traffic that would have gone past Washington street? A On Market.

Q On Market? A Yes, undoubtedly some of it comes down the new street.

Q Do you know just what arrangement exists between the telephone company and the City of Newark for the laying of these wires? A Underground?

Q Yes.

Mr. Day. I object. I do not see the relevancy of that. I object to the question. It is not cross examination, and I do not see its relevancy either.

The Court. The subject of the wires being laid underground was part of the direct examination. I am not quite prepared to say that further inquiry on that subject is not cross examination. What its force and

value would be I am not called upon to determine now.

A Yes, I am generally familiar with that arrangement.

Q Can you say generally what it is, briefly? A Why, the right to use the streets of the City of Newark by the telephone company for the purpose of constructing its subways and underground cables was given, or was granted, to the company by an ordinance passed by the Board of Works in the year, I believe, 1889 or 1890; that is the ordinance giving the telephone company the right to construct subways in all the streets of Newark as necessary from time to time.

By the Court.

Q It is not limited to this particular locality? A No, sir.

Q The general right? A The general right covering all the streets.

By Mr. Kalisch.

Q The general right in all the streets of Newark? A Yes, sir.

Q Is there any other use of the public streets made by the telephone company, other than that? A That is the only underground use.

Q Well, is there any overhead at the present time? A Yes, the same—we occupy the streets with our poles and overhead wires.

Q At the present time? A At the present time.

Q All over the city? A We have rights extending all over the city. The poles and wires, however, have been for the most part removed through the built-up business center of the city.

Q You own no right of way in the City of Newark which permits you to lay the wires, do you—or your company? A Well—

The Court. Perhaps that is a question of law.

Witness. Yes, I was going to say that.

Q What I mean to say is that none of the property over which your wires are laid is owned by your company, is it? A Well, naturally, we do not own the public streets, and most of our conduits are in the public streets. Where the wires enter the building in question, of course, that is on our property from the building—

Q From the property line, from the building line? A Yes.

Q I understand that, but I mean other than that, you merely have a—

The Court. A license.

Mr. Kalisch. A license to run your wires?

A. Oh, yes, I get you now. Where we use private property we merely do it under a license, or grant, from the owner.

Q And also public property, you merely have a license, or permission, from the— A Well, public property—if you refer to the streets, it is covered by a grant in the form of an ordinance.

Q It is by virtue of that that your wires are laid? A In the streets, yes. Of course, there is a fundamental right back of it, the state franchise, but the municipal right is given by municipal ordinance.

William C. Paul, recalled.

WILLIAM C. PAUL, recalled in behalf of New York Telephone Company, objector.

Mr. Kalisch. Are these comparisons that you are going to submit?

Mr. Day. Yes, they are.

Mr. Kalisch. If they are, I presume that we can save time. If they have been tabulated, we might save time by just offering—

The Court. Tabulations of what?

Mr. Kalisch. Comparisons between the assessments, between the telephone property and other properties, I suppose.

The Court. Comparisons of different assessments?

Mr. Kalisch. Yes. Because I do not care to cross examine on them.

The Court. It is merely a matter of details gathered from the report itself?

Mr. Kalisch. That is all.

Mr. Day. Then I will introduce this tabulation and the map in behalf of the telephone company. I would also call attention to the data on the first page: "Frontage on Branford place, 205 feet; frontage on Washington street, 96.46 feet; assessment per square foot by the commissioners for this assessment, $1.32.2; assessment per front foot on Branford place, $109.76; assessment of lot 25 by 100 feet fronting on Branford place, $2,744; area of the telephone company property, 17,062 square feet.

The Court. Let the map and the tabulation be marked as an exhibit.

(Map marked "Ex. Tele. 1"; tabulation marked "Ex. Tele. 2.")

JAMES A. BERRY, recalled in behalf of New York Telephone Company, objector.

Direct examination by Mr. Day.

Q Mr. Berry, you are very familiar with this Branford place assessment for benefits by this time? A Quite familiar.

Q Have you made a special study of the assessment imposed against the telephone company property at the southwest corner of Washington street and Branford place? A Yes, sir.

Q Does the sum of $22,500 for such benefits accord with your views and judgment as a real estate expert? A It does not, sir.

Q Will you please give your opinion as to the peculiar benefits sustained by this property by this improvement? A Yes, sir. In my judgment, a sum of not exceeding, say, $12,500 would fairly represent the assessment that should be made against the telephone company's property for peculiar benefits in the matter of Branford place. Do you wish me to state how I arrive at it?

Q Please state your reasons and the method by which you arrived at it. A Taking the first 25 feet of the telephone company's property, I would add to that 25 feet, say, $400 per foot, being what, in my judgment, is the additional value conferred upon that property by reason of its having been placed upon the corner. That would represent $10,000, being at the rate of, say, $400 a foot, or $2 per square foot, if you measure it up accordingly. The property next adjacent, meaning the 25 feet again, I would add to it $1,000 for peculiar benefits. The next 25 feet, to my way of thinking, should be charged with, say, about $800, and the last 20 feet odd, say, $500. So that the total as-

sessment that, in my judgment, should be charged against the property for peculiar benefits would be, as stated, not exceeding $12,500.

Q And that estimate is arrived at irrespective of the use that has been made of the property by the telephone company? A I have considered it merely as real estate; yes, sir; in answer to your particular question.

Q Now, may you not arrive at a figure, too, by comparison with the amounts laid upon other properties by the commissioners of assessment? A I think so.

Q And have you examined these schedules that have been introduced, made by Mr. Paul, showing the comparisons from one end of the street to the other? A Yes, sir.

Q Along Branford place? A Yes, sir; I have been all through that.

Q I would like to have your estimate of the benefits derived by comparison with other corner properties and this corner property, or the ones indicated upon the map marked "Exhibit Telephone 1" (Ex. Tele. 1 shown to witness). A As a result of my comparisons of the assessment as against the New York Telephone Company's property with other properties with what you might state similar area in the zone affected, there is no doubt in my mind that the assessment is inequitable.

Q Now, comparing the telephone company property with the property at the northwest corner of Washington street and Branford place, is the assessment less or more for a similar area? A My recollection is that the area of the northwesterly corner referred to is somewhat larger than that of the southwesterly corner, and that, notwithstanding that, the assess-

ment against that property, which, in my judgment, is more valuable, on the northwesterly side is less.

Q Some $3,000 less? A That is my recollection, approximately $3,000.

Q Why is the property on the northwest corner the more valuable? A Well, for two reasons at least, one of which is that it is in the block No. 1 and is nearest to Market street, and the other, it lies along the northerly side of Branford place, the northerly side being, all things being equal, a little more precious than the southerly side.

Q And is there a percentage that indicates that preciousness? A I think so. It varies, of course, according to the position, and perhaps the importance of the thoroughfare, but, in round numbers, I think, twenty-five per cent. is considered to be a reasonable addition for north side values.

Q (*By the Court.*) As against south side? A As against south side; yes, sir.

Q (*By Mr. Day.*) And so, using the northwest corner as a basis of comparison, you consider that the assessment made against the telephone company's property is excessive and inequitable? A That is my judgment; yes, sir.

Q Now, considering the benefit to the telephone company's property on the basis of its being a public service corporation, located permanently, as Mr. Crane has stated—you have heard his testimony, have you not? A I have listened to Mr. Crane; yes, sir.

Q Now, can you arrive at the peculiar benefit derived by the telephone company's property upon that basis? A Well, it is my opinion that the telephone company is not in the

ordinary position of the average real estate owner, in that they are tied to that situation and cannot very readily shift or transfer their holdings.

Q That is, the company is not in a position to reap the advantages of the increase in market value? A That the ordinary holder would have or possess; yes, sir.

Q Unless the company should remove its business—

Objected to as leading.

The Court. He is your witness, Mr. Day.

Q Would it, in your judgment, be feasible for the company to move its business from that building so as to reap the benefit of the increased value?

Objected to.

The Court. I will receive it, subject to your objection.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A I am quite sure that the company would lose a great deal more than it would gain in such an event; in other words, that the additional advantage the company might obtain by reason of enhanced values there, due to this improvement or otherwise, would, in my judgment, be a great deal more than offset by the enormous cost of transferring their plant.

Q Now, what is your judgment as to the effect on the assessment for benefits by reason of the greater convenience of access through the widened Branford place and the new Branford place westerly from Washington street? A The so-called greater accessibility to the company's property is, in my judgment, a gen-

eral benefit to the extent that it may enable some of its patrons to reach the property more readily, or its employes may get there a little more quickly, but I do not see where the company is in a position to obtain any greater revenues thereby.

Q You think it does not increase the number of telephone calls? A No, I cannot see that it has.

Q In your judgment, did the telephone company before this improvement have all the access that was necessary for its business purposes?

Mr. Kalisch. I object to that. I think that would depend a great deal on the necessities that the business called for. I understand Mr. Berry to be qualified as an expert on real estate values, but not what is necessary for any all kinds of business.

Mr. Day. I will confine my question to the time that we are considering, and that is when the improvement was made.

(Question read.)

Mr. Kalisch. That is objected to.

The Court. I sustain the objection. I do not see any reason why Mr. Berry should be a judge of that.

Q What is your judgment as to the peculiar benefit derived by the telephone company from this improvement, and considering the use of the building, the fact that it is a public service corporation, permanently anchored at that spot?

Mr. Kalisch. I object to that. Mr. Berry is merely called as an expert to determine market values of properties, but I do not see how he can be called upon to say whether or not there has been peculiar

benefits accruing to a particular property, considering the use to which it is put and that it is a public service corporation. I think that is more a legal question, and it is not one that comes within a real estate expert's skill or understanding.

The Court. (After argument.) I think it is merely a matter of argument. I sustain the objection.

Q Considering Branford place as a whole from Broad street to Springfield avenue, what, in your judgment, is the area of least relative peculiar benefits by reason of this improvement? A I think probably right at the spot that we are dealing with, Washington and Branford place.

Q Why? A For the reason that Camfield street and Branford place as opened between Halsey and Broad extended right to this property, and therefore—

Q At the time of the improvement? A Prior to the improvement this property had access not only through Washington street, if you please, but likewise through Branford place as it had been and is today, between Halsey and Broad, and Camfield street as it then was led to the door of the telephone company, so that Branford place in its extension westerly from Washington street opened, it is true, from that point new territory, and, to my way of thinking, the territory most benefitted was what we would call interior land, meaning by "interior land" lots which were most remote from cross streets. Branford place has brought those properties into the limelight, so to speak, whereas the property of the telephone company had already been more or less conspicuously placed.

Q And Washington street is a conspicuous street, too, with a trolley line running through it? A It is a 66 foot street, an important thoroughfare.

Q Then, what, in your judgment, are the areas of greatest benefit? A Well, those, as stated, where interior lands have been opened to the new street, and probably then at either end of the new street, the values have been most peculiarly enhanced.

Q Have you familarized yourself with the amount of benefits imposed upon the property at the corner of Branford place and Broad street? A My recollection is that one property that we dealt with here in court, that of the Osborne Realty Company—my recollection is that that is $2,250, or, otherwise, one-tenth of the assessment that we are treating with as to the telephone company's holdings.

Q In your judgment, is the assessment imposed upon the telephone company property inequitable as compared with that property on Broad street and Branford place?

Mr. Kalisch. I object to that. I think that calls for a legal conclusion, whether it is inequitable. I think that is a matter for the Court to determine, whether it is inequitable. I can readily see where he may make a comparison as to the market values of the respective properties—comparative market values.

The Court. I think it is a proper subject of inquiry and testimony. You may answer the question.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

James A. Berry, direct.

A The assessment against the New York Telephone Company's property, as compared with that of the Osborne Realty Company, on the southwesterly corner of Broad street and Branford place, is, to my way of thinking, conspicuously inequitable.

Q The relative benefit acquired by the property on Broad street and Branford place is greater, in your judgment. than that on Washington street and Branford place? A I feel very certain of it.

Q Now, if I understood your answer right, you also included as the area of greater benefit the lands to the west of Washington street made accessible as to Plane street, Arlington street, Nicholson street and Shipman street through the opening of this new thoroughfare? A That is my view.

Q Now, have you compared the various properties indicated upon Exhibit Telephone 1, so that you may form a judgment from a comparison with the values placed upon those properties in relation to the telephone company property? A This is the Exhibit 1 that you refer to (indicating)?

Q That is Exhibit Telephone 1 before you, yes. A Yes, I have been through most of these.

Q Will you please state what, in your judgment, would be a proper assessment to be made against the telephone company property, using those plots as a comparison? Those are the same plots that are stated in Mr. Paul's schedule which has already been put in evidence as Exhibit Telephone 2.

The Court. Let me see if I understand you. Interior lots to the west of Washington street?

Mr. Day. Yes, sir; marked by the yellow and red lines.

The Court. The lots marked with a red line are on cross streets?

Mr. Day. Red outline.

The Court. So that they are not interior except in the sense that they have got an entirely new frontage on Branford place.

Mr. Day. Take, for instance, block 75, lots 4, 7, 8, 32, 33, 34 and 35, in yellow outline.

Witness. That is a plot on the southwesterly corner of Plane street and Branford place, your Honor, marked in yellow.

The Court. What do these slanting lines mean, Mr. Berry?

Witness. I think merely to emphasize area.

The Court. What are the street numbers of these lots?

Witness. The street numbers on Plane street would be from 345 to 351 inclusive, and on Arlington street street Nos. 25 to 31 inclusive.

Q The total assessment upon those lots is $8,840, is it not? A I recall that that is approximately the figure; yes, sir; $8,840.

Q You may use Mr. Paul's schedule (handing paper to witness). You have been over that schedule and verified it, have you not—Mr. Paul's schedule? A I have been through all these figures, yes, sir.

Q You find the frontage on Branford place to be 154.65, on Arlington street 95.69, Plane street 96.27, making a total area of plot of

14,946. Now, what are the rates per square foot as compared with the telephone company? A The statement is here made that there are 14,496 square feet in the plot that you have just described, and that it figures up to fifty-nine cents per square foot as against one dollar and some cents a square foot laid against the New York Telephone Company's property.

Q And how about the average price per lot on Branford place—how about the price per average lot, 25 feet, on Branford place? A Well, really, if I may state it to you, there were not any what you would call lots fronting upon Branford place; those lots had prior to the introduction of the new streets fronted on the intersecting streets.

Q Well, at the rate of that plot, the telephone company should be assessed at what figure? A What are the total contents of the telephone company's plot, if you please?

Q 17,062 square feet. A Then it should be, in round numbers, $8,500.

Q I think Mr. Paul's computation, according to this schedule, is $10,066.58. A Yes, the depth, and so forth, the square feet—yes, I merely state fifty times seventeen thousand—ten thousand dollars.

Q Now, if you will compare the telephone company property with block 73—you have already done that—block 73, lots 54, 40 and 50, in orange outline—that is, at the northwest corner of Branford place and Washington street—and using that plot as a comparison, what should the assessment have been upon the telephone company property? A I find the plot you have just described to be assessed at $19,500, and the telephone company's plot is

less in dimensions, and yet is assessed more. Is the question still before me, Mr. Day?

Mr. Kalisch. No, the question is unanswered.

Q I think you have not answered it yet. A The plot contains approximately—I have forgotten precisely, but, it seems to me, 1,000 square feet more, in round numbers, or nearly so, and yet it is assessed at $3,000 less, being $19,500 as against $22,500 in the case of the telephone company. So that the answer would be that the telephone company's assessment should fall in the same ratio, and likewise there should be taken into account the fact that it is on the southerly rather than on the northerly side of Branford place and that it is in the second block from Market street rather than the first block.

Q Now, if you will compare the telephone company property with block 75, in red outline, lots 29, 28, 24 and 26, being on page 3 of Mr. Paul's outline. You see the data upon Mr. Paul's outline. Adopting that, what would be the assessment against the telephone company property? A About $9,700.

Q Compared with block 75, lots 12 and 13, and so on—that is the next schedule on page 3 of Mr. Paul's outline—what would be the figure? A Well, it is block 75, lots 12, 13 and so forth?

Q Yes. A Yes, I have it, Mr. Day. About $8,500.

Q Now, if you will take block 75, where the yellow cross lines exist, lots 4, 7, 8, 33, 34 and 35. You will see the data upon Mr. Paul's schedule on the next page, marked page 5. That, I think, you have already answered.

That was $10,578. A We have already dealt with that, I think.

Q You have also dealt with block 57, which is the property bounded by Branford place, Broad street and Treat place, and there is a difference there of about four to one as against the telephone company property, is there not?

The Court. That is the Osborne Realty Company?

Mr. Day. Yes.

Q That is about four times as much, is it not? A It is even greater than that, Mr. Day.

The Court. You are speaking now of the Osborne Realty Company's property?

Mr. Day. Yes.

Witness. Yes, much greater than that, noticeably so. For example, the Osborne Realty Company's property there is assessed at seven-tenths of one per cent. of its true value, while the telephone company's property is assessed at twenty per cent. of its value, in round numbers.

Q That is the proportion? A It is more than twenty times as great.

By the Court.

Q How much do you call the Osborne Realty Company, only the block on the corner? A Yes, sir; on the southwesterly corner of Broad street and Branford place.

Q There are three lots there. A Oh, no, it is forty odd feet, running through to and fronting also on Treat place—44 feet, I should think.

James A. Berry, direct.

By Mr. Day.

Q That is Hockenjos's property. A Oh, I beg your pardon? The Hockenjos property is the second southerly. I presume, then—I have gone over two of those assessments; I was dealing more particularly with the Osborne Realty Company. The other assessments I do not at this moment recall, unless they are stated on this schedule.

Q They are not stated on the schedule. Now, if you will make the same comparison with reference to the corner in block 59, the southeast corner of Washington street and Branford place? A Yes, sir. That is known as the Wolf corner.

Q (*By the Court.*) What corner is that? A The southeast corner of Washington street and Branford place.

Q (*By Mr. Day.*) That has a large assessment, has it not?

The Court. Lot 19?

Mr. Day. Lots 15, 17 and 19 taken together, your Honor.

The Court. The Wolf property?

Mr. Day. Yes, the Wolf property.

A Yes, sir; I have it before me now. The total area of that plot is stated to be 10,374 square feet; it is assessed at the rate of $1.08 and a fraction per square foot. On this same ratio the telephone company's property would be assessed at $18,400 odd.

Q Mr. Wolf has objected in these proceedings, too, has he not, to that assessment as being too large?

Objected to.

The Court. I think it is irrelevant.

Q Now, taking all these properties into comparison, is the assessment imposed upon the telephone company property greater or less relatively? A I think it is greater.

Q And the benefit, is that greater than these other properties relatively?

Mr. Kalisch. I object to that.

The Court. I will allow it.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A The benefit is not greater.

Q It is less? A It is less.

Cross examination by Mr. Kalisch.

Q Mr. Berry, what do you consider to have been the market value of this property after the opening of Branford place? A About $112,000, I should think.

Mr. Day. I object to that question. My mind was taken away. I do not know what the question was.

Witness. The question was "What was the value?"

Mr. Kalisch. The market value of the property?

Witness. Of the telephone company's property after the opening of Branford place. My answer was about $112,000.

Mr. Day. I would like the opportunity to object as not cross examination. It seems to me it should be part of Mr. Kalisch's case.

The Court. Well, Mr. Berry is a real estate expert, and market value has a factor in it of these estimates of peculiar bene-

fit. Therefore I think it is a proper subject of inquiry.

Mr. Day. Very well.

Q And that is a value that you arrive at notwithstanding that the depth of the property is more than the ordinary 100 feet that generally is the depth?

The Court. Dealing with the lands exclusively or the buildings?

Witness. I am talking of the land, yes, your Honor.

Q You consider that it is 204 feet deep? A I have a full appreciation of the contents of that plot.

Q Now, you have given various figures as representing the benefits to the telephone company when compared to other properties. The first figure that you gave was $12,000; then you gave $10,578; then you gave $9,700; then you gave $8,500; then you gave $18,000. Now, which do you think is the figure that represents the peculiar benefit? A In the case of the New York Telephone Company?

Q Yes. A Casting aside all comparisons and determining what, in my judgment, was the peculiar benefit conferred upon that property, my answer is, as stated, not exceeding $12,500, and, to be more precise, probably $12,300.

Q How much a foot did you consider the property worth on Washington street, that particular property, prior to the opening? A It varies. The most northerly portion of it was worth more than the most southerly, of course.

Q Where was the line? A Of demarcation?

Q Yes. I mean was there a decided drop at any particular point along the line, or was it

by degrees? A Well, I think probably you would have to take it following the usual rule, which appears to be determining your values upon, say, each 25 feet. I have no doubt that probably the last foot of the first 25 in any lot would be worth probably as much as the first foot in the next 25 feet, and you must to a certain degree be somewhat arbitrary, but taking the values, according to my view, I will state that the first 25 feet of ground was worth $1,000 a foot, and from there on I would scale it down.

Q To what extent? A Well, quite rapidly.

Q Well, say about? A Well, I would take it this way. Say $1,000 a foot for the first 25 feet, say $900 a foot for the next 25 feet—

Q For the next 25 feet? A I think so—and $800 probably for the next. I think that would be a pretty close approximation, too, of the absolutely sound values.

Q And the next 25 feet, would it drop a little more? A Well, not a great deal, I should think. Of course, the further south you go and the more remote from the important thoroughfares, unquestionably values would fall. There comes a time in the dead center of a block when you strike bottom. Then as you go towards the next important thoroughfare possibly there would be a slight accession of values again, but, generally speaking, the nearer you are to Market street the greater are your values.

Q Well, then, what do you think the value per foot was of the last 25 feet, or did you not fix it? A Oh, I do not know that I did, but I will fix it for you. There was not any last 25 feet, but there remained about 21 feet and a fraction.

Q Yes. A But I think that $800 would be a fair estimate of the value.

Q That is the same as the— A The next; I think so.

Q Yes. A I think so.

Mr. Kalisch. That is all.

Witness. You understand that—

Mr. Kalish. No, Mr. Berry, that is all.

Mr. Day. What were you about to say?

Mr. Kalisch. No, I did not ask him any questions, Mr. Day.

Mr. Day. Now, if your Honor pleases, taking the benefit of the stipulation with the city, so far as it may be relevant to our case, we declare out case closed. I would like to have the benefit of the stipulation, so far as it may bear on this matter.

Mr. Kalisch. You may have it.

New York Telephone Company, objector, rests.

Rule to Take Testimony.

NEW JERSEY SUPREME COURT

NEW YORK TELEPHONE COMPANY, *Prosecutor,* *vs.* THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, *et al.,* *Complainants.*	*On Certiorari.* *Rule to Take Testimony.*

Application having been made to the court, both by the prosecutor and respondent, for leave to take testimony herein, and both parties by their respective attorneys consenting to the making of this rule:

It is, on this day of June, Nineteen hundred and sixteen, ORDERED that leave be and the same is hereby given to both the prosecutor and the respondents to take testimony before a Supreme Court Commissioner on three days' notice from either party to the other.

We consent to the entry of the foregoing order.

EDW. A. & WM. T. DAY,
Attorneys of Prosecutor.

HARRY KALISCH,
Attorney of Respondents.

Opening.

NEW JERSEY SUPREME COURT.

NEW YORK TELEPHONE COMPANY, *Prosecutor,* vs. THE MAYOR AND BOARD OF STREET AND WATER COMMISSIONERS OF THE CITY OF NEWARK AND THE ESSEX COUNTY CIRCUIT COURT, *Defendants.*	*On Certiorari.* *Depositions.*

Examination of witnesses before Herbert W. Knight, Supreme Court Commissioner, pursuant to an order of this court dated June, 1916, and the stipulation between the parties in this suit.

Appearances:

William T. Day, Esq., attorney for the prosecutor.

Harry Kalisch, Esq., attorney for the respondents.

Counsel for prosecutor offers in evidence, pursuant to stipulation, the testimony taken in behalf of the New York Telephone Company before the Essex Circuit Court and also that taken in behalf of the clients represented by Coult and Smith and others so far as relevant to the issues involved in the above entitled action.

He also offers in evidence the exhibits used in the court below which are Exhibit 1, map of Branford place from Broad street to High street and Springfield avenue and schedule of comparison of the assessments for benefits affecting

the properties on the line of Branford place, prepared by William C. Paul.

Marked respectively Exhibits 1 and 2 for respondents.

JAMES A. BERRY, sworn on behalf of the prosecutors.

Direct examination by Mr. Day.

Q Mr. Berry, you were a witness for the New York Telephone Company relative to the opening of Branford place before the Essex Circuit Court, were you not? A Yes, sir.

Q You are familiar with the testimony that you gave at that time? A Yes, sir.

Q Have you or not made a careful study of this entire matter of the opening and widening of Branford place? A Yes, sir.

Q With particular reference to the peculiar benefits derived by the New York Telephone Company property on the southwest corner of Washington street and Branford place? A I have.

Q There were developed as part of your testimony before Judge Adams in the Essex Circuit Court various bases by which to arrive at the amount of benefit to the telephone company property by reason of the opening of Branford place. The theory advanced by the telephone company in your testimony was that being a public or quasi public corporation the telephone company should be dealt with upon a different principle than that of ordinary private owners, that it stood in a different category, and its property should be assessed for such benefits on one basis. It was also developed that various properties along the line of Branford place were assessed

at relatively lower figures than the telephone company property. And you also testified as to what in your judgment was the true amount of benefits, considering the telephone property as private property. Will you state what in your judgment is the true rule to apply to the tele-
10 phone company property?

Mr. Kalisch. I object to it because it is indefinite and I also object to it as it involves a point of law, as to what proper rule should be applied. That is a matter for the court's determination, what the proper rules are. Mr. Berry is called upon to testify as to the benefits, but he cannot testify as to what rule should be applied.

A I don't think that the telephone company
20 by reason of its being a public utility corporation, that it is in a position to avail itself of any increased valuations by reason of this improvement.

Q Did you base your judgment on the testimony given by Stephen D. Crane, in the court below?

Mr. Kalisch. I object to that—

Mr. Day. To any extent.

30 *Mr. Kalisch.* If he did, it would be hearsay.

A I heard Mr. Crane's testimony and I will say that it adds force to my own views upon the matter.

Mr. Kalisch. I move to strike out the answer on the same ground, that it is hearsay and it calls for an opinion of the witness upon the testimony of another witness.

Q In view of that, what would be the amount
40 of benefits to be assessed against the corner land

owned by the telephone company? A Practically nominal.

Q Are there other properties in the zone of assessment in the same category as the telephone company, in your judgment? A Yes, sir.

Q Referring to which? A Let us take for example the property of the Central Railroad Company on Broad street and we might also include the St. Paul church property on the northeast corner of Court and High streets.

Q In that case the assessment was set aside?

Mr. Kalisch. I object to that.

A I understand the assessment on the St. Paul church property was set aside.

Q In your judgment then, this property is in the same category as the Central Railroad and the church property? A I believe that it is.

Q Are you still of the opinion expressed before Judge Adams that the area of benefits was lowest at Washington street and Branford place? A I am.

Q For the reasons that you stated before Judge Adams? A Yes, sir.

Q Are you still of the opinion that as a relative proposition, the telephone company property being assessed at $22,500 for the improvement was assessed at a higher figure than other properties—

Mr. Kalisch. I object to that as being immaterial and irrelevant as to whether it was assessed higher than other property.

A I am.

Q In your judgment did the commission or did it not show discrimination and inequality of assessment to the detriment of the telephone company?

Mr. Kalisch. I object upon the ground that the witness cannot be called upon to pass judgment upon the conduct of the commission. That is for the court.

A I think the commissioner's actions were irregular, and as I have before stated, almost erratic.

Q In this particular case was there discrimination—any discrimination to the prejudice of the telephone company? A I believe there was.

Mr. Kalisch. I object to that on the ground that it is not competent for this witness to state as to the conduct of the Board.

Q In your examination before Judge Adams you testified that the property on the northwest corner of Washington street and Branford place being plot 73 and lots 40, 50 and 54, making an area somewhat in excess of the telephone company's lot was of greater relative value, did you not? A I believe I did.

Q The aggregate assessment placed upon this plot making up that area was $19,500 as against the $22,500 for the telephone company property, that is right? A I do not remember the assessment against the plot of similar area on the northwesterly corner of Washington street and Branford place, but I do remember the assessment against the telephone company very well and I also do remember that it appeared that the telephone company had been assessed more greatly than the more valuable plot.

Q Since the hearing before Judge Adams the commission has re-assessed that plot on the northwesterly corner? A I understand they did.

Q Did they reduce the figures?

Mr. Kalisch. The best evidence would be the record itself and even that testimony would be irrelevant and immaterial at this hearing.

(It was stipulated between counsel that the amounts to which the assessment upon the three plots mentioned is reduced will be put in correctly at the next hearing, but subject to the objection as to the relevancy and materiality and competency of such evidence).

Q You were present before the court at the time that I examined Mr. Van Duyne, one of the commissioners, to ascertain the method or basis by which the commission arrived at the assessment of $22,500 upon the telephone company property? A I was.

Q Did he give any such basis or method in his testimony?

Mr. Kalisch. I object to that upon the ground that it is entirely immaterial and irrelevant as to what Mr. Van Duyne stated at the hearing before Judge Adams, and the best evidence of what he said would be the record itself.

A He did not.

Mr. Kalisch. I move to have his answer stricken out, on the same ground that I object to the question.

Q As an expert do you know of any standard or recognized basis of computation in matters of this kind which would account for the sum of $22,500 imposed upon this property by the commission? A I do not.

Q What, in your judgment, was the effect of this assessment of $22,500, whether it was rea-

sonable and fair or not? A I think it was an unreasonable assessment.

Q Treating the corner property of the telephone company as property of private owners, subject to sale and exchange, and adopting the rule of the present increase on market value as determining how much the peculiar benefit was, do you recall what figure you stated in your testimony before Judge Adams?

Mr. Kalisch. I object to that, I don't think it makes any difference if he recalls what figure he stated before Judge Adams, it was stated as a matter of record that it has been introduced in evidence at this hearing.

Q What is your estimate, based on these conditions? A My estimate of the amount of peculiar benefits that are attached to the property of the New York Telephone Company on the northwesterly corner of Washington street and Branford place is $12,300, and not exceeding that figure.

Q Did you and do you now arrive at that figure by haphazard or by the application of any recognized standards?

Mr. Kalisch. I object to that. I thought this testimony concerning benefits was all in, because the record of the testimony was put in, that was taken before Judge Adams, and it covers that entire question and it shows just what this witness thought the benefits were and how he arrived at these benefits and to repeat that testimony is unnecessary and if it is for the purpose of contradicting that testimony I will object to it.

Mr. Day. It is to show the methods by which he arrived at these figures.

Mr. Kalisch. If it is an effort to contradict the testimony I wish to add you cannot impeach your own witness by showing contradictory notions. He is your witness and you have offered his evidence in the shape of this book and now you put him on the stand to show something he said before is not so, if you are offering this present testimony for the purpose of contradiction.

Counsel for the prosecutor states it is not for the purpose of contradiction, but to enable the witness to state the basis on which he arrived at that figure which was not explained before Judge Adams.

Mr. Kalisch. I wish to object on the grounds I have already stated.

A I did not arrive at it in any haphazard fashion, but sought to do it correctly by the application of a rule in such cases as I understand—

Q What rule do you refer to?

Mr. Kalisch. I object to that on the same ground I objected to the previous question.

A I followed the rule adopted by the larger municipalities and in vogue in our own City of Newark, and also pursued by our local taxation authorities.

Mr. Kalisch. I wish to object to that on the ground that it is purely hearsay that this rule is in vogue in Newark and other municipalities and it is practiced by our local taxation authorities. I also move to have that part of the answer stricken out.

Q Is that rule known as the rule—the tables of Hoffman?

Mr. Kalisch. I object to that.

A It follows substantially the Hoffman Neill table.

Q Is that table recognized largely as the standard in matters of this kind? A It is.

Mr. Kalisch. I object to that and ask that the answer be stricken from the record.

Q I show you a printed card and ask you what it is. A That is the card issued in the name of the Board of Assessment and Revision of Taxes, Newark, New Jersey.

Q For what purpose and showing what?

Mr. Kalisch. I object to that, I don't think the witness ought to be permitted to state what a card is that is not in evidence.

Q My question is, showing what and for what purpose? A It is printed on the card "Per cent. of unit value for lots of various depths," and exhibits the methods adopted by our local taxing authorities in measuring values.

Mr. Kalisch. I ask to have that answer stricken out upon the ground that it is hearsay testimony, and that it is immaterial and irrelevant to this issue.

Q Do you know as a matter of fact whether that unit value is observed by the city in cases of the kind under discussion?

Mr. Kalisch. I object to that as purely hearsay and immaterial.

A I know that these rules as printed upon the card are observed by the city.

Mr. Kalisch. I move to have the answer stricken out on the same ground.

Q How is your knowledge gained? A By almost daily contact with the tax office and by actually computing values according to the

methods printed on the card and ascertaining their correctness.

Mr. Kalisch. I ask that that answer be stricken out.

Q Have you ascertained from the city officials whether the method indicated by that card was applied in the re-assessment of tax values on the telephone company property after the opening of Branford place.

Mr. Kalisch. I object to that on the same ground, I don't know of any authority which permits an official to bind the City of Newark. There is no particular official designated in your question, but there is no official who has that authority. I also object on the ground that it is hearsay testimony.

A I have ascertained the facts as to the New York Telephone Company property from the city.

Mr. Kalisch. I ask to have the answer stricken out on the same ground.

Q Did you ascertain that the city had followed that card in making the new tax values on that property?

Mr. Kalisch. I object to that upon the same ground as I objected to the previous question and answer.

A I did.

Q Is the rule or standard as indicated by this card that which governed you in arriving at the benefit of the New York Telephone Company which you fixed at the sum of $12,300? A Yes, sir.

Q Please show in schedule form the method by which you arrived at that figure? A I placed upon the most northerly twenty-five foot

frontage of the land of the New York Telephone Company for the benefit accruing to it by reason of the opening of Branford place $10,000, and I based that action upon the fact that this opening made of that lot a corner and I added to that land what I deemed to be the percentage of the increase upon it, this having been made a corner and that does not exceed ten thousand dollars. I took the lot adjoining it on the south and I added to it for peculiar benefits one thousand dollars. I took the next 25 feet southerly and I added to it eight hundred dollars, and I took the remaining 21 feet and a fraction thereto, and I made that five hundred dollars, and that in my judgment represents the full peculiar benefits accruing to that property because of that improvement.

Q Do you arrive at that result by taking the city's methods? A Yes, sir.

Q What was the city's valuation of the telephone company property prior to the opening of Branford place?

Mr. Kalisch. I object to that as entirely irrelevant, immaterial and hearsay evidence.

A About eighty-six thousand four hundred dollars.

Q That was at the rate of six hundred dollars per front foot? A Yes, at the rate of $600 per unit.

Q Taking into consideration the depth of the lot? A Absolutely.

Q What is the present tax value on the property? A I believe it is $98,000.

Q What is the difference between the two amounts? A I believe it is somewhat less than $12,000, $11,600 I believe, yes, that is what it is exactly, $11,600.

Q Does that represent the difference as ascertained by the city by reason of the peculiar benefits? A It would so appear to me.

Q Give the figures by which the city arrived at the additional value of $98,000 from $86,400? A Yes, sir.

Mr. Kalisch. I object to that as hearsay.

Q You ascertained the facts from the City Hall? A Yes, sir.

Q I call your attention to the shape of the plot? A Yes, sir. The plot owned by the New York Telephone Company at the corner mentioned is somewhat irregular. By that I mean to say that the 25 feet or substantially 25 feet upon the corner extend along the line of Branford place for about 205 feet or perhaps 206 feet. The remaining 71 feet or frontage upon Washington street extend westerly for a distance of 165 feet. Now the city adopts a unit for its basis of taxation, if the land did not exceed 100 feet in depth, of $700 per foot, and the city adds a percentage according to the fixed rule, the rule referred to on this card, which is printed and circulated by the tax board. And for the distance of 165 feet the city would add 26 per cent.; for the distance of 205 feet the city would add 33 or 34 per cent.; so that in measuring the value of this land we follow the city's basis rule.

Q From what you have stated you would say that they used the unit figure of $700 per foot and then added 26% for the additional depth of the lot making a total of $882 per foot and an aggregate value of $62,887? A Yes, sir.

Q The plot at the westerly end of the telephone company property is 23 feet wide, is it not? A 23 feet deep on Branford place.

Q And they included two feet as a part of the corner lot? A Since the city computes 25 feet as the frontage, the city took two feet from 71 feet and added it to the 23 feet upon the corner and then added the city percentage upon the corner plot.

Q They added this 26% and then they also added in respect to that 2 feet because it was part of the corner, a further percentage making all together $1,343 per front foot of $2,646 aggregate? A That is the aggregate.

Mr. Kalisch. I want to make one general objection to all the testimony as to what the city has done with reference to valuing property or any method adopted by the city in the valuation or assessing of property. I want to make a general objection so as not to use the time objecting to these questions.

Q Now, that still left 23 feet or 23 feet two inches as the balance of the corner with an estimated depth of 200 feet. Using the same $700 as a unit, they added 34%, as I understand it, and so brought the value of 23 feet up to $1,407 a foot, an aggregate of $32,595? A That is correct.

Q And that aggregate of figures makes up the $98,000 as the tax value after opening of Branford place? A It makes it, to be precise, $98,118, the city struck off $118, leaving it at $98,000.

By Mr. Kalisch.

Q That is at present? A Yes, the present assessment on the land.

James A. Berry, direct.

Further direct examination by Mr. Day.

Q That is the method pursued by the city in arriving at that value? A That is the city's method, and these are the city's figures.

Q And these are the same methods that you pursued in arriving at your amount of peculiar benefits? A Yes, sir.

Q In your previous testimony before Judge Adams you stated in your testimony the selling value of the property at $112,000 did you not? A I think it was $112,000.

Mr. Kalisch. I ask to have the answer stricken out. I don't see where the testimony he gave there is material or relevant.

Q By what method did you arrive at that, by pursuing the city's rule or standard? A I valued the most northerly 25 feet of the telephone company's land for the depth of 100 feet at $1,000 per foot. The next 25 feet—

Q That would amount to $25,000? A Yes, with the usual or nominal depth. I value the next 25x100 feet at $900 a foot, making $22,500 for it. The next 25 feet I would consider is worth say $800 a foot at $20,000 for 25x100 feet, and the remaining 21 feet there would be of course a small fraction of a foot, I valued at say $800 per foot, probably, however, it would be somewhat less.

Q Making $16,800 for 21 feet, if these 21 feet were 100 feet in depth? A For the 71 feet x 166 or 165 I added 26%.

Q Making how much? A Well, about $15,700, it can be exactly calculated of course. To the 25 feet on the corner, as it now stands, it having 205 feet in depth, I added one third or 33 1-3 per cent.

Q Amounting to what? A $8,333.33.

Q $8,333.33? A To be exact.

Q Now, if you added for the corner lot according to the city rule, fifty per cent., what would be the aggregate? A If you added fifty per cent. on that corner you already have $33,300, you would add sixteen thousand five hundred and some odd dollars.

Q Did you consider that the fifty per cent. rule should apply in the case of this telephone company property? A I did not. I am unwilling to add fifty per cent. on that corner.

Q Why not? A It should be borne in mind, I think, that prior to the widening and extension of Camfield street, that the New York Telephone Company property already had two streets, Washington and Camfield streets. I am unwilling to add on the outside more than thirty per cent. and probably twenty-five would be ample. When it is borne in mind that the city on these more valuable corners adds but fifty per cent. I think it is self evident that a corner which exists there now and did exist should not carry with it the same additional fifty per cent.

Q The property on Plane, Arlington, Shipman and Augusta streets, did they receive the full benefit of fifty per cent? A Undoubtedly, as compared with the telephone company, particularly.

Q In other words this street ran west and east. It had heretofore been absolutely interior property without any corner, and it received an increase of 100% because where one street previously existed, there are now two? A Yes, sir.

Q So that that 50% rule might apply to these properties and not to the telephone property

because of Camfield street besides? A It might apply in the matter of Plane and Arlington and other points not similarly situated as the telephone company, but it would not apply, to my way of thinking, to the telephone company property.

Q Then you did add to your value at the rate of thirty per cent. the sum of eight thousand dollars? A It would measure up to be exact, at 25%, $8,300, and I put the stamp upon it as not exceeding $10,000, the benefits of a corner twenty-five foot lot.

Q Did you make any reduction by reason of the lot being less than twenty-five foot frontage? A The last lot?

Q Yes, the last lot? A It was so small I did not think it is necessary worth calculating really, but there is no question that a plot of similar area would be unable to participate in the same ratio of benefits.

Q As a result of the process you describe, you made the aggregate of $112,000 or somewhat upwards, as the selling value of the telephone company's land? A I think the fair value does not exceed $115,000 of the telephone company's lands, today.

Q At the argument before Judge Adams, I understand Mr. Kalisch attempted to defend the valuation of $22,500 fixed by the commission of the telephone company's property by taking your total value of $112,000 and deducting the assessed value prior to the opening, of $86,400, making a difference of $25,600, and that adopting that rule he arrived at the figure given by the commissioner, is that correct? A If so, Mr. Kalisch probably started from an erroneous basis.

Q He certainly didn't use the city's form of calculation in cases of this kind, did he? A I should not think so.

Q You have stated the city's rule which you have followed? A Yes, sir.

Q Then it is not accurate is it, what Mr. Kalisch stated before Judge Adams? A I do not have sharply in mind what Mr. Kalisch did say, but assuming what you have said to me to be a fact, I should think so.

(Attorney for the prosecutor offers in evidence card referred to by the witness. Marked Exhibit 3 for the prosecutor.)

Mr. Kalisch. I object to it because it is immaterial and irrelevant.

Cross examination by Mr. Kalisch.

Q You have stated that the value is $115,000 today? A I have said not exceeding $115,000.

Q That is the entire plot of land? A Yes, sir.

Q Did you include the building or are you speaking of the land alone? A Oh, no, the city assessed the building alone at $300,000.

Q You are dealing entirely with land? A Yes, sir.

Q Taking the land as it is? A 96x166, and with 25 feet of land having 205 feet depth, my estimate of the value of that land does not exceed $115,000.

Q How often do you get these cards? A As often as I require them.

Q Are they issued regularly? A I am not certain if I understand what you mean by "issued regularly;" I know they are always on hand in the tax office.

Q How long a time back have they been on hand? A For years.

Q What department did you get them from? A The department whose name is printed at the head of the card.

Q Did they ever change or are they always the same amount? A They vary only to this extent that the present card is carried in greater detail than its predecessors.

Q The figures do not vary? A I do not think so.

Q The values do not vary? A The values are not printed on the card, only the percentage table.

Q You say that in none of the cards that you saw from the tax office did the figures vary from these on this card? A I have not so stated.

Q Do they vary? A I don't know, I can't say.

Q You have seen other cards? A I have had them for several years as I have stated. I suppose the Tax Board being human, if they saw a reason for correcting it they certainly would do so.

Q This one which you have here, this was issued in 1916, this year, was it not? A It has printed on here 1916.

Q This one was printed this year, and says "Board of Assessment and Revision of Taxes, Newark, New Jersey," was it a revision of the previous table? A That I cannot say, but I do know that is an extension of the old one.

Q It says "Revised 1916" so that there must have been some changes made? A It speaks for itself.

Q Do other municipalities issue these cards? A They do.

Q Do they differ as to the tables adopted? A Not materially.

Q They differ some? A Not materially. I would not say that even.

Q Do you know if they do? A It would be such an immaterial difference it would be useless to distinguish it.

Q What do you say the value of this property was before—the ground value, the whole ground, before the opening of Branford place, the depth and all as it is? A About ninety odd thousand dollars.

Q Well ninety thousand, what do you mean, 1, 2, 3, 4, 5, 6, 7, 8 or 9? A I should say—we can figure it.

Q Didn't you place the value before you arrived at your benefits? A Yes.

Q What did you place it at? A I would like to do it exactly.

Q Have you not fixed it before the opening, the entire plot as it is with the depth as it is and I would like to get that value. If you know—have you not fixed it in your mind? A I don't recall now that I did but I am willing to do it.

Q You have never fixed in your mind then the value of this property before the opening? A I would not say that now, I have—I would not say that I never have, but I don't recall that I did but I am willing to.

Q You don't remember ever arriving at the value of this land before the opening? A I would not say that.

Q You don't remember ever arriving at the value of this land prior to the opening of Branford place, you don't remember ever having done that? A I don't recall but I am willing now to do it.

Q And so you fixed the benefits without getting at the market value of this land before the opening? Answer me, yes or no. A I would not agree to that, I am unable to say yes or no. The figures—

Q Answer me yes or no, Mr. Berry, if you are capable. A I think so. The figure—

Mr. Kalisch. I object to that answer. Read the question.

Q And so you fixed the benefits without getting at the market value of this land before the opening? Answer me yes or no. Did you or didn't you? A Yes, I am inclined to think that I did approximate a value there, yes sir, on second thought.

Q Then you did fix or arrive at the value? A I knew the value before the opening.

Q Then why did you—why were you unable to give it to me? A I have not expressed any inability to give it to you.

Q I know you have not, but you said you didn't recall ever fixing the value, and then you proceeded to figure out what it was, why did you say that if you had fixed the value before the opening? A I do not wish to take for granted your assumption there.

Mr. Kalisch. The stenographer will kindly repeat the question and answer.

Question and answer repeated at follows:
Q And so you fixed the benefits without getting at the market value of this land before the opening? Answer me yes or no. A Yes, I am inclined to think that I did approximate a value there, yes sir, on second thought.

A If the answer is not clear I am willing to correct it.

Q It is very clear, but the two answers you gave now are inconsistent, they are both clear. Explain them. A The value of that property would be—

Q I want you to answer the question. Will you do that?

Mr. Kalisch. Will you kindly read my question?

Q And so you fixed the benefits without getting at the market value of this land before the opening? Answer me yes or no.

A Now that—

Q Can you explain it?

Mr. Day. I insist upon the question being repeated.

Q Can you explain it? Permit me to give you the question. You have stated that you did not recall fixing the value of that property before the opening and you since then have stated that you had fixed the value, now I want you to explain to me why you first said you didn't recall fixing it and now you said you had fixed it? A Inconsistent as it may appear, I think probably both of those answers would be nearly correct. I can best state it, I think, by now telling you what the value was before the opening and after.

Q No, I don't want you to explain. I want you to tell me why you said one thing at one time and the contrary at another time. A I didn't mean to say a contrary thing.

Q Let me ask you this question then. Did you fix it? A I don't remember that I did.

Q When I say did you fix the value of this property before the opening of Branford place, I mean for the full depth and just as it stands,

and your answer is you don't remember you did. A You have revived my recollection of something.

Q Oh, I have revived it? A Yes, I recall your having asked me now in the Circuit Court for certain values, and the manner of your question was such as to make it appear the values were for the full depth, whereas my recollection of the figures I gave you were the basis values for one hundred feet in depth.

Q I am asking you how you fixed the values of this property as it stands? A Yes.

Q The full plot before the opening of Branford place, I don't mean did you fix it before the opening of Branford place, but did you fix the values as it was before the opening? You can answer that I did or I did not. A I recall your having asked me—

Q I don't care, you can say I did or I didn't. A The value today is the same as the value then with the exception of the addition for the improvement.

Q Yes. But did you fix the value of this telephone property as it stood prior to the opening of Branford place, referring to the land as it is—full depth? A Then I answer that I don't recall that I did.

Q The only thing that you did do was to fix the value as you have done here on that land since the opening of Branford place? A Possibly it will clarify matters if I said to you now—

Q I don't want you to clarify matters. If I want you to clarify matters I will ask you, what I want to know is whether you placed a value on that property before the opening of Branford place? A I knew what the value was.

Mr. Kalisch. I ask that answer be stricken from the record. Do not fence with me, Mr. Berry.

Witness. My desire, Mr. Kalisch, is never to fence with any examiner, but to place upon the record only that which I believe to be true.

Mr. Kalisch. Repeat the question.

"Q I don't want you to clarify matters. If I want you to clarify matters I will ask you to, what I want to know is whether you placed a value on that property before the opening of Branford place?"

A I have fixed the value since the opening of Branford place and I knew it before.

Q Why did you say you didn't recollect fixing it? A I didn't recall fixing it for you and I undoubtedly had in mind what it was before the opening, and if I didn't I would not have been able to measure the benefits.

Q I didn't ask you whether you fixed it now, I asked you whether you fixed it before the opening and not whether you fixed it now. A I had to my own satisfaction and perhaps to yours I don't recall.

Q What did you place the value at before the opening? A I will measure it up exactly.

Q I want the aggregate value now of that land before the opening of Branford place. A Just the same as it is today with the exception that it had assessed upon it $12,300 for benefits.

Q I want you to fix the value of that land— A That would come to—

Q Before the opening of Branford place? A That would come to practically $100,000.

Q You are sure about that? A Practically $100,000.

By Mr. Day.

Q You mean to say the selling value in case they found a purchaser? A I mean the fair market value if there was a willing purchaser.

By Mr. Kalisch.

Q Mr. Berry, you have based your figures upon the Board of Taxation figures, which you have exhibited on this card? A I am not quite sure. I used, I will say, the Board's percentage table in aiding me.

Q And this is the unit table that you used? A I didn't go any further than it.

Q You have testified that the telephone property had already a means of access before the opening of Branford place through another street called Camfield street? A Yes, sir.

Q And that on that account the benefit to the telephone company property would not be as great? A I testified that it partook less of the benefits than interior property would, by reason of this means of access.

Q Did you consider the telephone company interior property before the opening or widening of Branford place? A No, sir.

Q You didn't consider it corner property, did you? A To the extent that Camfield street ended at the telephone company's door, you might say.

Q How wide was Camfield street? A I should think the thirty feet—thirty odd feet, possibly thirty-five feet, I can't tell you absolutely.

Q Did it carry much traffic? A Of course, the traffic would not be very great under the old conditions, it would be more apt to be greater going easterly than going westerly from Broad street, because the bottle being smaller than the neck those going westerly would swerve into Halsey street.

Q What percentage of the traffic that now goes down Branford place, which was formerly Camfield street, went down Camfield street prior to the opening and widening of Branford place? A From Washington?

Q Yes. A Not a great deal. Making a comparison between the traffic as it now goes down, it would be only guess work to do that in the realm of speculation again, but the traffic today is very much enhanced.

Q It is? A Oh, yes, indeed.

Q Making a comparison— A I don't think it is possible to measure the difference between then and now with any exactness or even reasonable closeness.

Q Do you think it would be five per cent.? A I can't say. It would be only a guess, and in that case a guess from one person would be as worthy of credence as one from another.

Q Was it not almost insignificant? A It was small.

Q Wasn't it crooked? A It was not crooked, it ran at right angles from Halsey to Washington streets.

Q Mostly residential street? A There was some little business, but more dwellings.

Q Was it not a badly lighted street? A I never counted the lights.

Q It was a badly paved street, was it not? A That I can't tell you, it was paved. I am

not sure whether it was granite block or not, the records would show that.

Q Now, the only means of access to the telephone property from the western part of the city was either down Springfield avenue or down— A William street or Washington street.

Q And that traffic down these streets from the western part of the city has been diverted into Branford place? A That part of the traffic that emanated westerly from High street and that was more or less southerly bound would go through that way.

Q What about the traffic northerly bound? A Some of the traffic northerly bound would be that which is borne southerly from the line of Branford place.

Q Then the traffic that is bound north and south, coming from the westerly part of the city, that is west of High street— A Yes.

Q —would use Branford place? A To make it clear, traffic coming from the west southerly bound would use Branford place and traffic coming north from south of Branford place would probably use it likewise.

Q So that traffic that came from a direction south of Branford place on High street would not use Branford place? A Not if they were coming southerly from William street and were bound in the general direction of the way the telephone company is, or north of that, they would be obliged to pass the telephone company's door on Washington street.

Q Do they still use William street and Branford place? A Southerly through William street would get into Washington street, if that were its destination.

Q So they would not use Branford place? A Some of it would not undoubtedly.

Q So that there is a new means of access for the telephone building for traffic coming from the western part of the city? A There is an additional means on the west side of Washington street to the telephone company. They had three methods of approach and now they have one additional.

Q Do you call Camfield a method of approach? A Undoubtedly.

Q Was it used? A Undoubtedly, I myself, have used it.

Q For what purpose? A Going to the telephone company's office.

Q Was it a much traveled street? A No. It was a very ancient street.

Q It was a street that people did not like to go through at night? A I never saw any crowds like Broad and Market streets.

Q It was a street of bad repute? A Well, I have no knowledge of that.

Q You can use hearsay now. A The Police Department would be expert in that matter.

Q The general idea—it was a street of bad repute? A I should not concur in that. In recent years it was getting in a lot of respectable people—poor, but respectable, and then some business crept into it.

Q Didn't the widening of Branford place make the telephone company more prominent to persons using Washington street and Halsey streets? A I might say that by reason of its height it was always in evidence from the day of its completion, but of course you could see it more than you could prior to the extension,

but it is a blank wall and apparently was treated by the telephone company as if they ignored the proposition.

Q Was Camfield street a well known street? A It was ancient.

Q Was it well known to the old residents of the city? A I can talk for myself, I have known it from babyhood and, of course, being a small street it was not a notable one.

Q Branford is quite a well known street, or it should be by this time? A Yes, Branford place is a reasonably well known street.

Q The traffic through is considerable? A Yes.

Q That would give an additional prominence to the locality where the telephone company is? A Yes, there is some addition made there and I have taken that into consideration.

Q Is there anything, Mr. Berry, bearing upon this subject that you have not taken into consideration? A Well, I am not infallible, but I have tried to measure everything that would shed true light upon the subject to the extent of my ability.

Re-direct examination by Mr. Day.

Q The previous revision of the Board of Assessment and Revision of Tax percentage of unit values was made in 1912, was it not? A That card so states.

Q That is your recollection, is it not? A Yes, I think that was it.

Q That card was in force until the revision of 1916, according to your recollection?

Mr. Kalisch. I object to that.

A That is true.

Q The only difference between the two is that the revision of 1912 deals with lots of 10-20-30 feet, and so forth, whereas that of the 1916 deals with 10, 15, 20, 25, and so forth. A They have gone into greater details and have extended it.

Q But the unit values placed against the 10-20, and so forth, are the same on both cards, are they not? A I believe them to be the same.

Q Examine the card and see. A Yes, they are identical so far as they go.

(The further taking of testimony was then adjourned until Monday, August 14th, at 11 A. M.)

Monday, August 14th, 1916, Newark, N. J.

Before Herbert W. Knight, Supreme Court Commissioner.

Hearing resumed pursuant to adjournment.

Appearances:

William T. Day, Esq., for the New York Telephone Co.

Harry Kalisch, for the City of Newark.

Leo Stein, Esq., for Richard C. Jenkinson and others.

(It was stipulated between Harry Kalisch, Esq., attorney of the City of Newark, and Day and Day, Esqs., attorneys of the New York Telephone Company, and Coult and Smith, Esqs., and Stein and Stein, Esqs., attorneys of Richard C. Jenkinson and others, that the testimony about to be given by witness, Charles F. Kraemer, should apply to both writs of certiorari,

and could be used in the case of the New York Telephone Company and that of Richard C. Jenkinson and others.)

DR. CHARLES F. KRAEMER, sworn for the prosecutor.

Direct examination by Mr. Stein.

Q You have been a member of the Board of Street and Water Commissioners of the City of Newark? A I have.

Q Do you know when you first became a member of that Board? A I think 1911, I will have to verify these facts from the records, I don't remember the exact date.

Q How long did you continue as a member? A Five years—no, four years.

Q When did you go out of office? A I was in one term, I was appointed to fill a vacancy. It must have been four years.

Q When did you go out of office? A 1914, December; January 1, 1915.

Q Then your term of office covered a period of time, during which the discussion took place relative to the opening and widening of Branplace? A Yes, sir.

Q During that time also, an ordinance was adopted for the opening and widening of that street? A It was.

Q Were you president of that Board at any time? A I was not president when this ordinance was adopted, I believe.

Q Were you president at any time? A Yes, I was president of the Board.

Q How long? A The year of 1914.

Q You are fully familiar with the proceedings relating to the opening and widening of

this street? A In every phase and detail of it.

Q Tell us what was the original object of the opening and widening of that street?

Mr. Kalisch. I object to that upon the grounds that it is immaterial what the object was, and upon the further ground it would be hearsay for this witness to give what the object was since the object must have been the minds of others besides himself.

A The objects for opening Branford place were to my mind fourfold and having been sponsor for the commissioners I used these fourfold objects for the reason of defending the ordinance;

First, to create a highway from Ferry and Market streets to High, running as near parallel with Market street as possible for the reason of relieving Market street vehicular traffic, which entered it at the east from Market and Ferry streets, and afforded an easier method of reaching the western section of the City of Newark.

Secondly, considerable discussion with reference to keeping certain promises, which in a form were implied when Branford place was originally opened between Broad and Halsey streets, it was stated that the city officials were going to open up Branford place to High street, and we were continually requested to carry out these promises. It was stated that large sums had been paid for the front foot value when these sales were made, and these amounts had actually been paid because such promises were fresh in the minds of the purchasers.

Q You are speaking of property between Halsey and Broad streets on Branford place?

Mr. Kalisch. I want to ask to have stricken out the testimony in which the witness says, "It was stated, etc.," all that he testifies to was stated to them. It is hearsay and I ask that it be stricken from the records.

Q Proceed. A I might state that these were requests made by property owners on Branford place to us as commissioners.

Thirdly, a large amount that was located between Halsey and High street in the rear of Market street frontages and which was considered assessed very low by the taxing officials, had a bearing point, as by opening up this thoroughfare, it would increase the tax revenue for the City of Newark.

Q Which property? A All the property west of Halsey street and in a direct line with High street.

Q You mean the property in the rear of the Market street frontage? A They are today eliminated by Branford place, and it places these properties on a street front.

Fourthly, the sociological conditions that existed in this entire property, including Augusta street and Shipman street, and all these adjacent streets in that immediate vicinity.

Q Nicholson street? A Yes, it all had strong influence and bearing on furthering this opening of Branford place.

Q What were the sociological conditions? A The very worst that existed in the City of Newark, and from police records the most troublesome section, requiring continual attention. The properties were infested by low dives

and low characters and conditions were so bad it was worth a person's life to walk through the streets, crimes were committed publicly, and property was at its lowest ebb; it could not be rented or sold, and it necessitated wiping out to eliminate the conditions.

Q To what extent did those conditions exist that you intended to wipe out? A Shipman street existed, and Nicholson street—

Q But, what I am getting at, did it extend as far as William street on the south? A Yes, and as far as Market street, on the north.

Q Now which of these reasons for the objects sought to be accomplished—were they all of equal weight or was there some principal objects and some minor objects?

Mr. Kalisch. I object to that question on the same ground that it is immaterial and hearsay.

A The principal object for opening Branford place from Ferry street to High street was based on an investigation ordered by the Board of Works through their engineers and primarily was to relieve vehicular traffic at the four corners.

Q Where? A Particularly at that time in the early stages from the Market street depot west towards Broad and Market streets.

Q On Market, you mean? A On Market.

Q You mean west of Broad, or west to Broad? A West to Broad.

Q Where is Ferry street located with reference to Broad and Market streets? A Ferry street meeting Market street at right angles terminates into Market street like the larger part of a funnel to the spout, taking up the

volume of traffic into one narrow street at the Market street depot.

Q Where is it located? A Practically east, the outlet of Market street where Market street runs into South Market street.

Q It meets Market street at the Pennsylvania Railroad? A Yes, sir.

Q That is New Jersey Railroad avenue? A Yes, sir.

Q You have a junction there of what streets? A South Market street, Ferry street and New Jersey Railroad avenue, all terminate into the Plaza.

Q How about River street? A River street is somewhat north of Market street, and also adds as a feeder, not primarily into Market street.

Q About how many city blocks east of River street, this— A This junction?

Q Yes, about how many city blocks is that east of the corner of Broad and Market streets? A Five.

Q Do I understand you to say that the primary reason was to relieve the vehicular traffic on Market street west of Ferry street? A Yes, sir. West of Ferry street it was the primary object to relieve the traffic on Market street east from the Market street depot to the four corners.

Q Would that not be west? A That would be west from Ferry street and Market street, yes, sir.

Q And by what method was that relief to be gained? A By the opening of Branford place, as contemplated to run from Ferry street practically west over the route now occupied by East Mechanic street under the Pennsylvania Railroad through Market street west-

ward to Broad street, and then westward to High.

Q It was not carried out in that way? A No, sir.

Q Can you tell why?

Mr. Kalisch. I object to that as immaterial, irrelevant, and it is hearsay.

Q Tell us why the entire improvement was not made? A From the outset, and in making the various examinations of the properties, we were about to require for this improvement, the Legal Department ran across obstacles to titles of property occupied by the Pennsylvania Railroad which subsequently necessitated our going into court and testing out the legality of their occupancy. While this matter rested in court, in order to expedite matters we divided the project into two parts and passed the ordinance to open up Branford place from Halsey to High streets, the same to proceed immediately and to take up the continuation of the work just as soon as the legality in the status of the land of the Pennsylvania had been established as to the completion of the work from Broad to Ferry street.

Q Just where does the land lie with reference to Mechanic street and Ferry street, this line of the Pennsylvania Railroad, the title of which was in dispute? A In a direct line eastward and westward of Mechanic street and East Mechanic street.

Q So the work of the other half east of Broad street was left for the future? A It was deferred, yes.

Q What then, with regard to the completion of the primary object of the opening and

widening of Branford place has it been actually effected by the ordinance as it has been adopted?

Mr. Kalisch. I object to that on the ground that it calls for an opinion of the witness and it is immaterial.

Q Before answering that question, I ask you what is your business? A Real estate investments.

Q How long have you been in that business? A Fifteen to twenty years, fifteen years definite.

Q Are you familiar with the value of property throughout the center of the city of Newark? A Yes, sir.

Q Bought and sold? A Yes, sir.

Q Appraised? A Yes, sir.

By Mr. Kalisch.

Q Are you in the real estate business now? A Yes, sir.

Q Why did you tell this morning to Mr. Fielder you were out of the real estate business? A Yes, sir, but I will clarify that somewhat—it needs qualifying. You overheard a conversation which has no bearing upon my occupation. I am in the real estate business and have been continually.

Q Didn't you state to Mr. Fielder that you were now in a business that had real estate beaten a mile? A I desire to qualify that because you overheard a conversation—

Q You stated that? A I did state it, yes, sir.

Q How long have you been out of real estate business? A I am still in the real estate business.

Dr. Charles F. Kraemer, direct.

Q Where is your office? A No. 776 Broad street.

Q You still hold yourself out a real estate agent? A Yes, sir.

Q What did you mean when you made that statement? A That I am now devoting my time to it theoretically rather than selling it practically.

Q What is the difference? A I am hiring out my services in writing real estate opinions for the real estate magazine, and I have not been practicing salesmanship for the last four months.

Q So that you don't buy and sell? A Not within the last four months.

Mr. Kalisch. I object to this testimony, he is not a qualified expert.

Further direct examination by Mr. Stein.

Q You consider yourself as capable of judging real estate now as you were four months ago?

Mr. Kalisch. He is not an expert. Who is an expect, that is for the Court to say.

A I consider myself thoroughly competent as to its value in the city of Newark.

Q What then would you say, doctor, was the effect of opening and widening Branford place from Halsey street to High upon the original primary object which the Board of Works had in mind when this project was first under discussion?

Mr. Kalisch. I object to this on the ground that it is not a matter for expert knowledge of a real estate expert.

A I should say the work was only partially completed as to the original contemplated lay-out of the entire property.

Q Did it or not have the effect—I am speaking of the ordinance as actually adopted to relieve the vehicular traffic on Market street, west to Broad, from Ferry? A I don't think it had any effect on that condition.

Q So that the primary object of the opening was not carried out? A Not to my way of thinking.

Q How about the secondary objects of the opening, how were they affected by the opening, as actually contemplated by the ordinance which was actually adopted?

Mr. Kalisch. I object to that question upon the ground that it has reference to conditions that existed after the work was accomplished, after the improvement was accomplished.

A By accomplishing these purposes, it raised a tax valuation.

Q Where? A In the territory west of Halsey to High street on Branford place, and in the immediate vicinity of the various streets that ran into Branford place north and south of Halsey, cleaned out and relieved the sociological condition that I mentioned previously in my testimony.

Q Then what would you say, generally, with regard to this improvement, as to its effects, either on particular properties or on the city of Newark at large as the ordinance was actually adopted? A I would like to ask a question myself, are you referring to the improvement as it was completed?

Q No, speaking of the time the ordinance was actually adopted and the property acquired by the city of Newark, for the opening, so that you had a theoretical though not an actual one. A I just don't know what to answer.

Q Perhaps the question is a little awkward? I am asking now for the effect upon the city of Newark and upon particular properties of the opening of this street in accordance with the ordinance as actually adopted, and I ask you to consider the street as of the time when the title to the various properties in the bed of the street had actually been acquired by the city, but before any work of grading, curbing or flagging had been done. Was that improvement one that benefited private property especially or one that benefited the city at large? A May I interpose a question, I don't grasp what you are driving at. Just before you said when the property was acquired there had been no improvement, it was only a theoretical improvement; so you ask if that improvement was of benefit and if any work had been done, how can I answer that?

Q Answer the best you can. A If the ordinance was being carried out in theory and subsequently developed practically it was going to be of benefit to the property, particularly abutting on that street, primarily, and secondly, the greater area that fed that street or would utilize that as a highway from the western part of the city to Broad street.

Q How would it affect the city? A It was a general improvement benefiting the entire city.

Q Which would you consider greater, the benefit to the public at large or private owners?

Dr. Charles F. Kraemer, cross.

Mr. Kalisch. I object to that, that question is unintelligible for these reasons that the general benefit to the public at large does not mean increase in market value; therefore not comparable.

A I think primarily, that the greater benefit of the carrying out of this ordinance resulted to the public generally, secondly, to the property fronting on Branford place.

At this point a recess was taken until 1:45.

After Recess.

Cross examination by Mr. Kalisch.

Q Dr. Kraemer, you testified this morning that the projects which prompted the Board of Works to open up Branford place were fourfold, and you named as the first one, to create a highway from Ferry street to High for the purpose of relieving traffic, was that the most important one? A Primarily.

Q That was the prime object, is that correct? A Yes, sir.

Q And that was to be accomplished by connecting Broad street opposite the easterly end of Branford place with Ferry street through Mechanic street? A Yes, sir.

Q Do you know at the time that this Branford place ordinance was up, who the owners were of any of the properties along Branford place?

Mr. Stein. I object to that on the ground that it is totally immaterial.

A Do you refer to the extension of Branford place from Broad to Halsey?

Q No, from Halsey to High? A Yes.

Q Before the street was open, do you know who they were? A Yes, sir.

Q Can you name some of them?

Mr. Stein. This is subject to the same objection. That it is immaterial and incompetent.

A One of the owners was Mrs. Neu, I will have to refer—I can't refer to them, if I can later I will give them to you.

Q Don't you know any besides Mrs. Neu? James Smith, Jr., did he own any? Did he own any above Halsey? A Yes, near Arlington.

Q On the line of Branford place? A Yes.

Q Did the former Mayor own any? A Yes.

Q Along the line of Branford place? A Yes.

Q How many, if you know, did former Mayor Haussling own? A I don't recall all these details, it is a matter of record.

Q Well, now, Doctor, do you remember when this litigation over the Mechanic street property started, do you remember that? A Yes, sir.

Q You say that while the matter was in court, testing the legality of the title of the Mechanic street property, the Board of Works of which you were then a member passed a resolution to open up Branford place from Halsey to High street? A I don't know that I used those words during that period we proceeded with the work.

Q I want to fix a time as near as I can? A Permit me to interrupt you, I am not going to set upon the exact date, they are a matter of record.

Q I want it approximately. I will try to refresh your memory. You say that while the title to some of the Mechanic street property was being tested by litigation in the courts of this State that the Board of Works of which you were then a member, passed a resolution to open up Branford place from Halsey to High streets. Is that correct? A I will not permit that to be the statement at all, I will make the statement in these words: that the fact of an obstruction in the title having occurred in the lands that were required in order to continue with the improvement to Ferry street, that precluded us in going on with that entire project, but we went on with the western half of it.

Q These other three objects that you spoke of this morning, in addition to the first object that the Board of Works had in view as a result of the opening of Branford place, they were minor objects? A Secondary objects, but important objects.

Q What I mean is, if the first object did not exist you would not have opened the street? A I believe so.

Q Then there was no occasion for opening the street from Ferry to Broad? A Oh yes, there was.

Q Was that the main object? A To create a lateral highway from Ferry to High street.

Q Now, if you didn't have that object in view would you have gone on and opened this street anyway? A Quite likely, if they would have given it consideration.

Q Would that have relieved the traffic after the opening of Mechanic street? A I stated before that it was only one half of the project

and we had no more idea that would relieve the traffic in completing one half of the work—we wanted to complete the entire project.

Q So, you would not have opened Branford place at all if you didn't have also in view the opening from Ferry street to Broad, that is what I mean, to complete the proposition? A You are perfectly right, that is the primary understanding.

Q Then, the opening of Branford place from Ferry to Broad was futile— A That I did not say.

Q —in the sense that you would not have made the improvement if you did not have in mind that you were going to open up Ferry street to Broad, that was the completion of the whole thing? A I hesitate to say yes to that.

Q Is it important or not? A It was secondary. Subsequently it was necessary to open it from Broad to High street to accomplish this secondary object. The primary object of the engineering proposition that brought about the project was the opening of the street in its entirety—what we expected was to open the street in its entirety. I would not have done that if I was entirely stopped from opening it from Broad to Ferry.

Q You mean if you were stopped before you started? A Yes.

Q Now, Doctor, do you know the cost of this opening from Halsey to High street? A I know of the cost.

Q Do you know about the amount? A I don't recall.

Q As much as one million dollars? A Yes.

Q Do you mean to say that while the title to this property in Mechanic street was in question, and in litigation that you notwithstanding that, and notwithstanding Mechanic street was an important, and the important part of the improvement, the Board of Works passed an ordinance to expend one million dollars without knowing what the result of that litigation would be? A We were assured by counsel we would win.

Q But you didn't? A We won the larger part.

Q Why didn't you continue the improvement? A Extending Branford place to Ferry street?

Q Yes. A The matter was taken up between the engineering department and the Pennsylvania Railroad three or four weeks such a conference took place, and the Pennsylvania were granted certain privileges along their line with *quid pro quo*.

Q And was that proposition in existence when you were on the board? A The demand of the Pennsylvania Railroad in anticipation of this opening, yes sir.

Q What was the result? A In my capacity as President of the Board, I turned it down.

Q You turned it down? A Yes, sir.

Q That was after the resolution to open Branford place? A Oh yes, a long while after.

Q And after the litigation had been tried and won and lost on appeal? A And lost on appeal? No, the Pennsylvania only lost one portion of the appeal.

Q Was there not a litigation in which the question of continuing Branford place under-

neath the railroad track of the Pennsylvania —was not that in court? A No, sir.

Q It was not? A No, sir.

Q This is a solid wall, is it not? A Yes.

Q How did you expect to go through it? A The litigation in court was a question whether or not the Pennsylvania were holding land down there without title, from the city, and in order to establish the right to go through that wall, endeavoring to prove that such was the case, they were holding land without title, one portion of it was proved and other portions could not be proved for lack of proper evidence, of records which we could not obtain.

Q The going through of that wall was a matter of condemnation? A They insisted and expected such enormous returns for releasing to us, we turned them down and said we would test out their legality as an occupant of that land.

Q Had you then passed the resolution to open up Branford place? A Whether or not that day preceded or was directly after I don't know.

Q Then while the matter was in litigation a resolution was passed? A The litigation with reference to the Pennsylvania, and the opening of Branford place ordinance were all about the same time, whether it preceded or was directly after I will have to refer to the minutes of the meeting.

Q I don't want the exact date, all I want to know is whether the litigation had been completed on appeal when you passed the resolution to open Branford place? A I don't know.

Q You have stated in your evidence this morning it was within two years and you have

stated in your evidence this morning that while the matter was in court you went ahead and passed a resolution to open up Branford place from Halsey to High street? A Yes, I believe that is true.

Q You say that the opening of Branford place from Halsey street was only one-half of the project, what do you mean? A One-half of the contemplated project.

Q Well, in what sense? A I supposed the opening was to extend from Ferry street to High.

Q Well, you mean that it did not accomplish the same purpose as if it extended to Ferry street? A Absolutely not.

Q Why not? A The very fact that the primary object was to relieve vehicular traffic on Market street eastward, due to the fact these two arteries or funnels opened into that narrow neck, choking traffic as it came to Broad and Market streets, the four corners, was the primary object of creating this parallel highway, Market street.

Q Didn't it relieve the congestion at Broad and Market streets? A What.

Q (Question repeated.) A I would not like to say that exactly.

Q Do you mean to say there is not a great deal less traffic on Market street from High to Broad from what there was before the opening? A I am told so.

Q Is there? A I have never counted it. They say it is a fact.

Q A great deal less? A I am not competent to state. The engineers tell me there is a marked difference.

Q Does it not relieve the traffic at the four corners? A That has been the object.

Q So that the project of relieving vehicular traffic at Broad and Market streets is a success? A Primarily, looking at it from the western end; but not as we had anticipated, we were trying to create that relief from the other end.

Q I know, but your object also was to relieve traffic at the four corners, that was the prime object? A Yes, that had something to do with it, yes.

Q You say, now another object was to increase tax ratables, opening Branford place west to Halsey? A Yes.

Q Just what properties? A The entire property in that zone that is now occupied by Branford place.

Q Was it your view that it would increase the tax ratables? A Absolutely.

Q Assuming now, that the entire project was not carried out, meaning the Mechanic street end of it, would you still be of the opinion that it has increased the tax ratables? A Yes.

Q Why? A Property that was formerly rear end property to buildings consisting of yards, rear ends on Market street, had no particular value, because it had no particular access, now becomes property fronting on a main highway, giving it an opportunity to be used for marketable property.

Q Take the property on Washington street, taking the New York Telephone Company property, for instance, did that not have an approach by way of Camfield street already before Branford place was opened? A That I don't think had a rear approach, Camfield street terminated on Washington street, and the New York Telephone Company was on the westerly side.

Q Was opposite? A Yes, sir.

Q Didn't the New York Telephone Company have a means of access by way of Camfield street? A There is a big difference of approach in going to property through a ten or twelve foot alley inhabited by the cheapest kind of people than a sixty foot wide street with modern buildings.

Q Camfield street was a narrow and slightly inhabited highway? A At its very best a dangerous neighborhood to proceed through.

Q What reason? A Dives, criminals and colored people lived in that neighborhood.

Q Was it a street much used? Was there much traffic on Camfield street? A Not any to speak of.

Q How wide was that street? A A narrow street, probably 20 feet wide.

Q Was it a straight street? A Apparently straight, it had some little crooks in it.

Q Sidewalks? A Very narrow, dangerous, with a lot of basement openings in it.

Q You would not call that very much of an approach to the New York Telephone Company property? A No, it was a detriment to that company, for if one of their subscribers walked up there they were in danger of injuring themselves before they got to the building.

Q That is some kind of an approach, is it not? A In case of emergency, a fellow could get through and then find his way out.

Q Was it considered of bad reputation. A I always considered it so.

Q Infested with disorderly houses? A Yes. Had everything you would call disorderly.

Q So that you think the interior property, using the New York Telephone Company prop-

New Jersey State Library

erty as an example, acquired a new means—an absolutely new means of access by the opening and widening of Branford place to and from Halsey street to High? A Among that other property should not be included the New York Telephone Company property. It was a modern property before this took place and cannot be compared with these back yards and old rookeries that existed and had no frontage at all, that were shut in and unapproachable; the New York Telephone Company was a modern and up-to-date building.

Q I am not speaking of the building, I am only speaking of the land, we only assess the land values. A It had an influence on all that property, even had an influence on the New York and New Jersey Telephone Company as to its being placed upon a corner.

Q You have spoken of the sociological conditions around Shipman and Augusta streets, do you mean that the opening of Branford place has eliminated those conditions? A It has had a very beneficial effect, just how entirely it has eliminated them I don't know, but it is much better than it has been.

Q It has made a new means of access to this building, made it more prominent. A I believe today property there is worth more, it is utilized by better people and the change has driven out the other kind of people and it is entirely different today from what it was before.

Q Are you familiar with the conditions as they were just before Branford place was opened in the neighborhood of High street, or rather Springfield avenue and High street? A Yes, sir.

Q Can you say whether or not the effect of the opening of Branford place has been to divert traffic to any large extent, into Branford place from Springfield avenue which otherwise would have gone down Springfield avenue A I certainly would say so. It has diverted traffic down Branford place.

Q And that diversion of traffic takes place regardless of where the traffic is bound, to the southern or the northern part of the city? A I am not competent to speak on that question primarily, I have never watched it from that end.

Q Did you say there has been in contemplation the acquiring of the right to continue Branford place to Market street and underneath the Pennsylvania Railroad bridge. A I don't speak officially, I say the matter is still pending before the officials.

Q Would you say that they have in mind —in contemplation—any such project? A I am not in a position to say that, I cannot say that.

Q What you heard are rumors? A The exact version that took place between the commissioners at a meeting that I attended.

Q Has there been any resolution passed by the present Board of Works looking to that end? A No, sir.

Q Or has there been any discussion upon the question by the present Board of Works officially at any of their meetings? A That, I don't know.

Q Was there any resolution passed by the old Board of Works after the litigation had been finished, looking to that end? A No, sir. I would say that the present Board of Works—

Q I mean the Board of Works of which you were a member. A Litigation had not been finished at that time.

Q Then the Board of Works that immediately succeeded you. A That I do not know, I have not kept a record of their minutes.

Q You mean the litigation had not been finished before you went out of office? A I think the last appeal was still pending.

Re-direct examination by Mr. Stein.

Q Dr. Kraemer, when you speak of the intention of the Board of Works of which you were a member, the commission's intention to open the street all the way down to Ferry street, do you refer now to your own personal opinion or to that of the Board as expressed at public meetings? A That of the entire Board.

Mr. Kalisch. I want to move to strike out that question and answer on the ground that it is purely hearsay and the best evidence would be the members of that board themselves.

Mr. Stein. We have one member here who was only the president of the board.

Q You said in answer to one of Mr. Kalisch's questions that notwithstanding the fact that the street was not opened to Ferry street, it nevertheless had the effect of raising certain property values? A Yes, sir.

Q To what extent in your opinion were these property values raised, I don't mean as to the amount, but as to the area? A It had direct bearing on all properties fronting on Branford place.

Q You mean increase in values? A Yes, sir, making it desirable and tenantable.

Q And it also had a direct effect on all the property on the side streets that ran into Branford place? A Possibly one-half block north and south were particularly benefited by such an opening.

Q How far west of Broad street, if at all, would you say increase of values had occurred? A I don't think it affected the property east of Broad street.

Q How far west of High street? A That is problematical, I don't think the area west of High street was particularly affected, but I feel that the entire city was benefited or would have been benefited if the project went through.

Q What do you mean? A I take it you mean what effect this opening would have had upon certain area west of High street, are you referring to the improvement as it extended from Broad to High street?

Q As it extended from Halsey to High street, take it as of the time of the legal opening, before it was actually improved, flagged and curbed? A It has been a general benefit to the entire city.

Q Discussing it from the general benefits to what area would you limit the peculiar benefits enjoyed by reason of the opening? A The abutting property, the property within one-half a block or within that latitude, on the tributary streets, lateral streets. Outside of that I can't see any effect outside of the general benefit on all the properties in the city of Newark.

Dr. Charles F. Kraemer, re-cross.

Re-cross examination by Mr. Kalisch.

Q Don't you think that the opening up of a new frontage affects more than one-half block either side of that street? A No, I don't think so.

Q Assuming that Branford place developes into an important business center don't you think that it will spread its influence to the extent of affecting market values beyond one-half a block north and south? A One-half a block is a long distance to be affected by the opening of a street.

Q Can you tell me whether Washington street is affected by the development of Broad street? A Which development are you referring to?

Q I mean does not Washington street receive any additional value by reason of the increase in values on Broad street? A No, sir.

Q So that if Broad street was not there Washington street would be just as valuable? A No, that requires an explanation. Washington street receives its emphasis in value due to the fact that Broad street is so crowded, that the business is driven into the next nearest street.

Q So that the development of Broad street forces its traffic into Washington street and into Halsey? A You say the development, it is not that, but the fact that Broad street has reached its limit in supply and demand, and having reached that limit is forcing business into the next nearest street.

Q If the four corners, let us say, were not there—did not exist—all these nearby streets would be as valuable as they are today? In

other words, if Halsey street was more than a block from the four corners, it would be as valuable as it is today? A What comparison are you trying to make?

Q I am asking you a simple question. You think Market and Halsey streets derive their value from their proximity to the four corners? A Yes, they do.

Q Does Market and Washington street derive its value from its proximity to the four corners? A It does.

Q So that the farther away we go the less valuable it becomes? A The corner of High street and Springfield avenue may become more valuable than Broad and Market some day.

Q Because of local conditions? A Yes.

Q You mean sympathetic influence? A Yes. I wish to state that the supply and demand of business on Broad street is forcing traffic into the neighboring streets.

Q Up? A Yes.

Q Property two blocks from Branford place would therefore be affected in value if Branford place grew to be an important commercial street? A If the same conditions existed also on Branford place and the supply and demand was limited the same as it is on Broad street it would have to be answered yes. You are putting only a theoretical question and the influence on market value of the opening of Branford place will not have that effect on more than one-half block for many years to come.

Q You mean to say then that the present values without considering the future developments of the street, are not affected? A Present values are not affected.

Q You considered Branford place as it is today didn't you? A Yes, sir.

Q You didn't consider the future of the street in determining the value of the lateral street? A I took the condition as it is, not what it is going to be.

Q Don't you think Branford place will develop into an important business street? A I think so.

Q Don't you know the values of Branford place will go up to a considerable extent in the future? A It is problematical.

Q Do you mean to say that Branford place in going up in value to a great extent in the future does not affect the value of property more than one-half a block away? A I absolutely do.

Q You consider that that property which is only one-half a block away—one block north of Branford place is affected? A Directly.

Q That is in reference to market values? A Yes, sir.

Q What causes the increase in value in property which is one-half a block north of Branford place? A The additional facilities for reaching traffic centers or important centers east, north, south and west.

Q Let us take Washington street, does the opening of Branford place make more traffic on Washington street north of Branford place? A Absolutely. It is a mathematical proposition. When there are three or four highways leading to one opening and there has only been one before, there is more traffic.

Q Where does that traffic come from? A All over the city.

Q Goes into Washington street? A Yes, sir.

Q Covering what area? A One-half block north or south.

Q Name the streets. A Washington street, Halsey street—

Q You say Washington street north of Branford place between Market street and Branford place—there has been increased values—increased rentals? A The rentals are worth more than before that improvement was made.

Q That you say is due to traffic? A Greatly, pedestrian and vehicular traffic.

Q That pedestrian and vehicular traffic is due to the opening of Branford place? A I attribute a great deal to it.

Q You mean that is also true to traffic on Halsey north of Branford place? A Yes.

Q And Halsey south of Branford place? A Yes, sir.

Q Going there by reason of Branford place being there? A Yes.

Q How does the traffic from the southern part of the city increase because of Branford place coming north of Halsey street or Washington street, from the southern part of the city, what causes that to increase? A I don't intend to admit that. Did you ask me whether the traffic coming from Branford place increases going into those side streets?

Q I asked you whether there was increased traffic on Halsey and Washington streets between Market and Branford place, whether there was increased traffic as a result of the opening of Branford place? A Yes, that is absolutely so.

Q Is that so of the property that is south of Branford place? A Yes, sir, the same diversion that takes place northerly takes place southerly, the same influence that diverts traffic

into these lateral streets north and south, is prevalent as a magnet north and south into Branford place.

Q It is small—insignificant? A It is marked, noticeable.

Q Has traffic any bearing on the value of property? A Yes, sir.

Q Any great bearing? A Decided bearing.

Q Will you tell me now, you say there has been— A There has been a marked increase of traffic on these streets that ran into Branford place from the southern end of the city.

Q In what way? A Branford place causes traffic to increase in these side streets.

Q Does the presence of Branford place affect the amount of traffic on these streets? A Yes, the traffic that heretofore came east on Market street from the hill and formerly only had Market street to go down and reach the four corners, today is split as it were into two streams, one-half coming down Branford place and one-half down Market street.

Q It is only going in the one direction? A The traffic that heretofore carried the people from the eastern end of the city and from the center up to the hill to their homes. Today pedestrians can walk up Branford place and leave Market street aloof. You will find them going north and south on Market street, and Shipman the same thing. So noticeable is it that you only have to spend five or ten minutes between six and seven o'clock and you would be surprised to see the thing as an ocular demonstration.

Q Is that so of traffic going north on these streets too? A It has its influence too, but possibly not as marked.

Dr. Charles F. Kraemer, re-cross.

Q How about Thirteenth avenue, is there a tendency of the traffic that comes down Thirteenth avenue to use Branford place or any of these streets, Brientnall place? A I am not sure about Brientnall place, but it has an effect on Thirteenth avenue in utilizing that street. The city had in mind an improvement which would relieve traffic, but when the Freeholders bought the plot of ground for the Court House annex it eliminated the triangle and thus had its influence on the matter of the Branford place opening.

Q This traffic you spoke of coming from the southern part of the city going north towards Branford place just how far down does that traffic commence? A It is problematical.

Q How far does that commence? How far south? A I could not say how far south. Not more than a block or two, I don't think the influence would be felt. The peculiar influence you are probably leading up to, as to the influence upon property values, is the diversion of the traffic in and out of these streets from Branford place and in the magnetic powers of drawing the traffic north and south from other streets.

Q Does it do that? A It does, it has that effect.

By Mr. Stein.

Q Considering that the street as originally contemplated all the way from Ferry street down actually going through, and assuming that the cost of opening Branford place as it has actually been opened, assessed to the extent of about fifty per cent. on private property owners, do you consider that is a fair and reasonable kind of assessment to be placed upon private

property owners or that it is too high? A Assuming that it is about fifty per cent. that would make about $450,000 or $500,000.

Q On the limited area? A Yes. A I think it is an outrage perpetrated by the city of Newark which should have been paid by the tax payers generally throughout the city.

By Mr. Kalisch.

Q Did you see the first report that was submitted for condemnation by the old Board? A I did.

Q Did you help make up that report? A No, sir.

Q Did they seek your advice about it? A No, if they had it would have been a general assessment upon all the tax payers, outside of the abutting property owners, because it was well known that this was a general improvement to the entire city and not to any special class, just as the opening of Central avenue, and it should have been considered in the same light.

Q So that your judgment about it is that it should come out of the city tax fund? A General tax levy with the exception of the abutting property owners, and from the peculiar benefits they received, they could well afford to pay the special assessment.

WILLIAM C. FIEDLER, sworn for the prosecutor.

Examined by Mr. Day.

Q Mr. Fiedler, you are familiar with this matter of the opening and widening of Branford place and the assessment for benefits? A Yes, sir.

Q And you recall testifying as an expert for various property owners in the proceedings before the Essex Circuit Court? A Yes, sir.

Q You familiarized yourself in this connection with the situation as affecting the property of the New York Telephone Company at the southwest corner of Washington street and Branford place? A Yes, sir.

Q Have you also made a careful examination of the evidence that was taken in behalf of the telephone company before Judge Adams in the Essex Circuit Court and the exhibits offered in their behalf? A Yes, sir, I have examined them and read them.

Q Also were you present on Thursday, August 10th, when Mr. Berry testified before the Commissioner in this matter, and did you hear his testimony? A Yes, sir.

Q And have you also ascertained what was the tax valuation of the land of the telephone company prior to the opening of Branford place, and if so what was the amount? A I examined the tax receipts and learned that the assessment—

Mr. Kalisch. I object to the question because it is immaterial what it is taxed for and it would be purely hearsay on the part of this witness to state what he learned from tax receipts and different records.

Q What is the amount? A The tax assessment for the telephone company property previous to the opening in 1914 was $86,400.

By Mr. Kalisch.

Q Previous to the opening? A Yes, sir.

By Mr. Day.

Q What was the tax valuation for the next year, 1915, after the opening? A The tax valuation as taxed by the city after the opening was $98,000.

Mr. Kalisch. This, of course, is all objected to.

Q Have you given careful consideration to the peculiar benefits derived by the land of the telephone company shown on Exhibit 1, by reason of the widening and opening of Branford place, and if so to what conclusion have you come? At what figure would you place that peculiar benefit? A I am going to consult my figures here.

Mr. Kalisch. Where did you get those figures?

Witness. From my figures—they are my figures.

Mr. Kalisch. Taken from where?

Q I ask you first, did you come to any amount? A $12,039.58.

Q By what method did you arrive at that figure? A I considered that the fact of making the most northerly twenty-five feet of the telephone company, a corner, that that corner influence added an additional twenty-five per cent. to the value of that 25x205 feet now the corner of Branford place and Washington street.

Q Proceed. A In my opinion, that is the maximum charge that should be assessed against the telephone company property as far as the corner twenty-five feet are concerned. Of the figure that I have stated $8,333.33 represents twenty-five per cent. of the value of that

twenty-five feet prior to the opening and to that extent I am of the opinion that that property has gained in value.

Q That then makes $8,333.33 as the peculiar benefit? A Peculiar benefit, increased value—enhancement of value affecting the most northerly twenty-five by two hundred and five feet.

Q Then you did something more? A Yes, the balance amounting to $3,706.23 is five per cent. of the value of the immediate seventy-one feet fronting on Washington street, having a depth of 165 or 166 feet. This additional five per cent., however, in my opinion, is more or less speculative.

Q In reaching this estimate of peculiar benefits are you using methods and standards that are well recognized in the city of Newark and other municipalities? A Yes, sir.

Q The Commissioners of Assessment fix the sum of $22,500 as being the peculiar benefit, that is the immediate increase in market value by reason of the opening and widening of Branford place; have you given consideration to that figure? A Yes, I have carefully gone into that and endeavored to arrive at some method or basis and I cannot discover any way by which they can fix that benefit of $22,500. It does not agree with any rules that I have ever used, and it looks to me like a very poor guess, at best.

Q You consider that amount unjustifiably large so far as the telephone company is concerned? A It is unfair, unreasonable and inequitable.

Q Now, Mr. Fiedler, you are familiar with the property on the northwest corner of Washington street and Branford place and on the map shown to be something more than the telephone

company's land, is that plot of greater value in your judgment than the same relative plot on the southwest corner of these two streets owned by the telephone company? A There is no doubt in my mind that land such as you have described, being in the first block from Market street, and also on the northerly side of Branford place, is of greater relative value than property in the second block and on the southerly side of Branford place.

Q So that in putting a lower relative value on the northwest corner of Washington street, an unfair discrimination has been shown with respect to the telephone company? A It is very plain that there has been discrimination shown against the telephone company, assessing it on the face of its actual value.

Q Taking the plot at the corner of Broad street, Branford place, and Treat place in block 57 on a map which is marked Exhibit 2—A You refer to the property which is owned by the Osborne Realty Company?

Q What have you to say about that? A In comparing the assessment made by the Commissioners against that property with the assessment of $22,500.00 against the New York Telephone Company there seems to be—

Q How does the inequality impress you? A The inequality is startling. As I figured the value of the Osborne Realty Company property, comparing it with the value of the telephone company, and considering the great benefit that the Osborne property has received as a result of the opening of Branford place, my opinion of the assessment, comparing it with the assessment of the telephone company, is that it should be many times greater than it is, and then after I

took my figure that I used, my method of adding 5% on the value of the interior 71 feet of the telephone company, there is no doubt but what the Osborne Realty Company enjoys greater benefit. But if I actually allowed 5% of the value then the assessment should be over $20,000.00, and that would be a very low figure, assuming that my charge of 5% on the 71 feet of the telephone company is right.

Q Five per cent. upon how much of the Osborne Realty Company on Broad street? A I think it is 45 feet and has a depth of one hundred and seventy odd feet on Branford place and a frontage on Treat place of 45 feet.

Q Then in your answer—your last answer—you were placing only a 5% charge upon the 45 feet? A Yes, sir, comparing it with the 5% I have made on the telephone company property, it is more than reasonable.

Q Did you make any special computation for the corner of Broad and Branford place? A No, I have not considered that.

Q What is your judgment as to Washington street and Branford place representing large area of peculiar benefit by reason of the opening and widening of Branford place? A I believe, with reference to the peculiar benefit that the telephone company enjoys as the result of the opening of Branford place it is less there than anywhere else.

Q Does your judgment coincide with Mr. Berry's as stated in his testimony? A I read his testimony, and I agree with him absolutely.

Q Now Mr. Fiedler, what is your judgment as to what is the true measure of peculiar benefits derived by the telephone company by reason of this improvement, by increase in market value,

or what? In your judgment is the pecular benefit accruing to the telephone company the amount which represents the difference between the market value prior to the opening and the market value subsequent to or at the time of the opening? Or should one take into consideration the fact that the telephone company cannot get the benefit of the market value by moving or selling, as other private property owners might because of the great expense; what have you to say on this head? A Judging it from that point of view, of course the assessment should be nominal if anything at all. My figures are based as an ordinary proposition owned by an individual or a corporation. Judging it as a public utility corporation, I would place it in the same category as the New Jersey Central Railroad and I would go a little farther. While I don't believe the Central Railroad has been benefited to any great extent, I believe the telephone company has received even less, for this reason; there are two or three railroad offices in Newark, and any one desiring to leave has the option of going two or three ways, but there is only one telephone company, and wherever they are you have got to go; and I don't see where, figuring it as a public utility proposition, they have gained anything at all. If they moved, it would cost thousands of dollars and that is so far in excess that it would be very unwise to make such a move.

Cross examination by Mr. Kalisch.

Q Do you know in making out their yearly statement whether they put the value of their property in as on that basis? A What?

Q Do you know in making out their yearly statement whether they put the value of their

property in as on that basis, as one of its assets, that is property valued upon the basis you have just valued it as a public utility corporation, or do they put it in at its market value? A I am not an officer of that corporation and what they do and what their reasons may be I cannot answer that.

Q Now, Mr. Fiedler, what was the market value per front foot of this property before the opening? A Prior to the opening?

Q Per front foot? A In my opinion the 25 feet fronting on Washington street nearest Market street—

Q That is the corner? A Now the corner, at a unit depth of 100 feet was worth $1,000 per front foot. To this I would add about one-third for the additional depth.

Q $6,800.00? A $25,000.00 for the 25 feet by 100 and $8,333.33 for the additional depth.

Q That is the first 25 feet? A Yes, sir.

Q What is the next 25 feet? A The next 25 feet at a depth of 100 feet I figure it on the basis of $900.00 a front foot.

Q The next 25 feet? A Yes, sir. And I added 25% or ¼ for extra depth. That amounted to $28,125.00 for the property including the extra depth of 165 or 166 feet. The third 25 feet I valued at $800 per front foot.

Q $800.00 a front foot? A Yes, sir. And I added 25% for additional depth making a total of $25,000.00 for 25 feet fronting on Washington street and including the full depth of 165 feet. The last 21 feet I valued at $800.00 a front foot.

Q $800.00? A Yes, sir. And I added 25% for the additional depth, that would total $21,000.00.

Q $21,000.00? A I think so, yes.

Q What is your estimate of value since the opening? A All together?

Q No; well, yes, all together? A About $120,000.00.

Q That is your estimate? A Of the value of the telephone company land after the opening?

Q $120,000.00? A Yes, about. I have figures showing exactly if you will let me consult them.

Q You say property on the northerly side of Branford place is more valuable than on the southerly side? A I think it is.

Q Very much more? A Approximately 25% more, in my opinion.

Q Why? A Why?

Q Yes? A It is in the first block, in the Market street block.

Q How far is it from the northerly side of Branford place to Market street? A Approximately 250 feet.

Q And how much of the depth is property front on Branford place on the northerly side? A The property front on Branford place, how much depth has it? This map does not show.

Q Do you know? A There is a very narrow strip there.

Q How much? A About 9 or 10 feet.

Q On Branford place? I mean the depth runs back from Branford place? A Yes, from Branford place about 10 feet. It gets wider towards the rear.

Q You don't mean that property is more valuable than the property on the other side?

Mr. Day. Objected to as the witness has not so testified on direct.

Q Has not the size of property anything to do with its value per foot of the property frontage? A It is one of the elements.

Q Is it not an important element? A Yes.

Q So that if the frontage on the other side of Branford place is small, and has only the depth of 9 feet, does not that make it less valuable per front foot than the property on the other side considering that piece separately? A Yes, but we were not considering that in my answer to Mr. Day's question.

Q Can you make a comparison between small plotage and large plotage on equal bases? Are they on equal bases or are they not comparing that little strip with the whole of the New York Telephone Company property? A No, but figuring the area of a plot equal in size to the telephone company—that is a fair proposition on which to arrive at values.

Q But does not the unit value become less as the plotage becomes less? A The unit value?

Q Yes, the unit value per front foot becomes less as the plotage becomes less, that is a familiar real estate rule? A I would not think so. I would not say the unit value becomes less, I would say perhaps there is an additional value.

Q Take then for instance these 9 feet? A Yes.

Q On Branford place? A Yes.

Q You would not say that is worth as much per foot as a piece of property that has 50 feet in depth? A No.

Q Then on what principle can you say that property on the north side of Branford place is more valuable than property on the south side as it exists today? A I do say so with a plot of equal size.

Q But you compared the property on the northwesterly corner of Branford place and Washington street with the telephone company's? A A plot on the northwest corner having an area equal to or in excess of the area of the telephone company.

Q The only difference then is that these two properties are one in the first block and the other in the second block, that is the only difference is it not? A It is quite an important difference. Property in the first block has a potential value that property in the other block does not enjoy. But, I may add that it is possible in the future some one owning property on Market street desirious of getting through to the next street would pay a bigger price for a piece of property giving them frontage on the next street than if it were only a small strip.

Q That is merely speculation? A Yes, but it adds a potential value.

Q You mean the possibility of some one wanting to acquire that property, has a potential value? A I think so.

Q Are there any properties fronting on Washington street on the first block which intersect the property on the northwest corner of Branford place and Branford place property? A Yes.

Q How many properties are there on Washington street, facing on Branford place? A I don't know if this map is correct or not, but if it is you could get to Market street by purchasing one of the properties on Washington street and one on Branford place, you could get to Branford place also.

Q How many properties? A I think the theatre property belonging to the Chelsea Realty Company and this little strip.

Q Did you get your values that the city placed upon this property from the tax receipts? A Did I get my values?

Q The values that the city taxing department placed upon this property, did you get them from the tax receipts? A Yes. They were shown to me, the tax receipts for 1914 and 1915.

Q You saw tax receipts for the years '13 and '14, these were the only tax receipts you saw, is that correct? A I am not certain it might have been '13 and '14.

Q Which is it, were they 1913, 1914, 1915, or which? A 1914 and 1915.

Q I show you some tax receipts, are these the ones? A Yes.

Q Who put those red pencil marks there? A The city.

Q Did you get these tax receipts yourself from the office? A No.

Q Who gave them to you? A Mr. Day.

Q When you got them this writing in red ink was on them? A Yes, sir.

Q You don't base your evidence on those do you? A My conclusions?

Q Yes? A Oh, no.

Q Now, what do you consider that whole property worth at the present time? A With the building?

Mr. Day. I object, the witness ought not to be called on to answer as to the building, it is not in controversy in any way.

A I have not gone into that question at all, the value of the building.

Q You made some comparisons as to the property owned by the Osborne Realty Company, where is that property located? A On the

southwest corner of Broad street and Branford place, west to Treat place.

Q West to Treat place? A Yes, it has three frontages, Broad street, Branford place, and Treat place.

Q Well, now, do you say that that property for the purpose of assessment can be compared with the telephone company property? A In my opinion, the property of the Osborne Realty Company has received a greater relative benefit than almost any other property that has been assessed.

Q In what way? A All the through traffic going east or west passes that property.

Q Is that the only reason? A It is at the termination of the new street.

Q Didn't the Osborne Realty Company property have that advantage before Branford place was opened from Washington street to High street? A No, sir, they didn't get any of that traffic; it formerly went down Market street and now comes out Branford place.

Q Was not that always a corner property? A Yes, sir.

Q Doesn't the telephone company get the same traffic that comes down Branford place and passes the Osborne Company property? A I have allowed for that.

Q And is it not now a corner property which it was not before Branford place was opened? A I have allowed for that.

Q Is that an advantage which is in addition to the benefits which the New Jersey Telephone Company has enjoyed? A I have added twenty-five per cent. to the value of the corner of the telephone company property, whereas I am only assuming that the Osborne property has

been increased 5% as against 25% of the telephone company.

Q You said the Osborne Realty Company should have been assessed at the rate of $20,000.00? A I figure the Osborne Company's property value from $400,000.00 to $450,000.00.

Q Without the building? A Yes.

Q And on the basis of 5% increase? A Yes, that would make it from twenty to twenty-two thousand dollars.

Q And where did you fix the increased value from the opening of Branford place, at what point? A Both ends, I think.

Q You mean at both ends? A Yes, sir.

Q Those were the greatest benefits? A Excepting that property which has received an entirely new frontage on the street.

Q Is not the New York Telephone Company one of them? A Yes, but they have not received the same relative value—the same relative benefit that property west of the company has.

Q Why not? A Because it had access from Camfield street.

Q Do you call that an access on Camfield street? A Undoubtedly, many times I went through there. It was a quick way of getting to the telephone company.

Q You don't agree with Dr. Kraemer's testimony, it was a street that was very little used, and it was precarious for a person to go through there? A I went through there many times and I am still here.

Q You don't agree with him it was only an alley? A I don't know what the width was, but I should judge it was 30 or 35 feet wide.

Q Do you think there was traffic on that street? A Some.

Q An insignificant amount of traffic? A No, quite a little.

Q You think because the telephone company had access by way of Camfield street that the opening of Branford place west of Washington street did not give it such an additional advantage, that is, the telephone company? A No, I don't think so.

Q How much difference is there in value between interior property and corner property, what did you add on? A It depends on where the corner is. The corner of Broad and Market street, where both intersecting streets are of great importance, where they are of almost equal values, I should judge the additional value to be about 50%, but I don't think the telephone property which has now been put on the corner of Branford place has received benefits in excess of 25%, because of the comparative non-importance of Branford place.

Q You consider it non-important? A Compared with Broad and Market streets, yes.

Q Why do you consider it non-important? A Comparatively, I said.

Q In what way? A It does not get the traffic that Market street does.

Q It does not? A No.

Q Has there not been a great deal of traffic taken away from Market street? A Very little.

Q What percentage has been diverted into Branford place? A To answer that, I would have to guess.

Q I don't want any guess, you are passing your opinion upon a comparison, and I want to know—

Mr. Day. I object to that question.

A I cannot answer that.

Q You have spoken about the comparative values between corners, and you are comparing the telephone corner with Market street, and you say there is a difference on account of traffic? A That is one of the elements.

Q That is an important element? A I am not prepared to say that, there are many elements to be considered.

Q You mean to say that traffic itself is not the most important element? A It may be, I have not gone into all the elements.

Q It is the most important? A I am not prepared to say.

Q Will you say it is not? A I am not prepared to say, but certainly, any man knows that Market street is worth a great deal more than Branford place.

Q Is there not as much traffic going down Branford place as goes down Market street? A No.

Q What percentage of the traffic has been diverted to Branford place? A Perhaps 25%.

Q 25%? A Perhaps, I don't know.

Q Now then, what additional value does a piece of property acquire by reason of being a corner of Branford place and one of the side streets that run into Branford place? A I don't understand that question.

Q Is it not a universal rule that corner property is about one-third more valuable than interior property on the same street? A I have never heard of such a rule.

Q What is the rule of comparing value with property fronting on the same street of which one is a corner property and the other is an

interior property? A As I said before, it would depend largely on the location of the corner.

Q What is the difference then in value that is between the corner of Branford place and Washington street and interior property to the south of Branford place? A 25%.

Q 25%? A I think that particular corner, yes.

By Mr. Day.

Q Including the fact that Camfield street existed? A Oh, yes, I considered that, of course.

By Mr. Kalisch.

Q Now, that is the rule that you are governed by in fixing values? A That is the rule that I apply in that particular case.

Q And for that you take the property as it is, I mean the depth, or at the 100 foot depth, or doesn't it make any difference? A Oh, yes, in estimating the value of the telephone company, that is the 25 feet, I have figured on the basis of the full depth, 205 feet.

Q When you make the comparison then between the corner and interior property you must figure on a uniform basis of depth? A I have done that.

Q The interior property for instance is not 205 feet? A It is 155 or 166.

Q It becomes less as you go toward the south? A No, it remains the same depth as the corner, as a matter of fact I have allowed 25 feet by a depth of 205 feet, when as a matter of fact only 23 feet extend back the entire depth.

William C. Fiedler, cross.

Q Will you give me the value of the corner property with a depth of 166 feet instead of 205 feet? I mean the value of it if it were the same depth as the other property south of it? A Yes, sir, in the first place basing it at a depth of 205 feet I added one-third to the unit value, the unit depth being 100 feet. In the second case having a depth of 165 feet, I added 25%.

Q What do you make the value of the corner property? A Assuming that it was 165 feet, or the same depth as the property immediately south of it, considering it as a corner?

Q Yes? A You want my value if it were 165 feet, you want me to assume it is also 165 feet?

Q Yes.

Mr. Day. I object to that as being a theoretical question, it is not applicable to the situation.

A Assuming that the corner had a depth of 165 feet that corner, as a corner, in my opinion would be worth $39,062.00.

By Mr. Day.

Q Is that at the depth of 25x165? A Yes, 25x165.

By Mr. Kalisch.

Q Did you give me the value of the 25 feet immediately south of the corner of Branford place per foot? A Yes.

Q Will you give it to me again? A Yes. I valued the second 25 feet at a unit depth of 100 feet at $900.00.

Q That is after the opening? A Before the opening.

Q I am speaking after the opening? A I added 50% to that.

Q To the $900.00? A The second 25x155, I first figured my unit value at a depth of 100 feet at $900.00 and I added 25% for the extra 65 feet depth.

Q That is after the opening? A Then I added 5% for the peculiar benefit which would accrue to that property as a result of the opening.

Q So that is worth $14,006.25 making a total after the street had been opened of $29,513.25? Is that right? A Yes, as I said I considered that additional 5% on the 71 feet interior more or less speculative. Put it on for good measure, so to speak.

The further taking of testimony was then adjourned to Tuesday, August 15th, at 10:30 o'clock in the forenoon.

NEW JERSEY SUPREME COURT.

NEW YORK TELEPHONE COMPANY,
Prosecutor,
vs.
THE MAYOR AND BOARD OF STREET AND WATER COMMISSIONERS OF THE CITY OF NEWARK AND THE ESSEX COUNTY CIRCUIT COURT,
Defendants.

Newark, N. J., Tuesday, August 15th, 1916.

Hearing resumed pursuant to adjournment.

WILLIAM C. FIEDLER, resumes the stand.

Re-direct examination by Mr. Day.

Q When you were testifying yesterday as to the northwest corner of Washington street and Branford place did you have only the narrow strip of the Neu estate in mind, or also the properties of the Chelsea Investment Company and the Prospect Improvement Company? A When I testified with reference to the property on the northwest corner of Washington street and Branford place I had in mind a plot of ground having an area a little in excess of the area of the telephone company plot which—

Q Looking at the map, Exhibit 1, did you have in mind plot 73, lots 54, 50, 40? A I referred to property in block 73, lots numbered 40, 50 and 54.

Q And in stating that the property was much more valuable than the southwest corner owned by the telephone company you added two elements of value, did you not? A Yes.

Mr. Kalisch. I object to that as very leading.

Q What were these elements? A The fact that the property is in the Market street block and that it also has a frontage on the northerly side of Branford place.

Q That advantage on the northerly side you say is equivalent to about 25%? A I think about 25%.

Q Now in changing the unit value for the corner of Washington street and Branford place from 50% to 25%, you were governed by what circumstances? A In adding 25% to the value of the corner instead of 50% I did so for the reason that the telephone property already has and had the advantage of access through Camfield street and that the opening and widening of Branford place only gave the property access from one other direction.

Q And you also stated that in your judgment the 50% rule would not apply in any case to a corner like Washington street and Branford place, did I so understand. A That is right. I would not consider a corner in that location worth over 25% more than interior unit value, particularly when comparing it with such corners as Broad and Market street.

Q And particularly when considering that Camfield street was in existence? A Yes.

Re-cross examination by Mr. Kalisch.

Q You mean to say that Camfield street as it existed before the opening and widening, pre-

sented the same means of access as it did after the opening and widening? A No, it was not as wide a thoroughfare as today but it was valuable in its former stage particularly as far as the telephone company is concerned.

Q You don't mean to say Camfield street was as much used before the widening of it as it is today, do you? A No, I didn't say that.

Q So that the improvement of Camfield street, by widening, added to the benefits of that street so far as the telephone company was concerned, did it not? A I didn't consider the widening of Camfield street added a great deal to the value of the telephone property.

Q How wide is that now where Camfield street used to be? A I have not got the exact dimensions.

Q About 60 feet? A About 60 feet.

Q You mean to say, you are willing to say, upon your oath that that street as it exists today, Camfield street as it exists today is 65 feet instead of 35 feet has not been an additional advantage to the New York Telephone Company.

Mr. Day. I object to that, it was not what the witness said.

A Yes, it has been of some advantage.

Q What percentage, can you compare it? A It is so nominal.

Q Can't you put it down? Will you tell me what advantage has accrued, figuring it by percentage of advantage? A The advantage of the widening of Camfield street is so nominal that it is immeasurable in dollars and cents.

Q You say it is nominal? A So slight, I say now.

Q So that as it existed before, being 35 feet, it was almost of the same advantage to the New York Telephone Company as Camfield street as it exists today? A I think so, I might add that in allowing 25% additional—

Q I am not asking you that? A When I arrived at my basis I took that into consideration.

Mr. Kalisch. I ask that that be stricken from the record; I didn't ask you that.

Q You put yourself on record as saying that Camfield street as it existed before the widening of Branford place was as valuable and as advantageous to the New York Telephone Company as a means of access as it is today, or as it was immediately after the opening and widening, you said yes? A I said it was a slight advantage which I allowed for in my 25%.

Q You said it was immeasurable? A I allowed for it.

Q You said it was immeasurable? A I think so.

Q It is so slight it is immeasurable? A I think so.

Q So that if Branford place had not been opened from Washington street to Springfield avenue this westerly end, that the New York Telephone Company would have acquired no benefit from the widening of Camfield street now called Branford place? A Very little.

Q So slight that you could not measure it in dollars and cents? A It is pretty hard to figure it out.

Q That is right, it is so slight you could not measure it in dollars and cents? A That is right.

William C. Fiedler, re-cross.

By Mr. Day.

Q In making that statement, are you governed in your judgment at all by the fact that this is a public service corporation to which the people must come?

Mr. Kalisch. I shall object to that as absolutely leading and suggestive to the witness.

A I did not consider the telephone property in the light of a public utility corporation in arriving at my market value, but undoubtedly as a public utility corporation being in a position where subscribers were compelled to go no matter where they were, in my opinion added no advantage at all.

Further re-cross examination by Mr. Kalisch.

Q So that in making your mind up on this proposition you considered not the market value of the telephone property, but its uses as telephone property or a public utility property, that is, property belonging to a public utility corporation?

Mr. Day. I object to it, that is not what he said.

A I have not.

Q Did you consider market value and market value alone when you said that Camfield street as it existed immediately after the opening and widening did not affect the telephone property advantageously. Did you or not consider it in the light of market value? A Yes.

Q And the market value alone? A Yes, sir.

Q In arriving at your figures? A Yes, sir.

Q When you made the statement this morning that you had not thought that the telephone

company acquired any benefit from the widening of Camfield street were you considering market value or not? A Yes, sir, I was considering market value.

Q And market value alone? A Yes, sir, I said so in my former statement and I say so now.

By Mr. Day.

Q If, however, Camfield street had not existed at the time of the improvement would you have added a larger percentage for corner values or corner influence than 25%? A That is just what I wanted to drive at in answering a previous question, that if Camfield street had not been there and a new street instead of the widening of the old street had taken place I should have added more for corner influence.

Q And considerably more? A Yes, I don't know just how much, I have not considered that stage of it. That is just the point I wanted to cover and didn't know how to answer it.

By Mr. Kalisch.

Q You say that the widening of the street confers benefits on surrounding properties? A The widening of the street does not confer benefits as valuable as the opening of a new street.

Q Does it confer benefits measurable? A Slight.

Q So that you cannot measure it in dollars and cents? A In that particular case.

Q I am asking you whether the widening of a street from 35 to 65 feet confers, in your opinion, benefits, peculiar benefits, upon property within the vicinity, within the very near vicinity? A As far as that particular street is concerned, I do not think so.

JAMES A. BERRY, recalled.

Re-direct examination by Mr. Day.

Q Mr. Berry, have you ascertained what reductions were made by the third report of the commissioners of assessment in plot 54, 50, 40 of block 73, on the northwest corner of Washington street and Branford place? A Yes, sir.

Q From whom did you get your information? A From the office of the Board of Assessment Commissioners.

Q From what person? A The deputy of Mr. Burdett, the secretary or chief clerk.

Q With what results?

Mr. Kalisch. I object to that on the ground that it is immaterial and irrelevant.

Q Lot 54, Neu Estate, was that reduced? A Yes, sir.

Q From what figure to what figure? A The original figure of $7,500 was reduced to $5,000.

Q Lot 50, Chelsea Investment Company? A It was not reduced, and stood as originally written, $7,500.

Q Lot 54, Prospect Improvement Company? A Reduced from $4,500 to $3,600.

Q Making a total reduction on all three plots of $3,400? A Right.

Q Or an aggregate assessment of $15,100.00? A Yes.

Q Now, Mr. Berry, I regret to say that either from my questions or your answers or the transcribing of the notes, confusion seems to exist in the record of your testimony of last week with reference to your schedules, and I, therefore, desire to requestion you on all three of these points. Mr. Berry, have you prepared a schedule showing how the city increased the tax

valuation on the land of the telephone company at the southwest corner of Washington street and Branford place from $86,400 in 1914, before the improvement was made, to $98,000 in 1915, after the improvement was made? A I have.

Q State from whom you acquired your information, at the city hall, concerning the valuation of $98,000? A From the secretary of the tax board, and—

Q His name? A Mr. Fitzsimmons, and by actually seeing the figures written in the tax records.

Q State the method which the city adopted as explained to you by that official and as appears by the city books?

Mr. Kalisch. That is subject to my objection, that it is immaterial, irrelevant and incompetent, and that it is subject to a copy which Mr. Berry is reading from being a correct copy of what the records show. If the record itself was produced or the men from whom Mr. Berry got his information were produced their testimony would be immaterial and irrelevant in these proceedings.

A The city taxed the interior land of the New York Telephone Company property, being 71 feet frontage by 166 feet in depth at the unit of $700 per front foot, and added—

Q For what depth? A I am coming to that. And added for 66 feet additional depth 26% being the value per foot for 166 feet in depth to 882, then the city took—

Q Excuse me, what total does that make? A Total $62,887.00. The city then took 2 feet at the same unit of $700 per foot adding 26% for

additional depth, making these two feet worth $1,754, and then added to these two feet, for their being part of the corner, 50%, or $882 per running foot, or $1,323 per foot, making a total of these two feet, $2,646. The city then took the balance of the corner, being 23 feet 2 inches by 206 feet in depth, using the same $700 unit, and then added 34% for extra depth amounting to $5,513, and then added 50% for its being a corner lot amounting to $10,865, and making the foot value $1,407, or a total of $32,595. These totals make a grand total for assessment purposes of $98,118.00, from which the city deducted the fractional amount of $118.00, leaving $98,000.00 as the assessed value of the New York Telephone Company land for the year 1915.

Q Now state the figures by which you arrive at your estimate and values of the telephone company land? A I have prepared here a schedule showing the value of the New York Telephone Company land at the southwesterly corner of Washington street and Branford place. The best lot, being that nearest to Market street, 25 feet, at $1,000 per foot frontage, for 100 feet in depth, amounting to $25,000.00. The next lot, 25x100 in dimension, at $900 per foot, amounting to $22,500.00. The next lot, 25x100 feet, at $800 per foot, amounting to $20,000.00. The next lot twenty-one and a fraction by one hundred feet, at $800 per foot, amounting to $16,800.00. Making a total value for 100 feet in depth of $84,300.00. I have added to this total for 66 feet additional depth of plot having 71 feet frontage, 26% amounting to $15,700.00. I have also added for additional depth on what is now the corner lot of 106 feet, $8,300.00, making a total valuation of this land, $108,300.00. I

will now add for corner lot at Branford place say 25% of the previous value or in round numbers $8,000, making a total value of the land as it now stands today $116,300.00. I wish to say further that in placing a value of $800 per foot upon the most southerly twenty-one feet and a fraction of frontage I have given to it probably $100 per foot valuation more than it should receive, due to the fact that the lot is smaller than usual and to that extent less useable and consequently less valuable. So that I would deduct from the total valuation of $116,300.00 the sum of $2,100.00, being to my way of thinking, the sound value of this plot, or $114,200.00.

Q Now restate the method by which you arrived at your estimate of $12,300 as the peculiar benefit accruing to the lands of the New York Telephone Company by reason of this improvement. A Yes, sir. I have prepared here a schedule showing $12,300 as the increase of market value on the New York Telephone Company land, as corner land, after the opening. The value of the corner lot, 25x100 feet, $25,000.00. I have added for the fact that this lot is 206 feet in depth, 33 1-3%, making it $33,300 in value. 25% of this would be again $8,300 in round numbers, but I have credited that plot with a peculiarly increased value of $10,000 instead of the $8,300, which sharp calculation would seem to give it. I have added to the lot next to the corner $1,000, being at the rate of $40 per foot frontage for its depth. I have added to the lot second from the corner $800, computing it in round numbers at a little over $30 per foot, and the fourth lot, being the remaining twenty-one feet and a fraction, I have added

at the rate of $25 per foot making it peculiarly increased value say $500 and thus coming to what I believe to be the maximum special benefit obtained by the New York Telephone Company's whole plot, $12,300.

Q Did you make your inquiry at the city hall of any one other than Mr. Fitzsimmons? A Yes, sir, I discussed the matter also with the chief clerk, Mr. Terhune, and also with the assessor for the district covering the property of the New York Telephone Company.

Re-cross examination by Mr. Kalisch.

Q When did you acquire this information? A At various times, most recently within a week.

Q The detailed information that you have testified to this morning, you acquired that within this week?

Mr. Day. Objected to, he did not say within this week.

Q When did you transcribe them on paper, you have them all written out? A I have some, I should think I got it about a week ago.

Q Is that when you got all that information or most of it? A I am prepared to tell you what I did get.

Q Did you get most of it within a week? A I acquired all the information as to the 1915 assessment by the city within a week, for at least the second time and probably the third time.

Q Did you get the information concerning the 1914 assessment within a week? A Yes, I did.

Q Has the personnel of the tax board changed since 1914? A Yes.

Q Do they all adopt the same system, the same methods? A Who all?

Q Does the tax board always use the same method of arriving at values, regardless of who the members of the board are? A Well, I can't talk for each individual member, but in a general way I am conversant with the methods of the Board as a Board.

Q What have you got to say, do they or don't they? A The same method as to what?

Q In arriving at values. Such methods for instance as you have stated this morning? A May I ask—

Q Answer my question if you know? A I am not quite sure that I understand the question thoroughly.

Q I want to know whether the Board of Taxation of the City of Newark always used the same method for arriving at values on property, real estate? A To the extent they adopt the unit rule and make additions for the additional depth or make concessions for the lack of depth.

Q Did they use the method as stated by you in its entirety, did they use that method or did they make changes in their method of arriving at values? A Well, that is the method in use at this time.

Q I know that, I am asking you whether they always used that method in its entirety? A I cannot speak for always.

Q It depends on the personnel of the Board? A I suppose individuals have their views and they cut some swath probably.

Q Now, what do you say the value of that property was before the opening? A About $100,000.

Q And after the opening $112,300, I believe. Well, the additions allowed for special or peculiar benefits were $12,000? A Yes.

Q That makes it about $12,300? A Yes.

Q Is there more than one method of arriving at these values? A By whom?

Q By real estate brokers? A I suppose there is.

Q And would the various methods they could employ bring about different results? A There would not be a great deal of variance, I think, in the conclusions reached by men qualified to judge.

Q How much variation would there be? A I can't say that?

Q $5,000 in the value? A Well, $5,000 would be five per cent., scant, on the total, I suppose you would be apt to find someone making $5,000 difference.

Q $10,000? A Well, that would be scant ten per cent.

Q Mr. Fiedler differed $7,000? A I didn't hear.

Mr. Day. That is objected to on the ground that it calls for a fact.

Q I call your attention to Mr. Fiedler's testimony, he said yesterday, that that property, before the opening, was worth $107,000, you have testified it was worth $100,000, that is a difference of $7,000? A I said one hundred thousand.

Q He said one hundred and seven thousand, and you said one hundred thousand—A Yes, but I didn't hear Mr. Fiedler's testimony, I didn't hear him say one hundred and seven thousand, but I accept your statement.

Q He said it was worth one hundred and seven thousand, and after the opening it was worth one hundred and twenty thousand, so that different brokers undoubtedly would have different opinions about these values? A Oh, yes, undoubtedly.

Q Even to the extent of differing more than ten per cent., some of them, would they not? A I suppose you would find a difference of opinion probably with a great number of experts.

Q They could be called reliable experts, too, could they not? A Oh, yes, I think so. I would call attention by the way to the estimate which you gave me as having been made by Mr. Fielder would vary just about to the extent of five per cent. from the total I reached. I am giving you the figures of one hundred and seven thousand as against one hundred thousand, by figures, and his total of one hundred and twenty thousand.

Q I am not asking you about his total of one hundred and twenty thousand. A You mentioned it.

Q I haven't asked you. You didn't hear his testimony. A I am accepting your statement.

Q I stated it to you, I didn't ask you about it. There is, among real estate brokers, a wide divergence of opinion upon the question of market values, is there not? A I should not think the divergence among these brokers would be so wide.

Q Just tell me what would be a safe margin to measure the difference of opinion among real estate brokers on market values.

Mr. Day. If you know.

A I would be hazarding a guess under these circumstances and I hesitate to do that.

Q You say you would be hazarding a guess? A As to what the divergence, if any, would be.

Q Is it so diversified that you cannot arrive at a safe conclusion about it? A It would be so inexact, possibly, that I would hesitate to state, it would be purely a speculative opinion.

Q Would fifteen per cent. measure approximately? A Well, I should not have thought it would go beyond that. I should not think so.

Q Anywhere within fifteen per cent. would be a safe guide to measure the difference of opinion?

Mr. Day. If you know.

A No, I think that would be pretty wide, Mr. Kalisch, and I would rather give, myself, the opinion, that among those qualified to measure values, variations would not run as high as fifteen per cent. I consider that to be an outside measure, I don't assent to that opinion. Experience has taught me that those who are more or less capable or skillful in measuring the real value and having no selfish concern are very apt to consider about the same, one with the other among three men.

Q You have no reference to a man who is testifying as an expert, have you, when you say "selfish concern?" A I mean a man—I don't wish any false construction so I will clarify it. I mean a person having no financial interest in land being appraised or land immediately adjacent.

Q Don't you mean by a person having no concern, a person who is not called in by one side or the other and who has no interest,

financially, in purchasing or selling, is that what you mean? A I mean a person without any selfish interest. Take among real estate men, commonly, for intsance, Mr. Smith would say, "What do you think is the value of land at such a spot," if that man is a broker, owner or is concerned with land there, he might have an exalted opinion, induced by what he expected to achieve for it. This opinion I would dismiss—and when I say unselfish, I mean the man without any concern except to ascertain the truth.

Q Don't you think a man who testified on the stand has more interest in backing his opinion more so than if he acted only as a casual observer? A I should hope that an appraiser would not exalt values because he happened to own there.

Q Well, then, how near the fifteen per cent. would you come in determining the difference —in measuring the difference of opinions of experts? A I was going to say as near as you lawyers come in some opinions, but I should think fifteen per cent. would be a very generous difference among those qualified, and I would rather make a guess that the percentage would not average over one-half of that.

Q Seven and one-half? A I don't wish to split hairs, I would rather make it eight or seven.

Q Would ten per cent. be proper? A It might grow to it, but I think it would be wider than it should be.

Q Is not a great deal of the valuations by experts of land a matter of guess work—in a large measure, Mr. Berry, among competent experts? A I was about to say there are

experts and alleged experts, of course. But I think there is bound to be a difference of opinion among men in the real estate business, as in law.

Q Does not a great deal of the opinion of experts depend upon the individual himself, I mean as to whether he is conservative or the opposite of conservative? A I should think, like in other respects, the man who knows the most is best qualified to really appraise.

Q Do you assess rental values? A Yes, I am doing that in a matter now.

Q Did you do it in the telephone matter? A I don't know how I would arrive at rentals in that case.

Q That component element makes it more difficult to arrive at the value? A I should think it would simplify it. I have one less condition to contend with.

Q You have one less indication of value, haven't you? A Not necessarily, because the most valuable property might bring a small rental.

Q Where, for instance? A The Prudential, where we are sitting, for instance.

Q Isn't it a conceded fact the values on Broad and Market streets, the centre of the city, including the Prudential building, if you will, are exhorbitantly high, are fancy figures? A It is not a conceded fact.

Q You think the values placed or put upon the property on Broad and Market streets, within half a block of the four corners, are true values? A I would be pleased to separate them for you.

Q It cannot be answered except in two ways, I want to know if they are true values or values that do not exist in that property.

Mr. Day. That question is objected to unless the witness is asked as to specific properties and their values.

Q I am asking you whether properties within one-half a block— A The answer would be yes or no, as to each street, for example, I wish it to go on record there has been no recession on Broad street at Market. It might also be stated as to Market street there has been discovered a recession that is the exact answer that I wish to put upon the record.

Q As a matter of fact, what you call recessions is nothing more than putting upon Market street properties, the values that they actually have? A I would attribute it rather to the conditions of the business world, first, and then I would state that in some instances probably there had been earlier an over-estimate of values, but the two of these conditions should be considered.

Q And that refers to what property? A Market street in certain places.

Q What places? A Well, perhaps we ought not, if you please, to exploit publicly any deterioration in their values.

Q Well, give us the section? A We might state the southerly side of Market street, between Broad and Halsey, not to go any further.

Q Between Broad and Halsey streets there has been a recession, you say? A There has been a recession.

Q What about the north side of Market street, between Broad and Halsey? A Not any recessions, holding its own.

Q And that you mean to say is the only part of Market street in which there has been

a recession? A I think I added not to go any further when I stated Broad and Halsey streets.

Q We can go further and find some recessions on Market street? A Yes.

Q What section? A Well, take the westerly side from Halsey on the southerly side.

Q And how far up? A Well, up towards Washington street and beyond, west of Washington street. We will now cross Washington street and likewise find some properties that have slumped.

Q And that you say— A Is due, to keep it perfectly clear, probably to the conditions existing in the business world and perhaps also to over estimates made in earlier days.

Q Does that also apply to the northerly side of Market street? A On the northerly side of Market street it might be set down as being the fact, in my opinion, certain properties there are still stepping forward in value.

Q Which are they? Isolated cases, I suppose. A No, we will measure it in blocks, first naming the block in which we are now sitting?

Q You mean the block between Broad and Halsey, on the north side of Market? A Yes, sir. I will also state that the block on Market street, northerly side, between Halsey and Washington—

Q Where, between Halsey and Washington? A Yes, meaning the second block from Broad street is likewise, in my judgment, still holding its own. Shall we cross Washington street?

Q Yes. A Going into the block westerly from Washington street on the northerly side of Market street, I am not sure whether the

values have gone forward, or even if they are standing still, and it may be that there has been in that block some reductions in values.

Q By that you mean that you are not sure if they are going forward or not, if they are standing still there might be some reduction in value? A Standing still usually is considered to be a recession.

Q There is no increase in the second block from Broad on Market in values? A I have not said that. I have said that it at least is holding its own, from which the inference is to be drawn that it is going forward.

Q There is a very slight increase in the second block from Broad? A I cannot tell you in the absence of a sale.

Q Well, then, you cannot tell me that it has gone forward? A I said the inference is to be drawn it is going forward because it is at least holding its own. I stated that for this reason, that the block is absorbed chiefly by one concern and one firmly fixed and being probably the largest business in its line in the state and immediately adjacent to such conditions values are always well maintained.

Q Always what? A Always well maintained.

Q Well, that is rather indefinite, well maintained. From that I suppose— A I will give you my judgment that the values there are as I stated before, at least holding their own, and to my way of thinking, advancing.

Q Have they not reached a point where they cannot advance any further in values? A I would not say that, I will admit that the figures soar rather high, but I suppose I might state that I can recall the time when one-half

of those figures likewise looked high, so that the future advances would be somewhat problematical to judge the future from the past, but values have not stopped.

By Mr. Day.

Q Mr. Berry, can you now recall what was the method and what were the figures adopted by the city in arriving at the valuation of the telephone property for 1914, of $86,400? A I note that it comes exactly to $900 per foot.

Q Do you know what was the unit value? A Six hundred dollars.

Q And therefore, fifty per cent., or three hundred, was added for the additional depth of 166 feet? A Yes, it was added.

By Mr. Kalisch.

Q You consider Mr. Fiedler a competent expert, do you not? A I am pleased to certify him.

Q You so consider him, don't you? A I do.

(The further taking of testimony was then adjourned to a time to be agreed upon between counsel.)

Newark, N. J., Monday, October 23d, 1916.

Before Herbert W. Knight, Supreme Court Commissioner.

Mr. William T. Day, for the prosecutor.

Mr. Harry Kalisch, for the respondents.

The following stipulation was entered into between counsel for the respective parties:

(It is hereby admitted on the part of the respondents that the value at which the prosecutor's land at the southwest corner of Washington street and Branford place, was taxed for the year 1914, $86,400, and for the year 1915 at $98,000; and that the city's method of increasing the tax valuation of said property for the year 1915 from $86,500 to $98,000, was correctly stated and set forth by the prosecutor's witnesses; and the respondents according withdraw their objection that the testimony as given was hearsay.)

WILLIAM McHARG, sworn for the respondents.

Examined by Mr. Kalisch.

Q Mr. McHarg, what is your connection with the New York Telephone Company? A I am called the general agent in our New Jersey territory.

Q Does that include the supervision of the plant here in Newark? A No, that is supervised by our telephone plant superintendent.

Q Your first name is what? A William.

Q Have you any duties which require you to be in Newark in connection with the telephone company matter? A Yes, I have duties from time to time taking me not only to

Newark, New Jersey, but to all points in our territory. If you will allow me, I will state my work is of a municipal nature; that is, I represent the telephone company before governing bodies of political subdivisions in our territory in this state.

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

Q You are familiar with the New York Telephone Company property on Washington street and Branford place—do you know the property? A Yes, I do. I had an office in the property for a few years. I know its location and I know generally about it as a tenant would know about it.

Q Do you know the property as it was before the opening of Branford place? A Only so far as my knowledge will carry me in that I know there were buildings where Branford place has been opened.

Q Were you a tenant in the building before Branford place was opened? A Yes.

Q For how long? A I just can't say when our building was put up, but I have been out of the building entirely for about three years.

Q You left the building after Branford place was opened? A No, before Branford place was opened.

Q And while you were a tenant in the building were you connected with the New York Telephone Company? A Yes.

Q In the same capacity you are now? A Yes.

Q Is there a supply distributing station in that building? A Yes.

Q Was there one there before the opening of Branford place? A Yes.

Q I show you a letter, a copy of a letter, and ask you whether or not that was a letter sent by you to the Board of Works of the City of Newark? A (Witness examines letter.)

Mr. Day. I enter a general objection to the evidence on the ground it is immaterial and irrelevant.

Q Is that a true copy of the letter you sent? A Pardon me, I didn't hear what the decision was.

Q There is no decision, it is just an objection. A I am a little bit confused, I notice you have five copies.

Q There is only one letter. A Inasmuch as there are two letters written and you have one of them and I have both of them, the only thing I can do is to compare this with one of the two which I have.

Q For the purpose of formal proof, I show you this copy of a letter and ask you whether that is a copy of a letter sent by you or delivered by you to the Board of Works? A Yes.

Mr. Kalisch. I offer that in evidence.

(Letter just identified by the witness received in evidence and marked Exhibit No. 1 for the respondents.)

Mr. Kalisch. If required, I will produce the original.

Mr. Day. I make a general objection to the materiality and relevancy of this letter and this evidence.

Q Mr. McHarg, is it part of your duty to appear before municipal bodies for the telephone company and to make requests such as

those contained in this letter which I have just shown you? A Yes.

Q In doing that, you represent the telephone company? A Yes.

Q Now, what did the telephone company hope to accomplish by making the change as suggested in this letter, Exhibit No. 1 for the respondents?

Mr. Day. I object for the reason that the paper must speak for itself. I think you ought to put in—you ought to put in the diagram that accompanied the letter.

Mr. Kalisch. I will produce that or a copy of it.

A To minimize the congestion on the sidewalk so far as pedestrians are concerned; also to minimize the congestion in Washington street proper, so far as the vehicular traffic is concerned. At the same time, to secure adequate and full use of its property—in that the elevator, which was originally placed there, now used for the receipt and delivery of supplies and the removal of ashes, was inadequate. I might state that there are about twenty-five to thirty horse-drawn and automobile vehicles stopping on Washington street in front of the building, as well as a number of motorcycles, and the incoming freight, amounts to daily about ten thousand pounds or one hundred and fifty cases, and the outgoing freight amounts to about fourteen thousand pounds or four hundred and twenty-five cases, which necessarily to a certain degree, would impede the traffic so far as pedestrians and vehicular conveyances are concerned. These figures, of course, are daily approximate averages.

Q When you say the object of this plan—one of the objects was to get the full use of the building, do you mean for the use of the telephone company? A Yes.

Q Was the plan feasible under the old condition of affairs, I mean before the opening of Branford place?

Mr. Day. I enter the same general objection.

A Well, there were buildings, I believe, alongside—

Q Yes, I know. I don't mean that. I mean was it feasible to do what you suggested in your letter, or would it be feasible to make any change to accomplish the object you had in mind prior to the opening of Branford place? Could it have been done? A You are asking me a question which would come natural to a builder or a man of constructive bent, as it were.

Q If you don't know, say you don't know. A I would say it would be possible in all probability to place a similar elevator to the one which exists on the Washington street side to increase the facility for receiving and delivering parts.

Q To what extent? A That is a matter I am not conversant with.

Q Would it be a greater expense to make that kind of a change than the one suggested here (referring to Exhibit No. 1)? A I am not in a position to answer that.

Q You spoke of congestion on Washington street, is that detrimental to, or does it interfere in any way with the business of the telephone company? A I cannot say that, but I suppose it does inconvenience the telephone

company's employees, as they are pedestrians on the sidewalk the same as the general public.

Q Then what was the object of the reason of relieving the congestion? A It was brought about through the full use of the building compared with the partial use of it from the beginning.

Q The building is now being used to its full capacity, practically? A Yes, all the floors are now in use.

Q For the business of the telephone company? A Yes, solely.

Q Whereas, before the opening of Branford place the building could not be used? A No, I did not say that. When we put up a building we build sometimes higher and create some floors which we have no use for at the time the building is put up and as these empty lofts or floors are used, of course, it becomes a drag or additional burden for the general facility of the building to carry over and above what it carried originally.

Q Well, I want to know in what way the use of these upper floors, which originally were not used—I want to know what effect the use of these floors would have upon the business of the telephone company in that property—where it interfered with it? A Well, to answer that question I will say this: One of the uses they made of this small elevator is the removal of ashes. They were heating seven floors out of nine and the eighth and ninth floors on the top of the building would call for the burning of more fuel than from the first to the seventh. In this way the elevator would be called upon for the additional burden from the basement to the sidewalk. The depart-

ments have been enlarged and require more space and the growth generally. Because of that, it called for more material and the delivery of more material as our business grew in this unit.

Q Was the opening of Branford place beneficial to the telephone company as used for the business of the telephone company?

Mr. Day. I enter a general objection that this witness is not an expert and not qualified to answer questions of that kind.

A In answer to that I should say, without having experienced the proposed new improvement it would be impossible to answer the question.

Q You think these changes you contemplated, which you have set forth in this letter, could have been made with the same practicability and ease if Branford place was not open? A In answer to that I will simply repeat what I have said heretofore, that it is possible to provide similar facilities on the Washington street side of the building, and as to its being easier or more difficult it seems to me that is a matter for some one qualified in construction or building lines. That is out of my part of the work with the telephone company and my duties to be performed.

Q When did you begin to use the building to its full capacity? A I am not very sure I could give a correct answer to that question, but I would guess about four or five years ago.

Q The continued use of that building to its full capacity would have been attended with more inconvenience if Branford place had not been opened—more congestion and inconveni-

ence. A As compared with the two it is evident that the little hole on the sidewalk on Washington street is not a very great help so far as the receipt and delivery of goods is concerned.

Q Have you got another one on Branford place now? A No, we have not.

Q That is the one you intend to build? A You mean the one referred to in the letter?

Q You spoke of the one on Washington street. A That is the only one we have, but the city, judging from—

Q I don't care anything about the city, you don't feel this would be any improvement if this was put in, what you suggested in your letter? A I can say it would facilitate the receipt and delivery of goods.

Q Is that the only benefit these plans would bring about? A That is all the company is seeking; the receipt and delivery of goods on its private property.

Q Is that a great item to be considered? A The private property?

Q No, the receipt and delivery of goods. A Not any more so than the receipt and delivery of goods to any commercial house or business.

Q Is it of the same degree of importance? A Yes.

Q Is there very much freight handled? A The freight handled is as heretofore stated.

Q You say the only benefit the opening of Branford could bring would be the easier handling of goods? Is that correct?

Mr. Day. I object to that as not what the witness stated.

Q I will reframe the question. This witness has applied to the City of Newark to make certain changes and I am asking him now, whether the only benefit that the opening of Branford place could bring about for the telephone company would be an easier method of handling the goods that are received and leave the telephone company building? A Yes, with the exception of light and air.

Q Where do you get more light and air in your telephone company building? Where is that mentioned in your letter? A No, as far as my letter is concerned it didn't propose and attempt to set forth anything about the general benefits that might be derived by the opening of Branford place.

Q All right. What benefits have you in mind? A I have not given the matter any consideration—

Q Well, will you give it some consideration? A —nor am I qualified as a real estate expert to give this information.

Q I am asking you so far as your knowledge of the business of the telephone building is concerned what benefit it derives, in addition to what you have stated in your letter? A I see no benefits.

Q You spoke of light and air? A You mean from the Branford place side?

Q Yes. A Yes, we have not those buildings alongside of us any longer.

Q Well, that room which faces on Branford place, how was that lighted before?

Mr. Day. Which room?

Q The rooms of the telephone company building that now face on Branford place, how were they lighted before the opening of Bran-

ford place? A I have no knowledge of the room of which you speak. I might add that I have no particular interest in the building, and therefore that I have not made myself familiar with its details.

Q You have been in the rooms, have you not, in the building prior to the opening of Branford place? A Not in these rooms that were next, we will say, the roof tops.

Q I am asking you about those that were used? A I am trying to get your drift and give you the information you desire. I was going to say that on that side of the building, to the height of the buildings which were removed, I don't remember ever being in such rooms.

Q What rooms are they? A Such rooms as existed there, I cannot answer that any more than I could the other. In other words, I might say that during the space of time I had an office in that building I very seldom went anywhere other than from the first to the seventh floor on which my office was located and leaving at night would take the same route.

Q How are the rooms on the seventh floor lighted? A The rooms on the seventh floor were lighted, as far as my memory serves nue, by windows on either side of the building.

Q Which sides? A Well, I believe it to be on the south side, there were windows on the Branford place side just back of the elevator shaft.

Q Prior to the opening of Branford place? A Oh, yes.

Q What did they face on? A Over the roof tops of the adjoining buildings.

Q How high did the roof tops of the adjoining building reach? A That I cannot answer.

Q I mean, did it reach about to the 6th floor of the telephone company building? A I cannot answer that.

Q How far below the windows of the seventh floor did they reach? A I can, I think, say to the best of my recollection, you could obtain a view over the roof tops from the seventh floor of our building.

Q How far below you were the roof tops? A I don't know.

Q Were they ten feet? A I could not say they were ten feet any more than I could say they were two feet, I don't know.

Q You don't know how far up these roof tops came? A No.

Q You don't know how near to the windows of the seventh floor of the telephone company building they reached? A No, sir.

Q Have no idea whatsoever? A No.

Q You have looked out? A Probably on that side only once.

Q Were you not there every day? A Yes, but as I said before, my office was not on that side of the building. The hall separated my office, and also the elevator shaft, from the windows on the Branford place side. I might add that the company has men who are supposed to be full of this information. My duties don't require me to know those things.

Q You have looked out of those windows overlooking these roofs? A Just as a tenant would.

Q You cannot say though how high these roofs go, you don't remember that? A No.

Q Do you know whether they came about to the fifth floor? A I really don't know. It is very difficult to say that after they have been taken down, from memory, to say how high or how low they were. It might be, however, that there is a mark on the building—on our building—to show their building height, where they were torn down.

Q Were not all the floors of the building devoted to one room, or were there a number of rooms? A Well, in the beginning the floors I believe were one general floor or loft and they were sub-divided in some instances for offices or sub-heads of departments, clerks, etc., and as might be found convenient for the general trend of the business.

Mr. Day. No cross examination. The entire examination is objected to as immaterial, irrelevant and incompetent.

At this point a recess was taken until two o'clock in the afternoon.

AFTER RECESS.

FRANK J. BOCK, sworn for the respondents.

Examined by Mr. Kalisch.

Mr. Kalisch. The qualification of the witness as an expert on real estate values is admitted by Mr. Day in behalf of the New York Telephone Company.

Q Mr. Bock, you are familiar with the New York Telephone Company property? A I am.

Q And you have been familiar with that property before the opening and widening of Branford place? A Yes.

Q And have been familiar with that property since the opening and widening of Branford place? A Yes, sir.

Q Have you given any consideration to the question of peculiar benefits derived by the telephone company as a result of the widening and opening of Branford place? A I have.

Q What were the benefits that you considered? A Actual benefits created by the opening—peculiar benefits accruing from the opening of the street.

Q That is benefits peculiar to that particular property? A Yes, that particular property.

Q By which you mean what? A The land.

Q The land, yes. But I mean how did you arrive at the peculiar benefits—what do you mean? A The increase in the market value the selling value of the property.

Q As a result of the opening? A Yes, sir.

Q Will you give us the result of your study of this matter so that we can get what the peculiar benefits were in your opinion? A I have considered them in a general way without attempting to go into detail and my judgment is that the value of the property has been increased not less than twenty-five thousand dollars by reason of this opening.

Q And that does not include the benefit resulting from the paving or curbing? A No.

Q You are simply considering it as an unpaved and unimproved street? A Yes, just the opening—the additional street frontage.

Q The opening and widening? A Yes.

Q Upon what did you base that opinion? A My experience as a real estate man.

Q And did you determine what the market value of that land was prior to the opening? A Yes.

Q What did you determine that it was? A I estimated that the value of the land, that is the property on Washington street, one hundred feet in width approximately $1,100 a front foot, the property in excess of that, the additional depth—

Q You say you considered the property fronting on Washington street at $1,100 a front foot, considering it one hundred feet deep? A Yes, it was $105,600. $105,000 in round figures.

Q Did you add to this value anything because of the additional depth beyond the 100 feet? A Yes, I should say that the balance of the plot is worth approximately fifteen or sixteen thousand dollars.

Q Added to the $105,000? A Yes, making about $121,000 all told.

Q Now, Mr. Bock, have you considered what the value of that land is since and as a result of the opening and widening of Branford place? A Yes.

Q What is it? A Oh, I think it is worth $25,000 more.

Q Making about $146,000? A Yes, approximately.

Q Then do you think that an assessment of $22,500 as peculiar benefits resulting from the opening and widening of Branford place is an unreasonable or a reasonable and fair assessment? A Fair.

Q Now, considering the property as devoted to the uses of the New York Telephone Company in the business that they carry on there, do you think that there has been a peculiar

benefit derived from the opening and widening of Branford place? A No question about that.

Q What benefits do you think have been derived, I mean the nature and the character? A They have a right to an uninterrupted access to the light which is as important to them as any other large concern or any concern, as a matter of fact. They have a right also to a side entrance without encroaching on the front on Halsey street. They have access for loading or unloading if they desire from the rear of their property which they otherwise would not have.

Cross examination by Mr. Day.

Q Mr. Bock, have you been inside the telephone company property so that you know how it is arranged? A I have not made any careful examination of it, no, I have been in the building.

Q So that when you speak of the use you are guessing rather than testifying from actual knowledge? A Only to this extent, that an uninterrupted right to light and air of course is always valuable to any business.

Q Where are the elevators? A They are on the right hand side as I remember of the building as you enter it on the northerly side of the building.

Q On the Branford place side? A Yes.

Q And take up how much of the distance? A I don't know.

Q Two thirds? A That I have no knowledge of.

Q You really don't know much about the interior arrangement of the building do you? A No.

Q To that extent you are guessing in your estimate as to the value of the use? A I did not make any specific estimate as I recall it.

Q When were you in the building last? A within a year.

Q For how long? A It may have been for one-half or three-quarters of an hour.

Q For what purposes? A To see some of the officials of the company.

Q Not to examine the structure of the building? A No.

Q Not for the purpose of testifying as an expert in this suit? A No.

Q Now you testified that in your judgment the land on the west side of Washington street which is now the corner of Branford place and Washington street is worth $1,200? A $1,100.

Q $1,100 per running foot? A Yes, sir.

Q Then as you go northerly to Market street, the value of the land is increased, is it not? A Yes.

Q In what ratio? A I should say the property near Market street would be worth approximately fifteen or sixteen hundred dollars a front foot as you get close to Market street.

Q $1,100 for the telephone company property and then the next twenty-five feet northerly would be how much more? A I have not attempted to go into that in detail.

Q How about the next twenty-five feet? A I say I have not attempted to go into that in detail, to go in to the graduation at all.

Q You are not prepared to say anything as to that? A No.

Q You are simply willing to say that near Market street the value per running foot is about fifteen or sixteen hundred dollars per

running foot? A Yes, and graduates down proportionately, and I should say that would be a fair proposition.

Q And as you go southerly from the corner of Branford place, the value diminishes? A Yes.

Q So that at the end of the telephone company's property what would you say the value was per running foot? A I should say the property begins to decrease in value there and decreases proportionately as you go down Washington street. As you get down, oh, some distance there, from that building, the property has been sold for as low as five hundred dollars a foot on Washington street.

Q Where is that? A I can't tell you definitely without reference to a map. I think it was between Hill street and this property.

Q What? A I cannot say definitely without looking it up.

Q Near William? A No, Hill, Hill street.

Q For what distance does the uniform value of $1,100 extend? A I have not given that sufficient consideration to determine that definitely, in my own mind even.

Q Which is the more valuable part of the telephone company property? A I don't think it makes much difference. In a plot of one hundred feet it is a hard matter to determine any difference for the reason it is in one plot.

Q Is the corner lot worth more than the lot next to the corner? A Are you speaking of the percentage?

Q Yes. A Yes, of course.

Q How much more value do you put on the corner property? A In considering the value of that property the one hundred feet as a

whole, I have not attempted to separate the value into units of twenty-five feet.

Q Why not? A Because I don't think it is a fair way to regard the property—to regard a property of that kind when you have one plot.

Q It is the universal way, is it not? A Not by any means.

Q It is the city's way is it not? A That may be true.

Q It was the commissioners' way, was it not? A That, I don't know.

Q That was Mr. Berry's way and Mr. Fiedler's way was it not? A That may be true, the result is the same.

Q Now, let me get at your method, did you make any distinction between the corner twenty-five feet and the next twenty-five feet south of the corner? A Naturally, however, my judgment in a matter of that kind is that twenty-five feet for property such as that is too small a unit; far better results are had by considering it as at least fifty feet. Modern conditions have changed the requirements of business. A twenty-five foot unit is too small to get best results for property to which that property might be devoted. In other words you could not sell twenty-five feet to as good advantage as you could a plot fifty feet wide.

Q You keep your unit of depth then 100 feet and you make the unit of front fifty feet instead of twenty-five? A Yes, I have, that is becoming almost necessary in business properties of a certain class.

Q Well, now, what relative difference in value do you make between the corner and the next to the corner? A Taking a 50-foot plot I should say there would be a difference of approximately thirty-three per cent.

Q The corner is worth approximately thirty-three per cent. more than the inside lot adjoining it? A Yes.

Q To a depth of what? A One hundred feet.

Q Then how much would you place upon the corner 50 by 100? A That would be a matter of computation, I have taken the whole property into consideration and have not attempted to divide it in that way. Do you want me to do that? I will see if I can do that to your satisfaction. (Witness proceeds to make calculation on paper.) By adopting the same percentage basis for that, I find the benefit might be considered even greater than $25,000. I would say, however that after adopting the fifty feet as a unit, probably the twenty-five per cent. would be sufficient increase over the interior lot.

Q What do you mean by "interior lot?" A The lot adjoining on the south other than the corner.

Q How many feet in width, fifty feet or twenty-five feet? A It does not make so much difference, fifty feet preferably, approximately fifty feet. Now, I will start over again.

Q You are speaking now of the first fifty feet on the corner of Washington street and Branford place? A Yes.

Q 100 feet in depth? A Yes.

Q What do you say about that? A I said I thought twenty-five per cent. would be a fair addition in price to the value of the lot next to it on the south as a price for the corner lot.

Q The corner lot then you would value at $55,000 plus twenty-five per cent? A Yes, plus twenty-five per cent. No, not $55,000 plus twenty-five per cent.

Q That is what you said? A That was not what I intended to say, if I said it, nor do I think I said it. What I said is this: That the value of the corner lot is twenty-five per cent. in excess of the value of the adjoining lot on the south. The value of the adjoining lot to my mind today is more than $55,000. The property today is worth more than $1,100 a foot front.

Q We are not speaking of the value of today we are speaking of the value as of the day when the improvement was completed. A That is what I have reference to.

Q Then don't say today. A Upon the opening—the completion of the opening of Branford place, that is what I had reference to.

Mr. Kalisch. Wait a moment. Do you mean the opening or the paving?

Witness. Just the opening.

Mr. Kalisch. You mean excluding the paving and curbing?

Witness. Yes, I think the opening of necessity benefited the lot that was fifty feet south from Branford place proper. There was a change in value there in my opinion and the present values are the values as of the date of the opening.

Q That lot was forty-six feet, was it? A Yes.

Q By 100? A Yes.

Q Do you fix a value on that 46 by 100? A That was my notion, $1,200 a front foot.

Q $1,200? A I think it is worth $1,200 since the opening.

Q How much was it worth before? A About $1,100; that is what I testified to.

Q That makes a difference of $100 a front foot, that was the second forty-six feet from the corner? A I think so.

Q How much did you put on the corner 50 by 100? A I think that the value there was twenty-five per cent. added to that, that is added to that per front foot, in other words.

Q Now give me the figures. A I think the inside property is worth $1,200 a foot, I think the corner lot is worth $1,500 a front foot plus twenty-five per cent. over the other.

Q The property on Branford place is 206 feet deep is it not? A I am speaking of 100 feet deep.

Q You would get the same—50 by 100—as you did the distance along Branford place? A No, I think the opening of Branford place has changed conditions materially, it has given you a new street front, and neither the city nor any one connected with the city assesses property that way, fixes benefits that way, and in paying assessments don't regard it that way. They regard it as 100 feet on Washington street, and the balance of the depth of this street frontage is taxed and assessed on that street.

Q You follow the city in that although not in anything else. A Not necessarily. Where I think the city is right I agree with them and where I don't think they are I don't.

Q You adopt your own rules? A I do.

Q Yes, that is what I supposed. You fix the value at $1,200 a running foot for the 46 feet on the second plot—do you allow for 100 feet in depth? A Yes.

Q What allowance have you made for the additional depth of 166 feet? A I regard it as being a lot facing on Branford place that is a part of the Branford place lot.

Q You are going to say 46 by 100 on Washington street at so much a front foot? A Yes.

Q And you are going to say 50 feet on the corner of Branford place at $1,500 a front foot? A Yes.

Q And then what do you do with the balance? A The balance of the property is Branford place frontage.

Q How much do you value that at? A That property there I should say it is worth four to five hundred dollars a front foot.

Q Well, which, that is a pretty large difference. A Not when you strike property of that kind. I should say $500 a front foot on Branford place.

Q When, the moment Branford place was opened? A Yes.

Q How much value did you put on the land that you face now on Branford place? A That would be approximately sixty-five feet; that would be $32,500. That piece there forty-three front by twenty-four deep, according to the same rule used by the city would be worth—I don't know how much. I don't think it is worth that much.

Q I am asking for your estimate of the value. A I should say that piece in there was worth $3,000 or $3,500.

Q Well which? A The piece of twenty-four feet?

Q No. I mean which, thirty-five hundred or three thousand? A I should say it was worth $3,500.

Q Taking the aggregate of your estimate, what is the total value of the plot in your judgment? A I have not attempted to assemble

them. I stated, I believe, the property is worth—

By Mr. Kalisch.

Q Will you do that Mr. Bock? A Yes (witness proceeds to calculate). I think it amounts to $166,200.

Further cross examination.

Q $166,200, let us get it right? A Yes, $166,200.

Q Why do you allow a value of only $3,500 on that lot which is forty by twenty-five? A Twenty-four.

Q Twenty-five, I think—following the city schedule, how much value are you putting on that little plot? A At the rate of $500 it would be $20,000.

Q How much would you take off, according to the city plan, by reason of the depth of only twenty-four feet? A That would make it $10,000.

Q You made it $3,500? A Yes, and I am free to say $10,000 is an entirely unreasonable price, to put it moderately.

Q Whereas, $3,500 is perfectly reasonable? A In my opinion.

Q $166,200 as a total for the telephone company's property is also reasonable? A In attempting to describe the method of arriving at the price by piecemeal I think that price is a reasonable price. I lumped it, however, and did not attempt to arrive at the price with the result of the price that I appraised it as one parcel.

Q There is quite a difference between $146,000, according to one lumping arrangement, and $166,200, according to that methed? A That

is true, it simply adds $20,000 for the benefit from the street opening.

Q So that instead of $22,500 you think it should have been $42,500? A If my figures are correct, that is true.

Q What do you say as to the ratio of assessments to real valuation in the city of Newark? A The law provides they shall be assessed in full.

Q Is that law carried out according to your practical experience? A No.

Q Did you find any ratio which does exist? A No absolute ratio.

Q What do you mean by that? A By that I mean some properties are assessed at lower percentage of the full valuation than others.

Q Is there a general average? A No.

Q There is supposed to be is there not? A I have not talked it over with the assessment commissioners recently, they are supposed to assess at somewhere around seventy or eighty per cent., but I think there is a marked difference in the percentage in the city.

Q What was the assessed valuation of this property—the telephone company property— before the opening of Branford place? A I think something less than $85,000.

Q What was the assessment after Branford place had been opened? A As I recall it is something like $98,000 in that neighborhood, something less than $100,000.

Q $98,000. A As I recall it now.

Q Is it not a fact it was $98,118, and they took off $118 and left it at $98,000? A That may be true. I don't know, that is my recollection, I can't speak definitely on that.

Q Of course you recognize that by the opening of Branford place the telephone company property came into the second block from Market street and so became less valuable don't you? A I don't consider it so.

Q You don't? A No.

Q Don't you think property grows less in value as it gets further from Market street? A The opening of the street doesn't make it further from Market street.

Q It doesn't? A Why no, there are the same number of feet between the telephone building today and Market street as existed before the opening of Branford place.

Q But it is now on the second block, when it was on the first block before? A That doesn't change the distance.

Q It doesn't change the distance, but it does change the value. A It placed it on a corner and made it more valuable.

Q It placed it on the second block and therefore made it less valuable? A That is a question of opinion.

Q Your opinion doesn't seem to accord with the opinion of other experts that I have had the pleasure of talking with. A That may be true, I have found that condition to exist heretofore.

Q Have you considered at all, in connection with the uses of this property to which you testified—where I admit I was a little surprised—have you considered how much it would cost to get the benefit of this increase in valuation to the telephone company? A You mean as far as the improvements are concerned?

Q Yes. A Yes, sir, I was very much surprised at the modesty of them. I understand it

cost less than $2,700. I have had some experience I want to tell you and we never had a sewer installed, for a length of two hundred odd feet, at a cost of less than $2,500.

Q You misunderstand me. A I beg your pardon.

Q Do you know what it would cost the telephone company to dispose of this property and move elsewhere? What is the cost involved to the telephone company to remove these wires and cables and to reinstate them elsewhere? A I didn't suppose for a moment they considered that, unless their business conditions warranted them to go to such an expense.

Q You are speaking now of their getting the benefit of this change? A Exactly.

Q In the use of their property? A No.

Q That is what you said. A The benefit that comes through the increased valuation of the land on which their building is located.

Q The benefit you say is the increase in the selling or market value? A Yes.

Q Can they get it except by severing all their wires and cables? A I say I don't believe they can.

Q Then they cannot possibly get the benefit can they? A It isn't a question of whether they can get it, they have it and when they get ready to take advantage of it the benefit is there in their interest.

Q That is your judgment? A Yes, it doesn't make any difference whether it is a year from today or twenty years from today or fifty years from today.

Q Now, Mr. Bock— A Yes, sir.

Q —what is your estimate of the value per running foot on the next fifty feet south of the

telephone company property before and after the opening? A I have not given that matter any particular consideration. I should say the opening of Branford place—

Q How much before?

Mr. Kalisch. Give it before and after.

A That is what I am trying to get at. I have not given that question of valuations on Washington street other than this particular property any special consideration, I have not looked at anything in connection with it and what I speak of now is benefits, which I think you are trying to arrive at. I think the benefits would undoubtedly cease, so far as the Washington street frontage is concerned, one-half way in the block between this opening and the first street south—William street—on the westerly side of the street.

Q That is the— A Benefits.

Q Benefits? A I don't think they extend more than one-half block.

Q Then how much valuation would you place upon the next lot south of the telephone company before the opening of Branford place? A I have not given it any specific consideration.

Q $1,100? A It is less than that, about $1,000 a foot.

Q For what distance? A That, I don't know, I am not prepared to say that without giving that particular block more consideration, and I have not examined the property nor the map in connection with it, and I am not prepared to say.

Q I would like to have you prepare yourself on that point. A I should say generally without further consideration or examination that the property along Washington street from

Frank J. Bock, cross.

William street to this property is worth from $800 to $1,000 a front foot, speaking generally.

By Mr. Kalisch.

Q Before the opening? A Yes, and since the opening also. I should say the property approximately one-half block away between these two points I have stated, would graduate from nothing to the price I have fixed on this inside plot there. It is simply a matter of computation.

Further cross examination.

Q Would you put the larger valuation on the property on the corner of Washington and William street than inside? A Yes.

Q How much do you put there? A The same conditions obtain there as obtain on Branford place; that is on a fifty foot lot there you would have an increased valuation of twenty-five per cent. on the value.

Q Well, now, how much have you allowed for increase on the value by reason of the opening, the increase in market value which you describe as peculiar benefit which the telephone company has obtained from this opening. How much do you put on the 46 feet that is next south from the corner property of fifty feet? A About forty-six hundred dollars as I recall it.

Q $4,600? A Yes, sir. If you will permit me, you are going to arrive approximately at the same results you arrived at before in going into detail, you are going to find that difference of approximately $20,000. Now my notion was, and that is what I testified to, that taking the property in its entirety my best judgment is there is a benefit of not less than $25,000 in that

property by reason of the opening. In going into detail in this way that is going to be raised.

Q It would be about $45,000? A Yes, sir.

Q Which is the correct estimate? A I said not less than $25,000 was a reasonable estimate as to the benefit in my judgment and I am convinced that is true. However, by separating the property and disregarding the fact that there is one ownership, if a man owned that property that 65 by 98 feet or 96, whatever it may be on Branford place, and disregarding the joint ownership, there the assessments for the benefits may be increased. I am of the same opinion that approximately $25,000 is a reasonable assessment for benefits on that property.

Q I would like to know where the additional twenty or twenty-five thousand dollars comes in by attempting to fix the amount of benefits on each property. Now you say 46x100, that is a matter of $4,600? A Yes, approximately.

Q Yes, and the next plot that is 50x100 on the corner, how much is that special benefit? A I would estimate that would be a matter of $1,400 a foot that would be $300 a foot there.

Q That is $1,500, is that it? A No, I said—yes, that would be $400 a foot, $20,000 on the corner, that is where the difference comes in.

Q $24,600. Then how much is the additional benefit on the Branford place lot of sixty-five or sixty-six feet? A Approximately $15,000 there, and possibly $1,000 or $1,500 on the forty feet there.

Q That doesn't quite provide for that $20,000 difference. A How much difference is there?

Q When you take $4,600 for the first, $20,000 for the second, $15,000 for the third and $1,500

for the fourth, that makes $41,100, and if you take away $25,000 it gives you only $16,100. A They are approximate figures, there may be that difference of $16,000 instead of $20,000.

Q That is as close an estimate as you can make is it? Mr. Bock, of course you are not confining your estimate of benefits to fifty feet of this particular property, but what is true of fifty feet of this particular property is true of practically all of the properties along the line of Branford place is it not? A That are similarily situated?

Q Yes. Where is the centre of the greatest benefit to properties from the opening of Branford place? A I have not given the opening—the entire opening of Branford place the consideration a question of that kind would demand. Of course the chief benefit, to my mind, is to the properties which front on Branford place. As to what relative proportion of benefit there is, I am not prepared to say.

Q Relatively, what you said about this property would pertain to other properties as well? A Exactly.

Q Take for instance the northwest corner of Branford place and Washington street, a plot of the same size, would you estimate the benefit from the improvement at a greater figure than you would for the telephone company property? A No, the benefits would be practically alike.

Q But it is on the favorite side of the street, the northerly side, which is worth twenty-five per cent. more, at least? A Not on a new street.

Q Is it not? A No.

Q It is 60 feet nearer Market street, is it not? A That is true.

Q Does not that make a great deal of difference? A It does in the value, but not in the benefits. There is a distinction there.

Q But does not the benefit follow the value? A Not necessarily, the benefit is not a percentage proposition.

Q You have deemed it so in your previous testimony today? A How?

Q In reference to the telephone company property. A Not that I know of. In what respect?

Q How much greater in value is property on the first block from Market street to Branford place? A Greater than what?

Q Than the value below Branford place? A That depends upon the distance; there may be, and there is, a difference of fifty per cent. as you get towards Market street.

Q Would you say that the corner property, the property on the northwest corner of Branford place and Washington street is worth fifty per cent. more than the property on the southwest corner? A No.

Mr. Kalisch. One moment, Mr. Day. I think that is unfair to the witness. He has merely stated that while the property to the north is more valuable the benefit on account of the opening of Branford place is not as great.

Witness. Not any greater.

Mr. Kalisch. Or not any greater?

Witness. There may be a difference in value between the property on the northwest corner of Branford place and Washington street, there may be a greater real estate value.

Q You would not expect property on the northwest corner of Branford place and Washington street to be assessed for benefits at a lower figure would you, than the telephone company property? A No.

Q It would be more rather than less? A It would be the same, if anything it certainly should not be less, as to whether it should be more or not I am not prepared to say.

Q As a matter of fact you know it is less? A I do not.

Q As a matter of fact was not Washington street and Branford place the lowest area of benefit from the improvement? A Not in my opinion.

Q Why not? A Why should it be?

Q Camfield street existed before did it not? A That is true.

Q That gave access directly from the telephone company property to Broad street? A That is true.

Q They had access to Broad street in one direction, William in another, Market in the third? A Yes.

Q So it merely added a westerly mode of access? A It afforded a suitable means of access that it didn't have before this opening and widening.

Q What do you mean, "suitable?" A Camfield street was clearly unsuitable for any ordinary modern business requirements, it was narrow, illy paved and in every way undesirable from the standpoint of pedestrian or vehicular traffic.

Q How wide was it? A I don't know the exact width, it was probably thirty feet or less; it may have been twenty-eight.

Q It was thirty-three was it not? A I don't know, I am not certain as to that.

Q Thirty-three or thirty four? A I am not certain, but it was anything but a desirable street.

Q That was a street that was used a great deal? A It was a right of way. It was not used any more than necessity compelled.

Q It was all that was necessary for a public service corporation? A Hardly, that is speaking now from the standpoint of valuable and desirably business property.

Q People had to go to that public service corporation did they not? A True, and avoided going through Camfield street when possible.

Q The mere fact that an added way from the west was given to them made no difference did it? A Yes, sir.

Q To them as a corporation? A Possibly not as a corporation perhaps, other than the additional prominence that it gave their building and business as a means of advertisement which is a valuable proposition.

Q Do you think it did— A It may not have directly, it is possible; that is a matter— a hard matter to determine.

Q Do you imagine it has? A It has not hurt them any.

Q Do you suppose the moment the street was put through that anything was added? A No, the value does not depend upon immediate returns. The more prominent that thoroughfare becomes the more valuable that location becomes to them.

Q The properties west of Washington street, they never had an east and west access to their property until Branford place was opened did they? A That is true.

Q So that relatively that property derived a much greater benefit than the telephone company property, did it not from that improvement? A The property located similar to the telephone company property derived practically the same benefit—I don't think any greater to speak of by reason of this opening.

Q What is that? A Properties located such as the telephone company is, so that they were placed on the corner and given additional street frontage I think were not benefited to any material extent more than the telephone company property was.

Q You quite ignore the value or influence of the existence of Camfield street do you not? A To a very great extent.

Q You have not quite answered my question as to properties west of Washington street, did they not relatively derive a greater benefit from this improvement than the telephone company property and other properties in that location? A I don't think so.

Q Take Plane street for instance, an inferior kind of street because it had an access only north and south; the moment that it derived a new kind of access from the east and west by an improved and important street like Branford place was it not permanently enhanced in value? A Of course.

Q Relatively more than the telephone company? A The assessment—

Q Answer that question. A I am trying to make myself clear. The assessment at the same price per foot would amount to a very much larger relative assessment because of the difference in the value of the property to start with. In other words, a $200 assessment per front foot on Washington street might mean ten or

twenty per cent. and when you get up to Shipman street it might mean thirty or forty, and the assessments are fixed generally in that way.

Q You mean to say that relatively the values would be very much greater as to Plane street and Shipman and the other streets that are west of Washington? A The valuations would be much greater.

Q Because of the improvement? A I don't get that question quite, you say the valuation—

Q The benefits then? A Oh.

Q The improvement would be relatively very much greater or larger than the telephone company and other properties secure? A The benefit that accrues to the property of the telephone company is proportionately the same as that accruing to the property west of them, for this reason—

Q You mean on Plane street? A Plane and Shipman streets. You start with the more valuable property and the relative increase in valuation there is greater; that is what I mean. If you are following the same proportion of benefit or making it even greater—a greater proportion of benefit west of Washington street your assessment will be comparatively lower because the same relative proportion does not exist in your benefit as reflected by the added sale price. Do you see what I mean?

Q But the percentage of increase by reason of peculiar benefits was greater at the corner of Plane street and Branford place than on the telephone company property? A That may be true. That may be due to the difference in value of the property.

Q Isn't it due to the fact that Branford place is a new highway supplied to Plane street property east and west? A Branford place un-

doubtedly afforded a new highway east and west for property on Plane street and Shipman, and it also did the same for the property of the New York Telephone Company.

Q In the same degree? A No, not the same degree because the company did have a right of way to Broad street from Camfield street, which the other properties lacked all together.

Q Therefore you make a distinction between the two properties that is west of Washington street and the telephone company building on Washington street? A The question as to what peculiar benefit accrued of course depends upon the existing conditions before and after the improvement. The extent of that benefit must be shown by the increase in the actual value of the property or its reasonable sale price. If that shows a difference in the percentage between those two locations referred to there is a difference insofar as the assessment of Plane and Shipman streets—I have not given it consideration and cannot speak of my knowledge as to whether there is an actual difference existing there in this assessment or not.

Q As a matter of fact does the area of benefit from the improvement begin at Washington street, so to speak, and extend westerly to Springfield avenue, in one direction? A The area of benefit?

Q Yes, peculiar benefits, relatively? A You take an opening of this character and it is a broad question as to whether you can confine the benefits to any one immediate location in the line of that benefit. The fact that there is a street—an existing street—has some effect, of course, however, the fact must be considered as a general broad proposition that is reflected in

the actual figures in the value of the property after it is complete, whatever that may be, it may be relatively greater in one place than another.

Q But as a general proposition the benefit of the improvement is westerly where they have not had any previous access east and west before? A True.

Q Isn't it a fact also that going easterly from Washington to Broad the properties get a relative increase in benefit? A Greater benefit?

Q Yes. A No.

Q Relatively? A No, why?

Q Because the traffic goes down this new highway to Broad street and is distributed. A Yes, but they, however, have an actual street frontage.

Q What do you mean by that? You say east from Washington street there is an existing street or streets. Camfield street and Branford place, they are relatively not benefited to the same extent that Washington street west is, on the westerly side of Washington street.

Q But they are benefited more than the property on Washington street as a centre? A I cannot agree to that.

Q You can not? A No.

Re-direct examination.

Q These observations that you have been making as to relative benefits to the different locations resulting from this opening of Branford place are greatly modified by the size and shape of the property in question are they not?

Mr. Day. I object to the question, it is characterizing the testimony and it is leading.

Frank J. Bock, re-direct.

A What do you mean by the observations.

Q I mean comparisons. For instance between the southwest corner of Branford place and Washington street and the northwest corner. A I understood Mr. Day's question to be as to the plots of the same size and shape.

Q Yes, of course. A Now, I might say this, to make my position clear, anything I have testified to here concerning assessments, relative assessments, have no bearing upon the assessments as fixed by the commissioners in their way, or by the city.

By Mr. Day.

Q Or the city? A Or the city.

Q Or the assessors? A Not at all, I am not prepared to say that the present assessments as fixed are proper in my opinion. That is what I want to make plain.

Further re-direct examination.

Q I would like to have you, Mr. Bock, if you can make up what in your opinion is, or was rather, the value of the telephone company property per front foot prior to the opening and widening of Branford place and the value of it since and as a result of the opening and widening, adopting whatever you think would be the most feasible way of arriving at the true value. I would like to have you do that, not necessarily now, but I would like to have it done and put down in writing and if Mr. Day wants to cross examine on it all right.

Adjourned to a day to be agreed upon between counsel if it is found necessary to have further testimony taken.

Opinion of Supreme Court.

Filed June 6, 1917.

New Jersey Supreme Court.

February Term, 1917.

NEW YORK TELEPHONE COMPANY,

vs.

MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK.

Submitted February term, 1917; decided June 6, 1917.

Certiorari of Assessment for Benefits.

Before Justices Swayze, Minturn and Kalisch.

Edward A. and William T. Day (Charles T. Russell on the brief) for the Prosecutor.

Harry Kalisch, Esq., for the City.

The opinion of the court was delivered by SWAYZE, *J.*:

This assessment is for the same improvement involved in *Jenkinson* v. *Parmly,* Comptroller, and *Fiedler* v. *Parmly,* Comptroller. All the points but one are disposed of by the opinions in those cases. The additional point made in this case is that the assessment must be limited to the benefit conferred on the Telephone Company for its use of the property and cannot be measured by the increase in the market value of the land; and inasmuch as the property is said to be per-

manently devoted to a public use of such a character that the present owner is not benefited by improved means of access, it is argued that the assessment should be nominal, or should at most be less than it would be if the property were ordinary business property. To sustain this position the prosecutor relies on *State, Morris & Essex R. R.* v. *Jersey City,* 36 N. J. Law, 56; *Cemetery Company* v. *Newark,* 50 N. J. Law, 66; *Erie R. R. Co.* v. *Paterson,* 72 N. J. Law, 83. The last two cases do not help the prosecutor. In the Cemetery Company case the portion of the land to which the Cemetery Company had title was held liable to assessment. In the Erie R. R. Co. case it was held that there might be an assessment for benefits to the use of the property, although there might be no assessment under the circumstances of that case for enhancement of market value. In the Morris and Essex R. R. case, it was indeed held that the enhancement of the present market value was not the proper basis of assessment, but that result was justified by the facts peculiar to the case. The subject has been recently reviewed by the Court of Errors and Appeals and the rule and the reasons on which it rests have been admirably stated by Mr. Justice Garrison. *New York Bay R. R. Co.* v. *Newark,* 82 N. J. Law, 591. The reasons of the rule in *Morris and Essex Railroad Company* v. *Jersey City,* he says, is "that land acquired under a legislative sanction that implies its permanent devotion to a public use cannot, without a violation of such public use, have a market for any other purpose and hence, as such a violation will not be presumed, such land has in legal contemplation, no market value to be enhanced." The distinction between such a case and the

present is that here there is nothing that in a legal sense implies the permanent devotion of the telephone company's property to a public use. It may be that in fact that it is always likely to remain the best site in Newark for a telephone exchange, and that the company is never likely to move; it may be that the investment is so large that the loss due to a removal would be prohibitive; it may be that it is fitted up for the special business of the company. All these considerations would probably be applicable to any large business, to a bank, an insurance company or office building, a hotel; a factory or a department store. But there is nothing to show that the title to the property is likely to be affected by an abandonment of the present use, nor is the property so changed in character that it cannot readily be adapted to other business purposes. Such a change is not unknown in the case of the telephone company in Newark. We see nothing to distinguish the case from that of land used for the other kinds of business buildings just mentioned.

The assessment is affirmed with costs.

Rule Affirming Assessments.

Filed June 7, 1917.

NEW JERSEY SUPREME COURT.

NEW YORK TELEPHONE COMPANY, *Prosecutors,* *vs.* THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, *Defendants.*	*On Certiorari.* *Rule Affirming Assessments.*

The Court having inspected the transcript and proceedings of the Essex County Circuit Court, returned with the certiorari in this case, and the reasons for reversing the judgment below and heard the arguments of counsel therein, and having duly considered the same, it is on this day of June, 1917,

ORDERED, that the assessments under review in this cause be and the same are hereby affirmed with costs.

On motion of

HARRY KALISCH,
Attorney of Defendants.

Notice of Appeal.

Filed August 15, 1917.

New Jersey Supreme Court.

NEW YORK TELEPHONE COMPANY, *Prosecutor,* *vs.* THE MAYOR AND CITY COUNCIL OF THE CITY OF NEWARK, *et als.,* *Respondents.*	*Notice of Appeal from Judgment of Supreme Court on Certiorari.*

To Harry Kalisch, Esq., Attorney for Respondents.

TAKE NOTICE that the Prosecutor, the New York Telephone Company, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause.

EDW. A. & WM. T. DAY,
Attorneys for the Prosecutor.

Service of the within notice is hereby acknowledged this 12th day of June, 1917.

HARRY KALISCH,
City Attorney.

Grounds of Appeal.

Filed August 16, 1917.

New Jersey Court of Errors and Appeals

NEW YORK TELEPHONE COMPANY, *Prosecutor,* *vs.* THE MAYOR AND CITY COUNCIL OF THE CITY OF NEWARK, *et als.,* *Respondents.*	*Grounds of Appeal from Judgment of Supreme Court on Certiorari.*

To Harry Kalisch, Esq., Attorney for Respondents.

TAKE NOTICE that the appellant, the New York Telephone Company appeals from the whole of the judgment entered in the case on the ground that the Supreme Court, in affirming the judgment of the Essex County Circuit Court which confirmed an assessment made against the property of the appellant by the Assessment Commissioners of the City of Newark for benefits alleged to have been conferred on said property by reason of the opening and widening of Branford Place in said City, erred for the following reasons:

REASONS.

(1) Because the real estate of the prosecutor is not benefited to any extent whatsoever by the opening and widening of Branford place.

Grounds of Appeal.

(2) Because, at all events, the property of the prosecutor is not peculiarly benefited by the said improvement to the extent of the assessment imposed.

(3) Because the improvement was made for the purpose of providing a new street for heavy traffic east and west and for the relief of traffic on Market street, and was a general improvement for the public at large, the cost of which should be paid by the City at large.

(4) Because the assessment was not made upon all of the land and real estate in the City of Newark peculiarly benefited, in proportion, as nearly as may be, to the advantages each property owner is deemed to have acquired.

(5) Because the assessment for such improvement against the real estate of the prosecutor was not made fairly, legally and equitably, but in an arbitrary, unscientific and illegal manner, and not according to the best of their skill and ability, and was not made in accordance with the peculiar benefits to said property and was based upon a fictitious value of said lands.

(6) Because discrimination was exercised in the making of said assessment as between the properties of prosecutor and of other owners similarly situated, and that the assessment against the property of the prosecutor is relatively larger than that made against said other properties upon and near said Branford place.

(7) Because the said assessment is inequitable and the benefits from such improvements, if any, are prospective at the present time and the assessment made is speculative.

(8) Because the property of the prosecutor is worth less for the purposes for which it is

used, when upon a corner of two intersecting streets, than when upon the inside of a block.

(9) Because the land on which said assessment was made was acquired by said company in the business center of the City of Newark for telephone purposes and is in actual and sole use for that purpose and has been appropriated to such special use as the permanent location and principal office of said company in said city. The building erected thereon, in good faith and before the extension of Branford place was projected, is a modern steel structure of the type best adapted to the needs of the telephone service, and is not readily adaptable to general office or commercial business, the elevators and stairways being located on the Branford place side of the building, so that entrance from Branford place cannot be opened and utilized without an entire reconstruction of the steel work of said building from cellar to roof, at a prohibitive cost. Said building has therein the company's conduits, cables and other appliances for the furnishing of telephone service to the City of Newark and elsewhere. Said company is a public service corporation, and is limited by charter to a telephone business, and has devoted said land and building wholly to the public use. It does not deal in real estate except by way of purchase for permanent occupation and use, and the extension and improvement of Branford place in no way add to the market value of said property, and said company in no way derives any peculiar benefit therefrom. Said company has no intention of putting said property in the market or of converting the same to any other than its present use, and thus has no means of obtaining, by sale or otherwise, the benefit of

said Branford place opening and widening. That the expense of removing its business from its present building to another would exceed $500,000. Wherefore, said assessment should be reduced to a nominal amount.

(10) Because the said commissioners failed to examine or view said property, and neglected and refused to consider the special and public use to which said land and building had been dedicated.

(11) Because the assessment under review is erroneously based on increase in market value of said land, whereas it should have been based on the enhancement, if any, of the use of said land for public telephone purposes, occasioned by the opening and widening of Branford place.

(12) Because the commissioners refused to consider the objections filed by the prosecutor at such hearing, contrary to right and justice.

(13) Because such assessment and the levy and collection proposed is contrary to the constitution of the State and of the United States, and the said assessments are in effect the taking of property without compensation and also the taking of the same without due process of law and without proper adequate compensation therefor.

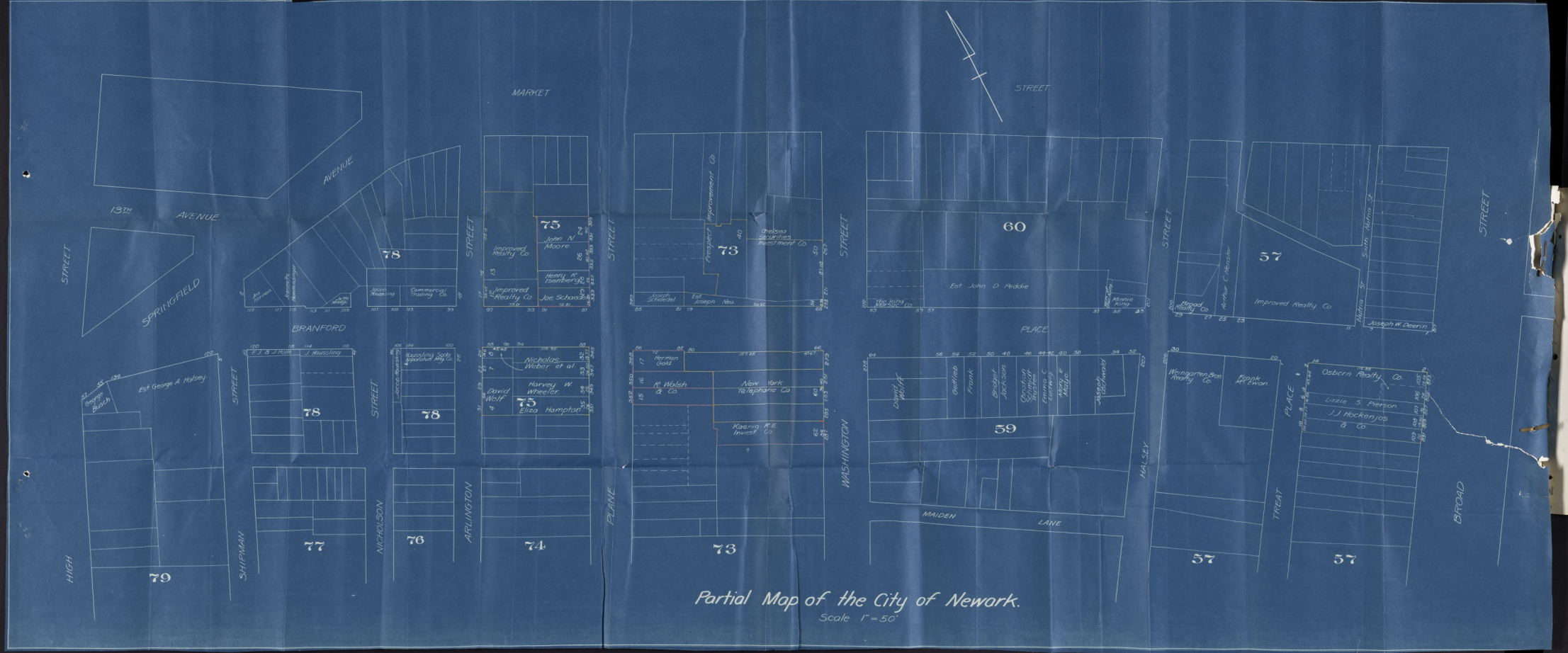
(14) That the said assessment is in many other respects illegal, unjust and unauthorized.

Dated July 3, 1917.

EDW. A. & WM. T. DAY,
Attorneys for Prosecutor.

Due and legal service of the within reasons is hereby acknowledged July 2nd, 1917.

HARRY KALISCH,
Attorney of Respondents.



Partial Map of the City of Newark.

Scale 1" = 50'

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Writ of Certiorari.

Allowed June 6, 1916.

NEW JERSEY, *ss.*

(SEAL) NEW JERSEY SUPREME COURT, THE STATE OF NEW JERSEY, TO TYLER PARMLY, Comptroller of the City of Newark, The Mayor and Common Council of the City of Newark, The Board of Street and Water Commissioners of the City of Newark, and Honorable FREDERIC ADAMS, Judge of the Essex Circuit Court, GREETING:

We being willing for certain reasons to be certified of certain assessments for benefits, confirmed by Honorable Frederic Adams, Judge of the Circuit Court of the County of Essex, on May 6th, 1916, said assessments having been made for the opening and widening of Branford Place in the City of Newark, from Halsey Street to Springfield Avenue, and having been confirmed against property of Richard C. Jenkinson, known as lots Nos. 64, 67, 68 and 93 on Block 73 of the Assessment Map of the City of Newark, and against property of Gottfried Krueger, known as lots Nos. 18, 19 and 12 on Block 869 on said Map, and against property of Real Estate Trading Company, known as lot No. 26 on Block 2498 on said Map, and against property of Nathan Hammerschalg, known as Lot No. 12 on Block 210 on said map.

WE DO HEREBY COMMAND that you do send, under your hand and seal, to our Justices of our Supreme Court of Judicature at Trenton, on the 26th day of June, 1916, the report of assessments for benefits made by Harrison R. Van Duyne, Harry B. O'Connell and Michael

Devita, Assessment Commissioners of the City of Newark, for the opening and widening of Branford Place in said city, from Halsey Street to Springfield Avenue, together with maps and schedules thereto attached, and all proceedings had thereunder, and the order confirming certain of said assessments, dated May 6th, 1916, together with all schedules and returns filed with you; together also, with the resolution adopted by the said Board of Street and Water Commissioners on January 23rd, 1913, approved by the Mayor on January 24th, 1913, fixing the amount required for the opening and widening of said street; and the resolution of the said Board of Street and Water Commissioners adopted January 23rd, 1913, approved by the Mayor on January 24th, 1913, directing publication of notice of its intention to cause said improvement to be made, and the resolutions adopted by the Common Council of the City of Newark on February 7th, 1913, approved by the Mayor on February 10th, 1913, for the issue of temporary loan bonds for said opening and widening; and the resolution of the Common Council of the City of Newark, adopted August 7th, 1914, and approved by the Mayor on August 8th, 1914, for the issue of temporary loan bonds for said opening and widening; and the resolution of the Common Council of the City of Newark adopted on October 2nd, 1914, and approved by the Mayor on October 3rd, 1914, ascertaining and declaring the total cost and expenses incurred in said improvement, together with all the proceedings taken by William Dimond, Joseph Heisler and Adolph Holzner, and also by Harrison R. Van Duyne, Harry B. O'Connell and Michael Devita, the Commissioners of Assessments for local improvements of

the City of Newark, together with all things attaching or concerning the same, as fully and entirely as they remain before you, together with this writ, that therein may be done what of right and according to the laws of this State should be done.

WITNESS the Honorable WILLIAM S. GUMMERE, Chief Justice of our Supreme Court, at Trenton, the 7th day of June, 1916.

WM. C. GEBHARDT,
Clerk.

COULT & SMITH,
STEIN, STEIN & HANNOCH,
Attorneys.

Endorsement—

This writ is allowed. Let it be sealed June 6, 1916. Case to be submitted on brief before August 5, 1916.

By the Court,

F. J. SWAYZE, *J.*

Filed June 27, 11:54 A. M., 1916.

JOSEPH MCDONOUGH,
Clerk.

By AMT

Rule Joining Parties.

Dated June 6, 1916.

New Jersey Supreme Court.

RICHARD C. JENKINSON, *et al.*, *Prosecutors,* *and* TYLER PARMLY, Comptroller of the City of Newark, *et al.*, *Respondents.*	*Rule Joining Mary R. Plum and Others as Parties Prosecutors.*

This matter coming on to be heard in the presence of Coult & Smith and Stein, Stein and Hannoch, Attorneys of the Prosecutors, and Harry Kalisch, City Attorney of the City of Newark, upon application to join certain other property owners concerned as parties prosecutors to the Writ of Certiorari issued herein to review the assessments of benefits made for the opening and widening of Branford Place, from Halsey Street to Springfield Avenue, in the City of Newark, and no cause being shown or appearing to the contrary;

It is, on this 6th day of June, 1916, on motion of Coult & Smith and Stein, Stein & Hannoch, Attorneys of the Prosecutors, ORDERED, that MARY R. PLUM and Others, and all other property owners concerned, as shown on the annexed schedule, be, and they are hereby made parties prosecutors to said writ.

Rule Joining Parties.

And it is further ORDERED that it shall not be necessary to sue out separate writs for said property owners.

F. J. SWAYZE,
J. S. C.

Schedule.

PLATE No. 1.
Block 57.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESS-MENT.
Est. of Stephen H. Plum Mary R. Plum Stephen H. Plum Marco J. Plum Margaret M. P. Atha	Est. of S. H. Plum	843-845 Broad	57-115	$1,315
Geo. F. King, Lessee Wm. Scheerer, Owner	William Scheerer	837-839 Broad	57-112 113	1,650
Union Bldg. Co.	Union Bldg. Co.	841 Broad	57-114	715
William M. Sommer	William M. Sommer	847-849 Broad	57-118	
	William M. Sommer	851 Broad	57-121	1,350
Ida Heller, Owner	A. Meyer	25 William	57- 6	30

PLATE No. 2.
Block 58, 59, 60.

Louis Krieger	Louis Krieger	296 Washington	58- 27	
	Louis Krieger	298 Washington	58- 26	
	Louis Krieger	300 Washington	58- 24	
	Louis Krieger	10 Maiden Lane	58- 28	

	Louis Krieger	12 Maiden Lane	58- 29	
	Louis Krieger	202-204 Washington	58- 21	$ 825
Mahlon S. Drake	Mahlon S. Drake	33-35 William	58- 2	70
Havell Mfg. Co.	Havell Mfg. Co.	284 Washington	59- 13	
	Havell Mfg. Co.	286 Washington	59- 11	1,875
Metropolitan Realty Co.	Metropolitan Realty Co.	266 Washington	60- 5	
	Metropolitan Realty Co.	260-264 Washington	60- 6	1,875
John Jackson	John Jackson	11 Maiden Lane	59- 3	75
	John Jackson	7-9 Maiden Lane	59- 4	105
	John Jackson	5 Maiden Lane	59- 6	
	John Jackson	289-290 Washington	59- 9	
	John Jackson	292 Washington	59- 9	900
	Bridget Jackson	50 Branford Place	59- 23	5,070
	Bridget Jackson	48 Branford Place	59- 24	5,065
	John Jackson	14 Maiden Lane	58- 30	50
	John Jackson	16 Maiden Lane	58- 31	50
Henry L. Bauman	Henry L. Bauman	37 William	58- 4	34
Henry L. Bauman	Henry L. Bauman	39 William	58- 5	36
Henry L. Bauman	H. L. Bauman & Ollendorf	45-47 William	58- 9- 11	
	H. L. Bauman & Ollendorf	49-51 William	58- 13	165
Emma C. Ludwig	Est. of Jacob Ludwig	42-44 Branford	59- 27	6,125
Mary O'Brien	Mary O'Brien	268 Washington	60- 4	1,675
King Marsac Co.	King Marsac Co.	272 Washington	60- 2	4,200

PLATE No. 3.

Block 73.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Edward A. Wurth	Edward A. Wurth	374 Plane	73- 5	$ 305
Richard C. Jenkinson	Richard C. Jenkinson	289-293 Washington	73- 64	
	Richard C. Jenkinson	295 Washington	73- 67	
	Richard C. Jenkinson	297 Washington	73- 68	
	Richard C. Jenkinson	297 Washington (Rear)	73- 93	2,250
Union Building Co.	Union Building Co.	303 Washington	73- 71	
	Union Building Co.	305 Washington	73- 72	225
Home Coupon Exchange Co.	Home Coupon Exchange Co.	324 Plane	73- 29	
	Home Coupon Exchange Co.			
Chelsea Securities & Invest. Co.	Chelsea Securities & Invest. Co.	261-265 Washington	73- 47	1,125
	Chelsea Securities & Invest. Co.	267-271 Washington	73- 50	7,500
				8,625
Joseph Schloss	Joseph Schloss	77 William	73- 81	23
	Joseph Schloss	79 William	73- 82	23
Herman Gold	The Goerke Co.	348 Plane St.	73- 17	3,750
Est. of Israel Baldwin	Est. of Israel Baldwin	354-366 Plane	73- 9	
Sarah D. Clarke, Owner			10	
			11	
			12	
			13	
			14	
			91	1,800

PLATE No. 4.

Blocks 74, 75, 76, 77, 78.

Real Estate Trading Co.	Real Estate Trading Co.	49 Arlington	74- 7	$ 85
	Real Estate Trading Co.	51 Arlington	74- 6	90
	Real Estate Trading Co.	38 Shipman	77- 5	110
	Real Estate Trading Co.	15 Nicholson	77- 28	80
				365
Jacob Heinochowitz	Jacob Heinochowitz	50 Arlington	76- 8	70
Joshua W. Read	J. W. Read	55 Arlington	74- 4	65
Harvey Wheeler	Harvey Wheeler	349 Plane	75- 34	580
Margaret Manning	Est of J. Manning	353 Plane	75- 36	245
Florence D. Bankoff	Florence D. Bankoff	367 Plane	74- 23	180
		369 Plane	74- 25	180
		47 Arlington	74- 8	100
				460

PLATE No. 7.

Blocks 203—a, b, c.

Theo. Koellhoffer	Theo. Koellhoffer	37 Thirteenth Ave.	203a- 22	$ 69
Anthony Koellhoffer	Anthony Koellhoffer	39 Thirteenth Ave.	203a- 23	65
Louis Schlesinger	Louis Schlesinger	16 Nelson Place	203a- 16	80
Louis Sachs	Louis Sachs	467 High	203a- 7	160
I. Greenbaum	I. Greenbaum	14 Nelson Place	203a- 13	84

Plate 4 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESS-MENT.
Amalia Littauer	Amalia Littauer	44 Nelson Place	203b- 44	38
	Amalia Littauer	46 Nelson Place	203b- 45	38
				76
John M. Mechler	John M. Mechler	49 Thirteenth Ave.	203b- 34	45
Louis Lasser	Louis Lasser	65 Thirteenth Ave.	203b- 50	38
	Louis Lasser	67 Thirteenth Ave.	203b- 51	38
				76
Dawkins & Kipping R. F. Dawkins Charles Kipping	R. F. Dawkins and Charles Kipping	28 Nelson Place	203b- 28	56
Agnes Criqui (Sole Owner)	Theresa Dougherty	47 Thirteenth Ave.	203b- 31	50
Samuel Lagner	Samuel Lagner	71 Thirteenth Ave.	203c- 58	25
	Samuel Lagner	71 ½ Thirteenth Ave.	203c- 59	49
				74
Joshua W. Read	J. W. Read	24 Nelson Place	203a- 24	65
Mrs. Virginia Isola	V. Isola	18 Nelson Place	203a- 18	75

PLATE No. 8.
Block 232.

Charles J. Gogel	Charles J. Gogel	17 Sterling	232- 10	$ 70
Henry D. Cohen	Henry D. Cohen and Abraham Klein	43 Sterling	232- 24	30
Henry D. Cohen	Henry D. Cohen	55 Sterling	232- 31	
	Henry D. Cohen	57 Sterling	232- 32	
	Henry D. Cohen	66 Thirteenth Ave.	232- 45	
	Henry D. Cohen	68 Thirteenth Ave.	232- 44	125
				155
Mahlon S. Drake	Mahlon S. Drake	15 Sterling	232- 9	75
Ellis Himber, Owner	S. Kimmel	489 High	232- 3	77
	S. Kimmel	491 High	232- 4	77
	S. Kimmel	493 High	232- 5	135
				289
Fred A. Schultz	P. Schultz	50 Howard	232- 29	35
	P. Schultz	48 Howard	232- 40	
	P. Schultz	76-74 Thirteenth Ave.	232- 41	38
				73
	F. A. Schultz	48 Thirteenth Ave.	232- 55	25
	F. A. Schultz	46 Thirteenth Ave.	232- 56	26
				51

PLATE No. 9.
Block 231.

OBJECTOR.	ASSESSED TO.	STREET AND STREET AND	BLOCK BLOCK	ASSESS- ASSESS-
Lina C. Messerschmidt, Frederika Haselmayer, Marie Haselmayer, Owners	M. Haselmayer, et al.	26 Sterling	231- 78	$ 75
Louis Wasserman and Morris Goodman, Owners	Louis Wasserman and Morris Goodman	29 South Orange	231- 39	34
Louis Wasserman and Morris Goodman, Owners	A. Goodman, et al.	50 Sterling	231- 65	40
				74
Mary A. Reinhardt	Mary A. Reinhardt	30 Sterling	231- 75	110
	Mary A. Reinhardt	32 Sterling	231- 74	
William H. Axt	William H. Axt	76 Springfield	231- 19- 18	150
	William H. Axt	78 Springfield	231- 19	140
	William H. Axt	80 Springfield	231- 20	135
				425
Charles J. Gogel	Charles J. Gogel	1 South Orange	231- 24	225
Annie Rosenstrauch	Annie Rosenstrauch	36 Sterling	231- 72	45
Wm. S. Rosenstrauch	Wm. S. Rosenstrauch	34 Sterling	231- 73	50
Advance Building Co.	Advance Realty Co.	41 South Orange	231- 45	38
	Advance Realty Co.	43-45 South Orange	231- 46	70
				108

Minna Kniep Henry Werner Minnie Schimper and Lucy Scharringhausen	Minna Kniep Henry Werner Minnie Schimper and Lucy Scharringhausen	3 South Orange 28 Sterling 38 Sterling 40 Sterling 42 Sterling	231- 25 231- 77 231- 71 231- 70 231- 69	205 60 43 41 40	*Schedule.*

PLATE No. 10.
Block 233.

Arthur Devine, Jr., Manager Gussie Devine, Owner	G. Devine G. Devine	126 Springfield 94 Howard	233- 51 233- 6	$ 50 34	
				84	
Ignatz Hausmann	Ignatz Hausmann Ignatz Hausmann Ignatz Hausmann Ignatz Hausmann	98 Howard 100 Howard 132 Springfield 134 Springfield	233- 4 233- 2 233- 53 233- 54	38 22 38 32	
				130	
Aaron Lang	Aaron Lang and Simon Lang Aaron Lang and Simon Lang	108 Springfield 22 South Orange	233- 42 233- 24	31 33	
				64	
Eisner Bros. Co.	Eisner Bros. Co. Eisner Bros. Co.	40 South Orange 38 South Orange	233- 15 233- 16	38 38	
				76	
Samuel Lagner	Samuel Lagner	120 Springfield	233- 48	38	

Plate 10 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESS-MENT.
Israel Greenbaum and Sarah Greenbaum, Owners	Israel Greenbaum and Sarah Greenbaum	116 Springfield	233- 46	38
Theresa Weiss	Theresa Weiss	112 Springfield	233- 44	34
A. C. Hagen and Clara Dieffenbach	C. W. Hagen	122 Springfield	233- 49	33
		124 Springfield	233- 50	43
				76
Israel Greenbaum	Israel Greenbaum and Sarah Greenbaum	128 Springfield	233- 52	38

PLATE No. 11.

Block 2496.

Est. of Henrietta Kaufherr, Morris D., Julius F. and Albert H. Kaufherr and Gertrude Buxbaym	Henrietta Kaufherr	71 Springfield	2496- 29	$ 245
	Henrietta Kaufherr	69 Springfield	2496- 30	450
	Henrietta Kaufherr	67 Springfield	2496- 31	280
Franklin A. Chapman	Franklin A. Chapman	97 Springfield	2496- 14	56
Aaron Lang and Samuel W. Bailey Elizabeth A. Bailey Mamie I. Naeberle Florence N. Oldis Anna E. Brand	Aaron and Simon	89 Springfield	2496- 19	170
	J. G. Haberle	162 William	2496- 58	45

Fileb Wachstein	Fileb Wachstein	105 Springfield	2496- 10	30
	Fileb Wachstein	173 William	2496- 64	30
				60
Caroline and Joseph Straub		155 William	2496- 51	38
M. T. Bauderman, Jr.	M. T. Bauderman, Jr.	159 William	2496- 54	45
Real Estate Trading Co.	Real Estate Trading Co.	93-95 Springfield	2496- 15	150
Henry P. Pfeiffer	Henry P. Pfeiffer	107 Springfield	2496- 9	34
	Henry P. Pfeiffer	175 William	2496- 65	23
				57
William H. Axt	William H. Axt	75 Springfield	2496- 27	280
	William H. Axt	73 Springfield	2496- 28	300
				580
Rosalie Epstein	R. Epstein	157 William	2496- 52	45
Estate of J. A. & A. J. Geiger, Andrew J. and Johanna Geiger	Est. of J. A. &. A. J. Geiger	77 Springfield	2496- 26	265

PLATE No. 12.

Blocks 53, 54, 55, 56.

Littleton Kirkpatrick and Rob't O. Gorman and Roger Young	Littleton Kirkpatrick	17 Academy	53- 4	$ 19
	Littleton Kirkpatrick	19-21 Academy	53- 5	26
	Littleton Kirkpatrick	23-25 Academy	53- 8	26
	Littleton Kirkpatrick	27 Academy	53- 9	23
				94

Plate 12 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESS-MENT.
Prudential Ins. Co. of America	Prudential Ins. Co. of America	36 Bank	56- 13	
	Prudential Ins. Co. of America	34 Bank	56- 14	
	Prudential Ins. Co. of America	30-32 Bank	56- 16	115
Frederick D. Stoutenburgh	Frederick D. Stoutenburgh			
Frank L. Stoutenburgh	Frederick D. Stoutenburgh	13-15 Library Ct.	56- 18	
Mariana S. Gleason, Owners	Frederick D. Stoutenburgh	17 Library Ct.	56- 17	38
Prudential Ins. Co. of America	Prudential Ins. Co. of America	19-12 Academy	54- 30	
	Prudential Ins. Co. of America	8 Academy	54- 31	
	Prudential Ins. Co. of America	739 Broad	54- 32	
	Prudential Ins. Co. of America	741-743 Broad	54- 33	
	Prudential Ins. Co. of America	745-747 Broad	54- 34	
	Prudential Ins. Co. of America	749 Broad	54- 36	
	Prudential Ins. Co. of America	755-759 Broad	54- 40	950
	Prudential Ins. Co. of America	14-20 Bank	55- 14	
	Prudential Ins. Co. of America	28-26 Bank	55- 17	
	Prudential Ins. Co. of America	761-769 Broad	55- 22	640
	Prudential Ins. Co. of America	771 Broad	55- 22	140
	Prudential Ins. Co. of America	773-775 Broad	55- 30	145
	Prudential Ins. Co. of America	777-779 Broad	55- 32	145
	Prudential Ins. Co. of America	781 Broad	55- 33	85
	Prudential Ins. Co. of America	783 Broad	55- 34	85
	Prudential Ins. Co. of America	785 Broad	55- 35	105
	Prudential Ins. Co. of America	787 Broad	55- 36	80

PLATE No. 13.
Blocks 61, 62, 63.

Prudential Ins. Co. of America	Prudential Ins. Co. of America	39 Bank	62- 1	
	Prudential Ins. Co. of America	41 Bank	62- 2	
	Prudential Ins. Co. of America	43 Bank	62- 3	
	Prudential Ins. Co. of America	45 Bank	62- 4	
	Prudential Ins. Co. of America	42-44 Academy	62- 29	
	Prudential Ins. Co. of America	40 Academy	62- 31	
	Prudential Ins. Co. of America	36-38 Academy	62- 32	$ 190
Florence R. and Irving R. Strauss	Bernard Strauss	135-137 Halsey	63- 40	12
	Bernard Strauss	37-45 Academy	63- 44	65
	Bernard Strauss	47-49 Academy	63- 49	19
				96

PLATE No. 14.
Blocks 69, 70, 71, 72.

John W. Vliet	W. J. Vliet	85 Academy	69- 9	$ 21
	W. J. Vliet	87 Academy	69- 11	23
				44
Katherine W. Atwater	Katherine W. Atwater	81 Academy	69- 7	20
	Katherine W. Atwater	83 Academy	69- 8	16
				36

Plate 14 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESS-MENT.
Gottfried Krueger	Gottfried Krueger	95 Academy	69- 15	
	Gottfried Krueger	95½ Academy	69- 16	
	Gottfried Krueger	97 Academy	68- 17	22
Emily S. Egner	Henry W. Egner	219 Washington	70- 43	38
James E. Robinson	James E. Robinson	84 Academy	70- 27	
	James E. Robinson	82 Academy	70- 28	
	James E. Robinson	80 Academy	70- 29	34
	James E. Robinson	83 Bank	70- 4	34
				68
Charles Hood	Charles Hood	31 Campbell	71- 12	
	Charles Hood	298-300 Plane	71- 14	64
	Charles Hood	296 Plane	71- 15	49
				113
Century Realty Co.	Century Realty Co.	80 Bank	71- 28	23
King Realty & Investment Co.	King Realty & Investment Co.	235-237 Washington	72- 45	210
		239 Washington	72- 47	95
				305
Annie L. Tichenor	Annie L. Tichenor	79 Bank	70- 2	30

Jos. T. and S. B. Harrison and Edwin A. Kirch	E. A. Kirch & Co.	87 Bank	70- 6	
		89 Bank	70- 7	53
		86 Academy	70- 26	
		88 Academy	70- 25	26
				79

PLATE No. 15.
Blocks 83, 84, 85, 86.

Anna Southard	Anna Southard	446 High	83- 5	$ 40
Maria Guatelli	Fillippo Guatelli	17 Court House Place	84- 8	30
Antoinetta Brussi	Fillippo Guatelli	19 Court House Place	84- 7	38
				68
Charles F. Schneider	Charles F. Schneider	18 Comes Alley	85- 21	20
Antoinetta Dughi	M. Dughi	124 Bank	85- 18	38
	M. Dughi	122 Bank	85- 19	30
				68
Jos. Olini	Jos. Olini	9 Pierson's Alley	85- 8	26
Raffaello Fenegaro and Jos. Olini	Raffaello Fenegaro, et al.	15 Pierson's Alley	85- 11	10
				36
Attilio Orsi	Attilio Orsi, et al.	17-19 Comes Alley	86- 8	15
		120 Bank	86- 11	35
				50

Plate 15 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Celementina Zucchi	Carlo Zucchi	118 Bank	86- 12	42
Charles and Mamie Gottfried Krueger	Gottfried Krueger	301-303 Plane	86- 24	105
Bartholomew Zazzali	B. Zazzali	13 Court House Place	84- 10	26
	B. Zazzali	7 Court House Place	84- 13	29
	B. Zazzali	134 Bank	84- 20	34
	B. Zazzali	132 Bank	84- 24	26
	B. Zazzali	22 Pierson's Alley	84- 21	15
				130
James and Nicholo Di Menna	James and Nicholo Di Menna	138 Bank	84- 17	42
Fidele Di Menna	Fidele Di Menna	128 Bank	85- 16	50

PLATE No. 16.
Blocks 202, 204, 205.

Amalia Littauer	C. H. Davis	65 Nelson Place	205- 30	$ 24
	C. H. Davis	67 Nelson Place	205- 19	26
	C. H. Davis	69 Nelson Place	205- 20	38
				88

Lena Bacharach	B. Bacharach	20 Howard	205- 21	23
Nathan Hammerschlag	Nathan Hammerschlag	59 Nelson Place	205- 15	38
	Nathan Hammerschlag	28 Brientnall	204- 15	80
	Nathan Hammerschlag	30 Brientnall	204- 16	85
	Nathan Hammerschlag	38 Brientnall	204- 20	75
				278
James Connelly	James Connelly	48 Brientnall	204- 25	38
Arthur Connelly	Arthur Connelly	42 Brientnall	204- 22	60
Estelle G. Myers	E. G. Myers	8-14 Brientnall	204- 1	135
	E. G. Myers	16-20 Brientnall	204- 11	205
				340
Wm. B. Cunningham	Wm. B. Cunningham	44 Brientnall	204- 23	56
Sarah Agnes Hannahs	Sarah Agnes Hannahs	25 Nelson Place	204- 10	36
	Sarah Agnes Hannahs	25½ Nelson Place	204- 48	36
	Sarah Agnes Hannahs	27 Nelson Place	204- 47	36
				108
Wm. J. Douglas	Wm. J. Douglas	31½ Nelson Place	204- 44	35
	M. Douglas	29 Nelson Place	204- 46	26
	Wm. J. Douglas	19-21 Brientnall	202- 9	180
				251
Park Realty Co.	Park Realty Co.	3-11 Brientnall	202- 1	300

Plate 16 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESS-MENT.
Mrs. Minotti Franchi Louisa Franchi Katherine Franchi Victor Franchi Albena Franchi	Peter Franchi	210 Bank	204- 28	38
Buerman Instrument Co.	Buerman Instrument Co.	447-449-451 High	202- 28- 30	205

PLATE No. 17.
Block 206.

Banwick Realty Co.	Banwick Realty Co.	60-68 Wickclyffe	206- 22	$ 265

PLATE No. 18.
Blocks 207, 208.

Robert A. Dorrill	Robert A. Dorrill	10 Boston	207- 43	$ 15
Gottfried Krueger	Gottfried Krueger	250 Bank	207- 13	15
Samuel E. Bailey	S. E. Bailey	99-101 Thirteenth Ave.	208- 13	30
	S. E. Bailey	103 Thirteenth Ave.	208- 16	8
				38

PLATE No. 19.
Block 229.

Est. of Henry Horns and Agnes Horns	Henry Horns	51 South Orange	229- 31	$ 30

PLATE No. 20.
Blocks 227, 228.

Samuel Lagner	Samuel Lagner	71-73 South Orange	228- 15	$ 26
Maria K. and Henry Arnold	Henry Arnold	117 Wickclyffe	227- 9	
	Henry Arnold	119 Wickclyffe	227- 10	
	Henry Arnold	221 Wickclyffe	227- 11	46
Henry D. Uhl Lillie P. Uhl Clara R. Uhl	C. W. Uhl	64 Boston	227- 23	12

PLATE No. 21.
Block 235.

Florence R. and Irving R. Strauss	Bernard Strauss	37 Broome	235- 23	
	Bernard Strauss	168 Springfield	235- 25	
	Bernard Strauss	170 Springfield	235- 27	
	Bernard Strauss	172 Springfield	235- 28	
	Bernard Strauss	174 Springfield	235- 29	
	Bernard Strauss	174½ Springfield	235- 30	
	Bernard Strauss	176 Springfield	235- 31	
	Bernard Strauss	178 Springfield	235- 32	
	Bernard Strauss	180-182 Springfield	235- 33	$ 168

PLATE No. 22.
Block 234.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Louis Lasser	Louis Lasser	154 Springfield	234- 22	$ 32

PLATE No. 23.
Blocks 2498, 2499.

Ella C. Engleberger	F. Engelberger	60-62 Mercer	2498- 23	$ 38
	F. Engelberger	130-132 Howard	2498- 22	
Real Estate Trading Co.	Real Estate Trading Co.	122-126 Howard	2498- 26	60
Margaret Jubert	Margaret Jubert	13 West	2498- 11	26
		15-17 West	2498- 12	38
				64

PLATE No. 24.
Block 2497.

Ferdinand H. Wismer	Ferdinand H. Wismer	537 High	2497- 40	$ 24
	Ferdinand H. Wismer	539 High	2497- 41	24
	Ferdinand H. Wismer	539½ High	2497- 42	24
				72

Mary Reinhardt	Mary Reinhardt	178 William	2497- 17	54
	Mary Reinhardt	176 William	2497- 19	54
				108
Minnie Sachs	John F. Seidel	160 William	2497- 29	43
Caroline and Joseph Straub	Caroline Straub	164½ William	2497- 80	
	Caroline Straub	164 William	2497- 28	45

PLATE No. 25.
Block 102.

Henry S. Pfeil	Henry S. Pfeil	560 High	102- 19	$ 90
Herman Bornemann, Sr.	Herman Bornemann, Jr.	85 Shipman	102- 55	14
Herman Bornemann, Sr.	Herman Bornemann, Jr.	574-578 High	102- 10	90
				104
Herman Bornemann, Jr.	Herman Borneman, Jr.	572 High	102- 13	74
Emma N. Byington	Emma N. Byington	562 High	102- 18	34
Clara Hirschoff	Clara Hirschoff	556-558 High	102- 22	86
Trustees of Newark Academy	Newark Academy	51 Shipman	102- 37	
Trustees of Newark Academy	Newark Academy	53 Shipman	102- 38	
Trustees of Newark Academy	Newark Academy	536-548 High	102- 27	
Trustees of Newark Academy	Newark Academy	550-554 High	102- 28	565

PLATE No. 26.
Block 101.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Henry S. Pfeil	Henry S. Pfeil	120-114 William	101- 1	$ 132
Knickerbocker Storage Warehouse Co.	Knickerbocker Storage Warehouse Co.	100 Arlington	101- 25	23
		102-106 Arlington	101- 26	56
		74-76 Shipman	101- 65	42
				121
John Mulligan	John Mulligan	76 Arlington	101- 12	30
	John Mulligan	122-124 Arlington	101- 37	15
				45
Herman Bornemann, Sr.	Herman Bornemann	78-82 Shipman	101- 62	64
Excelsior Realty Co.	Excelsior Realty Co.	108 Arlington	101- 30	
	Excelsior Realty Co.	110 Arlington	101- 31	30
	Excelsior Realty Co.	84-86 Shipman	101- 59	45
				75
Stephen B. Townley	Stephen B. Townley	64-66 Shipman	101- 71	68
	Stephen B. Townley	60-62 Shipman	101- 74	72
				140
Grace C. Townley	Grace C. Townley	86 Arlington	101- 18	25

Chas. F. Sorhagen	Chas. F. Sorhagen	70-72 Shipman	101- 67	45
	Chas. F. Sorhagen	68 Shipman	101- 69	30
				75

PLATE No. 27.
Blocks 99, 100.

John Mulligan	John Mulligan	105 Arlington	99- 24	$ 13
Wm. C. Fiedler	Wm. C. Fiedler	413-415 Plane	99- 19	34
	Wm. C. Fiedler	417 Plane	99- 21	23
	Wm. C. Fiedler	103 Arlington	99- 25	14
	Wm. C. Fiedler	101 Arlington	99- 26	17
				88
Greater Newark Realty Co.	Greater Newark Realty Co.	411 Plane	99- 17	26

PLATE No. 28.
Blocks 97, 98.

Est. of B. Schloss	B. Schloss	329 Washington	97- 17	$ 34
	B. Schloss	335 Washington	97- 20	26
	B. Schloss	337 Washington	97- 21	31
				91

Plate 28 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
The Drew Co.	The Drew Co.	347-349 Washington	97- 28	55
	The Drew Co.	351 Washington	97- 30	28
	The Drew Co.	12 Willow	97- 37	3
	The Drew Co.	10 Willow	97- 38	4
	The Drew Co.	8 Willow	97- 61	3
				93
Jacob L. Schwartz	Jacob L. Schwartz	76 William	97- 8	41
	Jacob L. Schwartz	74 William	97- 9	41
				82
Benjamin Amster	Benjamin Amster	82 William	97- 5	27
	Benjamin Amster	80 William	97- 6	27
				54
Henry L. Bauman	Henry L. Bauman	319 Washington	97- 12	34
	Henry L. Bauman	321 Washington	97- 13	34
	Henry L. Bauman	323 Washington	97- 14	35
	Henry L. Bauman	325 Washington	97- 15	34
				137

PLATE No. 29.

Blocks 95, 96, 106.

Est. of B. Schloss	B. Schloss	62 William	95- 2	$ 34
Empire Investors Co.	Empire Investors Co.	342 Washington	96- 33	64
		346 Washington	35	
			42	
			34	
W. Halsey Smith	W. Halsey Smith	6 Pearl	96- 39	
	W. Halsey Smith	8-10 Pearl	96- 40	14
Jean R. Tack	Jean R. Tack	40 Hill	106- 4	8

PLATE No. 30.

Blocks 93, 94, 109.

Harry C. Strobell	Harry C. Strobell	895-897 Broad	93- 17	$ 108
Rose Cohen	Rose Cohen	919 Broad	93- 30	53
Louis Schlessinger	Louis Schlessinger	903-905 Broad	93- 22	105
	Louis Schlessinger	23 Hill	93- 49	8
	Louis Schlessinger	25 Hill	93- 50	8
				121
Edward R. McGlynn	Edward R. McGlynn	929-933 Broad	93- 36	50
Chelsea Securities & Invest Co.				
Est. of Geo. D. Randell	Est. of Geo. D. Randell	881 Broad	93- 10	70
Lillie Lawrence				
Edith Hopping				
Fred L. Randell				
S. Leschziner Realty Co.	S. Leschziner Realty Co.	889-901 Broad	93- 19	155

PLATE No. 31.
Blocks 873, 874, 875.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Est. of Jared Haines Julia R. Haines Martha B., Florence L., Alice B., Julia N., George H., Margaret D. Haines, Geraldine Haines King	George H. Haines	34 Franklin	873- 78	$ 11
Louis Schlessinger	Louis Schlessinger	25 Franklin	875- 26	6
Anna C. Smith	Anna C. Smith	49 Green	873	
		47 Green (Rear)	46-102	30
		44 Franklin	873- 72	7

PLATE No. 32.
Block 865.

Est. of August Burkhardt	August Burkhardt	46 Green	865- 70	$ 15
Emelie C. Bovet	August Burkhardt	42 Green	865- 88	
Bertha F. Ulrich	August Burkhardt	40 Green	865- 89	23
Pauline C. Schweiker				
Ida J. Kenngott				38
Emma S. Morlock				
Lillian Voellm				
August Voellm				
Margarette Voellm				
William Voellm				

James A. and Mary E. Turnbull	A. Turnbull	56 Lafayette	865- 45	
	A. Turnbull	58 Lafayette	865- 46	56
Ferdinand H. Wismer	Ferdinand H. Wismer	16 Green	865-119	32
	Ferdinand H. Wismer	14 Green	865-121	
Fred R. Randell				
Lillie Lawrence and Edith R. Hopping	A. E. Davis	18-22 Lafayette	865- 21	94
Est. of Peter Fruend	Est. of Peter Fruend	18 Green	865-118	14
Mrs. Emma A. Gerth				
Wm. H. Drummond & Co., a Corporation	Wm. H. Drummond & Co.	16 Lafayette	865- 47	45
Victor Realty Co.	Victor Realty Co.	24 Lafayette	865- 23	53
	L. Meyer	40 Lafayette	865- 34	34
	Victor Realty Co.	24 Green	865-100	
	Victor Realty Co.	26 Green	865- 99	
	Victor Realty Co.	28 Green	865- 98	41
	Victor Realty Co.	Green	865-106	
	Victor Realty Co.	Green	865-131	
	Victor Realty Co.	32 Green	865- 94	
	Victor Realty Co.	34-36 Green	865- 92	
	Victor Realty Co.	38 Green	865- 90	86
Harry W. Weil	Harry W. Weil	26 Lafayette	865- 24	30
	Harry W. Weil	28 Lafayette	865- 25	34
				64

Plate 32 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Emma Cohn	Emma Cohn	30 Lafayette	865- 26	
	Emma Cohn	Lafayette	865- 27	
	Emma Cohn	32 Lafayette	865- 28	70
Fred A. Mack	Fred A. Mack	32-34 Lafayette (Rear)	865-125	
	Fred A. Mack	Lafayette	865- 30	
	Fred A. Mack	Lafayette	865- 31	
	Fred A. Mack	36-40 Lafayette (Rear)	865- 32	115
Fidelity Trust Co.	Fidelity Trust Co.	34 Lafayette	865- 29	34
J. E. Linde Paper Co., Inc.	J. E. Linde Paper Co., Inc.	48 Lafayette	865- 38	
		50 Lafayette	865- 40	
		48-50 Lafayette (Rear)	865-130	94

PLATE No. 33.
Block 165.

Central R. R. of N. J.	Newark & N. Y. R. R.	45-49 Lafayette	165- 76	
	Newark & N. Y. R. R.	21-43 Lafayette	165- 78	$ 560
	Newark & N. Y. R. R.	846 Broad	165-105	215
	Newark & N. Y. R. R.	838-840 Broad	165-109	600
	Newark & N. Y. R. R.	Broad	165-114	
	Newark & N. Y. R. R.	832 Broad	165-113	

	Newark & N. Y. R. R.	834 Broad	165-112	
	Newark & N. Y. R. R.	836 Broad	165-111	1,485
				2,860
John W. Pringle	N. P. Cullen	13 Lafayette	165- 96	26
	John W. Pringle	15 Lafayette	165- 95	26
	John W. Pringle	15½ Lafayette	165- 94	15
	J. A. Norton	17 Lafayette	165- 93	26
	John W. Pringle	19 Lafayette	165- 92	26
				119
Leopold Meyer	Leopold Meyer	183 Mulberry	165- 66	34
	Leopold Meyer	59 Lafayette	165- 71	26
Junior Co., Inc.	P. J. Bowers	844 Broad	165-106	260
Ludwig Achtelstetter, Inc.	Ludwig Achtelstetter	842 Broad	165-107	365

PLATE No. 34.
Block 165 (Con.)

Est. of Arthur Devine	G. Devine	157 Mulberry	165- 48	
Gussie Devine	G. Devine	159 Mulberry	165- 49	$ 150
Wm. S. and Addison A. Righter	W. A. Righter, et al.	153 Mulberry	165- 46	39
Anna K. Marsh	Anna K. Marsh	151 Mulberry	165- 45	42
W. T. Crane	W. T. Crane	165-167 Mulberry	165- 55	115
W. T. Crane Carriage Hardware Co.	W. T. Crane Carriage Hardware Co.	169-171 Mulberry	165- 57	115
Oswald R. Routh	Ernest F. Kerr	161 Mulberry	165- 51	75

PLATE No. 35.
Block 164.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Marcus L. Ward	Est. Marcus L. Ward	200-202 Market	164- 20	$ 184
	Est. Marcus L. Ward	204 Market	164- 23	140
Est. Dr. Abram Coles J. Ackerman Coles Emily Coles	Abram Coles	222 Market	164- 35	89
Jas. Ruckelshaus' Sons Wm. Ruckelshaus John H. Ruckelshaus Otto H. Ruckelshaus	W. Ruckelshaus	228 Market	164- 40	75
Est. Wm. J. Bannister W. Albert Bannister Charlotte Bannister Lydia Gassman	Wm. J. Bannister	206-208 Market	164- 25	150

PLATE No. 36.
Blocks 146, 147.

Matthias Plum	Matthias Plum	17-21 Clinton	146- 24	$ 115
Union Building Co.	Union Building Co.	11-13 Clinton	146- 18	
	Union Building Co.	15 Clinton	146- 22	150

Est. of Henry C. Miner, Inc.	Est. of H. C. Miner	10-14 Beaver	146- 31	130
	Est. of H. C. Miner	193 Market	146- 39	85
				215
Jas. A. Turnbull	Jas. A. Turnbull	197 Market	146- 37	98
P. J. Bowers Co.	P. J. Bowers	189-191 Market	146- 40	190
Union Building Co.	Union Building Co.	27-31 Clinton	147- 1	
	Union Building Co.	33-35 Clinton	147- 5	170
Aaron P. Ordway	Aaron P. Ordway	209-213 Market	147- 59	
	Aaron P. Ordway	207 Market	147- 53	390
Chelsea Securities Invest. Co.	Chelsea Securities Invest. Co.	231-235 Market	147- 43- 46	140
Fidelity Trust Co.	Fidelity Trust Co.	185 Market	146- 44	98
Theo. Pric	Theo. Pric	37 Clinton	147- 7	45
Broad St. Realty & Imp. Co., Inc.	Broad St. Realty & Imp. Co., Inc.	774 Broad	146- 4	51
Mercantile Realty & Imp. Co., Inc.	Mercantile Realty & Imp. Co., Inc.	776-778 Broad	146- 2	125
Market St. Realty & Imp. Co., Inc.	Market St. Realty & Imp. Co., Inc.	181 Market	146- 46	68
A. C. Getchius	A. C. Getchius	183 Market	146- 45	85
Trustees, Central M. E. Church	Central M. E. Church	223 Market	147- 53	70
	Central M. E. Church	225-229 Market	147- 49	190
				260

PLATE No. 37.
Blocks 87, 88, 89-B.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Paul H. Jaehnig and Frederick W. Walsh	Paul H. Jaehnig and Frederick W. Walsh	106 Academy	87- 10	$ 20
	Paul H. Jaehnig and Frederick W. Walsh	104 Academy	87- 11	17
	Paul H. Jaehnig and Frederick W. Walsh	269 Plane	87- 13	14
	Paul H. Jaehnig and Frederick W. Walsh	271 Plane	87- 14	12
	Paul H. Jaehnig and Frederick W. Walsh	273 Plane	87- 15	13
	Paul H. Jaehnig and Frederick W. Walsh	275 Plane	87- 16	23
	Paul H. Jaehnig and Frederick W. Walsh	277 Plane	87- 17	29
	Paul H. Jaehnig and Frederick W. Walsh	279 Plane	87- 18	24
	Paul H. Jaehnig and Frederick W. Walsh	281 Plane	87- 19	25
	Paul H. Jaehnig and Frederick W. Walsh	283 Plane	87- 20	32

	Paul H. Jaehnig and Frederick W. Walsh	109 Bank	87- 21	39
				248
Charles F. Schneider	Charles F. Schneider	119 Bank	88- 1	
	Charles F. Schneider	32 Comes Alley	88- 50	
	Charles F. Schneider	121 Bank	88- 2	64
Catherine Grom	Est. of John Grom	130 Academy	88- 39	14
Otto C. B. Grom	Est. of John Grom	128 Academy	88- 40	19
John Grom				
Joseph B. Grom				33
Frederick H. Grom				
R. B. Grom				
Philip Erbach	Philip Erbach	151 Bank	88- 19	39
	Philip Erbach	438 High	88- 20	26
				65
Frederick Diffany	Frederick Diffany	123 Bank	88- 3	48
Industrial Building Co.	Industrial Building Co.	99-105 Academy	89b-123	56
Rosina C. Boyd	Rosina C. Boyd	115 Academy	89b-117	
	Rosina C. Boyd	113 Academy	89b-118	
	Rosina C. Boyd	111 Academy	89b-119	45
Antoino and Angelina Faccidomo	Antoino and Angelina Faccidomo	132 Academy	88- 38	19

PLATE No. 38.
Blocks 376, 377.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Sidney C. Keller	C. Keller	427 High	377- 16	$ 75
		429 High	377- 18	
Selina McCracken	Selina McCracken	170 Academy	377- 5	23

PLATE No. 39.
Blocks 378, 379, 390, 380.

Est. of Geo. Minchen Mary J. Minchen	George Minchen	211 Academy	390- 47	$ 17
Joseph Pfohl	Joseph Pfohl	195 Academy	380- 31	16
	Joseph Pfohl	197 Academy	390- 38	17
	Joseph Pfohl	199 Academy	390- 40	17

PLATE No. 40.
Blocks 380, 390, 391.

Filomena Viscidi	Filomena Viscidi	223-225 Bank	391- 23	$ 50
	Filomena Viscidi	231 Bank	391- 26	40
	Filomena Viscidi	237-239 Bank	391- 29	48
				138
Ellen L. Jacot	Ellen L. Jacot	221 Bank	391- 22	40

PLATE No. 41.
Blocks 404, 405, 406, 409.

Selina McCracken	J. H. McCracken	29 Wickliffe	404- 16	$ 6
	J. H. McCracken	29½ Wickliffe	404- 17	8
	J. H. McCracken	31 Wickliffe	404- 31	9
	R. Mahler	33 Wickliffe	404- 18	12
	R. Mahler	35 Wickliffe	404- 19	11
	J. H. McCracken	253 Academy	404- 20	23
				69
Emidio Tarullo	Emidio Tarullo	257 Bank	405- 20	16
Francesco Penzino	Francesco Penzino	255 Bank	405- 18	23

PLATE No. 43.
Block 209.

Robert A. Dorrill	Robert A. Dorrill	280 Bank	209- 5	$ 15
Mrs. J. Goodman	M. Goodman	38 Richmond	209- 36	14
	M. Goodman	36 Richmond	209- 38	14
				28
George J. Witt	George J. Witt	10 Richmond	209- 54	13

PLATE No. 44.
Blocks 210, 211.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Nathan Hammerschlag	Nathan Hammerschlag	11 Richmond	210- 12	$ 11
Emanuel Baer and Charles See	Baer & See	15 Richmond	210- 14	
	Baer & See	17 Richmond	210- 15	
	Baer & See	19 Richmond	210- 16	
	Baer & See	250-252 Norfolk	210- 45	38
	Emanuel Baer	248 Norfolk	210- 47	8
				46

PLATE No. 45.
Blocks 224, 225.

Martha Compton	L. Compton	51-55 Richmond	225- 3	$ 34
Samuel G. Bailey	Samuel G. Bailey	63-69 Richmond	225- 9	47

PLATE No. 46.
Block 226.

Mrs. Mary Walker	J. D. Walker	62 Richmond	226- 48	$ 16
Samuel G. Bailey	Samuel G. Bailey	99 South Orange	226- 31	11
	Samuel G. Bailey	101 South Orange	226- 32	11

	Samuel G. Bailey	103 South Orange	226- 33	17
	Samuel G. Bailey	88 Richmond	226- 35	11
				50

PLATE No. 48.
Block 237.

Samuel Lagner	Samuel Lagner	9 Ranklin	237- 10	$ 14

PLATE No. 49.
Blocks 238, 239 (Part).

August W. Schumacher	A. Roemelle	29 Beacon	238- 86	$ 9
Wm. C. Fiedler	Wm. C. Fiedler	124 South Orange	238- 63	11
Nathan Mayer and Charles Zemel	N. and M. Zemel	27 Jones	239-107	10
	N. and M. Zemel	29 Jones	239-108	7
				17

PLATE No. 50.
Blocks 238, 239 (Con.)

Aaron Lang	L. Lang	228 Springfield	238- 16	
Simon Lang	L. Lang	226 Springfield	238- 15	
Marie Klappholz	L. Lang	61 Beacon	238- 14	$ 20
Rebecca Muehlfelder	L. Lang	66 Jones	238- 15	8
				28

Plate 50 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESS-MENT.
Gottfried Krueger	Gottfried Krueger	232 Springfield	238- 18	8
	Gottfried Krueger	49 Jones	239- 9	10
				18
Real Estate Trading Co.	Real Estate Trading Co.	65 Jones	239- 18	8
		67 Jones	239- 19	7
				15

PLATE No. 52.
Blocks 2500, 2503.

Ignatz Hauaman	Ignatz Hauaman	165-171 Springfield	2500- 1	$ 19

PLATE No. 53.
Block 2504.

August W. Schumacher	A. W. Schumacher	79 Mercer	2504- 3	$ 19
	A. W. Schumacher	77 Mercer	2504- 4	19
				38
Mrs. J. Goodman	Mrs. J. Goodman	151 Howard	2504- 12	7
	Mrs. J. Goodman		2504- 13	6

	Mrs. J. Goodman	153 Howard	2504- 14	5
	Mrs. J. Goodman	155 Howard	2504- 15	4
				22

PLATE No. 56.
Block 2507.

Julia L. Steiner	Julia L. Steiner	577-579 High	2507- 19	$ 30
Gottfried Krueger	Gottfried Krueger	583 High (Rear)	2507- 62	4
	Gottfried Krueger	581 High (Rear)	2507- 63	3
L. F. Blanchard	L. F. Blanchard	575 High	2507- 18	15
Marcus Straussberg	Marcus Straussberg	565 High	2507- 12	35

PLATE No. 57.
Blocks 872, 876.

Nathan Meyer and Charles Zemel	M. Zemel	59 Columbia	872- 11	$ 15
	M. Zemel	61 Columbia	872- 12	15
				30

PLATE No. 58.
Blocks 870, 871, 876 (Con.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Emma F. Stites	Est. Henry C. Jones	50-52 Liberty	870- 40	$ 8
Clara P. Brown	Est. Henry C. Jones	48 Liberty	870- 41	8
	Est. Henry C. Jones	46 Liberty	870- 42	7
				23
Emma F. Stites Clara P. Brown	Est. Henry C. Jones	49-55 Liberty	871- 28	30

PLATE No. 59.
Blocks 866, 867.

Gussie Devine	A. Devine	196 Mulberry	866- 12	$ 19
United Merchants Realty Co.	United Merchants Realty Co.	204 Mulberry	866- 8	20
Leopold and A' raham Meyer	L. and A. B. Meyer	37 Liberty	867- 8	9
	L. and A. B. Meyer	39-43 Liberty	867- 10	19
	L. and A. B. Meyer	102 Green	867- 14	7
				35

PLATE No. 60.
Blocks 868, 869.

Henry Loeffler	Henry Loeffler	44 Liberty	868- 24	$ 7
		42 Liberty	868- 25	7
				14
Gottfried Krueger	Gottfried Krueger	104 N. J. R. R.	869- 18	6
	Gottfried Krueger	116 Green	869- 19	5
	Gottfried Krueger	114 Green	869- 20	5
				16

PLATE No. 61.
Block 166.

The Central Railroad Company of New Jersey	Central R. R. of N. J.	7 Hamilton	166- 9	
	Central R. R. of N. J.	11 Hamilton	166- 10	$ 30
	Newark & N. Y. R. R.	1 Columbia	166- 18	4
				34
John B. Oelkers	John B. Oelkers	9 Columbia	166- 22	15
	John B. Oelkers	11 Columbia	166- 23	18
	John B. Oelkers	13 Columbia	166- 24	18
Elizabeth M. Oelkers	Elizabeth M. Oelkers	87 Lafayette	166- 28	15
				66

PLATE No. 63.
Blocks 162, 163.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Gussie Devine	G. Devine	264 Market	162- 26	$ 23
	G. Devine	266 Market	162- 27	15
	G. Devine	40 Lawrence	162- 28	19
				57
Est of Dr. Abram Coles J. Ackerman Coles Emily S. Coles	Abram Coles	126 Mulberry	162- 13	50
James and Mary E. Turnbull	M. E. Turnbull	142 Mulberry	162- 2	76
	M. E. Turnbull	136-140 Mulberry	162- 4	150
				226
Louis F. Hersh and Herman Hersh	L. F. Hersh	154 Mulberry	163- 12	
	L. F. Hersh	152 Mulberry	163- 13	135

PLATE No. 64.
Blocks 159, 160, 161.

Newark Warehouse Co.	Newark Warehouse Co.	24-36 Ward	159- 11	$ 265
James M. Seymour, Jr.	J. M. Seymour, Jr.	51 Lawrence	160- 23	23
	J. M. Seymour, Jr.	8-22 Kirk Place	160- 28	38

Anna J. Seymour	Anna J. Seymour	45-49 Lawrence	160- 25	41
	Anna J. Seymour	43 Lawrence	161- 31	15
				56
Walter D. Osborn Franklin D. Wheeler Florence O. Wheeler	C. S. Osborn	274 Market	161- 4	18

PLATE No. 65.
Blocks 153, 154, 155, 156, 157, 158.

J. Herbert Ballantine	J. H. Ballantine	314-322 Market	153- 1	$ 30
Walter H. Meier	Walter H. Meier	306 Market	154- 2	8

PLATE No. 67.
Block 151 (Part).

Nathan Meyer and Charles Zemel	N. Zemel	323 Market	151- 72	
	N. Zemel	326 Market	151- 73	
	N. Zemel	327 Market	151- 74	$ 19
Leopold Meyer	L. Meyer	355 Market	151- 88	5
	L. Meyer	357 Market	151- 89	4
				9

PLATE No. 68.
Block 151 (Con.).

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESSMENT.
Gussie Devine	A. Devine	267 Market	151- 57	$ 17
Gussie Devine	G. Devine	88 Commerce	151- 13	9
	G. Devine	92 Commerce	151- 15	9
				18
Oswald H. Roth	O. H. Roth, Jr.	295 Market	151- 41	11
Philip Roth, Jr.	Philip Roth, Jr.	299 Market	151- 39	11
	Philip Roth, Jr.	297 Market	151- 40	11
				22
James A. Turnbull	James A. Turnbull	283-285 Market	151- 46	33
Peter Keller	Peter Keller	98 Commerce	151- 18	11

PLATE No. 70.
Block 150 (Part).

Gussie Devine	G. Devine	79 Commerce	150- 33	$ 17
Lyon & Sons Co.	Lyon & Sons Co.	111 Commerce	150- 8	14
		109 Commerce	150- 10	14
		107 Commerce	150- 12	13
		105 Commerce	150- 14	13

		103 Commerce	150- 16	13
		97 Commerce	150- 20	8
		91 South Canal	150- 60	8
		93 South Canal	150- 63	8
		95 South Canal	150- 64	8
		97 South Canal	150- 66	8
		99 South Canal	150- 68	8
		101 South Canal	150- 70	8
		103 South Canal	150- 72	8
		105 South Canal	150- 74	8
				139

PLATE No. 71.
Blocks 148, 149.

James A. Turnbull	James A. Turnbull	65 Clinton	148- 2	$ 17
	James A. Turnbull	67 Clinton	148- 3	24
	A. Turnbull	247 Market	148- 24	41
				82
Baker Printing Co.	Baker Printing Co.	71 Clinton	148- 5	15
	Baker Printing Co.	73 Clinton	148- 6	15
				30

Plate 71 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESS-MENT.
Samuel R. Baker	S. R. and W. A. Baker	69 Clinton	148- 4	20
William A. Baker	S. R. and W. A. Baker	251 Market	148- 21	34
				54
Groebe McGovern Co.	Groebe McGovern Co.	84 Clinton	149- 11	11
	Groebe McGovern Co.	82 Clinton	149- 12	11
	Groebe McGovern Co.	80 Clinton	149- 13	11
				33
Gussie Devine	A. Devine	80-84 Commerce	149- 6	30
Crowell & Coe	James A. Coe	72 Clinton	149- 17	15
		108 Mulberry	149- 21	53
				68
Amanda M. Smith	Thomas Smith	74-76 Commerce	149- 1	
May Green		76½ Commerce	149- 4	
Ellen Harpell		78 Commerce	149- 5	38
Jane Laraway				
Cora Laraway				
Charles Smith				
Carrie Stalnaker				
Imogene Latchaw				
Ida Kinsey				

Clare Hook
Emma L. Pike
Grace H. Dickenson
Nellie S. Cass
Joseph J. Stephens
Bessie J. S. Hook
Wm. T. Stephens
Emmabelle Stephens
Fred B. Stephens

PLATE No. 72.
Blocks 144, 145.

Julius S. Rippel	J. S. Rippel	18 Clinton	145- 78	
		16 Clinton	145- 80	$ 75
Frederick D. and Frank L. Stoutenburgh and Marianna S. Gleason	R. Stoutenburgh	48 Commerce	145- 38	20
		44 Clinton	145- 60	29
				49
Amanda M. Smith May Green Ellen Harpell Jane Laraway Cora Laraway Charles Smith Carrie Stalnaker Imogene Latchaw	Thomas Smith	16 Commerce	145- 15	
		18 Commerce	145- 16	
		20 Commerce	145- 17	47

Plate 72 (cont.)

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESS-MENT.
Ida Kinsey				
Clare Hook				
Emma H. Pike				
Grace H. Dickson				
Nellie S. Cass				
Joseph W. Stephens				
Bessie J. S. Hook				
William T. Stephens				
Emmabelle Stephens				
Fred B. Stephens				
Elsie P. Sauvage	P. Sauvage	48 Clinton	145- 58	
	P. Sauvage	46 Clinton	145- 59	42

Rule Joining Parties.

Dated July 3, 1916.

NEW JERSEY SUPREME COURT.

Application having been made to join B. & R. Corporation and certain other property owners concerned as parties Prosecutors to the writ of certiorari issued herein to review the assessments for the opening and widening of Branford Place, from Halsey Street to Springfield Avenue, in the City of Newark, and both parties by their respective attorneys consenting to the making of this rule;

It is, on this third day of July, 1916, Ordered that B. & R. Corporation and all other property owners concerned, as shown on the annexed schedule, be, and they are hereby made parties Prosecutors to said writ.

And it is further Ordered that it shall not be necessary to sue out separate writs for said property owners.

F. J. SWAYZE,
J. S. C.

We consent to the foregoing Rule:

COULT & SMITH,
STEIN, STEIN & HANNOCH,
Attorneys of Prosecutors.

HARRY KALISCH,
Attorney of Respondents.

Schedule.

PLATE No. 2.
Block 60.

OBJECTOR.	ASSESSED TO.	STREET AND NUMBER.	BLOCK AND LOT.	ASSESS-MENT.
B. &. R. Corporation	B. &. R. Corporation	193-197 Halsey	60- 43	$3,750

PLATE No. 13.
Block 62.

Prudential Insurance Co.	Lowy & Co.	63 Bank	62- 12	$ 75
Prudential Insurance Co.	Lowy & Co.	65 Bank	62- 13	
Prudential Insurance Co.	Lowy & Co.	67 Bank	62- 14	

PLATE No. 24.
Block 2497.

Martin Burne	Martin Burne	553-559 High	2497- 49	$ 128
Lucien Burne	Lucien Burne	2- 10 Mercer		
Honoria Ann Blanchet	Honoria Ann Blanchet			
Margaret B. Cook	Margaret B. Cook			
D. Paul Burne	D. Paul Burne			

PLATE No. 33.
Block 165.

G. Krueger	G. Krueger	65 Lafayette	165-67-68	$ 21
G. Krueger	G. Krueger	181 Mulberry	165-65	38

PLATE No. 35.
Block 164.

Kinney Realty Co.	Kinney Realty Co.	788-794 Broad	164- 8	$1,350

PLATE No. 61.
Block 166.

Martin Burne, Jr.	Martin Burne, Jr.	184 Mulberry	166- 2	$ 29
Lucien Burne	Lucien Burne			
Honoria Ann Blanchet	Honoria Ann Blanchet			
Margaret B. Cook	Margaret B. Cook			
D. Paul Burne	D. Paul Burne			

PLATE No. 70.
Block 150.

G. Krueger	G. Krueger	99 Commerce	150- 19	$ 8
G. Krueger	G. Krueger	95 Commerce	150- 21	10

PLATE No. 77.
Block 109.

Union Universalists Society	Union Universalists Society	937-939 Broad	109- 13	$ 26

Return.

Return by Comptroller.

Dated June 26, 1916.

In obedience to the command of the within writ directed to me, I, Tyler Parmly, Comptroller 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, the report of assessments for benefits made by Harrison R. Van Duyne, Harry B. O'Connell and Michael DeVita, Assessment Commissioners of the City of Newark, for the opening and widening of Branford Place in said city from Halsey Street to Springfield Avenue, together with the maps and schedules thereto attached and all proceedings had thereunder, which assessments were confirmed against property of Richard C. Jenkinson known as lots Nos. 64, 67, 68 and 93 on Block 73 of the Assessment Maps of the City of Newark; property of Gottfriend Krueger known as lots Nos. 18, 19 and 12 on Block 896 on said maps; and property of Real Estate Trading Company known as lot No. 26 on Block 2498 on said maps, and property of Nathan Hammerschlag known as lot No. 12 on Block 210 on said maps, together with all schedules and returns filed with me; together with the resolution adopted by the Board of Street and Water Commissioners of the City of Newark on January 23d, 1913, and approved by the Mayor January 24, 1913, fixing the amount required for the opening and widening of said Branford Place; and the resolution of the said Board of Street and Water Commissioners adopted January 23, 1913, approved by the Mayor January 24, 1913, directing publication of notice of its intention to cause said improvement to be made;

Return.

and the resolution adopted by the Common Council of the City of Newark on February 7, 1913, approved by the Mayor on February 10, 1913, authorizing the issue of temporary loan bonds for said opening and widening; the resolution of the Common Council of the City of Newark adopted August 7, 1914, and approved by the Mayor August 8, 1914, authorizing the issue of temporary loan bonds for said opening and widening; and the resolution of the Common Council of the City of Newark adopted October 2, 1914, and approved by the Mayor October 3, 1914, ascertaining and declaring the total costs and expenses incurred in making said improvement, and the proceedings taken by William Dimond, Joseph Heisler and Adolph Holzner, Assessment Commissioners 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.

In witness whereof, I have hereunto set my hand and seal this twenty-sixth day of June, A. D. Nineteen hundred and sixteen.

TYLER PARMLY,
Comptroller of the City of Newark.

Notice of Intention.

Approved January 24, 1913.

RESOLVED, That it is the intention of The Board of Street and Water Commissioners of the City of Newark, under and by virtue of the provisions of the Act entitled "An Act to revise and amend the Charter of the City of Newark," approved March 11, 1857, and the Supplements thereto, and the law creating this Board, approved March 28, 1891, being Chapter 134 of the laws of 1891, and the laws of the State relating to such improvements, to order and cause—the opening and widening of BRANFORD PLACE from Halsey Street to the intersection of High Street and Springfield Avenue, the general width of the new street to be sixty-two (62) feet except the section between Halsey Street and Washington Street which will have an average width of seventy (70) feet, in accordance with a map on file in the office of the Chief Engineer, known as No. 1130-0.

And the Chief Engineer of the Board is hereby directed to give public notice in three daily newspapers, and one insertion in each of two weekly newspapers, printed and published in the City of Newark, of the intention of the Board of Street and Water Commissioners to order and cause such improvement to be made, requesting such persons as may object thereto, to present their objections in writing, at the office of the Chief Engineer of the Board, on or before the expiration of six days from the date of such notice.

Adopted Jan. 23, 1913.

(Signed) P. H. RYAN,
President of the Board of Street and Water Commissioners.

Resolution Requesting Issuance of Bonds.

Presented to the Mayor Jan. 24, 1913, for Approval.

(Signed) A. L. SWAIN,
Acting Clerk.

Approved Jan. 24, 1913.

(Signed) JACOB HAUSSLING,
Mayor.

(Proof of Publication.)

Notice of Intention as provided for in the foregoing Resolution was published as follows:

Newark Evening News, Jan. 25th, 27th, 28th, 29th and 30th, 1913.

Newark Evening Star, Jan. 25th, 27th, 28th, 29th and 30th, 1913.

Freie Zeitung, Jan. 27th, 28th, 29th, 30th and 31st, 1913.

Newark Sunday Call, Jan. 26th, 1913.

Newark Ledger, Jan. 25th, 1913.

Resolution of Board of Street and Water Commissioners Requesting Issuance of Bonds.

Approved January 24, 1913.

RESOLVED, That the Board of Street and Water Commissioners hereby certifies that in its judgment the sum of one million dollars ($1,000,000.00) is necessary for the opening and widening of BRANFORD PLACE from Halsey Street to the intersection of High Street and Springfield Avenue; said estimate having been prepared on the basis of the estimated value of the land and real estate needed for said opening and widening;

AND BE IT FURTHER RESOLVED, That the Common Council is hereby requested, in conformity with the provisions of Chapter 121 of the State Laws of 1912, entitled "An Act to provide funds to be used for opening, widening and vacating streets and highways in cities of the first class in this State," approved March 21, 1912, to provide and make available in the fund for the opening, widening and vacating of streets, the said sum of one million dollars ($1,000,000.00) or so much thereof as may be necessary to be used for the purpose herein expressed.

Adopted Jan. 23, 1913.

(Signed) P. H. RYAN,
President of the Board of Street and Water Commissioners.

Presented to the Mayor for Approval Jan. 24, 1913.

(Signed) A. L. SWAIN,
Acting Clerk.

Approved Jan. 24, 1913.

(Signed) JACOB HAUSSLING,
Mayor.

Resolution of Common Council Authorizing Bonds.

Approved Feb. 10, 1913.

RESOLVED, That the Comptroller be and he is hereby authorized to issue Temporary Loan Bonds to the amount of One million dollars ($1,000,000.00) the proceeds of which are to be used for the opening and widening of Branford Place from Halsey Street to the intersection of High Street and Springfield Avenue, in accordance with the provisions of Chapter 121 of the State Laws of 1912 entitled "An Act to provide funds to be used for opening, widening and vacating streets and highways in cities of the first class in this State," approved March 21, 1912.

P. C. O'BRIEN,
C. J. HARRINGTON,
E. J. QUIGLEY,
JOHN F. REILLY,
Committee on Finance.

Adopted Feb. 7, 1913.

J. H. DONNELLY,
President of Common Council.

Presented to the Mayor for his Approval Feb. 8, 1913.

JAS. F. CONNELLY,
City Clerk.

Approved February 10, 1913.

JACOB HAUSSLING,
Mayor.

Resolution of Common Council Authorizing Additional Bonds.

Approved Aug. 8, 1914.

RESOLVED, That the Comptroller be and he is hereby authorized to issue Temporary Loan Bonds to the amount of Fifty Thousand Dollars ($50,000.00) the proceeds of which are to be used for the opening and widening of Branford Place from Halsey Street to the intersection of High Street and Springfield Avenue, in accordance with the provisions of Chapter 121 of the State Laws of 1912 entitled "An Act to provide funds to be used for opening, widening and vacating streets and highways in cities of the first class in this State," approved March 21, 1912, and the amendments thereof and supplements thereto.

J. F. REILLY,
THOMAS J. LEE, JR.,
ANGELO R. BIANCHI,
GEO. W. TAYLOR,
Committee on Finance.

Adopted August 7, 1914.

P. C. O'BRIEN,
President of Common Council.

Presented to the Mayor for his Approval Aug. 8, 1914.

A. ARCHIBALD,
City Clerk.

Approved Aug. 8, 1914.

JACOB HAUSSLING,
Mayor.

Certification of Cost of Opening.

Dated Oct. 1, 1914.

AUDITOR'S OFFICE

Newark, N. J., Oct. 1, 1914.

To the Board of Street and Water Commissioners.

Gentlemen:

I respectfully submit the Statements annexed (by items), of the Cost and Expenses of the several Openings now completed and ready to report to Common Council for the appointment of Commissioners to assess benefits, which amount in gross to the following sums as shown by the records of this office.

A. K. BRADY,
Acting Auditor.

Branford Place Opening..... $1,093,040.20

To the Hon., the Common Council of the City of Newark.

Gentlemen:

Pursuant to the directions of the statute, in such case made and provided, we certify the Costs and Expenses of the several Openings to be as stated above, a detailed statement of which is attached, in order that you may proceed to collect the same according to law.

C. F. KRAEMER,
President Board of Street and Water Commissioners.

A. L. Swain,
Acting Clerk.

Declaration of Cost.

Approved Oct. 3, 1914.

RESOLVED, That the Common Council of the City of Newark has ascertained and hereby declares that the total amount of costs and expenses incurred in the following street improvements to be as follows:

Branford Place Opening..... $1,093,040.20

and the City Counsel be and he is hereby authorized to apply to the Assessment Commissioners to make the assessments.

J. F. REILLY,
A. R. BIANCHI,
GEO. W. TAYLOR,
JOHN J. WALSH,
Committee on Finance.

Adopted Oct. 2, 1914.

MARK F. PHILLIPS,
Acting President of Common Council.

Presented to the Mayor for his Approval Oct. 3, 1914.

A. ARCHIBALD,
City Clerk.

Approved Oct. 3, 1914.

JACOB HAUSSLING,
Mayor.

Second Report of Commissioners.

Dated September 20, 1915.

WHEREAS, The Board of Street and Water Commissioners, of the City of Newark, N. J., by ordinance approved March 9, 1913, did determine that Branford place should be opened and widened from the westerly line of Halsey street to a point on the southerly line of Springfield avenue, located about 44.33 feet east of the easterly line of High street, and that the whole amount of the costs and expenses paid and incurred by the City of Newark, in the prosecution and completion of the said improvement, should be assessed according to the provisions of the Act entitled "An Act to revise and amend the charter of the City of Newark," approved March 11th, 1857, and the supplements thereto.

AND WHEREAS, The said Board of Street and Water Commissioners, did duly certify to the Common Council of the City of Newark, the costs and expenses paid and incurred by the City of Newark,

AND WHEREAS, The Mayor and Common Council of the City of Newark, did thereupon by resolution approved October 3, 1914, ascertain and declare the whole amount of the costs and expenses paid and incurred by the City of Newark, to be the sum of one million, ninety-three thousand and forty dollars and twenty cents, said costs and expenses being arranged under the following principal divisions or heads, to wit:

Total Damage Award	$1,037,120.00
Amount Received for Buildings Sold	10,416.50
Net Damage Award	1,026,703.50
Preliminary Costs	11,952.00
Commissioners' Fees for Damages	1,000.00

Commissioners' Fees for Benefits..	1,000.00
Maps and Clerkship.....	1,000.00
Advertising	750.00
Court and Filing Fees.....	22.72
Interest	50,611.98

And Whereas, The Mayor of the said City of Newark, did by virtue of an Act of the Legislature of New Jersey, entitled "An Act concerning assessments for local improvements in the cities of the first class, providing for the appointment of Boards of Commissioners to make all such assessments, defining the duties of such Commissioners and fixing their compensation," approved March 24th, 1892, appoint the undersigned Harrison R. Van Duyne, Harry B. O'Connell and Michael Devita, being Freeholders and residents in said city, Commissioners to make an estimate and assessment upon all the owners of all the lands and real estate in the City of Newark peculiarly benefited by any local improvement, in proportion as nearly as may be to the advantage each was deemed to have acquired, and in case the cost and expenses of the said improvements should exceed the amount of the said benefits, then to assess such excess upon the City of Newark.

Now, Therefore, Be it known, that we, the said Commissioners, before entering upon the performance of the duties required of us in the said appointment, having first severally taken and subscribed the oath required by law to be by us taken, to faithfully and impartially discharge the duties imposed upon us, according to the best of our skill and ability, did enter upon the duties of the said appointment, and having viewed and examined the lands and premises peculiarly benefited by the said improvement and so far as prac-

ticable ascertained the names of all the owners of the lands and real estate in said city peculiarly benefited by the said improvement, and caused a map of the said lands and real estate benefited as aforesaid to be made, which map accompanies this report and makes a part thereof, we did make the said estimate and assessment fairly, legally and equitably, according to the best of our skill and ability; and having prepared a report by a certificate in writing of the said assessment so made, did cause the same to be placed in the office of the City Clerk of the City of Newark, for examination by the parties interested therein, and did give notice by advertisement published in three daily papers (one of which is printed in the German language) printed and published in the City of Newark, for five days successively prior to the time appointed for meeting therein, that said report was deposited as aforesaid and also the time and place, when and where the parties interested in the said assessment could be heard by the said Commissioners, of which advertisement a copy is hereunto annexed, at which time and place appointed in said notice, having met for the purpose of hearing the said parties in relation to the said assessment, and having given an opportunity to the parties then and there to be heard before us in relation thereto; and having further considered the subject of the said assessment and the representations of the parties interested therein, and objections in writing having been presented to us and which are annexed hereto, and having further considered the said objections, we, at last said meeting, concluded the consideration of the said assessment, and proceeded to complete and sign the said report of the said assessment; and we do hereby report

that we have assessed upon all the owners of all the lands and real estate in said city peculiarly benefited by the opening and widening of Branford place as hereinafter particularly set forth, in proportion as nearly as may be to the advantage each was deemed by us to have acquired, the sum of five hundred thirty-three thousand seven hundred ninety-four dollars and the balance of the whole amount of the costs and expenses which exceeds the amount of the benefits being the sum of five hundred fifty-nine thousand two hundred forty-six dollars and twenty cents is paid by the City of Newark. And we do further certify that we have limited the said several assessments so made as aforesaid, and more particularly hereinafter referred to, upon all the owners of all the lands and real estate peculiarly benefited as aforesaid, to the amount of the peculiar benefits conferred on said owners of said lands and real estate by said improvement, and that no others than the owners of said lands and real estate so assessed as aforesaid are peculiarly benefited by the said improvement.

The following and annexed is a schedule of the several assessments upon the several owners of all the lands and real estate in the City of Newark peculiarly benefited by the said improvement, and the amount assessed upon each of the said owners according to the best of our skill and ability, which schedule makes part of this, our report. The maps accompanying the same and hereunto annexed and signed by us, exhibit the location and dimensions of the several lots, tracts and parcels of land and real estate assessed. In all cases where it appears in the annexed schedule, that the owners of the property assessed are unknown, or that the property as-

sessed belongs to an estate, we hereby certify that we have diligently endeavored to ascertain the names of the owners so assessed as unknown, and the names of the persons interested in the said estate, but have been unable to obtain information with reference therto. The said lots, tracts and parcels of land and real estate are known by and designated as upon the block maps of the City of Newark, and by the names of the owners, so far as practicable, as whose property they are assessed respectively, and the street numbers of each and every of such lot, tract and parcel of land and real estate where the streets are numbered.

The figures, lot numbers and block numbers on the annexed maps, refer to the figures, lot numbers and block numbers mentioned in the annexed schedule of assessment.

In Witness Whereof, We, the said Commissioners, have hereunto set our hands, this twentieth day of September, 1915.

HARRISON R. VAN DUYNE,
HARRY B. O'CONNELL,
MICHAEL DEVITA,
Commissioners.

Block No.	Lot No.	Street No.	Names of Owners.	Amount Assessed.
73	64	289–293	Richard C. Jenkinson	
	67	295	Richard C. Jenkinson	
	68	297	Richard C. Jenkinson	
	93	Rear 297	Richard C. Jenkinson	$2,250
			(Map omitted)	
2498	26	122–126	Real Estate Trading Co.	60
			(Map omitted)	

210	12	11	Nathan Hammerschlag	11
			(Map omitted)	
869	18	104	Gottfried Krueger ..	6
	19	116	Gottfried Krueger ..	5
	20	114	Gottfried Krueger ..	5
			(Map omitted)	

First Report of Commissioners.

Dated December 12, 1914.

This report is the same as the second report except that it is dated September 20, 1915, and is made by William Dimond, Joseph Heisler and Adolph Holzner, Commissioners, and the amount assessed against individual properties is $698,390 and the balance of $394,650.20 is paid by the City of Newark.

In this first report the word "peculiar," which is the thirty-ninth word from the end of the third from the last paragraph of the report reads "açtual." (We have underscored the word peculiar in the second report).

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

I, FREDERIC ADAMS, Judge of the Circuit Court in and for Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey the order and proceedings of the court together with all things touching and concerning the same as by the within writ to me directed I am commanded.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said court and (SEAL) county at Newark, N. J., this 26th day of June, 1916.

FREDERIC ADAMS,
Circuit Court Judge.

The following rules referring to First Report are omitted:

Jan. 6, 1915.

Dec. 12, 1914, Dec. 19, 1914, Jan. 9, 1915, Jan. 16, 1915, Jan. 23, 1915, Jan. 30, 1915, Feb. 6, 1915, Feb. 13, 1915.

Opinion of Circuit Court on Returning First Report.

ESSEX CIRCUIT COURT.

Saturday, February 27, 1915.

In the Matter of the Report of the Commissioners of Assessment of the City of Newark assessing benefits for the Branford Place Opening and Widening.	*On Objections to Report.*

DECISION.

Adams, *J.*

This is an application to refer back to the commissioners the report assessing benefits for the Branford place opening and widening.

A number of arguments have been presented in favor of this application. It is urged that the report should be recommitted because a great many objections have been filed to individual assessments. It is not phrased in exactly that way perhaps, but that is substantially a part of what has been said. The Court has no power to recommit merely for this cause. The act of 1875 contemplates action to be taken upon a hearing. By "a hearing" is meant, not merely the announcement and reception by the Court of an objection, but a judicial examination of the merits of the objection. None of these objections to individual assessments, of which there are a great many, have yet been examined. There has been no opportunity for examination. As the case stands, the legal

presumption in favor of the report, on which so many of our New Jersey cases lay stress, prevails over the mere fact that that objections to individual assessments have been filed.

Nor, for the same reason, can the Court recommit merely because the law department of city says that, in its opinion, some of the assessments are too large and others too small. This announcement relieves the Court of no responsibility.

Nor should the Court recommit because now to confirm those assessments which are not objected to would be illegal. The law was settled the other way twenty-five years ago in *McCarter* v. *Newark,* 22 Vroom, 341. This case is prefaced by an opinion on *certiorari* by Mr. Justice Depue, in which he says:

> "The Supreme Court on certiorari, and the Circuit Court in the matter of general assessments, have always regarded the assessment against the individual, standing by itself, as an assessment in its totality, so far as regarded that particular individual."

The opinion of the Supreme Court, which follows, sustains the practice which has been followed here ever since.

It is urged that various acts of advertising, and the like, prior to the report were illegal. As to the attitude which the Circuit Court should take as to these matters anterior to the report itself, three views are possible: First, the broadest claim in favor of the power of the Court is that the Court should inquire into the legality of anything, even the ordinance, on which the report rests for support. I have been asked, not in this matter, but in similar

matters, by counsel for whom I have the highest respect and who had a perfect right to make the application, to consider the legality of an ordinance on which the whole proceeding rests.

That I have always declined to do, on the ground that the statute confers no such jurisdiction. My view has been perhaps at the other extreme; that the report, and nothing but the report, is to be investigated, that the jurisdiction attaches when, in the language of the statute, the report comes into court, and that the Court does not go back of that date in its inquiry. That view would rule out these matters.

An intermediate view is suggested to me, to which, standing by itself, separated from the earliest view which I mentioned, the broader view, I have never given any particular attention, and it is this: That the Court may inquire, and ought to inquire, not, indeed, as to acts over which the commissioners have no control, like an ordinance, but as to such of their own acts performance of which is made by law a condition precedent to the making of a legal report; and that view would include the objections which I now have in mind. This proposition is fairly arguable, and I am not prepared to say that it is not sound; but I have not thought it necessary to examine this phase of the case, and go into details of these objections as to advertisement, and what not, because I shall dispose of the application upon a ground which will make such examination needless. If the report is to go back as a whole, it ought to be easy for the law department, by being over cautious, to forestall any objection founded on mere procedure.

There remains the objection on which I purpose to dispose of this matter, which relates to the kind of benefit which the commissioners adopted as the measure of their assessment. It will be admitted that the basis of the report ought to be the peculiar benefit which landowners have sustained, as distinguished from the general benefit which landowners have sustained in common with all the rest of the community. In taking up the report for the purpose of seeing whether they have applied this rule, I notice on the face of their report certain things: First, a recital that certain commissioners were appointed to make an estimate and assessment on all landowners "peculiarly benefited by any local improvement, in proportion, as nearly as may be, to the advantage each was deemed to have acquired." The word "advantage" is used, not "benefit" and not "peculiar advantage"—the antecedent phrase "peculiarly benefited" being correctly and naturally understood to limit the advantage to the advantage resulting from peculiar benefit. The report then begins: "Now, therefore," that the commissioners, "having viewed and examined the lands and premises peculiarly benefited by the said improvement, and, so far as practicable, ascertained the names of all the owners of the lands and real estate in said city peculiarly benefited by the said improvement, and caused a map of the said lands and real estate benefited as aforesaid to be made;" and then, "We did make the said estimate and assessment fairly, legally and equitably, according to the best of our skill and ability"—"the said estimate and assessment" referring back, of course, to the antecedent phrase of the re-

port—"and we concluded the consideration of the said assessment, and proceeded to complete and sign the said report of the said assessment, and we do hereby report that we have assessed upon all the owners of all the lands and real estate in said city peculiarly benefited in proportion as nearly as may be to the advantage each was deemed by us to have acquired." There we have the same phrase over again. And then comes the clause which makes the trouble: "And we do further certify and report that we have limited the said several assessments so made as aforesaid and more particularly hereinafter referred to, upon all the owners of all the lands and real estate peculiarly benefited as aforesaid, to the amount of the actual benefits conferred on said owners of said lands and real estate by said improvement, and that no others than the owners of said lands and real estate so assessed as aforesaid are peculiarly benefited by the said improvement."

The difficulty arises out of the use of the word "actual,"—as to what that means. I do not know why that word was put into the report. There may be some decision which would explain it, but I have not been able to find it. I find great difficulty in getting a clear idea as to what that word means. Two views may be taken. One view is that it means nothing; that is, that it adds nothing to the sense, and that what the report says in that paragraph is merely equivalent to saying that the commissioners made the assessment, limiting it to the amount of the peculiar benefits actually received, which, of course, would be, as far as the word "actually" goes, a superfluous statement. The other view is that the word "actual" throws

the subject into confusion, and that the report is susceptible of this construction: that the commissioners first ascertained who were peculiarly benefited, recognizing in them a class of men and women who had received from the opening of the street special to them and over and above that which the general public received, and that they also, as members of the general public, had received some benefit, and that the actual benefit refers to the totality of the two kinds of benefits which were conferred upon them, the special benefit and the general benefit.

I am not very much impressed by this objection, and, as a matter of construction of the report, it seems to me that if I were sitting, not in a court of first instance, as I am, but in a court of review, I should decide that the word "actual" meant nothing. But I am not in a court of review; I am here at the beginning of the proceeding; and I have so much sense of my own fallibility, as well as the fallibility of others, that it is quite impossible for me even to conjecture with any assurance what view would be taken by the courts at Trenton who might be called upon to review this assessment. I think they would probably say that the word "actual" meant nothing. But I recognize this as a serious question, as an awkward, embarassing and difficult question of construction, and I ought not to dogmatize about it when it is possible to eliminate it at or near the beginning of this extensive and expensive proceeding. It is possible to eliminate it by referring the report back. If the question remains, there is no telling how much time it may cost and how much money it may take to straighten the matter out, and how much trouble it may involve to parties

and counsel. I think, therefore, that it is the part of wisdom for the Court to recognize the existence of this feature of the report and to refer the report back in order that it may be eliminated, and that it is no objecion to referring the report back that there are many assessments against individuals which are not objected to because the report as to them is not a finality, and this class of individuals have acquired no vested right that the assessment against them should remain and be just what it now appears upon the report.

The report will therefore be referred back, with instructions to the commissioners to review it as to the basis of the assessment with respect to benefit, and, of course, as to the amount and the distribution of the assessment against individuals.

Order Returning First Report.

Dated March 19, 1915.

It appearing that a report was made by the Commissioners of Assessment of the City of Newark making an assessment according to benefits conferred upon property by the opening and widening of Branford place from the westerly line of Halsey street in the City of Newark to a point on the southerly line of Springfield avenue in said city, located about 44.33 feet east of the easterly line of High street, dated December 12, 1914, and filed with the clerk of the Essex County Circuit Court; and it further appearing that subsequent to the filing of said report and on February 6, 1915,

the Essex Circuit made an order directing that notice of a hearing be given to the owners of property alleged to be peculiarly benefited by said improvement, and that said Court would hear objections that might be made to said assessment at the Court House in the City of Newark in the Circuit Court rooms, Nos. 302-303, on the 13th day of February, 1915, at ten o'clock in the forenoon or as soon thereafter as the same could be heard, said order further directing notice of such hearing to be published in at least two of the official newspapers of the City of Newark for five successive days prior to said date, and further making provision for the filing of written objections to the confirmation of said report; and numerous objections in writing having been filed both as to the confirmation of said report as against the objectors and against the confirmation of any part of said report; and said matter coming on to be heard before the Essex Circuit Court on the 13th day of February, 1915, at the time and place aforesaid, and said Essex Circuit Court having by an order made on that day set down the hearing of said objections before said Court on the 20th day of February, 1915, at the same time and place; and the matter coming on to be heard at said last mentioned time; and on motion made by Adrian Riker, of counsel on behalf of the objectors, to refer back to commissioners the said report, and on motion made by Harry Kalisch, city attorney, of counsel with the Mayor and Common Council of the City of Newark, to refer back said report to commissioners; and after hearing Adrian Riker, J. Franklin Fort, Leo Stein and William A. Smith, of counsel with objectors, in favor of said mo-

tion, and Harry Kalisch, city attorney, of counsel with The Mayor and Common Council of the City of Newark, in favor of said motion, and Frank E. Bradner, of counsel with certain landowners, in opposition thereto; and the Court having taken the matter under advisement and having, by order made on said 20th day of February, 1915, continued this matter until February 27, 1915, at the same time and place, and the Court having duly considered the argument of counsel and the briefs filed:

It is, therefore, on this nineteenth day of March, nineteen hundred and fifteen, ORDERED that said report be and the same is hereby referred to Harrison R. Van Duyne, Harry B. O'Connell and Michael DeVita, Commissioners of Assessment for Local Improvements in the said City of Newark, to reconsider the subject matter thereof, and to present a new report, making an assessment of the costs and expenses of said improvement upon all the owners of lands and real estate in the City of Newark peculiarly benefited by the said opening and widening of Branford place in proportion to the peculiar benefit received therefrom, but in no case in excess of such benefit, and in case the costs and expenses of said improvement shall exceed the amount of said benefits, then to assess such excess upon the City of Newark.

Let the foregoing order be entered.

FREDERIC ADAMS,
Circuit Court Judge.

Objection by Prosecutors to Commissioners' Report.

Filed October 2, 1915.

To the Circuit Court of Essex County.

We, the undersigned owners of real estate proposed to be assessed for peculiar benefits in a report made under date of September 21st, 1915, by Harrison R. Van Duyne, Harry B. O'Connell and Michael Devita, Assessment Commissioners, acting for the Mayor and Common Council of the City of Newark, for the opening and widening of Branford place in said City of Newark, respectfully object to said report and to the assessments therein made against the parcels respectively owned by us, and to the confirmation of said report by the Circuit Court of Essex County on the following grounds:

First Objection: Because our said respective real properties are not peculiarly benefited by said improvement.

Second Objection: Because, at all events, our said respective properties are not peculiarly benefited by said improvement to the extent of the proposed assessment.

Third Objection: Because said commissioners by their report have not made said assessments upon all the owners of land and real estate in the City of Newark peculiarly benefited by said improvement in proportion, as nearly as may be, to the advantages each is deemed to acquire.

Fourth Objection: Because our respective properties do not front or abut upon said opening and are not peculiarly benefited by said improvement, in accordance with said proposed assessment.

Objections to Commissioners' Report.

Fifth Objection: Because the proposed assessments against our respective real properties for said improvement are made up by arbitrary method and by scale and are not proposed to be made on our properties in accordance with the peculiar benefits to each property; and the advantages and benefits, if any, of said improvement vary as to the various lots or parcels of land.

Sixth Objection: Because the Board of Street and Water Commissioners did not, as stated in said report, certify to the Mayor and Common Council of the City of Newark the cost and expenses paid and incurred in prosecuting and completing said improvement.

Seventh Objection: Because the Mayor and Common Council of the City of Newark did not by any duly and legally passed resolution ascertain and declare the amount of the cost and expenses paid and incurred by said the Mayor and Common Council of the City of Newark in the making, prosecution and completion of said improvement.

Eighth Objection: Because said commissioners did not, before entering upon the performance of their duties, sufficiently take and subscribe the oath required of them by law.

Ninth Objection: Because said commissioners did not view or examine our respective lands and properties so proposed to be assessed and reported by them to be peculiarly benefited by said improvement.

Tenth Objection: Because said commissioners did not, so far as they might have done, ascertain the names of all of the owners of the lands and real estate in said City of Newark peculiarly benefited by said improvement, nor did they, as

required by law, cause a map to be made, to accompany said report.

Eleventh Objection: Because said commissioners, in the making of their said assessment and report, did not make their estimates and assessments fairly, legally and equitably, nor according to the best of their skill and ability.

Twelfth Objection: Because said commissioners did not, after having prepared a report of the assessments for said improvement or a tentative report thereof, by certificate in writing cause the same to be deposited in the office of the city clerk of the Mayor and Common Council of the City of Newark for the examination of the parties interested therein.

Thirteenth Objection: Because sufficient time did not elapse between the date of depositing the proposed report of said commissioners with the city clerk of said City of Newark and the hearing before said commissioners.

Fourteenth Objection: Because neither due, legal nor sufficient notice was given by advertisement or otherwise of the hearing of said commissioners, referred to in said report, as to the proposed assessment and the making of said report.

Fifteenth Objection: Because said commissioners did not give notice by advertisement of said hearing on August 10, 1915, referred to in said report, in two of the official newspapers of said city selected with regard to the age and average circulation of said official newspapers.

Sixteenth Objection: Because said commissioners did not give notice of said hearing on August 10, 1915, referred to in said report in two nor in more than two newspapers, official or otherwise, published in the City of Newark.

Objections to Commissioners' Report.

Seventeenth Objection: Because said commissioners did not, as required by law nor as stated in their report, publish a notice of the hearing on August 10, 1915, referred to in said report, in three daily newspapers printed and published in the City of Newark, nor in one of such newspapers printed in the German language.

Eighteenth Objection: Because said commissioners did not, after hearing the objections made at said hearing, referred to in said report, by some of the undersigned objectors and by others, further consider the proposed assessment against the objectors nor the subject thereof nor the representations made to said commissioners in relation thereto.

Nineteenth Objection. Because said commissioners in passing on the representations and objections made to them at their said hearing, acted arbitrarily and without due regard to law and justice and the rights of the undersigned and did not consider the objections presented, and in holding said hearing and receiving said objections acted arbitrarily and merely for the purpose of pretending to conform to the legal requirement of having a hearing.

Twentieth Objection: Because neither due nor legal nor sufficient notice, as required by law and the order of the Circuit Court of Essex County, was given of the filing of said report with the clerk of the Circuit Court of Essex County, nor of the time and place of hearing of objections to said report or the assessments thereby made.

Twenty-first Objection: Because neither due, legal nor sufficient notice was given, as required by law and by the order of the Circuit Court of Essex County, of an application to said court to

confirm said commissioners' report or to hear objections thereto.

Twenty-second Objection: Because said commissioners, in the making of their report and the said assessment against the prosecutors, did not limit their proposed assessment of peculiar benefits to such peculiar benefits, if any, as are presently and immediately accruing to the undersigned.

Twenty-third Objection: Because the benefits assessed by said commissioners in and by the said report against the prosecutors included benefits not present and not immediately accruing to the prosecutors.

Twenty-fourth Objection: Because said commissioners, in the making of their report and the said assessment against the prosecutors, did not limit their assessment of peculiar benefits to such peculiar benefits, if any, as are presently and immediately accruing to the prosecutors.

Twenty-fifth Objection: Because the benefits assessed by said commissioners in and by the said report against the prosecutors included benefits not present and not immediately accruing to the prosecutors.

Twenty-sixth Objection: Because said commissioners, in and by their said assessment, did not make an assessment of special benefits accruing from said improvement against the property owners especially benefited, as required by law.

Twenty-seventh Objection: Because, at the time of the making of the commissioners' report of assessments, the opening and widening of Branford place had not been completed, and the action on the part of the commissioners in making the assessment was premature.

Objections to Commissioners' Report.

Twenty-eighth Objection: Because the commissioners' report does not affirmatively show that the proposed assessments to be made do not exceed the peculiar benefits.

Twenty-ninth Objection: Because the said report of said commissioners does not affirmatively show that the proposed assessments do not exceed the special benefits.

Thirtieth Objection: Because said commissioners have never been legally authorized to proceed with the making of assessments.

Thirty-first Objection: Because the notice of intention of the proposed passage of the ordinance for the opening and widening of Branford place was not legally given nor given in the manner and for the time required by law, nor published in the manner required, nor for the time required by law.

Thirty-second Objection: Because the ordinance for the opening and widening of Branford place was not legally passed and is null and void.

Thirty-third Objection: Because said commissioners were never authorized to proceed with the making of an assessment for said opening by an application of the city counsel on behalf of the Board of Street and Water Commissioners and the Mayor and Common Council of the City of Newark, or either by them.

Thirty-fourth Objection: Because, after the passage of the ordinance for the opening and widening of Branford place, approved March 19, 1913, said commissioners were never authorized by a resolution of the Board of Street and Water Commissioners of the City of Newark to make said assessment.

Objections to Commissioners' Report.

Thirty-fifth Objection: Because the resolution of the Board of Street and Water Commissioners of the City of Newark, approved January 24th, 1913, certifying to the Common Council the sum necessary for the opening and widening of Branford place, was not based upon an estimate of the amount which, in their judgment, was necessary for said opening, but was based upon an estimate of the value of the land and real estate needed for said opening and widening.

Thirty-sixth Objection: Because said commissioners' authority for proceeding with this improvement is based upon an ordinance for the opening and widening of Branford place, which, in turn, is based upon a resolution of the Common Council of the City of Newark authorizing the issuance of bonds to pay for the same, and objection is made to said commissioners' authority to make a report or the court to confirm, because said resolution was not legally passed, and the subsequent action in reference to said improvement is illegal because, under the act to provide funds to be used for the opening, widening and vacating of streets and highways in cities of the first class in this State, (Public Laws of 1912, page 169), (Chapter 12), provision is made, by its second section, that, the Board of Street and Water Commissioners must, in addition to stating the amount of money necessary for said opening, certify and state to the Common Council the information upon which the judgment of the Board of Street and Water Commissioners is based in requesting said the Mayor and Common Council of the City of Newark to authorize the issuance of bonds for said improvement, and there was no certificate or statement of the facts, estimate and information,

upon which the Board of Street and Water Commissioners based their judgment, presented to the Mayor and Common Council of the City of Newark upon or before the passing of said resolution, which was approved February 10, 1913, and therefore the Mayor and Common Council of the City of Newark were without any authority, jurisdiction or power to pass said resolution, and all subsequent proceedings taken for the opening and widening of Branford place were therefore illegal.

Thirty-seventh Objection: Because said assessments are contrary to the Constitution of this State and the United States, and said assessments are in effect the taking of our property without compensation and also the taking of the same without due process of law.

Thirty-eighth Objection: Because such notice as was given for the hearing of objections before the Circuit Court of Essex County is defective and void, in that it fails to set forth that the improvement mentioned therein was made pursuant to any ordinance, resolution or other action of any public body having jurisdiction so to do.

Thirty-ninth Objection: Because the commissioners' said report fails to show that they have assessed upon the City of Newark the excess over the amount of peculiar benefits enjoyed by private owners, by reason of said improvement.

Fortieth Objection: Because said commissioners in making their said proposed assessment did in fact limit the same to the amount of the "actual" benefits conferred on the owners of said land and real estate instead of to the benefits peculiarly enjoyed by them.

Forty-first Objection: Because said commissioners in making their said proposed assess-

ment and by their said report assessed the actual benefits against all those whom they alleged to be peculiarly benefited.

Forty-second Objection: Because said commissioners, in making up their assessment, assessed alleged benefits for the opening and widening of Branford place, whereas they were only authorized to assess benefits for the opening of Branford place.

COULT & SMITH,
STEIN, STEIN & HANNOCH,
Attorneys of Objectors.

(*Schedule attached omitted. The schedule includes the names of the prosecutors and those parties made prosecutors by order of the Supreme Court of June 6, 1916, and listed in the schedule attached to said order*).

October 2, 1915.

Order of Continuance.

Dated October 4, 1915.

Continuing hearing until October 16, 1915.
(Omitted.)

Classification of Prosecutors' Objections.

Filed October 14, 1915.

The objections submitted may be classified under five heads, as follows:

I. Objections that there are no benefits accruing.

II. Objection that the benefits assessed are excessive.

III. Objection relating to actions on the part of the commissioners.

IV. Objections directed to the proceeding before the Circuit Court.

V. Objections directed to proceedings anterior to the commissioners' proceedings.

The Court has ruled in the previous proceeding that objections coming under the fifth head will not be considered. This will eliminate from the Court's consideration objections 6, 7, 30, 31 and 32.

The remaining objections are classified under the four headings as follows:

I.

OBJECTIONS THAT THERE ARE NO BENEFITS ACCRUING.

1. No peculiar benefits.

Properties assessed do not abut or front on the improvement and therefore are not benefited.

II.

OBJECTION THAT THE BENEFITS ASSESSED ARE EXCESSIVE.

2. Objectors' properties are not peculiarly benefited to the extent of the assessment.

3. Commissioners have not properly proportioned the assessments as between the property-holders as nearly as may be to the advantage each is deemed to acquire.

5. The benefits vary and the assessments are made by arbitrary method and by scale.

22, 23, 24, 25. Benefits assessed are not limited to those peculiar benefits as are presently and immediately accruing.

41, 42. Commissioners assessed actual benefits instead of peculiar benefits.

III.

OBJECTION RELATING TO ACTIONS ON THE PART OF THE COMMISSIONERS.

3. Insufficiency of commissioners' oath.

9. Commissioners did not view lands assessed.

10. Commissioners did not, as far as they might have done, ascertain the names of all owners assessed and did not cause a map to be made to accompany said report.

11. Commissioners did not make assessment in accordance with the statute, viz., fairly, legally and equitably, or according to the best of their skill and ability.

12. No certificate in writing accompanied the tentative report filed in the city clerk's office by the commissioners.

13. Sufficient time did not elapse between the depositing of the proposed report with the city clerk and the hearing before the commissioners.

14. Due, legal or sufficient notice was not given of the hearing before commissioners.

Classification of Prosecutors' Objections.

15. Same as 14, objection being that advertisement was not in two official newspapers selected with regard to age and average circulation.

16. Same as 14.

17. Same as 14, objection being that publication was not in three daily newspapers, one published in the German language.

18. Commissioners did not consider objections made by objectors on the hearing before them.

19. Commissioners in passing on objections made before them, acted arbitrarily and without regard to law or justice or the rights of the objectors, and did not consider the same. Their actions were merely for the purpose of complying with the legal requirement of having a hearing.

26. Commissioners did not make assessment of special benefits accruing from said improvement against those especially benefited, as required by law.

27. Action of commissioners premature because actual opening of street not completed.

28. Commissioners' report does not affirmatively show that assessments do not exceed *peculiar* benefits.

29. Commissioners' report does not affirmatively show that assessments do not exceed the *special* benefits.

37. General objections under the Federal Constitution.

IV.

OBJECTIONS DIRECTED TO THE PROCEEDING BEFORE THE CIRCUIT COURT.

20. Due, legal or sufficient notice, as required by law and the Circuit Court order, was not given

of the filing of the report or the time and place of hearing the objections.

38. Notice given of the hearing of objections illegal because it fails to set forth the improvement mentioned was made in pursuance of any ordinance, resolution or other action.

COULT & SMITH,
STEIN, STEIN & HANNOCH,
Attorneys for Richard C. Jenkinson and others, Objectors.

Filed October 14, 1915.
JOSEPH MCDONOUGH,
Clerk.

Order Dated October 19, 1916, Setting Down Hearing on Objections for October 29, 1915.

(Omitted).

Stipulation—Exhibit A.

It is hereby STIPULATED AND AGREED between Harry Kalisch, attorney for the Mayor and Common Council of the City of Newark, and Coult and Smith, and Stein, Stein and Hannoch, on behalf of objectors represented by them, for the purpose of determining the preliminary questions raised by the objections filed by said objectors to the confirmation of the report of said commissioners dated September 20, 1915, that the following statements shall be taken and considered as facts as if proved in this matter by competent oral or documentary evidence; this stipulation to be binding only as between the Mayor and Common Council of the City of

Newark and those objectors represented by Coult and Smith, and Stein, Stein and Hannoch; the Mayor and Common Council of the City of Newark reserving the right, pending this proceeding and its determination, to amend this stipulation should it be found that the stipulation does not conform to the facts:

1. That annexed hereto and marked "Schedule A" is a certification by the Board of Street and Water Commissioners of the City of Newark fixing the sum necessary in its judgment for the opening and widening of Branford place from Halsey street to the intersection of High street and Springfield avenue.

2. That annexed hereto and marked "Schedule B" is the resolution of the Mayor and Common Council of the City of Newark adopted February 7, 1913, authorizing the comptroller to issue temporary loan bonds to the amount of one million dollars ($1,000,000), the proceeds to be used for the opening and widening of Branford place.

3. That annexed hereto and marked "Schedule C" is a resolution of the Mayor and Common Council of the City of Newark authorizing the comptroller to issue temporary loan bonds to the amount of fifty thousand dollars ($50,000), the proceeds to be used for the opening and widening Branford place.

4. That annexed hereto and marked "Schedule D" is a copy of the notice of intention adopted by the Board of Street and Water Commissioners of the City of Newark declaring its intention to order and cause the opening and widening of Branford place from Halsey street to the intersection of High street and Springfield avenue and directing the chief engineer of the board to give public notice in three daily newspapers and

for one insertion in each of two weekly newspapers of such intention and requesting such persons as might object thereto to present their objections in writing at the office of the chief engineer of the board.

5. That said notice of intention was advertised in the manner set forth in the certificate of the acting clerk of the Board of Street and Water Commissioners attached to the said notice of intention marked "Schedule D" hereto annexed.

6. That no objection in writing to said opening and widening of Branford place were presented either at the office of the chief engineer or to the Board of Street and Water Commissioners, but several objections were made thereto at a public hearing of said Board of Street and Water Commissioners held on the evening of February 20, 1913; also, at said hearing, a large number of persons, whose properties would be affected by said improvement, appeared and spoke in favor of said improvement, as appears by a statement thereof dated October 25, 1915, made by the acting clerk of the Board of Street and Water Commissioners marked "Schedule E" annexed hereto.

7. That annexed hereto and marked "Schedule F" is a copy of the ordinance adopted by the Board of Street and Water Commissioners March 13, 1913, providing for the opening and widening of Branford place and that said ordinance was published in the manner set forth in the certificate of the acting clerk of said board attached thereto.

8. That annexed hereto and marked "Schedule G" is the certificate of cost adopted October 2, 1914, made by the Board of Street and Water

Commissioners of the City of Newark to the Common Council of the City of Newark and the ascertainment and declaration of cost and resolution authorizing the assessment of benefits for said opening and widening made by the Mayor and Common Council of the City of Newark, dated October 2, 1914.

9. That the matter of making the assessment before the court was presented to the commissioners in the following manner, viz., by delivery to them of a certified copy of the ordinance for the opening and widening of Branford place and the delivery to them of a certified copy of the certificate of cost dated October 1, 1914, made by the Board of Street and Water Commissioners of the City of Newark, and a certified copy of the resolution ascertaining and declaring the cost, adopted October 2, 1914, true copies of which are attached hereto.

10. That annexed hereto and marked "Schedule H 1, H 2 and H" are the oaths of office of Michael DeVita, Harry V. O'Connell and Harrison R. Van Duyne, Commissioners of Assessments for Local Improvements in the City of Newark they being the commissioners who signed the report assessing benefits for the above mentioned improvement now before the court for confirmation.

11. That on August 3, 1915, the commissioners of assessment filed in the office of the city clerk of the City of Newark the schedule of assessments and maps which are now attached to the report before the court, except that said schedule and maps were unsigned. Attached to said schedule and maps was the original printed report now before the court, except that said printed report did not have the writing now

therein filled out below the printed words about the middle of the page of said report, beyond the clause reading as follows: "And having further considered the subject of the said assessment and the representations of the parties interested therein," with the exception that the word "actual" in the third from the last paragraph in said printed report was stricken out and the word "peculiar" inserted in place thereof. That none of the signatures of the commissioners were attached to said report and that said report, schedule and maps comprised the entire matter filed by said commissioners with the city clerk on the third day of August, 1915, in the matter of the Branford place opening and widening.

12. That the hearing before the commissioners, referred to in the report now presented for confirmation, was had on August 10, 1915, and adjourned from time to time until the report was signed on the 20th day of September, 1915.

13. That at the time of the making of the commissioners' report in this matter, the grading of Branford place had not been completed and the street was not available for vehicle traffic.

HARRY KALISCH,
Attorney for the Mayor and Common Council of the City of Newark.

COULT & SMITH,
STEIN, STEIN & HANNOCH,
Attorneys for Richard C. Jenkinson, et als., Objectors.

Schedules A to E.

SCHEDULE A.

Resolution of Board of Street and Water Commissioners requesting issuance of bonds; printed at p. 59.

SCHEDULE B.

Resolution of Common Council authorizing bonds; printed at p. 61.

SCHEDULE C.

Resolution of Common Council authorizing additional bonds; printed at p. 62.

SCHEDULE D.

Notice of intention; printed at p. 58.

SCHEDULE E.

THE BOARD OF STREET AND WATER COMMISSIONERS

Of the City of Newark, N. J.

Newark, N. J., October 26th, 1915.

Mr. Harry Kalisch,
City Attorney, City Hall.

Dear Sir:

Referring to the matter of Branford place opening and widening, the following facts are submitted for your information:

Resolution notice of intention for this improvement was adopted by the Board of Street and Water Commissioners on January 23d, 1913, and approved by the mayor on January 24th, 1913, and duly published as set forth on separate sheet

Schedule E.

appended hereto. The ordinance for this improvement was adopted by the board on March 13th, 1913, and approved by the mayor on March 19th, 1913, and duly published as set forth on separate sheet also appended.

Between the date of the publishing of the notice of intention and the passage of the ordinance, the following communications pro and con were received by the board:

At board meeting February 27th, 1913, communication from Musicians Mutual Protective Union, 401 Plane street, stating that at a special meeting held by them the matter of Branford place opening was heartily and unanimously endorsed.

At board meeting March 6th, 1913, communication from Board of Trade, quoting resolution adopted by it on February 19th, protesting against the proposed opening of Branford place.

The Board of Street and Water Commissioners held a public hearing on the evening of February 20th, 1913, and while no objections were submitted in writing, the names of those who appeared for or against the opening are given below:

IN FAVOR.

Dr. Jos. Kussy, for Springfield Avenue Merchants Imp. Association.

Mr. David Grotta.

Mr. Frank McTague.

Mr. F. F. Mayo.

Mrs. Lydia Grimm, a property owner in the assessment zone.

Mr. Edw. S. Rankin, a property owner in the assessment zone.

Mr. Mortimer Lowy.

Mr. Frank Wadsworth, a property owner on Plane street.

Schedule E.

Mr. Geo. J. Busch, a property owner in the assessment zone.

Mr. Robt. A. Osborne.

Mr. Oscar Aschenbach, interested in property on Plane and Arlington streets.

Mr. W. A. Lawson.

Mr. C. W. Meyer.

Mr. D. E. Olds.

Mr. Chas. Rosin, owner of property, 18 Arlington street.

IN OPPOSITION.

Mr. Frederick Jay, for Market Street Business Men's Imp. Association.

Alderman Louis Pfeiffer, on behalf of Ironbound Imp. Association and a majority of taxpayers east of the railroad.

Mr. Harrison Van Duyne, Sr.

Mr. Edw. Blau.

Mr. Wm. A. Baker.

Yours respectfully,

A. L. SWAIN,
Acting Clerk of the Board.

3 Incls:

Copy of Notice of Intention.

Copy of Ordinance.

Copy of Resolution asking Common Council to make available $1,000,000.00 for the opening and widening.

Schedule F.

SCHEDULE F.

AN ORDINANCE TO OPEN AND WIDEN BRANFORD PLACE from the westerly line of Halsey street to a point on the southerly line of Springfield avenue, located about 44 33/100 feet east of the easterly line of High street.

BE IT ORDAINED, By the Board of Street and Water Commissioners of the City of Newark, as follows:

SECTION 1. That Branford place shall be opened and widened as a public street or highway from the westerly line of Halsey street to a point on the southerly line of Springfield avenue, located about 44 33/100 feet east of the easterly line of High street. The new street to have an average width of about seventy (70) feet on the block between Halsey street and Washington street and a width of sixty-two (62) feet from the westerly line of Washington street to the easterly line of Shipman street, the new street to effect a junction with Springfield avenue by taking a triangular plot, having a frontage on the westerly side of Shipman street of about eighty-one (81) feet and on the southerly side of Springfield avenue of about one hundred and ninety-nine (199) feet, as the same is shown on a map on file in the office of the chief engineer of this board, known as No. 1130-O.

SECTION 2. The Board of Street and Water Commissioners of the City of Newark doth hereby determine to take and appropriate the lands and real estate necessary to be taken and appropriated for opening and widening as aforesaid. The counsel of the board is hereby directed on behalf of the Mayor and Common Council of the

Schedule F.

City of Newark, and of this board, to make application to the Board of Commissioners appointed to make all assessments of damages and benefits for local improvements made and to be made in the City of Newark, pursuant to the provisions of an act entitled "An Act concerning assessments for local improvements in the cities of the first class, providing for the appointment of boards of commissioners to make all such assessments, defining the duties of such commissioners and fixing their compensations." Approved March 24, 1892, to make an estimate and assessment of the damages sustained by the owner or owners thereof, and an assessment of the benefits received by the owner or owners of all the lands and real estate in said city peculiarly benefited thereby in proportion as nearly as may be to the advantage each shall be deemed to acquire, and in case the cost, damages and expenses of said improvements shall exceed the amount of said benefits, such costs shall be assessed upon and paid by the City of Newark.

Section 3. That immediately upon the completion of such public work or improvement, the clerk of the board, in conjunction with the chief engineer of the board, shall carefully prepare and furnish all necessary statements, maps, specifications and other data pertaining to such public work or improvement, and the president of the board shall thereupon, on behalf of the Board of Street and Water Commissioners of the City of Newark, certify the same to the Common Council of the City of Newark, in order that said Common Council may thereafter proceed to make and collect the proper assessment for the cost and expense of such public work or improvement as may now or hereafter be required by law.

Schedule F.

SECTION 4. Said public work or improvement shall be made and completed under the supervision or inspection of the chief engineer or acting engineer of the board, according to the provisions of the City Charter and the Laws of the State, and the ordinance of the city and by-laws, rules and regulations of the Board of Street and Water Commissioners of the City of Newark, applicable thereto.

SECTION 5. That this ordinance shall take effect immediately.

Passed March 13, 1913.

(Signed) P. H. RYAN,
President of the Board of
Street and Water Commissioners.

Presented to the Mayor, March 14, 1913, for approval.

(Signed) A. L. SWAIN,
Acting Clerk of the Board of
Street and Water Commissioners.

Approved March 19, 1913.

(Signed) JACOB HAUSSLING,
Mayor.

I hereby certify that the foregoing is a true copy of an ordinance adopted by the Board of Street and Water Commissioners, March 13th, 1913, and approved by the Mayor March 19th, 1913.

IN TESTIMONY WHEREOF, I have here-
[L. S.] unto set my hand, and affixed the seal of the board, this 26th day of October, A. D. 1915.

ALFRED L. SWAIN,
Acting Clerk of the Board.

Schedule G.

The foregoing ordinance was published between second and third readings, as follows:

Newark Evening Star, March 7th, 8th, 10th, 11th and 12th, 1913.

Newark Morning Star, March 7th, 8th, 10th, 11th and 12th, 1913.

Freie Zeitung, March 7th, 8th, 10th, 11th and 12th, 1913.

The foregoing ordinance was published after final reading as follows:

Newark Evening Star, March 20th, 21st, 22d, 24th, 25th, 1913.

Newark Morning Star, March 20th, 21st, 22d, 24th, 25th, 1913.

Freie Zeitung, March 20th, 21st, 22d, 24th, 25th, 1913.

SCHEDULE G.

RESOLVED, That the Common Council of the City of Newark has ascertained and hereby declares that the total amount of costs and expenses incurred in the following street improvements to be as follows:

Branford place opening, $1,093,040.20, and the city counsel be and he is hereby authorized to apply to the assessment commissioners to make the assessments.

F. J. REILLY,
A. R. BIANCHI,
GEO. W. TAYLOR,
JOHN J. WALSH,
Committee on Finance.

Adopted October 2, 1914.

MARK F. PHILLIPS,
Acting President of Common Council.

Schedule G.

Presented to the Mayor for his approval October 3, 1914.

A. ARCHIBALD,
City Clerk.

Approved October 3, 1914.

JACOB HAUSSLING,
Mayor.

I Hereby Certify that the foregoing is a true copy of a resolution adopted by Common Council, October 2, 1914, and approved by the Mayor October 3, 1914.

In Testimony Whereof, I have hereunto [L. s.] set my hand and affixed the seal of the City of Newark, this twenty-seventh day of October A. D. 1915.

A. ARCHIBALD,
City Clerk.

AUDITOR'S OFFICE.

Newark, N. J., October 1, 1914.

To the Board of Street and Water Commissioners:

Gentlemen:

I respectfully submit the statements annexed (by items), of the cost and expenses of the several openings now completed and ready to report to Common Council for the appointment of commissioners to assess benefits, which amount in gross to the following sums as shown by the records of this office.

A. K. BRADY,
Acting Auditor.

Branford Place Opening...$1,093,040.20

Schedule G.

To the Hon., the Common Council of the City of Newark:

Gentlemen:

Pursuant to the directions of the statute, in such case made and provided, we certify the costs and expenses of the several openings to be as stated above, a detailed statement of which is attached, in order that you may proceed to collect the same according to law.

C. F. KRAEMER,
President Board of Street and Water Commissioners.

A. L. SWAIN,
Acting Celrk.

BRANFORD PLACE OPENING

HALSEY STREET TO A POINT ON THE SOUTHERLY LINE OF SPRINGFIELD AVENUE 44.33 FEET EAST OF HIGH STREET.

Advertising.

1913		
Jan. 25—Notice of Intention	$ 59.64	
Feb. 15—Notice of Intention	67.62	
Mar. 7—Clerk's Certificate	21.42	
Mar. 21—Passage of Ordinance	25.20	
	$	173.88
1913		
July 11—Fidelity Trust Co. Searches	$ 1,032.00	
Sept. 5—Fidelity Trust Co. Searches	80.00	
1914		
July 3—Fidelity Trust Co. Searches	39.49	
1913		
Dec. 5—Fidelity Trust Co. Searches	1,142.00	
	$	2,293.49

Schedule G.

1913				
Oct. 5	John J. Bracken, appraising	$ 150.00		
	H. J. King, appraising	300.00		
Dec. 5	H. J. King, appraising	540.00		
	John J. Bracken, appraising	280.00		
	James A. Berry, appraising	1,000.00		
	John J. Gillen, appraising	1,000.00		
1914				
Jan. 2	Louis C. Becker, aping	1,500.00		
	E. M. Waldron, appraising	1,500.00		
Mar. 6	Chas. A. Winton, appraising	510.00		
July 3	Sylvester J. Connelly, appraising	300.00		
			$ 7,080.00	
Apr. 3	Franklin Marx, Expert	$ 100.00		
	Ed. D. Birkholz, Expert	50.00		
	John J. Gillen, Expert	200.00		
	James A. Berry, Expert	200.00		
	S. Leschziner, Expert	100.00		
May 1	E. M. Waldron, Expert	200.00		
	L. C. Becker, Expert	200.00		
	C. F. Collon, Expert	200.00		
			$ 1,250.00	
Apr. 3	M. J. O'Connor's Sons, Auctioneers	$ 152.25		
June 5	M. J. O'Connor's Sons, Auctioneers	153.57		
July 3	M. J. O'Connor's Sons, Auctioneers	125.25		
Aug. 7	M. J. O'Connor's Sons, Auctioneers	69.75		
			$ 500.82	
June 5	Ed. A. Stahl, Watchman	$ 12.00		
	Fred B. Munn, Watchman	12.00		
July 3	John B. Chattin	20.00		
June 5	Public Service Electric Co. Light	11.80		
Aug. 7	Insurance	562.51		
			$ 653.81	

Schedule H. 1.

1914		
Jan. 16—Damages, Land, &c.	$662,850.00	
June 5—Damages, Land, &c.	180,200.00	
June 27—Damages, Land, &c.	194,070.00	
		$ 1,037,120.00
Less amounts for sale of buildings	$ 9,916.50	
Rent of buildings	500.00	
		$ 10,416.50
		$ 1,038,655.50
Commissioners' fees for damages	$ 1,000.00	
Commissioners' fees for benefits	1,000.00	
Maps and clerkship	1,000.00	
Advertising	750.00	
Court and filing fees	22.72	
Interest to December 31, 1914	50,611.98	
		$ 54,384.70
		$ 1,093,040.20

SCHEDULE H. 1.

I, Michael Devita, do sincerely profess and swear that I do and will bear true faith and allegiance to the government established in this State, under the authority of the people. So help me God.

MICHAEL DEVITA.

Sworn and subscribed before me
the 1st day of January, 1915.

A. ARCHIBALD,
City Clerk.

I, Michael Devita, do solemnly and sincerely promise and swear that I will faithfully and impartially execute the trust reposed in me as a member of the Board of Commissioners of Assessments of the City of Newark, in the County of Essex, according to the best of my ability and understanding. So help me God.

MICHAEL DEVITA.

Sworn and subscribed before me,
the 1st day of January, 1915.

A. ARCHIBALD,
City Clerk.

I hereby certify that the foregoing is a true copy of an oath on file in the office of the City Clerk of the City of Newark, N. J.

L. S.

A. ARCHIBALD,
City Clerk.

(The oaths of Harry O'Connell and Harrison R. Van Duyne are exactly similar except in names and are omitted).

Order Confirming Second Report as to Those Not Objecting.

Dated October 16, 1915.

The report of assessment commissioners in the above matter having been presented to the court for confirmation on the second day of October, nineteen hundred and fifteen; and the court having made an order fixing the sixteenth day of October, nineteen hundred and fifteen, at twelve o'clock noon, as the time within which the owners of property assessed for benefits for said improvement and other persons affected thereby might file objections in writing to the confirmation of said report; and the persons whose names appear in the annexed schedule having filed objections in writing thereto, either individually or through their respective attorneys; it is, on this sixteenth day of October, nineteen hundred and fifteen, on motion of

Harry Kalisch, Esquire, city attorney of the City of Newark,

ORDERED, that said report be, and the same is hereby confirmed, except as to those owners and other persons interested therein whose names appear in the schedule hereto annexed and as to them it is further ordered that the question as to the confirmation of the assessment for property against Weingarten Bros. Realty Co. is hereby reserved for further consideration.

And it is further ORDERED, that the hearing on the objections heretofore filed in this matter be brought on before this court on Friday, the twenty-ninth day of October, nineteen hundred and fifteen, at ten o'clock in the forenoon.

Let the foregoing order be entered.

FREDERIC ADAMS,
Circuit Court Judge.

November 6, 1915.

Orders of Continuance.

Dated October 9, 1915, and November 5, 1915.

(Omitted.)

Order on Preliminary Questions.

Dated November 12, 1915.

The Court having made an order fixing the twelfth day of November, nineteen hundred and fifteen, at ten o'clock in the forenoon as the time and the courthouse in the City of Newark as the place for hearing on the preliminary questions of law raised by the objections heretofore filed in this matter;

And the Court having heard argument of counsel on said preliminary questions of law and having determined them;

It is on this twelfth day of November, nineteen hundred and fifteen, on motion of Harry Kalisch, Esquire, City Attorney of the City of Newark,

ORDERED, that the hearing in the above matter be, and the same is hereby, continued to the nineteenth day of November, nineteen hundred and fifteen, at ten o'clock in the forenoon, for the purpose of taking testimony therein.

Let the foregoing order be entered.

FREDERIC ADAMS,
Circuit Court Judge.

Filed November 16, 2:27 P. M., 1915.
JOSEPH MCDONOUGH,
Clerk.

Order of Continuance.

Dated November 19, 1915, omitted.

Proof of Mailing Notice to Objectors.

(Omitted.)

Notice of Motion to Settle Terms of Order.

(Omitted.)

Order Amending Order of Confirmation.

December 15, 1915.

It appearing to the court that by its order in the above entitled proceeding, dated October sixteenth, 1915, and filed November sixth, 1915, the assessments made by commissioners for peculiar benefits for the Branford place opening and widening were confirmed by the court except as to owners and other persons in interest whose names appear on an accompanying schedule of assessments to which objections have been filed, which schedule is annexed to said order;

And it further appearing that said schedule is incomplete, in that, through error, it does not contain the names of certain owners and persons in interest who have duly filed objections to said assessments, whose names are hereinafter stated, and against whose lands the assessments objected to have been by said order erroneously confirmed;

It is therefore, on this fifteenth day of December, 1915, ORDERED that said order of confirmation made on the sixteenth day of October, 1915, and filed on the sixth day of November, 1915, be and the same hereby is va-

cated as to the confirmation of assessments against the lands of owners and persons in interest whose names are hereinafter stated, and that said assessments stand in all respects as though they had been originally enumerated on the schedule accompanying said order.

Let the foregoing order be entered.

FREDERIC ADAMS,
Circuit Court Judge.

LIST OF ADDITIONAL OBJECTORS.

BRANFORD PLACE ASSESSMENT.

OBJECTOR.	BLOCK NO.	LOT NO.	ATTORNEY.
Keasbey Real Estate Association	57	79	Edw. Q and Geo. M. Keasbey
Jeanette Hemmendinger	78	15	Cohn & Cohn
	78	22	
The Goerke Co.	55	8	Cohn & Cohn
Celia S. Weiss	231	57	Altman & Altman
Henry R. Isenberg	75	28	David Bobker
	77	30	
Joseph Mullen	232	58	David Bobker
	232	59	
Frederick Hummel	73	22	David Bobker
George Bakos and	57	54	Henry Pomerehne
George Cavalas	57	55	
James J. McGuire	58	41	Lintott, Kahrs
and William A. McManus	58	43	& Young
James J. McGuire	57	127	Lintott, Kahrs
	57	129	& Young
Louise Koellhoffer Caroline Koellhoffer Evelyn Koellhoffer Devisees under the Last Will and Testament of Silverius A. Koellhoffer, deceased.	78	71	Grosken & Moriarty
Philip Fenster	2497	71	Levy & Fenster
First Presbyterian Church	165	4	McCarter & English
	165	10	

OBJECTOR	BLOCK NO.	LOT NO.	ATTORNEY
C. S. Barber	872	33	McCarter & English
Commercial Trading Company	78	54	
Alice M. Woodruff	77	16	Clarence S. Blake
Trustee	77	17	
	77	18	
A. H. Gemeinder	77	23	Clarence S. Blake
	77	24	
J. E. Osborn	74	13	Clarence S. Blake
E. S. Rankin	76	1	Clarence S. Blake
Giovanni Solento	76	2	Clarence S. Blake
E. S. Rankin	76	3	Clarence S. Blake
	76	4	
	76	9	
	76	10	
J. E. Osborn	74	17	Clarence S. Blake
Herbert W. Ross	60	48	Clarence S. Blake
E. S. Rankin	63	59	Clarence S. Blake
Mary E. Mayo	59	29	Clarence S. Blake
Waldo C. Genung	875	25	Clarence S. Blake
Estate of William	231	79	Clarence S. Blake
Rankin	231	80	
	231	81	
	232	36	
	232	37	
	229	22	
	231	53	
	227	30	
	227	29	
	206	11	
	872	25	
Estate of Amy J. Hall	147	16	Clarence S. Blake
Johanna Robrecht	207	26	Clarence S. Blake
Estate of William	2497	44	Clarence S. Blake
Tierney	86	31	
Caroline Kirchner	78	66	Clarence S. Blake
	78	59	
	86	26	
Estate of F. X.	2497	7	Clarence S. Blake
Derivaux	2499	9	
	2499	12	
Joseph Korman	232	23	
Marie Frank	59	21	Clarence S. Blake
	59	22	

Charles Stopper	231	42	Clarence S. Blake
	229	53	
	234	13	
	234	14	
	109	15	

Opinion on Confirming Report as to Prosecution.

ADAMS, *J.*

This matter comes up on written objections filed by landowners to assessments against their lands contained in a report of commissioners. A former assessment according to benefits was sent back upon a general objection which did not make it necessary to consider any specific assessment. In the meantime a new board of commissioners came into being and has made the report which is now under examination.

The authority of the court to sit in such a proceeding as this is derived from the second section of a supplement to the charter of the City of Newark, approved March 11, 1875 (P. L. 1875, p. 249), which reads as follows:

> "And be it enacted, That all commissioners to estimate and assess damages or benefits in said city, shall make a report of their assessments to the said court (the circuit court), and upon the coming in of any such report, signed by the said commissioners, or any two of them, the said court shall cause notice to be given as it shall direct, of the time and place of hearing any objection that may be made to any such assessment, and, after hearing any matter which may be alleged against the same, the said court shall, by rule or order, either confirm the said report or refer the same

to the same commissioners for revision and correction, or to new commissioners to be appointed by the said court, to reconsider the subject matter thereof, and the said commissioners to whom the said report shall be so referred, shall return the same report corrected and revised, or a new report to be made by them in the premises to the said court, without unnecessary delay, and the same on being so returned, shall be confirmed or again referred by the said court in manner aforesaid, as right and justice shall require, and so, from time to time, until a report shall be made or returned in the premises which the said court shall confirm, and such report when so confirmed by said court shall be final and conclusive, as well upon the said city as upon the owners of any land and real estate effected thereby, and the said court shall thereupon cause a certified copy of said report to be transmitted to the city clerk, with a certified copy of the rule of said court confirming said report, and the common council shall thereupon order the said assessment to be collected as authorized by law."

At the time of the passage of the act of 1875 commissioners were appointed by the Circuit Court of Essex County, on application of the Mayor and Common Council of the City of Newark. By a subsequent act, chapter 147 of the laws of 1892 (P. L. 1892, p. 255), the appointment of such commissioners in cities of the first class was given to the Mayor of the city.

By chapter 32 of the laws of 1899 (P. L. 1899, p. 44; 1 C. S., pp. 1013, 1014, Sec. 1532), the court was given power to refer a report of

commissioners for revision or correction either to the commissioners who made the same, or to new commissioners to be appointed by the court. This same power was given by the act of 1875.

This report contains, it is stated by counsel, assessments against more than three thousand different lots or parcels of land. Objections have been filed to about eight hundred of these assessments. Many of the questions raised by these objections relate to matters of mere procedure, as to which counsel have been heard in a preliminary way. These preliminary objections have been decided against the objectors. The objections of substance remain to be examined. Only those will be considered which have been presented by argument, brief or by the objector in person. The assessments to which no objections have been filed have been confirmed, in pursuance of the practice sanctioned by *McCarter* v. *Newark,* 23 Vroom, 341.

Before coming to the detail of the case, it will be well to notice two leading considerations. Each is well established and familiar. The first consideration is the limitation of the purely statutory power of the court before which such a proceeding comes. The second consideration is the legal presumption in favor of the commissioners' report.

As to the first consideration, it is to be remarked that the Circuit Court acts in such a case not by virtue of a general common law authority, but as a municipal agency of the City of Newark, exercising a certain, specific, restricted, statutory jurisdiction. There is no judicial power to make a new assessment. The judge who hears the matter does not sit as a

commissioner. What may be done as to the report, or any part of it, is either to confirm or to return for revision and correction. In case a report, or any part of it, is returned to the commissioners for further action, the function of the court is, it seems, as to matters of law, to direct, and, as to matters of fact, to suggest, advise and recommit for revision and correction, "as right and justice shall require."

As to the second consideration, the rule is laid down by Mr. Justice Gummere in *Coward* v. *North Plainfield,* 34 Vroom, 64. I quote from the opinion:

> "Still another reason relied on for setting aside this assessment attacks the judgment of the commissioners in fixing the amount of the benefits received by the several prosecutors. We are asked to disregard their judgment, and accept as accurate that of certain other residents of the borough who testified for the prosecutors on that subject. The statute under which this assessment is made provides for the selection of certain freeholders whose judgment on the amount of the benefit received is to be accepted as accurate unless it is made to appear, by clear and convincing proof, to be erroneous."

To the same effect are *Hegeman* v. *Passaic,* 22 Vroom, 109, and *Humphreys* v. *Bayonne,* 31 Vroom, 406, 408. In the case last mentioned the court says:

> "An assessment will not be set aside because the commissioners might reasonably have reached a conclusion different from that at which they arrived. It must appear affirmatively that their conclusion is erroneous. It is their judgment of the amount to which property has been bene-

fited, and not that of third persons who are called as witnesses, which is controlling."

A recent decision is *Kirkland* v. *Parker,* 47 Vroom, 217. In *Van Riper* v. *North Plainfield,* 14 Vroom, at pages 352 and 353, it is said that a report of commissioners is not conclusive before confirmation. It is not denied that there is an evidential presumption in its favor, so that it stands as an official act until overthrown. This rule is well settled. *Paterson & Hudson River R. R. Co.* v. *Passaic,* 25 Vroom, 340, at pages 341, 342.

The remark is again pertinent that a judge in a case like this does not sit as a commissioner, any more than he sits as a juror when he reviews a verdict. In the one case there is a presumption in favor of the verdict; in the other of the verdict; in the other case there is a presumption in favor of the verdict; in the other case there is a presumption in favor of the report. The inquiry in each instance is whether the presumption has been overcome, not whether the verdict is the best possible verdict or whether the report is the best imaginable report; not whether the judge, if he has been commissioner, would have signed that precise report, or whether the judge, if he had been a juror, would have approved that particular verdict. More specifically, the question now is whether it has been satisfactorily shown that the commissioners employed an incorrect method, or, in particular instances, reached results inherently unfair or irrational.

As this assessment according to benefits covers a wide area and runs into high figures, it

may be useful, by way of explanation, to sketch the history of the Branford place improvements up to this point.

The streets of Newark near the civic centre are generally right angle streets; that is, one set runs north and south on parallel lines and is crossed by another set which runs east and west on parallel lines. Broad street, which is the chief street, runs north and south. Market street, next in importance, crosses Broad street and runs east and west. West of Broad street and parallel with it comes Halsey street. As one goes south on the westerly side of Broad street from its intersection with Market street he comes to Branford place, a street which prior to its recent extension, was one block long and extended west to Halsey steeet at right angles to Broad street. From Halsey street to Washington street, which comes next on the west, there was a street one block long, called Camfield street, earlier in date than Branford place and much narrower. Its westerly line was nearly in alinement with the westerly line of Branford place between Broad and Halsey streets. The scheme of development was to extend Branford place from the westerly line of Halsey street to the easterly line of Washington street and beyond to the west, crossing Plane street, Arlington street, Nicholson street and Shipman street, and not quite reaching High street. The lines proposed were such as to wipe out Camfield street between Halsey and Washington streets and to make what was the southerly line of Camfield street on that block the southerly line of Branford place. Such an extension would leave the land on the southerly line of Camfield street undisturbed and

would appropriate to public use enough land lying along the northerly line of Camfield street between Halsey and Washington streets to give to the proposed Branford place its required width. West of Washington street up to a point near High street, the whole of the proposed Branford place was to be taken by condemnation. The opening and widening thus projected was duly carried out by commissioners appointed to take the necessary land. The matter came duly before the Circuit Court. The awards which were not objected to were confirmed; certain objections were overruled; certain awards were sent back, with the suggestion that they be increased, and in these cases the commissioners again reported and made awards which proved satisfactory to the landowners.

This report awarding damages was followed by a report making assessments according to benefits, which, as already remarked, was sent back, and then came the report of assessments according to benefits which is now under consideration.

An inspection of the first page of this report, which bears date September 20, 1915, shows that by resolution approved October 3, 1914, the Mayor and Common Council of the City of Newark ascertained and declared the whole amount of the cost and expenses paid and incurred by the City of Newark in the Branford place matter to be the sum of $1,093,040.20. The report states the amount assessed to be the sum of $533,794, leaving the balance of the costs and expenses, exceeding the amount of the benefits, being the sum of $559,246.20, to be paid by the City of Newark. The report declares that the assessments are laid upon all the

owners of all the lands and real estate peculiarly benefited, as nearly as may be, to the advantage each was deemed to have acquired, and that the assessment in each case is limited to the peculiar benefits conferred and that no others than the owners of the lands and real estate so assessed are peculiarly benefited by said improvement.

The large map marked "Exhibit B" shows the zone or area of assessment, which is bounded on the east by the Pennsylvania Railroad, on the north by the Morris Canal, on the west by the rear line of lots fronting on Jones and Norfolk streets and on the south by the rear line of lots fronting on Walnut and Court streets.

The length of Branford place as developed, from Halsey street to its westerly extremity, is about 1500 feet. The distance from the centre line of Branford place to the northerly boundary line of the zone or area of assessment is about 1054 feet, and to the southerly boundary line of the zone is about 1297 feet. The distance from the easterly end of Branford place at Halsey street to the easterly boundary line of the zone or area of assessment is about 2494 feet, and from the westerly terminus of Branford place to the westerly boundary line of the zone is 2286 feet, more or less. The distance from the Pennsylvania Railroad to the westerly end of the zone is 6400 feet.

There are some general objections to the action of the commissioners which it is convenient to consider at the outset, as the determination of them will simplify the inquiry.

One of these objections is that this zone is too extensive. Witnesses and counsel for the

objectors do not agree as to how extensive it should be. A counsel for some of the objectors has argued that the assessments in such a case should be limited to lands fronting on the line of the improvement, and that anything more than that is merely speculative. Two competent real estate men, witnesses for the objectors, Mr. Berry and Mr. Fiedler, have taken an intermediate position, and have testified that, in their opinion, benefits have accrued to lots on the side streets, but to a shorter distance than that fixed by the commissioners, and that, with a few exceptions, lands east of Broad street and west of High street have not received peculiar benefit as distinguished from general benefit common to the public at large.

The determination of the area of assessment is one of the questions submitted by law to the consideration of the commissioners. Their decision is to stand unless there be very convincing evidence to the contrary. (*Jelliff* v. *Newark,* 19 Vroom, 101, at page 109, and other cases). Whether these commissioners first selected the boundaries and then worked up to them or whether they proceeded in the inverse order is a matter of detail. The validity of the zone or area of assessment depends upon the validity of the assessments themselves. Considering merely the zone itself, the objection to it is not substantial. There is nothing inherently irrational or absurd in selecting such a zone. This objection is not sustained.

Another general objection to the action of the commissioners is that their method of ascertaining benefit was erroneous. It is said that, in order to get at the amount of peculiar benefit, in each case, the commissioners should have

ascertained the market value of the lot or plot before the improvement, and then the market value of the lot or plot immediately after the improvement, and should have taken the difference between the two as the amount of the assessment, and that they did not do this. The commissioners, Messrs. Harrison R. Van Duyne, Harry B. O'Connell and Michael Devita were all sworn and examined on behalf of the objectors and cross-examined by the city attorney. It is said that the testimony of Mr. Van Duyne shows that the commissioners did not follow the method above suggested. This objection, if supported, by proof, seems at first sight to have considerable weight. It may be admitted that an accountant employed to examine the books of a bank or of a firm to ascertain its financial condition should take both sides of the account, and so ascertain whether the business was done at a profit or at a loss. In that case the accountant would be dealing with a simple question of arithmetic and using exact and definite figures, which are demonstratably either accurate or erroneous. Such a method would be unobjectionable, if employed by commissioners; but it must be remembered that commissioners in a case like this deal not with exact figures, but with estimates depending upon the exercise of judgment. It is not usual for commissioners to be real estate experts. They are expected to act on their own opinion as citizens of experience and intelligence, with the aid of such information as they are able to gather. The report made by these commissioners should not be condemned because they have not gone into the strict and formal appraisal of the values of these three thousand lots or any

of them. Such a process would have been fruitful of controversy, and would have spun out the proof without corresponding advantage. The commissioners brought to their duty their own good sense and experience and some knowledge gathered from others. The law, I think, contemplates that they should reach their conclusions by the exercise of such powers and instrumentalities as these, and this they appear to have done. This objection is not sustained.

Another leading objection is that it is said to appear from the testimony of Commissioner Van Duyne that the commissioners did not consider whether the diversion of traffic, particularly vehicular traffic, from another street or other streets to Branford place would probably depreciate the market value of lands fronting on the streets which had formerly enjoyed the traffic thus diverted, so that the opening of Branford place would be, to that extent, injurious to lands on such other street or sreets. This objection is pressed most strongly on behalf of the owners of lands fronting or having a boundary on the south side of Springfield avenue, along the block from Shipman street to Arlington street, and on the south side of Market street from Arlington street to Broad street, and on the west side of Broad street from Market street to Branford place, and on the north side of Market street from Broad street to Courthouse place.

I have read with care the testimony of Mr. Van Duyne as to traffic, and have reached the following conclusions:

First, that the commissioners regarded traffic, short of such a volume as to produce congestion, as beneficial to a street, and so beneficial

to Branford place; secondly, that the commissioners thought that most of the traffic which Branford place was likely to enjoy in the near future would be traffic diverted from some other street or streets; thirdly, that it is at least doubtful whether the commissioners considered the question whether the probable diversion of traffic from such other street or streets to Branford place would be injurious to the market value of lands on such other street or streets to an extent sufficient to reduce or extinguish any benefits which might otherwise be thought to have accrued to lands on such other street or streets from the Branford place improvement.

It is strongly urged in opposition to the report that the commissioners should have taken into account the probable diversion of traffic, within the limits above mentioned, as an element tending to diminish, if not to conceal, benefits. This precise question does not appear to have presented itself distinctly to the minds of the commissioners.

It is urged also on behalf of owners on Mechanic street that the commissioners should have inquired whether the diversion of traffic incident to the opening and widening of Branford place would tend to congest Mechanic street, and so effect an estimate of benefits accruing to land fronting or having a boundary on that street. It is not clear that this specific question received consideration.

These inquiries relating to diversion of traffic deserved the attention of the commissioners. So much of the report as is involved in this question will be returned for re-examination and review upon this point. The assessments to be re-examined, with special reference to the di-

version of traffic, are those within the limits above mentioned; that is, the assessments which have been objected to on lands fronting or having a boundary on the south side of Springfield avenue along the block from Shipman street to Arlington street, and on the south side of Market street from Arlington street to Broad street, and on the west side of Broad street from Market street to Branford place, and on the north side of Market street from Broad street to Courthouse place, and on Mechanic street.

Another criticism of the action of the commissioners is that in very many cases their assessments are twenty-five per cent. less than assessments imposed on the same lots or plots by the board of commissioners who made the previous report of assessment according to benefits. This previous report, as already stated, was sent back for a cause not involving the examination of any assessment. To be exact, the cause was this: that the commissioners certified as to "actual benefits," whereas they should have certified as to peculiar benefits. The order referring the report back bears date March nineteenth, 1915. Prior to this date the commissioners who made the report which was sent back had gone out of office, so that the reference was to the present board. The language of the order is "that said report be and the same is hereby referred to Harrison Van Duyne, Harry B. O'Connell and Michael Devita, Commissioners of Assessments for Local Improvements in the said City of Newark, to reconsider the subject matter thereof and to present a new report," &c. The commissioners, thus directed "to reconsider the subject matter"

of the former report, would naturally examine the former report in order to ascertain what was the subject matter which their duty was to consider. It was, of course, essential that they should exercise an independent judgment as to the land to be assessed and the amount to be assessed in each case. The testimony of the commissioners indicates that they did exercise an independent judgment. If this was the fact, the circumstances that many of their figures bore a certain arithmetical relation to the figures reached by the earlier board has no importance. This objection is not sustained.

Another objection, in support of which much testimony has been taken and much argument presented, is that in certain specified instances assessments are inequitable, or, in other words, do not have that equality which is equity, other things being equal.

The law appears to be that every landowner has an unqualified right to insist that an assessment against his land is too large and to have it reduced, if he proves it to be absolutely too large, but that he has not an unqualified right to insist that an assessment against his land is only relatively too large, and to have it reduced if he proves it to be relatively too large. To put it in another way, he cannot have his own assessment cut down because his neighbor's assessment is smaller than his own, other things being equal, unless the fact that his neighbor's assessment is smaller than his own, other things being equal, has or may have injured him by imposing on his land more than a proper assessment.

As the Supreme Court says in *Righter* v. *Newark,* 16 Vroom, at p. 109:

"I think it results that there was inequality in the assessment. But is the prosecutor in a position to complain? Had the whole amount of the expense been placed upon property, this unequal assessment would place the prosecutor in a position to attack it successfully, because a proper re-adjustment would result in relieving him from a portion of his burden. Where, however, a surplus representing the amount of the assessment above the benefits is placed upon the city, another question arises, and that is whether the inequality results from the insufficient assessment of the other property or the excessive assessment of the property of the prosecutor.

He cannot complain of the inadequate assessment of his neighbor unless it peculiarly affects him. It could affect him only if by placing a proper assessment upon all the property that should be assessed, it would operate to place upon this property all the assessment made against the city, and also place upon this other property a part of the amount assessed against the prosecutor in order to make the assessment an equable one. Now, while I think inequality appears, and I may say here that I also think that it appears that some unassessed properties which were clearly benefited should have been included, yet I do not see how an increase and extension of the assessment could wipe out the $22,635.18 assessment against the city. I do not think that this result from a proper assessment is contended for or could be reasonably apprehended. The prosecutor's right to complain must rest upon his con-

tention that his property was assessed more than it was benefited."

So in *Raymond* v. *Rutherford,* 26 Vroom, at p. 446, (affirmed, 27 Vroom, 340) it is said:

"Assuming that these parcels should have been assessed, $75 would have been the utmost assessment for the whole four of them, and the assessment against the borough at large was greater than this, and therefore no injury has arisen to the prosecutors by this omission."

So in *Davis* v. *Newark,* 25 Vroom, at pp. 147, 148, (reversed on another point, 25 Vroom, 595) the opinion reads:

"Another objection to the assessment, is that the commissioners did not take into consideration the benefits to certain lots on the avenue in question,

"It appears that commissioners appointed under the Martin act, upon the application of owners of said lots, adjusted the city's claim upon this improvement in respect to each of said lots. It is unnecessary to determine whether there was authority to make such adjustment.

"It also appears, in my judgment, that the commissioners in the proceedings before us erred in not determining the benefits to such lots, for even if they could not impose an assessment upon them, such a determination might affect the proportion of assessment upon other lots. *Ropes* v. *Essex Public Road Board,* 11 Vroom 64; *Sutphin* v. *Elizabeth, Id.* 283.

"But to make such an objection effective, prosecutors must show that the error has, or at least may have, injured them by imposing upon their lands more than a proper assessment. *Righter* v. *Newark,* 16 Vroom 104.

"In the case in hand the contrary clearly appears. The adjustments by the Martin act commissioners amount to a trifle over $8,000. They were imposed at a rate slightly higher than that which the commissioners in this case imposed on similar lands. But the amount of costs and expenses imposed on the city at large was over $28,000. Had these commissioners taken the lots into consideration, and imposed their rate of assessment for similar property, the result would have affected the city alone. Prosecutors would not have benefited at all. As it seems the city has been paid the adjusted amounts, no injustice can be done by overruling this objection."

So in *Humphreys* v. *Bayonne,* 31 Vroom 406, at p. 408, the opinion says:

"The only other ground upon which the prosecutors seek to contest the confirmation of this assessment is that the commissioners did not assess all the lands which have been benefited by the improvement. But it is settled in this court that an objection of this kind will not be sustained unless it is made to appear that the failure of the commissioners to assess all property benefited has operated to injure the prosecutor by imposing on his lands more than a proper assessment."

So in *Coward* v. *North Plainfield,* 34 Vroom 61, at p. 64, the opinion says:

"But although this method is illegal, it will only justify the vacation of the assessments so far as those prosecutors are concerned whose lots have been bisected and assessed in the manner complained of. As to the other prosecutors, such illegality does not seem to have worked any harm to them.

> A very considerable part of the cost of the improvement has been assessed upon the borough at large, and there is nothing in the proofs to suggest that the result of this error has been to impose on their lands more than a proper assessment. *Righter* v. *Newark,* 16 Vroom 104; *Davis* v. *Newark,* 25 *Id.* 144."

The assessment against the city in this case is $559,246.20, a sum so large that it is inconceivable that any assessment which is said to be relatively too low has had the effect to increase the assessment of any objecting landowner, or that, on a readjustment, any proper increase of the assessment which is said to be too low would diminish the assessment of any objecting landowner. There is no substantial evidence that any one of these three thousand assessments is absolutely too low; that is, that it is less than the benefit conferred by the improvement. On analysis, therefore, the real inquiry in each instance is seen to be the single question whether the assessment complained of is absolutely too large. Of course, it is also true that inequality in statements is available to objectors as material for argument tending to weaken the legal presumption in favor of the report.

These five cases form a consistent chain, one hanging from another in the order of time. An examination of our law reports shows that they have been cited only with approval. The case of *Simmons* v. *Millville,* 46 Vroom 177 (affirmed 47 Vroom 821), is not inconsistent with these earlier decisions, none of which are referred to in the opinion. The inequality in *Simmons* v. *Millville* was so glaring that the whole assessment was held to be invalid. It

is to be admitted that in a case of extreme inequity the presumption in favor of the commissioners' report may be overcome as to the whole or as to a part of the record. In *Bradley* v. *Asbury Park,* 2 Gummere 293, at p. 296, it was held, citing *Simmons* v. *Millville,* that all property benefited must be brought within the range of the assessment, which in that case was for different reasons conspicuously illegal. The cases first cited—namely, *Righter* v. *Newark, Raymond* v. *Rutherford, Davis* v. *Newark, Humphreys* v. *Bayonne* and *Coward* v. *North Plainfield*—two of which went to the Court of Errors and Appeals, may be accepted, so far as they go, as containing a statement of the legal rule applicable to the phase of this matter now under consideration.

In examining the specific objections founded on what is claimed to be inequality of assessment, it seems necessary to take up each case by itself, bearing in mind that, in view of the decisions above referred to, three closely connected inquiries should, or may, be made; first, whether the assessment objected to is too large absolutely; secondly, whether the assessment objected to is so much too large, relatively, that an equalization and readjustment would be likely to reduce it, and, thirdly, whether so extreme a case of inequality is made out as to require the Court, on that general ground, to send back the report or some part of it.

It is convenient to examine first the objection made on behalf of the Halsey estate. That assessment is very large, and was arrived at by a definite method which Mr. Van Duyne describes in his testimony. It would seem that this method should be demonstrably either ad-

missible or inadmissible. Some explanation is necessary in order to make the matter clear.

The Halsey tract before the opening of Branford place was bounded on the north by Springfield avenue and on the east by Shipman street. Branford place when opened took away from the Halsey tract a triangle with its base on the west line of Shipman street, along which the base extended 80.48 feet southerly from the corner of Shipman street and Springfield avenue. The longer side of the triangle extended along the southerly line of Springfield avenue westerly 198.05 feet from the corner of Shipman street and Springfield avenue. Its third side, which was its southerly side, measured 166.25 feet. The effect of taking this triangle was to make a junction, throughout the long side of the triangle, between Branford place and Springfield avenue. Branford place was laid out to a point on the southerly line of Springfield avenue located about 44.33 feet east of the easterly line of High street. This point is at the westerly end, or apex, of the triangular piece taken. The original frontage of the Halsey tract on the west side of Shipman street, measuring south from the corner of Shipman street and Springfield avenue, was 245 feet. Of this Shipman street frontage 80.48 feet was taken, as already mentioned, when Branford place was opened. No part of the Halsey tract extended to High street, which is the street next west of and parallel with Shipman street. The only frontages of the Halsey tract before Branford place was opened were on Springfield avenue and Shipman street, that on Springfield avenue being the more valuable. The effect upon the Halsey tract of the opening of Bran-

ford place was, generally, to diminish its area by abstracting the triangle; and, specifically, first, to shorten the Shipman street front by about 80 feet; secondly, to take away the entire Springfield avenue front of 198.05 feet; thirdly, to take away nearly all of one building and a part, which included the front, of another building. The commissioners made an award to the owners of the Halsey tract of $165,000 as compensation for their damage. This award was objected to as insufficient and was sent back. The Court, in sending back this award for revision and correction, gave certain instructions to the commissioners, which I will epitomize from the decision which is before me. A clear understanding of the consideration which governed the award for damage will throw light on the assessment for benefit. The Court, in sending back for correction certain of the awards, gave to the commissioners the following instructions, with special reference to the award in favor of the Halsey estate:

That the Newark Charter of 1857, section 100, provided that commissioners to award damages for opening a street shall have regard both to damage and to benefit;

That the third section of a supplement to the Newark Charter, approved March 18, 1868 (P. L. 1868, p. 411), enacted that thereafter such commissioners, in estimating and assessing such damages, shall not have regard to benefit;

That in 1875 a further supplement to the Newark Charter, approved March 11, 1875, provided, in section 5, the following method of assessment:

> "Hereafter all assessments for costs, damages, and expenses shall be assessed by the said commissioners upon all the owners of

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land and real estate in said city as nearly as may be to the advantage each shall be deemed to acquire, and in case the said costs, damages and expenses shall exceed the amount of said benefits, such excess shall be assessed upon and paid by the City of Newark;"

That in the matter of the Halsey award a part of the Halsey tract was taken for the opening of Branford place, and that, as to the award for damages, two questions arose: first, what, on the day of the taking, was the market value of the part taken; secondly, to what extent, if to any extent, was the market value of the remainder of the tract impaired on that day by the withdrawal of that part taken; that the first question is simple, because it calls only for an estimate of the market value of a piece of land; that the second question would be almost equally simple if it were allowable to have regard both to damage and benefit, to advantage as well as to disadvantage; that, as the consideration of benefit or advantage is excluded by the statute of 1868, it is necessary to find a method, applicable to all cases, by which, when part of a tract is taken, damage to the remaining land may be ascertained, excluding from consideration benefit to such remaining land;

That the true method of eliminating the consideration of benefit is this; Exclude from the mind all reference to the nature and purpose of the taking; let the taking be for any object for which a public agent may exercise the power of eminent domain, for a park, for a street, a court house, a jail, a railroad, a canal, a pumping station—no matter what; let, if you please, an imaginary wall separate the land

taken from the land not taken, and then, without caring what is to be done with the land taken, inquire into what extent the remainder of the tract will be diminished in market value by the abstraction of the land taken; and that thus all question of comparative advantage and disadvantage created by the condemnation, as elements of the award for damages, at once vanishes;

That the commissioners, in awarding compensation for damage to the Halsey tract, should first determine the market value of the land taken, and then, in the second place, determine the damages to the remaining land caused by the opening of Branford place; that it is evident that the opening of Branford place has inflicted upon the remaining land a serious damage, for it has cut off the whole of its frontage on Springfield avenue and part of its frontage on Shipman street; that it is equally evident that the opening of Branford place has conferred upon the remaining land an important benefit by giving to it a new frontage on Branford place, but that the commissioners, in making the award for damages, should not weigh this benefit against this damage, for the statute of 1868 forbids it; that it appeared from the testimony of Dr. Dimond and Mr. Holzner, two of the commissioners, taken on objections to the first awards, that the commissioners did in fact adopt the course which the Court afterwards pointed out; that they first determined the value of the land taken, and then estimated the damage to the remaining land, leaving out of calculation benefit conferred by the opening of Branford place, and that, in dealing with this question, they were obliged to treat the remaining land not as land having a frontage on Bran-

ford place, but as land which had been deprived of direct access to Springfield avenue, and that the questions to be considered by the Court, on a review of the award for damages, were whether the award made by the commissioners to the Halsey estate is adequate for land and and buildings taken, and also, laying aside any question of benefit incurred, whether it is adequate for damages to remaining lands and buildings and for impairment of plottage value, meaning by "plottage value" capability of development, which, other things being equal, is naturally greater in a large tract than in a small one.

The Court then went on to examine the sufficiency of the award of $163,000, on the basis of valuations adopted by the commissioners themselves, and reached the conclusion that the award of $163,000, while it was more than enough to compensate the owners of the Halsey tract for the land and buildings taken, was not large enough to cover also the diminution in value of the remaining lands and buildings. Accordingly, the report was referred back to the commissioners for further consideration. The commissioners subsequently increased the award to $194,070, which was acceptable to the owners of the Halsey tract and was confirmed. A small building and the front of another were taken. They were old and were probably inconsiderable items in the calculations. The commissioners adopted $1,500 per front foot as the value of a lot of normal depth fronting on Springfield avenue, except the lot on the corner of Springfield avenue and Shipman street, with a frontage of 31 feet on the avenue, which was estimated to be worth $2,000 per front foot, and reckoned that there was a remaining frontage of 90 feet on Shipman street, worth $500

per front foot. The valuation of the entire Halsey tract, on the commissioners' own figures, which the Court approved, was as follows:

Springfield avenue frontage	$312,500
Shipman street frontage	45,000
10 per cent. for plottage value	33,750
	$393,250

These figures were not made by the present board of commissioners, but by their predecessors. They are part of the history of the double proceeding, and it is not improper to refer to them.

Coming now to the action of the present board, the first question is, How did the commissioners arrive at the assessment of $60,000? The answer to this question is to be extracted from the testimony of Mr. Van Duyne, who undertakes to explain the assessment. The following seems to be a correct general formula:

The owner of a tract of land, across a part of which a public highway has been laid by condemnation proceedings, has been paid the value of the land taken and compensation for the damage which the taking of such land has inflicted upon his remaining land. It is required to find the pecuniary benefit or advantage, if any, which his land has derived from the condemnation proceeding. The payment for the land taken is a pecuniary equivalent for the lands taken. The compensation for damage to remaining land is a pecuniary equivalent for such damage. The owner, who has thus been fully compensated, has lost no value. He therefore has not, so far, been financially injured. Excluding now the thought of damage, turn to the question whether his remaining land has received benefit. This depends upon circum-

stances. If the public highway thus opened adds to the value of his tract by giving him a new beneficial frontage, or by increasing the value of his former frontage or of any part of it, that is a benefit or advantage resulting directly from the condemnation and from no other cause.

Coming to this particular case, it is the fact that the Halsey tract, before the opening of Branford place, had two frontages: one, of minor value, on Shipman street; another, of major value, on Springfield avenue. The opening of Branford place took away a part and left undisturbed a part of the Shipman street frontage, and took away the whole of the Springfield avenue frontage. The owners of the tract have been fully compensated for the land taken and for the loss in value of the remaining land occasioned by the taking. The question of damage is, therefore, eliminated and disappears. What remains is the question of benefit occasioned by the opening of Branford place. It is to be remarked that the corner lot has both frontages, one on Branford place and one on Shipman street, and so has a special value, and that there is room for the exercise of judgment as to the best method of plotting the whole tract.

Benefit means increment of value to the remaining lands. This question as to benefit naturally divides itself into two distinct inquiries:

First. How much, if at all, has the land which was the Shipman street frontage, and was left undisturbed by the opening of Branford place, increased in value in consequence of the opening?

Secondly. How much, if all, has the land which is now the Branford place frontage in-

creased in value in consequence of the opening of Branford place?

This land, which now fronts on Branford place, was always there and always had a value. At first it had access both to Springfield avenue and to Shipman street. When it lost its access to Springfield avenue, for which loss the owners were duly paid, there was left to it only its access to Shipman street. It was thus taken out of the major, or more valuable, class of land, fronting on Springfield avenue with access to Shipman street, and reduced to the minor, or less valuable, class of land, with access only to Shipman street. But this land acquired a new front on Branford place, and this raised it out of the class of land with access only to Shipman street into a new class of land, which has access both to Branford place and to Shipman street. It will probably be admitted that this acquisition of a frontage on Branford place gave to the land which acquired it some additional value.

Now, what is the increment of value? It is the difference in market value between the same land in its present situation and in its former situation. Whereas before it had access only to Shipman street, it now has also a frontage on Branford place. How much more is it worth with this Branford place frontage than it was before?

Any line of inquiry as to this matter of benefit to the Halsey tract which deals fairly and reasonably with the available data, with a view to answering the foregoing questions as to Shipman street and Branford place frontage, ought to yield a result approximately correct. The question now is whether the method

pursued by the commissioners fulfills these conditions.

Mr. Van Duyne says that the commissioners had in their hands an appraisement of the whole tract at $400,000, made just before the opening by Mr. Brock, a well known Newark real estate man, and that they examined and approved that valuation, and so adopted the sum of $400,000 as the value of the entire tract. I am disposed to think favorably of this estimate of $400,000, for two reasons: first, because the commissioners approved it, and, secondly, because it agrees very closely with the estimate made by the commissioners to award damages. (Page 26 of this Decision.) Mr. Van Duyne goes on to say:

> "We also had in our records the value of the triangular piece of property which was taken from along the line of the Halsey estate by the city, and that the value of this was $182,000. We carefully considered this fact of $182,000, and, in our judgment, that was the proper value of that strip, as it represented the value of the land itself and the damage to remaining land by its abstraction therefrom."

This is not accurate. The sum of $194,070 has been judicially ascertained to be the value of the land taken and the damage to remaining land. Those figures should have been used, and not $182,000. Passing over for the present the fact that the wrong figures were used for the value of the land taken and damage to remaining land, the question remains whether the method employed by the commissioners to ascertain damage was a valid method. That method was this. They first ascertained the value of the Halsey tract before Branford place was opened, and determined it to be $400,000.

From this total valuation they then deducted $182,000, which, in their view, represented what the tract had lost by the abstraction of land and the diminution in value of the remaining land. This left, in round numbers, $218,000 as the value of the remaining land, reduced to Shipman street frontage only. The exact figures would be $217,985. The next step was to determine what was the increment of value due to the Branford place improvement. In order to ascertain this increment, the commissioners plotted the land which remained, put a value on each lot, and added the valuations. The sum of these valuations should be the value of the remaining land, with the benefit of the improvement. The difference between the value of the land reduced to a Shipman street frontage only and the value of the land with both a Shipman street and a Branford place frontage should represent the benefit due to the improvement. The two following pages are copies of Exhibits H 5 and H 6 on behalf of the Halsey estate. H 6 is a sketch of the land as plotted. H 5 is a tabulated statement of the valuations put by the commissioners on the different lots. These pages show clearly what the process was which the commissioners employed. Exhibits H 5 and H 6 show eight lots. The map marked Exhibit H 1 shows nine lots. The land is the same. The difference is that H 5 and H 6 put the Shipman street frontage into one lot, while the map, H 1, divides it into two lots. It will be convenient to consider the number of lots to be eight and not nine.

The result obtained by the commissioners was $62,584, which they afterwards reduced to $60,000. This they determined to be the benefit.

The method was excellent, and, if proper figures were used, the result should be at least approximately correct.

Several things are to be said about this figure of $60,000.

First. As already stated, the amount which represents the value of land taken and damage to remaining land is not $182,000, but is $194,070. Whatever else may be debatable, the figures $194,070 are immutable, for they have been judiciously ascertained. The figures $400,000 for the original value of the Halsey tract are debatable. The figures $255,963, the commissioners' estimate of the value of remaining land, with a Branford place and a Shipman street front, are debatable. The figures $194,070 are not debatable.

Secondly. It is objected that the item "Plus ten per cent. plottage value, $25,506," is not allowable. By "plottage value" is meant capacity of development, attributable to a tract of considerable size. The figure $400,000, which the commissioners adopted as the original value of the Halsey tract, included a ten per cent. plottage value. The deduction from $400,000 of $194,070 leaves $205,930 as the value of the land after it had been reduced to a Shipman street front only. Plottage value is an ingredient in this $205,930, because it was an ingredient in the $400,000, from which sum the $205,930 was derived. The next step in the calculation is to subtract the $205,930 from the value of the land which enjoys both a Branford place and a Shipman street frontage, and so deduce the benefit. The commissioners' estimate of the value of these eight remaining lots is $255,063. This estimate does not include plottage value, but is made up by adding together

valuations of separate lots. As the subtrahend, $205,930, contains plottage value, the minuend, $255,063, which does not contain plottage value, should have plottage value added to it. Consequently, the objection is not well taken and plottage value should be added to $255,063.

The commissioners' figures as corrected then would be

Land value	$255,063
Plus ten per cent. plottage value	25,506
Market value of Halsey land after opening of Branford place	$280,569
Value of land after it had been reduced to a Shipman street frontage only	205,930
Total increase in market value	$ 74,639

The disputable elements in this calculation are the $400,000 and the $255,063. As already said, the Court adopts $400,000 as the value of the original Halsey tract.

The critical question is as to the value of the eight lots. A tabulation of the estimates of Messrs. Conlon, Birkholz, Fiedler, Eisele and Berry, experienced real estate men called as witnesses by the Halsey estate as to the value of the lots in question, shows that there is some divergence of opinions among them, but that, in most cases, they name figures lower than those estimated by the commissioners. Whatever may be thought of the estimates of these five witnesses for the Halsey estate, it is clear that the estimates of the commissioners are too high; and this for the following reason: The figure on which the awards for damages were founded were these: $2,000 per running foot for the corner lot, $1,500 per

running foot for the Springfield avenue front and $500 per running foot for the Shipman street frontage. (Page 25 of this Decision.) These are the figures which entered into the estimate of $400,000, which the present board of commissioners approved and adopted. These are the figures used in estimating the value of the triangle taken and the consequent damage to remaining property. They are worthy of the greatest respect and are almost authoritative. They were within the reach and probably within the knowledge of the present commissioners. The present board, in estimating the value of these eight lots, adhere to these figures. The corner lot, which was worth $2,000 when it was at the corner of Springfield avenue and Shipman street, is thought to be still worth $2,000, now that it is at the corner of Branford place and Shipman street. The three lots next west of the corner lot, which were worth $1,500 per running foot when they fronted on Springfield avenue, are thought to be still worth $1,500 per running foot, now that they are numbered 2, 3 and 4, and front on Branford place. So with the rest of the Branford place lots, though, owing to the short and irregular lines, the comparison is not so easy to make. So, also, there is no change in the value of the Shipman street lots, which remain at $500. That case is not so clear. In other words, and this is the point, the commissioners have estimated the lots which front on Branford place as having the value they would have had if they had fronted on Springfield avenue instead of on Branford place. To put it in another way, the commissioners have treated the existing Branford place frontage as of equal value per foot with the old front-

age on Springfield avenue. One has only to look at the ground now, and to remember the lines of Springfield avenue on the block west of Shipman street, to see that this is not true. If what remains of the Halsey tract could now be sold *en bloc,* for some special public use, which would call for the erection of a noble building looking out on the plaza formed by the junction of Branford place and Springfield avenue and across to the white walls of the court house, with something of a vista down Branford place to the east—in that case, perhaps, the Branford place frontage would be superior, for purposes of architectural display, to the same length of the old Springfield avenue frontage. But that is not the natural destination of the Halsey tract. It is only good, plain, valuable business property. The important, the controlling, factor in the business situation in that immediate locality is the relation of property to traffic on Springfield avenue. The Branford place frontage, which has been swung off to the south, away from that Springfield avenue traffic, like a door moving on its hinges, has thereby suffered a substantial loss in value. The Springfield avenue traffic used to pass along its front. The main stream of it does so no longer. It now passes, but at a distance from the Branford place frontage, and at a distance which rapidly increases toward the east, so that the deepest and most valuable lots suffer most. The commissioners, in making their award of $60,000, must, it seems, have overlooked these considerations. However that may be, the Court cannot approve an assessment which involves the erroneous assumption that 166 feet, or thereabouts, of the Branford place frontage is as valuable as the same number of feet would

have been on Springfield avenue. The assessment of $60,000 should be substantially reduced. Just how much is a question for the commissioners rather than for the Court. Here are some calculations which may be useful.

If the valuations by the commissioners were reduced ten per cent., the figures would be as follows:

Land value,	$229,557
Plus 10 per cent. plottage value,	22,956
Value of land after Branford place had been opened,	252,513
Value of land after it had been reduced to a Shipman street frontage only	205,930
Increase in market value,	$ 46,583

If a fifteen per cent. reduction the increase in market value would be $32,554. At a twenty per cent. reduction the increase in market value would be $18,526. At a twenty-five per cent. reduction the increase in market value would disappear.

The objection to the assessment of $60,000 upon the Halsey tract is sustained, and the report as to that matter is referred back to the commissioners, in order that they may re-examine the subject in view of the foregoing conclusions and suggestions.

Objection is made to the following asssessment:

"Block 73, Lot 60, Nos. 279 to 285 Washington street, New York Telephone Company, $22,500."

Eleven objections have been filed on behalf of the owner against this assessment, some of which are general and some specific. The Court

will consider only those objections which have been urged in argument or by brief or are covered by stipulation and which are within the filed objections. On the oral argument two grounds of objection were relied on:

1. That the premises assessed stand in a different category from that in which they were placed by the commissioners of assessment, and should have been assessed, not the increase of market value, but on the enhanced value of the use.

2. That a triangular tract, bounded by High street on the west, Thirteenth avenue on the north and Springfield avenue on the south, lettered on map Exhibit B with the words, "Hall of Records, Essex County Property, not assessed," should have been assessed, and that because it was not assessed the Court should set aside the assessment against premises of the New York Telephone Company. There is little evidence as to this triangular tract, which is separated from the court house tract by Thirteenth avenue. It may be assumed that it is county property, acquired for county purposes, to which it has not yet been devoted. Most of it is covered with buildings, for which it seems likely that rent is paid to the county. The excellent brief submitted on behalf of the New York Telephone Company does not mention this second ground of objection. The brief is largely devoted to the first ground of objection; namely, that the property should have been assessed solely on the enhanced value of its use, and not on the increase of market value due to the opening and widening of Branford place.

It is established law in New Jersey that railroad property used solely for railroad pur-

poses is assessable, not on the increase of market value due to a local improvement, but on the extent of actual benefits thereby conferred on such land for railroad purposes; in other words, on the enhanced value of the use. *New York Bay R. R. C.* v. *Newark,* 53 Vroom, 82 L., 591.

A remark by Mr. Justice Swayze, in *Simmons* v. *Millville,* 46 Vroom, 75 Law, 177, at page 178 (affirmed on opinion in 47 Vroom, 76 Law, 821), suggests that this rule may in some instances be extended to cover property other than railroad property. In that case an assessment had been laid according to benefits from sewers. Churches, factories and railroad property were altogether omitted. The opinion says:

> "We cannot doubt that both churches and factories and perhaps the railroad, are benefited in their use, if not in the market value of the properties, by the construction of the sewers."

The question now is whether the rule which applies to railroad property should in this case be extended to a piece of factory property, for that is the class to which the property of the New York Telephone Company belongs. The general rule, to which there are some exceptions, was laid down in the *Foster Home* case, 6 Vroom, 35 Law, 157, 166, 167, a case subsequently reversed on another point. In this case it was held that, in making municipal assessments,

> "the present use of the property and the purpose of the owner, in relation to its future enjoyment, must, as a general rule, be laid out of view, the only safe and practical course being to consider what will be

the influence of the proposed improvement in the market value of the property."

In this case two assessments had been imposed on the land of a charitable institution one for opening Summer avenue and the other for grading, curbing and flagging Second avenue, in the City of Newark, and the objection was distinctly made that this land should not have been assessed for benefits on the same principle as that on which lands of other owners were assessed. The Court, in dealing with this question, said this:

"But it is further objected on the part of the prosecutors, that even if their charter does not contain the exemption which they claim, these assessments are wrong, and ought to be set aside on another ground, namely, that the property of the society was not benefited as much, relatively, as the property of other land-owners on the line of said streets, and should not have been assessed for benefits upon the same principle.

"The cases relied on to support this objection were, *Matter of the Mayor, &c.*, 11 Johns. R. 77, and *Matter of Albany St.*, 11 Wend. 150. These cases are referred to by Mr. Justice Bronson, *In the Matter of William and Anthony Sts.*, 19 Wend. 678, who, in delivering the opinion of the court in that case, says with reference to a similar objection: 'As a general rule, in making these estimates and assessments, the present use of the property and the purpose of the owner in relation to its future enjoyment, must be laid out of view. The only safe and practical course, the one which will do equal justice to all parties, is to consider what will be the influence of the proposed improvement on the market value of the prop-

erty. What is it now fairly worth in the market, and what will be its value after the improvement is made? *Furman St.,* 17 Wend. 668.

"'In the case of churches and lands which can only be used for a cemetery, a different rule has been laid down. *Matter of Mayor,* 11 Johns. R. 77; *Albany St.,* 11 Wend. 150. But it should be remarked in relation to these cases, that they proceed on the ground that the owner cannot apply the property to any new or different use. Where the owner has the unrestrained power of alienation, and the property may be converted to any new use at his pleasure, it is difficult to see upon what principle an exception can be made to the rule regarding only the market value. After the owner has escaped what would otherwise be a just burden, on the ground that he does not intend to use the property in a way which will make the improvement beneficial, he may change his mind, throw the property into the market, and realize advantages for which others have been made to pay.'

"The rule as here stated by Judge Bronson, we understand to be the correct one. The assessments against the prosecutors in this case appear to have been made in conformity with this rule, and the objection that they are wrong in principle is therefore not sustained."

In *State, Morris and Essex R. R. Co., Pros.* v. *Jersey City,* 7 Vroom, 36 Law, at p. 5, Mr. Justice Depue said that the case in 19 Wendell is undoubtedly correct as a statement of the general rule.

It is well to notice at the outset that the inquiry as to market value is broader than the inquiry as to enhancement of the value of use.

The inquiry as to market value overlaps and includes the injury as to use. The inquiry as to use is mainly an inquiry as to accessibility. The inquiry as to market value embraces many considerations, of which the subject of accessibility is only one. It is by no means true that two lots which are equally accessible are equally valuable. Of these two values—market value and the value of use—market value is the more comprehensive, and takes account of more elements in the calculation. To select the other as the criterion rather than market value would be to prefer the exclusive to the inclusive, the narrow to the wide, the partial to the complete.

It is said on behalf of the New York Telephone Company that its investment in the lots on which this assessment has been made is very large; that it has put up there a building designed to serve as the local centre of its business; that the company does not wish to move its headquarters, and that, while it is true that this property has a market value which is at least approximately ascertainable, yet the situation is such that the company could never by a sale of its premises realize any benefit which could reasonably be ascribed to the opening and widening of Branford place, because the loss incident to moving its quarters would wipe out such benefit ten times over. All this may be admitted, but how does it follow that the basis of assessment should not be increased of market value? The argument, so far, proves too much, for it is equally available to any very large concern.

Take, for example, some of our institutions which are in this class: the Prudential Insurance Company, the Mutual Benefit Life Insurance Company, the vast establishment of Hahne

& Company, Proctor's Theatre, any one of half a dozen huge breweries. Each, like the New York Telephone Company, has a market value which can be ascertained; each, like the New York Telephone Company, has expended great sums on its plant; each would find it very inconvenient to move; and no one of them all could probably realize, as the net result of a sale, the increment of market value such as is attributed to the opening and widening of Branford place, of which an assessment is assumed to be the equivalent. Will it be urged that these great enterprises are to be assessed differently from their neighbors; that is, on a different principle? Such a claim would strike the legal profession as an entire novelty.

But, it may be said, this is not the whole of the argument on behalf of the New York Telephone Company. That company is a *quasi* public corporation, and enjoys a public use. True, but what is a *quasi* public corporation? Our Court of Errors and Appeals prefers to use the expression, "corporation affected with a public interest." *Attorney General* v. *Firemen's Ins. Co.,* 4 Buch., 74 Eq. 372, 376, 377, 378. This definition requires itself another definition, which is thus supplied by Chief Justice Waite:

> "Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use and must submit to be controlled by the public for the common good to the extent of the interest he has thus created." *Hunn* v. *Illinois,* 94 U. S. 113.

Fire insurance companies were held in the New Jersey case above cited to be corporations affected with a public interest. A telephone company is, no doubt, in this class. So is a telegraph company. So is an express company. So is a hotel company. Here, again, the argument proves too much. Is the Court to be told that all the telegraph and express and hotel companies who own land used in their business in the zone of assessment are to be assessed differently from other persons? Well, no, perhaps it will be said, not exactly that, but there must be a combination of business and public interest. The question at once arises, How big? Is the modest office of the Western Union Telegraph Company, at 749 Broad street, large enough? If not, would the rule be different if the building were twice as wide and four times as high, or twice as high and four times as wide, or as large as the Western Union offices on Broadway, in New York City? And are such questions to be left to commissioners? It is easy to imagine into what refinements and complexities the matter might run, and how the labors of a board of commissioners, already troublesome enough, might become more of a puzzle than ever.

In short, the Court overrules this objection, for two reasons: First, what seems to be a doubtful and unnecessary exception to a simple general rule should not originate at the circuit. Secondly, the exception is objectionable, among other reason, on the practical ground that it raises questions with which commissioners should not be required to deal. There seems, on the whole, to be nothing to support it in New Jersey except some general language used by courts in railroad cases, without special reference to

this particular question and which need not be considered controlling authority.

The second objection raised in argument against the assessment on the land of the New York Telephone Company is that the assessment should be set aside because the commissioners laid no assessment on the triangular tract belonging to the County of Essex, referred to on pages 40 and 41 of this Decision. As that tract is not yet devoted to public use, it seems that it should have been assessed. This question, however, has not been argued. According to the New Jersey cases referred to on pages 16, 17, 18 and 19 of this decision, this objection ought not to prevail, because the objector is not a penny the worse by reason of the omission to assess the triangular tract and would not be a penny the better if the triangular tract were now assessed. These decisions go on what seem sound, practical grounds. It may, however, be said that there is an aspect of the situation, rather obvious, but not referred to in any one of these decisions, in which the assessment against the New York Telephone Company might be thought to be theoretically affected, in this way. The amount assessed against the city is $559,-246.20. If the triangular tract were assessed, say, $20,000, the amount assessed against the city would be reduced to $539,246.20. The New York Telephone Company is a taxpayer in a city of about 400,000 inhabitants, and has to bear its proportionate share of the civic burden. Its tax bill might, therefore, at some future time be somewhat less than it would be if an assessment of $20,000 on the triangular tract had been paid. Perhaps the question of the interest of the taxpayer was not raised in these other cases,

or perhaps the courts thought that it would work out into one of these infinitesimals which the law does not regard. This court will follow these cases and overrule this objection.

The same ruling applies to the objection on behalf of the Improved Realty Company, which raises the same question.

Counsel for the New York Telephone Company has suggested that the tract upon which the court house stands, and which was not assessed, should have been assessed, though only for a nominal sum. If this be so, the objection is insubstantial, under the *de minimis* maxim. The Massachusetts rule is to be preferred; that, on grounds of public policy, land of a county, used for county purposes, is exempt from assessments for local improvements of a public nature. *Worcester Co.* v. *Worcester,* 116 Mass., 193; *4 Dillon on Municipal Corporations,* sec. 1444, note.

The brief submitted on behalf of the New York Telephone Company insists also that the assessment of $22,500 is excessive. The commissioners thought otherwise. Mr. James A. Berry, a very competent witness for the objecting company, testified that, in his opinion, $12,500 would be about right. I see no reason why his opinion should overrule the conclusion of the commissioners. The brief also makes certain comparisons between the property of the telephone company and lands of others. These comparisons are inconclusive as ground for setting aside this assessment. There is nothing else in the brief that requires specific attention. The objections to this assessment against land of the New York Telephone Company are therefore overruled.

Objection is made to the following assessment:

Block 83, Lot 18, Nos. 1 to 11 Market street, St. Paul's Episcopal Church, $750,00.

This land is situated at the northeast corner of High street and Market street. On it stands a church edifice and other buildings, all regularly used for religious purposes and purposes connected therewith, according to the laws and usages of the Protestant Episcopal Church. A copy of an instrument in writing, dated October 25, 1856, between Jeremiah C. Garthwaite, of the first part, and the rector, wardens and vestrymen of St. Paul's Church in Newark, of the second part, in which Caroline C. Garthwaite, wife of Jeremiah C. Garthwaite, joins with her husband, has been offered and received in evidence and marked Exhibit 1 for St. Paul's Episcopal Church. This document was objected to on the ground that it is immaterial and irrelevant, but not on the ground that it is an uncertified copy. This document, though informal, has no doubt been accepted by the party of the second part, and constitutes a contract purporting to bind the party of the second part to hold the lands in question for the use of the parish connected with St. Paul's Church, and to devote them to religious worship, according to the rites, usages, ceremonies and laws of the Protestant Episcopal Church and for such educational, charitable or other purposes as may be consistent therewith, and no other uses or purposes whatsoever, without power to sell, alien, transfer or encumber said lands or any part thereof.

Among the objections filed for St. Paul's Episcopal Church is this: "That said lands are not peculiarly benefited by the opening and widening of Branford place, or, if at all, not to the extent of the assessment imposed." On the hearing this assessment was objected to because it is for increase of market value, whereas the church is

restricted by its deed, and so has precluded itself, so far as it is possible, from exercising the power of alienation, and has become incapable of ever legally taking advantage of increase in market value. *(Miscellaneous Objections,* No. 1, p. 200). The opinion in the Foster Home case, quoted on pages 42 and 43 of this decision, contains a strong intimation that, in such a case, the basis of an assessment should not be increased in market value. This objection is therefore sustained. The assessment is set aside, and the commissioners are directed to reconsider the case of St. Paul's Episcopal Church, and are instructed that its lands are not liable to assessment for increase in market value, but, if at all, only for enhancement of the value of the use of the premises for religious purposes, due to the opening and widening of Branford place.

The Court has already dealt with certain general considerations, such as the size of the zone, at pages 9 and 10 of this decision; the method of ascertaining benefit, at pages 10, 11 and 12 of this decision; the question of traffic, particularly vehicular traffic, at pages 12, 13 and 14 of this decision; the arithmetical relation of certain assessments to those in a former report, at pages 14, 15 and 16 of this decision, and some legal aspects of inequality in assessments, at pages 16 to 21 of this decision. It is not necessary to refer again to these general rulings.

The specific assessments already considered are only three in number; that against the Halsey estate, that against the New York Telephone Company and that against St. Paul's Church. These have been considered at the outset chiefly because they have characteristics which distinguish them broadly from most others. As

already mentioned, certain assessments are affected by the question as to diversion of traffic and require re-examination. Many assessments remain to be dealt with. It is desirable to simplify the inquiry by classification of the assessments, so that as many as possible may be disposed of by considerations applicable to a whole group.

It has become apparent during this investigation that there is one very large class which will require no attention from the Court except the statement which is now about to be made. That class is made up of assessments as to which it appears, upon analysis, that there is a difference of opinion, and nothing more. The report of commissioners, for example, finds in official form that, in their opinion, a certain lot, owned by Mr. A B, has received peculiar benefit to the extent of ten dollars. Mr. A. B. objects that his lot has, in his opinion, received no benefit or not so much. Testimony *pro* and *con* is taken on both sides. It is very largely a matter of mere opinion, and opinions differ. Opinions of owners and of real estate experts are opposed to conclusions of commissioners. On such a subject difference of opinion is inveterate. Assessments are sometimes unreasonable, but the fact that an assessment is objected to as unreasonable does not, of itself, even tend to prove that the assessment is objectionable. Unless the views entertained by the Court as to the nature of this proceeding and as to the rules which should govern it are radically erroneous, the mere fact that owners and commissioners do not agree as to matters that are fairly disputable gives the court no warrant to set aside an official report.

The Court will not attempt now to enumerate the assessments which form this very large class, and which therefore should be at once confirmed. It is better to consider the assessments which, on their face, appear not to belong to this class. Pursuant to notice heretofore given, no questions will be considered, where objections have been filed by an attorney, which have not been raised by brief or in argument.

In examining this subject it is wise not to make much of lapses of memory or of statements which may seem or be inaccurate as to matters which are to some extent speculative and theoretical. Commissioners and jurymen are not required to be expert witnesses. Many a perfectly good verdict would have to be set aside if its validity were to depend on the ability of the jurymen who rendered it to stand an examination months afterwards on their methods of inquiry and the grounds of their decision. There is much sagacity in the opinion delivered by Mr. Justice Dixon in *State, Hunt, Pros.,* v. *Rahway,* 10 Vroom 646. In that case the only witness was one of three commissioners. The witness stated that the commissioners did not go outside of the line of the improvement or make any personal examination of any property outside of that line, *because,* in their judgment, the property on the line of the street was benefited to the full amount of the cost, except what was assessed to the city. On that the court remarked:

> "The reason given by the witness, if it was the whole reason, would, indeed, be a bad one, but he also expressly says that the commissioners assessed all lands which, in their judgment, were benefited, and took that fact into consideration. I judge, therefore, that the witness has given only a part of the

reason which must have actuated him and his associates; but that should invalidate the assessment."

In the *Matter of William and Anthony Streets,* 19 Wendell 694, the opinion, by Bronson, *J.*, contains the following passage, which is full of good sense and is pertinent to the matter now under consideration:

"All the questions relating to the principle upon which the commissioners proceeded in making their several estimates and assessments, have received a separate consideration. We are now brought to the inquiry, whether the commissioners have erred in judgment upon mere questions of value, or concerning the probable influence of the improvements upon value. And here, most of the several objectors have produced affidavits, in which deponents express opinions differing, more or less widely, from the results at which the commissioners arrived; and we are asked to send back the reports on the ground that they are against the weight of evidence.

Courts seldom set aside the verdict of a jury on the sole ground that they may think it against the weight of evidence. And yet there is much less difficulty in such a review than there is in the case under consideration. Jurors do not act upon particular facts within their own knowledge, but upon written documents and the testimony of witnesses submitted to their consideration. The evidence upon which they form conclusions may be put upon paper, and submitted to the court for consideration. But it is not so, or, at least, only to a very limited extent, in relation to the proceedings of those commissioners. They are selected not only with reference to their integrity and general

capacity for business, but on account of the knowledge which they are supposed to possess concerning the particular duty which they are appointed to discharge. Such information as they have in relation to the value of the property taken, and the probable effect of the improvement upon other property in the same neighborhood—in whatever way the information may have been obtained—they are at liberty to use. The very first thing which is required of them by law, after taking the oath of office, is to view the premises affected by the improvement. Sec. 178. They are thus to acquire information, and that too of the most important character, which there are no means of bringing before this court. And beyond this, I entertain no doubt that the commissioners may take the opinions of others, in whose integrity and judgment they have confidence, without swearing them as witnesses. They may converse with all classes of men concerning the business in hand, and collect information in all the ways which a prudent man usually takes to satisfy his own mind concerning matters of the like kins, where his own interests are involved in the inquiry. The commissioners must exercise their own judgment at the last, but they may first seek light from other minds, the better to enable themselves to arrive at just conclusions. When the original jurisdiction is exercised in this manner, it is impossible that there should be anything like a regular judicial review.

We cannot regard the commissioners as witnesses merely, and then suffer their judgment to be balanced by the opinions expressed in three opposing affidavits, and to be outweighed when a fourth is added. For

aught that we can know, the judgment expressed by the commissioners upon questions of value, may combine the opinions of a hundred men who are in all respects as well qualified to form just conclusions as those who make opposing affidavits.

In settling questions of value, the commissioners do not sit as a court and jury, and decide upon the evidence of witnesses examined before them. Nothing of this kind was contemplated by the Act of 1813, nor can it be justly inferred from the Act of 1818, which authorized them to administer oaths. Stat. of 1818, p. 196, sec. 2. Estimates from mechanics and builders may become important in the discharge of the duties of the commissioners, and in these and other cases they may require the sanction of an oath to the estimates which they receive. If, in any case, they make the opinions of others the basis of action without exercising their own judgment, those opinions should be given upon oath. But when they only seek information for the purpose of enlightening their own judgment, they may obtain it in any of the ways in which men usually acquire knowledge. They need not, and in point of practice, they do not, sit as a court. If in any case they take the testimony of witnesses in relation to value, it is but an item in the account, which may go to qualify, but cannot control their own opinions. How, then, is it possible that we can disturb the report upon mere questions of value, on the single ground that five, ten, or even twenty reputable men have sworn to opinions at variance with the judgment of the commissioners?''

As remarked at the top of page 54 of this decision, there are certain exceptional assess-

ments which appear not to belong to the large class of cases in which there is a mere difference of opinion as to matters that are fairly disputable. Without attempting an exact classification, it may be said generally that these exceptional assessments are made exceptional by some special characteristic of the land on which they have been imposed. Perhaps no two minds would altogether agree in the enumeration of these exceptional assessments. The court, after hearing the testimony and oral arguments, has reviewed the entire issue, re-reading the evidence and briefs and examining the documentary exhibits and maps. As a result of this inquiry, the Court has reached the conclusion that the following assessments, in addition to those previously mentioned, should go back for reconsideration:

Owner, Estate of Joseph Neu; block 73, lot 54; street number, 273 Washington street; assessment, $7,500.

This lot is a strip lying along the northerly line of Branford place, with a frontage of not quite 9 feet on the westerly side of Washington street, running back about 202 feet. It narrows slightly for about 75 feet, at which point it is about 6 feet wide, and then widens, until at the rear it is a little more than 26 feet wide. It has no front except that on Branford place. Mr. James A. Berry testifies that this land is practically unusable, and that it is hard to think of any profitable use that would yield money on its value, which he estimates at $13,500. (Miscellaneous Objections, Book 1, pp. 191 to 194). Mr. William C. Fiedler, in speaking of this lot, says: "I do not know what can be done with it in its present condition." He says further

that the prospect of buying from an adjoining owner or owners so as to get more width or of selling to an adjoining owner or owners so as to give such owner or owners a front on Branford place is too uncertain and speculative to be a sound basis for assessment. (Book 5, pp. 784-788). This is a sound conclusion. An examination of the large map, Exhibit B. for Objectors, shows that this Neu strip is bounded on the north by land of the Chelsea Securities Investment Company, on which stands Miner's Empire Theatre, then further west by land of the Prospect Improvement Company, and then still further west by land of the Estate of James Moran. The Neu strip is bounded on the west by land of Joseph Schaedel. The land of the Chelsea Securities Investment Company has a large front on the west side of Washington street, with an L of the lot running to the south side of Market street. The land of the Prospect Improvement Company has a broad front of three lots on the south side of Market street, with a deep rear. The land of the Estate of James Moran has a frontage of six lots on the east side of Plane street. The land of Joseph Schaedel fronts on the east side of Plane street. The land which bounds the Neu strip is therefore already well provided with frontages of its own. To get a Branford place frontage by purchase from the Neu estate might be desirable for the owners of these lands which bound the Neu strip, but is apparently not a vital matter to them. It seems unlikely that they would want to sell. The whole prospect is at best vague and hypothetical. Under these circumstances, an assessment of $7,500 on the Neu strip does not seem justified either by the existing situation or by any natural

probabilities of the future. It will be referred back to the commissioners for reconsideration.

Owner, The King-Marsac Company; block 60, lot 2; street number, 272 Washington street; assessment, $4,200.

This lot is at the northeast corner of Branford place and Washington street, has a frontage on Washington street of 11.61 feet and a depth of 80 feet. The rear is about as wide as the front. This lot is what was left of a larger lot, the southern portion of which was taken by condemnation for the opening and widening of Branford place. The award for the land taken was $30,000. Mr. Rollins C. Marsac testifies that the King-Marsac Company bought this remaining lot in May, 1914, for $9,500, and that it was a good bargain; that he values this land at $1,000 per running foot, and that it is now vacant. (Miscellaneous Objections, Book 3, pp. 319 to 329). Mr. Berry, at page 580, Book 5, testifies that he thinks that an assessment of $4,200 is very high for a lot of this size. The Court agrees with Mr. Berry. It seems that the commissioners could not have sufficiently considered the effect of such small size as a limitation of the availability of the lot. This assessment will be referred back to the commissioners for reconsideration.

Owner, Estate of John D. Peddie; block 60, lot 51; street numbers, 37 to 57 Branford place; assessment, $45,000.

The situation here is somewhat like that of the King-Marsac lot, only on a much larger scale. Lot 51 is what is left of a tract which used to front on the north side of Camfield street. When Branford place was opened and widened Camfield street was merged in Branford place, and a por-

tion of the Peddie tract was taken, for which the award was $159,200. Lot 51 is what was left. It is a parallelogram, fronting on Branford place for 264.43 feet and from 50 to 53 feet deep. So large an assessment on so shallow a lot seems indefensible. The land is not wholly unavailable, but its availability is much restricted. Mr. Fielder, at page 877 of Book 8, was asked and answered these questions:

> "Q Now, is a property that has a depth of 50 feet, let us say, on Branford place very available? A Not very, but it is available; you can use 50 feet.
>
> Q For some purposes? A Yes."

Mr. Berry, who, at page 242 of Book 2, Miscellaneous Objections, values this lot at $110,000 to $112,000, says, at pp. 242 and 243:

> "To my way of thinking, this plottage of the Peddie estate, having but 55 feet in depth, was never in a position to partake of the same rate of peculiar benefits as property of normal depth. * * * A plot of approximately normal depth is undoubtedly estimated to be more usable than a plot having 53 feet of depth. Offhand, I could not think, for example, of any profitable uses for which 53 feet of land could be applied in a section such as that, and it would cause me no difficulty to enumerate business that could use profitably, say, 90, 95 or 100 feet. I mean by that any business."

See also testimony of Mr. Berry on page 247 of Book No. 2, Miscellaneous Objections, and page 823 of Book 7, where he states facts tending to show that lot 51 is not likely to ever acquire any additional depth, on account of the character of the property behind it on Market street. All three of the commissioners have

testified, but threw no light on the assessment. (Mr. Van Duyne, Book 1, p. 72; Book 2, pp. 130, 132; Miscellaneous Objections, Book 2, p. 232; Mr. O'Connell, Miscellaneous Objections, Book 2, pp. 228-230; Mr. Devita, Miscellaneous Objections, Book 2, pp. 231-232).

This assessment will be referred back to the commissioners for reconsideration.

Owner, Federal Real Estate Company; block 60, lot 67, fronting on the south side of Camfield court; assessment, $2,500.

Camfield court is a narrow, blind alley or small street, about 20 feet wide, parallel with Branford place, lying between Branford place and Market street. Lot 65 has a frontage of 44 feet on the south side of Camfield court, and a depth, according to the large map, Exhibit B. for Objectors, of about 80 feet. The map of block 60 attached to the report also indicates about 80 feet. Mr. Berry, at Book 6, p. 662, says that he knows the depth to be about 57 feet. Here he seems to be in error, or the error may be clerical. Lot No. 67 is bounded on the south by lot 51 of the Estate of John D. Peddie, the assessment on which has just been considered. Lot No. 67 is bounded on the west by lot 65 of the Estate of John D. Peddie, which has a frontage of 35.25 on the south side of Camfield court and extends back for about 80 feet to lot 51 of the Estate of John D. Peddie. Lots 51 and 65 thus have the same owner, and lot 51 has an outlet through lot 65 to Camfield court, and so to Washington street, and lot 65 has an outlet through lot 51 to Branford place. Lot No. 67 is bounded on the east by the Proctor Theatre property, which has an L leading to Market street. Lot No. 65 is bounded on the west by lots fronting on the east

side of Washington street. The assessment on lot No. 65, with its frontage of 35.25 feet on Camfield court, is $2,000. The assessment on lot No. 67, with its frontage of 44 feet on Camfield court, is $2,500. The depths are the same. The striking difference between the two lots is that 65 and 51 are under the same ownership, and so can be developed together while 67 stands alone. Yet 65 and 67 are assessed as though they had equal advantages. This is plainly a mistake of judgment. The commissioners must have failed to observe and allow for this obvious inequality of benefit. This assessment will be referred back to the commissioners for review and correction. The testimony which relates to this assessment is that of Mr. Van Duyne, Book 2, pp. 118, 119, 120, 121; Mr. Berry, Book 5, pp. 506-510; Book 6, pp. 662 to 664; Book 7, pp. 729 to 733, 822 to 824; Mr. Paul, Book 8, p. 959; Mr. Fiedler, Book 8, p. 866.

There are two assessments which strongly resemble one another and may be conveniently considered together. They are the assessment against lands formerly of the Prospect Improvement Company, now owned by Burt M. Decker, and the assessment against lands of Frederick F. Proctor. The particulars are as follows:

Former owner, against which it is assessed, Prospect Improvement Company; block 73, lot 40, in rear of three lots of the same owner, fronting on the south side of Market street, each of which is separately assessed. These three lots are Nos. 36, 37 and 38 on block 73 and are known by the street numbers 68, 70 and 72 Market street. The assessments on these three lots are $285, $255 and $235. The assessment on the rear lot, No. 40, is $4,500. The Market street front is the only front.

Owner, Frederick F. Proctor; block 60, lot 33. Here there is a very large rear, with an L of one lot, fronting on the southerly side of Market street, known as 114, 116 Market street, with a frontage of 33 feet. There is one assessment of $6,500 on the whole property. The Market street lots on either side of 114 Market street are Nos. 110, 112 on the west, with a frontage of 31.87 feet, assessed for $360, and Nos. 118-122 on the east, with a frontage of 44.75 feet, assessed for $510. If the assessment had been divided, as it was in the case of the Prospect Improvement Company, Nos. 114-116 Market street would have probably been assessed at not more than $500, leaving an assessment of about $6,000 on the rear.

That these rear lots of the Prospect Improvement Company and of Mr. Proctor are valuable is evident. Mr. Proctor has demonstrated the availability of his own rear lot by building on it the greater part of a large theatre. Moreover, its northern boundary for nearly 100 feet is Camfield court, the blind alley, or narrow street, leading to Washington street already mentioned. The rear lot of the Prospect Improvement Company is also of considerable area. The testimony of Mr. Frederick R. Pilch seems to indicate that this rear is unimproved by building. (Miscellaneous Objections, Book 3, pp. 349-355). But the question is not as to the value of these rear lots, but as to the benefit received by the rear lots from the opening of Branford place.

Lot No. 40, of the Prospect Improvement Company, is separated from Branford place by the strip owned by the Estate of Joseph Neu. The rear part of the Proctor property is bounded on the south by lot 51 of the Estate of John D.

Peddie, which is about 53 feet deep. Each rear lot is therefore cut off by the land of another owner from direct access to Branford place. There is thus in each case this general situation: A front on the south side of Market street and a rear deriving most of its value from its connection with that front. Whatever benefit the Proctor rear has received is, so to speak, not original, but derivative—conferred by and coming from and through the frontage on Market street—and this is substantially true of the rear of the Prospect Improvement Company's lot, though that has itself a frontage on Camfield court. How, then, does it come that the rear is assessed in each case so much more than the front? No valid reason for this incongruity suggests itself. The commissioners in these two instances seem to have made an excessive overestimate of advantage attributable to mere adjacency, over-looking or not giving due effect to considerations as to accessibility.

Testimony on behalf of objectors bearing on these two assessments is as follows: As to Prospect Improvement Company assessment, Berry, Book 5, pp. 493-500; Van Duyne, Book 2, pp. 129-130; Fiedler, Book 8, pp. 866-867. As to Proctor assessment, Berry, Miscellaneous Objections, Book No. 1, pp. 61-68.

An examination of the whole subject leads to the conclusion that the assessments hereafter specified, to which objections have been filed, and no others, should be referred back to the commissioners for reconsideration.

Assessments on lots fronting or having a boundary on the following streets and parts of streets: The south side of Springfield avenue along the block from Shipman street to Arlington

street, the south side of Market street from Arlington street to Broad street, the west side of Broad street from Market street to Branford place, the north side of Market street from Broad street to Court House place, and both sides of Mechanic street. These assessments are referred back for reconsideration in order that the commissioners may include in their inquiry the effect as to said lots, if any, of diversion of traffic from Market street to Branford place.

Also assessments on lots hereinafter named, which are to be reconsidered in view of the recommendations and directions in respect to them contained in this decision.

Estate of George A. Halsey, block 79, lot 17.

St. Paul's Episcopal Church, block 83, lot 18.

Estate of Joseph Neu, block 73, lot 54.

The King-Marsac Company, block 60, lot 2.

Estate of John D. Peddie, block 60, lot 51.

Federal Real Estate Company, block 60, lot 67.

Prospect Improvement Company, block 75, lot 40.

Frederick F. Proctor, block 60, lot 33.

The assessment against the lot of St. Paul's Episcopal Church is set aside because it is based on increase in market value, whereas any assessment on that lot should have been based on enhancement of the value of the use for religious purposes. The assessments against the other seven lots above mentioned are set aside because, for reasons stated in the decision, they are thought to be excessive.

All assessments which have been objected to, other than those which are to be referred back to the commissioners for reconsideration, will be confirmed.

Order of May 6, 1916, Confirming Assessments as to Prosecutors and Others and Referring Back as to Same.

Objections having been filed by owners and persons interested in the lands affected by the report and assessment of benefits heretofore made by the Commissioners of Assessments for Local Improvements of the City of Newark in the above matter and the Court having duly considered the said objections and heard the arguments of counsel thereon, it is, on this sixth day of May, nineteen hundred and sixteen, on motion of Harry Kalisch, Esquire, City Attorney of the City of Newark,

ORDERED, That the said report be, and the same is hereby ratified and confirmed except in the particulars hereinafter named, that is to say, first, except in so far as the same imposes assessments, as to which objections have been duly filed, upon lots fronting or having a boundary on the following streets, or parts of streets, namely,

The south side of Springfield avenue between Shipman street and Arlington street.

The south side of Market street from Arlington street to Broad street.

The west side of Broad street from Market street to Branford place.

The north side of Market street from Broad street to Courthouse place.

Mechanic street on both sides thereof.

And it is ORDERED, That said assessments, as to which objections have been duly filed, upon lots having a frontage or boundary on said streets or parts of streets, be and they are hereby referred back to said commissioners in

order that they may include in their inquiry the effect, if any, upon the market value of said lots, of any diversion of traffic from Market street to Branford place, and that said commissioners make whatever revision and correction of said assessments is in their judgments required by consideration of said diversion of traffic.

And it is further ORDERED, secondly, that the assessments upon the following properties, namely:

Lot 17, in block 79, in the name of the estate of George A. Halsey.

Lot 54, in block 73, in the name of the estate of Joseph Neu.

Lot 2, in block 60, in the name of the King-Marsac Company.

Lot 51, in block 60, in the name of the estate of John D. Peddie.

Lot 67, in block 60, in the name of the Federal Real Estate Company.

Lot 40, in block 73, in the name of Prospect Improvement Company.

Lot 33, in block 60, in the name of Frederick F. Proctor, as to which objections have been duly filed, be, and the same are hereby referred back to the said commissioners for revision and correction, in order that the said commissioners may reduce the amount of the assessments against the said properties in accordance with the view expressed by this Court in a decision in the above matter, announced on March 23, 1916, and filed with John MacLauchlan, court stenographer.

And it is further ORDERED, thirdly, that the assessment upon lots 18 and 19, in block 83, against St. Paul's Episcopal Church, as to which

objections have been duly filed, be and the same is hereby set aside, because it is erroneously based on increase in market value of said lots, whereas, it should be based on the enchancement, if any, of the value of the use of said lots for religious purposes, occasioned by the opening and widening of Branford place, and the commissioners are directed to inquire and report whether there has been such enhancement of value, and, if there has been such enhancement, what assessment should be laid upon said lots based on such enhancement of the value of the use of said lots for religious purposes.

And the commissioners are hereby directed to report according to law their conclusions as to said matters referred to them.

Schedules of the assessments sent back and of the assessments confirmed are filed with and made a part of this order.

Let the foregoing order and the accompanying schedules be filed.

FREDERIC ADAMS,
Circuit Court Judge.

Filed May 6, 1916.

JOSEPH MCDONOUGH,
Clerk.

Schedules attached omitted. The schedules showing the assessments confirmed include the names of the prosecutors and those parties made prosecutors by order of the Supreme Court of June 6, 1916, and listed in the schedules attached to said order.

Reasons.

Filed July 6, 1916.

NEW JERSEY SUPREME COURT.

RICHARD C. JENKINSON, *et al*, *Prosecutors*, *vs.* TYLER PARMLY, Comptroller of the City of Newark, *et al*, *Defendants.*	*On Certiorari.* *Reasons.*

Richard C. Jenkinson, Gottfried Krueger, Real Estate Trading Company and Nathan Hammerschlag, by Coult & Smith and Stein, Stein & Hannoch, their attorneys, come and pray that the alleged assessment made against their several properties by the Assessment Commissioners of the City of Newark for benefits alleged to have been conferred upon their several properties by reason of the opening and widening of Branford place in the City of Newark, which assessment was confirmed by the Circuit Court of Essex County on May 6, 1916, may be set aside and for nothing holden or may be re-assessed according to law as the determination and nature of this action shall require, for the following reasons:

1. Because the said respective properties of the prosecutors are not peculiarly benefited by said improvement.

2. Because, at all events, the respective properties of the prosecutors are not peculiarly bene-

Reasons.

fited by said improvements to the extent of the proposed assessment.

3. Because the said commissioners by their report have not made said assessment upon all the owners of land and real estate in the City of Newark peculiarly benefited by said improvement in proportion, as nearly as may be, to the advantage each is deemed to acquire.

4. Because the prosecutors' respective properties do not front or abut upon the said opening and are not peculiarly benefited by said improvement in accordance with said proposed assessment.

5. Because the proposed assessment against their respective properties for said improvement are made up by an arbitrary method and by scale and are not made in accordance with the peculiar benefits to each property and the advantages and benefits, if any, of said improvement vary as to the various lots or parcels of land.

6. Because the Board of Street and Water Commissioners did not, as stated in said report, certify to the Mayor and Common Council of the City of Newark the cost and expense paid and incurred in prosecuting and completing said improvement.

7. Because the Mayor and Common Council of the City of Newark did not by any duly and legally passed resolution ascertain and declare the amount of the cost and expenses paid and incurred by said the Mayor and Common Council of the City of Newark in the making, prosecution and completion of said improvement.

8. Because said commissioners did not, before entering upon the performance of their

Reasons.

duties, sufficiently take and subscribe the oath required of them by law.

9. Because said commissioners did not view or examine their respective lands and properties so proposed to be assessed and reported by them to be peculiarly benefited by said improvement.

10. Because said commissioners did not, so far as they might have done, ascertain the names of all of the owners of the lands and real estate in said City of Newark peculiarly benefited by said improvement, nor did they, as required by law, cause a map to be made, to accompany said report.

11. Because said commissioners, in the making of their said assessment and report, did not make their estimates and assessments fairly, legally and equitably, nor according to the best of their skill and ability.

12. Because said commissioners did not, after having prepared a report of the assessments for said improvement or a tentative report thereof, by certificate in writing cause the same to be deposited in the office of the city clerk of the Mayor and Common Council of the City of Newark for the examination of the parties interested therein.

13. Because sufficient time did not elapse between the date of depositing the proposed report of said commissioners with the city clerk of said City of Newark and the hearing before said commissioners.

14. Because neither due, legal nor sufficient notice was given by advertisement or otherwise of the hearing of said commissioners, referred to in said report, as to the proposed assessment and the making of said report.

Reasons.

15. Because said commissioners did not give notice by advertisement of said hearing on August 10, 1915, referred to in said report, in two of the official newspapers of said city selected with regard to the age and average circulation of said official newspapers.

16. Because said commissioners did not give notice of said hearing on August 10, 1915, referred to in said report, in two nor in more than two newspapers, official or otherwise, published in the City of Newark.

17. Because said commissioners did not, as required by law nor as stated in their said report, publish a notice of the hearing on August 10, 1915, referred to in said report, in three daily newspapers printed and published in the City of Newark, nor in one of such newspapers printed in the German language.

18. Because said commissioners did not, after hearing the objections made at said hearing, referred to in said report, by prosecutors, further consider the proposed assessment against the objectors nor the subject thereof nor the representations made to said commissioners in relation thereto.

19. Because said commissioners in passing on the representations and objections made to them at their said hearing acted arbitrarily and without due regard to law and justice and the rights of the prosecutors and did not consider the objections presented, and in holding said hearing and receiving said objections acted arbitrarily and merely for the purpose of pretending to conform to the legal requirement of having a hearing.

20. Because neither due nor legal nor sufficient notice, as required by law and the order

Reasons.

of the Circuit Court of Essex County was given of the filing of said report with the clerk of the Circuit Court of Essex County, nor of the time and place of hearing of objections to said report or the assessments thereby made.

21. Because neither due, legal nor sufficient notice was given, as required by law and by the order of the Circuit Court of Essex County of an application to said court to confirm said commissioners' report or to hear objections thereto.

22. Because said commissioners, in the making of their report and the said assessment against the prosecutors, did not limit their proposed assessment of peculiar benefits to such peculiar benefits, if any, as are presently and immediately accruing to the prosecutors.

23. Because the benefits assessed by said commissioners in and by the said report against the prosecutors included benefits not present and not immediately accruing to the prosecutors.

24. Because said commissioners, in the making of their report and the said assessment against the prosecutors, did not limit their assessment of peculiar benefits to such peculiar benefits, if any, as are presently and immediately accruing to the prosecutors.

25. Because the benefits assessed by said commissioners in and by the said report against the prosecutors included benefits not present and not immediately accruing to the prosecutors.

26. Because said commissioners, in and by their said assessment, did not make an assessment of special benefits accruing from said im-

provement against the property owners especially benefited, as required by law.

27. Because, at the time of the making of the commissioners' report of assessments, the opening and widening of Branford place had not been completed, and the action on the part of the commissioners in making the assessment was premature.

28. Because the commissioners' report does not affirmatively show that the proposed assessments to be made do not exceed the peculiar benefits.

29. Because the said report of said commissioners does not exceed the special benefits.

30. Because said commissioners have never been legally authorized to proceed with the making of assessments.

31. Because the notice of intention of the proposed passage of the ordinance for the opening and widening of Branford place was not legally given nor given in the manner and for the time required by law, nor published in the manner required, nor for the time required by law.

32. Because the ordinance for the opening and widening of Branford place was not legally passed and is null and void.

33. Because said commissioners were never authorized to proceed with the making of an assessment for said opening by an application of the city counsel on behalf of the Board of Street and Water Commissioners and the Mayor and Common Council of the City of Newark, or by either of them.

34. Because, after the passage of the ordinance for the opening and widening of Bran-

ford place, approved March 19, 1913, said commissioners were never authorized by a resolution of the Board of Street and Water Commissioners of the City of Newark to make said assessment.

35. Because the resolution of the Board of Street and Water Commissioners of the City of Newark, approved January 24, 1913, certifying to the Common Council the sum necessary for the opening and widening of Branford place, was not based upon an estimate of the amount which, in their judgment, was necessary for said opening, but was based upon an estimate of the value of the land and real estate needed for said opening and widening.

36. Because said commissioners' authority for proceeding with this improvement is based upon an ordinance for the opening and widening of Branford place, which, in turn, is based upon a resolution of the Common Council of Newark authorizing the issuance of bonds to pay for the same, and objection is made to said commissioners' authority to make a report or the court to confirm, because said resolution was not legally passed, and the subsequent action in reference to said improvement is illegal because, under the act to provide funds to be used for the opening, widening and vacating of streets and highways in cities of the first class in this state, (Public Laws of 1912, page 169, chapter 121), provision is made, by its second section, that the Board of Street and Water Commissioners must, in addition to stating the amount of money necessary for said opening, certify and state to the Common Council the information upon which the judgment of the Board of Street and Water Commissioners is

Reasons.

based in requesting said the Mayor and Common Council of the City of Newark to authorize the issuance of bonds for said improvement, and there was no certificate or statement of the facts, estimate and information, upon which the Board of Street and Water Commissioners based their judgment, presented to the Mayor and Common Council of the City of Newark upon or before the passing of said resolution, which was approved February 10, 1913, and therefore the Mayor and Common Council of the City of Newark were without any authority, jurisdiction or power to pass said resolution, and all subsequent proceedings taken for the opening and widening of Branford place were therefore illegal.

37. Because said assessments are contrary to the Constitution of this State and the United States, and said assessments are in effect the taking of thir property without compensation and also the taking of the same without due process of law.

38. Because such notice as was given for the hearing of objections before the Circuit Court of Essex County is defective and void, in that it fails to set forth that the improvement mentioned therein was made pursuant to any ordinance, resolution or other section of any public body having jurisdiction so to do.

39. Because the commissioners' said report fails to show that they have assessed upon the City of Newark the excess over the amount of peculiar benefits enjoyed by private owners, by reason of said improvement.

40. Because said commissioners in making their said assessment did in fact limit the same to the amount of the "actual" benefits con-

Reasons.

ferred on the owners of said land and real estate instead of to the benefits peculiarly enjoyed by them.

41. Because said commissioners in making their assessment and by their said report assessed the actual benefits against all those whom they alleged to be peculiarly benefited.

42. Because said commissioners in making their said assessment, assessed alleged benefits for the opening and widening of Branford place, whereas they were only authorized to assess benefits for the opening of Branford place.

43. Because the Circuit Court of Essex County, in passing on the objections of the prosecutors to the confirmation of the assessment, refused to hear or consider objections made by the prosecutors.

44. Because the commissioners included general benefits in their assessments.

45. Because the assessments are excessive and include matters not properly assessable and elements which are speculative, distant, contingent, uncertain and general.

46. Because the commissioners did not exercise independent judgment in making their assessments.

47. Because the commissioners did not take into consideration facts which they should have considered in making their assessments, such as building, traffic, etc.

48. Because in making their assessments the commissioners first determined upon the area of benefits before determining the peculiar benefits to individual properties.

Exhibit B.

49. Because the commissioners in determining the benefits did not determine the market value of the land assessed.

50. Because the Court, on the hearing of the objections to the assessments, admitted illegal testimony over objections and permitted leading questions.

51. Because the said assessment is in other respects illegal, unjust and void.

COULT & SMITH,
STEIN, STEIN & HANNOCH,
Attorneys for Prosecutors.

Exhibit B.

MAP OF WHOLE ASSESSED AREA, EXCEPTING WEST OF HOWARD STREET.

This is a large map, showing each individual piece of property in the area. It contains in the middle of each block the block number. At the front of each lot and within the lines of the lot the lot number, and between this number and the front line of the lot is the number of feet front; in front of the lot in the street is the street number of each property. It also contains the name of the owner against whom the assessment for the property is made, and in white figures the amount of the assessment, according to the second report of the commissioners, the one under review in this case. The properties outlined in red are properties owned by the prosecutors and those made parties to this proceeding, excepting that there are also included in the properties outlined in red properties represented by the attorneys for the prosecutors which were denied confirma-

tion, viz.: the properties designated by the Court, which are fronting on Market, Broad and Mechanic streets, and the individual properties sent back by name.

The part of Branford place which was opened is shown by shaded red outline. The respective properties taken for the opening are numbered from 1 to 23 and on the margin of the map are the amounts of the awards for these respective properties.

Exhibit C.

MAP OF ASSESSED AREA WEST OF HOWARD STREET.

This is an outline map of the blocks contained in the assessed area west of Howard street. The properties of the prosecutors, viz.: those made parties to this proceeding, are the properties outlined on the map. The map also gives the lot, block and street numbers and the amount of the assessment.

Exhibit D.

FIRST REPORT OF COMMISSIONERS.

(Omitted.) See page 71.

Exhibit E.

BRANFORD PLACE OPENING MAP.

Exhibit F.

SECOND REPORT OF COMMISSIONERS.

(Omitted here, printed at page 65.)

Stipulation As to Individual Properties.

It is hereby stipulated and agreed between Coult & Smith and Stein, Stein & Hannoch, Attorneys of Richard C. Jenkinson and other objectors, and Harry Kalisch, City Attorney of the City of Newark, that the following facts shall be considered as evidence herein, as if duly proved under oath in open court:

1. Property assessed to *Shoreham Realty Co.*, Block 2496, lots 29, 30 and 31, known as Nos. 67-68 and 71 Springfield avenue, is developed as one parcel. One building covers the entire frontage and contains stores and four apartments. This property is, and has been for several years, assessed on the city tax maps by lots, in the same manner as it was assessed by the commissioners herein, and the taxes thereon have been paid without objection, and no objection has ever been made by the owner to such separate assessments on the city tax maps.

2. Property assessed to *William H. Axt,* Block 231, lots 18, 19 and 20, commonly known as Nos. 76 to 80 Springfield avenue, is developed as one parcel on which is erected a building used for stores and lofts. This property is and has been for several years, assessed on the city tax maps by lots, in the same manner as it was assessed by the commissioners herein, and the taxes thereon have been paid without objection and no

objection has ever been made by the owner to such separate assessments on the city tax maps.

3. Property assessed to *Jaehnig & Walsh,* Block 87, lots 10 and 11, commonly known as Nos. 104-106 Academy street, is developed as one parcel. One building covering both lots is used as shop. This property is, and has been for several years, assessed on the city tax maps by lots, in the same manner as it was assessed by the commissioners herein, and the taxes have been paid thereon without objection and no objection has ever been made by the owner to such separate assessments on the city tax maps.

4. Property assessed to *Littleton Kirkpatrick,* Block 53, lots 5 and 8, commonly known as Nos. 19, 21, 23 and 25 Academy street is developed as one parcel. One building (formerly known as the "Burnett Building") covers the entire parcel and is used for stores and apartments. This property is, and has been for several years, assessed on the city tax maps by lots, in the same manner as it was assessed by the commissioners herein, and the taxes have been paid thereon without objection and no objection has ever been made by the owner to such separate assessments on the city tax maps.

5. Property assessed to *Metropolitan Realty Company,* Block 60, lots 5 and 6, commonly known as Nos. 260-266 Washington street, is developed as one parcel. Building known as "Iroquois Building" covers the entire parcel. This property is, and has been for several years, assessed on the city tax maps by lots, in the same manner as it was assessed by the commissioners herein, and the taxes have been paid thereon without objection and no objection has ever been

made by the owner to such separate assessments on the city tax maps.

6. Property assessed to *Lyons & Sons,* Block 150, lots 8, 10, 12, 14 and 16, commonly known as Nos. 103-105-107-109 and 111 Commerce street, and lots 60, 62, 64, 66, 68, 70, 72 and 74, commonly known as Nos. 91-93-95-97-99-101-103 and 105 South Canal street. All this property runs from Commerce street through to South Canal street and is developed as one parcel for brewery purposes. This property is, and has been for several years, assessed on the city tax maps by lots, in the same manner as it was assessed by the commissioners herein, and the taxes have been paid thereon without objection and no objection has ever been made by the owner to such separate assessments on the city tax maps.

COULT & SMITH and
STEIN, STEIN & HANNOCH,
Attorneys of Objectors, Richard C. Jenkinson, and others.

HARRY KALISCH,
Attorney of the City of Newark.

Stipulation as to Traffic.

Ex. H. Jan. 31, 1916, J. M.

IT IS HEREBY STIPULATED AND AGREED between Harry Kalisch, representing the Mayor and Common Council of the City of Newark, and Coult & Smith and Stein, Stein & Hannoch, representing Richard C. Jenkinson and others, objectors in the above matter, as follows:

1. That on April 13, 1915, before the opening of Branford place to either vehicle or pe-

destrian traffic, a traffic count was taken under the authority of the City Plan Commission of the City of Newark under the direction of its secretary, Harland Bartholomew.

2. That on November 30, 1915, after the opening to traffic of Branford place, another count of traffic was conducted under the direction of Harland Bartholomew, acting on the request of counsel for the objectors.

3. That the following table is the result of said count and shall be admitted in evidence as if each of the persons who actually made the count were present and sworn and testified to the fact that the count as shown on the annexed tables was the true result of their count.

4 In receiving the annexed tables in evidence, the same shall be received subject to the objection on the part of the City of Newark as to relevancy or materiality.

HARRY KALISCH,
City Attorney.

COULT & SMITH,
STEIN, STEIN & HANNOCH,
Attorneys for Objectors.

Stipulation as to Traffic.

The character and amount of vehicular traffic on Branford place and Market street, between Washington and Plane streets, as observed for a period of ten hours, 8 A. M.-6 P. M., on Tuesday, November 30, 1915, a normal clear day, is as follows:

TABLE A.

East Bound Vehicular Traffic.

	Market St.	%	Branford Pl.	%	Total
Iron Tires	566	37	388	39	954
Rubber Tires	60	4	49	5	109
Automobiles	664	43	327	33	991
Auto Trucks	259	16	221	23	480
	1549	100	985	100	2534

Market St	1549	61%
Branford Pl.	985	39%
Total	2534	100%

West Bound Vehicular Traffic.

	Market St.	%	Branford Pl.	%	Total
Iron Tires	626	32	377	45	1003
Rubber Tires	57	3	47	6	104
Automobiles	932	48	265	32	1197
Auto Trucks	321	17	134	16	455
	1936	100	823	100	2759

Market St.	1936	70%
Branford Pl.	823	30%
Total	2659	100%

Stipulation as to Traffic.

A comparison of the character and volume of vehicular traffic on these two thoroughfares with that on Market street in April, 6 months previous, when Branford place was not open to vehicular traffic, follows (for some period):

TABLE C.

East Bound Vehicular Traffic.

	Market St. (April. 1915)	Market St. and Branford Pl. (Nov. 1915)
Iron Tires	929	954
Rubber Tires	113	109
Automobiles	693	991
Auto Trucks	208	480
Total	1943	2534

West Bound Vehicular Traffic.

	Market St. (April. 1915)	Market St. and Branford Pl. (Nov. 1915)
Iron Tires	1037	1033
Rubber Tires	120	104
Automobiles	828	1197
Auto Trucks	180	455
Total	2165	2759

Table D shows the character and volume of vehicular traffic using Market street in April, 1915, as compared with that of November, 1915, during same time of day.

TABLE D.

East Bound Vehicular Traffic.

	Market St. (April, 1915)	Market St. (November, 1915)
Iron Tires	929	566
Rubber Tires	113	60

Stipulation as to Traffic.

Automobiles	693	664
Auto Trucks	208	259
Total	1943	1549

West Bound Vehicular Traffic.

	Market St. (April, 1915)	Market St. (November, 1915)
Iron Tires	1037	626
Rubber Tires	120	57
Automobiles	828	932
Auto Trucks	180	321
Total	2165	1936

PEDESTRIAN TRAFFIC.

The volume of pedestrian traffic on either side of Market street, as shown by the counts of April and November, from 8 A. M. to 6 P. M., is as follows:

TABLE E.

Pedestrian Traffic on Market Street.

	April	%	November	%
North side	24558	64	20465	69
South side	14068	36	9285	31
Total	39626	100	29750	100

Pedestrian traffic on Branford place on November 30, 1915, between 8 A. M. and 6 P. M., between Washington and Plane streets, was as follows:

TABLE F.

Branford Place Pedestrian Traffic.

North side, eastward bound	979	
North side, westward bound	963	
Total, north side		1942
South side, eastward bound	1403	
South side, westward bound	892	
Total, south side		2295
Grand total		4237

The notice of the hearing before the Commissioners of Assessment was as follows:

BRANFORD PLACE, OPENING AND WIDENING—Assessment for Benefits.

Notice is hereby given that an assessment upon all the owners of all the lands and real estate peculiarly benetfied by each of the following improvement, namely:

The opening and widening of

BRANFORD PLACE,

from the westerly line of Halsey street to a point on the southerly line of Springfield avenue, located about 44.33 feet east of the easterly line of High street, according to the provisions of an Ordinance of the City of Newark, entitled, "An Ordinance to provide for the opening and widening of Branford place, from the westerly line of Halsey street to a

point on the southerly line of Springfield avenue, located about 44.33 feet east of the easterly line of High street," approved March 19, 1913.

Has been prepared by the undersigned commissioners, appointed by the Mayor of the City of Newark, and that a report by a certificate in writing, with the accompanying map and schedule, showing the several assessments against the several owners peculiarly benefited as aforesaid, has been deposited in the office of the City Clerk of the City of Newark, for examination by the parties interested therein.

Said assessment comprises all lots, tracts and parcels of land and real estate liable to be assessed as aforesaid, lying on both sides of

(Here follows a list of the streets on which properties assessed are located and a metes and bounds description of the area assessed).

A "lot" represents an entire plot of land, whether large or small.

All persons interested in said assessment may be heard before said commissioners, on Tuesday afternoon, the Tenth day of August, 1915, at 2 P. M., at the commissioners' room, No. 4 (3d floor), City Hall.

Dated, August 4, 1915.

HARRISON R. VAN DUYNE
HARRY B. O'CONNELL,
MICHAEL DEVITA,
Commissioners.

aug.4-5t.

This notice was published as follows:

Newark Evening News on August 4, 5, 6, 7, 9th, 1915.

The Newark Eagle and The Newark Star on the same dates.

N. J. Freie Zeitung on the same dates.

At the hearing objections in writing were presented by the prosecutors similar to those filed in the Circuit Court, but are omitted.

The notice of the application to the Essex County Circuit Court for confirmance was as follows:

BRANFORD PLACE OPENING AND WIDENING.

NOTICE is hereby given that the Commissioners heretofore appointed by the Mayor of the City of Newark to make an estimate and assessment upon all the owners of all the land and real estate in the City of Newark peculiarly benefited by any local improvement in the said city in proportion as nearly as may be to the advantage each was deemed to have acquired have made an estimate and assessment of benefits conferred upon all the owners of all the lands and real estate in the City of Newark peculiarly benefited by each of the following improvements in said city, namely:

The opening and widening of

BRANFORD PLACE,

from the westerly line of Halsey street to a point on the southerly line of Springfield avenue, located about 44.33 feet east of the easterly line of High steret, approved March 19, 1913.

Said assessment comprises all lots, tracts and parcels of land and real estate liable to be assessed as aforesaid, lying on both sides of

(Here follows a list of the streets on which properties assessed are located and a metes and bounds description of the area assessed).

A "lot" represents an entire plot of land, whether large or small.

And have filed their reports of said assessments for benefits in the office of the Clerk of the Circuit Court of the County of Essex, and that the judge of said court has fixed Saturday, the thirteenth day of February, 1915, at ten o'clock in the forenoon, in the Circuit Court room, A-302-303, at the Court House in the City of Newark, as the time and place of hearing any objections that may be made to the said assessments.

Dated February 8, 1915.

HARRY KALISCH,
City Attorney.

feb8-5t

This notice was published as follows:

Newark Evening News on Sept. 27, 28, 29, 30 and Oct. 1st. 1915.

The Newark Eagle and The Newark Star on the same dates.

N. J. Freie Zeitung on the same dates.

Opening.

Essex Circuit Court.

Friday, November 19, 1915.

In the Matter of the Report of the Commissioners of Assessment of the City of Newark Assessing Benefits for the Branford Place Opening and Widening.	*On Objections to Report.*

Before Hon. Frederic Adams, *J.*

For the City of Newark, respondent, appears Harry Kalisch, Esq., City Attorney.

For objectors appear Messrs. Coult & Smith, by William A. Smith, Esq.; William T. Day, Esq.; Harry Campton, Esq.; Alfred F. Stevens, Esq.; Alonzo Church, Esq.; Fred Prout, Esq.; Leo Stein, Esq.; George D. Mulligan, Esq.; James R. Mulligan, Esq.; Ernest C. Lum, Esq.; Saul Cohn, Esq., and Henry L. Grosken, Esq.

The Court. It has been agreed heretofore that argument on the preliminary questions made on behalf of any one party will be available to others. Is a similar agreement to be made as to the effect of testimony? For instance, I understand that Messrs. Coult & Smith propose to examine the commissioners as to their methods. Is that testimony to be available to other objectors?

Mr. Smith. As far as we are concerned, it can be. It is rather a matter for the city and the other objectors, I suppose.

Mr. Kalisch. I have not any objection to having it apply to the other objectors.

The Court. So far as it is general in its character and naturally applicable to the cases of other objectors, I see no reason why it may not, by agreement, be considered. It will save the trouble of taking the testimony over and over again. So far as it is specific, of course, it would not apply.

OLIVER B. BURDETT, sworn in behalf of Richard C. Jenkinson, *et als.*, objectors.

Direct examination by Mr. Stein.

Q Mr. Burdett, you hold an official position in the City of Newark? A Yes, sir.

Q What is that position? A Clerk of the Board of Commissioners of Assessment for Local Improvements.

Q How long have you held that position? A Well, I have been clerk of the board since May 4, 1910, and I have been in the office since April, 1896.

Q Are you familiar with the opening and widening of Branford place? A Yes, sir.

Q And have you made a map—either made it yourself or under your supervision—of the area covered by the assessment commissioners? A Yes, sir. Referring to this blueprint, which is a copy, do you mean (indicating)?

Q Yes. A Yes, sir.

By the Court.

Q That is, of the area covered by the assessment for benefits; is that it? A Yes, sir.

Q Which includes also the area covered by the assessment for damages, I suppose? A Yes, sir.

Oliver B. Burdett, direct.

By Mr. Stein.

Q I refer you to this blueprint immediately in back of you. Was this map made under your supervision (indicating map)? A Yes, I worked on part of it. My assistant and myself made the tracings, and then, of course, this blueprint was made from the tracings.

Q Does this map cover the entire area? A No, that map you have there embraces the area between the railroad and Howard street. The section west of Howard street—that is, between Howard street and Jones and Norfolk street—is not included in this map.

By the Court.

Q Let me see if I understand that. The map covers the area from the railroad west to Howard street? A Yes, sir.

Q But not that west of Howard street? A No, sir.

By Mr. Stein.

Q You mean the Pennsylvania Railroad? A Yes, sir; the Pennsylvania Railroad's right of way on the east.

Q The section west of Howard street covers the very small assessments, I believe? A That is a small part of it, yes, sir.

Q And it was not included in this map because of the impractical nature of it and size of it? A Yes, sir; that is the reason, I believe, that it was not included. It would be unwieldly to handle.

Q You have had the block map of that section west of Howard street, nevertheless? A Yes, sir.

Mr. Stein. I should think it might be well to have this map marked at the outset.

(Map marked Exhibit B.)

Q (*By the Court*). Have you got the block map west of Howard street? A Mr. Stein has it.

Mr. Stein. I have it.

The Court. We may as well mark that, too.

(Map marked Exhibit C.)

Q (*By Mr. Stein.*) Exhibit C. represents the section west of Howard street, Mr. Burdett? A Yes, sir.

Q But does not contain the individual lots? It is merely an outline map? A That is all.

Q I believe that another map has been made, Mr. Burdett, showing the particular properties in which Mr. Smith and I are interested on the section west of Howard street? A Yes, sir; I made that for you last night.

Mr. Stein. That additional map, if your Honor please, will be here in a very few minutes, and we would like to substitute the other map as soon as it arrives for the one that is now marked Exhibit C.

Q (*By the Court.*) Does the map last referred to, that you made most recently, show all the lots west of Howard street, or only those in which Mr. Stein's firm is interested? A Only those in which Mr. Stein's firm is interested.

Q (*By Mr. Stein.*) The map marked Exhibit B shows all the lots that have been assessed? A Yes, sir.

Q Can you identify, Mr. Burdett, by the colorings those that Mr. Smith and I represent and those represented by the other counsel? A Only

from knowledge that I acquired from your Mr. Paul. Mr. Paul informed me that the properties outlined in red represent the clients that you and Mr. Smith represent, and those colored by yellow are miscellaneous.

Q Other objectors? A Yes, sir; some represented by counsel and some not.

The Court. Are you speaking now of map B?

Mr. Stein. Yes, sir.

Q And those not colored at all on Exhibit B are the properties that are affected by the assessment, but are not objected to? A That is right.

Q And have been confirmed? A And have been confirmed.

By the Court.

Q Then, as I understand, on the map the Coult & Smith and Stein lots are outlined in red? A Yes, sir.

Q And others— A Those outlined in yellow.

Q —as to which objections have been made— A Yes, sir.

Q —are in yellow? A Assessments that have been objected to.

Q (*By Mr. Kalisch.*) What do they represent? A They represent individual objectors in some cases, and in other cases property owners who are represented by counsel.

By Mr. Stein.

Q Now, does that map, Exhibit B, show also the amount of the assessments against each particular lot? A Yes, sir; in other words, it is a copy of the maps on the report and contains the amounts shown in the schedule on the report.

Q (*By the Court.*) The amount of the assessments for benefits? A Yes, sir.

Q (*By Mr. Stein.*) The marks in heavy orange tint—I suppose you would call that orange tint—running through here (indicating) represents the present line of Branford place? A Do you refer to the entire length of Branford place?

Q Yes. A Yes.

Q And just what are the boundary lines of Branford place as now opened? A Well, Broad street is the easterly terminus and Springfield avenue is the westerly terminus.

Q Of that street the portion between Broad street and Halsey street, I believe, was in existence before the opening? A Yes, known as Camfield street.

Q No, between Broad and Halsey. A Oh, no. I misunderstood that; I am wrong there. Between Broad and Halsey was opened before this ordinance was passed, and was known as Branford place.

Q Was any part of the section of the street between Halsey and Washington streets an open public street at the time of the beginning of these proceedings? A Yes, there was an open street there known as Camfield street.

Q And Camfield street extended from Halsey street to Washington street? A Yes, sir.

Q (*By the Court.*) That is, from Halsey street to Washington street? A Yes, sir.

Q (*By Mr. Stein.*) Do you know what the dimensions of Camfield street were? A Camfield street, if I remember right, was about 40 feet, I think. I could not swear to that, but I think that was it.

Q The map would show the exact dimensions? A Yes, you can scale it.

Q (*By the Court.*) What is the scale of that map, Exhibit B? A 50 feet to 1 inch. Would you like me to scale that?

Mr. Stein. Will you scale it now?

Witness. Yes. (Witness measures on map.) It scales 30 feet at one end and about 33 feet at the other end; it would probably be an average of about 33 feet.

Q (*By Mr. Stein.*) Which end is the narrower end? A The narrower end is at Washington street—30 feet wide at Washington street.

Q (*By the Court.*) The more westerly end? A The more westerly end.

Q (*By Mr. Stein.*) The shaded portion, Mr. Burdett, to which I am now referring, represents the land that was taken, I believe, between Halsey and Washington streets for the purpose of the widening of that street (indicating)? A Yes, sir.

Q And the part that is not shaded represents old Camfield street? A That is right.

Q Was any other portion of the street widened except the one to which I have just referred? A No, not unless the Halsey part is considered a widening. That, of course, is an opening of Branford place. I do not suppose that could be considered a widening, because then it would be the widening of Springfield avenue. You see, that is not a complete opening there, just a widening (indicating on map).

Q Will you repeat that? A I say the part of the opening at the Halsey property really amounts to a widening.

Q A widening of what? A Well, it is a widening of that thoroughfare. Part of it has gone

into Branford place and the balance remains in Springfield avenue.

Q Before these proceedings were taken no portion of Branford place had extended as far west as High street or Shipman street? A No.

Q The territory, then, between Washington street and Springfield avenue that was taken was all a new taking for the opening of the street? A Yes.

Q Camfield street lay north, then, of the portion of Branford place as now opened that was taken for the widening? A Yes.

Q It lay south, rather, did it not? A The part that was taken before this ordinance was passed?

Q Yes. A Southeasterly, or, rather, easterly. That street runs east and west.

Q Yes, but with reference to the strip of land that was taken for the widening of Camfield street, the part that was Camfield street lay south of the strip taken? A Oh, yes, that is right.

Q (*By the Court.*) That is, the southerly line of Camfield street became the southerly line of Branford place? A Yes, sir.

Q (*By Mr. Stein.*) How wide was the strip that was taken between those points, between Halsey and Washington streets? A Well, Branford place was opened up to a width of about 66 feet, so that there must have been a strip in the neighborhood of 34 or 35 feet taken.

Q Do you know whether that is the exact width at that point? A No, I don't remember it, no.

Q Will you scale that off for us, please? A I could probably tell by looking at the map. (Measuring on map). 32 feet; the strip is about 32 feet wide.

Q You mean the strip that was taken? A Yes, sir; the strip that was taken. It varies; it is 33 feet at the easterly end and 41 feet at the westerly end.

Q Now, take the rest of the street, Mr. Burdette, from Washington street west to Springfield avenue. Will you give us the dimensions of the portions of the street that were taken between Washington street and Springfield avenue? A Do you mean the dimensions at each street?

Q First the dimensions between Washington and Plane streets, and then between Plane and Arlington streets, and so on west. A (Measuring on map). The width of Branford place along the westerly line of Washington street is 65.85 feet. It is also 65.85 feet wide measured along the easterly line of Plane street.

Q What is the length?

The Court. Measured on the center line, I suppose?

Mr. Stein. Measured on the center line.

A (Measuring on map). 201.95 feet.

The Court. That is the block from Washington to Plane?

Witness. I may have to correct that last measurement. The figures are not the total measurement. It is about 275 feet measured along the center line.

Q Now, will you take the next block west, between Plane and Arlington streets? A Well, Branford place, measuring along the westerly line of Plane street, is 62 feet wide.

Q And along the easterly line of Arlington street? A It is 62.01 feet wide.

Q And what is the length measured on the center line? A Measuring on the center line, it is about 155 feet.

Q Will you take the next block, between Arlington and Nicholson streets? A Measuring along the westerly line of Arlington street?

Q Yes. A 62.01 feet wide.

By the Court.

Q What is the street above Arlington street? A Nicholson street.

Q On the westerly side of Arlington street, you say, it is— A 62.01 feet.

Q That is the same as it was on the easterly side? A Yes, sir; and it is the same width measuring along the easterly line of Nicholson street, formerly Lander's alley.

Q 62.01 feet? A Yes, sir. It is about 130 feet long.

By Mr. Stein.

Q That is also measured along the center line? A Yes, sir.

Q Take the next block, from Nicholson street, or formerly Lander's alley, to Shipman street. What are the dimensions there? A Well, measuring along the westerly side of Nicholson street, the width is 62.03 feet wide.

Q And on Shipman street, the easterly side of Shipman street? A Measuring along the easterly side of Shipman street, the width is 62.06 feet; the length is about 150 feet measured along the center line.

Q And the triangular strip west of Shipman street, will you give us the three dimensions of the triangle? A The base of the triangle is 80.48 feet; the altitude would be 166.25 feet.

Oliver B. Burdett, direct.

Q That is not a right angle, is it? A No, sir.

By the Court.

Q That is the more southerly line? A Yes, sir; that is the southerly line of the triangle.

Q And the other line? A That is 198.05 feet.

By Mr. Stein.

Q Is that a straight line or a curved line? A That is identical with the southerly line of Springfield avenue, which runs at an angle.

Q (*By the Court.*) Is it a straight line? A Oh, yes, it is a straight line.

Q (*By Mr. Stein.*) Now, then, Mr. Burdette, does this map also show in the outlines of the street that you have just been referring to the damages that were awarded for the taking of the particular strips of land necessary for the taking or the opening? A You mean the amount of the award?

Q Yes. A Yes, on the lefthand border of the blueprint is the list of the numbers of plots and the amount awarded for each plot.

Q There are twenty-three of these numbers, are there? A Yes, sir.

Q (*By the Court.*) There were twenty-three awards, then? A Yes, sir.

Q (*By Mr. Stein.*) And the total of the awards, according to the stipulation, amounted to $1,037,120? A Well, that I couldn't testify to; I haven't really added those up. I don't remember what the sum total would amount to.

The Court. Well, we will take the figures of the stipulation.

Mr. Stein. Those figures, if your Honor please, do not take into consideration the additional costs for appraisals and interest and advertising.

The Court. Merely what was given for the land?

Mr. Stein. Merely what was taken for the land. I can give your Honor the other figures. The additional cost for fees, advertising and interest amounts to $54,384.70, but from that amount must be deducted the amount obtained by the city for the sale of buildings and rents of buildings, amounting to $10,416.50. There appear to be some additional expenses for advertising, appraising, searches and auctioneers' fees, which we have just calculated. These figures by subtraction we find amount to $11,952.

The Court. What is the net figure that you get to be assessed for benefits?

Mr. Stein. $1,093,040.20.

The Court. That was the amount to be assessed?

Mr. Stein. Yes, sir; the net cost.

Q Will you tell us now, Mr. Burdett, generally, what are the boundary lines of the zone covered by the assessments? A Why, the area assessed is bounded on the north by the Morris canal, on the east by the Pennsylvania Railroad's right of way, on the south by the rear line of lots fronting on Elm, Franklin and Court streets—Hill street. I would like to change the southerly boundary. Strike that out. I will say bounded on the south by the rear line of lots fronting on Walnut street and Court street. That covers it.

Oliver B. Burdett, direct.

By the Court.

Q And on the west? A On the west by the rear lines of lots fronting on Jones and Norfolk streets.

Q (*By Mr. Stein.*) And Belmont avenue? A No, there is no property on Belmont avenue; Jones and Norfolk covers it.

Q (*By the Court.*) The rear lines of lots fronting on Jones and Norfolk streets? A Yes, sir.

By Mr. Stein.

Q This map, Exhibit B., contains also the city block and lot numbers, does it not? A Yes, sir.

Q In what respect, Mr. Burdett, does the area covered by the present assessments of the commissioners differ from the area covered by the previous report? A Why, the only difference is that there are a few additional lots assessed on Washington street; it was the extreme southerly boundary.

Q Down here (indicating on map)? A Yes, sir.

Q Do you know just which lots they are, Mr. Burdette? A No, I couldn't say just now. I could tell by making a comparison with the old report. I have the old report there.

Q Will you give us that information? A (Referring to map and report). On the westerly line of Washington street the last number assessed in the original report was street No. 365, and in the new report the last number assessed is No. 369, which amounts to two additional lots on the westerly side of Washington street.

Mr. Kalisch. Well, doesn't that bring it south of Hill street?

Mr. Smith. Yes, if extended.

Witness. There was no change on the easterly side of Washington street.

Q Were there any other additions or subtractions? A I don't recall any; no, sir.

Q Is this the original report of the commissioners? A Yes, sir.

Mr. Stein. We would like to offer that in evidence, if your Honor please.

Mr. Kalisch. I shall object to that.

The Court. In what point of view is that competent?

Mr. Stein. On the examination of the commissioners, if your Honor please—this question being, of course, merely preliminary—it will be necessary to ascertain the exact method that they adopted for making their present assessment, and to ascertain to what extent, if any, they were guided by the assessments set forth in the original report. It would be important for that purpose to have the original report before us, if it should develop that they were in any measure guided by it. In addition to that, we will probably use the original report for the purpose of examining the commissioners to see to what extent they were actually guided by the first report.

Mr. Kalisch. I do not see that the first report has any relevancy at all. Even if it was similar to the present report, there is no evidence that the commissioners were guided by that first report.

The Court. (After further discussion). This report may be marked for identification. I am not prepared to receive it in evidence at present.

(Report marked Exhibit D for identification).

(Counsel for objectors call for the production of the report now under consideration).

Q Mr. Burdett, while we are waiting for the second report, I will ask you whether you have measured the distance from the most westerly opening of Branford place to the most westerly boundary line of the zone of assessment? A No, I have not.

Q Will you be able to make those measurements for us after you leave the stand, Mr. Burdett? A I will.

Mr. Stein. We would like to have the measurements, both north, south, east and west from the respective openings of the lines of Branford place, as well also as the measurement from the westerly opening measured on a diagonal line northwest to the most northwesterly corner of the zone of assessment, as well as the most southwesterly and most northeasterly and the most southeasterly distances from the openings of the street.

Witness. I will try to do that. With the map you have here it is not an easy matter, on account of the map being in pieces. Have you got the tracings from which these blueprints were made?

The Court. You had better give Mr. Burdett a memorandum of what you want, so that he may understand exactly what you desire. It is a little complex.

Mr. Stein. I may say to the Court that I had spoken to Mr. Burdett about obtaining these measurements, but I did not give him sufficient time to obtain them.

The Court. I think the question that you asked was whether Mr. Burdett had measured the distance from the extreme westerly point, or line, of the street as opened to the extreme westerly portion of the zone; is that it?

Mr. Stein. Yes, sir, that is one portion of the question. I think it may be well for us to recall Mr. Burdett, with your Honor's permission, for that purpose.

The Court. Yes.

Q Have you before you there, Mr. Burdett, a copy of the damage map? A Yes, sir.

Q That was also made under your supervision? A No, sir; this was not. This must be a copy of the opening map made in the engineer's department of the City of Newark. I can identify it—

Q As such? A —because of having worked on a similar map; that is, an identically the same map—their tracing—but this is a blueprint, and the colored lines on it, and so forth, I don't know anything about. I had nothing to do with it; I didn't prepare this blueprint.

Q Well, you identify it as a copy of the map of the opening in the engineer's office? A Yes, sir; it is taken from their tracing.

Q Then the only things that you are unable to testify to are the colored lines? A The colored lines and figures.

By the Court.

Q I understand that comes from the engineer's office? A Yes, sir.

Q And relates to the opening? A Yes, sir; it is a blueprint of their opening map.

William C. Paul, direct.

(The map referred to is marked Exhibit E for identification).

By Mr. Stein.

Q I show you this report, Mr. Burdett (shown to witness. Is that the present report, now before the Court? A Yes, sir.

Mr. Stein. We would like to have that report marked also.

(Exhibit F—not marked).

Cross examination waived.

WILLIAM C. PAUL, sworn in behalf of Richard C. Jenkinson, *et als.*, objectors.

Direct examination by Mr. Stein.

Q Mr. Paul, you are familiar with the maps for the opening and widening of Branford place? A I am.

Q And are you familiar also with the names and locations of the properties represented by Mr. Smith and myself? A I am.

Q Have you outlined on this map, Exhibit B, in red the properties that are represented by Mr. Smith and myself? A Yes, sir.

Q And have you also outlined the other properties assessed to the other objecting property owners? A Do you refer to those in yellow?

Q Yes. A They are objectors not represented by yourselves.

Q And those that are not outlined are— A Are, as I understand, confirmed.

The Court. And does that include objectors not represented by counsel?

Witness. Individually or represented by counsel. All objectors are there in yellow

except those represented by Messrs. Stein and Smith, which are in red.

Q Are you familiar also with the colored outlines of the damage map, Mr. Paul? A Yes, sir.

Q Will you look at it, please, and explain it? That is Exhibit E. Will you explain the colored lines on that map? A The yellow lines on the map represent the present Branford place, the actual confines of it, and the properties taken for it; the part in yellow etching are the properties taken for that purpose.

Q The shaded portions? A The shaded portions are taken for that purpose. The red lines outline the original condition of the properties before Branford place was opened.

By the Court.

Q You say the colored lines represent Branford place, and then you said something as to other lines, something that came in intermediately between the lines that represent Branford place and the red lines which outline the original condition of the property. What was that second class? A The shaded portion represents that portion—

Q The shaded portion? A The shaded portion; that represents that part of the land taken for the opening of Branford place.

By Mr. Stein.

Q And the red lines what? A Outline the original forms of the various original properties.

Q Which were taken? A Before Branford place was opened.

Q Those red lines, as I understand it, embrace not only the portion that was actually taken, but the balance of the property that remained after the taking? A Yes, sir.

The Court. The condition of the property before the place was opened; that is the witness's statement.

Mr. Stein. Yes, sir; the shaded portion represents the parts that were actually taken.

Q Does that damage map show on its face also the amount that was paid for the land taken? A It does.

Q Have you made a computation of the number of square feet that were taken for the opening? A I have.

Q Have you that computation with you? A Yes, sir (producing paper).

Q (*By the Court*). That is the area of land taken, is it? A The area of the land taken; yes, sir.

Q (*By Mr. Stein.*) And what is that area? A The total area of land taken is 61,932.3 feet.

Q Square feet? A Square feet.

Q Have you made a computation also as to how many lots, based on a lot of 25 by 100 feet, this area would amount to?

Objected to as immaterial.

The Court. It is only one way of getting some convenient measure of size. I do not see any objection to it. It does not prove anything.

A 24.7 lots.

Q And have you made a computation also of the cost of this land per square foot, based upon the total cost of the improvement? A $17.63 per square foot.

Q And also based upon the actual cost of the land? A $16.73 on the actual cost of the land.

By the Court.

Q What do you mean by "the actual cost of the land?" A What was paid for the land.

Q The cost to the city of the land? A Yes.

By Mr. Stein.

Q And have you also made a calculation of the cost per lot of 25 by 100 feet? A $41,825.

Mr. Kalisch. I should like to object to this line of examiantion. I do not see the materiality of it. All these commissioners were called upon to do was to make the assessments and award the damages. I do not understand that this testimony as being opened now can have any bearing upon that question at all. They merely made assessments according to the benefits, and they awarded the damages according to the damages allowed each particular property. What bearing this has I cannot see. I do not want to object each time, so that I will put in a general objection to this line of testimony.

The Court. You may make a general objection. I will let the testimony stand, without passing on its value.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q The figure that you just gave us is based upon the actual cost of the land? A Yes, sir.

Q And have you made a similar calculation based upon the total cost of the improvement? A $44,075.

Q Per lot of 25 by 100? A Per lot of 25 by 100.

Cross examination waived.

HARRISON R. VAN DUYNE, sworn in behalf of Richard C. Jenkinson, *et als.*, objectors.

Direct examination by Mr. Smith.

Q Mr. Van Duyne, you hold an official position in the city government of the City of Newark? A I do.

Q What position is it? A I am a member of the assessment commission, Commissioners of Assessment for Local Improvements.

Q How long have you held that office? A Since January 1, 1915.

Q Do you reside in the City of Newark? A I do.

Q How long have you lived here? A All my life, except three years, when I lived in Upper Montclair.

Q You are therefore perfectly familiar with all this surrounding territory in which the assessment was made? A I am.

Q Do you know anything about the history of this improvement? When it was first agitated and when it was put through?

Objected to.

Mr. Smith. In this case we have got to find what the benefits are. I think that any fact which throws a light on what this improvement was, what it was intended to accomplish and what it did accomplish, and how it began and ended, is a matter to be taken into consideration. We are not trying a very narrow issue here. It all sums up on value, and any fact which has a rela-

tion to value or how it should be ascertained ought to be brought before the Court, I think. We are not here before a jury. The Court can eliminate any incompetent fact. But I think we ought to have a wide latitude to cover the case, so that we may know as much as is to be known about the improvement.

The Court. It seems to me this question would open a very wide door to a great deal of evidence that would be very useless. I sustain the objection. I think it is irrelevant.

Counsel for Richard C. Jenkinson, et als., objectors, pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q When did you first take up the consideration of this assessment for benefits? A I cannot give you the exact date, but some time during the early part of 1915.

Q Before the summer vacation? A Yes.

Q With the other two commissioners, I understand? A I did.

Q You had before you the old report which was not made by the present commission, of which you are a member, did you not? A No, we had practically a copy of the tax maps of the city.

Q Well, you had referred to you by the— A No, in the first place, we had no report before us.

Q You had referred to you by the order of this Court the old report, did you not, which was rejected by the Court and sent back to you? A That presumably was before us.

Q Well, you had the physical possession of it in your office, did you not? A I believe so.

Q And you used it for reference, did you not? A Well, I do not remember using it particularly as a reference.

Q Either that or copies of it, I mean? A I do not remember particularly using it as a reference.

Q Did you have any knowledge in making up this assessment as to the cost of this improvement? A Why, the cost of this improvement was public property. We had knowledge of the cost, of course.

Q Did you actually—did you know? A I did.

Q Did you specifically ascertain it so as to consider it in this matter? A We had before us the cost of the property—the cost of the improvement, rather.

Q You did not make the damage award in this case, did you? A No, the present assessment commission had nothing to do with that.

Q From your examination of the damages awarded, did you arrive at any conclusion as to its being reasonable or not?

Objected to.

(After argument, the question is amended to read as follows):

Q From your examination of the cost of this improvement, did you arrive at any conclusion as to its being reasonable or not?

The Court. That is the question: "From your examination of the cost of this improvement"—(the examination, of course, would be an examination of the report to see what the report said the cost was)—"did you ar-

rive at any conclusion as to its being reasonable or not?"

Mr. Kalisch. I do not think that is fair to the witness, because I do not think there is any proof that he examined into the cost of the improvement.

Mr. Kalisch. (After further discussion). I supposed that was a preliminary question, to be followed up by further questions as to whether he took it into consideration in making the assessment.

Mr. Smith. I have no objection to admitting that that is the object.

The Court. Regarding it as a preliminary question, you have no objection to it?

Mr. Kalisch. I do not see any objection to that, no.

Mr. Smith. You may answer that yes or no.

(Question read).

A As to whether the cost—

Mr. Smith. That can be answered yes or no.

The Court. As to whether the cost was reasonable, did you arrive at the conclusion?

Mr. Smith. Any conclusion as to its being reasonable or not—not what your conclusion was, but whether or not you arrived at any.

Witness. I think it is rather hard to answer that question by either yes or no. I would like to qualify it in a certain way, and say that as to whether—

Mr. Smith. I think the witness can answer the question yes or no. It is perfectly clear. It is as to whether or not he came to any

conclusion as to whether or not this cost of this improvement was a reasonable one. He must have none at all, or one way or the other.

Mr. Kalisch. I want to interpose an objection, if your Honor please. Of course, Mr. Smith can pursue his own method in examining, but I think it is fair to ask the witness first whether it affected his mind in making the assessment before asking him if it was reasonable, because if he did not consider the reasonableness of it in making the assessment, it would not make any difference whether he considered it reasonable or not.

The Court. Do you feel any difficulty in answering this question yes or no? I do not see any reason why it may not be answered yes or no.

Witness. The present board did not have before them the question of damages, and that was something that had been entirely disposed of by a past board. We met to consider the benefits and assessed the benefits for the opening of the street.

Mr. Smith. That does not answer my question, your Honor.

Witness. As to whether the cost was too high or too low, I am not prepared to say. That is a question for careful consideration and examination as a real estate expert.

Q Do you mean to say, Mr. Van Duyne, that you did not consider the cost of this improvement in examining the amount that you assessed on the various properties? A I mean to say I did not and the board did not make a careful analysis as to whether the cost, in their judg-

ment, was ten per cent. lower than it might have been or ten per cent. higher than it might have been. We accepted the cost as comparatively reasonable, considering the nature of the improvement.

Q You did not, however, in fixing the amount of the assessments in this case, determine whether or not that was a reasonable cost for such an improvement? A I believe that it was—

Q Yes or no. A —a reasonable cost for such an improvement. I am not prepared to state—

Mr. Smith. One moment. I move to strike out that answer.

Mr. Kalisch. Let him answer it.

Mr. Smith. I do not want to be bound by his present belief.

The Court. He was using the past tense. I think he ought to be allowed to answer the question in his own way.

(Answer read).

Witness. —within five or ten per cent. of whether, in my judgment, it might have been done at a less cost. It is a question that I have not studied beyond just what I have told you.

Q Then, Mr. Van Duyne, you did not when you made this report and fixed these assessments for benefits go into that question and make a determination in your own mind in fixing as to whether or not this was a reasonable cost for such an improvement? A We made assessments for benefits for this improvement.

Q Can you not answer my question?

Mr. Kalisch. I think he has answered it. He said he did not. He said that before.

(Question read).

A I believe that the cost was not inconsistent with what was accomplished.

Mr. Smith. No. Just answer the question.

The Court. The question is not as to your present view, but the extent, if to any extent, to which you considered this question in making your assessment for benefits.

Witness. I still do not exactly understand how I have failed to answer Mr. Smith's question.

Q (Question read as follows: "Then, Mr. Van Duyne, you did not when you made this report and fixed these assessments for benefits go into that question and make a determination in your own mind in fixing as to whether or not this was a reasonable cost for such an improvement?") A I answered that by saying that we accepted the cost of the improvement and we assessed according to the benefits of the improvement.

Q The fact is, Mr. Van Duyne, that you did not consider whether that was a fair cost or not, but took it as an accomplished fact, did you not? A Yes, to a certain extent, Mr. Smith, we did. Necessarily that would have to be so.

Q Now, to what extent did you take the cost of this improvement into consideration in determining the amount of benefits which you assessed?

Mr. Kalisch. I object to that. He testified that he did not take it into consideration, but accepted the award of damages.

The Court. Well, I think the latter part of the witness's last answer contained the words, "To a certain extent we did so."

(Former question and answer read).

(Last question read).

Mr. Kalisch. That is quite different. He said, "To a certain extent we did accept the award of damages."

The Court. (After further discussion). The witness said, "To a certain extent we did." Ask the witness what he meant by that. There may be something in Mr. Kalisch's objection. You are supplying phraseology which the witness himself has not used.

Q Mr. Van Duyne, in answering my previous question, you said that, to a certain extent, you did consider the cost of this improvement in making up or determining upon the assessment for benefits, did you not?

Mr. Kalisch. I object to that. He has not stated that at all. That last part is absolutely contrary to the evidence.

The Court. That is just the same question that you asked before. I think you may ask the witness what he meant by saying that to a certain extent, he did. That would be the way to find out what he had in his mind.

Q Mr. Van Duyne, in answer to the previous question you said that, to a certain extent, you did. Will you kindly state what you meant by that statement? A In attempting to make a benefit assessment one necessarily has in one's mind the cost of the improvement. That cost must be made. In making the benefit assessments we assess according to what, in our judg-

ment, is the real benefit to the properties. If at the completion of our report the sum assessed amounts to the complete cost of the improvement, well and good. Then it is entirely paid for by the assessed district. If it does not, then there is a balance left. That is all there is. The cost of the improvement—the benefit of the improvement—has been assessed on the area; that is, the benefit to each particular lot and each particular plot. Now, if that falls short of the complete cost, why, it simply falls short.

Q Now, Mr. Van Duyne, do you mean to say, then, that the only consideration you took in determining the amount to be assessed in this case of the cost of the improvement was as to whether or not your assessments would go beyond the cost or not? A Yes, I think that you can very safely say that that is so in any assessment. You are given a cost of the improvement. You certainly cannot assess benefits beyond the cost of that improvement. You can assess benefits according to your judgment as to the amount of actual benefit. If it falls below, why, that is unfortunate. I do not think it can go above the cost.

Q Well, then, in this particular improvement do you mean to say that the only consideration you made of the cost of this improvement was the consideration which limited you in fixing the assessments to that cost? A No, I do not. I say we assessed the property for what we considered to be the actual benefit that that property derived on account of this opening.

Q I know, Mr. Van Duyne, but you do not answer my question. I am trying to get you to state to what extent you considered the cost of this improvement in determining the benefits?

A Excepting as we knew, just as you and most of the people in this room knew, the cost. That was all taken into consideration in going over each one of these properties, plot by plot, and assessing on them the amounts which we thought they were actually benefited by the opening of Branford place.

Q Then, in determining on these assessments for a particular piece of property, it was no concern of yours, and you did not consider in determining that particular assessment, whether or not the cost was a quarter of a million or two millions? A Exactly, that is right. We assessed according to benefits.

Q Now, you say you started on making up this report last spring or the early summer? A Yes.

Q What was the first thing that you and the other commissioners did on taking this report up? A I think you will have to particularize your question a little more, Mr. Smith.

Q What was the first matter that you considered?

Mr. Kalisch. May it please your Honor, I should like to have settled once and for all, if it is possible to have it settled, just the latitude that will be allowed counsel in making this examination. I do not know whether this constitutes a cross examination, or whether, this witness having been called by Mr. Smith, it is direct examination. It is pretty difficult to know just how far Mr. Smith will be permitted to go.

The Court. It certainly is not a cross examination.

Mr. Kalisch. Then I understand that Mr. Smith will be bound by the evidence that this witness gives.

The Court. There is a presumption in favor of the regularity of every report. The report being introduced, it is taken *prima facie* as evidence of its regularity until that is overthrown. Now, it may be that scrutiny of the methods adopted by the men who made the report will show that their methods were irregular. It is not necessary for the city to call the commissioners, because they have the presumption in favor of the report. If the objectors to the report call the commissioners, they make them their own witnesses, of course, necessarily. But it is impossible for the Court to lay down any general rules as to the conduct of the examination. The object is plain enough. The object is to see whether the methods were correct and legal.

(Question read).

A The first matter that the board considered was the benefit to property lying along on either side of the direct line of the improvement.

Q And from which end did you commence? A I don't remember.

Q Do you remember whether you took up the opening or the widening first? A No, I don't remember which end we took up first.

Q You say you took up the consideration of it. In what way did you take up the consideration of it? A Well, there are certain lots along the line of the improvement which before the opening and widening of Branford place were interior lots. These formed plots on a thoroughfare connecting two thoroughfares—connecting

with two thoroughfares, Springfield avenue and Broad street. Some lots, such as the rear of lots fronting on the cross streets, were changed from interior property to property having frontage on this valuable thoroughfare. In other cases lots which fronted on practically an alley connecting two streets—I may not call it an alley; a narrow street, 33 feet wide, connecting Halsey and Washington streets—I am speaking now of Camfield street—were placed on a thoroughfare 66 feet and more wide.

Q Well, what I was getting at is in what way did you take this up? Did you take it up with a map before you or did you take it up with an actual examination on the ground? A Both with the maps before us and by actual examination of the entire territory on the ground.

Q What maps did you use when you considered this? A We used the set of maps that had been specially prepared in the office of the commissioners of assessment, and I believe they were copies of the tax maps.

Q Have you still got those maps that you used? A Yes.

Q Are they the maps attached to the report, or were those made up afterwards? A No, I think they are not the maps attached to the report, unless they have been inked in since. The maps that we used were in pencil.

Q Well, the map that you had before you and used was the tax map which Mr. Burdette had as his map in the making up of the first assessment, was it not? A It was not.

Q You know the map that I refer to? A I know the map that you refer to.

Q And these were different maps? A These were an entirely different set of maps.

Q And they were also not the same maps as attached to this report? A I think not; I am not absolutely sure. Those maps may have been inked in. When we made our examination the ink lines were not there. That I do not know.

Q Now, you say that in considering the property along Branford place, did you consult with anybody other than yourselves as to value or benefits? A You mean did we employ experts?

Q Yes. A We did not.

Q You did not employ any experts? A No.

Q Did you, without employing any experts, consult and get opinions from any other persons with reference to these benefits or values? A No, excepting as we may individually have talked it over with somebody in whose judgment we had faith.

Q Did you finish up the question of how much you should assess for benefits the property along Branford place before you took up the consideration of any other property? A Yes, we did.

Q Was that determination final? A I don't just understand what you mean by that.

Q Well, was that determination of benefits along Branford place that you arrived at before you took up the consideration of other benefits adhered to by you in the final report? A We did not consider, as we took up the different properties piece by piece, any one special property final until we finally went over the report and satisfied ourselves as to those that needed no change and changed those that more mature consideration may have suggested a slight variation from the original assessment.

Q Well, this is with reference to Branford place. A Well, I am speaking—the same will apply to Branford place.

Q After you had, as I understand it, tentatively determined on the assessments on Branford place, what did you next do in making this assessment? A Then we took up the streets that are included in the benefited area, and assessed each one, each lot, according to our best judgment, in accordance with the benefit that we thought it had received.

Q Before taking up the actual amounts to be fixed on the various properties outside of the line of Branford place, did you discuss and consider the extent of the area of assessment? A I think that we first worked out—if I remember right, we first worked out the Branford place frontage assessment, and then carefully considered the area, and arrived at the conclusion as to the area benefited.

Q And you determined then that the present area of benefits as shown on these maps should be the area of benefits of this improvement? A That was our judgment.

Q And that was before you fixed the amount of benefits to properties not located on Branford place? A Well, Mr. Smith, it is rather difficult to follow—

Q Maybe I can give you a specific case. For instance, before determining the amount of assessment that should be made upon the property here, say the corner of Washington street and Market street, you had determined what the area of assessment should be (indicating on map)? A No, I am not prepared to state that. We determined among ourselves the actual amount of benefits to the different pieces of property, and when those amounts became practically unappreciable, we considered that we had arrived at the outside lines of the benefitted area.

Q You do not mean to say, Mr. Van Duyne, that you took, for instance, Market street, and went down Market street, fixing the assessments on each property, until you got to the Pennsylvania Railroad, and then you decided that you had assessed enough in that direction, and then went back to the next street and did the same thing? A No, not entirely. I was thinking more of the area as it extended in the westerly direction. It was rather apparent, even before those assessments were made, that the line of the Pennsylvania Railroad should be the easterly boundary line of the benefit; that is, the commissioners did not feel justified in assessing benefits for Branford place east of the Pennsylvania Railroad; so that that immediately became a boundary line. Now, as to just exactly the stage in the proceedings, or at what time we arrived at that conclusion, that that should be the easterly boundary line, I am not prepared to say.

Q But you are prepared to say that you arrived at that stage before you made the assessments east of Broad street? A Yes, I think I can very positively say that.

Q Now, in the same way, before you arrived at the amount of the assessments north of Market street you determined that the canal should be the exterior line of benefit in that direction, did you not? A Mr. Smith, it is utterly impossible to say at just exactly what time we arrived at the conclusion or in just what state the work was at the time we arrived at the conclusion that the canal should be the northerly boundary line. I cannot state that. The fact remains that we arrived at that conclusion.

Q Do you mean to say that you made individual assessments north of Market street be-

fore you determined on the canal being the northerly line? A No, I say that we may have made assessments north of Branford place before determining that the canal should be the northerly boundary line.

Q Now, as to the southerly boundary line. Can you tell me whether or not you determined that line before you made the individual assessments south of Branford place? A At some stage of the proceedings, either just before or just after we had considered the Branford place frontage, we carefully considered the boundary lines. Whether we had made any assessment south of Branford place on the intersecting streets at the time that we determined that southerly boundary line, I am not prepared to say. We arrived at the conclusion—

Q But you arrived at the southerly boundary before you did the most work in determining the individual property assessments to the south of Branford place, did you not? A Before we had done all of it; we may have started there.

Q You may have started? A Yes, sir.

Q Before you did the majority? A Yes, sir.

Q Now, in the same way, before you made the individual assessments west of High street, did you determine on the exterior line of benefits west? A If I remember rightly—

Q The balance of the section is on the map in back of you? A Yes, I was just noticing it. The same answer would apply to the westerly direction as to the northerly. We were working on this assessment for some little time before we finally determined the area.

Q But, Mr. Van Duyne, you did not make your assessment in this manner: start on, say,

Washington street, or any of these streets, and fix the values as you went along until you came to a point where those values had been reduced down until they were too small to assess? A We assessed every piece of property according to the benefits which we felt that each piece of property derived by the opening of Branford place.

Q You do not answer my question. For instance, in assessing the benefits on Washington street, you did not start at Branford place and fix these benefits from property to property until you got where, in your mind, you determined there was no benefit? A No, not entirely that way. Of course, the further you get away from the improvement along one of those side streets, the less the benefit, and practically the same thing that would apply on Halsey street would, to a certain extent, apply on Washington street, as you went south; that is, taking into consideration all the time the size and location and shape of the plot benefited.

Q But, Mr. Van Duyne, in having the maps before you and fixing the individual assessments, you had no method that here was the line of the opened street and here was the limit at which you had determined to make the boundary of the assessed area? A Not when we first began making assessments, arriving at our conclusions, on those side streets.

Q If not when you began, it was, was it not, before you got the work to any large extent finished? A As a matter of fact, the assessments do grade down probably to that point. I do not say that they grade down regularly to

that point, but they must necessarily grade down to it.

Q But that point, in your mind, was fixed before you determined on the individual intervening assessments? A Before your report was finished it was.

Q Did you have the area of benefits under the old report before you in considering this matter? A Not in considering this matter, no.

Q It is the same area, is it not?

Objected to.

A I believe so.

Mr. Kalisch. He stated that he did not have it before him in considering the assessment. Therefore it had no bearing on it, and whether it was the same or not would be immaterial. It just happens that both of them were the same. It would have no bearing on the former one entering into the making of the latter one.

The Court. I will allow the question to be answered.

(Question and answer read).

Witness. I wish to change that answer: "I believe so."

The Court. You may change it.

Witness. In comparing the new report with the old, it is substantially the same area.

Q Well, there is no practical difference except for two lots at the southerly end of Washington street; is not that a fact, Mr. Van Duyne? A Yes, sir.

Q Do you mean to say that it is merely a coincidence that the two areas are so similar?

Objected to.

The Court. I will allow it.

A I will answer that question by saying yes, I believe it is a coincidence that the areas are the same.

Q And the fact that that was the old area of assessment had no bearing upon your mind in fixing this new area? A It had no appreciable bearing on my mind.

Q Well, did it have any? A That I am not prepared to say.

Q Well, I would like to know that fact. A Well, personally I was reasonably familiar with the area of the old report. The assessment commissioners had two separate maps. The city map eventually established that as the area.

Q Well, that still does not answer my question: To what extent you took it into consideration, if you did? A I cannot answer you as to the extent I took it into consideration; I can only answer for myself.

Q Well, you did take it into consideration in fixing this area of assessment, did you not? A No, I do not think I did intentionally. I believe that area is the proper area—the area of the report that has been handed in.

Q Did you make an independent determination as to what the area should be, or did you make the determination that the area covered by the previous report was a proper area? A Why, Mr. Smith, I think I have answered your question as to how we arrived at the conclusion as to the area in the previous testimony.

Mr. Smith. Well, I would like you to answer this question.

The Court. See if you can answer this question, Mr. Van Duyne.

Q (Question read). A I should say that we arrived at the area through a careful consideration of what the benefits were. The area of the old report may have been in our minds, but I do not think it had any special bearing on the future. It may be possible that a question of 10 feet one way or the other, if such a thing had been possible, might have been different under the new report, if we had not had practically in our minds—or I am speaking of myself—if I had not had in my mind generally the area of the other report. In other words, I believe the area assessed is the area benefited and is in accordance with our report. We believed it to be the area benefited.

Q Mr. Van Duyne, did you not, as a matter of fact, take up the old area of assessments and determine that that was a proper area? A I believe without the other report, Mr. Smith, we would have arrived at a conclusion that the area benefited is as you see it in our own report substantially.

Q But, Mr. Van Duyne, did you not arrive at that conclusion practically before you went over the ground in making individual assessments? A Absolutely not.

Q Mr. Van Duyne, in the report which you signed you state that you made these assessments "fairly, legally and equitably." Will you please state what you mean by that statement?

Objected to.

The Court. It seems to me to be a proper question.

Mr. Kalisch. I think it speaks for itself. It is the English language. I do not know that Mr. Van Duyne is to be called upon to explain what is mean by these three words.

The Court. The words occur in the report signed by the commissioners. I think their attention may be called to them and they may be asked what meaning they attached to them. It is their report.

(Question read).

A Do you wish me to analyze the three words?

Q What you meant when you put that in your report? A So far as "legally" was concerned, we were appointed by the city, by the Mayor, I believe, according to law, to assess—well, to do just this kind of work, to assess benefits and damages, and so on. This came within the line of our work. Therefore it was done legally. It was done fairly, because it was done —because it represents our careful judgment and our honest work placed upon it. So far as "equitably" is concerned, I wish you would elucidate a little.

Q Well, it is your own language, you see, Mr. Van Duyne. You signed the report? A Well, that would mean "fairly," I believe, also, that we did this work fairly.

Q What do you mean when you say that you made an equitable assessment? A A consistent assessment.

Q Do you mean when you say "fairly, legally and equitably" that when you found a piece of property which you considered was legally liable to an assessment, but some particular circumstance was going to work a hardship to the individual owner, that you would change what you would consider a legal assessment to an equitable assessment? A No.

Q Well, what do you mean by "equitable?"

Mr. Kalisch. I want to be understood as objecting to this line of testimony without making individual objections.

The Court. Yes.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A You are asking me, as I understand it, for a dictionary definition of "equitable?"

Q No, I am asking you for what your understanding is of what you were doing and what you did when you designated in your report that you did it in an equitable manner, or did it equitably, and you stated that you did it "fairly, legally and equitably." Now, I want you to state just what you mean and what you did as applied to those words. A Will you give me a dictionary definition of the word "equitable?"

Q I am not testifying, Mr. Van Duyne. Can you give me an application of where you consider you equitably fixed an assessment on this report? A Well, I thought we equitably fixed an assessment where—

Mr. Kalisch. One moment. I would like to add to my former reasons for objecting to this question. I do not understand that "equitably," or any of those three words, in fact, is properly a part of the report. Where do you find that in the statute?

Mr. Smith. It is part of the oath.

Mr. Kalisch. Part of the oath that they took?

Mr. Smith. I do not know that it is in the oath; it is in the statute.

Mr. Kalisch. Then he is called upon to pass upon a matter of law. If that is so,

it is entirely irrelevant. He is not called upon to explain the surplusage.

The Court. It seems to me it is only a way of getting at the legal method that the witness had in his mind in performing his duties. I think the question is a proper one.

Q (Question read).

Mr. Kalisch. In reference to property that you represent, or any other? I object to the question unless it is restricted to the properties that Mr. Smith represents, and not to any property on the map, some of which may not have been objected to at all. It only opens the door to a lot of testimony.

The Court. What do you say to that?

Mr. Smith. This, your Honor. The witness seemed unable to tell just what he meant when he said that he equitably made this assessment. I ask the witness now if he can tell me any piece of property or any assessment that he made here which he considers was an equitable assessment. And I think that is perfectly proper to illustrate the method by which they arrived at the assessments before the Court.

The Court. I call your attention to Mr. Kalisch's remark, which is that your inquiry ought to relate to the lots in which your clients are interested, and not perhaps as to the lots of other people, who have not objected.

Mr. Smith. (After further discussion). My inquiry was general, but I will limit it to the properties marked on the map inclosed in red.

Q *(By the Court).* Understanding the question in that way, Mr. Van Duyne, can you illustrate your idea of what would be an equitable assessment? A Well, "an equitable assessment"—"equity according to value" probably comes near to defining the words—an assessment according to value. Is that what you wish?

Q *(By Mr. Smith).* I am asking you what you did and not what I wish, Mr. Van Duyne.

Mr. Kalisch. May it please the Court, I want to note another objection. I do not want to be unduly persistent, but I think there is something due to the witness. I understand there are several hundreds of assessments that are involved in this matter, and I do not think it is fair to the witness to ask the witness to say, with six or seven hundred assessments, just what he did with reference to one of them.

The Court. The witness may have all the time he wants to refresh his recollection as to any assessment. It is very true that Mr. Van Duyne may not have in mind all the lots in which your clients are interested.

A I am willing to take any lot at random and say that the assessment is in accordance with the oath of office, the three requirements.

Q Well, you just stated that "equitably" was according to value. Do you mean that? A Mr. Smith, I cannot give you a dictionary definition of "equitable." Frankly, for the moment, I am puzzled.

Q Then, when you said that you "equitably" assessed the benefits in this case, you did not know what you meant by that term? A It is in my mind at any time that the assessments were made according to the benefits. They may have

been done in accordance with three or four different adjectives, but they were honestly, fairly and conscientiously done according to the benefits.

Q Well, that merely goes to your endeavor. I want to get what you accomplished. Now, I want to know what you meant when you said that you fixed these assessments, particularly those of my clients, "fairly, legally and equitably," and I want you to state what you mean when you determined upon an equitable assessment in regard to these benefits? A I interpreted that an equitable assessment is one that is consistent—

Q Consistent with what? A I am just trying to think of the word. Well, perhaps consistent with values, actual land values.

Q Then in making up your report, that you "equitably" determined on these benefits, you meant that you determined upon them according to value; is that what you mean to say, Mr. Van Duyne? A No, I do not mean to say that. They were made according to benefits.

Q Well, I am asking how the benefits were made. You say that you determined these benefits equitably, and you have rather intimated, I take it, that you determined them according to value. Now, if not according to value, how else? A As I said, according to benefits received.

Q Well, that is the result you say you attained. I am asking you to state how you attained that result. You reported that you attained it equitably. Can you state? A I cannot answer your question, Mr. Smith. I am puzzled on just exactly the definition of the word "equitable." It did not necessarily come in my mind in arriving at benefits for the opening of Branford place.

Q Then in determining the benefits of this improvement you did not consider the question of whether they should be equitably determined or not, did you? A Well, I may very easily have done so, but I did not apply the word itself to my reasoning.

Q You do not know, according to your reasoning, and therefore your determination, whether you decided these benefits would be equitable or not? A I do not before starting go back to my oath of office and analyze just exactly those three words.

Q What was your understanding, then, of the method by which you should arrive at the benefits in this case?

Mr. Kalisch. May I ask if this is all in reference to the properties that you represent?

Mr. Smith. Is it necessary to specifically designate that each time? I will limit it to that in each case. I have no interest in any other properties.

The Court. The question is, what was your idea of the method to be adopted in making the assessment as to the lots in which Mr. Smith is interested? If you do not know what those were, it is easy to find out.

Witness. The method adopted is left absolutely in the hands of the commissioners. The assessments were made according to their best judgment as to the actual benefit to the property in the area.

Q Then you determined what the actual benefit was and fixed that? A Did I say "actual benefit?"

Q That is what I understood you to say. A Yes, in accordance with the benefit.

Q Did you determine what the actual benefit was? A We determined what the benefit was, according to our best judgment.

Q What do you consider the benefits for a street opening are? A The benefits of a street opening are an increase in the value of real estate in the open market; that is one of the benefits.

Q That is one of the elements. That is not all of the elements, is it? A Well, that is a very good basis; that is the main element.

Q Well, what other elements are there that go to make up the benefits—what other elements worked in your own mind, I should say, in making this assessment?

After Recess.

HARRISON R. VAN DUYNE, resumes the stand in behalf of Richard C. Jenkinson et als., objectors.

Direct examination (continued) by Mr. Smith.

Q (Question read). A The enhancement of market value.

Q That was the only consideration, Mr. Van Duyne, was it? A That is the only consideration in regard to the peculiar benefits.

Q What did you deem were the elements which made up market value? I do not ask you to give them all, but give me some of the elements? A The opening of a new thoroughfare where no thoroughfare was located before is one of them. That will increase market value.

Q Now, give me another? A What follows, also, in increasing the market value is the acquiring of property, the location of business along the line of this new improvement.

Q Now, take Branford place, for instance. With this opening, the property holders fronting on it from Washington street to Springfield avenue had a new street frontage, did they not? A They have.

Q What are the elements which go to make up the value of a new street frontage? One, I suppose, is access, is it not? A Access, of course.

Q Now, are there any others? A New property frontages, the placing of interior lots—of lots that were formerly interior lots—on the corner of a new thoroughfare. That would be another one.

Q How about traffic? A Traffic would necessarily follow a new thoroughfare.

Q It might not, if there was not any traffic to go across it. Did you deem that in this opening a part of the elements which would go to make up the benefits would be the traffic that would go up and down it? A Do you mean pedestrian traffic or traffic of all kinds?

Q Any. A Yes, I believe unquestionably you must get the people on a new thoroughfare if you wish it to be of any value.

Q Well, did you in determining these benefits consider that there would be an increase of traffic from time to time by reason of this opening? A Well, there was no traffic there at all before the opening was made.

Q Well, I mean that— A That traffic would follow the opening.

Q Follow and increase? A And increase, yes.

Q Did you consider as an element of benefits the probability of property which now fronts on the streets which cross Branford place being developed so as to face on Branford place? A Wherever such a thing is possible, undoubtedly the properties—the future development of the property will be as of Branford place frontage.

Q Well, in fixing your benefits did you deem that probability as a benefit? A Yes, sir.

Q You understand, do you not, that the properties which face on the newly opened street from Washington street to Shipman street were at the time of the opening developed so as to face on the cross streets? A In making our assessments we did not consider the locations of buildings. The benefit was to the land alone.

Q Well, I have particular regard to the size of the plots, the way the plots were arranged? A In making our assessments, the size, shape and the locality of the plots were all taken into consideration.

Q And the plots on the properties bordering the newly opened street were so located as to naturally face on the cross streets, were they not? A Before the opening?

Q Yes? A Yes.

Q And the opening gave them a side frontage, did it not, in almost every instance? A I would call it a frontage.

Q Well, you cannot call more than one side a front, can you? A I call the front on the street the part of the property that lies along the most prominent of the two.

Q And you considered that Branford place along the line of this opening was more promi-

nent than the cross streets where property faced on both streets? A Yes, sir.

Q Did you consider as an element of benefits a growth of business along this newly opened street? A Yes.

Q And that you considered in making your assessment would naturally come after the street was thrown open to the public, did you not? A Yes, sir.

Q And the fact that this opening would attract business, both by reason of traffic and by reason of location of properties along it, was one of the elements which you considered were benefits accruing from this opening? A Yes, sir.

Q And you also considered that by reason of this opening new properties and businesses would be attracted to this street? A Yes, sir.

Q And you considered that an element of benefit? A Yes.

Q An element of benefit to this entire area, I take it? A Yes, the entire area.

Q Just what area do you mean by that? A Well, I am speaking now of the general area.

Q The general area throughout the zone of the assessment? A Throughout the zone of the assessment.

Q Other than presenting a new street front to the property through which it passes, did you consider that there would be any benefit to any other property by reason of diversion of traffic to this street?

Mr. Kalisch. I object to that question. I think it ought to be restricted—

The Court. Benefits to other property outside of the zone?

Mr. Smith. No, inside of the zone of assessment.

Mr. Kalisch. The general zone, instead of the particular properties that Mr. Smith appears for?

Mr. Smith. I thought you would understand that I was referring to the properties that I appear for. They are in practically every part of the area of assessment.

A I believe any opening of new—

Q Let me caution you one moment. I am asking you as of the time you made this assessment? A Yes, sir.

Q Speak in the past tense. A I believe that the opening of a new, broad thoroughfare through the business section of the city increases the value of all the surrounding property on account of its association with that. It brings the means of developing new business, and if it does divert a certain amount of traffic which is going from above to a point below, it still—that diversion of traffic does not act as the reverse of benefit on any surrounding property.

Q Did you in making your assessment consider that there would be any diversion of traffic from any other street into this street? A Necessarily all the traffic that goes through that street is a diversion of traffic, because before the street was there it could not go through.

Q A diversion from streets principally paralleling it? A Yes, sir.

Q Now, did you deem that diversion of traffic into Branford place as part of the benefit to the property facing on Branford place? A I go a step beyond that, and say that any peculiar improvement that is developed in the middle of the city tends to increase property values of

all property that is associated in any way with it.

Q But I take it from your answer that you did not consider as a benefit to property along Branford place a taking of traffic which formerly went through other streets? A What was your question, do I consider that a benefit?

Q Yes, to the property on Branford place. A Oh, it is a benefit to the property on Branford place to have the traffic go through it.

Q Well, it was one of the elements which you considered in making up the elements of benefit which the property on Branford place received, was it not? A Yes, sir.

Q And you deemed that this traffic would increase property values along Branford place; that is so, is it not? A Yes.

Q Now, what effect did the fact that the traffic which would go down Branford place would be diverted from Market street have on your mind in fixing the elements of benefits to property on Market street? A Well, I think that the through traffic will necessary follow on, where it can be followed, as a shorter cut, or as a relief from congestion; but I also think, as I have stated before, that the opening of a new improvement which is intimately associated with Market street property, or any property in this area, increases the value of all of the property.

Q I understand what you say, Mr. Van Duyne, but I am asking you as to this particular element, which you have now applied to Branford place: that by reason of the diversion of traffic down Branford place, that makes an element of increase in the value of property along Branford place? A Yes, sir.

Q Now, I wish you would apply that particular element to Market street, and I ask you

if the diversion of that traffic from Market street to Branford place in itself—not considering other matters of benefit, but in itself—whether or not you deemed that a detriment or a benefit to Market street? A I do not consider that the diverting of traffic into Branford place is a detriment to Market street.

Q Do you consider that the throwing open of this interior land on Branford place would be put into competition with properties of like kind on Market street, Bank street and Academy street? A It will throw into the market some property that, without any question, is a necessity in this locality. Business will build up along Branford place, and big business, because there is a demand, undoubtedly, in this city for more available central frontage for big business. The mere fact that big business comes into Branford place does not necessarily mean that it is withdrawn from Market street. It comes because there is a demand in that locality for more business.

Q In determining upon the elements of benefits, you assumed, did you not, that this would be a business street? A I did.

Q A business thoroughfare? A Yes; we did.

Q You also assumed that it would build up with properties which would be more or less of a retail nature, did you not? A Well, that would be mere supposition. I do not know what the properties would be.

Q Well, you are certain on the question of residential or business property? A I am certain on that question.

Q Were you certain as to whether or not large factories would locate along this property? A

I hardly think that large factories will locate there.

Q You assumed, did you not, in making your assessment, that factories would not locate along this property, or this opening? A Well, I can say, personally, that I do not think factories will locate along there.

Q I am directing all my remarks to your determination in this assessment, the elements that you took into consideration. A We took into consideration the mere fact that it would build up as business property.

Q And when you say "business property," what kind of business property do you have in mind? A Stores.

Q Stores? A Yes, and perhaps office buildings.

Q You, therefore, considered that in throwing open this property bordering on Branford place as opened, you put that property in the same class as property used for wholesale or retail stores or office buildings, or property of similar character? A Yes, sir.

Q Now, as of what date, Mr. Van Duyne, did you fix these benefits? A Well, we fixed these benefits as of the date which preceded any of the physical developments.

Q Did you have any particular date in mind as to when these benefits should be fixed as of? A Yes, as of, course; after the property had been purchased and before the physical improvements had gone in, or had been placed in the street.

Q Then did you consider in making this assessment that there was an absolute certainty that this street would be curbed, graded, flagged, paved, sewered and supplied with water? A I

do not ever remember any discussion of that by the board.

Q That was not considered by you? A That was not considered.

Q Now, I do not think you have given me a specific date as of which you fixed the benefits in this case. A I cannot give you the date nearer than I have already given it.

Q And that is what? A That is between the time when the property was purchased—after that and before the time of the physical improvements.

Q What do you call the physical improvements? A The grading, paving, sewering, curbing and paving, flagging, and so forth.

Q Well do you mean that you fixed it as before it was opened, before any access to the public? A It is the practice of the board to make assessments for benefits as soon as the city has acquired all the property.

Q What do you mean by "as soon as the city has acquired all the property?" A As soon as the city has purchased the property. It may not be within a week or a month or two months or three months, but it is limited to the time when we get to it.

Q Now, will you kindly tell me just what process you used to figure out benefits on these properties? I notice that they are in uneven numbers, and I assume that you made some arithmetical calculation in determining upon them. A Yes, we considered each piece of property separately, and we took into consideration its size, its location, its shape, and we arrived at the peculiar benefit according to the best judgment of the commissioners.

Q Now, this necessitated your making some actual figures, did it not? A We may have made some figures; yes.

Q Well, you did in practically every instance, did you not? A Yes, sir.

Q Who did that figuring? A Why, sometimes one member of the commission and sometimes another.

Q Did the clerk make any of these figures? A He may have made some of them; we usually sat down, each with a paper, a pad, before us, and made those figures together, and that served as a very quick and accurate check on the work.

Q On any of this property did you employ a general principle as to the methods of calculating the amount of the assessments? A We considered each property separately and arrived at our conclusion on that particular property.

Q Did you consider that the benefits decreased as the distance increased from the opening? A Yes.

Q Did you consider that the benefits were larger to the west of the opening than the same distance to the north or south? A Yes.

Q And did you consider the benefits to the east of the opening for the same distance greater than to the north or south? A Yes; we did.

Q How did you come to that conclusion, Mr. Van Duyne? A We came to that conclusion, that the streets running east and west are more intimately associated with Branford place than the streets running north and south. They are sort of feeders for Branford place and Branford place is a feeder for them.

Q You deemed, did you not, that the natural trend of traffic in this section of the City of Newark was east and west? A Yes, sir.

Q And that you deemed was an important element of benefit? A In our judgment, that was the only benefit.

Q Now, Mr. Van Duyne, you had here to deal with an opening, as well as a widening, did you not? A Yes, sir.

Q How did you deal with those two improvements? A You mean in assessing the benefits?

Q Yes. A The peculiar benefits?

Q Yes. A The widening took place between Halsey street and Washington street; that is, it was the widening of Camfield street. We assessed on the southerly side of Camfield street, according to the peculiar benefits, as we saw them. It was formerly a narrow street, and it was increased not only to a street from 65—averaging about 65 or 66 feet in width, but it was made a thoroughfare between two important streets, Broad street and Springfield avenue.

Q Well, now, take, for instance, the Peddie property there (indicating on map). Did you consider that by reason of the taking of the property marked "4," and it having been paid for in damages, that you were giving the property marked "51," the one that I am pointing to, a new street frontage? A A frontage on Branford place.

Q That is, you figured that the property holder there had been compensated for the loss of his Camfield street frontage by the payment of damages, did you not? A Yes.

Q And that by the opening of this street and a separate assessment of benefits he received the benefit of being placed on Branford place? A Yes.

Q That is hardly the case with the property on the opposite side of the street, marked plots "21" to "29"? A I cannot see—

Q I will indicate them here (indicating on map). A There the property was peculiarly benefited by being made not only a frontage on a wide street, but also on a through street.

Q But it had a street frontage before, did it not? A It had a street frontage before.

Q And, therefore, the benefit to that property was not giving it a brand new frontage on a thoroughfare, but a frontage on a wider thoroughfare which was a through thoroughfare? A It was not a thoroughfare before Branford place was opened. Camfield street ran from Halsey street to Washington street.

Q Well, a thoroughfare between those two streets, was it not? A Well, not as you generally conceive a thoroughfare as being. It was a short, narrow street between those two streets.

Q Well, I do not think you have answered my question. The benefit which this property that I refer to, plots 21 to 29, was not the same as the benefit to the property opposite, was it? A It was given a frontage on a new and a broader street which was turned into and made a through thoroughfare. The benefit that it received was, according to the judgment of the commissioners, what we may have made it.

The Court. Which side of the street are lots 21 to 29 on?

Mr. Smith. They are on the south side of the old Camfield street.

Q Did the commissioners distinguish between an opening and a widening in this improvement? A The commissioners assessed according to what we believed was the increase in market value due to the peculiar benefit arising from either the opening or the widening.

Q Then I take it that you did not first determine one way or the other that there was a certain benefit by reason of the widening and a certain benefit by reason of the opening? A The commissioners considered all the facts in the case and they arrived at their conclusions with all those facts before them.

Q Well, in arriving at your conclusion, did you come to a figure, first, as to either opening or widening, and then, second, as to the other branch of the improvement, and then assess the total, or did you fix upon the entire sum without dividing it in your own judgment? A I have forgotten just the method of procedure in that particular block.

Q Well, give us your best recollection on it. A I don't remember.

Q You have no recollection, then, as to whether or not you first arrived at the benefits of either the opening or widening, and then the benefits, by reason of the other form of improvement, and then assessed the total of those two? A We took them into consideration. Which one we took first I don't remember.

Q Well, did you arrive at any specific amount as to one or the other, or did you make your first calculation as to the benefit which the property holder received by both generally? A I don't remember the method of procedure.

Q You have testified that you assessed peculiar benefits. What are the elements of peculiar benefits which you assessed? A The elements of peculiar benefit is the benefit that is peculiar to any specific plot of ground in this whole area, and represents, in the opinion of the commission, the enhancement in market value due to this special piece of property by the opening of Branford place.

Q Did you think that there was any general benefit to the City of Newark by reason of that opening?

Objected to.

A Yes; I do.

The Court. I think it is proper. We want to learn the witness's view as to what kind of benefit the commissioners were dealing with.

Mr. Kalisch. He asked if there was any general benefit.

The Court. Yes; whether the witness recognizes the fact that there was a general benefit. I think the question may be asked. You may answer the question.

Counsel for respondent prays an exception to this ruling of the court.

Exception noted as ground of appeal.

Q (Question read.) A Yes; I can readily see the general benefit to the City of Newark at large from that opening.

Q Well, what did you deem the general benefits were? A Well, if you, personally, wished to go from the court house to the corner of William street, you would go down Branford place, and so save perhaps three or four minutes of time. That would be a benefit to you.

Q What other element of benefit, generally? A That would be the main benefit. Any one who was going from one section of the city to the other, either walking or in an automobile, if they could save a few minutes by taking Branford place, they would certainly be benefited.

Q In fixing your peculiar benefit, did you deem the probability of a street car line up and down this street? A We did not.

Q You determined, did you not, Mr. Van Duyne, that such a thing was very unlikely to happen? A I don't remember discussing it at all.

Q It was not determined one way or the other, then? A No.

Q Did you determine that the peculiar benefits which you fixed came from the same or different elements when applied to different sections of this zone? A We considered the peculiar benefits as arising from the enhancement of market value of the property due to the opening.

Q Well, I will put the question in a differnet way. In determining this market value, did you consider that this increase in market value was derived from different or from the same elements in different zones? A Why, it was derived from opening a new business thoroughfare where Branford place was opened.

Q You do not answer my question. I asked you if the same elements that go to make up the increase of market value were present in the entire zone, or whether it varied throughout the zone? A It varied throughout the zone.

Q Now, what were the elements which went to make up the increase in market value of property lying along Springfield avenue, South Orange avenue and the neighboring streets? A If a new business thoroughfare is opened in a section, bringing in more business, more trade, more offices, a certain district or section is benefited by it— is peculiarly benefited by it—in the increase in the market value of the property lying iu that zone, and this is a case in point.

Q I do not quite understand what you considered the advantage was—the particular advantage to this particular property. A The partic-

ular advantage to this particular property is that a new business thoroughfare has been opened through its center.

Q I did not refer to the center; I referred to the property running from the westerly end of the improvement out towards the westerly side of the area of assessment. A When I speak of the center I mean the center of the zone. The improvement runs through practically what we will call the center of the zone. In the middle, or at the center, of the zone is opened the street that will develop into a business thoroughfare, and it enhances the value of all the property in that zone, in the judgment of the commissioners.

Q How did you determine that that enhanced the value west of High street? A That was our judgment. I will explain to you, Mr. Smith, that Branford place, in our judgment, will build up into a business thoroughfare, and in building up into a business thoroughfare, and increasing the value—continually increasing the value—of property along the line of the opening, its effect will be felt, in our judgment, as far as the zone extends.

Q Why is that? A I think the best answer to that is that that is our judgment; we believe that it is so.

Q Did you consider this zone as of a residential character or as of a business character? A It combines both a residential and a business character.

Q Did you deem the benefit, or the increase in value, more to residential or to business property? A We made no distinction; we assessed the land itself. The way in which the property was built up had no bearing whatever upon the assessment.

Q Did you deem that there would be any increase of traffic to the west of High street by reason of this improvement? A If you establish a brand new business street, a new business zone, bringing in new stores and factories and businesses where there are neither, it will, necessarily, increase the traffic.

Q Where will it increase it? A It will increase it, according to our best judgment, in the zone assessed.

Q Throughout the entire zone? A Throughout the entire zone.

Q Do you mean to say that it will increase it on Market street? A No; I think that Market street—I would arrive at the conclusion in regard to Market street in a little bit different way. I think that Market street is benefited because it becomes intimately associated with a new business development.

Q Did you or did you not consider that some of the properties which were on Market street might leave and go to Branford place—that is, some of the occupants of the property? A Why, that is a possibility. I do not know how to answer that in any other way. I do not consider it.

Q It is a matter that you considered, you say? A No; we do not consider the general effects of the exit of Market street property holders to Branford place.

Q What do you mean by saying that Market street property, being intimately related to Branford place property, increases the value of the Market street property? A At the intersection of Broad and Market street, Market street is intimately related to and associated with Broad street and Broad street intimately associated

with Market street. The result is that our highest property values are at that point. Now, if you open a new business thoroughfare in connection with Market street that will develop business, then Market street becomes intimately associated with that new development, and, therefore, Market street values are enhanced.

Q You deemed, did you not, that the values at Broad and Market streets were made because those two streets intersected and the traffic from one mingled with the traffic of the other? A I merely used that as an illustration because it was before me.

Mr. Smith. That does not answer my question.

Q (Question read.)

The Court. That is in the form of an affirmation, but it is a question.

Q Was that your view? A Well, of course, the mere fact that they intersect would have something to do with its being the highest priced property in the town, but that does not in any way interfere with my illustration that they are intimately associated with each other; that is, the properties bordering on Market street and the properties bordering on Broad street in the vicinity of Market. I am not speaking of the properties exactly on the corner; I am speaking of the properties in the vicinity.

Q Well, you deemed, did you not, in determining the market value, that the traffic by the property in question was one of the elements which went to make up the market value of that property? A Of Branford place?

Q Of any property? A Well, that depends on whether that is, necessarily, through traffic or

traffic that is coming to that vicinity for a purpose.

Q Well, you cannot distinguish it, can you? A It is very difficult to distinguish it; that is, you cannot pick out which is which.

Q So that, in determining it you determine on traffic in general, do you not? A Traffic in general, I suppose.

Q Well, now, do you consider as an element of benefit to a property the amount of traffic that it had go by it? A Yes; generally speaking.

Q The opening and widening of Branford place will, at the time of its opening, decrease the amount of traffic going east and west on Market street, will it not? A It will, undoubtedly, decrease the through traffic; I do not think it will have any effect on the traffic that wants to stop along on Market street between where Broad street and Springfield avenue and Branford place intersect.

Q Why do you distinguish? Did you not consider that where there was local traffic from the court house to, say, the southwest corner of Halsey and Market streets, that formerly the traffic went down Market street, but now, by reason of this opening, it may go down Branford place and through Halsey street? A Yes; it may. It is a matter of convenience. I think it is only the through traffic that will take Branford place.

Q Then, did you deem that you could distinguish between the kinds of traffic in making up your increase in value? A Well, it is rather difficult to distinguish. Take simply an illustration. If I were going down Springfield avenue, and wished to go south on Broad, we will say, in a wagon or an automobile, and had no errand that would take me down through Market street,

I would, naturally, go down through Branford place. That would have nothing to do so far as affecting the value of Market street property from losing my traffic.

Q Did you not consider that a person who, ordinarily, would have gone down Market street, but going down Branford place, might make a purchase on Branford place that they might have made on Market street, if they saw something that they fancied? A Well, I cannot answer that question, Mr. Smith.

Q Well, you did not consider that, then? A That seems to be—

The Court. The question really is as to what the action of the board was in all these cases, taking your own recollection as a help toward that.

Witness. According to my recollection, I do not remember considering with the board just exactly that possibility.

Q I do not wish to center it on that particular possibility, but on traffic of that kind. (No response.)

Q Now, did you consider this? You considered, did you not, that there would be at certain times, such as Saturday afternoon or evening, a heavy traffic on foot from the westerly section of the town down to around the Four Corners, at Broad and Market streets? A There always is.

Q And you considered, did you not, that a large amount of that traffic would be diverted to Branford place? A Unquestionably.

Q Well, did you not also consider that that traffic was one which would make purchases in the course of its movement? A The point of view from which we considered Branford place was that the mere fact that a broad, new thor-

oughfare is opened at the time when the time is ripe for a business development along it, does not interfere with business already established on adjoining streets; it simply increases it; it increases the business section according to the public demand for it, and that leads to the result, in my mind and the mind of the board, of increasing market values.

Q I suppose you mean that you considered that that would develop business of like character to Market street in a natural way? A I think that whole section will develop into a business section, the result of which will be the increase of market values in that entire section.

Q And that was one of the elements that you took into consideration in fixing your assessments? A I believe that was.

Q Did you not consider that, by reason of this opening, it would put in competition the property along Branford place with the property on Bank street and Academy street, lying between Broad and High streets? A I think the same answer applies. If you add a business section where it is needed, the result is the increasing of value in the entire area assessed.

Q Does that operate immediately? A It may not operate instantly; it operates eventually.

Q Well, it takes time, does it not? A Everything takes time.

Q It would take a year or two, anyway, would it not? A Possibly, possibly more.

Q The minute that this street is a public street, did you not deem at the start that there would be an effect in that regard on Bank street and Academy street by putting property in competition? A I don't believe that a street that brings competition decreases the market value of

a property in the vicinity; I think it increases it, because if there is competition there must be a necessity for competition.

Q There is a business section, is there not, along Springfield avenue, and running westerly? A There is.

Q Did you deem that that business section would lose some of its trade by reason of the more ready access to downtown? A No; I don't believe that the business section will lose any of its trade.

Q Did you deem that the making available of business properties on Branford place would benefit the business properties on Springfield avenue? A We did.

Q In what way? A On account of its association with a big improvement.

Q Just what do you mean by "association?" You have described the association at Broad and Market streets, but, I take it, it is a different association between a street such as Branford place and property considerably beyond it and in line with it? A The association is more remote.

Q Well, then, in what respect does it increase it? A In a lesser degree and exactly the same, along the same general lines that it increases the value in the immediate vicinity, and for the same reasons.

Q Just state those reasons again, will you not, please? A It brings the properties in question into the zone of an important improvement, where property values are increased and where business increases, and, in the judgment of the commissioners, it increases the market value of the property on Springfield avenue according to the amount assessed.

Q Did you deem that the opening of this street would increase the traffic on Mechanic street east of the opening? A It undoubtedly does increase the traffic on Mechanic street east of the opening.

Q Did you consider that an increase in value to Mechanic street property? A In our judgment, the amounts that we have assessed on Mechanic street represent the peculiar benefits to the Mechanic street property on account of its relationship with the new improvement.

Q Can you not answer the question I asked you?

(Question read).

Mr. Smith. That is the increase in traffic.

The Court. Would the increase in traffic on Mechanic street lead to an increase in the value of the property on Mechanic street? That is the question, is it not?

Mr. Smith. Yes.

A Mechanic street is a pretty busy street as it is. We attempted to take into consideration all the conditions and all the peculiar benefits that would arise in Mechanic street from that opening, traffic as well as other things.

Q Well, I would still like you to give me an answer to my question.

The Court. Consider the traffic alone, if you can.

A You can assume that we considered each one of these separate conditions by themselves.

Q Each one? A Considered them by themselves.

Q Segregating traffic from everything else and looking at that separate subject, would an increase of the traffic by itself on Mechanic street

increase property values on Mechanic street? A To an appreciable degree, it probably would.

Q That is not the answer I want; I want to know what was your determination as to its increasing property values on Mechanic street to have the traffic increased? A And I answered that, that it might by an appreciable amount, and I cannot give it to you in dollars and cents per square foot; I do not know.

Q Well, did you deem that particular element to be a benefit to Mechanic street? A The main benefit to Mechanic street is its proximity to the zone of the improvement.

Q I did not ask you what the main value was; I asked you as to that one thing. A I told you that increase of traffic may have been taken into consideration as part, or to a certain extent, in arriving at our conclusion. Now, whether we just sat down and discussed traffic conditions as to just each one of those lots, that I cannot remember. There were so many thousands of these that that part of it has slipped from my mind.

Q Well, you remember that you did discuss the bearing of traffic on Mechanic street on its benefits? A We discussed the bearing of traffic on its benefits, and all the other things that might bear on its benefits, on each and every one of the streets in the zone. Now, I cannot say, because I cannot remember, just the discussion that we had in regard to Mechanic street; I cannot recall.

Q Can you not tell me whether you deemed when you made this assessment whether the increase of traffic on Mechanic street was a benefit or a detriment? A I cannot absolutely recall

the discussion that we had in regard to Mechanic street. We considered it in all its phases.

Q Now, on Market street east of Broad street did you consider the increase or decrease of traffic an element of benefit? A I do not believe that there is very much change of traffic on Market street east of Broad street. The assessments were made there according to the best judgment of the commissioners as to the amount of the peculiar benefit.

Q The opening did not have the same effect on traffic on Market street below Broad—that is, east of Broad—that it had west of Broad, did it? A No, it did not.

Q What is the difference? A The difference is that, in all probability, the main part of the traffic that comes down either Branford place or Market street and has for its destination some point on Market street running east will continue down Market street.

Q Regardless of the fact that it may go down Branford place or may go down Market street? A Well, it may be partly diverted to the south and go down some of the other streets, depending on what its destination is.

Q Well, I do not think you have given me yet what is the difference between the effect of this opening on the traffic west and east of Broad street on Market street? A I think in all probability the traffic east of Broad street will remain more as it was before the Branford place opening.

Q And as to the part of Market street west of Broad? A That may be possible, that may be a little less.

Q That will be decreased, will it not? A That may be decreased, yes.

Q Well, you considered that it would, did you not? A Yes, I considered that it probably would be decreased—through traffic, that is.

Q Now, what effect did the opening of Branford place have, or did you deem it had, upon properties north of Market street on Broad street and parallel streets? A That they were associated—

Q No, just the question of traffic.

(Question read).

A I think very little change in traffic.

Q So that that did not form much of an element of benefits in this case? A It did not.

Q Now, what effect did this opening have on traffic south of the opening on Broad street and other parallel streets—south of Branford place? A It probably had not very much effect on traffic south of Branford place.

Q Then, Mr. Van Duyne, you deemed in making these assessments that the benefits by reason of traffic was to properties north of the opening and directly east of the opening, did you not? A Well, this opening was considered in a broader sense, Mr. Smith, than simply one of the increase or decrease or variations of traffic. It was considered as a big improvement that would bring business into the center of this zone, and that the property lying in the zone, every last lot of it, would be peculiarly benefitted to the amount of the assessment by the new business and the new territory thrown into the market by this opening.

Q Now, Mr. Van Duyne, you have given us, as I understand it, two distinct elements of increase in market value on which you based your assessment; one was an increase in traffic and the other was a proximity to the public improve-

ment, which made the property assessed intimately related to the improvement; is that right? A That is right.

Q Now, is there any other element of benefit other than these two that you considered in determining your peculiar benefits or your increase in market value? A Those were the main reasons, the ones that you have just stated.

Q Those are the main reasons? A Yes, sir.

Q Are there any others? A No; I think that they will practically cover the reasons for the increase in market value.

Q Now, on this question of close proximity to the improvement, does that decrease in direct proportion to the increase of distance from the improvement? A Whether it does absolutely, mathematically, I am not prepared to say. Generally, it decreases directly as regards the distance from the improvement.

Q Now, did it decrease in a greater degree to the north than it did to the west? A We arrived at the point of our minimum assessment at a lesser distance running north and south than we did running east and west.

Q And you, therefore, determined, did you not, that it decreased in greater proportion as you went away from the improvement to the north and south than to the east and west? A Yes, sir.

Q Now, comparing the east and west, did it decrease more rapidly as you went away from the improvement towards the east or towards the west? A It decreased, as I recollect it, more rapidly going to the east than it did to the west, although there were a good many assessments in there, and I would have to refer to the report to absolutely answer that question.

Q If you desire to refer to the report, you may, and the map is here, and you can look at it. A I would be very glad to step down there and read off the assessments on any lots that you want to, and that should show whether it decreased more rapidly or not.

Q Well, I could do that myself. I do not think that will help us any, Mr. Van Duyne. You made up what is called a tentative report of these benefits, did you not, before you signed the report itself?

Mr. Kalisch. I object to that. I do not see the object of examining into what they did before they made the report. That question was, in a sense, raised on these preliminary objections, as to just what proceedings were taken, what course was pursued, prior to making their report concerning matters that were anterior to the report, and I understood your Honor to rule that you would not examine into matters that took place before the actual making of the report. Now, in this proceeding here I cannot see where it is any more relevant or competent to go into what took place prior to the commissioners actually making their report that is the subject of this particular hearing and what report was made before the final assessment was made.

The Court. I can conceive that it is one thing to say that on objections to the report the commissioners made a legal error in drawing up their tentative report, and it is another thing to ask some one of the commissioners whether, on a previous examination of the subject matter, they reached other

figures, and, if there is a discrepancy, they might be asked to explain.

Mr. Kalisch. If that is the object, then I shall object because it would be an attempt to impeach their own witness by showing that the commissioners made a statement different to the one that appears in the particular report that they are now submitting.

The Court. I understand the law to be that it is one thing to impeach your witness and quite another thing to show, if you can, that the witness has made an inconsistent statement at some other time. You impeach a witness when you charge him with being unworthy of credit; but a man who called a witness would be in a pretty hard position if he could never show that he had expressed some opinion other than that which he expresses when on the stand.

Mr. Kalisch. That is just the point. If they endeavor to show that he is unworthy of credit, I suppose one of the ways of doing that would be to show that he made another statement at another time; that is one of the ways of showing it.

The Court. I do not think that this appears at all to be an impeachment. If anything, it is a mere contradiction. I suppose even a commissioner may change his mind. I think the question is not improper.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(Question read.)

A Do you mean by that—are the figures on the map of this report our own figures, and

placed on the maps that we used at the time when we were doing our work of assessing this property?

Q No; what I mean is this—

The Court. You know what the statute is, do you not? You make a report; you send out notices, and people come to criticise it.

Witness. Yes, sir.

The Court. And then, afterwards, after hearing everybody, you sign your report.

Witness. Yes, sir.

The Court. Up to that time you have not signed anything.

Witness. Yes, sir.

The Court. Now, did you make up a tentative report?

Witness. Yes.

Q You made up a tentative report? A Yes.

Q And that was filed with the city clerk? A Yes, sir.

Q And that was complete, so far as the schedules were concerned, as to what properties were to be assessed and what you tentatively decided to assess against them? A Yes, sir.

Q Now, did you make any changes in the report after you filed it with the city clerk, showing the tentative assessment? A No.

Q There were numerous objections filed, were there not, to this tentative report? A I may misunderstand, Mr. Smith. Will you put that question again? Between which time and when are you referring to?

Q I refer to your report which you prepared tentatively and filed, I think it was in August, with the city clerk, and then gave notice of a hearing on that report. A Yes.

Q Which you would have done, I believe, in September or the latter part of August. Now, you did make such a report and did give notice, did you not? A Yes.

Q Now, was that report, as you had it made up, changed in so far as the figures against any of the properties assessed?

Mr. Kalisch. I object to that, may it please the Court. I think the contents of the report, if there were any changes made in it, is the best evidence of that.

The Court. That may be so, but I think the witness may answer the question; he may say yes or no.

Mr. Smith. Perhaps that is so, but the report would not show it, because the tentative report would be the same as the report they are using now.

The Court. Yes; I suppose you are right. Can you tell from your recollection?

Witness. I have a recollection that one piece of property, in which there was a clerical error, if I remember right, a clerical error in figures, that was changed, but, aside from that, I don't remember anything else.

Q There was one change, then, according to the best of your recollection? A I have a recollection of of one change.

Q Well, there were a great many objections filed, were there not? A Yes, sir.

Q What was done with those objections?

Objected to.

The Court. That, I think, is rather doubtful. What difference does it make what was done with the objections?

Mr. Smith. I meant what action was taken?

The Court. If you mean whether there were any changes, I will allow that.

Mr. Smith. I want to ask this witness what action they took on those objections. He may testify that he considered some of those objections good, but also decided not to change the report. I do not know what the witness will say.

The Court. I think it is irrelevant.

Counsel for Richard C. Jenkinson *et als.*, objectors, pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q In arriving at the benefits, Mr. Van Duyne, in making your figures on the benefits, did you primarily use any basis of size of lot for the purpose of comparison? A Each property was separately assessed and each plot was considered by itself, its size and its location and its dimensions.

Q *(By the Court).* Did you use a standard, a standards of size, in working out the problems as to each lot?

The Court. Is that your question, Mr. Smith?

Mr. Smith. Yes.

A Each property was assessed according to what, in the judgment of the commissioners, it was benefited.

Mr. Smith. I appreciate that that has been your testimony.

Q You do not quite get the point of the question. Assuming that that was so, did you

have in your minds and use in your figuring a lot of a standard size; say, for instance, 25 by 100? A 25 by 100 feet? Yes, 25 by 100 feet was and it is always considered in anything connected with real estate as the standard sized lot.

Q (By Mr. Smith). Then in making your figures you would have in mind a standard size to compare it with the property you were treating? A Yes.

Q And in treating this property would you increase the assessment if the lot was over 100 feet in depth? A Each lot was separately considered, and if a lot was over 100 feet in depth, necessarily the assessment would have been more than if the lot was just 100 feet in depth.

Q And what would you do if the lot were under 100 feet? A If it were under 100 feet in depth, that would be considered.

Q Is there any standard of ratio that you used for increased depth or decreased depth? A That was entirely in accordance with the judgment of the commissioners as to its actual value.

Q Well, in the judgment of the commissioners, did they use any particular ratio? A The commissioners used—

The Court. You mean for the purpose of comparison?

Mr. Smith. For the purpose of comparison.

The Court. With the standard?

Mr. Smith. With the standard.

Witness. The commissioners used their own judgment with regard to the value of

the property in accordance with its size and its depth and its shape and its location.

Q Do you mean that you would treat a property of 200 feet in depth with the same increase of ration as one 125 feet? A I mean that we considered the plot 200 feet as a whole, and the lot 100 feet deep as a whole, and assessed according to our best judgment.

Q Without any regard to the difference, one from the other? A I don't know what you mean.

Q For instance, where there were adjoining properties and one was 200 feet and the other 100 feet deep, did you have any definite scheme as to the ratio of difference in the depths? A We considered each plot separately and assessed it for peculiar benefits, taking into consideration its size and its location and its frontsideration its size and its location and its frontage.

Q In determining the amounts which you would assess on these properties, did you figure out what your assessment would be by a square foot? A We followed no rule. We arrived at the value of the property as I have explained to you, each property on its own merits, and we assessed what, in our judgment, was the peculiar benefit to that property.

Q Take the block from Plane street to Washington street on the north side of Market street. Did you figure that block differently as to any of the properties, or did you figure them all the same? A We considered each property separately, and we assessed it according to our best judgment.

Q In using your judgment, did you require any property to pay more per square foot than

another property in that block? A I cannot now make comparisons. We made no assessments per square foot, we made no assessments per lineal foot; we took each property separately and assessed it according to its size and its location and its shape.

Q Now, we have here two plots, No. 73 and No. 75 Market street (indicating on map). You have assessed those properties each $120. Do you mean to say that you arrived at that assessment in each case independent of the other? A I do.

Q And that you did not consider that they should be treated in the same way? A Each plot was considered separately and was assessed according to what we considered it was peculiarly benefited.

Q And it was mere chance that they might come out the same? A Mere chance that they came out that way.

Q Now, Mr. Van Duyne, will you return to the report which you have there, block 60, this one here, bounded by Washington street and Branford place and Halsey street and Market street (indicating on map)? A (Referring to report). Block 60.

Q Now, Mr. Van Duyne, I call your attention to property No. 94 Market street, which is plot No. 13. What did you assess that for? A (Witness refers to report).

Q Suppose you use this blueprint, Mr. Van Duyne (shown to witness). It has the amount of the assessments on each piece of property; it is merely a duplicate; so that it is easier to get at it. The report does not show it on the map, does it? A No, the report does not show it on the map. (Witness refers to blueprint).

Harrison R. Van Duyne, direct.

Q Your assessment on lot 13 was $245, was it not? A It was.

Q And the assessment on the adjoining lot, No. 15, was $230, was it not? A $230 is lot 15, and lot No. 13 is $245. Lot No. 13 is 94 Market street and lot No. 15 is 96 Market street.

By the Court.

Q One is $245 and the other is— A $230.

Q A difference of $15? A Yes, sir.

By Mr. Smith.

Q Now, why were those properties assessed differently? A Each one was considered separately and the amounts arrived at were the opinion—each one was the opinion of the board as to the actual—

Q *(By the Court).* Well, assuming that, Mr. Van Duyne, do you now remember or can you now tell us how it was that the board reached different figures in those two cases? There must have been some reason for it, of course. If you do not rmember, you can say so. A There is a difference in size of the two lots.

Q *(By Mr. Smith).* Plot 13 has a larger frontage than plot 15, has it not? A It has.

Q And you deemed because of that fact that it should have a larger assessment? A We didn't assess as regards to frontage; we assessed in regrd to the size and the shape and the location of the lot.

Q Did you consider that by reason of the shape of those lots one was benefited more than the other? A Yes, sir.

Q Why? A Well, one lot is a smaller lot than the other.

Q Well that is as to size, not shape. A Well, a difference in size may follow a difference in shape.

Q Well, which has the reason which moved you to make the assessment more in one than in the other, the size or the shape? A The fact that lot No. 96 was smaller than lot No. 94 led us to make the assessment less.

Q Small in size? A Smaller in size. Now, that size happens to be in the amount of street frontage. It might be in depth or it might be in area; it might be anywhere. We considered all of those.

Q Do you think they were different in any other respect? A They are not different in any other respect.

Q (By the Court). Can you tell us what the difference is in frontage? A The difference in frontage is 1 foot and 4 inches.

Q (By Mr. Smith). Now, can you tell me why that difference of 1 foot and 4 inches is directly in proportion to the difference in the size? A I cannot.

Q Was it intended so to be by the commissioners? A Not necessarily.

Q Well, why not? A Because we applied our judgment to each and every separate lot.

Q You considered these plots as without buildings, I understand? A Absolutely.

Q And you say that there is no difference in benefits between the two in any other aspect than the size? A I did not say that; I said that they differed in size.

Q Well, was there any other difference? A Yes, they also differ in shape.

Q What is the difference in shape? A Lot No. 13 has a frontage along Market street of

21.92 feet, 21 feet and 11 inches, and across the rear it is 19.35 feet. Lot No. 15 has a frontage of 20.58 feet, or 20 feet and 7 inches, and across the rear it is 19.64 feet.

Q *(By the Court).* It is wider in the rear than the other? A It is wider in the rear than the other. Practically they are the same depth.

Q *(By Mr. Smith).* And then the reason for the variance in those two assessments is the size and the shape? A We took the size and the shape and the location into consideration in arriving at our figures.

Q Now, as to the question of location. You have not spoken of the question of location. Does the difference in location make a difference in the question of benefits on those two particular pieces of property? A Well, whether in analyzing those two particular pieces of property at the time we made that assessment as regards their location, I cannot say. We may have taken that into consideration and we may not have. We attempted to take every phase into consideration and arrive at the amount of the peculiar benefit of those two lots as you see it on the report.

Q You say you took every phase into consideration. You have told us you took the size and the location. A And the shape.

Q I mean the size and the shape. Do you know as a matter of fact that you did or did not take this question of location into consideration? You say you took everything into consideration. A I do not remember the particular discussion on these two particular lots.

Q Well, you can tell, can you not, from the fact of the result and the fact that you person-

ally went over it, if you did— A Then we must.

—that you took those various things into consideration, the size, location and shape? A Undoubtedly.

Q Is there an yother element which would bear on this question of the difference in these two assessments? A The nearness to the opening might have some consideration.

Q It is not a question of whether it might have; it is a question whether it did or did not have in the minds of the commissioners. A At the time these two particular lots were assessed just what line of reasoning and thought we followed in differentiating between the two has escaped my memory.

Q Well, in going over it now, do you see any difference now? A In the two lots?

Q Yes. A One of the lots has a lesser frontage than the other, according to the sketch, and they are of different shape.

Witness. May I make one correction in my testimony given this morning?

The Court. Yes, certainly.

Witness. On several occasions this morning I used the word "actual" in regard to benefits where I had in mind the word "peculiar". I wanted to simply make corrections in that one word.

The further taking of testimony is adjourned until Monday, November 29th, 1915, at ten o'clock, A. M.

SECOND DAY.

Monday, November 29th, 1915.

Met pursuant to adjournment.

HARRISON R. VAN DUYNE resumes the stand in behalf of Richard C. Jenkinson *et al.*, objectors.

Direct examination (continued) by Mr. Smith.

Q Mr. Van Duyne, I call your attention to a piece of property back of the properties that we were discussing, which is marked "Estate of John D. Peddie", lot 65, which faces on Camfield Court, and was assessed $2,000, having a frontage of 35.25 feet on Camfield Court, 80 feet east of Washington street—

The Court. You described that as being in the rear of what lot?

Mr. Smith. Back of the properties that we were discussing, on Market street.

Q Could you tell me why it was assessed separately from the balance of the estate of John D. Peddie—any particular reason? A (Referring to map). That was the way the property was shown on the map that was submitted to us.

Q Mr. Van Duyne, did you consider that that property had access over the property to the south to Branford place in making that figure? A I do not remember whether we did or not. We assessed it because of the peculiar benefit derived on account of its proximity to the improvement.

Q Well, proximity in which direction, through Camfield Court and Washigton street,

or proximity across the intervening property of the estate of John D. Peddie? A I do not remember the discussion as to that. On account of the proximity to the improvement.

Q I know, but can you not tell us proximity in which direction? A I cannot.

Q Do you mean to say that you do not know? A I mean to say that I do not know Generally its proximity to the improvement.

Q I call your attention to the assessment against the Metropolitan Realty Company, which has a frontage on Washingon street of 87 feet and a frontage on Camfield Court of 80 feet, and is assessed $1,875. Does not that indicate to you that in your determination you consider the proximity to Branford place and Market street through the property of the estate of John D. Peddie?

Mr. Kalisch. I object to that.

The Court. The question is whether this refreshes the witness's recollection.

Mr. Kalisch. He is asking him whether a certain set of facts indicate another fact to his mind. It asks for a conclusion to be drawn by the witness.

The Court. I think the form of the question may perhaps be objectionable; but the question essentially is this: Looking at this assessment on this lot of the Metropolitan Realty Company, is your recollection refreshed as to whether you considered in dealing with lot 65 of the Peddie property its proximity through the other Peddie property as a ground of your award? Is not that your point?

Mr. Smith. Yes, your Honor.

(Question read).

A The corner property that you refer to was assessed for peculiar benefits without any relation to any other property. It stood on its own merits, and the assessment was made by the commissioners accordingly.

Q That does not answer the question. The question is if the fact with reference to the Metropolitan Realty Company's assessment does not refresh your recollection as to whether or not you considered the proximity of lot 65 to Branford place across the balance of the Peddie property to that street? A There were three—

Mr. Kalisch. The question is whether it refreshes your recollection.

Witness. It does not refresh my recollection.

Q Did you consider in fixing the assessment on lot 65 the fact that the owner had access to Branford place across the intervening lot, 51? A I do not remember.

Q Do you know, as a matter of fact? A I do not remember.

Q I ask you now if you know, as a matter of fact?

Mr. Kalisch. Your Honor, he has answered it twice. He says he does not remember.

Mr. Smith. Now I ask him whether he does not know, as a matter of fact.

Mr. Kalisch. (After further argument). Then I shall object to it. It does not make any difference what he knows now.

The Court. I think the question is what the commissioners considered and deter-

mined upon in making their awards. I sustain the objection.

Q Did you and the other commissioners consider, Mr. Van Duyne, that lot 65 was more peculiarly benefited by this opening than lots 5 and 6 on block 60?

Mr. Kalisch. I shall object to that.

The Court. What are lots 5 and 6?

Mr. Smith. Lots 5 and 6 are here, and this is the lot that I am talking about (indicating on map).

The Court. Do you object as to 5 and 6?

Mr. Smith. Yes, your Honor.

The Court. Then they are all your clients—the owners of lots 5 and 6 and 65?

Mr. Smith. Not 65; the owners of 5 and 6 is our clients.

The Court. Then you are not objecting to 65?

Mr. Smith. No.

The Court. What is the objection?

Mr. Kalisch. That is one objection, and the other objection is that we feel that the subject of this investigation is upon what he based the assessment. They are asking merely whether or not he gave that comparison consideration, not whether he based his assessment upon that comparison.

The Court. I do not quite understand that distinction.

Mr. Kalisch. The point that I make is this: that Mr. Van Duyne could properly be asked, I suppose, with the exception of this other objection that has been made,

that Mr. Smith does not represent the owner of 65, whether or not he made a comparison, and whether that comparison was a basis upon which he made the assessment, but not the statement merely as to whether he made a comparison. That in itself is entirely immaterial, unless he used it as a basis for making an assessment.

(Question read).

The Court. Just to what extent can the Court consider the assessment made against 65, which is not objected to?

Mr. Smith. Oh, there are objections filed to it, but not by me. But my point is that I have got a right to compare the assessments to show whether there is equality?

The Court. Who represents the owner of 65, do you remember?

Mr. Smith. Mr. Prout, I think.

The Court. I am disposed to allow a good deal of freedom of inquiry in this matter. I think your question is not improper. I overrule the objection.

Mr. Kalisch. It is not cross examination.

The Court. I do not understand this to be cross examination.

Mr. Kalisch. No, that is the reason I object to this. It is quite a good deal of latitude on direct examination.

The Court. It is like the examination of an unfriendly witness, which gives the examiner more latitude than he otherwise would have—not that the commissioners are in any way on an offensive stand, but they are interested in sustaining their own report,

which is attacked. Now, you may answer the question.

(Question read).

A We did not compare the amount of the peculiar benefit conferred on any one particular property with the amount of benefit conferred upon any other particular property. Each one was taken by itself, and assessed according to the peculiar benefits which we felt were conferred upon it.

Q I take it, then, Mr. Van Duyne, that in making this assessment you made no attempt to make equality in the matter of the assessments as between various property holders? A The report will show that; that may be determined by an analysis of the report.

Q But in this particular instance I am asking you about lots 5 and 6 and 65 on block 60, you may give what you considered to make the assessments comparatively equal? A Each one was considered separately.

Q In what way did you—what did you consider the peculiar benefit of the Metropolitan Realty Company property by reason of this opening? A The enhancement of the market value due to its relationship with the improvement.

Q Well, you say "relationship," what do you mean by that? A Proximity, too.

Q Then when you say proximity you mean distance? A I mean proximity, too. Its location with regard to the improvement.

Q That is its nearness to the improvement? A Its nearness to the improvement.

The Court. Can you give me the number of that Metropolitan Realty lot?

Mr. Smith. Nos. 5 and 6 on block 60.

Q Did you consider that the Metropolitan Realty Company property was nearer the improvement than the estate of John D. Peddie? A We made no comparison of any two properties. We assessed each one according to the amount we considered it materially benefited.

Q Now, assessing lot 60 did you consider the proximity southerly or the proximity by way of Camfield street and Washington street? A We considered the relationship to the improvement. I do not remember—there were 3,000 different pieces of property that were assessed approximately. I do not remember just the train of reasoning of the board on any particular piece or on this particular piece.

Q Did you have any particular method or principle on which you determined proximity in any of these assessments? A We assessed each one—(interrupted).

Q Can't you answer me that yes or no?

Mr. Kalisch. I object. I think it is entirely immaterial, to determine the principle as to proximity to the given improvement. The question is the principle that they pursued in determining the peculiar benefits, not the question of proximity.

The Court. Objection overruled.

Q (Question read). A We considered each one separately.

Q Answer that yes or no. A With regard to the location with reference to the improvement.

Q I am asking you to tell me, Mr. Van Duyne, what you mean by location; whether you mean location in an air line or in a straight line from the property to the improvement or location by reason of the accessibility through public

streets to the improvement? A We considered all of the conditions that would have any bearing on the peculiar benefit.

Mr. Smith. Your Honor, I do not think that is a proper answer to that question. I feel that the witness ought to be instructed to give me a direct answer to the question I have asked him.

The Court. The question as I understand it relates to the subject of location and is substantially this, what factors in respect to location did you take into account in determining value resulting from location, is that about your idea?

Mr. Smith. Yes, your Honor, and I ask him specifically whether he took into consideration a straight line or an air line direction from the property to the improvement or getting to the property through public streets.

The Court. You get the idea?

Witness. Yes, sir; I get the idea but I maintain that each property was assessed separately according to its size, shape, dimension and location and that the conclusion that we arrived at was the joint conclusion of the board, and as to our methods, just exactly to what extent we took into consideration as to whether it was a straight line or around the corner I absolutely cannot answer at this time. The result is our judgment after taking into consideration all these factors and not any particular one.

Q And then you could not tell me—you cannot tell me whether or not you in determining the

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peculiar benefit by reason of location to lot 65 and lots 5 and 6—whether you measured—whether you considered its nearness in a straight air line or through the public streets to the improvement? A I cannot.

Q You knew in making this assessment, did you not, Mr. Van Duyne, that lot 65 and lot 51 were owned by the same party? A Yes, sir.

Q I call your attention to lot 67 adjoining east of lot 65 and owned by the Federal Real Estate Company, which has a frontage 44 feet and is assessed at $2,500 and ask you if in proportion that assessment is not the same as that on lot 65? A I don't know.

Q Will you kindly figure it and tell me if it is not the same?

The Court. What number is it?

Mr. Smith. It is the adjoining property, Federal Real Estate lot 67.

A It is impossible to accurately figure the proportions from this map. No rear distances are given on the two lots and they are of different sizes and shapes.

Q Approximately they are the same, are they not, Mr. Van Duyne? A According to the plotting the property No. 67 is a rectangular lot and property No. 65 is trapezoid.

The Court. "Approximately." The area, I suppose you mean, is the same?

Mr. Smith. I said the assessment is approximately the same considering the size of the lot.

The Court. Oh, yes. Take your time, Mr. Van Duyne, and satisfy your own mind about it.

Witness. I cannot tell you without having the figures before me and making the calculation, and the figures are not there, only the frontage figures are given.

The Court. What block is that, Mr. Smith?

Mr. Smith. That is on block 60.

Q Can you tell me if you considered any difference in peculiar benefits between the Peddie lot 65 and the Federal Real Estate lot 67? A I cannot. Each one was separately assessed and considered separately.

Q Can you tell me why you assessed lots 5 and 6 at a less rate than lots 67 and 65? A In the judgment of the commissioners at the time the assessments were made the amount of peculiar benefits was less.

Q What is the difference in peculiar benefits between those properties?

Mr. Kalisch. What do you mean, in dollars and cents?

Mr. Smith. No, in principle.

A We made no comparison at the time of making these assessments, each one was at the time separately considered.

Q Can you tell me—they are both the same distance from Branford place in an air line direction, are they not, all three of them? A Well, the map will show whether that is so or not.

The Court. Can you tell by referring to the map?

Witness. The question is are lots Nos. 5 and 6 and 65 and 67 of equal distance from the improvement.

Q Practically equal distance? A No. 6 is further from the improvement than No. 5.

Q You assessed 5 and 6 together, did you not? A Yes, sir. They are approximately of equal distance from the improvement.

Q And you cannot tell me then what the difference in peculiar benefits between 65 and 67 and 5 and 6 are? A We absolutely did not compare any two pieces of property in making this assessment. Each one was assessed according to the peculiar benefits as we considered it separately.

Q In determining the benefit on lot 67, Federal Real Estate, did you consider that its only access to Branford place was through Camfield court and Washington street? A We undoubtedly considered everything that could possibly have any bearing on arriving at the amount of the peculiar benefits.

Q You cannot give me, however, what you did consider? A I cannot go back in one single lot on this area and tell you just what the workings of the minds of the board were in relation to it, there are too many of them.

Q Now, I call your attention to property 17 and 19 on block 60, assessed to Anna C. Lang and Nathan Hammerschlag and call your attention to the fact that they are both 20 feet front and 19.75 feet wide in the rear and each assessed for $275. Now, can you tell me what the difference in peculiar benefits there are between those properties and the Federal Real Estate property lot 67? A We made no comparison at all in relation to any two lots or any two sets of lots.

Q And you can give me no information to what the peculiar benefits were? A I cannot make comparisons of the peculiar benefits.

Q Are they differently peculiarly benefited?
A I don't understand what you mean.

Q I am asking you if they had—or put it the other way—did they have the same peculiar benefits by reason of this improvement?

Mr. Kalisch. I object. The witness has already testified that he has made no comparison and then he is asked on top of that whether he can compare them.

Mr. Smith. I am asking him to go through the operation of giving the peculiar benefits on each in order to find whether there was any difference.

Mr. Kalisch. You are asking whether they were differently benefited, which involves the comparison which he has already testified that he did not do—compare any two properties or sets of properties.

The Court. The one question that would seem to underly somewhat this examination is whether the witness can be asked what he now thinks about the assessment or whether the examination should be restricted to the grounds upon which the commissioners acted so far as he can remember them. I am inclined to favor the idea that we are investigating now the action of the commissioners so far as it can be made to appear. Now, it may be that the judgment of the commissioners would change as to the value of some of these properties between the time when he signed the report and the time of the examination, but I suppose that would not invalidate the report. I am disposed therefore—I will take great pleasure in hearing counsel—

Mr. Smith. I intended to apply this distinction only to their examination and not what he thinks now as an individual.

The Court. I think your questions have been general. Read the question.

(Question read).

The Court. That may be understood either way, either asking him what he now thinks or what the commissioners then thought. Taking it in the latter way, which I think is the proper way, the witness may answer the question, and that, of course, carries with it not only the formal action of the commissioners but what their reasons were as far as the witness is able to state them.

Q (Question read).

The Court. That is lots 17 and 19 on block 60.

A I don't know how I can compare two different peculiar benefits assessments. The Market street lots referred to were separately considered and they were assessed according to the benefit—peculiar benefits that the commissioners believed they acquired by reason of this opening. I cannot compare two different lots.

Q Can you give me the peculiar benefit that you determined—the elements of the peculiar benefit that you determined lots 17 and 19 received—or give me any elements of peculiar benefit which you determined that they received? A An increase of market value due to their proximity to the opening.

Q Now, I mean,—that is practically giving me—stating the same thing over again—can you give me any elements upon which you deter-

mined that there was an increase in the market value in lots 17 and 19? We will save time if you understand that the general answer does not cover my question. A That general answer must necessarily be my final answer on that. Its proximity to the opening.

Q Is that the only element of benefit which you considered in determining the increase in market value? A That is the only element.

Q Can you give me any element other than proximity to Branford place by which you determined the increase in market value to plot 67, the Federal Real Estate Company? A Well, it amounts to the same thing: its intimate relationship with the improvement.

Q "By intimate relationship," you mean distance, do you not? A I mean by "intimate relationship"—I mean its proximity to the improvement, its being included in the zone of the improvement.

Q Do you consider traffic an element of benefit to lot 67? A I considered traffic an element of benefit in market value, but I did not consider traffic an element of benefit in relation to the benefit that this lot got from the improvement itself.

Q That also applies, does it not, to lots 17 and 19? A That applies to lots 17 and 19.

Q And that would apply to all of these lots which are marked in red on the block between Washington and Halsey streets on Market street?

The Court. Which block would that be?

Mr. Smith. On block 60.

The Court. Does that apply to all of them, Mr. Van Duyne?

A The commission assessed for immediate benefits, and based the assessments on the basis

of immediate peculiar benefits, so that the proximity to the improvement was a fact that governed that benefit.

The Court. I think that leaves Mr. Smith's question somewhat unanswered. He asks whether your statement as to lots 17 and 19 and as to lot 67 applies equally to all the lots on block 60.

Q (Question read). A Yes.

Q Now, I call your attention to block 73 and to the properties marked in red on block 73, which faces on Market street, and ask you if the same element of benefit, namely, traffic, was or was not considered a benefit to those properties in determining the assessment? A The assessment was made, Mr. Smith, before there was any possibility of traffic conditions materially changing. We assessed for immediate benefits to each —immediate peculiar benefits accruing to each one of these lots and each one of these plots from the opening.

Q I understand that, Mr. Van Duyne, you testified at the last hearing that you considered in determining the assessments in this case the fact that the opening of Branford place would increase traffic and would therefore be an element of increase in value? A There was a confusion in my mind, Mr. Smith, in the word "benefits." In my testimony in regard to it, in my mind "benefits" was something that would increase the market value of the property. For instance, if I were called upon as an appraiser to go to South Broad street, somewhere between the business and the residential section, I would take into consideration what I would call benefits—future benefits—in arriving at my present value; that is, the future benefit of increased

traffic, the future benefit of business creeping in on it; and from that I would arrive at my present market value of that property; but in making this assessment, while this question of traffic may have come as a basis—not as a basis, but as a factor in arriving at the present market value—it was not taken into consideration as arriving at the peculiar benefits resulting from this opening, because those peculiar benefits were assessed as immediate benefits.

Q Then I understand you to say, Mr. Van Duyne, that you have just had your mind cleared as to what the kind of benefits that you were to determine were; namely, since the last hearing? A No, I had a wrong impression in my mind as to the use of the word "benefit." I took it more in a popular form, as I understood it in real estate work, than as in its mere legal form, as applied to this particular proposition.

Q When did you find out this distinction? A I found that distinction out—well, this distinction came to me immediately.

Q Immediately when? A After the testimony. I realized that I had misconstrued the word "benefits."

Q And that was the first time that you found a distinction between the two? A I found that distinction; that was the first time that I realized I had misconstrued "benefit."

The Court. In order that I may understand the witness, I will ask a question.

Q *(By the Court).* Do you mean to convey the idea that the commissioners disregarded or ignored the question of traffic in making up their assessments? A Absolutely disregarded the question of traffic in making up their assessments.

Q They assessed for immediate benefits? A Yes, sir.

Q *(By Mr. Smith).* Now, to what does that disregard apply, to what properties? A That disregard applies to all the properties in the area.

Q Now, Mr. Van Duyne, I call your attention to lot 40 on block 73, assessed to the Prospect Improvement Company, and assessed for $4,500, and ask you if that assessment was arrived at by reason of its close proximity to the Branford place opening? A It was, but I would prefer to use the words "relationship with the improvement."

Q Well, was not the assessment fixed by reason of its close proximity as well? A No. That may possibly have been a factor; I don't remember. They were all made in regard to their relationship to the improvement.

Q In determining the assessment on this property, did you consider as an element of benefit the likelihood or ability of acquiring an outlet on Branford place across the property of the Estate of Joseph Neu? A We did not.

Q Now, can you tell me if the property to which I refer, lot 40, is smaller in area than the properties 36, 37 and 38, adjoining to the north, considering, as you must, that the lot is drawn to scale? A It would appear so.

Q The lots on the property named, 36, 37 and 38, are assessed for $570 in the aggregate, are they not? A They are.

Q Did you consider in determining this assessment that the owner of lot 40 would have to go across the remaining property, lots 36, 37 and 38, to Market street, and then through Market

street and some other street, to get to this opening? A I don't remember.

Q Did you consider in making your assessment that there were the same elements of benefit to lot 40 as there were to lots 36, 37 and 38? A The elements of benefits of all the properties are their relationship to the improvement—all of the properties.

Q And you considered that both these properties were benefited, then, in the same way, by reason of their relationship to the improvement? A They were each benefited by their relationship to the improvement.

Q Now, Mr. Van Duyne, in arriving at the benefits to lot 51, assessed to the Estate of John D. Peddie, there were other elements of benefit, were there not, than the benefits to the Federal Real Estate Company or to the Prospect Improvement Company? A The Estate of John D. Peddie is along the line of the improvement, and this property was given a frontage on Branford place.

Q Then there was an additional, or a new frontage, was there not? A There was.

The Court. As to 51?

Mr. Smith. Yes, that is lot 51 on block 60.

Q I understand you to say at the hearing the other day that you assessed lot 57 as if it had a brand new frontage, that it had never had a frontage, the other frontage having been paid for by the damage award? A Yes.

Q Do you consider that lots 23 and 24, assessed to Bridget Jackson and fronting on the improvement, in block 59, received any different benefit than the Peddie property—any different element of benefit than the Peddie property?

Mr. Kalisch. I object to this line of questioning, your Honor. The witness has said that he made no comparison; he said it over and over again; he said that each assessment was made individually, without comparing any one with any other one, and he so stated a number of times. I do not know what the object of prodding him is when he has already made that statement over and over again.

The Court. I am quite aware that the witness has made that general statement, but I think it is entirely proper for Mr. Smith to call his attention to certain aspects of any subject that he desires to bring to the witness's mind, for the purpose of seeing what he has to say about it. Mr. Smith is not concluded by the general statement of the witness from making any further scrutiny of the matter. The question is a proper one.

(Question read).

A We did not make comparisons between the two, to my recollection.

Q Well, will you kindly state the elements going to make up the increase in market value, and therefore peculiar benefits, to lots 23 and 24 on block 59, assessed to Bridget Jackson? A Lots 23 and 24 originally had a frontage on a narrow and a practically unused street running between Halsey street and Washington. The opening and widening of Branford place gave them a new frontage—gave them a frontage on a new thoroughfare. The assessments that were placed on those lots were what the commissioners believed they were immediately enhanced in market value by this opening.

Q Then, Mr. Van Duyne, the benefits which lots 23 and 24, assessed to Jackson, received were different than the benefit received by the Peddie property, lot 51, in that the latter had a brand new frontage on a new street, while the Jackson property had a street widened in front of it and made a through street? A Well, I can't use that as a comparison. I can agree with you as to that as a fact, but not as to a comparison between any two properties.

The Court. I think that the question is not as to a comparison made, but as to a fact, that these lots did receive those different benefits, one the benefit of a new frontage and the other the benefit of a widened street.

Witness. Yes.

The Court. In that respect they differed, then?

Witness. Yes.

Q Then, therefore, the benefits between the properties differed, did they not? A The benefits—

Q Or the benefits that these properties received differed? A The factors differed.

Q That is, the elements? A The elements, I should say.

By the Court.

Q Which side of that gave the new frontage —which was it? A The new frontage is on the east side.

Q Was it 23 and 24 that got the new frontage? A Yes, they are given a widened street.

By Mr. Smith.

Q Which did you consider in arriving at your peculiar benefit was of the greater benefit, a new street or a widening of an old street?

The Court. You mean in this particular case?

Mr. Smith. Yes.

A We considered them both together. I cannot answer that question.

Q You mean to say that you cannot tell me that you considered in making this assessment that the giving of a new frontage on the new street was of more benefit to the property than the giving of a frontage on a widened street—on the widened street? A An analysis of those figures may answer that question. I do not remember discussing that phase of it.

Q Well, without an analysis of those figures, can you not tell me which was the more beneficial? A I cannot.

Q Would that apply to the properties fronting on the improvement between Washington street and the western terminus of the improvement?

The Court. You mean the inability of the witness to answer the question, or the difference in the conditions?

Mr. Smith. I will ask the question over again.

Witness. I wish you would.

Q Do you mean to say, Mr. Van Duyne, that in determining the assessments for peculiar benefits on the opening and widening from Halsey street to the western terminus of the opening that you cannot say whether in fixing these peculiar benefits you considered the placing of the property on a new street of more benefit than

the giving of property a frontage on the widening of the street? A Why, our report will show; the figures will show.

Q But without reference to the report you cannot tell me? A Without reference to the figures of the report I cannot remember the discussion that took place in regard to the opening and widening on the block between Washington street and Halsey street.

Q Now, will you refer to your figures and tell me, if you can. A (Witness refers to map). Do you wish me to read off the figures?

The Court. No, we can any of us do that, but examine them and see if you can answer the question.

Mr. Kalisch. I shall object to the question. First of all, this is Mr. Smith's witness, and this witness has said that he does not remember. Now, the mere fact that he looks at the figures and reads them off certainly is not direct testimony; it is reading something that he put down there or caused to be put down there months and months ago, and it is hearsay evidence, unless he refreshes his memory from inspecting it, and then it must be from data that he himself has written. It is Mr. Smith's own witness.

The Court. Not necessarily data that he himself has written. I agree with you that it is a question of refreshing his memory. The witness having said, as he has said, that he could not say without reference to the figures which the commissioners considered the greater benefit, new frontage or a widened frontage, it is the most natural thing in the world to understand him to have meant that

by referring to the figures his memory would be refreshed on that subject.

Mr. Kalisch. May I cross examine him on that, as to whether his memory is refreshed?

The Court. No, I will not interrupt the examination.

Mr. Smith. Before I press this question, your Honor, I wish it understood that our stipulation was, when we commenced taking testimony, that we might use these figures in place of the original report, which was signed by this witness.

The Court. I do not understand that.

Mr. Smith. I understand when we began taking testimony it was agreed that we can use these figures instead of the original report, where every plate giving the details was signed by the witness. That original report is not here; it was withdrawn by Mr. Kalisch's request; and now there is an objection to the witness's using his data for the purpose of refreshing his memory. I wish to know whether the stipulation is in effect yet.

Mr. Kalisch. You evidently miss my point. I do not care whether the original report is here or not. The point is that this contains data that was put upon it some months ago, and for the witness to read from that report is purely hearsay testimony. Now, if the witness has a recollection of what took place, well and good, but to read from a report that he made months ago, I contend, is hearsay. If, on the other hand, his memory is refreshed by referring to a report that he made, that is a different

proposition; but I make that point on the question, whether it is the original report or not.

[After further discussion, the stenographed reads from the record as follows: "Q Now, will you refer to your figures and tell me, if you can? A (Referring to map.) Do you wish me to read off the figures? *The Court.* No; we can any of us do that, but examine them and see if you can answer the question."]

The Court. The witness stands in a different position from any outsider, who would simply go to the map and see that lot A was assessed more than lot B and less than lot C; anybody could tell that; anybody with eyes could read the figures. The question is as to the action of the commissioners, whether the witness can tell us what the action of the commissioners was or what it was that the commissioners considered as elements of peculiar benefit in making up these assessments.

Mr. Kalisch. The instance of any one reading the report, your Honor, and getting, therefore, this data that anyone could tell, that would be quite true in an ordinary case, but where there is a report involving pretty near three thousand assessments, then the mere fact that he looked at the report—the presumption does not hold that his memory would be refreshed. In an ordinary report involving one or two instances, or maybe half a dozen instances, that might very well be true, but not where there are pretty near three thousand assessments.

The Court. No doubt circumstances alter cases.

Mr. Kalisch. Would your Honor instruct the witness that that means whether his memory will be refreshed, not whether he can answer the question by concluding facts from what appears on the map.

Mr. Smith. I object to any such instruction.

The Court. I understand that the question the witness is asked is a question as to the reason—the grounds upon which the commissioners made this line of assessments. We all know what assessments they made. That is not the question. They made certain assessments and they are there in blue and white. The question is what they considered in making the assessment as elements of value. Now, have you recollection or not as to the proceedings of the board to answer that question.

Witness. Why, yes.

The Court. Let us have the benefit of your recollection.

Witness. You are speaking now of the block between Halsey street and Washington street?

Q I am speaking of the whole distance from Halsey street to the western terminus of the improvement, but comparing the widening and opening as to which you considered the greater benefit. A Oh, that I cannot—we considered the opening—we considered them together—I cannot tell you which we considered the greater benefit. We took each property absolutely separate.

Q No; you do not get what I mean, Mr. Van Duyne. If I understood you said that you might, by referring to the figures, tell whether you considered the opening—the property which was benefited by reason of having an opening in front of it—whether it would be greater than property which had a widening in front of it, of course, considering that both had the benefit of the newly opened street, and you said by referring to your figures you could tell us. A Well, I mean this, if, for your own particular purpose, Mr. Smith, if you wish to reduce the amount assessed on a square foot basis, which was not in any way taken into consideration by the commission in arriving at these figures—but if, for your special purpose, you wanted to, I can sit down with pencil and paper and take the assessments on the north side of Branford place where there is an opening and take the assessments on the south side where there is a widening and reduce it to that for your special purpose.

Q If you did that, I mean, you could tell me. Now, which would be the greater per square foot?

Mr. Kalisch. I object.

The Court. Go back to the time when the commissioners reached their conclusion and tell us what the witness knows about that.

Q If you figured your assessments per square foot on the opening and on the widening would that help you in determining whether or not you arrived at the conclusion that the property on the widened part was benefited more than property on the opened part? A It would not.

Mr. Kalisch. I object.

The Court. I think that is an entirely proper question. The witness says it would not help him.

Q Will you tell me why it would not?

Mr. Kalisch. I object on the ground that it makes no difference why it wouldn't help him, and the question is entirely irrelevant and immaterial.

The Court. It appears to me to be rather material.

Mr. Kalisch. I mean the preceding question.

The Court. I understand. The preceding question was sustained against your objection. Therefore, regarding that as relevant and material, we will have to consider whether this question is proper. I think it is proper. You may answer it. Why would not that figuring help you to find out?

Mr. Kalisch. I want to object because I understood that it must refer back to the making of the assessments.

The Court. Refer it back to the making of the assessment. Why would it not make these figures now help you to answer the question on what grounds the commissioners acted? You say it would not help you. Why not? Do you know why?

Witness. Because the assessment was not made on the square foot basis.

Q Mr. Van Duyne, if you took a piece of property fronting on the newly-opened street and figure out that it was assessed at so much a square foot—that is, the assessment as applied to the size of the property was so much per square foot, and you took a property of practi-

cally similar dimensions on the widened part of the street and figured out that the assessment made so much per square foot and one was greater than the other, would not that lead you to determine that at the time you made your assessments you considered that the one which was greater per square foot had a greater amount of benefit by reason of this improvement than the other? A Absolutely not.

Q I will repeat again, why not? A Because the size and shape and location of each lot was taken into consideration, the number of square feet had nothing to do with it at all, as to comparison.

The Court. Has something to do with the size, hasn't it?

Witness. It has something to do with the size. It goes to make up the size, all these considerations.

Q My question had relation also to the property being of similar shape. When I say similar shape I do not mean they have got to be exactly the same shape, but practically the same dimension. A. I don't know how to make a comparison between any two plots. Each one was separaely considered.

Q Can you tell me, Mr. Van Duyne, why lot 23 was assessed $5 more than lot 24, when they are both of the same size?

The Court. $5 in the total?

Mr. Smith. Yes; one is $5,070 and the other is $5,075.

Witness. I cannot.

Q Did you consider there was a difference in peculiar benefits between those properties? A I do not remember.

Q You must have if you made the—

Mr. Kalisch. He says he don't remember.

Q Now referring to property lot 22 on the same block assessed to Frank, $5,080; that is the same size as the other lot, is it not, block 59?

The Court. What is the question about 22?

Mr. Smith. I asked him if lot 22 is not the same size as lot 23.

Witness. Mr. Smith, I cannot answer in regard to either 22, 23 or 24, in regard to the size; only the frontages are given.

Q Well, did you have any other data before you when you figured out these assessments than the city map with reference to determination of size of properties? A Of these particular three lots?

Q Yes? A Why, I don't remember whether the figures were had at the time or not. I can't remember what the figures were on those three lots.

Mr. Kalisch. Are all these properties of persons you represent?

Mr. Smith. Two of them are and one lot is not.

Mr. Kalisch. I understood you were restricted?

Mr. Smith. I do not think I am restricted when I am dealing with—go ahead and make your objection.

The Court. Which lot is not one of yours?

Mr. Smith. The third lot I referred to. I do not represent the objector.

The Court. Lot 22?

Mr. Smith. He is an objector, but I do not represent him. My question was whether 22, whom I do not represent, is the same size as 23, whom I do represent.

The Court. That raises the question that I thought had arisen some time ago, but it seems I was mistaken, as to whether comparisons can be made between lots which is objected to and a lot which is not objected to.

Mr. Smith. These are both objected to.

The Court. But not by you.

Mr. Smith. I do not represent the objector of one, I represent one and the other Mr. Blake represents.

The Court. I think the question may be asked.

Mr. Smith. That does not dispose of any question we have before the witness, I do not think. I will ask it over again.

The Court. You asked him if they were the same size. He says he couldn't say—only the frontage he had.

Mr. Smith. Then I started to ask a question which was interrupted.

Q Now, Mr. Van Duyne, in making up this report did you have before you in order to determine the size and location of the properties assessed—

The Court. You mean the board, I suppose?

Mr. Smith. Yes.

Q (Continuing). Any other maps or measurements than those shown on the plates which accompany the report, or similar? A Which were a copy of the tax maps?

Q Yes, which were copies of the tax maps? A Those are the maps we had.

The Court. The question is, did you have any other?

Witness. No other maps.

Q And in determining the assessment and therefore determining the size and location of properties in order to determine your assessments you used these maps, did you not? A The tax figures?

Q Yes. Then I will repeat again my question and ask you if you can tell me why the property 24, 23 and 22, which appear to be the same size on the map are assessed at different amounts? A Each one was separately considered and I cannot compare variations in the assessment with each one.

Q I do not ask you to compare. I will ask you to tell me what the peculiar benefits to each of those were; that is, what were the elements which go to make up the increase in the market value on each one of these, if they differ at all?

Mr. Kalisch. Of those three?

Mr. Smith. Yes.

Mr. Kalisch. I shall object as to what one that he does not represent.

The Court. That objection I overrule.

A I cannot remember the discussion on those three lots which made a slight variation in each one of the assessments.

Q You mean to say that you cannot justify this variance at the present time?

Mr. Kalisch. I object. I do not think he should be called upon to justify any variance.

The Court. Well, justify is a synonym of to explain.

Mr. Smith. I will change it to explain.

A I do not remember. There must have been some reason. We must have arrived at the conclusion that each one was benefited—we did arrive at the conclusion that each one was peculiarly benefited in increase of market value to the amount of that special assessment. We did not compare two adjoining pieces of property.

Q In determining these benefits, Mr. Van Duyne, did you consider corner properties—properties which were made corner properties were benefited to a greater degree than properties which were fronting—which were given a new frontage on the improvement which theretofore had been interior land? A Why, the report will show, Mr. Smith.

Q Can you show me from the reports? A I have told you before that I cannot compare different benefit assessments. I cannot do it.

The Court. Let us see if the question is quite clear. Read the question. (Question read.) Let us see if I understand it. The corner lot that you have in mind, Mr. Smith, are they lots which formerly had a frontage?

Mr. Smith. Formerly had a frontage on the cross street and were given the position of corner property.

The Court. Were given two frontages?

Mr. Smith. Two frontages.

The Court. Retaining the frontage it formerly had on the cross street and acquiring new frontage on Branford place?

Mr. Smith. Yes.

The Court. That is one class. Now, the other class are lots which were given a new frontage.

Mr. Smith. On Branford place?

The Court. That were not originally corner lots?

Mr. Smith. Yes.

The Court. You have those two classes of property in mind, Mr. Van Duyne. Now, the question is whether you can say what the commissioners' conclusion was as to the comparative benefits given those two classes of cases?

Witness. With very few exceptions in this entire area the size and shape of the lots are different, and you cannot make—I don't know how to make those comparisons except by referring to the actual figures on the corner lot and the actual figures assessed as being benefits on the inside property. I can't answer that question.

The Court. You are not now asked, as I understand the question, to make comparisons as of this time, but asked whether you are able to tell us whether the commissioners in their deliberations and in reaching their conclusion compared the benefits acquired in consequence of the improvement by those two classes of lots.

Witness. No, I do not think we compared the benefits because we assessed each lot separately. There was no comparison at all.

Q Well, did you consider—which did you consider the greater character of benefit, if you can tell us? A I cannot give you the discussion that took place in this respect. I have forgotten.

Q Then you don't know whether or not you considered putting a property on a corner where it was just fronting on one of these cross streets was a greater benefit to the property than the giving it a new frontage on this street, where it had none before? A No, I cannot say offhand.

Q Well, do not say offhand, say after deliberation? A I cannot say. I refer you to the figures on the report.

Q Can you tell me, Mr. Van Duyne, whether you considered it more benefit—this opening more benefit to properties north of the opening going towards Market street or south of the opening going towards William street, other things being equal? A I cannot compare—I cannot compare benefits—peculiar benefits, because we did not compare them in making up this report. We took each lot separately and assessed it.

Q Didn't you determine on any principle before you began to figure the benefits on each piece of property? A Not any settled principle that I recollect.

Q Well, did you determine on any unsettled—for instance, give me if you can an idea how you arrived at any of these properties in this zone along Branford place, bounded by Broad and Shipman and William and Market streets.

which are marked in red? A A lot that was an interior lot before the opening of Branford place and was made by the opening of Branford place and widening a corner lot was assessed for peculiar benefits because it was made a corner lot and on account of its relationship to that improvement.

Q No, you do not get what I want to know. I asked you to pick out any one of those properties in there and tell me how you arrived at the specific figures stated as the peculiar benefit assessed—by what method you calculated it? A We took—well, you can take any one lot—

Q Which one? A I don't care which it is.

Q Take one where you recollect the circumstances. A We discussed—well, I cannot—this will apply to all of them—we discussed the amount of benefits as regards its size—

Q One minute.

Mr. Kalisch. Let him answer.

Mr. Smith. He is not answering my question. I asked him to please pick out a lot and he has not done that as yet. He says he can tell me.

Witness. Well, pick any out.

Q I ask you to pick one out.

Mr. Kalisch. I object. I think he can be interrogated on any particular lot where the assessment is objected to.

The Court. I think the witness may be asked to select—to review in his own mind the subject and select any lot on which the assessment has been objected to and use that as an illustration of the method adopted by the commissioners, if they had any method.

Witness. Well, take lot 34, on block 75.

Q That is assessed to Harvey W. Wheeler, assessment of $580; is that right? A Yes, sir.

Q And the property is located at No. 349 Plane street and is lot 23, on block 75, assessed for $580, and has 26 feet frontage? A Now, remember I have not the faintest recollection of the particular discussion on this lot. I am simply using this as an illustration because you asked for a lot, and the same might apply to any other lot on this entire tract. I do not recollect the discussion on any one particular lot.

Q Now, before you go any further, Mr. Van Duyne, is there any lot either on this zone that I have been referring to or in the entire zone of assessment where you have a recollection as to the exact way you computed the assessment on the property? A Oh, absolutely not. There is no lot which stands out prominently and conspicuously as one of these 3,000. I can simply give you a general—

Q Can you get one to stand out? A No, sir.

Q In other words, Mr. Van Duyne, you haven't any recollection of the method that you figured any one of these lots in the entire zone? A No, sir; not to come down to that one particular lot. I can tell you the general method we pursued by picking one lot and saying that that is perhaps an illustration—it is an illustration of how we worked on the other lots.

Q Now, as I understand it, you said you took paper and pencil and you put down the figures. Did you put down the figures as to the size of the lot? A Why, we took into consideration the location—(interrupted.)

Q Answer my question. Did you put down the figures of the size of the lot? A Undoubtedly.

Q And what would you do with those figures when you put them down? A That gave us a general idea of the size of the lot.

Q Did you find the area of the lot per square foot? A Not necessarily at all.

Q Did you on any of them? A I don't recollect. We may have.

Q Do you mean to say you do not recollect whether you got the area per square foot of any of these properties you assessed? A No; I don't recollect. I say we may have done it.

Q You may have done it. But you do not recollect whether you did? A I cannot pick out one specific property—particular property there and say we got the area per square foot on that property.

Q I didn't ask you to pick out any particular one, but I am asking you if, any property in this whole zone, before you determined the amount assessed, did you figure the square foot of area in the property? A We may have.

Q You say you may have, don't you know whether you did it on any one? A I can't recollect.

Q I don't ask you to pick out the one. I want to know whether you did on any one—you know you did on any one? A I know a lot 25 by 100 has 2,500 square feet. Need no figure for that.

Q Other proportion, you wouldn't know that offhand? A Why, I wouldn't want to know it. It wouldn't have anything to do with it.

Q Well, can you tell me whether you know now as to whether or not at the time of making

this assessment there was any property that was assessed on which you figured the square foot of area before you determined the amount you would assess it? A I don't remember.

Q Haven't any recollection? A I haven't any recollection.

Q You don't remember sitting down and putting so many feet front and so many feet depth and figuring the square feet on any particular piece of property? A I do not.

Q Then you did not get at the benefit, the figures which you arrived at as benefits by a determination that that particular property would be benefited so much per square foot and then determine— A No; we did not.

Q You did not. Did you delegate such figures for anybody else to do? A We all worked together.

Q You did not delegate it? A No.

Q Did your method of figuring differ on any particular section? A Taking into consideration the size and location, we graded down until we came to our minimum assessment.

Q Now, you picked out this property of Harvey W. Wheeler, lot No. 34, block 75, and was going to give us an instance of how you arrived at that assessment of $580? A We considered the size, the shape and the location. We discussed the amount of probable enhancement in our judgment—the enhancement of the market value due to its association with Branford place and we assessed it for peculiar benefits to that amount.

Q Did you ascertain in your own mind or among you what you considered the market value of that property's worth before the opening? A We may have.

Q Did you consider it before the opening? A I do not remember.

Q Is there any property on the entire area of the assessment which you can tell me what was the market value that you considered it before the opening? A I cannot.

Q Why not? A I don't remember. There are 3,000 separate lots in this.

Q And there isn't one of them that you can remember? A There is not.

Q I want to call your attention to the assessment against the Prudential Insurance Company, block 54, $950, containing practically that whole block, and ask you to give me the methods by which you determined that assessment? A I cannot give you the method. That was the judgment of the commissioners.

Q Had no method, did you? A Our judgment is our method.

Q Did you arrive at what you thought was the market value of that property before you fixed that assessment? A We arrived at what the—determined the increase of the market value due to the improvement.

Q In determining this increase of market value did you, in any of these cases, determine what the market value—what you considered the market value was before the improvement was made? A Yes, sir; we may have taken that into consideration.

Q I am not asking you whether you may have; I am asking you whether you did? A I don't remember any particular case. I remember discussion of market value.

The Court. You are asked as to the one case, this Prudential Insurance Company case.

Mr. Kalisch. I understood in any of these cases.

Mr. Smith. Any of these cases, whether he actually came to a conclusion of what the market value was before the improvement.

The Court. I thought we had disposed of that general question and then you had taken up the special one. The witness had previously said that he did not remember as to any one lot other than he could say that the commissioners estimated the market value, and then you took up this special case.

Mr. Smith. I am going back and asking him, without referring to the specific lot, whether he knows that there were instances or at least one instance where they actually did determine the market value of the property for their own purpose.

The Court. The question is proper. I misunderstood it.

Witness. Yes; undoubtedly we did.

Q Now, can you give me any particular property where you did determine on what the market value was? A I cannot.

Q Did you consider, Mr. Van Duyne, that in order to determine the increase of market value by reason of this improvement it was necessary for you to have what you considered the market value was before the opening? A No. The discussion of the market value before the opening was entirely immaterial. We may have discussed it. We dealt with increases in market value.

Q Now, going back to the assessment again of the Prudential, do you remember having the matter up before you for discussion? A I re-

member the discussion on the Prudential—that we did discuss it.

Q You absolutely did have discussion among the commissioners on that particular piece of property? A Undoubtedly. I don't remember just what the discussion was.

Q Do you know whether you ascertained the square foot of that property? A I do not.

Q Did you consider the question of what improvements there were on the property? A No, sir.

Q Do you know what your figures were on that—how you came to figure $950? A That was the judgment of the commissioners as to the increase in the market value.

Q Do you remember who suggested $950 first? A I do not; there was 3,000 pieces of property—

Q Was it suggested by any one commissioner first? A I don't remember.

Q Do you know whether you made any calculations—before you determined that $950? A On this particular plot?

Q Yes. A I don't remember. It was our judgment as to the market value.

Q You cannot give us the method by which you calculated $950? A I cannot.

Q Do you know whether you did calculate it or not? A We arrived at the conclusion as to the amount of the peculiar benefits on this particular piece of property.

Q Have you any recollection whether you actually made any calculations or not as far as that property— A We may have made calculations. We made a good many calculations.

Q That is your recollection, that you made a calculation on that property? A We may have made a calculation on that property.

Q Some of the properties you did not? A We may not have. We made calculations on most of the properties. I cannot answer the question about any particular property; I don't remember.

Q Mr. Van Duyne, this is a very important piece of property in this city, is it not? A Unquestionably.

Q And it is one that would require special care by reason of its peculiar magnitude, would it not? It is practically a whole city block, isn't it? A Yes, sir.

Q Well, now, you say you haven't any recollection whether you made any figures on that at all or not? A I can't remember as to any one particular plot.

The Court. What particular plot of ground is that?

Mr. Smith. It is the Prudential Insurance Company, lot 54, bounded by Broad, Bank, Halsey and Academy streets. It contains the whole block, excepting one piece of property owned by the Essex County National Bank.

Q What did you do, Mr. Van Duyne, with the calculations you made on the various properties? A I don't remember. Tore them up, I guess.

Q They were not preserved? A They were not preserved; no.

Q What calculations, if any, have you, then? A I have no calculations.

Q Well, the commissioners? A None that I know of.

Q Have you a file for Branford place benefit data? A No.

Q Then do I understand that in fixing the assessments you had before you the city tax map and the three commissioners got together and took up each property, discussed it, and then arrived at the figure either by calculation or not by calculation? A Yes, sir.

Q And then entered that figure as the assessment? A That is right.

Q That is your method? A That was the method.

Q Now, is that the method you adopted throughout the whole improvement? A That was the method that was adopted throughout the whole improvement.

Q I do not think we finished with this lot of Harvey W. Wheeler, you were going to give us the method at which you arrived at the $580? A I think I have already covered that in giving my testimony in regard to the other lots. We considered it as regards its size and shape and distance from the improvement and assessed it accordingly, for the peculiar benefits.

Q And you cannot refigure it for me and show me the makeup of your figures? A No.

Q Have you got your map before you there? A Yes, sir.

Q Please refer to it. You say that one of the elements going to make up market value—increase of market value is proximity to the improvement? A Relationship to the improvement.

Q Relationship or proximity. Will you tell me if you determined there was any difference in the method you used—any difference in the proximity to the improvement between the Wheeler lot, namely, lot 34 on block 75, and the Hampton lot, lot 35 on the same block, which is

next door to it? A Yes, sir; lot No. 35 is further from the improvement that lot No. 34.

Q They are the same size, are they not, as far as anything you have before you— A So far as anything I have before me now, they are the same size.

Q Well, so far as anything you had before you at the time you made the assessment they were the same. That is a copy of the tax map? A That is a copy of the tax map.

Q Is that not so? A Yes, sir.

The Court. Did you say the Wheeler lot is further from the improvement?

Witness. No; that the Hampton lot is further than the Wheeler lot.

The Court. Hampton is lot 34?

Witness. No; lot 35.

The Court. The Hampton lot is the one that is furthest from the improvement?

Witness. Yes, sir; your Honor.

Q Then there is a difference between those two lots by reason of the proximity, is there not? A Yes, sir.

Q And the greater proximity is with the Wheeler lot, is it not? A The Wheeler lot is closer to the improvement than the Hampton lot.

Q I mean the greater proximity is with the Wheeler lot, then? A Well, I have answered the question.

Q How? A The Wheeler lot is nearer to the improvement than the Hampton lot.

Q Did that account for the difference of $100—no; it is a difference of $130 in the amount of the assessment? A Well, as the assessment—as the benefit—peculiar benefit gets

—just cross that out, please—as you get further from the improvement the peculiar benefit of the improvement decreases and the difference of the assessment of each of those two lots indicates the lessening of the benefit.

Q Now, take the property to the west—I mean to the north of the opening—on Plane street, lot 26 on block 75, is further from the opening than the Wheeler lot, is it not?

The Court. This is on Plane street?

Mr. Smith. Yes, sir.

Q Was there a greater benefit to the Moore lot, namely, 26—it is 26 and 24 together—is there a greater benefit to that by reason of proximity than the Wheeler lot? A Why, it is as you see it. That lot is assessed—that is, the Moore lot is assessed at $1,125 and that was the judgment of the commissioners as the amount that that particular lot was benefited.

Q Well, in getting at that judgment you did not consider it had as much proximity—greater proximity to Branford place as the Harvey Wheeler lot? A The size and shape is taken, as well as the location of the lot in arriving at the benefits.

Q You did not answer my question. In so far as the proximity was concerned you considered the Wheeler lot had more benefit— A I cannot compare a lot on one side of Branford place and a lot on the other. Each—the benefit was—the peculiar benefit was arrived at each lot separately. I cannot make those comparisons.

Q I will just ask you to give me the approximate benefit to each, then? A Why, I can read the figures.

Q What other elements besides proximity did you consider that 26 and 24 was benefited? A Relationship.

Q Is there any difference in relationship and proximity in your mind? A I prefer to use relationship if you would just as soon—relationship to the improvement.

Q Please define what you mean by relationship. A Well, relationship—it is—location in rgeard to the improvement is, perhaps, a synonym, but—it is location.

Q Location. They are practically the same, are they not? A Practically the same, but I prefer the word "relationship."

Q Can you make any distinguishing explanation between them? A No, sir; relationship appeals more to my mind than either proximity or distance, the relationship to the improvement, the bearing—

Q I would like to get at what you mean—(interrupted). A The bearing that the lot has to the improvement.

Q (Continuing.) By the bearing or relation or proximity? A They are practically synonymous. I prefer to use the word relationship.

Q Now, I clearly understand what location means and I think you said they were practically synonymous to location as far as making these assessments was concerned, are they not? A Yes, sir; practically synonymous.

Q Now, if there is any difference in your mind between any of these words with relation to these assessments, I wish you would give me an example if you can by referring to any of these properties where proximity or relationship differs from location? A Well, relationship, I think, includes the others. It includes proximity and it includes distance, and is the word, as I

say, that includes the other words that you have used.

The Court. What is the difference in distance, if you have the figures there, from the improvement between this lot which is on the north of the opening and this lot which is on the south of the opening?

A The Moore lot, which is lot No. 26, is on the west side of Plane street, 52.47 feet north of Branford place. It has a frontage of—

The Court. Now, this Wheeler lot is south?

Witness. The Wheeler lot is 44.27 feet south of Branford place.

The Court. Also on the same side of Plane street or a different side?

Witness. On the same side of Plane street.

Q Now, in so far as their location is concerned, that is the way they are located with reference to this improvement, is it not, one so many feet north and the other so many feet south? A Yes, sir.

The Court. Evidently.

Q That you understand. Now, that is also their proximity to this improvement, is it not? A Well, there is a rather fine distinction there.

Q Give us the fine distinction. A Well, the fine distinction would possibly be this, that the beginning point of each lot is the same way, the distance that is shown. Now, one of the lots may—the lot on the south may slope to the north and it slopes nearer to Branford place when it goes back. Now, I would say that that would be defined by its proximity. Proximity is

the general location of the lot as distinguished from the beginning point.

Q Do you know, as a matter of fact, that it does slope that way? A No; I do not.

Q You didn't have anything before you at the time you made your assessment different from what you have before you now? A I am trying to define the word.

Q Now, in this particular case the proximity is the same as the location, is it not? A Yes, sir.

Q Now, is there any difference in the relationship of those properties to the improvement other than the distance from Branford place? A Why, the properties are different size and shape. Now, their relationship—the real relationship of those two lots from the improvement, it seems to me, to be, perhaps, from their middle point rather than from their beginning point.

Q I do not quite understand you. A As you have said, the distance—well, we have the distance—

Q The distance is fixed now. I say those distances are their relationship to Branford place, are they not? A No; those distances are the beginning point of the properties—simply the frontages.

Q Then what do you mean by the relationship? You said it is practically synonymous with location? A All right. Grant that one is located so many feet north and the other so many feet south—(interrupted).

Q And the other relationship to the improvement is so many feet to the north and so many feet to the south? A Yes.

Q Isn't that it? A That is so.

Q And there is really no distinction, is there? A They were considered absolutely separately; there was no connection in the commissioners' mind between lot 34, block 75, and lot No. 26, in block—

Q Now, we have taken a concrete example of two assessments, and you have told us that the location was the same as the relationship to the improvement, and I have not noticed any difference except a difference in distance. A They are different size and shape.

Q Well, I know they are different size and shape, but outside of that you have not given us any difference between location and relation. A There is no question about the beginning points of each; there it is down in each case.

Q So that when you say that in determining this assessment you determined the peculiar benefit by fixing the increase in market value, and the element which you considered in fixing this increased market value was the relationship to the improvement, you meant the distance to the improvement, did you not? A No, "relationship" is a word that has a broader sense than that.

Q Well, it is the same as location, is it not? A No, I think relationship is broader than location.

Q Well, I have asked you to give me a distinction, and you have not given me one yet. A Well, I think the word itself indicates that.

Q You testified that you fixed these benefits by reason of their relationship to the improvement, and I think you ought to be able to give me what you determined by relationship, if it was different than distance or location. A Well, relationship includes both distance and location.

Q Well, is there any difference between distance and location? One is located so many feet from the improvement and the other is a different distance from the improvement, is it not? A That merely defines the beginning points, unless the lines are parallel with the improvement.

Q Well, it would be so many feet to the rear line and so many feet to the front line, would it not, if it was different? Would not the relationship of one of these tracts to the improvement be the distance, whichever you wanted to measure the distance from, to the improvement? A No, I think relationship has, as I said, a broader sense than either distance or location.

Q Can you give me a concrete example on any of these properties which were assessed? A Well, a property might—

Q No, I mean a concrete example, not what a property might. Pick out one and show me where there is a difference by reason of its distance or location or relationship? A Well, assume that the property was partly on one street, one of the cross, or parallel streets, and partly on Branford place. Then we would assess according to its relationship with the improvement. It includes more than distance; it includes more than location; its actual relationship with the improvement.

Q Well, I ask you to pick out a particular piece of property and show me where the distinction is between its location and its relationship to the improvement? A I just attempted to explain that to you.

Q Well, pick out a particular piece of property, and then explain it to me from that. Take

the Prudential Insurance Company, or any one that you see fit? A Well, take the Prudential Insurance Company. It does not run back—it is not a piece of property that is between four parallel lines. In the middle or somewhere along the southerly line it may jog in nearer the improvement; I say it may. Its distance from the improvement is not absolutely defined by its distance along Broad street from the improvement, but its relationship to the improvement also includes irregularities of the shape or size that it may have.

Q That could all be covered by measurements, measuring the distance, could it not? A Why, if you want to go into a sufficient number of distances.

Q Well, what is the difference between the distance and the relationship on those two, on this property as compared with the improvement? A Well, I think that the relationship avoids the use of three or four different words and includes them.

Q Location would not include any benefit by reason of traffic, if there was an increase of traffic, would it? A No.

Q Would relationship? A No.

Q Then there is not that distinction? A No, no; there is not that distinction; there is not that distinction.

Q Accessibility to the improvement would not be a distinction, would it? A It might be a distinction, yes.

Q Distance or location would be the same, would it not, as its relationship to the improvement, so far as accessibility was concerned? A It would include it.

Q In either of them? A Possibly.

Q Well, where not possibly? A Well, relationship is a broad word; that is what I say.

Q Well, you have not been able, as far as I can tell, Mr. Van Duyne, to tell me where it is any broader in your mind than either location or distance, and I have asked you to give me an example, and I do not think you have, have you? A Why, I have attempted to.

Q What is the example that you attempted to give me? A I repeat my testimony, that a lot may be or a plot may be irregular in shape; part of it might be fronting on the improvement and part on another street. Now, its relation to the improvement would not be fixed by a distance from it, but the word "relationship" would cover practically the whole thing.

Q Well, we will take the property of Herman Gold, on the southeast corner of Plane and Branford place, known as lot 17, on block 73 (indicating on map). That property is located on that corner, is it not? A Yes.

Q And it is at no distance, it is actually on the corner? A Yes.

Q It runs 72 feet along Branford place and an ungiven distance along Washington street; its distance on Washington street is that ungiven distance. Is there any difference now between the relationship of that property to the improvement and its location or distance? A Yes; that is intimately—most intimately related to it; it has been made a corner lot.

Q (*By the Court.*) It has been made a corner lot? A Yes, sir.

Q (*By Mr. Smith.*) Well, that is its location is it not? A Yes.

Q Is there any difference between its location and relation in that respect, then? A Its location—it is on the corner; its relation to the improvement is that it has been made a corner lot.

Q Do you think there is a distinction there?

The Court. What is that?

Q Do you understand that there is a distinction there?

The Court. I thought the witness indicated a distinction. Its location is on the corner; he says it is physically there. It has become so, and was not so before. It has been made a corner lot; it not only is a corner lot, but it has been made one. That, I suppose, is the witness's distinction?

Witness. Yes.

Q Well, do you deem that a distinction? A Well, that is its relationship to the improvement; its relationship to the improvement is that it has become—

Q It has been made a corner? A Yes, sir.

Q Well, it was not located as a corner lot before the improvement, was it? A No.

Q And it is now? A It is now.

Q Well, is there any distinction now? That is a change of locationship, is it not? A The change of locationship, yes—no, that is exactly the distinction.

Q It was not located on a corner before? A It was located just where it is before, I presume; I don't know, but I am presuming that the property was located before the opening exactly where it is now. It is located in just the same place now, but it has become a corner lot

and has become intimately related to the improvement.

Q By reason of its location? A By reason of its location, of course.

The Court. It was located there, I suppose, as early as the year 1666, when Newark was founded.

Mr. Smith. The Gold property, I find from the tax map here, the difference is given as 38.85. You might put that down, Mr. Van Duyne.

Q Now, was the reason for the greater assessment on the Gold property than the combined assessments on lots 15 and 16—which are greater in area, are they not? A Yes.

Q Is the reason for the greater assessment on the Gold property the reason because it is located on the corner? A It has been made a corner lot.

Q Now, there we have a comparison, have we not, which you admit, namely, that the reason for the greater assessment on the smaller piece of property was by reason of the location on the corner? A Yes; that was the judgment of the commissioners, that it was to the immediate benefit, being placed as a corner lot.

Q Was there any other element of increase in value which gave rise to that distinction? A Well, its proximity to the opening.

Q Well, that would be covered by its being made a corner lot by the opening. Is there any other distinction? A The relation to the opening is the basis for the increase in market value.

Q Mr. Van Duyne, I call your attention to the block 73. I think you have a reference there. The assessment for lot 50, assessed to the Chel-

sea Security and Investment Company, is $7,500, is it not? A Yes.

Q The assessment against lot 47, to the same owner, is $1,125, is it not? A What was the first question which you asked me?

Q I said the assessment against lot 50, assessed to the Chelsea Company, was $7,500, was it not? A Yes, sir.

Q And the assessment against lot 47, assessed to the same company, was $1,125? A It so appears here.

Q And the assessment against lot 39, for the same company, was $675? A Yes, sir.

Q Now, were those properties separately considered, or considered as one, or considered as being owned by the same party? A Separately considered.

Q You separately considered those? A Yes.

Q Can you account for the reason for the assessment on lot 39 being so much larger than the assessment on the properties on either side of it, either by size, location or relationship, or any other thing? A Yes; it is more intimately related with the opening of the improvement.

Q In what respect? A In size, shape and depth.

Q (*By the Court.*) Which lot is this? A This is lot No. 39.

Q That is the L out to Market street. Therefore, in figuring its location, being nearer, you figured the distance measured from Branford place directly north until you struck this property? A It is more intimately related; yes.

Q By reason of location in that respect? A By reason of location.

Q In that respect? A By reason of its location to Branford place, of its nearness to Branford place.

Q Well, its nearness is governed by the distance from the southerly portion directly south to Branford place, is it not? A That is the distance; yes.

Q And it was so considered by the commissioners, was it not? A Its association with Branford place?

Q Yes or no. A Yes.

Q It was so considered by the commissioners? A Yes.

The Court. What frontage have these lots —that is, on what street?

Mr. Smith. 39 is on Market street, and 47 and 50 are on Washington street.

Mr. Kalisch. 39 has a frontage of 30.17 feet.

Q Now, I call your attention to the fact that under the old report, which has been offered in evidence, lot 50 was assessed $10,000; lot 47 was assessed $1,500, and lot 39 was assessed $900—

The Court. Let me see how the old report is going to help us. It was not made by the same commissioners; it has been set aside. You say it has been offered in evidence. I have no doubt it has; I don't remember it.

Mr. Stein. It has been marked for identification.

The Court. Suppose we consider the question whether it is competent.

Mr. Smith. I suppose the proper thing for me is to get a fair question that will raise the question.

The Court. Yes.

Mr. Smith. As I understand the law, I am entitled to find out the method which the commissioners adopted in arriving at these

assessments, and anything that will throw any light on that fact would be a proper subject of examination. I am referring now to the old assessments which show—the witness has testified that he considered them separately—that each of these assessments has been actually reduced twenty-five per cent., and by calling the witness's attention to that fact, I wish to find out whether or not this old report was used in any way or considered by them in determining the new assessments.

The Court. Have you got your question the way in which you want it to stand? I did not intend to interrupt you.

Mr. Smith. I will have to tell the witness what I am after in disclosing this, but I suppose there is no objection to that.

(Question read.)

Q —and to the fact that the present assessments made by you and your co-commissioners figure out a reduction of exactly twenty-five per cent. from the figures on the old report, and I ask you if you considered in determining your present assessment the figures of the old report in any manner whatsoever?

Objected to.

The Court. State your grounds.

Mr. Kalisch. I do not think the old report figures in this examination at all. In the first place, it is not in evidence, and, in the second place, it was made by other commissioners. I cannot see where it would throw any light upon this question at all. I do not think it is relevant.

Mr. Smith. I offer it in evidence for the purpose of asking this question. Now,

among other things, I wish to offer it in evidence to be used for the purpose of examining this witness.

Mr. Kalisch. I shall object to the offer.

The Court. I do not think it ought to be received. I will not receive it as evidence, and I will give you an exception to that, but I see no objection to your asking the witness the direct question whether they considered any particular thing which you choose to specify in making up that assessment. I think that question is objectionable, because it assumes that it is in evidence, which is erroneous; it is only marked for identification, and it mentions figures that are supposed to be derived from the old report. I think the first part of the question is objectionable, but I think, if you chose to ask the question beginning with the portion of your question which asks the question that you want to ask, that it would be allowable. Ask the direct question.

Mr. Smith. I know, but I want to get the facts before the witness. If I ask him what the old assessment was, he may not know, and I want to get that fact before the witness as well as the Court.

The Court. I can only go a step at a time. I sustain the objection to the question as it stands.

Counsel for Richard C. Jenkinson, *et als.*, objectors, pray an exception to this ruling of the Court.

Objection noted as ground of appeal.

(The stenographer reads the latter part of the question, as follows: "I ask you if you

considered in determining your present assessment the figures of the old report in any manner whatsoever?'')

Mr. Kalisch. I haven't any objection to that question.

Mr. Smith. I will withdraw that question.

Q In determining the present assessments on lots 50, 47 and 39, did you take into consideration the fact that they would be a reduction of twenty-five per cent.—did you take into consideration the fact in any particular that the figures of the present assessment would be a reduction of twenty-five per cent. from the figures of the old report?

Objected to.

The Court. I think that is objectionable as stating as a fact something that is not in evidence.

Q Well, Mr. Van Duyne, do you know what the assessment under the old report was against lots 50, 47 or 39?

Mr. Kalisch. I object to that.

Mr. Smith. I call your Honor's attention to the fact that the witness has already testified in his testimony the other day that they had the report and examined it.

The Court. I do not remember everything that he testified to.

Mr. Smith. I might ask the witness again:

Q Mr. Van Duyne, you had the possession of the old report, did you not, at the time you were making up the present assessment?

Mr. Kalisch. I object to that. I do not think it makes any difference whether he had or not.

The Court. Let us see whether it is in the record or not.

Mr. Stein. I think I have it here on page 27.

Mr. Smith. It is at the bottom of the page: (Reading.)

Now, from that it shows that this witness has had this report before him, and it is a report that was actually sent back to this commission by this court, rejected by this court, and I think I have the right to show and bring out the fact, if the fact be such, that this witness has considered in determining the amount of benefits in this case the old figures of the assessment, and to that extent he has considered them or used them.

The Court. Well, I have already said that I think you have a right to ask that question.

Mr. Smith. Now I am calling his attention to a particular piece of property, in order to determine whether he did or not, and I am asking him first if he knows what the old assessment was against the Chelsea Company's property, and that is the question which was objected to by Mr. Kalisch.

The Court. Well, without ruling as to whether such a question may become proper, it seems to me that is it not a question which ought to introduce the subject, but that a more general question ought to introduce it, because this question contains statements in

it that are not yet evidence, and so are not yet before the Court, and so ought not to be brought to the attention of the witness in the form of a question.

Mr. Smith. This does not contain any facts. I simply ask him if he knows what the assessments were under the old report. I had to ask him that in order to call his attention to the proportion as to the present and the old assessments.

(Question read.)

Mr. Kalisch. I object to that.

The Court. Now, the only ground on which, as it now strikes me, that could be received is as an introductory inquiry, to be followed up by the question whether the Board of Commissioners examined and used those figures in the course of their consideration of their own assessments upon those lots; that is, whether that was an element in their consideration. I do not think that this question is particularly objectionable, if it is followed up in that way. Of course, the old assessment has not any substantive value at all. The only thing that interests us is whether the commissioners made use of it, and if so, to what extent?

Mr. Kalisch. And for the purpose of using part of the contents of the old report; undoubtedly use is to be made of it, and comparing it with the present report.

The Court. I suppose it was the duty of the commissioners to whom the report was referred back to know what it was that was sent back to them. The question is whether they made any improper use of it.

Mr. Kalisch. But in this proceeding here before us now, I do not see how the contents of the old report can be introduced in evidence, either by offering it directly or by taking up parts of the contents and stating or assuming that certain facts are true and then asking the witness to compare them.

Mr. Smith. I am not doing that now, Mr. Kalisch.

Mr. Kalisch. Well, that is what practically results from the question. And I understand that Mr. Van Duyne testified the other day that he did not refer to the old report at all; that he had physical possession of it, but made no use of it.

The Court. He did not remember referring to it particularly, I think it was.

Mr. Kalisch—Yes, did not remember referring to it particularly. That is the way the fact stands now.

The Court. Mr. Smith has a right to inquire about that.

Mr. Smith. I am particularizing.

The Court. I think the question is admissible.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(Question read, as follows: "Well, Mr. Van Duyne, do you know what the assessment under the old report was against lots 50, 47 or 39?")

The Court. Let me make a suggestion. The question should be not "Do you know," but "Did you know?"

Mr. Smith. Did you know?

A I did not.

Q In determining the amount of peculiar benefits for these particular properties, do you mean to say that you did not look at the amount of the assessment against them under the old report? A I do.

Q You did not look at it? A I didn't look at it, according to my recollection; I have no recollection in regard to it.

Q Does that apply to other property—to all of the other properties covered by this area of assessment? A I don't remember having the old report with us at all in making the assessments.

Q Do you know whether any of the other commissioners made any reference to it? A I do not.

Q Do you know whether Mr. Burdett did any figuring from it for you or for the other commissioners?

Objected to.

The Court. I think the inquiry ought to be confined to the commissioners.

Mr. Smith. Well, your Honor, I am asking if any other use was made by some other person for them. I think I have that right—of course, if this witness knows.

The Court. That would bring us back to the former question, whether the commissioners themselves made any use of the old report, and if so, what?

Mr. Smith. Yes, and he says he did not. Now I am asking him whether he had somebody else do it for him. I think that is right in line with the other.

The Court. You may ask that question.

A I do not know of any figuring that he did for the commissioners from the old report.

Q Did you request him to do any figuring from it for you or for the commissioners? A I haven't the slightest recollection of such a request.

RECESS.

HARRISON R. VAN DUYNE resumes the stand in behalf of Richard C. Jenkinson, *et als.*, objectors.

Direct examination (continued) by Mr. Smith.

Q I call your attention, Mr. Van Duyne, to the order which placed this matter in your hands for consideration. You are, or were, familiar with it, I suppose. Do you want to read the order part, or shall I read it? I want to call your attention to it. "It is, therefore, on this 19th day of March"—

Mr. Kalisch. One moment. Is that in evidence?

Mr. Smith. No, it is not in evidence.

The Court. It is part of the records of the court, is it not?

Mr. Smith. It is a part of the records of this court, and this contains an order of reference to these gentlemen. As I understand it, when a report comes here and is not confirmed, but is sent back, it is within the power of the Court to refer it to the same commissioners or to other commissioners. Now, as a matter of fact, in this case the Court referred it to the commissioners, but they happened to be the

successors of the previous commissioners for local improvements in the city.

The Court. Let me see what the point of the objection is.

Mr. Kalisch. That the order is not in evidence, and I do not see how it can be made use of.

The Court. It is in the same proceeding. The Court will take notice of its own orders. It is part of the records of the court.

Mr. Kalisch. I consider that this motion to confirm is a somewhat different proceeding. This is a new report, so to speak, by different commissioners, and that report has been submitted to your Honor for the purpose of being confirmed. It has no bearing on the old report submitted to your Honor. Each report is taken and considered by itself, without any reference to anything else.

The Court. I think that it is undoubtedly competent.

Mr. Smith. I want to read it, not only for the witness's information, but for the Court's information.

The Court. What is the date of the order?

Mr. Smith. It is an order dated the 19th day of March, 1915, and it provides (reading).

Now, I want to ask this witness if, in accordance with that order, he considered the old report in any way whatsoever?

Mr Kalisch. I object to that. It is decidedly immaterial, in the first place,

whether he considered it or not. He was not asked to revise the report; he was asked to make a new report.

Mr. Smith. To reconsider.

Mr. Kalisch. No, he was asked to consider the subject matter of the report—"the subject matter thereof"—of that report, which means the property and the assessments thereof, but not to revise that report—to make a new report. I do not see where it is material whether they considered the old report or not.

The Court. I overrule the objection.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q (Question read, as follows: "Now, I want to ask this witness if, in accordance with that order, he considered the old report in any way whatsoever?") A The commissioners looked over the old report.

Q For what purpose did you look it over, Mr. Van Duyne? A To conform with the order.

Q What did you understand you were to do with the old report, under the order? A I did not understand that we were to do anything with the old report, under the order; I understood that we were to make a new report.

Q Did you understand that the old report limited you in any way as to the character of benefits which you were to assess—I mean that the order limited you in any way as to the character of benefits that you were to assess? A Certainly; it says for immediate benefits.

Q Not peculiar benefits? A Peculiar benefits, yes.

Q Well, which? A Immediate peculiar benefits.

Q What do you understand by immediate peculiar benefits? A I mean by immediate benefits—

Q No, immediate peculiar benefits? A I will separate them. Immediate and peculiar benefits is—the immediate benefit that is—immediate benefit is the benefit that immediately accrues to the property in the area upon the opening of the street. Peculiar benefit is the raise—is the increase in market value of the property in question at the time of the opening and as a result of the opening.

Q Now, in going over the particular assessments which you made up, did you in any instance refer back to the old report? A No.

Q You did not? A No.

Mr. Smith. Now, your Honor, I am in the position of an attorney who is surprised at the statements made by his witness. I had felt and assumed that the evidence which he would give would be that they had used this old report, and had used it as a basis of determining the new assessment by a percentage method, and I feel that I am entitled to introduce this old report, together with this order which referred it back to those commissioners, for the purpose of comparison, and to demonstrate to your Honor by argument that they have actually used this old report for the purpose of making a reduction by percentage. I think it is very important, your Honor, because I have had these assessments examined, and in block after block the reduction is twenty-five per cent., prin-

cipally in the section outside of this section down here (indicating on map), but outside of that there are blocks after blocks, according to figures that I have. There was in all a twenty-five per cent. reduction throughout the blocks. I have here a statement of some of the blocks. I have not figured all of them. There must be thirty blocks where the reduction was twenty-five per cent. It may not have been exactly twenty-five per cent., because if the figures came into cents I understand they used dollars; that is, they did not make any assessment of less than one dollar, or a fraction of a dollar. If it figured out as a fraction, that decimal was omitted or another dollar added. I think that in this matter this witness is a hostile witness, and he is the only witness that I can produce to give oral testimony to ascertain what method they used in figuring this assessment. I can produce records which they had in their possession for the purpose of showing a different method than what this witness testifies to, and I think that I ought to be entitled to produce that record which was in the possession of these commissioners, referred to them directly by the Court for their consideration—and I think I ought to have a right to produce that now in this case and use it for the purpose of comparison, in order to get at the true fact of what these commissioners did. I do not think that I am absolutely bound by what this witness says. In fact, on a great many things he has said both ways; he has corrected his testimony and changed it and

made it absolutely different from what it was before, and I think here, under those circumstances, I have a right to introduce records which he had in his possession, and which were referred to him, for the purpose of showing what he must have done in getting at these benefits.

One other matter. I do not know but what this is properly a part of the record in this case. I do not know whether your Honor has thought of it from that point of view. The report comes here by reason of an ordinance of the City of Newark, directing this street to be opened and widened. It is presented to the commission, in theory, by the city counsel, who is directed to present the cost of this improvement to the commissioners, and then it is their duty, on having that presented to them, to go ahead and assess benefits on property peculiarly benefited throughout the city. That was in effect done in this case, and the commission which was then in office presented a report to this court for confirmation. Your Honor received that report and considered it, and made the order which I have read, which directed that that report, which you had considered, together with the subject matter of it—that that report should be returned to this particular commission, and the subject matter of it should be considered by them, and a new report along the lines which you denoted in your order should be made to this court. Now, it seems to me that is a record in this very case, and one which we are entitled, without offering it in evidence, to refer to throughout the hearing of this case.

The Court. So that your motion is what?

Mr. Smith. My motion is to be permitted to introduce this record in evidence, or to use it, if the Court determines that it is a part of the record in this case; in other words, I want to make use of it in the examination of this witness.

The Court. I will hear the City Attorney.

Mr. Kalisch. Well, I make the same objection to it that I made this morning: that, in the first place, it is a report made by other commissioners, and it has been rejected as a report by this Court, and the present commissioners have been instructed to make a new report. As I understand it, they can only be examined as to their report. The witness has already testified that, while he had physical possession of the old report, his recollection was that no reference was made to it in making any assessments. Now, the mere fact that it appears on an examination of the two reports that the new report shows a twenty-five per cent. decrease in the assessments—it could be called a coincidence as much as it could be called a direct twenty-five per cent. decrease, and the mere fact that that happens to exist in a great many properties assessed is no reason why that report becomes legal evidence in the case. As far as being legal evidence, as far as being a part of the record is concerned, it has been rejected; it was not confirmed; it is a rejected report, and it is a report that was made by another commission. If Mr. Smith finds himself in the dilemma of getting this testimony that

he did not expect to get, I do not see that that is a reason for disregarding the rules of evidence.

The Court. The question seems to me to be free from difficulty. It is necessary to discriminate between two different things. The report, if received, would prove nothing of itself, by its own force. It represents the labors of an earlier board of commissioners, and it was set aside, and the present board was ordered to make a new report. That is one thing to remember: that the report, if received, has no evidential force of itself as a legal ascertainment of benefit, because it has been set aside. But it appears that the present board was charged with the duty, in making a new assessment, of doing it with some reference to the old report. I forget the exact phraseology; it has been quoted. Without considering the question raised by counsel for the objectors, whether this old report is a part of the record of this proceeding, and so before the Court already, without any offer, this seems to me to be a ground for receiving it, and it is a ground of reasoning that would be applicable to a letter or a memorandum or anything else which the commissioners used. The question is whether in making their own assessments they made use of this old report, and whether, if they did, the use which they made of it was an improper use or a legitimate use. It may be argued, on the one hand, that under the terms of the order under which they acted they were bound to pay more or less attention to it. It is said, on the other side, that this is a

matter with which they had no concern, except a merely formal concern.

Without determining in advance what the commissioners could or could not or should or should not do with the old report, it seems to me entirely proper to inquire whether the commissioners, in making their own assessments, have done or have omitted to do anything which their official duty requires. It is said that they ought, and it is said that they ought not to have examined this report. The Court will not undertake to determine that question. The question that now presents itself is whether the Court will inquire as to what use they did make of it, if any. The question whether that use was a proper use or a legitimate use is a further inquiry. Now, can that inquiry be gone into satisfactorily and thoroughly except by receiving the old report as an instrument of evidence? I think not. I do not see how we can get at the facts in any way except by using it, just as we would use a letter or a bill of particulars or an abstract of title. We receive it in evidence as something that came before the commissioners, and then inquire what they did with it and with what legal results.

On that general view, I will receive the old report in evidence.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(The paper referred to as the old report is marked Ex. D.)

Q Mr. Van Duyne, I call your attention to block 53, which is the block bounded by the

canal, Broad street, Academy street and Halsey street—

The Court. That is the Prudential block, is it not?

Mr. Smith. No; that is the post office block.

Q —and ask you if each of the properties assessed in that area was not reduced twenty-five per cent. from the old report by actual figures? A No.

Q Were they reduced twenty-five per cent., approximately? A No.

Q As a matter of fact, it figures out, does it not, that that property is assessed approximately twenty-five per cent. more than under the old report? A I don't know.

Q If that is so, this is the first time you have heard it? A Absolutely.

Mr. Smith. I suppose I may cover the whole case in this way, if there is no objection. I do not want to ask the same three or four questions on each block.

Q I call your attention to the following blocks, and ask you if your testimony is the same with regard to them: Blocks 99, 95, 96, 109, 100, 98, 94, 102, 2497, 2507, 2506, 2505, 233, 205, 391, 390, 375, 377, 376, 88, 87, 89B, 71, 70, 69, 63, 62 and 53, if asked the same questions in relation to them as I asked you with reference to block 53? A Well, I have not, from where I have been sitting, been able to follow these blocks, but I will make the general statement that the old report had absolutely no influence on the commissioners in making the new.

Q And the fact that the assessments in each one of these blocks total seventy-five per cent.

of the old assessments in those blocks is a matter that you never knew about until this time? A Yes; I have learned of it for the first time.

Q And the commissioners never considered it? A We did not consider the old report with reference to the new or the new with reference to the old.

Q Then, if that is a fact, that there is this percentage, it is a mere coincidence? A Yes, sir.

Q Mr. Van Duyne, you testified on the first day that you had consulted with people in whom you had confidence with reference to determining the peculiar benefits in this report, did you not? A No; I do not remember testifying to that.

Q On page 41 of the testimony there appears this question and answer: "Q Did you, without employing any experts, consult and get opinions from any other persons with reference to these benefits or values? A No, excepting as we may individually have talked it over with somebody in whose judgment we had faith." A Yes; that is a little different from the question that you asked me.

Q Well, you did talk this matter over with people in whose judgment you had faith? A Well, these benefit assessments were on our minds for months, I was going to say, and I remember talking with two or three people—I don't remember whom—during the time of the work that was done on it with reference to values.

Q Do you mean to say, Mr. Van Duyne, that you do not remember any one particular person with whom you talked about this assessment? A No; I do not remember any particular one.

Q You talked with me, did you not? A I don't remember.

Q You do not remember talking with me down in your office, in the Kinney building? A In regard to the Branford place assessment?

Q Yes, and getting some data from you? A If you recall the circumstances of it to my mind, Mr. Smith, I may be aided in remembering it.

Q But at the present time you do not recall it? A I do not recall discussing the Branford place assessments; no.

Q Now, do you recall any other persons with whom you discussed the Branford place assessments previous to the making of your report, in particular? A No; I do not remember the name of anybody.

Q Did you discuss the matter with the City Attorney, Mr. Kalisch, or the City Counsel, Mr. Frazer? A I do not remember.

Q Well, can you definitely say that you did not? A I cannot.

Q Did you discuss it with the Mayor of the City of Newark? A I do not remember.

Q Might you have? A I might and might not.

Q You cannot tell me now who are the people in whose judgment you had faith? A I cannot.

Q Did you have before you in determining these assessments the assessed valuation of the properties, or any of them? A No.

Q You did not? A No.

Q Did you consider what effect your assessments might have upon the tax rate of the City of Newark? A No.

Q Now, Mr. Van Duyne, in your report you state that you "assessed upon all the owners of all the land and real estate in the said city peculiarly benefited by the opening and widening of Branford place, as hereinafter particularly set forth, in proportion, as nearly as may be, to the advantage each was deemed by us to have acquired." Will you kindly tell me what you meant, or the commission meant, by that language in the report? A An increase—

Q "In proportion, as nearly as may be, to the advantage each was deemed by us to have acquired?" A An increase of property value.

Q An increase in property value? A Exactly.

Q Without regard to the relation of one piece of property to another, or what relation the benefit of one would bear to another? A The benefit to each particular piece of property; in other words, the increase of market value, the immediate benefit at the time of the opening.

Q There was no attempt made to proportion the benefits between the property holders; that is to say, being proportionate as between one another? A I do not know what you mean.

Q Well, property similarly situated should be assessed proportionately, in the same proportion? A No, each property was assessed separately.

Q In testifying on the first day you stated that you believed the cost was not inconsistent with what was accomplished. I suppose you meant what was accomplished by this improvement, did you not? A Yes.

Q In the determination of the commissioners, what was accomplished by the opening and widening of Branford place?

Mr. Kalisch. I object to that. I think that opens the door to a line of testimony which is absolutely of no benefit to us.

The Court. I will allow it.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A The opening of a new thoroughfare connecting Springfield avenue with Broad street.

Q Part of the property, namely the property from Washington street down had been connected theretofore, had it not, with Broad street? A Yes, sir, to Camfield street and what was formerly Branford place.

Q Was there anything alse accomplished other than the mere connecting of two streets?

Mr. Kalisch. I object on the same ground.

The Court. You are now asking the witness not for his present opinion.

Mr. Smith. No.

The Court. Or even for his opinion as a commissioner, perhaps, but as to the judgment of the board as a whole.

Mr. Smith. As to the judgment of the board, what was accomplished other than the connecting of those two streets by this improvement?

The Court. Now, let us consider that question.

Mr. Smith. The assessments, your Honor, of course, had to have a direct relation to what was accomplished by this improvement. In other words if the improvement was an entire failure and no improvement at all there would be no assessments. Now, I do not doubt at all but what this improve-

ment did accomplish something and that there may have been some benefit, but what it accomplishes depends upon what the assessment shall be. There is a direct relation there. Now, he has testified that one thing that was accomplished was the connecting of Springfield avenue with Broad street, and he has qualified it and said that the property on Washington street and down here was connected theretofore by Camfield street through Branford place. Now, I am asking him whether there was anything else accomplished by this improvement that they determined was accomplished when they determined the benefits, and then, of course, I wish to follow it up by calling his attention to specific matters which I think will be proper.

The Court. I was thinking whether the report itself was not sufficient evidence as to the conclusion of the commissioners as to what was accomplished. I am not deciding anything. It can be inferred from the report itself that in the opinion of the commissioners the street which was opened conferred benefits—peculiar benefits upon the owners of the lots in the City of Newark which, under the rule of law applicable to such a case, resulted in the assessments which were made. Does the report on its face purport to be made up to the limit of the benefit received?

Mr. Smith. Yes.

The Court. Otherwise the balance would not be put on the City of Newark.

Mr. Smith. Yes.

The Court. Then it would be inferred from the report that in the opinion of the commissioners the opening of this street had conferred benefits on certain lots in the City of Newark up to an amount represented in each case by the assessment which they made?

Mr. Smith. Yes, sir. That is a conclusion, your Honor, isn't it?

The Court. That is an official act.

Mr. Smith. That does not prevent me from asking them what the particular matters were accomplished by the improvement so as to analyze their method of determination. Your Honor will very readily see from the testimony we have from this witness he has not yet given us anything very concrete as to the exact method of determining benefits other than to say "increase of market values," so therefore I have to inquire into these specific details. I am asking the matters which were accomplished by this opening. Now, some of the things accomplished he may say he did not assess upon the property holders and others he may say he did assess upon the property holders, that is the benefits for those particular things accomplished, and it may be that he is wrong in his determination, as between these various elements or matters which he considered this improvement accomplished, and therefore I think it is perfectly proper for us to ask this witness and have him give us the various matters which this improvement was determined by the commissioners to have accomplished.

The Court. Isn't the report itself their determination?

Mr. Smith. There is no doubt that it is the figures of what they considered the peculiar benefits were but they do not tell us what matters they thought this improvement accomplished. For instance I might ask this witness whether he thought the improvement accomplished the relief of traffic on Market street west of Broad street. Now, I think that would have been very proper for him to have used, either pro or con. I do not mean properly used either way, but it was proper for him to use the matter accomplished by this opening. He might have assessed them one way or he might have assessed them another way, but I have a right to find out if he considered that accomplished by this opening.

The Court. The question is as to the whole board.

Mr. Smith. I cannot get at it any better than to ask him what the board did—what the board concluded. The report itself is a conclusion and does not give us the particular details.

The Court. Now, let me hear your question. (Question read). That on its face calls on the witness for an expression of his individual opinion. Perhaps it goes back to something antecedent.

Mr. Smith. I will ask a new question.

Q Did the board determine in assessing the benefits in this case that anything else was accomplished other than the connection of Springfield avenue with Broad street by way of old Branford place and Camfield street?

Mr. Kalisch. I object. I do not quite see yet what bearing it has on any assessments that were made by this board. I do not see where it is relevant. I can understand inquiring into the particular assessment as to how particular property was benefited by this improvement, by this opening and widening, but what the general scheme of improvement accomplished—what bearing that has I cannot see upon a motion to confirm a report. How that can be gone into I cannot understand.

The Court. It seems to me to be safer to confine our inquiry to the particular pieces of property the assessments upon which are objected to. I sustain the objection to the question. It is too general.

Mr. Smith. I will ask the question over again with reference to the properties in red, your Honor. You want me to locate one particular property or property we represent?

The Court. I will hear the question.

Q With reference to property marked in red and located on Market street, between Arlington street and Broad street, namely—well, I guess you understand the question.

The Court. Let us hear how the whole question would read.

Q Taking into consideration the property that I have referred to, namely, the property on Market street, between Arlington street and Broad street marked in red, what was there accomplished—what did you determine was accomplished—what did the commissioners determine was accomplished resulting in peculiar benefits

to these properties other than the connecting of Springfield avenue and Broad street through old Branford place and Camfield street?

Mr. Kalisch. I object.

The Court. I will allow it. This is as to property on Market street outlined in red.

A The immediate and peculiar benefits resulted from the opening and widening.

Q That is a conclusion. A No, sir. I have answered your question. That was what the result of it was, from the opening and widening.

Q Is that the only thing that was accomplished? A Yes, sir.

Q Then in your opinion—then it was the determination of the board that by this improvement the only thing that it accomplished was the conferring of peculiar benefits on this property?

Mr. Kalisch. I object.

Q (Continuing). Outside of the connecting of Springfield avenue with Broad street as I before said?

Mr. Kalisch. I object.

The Court. Do you understand the question?

Witness. I do.

The Court. If you understand it you may answer it. I am not sure that I understand it.

Mr. Kalisch. I object.

The Court. I overrule the objection.

A It came from the opening and widening.

Q (Question read).

Mr. Kalisch. I object.

Mr. Smith. I do not think that is an answer, that the answer given is an answer to that question.

Witness. I misunderstood the question.

Mr. Kalisch. I object.

The Court. The witness says, "I did not understand the question." As I said I was not sure that I did.

Mr. Smith. I do not understand the witness to say he does not understand this question, but he misunderstood it.

Witness. Misunderstood the question.

Mr. Smith. I would like an answer to that question if the witness can answer it, and I think he can, and he thinks he can.

The Court. Now, do you understand it?

Witness. I am rather more in doubt than I was the first time.

The Court. I do not understand the phrase "outside of."

Q (Question read).

Mr. Smith. He said one of the matters that was accomplished by this improvement was the connecting of those two streets. Now, I ask for any other matter that was accomplished and he said it was the conferring of peculiar benefits on properties on Market street. Now, I follow that up and ask him if anything else was accomplished by this improvement other than the conferring of peculiar benefits on the properties on Market street and the connecting of these two streets.

The Court. The connecting of the two streets was when the street was opened by the Board of Commissioners to assess damages or by the Board of Works and the Street and Water Commissioners working

behind them in paving the streets. It cannot set apart the opening as a thing which these commissioners did or which they were concerned in at all except as a basis for the assessment for benefits. The more I think of the question the more uncertain I am as to whether I understand what it means.

Mr. Smith. I suppose I had better reframe the question.

Q Mr. Van Duyne, I understood you to say that you considered that one of the things accomplished by this improvement was the conferring of peculiar benefits on these properties I referred to on Market street. That was accomplished by this improvement, was it not? A Yes, sir.

Q Now, I ask you what else was accomplished by this improvement?

Mr. Kalisch. I object to it.

The Court. You mean in respect to those lots?

Mr. Smith. Yes; not necessarily peculiar but what was accomplished? Maybe I had better put that in some other way.

Q Was there any other benefit—

The Court. The report was limited to peculiar benefits.

Q Was there any other benefits to these lots by this improvement which was not peculiar to those lots?

The Court. Let us consider that proposition. If there was what have we to do with it? This is an assessment for peculiar benefits.

Mr. Smith. To see that it was not included in the peculiar benefits.

The Court. If there was any benefit that was not a peculiar benefit it is not covered by this report.

Mr. Smith. I am asking—I want to get the details and the elements to go to make up the benefits from this improvement so as to determine—so as to have this witness apply what he determined was a peculiar benefit and what he may have determined was a general benefit.

The Court. We have general benefits that enure to the whole community and we have peculiar benefits distinguishable from general benefits which enure in a special and peculiar sense to certain properties, that is benefited otherwise than generally. Now, if you want to ask what the commissioners concluded were the elements of peculiar benefits which they assessed it is entirely legitimate inquiry I think. I understand that is what you do want to ask.

Mr. Smith. He said he assessed the peculiar benefits. He stated that as a conclusion, that that was one thing accomplished by this opening. Now, I want to know what other benefits were accomplished by this opening so as to determine and ask him whether he included any of those in the peculiar benefits.

Mr. Kalisch. May it please your Honor, the witness has already stated what he meant by peculiar benefit. He has stated that it meant enhancement of market value. That he stated over and over again, as I recollect his testimony.

The Court. The inquiry as to what benefits were not peculiar it seems to me relates

to an irrelevant matter. We are dealing only with peculiar benefits, but if you want to ask what benefits the commissioners thought were peculiar that is a perfectly legitimate inquiry.

Mr. Smith. Well, I will ask the witness once again with reference to these properties.

Q In determining the peculiar benefits to these properties along Market street, between Broad and Arlington streets which are marked in red, what elements did you consider went to make up the increase in market value because of this improvement which you determined to be the peculiar benefit therefrom?

The Court. Understand "you" means "board".

A The opening of the thoroughfare and the widening.

Q You call that an element?

The Court. That was the thing. That was the *res,* the thing that produced the benefit. Now, what was the benefit—what was the peculiar benefit which, in the opinion of the board, was produced by the opening and widening of that street?

Witness. The peculiar benefit was the enhancement of the market value due to the opening and the widening.

Mr. Smith. Suppose we read that question once again, because that is all included in my question.

Q (Question read.) A The mere opening of the thoroughfare connects these two important streets and widening.

The Court. Now just expand that idea. Go right on from that basis and tell us what the board thought—how the board thought that that benefited specially—peculiarly the properties assessed.

Witness. Well, the board assessed for immediate benefits as of the time of the opening.

The Court. Yes; benefit resulting from what?

Witness. Resulting from the placing at the disposal of the city and the property a new thoroughfare.

Mr. Smith. I do not think that answers my question.

Witness. It became — immediately upon the opening why this became public property, to be used in any way, shape or manner that the property holders along the line of the opening or public in general who occupied the benefited area, or public in general of the City of Newark could use this new street in any way that they wished to—in any way that they could legitimately use any other street in the City of Newark. It became an open street and that was the basis on which the benefits—peculiar benefit assessment was made.

Q Those advantages which you have referred to are advantages which these properties acquired and you included in your peculiar benefits then? A They acquired a direct association with this new street.

Q Well, going back to your answer, those facts—those advantages which you referred to in your answer were ones which you deemed the

property on Market street marked in red acquired? A I admit that all the property in the area benefited acquired.

Q And, therefore, they are included in the peculiar benefit—that is, those advantages are included, and when those assessments are paid that advantage is paid for? A Advantage against the—the immediate advantage will be paid for.

Q Now, can you think of any other advantages which those properties on Market street acquired by—

The Court. Now, you are getting down to the present time in asking the witness what he thinks.

Q Now, can you think of any other advantage which these properties on Market street acquired which the commissioners—on which the commissioners determined the peculiar benefit or have you mentioned them all? A I have mentioned them all. I am referring not to the Market street property; I am referring to the entire area.

Q I wish you to refer to the Market street property for the present. Is there any change in your answer? A As applied to the Market street property? The peculiar advantage being associated with this new improvement—with this opening and widening—

Q The advantages which you enumerated are also present, are they? A I beg pardon!

Q The advantages which you enumerated are also present so far as Market street is concerned and included in your assessment? A The opening and widening of Branford place increased—in the judgment of the commissioners—the value of the Market street—of the particular Market street plot which you are referring to to the amount of the assessment?

Q Yes; but you enumerate a certain number of elements of peculiar benefit which you said the Market street—as I understood you said the Market street and all the other properties throughout the entire zone received from this improvement. Now, I ask you, applying it solely to the Market street property and not throughout the entire zone whether those benefits are present — were deemed to have been acquired by the property holders by the commissioners on the Market street property? A The same elements are present in the Market street property that are present in the rest of the zone, with the exception of along the direct line of the improvement, and there they differ somewhat.

Q Now, you told us that all those elements enumerated by you are present or were present in the benefit which the Market street properties were assessed. Now, I am going to ask you, if, in taking the Market street property, there were any additional benefits than those you mentioned which you deemed the Market street properties acquired? A No; only its association with the improvement.

Q Well, are there any others? A No.

Q I want to call your attention to the assessment on property of the Chelsea Security and Investment Company known as lot 50 on block 73. It is the Empire Theatre property, practically on the corner of Washington and Branford place. In determining the peculiar benefit, or the elements which go to make up the increase of market value, which you determined in the peculiar benefit of that property, did you consider that the property acquired a specific element of increase of value by reason of the fact that the rear of the property was within a very

short distance of Branford place as opened? A Yes, sir.

Q Did you consider the possibility which the owner had of subsequently acquiring the intervening strip an element of peculiar benefit? A No; or we would have assessed it a great deal higher.

Q Can you tell me in proportion which property received the greater benefit by reason of this opening, the theatre property or the telephone company property on the other corner? A I do not know how to make comparisons between any two properties. They were considered separately.

Q I understood you to say, did you not, on the previous examination, that the property to the north of the opening on Washington street was more benefited than the property to the south? A I don't remember making that statement.

Q Well, maybe I am wrong, but isn't that a fact? Did not the commissioners so determine? A I do not remember. The report will show.

Q Well, can't you tell me? A No; not unless—no; I can't tell you.

Q Figuring out the square feet — approximating, I mean ,the property known as lot 50, was assessed at a higher rate than lot 47, was it not, which adjoins it on the north? A I don't know.

Q Did you consider those separate properties? A Are you referring now to the three properties of the Chelsea Security Company?

Q I am referring to the two of them, the ones facing on Washington street? A Yes, sir; they were assessed separately.

Q Did you consider that the property on the west side of Washington street, such as the Chelsea property, was more benefited than the property facing it on the east side? A I don't know. The report will show.

Q You made no comparison in determining these assessments? A Absolutely none.

Q I call your attention to lots 6, 8 and 9, assessed against John Jackson in block 59, and located on the northeast corner of Washington street and Maiden lane, the block to the south of Branford place. Now, referring to 6, 8 and 9, I ask you if you considered those properties were benefited more in proportion than the properties located on the northeast corner of Arlington street and Augusta street, such as lots 1 and 2 on block 75? A The board made no comparison between the two in making the assessment.

Q The property first referred to, however, had an outlet through Maiden lane—that is, a street outlet through Maiden lane and Halsey street to Branford place, did it not? A Yes, sir; you mean before?

Q Yes. And it was given no new access in that direction by this opening, was it? A Running east and west?

Q No; in going to the east to Broad street? A Maiden lane runs from Washington street to Halsey street.

Q So that that property was not given any new access to Broad street, or through Branford place to Broad street by reason of this opening? A No.

Q And I assume, therefore, that you did not determine that as an element which went to make up the increase in the market value? A I do not remember whether we considered Maiden lane or not.

The Court. You say Maiden lane runs from Washington street to Halsey street?

Witness. Washington street to Halsey street, an alley.

Q Now, in determining the elements or in determining the peculiar benefit of property on Stirling street and Thirteenth avenue, did you consider that they were differently benefited by reason of this opening? A Without coming down there, I cannot say.

Q Come down here?

Mr. Kalisch. I object to that. I think Mr. Smith ought to limit his question to the time that the commissioners made their assessment. He says, "Would you consider that they were benefited?"

Mr. Smith. I said in determining, did you—

The Court. Have the question read that way. Set your mind back to the time of the action of the board and see if you can answer the question.

Witness. I think that the report will show. The figures are on each and every lot on both Stirling street and Thirteenth avenue.

The Court. We have a right to appeal to your recollection, if you have any. I understand the question to be whether there was a different mode of assessment adopted with respect to those two streets?

Q Was there a different element involved? A Why, the elements are the association with the improvement.

Q Now, Stirling street is not a through street, is it—that is, it comes to a dead end at Howard street? A Yes, sir.

Q Thirteenth avenue is a continuous street almost to the entire westerly section of the city, is it not? A Well, it runs up—I have forgotten how far it runs.

Q It at least is a continuous street throughout the area you assessed, is it not, to the west? A Yes, sir.

Q Now, did the commissioners determine that the benefit accrued differently between these two streets? A I do not remember.

Q By reason of that fact? A I do not remember just exactly the argument of the commissioners in regard to those. I am sure we did not compare them. We had assessed each lot according to what, in our judgment, was the peculiar benefit.

Q Now, on each of these streets you deemed that the benefit decreased as you increased the distance from this opening, did you not? A Yes, sir.

Q I call your attention to lots 78—77 and 78 on block 231, 77 being owned by Henry Woerner, and 78 being owned by Addlemeyer and somebody else, and ask you if you can explain to me why the assessment on 78, which was a larger piece of property was only $75, while on 77 it was $160? A I cannot compare any two lots—the benefit assessment of any two lots. Each one was separately assessed and each of the assessments was the peculiar benefit according to the opinion of the commissioners.

Mr. Kalisch. I am informed that lot 78 is not assessed at $160, but as $60.

The Court. You mean 77?

Mr. Kalisch. 77.

The Court. Is there any question as to what the fact is?

Mr. Smith. That is evidently a mistake on the map, your Honor.

The Court. What is the right figure?

Mr. Kalisch. $60.

The Court. Then the question is between $75 and $60?

Mr. Smith. I am withdrawing that question, your Honor, because there was not that disproportion that I thought there was.

Q Mr. Van Duyne, did the commissioners determine that the property was more benefited on Stirling street or Thirteenth avenue than Nelson place, where it was the same distance from the improvement? A We made no comparison in reference to any two streets or to any two lots.

Q Can't you tell me whether or not it was determined by you that property of the same distance on Nelson place, without comparing it, whether it was not, as a matter of fact, determined by you to have been benefited more on Stirling street and Thirteenth avenue than on Nelson place, where it was the same distance? A I cannot. We made no comparison at the time.

Q Did you consider that the Nelson place property was similarly situated with reference to this improvement, as Thirteenth avenue or Stirling street? A I do not remember the discussion or comparison of the two.

The Court. Now, Mr. Van Duyne, suppose we try to make a comparison now. You have the map before you.

Witness. Yes, your Honor.

The Court. Does that show Stirling street and Thirteenth avenue and Nelson place?

Witness. Your Honor, I can only refer to the figures.

The Court. I am asking you whether the map shows those different streets, the map you have got?

Witness. No; this map does not, your Honor.

Mr. Smith. We have the map here.

Map produced.

The Court. Make some comparison between Stirling street and Thirteenth avenue on the one side and Nelson place lots on the other side about equal distances from the improvement, is that the question? Equal distance from what?

Mr. Smith. Equal distance from the improvement.

Q Take lot 27 on block 203B and compare it with lot 28 on 203B, that is the block between Thirteenth avenue and Nelson place?

The Court. Give me the number of those lots.

Mr. Smith. Lot 27, assessed to R. Brown, and lot 28, fronting on Nelson place, assessed to Dawkins. 27 is on Thirteenth avenue and 28 is on Nelson place.

The Court. Now, what is the lot which you wish to have compared with those?

Mr. Smith. Those two are to be compared together.

Mr. Kalisch. They are both assessed at the same amounts.

Witness. Now your question, Mr. Smith.

Q Now, those properties are practically equidistant from the improvement, are they not, A Yes, sir.

Q And they are assessed practically alike, are they not? A They seem to be.

Q And they are exactly of the same size, are they not? A Yes, sir.

Q And therefore it was considered that on that property equidistant from the improvement on those two streets were equally benefited, was it not? A They were separately considered. If we arrived at the same conclusion—

The Court. Other things being equal. If there were any other things—

Mr. Smith. And other things being equal. If there were any other things, but I do not see that there are.

Witness. In arriving at the one on Thirteenth avenue and the other on Nelson place, similar size lots, equally distant from the improvement, if we arrive at the same conclusion, why that would seem to be at least logic. Each one was considered separately.

The Court. We are trying to make a comparison, and this particular comparison shows which were equally distant from the improvement are equal to each other.

Q Then you did not make a distinction on the two streets by reason of the fact that one was a through street and the other was a butt street? A I do not remember discussion on it.

Q Quite evident you did not.

The Court. In this particular case do you seem to have made any distinction of that kind?

Witness. I do not remember any discussion about Thirteenth avenue extending

further and Nelson place stopping at Howard street.

The Court. In this particular instance it affords no evidence to your mind that you considered the streets differently?

Witness. It affords no evidence to my mind one way or the other. Each lot was considered separately and assessed separately.

Q I call your attention to block 391, bounded by Bank, Henry, Academy and Wickliffe streets, and ask you if lots 22 and 26 on that block, the first being assessed to Javot and the second being assessed to Biscibi, and ask you if those two properties are not exactly the same size, according to the map? A No; I think from the appearance of the map that lot 26 is considerably deeper than lot No. 22.

Q They are both assessed for the same amount, are they not? A Yes, sir.

Q Is there anything on the map which leads you to believe that one is deeper than the other? A Yes, sir; the lines, the front lines and the rear—the street line and rear property line seems to separate from each other as you go to the west.

Q What block is that? A 391.

Q Would the variance there be more than a couple or three square feet, do you suppose, if there was one? A It would be more than a couple or three square feet, it might be several lineal feet.

Q The rear line of all those properties throughout that block are the same—appear to be the same, don't they, excepting the one facing on Wickliffe street and excepting the Koch

property? A Yes, sir; I believe those lines do separate.

The Court. What is the point of that remark?

Witness. The rear lines.

The Court. You say they separate?

Q There is a difference of two feet in the distance between Bank street and Academy street? A Two and a half.

Q Two and a half, between Henry and Wickliffe, is it not? A Two and a half.

Q Two and a half feet, and Wickliffe street is not parallel with Henry street, is it? A No.

Q So that if anything it would make lot 26 smaller than lot 22, wouldn't it? A No; it would make lot 26 wider than lot 22. The greater distance is along Wickliffe street, and that wouldn't amount to over two or three inches, if that.

Q And as I said before, that would only make a difference of three square feet? A Oh, no; a great deal more than that.

Q Well, how much? A 25 or 30.

The Court. You say it is 30 inches?

Witness. There is a difference.

The Court. 30 inches?

Witness. I don't know what it would make. I would have to calculate.

Q Can't you scale it? Here is the city map with the measurements on it; can't you scale that to tell the difference? The Wickliffe street line seems to be different from the other property line? A I haven't any scale. It scales the same.

The Court. The two lots scale on the map attached to the report the same, 104 feet.

Q And they are both 27 feet wide? A Yes, sir.

Q Then they are both the same size, are they not? A They are both the same size.

Q Now, the assessments are both the same, are they not? A It is. The assessments are the same.

Q Lot 22 is three lots nearer the improvement than lot 26, is it not? A Yes, sir.

Q How do you account for that variance? As I understand it, I understood you to say you increased the benefits as you increased the distance. I would ask you how you accounted for the fact that both of these properties were assessed the same? A This must have been a case—in the first place no comparisons were made. This must have been a case where the commissioners considered that each lot was equally benefited.

Q You cannot explain? A No; I cannot explain. They were considered separately.

Q Did you consider properties similarly situated on Bank street was less benefited than property on Thirteenth avenue, namely, the same distance from the improvement and of the same size? A I refer you to the report.

Q You cannot tell me? A No; I cannot tell you without referring to the report.

Q Did not the commissioners make any determination? A The commissioners did not make any comparison.

Q Well, didn't they make determination which will allow you to make the comparison

now of the figures you arrived at? A If I can see the figures I can read off the figures.

Q I don't want you to read off the figures, but if you can answer my question from an examination of the figures—you have got them right before you.

The Court. You may look at the figures.

A I cannot testify any further than that, your Honor. If it shows on the figures that we considered the benefits greater on one of these streets than the other why that answers the question.

Q If the figures—the same sized lots, the same distance from the opening—on Bank street are less than on Thirteenth avenue then we can assume that the commissioners considered the benefits less on Bank street than Thirteenth avenue.

Mr. Kalisch. I object.

Q Now, I ask you if the commissioners did not determine that, all things being equal as between property on Thirteenth avenue and Bank street, those on Thirteenth avenue were more benefited by this opening than on Bank street? A They did not. We did not make comparison.

Q I do not ask you whether you made comparison, but didn't you arrive at that conclusion without comparison, namely, properties, all things being equal, that Thirteenth avenue property was more benefited than Bank street property?

Mr. Kalisch. I object. That does involve a comparison. More benefited I understand is a comparative degree and therefore involves comparison of property on both streets.

The Court. The witness may answer the question yes or no.

Q (Question read). A No.

Q You made no examination? A We made no such comparison.

Q Mr. Van Duyne, Nelson place, between Sidney place and High street and Breintnall place, between Bank street and High street, both have a considerable grade, do they not? A That is my recollection.

Q And Thirteenth avenue has a much—is much lighter in grade than these two streets, is it not? A I don't remember.

Q Lesser grade? A I don't remember.

Q Do you know whether you had that fact before you in determining these assessments? A I don't remember any question of grade.

Q Did you go up and down Nelson place in your work in determining the assessments? A We were over most of the territory. I do not remember whether we visited Nelson place or not.

Q Then you don't remember whether you actually viewed the property from Howard street to High street on Nelson place? A I do not remember.

Q I take it therefore that you did not view every piece of property in this area before coming to your conclusion? A We were in the vicinity of every piece of property.

Q But you did not view—absolutely view? A You mean by "view," stand and look at it?

Q Have you a visual contact with it?

The Court. A mental picture.

Witness. Yes; we had a mental picture of the area.

Q Of the area, but I mean every particular property. A I can't answer that.

Q You did not start in for instance on Academy street and go up and down through every one of these streets? A No.

Q And visit each street and go by or look at all of the properties covered by this assessment, did you? A No, but we were entirely familiar with the general area and local conditions.

Q And you don't remember whether you had compared or did compare the grade of Thirteenth avenue with that on Nelson place and Breintnall place? A I don't remember.

Q Did you consider that this opening and widening of Branford place—or did the commissioners consider this opening and widening of Branford place would lessen the traffic down Bank and Breintnall place and so down to the center of the city? A We assessed for immediate benefits.

The Court. You may answer the question.

Witness. The immediate benefits of the time and before. The general use of the street and traffic, that was not taken under consideration. The traffic was not taken into consideration.

Q Then in determining the benefits for the properties, lots 1 and 11 on block 204, which is assessed to Estelle G. Myers, and is located at the intersection of Breintnall place and Nelson place you did not consider that there would be either an increase or a decrease of traffic by that particular piece of property? A We assessed according to its relationship with the improvement and not on a traffic basis.

Q You did not take that into consideration at all, did you? A No.

The Court. I thought the witness had said that generally he did not pay any attention to the traffic. Didn't you say that the other day?

Mr. Smith. The other day he said that was the only thing he took into consideration in some of the assessments.

The Court. The record will show what he said.

Adjourned until tomorrow, Tuesday, November 30, 1915, at ten o'clock A. M.

THIRD DAY.

Tuesday, November 30, 1915.

HARRISON R. VAN DUYNE resumes the stand in behalf of Richard C. Jenkinson *et als.*, objectors.

Direct examination (continued) by Mr. Smith.

Q Mr. Van Duyne, I want to clear up the record somewhat. There are a great many questions which were asked and answered in the present tense, where I was asking you about what the commissioners did and what you considered. You understood, did you not, that I was referring to the matter of the determination of this assessment by you as an official, and not asking you your present opinion now? A Why, generally speaking, yes.

Q I mean if the evidence shows that I was specifically asking your present opinion, that would be different, but otherwise you understood that I was referring to your action as a commission, did you not? A Yes, I presume so.

Q Mr. Van Duyne, I call your attention to the property of Jean Tack, lot 4, on block 106, assessed for $8, and located at 14 Hill street (indicating on map). That is on the exterior southern edge of the area of assessment, is it not? A It is along the exterior, yes.

Q Well, I mean there is no property assessed south of it?

The Court. You may look at the map, if you desire to do so.

Q South of it on the particular block on which it is located? A No.

Q How was it that the commissioners determined that that piece of property should be assessed and the property in the rear of it, fronting on Court street, should not? A That was our judgment.

Q Well, what did you base your judgment upon? A The peculiar benefits arising from the opening of Branford place to this particular lot.

Q In what way was the Jean Tack property peculiarly benefited that the other property that I refer to was not? A What other property do you refer to?

Q The property right in the rear of it. It is not marked out on the map.

Mr. Kalisch. I object to that question. That is not one of the properties that was assessed. I do not think Mr. Van Duyne can be called upon to make comparison.

Mr. Smith. I am referring now to a piece of property which I do represent, and ask him in comparison with a view of property adjoining it.

Mr. Kalisch. Which you do not represent.

Mr. Smith. Which I do not represent.

Mr. Kalisch. And which was not assessed.

Mr. Smith. And which was not assessed.

The Court. That raises the question why the commissioners determined the boundary of the zone on the south where they did. I suppose one of your objections is that the zone was arbitrarily fixed?

Mr. Smith. Our contention is, of course, and will be, that it was fixed arbitrarily; that it should be far to the north of that point.

Mr. Kalisch. I suppose that will open up the question of comparing the property assessed with almost any property situated in the City of Newark that bears any relation whatsoever to the improvement.

The Court. The commissioners undoubtedly, as our courts have held, are vested with the power of determining where the line of demarkation between assessed and non-assessed property shall run, but it is a proper inquiry whether the line that they did adopt is determined upon sound principles. Therefore I think your inquiry is proper. It underlies the question when it comes to an inquiry as to the location of the boundary of the zone on the south. I think the question ought to be answered.

Mr. Kalisch. He is not asking about locating the boundary, but he is asking why he assessed one property and did not assess the property immediately in back of it. I suppose after he compares almost any property not assessed with those assessed, it will eventually result in determining why he fixed such a boundary. Now, if the direct question is put to him why he fixed certain lines

of boundary, I do not suppose it would be objectionable, but I do not think he is entitled to an answer as to comparison between any two properties that he sees fit to pick out.

The Court. I think this particular question is proper, and I therefore overrule the objection.

(Question read as follows: "In what way was the Jean Tack property peculiarly benefited that the other property that I refer to was not?")

A In the judgment of the commissioners, the appreciable peculiar benefit ended in going south with the Jean Tack property.

Q What do you mean by "appreciable?" A Well, what is the amount?

Q $8. A $8. In the judgment of the commissioners, the enhancement of market value of $8 on that particular lot approximately represented an appreciable peculiar benefit.

Q Well, you made assessments for lower than that, did you not? A I said "approximately," Mr Smith.

Q Yes, but I am asking you, you made assessments for lower than $8? You made them down to $6, did you not? A The report will show.

Q And $5? A The report will show.

Q What element or fact was it that determined that the Tack property was appreciably benefited and the property in the rear not appreciably benefited? A That was the judgment of the commissioners.

Q I mean what element of fact on which they determined it? A The relationship with the opening.

Q Does that merely mean the distance? A That means the relationship with the opening.

Q Was there any other element of fact on which the commissioners determined that the property in the rear of the Tack property, that I referred to, should not be assessed, other than its distance from the improvement? A I do not remember the discussion on that particular point as to that particular lot.

Q Well, can you pick out any lot along the southerly edge of the zone of assessment and answer the question referring to that lot? A There are more than three thousand lots in this area assessed. I cannot pick out any particular one of those three thousand and analyze it.

Q Are you willing to say that distance was not the chief element of fact which determined you not to assess the property directly south of the exterior line of assessment and the property adjoining it? A I am not.

Q It was the main element, was it not? A No, not necessarily. I said I was not willing to say that.

Q That it was or was not? A It was not necessarily.

Q Can you give me any other elements than distance? A I did not use the word "distance;" I used the word "relationship."

Q Well, you have testified that you understand that that includes distance? A It may include distance.

Q Well, does it in this case? A Not necessarily.

Q Why not necessarily, why does it not necessarily include distance in this case? A You can't compare distance from the zone going in different directions from the improvement. Of

course, we took into consideration the relationship of each particular lot with the improvement. Distance may be a factor but it is not necessarily the only factor. Relationship is the factor.

Q You testified that relationship included distance, didn't you? A I said relationship may include distance.

Q It has got to include distance? A It has not necessarily got to include distance; no.

Q Outside of cases of property not considered it has to, does it not? A Not necessarily.

Q Can you give me an instance? A Yes, I can give as an illustration the two main Prudential buildings, situate on either side of Bank street and also the small frame building that stood immediately next to the main building on the south. Now, I say the relationship to those two main Prudential buildings to each other is greater than the relationship or is different from the relationship of the frame bulding to the one which it immediately joins and yet the street separates the two Prudential buildings. There there is not an element of distance at all.

Q I do not understand you. What frame building do you refer to? A I refer to a frame building that formerly stood before it was torn down immediately next to the main Prudential building on Broad street.

By the Court.

Q On the west side of Broad street? A Yes.

By Mr. Smith.

Q You mean here (indicating)? A I say there is a closer relationship in my mind between the two main Prudential buildings on either side of Bank street than between the little frame

building that is up against the main Prudential building.

Q You don't imply—

Mr. Kalisch. Let him finish.

A And either one of the main buildings.

Q I understand you did not consider buildings? A No, I am giving you an illustration of the word "relationship."

Q I want a relationship that is applicable to this assessment? A I am giving you an illustration of what relationship means to my mind and attempting from that illustration to show you that it does not necessarily always convey the idea of distance.

Q I have asked you to give me an illustration of where relationship does not include distance as applied to the assessments that you made in this zone, in this zone where you made an assessment and you made that distinguishment.

By the Court.

Q Does any occur to you? A I don't think of any. I was attempting to define my idea of relationship.

By Mr. Smith.

Q It practically includes distance in every case, does it not? A It may include distance in every case, in the illustration I have given you it does not include distance.

Mr. Smith. I refer to this map as Exhibit C (indicating). The one that was in place of it is Exhibit C.

Mr. Kalisch. It is an exact duplicate.

Mr. Smith. Yes, an exact duplicate of Exhibit C.

Mr. Kalisch. All right.

By Mr. Smith.

Q I call your attention to Exhibit C. and to the properties known as Nos. 18 and 19, property known as No. 19, lot 19 on block 239 and located at 67 Jones street and assessed to the Real Estate Trading Company for $7. In assessing that property did you find any different elements of benefit than the property in the rear of it and not included in the zone of assessment? A Yes.

Q What was the different element that you found? A Why, the element is its relationship to the main improvement and the assessment was placed at $7 and it represented the judgment of the commissioners as to the enhanced market value due to the opening and widening.

Q What different relationship to the main improvement did lot 19 have for the property in its rear? A I don't remember the discussion in regard to that.

Q You can't give me any statement of that? A I cannot.

Q I call your attention, Mr. Van Duyne, to property assessed to Burnett E. Straus, known as lots 49, 44 and 40 on block 63 and located at the northwest corner of Halsey street and Academy street and ask you what different benefit that property received and the property directly north of it? A I cannot compare benefits or no benefits of any two pieces of property. Each one of them was considered as separately and our conclusion to the peculiar benefit was arrived at as the result of the judgment.

Q You have certified in your report, have you not, that you included all property in the city of Newark peculiarly benefited in your assessments? A Yes.

Q And you say that Burnett Straus's property is peculiarly benefited? A Yes.

Q And you say that property next to the north is not peculiarly benefited? A Yes.

Q What element is different in these cases? A The relationship to the improvement.

Q How differently are they related to the improvement? A I can't compare two cases of property. The Burnett Straus property is the enhancement of market value due to the improvement plus the amounts which in the judgment of the commissioners accrued to it.

Q Did the commissioners determine that the property to the north was not enhanced in market value? A I can't remember discussion on any particular one property. There were three thousand assessments.

Q Did the commissioners determine that none of the properties north of the Morris Canal along the line where the assessment is was not peculiarly benefited? A The report fails to show that, Mr. Smith.

Q You cannot distinguish between those properties and the properties you did assess lying along the south side of the canal? A The report shows our judgment in that case.

Q Outside of your judgment can you justify the distance? A No.

Q I call your attention to the property known as lot 19 on block 869 and located on the northwest corner of Green street and New Jersey Railroad avenue and assessed for $5 to Gottfried Krueger and ask you why the property on the other side of New Jersey Railroad avenue was omitted from the assessments and this property assessed?

Mr. Kalisch. I object to that. The properties outside of the zone were not considered by the board, at least no assessments were made. I don't see why Mr. Van Duyne is bound to make comparison between all the different properties that Mr. Smith wants to pick out and compare them to the ones that were assessed. It certainly opens up a large amount of testimony that does us no good.

Mr. Smith. I would like to reframe the question.

Q And ask you why this property was included in the area of assessments?

The Court. Lot 19?

Q Lot 19 was included in the area of assessments while the property on the other side of New Jersey Railroad avenue was excluded?

Mr. Kalisch. I object to that.

The Court. I think we have gone over this before. I will say once for all I think an inquiry as to why a certain line was determined as the boundary of the zone is a proper inquiry.

(After argument).

The Court. I think the right to ask a general question implies the right to ask a particular question, the answer to which might be illustrative of the general rule, therefore, I see no objection to the question.

Objection overruled.

Counsel for respondent pray an exception to this ruling of the Court

Exception noted as ground of appeal.

A The lot in question lies along the boundary line of appreciable peculiar benefits due to the

opening, in accordance with the judgment of the commissioners.

Q You testified, did you not, Mr. Van Duyne, on the first day that when you took up the question of determining the area of assessments the commissioners immediately saw that the Pennsylvania Railroad, or New Jersey Railroad avenue, was a natural eastern boundary of the area of assessments? Did you not so testify? A I do not remember it in those words.

Q Well, generally to that effect?

Mr. Kalisch. You had better find just exactly what he did say, Mr. Smith.

Mr. Smith. I have a right to ask the witness for his recollection as to what he said.

The Court. Do you remember?

A I do not remember how I answered that question. I prefer to have my answer referred to.

Q I refer to page 43 of the testimony (reading): "Q. You do not mean to say, Mr. Van Duyne, that you took, for instance, Market street, and went down Market street, fixing the assessments on each property, until you got to the Pennsylvania Railroad, and then you decided that you had assessed enough in that direction, and then went back to the next street and did the same thing? A No, not entirely. I was thinking more of the area as it extended in the westerly direction. It was rather apparent, even before those assessments were made, that the line of the Pennsylvania Railroad should be the easterly boundary line of the benefit; that if the commissioners did not feel justified in assessing benefits for Branford place east of the Pennsylvania Railroad; so that that immediately became a boundary line. Now, as to just exactly the

stage in the proceedings, or at what time we arrived at that conclusion, that that should be the easterly boundary line, I am not prepared to say.'' You remember testifying to that effect, do you not? A That seems to be the record of my testimony.

Q Why was it that the commissioners determined that it was ''rather apparent''—in your words? A Why, in regard to that testimony, I was speaking of my own personal recollection. In considering this whole situation, that may have occurred to me, but as a matter of fact, we worked down each of these streets, assessing for peculiar benefits each lot, according to our judgment, and arrived at our minimum values at the easterly side of the zone as it is shown. That may be used to substantiate that personal idea of mine with regard to the railroad.

Q You did not say in your testimony that it was your personal idea; you were testifying with reference to what the commissioners determined, were you not? A Well, Mr. Smith, we discussed and talked of so many things that it is very hard to separate what may have been my personal idea from any one particular discussion with the commissioners. This was the work of months, and our method—the method that we actually followed was to work in each direction, reducing the assessments, according to what we consider the peculiar benefits, until we arrived at our minimum assessment.

Q What do you mean by reducing the assessments? You had not made any before, had you? A In accordance with its relationship, the assessments were reduced.

Q What do you mean by reducing the assessments? You had not made any on the properties

as you came to them, had you? A I am attempting to explain our method of work.

Q Well, go ahead and explain it. A I have explained it.

Q You said that you went along, reducing the assessments as you went away from the improvement? A In regard to their relationship with the improvement. The relationship to the improvement was the measure of the peculiar benefit.

Q Mr. Van Duyne, I call your attention to the property assessed to the Newark Academy, and known as lots 27, 23, 28 and 37, on block 102, assessed in one amount for $565 for all, and ask you if that is not all used for school property by the Newark Academy (indicating on map)? A I do not know.

Q Well, in what manner did you assess it for peculiar benefits? A For its enhancement of market value, due to its relationship to the improvement.

Q You did not assess it in any different manner from the other property in that respect? A No.

Q Now, I call your attention to lot 109, on block 165, and assessed to the Newark & New York Railroad Company, for $560—I believe it is also labelled in addition lots 78 and 76, but all included in one assessment—and I ask you what that property is used for (indicating on map). A (Referring to map.) The tracks of the Newark & New York Railroad Company, the Central Railroad Company of New Jersey, are on that portion of it.

The Court. The question is what it was used for.

Witness. Railroad purposes, the rear portion.

Q The part on Broad street is used for the station of the Central Railroad, or the Newark & New York Railroad, is it not? A Yes.

Q And the property between the white lines in the rear is used for the main line tracks to New York, is it not? A Yes.

Q And the property to the south of the white line is used for freight purposes, is it not—freight sidings? A I believe so.

Q Now, you assessed it all as one piece, did you not? A No, lot 109 is assessed for $600; that is the Broad street frontage.

Q That is the railroad station? A That is the railroad station.

Q And the balance of the property that I referred to is assessed for $560, is it not? A That is the amount marked on the map.

Q Do you want to refer to the assessment? A I would like to.

(Mr. Smith hands paper to witness).

The Court. 109 is assessed for $600 and all the rest of it $560; is that right or is it wrong?

Witness. It is marked in the rear of the Broad street front $560, and the lot fronting on Broad street $600.

Q And this assessment of $560, therefore, includes the right of way, starting from back of the Newark & New York Railroad Company's station, and the property adjoining on the south, which is used as the freight yard? A Well, I am not absolutely sure what the map shows. I would like to correct that testimony. There is no assessment against the right of way of the New Jersey Central Railroad.

Q Now, by "the right of way" you mean that part of block 165 which commences in the rear of lots 106, 107, 109 and 111? A And part of 111.

Q And part of 111; is that right, Mr. Van Duyne? A That is right.

Q And that strip running southerly through that block is omitted? A That is omitted.

Q The assessment of $560 is on lots 76 and 78, is it not? A It is.

Q And 78 is used for a freight yard by the Central Railroad, is it not? A Partly as a freight yard.

The Court. The assessment of $560 is on lots 78 and 76 and the assessment of $600 is 109.

Q What part of lot 78 is not used as a freight yard by the Central Railroad? A I do not remember.

Q There is not any part of it that is not, is there? A I do not remember.

Q In assessing lots 76 and 78 how did you determine the peculiar benefits? A In the same way that we determined the benefits on any of the other property, in our judgment.

Q You assessed the increase of market value by reason of this opening? A Yes.

Q You did not confine your assessment to any added accessibility to this property by reason of the opening? A The increase in market value only, due to the opening.

Q Can you answer my question?

(Question read.)

A No.

Q Does this method of assessment also apply to lot 109, used as the Central Railroad Company's station? A Yes, sir.

Harrison R. Van Duyne, direct.

Q I call your attention to block 163, to lots 10 and 36, which appear on the map to be assessed together at $75 against the Newark & New York Railroad Company, and ask you how you determined the peculiar benefits in that case (indicating on map)? A In the judgment of the commissioners, the peculiar benefit represents the enhancement of market value of this property, due to its relationship with the opening and widening of Branford place.

Q You did not limit your assessment on that particular property to any added access by reason of the opening and widening of Branford place? A No.

Q That part of the property which fronts on Mechanic street and is marked 82 Mechanic street is the driveway, or entrance, to a freight yard of the Central Railroad, is it not? (Indicating on map.) A I believe it is.

Q And the property in the rear is a freight yard? A I think it is; that is my recollection.

Q Well, if you find out different, will you let me know? I do not want to call anybody else to prove it. A All right.

Q If you find any change, you will let me know, will you, Mr. Van Duyne? A I will let you know.

By the Court.

Q You say that this which fronts on Mechanic street is used for what purpose? You said that the part which is on Mechanic street was used for what purpose? A I think it was used as the entrance to the property in the rear.

Q And the rear is a freight yard? A That is my recollection; I don't recall; I don't recall just the physical conditions in relation with the freight yard.

By Mr. Smith:

Q Did you make a personal inspection of that property with regard to this assessment? A I did.

Q But you do not recall what is there? A I made a personal inspection of this whole area. I cannot at this time, months after the assessment, remember just the physical conditions of each and every lot; I do not remember.

Mr. Smith. It is stipulated, may it please the Court, that the property referred to, namely, lots 10 and 36, on block, 163, is used as a freight yard by the Newark & New York Railroad Company, and the L running out to Mechanic street, and known as 82 Mechanic street, is used as a driveway to that freight yard.

The Court. Is there any number to the driveway?

Mr. Smith. No, not specifically.

Q Mr. Van Duyne, I call your attention to lots 49 and 53, on block 147, assessed separately to the Central M. E. Church, lot 53 being assessed $70 and lot 49 being assessed $190, both properties being located on Market street, and ask you why those properties are separately assessed? (Indicating on map.) A Those properties must be separately taxed, or they must be divided—not separately taxed, but they must be divided in that way on the tax map, and the tax map was the map by which we worked.

Q On lot 49 is located the Central Methodist Episcopal Church, is it not, on Market street? A Yes, sir.

Q Lot 49 is occupied by the Central M. E. Church, is it not? A That is my recollection.

Q And is not used for any other purposes than the church, is it? A I really do not remember.

Q In assessing that property by what method did you determine the peculiar benefit which you assessed? A By its relationship with the main improvement.

Q Did you determine the peculiar benefits by the increase in market value? A Yes, due to the opening and widening.

Q And you did not determine it by the method of whether it was made more accessible by reason of the opening, limiting it to that? A By its relationship with the opening and widening.

Q But you did not limit your benefits to any added accessibility by reason of the opening? A In making our assessment we limited it to the immediate benefits, due to its relationship with the opening and widening.

Q You do not answer my question. I ask you if in making the assessment for peculiar benefit you limited your assessment to the one element, namely, the added—any positive accessibility of this property to the opening? A No, we made the assessment according to its relationship to the opening.

Q You didn't take into consideration what this property was used for? A No.

Q That applies as well to the railroad properties? A Yes.

Q And the Newark Academy property? A Yes.

Q Now, I call your attention to the assessment made against the Estate of Henry C. Miner, lots 39 and 31, the former assessed for $85 and the latter assessed for $130, located on block 146, and ask you if those properties are

not occupied, so to say, by the Newark theatre? A Yes.

Q Why were those assessments separated? A Because they were separated on the maps with which we worked which were copies of the tax maps.

Q They are developed, are they not, as one property? A That is my recollection.

Q And the only reason you assessed them separately was because they were assessed separately on the city tax map and the map with which you worked? A Yes.

Q I call your attention to the properties located in block 58 and located at the southeast corner of Washington street and Maiden Lane and assessed to Louis Krueger and Theodore Michel for $825 and known as lots Nos. 21, 24, 26, 27, 28, and 29 on block 58 and ask you if all of those properties are developed as one property? A I don't remember.

Q They are separated by lines, are they not, on your maps? A Yes.

Q And they are taxed separately by the city? A I don't know.

Q In determining on the assessment on these various lots you made one assessment, did you not? A It is marked as one assessment.

Q In determining that assessment did you first assess each particular property and then assess the total—each of the particular lots assess the total, or did you assess one price for the whole tract? A I don't remember.

Q Is that the best information you can give me? A Yes, that is the best information I can give you? I don't remember.

Q I call your attention to property assessed on block 59 to the Havill Manufacturing Com-

pany and known as lots 11 and 13 and assessed for $1,875 and ask you if in determining this assessment you considered the close proximity of the rear to the Branford place across the intervening properties of Jackson and others? A We considered it in regard to its relationship with the improvement.

Q Did you consider it in regard to that particular relationship? A You mean the relationship that would include its proximity?

Q Proximity through these properties instead of proximity by way of Washington street? A No.

Q You didn't include its proximity through those properties? A You mean as an outlet?

Q No. A Its relationship with the improvement is the best way I can answer that.

Q You stated that you considered close proximit to the improvement in determining its benefits, have you not? A I have said relationship with the improvements.

Q You also said proximity? A Yes, but relationship is the word I prefer to use and I tried to make clear what relationship conveyed to my mind.

Q Now, in reference to its relationship to Branford place, did you consider that this relationship was on an airline or by way of Washington street? A I don't remember in discussing that particular block whether we used the word airline or not. We assessed it for the amount we thought it was peculiarly benefited.

Q I again call your attention to the property which I examined you about before, namely, lot 19 on block 39, assessed to the Real Estate Trading Company and located at 67 Jones street and asked you if you inspected that property before you made this assessment? A I don't remem-

ber standing particularly in front or going into the back yard of that special property but we examined the whole area and every street in it.

Q Did you pass through Jones street in your examination? A Yes.

Q Did you pass through every street in the zone? A Every street in the zone.

Q Alone or together? A Sometimes alone and sometimes together. We went out on a number of inspections.

Q You didn't all go out together and go in every street in the zone together? A In one day?

Q No. A At different times, yes, we have been in every part of the zone.

Q Do you mean to say that all three commissioners went together in the zone? A Yes, we examined the entire zone.

Q That doesn't answer my question. Did you all go together and make your examination together to every street in the entire zone? A Yes.

Q How many examinations did you make? A I don't remember. We were out a number of times throughout the process of this work.

Q How did you go, on foot or by automobile or carriage? A Usually in Commissioner O'Donnell's or my automobile.

Q Yesterday in your examination you stated, did you not, that you didn't examine all of the properties? A I meant then I didn't stand and go into each and examine every part of all of the different lots.

Q Which lots were you referring to then? A I don't know. I was making a general statement.

Cross examination by Mr. Kalisch.

Q. Mr. Van Duyne, you testified this morning that you went along reducing the assessments, reducing them from the points of the improvement in both directions. By that did you mean that you reduced them by comparing the old reports with this new report or did you mean that as you went away from the improvement in both directions that the assessments became less and less?

Mr. Smith. I would like to object now to that question. I think in a hostile witness Mr. Kalisch should not lead the witness—

Mr. Kalisch. It is cross examination.

Mr. Smith. And Mr. Van Duyne is a hostile witness and I don't think he should be permitted, with the Court's discretion, to testify for the witness.

The Court. I will hear counsel as to whether that examination limits the right of cross examination. It enlarges the scope of direct examination. It gives the examiner more latitude but does it limit the cross examining counsel. I am asking for information.

Mr. Smith. I have not any authority on it, but it seems to me that where we have a hostile witness and we are of course given latitude in his examination it also should work in the inverse order and when it comes to the cross examination which is practically the examination of the witness by his own counsel, the Court ought to limit that within reasonable bounds. Of course, this ought to be in the Court's judgment as to

what is proper and what is not a proper question, but I do not think there ought to be that entire freedom that there would be in the ordinary case if Mr. Van Duyne were our own witness and we were examining him on the direct. Mr. Kalisch in effect in this proceeding introduced the report of the commissioners in evidence and that is *prima facie* correct, but it is made up of conclusions. It states what the commissioners concluded and doesn't give us the methods by which they came to that conclusion. The usual practice has always been for the objectors to be given an opportunity to examine the commissioners on their report. That is the usual practice. In starting these proceedings in order to ascertain and determine whether or not the commissioners did as they say they did and we have had them on cross examination, and I may go a step further. I think we have shown by that examination that the commissioners did not follow out the line of their report. Now, it seems to be the purpose of the questions of this character to lead the witness to make a statement contrary to what he has already testified to or to indicate in what way the testimony which Mr. Van Duyne has given he desires to clarify without first asking him his recollection direct, and it seems to me were we permitted the opportunity of a cross examination or examination of commissioners on their report that the city ought to be held in examining them in the ordinary way because they are here to sustain the report which Mr. Van Duyne has made and about which we have ex-

amined him and it is really a part of the city's case when they take up the examination of Mr. Van Duyne. I think the proper way to look at Mr. Van Duyne's testimony is to say that we are given the opportunity of cross examining Mr. Van Duyne upon his report and if that is the case then the city is given a sort of re-direct. They put in their report first, we of course, examine Mr. Van Duyne on the report and then they are on re-direct on Mr. Van Duyne. I think that ought to be the theory that should be adopted in this case.

The Court. The question came up at the very outset of the examination. Mr. Kalisch himself asked whether this was on examination or cross examination of the witness. He said it was certainly not cross examination and no objection was made to that ruling. We have gone on the other theory for I don't know how long.

I shall adhere to my original idea that the witness is your witness because you called him and he is now on cross examination. Now, if you can satisfy me that the right of cross examination is limited because the witness who is called is hostile to the side that calls him, why then I shall apply that rule, but in the absence of any rule to that effect I shall consider this ordinary cross examination.

Q (Question repeated.) A Yes.

Q Which, the former or the latter?

Mr. Smith. I wish to note an exception as to all questions that are leading which

would come under my same objection on this ground.

The Court. You make an objection to this question on the general ground that the witness is now on the re-direct and not on cross examination and that, therefore, the question is objectionable as leading.

Mr. Smith. Yes.

The Court. I shall overrule the objection and give you an exception.

Q Which, the former or the latter? A The assessment became less and less. We had nothing to do with the old report.

Q That is, they became less and less as a consequence of the assessments that you placed on these properties? A Yes, at each one.

Q Now, Mr. Van Duyne, I call your attention to the property on Market street, known as the Newark Theatre, concerning which you testified this morning.

The Court. Let me for my own convenience get the lot and block numbers.

Mr. Kalisch. It is block 146, lot numbers 39 and 31.

Q You were asked concerning those two lots whether they were developed as one property. I understood you to say they were? A I believe so.

Q Did you mean by that that the business which the property was used for was developed as one property or did you mean that the two strips of ground were always considered as one? A Two strips of ground were considered as one.

Q Where did you get your information from? A Why, it is just as I recollect now part of the theatre property.

Q Did you say something about the tax maps in reference to that property this morning? Did you consult the tax map? A Yes, that is the property on the tax maps.

Q And are the two properties as they appear on the tax maps considered as two separate strips? A Yes.

Q Are they taxed separately? A Undoubtedly.

Q There is one business occupying both strips of ground? A I believe so.

The Court. What was the assessment?

Mr. Smith. Two assessments, $85 on Market street and $103 on lot 31.

The Court. What was on lot 39?

Mr. Smith. $85.

Q On lots Nos. 21, 24, 26, 27, 28 and 29 on block 58, I call your attention to those blocks concerning which you testified this morning and ask you whether in assessing them whether you assessed them separately or as one piece? A The report shows they were assessed as one piece.

By the Court.

Q What is the assessment?

Mr. Kalisch. The assessment is $825.

Q Did you consult the tax map before making that assessment? A We had a copy of the tax maps before us.

Q And on the tax map does it appear as one piece?

The Court. The witness said that he did not know whether they were taxed separately by the city.

Q You do not remember that? A No, I do not remember.

The Court. And he did not remember whether he assessed separately on the different lots and figured up and made a total, or whether he assessed *en bloc.*

Q Now, on the property on Mechanic street, which is owned by the Central Railroad of New Jersey, which affords an entrance to the Central Railroad property that fronts on Mulberry street, do you know whether that property is used as a means of access to the property marked "Newark Warehouse Company?"

The Court. You mean an access from Mechanic street or Broad street?

Mr. Kalisch. An access from Mechanic street.

Mr. Smith. Now, I think that should be limited to knowledge of himself as commissioner at the time he made the assessment.

The Court. Yes, I think so.

Mr. Kalisch. I mean as commissioner.

Q At the time that you made the assessment did you know whether or not the property on Mechanic street and marked 82 Mechanic street was used as a means of access to the property marked on this map "Newark Warehouse Company?"

The Court. What lots are they, 10 and 36.

Mr. Kalisch. It is marked "Block 159, lot 11."

Q Did you know at the time you made the assessment whether 82 Mechanic street was used as a means of access to that property? A I may have known at the time, but personally I do not recollect.

The Court. In order to straighten my own mind out: It was stipulated that lots 10 and 36 were used as a freight yard, and there was a driveway to Mechanic street. Is that the property that you call 82 Mechanic street?

Mr. Kalisch. Yes, that is the one.

The Court. Now, the question seems to be whether the driveway, called 82 Mechanic street, was used as a means of access to some property other than 10 and 36?

Mr. Kalisch. Also; yes, sir; the adjoining property.

The Court. What is the name of that?

Mr. Kalisch. It is marked on the map "Newark Warehouse Company," and it is block 159, lot 11. It immediately adjoins the Central Railroad property.

The Court. The witness says he does not know.

Mr. Kalisch. He says he does not recollect.

Q Now, Mr. Van Duyne, I call your attention to the testimony that you gave on the first hearing, on page 60, near the bottom, which reads as follows: "*Question*: How about the traffic? *Answer*: Traffic would necessarily follow a new thoroughfare. *Question*: It might not, if there was not any traffic to go across it. Did you deem that in this opening a part of the elements which would go to make up the benefits would be the traffic that would go up and down it? *Answer*: Do you mean pedestrian traffic or traffic of all kinds? *Question*: Any. *Answer*: Yes, I believe unquestionably you must get the

people on a new thoroughfare if you wish it to be of any value." Now, yesterday you endeavored to explain just what you mean by benefits and by market value. Will you explain now just what you meant when you say, "Yes, I believe unquestionably you must get the people on a new thoroughfare if you wish it to be of any value?" Will you explain now just how that affected your consideration of these assessments? A There was a certain confusion in my mind in regard to the distinction between benefits and increase in market value. That, I think, was due probably to my work in appraising property. In making an appraisal, benefits are derived, or increases in market value are derived, from future improvements, such as the possibility of increased pedestrian traffic, of increased vehicular traffic, of approaching business buildings, of everything that goes to develop a street, and in arriving at present market value I take into consideration those things necessarily, if I am appraising property. They are elements that go to make present market value, and, to my mind, benefits in its popular and not in its legal sense.

Q So that when you made your assessment and you took into consideration future development you only considered it in so far as it affected present market value as of the time you were making the assessment? A Yes.

Q Did you assess for future development as benefits? A No.

Q And in the testimony that you gave concerning all future matters resulting from this opening, that is what you had in mind? A Yes.

Q Merely the effect that those future developments would have upon the then present market value? A Yes.

Q Now, I call your attention to your testimony on page 61, in which this question and answer appears: "Did you consider as an element of benefits the probability of property which now fronts on the streets which cross Branford place being developed so as to face on Branford place? *Answer*: Wherever such a thing is possible, undoubtedly the properties—the future development of the property will be as of Branford place frontage. *Question:* Well, in fixing your benefits did you deem that probability as a benefit? *Answer*: Yes, sir." Now, I ask you with reference to that testimony, when you speak of the word "benefit" in what sense did you speak of it? A In that sense as increase of market value; that was the meaning of the word to my mind—the popular meaning.

Q You did not, however, assess for such a benefit, did you? A No.

Q Now, I call your attention to your testimony, on page 62, which is as follows: "*Question*: Did you consider as an element of benefits a growth of business along this newly opened street? *Answer*: Yes." Now, just explain how you considered it as an element of benefit, in what sense you considered it as an element of benefit? A Why, I considered it as an element of benefit as it increased present market value.

Q And only in so far as it increased the present market value you assessed—only in so far as the future growth of business along this newly opened street increased the present market value you assessed? A Well, we did not assess even for as much as that; we assessed for immediate benefits.

Q Exactly, but this immediate benefit, you have testified, was the enhancement of market

value. Now, then, in considering the growth of business along this newly opened street, you only gave it the consideration that would affect the present market value? A Yes.

Q And you only assessed in so far as that future growth of business affected the present market value? A We did not even assess that much.

Q Well, when you made your assessments, as I understand your testimony, you went upon the theory that you were to assess for the enhancement of market value? A Yes.

Q When you considered the growth of business along this new street, which deals with the future, you only considered it in so far as it affected the present market value? A Oh, yes.

Q That is correct, is it? A Oh, yes; I understand.

Q And in so far as it did affect the present market value you assessed? A Yes.

Q But you did not try to fix the value of this future benefit as of the future, did you? A No.

Q I call your attention to your testimony at the bottom of page 62 and continuing on page 63, in which you testified as follows: "*Question*: And the fact that this opening would attract business, both by reason of traffic and by reason of location of properties along it, was one of the elements which you considered were benefits accruing from this opening? *Answer*: Yes, sir. *Question*: And you also considered that by reason of this opening new properties and businesses would be attracted to this street? *Answer*: Yes, sir. *Question*: And you considered that an element of benefit? *Answer*: Yes. *Question*: An element of benefit to this

entire area, I take it? *Answer*: Yes, the entire area." Now, in what way did you consider that or those things elements of benefit? A As increasing the present market value.

Q Can you give us some illustration which would clearly define what you had in your mind when you considered the future possibilities of the properties affected by the development? You attempted to give one yesterday, and I did not get it entirely. A I will attempt to give the same one. If I were called upon to appraise a piece of property on Broad street between what we will call the present business section and the present residence section, with my knowledge that business is increasing down that way and that the residence property is being at the same time being pushed further south, that business property is worth more than residence property, that traffic conditions in that section are bound to increase, and as a result office buildings and stores will be gradually approaching that location of the city, I take those conditions that will arrive somewhere, at some time, in my opinion, in the near future, as benefits, benefits from which I can arrive at the present market value of that special property. It is worth more today because of the future benefits that are coming. I base my appraisal—the main basis of my appraisal would be as of those future benefits, and from that I arrive at the present market value.

Adjourned until December 1, 1915, at ten o'clock, A. M.

FOURTH DAY.

Wednesday, December 1, 1915.

HARRISON R. VAN DUYNE resumes the stand in behalf of Richard C. Jenkinson, *et als.*, objectors.

Cross examination (continued) by Mr. Kalisch.

Q Mr. Van Duyne, I call your attention to the testimony appearing on page 64 of the first day's testimony, in which you testified as follows: "*Question*: Did you in making your assessment consider that there would be any diversion of traffic from any other street into this street? *Answer*: Necessarily all the traffic that goes through that street is a diversion of traffic, because before the street was there it could not go through. *Question*: A diversion from streets principally paralleling it? *Answer:* Yes, sir. *Question*: Now, did you deem that diversion of traffic into Branford place as part of the benefit to property facing on Branford place? *Answer*: I go a step beyond that, and say that any peculiar improvement that is developed in the middle of the city tends to increase property values of all property that is associated in any way with it. *Question:* But I take it from your answer that you did consider as a benefit to property along Branford place a taking of traffic which formerly went through other streets? *Answer:* What was your question, do I consider that a benefit? *Question*: Yes, to the property on Branford place. *Answer*: Oh, it is a benefit to the property on Branford place to have traffic go through it. Question: Well, it was one of the elements which you considered in making up the elements of benefit which the property on Branford place

received, was it not? *Answer*: Yes, sir." Now, will you explain just in what way a diversion of traffic operated on your mind in fixing the amount of benefits so as to explain this testimony that I have just called your attention to?

Mr. Smith. Amount of benefits where?

Mr. Kalisch. Referred to in this testimony, benefits to property on Branford place.

Mr. Smith. Your Honor, I object to this, because it does not appear that there is any confusion at all in this question. It is perfectly clear from the question and answer that the witness said that it operated in a certain particular way. Now, this question assumes that it did not so operate, and I object to it on account of that assumption.

The Court. I overrule the objection. Answer the question.

Counsel for Richard C. Jenkinson, *et als.*, objectors, pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

A As the word "benefit" was fixed in my own mind, the traffic considerations and the diversion of traffic, and so on, was a consideration in arriving—that is, the future traffic—in arriving at its increase in market value at the present time of the property along Branford place.

Q In what way? A Well, to enlarge on that, in determining present market value, future considerations are taken into account—that is, future increase in the traffic around and through Branford place—and that affects present market value.

Q Did you consider it as affecting future market value also? A Future and present market value. There is a connection between future market value and present market value.

Q What is that? A You arrive at your present market value by looking into the future and seeing if conditions developed normally would increase the present market value.

Q Well, what is the connection between the future market value and the present market value that you just spoke of? In what way do you connect the two? A Why, if I were making an appraisal there, in my mind—

Q An appraisal of what? A A piece of property along Branford place or in this vicinity.

Q Do you mean the present market value? A Well, if I am making an appraisal of present market value, in my mind's eye I would see Branford place developed; I would see traffic going up and down it, and I would see stores coming to it; and that future consideration would affect my mind as to the present market value and would be a factor in arriving at the present market value.

Q But in making your assessments for benefits did you assess for the future development— A No.

Q —or did you merely assess for enhanced present market value resulting from future development?

Mr. Smith. I object. I do not think I understand the question, and I do not know that the witness does. Maybe he does, but it does not seem to me to be a fair question.

(Question read).

The Court. Do you understand the question?

Witness. I do.

The Court. If the witness understands it, he may answer it.

Mr. Smith. All right.

A We assessed for immediate peculiar benefits only.

Q And in arriving at that you took into consideration the future developments resulting from this improvement? A Only as it affected present market value.

Q In making your assessments did any of them exceed the peculiar benefits? A No.

Re-direct examination by Mr. Smith.

Q Mr. Van Duyne, what do you understand to be the meaning of the words "market value?" A Market value is the price at which a piece of property can be sold to a willing buyer by a willing seller.

Q And that applies to the present time, does it not? A It applies to the present time.

Q And it applies to present conditions, does it not? A Well, I do not know about what factors and elements may be in the minds of the two parties who are negotiating with each other; that is something that I could not say.

Q No, but what I am getting at is that you have got to take the property as it is at the present time.

The Court. What do you mean by "the present time," the 1st day of December, 1915?

Mr. Smith. No, the time you made your assessments.

Q If you are fixing market value on the date that you made your assessments, the conditions have to be as they are at that time, do they not?

A Why, I think you have answered your own question.

The Court. Well, you can answer it also. You seem to understand it.

Witness. If I sell a piece of property today, I sell it as of today. I may take into consideration the future elements that go up to make its value.

Q Mr. Van Duyne, you have materially changed the purport of your testimony since you took the stand in this case.

Mr. Kalisch. I object to that question.

The Court. I sustain the objection; in the first place, that is too broad, and in the second place, it calls for an opinion.

Q Mr. Van Duyne, you testified on your direct examination on pages 64 and 65: "*Question:* Now, did you deem that diversion of traffic into Branford place as part of the benefit to the property facing on Branford place? *Answer*: I go a step beyond that, and say that any peculiar improvement that is developed in the middle of the city tends to increase property values of all property that is associated in any way with it. *Question:* But I take it from your answer that you did consider as a benefit to property along Branford place a taking of traffic which formerly went through other streets? *Answer*: What was your question, do I consider that a benefit? *Question*: Yes, to the property on Branford place. *Answer*: Oh, it is a benefit to the property on Branford place to have traffic go through it. *Question:* Well, it was one of the elements which you considered in making up the elements of benefit which the property on Branford place received, was it not? *Answer:* Yes, sir."

Q Do you mean by the testimony you have just given today to say that you did not take that increase of traffic into consideration in determining the benefit of this diversion? A Immediate benefits?

Q Benefits you have assessed in this case?

Mr. Kalisch. I object to the question because it implies that the witness had said something which he hasn't said.

Mr. Smith. I am asking him to explain his cross examination.

The Court. The question asks the witness whether he meant a certain thing by what he said. It is for him to say what he meant. If you have the question clear in mind you may answer it.

A Did you mean immediate benefits?

Q I said the benefits which you assessed. A Did you mean the immediate benefits?

Q I said the benefits which the commissioners assessed. A As the question is, peculiar benefit in my mind rather than its legality in form, benefit in my mind meant increase in market value. That is taken into consideration, but that was not assessed in reference to traffic and so on in this question.

Q Do you wish to testify now that when you asked, "Well, it was one of the elements which you considered in making up the elements of benefit which the property on Branford place received, was it not." And you answered, "Yes, sir." Do you mean to testify now that it was not? A Did you mean immediate benefits?

Q I am reading the question, I asked you the question, "Well, it was one of the elements which you considered in making up the elements of benefit which the property on Branford place re-

ceived, was it not?" And you answered, "Yes, sir." Now, did you take into consideration that question that I asked you in making the amount of the benefits you had assessed against the property which I represent? A No, I had in mind the increase in market value.

Mr. Kalisch. I object to this question. The question says it was one of the elements which you considered in making up the assessment but it doesn't say it was one of the elements you assessed.

The Court. I don't see anything unfair in the question.

A I answered it.

Q I am calling your attention now, Mr. Van Duyne, to the bottom of page 67, where I said: "I am directing all my remarks to your determination in this assessment, the elements that you took into consideration." A "We took into consideration the mere fact that it would build up as business property." Do you recall that? A Yes, sir.

Q And then I asked you another question, "And when you say, 'business property' what kind of business property do you have in mind?" A "Stores." You included those benefits in the assessment of the benefits on the properties which I represent, did you not? A No, not in making the assessment. Those are future benefits. We assessed for immediate benefits.

Q I call your attention again to the question I stated, "I am directing all my remarks to your determination in this assessment, the elements that you took into consideration." Do you still change your answer? A No.

Q You referred to a future market value and present market value. What do you mean by a future market value? A I mean that there are future conditions that will affect present market value.

Q Well, that refers, does it not, to present market value? A I perhaps did not quite understand your question.

Q Is there any such thing as future market value? A Yes, there is such a thing as future market value.

Q Well, will you explain to me just what future market value is. A If you see a business section growing in a certain direction and you are experienced in real estate your judgment will lead you to believe that at some period indefinite, of course, or at some period in the near future or distant future that piece of property in your judgment will have arrived at a certain value. Of course, it is your experience and judgment that indicates to you what that value may be. Now, if you wish to purchase that piece of property you can take into consideration your opinion and judgment as to that future market value and you can apply it to the property as indicating a determination in your mind as to what the present market value may be.

Q Which affects the present market value, does it not? A It does affect the present market value.

Q What are the elements of future market value which do not affect the present market value? A I don't know of any element of future market value which cannot affect present market value.

Q In fact all of the elements of future development do not affect the present market value?

A Assuming, of course, that development means something that will be of advantage to the property. I know of no element of future development that will not affect the present market value.

Q Then all elements of future development whether they are beneficial, I mean would increase the present market value? A I think they have a tendency to.

Q You so considered it, did you not, in arriving at the present market value? A In the same way, Mr. Smith, if you buy a stock that is paying no dividends you examine into the condition of the railroad or the manufacturing plant whose stock you hold and on your judgment as to their method of business and to their success you buy that stock. Its value is as of future market value. You believe that from the way things are going eventually that stock is going to pay you dividends. It is a question of judgment. It is a question of examination and a question of experience.

Q The condition of the railroad whether it is paying dividends or not determines what the market value of that stock is? A No, I think that depends on what in your mind or the opinion of experts that railroad will grow to in the future or that business.

Q That is an element of market value? A Why, you must necessarily so construe it if your stock is paying no dividends.

Q Well, now, I understand, Mr. Van Duyne, that you did take into consideration favorable future developments in fixing benefits or assessments in this case? A You mean immediate benefits, Mr. Smith?

Q I mean the benefits that you assessed? A Do you mean immediate benefits?

Q I mean the benefits that you assessed. For instance, in assessing $7,500 on the Chelsea Security & Investment Company, on lot 50, block 73. A Do you mean immediate benefits?

Q I mean the benefit that you assessed, the $7,500. A That assessment was made for immediate peculiar benefits.

The Court. Well, you can answer the question.

Q (Question read). A We took into consideration future favorable developments in arriving at present market value, but not in making the assessment. The assessment was made for immediate peculiar benefits.

Q Well, I understood you to say, Mr. Van Duyne, that in determining all of the assessments in this case the commission based their determination on the increase of market value occasioned by this improvement? Yes or no. A Immediate, yes.

Q And I also understand you to testify that in determining increase in market value you considered future favorable benefits? A In so far as the increase of market value is concerned, yes.

OLIVER B. BURDETT, recalled in behalf of Richard C. Jenkinson, *et als.*, objectors.

Direct examination by Mr. Stein.

Q Mr. Burdett, have you obtained the measurements that I requested you to obtain for me? A Yes, sir. I can refer to a memorandum, can I (producing paper)?

Q Yes, if you will, please.

(The paper produced by witness is handed to Mr. Kalisch).

Mr. Kalisch. Does not that appear on the map?

Mr. Stein. This is merely a matter for the convenience of the Court, so that the Court will not be obliged to make the measurements itself.

Mr. Kalisch. He can use it as a memorandum, I suppose.

Q What did you find the distance to be, Mr. Burdett, measured from the northerly line of Branford place to the most northerly line of the area of assessment?

Mr. Kalisch. I object to that on the ground that it is entirely irrelevant and immaterial.

The Court. I will receive it.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A The distance measured from the westerly terminus of Branford place to the westerly boundary line of the area assessed—

The Court. You were asked the distance from the northerly line of Branford place to the northerly line of the assessed distance.

Witness. Is that the question?

Mr. Stein. Yes.

Witness. From the northerly line?

Mr. Stein. Yes.

Witness. Branford place runs east and west.

The Court. Therefore it would have a north and south line, would it not?

Witness. Well, I have made these measurements from the center line, going in those directions, not from the northerly line. Of course, I can—

Q Well, give us the center line of Branford place to the northerly boundary line of the area of assessment. A I can state that it is about 2,286 feet.

The Court. That is from the center?

Witness. Well, it is measured from that westerly terminus; about at the center line; yes, sir.

Q And what is the distance from that center line of the street to the most southerly boundary line of the area of assessment? A What is that question?

Q (Question read).

The Court. Measured to the south.

A About 1,297 feet.

Q And what is the distance from the westerly exit of Branford place to the most western boundary line of the zone of assessment? A That question was already answered.

Mr. Kalisch. That was the first question.

Witness. Yes, that was the first question.

The Court. Well, you answered a question that was not asked, and I did not take your answer down. Now, we will take the question that is now asked: from the westerly end of Branford place to the westerly line of the zone assessed.

Witness. I have but one answer to that; that is 2,286 feet; it is about that, not exact.

By the Court.

Q Do you mean to say that it is just as far from the westerly end of Branford place to the westerly end of the zone as it is from the center line of Branford place to the northerly line of the zone? That was 2,286 feet. A Well, I do not get the question, I guess, clearly in my mind. If you mean the northwesterly corner of the zone—

The Court. No, that is not the question.

Q Let me read what I have got down and see if I am right. From the center line of Branford place to the northerly line of the assessed district is 2,286 feet? A That is not correct.

Q That is not correct? A No, sir.

Q Have you got the right figure there? A Yes, the correct figure is 1,054 feet, about.

Q See if this is right. Measuring from the center line of Branford place to the southerly line of the assessed district, it is 1,297 feet, more or less; is that right? A That is right; yes, sir.

Q Now, you are asked to measure from the west end of Branford place to the west line of the assessed district. A That is 2,286 feet, more or less.

Q How do you measure that line? A That is an air line—

Q On a straight line? A On a straight line.

Q In prolongation of Branford place, for instance? A Yes, sir; from the westerly terminus of Branford place, a straight line, to the westerly boundary line.

By Mr. Stein.

Q Was that measured from the apex of the triangular strip of land which, I believe, was

formerly the Halsey property, which was taken for the opening? A Yes, sir.

Q Or was it measured from the base? A No, it was measured from the apex.

Q Now, taking the measurement eastwardly, Mr. Burnett, what did you find to be the distance from the easterly opening of the street, from the easterly terminus, to the easterly boundary line? A The measurement from the easterly terminus to the easterly boundary line is 2,494 feet, more or less.

Q In giving us that distance, did you measure from Halsey street or from Broad street? A From the easterly terminus of this opening as opened by ordinance, between Halsey and Springfield avenue.

Q Then you measured it from Halsey street? A Halsey street, yes.

Q Now, have you also obtained the measurements on diagonal lines from the openings of the street? A Yes, sir.

Q Give us the measurement on a diagonal line from the westerly exit of Branford place, or the westerly opening of Branford place, in a northwesterly direction to the most northwesterly corner of the zone? A That distance is about 2,650 feet, more or less.

Q And the distance northeasterly from the easterly opening of the street? A I will have to correct that last figure.

The Court. To what point is that?

Mr. Stein. To the most northeasterly point of the zone assessed.

The Court. Just wait a minute and see if I am clear about it. The last measurement was 2,650 feet from the westerly opening of Branford place to the northwest?

Witness. I would like to correct that. That figure, instead of being 2,650, should be 2,707, more or less.

Q Now, will you give us the figure from the easterly opening of the street in a northeasterly direction to the most northeasterly corner of the zone? A That distance is about 2,950 feet, more or less.

Q Now, state the distance from the westerly opening of the street to the most northwesterly corner of the zone. A From the westerly terminus?

Q Yes. A I haven't the figure here, only the figures from the extreme ends.

Q Well, the westerly terminus is one of the extreme ends of the street? A Yes, but I have made these measurements — I understand that you wanted the measurements made from the westerly terminus to the westerly boundary line and from the easterly terminus to the easterly boundary line. Those are all the measurements I have.

Q Well, you have given us those, and you have given us some others in addition; you have given two diagonal lines.

The Court. You have given us some diagonals?

A Yes, the diagonal that I gave you was from the westerly terminus to the southwesterly corner of the zone.

The Court. Northwesterly?

Witness. Yes.

Q The northwesterly? A You asked for both the northwesterly and the southwesterly.

The Court. You have not given us the southwesterly yet.

Q I suppose we had better get this straight. Suppose you go back to the first diagonal line that you gave us, Mr. Burdett. Was that first diagonal line measured from the westerly end of Branford place to a point at the corner of Norfolk street and the intersection with the canal? A No.

Q You have it there on your paper, have you not? A The measurement I gave in that case was 2,707.

Q Where did that take you to? A That took you down to the corner of Belmont avenue and Springfield avenue.

By the Court.

Q That would be southwesterly? A Southwest; yes, sir.

Q We have got it northwest. Did you get a northwest measurement? A Yes, sir.

Q And how much was that? A About 2,650 feet.

Q I had that and then crossed it out and substituted 2,707 feet. A Those diagonals are measured from the westerly terminus of Branford place.

Q And what do you now say is the length of the diagonal from the westerly terminus of Branford place to the northwest point? A From the westerly terminus of Branford place to the northwesterly corner of the zone is 2,650 feet.

Q Now, you were telling us about the southwest, the Belmont avenue measurement. Is that from that northwesterly terminus? A From the westerly terminus of Branford place.

Q To the southwest? A To the southwesterly corner of the zone. That is 2,707 feet, more or less—more or less in each case.

Q We misunderstood one another on the question of north and south, that is all. Now, we have got also the diagonal from the easterly terminus in a northeasterly direction to the northeast corner of the zone. That would be up at Norfolk street, and would be 2,950 feet; is that right?

By Mr. Stein.

Q It would not go to Norfolk street; it would go the railroad? A To the railroad and the canal.

Q 2,950 feet? A 2,950 feet.

The Court. And from the westerly opening of Branford place to the southwest corner, 2,707 feet. You have already given that.

By Mr. Stein.

Q There is one other dimension which we have not got: from the easterly opening of the street to the southeasterly point of the zone? A That distance is 2,500 feet, more or less.

Q So that the longest dimension that you have there is 2,950 feet? A Yes, sir.

Q And that is the dimension from the easterly opening to the most northeasterly point of the zone? A Yes.

Q These measurements were all taken on an air line, were they? A Yes, sir.

Q And actual walking or driving distances were disregarded? A Disregarded.

Q Have you taken any of those measurements? A No, sir, I have not.

Mr. Stein. I will offer some additional evidence as to that.

Q The map that is immediately in back of you, Mr. Burdett, was that prepared by you or under your supervision? A Yes, sir.

The Court. Is that map marked?

Mr. Stein. That is the one we wished to have substituted for Exhibit C.

The Court. Any objection to it being marked?

Mr. Kalisch. It is an exact duplicate?

Witness. Yes, sir.

Q It isn't an exact duplicate? A It is an exact duplicate of Exhibit C. with the addition of your clients plotted in.

Q And they are plotted in on this particular map in white, are they not? A Yes, sir.

Q This represents merely the properties west of Howard street, does it not, which is not embodied in this larger map here, because of larger space? A That extends only to Howard street.

Q (*By Mr. Kalisch*). Does that represent properties that have been assessed? A Yes.

By Mr. Stein.

Q The original Exhibit C. simply showed the blocks without showing particular lots? A Yes, just an outline.

Q And this map that you now have here is an exact duplicate of that map with the exception of the additions of the particular lots represented by Mr. Smith and myself? A Yes, sir.

(Map marked Exhibit C.).

Q This map that has now been marked Exhibit C. shows the lots represented by Mr. Smith and myself outlined in white rather than in red? A Yes, sir, we plotted those lots in from a list furnished by your firm.

Q And they are in white rather than in red? A Yes, sir, they are plotted in white lines.

Q You assisted the commissioners, did you not, in the preparation of their work? A Yes, sir, I am clerk of the board.

Q And this map or this indexed map and various plottings that I now show you and which has been offered here as a substitute for the report, I believe?

Mr. Kalisch. For the original report.

Q For the first report, for the report that is on file, the original being in the comptroller's office. A The original is here also.

The Court. The original is here except that the comptroller is permitted to take it to send out bills.

Witness. I thought when you said the original report you had reference to the original report made by the former commissioners. That report is here in court.

By Mr. Stein.

Q Both reports are here in court? A Virtually.

Q Is that what it is? A Yes, the commissioners' report was made from this set of working maps and all of the information of the commissioners' report is contained in this set of working maps.

Q The work shown here is your individual work?

Mr. Kalisch. I object to that.

A Made in the office.

Mr. Kalisch. One moment. If there is going to be any testimony considering matters that are anterior to the presentation of a completed report I want an opportunity to object and I do object.

(Argument followed).

Mr. Stein. I will withdraw that question and put this question instead.

Q Did you make use of these maps now before you in assisting the commissioners to prepare their report?

Mr. Kalisch. I object to that.

Mr. Stein. As I understand it, we have agreed that during such times as the comptroller shall require the use of the original report, meaning by the original report the second report that is now before the Court's consideration that these maps, documents which the witness has shall be used in place of it.

The Court. Just so far as they are copies of it, but the witness has not said they are copies of the report. He says they contain all the information in the report. They may contain it in the same form or in a different form.

Mr. Stein. I take it that for practical purposes we are using this report that is now before the witness for reference purposes and as an exhibit to guide us in the investigation of this matter.

The Court. That is not in evidence. If counsel will agree that this is a copy of the report I will use it as the report or I will send for the report and have it here and let the comptroller send out his bill when he can. You may ask the witness if it is a copy of the report.

Q Does this report differ in any respect from the one presented by the commissioner other than the formal printed matter contained on the first page of the report?

Mr. Kalisch. I object to that.

The Court. What is your objection?

Mr. Kalisch. As I understand it is a copy. I don't suppose there would be any objection to using it. Whether it contains the information or not is quite another thing, whether it contains all the information.

The Court. There wasn't anything in the question about information.

Q (Question repeated). A Yes, sir.

Q It does differ? A Yes, sir.

Q In what respect? A It has data and memoranda on it not on the commissioners' report.

Q What data or memoranda do you refer to?

Mr. Kalisch. I object to that.

The Court. I don't think we can use it.

Q Do these working maps show the assessments made against the individual lots by the report filed by the commissioners?

Mr. Kalisch. I object to any evidence of what they show.

The Court. We shall have to have the original report here, the report itself. It appears from the testimony that there are notes and memoranda on the working maps which are not part of the original report.

Q The amount of the assessments upon the individual lots appear on these working maps, do they not?

Mr. Kalisch. I object to what appears.

The Court. I sustain the objection. It is not an instrument of evidence and I don't think it ought to be received appearing that it contains some extraneous matter.

William C. Paul, direct.

Q Is there any extraneous matter on these reports, on these working maps?

Mr. Kalisch. I object to that.

The Court. He has already said there was memoranda and calculations.

Witness. I said data.

Q Did you use more than one set of working maps in assisting the commissioners in making up their report?

Mr. Kalisch. I object to that.

The Court. I sustain the objection.

Q Then I should like to ask the witness this question as to whether this set of working maps, now before you, is the same set of working maps as was used by the previous commissioners.

Mr. Kalisch. I object to that.

The Court. I think that is entirely irrelevant. Let these working maps be marked for identification.

Maps marked Exhibit G. for identification.

WILLIAM C. PAUL, resumes the stand in behalf of Richard C. Jenkinson, *et als.*, objectors.

Direct examination by Mr. Stein.

Q Mr. Paul, have you had occasion to make yourself familiar with the zone of assessment by the present report of the assessment commissioners on the opening of Branford place? A I have.

Q Are you familiar also with the original report of the zone of assessment covered by the first repotr of the commissioners? A I am.

Q Over what period of time have you examined these reports? A I should say since the

time of the filing of the original reports, the first report.

Q Are you familiar with the difference between the two reports, so far as the zone of assessment is concerned?

Mr. Kalisch. I object to that.

The Court. What is the purpose of this inquiry?

Mr. Stein. We wish to show that the commissioners in fact have been guided to a very material extent in the making of their present report by reference to the former report and we wish to present a certain number of facts by the testimony of this witness from which we shall argue that the commissioners must have been guided to a very material extent. Then there is the other point of view that this testimony is being given for the purpose of assisting the court in determining just what the field of assessment actually is and the various other details which we shall elicit from this witness instead of putting the court to the trouble of making a lot of computations.

(Argument followed).

The Court. I will overrule the objection.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q What difference did you find on the comparison of the two reports with regard to the zone of the prospective areas assessed? A The zone, or the outside limits of assessment are practically the same. There are only slight differences of probably five or six lots added in the

present assessment that was not in the former one.

Q And where are those additional lots located? A I think in the northwest corner; I can't say definitely.

Q You are not sure of that? A I am not sure of that.

Q Have you made any measurements of distances from the extremities of this opening to the most northwesterly corner of the area actually assessed by this report—walking distances, I mean? A I have.

The Court. Walking along the street?

Witness. Walking along the street.

The Court. Ziz-zagging along, as you have to go; is that the idea?

Witness. That is correct.

Q And in making those measurements did you adopt the shortest or the longest route? A The shortest route.

Q What did you find to be the shortest route measured from the westerly opening in a northwesterly direction to the most northwesterly point? A 3162 feet to the northwest corner of the zone, via High, Breintnall place, Bank and Norfolk street.

Q And what was the distance from the same opening to the southwesterly end of the zone? A 2710 feet, via Springfield avenue.

Q And what was the distance from the easterly opening of the street to the most southeasterly corner of the zone? A 2718 feet; that is, from the corner of Halsey.

Q And along what street? A Via Lafayette, I think, to the end of the zone.

Q And from that same opening of the zone, namely, the eastern opening, to the most north-

easterly corner of the zone, what did you find the distance to be by walking? A 3718 feet, via Broad street and South Canal street.

Q Now. in making your comparison between the old and the new report did you in any part of the zone find any definite percentage of reductions or increases?

Mr. Kalisch. I object to that.

The Court. We had substantially that question up yesterday. I think it is competent.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A I did.

Q Tell us what you found.

Objected to.

Objection overruled.

The Court. Make as broad statements as you can.

A I found that, with the exception of both sides of Broad street, as an easterly line, both sides of Market street, as a northerly line, William street, as a southerly line—

By the Court.

Q Both sides? A Both sides. —and Howard street as a westerly line—

Q Both sides? A One side, the eastern side. —the properties in this territory show very many changes in the assessments between the old and the present report, and the properties without that zone, from the lines defined to the outside limits of the zone, show an average reduction of twenty-five per cent. reduction throughout.

Q Taking up the blocks outside of the zone that you have defined, were there any of those blocks which show a definite twenty-five per cent. reduction?

Mr. Kalisch. I want to put in one general objection, so that I do not have to object continually to this line of testimony.

The Court. You better state your objection, if you want to make a general one.

Mr. Kalisch. Well, I object to the line of testimony that involves the comparison, or a comparison, between the old and the new reports, and any facts testified to that are contained in either of those reports.

The Court. I will allow the witness to point out in his testimony what he has learned on this subject, in order to facilitate the inquiry which the Court is obliged to make as to the subject matter before it.

The Court. You are now asked whether you can enumerate, or mention, any block where there was an exact reduction; is that it?

Mr. Stein. Yes, sir.

The Court. The witness testified to an average reduction.

Mr. Stein. Yes, sir.

The Court. You may answer the question.

A There is no block in which there is an exact reduction of twenty-five per cent. carried down to the penny, but the average reduction carries itself in this manner: a property assessed formerly at $50 appears on the new assessment at $38, being round figures, no pennies appearing in the entire assessment—no frac-

tions of a dollar; a $49 assessment would also appear at $38, probably; but with that exception there are a great number. Shall I call off a number of them?

The Court. A great number of what?

Witness. Of complete blocks that showed the average of twenty-five per cent. reduction.

The Court. Mr. Stein is examining you.

Q Take block 109, which is located south of Hill street and between Halsey and Broad streets. What do you find there in comparing the two reports?

Mr. Kalisch. I want to further object on the ground that some of this property, for instance, that appears on block 109, is not property that is owned by the objectors that Mr. Stein or Mr. Smith represent. Neither one of them is interested in that property, as I understand.

Mr. Stein. No, I think Mr. Kalisch correctly states the fact. We do not happen to represent any property owner on that particular block that I selected.

The Court. Perhaps you had better select a block on which you do represent someone.

Mr. Stein. The object, of course, of this testimony, I will state to your Honor, is to give your Honor the benefit of all the investigation that we have made, which includes not merely those that we represented, but those that are represented by other objectors. In the block that I have pointed out, I find that there is an objector whose property is outlined in yellow. Of course,

the force and effect of our testimony on this subject will be enhanced, in our opinion, by showing that these reductions were quite general—not merely to our properties, but to properties of other objectors.

Mr. Kalisch. As I understand the cases, your Honor, I do not understand that any objection can be made to the confirmation of a report unless the parties that are objecting are—

The Court. You had better confine yourself to your own lots.

Q Take block 93, which is located north of Hill street, or bounded by the northerly side of Hill street, the easterly side of Halsey and the westerly side of Broad street (indicating on map). What do you find there? A An average of 25 per cent. reduction, except on Broad street, as originally stated.

The Court. What lots of yours are there on that block?

Mr. Stein. That we represent?

The Court. Yes.

Mr. Stein. We represent those in red; we have that general testimony.

The Court. How many are there? Can you tell conveniently how many there are of your red lots?

Mr. Stein. There are two on Hill street, being lots 49 and 50, in that block; there is also lot No. 30 in that block, fronting on Broad and running through to Halsey, and lot 36.

Mr. Kalisch. That is the corner of Hill and Broad.

The Court. Lot 30 is on Broad street and runs through to Hill?

Mr. Stein. No; to Halsey.

Mr. Kalisch. And lot 36 is the corner of Hill and Broad, the northwest corner of Hill and Broad.

Mr. Stein. In addition, if your Honor please, on the same block the following lots front on Broad street: 10, 17, 19 and 22, being properties represented by Mr. Smith and myself.

The Court. The witness began by excepting both sides of Broad street and both sides of Market and both sides of William street and the east side of—what street was that?

Witness. Howard street.

The Court. And then said that in the interior of the space so inclosed there had been many changes, and outside an average reduction of 25 per cent. Now, these lots on both sides of Broad street, for instance, are within the exception?

Witness. Yes, sir.

The Court. And there is no statement yet as to what the fact was as to them and as to the two lots on the side of Market street.

Mr. Kalisch. He said something about the Broad street property in this last question that he answered.

The Court. Yes, as to this particular instance.

Mr. Kalisch. Yes, as to block 93.

The Court. But the witness has not made any general statement as to the way in which lots on Broad street and Market street or

William street or the east side of Howard street are figured. Perhaps he does not propose to make any general statement about that; perhaps there is not any general fact to be stated; I do not know.

Mr. Stein. As to the Broad street properties?

The Court. Broad street and William street and Market street.

Mr. Stein. There is no general statement, as I understand it, as to those properties, but merely as to the properties excluded from the zone, as the witness has defined.

The Court. That is all that has been stated yet.

Mr. Stein. Yes.

The Court. But in this statement that the witness has just been making, he referred to lots on Broad street; for instance, 10, 17, 19 and 22.

Mr. Stein. Yes, sir.

The Court. I understood him to mean that there was an average reduction on those.

Mr. Stein. No, on all except those facing on Broad street.

Mr. Kalisch. All except those?

Mr. Stein. In other words only two?

Mr. Kalisch. In that block.

The Court. They were merely mentioned to indicate that they were your lots?

Mr. Stein. Exactly.

The Court. For no other purpose?

Mr. Stein. For no other purpose.

Mr. Kalisch. There were only two on that block where he said there was an average reduction of 25 per cent, and they were on Hill street; is that right?

Mr. Stein. Yes, sir.

The Court. 49 and 50 Hill street; No. 30 was on Broad street and No. 36 on the corner of Hill and Broad. So that leaves only two lots on Hill street that do not touch on Broad street?

Mr. Stein. Yes, sir.

Mr. Kalisch. That is right.

Mr. Stein. I want to make clear, your Honor, that in making these comparisons we have, of course, borne in mind that the evidence will be effective so far as we are concerned only in so far as the properties we represent are concerned. Nevertheless, for the purpose of the value, the weight, of this testimony, we have made these comparisons, not merely with regard to our particular properties, but other properties, also, outside of this restricted, narrow zone which the witness has referred to, and refer to all the properties, both objected to and not objected to, and whether represented by us or not. I will say that in most of the blocks we represent some objectors, but here and there there is a block which we do not represent an objector, and we should like to present the testimony to the Court as to the reductions in those blocks also, notwithstanding the fact that it cannot be of any benefit to us, but we think it may be of some benefit to the Court, because of the large number of other objectors interested.

The Court. I think if you will go through the list of your own lots, of which there are a good many, you will have done a good deal to suggest to the Court what the general situation is. I think you had better stick to your own lots.

Q Now, Mr. Paul, I refer you to block 106, which is bounded on the north by Hill street, on the east by Halsey, on the west by Washington street (indicating on map). We represent lot No. 4 on that block. What reduction do you find there? A An average of 25 per cent.

Q What do you mean by "an average of 25 per cent.?"

Mr. Kalisch. On that one property?

Q Explain your phrase, "an average of 25 per cent.," again. A That a property assessed originally in the first report at $50, taking 25 per cent. from that would leave $37.50, and in making the assessments they have eliminated any fractions of one dollar, and there may be an assessment of $37 or $38, and outside of that it is an average of 25 per cent. An original assessment of $49 would probably appear as $37 or $38.

Mr. Kalisch. I object to that. He asked him as to one particular lot, lot No. 4.

The Court. How many lots have you on that block?

Mr. Stein. One lot, No. 4.

Q You have used the word "average." Do mean—

Objected to as leading.

The Court. What do you mean?

Q What do you mean? A That the properties in that block all show an average of twenty-five per cent. reduction from the original to the

present report—between the original and the present report.

Q Do I understand that to mean that each lot has been reduced twenty-five per cent., with the slight exception that you make with regard to cents? A Yes, sir.

Mr. Kalisch. I will ask to have that testimony stricken out. It concerns more than the particular property that Mr. Stein represents. He is now speaking of all the properties on that block, where Mr. Stein represents just that one.

The Court. Yes, but I do not see any harm in letting us know in each case what the assessment is.

Q Giving as a concrete example this particular lot in this block so that we need not go over this testimony again on this question of average: I find that this lot is assessed at $8, lot no 4 in block 106. A It was assessed in the original assessment probably $10.

Mr. Kalisch. I ask to have that stricken out.

Witness. I can refer to the report and get it.

The Court. We had better find out what the fact is.

Witness. (After examining report.) $10.

Q Take block 96, in which we represent lots 33, 34 and 35, 40 and 39. What deductions do you find there? A An average of twenty-five per cent.

Q Take block 97 where we represent lots which are bounded by William street, Washington and Plane.

William C. Paul, direct.

The Court. Do you know which side of William street it is on?

Mr. Stein. It is on the south side of William, the west side of Washington and east side of Plane.

The Court. William street is on the south side and what is on the east side?

Mr. Stein. Plane is on its east side and Washington on its west.

Q We represent lots 5, 6, 8, 9, 12, 13, 14, 15, 17, 20 and 21. A Also an average of reduction of twenty-five per cent.

Mr. Stein. I understand that Mr. Kalisch will agree for the purpose of saving time that the witness may refer to memoranda which he has previously prepared to give your Honor the benefit of his calculation by reading from the memoranda.

Mr. Kalisch. I don't intend to waive the objection to the general line of questioning. That is merely done to expedite the proceeding here.

Q Will you call off the blocks where you find a twenty-five per cent. reduction approximately twenty-five per cent. A Block 109.

By the Court.

Q What is the next block? A No. 94, 106, 96, 95, 98, 100, 99, 102, 2507, 2506, 2497, 2505 and 2504.

By Mr. Stein.

Q Just a moment before you go on. Those blocks you have just mentioned are all west of Broad street, are they not? A They are west of Broad and I may say south of William.

William C. Paul, direct.

Q The next blocks you are about to give us will be located where? A West of Howard street, 2505 west of Broad, 2504 west of Howard street, 2503, 2502, 2515, 237, 236, 238, 239, 229, 228, 227, 226, 225, 224, 211, 210, 209, 208, 207, 206, 419, 418, 407, 408, 406, 409, 405, 404.

By the Court.

Q Those are all west of Howard street? A Yes, sir. Now, these are all west of Broad street. They are from Howard street east, or, in other words, north of Market between Howard and Broad; 233, 205, 391, 390, 379, 380, 376, 377, 87, 88, 89, 69, 70, 71, 62, 63, and 53. The following are east of Broad street, 148, 149, 151, 152, 153, 155, 158, 156, 154, 161, 160, 159, 163, 166, 167, 168, 869, 868, 870, 867, 871, 866, 872, 876, 875, 874, 77.

Q Are any of those blocks which you say are east of Broad street, have they a frontage upon Broad street? A No, I have not mentioned any that have a frontage on Broad street.

By Mr. Stein.

Q These are east or west of Broad? A These are east of Broad except the very last few numbers.

Q Block 77, is that east or west of Broad? A I would have to refer, I can't say offhand now.

Q Here is 77. A Those were internal maps in the zone I had originally defined.

Q 77 is west of Broad? A Yes.

Q Now, then, those blocks that you have enumerated all show the approximate reduction of each lot for twenty-five per cent.? A They do.

Q So that if a lot had been assessed before at $40 it would not be assessed at $30? A Yes, sir.

Q And if assessed at a hundred it would be assessed at $75? A Yes, sir.

Q And if assessed at $80 it would now be assessed at $60? A Yes, sir.

Q Now, inside of the zone that you have mentioned, bounded by both sides of Market street, Broad street, William and Howard, did you find any reductions that were definite reductions outside of the lots, those that face on these particular streets? A I have not definite reduction on Market street.

The Court. Let me see if I understand the question. Witness can show a boundary line as the question suggests, and he says that within those boundary lines there were very many changes. Now you were asking—

Mr. Stein. Whether inside of those lines there are any lots which were reduced a definite amount, excluding from that zone those lots that fronted on Market street or Broad street or William street or Howard street.

The Court. Those are excluded by his statement.

Mr. Stein. As I understand his statement it is not only those that are excluded, but generally the entire; all the lots of that zone are excluded.

The Court. No; he said outside of that zone the lots showed an average reduction of 25 per cent., and in that zone there were very many changes, but in considering what the zone is the boundaries are not counted as part of the zone; Market street and Broad street and William street and one side of

Howard street are out. They are not in the zone.

Q Will you explain again just what you mean by the defining of that zone? A The properties without the zone described are all practically on a 25 per cent. reduction, the entire territory without but within that zone, within both sides of Market street and from there south to William street the properties have been assessed in the new assessment in an irregular manner; I mean not in a given fixed reduction of percentage or increase.

By the Court.

Q You mean the two sides of Broad street and the two sides of Market street and the two sides of William street and the easterly side of Howard street as is the zone? A Within this definite zone and everything without; that is, within this 25 per cent.

The Court. Now, you are following up the remark of the witness that within there were very many changes?

Mr. Stein. Yes, sir.

By Mr. Stein.

Q Inside of that zone in the changes that you observed, did you find any definite percentage of reduction also? A Not an absolute fixed reduction; no.

Q Are you able to pick out any lot inside that zone where there were fixed reductions? A Block 79.

Q Where is that? A West of that within that zone, somewhere up in the upper end.

Q It is west of Shipman street.

Mr. Kalisch. I object to that.

Q Suppose you take block No. 73, lot No. 40, which is the property of the Prospect Improvement Company. That is an inside lot, south of Market street and between Plane and Washington streets, and which is now assessed at $4,500. What was that assessed by the former report? A Originally assessed at $6,000.

Q So that shows a 25 per cent reduction, also? A Yes, sir.

The Court. Was that $4,500?

Mr. Stein. It is now $4,500. It was $6,000.

Q Take lot No. 39 on block 73, which lot is much deeper than the other lots on Market street. This lot also faces on Market street. That is now assessed at $675.

Q What was that assessed by the former board? A $900.

Q That is an exact reduction of 25 per cent.? A Practically.

Q Take lot 47 on the same block, namely, 73, which faces on Washington street, between Market and Branford place. It is now assessed at $1,125. What was that assessed by the former report? A $1,500.

Q Is that a reduction of 25 per cent.? A It is, approximately.

Q Take lot No. 50 in the same block facing on Washington street, between Market and Branford place. That is now assessed at $7,500. What was that assessed for? A $10,000.

Q Are there any other examples that you can give us inside that zone where there were similar reductions of 25 per cent.? A I cannot, offhand. I can look them up.

Q Have you looked up any of them in advance? Will you refer to your memorandum on

the first page? I refer you particularly to lots Nos. 68, 67, 64 and 93 in block 73, all assessed in one portion for $2,250, to Richard Jenkinson. What was that assessment? A $3,000.

Q By the original report? A Yes, sir.

Q Take the Telephone building.

Mr. Stein. We don't represent that, if your Honor please, but it is in the same block and I think it would be important to have that, the fact of the reduction brought out at this point.

The Court. You might have the statement made by the witness as to the same block. It is convenient for reference.

Q The property of the New York Telephone Company being lot No. 60 in block 73. That assessment is now $22,500. What was it in the first report? A $30,000.

Q Take lots Nos. 71 and 72 in the same block assessed to the Union Building Company.

The Court. That is one of your lots?

Mr. Stein. That is one.

Q The assessment is now $225 on both lots, being a total assessment on both lots. What was that assessed at? A $300.

Q Now, referring to your memoranda, if you will, on the first page, block 97, which is bounded by the south side of William street, the west side of Washington, east side of Plane, what reduction did you find there?

Mr. Kalisch. Is that property that you represent?

Mr. Stein. In that block we represent lots 5, 6, 8, 9, 12, 13, 14, 15, 17, 20, 21, 28 and 30, 37 and 38.

William C. Paul, direct.

Q What reduction do you find there? A An average reduction of twenty-five per cent., except lot 38, which remains the same, being assessed at $4.

Q Take block 2498, which is bounded by the easterly side of Howard street, southerly side of Springfield avenue, north side of Mercer street and the west side of West street. What did you find there? A An average reduction of twenty-five per cent., except blocks 3 and 33, which were reduced from $60 to $40, a twenty-five per cent. reduction being $45.

The Court. You haven't told us yet what lots you have on the block.

Mr. Stein. We have quite a number. They are marked distinctly in red.

Mr. Smith. They are lots 11, 12, 22, 25 and 26, and there are lots of two other objectors whom we don't represent.

Q Block 231, that is between South Orange avenue and Stirling street, what reduction did you find there? A An average of twenty-five per cent. reduction, except lot 69 to lot 84, inclusive.

Q What reduction did you find in those? A They have been reduced from one-third to two-thirds.

By the Court.

Q You mean one-third in some cases and two-thirds in others? A Yes.

By Mr. Stein.

Q But in all the other lots you found a twenty-five per cent.? A Twenty-five per cent.

Q Take block 2496 bounded by Springfield avenue, William street and High street. What

reductions did you find there? A An average of twenty-five per cent., except lot 25, which was reduced from 385 to 225.

Q Take block 84, which is the property just across the street on Market street, Court House place and Pierson alley, running out to Bank street. What reduction did you find there? A An average of twenty-five per cent., excepting the Market street frontage which was reduced to fifty per cent. or more.

Q Take block 85, which joins the block you just referred to on the east. What deduction did you find there? A The same as block 84, twenty-five per cent. reduction, except the Market street frontage where the reduction was fifty per cent. or more.

Q Take block 86, immediately east of the one you have just mentioned. A The same as the two former.

After Recess.

Direct examination (continued) by Mr. Stein.

Q Mr. Paul, take block 204, which is the block bounded by Breintnall place, Sidney place and Market street, a triangular block. Were there any definite reductions there? A There was an average of twenty-five per cent., except on lot 11, which was reduced from $225 to $205; on the Breintnall place side an average of twenty per cent.—

By the Court.

Q On which side did you first speak of, the Sidney place side? A On the Nelson and Sidney place side, twenty-five per cent., except lot 11.

Q And that was reduced from— A $225 to $205.

Q Then you went on to speak of another side. A The Breintnall place side was reduced twenty per cent.

Q Throughout? A Throughout; yes, sir.

Q And the Market street side? A There are only three sides practically.

Q Oh, there is not any Market street side? A No.

Mr. Stein. That was a mistake on my part, if your Honor please; I should have said Nelson place instead of Market street.

The Court. Yes, I know where it is.

By Mr. Stein.

Q Take block 72, being lots on Market street between Plane and Washington streets, on the north side of Market street. A The majority of these lots run through from Market to Campbell street, and show a reduction of fifty per cent. or over on the Market street frontage.

By the Court.

Q A reduction of how much? A Fifty per cent. or over, or greater.

Q On the Market street front? A Yes, sir.

By Mr. Stein.

Q Take block 61, bounded by Washington, Bank, Halsey and Market streets. A An average reduction of twenty-five per cent., except Market street, which is reduced about forty per cent.

Q Take block 54, bounded by Halsey, Academy, Broad and Bank streets, on which the property of the Prudential Insurance Company

is located. A The Prudential property is reduced $50.

Q Is that for each lot assessment? A No, $50 on one plot.

Q It is all assessed together, is it? A All assessed together. That is one little—that Bank property in there, that remains the same; all the assessments remain the same in that block except one plot, which is reduced $50.

Q How much had that been assessed before? It is assessed now at $950. A At $950, and it was originally assessed at $1,000.

Q Take block 55, which is bounded by Market street, Bank street, the west side of Broad street and Library court. A An average of twenty-five per cent. reduction, except on the Market street frontage, where the reduction was fifty per cent. or over.

Q Take block 56, bounded by Halsey, Bank and Market streets and Library court. A An average of twenty-five per cent., except the Market street frontage, which was reduced fifty per cent. or over.

Q Now, going east of Broad street. Take block 144, which is bounded by Broad, Commerce, South Canal and Mulberry streets. A An average reduction of twenty-five per cent., except lot 2, reduced from $15 to $14.

Q Take block 145, bounded by Broad, Commerce, Mulberry and Clinton streets. A An average reduction of twenty-five per cent., except lots 1, 3, 5, 82, 81 and 14, which remain the same; lot 6, reduced from fifty to forty-five; lot 7, from forty-five to forty-two, and lots 8, 9 and 11, reduced from eighty to seventy.

Q Take block 146, which is bounded by Broad, Clinton, Market and Beaver streets. A

An average reduction of twenty-five per cent., except the Broad street frontage.

Q Have you calculated the reduction there on Broad street? A I have not; it varies.

Q Block 147, bounded by Beaver, Market, Mulberry and Clinton streets. A Block 147 has a twenty-five per cent. reduction, except lots 59 to 63, reduced from $445 to $390.

By the Court.

Q Is that the total? A That is the total; yes, sir.

Mr. Stein. That is one—

Witness. That is one plot.

Q Reduced from— A $445 to $390.

By Mr. Stein.

Q Those lots from 59 to 63 are assessed as one plot, are they not? A One plot, yes.

Q And that is on the corner of Market and Beaver streets on this map? A Yes.

Q Block 150, which is bounded by Lawrence street, Morris Canal, Commerce street and New Jersey Railroad avenue. A An average reduction of twenty-five per cent., except lot No. 76, which was increased from $6 to $7.

Q You mean that was an increase? A An increase of $1.

Mr. Smith. Which one is that?

Witness. Lot No. 76.

Mr. Kalisch. You do not represent that lot, do you, Mr. Stein?

Mr. Stein. Unfortunately not, Mr. Kalisch.

Q Block 162, which is bounded by Mulberry street, Market and Lawrence street. A Ap-

proximately twenty-five per cent., except lot No. 10, which was increased from $25 to $95.

Mr. Stein. We do not represent that lot, Mr. Kalisch.

Q Block 164, bounded by Broad street, Market street, Mulberry street and Mechanic street. A Twenty-five per cent. reduction, except lots 4 and 5, reduced from $1,600 to $1,075.

The Court. One assessment.

Witness. That is one assessment.

The Court. Reduced from $1,600 to—

Witness. $1,075. Lot No. 8, from $2,100 to $1,350; lot No. 92, from $675 to $450.

Q Block 165? A Twenty-five per cent., approximate reduction, except lots 11, 12, 13 and 14, increased from $1,450 to $1,485.

Q Lot 58? A Practically twenty-five per cent. reduction.

Q That block is located on Washington, William, Halsey and Maiden lane. Block 59 bounded by Washington, Maiden lane, Halsey and Branford place? A The southern half approximately twenty-five per cent., northern half approximately twenty per cent.

Q Block 79? A An approximate twenty-five per cent. reduction, excepting the northern frontage.

The Court. What streets are they on?

Mr. Stein. That is on High street, Springfield avenue, William and Shipman streets.

Mr. Stein. Which is the northern frontage?

Witness. Springfield avenue.

William C. Paul, direct.

By the Court.

Q What have you to say about that? Is it a twenty-five per cent. reduction? A Excepting the northern frontage. The northern frontage varies. The individual lots are not in a relative proportion.

By Mr. Stein.

Q Now, I call your attention to some particular lots again in block 60, lots 5 and 6, the corner of Washington street and Camfield court, assessed for $1,875 by the present report? A Was originally assessed at $2,500, present assessment $1,875, twenty-five per cent reduction.

Q Block 59, lots 11 and 13 are assessed together at $1,875? A Originally assessed at $2,500, a 25 per cent. reduction.

Q Take lots 23 and 24 in block 59 assessed to Bridget Jackson, lot 23, present assessment is $5,070?

The Court. How much is it on lot 24?

Mr. Stein. $5,065.

Q What were the former assessments? A $6,375 on lot 23 and the same on lot 24, being between 25 and 24 per cent. reduction.

Q Block 73, lot 17, the corner of Branford place and Plane street assessed for $3,750. Now, what was it by the former report? A $5,000, being a 25 per cent. reduction.

Q Have you made calculations of the square feet and running feet assessments on some of these lots and compared them with each other? A I have.

Q I call your attention to block 59, lots 23 and 24 each assessed to Bridget Jackson, lot No. 23 being assessed at $5,070, lot 24, $5,065.

New Jersey State Library

These are lots that formerly fronted on Camfield street, are they not? A They are.

Q What is the assessment on each of these lots per square foot or have you just calculated one of them?

Mr. Kalisch. I object to that. I don't see where we are getting any enlightenment in finding out the square feet. That is a mere matter of calculation. If you pick out two lots you can find out what it amounts to. It merely amounts to an operation of division. I don't see why the witness should be called as an expert to find out what the assessment was per square foot.

The Court. I will not exclude the testimony.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q What is that, either of those lots figure out per square foot; 23 or 24, which did you calculate? A I calculated lot 24 and brought it down to $2.33 per square foot. I wish to state now that my measurements were taken simply by scale. On the charts I have only one measurement, either a fronting or sometimes a depth and I have to use a scale rule and I may be wrong to a small fraction of one per cent.

Q What was the assessment per front foot? A $202.80.

Q Now, take the lots assessed to David Wolf in the same block, No. 59, being lots 15, 17 and 19 on the same side of Camfield street and located about 50 feet west of the Jackson lot and assessed at $11,250. What is the square foot assessment there? A $1.11.

Q And the front foot assessment? A $98.69, the Branford place frontage.

Q Now, take the Oschwald plot on the same block, lots 30 and 34 assessed together at $9,750.

The Court. Also block 59?

Mr. Stein. Yes, sir; these properties are being compared on the same block.

Q This property is located about 75 feet east of the Jackson property.

Mr. Kalisch. Do you represent the Oschwalds?

Mr. Stein. No.

Mr. Kalisch. I don't know why we should go into the square foot of a property that is not represented.

Mr. Stein. We say that we have been unjustly discriminated against. The Jackson property is one we represent. It is assessed more than twice as much as the Oschwald property almost immediately adjoining it.

The Court. I will let it stand.

Q What is the square foot assessment on the Oschwald property? A $1.17.

Q And the front foot on Branford place? A $95.90.

Q Now, I call your attention to another block, block No. 60, lot 67, assessed to the Federal Real Estate Company at $2,500. This lot faces on Camfield court just east of Washington street. What is the square foot assessment on that lot? A Seventy-one cents per square foot.

Q And the front foot on Camfield court? A $65.77.

Q Compare that with the Osborne plot, in block 59, being lots 105 and 106, the corner of Branford place and Broad street, and assessed for $2,250. What is the square foot assessment? A What is that block, please?

Q Block 59, lots 105 and 106, the corner of Branford place and Broad street. A 28½ cents per square foot, $13.01 per front foot.

By the Court.

Q Which lot is that? A Branford place frontage being measured.

Q Which lot? A That is block 59, lots 105 and 106, the Osborne Realty Company.

By Mr. Stein.

Q You are now comparing these assessments with the plot of the Federal Real Estate Company, are you not? A Yes, sir.

Q Compare another lot with the property of the Federal Real Estate Company. Take the property of John Jackson, in the same block, namely, No. 59, lot No. 4, fronting on Maiden lane, and approximately the same distance east of Washington street as the lot of the Federal Real Estate Company, and assessed at $105. What is the square foot assessment? A 37.3 cents per square foot, $2.58 per front foot.

Q Now, take the property of the Prospect Improvement Company, on block 73. There are several lots on that block, are there not, that are assessed to that company? A Yes, sir.

Q Take lot No. 40 in that block. That lot is in the rear of lots fronting on Market street, is it not? A Yes, sir.

Q Fronting on the south side of Market street? A Yes, sir.

Q And it is assessed at $4,500? What is the square foot assessment? A 68 cents per square foot.

Q And the dimension which runs parallel, as nearly as that dimension can run parallel, to the Market street frontage, what would be the assessment per front foot along such frontage? A $67.17.

The Court. That would be on the northern frontage?

Mr. Stein. The northern frontage.

Q Now, the lots immediately north and abutting on that northern frontage of lot 40, namely, lots 36, 37 and 38, on the same block, which lots front on the south side of Market street, and which are assessed for $285, $250 and $235 respectively, making a total of $770 for the three lots. What is the square foot assessment there? A 9½ cents per square foot.

Q And the assessment per front foot? A $12.37.

Q Now, go back, please, to block No. 60, lot 67, assessed to the Federal Real Estate Company at $2,500. This lot has a frontage on Camfield court and the southern boundary line is the property of the estate of John D. Peddie. Compare it with the assessment on the property of the estate of John D. Peddie, being lot 65 in the same block, and assessed for $2,000. The southern boundary line of this lot is other property of the estate of John D. Peddie, is it not? A It is.

Q And this other property has a frontage on Branford place? A It has.

Q The other property referred to being lot 51 on block 60? A Yes.

Q What is the square foot assessment on the Peddie lot, namely, lot 63? A 65, is it not? Pardon me!

Q 65. I beg your pardon! A 71 cents per square foot.

Q And the Federal Real Estate lot next door is what? A The same.

Q 71 cents a square foot? A Yes, sir.

Q And what is the front foot assessment of the lot 65, the Peddie lot? A $56.74.

Q And the Federal Real Estate Company lot? A $65.77.

Q Has the lot of the Federal Real Estate Company any other access than that of Camfield court? A It has not.

Q Are you familiar, Mr. Paul, with any of the improvements on any of these lots? A To a certain degree.

Q Take the property of the Prospect Improvement Company, lots 36, 37 and 38, in block 40, which have been separately assessed. Do you know that property is developed?

Mr. Kalisch. I object.

The Court. What was the question?

Mr. Stein. How that property is developed with reference to the improvements on it.

The Court. What improvements were on it at the time of the assessment?

Mr. Stein. Yes.

The Court. I think you may answer that.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A One building on the Market street frontage, covering all three plots.

Mr. Kalisch. Which lots are they?

Mr. Stein. Lots 36, 37 and 38 on block 73.

Mr. Kalisch. Are they separately assessed?

Mr. Stein. Yes.

Mr. Kalisch. You represent them, do you?

Mr. Stein. Yes.

Q I call your attention to lots 31 and 39 in block 146, and assessed to the estate of Henry C. Miner, lot No. 39 being assessed for $85, which fronts on Market street, the north side, and lot 31 being assessed for $130, and fronts on Beaver street.

Mr. Kalisch. You represent them?

Mr. Stein. We do.

Q Do you know how that is improved? A That is the Newark Theatre, and there is one building covering the entire plot.

Q Have you made a calculation of the percentage of assessments against private owners under this present report and the percentage of assessments on the city? A On the total assessments?

Q Yes? A I have.

Q Have you the figures with you? A I haven't got the figures here, no, not with me.

Mr. Stein. I should like to reserve the right to offer testimony on that subject, unless, I think, Mr. Kalisch and I can get together on a stipulation, probably, on the percentages.

Cross examination by Mr. Kalisch.

Q Mr. Paul, I call your attention to block 73, lots 36, 37 and 38, concerning which you testified that there was one building covering the

three lots, which is owned by the Prospect Improvement Company. Do you know how many deeds cover their title to that property, to those three lots?

Mr. Stein. I object to the question if your Honor please.

The Court. What is the object of it?

Mr. Kalisch. Why, the object is to show that each one of these lots is a separate lot, and so held by the owner regardless of how they develop it for business purposes, and so taxed.

The Court. You may have the question answered.

Counsel for Richard C. Jenkinson, *et als.*, objectors, pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Do you know? A I do not.

Q Do you know how they appear on the tax map, whether as one property or three? A I do not.

Q And concerning lots 31 and 39, on block 146, which is the Henry C. Miner property, can you tell me how many deeds cover the title to that property as that title exists in the present owner? A I cannot.

Mr. Stein. Subject to the same objection.

The Court. Same ruling.

Q Do you know whether the tax maps of the City of Newark show that those two lots appear as one or two lots? A I do not.

Q Have you been in the Henry C. Miner property? Have you inspected it? A I have been in it very frequently.

Q Just in the theatre? A In the entire building.

Q Do you know whether the building was put up as one building or whether it represents two buildings connected? A I do not.

Q It is an L property that faces on Beaver street and the building part on Market street? A Yes, sir.

Q You don't know whether the part of the property which faces Beaver street was put up before or with the property that faces on Market street? A I do not.

Q Nor do you know whether the building—I will ask you the question. Do you know whether the building that covers lots 36, 7 and 8, on block 73, was put up at one time, or does it represent a combination of buildings put up at different times? A That is the Prospect property?

Q I don't know what you call it. It is three lots? A The front of that building is one building.

Q What lots does that cover? A The three lots.

Q Is there another building on there? A I don't know whether there is another one on the rear of it.

Q You didn't inspect that property? A I am only conversant with the front of the building on Market street.

Q You didn't go into the building? A I have been in the building several times.

Q Did you inspect the three lots, and all the property that was on those three lots? A I did not.

Q Take block 231. You say there that there is an average reduction of twenty-five per cent.

with the exception of lots 69 to 84. Is that right? A That is correct.

Q Which is from one-third to two-thirds reduction? A West of Broad street.

Q How did you arrive at that result? Did you compare the assessment on each lot under the new report with the assessment of each lot under the old report, or did you add all the assessments together on each lot and then divide? A In speaking of twenty-five per cent reduction I meant an average reduction or an approximate reduction of twenty-five per cent. on each individual property assessed.

Q And that you did by comparing the same lot as assessed in the new report with the assessment of the lot in the old report? A Yes, sir.

Q How many lots are there in that block, do you know? A I cannot tell you offhand without counting them. There are over 300 plots.

The Court. Where is this block?

Mr. Kalisch. Bounded by South Orange avenue, Stirling street and part of Springfield avenue and Howard street. It is the apex that runs into High street.

The Court. Apex of what?

Witness. Of Stirling street and South Orange avenue.

Mr. Kalisch. The apex of that block runs into High street.

The Court. It is west of High?

Mr. Kalisch. Yes.

Q Did you just take out the lots that were assessed? You took out merely the lots that were assessed? A I took every lot in the zone.

Q And made a comparison? A And made a comparison, and when I speak of a block I speak of every lot in the block.

Q So when you take an average of twenty-five per cent. in block 231 you took every lot in that block? A I did.

Q And there was an average reduction of twenty-five per cent.? A Yes, sir.

Q Have you reckoned up how many lots were reduced on an average of twenty-five per cent. of the entire 3,000? A I should say over fifty per cent. of them have been reduced twenty-five per cent.

Q Have you mentioned fifty per cent.? Does your testimony represent fifty per cent.? A I said there was a zone inside of which there was a reduction of twenty-five per cent., which zone is larger than the zone that is included.

Q Does that include all the rest, or is it mixed up all through the zone? A No, it covers a distinct particular area.

Q In some of these blocks you have testified to you have given us exceptions where the lots were not reduced twenty-five per cent., such as this one I mentioned; block 231 you excepted lots 69 to 84, which are fifteen lots that were not reduced twenty-five per cent., and in each one of those blocks you have given us pretty near—in each of them you have marked exceptions where they were not reduced, where the lots were not reduced twenty-five per cent., so that reduction was not confined to any particular area? A It was, decidedly.

Q How do you account for the exceptions? A If I may go down to that map a moment I will explain it to you. (Witness walks to map.) There was material reduction in this zone right here.

The Court. You better come back to the stand.

A (Witness returns to stand.) There were material reductions in that zone west of High street bounded by Springfield avenue and the diagonal street, Branford place. The apex of that was materially reduced. The western end of it was assessed or reduced on a basis of twenty-five per cent.

Q With the exceptions that you have made? A With the exceptions that I have made.

Q In that zone? A Yes. They are part of the zone which I have defined in my original discussion.

Q There was a portion there which referred to Broad street frontage. There was a zone that was reduced twenty-five per cent., as you call it. Do you recall any more Broad street frontage? A Very few Broad street frontages were reduced to twenty-five per cent.

Q Some of them? A Some of them, but very few, and they are included in my excepted zone.

Q Can you pick out a block, a part of which fronts on Broad street, that was reduced twenty-five per cent.? A The northernmost end on the west side of Broad street, the northernmost block on the west side of Broad street.

Mr. Stein. You mean north of Market street?

Witness. North of Market, and I believe the same holds good on the eastern side of Broad street on the northern end.

The Court. That would be the post office property?

Witness. The post office and the property directly opposite, the extreme end on

Broad street. The reductions were twenty-five per cent.

The Court. Was the canal the boundary?

Witness. The canal was the boundary.

Q When you say an average of twenty-five per cent. reduction what do you mean? How near would the reduction have to come to twenty-five per cent. for you to call it an average of twenty-five per cent. reduction? A I should say offhand from twenty-four to twenty-six per cent.

Q It would have to be within twenty-four and twenty-six per cent. in order for you to call it an average of twenty-five per cent.? A I think so.

Q Now, block 84, 85 and 86, there was, as you say, an average reduction of twenty-five per cent. with the exception of the Market street frontage; is that right? A That is correct.

Q That runs from Court House place to Plane street, that is east and west. Does that twenty-five per cent. reduction include the properties that open on Plane street, too? A It does.

Q Was there an average reduction there of twenty-five per cent.? A An average reduction of twenty-five per cent. of those properties fronting on Market street.

Q I mean those that front on Plane street. You say there was an average reduction? A On Plane street alone there was an average reduction of twenty-five per cent.

Q Have you got the assessments there from the old and the new? Just refer to that block.

The Court. 84, 85 and 86.

Mr. Kalisch. Take block 86, for instance, that fronts on Plane street.

Witness. Lot No. 18, originally assessed at $50 and now $38—twenty-five per cent. reduction.

Q Now, let me have 19? A Lot 19, originally $40, now $30—twenty-five per cent. reduction.

Q And take No. 20? A Lot No. 20, originally $40, now $30—twenty-five per cent, reduction.

Q Lot 21? A 21, originally $40, now $30—a twenty-five per cent. reduction.

Q 22? A 22 and 23, $85 originally, $65 now—practically a twenty-five per cent. reduction, or approximately a twenty-five per cent. reduction. It should be $64 correct—$64 and a fraction—making a round figure of $65.

Q Now, the other one is what? A 24?

Q Yes. A Assessed at $140 originally, now $105—a twenty-five per cent. reduction.

Q And what is the next one? A No. 26, assessed originally at $120, now $90—a twenty-five per cent reduction.

Q What is the next one? A 28, assessed originally at $75, now $57—a twenty-five per cent. reduction.

Q And the next one?

Mr. Smith. That is all there are.

Q One of them there was reduced from $85 to $65. Have you that one in mind, that you just spoke of? A 22 and 23.

Q Just what per cent. do you make that? A Just what per cent.?

Q Yes. A I can figure that easily by division.

Q Well, do. A It is practically—

Q Just see what it is. A All right. (Witness figures on paper.) 23, as near as you can get to it.

Q So that you would not include that in the twenty-five per cent reduction, would you? A Yes, I would; because it brought it to round figures. There were no fractions.

Q You said an average of twenty-five per cent. reduction was from twenty-four to twenty-six. Now, this is 23, so that should not bring that within the zone of twenty-five per cent., should it? A When I cover fifty lots in a block and find one with a difference of one dollar, or a one per cent. difference, I would include that in the average of the entire block.

Q Now, will you tell us how far each side of twenty-five per cent. you go in including a reduction in the twenty-five per cent. group? A You would come down to a figure—if your original assessment, say, were $7—

Q I am not asking you that; I am asking you just how far either side of the twenty-five per cent. would you go and still include the reduction within the twenty-five per cent. reduction? A I would not go further than what would ordinarily be normally a twenty-five per cent. reduction, or a variance of one per cent. either way.

Q Well, that is twenty-four per cent.—A Twenty-four or twenty-six. There may be an isolated case in a group of fifty or sixty lots, a whole block, where one assessment was twenty-three or twenty-seven per cent.

Q And then you would still say it was a twenty-five per cent. reduction? A I would say it was averaging twenty-five per cent., approximately; yes.

Q And if it happened to be twenty-two, you would make it a twenty-five per cent. reduction? A If there was one in fifty lots; yes, sir.

Q If there was a twenty-five per cent. reduction of these particular two lots, that would have made the assessments how much? Have you reckoned that out? A Which two lots, those 85—

Q Yes. How much would it have been assessed for? A 22 and 23?

Q Yes. A It would have been assessed at $63.75, and it was assessed at $65, a difference of $1.25.

Q You have not any particular rule which keeps you within certain bounds in reckoning the twenty-five per cent. reduction, have you? A Why, just as I explained, the difference between twenty-four and twenty-six per cent., except in such cases where the fraction of a dollar may bring it up to thirty per cent., as I started to illustrate before. If an assessment were $9 originally, you cannot take twenty-five per cent. and give a round figure of dollars as an answer; you must either deduct $2 or $3.

Q You said something a moment ago about the number of properties having some bearing upon what you would consider twenty-five per cent., mentioning one or two in a block of fifty as an illustration. Have you any number of lots that you consider in making these calculations which would govern you in determining what constituted a twenty-five per cent. reduction? A If there was a marked difference in going over a block and calculating the difference, or reductions, in each lot, if in that block I found one single lot where the variance was greater than 24 or 26 per cent. in all these bounds, and not

unreasonably beyond that, I should include that as a twenty-five per cent. reduction, as I try to illustrate with a $9 original assessment. Making a twenty-five per cent. reduction in that case is impossible, and bring it out in round dollars. It must be either a reduction of one or two dollars. Your assessment must then be $6 or $7 on the basis of twenty-five per cent. general reduction, no fractions being made in this case.

Re-direct examination by Mr. Stein.

Q Is there some error that you want to correct, Mr. Paul, with regard to a reference to a particular block number? A In the question that you put to me you asked me regarding a piece of property, and described it as block 59, when it was 57. Block 57 crosses Branford place and runs down to William street right along Broad street. You called it 59, simply changing the block 59 to 57.

The Court. Did you get confused about the lots?

Mr. Stein. The particular lot numbers were—

Witness. It was all correct, except that, which was an error on the part of Mr. Stein, calling it 59 instead of 57.

Q In speaking of the property of the Osborne Realty Company, being lots 105 and 106 on block 59, you say, Mr. Paul, an error was made in the question as to the block number? A I did.

Q I referred to it as block 57? A You referred to it as block 59, and it is 57, unless I am in error—57 going away across.

Q I referred to it as block 59? A That is right.

Q And it should have been 57? A That is correct.

Q That is the property on the southwest corner of Branford place and Broad street? A Yes, sir.

Q And it was assessed to the Osborne Realty Company by this report, $2,250? A Yes, sir.

JAMES A. BERRY, sworn in behalf of Richard C. Jenkinson, *et als.*, objectors.

Direct examination by Mr. Stein.

Q Mr. Berry, I believe you are engaged in the real estate business? A Yes, sir.

Q And how long have you been engaged in that business? A About twenty-five years.

Q In this city? A In this city.

Q And you have had occasion to sell and lease and buy various parcels of real estate in this city? A Yes, sir.

Q And particularly in the zone of this assessment? A I have dealings all over the city; I have had several transactions in this section.

Q Have you had occasion to qualify as a real estate expert in any legal proceeding?

Mr. Kalisch. I will admit Mr. Berry's qualifications.

A Quite frequently.

Q Are you familiar, Mr. Berry, with the zone of the assessment covered by the report of the commissioners assessing benefits for the opening and widening of Branford place? A I believe so.

Q You have gone over the map, have you, showing the various properties? A Yes, sir.

Q And are familiar with the properties themselves? A I believe I am.

Q And you consider yourself reasonably familiar with the character and development of real estate values in the heart of the city, do you? A I have tried to keep abreast with what is happening in my line.

Q Do you know just what property was taken for the opening and the widening of Branford place? A Yes, sir.

Q Roughly speaking? A Yes, sir.

Q Where was it? A It extended from Halsey street at its easterly line to the intersection of Springfield avenue, just above Shipman street, easterly from High street.

Q And how much of that was taken for the widening of Branford place? A Why, practically all of it, excepting that portion of it lying along the line of Camfield street, between Halsey and Washington streets.

Q Was that the extent of Camfield street? A Camfield street now is embraced within the lines of Branford place.

Q Do you know approximately the size and width and length of Camfield street before the opening? A Yes; it extended but for the one block between Halsey street and Washington street, and was a narrow street, comparatively speaking.

Q It was open to traffic, was it? A Oh, yes, indeed.

Q Can you give us some idea as to the width of it? A Why, not precisely, but I should think that it was approximately 32 to 36 feet, I should think.

Q And the addition that was made to the street was made to the north side of Camfield street, was it not? A Yes, sir.

Q All the rest of the property that was taken for the opening of Branford place was taken west of Washington street? A Yes, sir.

Q Did you have any special employment in connection with the taking of this property by the city? A Yes, sir.

Mr. Kalisch. I object to that.

The Court. Well, the question itself is harmless, and it has been answered. I will let it stand.

Q In what respect, Mr. Berry?

Objected to.

A I was appraiser.

The Court. I will allow it.

Q You were an appraiser for whom? A For the city.

Q For what purpose? A Of determining the land values.

Q What land values? A To be taken in connection with the opening of Branford place and the widening of Camfield street.

Q Have you given any consideration, Mr. Berry, to the question of the effect of the opening and widening of Branford place on the values of real estate in the vicinity of the opening and widening? A I have.

Q And have you given any consideration to the question of the distinction between what are known as general benefits and what are known as peculiar benefits due to such an improvement? A I think I know the difference; yes, sir.

Q Will you give us your notion as to the distinction between general benefits and peculiar benefits acquired by an opening of a new street?

Mr. Kalisch. I object to that.

The Court. State your ground.

Mr. Kalisch. I understand that this witness is called as a real estate expert, to give his opinion upon the values of property, but I did not know that he was called as an expert to explain a legal term, such as "peculiar benefits." I do not know just what bearing that would have upon Mr. Berry's testimony as an expert in dealing with the value of real estate.

The Court. I suppose Mr. Berry will be asked his opinion as to whether these assessments were too large or too small, and one of the elements in the case is, what is peculiar benefit? That must enter into the determination of any particular assessment as to its size.

Mr. Kalisch. That is just the question I would object to if it were put. If Mr. Berry is asked the question whether he thought the benefits were too large or too small, I should object to that question on the ground that that is a question for the Court to determine; but whether or not the effect of the opening enhanced the market value of the property, that, of course, is a question that is perfectly proper, but whether the benefit is too large or too small, I think, is an entirely different proposition, and that is why I object to this question.

The Court. Well, I will not prejudice anything. I will allow this question.

A My understanding of the peculiar benefit is the improvement in the market value of a piece of property, that additional value, if you please, directly traceable to the improvement whereby I can sell it and maybe make the cost

of the improvement or more or can rent that property to better advantage.

Q What about the general benefit? A Well, that is a different question. We all may partake of the general benefit in a community without improving our property values necessarily. It may be a convenience or comfort or something else to us to ease things up as we go around in the sections of the city and yet every man in the city might get some of that benefit without paying for it.

Q So the term "general benefit" is broader or narrower? A It is much broader.

Q More than peculiar benefit? A Very much broader indeed.

Q And general benefits in your opinion would apply to property owners as well as to the members generally of the community? A Yes, might be, would be.

Q And peculiar benefits apply to whom? A Only to those directly concerned having property additions right in connection with the improvement.

By the Court.

Q Really applies to the land and not to the individuals? A To the land, yes, sir, and not the individual.

By Mr. Stein.

Q Are you familiar with the immediate locality in which Branford place has been opened and widened before the improvement took place? A Yes, sir.

Q And you have stated that peculiar benefits that are conferred by such an opening are covered as I understand you by the enhanced market

value of any particular piece of property as a result of the improvement? A That is my belief.

Q What elements, Mr. Berry, do you consider of improvements in determining whether a piece of property in the neighborhood of the improvement has been increased in value? A I believe them to be several in number, the improvements to be several in number. For example, I think the traffic question enters into it very largely, the diversion of traffic, if you please. I think the adaptability for certain uses, availability, proximity perhaps, probably, and there may be other reasons I don't think of. Size of building maybe would enter into it.

Q Accessibility have any thing to do with it? A Oh, yes, I think it would.

Q What about the element the uses to which the new street is likely to be put with regard to any benefit upon other streets of similar use? A It would be a competitor.

Q In what cases? A A street for example, running parallel with it and in close proximity would perhaps be affected.

Q You mean beneficial or otherwise? A Well, I should think more probably otherwise, detrimentally affect it if it were close.

Q In determining the question of benefits, peculiar benefits conferred, would former value of the neighborhood property have anything to do in your mind with the question of the increased value? A I should think it would have very much to do with it.

Q How about the question of the location of the improvements as to whether it was at the head of a hill or the foot of a hill, in the heart of the city or otherwise as relating to increased

value of neighboring property or affecting the value of neighboring property? A If I understand you correctly, Mr. Stein, I would say this, that at the end of such a thoroughfare it would probably be enhanced more than it would at some intervening spot, generally speaking. I don't know whether I understand your question correctly, but that is my interpretation of it.

Q Would the general typography of the country, the grading of it, whether it was a hill have anything to do with it? A Indeed it would. Property lying along a good level street would be worth more than property on a hillside.

Q Would the general trend of business in any particular direction as already established in any community have anything to do with the question of the increased value or otherwise? A I think it would.

Q You have spoken of traffic as being an element in determining the value, diversion of traffic to the street and from some other street? A Yes, sir.

Q To the new street and from some other street? A Yes, sir.

Q Would it make any difference whether the street from which the traffic was diverted was a business thoroughfare or a residential thoroughfare? A I think so. In a residential neighborhood you would be grateful if you took traffic away from it. In a business street you would want all of it that you could take care of, I think.

Q Have you in measuring peculiar benefits conferred on property, would you take into consideration also the bounds and shape of the property said to be affected? A Yes, sir.

Q Come back again for the moment to the question of traffic. So that if by the opening of

the new street traffic were diverted from a business street into the new street what would you say in regard to the effect of the opening on the value of the property on that business street? A If you mean the effect of the value upon the new street?

Q No, the effect of the value first upon the old street from which the traffic had been diverted? A It would have an injurious effect upon the values of a business street.

Q What effect would it have upon the values in the new street that was opened? A It would enhance values there necessarily.

Q Now, in fixing the amount of benefits that you consider the property in any community enjoyed by reason of the opening, peculiar benefits only, of course, at what time would you consider these benefits? A Immediately at that time, at the opening.

Q Just what do you mean by that? A The city, for example, by opening a street—we know what the proceeding is—they determine upon the lines of the new street and buy a property and when they do buy that property that is an opened street legally. That is my understanding of it. Then along later they proceed physically to open it.

Q In considering the physical opening do you consider that as a certainty which is bound to follow the legal, technical opening? A Why, of course, that is the purpose the city has in mind in buying the property, to follow it up by opening the street.

Q So that in considering the question of benefits conferred you consider it as of which time, the technical legal opening or the time when the opening is physically, the physical opening. A

They really both occur at the same time. The city no doubt starts to do the work immediately or should. I don't know of any case where they haven't, so that it all really occurs about the same time.

Q You consider those two times as practically being emerged? A About as closely as one can follow the other, yes, sir.

Q So that in determining the benefits or the detriment that may follow from an opening you consider it both from the standpoint of the technical, legal opening and the standpoint of the practical use of it? A I think they may be tied together, to a certain degree, yes, sir, very closely.

Q Now, bearing that in mind I will ask you whether you have given any consideration to the question of the effect on property located on Springfield avenue, between Shipman street where it joins Market street and on Market street taking the south side of it down as far as Broad street by reason of the opening and widening of Branford place? A I have given that some thought.

Q Is it your opinion that as a result of that opening and widening that traffic along Springfield avenue and Market street at the points I have indicated would be increased or decreased? A Traffic along Springfield avenue and Market street has been decreased.

Q You have enumerated a number of elements in going into consideration of the question of value and have mentioned traffic as one of them? A Yes, sir.

Q Would the question of traffic enter into a consideration of the increase or decrease in market value of Springfield avenue and Market

street properties? A I think the diversion of traffic from Springfield avenue and Market street to the new street has grievously hurt Springfield avenue and also Market street.

Q For example in what respect and from what places has traffic been diverted from Springfield avenue and Market street into Branford place? A Westerly from High street, South Orange avenue, Springfield avenue, any of the other streets, including Stirling, Thirteenth avenue, Breintnall place, probably.

Q You are speaking now of the traffic eastward? A I am speaking of eastbound traffic, yes, sir.

Q What about the westbound traffic, coming up from Broad street up to Branford place? A The effect of that upon Market street would be injurious.

Q Now, are there any elements of benefit that you consider that accrue to Market street and Springfield avenue as a result of the opening of Branford place? A I do not think so.

Q So that you consider the net result of that opening is a detriment? A Direct injury to Springfield avenue and to Market street.

Q Do you base that conclusion on any other consideration than the consideration the deflection of traffic? A You have grouped there an additional business zone for example and probably have done so at the expense of Market street and Springfield avenue, to a certain degree. The business of Market street now, for example, could stand the sustaining of no loss, and yet this street, parallel with Market street, in my judgment, will compel it to sustain a still further loss. There will not be business sufficient to go around on both streets with benefit to Market street.

Q What were the business conditions generally on Market street at the time of this opening? A I am not certain that I understand it, but I will answer this way: Market street, of course, as we know, is a mercantile street and business conditions were none too good.

Q Do you know anything about the properties —how well or how poorly they were occupied? A Yes; I am reasonably well posted on occupancies there.

Q Will you give us the benefit of your information? A Yes; there are quite a few that were unoccupied and a great many of them were rather aged buildings; of course, I am not sure that I quite understand the question.

Q Well, you have used the word "competition," I believe. Just in what respect would the question of competition— A Take Market street, for example. It is worth a certain figure per foot, we will assume. If business can be transacted nearby on property that is cheaper, the trend would be to that cheaper street, all other things being equal, and that would hurt Market street. Branford place is a street of lower value.

Q You don't consider that Market street will lose all of its business value by reason of the opening of Branford place? A No; Market street is an eminent and conspicuous place. There are places on that street that could not be taken away, but there are places that could be taken away, and by opening up Branford place you have reduced values on Market street.

Q Can you give us an example of what you mean? A Yes, quite so. Supposing a merchant were engaged in the furniture business at a rental of property based upon a certain price

or value of rent, such a merchant with an established business of furniture—I picked that out at random—moved to Branford place and found values there and rentals very much lower, now that would take something from Market street.

Q Have you told us what you consider the relationship is between values on such a thoroughfare as Market street and traffic, to what extent is property on Market street increased or decreased by traffic, or let me put the question in another way. What, in your opinion, has adduced trade to make of Market street the valuable street that it is? A There are one or two more reasons. One is it is a fine, wide street. Broad street has something to do with the value of Market street. The two corners there being, in my judgment, not only the chief corners in the city, but in the county and probably in the State. I think that has helped Market street to a certain degree. It is a very ancient thoroughfore, and it had a right of way for many years.

Q What has produced the value of the property? A Traffic chiefly.

Q What kind of business is being conducted on Market street, wholesale or retail? A Oh, retail mercantile business.

Q In speaking of the deflection of traffic from Market street, what kind of traffic do you refer to, pedestrian, vehicular or both? A Both.

Q You think both are deflected as a result of the opening? A I have no doubt of it.

Q Which has the greater bearing on the value, traffic on retail streets or traffic on wholesale streets, wholesale business streets? A I

think traffic on retail streets is, of course, much more desirable than traffic in wholesale neighborhoods.

Q And if you increase the traffic of a retail street it has what effect on it? A Very beneficial effect.

Q And if you decrease traffic— A It works the opposite, it injures it.

Adjourned until tomorrow morning, December 2, 1915, at ten o'clock.

FIFTH DAY.

Thursday, December 2, 1915.

Direct examination (continued) by Mr. Stein.

Q Mr. Berry, I believe we were discussing the effect of the opening on traffic on Market street. Before this opening took place, or was made, what was the condition of traffic on Market street, near Broad street? A Market street is, and has been, a very lively thoroughfare; traffic has always been brisk on it.

Q And what about the traffic at the corner of Broad and Market streets? A That is, generally speaking, extraordinary.

Q Large, I suppose you mean? A I do, indeed.

Q What effect do you consider that the opening had on traffic at Broad and Market streets?

The Court. What effect, if any, have you observed? You are not asking the witness for a matter of opinion; you are asking him for a matter of fact, as far as his observation enables him to speak.

A As far as I have been able to observe it, I think there has been considerable diversion of traffic from Market street to Branford place.

Q Which way? A Southerly; on Branford place, I meant, more particularly coming in an easterly direction.

Q You mean traffic coming from the western part of the city? A Yes, sir; it comes down Branford place, where heretofore, in my opinion, it all had to come down Market street.

Q Do you consider that traffic has been relieved, therefore, at the corner of Broad and Market streets?

The Court. That again is a matter of observation, and not of opinion.

Mr. Stein. I meant from his observation, of course.

The Court. I do not think we want the witness's inferences, but his observations. If the witness has observed any alterations in the traffic at that point it is very proper for him to state it.

Mr. Stein. From your observation, Mr. Berry.

Mr. Kalisch. I do not suppose he is testifying now as an expert.

The Court. Oh, no; just like any other citizen.

A I have observed that traffic has increased at Branford place and has been somewhat reduced at the Four Corners. The city has stationed a traffic officer, by the way, at Branford place during the last couple of weeks, I think.

Q Do you consider that the relief of traffic at Broad and Market streets has worked a detriment or a benefit to properties on Market street,

west of Broad street? A I think any reduction in traffic there effects an injury to Market street.

Q (*By Mr. Kalisch.*) You say it effects an injury? A I do.

Q (*By Mr. Stein.*) What benefit, speaking generally now, do you consider, if any benefit, has been worked by reason of the relief of traffic at those Four Corners? A No benefit has been effected to the property at the Four Corners by reason of a reduction in traffic, because it is frequently transient—largely transient—and the streets were capable of taking care of that traffic. Traffic is, to a large degree, what retail mercantile life thrives upon, to my way of thinking, and inasmuch as, as I say, the streets could take care of that traffic, if it were reduced, it is my view that the merchants and the property were injured thereby.

Q What effect did this relief have upon the city at large? A I think it was a benefit, generally speaking.

Q Will you specify in detail in what respect? A Yes. I think that access to the center of the city, for example, from the westerly side has been made much easier. Men having vehicles, for example, they would prefer to come down that wide street, with no tracks thereon, and those going in a southerly direction in our city, I think, would prefer it beyond a doubt. I think the same rule applies to a certain extent with pedestrian traffic.

Q Those benefits that you have now spoken of, would you consider them general in their nature or peculiar to any given section?

Mr. Kalisch. I object to that.

The Court. On what grounds?

Mr. Kalisch. I suppose what constitutes benefits is a matter of law. Mr. Berry is undoubtedly a real estate expert, but whether he can say what is a peculiar benefit, in the sense that we expect to understand it, I am not quite so sure about that. I do not think he is qualified to say that. I think that is a matter for your Honor to determine.

The Court. Undoubtedly it is a matter of opinion, but it is a matter as to which any intelligent citizen may be asked to express an opinion.

Mr. Kalisch. I think it is a legal question rather than a fact question.

A I think they are more general than peculiar.

Q Would they, for example, apply as well to persons and owners of property on sections west of Bergen street as to persons and property west of Belmont avenue? A I think they would.

Q And in the same way, to what extent would these general benefits, as you have referred to them, extend with reference to the opening, how far west? A I think the general benefits would extend very far west; I would almost say to the extreme westerly side of our city. Talking in a general way, for example, a person living, say, on Thirteenth avenue at Twelfth street, where the Fairmount Cemetery crosses—I think he would be able to avail himself of the advantages of Branford place, if he were bound in a southerly and easterly direction, for example. The same thing would hold good with reference to anybody resident at the city line, if you please, on South Orange avenue, or on any

street crossing that avenue. Others might be mentioned similarly.

Q From what point westerly of the opening would you consider that these general benefits which were not peculiar in their nature inure to the benefit of property owners and public generally?

The Court. Has not that question been answered? I understood Mr. Berry to say it would go nearly to the city line.

Mr. Stein. The question now asked is from what point west of the opening would these general benefits begin. He has shown the outside limits of these benefits as they extended westerly to the zone indicated.

Q At what point west of the opening do these general benefits begin to proceed westerly? A I might suggest if you mean how far easterly do the general benefits extend from the city line. Perhaps that would clarify it.

Q I think not. Eliminating now for the moment the territory west of the opening, if there is such territory, that has enjoyed only the peculiar benefits. At what point west of the opening would you say that the general benefits will have accrued? A I should think general benefits would commence really at a slight distance westerly from the corners of High street, maybe a hundred, a hundred and fifty feet.

By the Court.

Q Do you think that it is possible that a piece of land may be peculiarly benefited and also the owners of the land may be generally benefited at the same time? A I think that is possible; yes, sir.

Q It is very natural to reach such a conclusion, isn't it? A I think it is.

By Mr. Stein.

Q The converse of that proposition, however, isn't true? A It may be the other way, likewise.

By the Court.

Q What do you mean by the other way? A I mean this, that property here on Springfield avenue, for example, which is westerly from High street, may be injured by the opening of Branford place, as it is parallel and close to the center of the city and the trend of business is towards the center and it might take from such an owner of business at his place. That is what I meant by injury.

By Mr. Stein.

Q Is a third view of the matter possible, also, that a person may have received general benefits merely and no peculiar benefits and yet no special injury? A Oh, yes; I think so.

Q And that is true, is it not, of the large body of population of property owners in the city? A That is my view of it.

Mr. Kalisch. Has he mentioned two other views?

Mr. Stein. I think so.

Mr. Kalisch. I would like to get those three.

Q I will ask the witness to state the three points of view from which he considers these benefits? A That is peculiar and general?

Q Yes. A My view is that westerly from High street the benefits are general. My view

is that there may be benefits attaching as well as injuries inflicted.

Q You mean special or general benefits? A I mean general, and I am not certain now that I understand what the other question is.

By Mr. Kalisch.

Q Mr. Stein said something about the third view you took. A Yes, sir.

Q And I concluded you had given two other views, and I would like to get the two of them if I can.

By Mr. Stein.

Q Then there is the peculiar benefits, is there not, which inure, which the property owner acquires, the benefits also?

The Court. A man may enjoy a general benefit, a man may enjoy a special benefit or he may enjoy a general benefit and suffer some injury, in which case when you balance the benefit against the injury it eliminates one side of the problem.

Q At the time of the opening of this street was there any demand for additional business sites on Market street or in the center of the city? A I should not think so.

Q Is it your opinion, Mr. Berry, that it is possible to determine what peculiar benefits any peculiar piece of property has enjoyed by reason of an opening without first making a determination as to what the particular property was worth before the opening and then making another determination as to what the property was worth after?

Mr. Kalisch. I object to that.

The Court. I will allow it.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A It is my view that you could not assess for peculiar benefits unless you had first established the basic value of the property.

Q You mean market value? A I mean when I say value, market value.

Q And then having established that at what time? A The time of the opening.

Q With what then would you compare that? A With the total cost.

Q I am speaking of the value of the property before the opening? A The value before the opening?

Q Yes. With what other value would you compare that property for the purpose of determining what benefits had accrued? Do you understand the question? A I am not certain that I do.

By the Court.

Q The value before and the value afterwards? A If that is the meaning of it, it is this: such assessment for peculiar benefits would lead to add that much to the value prior to the opening in market value.

Q Then it would be necessary to establish what the value was before and what the value was after? A Yes, sir.

Q I call your attention to property No. 100 Market street being block 60 and lot 19 and is assessed to Nathan Hammerschlag. You might refer to this blueprint? A I know the Hammerschlag property.

Q That property has a frontage of 20 feet, has it not? A Yes, sir; 20 feet.

Q And a depth of 100 feet? A Yes, it would be about 100 feet.

By the Court.

Q Which side of the street is that on? A On the southerly side of Market street.

By Mr. Stein.

Q Southerly side of Market street, between Washington street and Halsey. It has a depth of about 100 feet? A I have answered it. I think so, about 100 feet.

Q And is assessed at $225. That would make an assessment at the rate per front foot of $10 and a fraction? A $11 if the frontage be 20 feet, and a fraction.

Q What would you consider the value of that property; of the land before the opening? A Approximately $4,000 per foot frontage.

Q You consider that property has an increase in market value since the opening and as the result of it? A I do not.

Q What you said, Mr. Berry, with regard to the failure of Branford place to increase the market value of the Hammerschlag property, does that apply equally well to all the other properties outlined in red on block 60 and facing on the south side of Market street? A I think it does. I do not think any property on that block, the southerly side of Market, between Washington and Halsey streets has been benefited by the opening of Branford place.

Q Is there any doubt about that in your mind? A My judgment is that it hurt Market street at that spot, along with the others, and that it has not benefited it.

Q You consider that the general benefits that these properties acquired have overbalanced the detriment?

The Court. Well, we are not considering detriment.

Q Take, then, block No. 73 which is the block between Plane street and Washington street.

The Court. On what street?

Witness. On the southerly side of Market street.

Q I call your attention to the lot No. 35, assessed to Joseph Isenberg for $285. A (Referring to map). Yes, sir; I have it before me.

Q Do you consider that that lot has been benefited by the opening of Branford place peculiarly? A I do not believe that that property has been enhanced peculiarly by that opening.

Q And what do you consider was the effect on that lot of the opening of the street? A I think that, as I said in the other case, that that property has been injured.

Q And is the injury that you speak of all due to the deflection of traffic? A I believe that is the real cause of it.

Q I call your attention to lot No. 40 in that block, No. 73, being the property assessed to the Prospect Improvement Company for $4,500 (indicating on map), this property being in the rear of other lots assessed to the Prospect Improvement Company, numbered 36, 37 and 38 in that block, the three lots facing on the south side of Market street, these lots being assessed as follows: lot 36 for $285, lot 37 for $250, lot 38 for $235. Will you compare the assessments on the

three lots that front on Market street with the lot immediately in the rear, namely, lot 40?

Mr. Kalisch. Your Honor, I shall object to that. I do not see how this witness can be called upon to compare assessments.

The Court. (After further argument). I do not want to interrupt you, Mr. Stein, but I think we will save a little time by allowing me to say this. This may be a question of some importance; it may arise again, and as I would like more opportunity to consider it, I will take the testimony, subject to Mr. Kalisch's objection, and will give it further attention. I should be glad to have the assistance of counsel in doing so. If I find that the law as it seems to be laid down by Mr. Justice Reed, in the Righter case, is to be followed, then it would seem that the comparisons should be disregarded. I will not undertake definitely to express any conclusion now. I will reserve my opinion, saving the point to Mr. Kalisch by giving him an exception.

Counsel for respondent prays an exception to this ruling of the Court.

(Question read).

The Court. That question is objected to on the ground that such a comparison is not a legitimate mode of criticism of assessment.

Mr. Kalisch. And such a comparison is entirely immaterial. It is immaterial what comparison may be between two lots.

A No. 40 on block 73 Prospect Building Company appeared to be assessed about seven times as much or more per square foot as the plots Nos. 36, 37 and 38 also owned by the Prospect Improvement Company.

James A. Berry, direct.

By the Court.

Q You understand the assessment to be $4,500? A $4,500 on lot No. 40 and approximately $700 on the three plots 36, 37 and 38.

Q More than that, isn't it? $285 on lot 36, $250 on lot 37, $235 on lot 38? A That would be $773 I think. Approximately $800, but the dimensions of the plots marked 36, 37 and 38 taken in comparison with the dimensions of the plot No. 40 indicate to me that the plot 40 is assessed at about seven times as much per square foot or pretty nearly that.

By Mr. Stein.

Q Is lot No. 40 as advantageous as lots 36, 37 and 38 with reference to the opening?

Mr. Kalisch. I object to the comparison. I suppose it is just as well for me to have a general objection.

The Court. Yes, take a general objection to the whole comparison.

A By no means.

By the Court.

Q I understand you to say lot No. 40 is not so well situated as the others? A That is the answer. 40 as I see it has no advantage at all.

Q What are the territorial areas of lot 40 and the other three lots taken as a whole? A It looks to me, I think, as though the Market street frontage would be about 65 or 66 feet and in depth approximately 150—60 perhaps and the other building in my judgment would not contain more than two-thirds of the solid contents of the first named building.

Q Lot 40 is about two-thirds as much as the others? A I should think it would not exceed

that. It could easily be calculated but there are no figures here.

By Mr. Stein.

Q Now, I will ask you an altogether different kind of question. Without making any comparison whatever of lot 40 and the other lots 36, 37 and 38, taking lot 40 all by itself; do you consider that lot 40 has been benefited by this opening? A I cannot see that lot 40 has been peculiarly benefited by this opening.

Q Will you give us the reasons for it? A I cannot see where it can partake of the benefits accruing from the opening. It has no frontage on it, no means of access.

Q Lots 36, 37 and 38 are immediately to the north of it, are they not? A Yes, sir.

Q And lots 23, 24, 25 and 26 are immediately to the west of it, is that not so? A 23. The figures are somewhat vague or indistinct here. I presume that is the Plane street frontage?

Q Yes. A Yes, sir.

Q And is bounded on the east by lots 39 and 50? A Yes, sir.

Q And is bounded on the south by a strip of land assessed to the estate of Joseph Neu and designated as lot 54? A I happen to know the Neu estate does not bound it on the south. I don't see the figures.

Q Those figures you will find right close to the Washington street side? A Yes, sir. I am familiar with the property and I know the Neu estate. It is bounded on the south by the property of the Prospect Improvement Company.

Q Will you state your reason why you consider this lot, No. 40, has not been benefited? A My view is that the property on Branford place

being owned by the Neu estate prevents the property in the rear which has no access to Branford place from partaking of any peculiar benefit by reason of that opening.

Q Are there any of the lots fronting on Market street, south side of Market street, between Plane and Washington in block 73 and outlined in red, in your opinion, peculiarly benefited by the opening? A I do not think so.

Q Going then to block No. 57 which is the block bounded by Halsey street and Broad street on the south side of Market, I call your attention to lot 56 in block 57 assessed to Gottfried Krueger for $195. What is your opinion as to whether that lot has been peculiarly benefited by the opening? A I do not believe that that lot has been peculiarly benefited.

Q I don't want to repeat my questions as to reasons for all of these lots on the south side of Market street so I will ask you a general question whether the reason you have given as to why you believe that the lots fronting on the south side of Market street, that I have already specifically pointed out, apply as well to lot No. 56 in block 57? A I think the reason I have given will hold good there.

Q Is the same thing true of all the other lots marked in red facing on the south side of Market street in block 57? A I believe that to be true.

Q I will direct your attention now to block 59 located on the south side of Branford place, bounded by Washington and Halsey streets and call your attention to lots 23 and 24 assessed to Bridget Jackson for $5,070 and $5,065 respectively and ask you to compare those lots with the lots of Nicholas Weber in block 75, two blocks above, being lots 32 and 33, 7 and 8.

Mr. Kalisch. I object to that upon the ground stated as before and also upon the further ground that those lots are not represented by Mr. Stein and Mr. Smith.

Mr. Stein. The Jackson lots are.

Mr. Kalisch. No, I mean the two that you are comparing the Jackson lots with.

(Argument followed).

The Court. I think I better take the same course as I did with the other question. I will receive the testimony subject to Mr. Kalisch's objection and subject to striking it out if I conclude it is not going to be useful or legal.

Q The Weber lots are assessed at a total of $7,250, are they not? A Yes, sir.

Q And the Jackson lots are assessed at a total of $10,135? A Yes, sir.

Q What is the frontage of the Weber lots on Branford place? A Approximately 155 feet, I think.

Q Those lots run right through from Arlington street to Plane street, do they not? A They run through.

Q And what is the frontage of those lots on Arlington street? A I cannot see very distinctly. It appears to be 40 odd feet, the total of the two—27 and 14 and a fraction.

By the Court.

Q You are speaking of the Weber lots now? A Yes, sir. The frontage on Arlington street of the Weber lots, Nos. 7 and 8, appears to be about 41 and a fraction feet, and on Plane street about 44 feet and a fraction, so that it averages about—

James A. Berry, direct.

Q What is the Arlington street front? A The Arlington street front appears to be about 41 and a fraction feet.

Q 41, and the other was 44, on Plane street? A Yes, sir, approximately. So that the average would be about 43 by 155, and, roughly calculated, would contain about 6,600 square feet, I should think.

Q (*By Mr. Kalisch.*) The Weber property? A Yes, sir. And the assessment, therefore, would figure up approximately $1 and a small fraction per square foot.

By Mr. Stein.

Q And how much per front foot on Branford place? A About $47 or $48, I should think, per foot frontage on Branford place for its depth.

Q Now, take the Jackson lots, the frontage on Branford place. What frontage do you find those lots to have? A They appear to have 50 feet frontage.

Q Each or together? A The total of the two lots together appears to be about 50 feet.

Q (*By the Court*). You are speaking of the Jackson lots now? A The Jackson lots; yes, sir.

By Mr. Stein.

Q And the depth? A 90 feet or thereabouts in depth. The solid contents would be about 4,500 square feet. It is assessed for $10,135 total, or about $2.50, perhaps, a square foot.

Q And per running foot on Branford place? A About a little over $200—let us see—$200 per foot frontage.

Q I take it that you consider that both the Jackson lots and the Weber lots have been

peculiarly benefited by the opening and widening of Branford place? A Yes, sir.

Q Which, in your opinion, have been benefited more? A The Weber property.

Q And will you state why? A Yes, sir. The Jackson property already had frontage, prior to the opening of Branford place and its widening, on old Camfield street. The Weber property had been interior land until the opening, when it became frontage upon Branford place.

Q What various means of egress and ingress did the Jackson property have before the opening? Refer to your map. A (Referring to map). By reason of its frontage on Camfield street, it was accessible both from Washington and Halsey streets, between which two streets Camfield street ran, and into Branford place, as it originally had been, easterly from Halsey street; it was practically connected.

By the Court.

Q The Weber property is $7,250, is it not? A Yes, sir.

Q And the other is $10,000? A $10,135.

By Mr. Stein.

Q What about the access that the Weber property had before the opening? A The Weber property fronted both on Plane street and on Arlington street, and its only access elsewhere was northerly to Market street or southerly to William street.

Q Now, take the property of the Federal Real Estate Company, which you will find in block 60, lot 67. A (Referring to map). Yes, sir; I find it.

Q That is located on the block bounded by the east side of Washington street, the south side of Market street, Halsey and Bank streets. Compare it with the lot immediately adjoining it on the west, being lot No. 63 in the same block, assessed to the estate of John D. Peddie, $2,000. A Excuse me! I think that looks to me like lot No. 65.

Q 65; you are right.

The Court. Is that a lot the assessment on which is objected to?

Mr. Stein. Both lots are objected to, the lot of the Federal Real Estate Company being objected to by us, and Mr. Prout, I think, represents the Peddie property.

Q The assessment of the Federal Real Estate Company is $2,500, is it not? A $2,500; yes, sir.

Q On what street do those two lots front? A Camfield court.

Q How wide is Camfield court? A It is not stated here exactly, but I know this court, and I should think it is pretty nearly, if not quite, 20 feet.

Q How long is that court, where does it begin? A Let me see. (Referring to map). I should think approximately 300 feet.

Q Running east from Washington? A Running easterly from Washington street.

Q And then it comes to a dead end, does it not? A It comes to a dead end; yes, sir.

Q *(By the Court).* What is the assessment on lot 65? A $2,000.

By Mr. Stein.

Q What number of lineal feet frontage has the land of the Federal Real Estate Company? A 44 feet.

James A. Berry, direct.

Q And the Peddie lot? A 35 and a fraction feet.

Q Bearing in mind, Mr. Berry, that the Peddie property adjoins immediately on the north other property of the estate of John D. Peddie, being lot 51; that this other property has a long frontage on Branford place— That is so, is it not? A The Peddie property fronts for a great distance on Branford place.

By the Court.

Q This particular lot, 65, adjoins other Peddie land? A Adjoins and communicates with it, yes, sir; it is a part of the same property.

Q All fronting on Branford place? A On Branford place.

By Mr. Stein.

Q Do you consider that the two lots were similarly affected by the opening? A I do not.

Q Do you consider that the lot of the Federal Real Estate Company was benefited peculiarly at all by the opening? A I do not.

Q And why not? A Well, for one reason, for example, if a street were required for the benefit of that Federal Real Estate plot, it already had all it did require in Camfield street, which is in the rear of it.

Q Camfield court or Camfield street? A Camfield street.

By the Court.

Q It fronts on Camfield court, is that right? A Camfield court is the frontage of the Federal Real Estate plot, your Honor; it does not touch upon and did not touch upon Camfield street, which is the rear of it, now merged in Branford place.

James A. Berry, direct.

Q And you say that 67 had all the frontage it wanted on Camfield street or Camfield court? A Camfield court, with access around to Washington and Halsey streets and Camfield place, which is all the access it enjoys today by reason of the other street.

By Mr. Stein.

Q Now, just state your reasons why you consider it was not peculiarly benefited by the opening? A I supposed I had stated it. The point that I make with reference to it is that the widening of Camfield place, as it was, the merging of Camfield place into the present Branford place—

By the Court.

Q That was Camfield street, was it not? A Yes, sir; Camfield street into Branford place—was of no benefit to the Federal Real Estate plot fronting upon Camfield court.

Q No benefit in having a wider street? A In the rear; no, sir.

By Mr. Stein.

Q The wider street does not abut upon the land of the Federal Real Estate Company, does it? A Not at all.

The Court. I probably do not get the point.

Witness. Will this help you any, your Honor? (Referring to map.)

The Court. Yes.

(Witness indicates on map.)

By the Court.

Q It already had in Camfield court— A All it needed.

Q —All it needed? A Yes, sir; Camfield court and Camfield street.

Q But you say it did not front on Camfield street? A No, sir.

Q Then it did not have that at all, did it? A Nor does it front on Branford place; it has the same frontage now that it always has had.

By Mr. Stein.

Q Do you consider that the lot 67 acquired any peculiar benefits through the opening of Branford place west of Washington street? A No, I do not.

Q What effect, if any, did that opening have west of Washington street on that lot? A On the Federal Real Estate land?

Q Yes? A I think its benefit was general only.

Q Is it your opinion that the market value of the land of the Federal Real Estate Company was affected one way or the other by the opening or the widening? A I do not think it helped it a bit, and, of course, I do not feel that it hurt it.

Q Now, compare the lot that we are speaking of—

The Court. Your objection as to comparisons, of course, goes to all of this, Mr. Kalisch.

Mr. Kalisch. Yes; I do not want to object each time.

Mr. Stein. I would like to call your Honor's attention to the fact that some of these questions that I am asking are in the nature of comparisons, while some of them are not. The last question and one or two

that preceded it were distinctly not questions of comparison.

Mr. Kalisch. Only those that involve comparisons are the ones that I object to.

The Court. Yes.

Q Mr. Berry, compare lot 67 in block 60, which is the Federal lot, with lot No. 4 in block 59, which is bounded by the east side of Washington street, Maiden lane, Branford place and Halsey street, and assessed to John Jackson for $105. What is the size of that lot? A (Referring to map.) About 41 feet frontage on Maiden lane and perhaps 65 or more feet in depth.

Q It is almost as large in area and in frontage, is it not, as the land of the Federal Real Estate Company, lot 67, block 60? A I should not think so.

Q Well, what difference in frontage is there? A The frontage would be three and a fraction feet less than the Federal Real Estate Company.

By the Court.

Q That is 44 feet, is it not? A It is 44 feet.

Q And this is 41 feet? A Scarcely 41; 40.83, three and a fraction feet more frontage of the Federal Real Estate holdings on Camfield court than there are Jackson holdings on Maiden lane, marked No. 4, block 59.

Q I do not know that you gave the depth of lot 67? A It would be about 87 feet, I think.

Q And this is about 65 feet? A 65 to 70.

By Mr. Stein.

Q The Federal lot is lot 67 in block 60? A Yes, sir.

Q And the John Jackson lot is lot 4 in block 59? A Yes, sir.

Q You have given us the frontage of the John Jackson lot. What appears to be its average depth? A About, I should say, 65 to 70 feet, or, at a quick calculation, 67 or 68 feet; there would be about 2,700 or 2,800 square feet therein, while the Federal Real Estate plot would contain nearly, if not quite, 4,000 square feet.

Q Will you calculate that for us? A Yes. The Walsh, or Federal Real Estate, holding would be about 60 cents per square foot, while the other would be about a scant 40.

Q You mean the Jackson? A Did I say 60 cents? 4,000 square feet assessed at $2,500.

Mr. Kalisch. That is the Jackson property?

Witness. That is the Federal Real Estate.

The Court. Jackson is assessed only $105?

Witness. Yes, sir. It would be very much heavier than the other; the assessment on the Federal Real Estate Company would be very much disproportionate to that of the Jackson property.

Mr. Stein. I think, if your Honor please, this has been already testified to by Mr. Paul, in comparing these two lots, and for your Honor's convenience and Mr. Kalisch's, I would like to read from my notes the exact figures given by Mr. Paul with regard to the square feet and lineal feet assessments on these two lots.

Q It has been testified to, Mr. Berry, that the square foot assessment on the lot of the

Federal Real Estate Company is 71 cents and the front foot assessment on the same lot, Camfield court, is $65.77, while the square foot assessment on the lot of John Jackson, lot No. 4, block 59, is $37.03 per square foot and the front foot is $2.58. Do you consider that these two lots have been in any wise differently affected by the opening of Branford place?

Mr. Kalisch. I object to that.

The Court. The witness has previously said they were not, in his opinion, similarly affected. If they were affected at all they must have been differently affected.

Mr. Stein. I think that was in regard to some other lot that we compared at the time. We were then comparing the lot of the Federal Real Estate Company with the estate of John D. Peddie on the same block. Now, we are comparing lots on different blocks.

Q Do you consider that these two lots were differently affected?

The Court. This question is objected to on the ground that it is leading.

Mr. Kalisch. That is one of the grounds, and on the further ground I don't think a comparison—

The Court. It is the general objection. It is somewhat of a leading question. I will take these comparisons for the purpose of seeing whether there is anything in them. You better reframe your question to avoid the objection of the question being leading.

Q How do you consider these lots have been affected by the opening of Branford place? A If anything, I believe that that property is

benefited more than the land of the Federal Real Estate Company.

Q What kind of benefit do you consider the Jackson property received, if any? A It is general, really, but it was more accessible by reason, I think, of the opening of Branford place; it was made a little more accessible.

Q State whether or not as your opinion that it received any peculiar benefit, that the Jackson lot received any peculiar benefit by the opening of Branford place? A It already fronts on Maiden lane, a rather narrow street, but I believe the bringing of Branford place, an improved thoroughfare, in close proximity to it, remote as it previously had been from Market street, benefited it some.

The Court. I meant to ask you, Mr. Stein, whether this Jackson property assessment is objected to?

Mr. Stein. Yes, sir; it is.

The Court. By you?

Mr. Stein. Yes, sir.

Q Then, what do I understand by your answer that there was or was not a peculiar benefit to the Jackson property? A I think there was some peculiar benefit there.

Q Now, take the property of the Osborne Realty Company. I want to compare the lot of the Federal Real Estate Company, lot 67, block 60, with the lots of the Osborne Realty Company, being lots 105 and 106 in block 17, situated at the southwest corner of Branford place and Broad street.

The Court. That is property represented by you?

Mr. Stein. No, sir.

The Court. Objected to by anyone?

Mr. Stein. I think not; no, sir.

Q Compare these two lots with each other, meaning the Federal lot with the Osborne Realty lots. What difference was there, if any, in the effect upon these lots by the opening of Branford place? A I think the Osborne Realty Company property was distinctly peculiarly benefited by the extension and opening of Branford place.

Q Will you tell us in what respect? A It already had a corner of Branford place as it had been opened some years ago from Halsey street into Broad and by reason of the extension of Branford place to the west it attracted to Branford place considerable transient and other traffic that theretofore could not reach it, as the land of the Federal Real Estate Company could, in my judgment, not in any fashion partake of that benefit.

Q I refer you now to blocks 84, 85, 86, 72, 56, 55, these blocks being located on the north side of Market street, between High and Broad streets, and being all the blocks between those thoroughfares excepting the block between Washington and Halsey streets, which is block No. 61 and in which were represented no objectors, and excepting also 83, which has no property fronting on Market street.

The Court. Let me go back. Those blocks which you have named are on the north side of Market?

Mr. Stein. Yes, sir.

The Court. What are the bounding streets?

Mr. Stein. Broad and High streets.

James A. Berry, direct.

Q Tell us in what respect you considered this property as affected by the property fronting on Market street on the blocks that I have mentioned have been affcted by the opening of this street? A I believe the northerly side of Market street as well as the southerly side has been injuriously affected.

Q Take the territory immediately north of the blocks that I have mentioned, being blocks 88, 87, 70, 62, 54, 53, 63, 69 and 89.

The Court. These blocks are north?

Mr. Stein. Yes, north of Market street.

Q There should be included in that question block 71. How had the lots in those blocks been affected by the opening? A I do not believe those properties have been peculiarly benefited.

Q Going back to the first set of blocks that I mentioned, I believe I limited my question to the lots in those blocks that fronted on Market street. There are a large number of lots in those blocks, namely, blocks 83, 84, 85, 86, 72, 56 and 55, which do not front on Market street. How have these other lots been affected by the opening? A I do not believe they have been benefited, peculiarly.

Q Have they suffered any detriment? A Well, I would not say they have been.

By the Court.

Q Do you think they have had any general advantage? A I think, generally speaking, there is a benefit to anybody to an improvement of that character.

James A. Berry, direct.

By Mr. Stein.

Q Does your last answer apply as well to blocks 88, 89, 87, 70, 69, 62, 63, 53 and 54? A Yes, sir.

By the Court.

Q Do you think there may have been a general benefit? A There may have been a general benefit.

Q Would you say that that general benefit was the same in degree as the general benefit which inured to persons owning lots on the outskirts of the city? A Probably the general benefit would be a trifle greater by reason of the proximity than it would be in a case of those more remotely resident or situated.

Q Then you think the general benefit as well as the special benefit would be decreased as the distance from the improvement increased? A I think the general benefit would fall slightly the more remote you went from it.

By Mr. Stein.

Q But would that general benefit be such as to manifest itself in any increase of market value in the properties north of Market street, as I have outlined them? A I do not think they would increase the market value.

Q As I understand your answer, there may be different degrees of general benefit? A I think so.

Q They may be such, nevertheless, as not to affect market value? A They may be immeasurable.

Q Now, take the property on the south side of Market street, east of Broad, embraced within blocks 164, 162, 161 and 153, how have these

lots been affected by the opening? A Where would those lots be in relation to Market and Broad streets?

Q Lots in block 164 is the block east of Broad bounded by the east side of Broad street, the west side of Mulberry and the south side of Market street. Suppose we confine our question to that block? A Yes, sir; some of those properties would be benefited.

By the Court.

Q Now you are speaking of lots in block 164? A Yes, sir; easterly from Broad, west of Mulberry, south on Market and on the northerly side of Mechanic street.

By Mr. Stein.

Q Which do you think would be considerably benefited? A Well, I feel that the Broad street frontage there at the corner, for example, would be peculiarly benefited; Mechanic street I should have stated. The Broad street property at the northeasterly corner of Mechanic street, in my judgment, would be peculiarly benefited and that benefit might extend some distance on that corner in a northerly direction there.

Q Would lots 23 and 20, in block 164, being lots fronting on Market street on the south side, known as the Ward property and being about 200 or 250 feet east of Broad street, be benefited, in your opinion? A I do not believe they would.

Q What was the effect on those lots by the opening, in your opinion? A I would not say the effect of the opening of Branford place was injurious to that part of Market street, but I do not believe that it was peculiarly beneficial.

Q Do you think it received any general bene-

fit? A Yes; I think probably there is general benefit there.

Q Does that benefit manifest itself in any rise in value and real estate? A No; I don't think it would.

Q What do you say about all the other lots on that block fronting on Market street, east of the two lots I have mentioned, and the way they are affected? A I do not believe they were beneficially affected, that is peculiarly so.

Q Now, take the lots on Market street on the north side of the street between the east side of Broad and the west side of Mulberry, embraced within blocks 146 and 147. Do you consider that any of those lots were peculiarly benefited by the opening of Branford place?

The Court. How far do those blocks extend along Market street?

Mr. Stein. From Broad to Mulberry.

Q (Question repeated.) A I do not believe they were peculiarly benefited.

Q Does that apply to all of the lots in those two blocks fronting on Market street? A I should think so.

Q Was there any effect on traffic on Market street between Broad and Mulberry by the opening? A Traffic between Broad and Mulberry street?

Q Yes, on Market street. A Not much.

Q What was the effect? A I think probably it might tend to increase the traffic some in that block.

Q Would the increase have any effect on the market value of any of those properties? A I do not think it would increase the market value.

I do not think there would be enough of it to measure it.

Q Now, take the balance of the lots in blocks 146 and 147, running from Broad to Mulberry street and north of Market street, and all of the lots in block 145, running from Broad to Mulberry and bounded on the north by Commerce street. Do you consider that any of the lots in those blocks?

The Court. What you exclude is the Market street frontage?

Mr. Stein. The Market street frontage.

Mr. Kalisch. In blocks 146 and 147, excluding all in 145.

Q How have the remainder of those lots been affected by the opening? A I do not believe they have been peculiarly affected.

Q Now, take the property east of Mulberry street. Did you consider that any of the property in block 148, which is bounded by the east side of Mulberry street and the north side of Market street—have any of the lots in that block been peculiarly benefited? A I do not believe they have.

The Court. That is on the north side of Mulberry street.

Witness. Easterly from Mulberry.

The Court. The north side of Market and the east side of Mulberry?

Witness. Yes, sir.

The Court. And running down how far?

Mr. Stein. Running down easterly as far as Lawrence street.

The Court. That is block 148?

Mr. Stein. Block 148.

The Court. Does Lawrence street cross Market street?

Mr. Stein. Yes, sir.

Witness. Yes, it crosses Market.

The Court. It is on the south side also, is it not?

Witness. Yes, sir.

The Court. I remember it on the south side, but not on the north.

Witness. Lawrence street runs northerly to Commerce street, and it has been extended to Canal street.

Q Take block 149, which is bounded by the east side of Mulberry, the north side of Clinton, the west side of Lawrence and the south side of Commerce streets. What effect has there been on these lots?

Mr. Kalisch. All of them?

Mr. Stein. All the lots in that block—by the opening?

A I am an owner there. I do not think they have been peculiarly benefited.

Q Included in that block I find are lots on the east side of Mulberry street, bounded by the north side of Commerce street, the west side of Lawrence street and the southerly side of the Morris Canal.

The Court. The north side of Commerce?

Mr. Stein. Yes, sir.

The Court. Across Commerce street?

Mr. Stein. Commerce street; yes, sir.

The Court. You go up to the canal?

Mr. Stein. Up to the canal.

The Court. What is the name of that block?

Mr. Stein. It is part of the same block, 149.

Mr. Kalisch. Have the assessments on these properties been objected to?

Mr. Stein. Yes.

Mr. Kalisch. Do you represent them?

Mr. Stein. We have some objectors in each one of the blocks.

Mr. Kalisch. Well, these questions that have been put refer to the entire blocks.

The Court. Yes, they have been put that way without objection.

Mr. Kalisch. I did not want to object.

The Court. You have sample lots in each block?

Mr. Stein. Yes, and, of course, I want it understood that the questions apply directly to the lots outlined in red, represented by us.

Q *(By the Court).* What do you say about those? A I do not believe those lots have been peculiarly benefited.

Mr. Kalisch. What block is that?

Mr. Stein. 148-149.

The Court. That portion of 149 which lies between Commerce street and the Canal.

Mr. Kalisch. Well, he said none of the lots in 149 were peculiarly benefited.

The Court. That is, up to Commerce street.

Mr. Stein. I limited it up to the south side of Commerce street in my question. Now we go to the north side of Commerce.

Q *(By Mr. Stein).* Take the block 150, located on the east side of Lawrence street, and bounded by the Morris Canal on the north, Commerce street on the south and Railroad place on the east (indicating on map). What effect has there been on these lots by the opening? A No peculiar benefit.

Q Take block 151, which is almost a triangle, bounded on the north by Commerce street, on the west by Lawrence street and on the south by Market street (indicating on map). What effect has there been on these lots? A I do not feel that those lots have been peculiarly benefited.

Q Take block 162, bounded on the north by Market street, on the west by Mulberry street, on the east by Lawrence street and on the south by lands of the Newark & New York Railroad (indicating on map). How have those lots been affected? A You mean the land bounded by Mulberry, Lawrence and Mechanic streets?

Q Mechanic street— A That intervenes.

Q So it does. A You said the Newark & New York Railroad; they are across the street on Mechanic street.

Q Well, the lots south of Mechanic street bounded by the Newark & New York Railroad, in the same block. Would your answer be different?

The Court. And bounded east by Lawrence street.

Mr. Stein. East by Lawrence street.

A I will embrace the lands between Mulberry, Market, Lawrence and the Newark & New York Railroad property, if you please, and state that I do not believe those lands have been peculiarly benefited.

Q That takes in, then, all the lots in block 162? A That is my intention.

James A. Berry, direct.

By the Court.

Q Easterly by Lawrence? A Yes, sir.

Q Southerly by Mechanic street? A No, sir; south by the lands of the Newark and New York Railroad Company.

Q And west—westerly by Mulberry street and the northerly line by Market street.

The Court. I thought we were taking Mechanic street as a boundary.

Witness. I understood it was decided to include the southerly side of Mechanic street with the northerly side, carrying it to the railroad.

Q What you say about the block is that there is no peculiar benefit? A I do not believe there has been.

By Mr. Stein.

Q Take block 159, bounded on the north by Market street, on the east by Ward street and on the south by Mechanic street and on the west by Lawrence street (indicating on map). A I do not believe those lands have been peculiarly benefited either.

Q Take block 163, which is all one lot, known as lot No. 10, and it appears to be known also as lot No. 36, assessed to the Newark & New York Railroad, and bounded on the north by block 159 and 162, on the east by Ward street, on the south by other lands of the Newark & New York Railroad, and on the west by Mulberry street (indicating on map). How has that lot been affected? Do you know the one that I refer to, Mr. Berry? A You mean the railroad property, I assume.

Q The railroad property, this property of the railroad (indicating on map). A Yes, sir;

embraced within the freight yard, the freight yard is embraced within those lots, and that plot lies northerly from its tracks.

Q Yes. A I do not believe that that land is peculiarly benefited.

Mr. Kalisch. One moment. I want to interpose an objection. It comes rather late. I suppose it ought to take the form of a motion to strike it out. As I understand it, railroad property can only be assessed for the actual benefit to the use as railroad property, not for any enhancement in market value, because the land is devoted to railroad purposes and nothing else, and it is impossible for it to have market value, the same as other property. There is a case in this state that holds that you can only assess railroad property for the enhancement in the actual value of its use as railroad property. So that the question put to Mr. Berry and the answer that he gives, indicating that he examined the railroad property for the purpose of arriving at peculiar benefits, as he has other property, indicates that the question and the answer are entirely immaterial and irrelevant, and it does not help us at all as to that land.

The Court. There is an assessment on this plot, is there?

Mr. Kalisch. Yes, sir.

Mr. Stein. Yes, this property appears to be assessed.

The Court. It is assessed on the theory that it is peculiarly benefited, I suppose.

Mr. Kalisch. Which is wrong. I do not say how we have assessed it. We have not

come to that. But it appears that Mr. Berry has examined it and is giving his testimony on the basis as to whether it was peculiarly benefited. That does not help us in this proceeding, because it cannot be assessed in that way. I have not ascertained from the commissioners whether it was assessed that way.

The Court. This is what I had in my mind; whether the advantage to the railroad use would be a peculiar benefit—not in the same sense that you speak of other property, not the same kind of peculiar benefit.

Mr. Kalisch. Well, "actual benefit" is the language, "actual benefit to the use as railroad property," not peculiar benefit. I understand "peculiar benefit" means because of the location of the property with reference to the improvement—the peculiar location of it; that is, it has a benefit peculiar, on account of that, in contradistinction to general benefit to property throughout the city, whereas railroad property is assessed in quite another way.

Q *(By the Court).* Having regard, Mr. Berry, to the fact that this is railroad property, assessable as such, and not otherwise, what is your answer? A I do not believe the railroad property could be peculiarly benefited by that opening.

Mr. Kalisch. Might I be permitted to ask Mr. Berry just how he arrived at, or how he went about the investigation as to the railroad property?

The Court. You may do so.

James A. Berry, direct.

By Mr. Kalisch.

Q In examining this railroad property, Mr. Berry, what did you take into consideration?

(Question withdrawn).

Q What do you mean by "peculiarly benefited"—this railroad property being peculiarly benefited? A I feel, in stating that I do not believe that the railroad property has been peculiarly benefited, not one dollar has been added to the value of that property by reason of the opening of Branford place.

Q Well, "that not one dollar was added to the value of the property." What kind of value do you mean, the market value? A The market value of that property.

Q And that is the way that you examined this property for the purpose of arriving at that opinion, the market value before and since the opening of Branford place? A I am not quite certain what you mean, Mr. Kalisch.

Q Well, I will explain. You have said, that in your opinion, the market value of the property, this Central Railroad property, has not been enhanced—that was not the word you used? A Yes.

The Court. Increased, I think.

Mr. Kalisch. Increased.

Witness. Yes, sir.

Q As a result of the opening? A I do not believe that it has been.

Q You inspected this property, did you, for the purpose of giving your testimony? A Well, I will not say that I did. I will say further, though, that there was really no necessity for my inspecting it, because I was thoroughly acquainted with it.

Mr. Kalisch. Then I shall object to this witness's testimony as to the assessment covering the Central Railroad property.

The Court. The question, then, would have to be determined by the statute as to what is the criterion by which an assessment on railroad property is to be tested.

Mr. Stein. I would like to call your Honor's attention to this. In the first place, that is the testimony of the commissioner who was on the stand, that the benefits were all determined by enhancement of market value, and there were no exceptions made with regard to railroad property.

Mr. Kalisch. I do not recall any such testimony, but even if it were so, the other two commissioners—I do not know what they had in their minds when they made the assessment. They have not been on the stand yet. I suppose two commissioners could make a report the same as three, and it would be perfectly valid.

I ask to have that testimony stricken out, concerning the enhancement of market value, and also the answer which the witness has given to Mr. Stein's question.

The Court. I will let it stand, subject to your objection, and examine the statute for the purpose of seeing whether the testimony is pertinent.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

James A. Berry, direct.

By Mr. Stein.

Q In giving your answer as to enhancement of the value of this railroad property, have you given any consideration to the question as to whether or not the use of this property—

Objected to as leading.

The Court. I sustain the objection as to the form of the question. You may ask him what he considered.

Q What did you consider in determining as to whether or not the assessments should be made against this particular property?

(Question withdrawn.)

Q What did you consider in determining the effect on this railroad property of the opening of Branford place? A That it was general; that is my view.

Q Well, that is the result, or the conclusion, to which you came? A I conclude that there has been no peculiar benefit attaching to the property of the railroad company in Mulberry street by reason of the opening of Branford place.

Q On what did you base that conclusion? A It has no access to Branford place; it has not added in any way to the selling worth of any of that property in that block, in my judgment, whether it be railroad property or mercantile or manufacturing.

Q Now, I call your attention to block 153, which is bounded on the north by Market street, on the east by Alling street and on the south by Mechanic street and on the west by Ward street (indicating on map). What benefit has there been on any of the lots in that block? A I do not believe they have been peculiarly benefited by this opening on that block.

Q You have now testified that, with the exception of the property on the southeast corner of Broad and Market streets none of the property lying on the blocks that I have enumerated east of Broad has been peculiarly benefited by this opening. Can you give us, Mr. Berry, some detailed reasoning as to the basis of your conclusion? A I think so. It looks to me as though Branford place were really an unfinished improvement; that the property eastwardly from Broad street, excluding certain frontages on Broad street in close proximity to that improvement, cannot be peculiarly benefited unless Mechanic street, which runs directly opposite to Branford place and extends eastward from Broad street, were likewise opened to concur, generally speaking, with Branford place. If that were done, in my judgment, properties eastwardly would be peculiarly benefited in a great many instances, and until it is done I do not believe that they are benefited.

Q Opened to what point do you mean? A Well, as I understand it, and I believe it to be true, the original proposition contemplated the widening of Mechanic street and the opening of Mechanic street through the Pennsylvania Railroad property into Ferry street—

Mr. Kalisch. I object to this testimony. In the first place, I do not see how the witness knows what the scheme was.

The Court. We had better drop what has been proposed or projected.

Q (*By the Court*). Do you wish your testimony to stand as to the improvement of Mechanic street, which is, of course, east of Broad street, being an element in the peculiar benefit which

would result to that portion of the city from the opening of Branford place? I do not know that I have made my meaning very clear. Is that your idea? A I think it is, your Honor.

The Court. Your objection was to some recitation of a proposal, I suppose, which we do not know anything about. I will strike out that portion of the answer.

Q (*By Mr. Stein*). Was there any increase in value, in your opinion, to any of the properties outlined in red in any of the blocks that we have been discussing east of Broad street as a result of the opening and widening of Branford place? A Barring, probably, in some cases, and, possibly, in others, meaning the properties on Broad street, I do not think there was.

Q Would you say that there had been any general benefits to these properties? A Yes, I think anything which makes for ease and convenience in getting around there would be a benefit, generally speaking.

Q Would you consider that any of those benefits were of such a nature as to increase the market values of those properties? A No, I don't think you could measure them in money.

Q Now, take this property west of High street, all of the property west of High street, and embraced within the zone of assessment, as far as Jones and Norfolk streets and Belmont avenue, can you make any general statement as to the effect upon those properties by the opening and widening of Branford place? A My judgment is that after you have passed the westerly line of High street there perhaps for a short distance there is no peculiar benefit conferred upon those properties.

Q You think there may be some peculiar benefits conferred on the properties facing High street? A I do believe that is probable; yes, sir; in certain cases.

Q And how far north and south, if at all, would that extend? A To a very limited extent, I think. I see, for example there, the corner of Stirling street, the northwesterly corner of High; I should think that property would be, say, peculiarly benefited somewhat.

Q (*By the Court*). Where is Stirling street? A Stirling is the first street northerly from Springfield avenue, running westerly from High street.

Q (*By Mr. Stein*). That is block 232, bounded by High street on the east, Thirteenth avenue on the north and Stirling street on the south and Howard street on the west? A Yes, sir.

Q How much of that frontage on High street on that block would you say had been peculiarly benefited? A Not very much, say a lot or two possibly.

Q The corner lot is No. 5—

The Court. What corner is that?

Mr. Stein. The corner of Stirling street and High street.

Q Would you include that within the limits of peculiar benefits? A I think I would; yes, sir.

Q Take the adjoining lots, No. 4 and No. 3, assessed to the Parkhurst Land Company, would you include those lots (indicating on map)? A I think so; not much, but some.

Q Well, how far north on High street would you go? A Well, 50 or 60 feet, perhaps.

James A. Berry, direct.

Q From where? A Northerly from Stirling street.

Q Would you go all the way up to Thirteenth avenue? A I doubt if Thirteenth avenue could be very much improved by this opening.

Q Would there be any doubt in your mind as to any of the property north of Thirteenth avenue on High street? A North of Thirteenth avenue on High street, I think, would not be peculiarly benefited.

Q (*By the Court*). That is the property back of the court house? A Yes, sir.

Q (*By Mr. Stein*). Extending all the way over to the Morris canal? A I do not think that would be peculiarly benefited.

Q Now, take the corner of High street and Stirling street and South Orange avenue, on block 31 (indicating on map)? A There isn't any such corner, I think; it would be Springfield avenue.

Q Springfield avenue, at that point (indicating)? A Yes, sir.

RECESS.

Direct examination (continued) by Mr. Stein.

Q Mr. Berry, I direct your attention now to the property situate at the intersection of Springfield avenue, High street and Stirling street in block 231. Some of this property faces on High street. I believe you have stated you considered some of the property on High street as enjoying peculiar benefits? A That is my belief.

Q How much does it benefit property in this block? A That is a very short block between Springfield avenue and Stirling street, sort of an apex. I think that frontage is benefited, and pos-

sibly 100 feet around the corner from it on Springfield avenue.

Q Will you step here to the map and point out the block and the number of it that you considered in the zone of peculiar benefits? A Take the property known as Nos. 495-497 High street. That would be in block 231, lots Nos. 6 and 8, I think, and probably also the property in the rear of No. 8, fronting on Springfield avenue, and known as Nos. 60 and 60½ Springfield avenue, lot No. 9 on this map. I think it probable that that has been benefited.

By Mr. Kalisch.

Q Those three lots? A I should think so.

By Mr. Stein.

Q Peculiarly benefited? A That is my meaning, peculiarly benefited.

Q Would you limit your zone of peculiar benefits to the westerly boundary line of lot 6? A Lot 6 and lot 9. The westerly line of those lots I should think would be about the limit of peculiar benefits. It would be about the limit of peculiar benefits. It might extend slightly over that but that is about it, I think.

Q Now, crossing the street to the southerly side of Springfield avenue at its intersection with the westerly side of High street would not all the property on that point come within the zone of peculiar benefits? A I think it would. I think the southwesterly corner property for example there, Nos. 59 to 65 inclusive, lot No. 34 on block 2496. This property is known also as Nos. 501 to 507, inclusive, High street.

Q Is that the property on which is the building of the West Side Trust Company? A

That is the property. I think probably that has been materially benefited.

Q What is the southern boundary line of that lot? A I think there is an alleyway running in from High street 10 feet in width. I think that the northwesterly corner of High street and Stirling street would be peculiarly benefited.

Q You have already mentioned that in this morning's testimony? A Yes, sir.

Q Three, four and five, I believe you stated? A I should think that would be fair.

By the Court.

Q What is the block number? A Block 323.

By Mr. Stein.

Q Are there any other lots abutting on that street that you considered coming within the zone of peculiar benefits? A No, I don't think so.

Q Now, what are the reasons that prompt you to limit the zone of peculiar benefits west of High street to these lots at the southwest corner of High and Springfield avenue, the lots at the corner of Stirling street, Springfield avenue and High street and the three lots at the northwest corner of Stirling and High streets? A My view of it is that those lots are brought into considerable prominence by reason of its opening and I picked them out for the reason that when traffic westward bound reached there it scatters, disburses, if you please.

Q Which way? A Northerly, northwesterly, more exactly.

Q Will you mention the streets? A Yes, sir; Stirling street, Thirteenth avenue, High

street, Springfield avenue, South Orange avenue, Breintnall place, Nelson place. Those streets westerly from High street.

Q Why do you select those lots in preference to any other lots in the immediate neighborhood as enjoying peculiar benefits? A Take the place of Stirling street, for example. Stirling street is a residential street. Traffic on a residential street does not add to its worth or value. The reverse would be more apt to be true. Thirteenth avenue is already a street of considerable importance and can take care of itself. That, too, is residential in character. The same thing can be said of Nelson place. As to Springfield avenue, that is business. South Orange avenue is a little mixed, business and residence.

Q You consider that there would be any more traffic going up Springfield avenue westward or South Orange avenue by reason of the opening than when before the opening? A Market street could take care of that diversion of traffic into those two avenues, and I suppose they would gain some of the increased traffic.

Q What would gain some? A Some South Orange avenue and Springfield avenue might gain some.

Q From what source? A Easterly and from northeasterly, so to put it.

Q Will you give us the streets from which you think Springfield avenue and South Orange avenue might acquire some additional property? A Any streets easterly from High street that touch upon Branford place, for example, I think would be a fair way of putting it and it may be that this indicates a vehicular traffic that came down from there might come up into Branford place in preference to going up Mar-

ket street to Springfield avenue. I think traffic that would come from the easterly side of the city and southerly from Branford place could be taken care of otherwise.

Q What about the question of traffic on Springfield avenue west of the lots that you have mentioned as being peculiarly benefited? How has that traffic been affected by this opening looking at traffic eastward bound? A I do not think that Branford place will add anything to eastward bound traffic on Springfield avenue.

Q Have you considered the question of transient traffic easterly on Springfield avenue to Branford place? A Yes.

Q What about the effect of the shopping district in the vicinity of Broad street so far as it relates to values of property on Springfield avenue? A It is my view that if Branford place fills the niche it was intended to fill I think that it may take it from Springfield avenue and carry it further down into the heart of the city, to the injury of Springfield avenue, probably.

Q Have you considered that element with reference to the determination of the present effect, speaking of present effect at the time of the opening of the street on property on Springfield avenue? A I think that would be the immediate effect of the opening on that street, on Branford place.

Q What about the question of additional business on Branford place by way of competition with the business property on Springfield avenue? A I think Branford place will probably be used for, generally speaking, the same line of business, mercantile life, retail trading.

Q What, then, do you say with regard to the effect of the opening of Branford place on the property on Springfield avenue west of High street including the lots that you have mentioned as within the zone of peculiar benefit? A I think Branford place will injure the values on Springfield avenue at that location.

Q You say it will injure it? What about its effect with regard to the opening as a present accomplished fact? A I meant to convey the idea that it is injurious in its effect.

Q What is your opinion whether those lots on Springfield avenue west of High street with exceptions noted—whether they have been peculiarly benefited or not by the opening? A In my judgment they have not been peculiarly benefited by the opening of Branford place.

Q Would you say, Mr. Berry, whether any of the lots west of High street on Springfield avenue have increased in value by reason of this opening with the exception again mentioned? A I don't think so. I don't think they have increased in value.

Q The property on South Orange avenue. What about that property? How has that been affected? A Not beneficially in my opinion.

Q Has it been harmed? A I rather think it has been.

Q What about the question of traffic and competition? A Well, South Orange avenue is a street that is more or less devoted, as I have said, to small retail or mercantile trading and I think the effect of Branford place is to attract attention away from South Orange avenue to the place, to the detriment of South Orange avenue.

James A. Berry, direct.

Q Is there any general tendency of the pedestrian traffic either eastward or westward in this city?

Mr. Kalisch. I object to that.

Q Was there at the time of the opening?

The Court. I will allow it.

A Yes, I think so.

Q With reference to Springfield avenue and South Orange avenue, what was that tendency? A To come downtown, go uptown.

Q By downtown you mean eastward from Broad street? A Yes.

By the Court.

Q What was it that went downtown? A Pedestrian and vehicular traffic.

By Mr. Stein.

Q The department stores in this city are located, generally speaking, where? A In the heart of the city, meaning near to Broad and Market.

Q You say that the opening of Branford place made it easier or more difficult for pedestrian traffic to reach the heart of the city? A I think it made it easier to get to the center of the city.

Q And what effect then do you think the opening had on pedestrian traffic eastward along Springfield avenue and South Orange avenue, so far as business conditions are concerned on those streets? A Well, the opening of Branford place takes certain traffic away, immediately away from the lower portion of Springfield avenue, eastbound traffic.

Q What about South Orange avenue? A People coming down South Orange avenue would

find it easier to go through Branford place to get to the center.

Q You have touched on Stirling street, the effect on Stirling street, of this opening? A Yes, sir.

Q What effect can you say the opening has had on Stirling street? A I stated I thought Stirling street is residental in character. I think the effect there would be so far as residential occupancy is concerned detrimental other than otherwise.

Q You are speaking now, of what kind of traffic? A Well, take vehicular traffic.

Q Yes. A Being a residential street the less of that it receives the better for it. I think Branford place coming in such immediate proximity with it is apt to increase that vehicular traffic to the injury of that street.

Q Stirling street is a one block street? A It is a one block street. It is a long block, of course, running as it does from High to Howard street.

Q Just what course do you consider that additional vehicular traffic to take? A I think it probably would take the two courses, eastward and westward, easterly reaching over Branford place and westerly coming from it.

Q And westerly going to what point? A Northwest.

Q Over Howard street? A Yes, sir.

Q Until it got to Bank street? A Until it scattered down the other streets. Some of it might, for example, turn up Thirteenth avenue, over up in Bank street. Some would go north and other directions in it rather than Bank street.

Q What kind of a street is Bank street? A That is what you might call a mixed street, business and residential.

Q What about the vehicular traffic coming east on Bank street? How would that be affected by the opening? A Not so much, I think.

Q All those streets have a heavy grade there, have they not? A Yes, they have. I might say Thirteenth avenue, by the way, is not what you call above High street a heavy grade street.

Q Which of those streets would you consider a grade? A Well, Nelson place is a steep street up to a certain line, to the line of what would be Summit street if it were carried through. Breintnall place is rather a steep climb.

Q The climb is westward in all those streets? A Yes, sir; the climb is westward.

Q Would there be any deflection of traffic from Bank street going easterly from what it has been before the opening?

Mr. Kalisch. I object to that. "Would there be any deflection of traffic?"

Mr. Stein. Perhaps I had better reframe the question.

Q What is your opinion, Mr. Berry, as to the effect on eastbound vehicular traffic easterly bound on Bank street by reason of its opening?

Mr. Kalisch. I object to that.

The Court. So far as you have noted, Mr. Berry, you may answer the question.

A I do not think there has been a great deal of change in the traffic on Bank street.

Q Now, what effect has there been on the property located on Thirteenth avenue west of High street as it is opened? A I should think

that Thirteenth avenue westerly from High street has not been benefited.

Q What kind of a street is that? A That is a residential street, not private residences, but a residential street.

Q Well, how do you distinguish? A Well, it is a street built up largely of three-family apartments, and there are two or three stores in the block, for example, between High and Howard streets. Outside of that the occupancy is a residential one.

Q (*By the Court.*) What is the grade on Thirteenth avenue? A Not very great, your Honor; I do not know, but it is not heavy, not very heavy, until you come above Howard street. Then there are three or four climbs. The block between Howard and Wickliffe on Thirteenth avenue, for example, is a pretty good rise; then you come up to Boston street, and there is a rise to Richmond street; then you are on flat land again until you come to Norfolk street, when there is again a rise to Wallace street; then there is a fall going up westerly, and then you come to the big hill, Fairmount to Littleton avenue.

Q (*By Mr. Stein.*) That takes us outside of the zone of assessment? A Oh, yes.

Mr. Kalisch. I have not been objecting to these questions. Would your Honor just permit me to ask one question in order to satisfy my mind? I think a great deal of the testimony is objectionable, and I would like to ask this witness just one question.

The Court. You may ask the question.

James A. Berry, direct.

By Mr. Kalisch.

Q Mr. Berry, these observations that you are testifying to concerning traffic have been made since the paving and grading of Branford place? A Yes, they have.

Q And not before the street was paved or graded or guttered; is that correct? A I think so; yes, sir.

Mr. Kalisch. Then, may it please your Honor, I do not think that the testimony of Mr. Berry concerning traffic conditions since the paving and grading of Branford place, which is the subject of another assessment, ought to have any bearing in determining the benefits that accrue merely from the opening and widening of Branford place. For that reason I want to object, and ask to have all the testimony concerning traffic conditions since the development, the grad- and and paving, of Branford place stricken out.

The Court. I will hear counsel on that.

Mr. Stein. It has been already testified to, if your Honor please, by this witness at the very outset of his testimony that he considered this question of the opening from two points of view substantially: that which took into consideration the condition at the precise moment of the acquisition of the title to the bed of the street by the city, before there was any physical opening, and that also which contemplated the physical opening of the street, not as a mere probability, but as an absolute certainty, which was bound to follow immediately upon the opening. The fact that the witness is giving his opinion with regard to traffic as of the

time of the paving and curbing, which we can show has been done and is completed, and that that is the subject of a separate assessment, is entirely immaterial, for the reason that, in the first place, the assessment will be applicable only to the abutting property owners, and not to anybody else in the outlying districts, but that if we should regard this proposition of benefits from the mere moment that the title of the property was acquired, before any grading was done of any kind, so that you would simply have a strip of land to which the city has title, that would, of course, be the most unfavorable view to look at this matter from the city's point of view, because from that point of view, assuming that nothing else was to be done, and the city was bound to do it, because otherwise it would be subject to indictment, if it did not —but looking at it from that point of view, there would be and could be, from the very nature of things, no benefit to any of the property owners whatsoever, with the possible exception of the mere technical benefits that might accrue to the owners on Branford place, who would have a right thereafter to go over the new land that was acquired by the city without being guilty of a trespass for doing it, whereas before that technical opening they would be guilty of a trespass. So that from that point of view, I take it, that if there was nothing to assure anybody that a real, practical opening, rather than a theoretical one, was to follow, that would be a view of the case to take most detrimental to the city, inasmuch as there

would be no real, practical benefit accruing to anybody from that kind of an opening; but the witness has taken a view of the matter which is more favorable to the city, one that contemplates that the city would do that which it ought to do, and would be obliged to do, namely, physically open the street for real traffic, and give it, therefore, the benefit of making the immediately accruing assessments that should follow.

The word "present," of course, as we all know, is, after all, a relative term, in times either past or future, I suppose. The present is such an indefinitely short time that we should, I think, in an investigation of this sort, take into consideration in determining accruing benefits those that lap over slightly in the future, but which are certain in their character, not merely speculative or partial. The witness has spoken in his testimony of the merging of the two times, when the opening would be a mere technical legal opening, and a present ,physical, practical opening. So that, unless we take this view of the opening, it seems to me that the city would shut itself out from the possibility of showing any real benefits by reason of the opening of the street.

The Court. I have always supposed that the point of time to be considered was the time when the street was opened, but was not improved, the improvements being taken care of by the subsequent assessments, which are based on benefits and damages. Now, just as far as the witness has founded his observation upon what has been done since the improvements were made, I think it is

the subject of criticism to that extent, as based on a wrong foundation. I should not know what to strike out, but that, I think, is the true point of view. I will let the testimony stand.

By Mr. Stein.

Q Mr. Berry, suppose you tell us, then, what these benefits are, and as of what time you considered this entire proposition, the benefits accruing or the detriments accruing, if you please. A I think that occurs at once, really, upon the determination by the city to open the street and the opening of the street physically—practically immediately thereafter.

Q You mean that there might be an effect upon the values of real estate in the immediate vicinity as soon as the opening was a legal opening? A Oh, I do not doubt that at all; I do not doubt that at all; but the true opening, as I have understood it, always occurred practically about as quickly as one thing could follow upon another.

By the Court.

Q In your view, the opening implies a probability of a very speedy improvement? A I have always understood that; that is my view.

Q And in your calculations you have taken into account that as a reasonable expectation? A Yes, sir.

By Mr. Stein.

Q Would you have any different opinion than what you have already expressed with regard to the lands subject to peculiar assessments, or subject to peculiar benefits? Would there be any

additional property in the territory that we have already covered that you would consider to have been peculiarly benefited by the opening, if you limited your consideration entirely to the moment of time when the city acquired the property, but before it had physically opened it? A Why, I think that property immediately adjacent to the proposed opening would immediately be benefited.

Q But my question is, Mr. Berry, whether there would be any additional property in the territory that we have covered— A Yes, sir.

Q —that you would consider as being the subject of peculiar benefits as the result of this opening, viewing the opening from the time of the mere acquisition of the property and the legal opening of the street?

Mr. Kalisch. I object to that.

The Court. You mean in addition to what the witness has already mentioned?

Mr. Stein. Yes, sir; whether there would be any additional.

The Court. In other words, whether the witness has mentioned everything?

Mr. Stein. Whether there would be any more lots peculiarly benefited than those the witness has already pointed out.

Mr. Kalisch. I want to make myself clear on this question, because I think it is a very important one. As I understand Mr. Berry's estimation of the benefits, they have been based upon actual observation since the street has been improved, which means graded, paved, and so forth. Now, he has so testified. He says his observations were made concerning the traffic after the street

was graded and paved. He is, therefore, basing his opinion as to benefits upon a fact which exists after the time when he ought to consider—or, rather, at a time which he ought not to consider in forming his opinion of benefit. If the witness testifies as of the time before the grading takes place, and includes in his estimation of benefits what is, in his mind, a probability, and bases it upon that, why, I have no doubt but what the testimony is perfectly correct, upon what he thinks the future will bring forth, for the purpose of establishing a present market value as of the time of the opening; but to take hold of a fact which actually exists is not necessarily the result of the opening, but more probably the result of improvements since the opening, such as traffic, which certainly could not have existed without the improvement, I say that is confusing because it is basing an opinion upon the existence of a fact which is not alone the result of this opening, but of the improvement since the opening—facts which I do not think he ought to consider. He may infer that certain facts will take place, but he cannot go beyond the point of the time of the opening, and show what has actually taken place.

That is the distinction I would like to draw, and that is why I object to this testimony.

The Court. Well, I am inclined to agree with you. The difference is between considering a fact subsequent to the opening and what would seem to the witness to have been a reasonable expectation at the time when the opening was made.

Mr. Kalisch. Yes.

The Court. Well, I agree with you there.

Mr. Stein. The question now comes within your Honor's view of the matter; that is, I intended that this question should be directing the witness's attention to the situation as it existed at the time of the opening.

The Court. I do not see any objection to your question.

Mr. Kalisch. No, but I did not know what disposition your Honor made of the motion to strike out.

The Court. I said I did not know just exactly what to strike out. There is a good deal of it. I think the Court ought to disregard conclusions based upon observations since the opening, but ought to regard the witness's testimony as to what the situation that existed when the opening was made would reasonably imply to the witness a reasonable possibility.

Mr. Kalisch. I suppose, there being no jury, it goes in, and your Honor will disregard what you do not think is competent.

The Court. That is my present idea about it.

(Question read as follows: "But my question is, Mr. Berry, whether there would be any additional property in the territory that we have covered that you would consider as being the subject of peculiar benefits as the result of this opening, viewing the opening from the time of the mere acquisition of the property and the legal opening of the street?") A I do not think so.

Q I wish you would give us your opinion, therefore, with regard to the benefits that have been conferred with entire reference to the time of the legal opening of the street before any improvements in it had been made whatsoever. Is it your opinion that any of the lots in the property embraced within block 231, outside of the three lots that you have mentioned on High street, 6, 8 and 9—that block is bounded by South Orange avenue, Stirling street and High street and Howard street—have been benefited by the opening? A I do not think they have been benefited by the opening.

Q And as to block No. 232, bounded by High street, Stirling street, Thirteenth avenue and Howard street, with the exception of the three lots, three, four and five, at the corner of High street and Stirling street? A Outside of those, I do not believe that on that block any peculiar benefit has been conferred.

Q You are expressing your opinion now as of the date of the legal opening, as I understand you? A Yes.

Q And I refer you to block No. 203A, 203B, and 203C, bounded by High street on the east, Thirteenth avenue on the south, Howard street on the west and Nelson place on the north (indicating on map). How do you consider that lots within that block have been affected by the opening? A I do not think that anything on that block has been peculiarly benefited.

Q Take block No. 202, bounded by High street, Breintnall place and Bank street (indicating on map). Do you consider that any of that property has been peculiarly benefited? A I do not.

Q Take block No. 205 (indicating on map). What about that block? A What does 205 embrace, Mr. Stein?

Q That embraces property bounded on the west by Howard street, on the north by Bank, on the east by Sidney place and on the south by Nelson place. A I do not think any peculiar benefit has been conferred upon that block.

Q Take blocks Nos. 377, 376, 380, 378, 391 and 390, which are all located west of High street and north of Bank street and between High street on the east and Wickliffe street on the west (indicating on map). Do you consider that any of that property has been peculiarly benefited by this opening? A I do not.

Q Do you consider that any of the property west of Howard street and north of Springfield avenue has been benefited by this opening? A No, sir.

Q And the property west of Wickliffe street and to the zone of assessment, to the limit of the assessment made by the commissioners, up to Norfolk street and all the way over to the canal, do you consider that any of that property, shown particularly on blocks 234, 229, 206, 404, 207, 208, 227, 228, 234, 235, 237, 239, 238, 225, 226, 209 and 210—were there any of the lots in those blocks that were peculiarly benefited by this opening? A I do not think they have been peculiarly benefited.

Q Take the property in block No. 233, which is the triangular block bounded by Howard street, Springfield avenue and South Orange avenue (indicating on map). Has any of the property within that block been benefited? A I do not think so.

Q I used the word "benefited;" I meant peculiarly benefited. A That is my understanding of it.

Q Can you give us any general answer with regard to the property on block 2496, bounded by William street, Springfield avenue and High street, excluding the lot No. 34 in that block, which is at the southwest corner of High street and Springfield avenue? A I think I stated that the only property that, in my judgment, is peculiarly benefited is that of the West Side Trust Company, at the corner of High street and Springfield avenue, the southwest corner. Outside of that particular piece, I doubt whether anything has been peculiarly benefited there.

Q Take the property in blocks 2497, 2507, 2498, 2506 and 2505, bounded by High street on the east, William street on the north, Howard street on the west and by the rear of lots fronting on Court street on the south (indicating on map). Is it your opinion that any of those lots have been peculiarly benefited? A I do not believe that they have been peculiarly benefited.

Q And taking block No. 2504, bounded by Howard street on the east, Mercer street on the north, Broome street on the west and Court street on the south (indicating on map), do you consider that any of those properties in that block have been peculiarly benefited? A I do not.

Q I call your attenion to blocks 102, 101, 99, 100, 97, 98, 95, 96, 106, 94, 93 and 109, which are bounded by William street on the north, Broad street on the east, the rear line of lots fronting on Court street on the south, and High street on the west (indicating on map). Is it your opinion that any of the lots embraced within any of those blocks have been peculiarly

benefited? A It is my opinion that they have not been peculiarly benefited.

Q Take block No. 58, which is bounded by Maiden lane on the north, Halsey street on the east, William street on the south and Washington street on the west (indicating on map). Do you consider that any of the lots in that block have been peculiarly benefited? A I do not.

Q Take block 74, which is bounded by Augusta street on the north, Plane street on the east, William street on the south and Arlington street on the west (indicating on map). Have any of those lots been peculiarly benefited, in your opinion? A I do not think so.

Q Take block 76, immediately west of the one I have just mentioned, bounded by Augusta street on the north, Arlington street on the east, William street on the south and Nicholson street on the west (indicating on map). Do you consider any of those peculiarly benefited? A I do not.

Q Take block No. 77—

Mr. Kalisch. Do you represent those?

Mr. Stein. We have properties in each of these blocks.

Q —bounded on the north by Augusta street, on the east by Nicholson, on the south by William and the west by Shipman (indicating on map). Do you consider that any of those lots have been peculiarly benefited? A No, I do not.

Q Now, taking up blocks 874 and 875, which are located east of Broad street, bounded on the north by Franklin street, on the east by Mulberry, on the south by the property of other private owners and on the west by Broad street (indicating on map). Do you consider that any

of that property has been peculiarly benefited? A No, sir.

Q Take block 873, which is the City Hall block, and is bounded by Green street on the north, Mulberry street on the east, Franklin street on the south and Broad street on the west (indicating on map). What about that block? A I do not believe it has been peculiarly benefited.

Q Take block 865, bounded on the north by Lafayette street, on the east by Mulberry street, on the south by Green street and on the west by Broad street (indicating on map). How about that block? A I do not think so.

Q You mean it has not been peculiarly benefited? A I do not think it has been peculiarly benefited.

Q Take blocks 872, 866, 166, 871, 867, 870, 868 and 869, bounded on the north by the right of way of the New York & New Jersey Railroad, on the east by New Jersey Railroad avenue, on the south by Elm street and on the west by Mulberry street (indicating on map). Do you consider that any of that property has been peculiarly benefited by this opening? A I do not.

Q Do you consider that any property east of Mulberry street has been benefited by this opening peculiarly? A No, sir.

Q Referring now to your testimony this morning with regard to the various properties on the south side of Market street and on the north side of Market street, and all the property north of Market street to the outside limit of the zone of assessment, viewing the benefits accruing from the opening as of the time of the legal opening of this street and before its phys-

ical opening, do you consider that any of the properties that I have mentioned, that we considered this morning, have been peculiarly benefited by this opening? A I do not.

Q Outside of those properties that you have specifically mentioned had been peculiarly benefited? A Yes, that I would repeat, outside of those that I have mentioned as having been peculiarly benefited.

Q We have attempted now, Mr. Berry, to exclude, so far as your opinion is concerned, such property as was outside of the zone of peculiar benefit. Will you tell us now what property you consider to be inside and within the zone of peculiar benefit as of the time of the legal opening of this street and before the making of any physical improvement? A Yes, sir. I think the only property really peculiarly benefited by the opening of Branford place is the property which lay along the line of that place, with possibly slight exceptions almost immediately adjacent thereto.

Q You would include, therefore, all the property on Branford place that had obtained a new access? A Yes, sir.

Q And would you include also all the property on the south side of Branford place between Washington street and Halsey street that has obtained a widening? A That was peculiarly benefited, but, of course, to a lesser extent.

Q And would you include also the property on Branford place between Halsey and Broad street? A That was benefited peculiarly.

Q Now, what additional property, Mr. Berry, do you consider as coming within the zone of peculiar benefits by this opening? A Well, I have referred to, say, the westerly side of High

street, commencing at the upper end, I would specify that there the properties, in my judgment, were peculiarly benefited. Then coming easterly along the line of Branford place.

Q What about the property at the corner of High street and Springfield avenue, east of High? A That is the Court House property, or the Board of Chosen Freeholders, as I understand it?

Q Yes. A That triangular strip. Yes, I think it was benefited peculiarly.

Q What about the property on the south side of Springfield avenue between High street and Shipman street? A I believe that it, too, is peculiarly benefited, immediately adjacent to and fronting on the new street.

Q Now, on the intersecting streets, Mr. Berry. In your opinion, would there be any peculiar benefits on any of the intersecting streets? A I think there is.

Q Take Nicholson street past Augusta and William streets, going to the south; how far, in your opinion, would the peculiar benefits extend? A Not very far, but I think the beneficial influence of the opening of that street would be reflected upon the cross street there, say a couple of hundred feet, perhaps a little bit more, southerly from it.

Q Southerly from what? A From the line of Branford place.

Q Would it go beyond Augusta street, which is located about 200 feet south of the opening? A I doubt it; I doubt that. I think it would extend, say, to Augusta street, and the corner of Augusta street most remote from Branford place might feel it likewise, but beyond that it would be very small, if any.

James A. Berry, direct.

Q Now take Arlington street, Shipman street, how far down would it extend? A Well, not very far. The influence might be beneficially developed a couple of hundred feet, but those streets are comparatively unimportant streets and by their very nature cannot partake perhaps so much of the benefit as though they were more important thoroughfares.

Q I call your attention particularly to lot No. 28 in block 77 which is bounded by Shipman street on the west, Augusta street on the north, Nicholson street on the east and William street on the south and which has been assessed in the sum of $80 and which is located about 225 feet south of Augusta and runs through from Nicholson to Shipman street. Would you consider that property had been peculiarly benefited? A To the extent of $8?

Q $80.

By the Court.

Q Have you the lot clearly in your mind? A I know the section thoroughly, your Honor. I think that including the line of Augusta street as I have said and improving this most southerly corner it would be benefited peculiarly. In other words, I mean to state in my judgment, for a distance southerly from the southerly line of Branford place, say for 250 feet and perhaps even a few more, that there would be peculiar benefits.

Q The lot that I have referred to and designated as one lot I find is really two lots, being numbers 5 and 28 and assessed in block 77.

The Court. Assessed together for $80.

Mr. Stein. One of them, lot 28, is assessed for $28. That is the lot that faces on Nicholson street.

The Court. How much?

Mr. Stein. $80 and lot No. 5, facing Shipman street, is assessed for $110.

A I think probably I ought to know the dimensions of those lots.

Q Lot No. 5 seems to have a frontage of 30 feet. A Fronting on what street?

Q On Shipman street and a depth of approximately 150 feet and both dimensions are alike, front and rear. Take lot No. 5 assessed for $110. A And the other is on?

Q The other faces Nicholson street. A Yes, sir; I am ready.

Q And is 30 feet front and a depth of 75 feet, both lots having a depth of 75 feet being 150 feet through from street to street, the two lots abutting on each other in the rear? A Taking the dimensions of each of those lots to be the same, the Shipman street lot should receive a slightly higher assessment.

Q So that the two lots that you are now speaking of, Mr. Berry, do you or do you not consider them as having been peculiarly benefited by this opening? A How far are they? I said my view of 250 feet would be a fair distance for it to spread peculiar benefits. If they are outside of that neighborhood we should not include them.

Q The map would seem to indicate that from the southerly line of Branford place Augusta street is about 150 feet and Augusta street is about 20 feet wide and from the southerly line of Augusta street the lots in question are a distance of about 200 feet. A So that the lots would be 350 feet away from the improvement.

Q Roughly speaking. A Then, I do not think they would be peculiarly benefited.

The Court. These are which lots?

Mr. Stein. Lots 5 and 28 in block 77.

Q Take lot 8 in block 76 which runs from Nicholson street to Arlington street and is also south of Augusta street, a distance of about 150 feet south of Augusta street. A And it is more than, say, 300 feet southerly from the improvement?

Q Just about? A I mean to say that anything that would be farther away than, say, 300 feet would not be peculiarly benefited.

Q And lot 4 on block 75 which is bounded on the east by Plane street, on the north by Augusta street, south by William and west by Arlington street and which is about 200 or 225 feet south of Augusta street, Augusta street being about 150 feet south of Branford place. A The total distance would be 200 feet south of the improvement to 250?

Q About 350? A Well, I doubt it. I do not think that beyond 300 feet there would be a peculiar benefit.

Q That lot that we are now speaking of is about 150 feet north of William street. That would give a better idea of its location. A That would be, say, more than 300 feet away from the southerly line of Branford place. My judgment is it has not been peculiarly benefited.

The Court. If Mr. Berry is satisfied that that formula is applicable to all cross streets, why is it necessary to go over this merely for the sake of getting measurements which we can get by putting a rule on the map.

Mr. Stein. I think that will probably suffice.

Q Mr. Berry, is it your opinion that the benefits to the property on the intersecting

streets, peculiar benefits, inure to the same extent to properties north of the opening as to properties on the south of the opening? A I don't believe that properties north of the opening and between Market street and the opening, for example, have been peculiarly benefited, excepting properties immediately fronting on that new street.

Q Will you examine the blueprint showing the situation north of the opening on the intersecting streets and tell us whether any or none of those properties, any other properties north of the opening on any of the intersecting streets have been benefited? A The intersecting streets, commencing then at Arlington street?

Q Yes. A I don't think that any property lying between Branford place and Market street on Arlington street has been peculiarly benefited excepting the corner property and it may be the immediately adjacent piece next door.

Q Meaning what lots? A Take the case now of the northwesterly corner of Arlington, which would be the first corner lot as you come down, Arlington and Branford place. There is a property on that corner which appears to be about 28 feet wide. That corner, of course, has been peculiarly benefited but the property next north of it, in my opinion, has not been peculiarly benefited. The same situation would apply across the street at the northeasterly corner of Washington and the new street where the corner property there would unquestionably partake of peculiar benefits.

Q Now, about Plane street coming down? A I would say the same. The property on the northwesterly corner of Plane street is peculiarly benefited and that next door probably not.

Q What about Washington street? A About the same situation there. There is a very narrow strip of land comes along Branford place on its northerly side midway between Plane and Washington, belonging apparently to the Neu Estate. A very narrow strip. I can't see what it is but it looks to me like 9 or 10 feet.

Q What about the adjoining property, lot 50 in block 73, which has been assessed for $7,500 to the Chelsea Security Company? A That is the theatre property there. That doesn't touch upon the new line of Branford place, but it is so very close to it there that probably there is some peculiar benefit attaching to it.

Q What is your opinion as to the assessment the commissioners placed upon that lot, namely $7,500? A A plot of what dimensions?

Q You have a map before you; 87 feet frontage on Washington street, having a depth I should judge to be about 100 or 110 feet or more. A Well, I think that assessment should be compared with others right along the place to determine its fairness.

By the Court.

Q Right along Branford place? A Yes, sir.

By Mr. Stein.

Q Without making any comparisons, is it your opinion that that property has been peculiarly benefited to the extent of $7,500? A Well, I don't think so.

Q What would you consider a reasonable increase in value of that property due to the opening of the street? A Well, I probably would give that a little more proportionate value if it were further away from the street, but it

doesn't come to the street and could be cut off, say, half that figure up to maybe $5,000.

Q Why do you make any distinction between the property north of Branford place and the property south of it on the intersecting streets so far as the peculiar benefit is concerned? A In my opinion they are not in a position to partake of the benefits. They already had Market street at their door, a very important thoroughfare, and I can't see how Branford place can add anything to the business conducted there. For example, everything could be taken off from the Market street end of it and it is also the fact, in my opinion, that certain traffic that heretofore would pass their doors to get southerly is now eliminated so far as those properties are concerned.

Q Speaking of what time, now? A Immediately that the improvement was effected, I mean to say the street opening.

Q Do you consider that the demand for property on the intersecting streets immediately upon the opening of that street, Branford place, would increase as much north of Branford place as it would south? A I do not.

Q Take the lot next door also facing on Washington street, being lot No. 47 on block 73, and assessed to the Chelsea Security Company, being located about 100 feet north of the northerly line of Branford place and then running northerly 61.83 feet, having a depth of about 75 feet. A I don't think property there at that distance from the opening has been benefited at all.

Q Take the property immediately across the street on Washington street north of Branford place, lots 5 and 6 in block 60, assessed to the

Metropolitan Realty Company for $1,875, this property being located at the southeast corner of Washington street and Camfield court at a distance of about 55 feet north of Branford place? A Yes, sir; I know that property. I can't see where that property was peculiarly benefited by the opening of Branford place.

Q That property previous to the opening opened on Camfield street? A It already was on the corner of two streets, Washington street, a fine, wide thoroughfare, and Camfield court, which I think is approximately 20 feet in width.

The Court. That is the southeast?

Witness. Southeasterly corner.

Q Take the lot immediately adjoining it, this property a little further south, lot 4, on block 60, assessed for $1,675, having a frontage of 20.75 feet on Washington street and located at a distance of about 30 feet, a little bit more, from the north line of Branford place? A That is the O'Brian property. I don't think that property has been peculiarly benefited.

Q Take the property immediately on the corner, skipping lot No. 35 and take the lot of the King-Marsac Company and known by the street number as 272 Washington street, assessed at $4,200. That is a strip of land 11.61 feet wide on Washington street and having a depth on Branford place of about 80 feet. A The frontage being how much, if you please?

Q 11.61 feet. That property acquired a new frontage, did it not? A Certainly. It unquestionably has been benefited, but $4,200 of peculiar benefits to my way of thinking are very high for a strip of that size.

Q What would be your best judgment as to what those benefits were that accrued to that

strip of land? A Not much in excess of half of that figure.

Q $2,500? A $2,500 would be an outside market value for me.

Adjourned until December 6, 1915.

SIXTH DAY.

December 6, 1915.

Direct examination (continued) by Mr. Stein.

Q There are just a few lots that I want to specifically direct your attention to, Mr. Berry: the property of R. C. Jenkinson, on the west side of Washington street, just south of Branford place, being lots 64, 67, 68 and 93, in block 73. That property, I notice, has been assessed for $2,250.

The Court. Collectively?

Mr. Stein. Collectively.

The Court. One assessment?

Mr. Stein. One assessment.

The Court. Do they take up the whole block?

Mr. Stein. It does not take up the whole block; it is part of the block.

The Court. I used the word "block" unfortunately. Do these lots form a continuous tract?

Mr. Stein. Yes, sir. This property, I notice, is located about 130 feet south of Branford place. That is the most northerly corner (indicating).

The Court. What part of Branford place, at its most northerly corner?

Mr. Stein. It is located about 130 feet south of Branford place; that point is the most northerly corner of the Jenkinson lots.

The Court. And on what street?

Mr. Stein. On Washington, the west side of Washington.

The Court. These lots front on the west side of Washington street?

Mr. Stein. Yes, sir.

Q Do you consider that that property has been peculiarly benefited, Mr. Berry, by this opening? A I do.

Q And what do you say with regard to the amount of the assessment imposed? A A little bit high, I think.

Q What amount of benefits do you consider that this property has received? A Well, my judgment is that probably one-half of that figure would be more nearly correct.

Q You mean $1,000 or $1,200? A Yes, sir.

Q And what is your reason? A Well, I feel that the property immediately next to the street, being on the corner, absorbs by far the larger portion of the benefits, and that from that spot on in any direction the increase would fall very rapidly—the peculiar benefits.

By the Court.

Q Does the northerly portion of this tract connect with the corner lot, or is there an intervening lot? A There are one or two lots in between.

Q One or two between? A Yes, sir; the telephone company's property is on the corner, and then there comes one other parcel.

Mr. Stein. In examining the map, if your Honor please, I find that the telephone build-

ing is on the corner, with a frontage of 96.46 feet, and immediately adjoining that property on the south—

The Court. That is, with a frontage of Branford place?

Mr. Stein. No, sir; a frontage on Washington street.

The Court. On Washington street?

Mr. Stein. Yes, sir.

The Court. And south of that comes—

Mr. Stein. South of that comes lot No. 62, which has a frontage of 34 feet on Washington street.

The Court. And then comes this tract?

Mr. Stein. And then comes this tract.

By Mr. Stein.

Q Why do you say, Mr. Berry, that as you leave the corner of Branford place the benefits grow less? What is the basis of your opinion?

The Court. The witness made a general statement that, in his opinion, in all cases, in all directions, the corner lot would, to use his own words, "absorb" most of the benefit. Mr. Stein wants your reason for that general statement.

Witness. Yes, sir. What is the question?

Q What is the reason for that general statement? A Well, I feel that any person, for example, southerly bound would have come through from Market street practically just the same, but to a person going up or down Branford place, either a pedestrian or vehicular traffic, those buildings, or those properties, come somewhat in the view, and are thereby made more prominent,

where under the old conditions from Market street they were so remote as not to be noticeable.

By the Court.

Q Which properties have you now in mind in making this statement? A Southerly from Branford place, your Honor.

Q Not the corner, but other southerly lots? A After you have passed the corner.

By Mr. Stein.

Q Does that answer apply to each cross street crossing Branford place? A I believe that it does.

Q Before this opening, Mr. Berry—speaking, of course, always of the opening as the legal opening—was Washington street between Market street and William street on the west side of the street one continuous block? A Yes, sir.

Q What effect, if any, would the projection of a street through that block have, generally speaking, on the continuity of business? A There is this to be said in explanation of the conditions there. I think, for example, that throwing any of that interior property southerly from Branford place into what now, or at the time of that opening, would be the second block—I think that offsets to a considerable degree the benefits that accrue to that property by reason of its proximity to Branford place.

Q The second block from where? A From Market street. Heretofore it has been one block. It is true that it is no more remote from Market street, but there is that appearance of being in block 2 instead of block 1.

Q Does that appearance have any effect upon real estate values? A I am inclined to think

that it does. I think the first impression would be that values in the second block had fallen, but I think that is retrieved in a measure and probably a little more than offset by the introduction of the new street.

Q Does the fact that the property is on the second rather than the first block from a main thoroughfare like Market street have anything to do in the popular mind affecting values?

Mr. Kalisch. I object to that.

The Court. I do not think it is improper. I overrule the objection.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A I think it does have an effect.

Q What kind of effect? A Injurious effect.

Q Take the property across the street from the one we are now considering, being lots 11 and 13 in block 59, assessed to the Havell Manufacturing Company for $1,875. The property is located on the east side of Washington street, its most northerly point on Washington street being about 91 feet south of Branford place. A Yes, I am well acquainted with the Havell property.

Q What do you say with regard to that property, whether the opening of Branford place would effect its value? A The situation there is somewhat different. That property already had northerly from it old Maiden lane or Camfield street, so that the benefits to which it would be, the peculiar benefits which might be charged against that property I think ought to be mitigated somewhat since the convenience was not what you would say very greatly increased there.

As against that you have the extended thoroughfare, of course, which again brings the Havell property into a more conspicuous position and the plot itself is of considerable depth. I have forgotten the precise depth but I know it is extraordinarily deep. What is the amount of that assessment?

Q $1,875. A And the frontage is how much?

Q The frontage is about 61½ feet.

Mr. Smith. A little over 250 feet deep.

A I am inclined to think that the charge made for peculiar benefits is high.

Q Does the rear portion of that lot, those lots participate in the benefit to the same extent as the front portion? A No, I should not think so.

Q This property lies in close proximity also to Maiden lane? A Yes, sir, it is northerly from Maiden lane.

By the Court.

Q Where is Maiden lane? A The first block southerly from Branford place.

Q You said something about old Maiden lane Is that the Camfield street? A Yes, sir.

Q Is that the same as Maiden lane? A No, sir; Maiden lane is the street south.

By Mr. Stein.

Q According to the map the Havell property is located about 60 feet? A That is right, about 60 feet north of Maiden lane.

Q And about 91 feet south of old Camfield street or the present line of Branford place. What would be your judgment as to the amount of peculiar benefit that this property enjoys from the opening? A I am inclined to think, Mr.

Stein, that the measurement you gave from Branford place may not be quite right. There is the Wolf corner and the Valle property and I think it would absorb 140 odd feet.

Q The Wolf corner has 91 feet and the Havell property immediately adjoins it and that contains 61½ feet? A That would be 150 feet. I think you said some other figure. The property I know is 60 feet or thereabouts northerly from Maiden lane and approximately 150 feet southerly from Branford place.

Q That is not quite correct, Mr. Berry. The most southerly line of the property is about 150 feet southerly from Branford place, but the most northerly line is about 91 feet northerly. A I beg your pardon. I was thinking of the property next south of Havell.

Q We are speaking of the Havell property. A You are correct.

Q That would be your judgment.

The Court. Is it true that the Havell property is about 60 feet north of Maiden lane?

Mr. Stein. That is to say its most southerly boundary line.

The Court. What is your judgment as to the amount of the assessment?

Witness. It is assessed at eighteen hundred and seventy-five dollars.

Mr. Stein. Yes. $1,875.

A I am inclined to think it is rather high.

Q What amount do you think would be a fair increase in value? A I think $1,000 would be a fair assessment.

Q Take the property immediately adjoining the Havell property on the south, lots 8 and 9,

assessed to John Jackson, two blocks facing on Washington street at the corner of Maiden lane, the northeast corner, and also lot No. 6 which is included with the other two lots in one assessment for a total of $900, lot No. 6 facing on Maiden lane and abutting on lots 8 and 9 in the rear.

Mr. Kalisch. You represent all these?

Mr. Stein. Yes.

Q What do you say as to whether this property enjoyed any peculiar benefits?

The Court. One assessment?

Mr. Stein. One assessment.

A The $900 refers, Mr. Stein, to the Washington street frontage or does it embrace all that extent along Maiden lane?

Q It embraces one of the lots on Maiden Lane. There is adjoining that lot in this block, No. 6, there is adjoining that another lot of John Jackson, No. 4; which is assessed at $105, but that is subject to a separate assessment. Confine yourself entirely to lots 8 and 9 facing on Washington street and lot 6 adjoining immediately in the rear. A And the dimensions of that lot would be about what?

Q About 60 feet, more or less, on Washington street and about 100 feet on Maiden lane.

By the Court.

Q Is this a corner lot?

Mr. Stein. Yes, sir; corner of Maiden lane and Washington street.

A I think that assessment is too high.

By Mr. Stein.

Q You think there should be some assessment? A Yes, sir; unquestionably.

Q What assessment do you think there should be? A In a general way not to exceed—half of it or perhaps $500.

Q Now, I want to direct your attention, Mr. Berry, to the lot of John Jackson immediately to the east of lot No. 6, which is one of three which have been discussed.

The Court. What is the number of that lot?

Mr. Stein. Lot No. 4, and is assessed for $105. We have already considered that lot.

The Court. How have we considered it?

Mr. Stein. We have compared the assessment of that lot with several other lots, particularly the lot 67 in block 60.

Q I believe you stated that you considered that this lot, No. 4, assessed for $105 had been peculiarly benefited and on the other hand lot No. 67 in block 60 assessed for $2,500 to the Federal Real Estate Company had not been peculiarly benefited. Will you give us the basis of the distinction? The Federal Real Estate Company's lot butts on Camfield Court and is located about— A About 140 feet north of Branford place.

The Court. Are you asking any questions about Jackson's lot No. 4?

Mr. Stein. Yes, sir; I am asking the witness to give the basis for his conclusion that lot No. 4 on block 59 had been benefited peculiarly and lot No. 67 on block 60 had not been.

The Court. Have we or have we not been over that before?

Mr. Stein. Not in this manner. Witness has stated that the one has been benefited

and the other has not. I wanted to get his reason and I failed to bring that out.

A I wasn't certain that I remember it quite that way. I noted the figure there and I recall a comparison, but if it were not for the fact that that lot on Maiden lane the Jackson lot on Maiden lane—

Q No. 4? A No. 4 were opened to the frontage of Washington street I should not consider that that was peculiarly benefited at all. I am not certain that I stated that it was benefited. Perhaps I did in that way, but my view is standing alone that Jackson lot on Maiden lane is not peculiarly benefited.

Q Now, take the property, the Stoutenburgh, on the west side of Broad street between lots 84, 86, 88 and 90 in block 57, which is assessed together at $2,250, that property being located at about 95 or 96 feet north of Branford place, about the same distance south of Market street.

The Court. On which side?

Mr. Stein. It is located on the west side of Broad street between Branford place and Market street.

Q What do you say, Mr. Berry, with regard to that assessment of $2,250? A I think it is high, and very high.

Q Will you tell us why? A It is my impression that that property has really not been benefited at all, and my reason for that is this. I feel that any peculiar benefit that it might derive by reason of the extension of Branford place westerly from Halsey street, because it has not recently been opened easterly from Halsey street, is at least offset, if it is not more than offset, by the deflection of traffic from Market street southward bound, which otherwise would be obliged

to pass the door of that store. That, in my judgment, is lost to the frontage there.

By the Court.

Q This is on the— A Westerly side of Broad street, nearly 100 feet northerly from Branford place.

Q Why would traffic that was deflected from Market street necessarily pass the door of this place? It might go northerly, might it not? A It is lost to this place to a certain degree, your Honor, to a large extent.

Q Which door do you mean? Is there more than one door? A To the Broad street frontage, between Branford place northerly to Market street. If Branford place fills, as I have said before, the gap in city life that it was intended to fill probably, then the traffic southward bound that comes east on Branford place, and also traffic that is going west and turns up Branford place, that is lost to the block between Branford place and Market street.

Q Let me see. How would the traffic coming east on Branford place and southbound on Broad street pass the Stoutenburgh lots? A That is the point that I am making.

Q They are north of Branford place. A That is the point I am making: that eastward bound and southward bound traffic, east on Branford place, would be lost to property north of Branford place on Broad.

Q How would property north of Branford place— I want to get your idea. A Yes, sir; I wish to explain it.

Q How would property north of Branford place lose what it never had—southbound traffic? A The contention is that they always did have it, your Honor.

James A. Berry, direct.

Q In what sense? A If you were going down Market street and intended to go to the City Hall, for example.

Q Yes, if you were going down Market street. A You would turn south on Broad; you would pass the Stoutenburgh property.

Q But suppose you were going down Branford place, how then? A The Stoutenburgh has lost you; you would get along without him. You were not obliged to pass his place, and there is one possible patron or transient traffic lost to him. If we were leaving where we are sitting now and started for the City Hall and turned down Branford place, Mr. Stoutenburgh's store would never see us, but prior to the extension of Branford place we would go down Market street and Stoutenburgh would see us.

Q You think you would actually go all the way down Market street to Broad? A Yes, sir; in the old days.

Q In the old days? A Yes, sir; but not now.

By Mr. Stein.

Q You are speaking now of the eastbound traffic? A Yes, sir.

Mr. Kalisch. One moment, your Honor. May I interrupt? May I just ask a question of the witness before he proceeds further with that phase of the case?

The Court. Yes.

By Mr. Kalisch.

Q You are speaking of traffic, of course, down Branford place after the street is ready for traffic, being improved, graded, paved and so forth? A No, not necessarily; that is my construction

of the improvement as of the time; I think that would be the basis of judgment.

Q From the opening? A Yes, sir; at the time of the legal opening. In assessing for benefits on the basis of what I then saw, I would take it for granted that what I am now saying is the fact.

Q Did you make these observations directly after the opening? A I am considering, if you please—

Q No, I just want to know whether you made the observations concerning the traffic down Branford place and then into Broad street at the time of the opening, or have you made it since the street was paved and graded? A I could not have observed, Mr. Kalisch, at that time what had not transpired, but I do observe it now, and that was my judgment as of the time of that opening.

Q You do observe it now? A I do.

Q And that is what have observed, what you have stated concerning traffic? A Yes, sir; the traffic, its convenience in turning south and also turning west.

By Mr. Stein.

Q Were you able to form any judgment with regard to that element of traffic prior to the physical opening and determine what the effect was likely to be on the value? A Why, of course, with the map in front of you, or knowing the situation physically, as I do, I am satisfied that, if I were sitting in judgment upon it, that is the basis upon which I would act and upon which I would assess for benefits.

Q What basis? A What I deemed would come to pass with the completion of that improvement, with the opening of that street.

Q So that you were looking ahead from the day of the legal opening to what you deemed would be the physical product? A Yes, what you would observe since would tend probably only to confirm your judgment then made.

Q Then your judgment as to these values and benefits is not based, as I understand it, upon what you have observed since the physical opening?

Mr. Kalisch. He said he did observe them.

A It could not have been, but I am observing now, for instance, what the trend is, and yet it would be too late to apportion assessments for peculiar benefits; it had to be done as of that time.

Q Then do you wish us to understand that you consider that the Stoutenburgh property had not been peculiarly benefited whatsoever?

The Court. It was not benefited at all, he said.

A I am inclined to think that it has not been benefited, that its loss has been greater than its gain.

Q Now, what you say with regard to the Stoutenburgh property, would that apply as well to the property assessed to George Watson, block 57, lots 81 and 82, and adjoining the Stoutenburgh property on the north? A Yes, sir.

Q And assessed for $790? A I think it would.

Q And also lot No. 77, assessed to George Watson & Company, facing on Market street, connecting in the rear with lots 81 and 82, lot 77 being assessed for $210? A Yes, sir; I do

not think that should have any assessments for peculiar benefits.

Q Now, take the west side of Broad street, south of Branford place (indicating on map). Is it your opinion that any of the property at that point has been peculiarly benefited? A Oh, yes; I think it was.

Q And to what extent would you say? A Well, I feel the benefits there naturally would be on a sliding scale as you went further away from the southerly side of Branford place, but it would taper off, too, as you reached William street, or, say, half-way down the block, or a trifle more.

Q Now, you say it would take you about half-way down the block to William street? A Yes, sir; that would be my idea.

Q Now, take the property immediately across the street, on the east side of Broad street. Has any of the property opposite the opening to Branford place and south of it been peculiarly benefited? A I think so, some of it.

Q How far south would it go? A Well, there is the National State Bank property, on the southeasterly corner; I think that has been benefited somewhat. Then comes the property—

Q (*By the Court.*) The southeasterly corner of Broad and Mechanic streets? A And Mechanic street. Then comes the property of the First Presbyterian Church. If that were a business property, I should give it some of the benefit; but, at any rate, no peculiar benefit, in my judgment, attaches beyond the line of that church property.

Q (*By Mr. Stein.*) Then you would not take it down as far as the Central Railroad? A I do not think so.

Q Why do you make the distinction between property on the west side of Broad and the property on the east side with reference to the termination at which the peculiar benefits would accrue? A For this reason. I have said before, and I think so now, that most of the traffic on Branford place would be in an easterly direction, and as you are on the righthand side, turning south, the owners of that property would be bound, in my judgment, to partake in that increase of benefits accruing from it. Traffic coming north on Broad street always had Market street on which to turn, and the presence of Branford place would not in any fashion tend to increase that traffic, in my way of thinking.

Q Do you consider that the property of the Central Railroad, the railroad station or any of the property used for railroad purposes had been in any way increased by reason of the opening of this Branford place? A No, I do not think so.

Q Or any of the railroad property that we have considered? A No, I do not.

Q I think now, Mr. Berry, that the only things that we have omitted are a couple of blocks on Mechanic street. One is the property of Mary Turnbull, being lot No. 92, in block 164, and is on the north side of Mechanic street, about 200 feet or thereabouts easterly of Broad street (indicating on map). A Yes. I know the Turnbull property.

Q It is assessed for $450. Do you consider that that has been peculiarly benefited? A Without going into the dimensions of that or the frontage of it, I do not think it has been peculiarly benefited at all.

Q Take lot No. 90, immediately adjoining it on the east, assessed for $310, and lot No. 72, on the same side of the street, about 50 feet west of Mulberry street, and assessed for $69 (indicating on map), do you consider that either of those two lots have been peculiarly benefited? A I do not.

Q What is the basis for your opinion that none of those three lots situate on the north side of Mechanic street has been peculiarly benefited? A Why, Mechanic street, to speak closely, had been and is already incapable of taking care of the traffic that was there prior to the extension of Branford place, and could not, in my judgment, or any part of it, be benefited by the opening and widening and extension of Branford place.

Q What kind of a street is Mechanic street? A Why, it is given over to manufacturing and wholesale mercantile.

Q How wide a street is it? A It is a very narrow street, about 40 feet, I should think; I have forgotten the precise figures.

Q Was there much congestion there before the opening of Branford place? A Constant congestion.

Q Mr. Berry, you have given us what you considered was the market value per front foot of property of Nathan Hammerschlag? A Yes, sir.

Mr. Kalisch. What lot is that?

Witness. That would be No. 100 or 102; 100 Market street, I think.

Q 100 Market street, being lot 19 in block 60. That is the block between Washington street and Halsey street. I believe you have stated that the market value before the opening was

about $4,000 a front foot? A That is my view of it; yes, sir.

Q That lot seems to be about half-way between Washington street and Halsey street, slightly nearer Washington street. Would you say that $4,000 per front foot was a fair average for front foot values? A I think it is the fair value.

Q Take the block immediately to the east, on the south side of Market street, one of the lots of Joseph Isenberg that we have considered? A That would be to the west, Mr. Stein.

Q Immediately to the west. I beg your pardon! What do you consider is the market value of that per front foot? A Well, not less than, say, $3,000 per foot.

The Court. How do you describe that lot?

Witness. The Isenberg lot?

Mr. Stein. Lot No. 35, in block 73.

Q Would that be a fair average for the block, interior lots? A Well, I think so. It might increase somewhat as you come easterly toward Washington street, but that is a fair approximation of its worth per foot, I think.

Q Now take the block between Halsey and Broad street, also on the south side of Market street. Take the property of Gottfried Krueger, lot No. 56, in block 57 (indicating on map). What do you say was the fair market value of that property at the time of the opening, or before the opening? A Well, that extends through to Nutria street, or Schoolhouse alley, I think?

Q Yes. A A fair average there, I think, would be, say, $5,500 per foot, or between $5,000 and $6,000.

Q Take the property on the other side of Market street now, the northwest corner of Broad and Market streets, speaking now particularly of the property of the Prudential Insurance Company. What would you consider the value of that property on the Broad street frontage? A Right on the corner?

Q Let us take the corner first? A Meaning Holzhauer's corner?

Q The Holzhauer corner? A Well, the figures there are extraordinarily high. If there were a—I assume you refer to the normal depth, which there is not there. There are about 60 odd feet there, I think; but if there were normal depth it would unquestionably be considered worth $20,000 per foot frontage.

Q And going a little north on Broad street from Market, but in the same block, between Bank street and Market street, what would you consider those values? A $15,000 per foot average.

Q (*By the Court.*) How far north? A Any portion of that block, your Honor, to Bank street northerly from Market street, on the westerly side of Broad, excluding corners, which are worth more.

Q *(By Mr. Stein).* And then those lots on the north side of Market street between the west side of Broad street and Wilbur alley, which is located about 150 feet west of Broad street, what values would you give there? A $10,000 per foot.

The Court. This is on Market street?

Witness. Yes, sir.

Mr. Stein. On Market street?

Q Now, Mr. Berry, you have undertaken to give us the area that you considered was the

area of peculiar benefit by this opening, and the area of general benefit. Will you now, in a general way, outline, if you can, the area that you considered was peculiarly benefited, first, by this opening? A Yes, sir.

The Court. Has not Mr. Berry given us his view of what the zone should be?

Mr. Stein. Yes, sir.

The Court. Now, you are asking for that again?

Mr. Stein. Well, we have gone into it in detail, if your Honor please, and I thought we would get one general question to have Mr. Berry outline in a general way the zone.

The Court. All right. I think we have gone over it before, but if you want to sum it up in the answer to one question, you may do so.

Witness. Commencing on the westerly side, I would give High street, and say a distance westerly from High street of probably 100 feet, or thereabouts, as being peculiarly benefited. Coming down, then, on the northerly side of Branford place, I would credit with peculiar benefits those properties lying, say, within 50 feet from the northerly corners of Branford place. Easterly I would not go beyond the Broad street frontage opposite Branford place, and on the southerly side of the improvement I would carry it down, approximately, say 300 feet, right along the line, practically from the beginning at the west to the ending at the east, including the original Branford place.

Q And why do you select the figures 300 feet? A Well, the blocks there are large, and I think that would be an approximation of about, say, one-half the distance down. That is my intention.

Q One-half of the distance down to where? A Towards William street from the southerly side of Branford place.

Q *(By the Court).* Half the length of the block? A Half the length of the block; yes, sir.

Q *(By Mr. Stein).* There is just one additional lot that I want to direct your attention to, and that is lot No. 21, in block 78, assessed to Edward Hassinger for $585, I believe? A Yes, I am acquainted with the Hassinger property.

Q It is located on the south side of Springfield avenue? A Yes, sir.

Q What do you say with regard to that property, whether it has been peculiarly benefited? A Well, my recollection is that that property touches right upon the new street—the Hassinger property does—in the rear.

Q Will you step to the map? A Yes, sir. (Witness proceeds to map). It is outlined in red, yes, that property known as lot No. 21 on block 78. That extends from Springfield avenue at its northwesterly side through to and at the rear touches—comes within, if not quite to, 20 odd feet, 20 feet of Branford place, but the—

Q It does not touch Branford place? A No, unless this be a public street here (indicating on map). That is a public street.

Q Nicholson street? A I think that is intended to be old Nicholson street, is it not (indicating)?

Q Yes. A That is my recollection of the situation there. There may be some slight benefit accruing to that property by reason of the fact that it does touch upon it, but the benefit would be very small, I believe.

Q Does it touch the street at grade at that point? A No, there is a very high natural embankment there so that it cannot be used at all without some expenditure to get at it. It merely has what you call light and air that would come through but so far as accessibility is concerned it is not practicable to use it at all.

Q What about its location on Springfield avenue? A That has been injured. The point I wanted to make was if this were readily acceptable, if there were ingress and egress in the rear of Branford place being about eight feet deep I would consider that additional access as real benefit but I think if there was any such it is a great deal more than offset by Branford place deflecting the traffic from it.

Q And what about this lot of Reiboldt, lot No. 63 in block 78? A I think that lot is practically next door to Arlington street.

Q On the south side of Springfield avenue? A Yes, I know the Reiboldt property.

Q That is assessed at $305? A No benefit of a peculiar character has been obtained there.

Q You have now mentioned the zone of peculiar benefits. What then do you say with regard to the rest of the area shown on these maps covering the assessment of the commissioners as to the kind of benefit the rest of the area received, Exhibit B and C? A Outside territory that I have mentioned as having been peculiarly benefited I believe that the benefits are general.

James A. Berry, cross.

Q Referring in the testimony on page 518, the question was asked by the Court as follows: "Would you say that that general benefit was the same in degree?" We were then talking of lots north of Market street between High and Broad.

The Court. Didn't the witness answer the question?

Mr. Stein. Yes, sir. I want to follow up the question by another question.

The Court. He said, "probably the general benefit would be a trifle greater by reason of the proximity than it would be in a case of those more remotely resident or situated."

Q Just what did you have in mind by that answer? A It seems to me, if you please, people living close to that improvement or doing business in close proximity to it would be able to partake more frequently, more generally of the effects from it. It would be perhaps a greater ease and convenience to them in turning around. They could use it, your Honor, more than a person living at a more remote point but who nevertheless could use it.

Q You are giving now merely general facts? A Yes, sir.

Cross examination by Mr. Kalisch.

Q Mr. Berry, in estimating peculiar benefits you have permitted the future traffic conditions to play an important part, have you not? A Traffic or future traffic. I would like to explain that.

Q Just answer that question? A Yes, traffic unquestionably enters into it very largely.

Q You have also considered the probability of an immediate improvement in the way of grading and paving of the new street, have you not? A I have stated that my view is that those improvements follow practically immediately the legal opening.

Q And that was in your mind, of course, when you estimated these peculiar benefits? A Yes.

Q The probability of that immediate improvement following the opening? A I feel that an immediate benefit attached to the property nearby along that line at once upon the taking over of the property by the city.

Q Now, in considering the traffic conditions, future traffic conditions, and in considering the future improvements such as grading and paving, did you permit those elements to fix in your mind the present market value or the future market value? A To a certain extent they affect the immediate market value.

Q And in which way do they affect the present market value? A Why, the mere knowledge that it was to occur, for example, will immediately cause property along the line of that improvement to enhance.

Q On the assumption, I suppose, that the future market value would increase when the future conditions came into existence and on account of the future increase in market value it would operate as an increase in present market value? A I don't bank so heavily upon the future.

Q Just explain in what way? A I will be glad to do that. I know that immediately upon the purchase by the city of that land there was an enhancement of value there.

Q I mean in particular reference to future traffic and improvement, in what way did that operate? A They would, of course, be paid for later. That is a separate improvement with which I am familiar.

Q You mean as to the effect it would have on the present market value, the probability of the future conditions? A I think to a certain extent you do take into account and measure the present or the possibility or probability of the future, but that is not the whole story.

Q Now, you spoke of the traffic that would naturally be diverted upon Branford place which heretofore has always gone down Market street. What sort of traffic in your mind would be diverted into Branford place? A I mean both vehicular and pedestrian traffic.

Q Do you think that persons who have business along the line of Market street, between Broad and High, would be likely to go down Branford place? A I do not. That would be taking them at least one block away from the place they intended to do business according to your statement.

Q So that you confine your opinion to the traffic which would go beyond Broad street either east of Broad or north or south of Market? A Not quite. I will make it clear to you if you wish. I mean by vehicular and pedestrian traffic the traffic which might be inclined, if you please, to do business or to visit or go to, generally speaking, any person out of the city southerly from Broad street.

Q Now, in which direction is the greater amount of traffic, north of Broad or south of Broad? A I am not sure that I know just

what you mean by north of Broad. From what point?

Q Say from Market street. I am now speaking before the opening? A Yes, I understand it. Generally speaking, I think there is no doubt that the traffic on Broad street northerly from Market is heavier than southerly from Market on Broad.

Q Is that so today? Has there been a change in the trend of traffic? A I am inclined to think the traffic north of Market will always be heavier or superior than that south.

Q Now, is it your opinion that traffic going from the direction of High street, that all traffic coming from the direction of High street would be diverted into Branford place with the exception of that traffic which had business, let us say, between High and Broad? A I am inclined to think—in the first place I would like to be more specific as to why that portion of High street did not help any. I will explain it this way. I am inclined to think that the traffic going westerly from High street and not being southerly bound from Branford place or its direction or going further south there.

Q That is not the direction I am inquiring about. I merely want to know about traffic going in an easterly direction from High street, whether or not the kind of traffic going in that direction that would be diverted into Branford place would include or rather would be all the traffic going in that direction with the exception of such traffic as would have occasion to stop or do business with persons between High and Broad? A Still, it isn't clear in my mind but I would like to state—

Q If you don't understand it, say so. It is rather involved.

Q You have stated that Branford place undoubtedly attracts traffic from Market street into Branford place. Does that mean all the traffic going easterly on Market street? A On Market street?

Q From High. A I don't think it includes all the property.

Q Just state which traffic. A I am inclined to think that all the traffic coming easterly and being bound eventually toward the south side of our city would rather turn on High street and go easterly on Branford place, bound for its destination.

Q So that the traffic that would go north of it on Broad street would continue in your opinion down Market street to the Four Corners? A That should be explained I think likewise. I think traffic that came from, say, the northerly side of Market street, going in the natural order of things, traffic from the immediate vicinity of High street, I think that would be apt to continue straight down Market street but when you went further west those neighborhoods, say Bank street and Academy street, if they were northbound; and eventually Warren street to come easterly bound.

Q (Question read). A Yes, sir; some of it.

Q How much of it? A Well, I have tried to explain it to you. In my opinion the traffic that would originate west of High street would be very, very slight, and then other traffic that would originate further west, say on Bank street and Academy street would reach Broad street with less congestion and then turn north.

Q What about the traffic that comes down from Springfield avenue and South Orange avenue. Do you think that that traffic would be

diverted into Branford place? A I am inclined to think that all traffic that would come between High street—

Q Can't you answer that yes or no? A Not quite.

By the Court.

Q You mean if it were northbound? A A certain portion of Springfield avenue traffic would come down Branford place.

By Mr. Kalisch.

Q And what about South Orange avenue traffic? A The same thing would be said about South Orange avenue.

Q You say a certain portion. What proportion?

By the Court.

Q It would lose a block on Broad street? A Yes, sir.

Q Go on. A Such traffic as was northward bound from Market street would be lost to the block between Market and Bank if it came down Bank, but you are speaking of Springfield avenue.

By Mr. Kalisch.

Q And South Orange avenue? A We will take these one at a time. Traffic that originated on Springfield avenue further west than William street could be taken care of, the intersection of William and Springfield avenue, could be taken care of by William street. Traffic that originated on South Orange avenue always had Market street on which to come down and it was the only way really that they could get to the center of the city.

James A. Berry, cross.

Q That doesn't answer my question. I would like to know what proportion of the traffic that comes down South Orange avenue and Springfield avenue would be diverted into Branford place when the destination of that traffic is north of Broad street? A I think that a very large proportion of that traffic would prefer to take Branford place.

Q What proportion? A I can't measure absolutely.

Q Fifty per cent.? A Yes, I think so, and more.

Q Sixty? A Yes.

Q Seventy? A Yes.

Q Probably seventy-five? A I would not want to go too far but I think so.

By the Court.

Q What in your opinion would be the counteravailing advantage which would make persons who were conducting that traffic be willing to travel the distance of an additional block on Broad street? A That is easily explained, your Honor. We all know what the congestion is at Broad and Market streets and we know that your turn there is troublesome, but by turning into Broad street at Branford place you would be able to travel on Broad street in a straight direction and without any turn. I think particularly vehicular traffic would prefer to go that way and avoid the congestion.

By Mr. Kalisch.

Q Now, then, concerning this Stoutenburgh property of which you spoke, you testified that Stoutenburgh by reason of the opening of Branford place had lost the advantage of traffic

which would go south on Broad and past Stoutenburgh and Watson's property. That you have testified to, haven't you? Now, isn't that more than counterbalanced by the traffic that goes north on Broad from Branford place and which formerly went down Market street and never passed Stoutenburgh's and Watson's property? Can you answer that yes or no? A Yes, certainly, I can. That is not quite right.

Q Why not? A For this reason. I think your comparison, if you please, was more or less erroneous. Take vehicular traffic going easterly and desiring to go north. That traffic is obliged to get to the right and would turn into Broad street on the easterly side and away as far as possible from the Stoutenburgh premises. A person desiring such as you have mentioned to go easterly upon Market street had no other way of reaching Stoutenburgh's and was obliged to turn east to go south and thereby passes the Stoutenburgh store. A person coming down Branford place desiring to go south need not touch the Stoutenburgh property.

Q Did the persons going north on Broad and coming out of Branford place? A Yes, sir.

Q Would pass Stoutenburgh's and Watson's properties, would they not? A Oh, yes, indeed.

Q No question about that? A Not the least question but what some person would pass.

Q And the traffic you have spoken of, which I think you said was seventy-five per cent., is traffic that comes down west of High from South Orange avenue and Springfield avenue, would go past these two properties, if they were going north on Broad, that is correct, is it? A Not quite. That includes vehicular traffic that I am

endeavoring to specify and which would not go near the Stoutenburgh premises.

Q You have spoken of seventy-five per cent. of the traffic which comes down Springfield avenue and South Orange avenue being diverted into Branford place that was going north on Broad. That traffic passes Stoutenburgh's property and Watson's property, does it not, on Broad street? A On the easterly side of Broad street.

Q I don't care easterly or westerly. It passes? A Yes, sir.

By the Court.

Q You have limited your view of that phase of the matter to the vehicular traffic. Is that because it would not be applicable to pedestrian traffic? A No, pedestrians would pass.

Q They could get to Stoutenburgh's whether turning down Market street or Branford place? A They could get to Stoutenburgh's any way.

By Mr. Kalisch.

Q How about the pedestrian traffic? Would that be diverted 75 per cent? A I should not think so.

Q How much of it would? A You have to measure that by the territory westerly from High, which would not be served and which still might be northerly bound.

Q I mean northerly bound on Broad street? A Yes, sir.

Q Traffic that is northerly bound on Broad street, coming down from Springfield avenue and South Orange avenue and the tributary of those streets pedestrian traffic, you don't think, would be deflected into Branford place? A Some of it would, undoubtedly.

Q How much of it? A You can't measure it accurately, but a considerable proportion I will grant you.

Q As much as the vehicular traffic? A Possibly not.

Q Is it a fifty-fifty proportion? A There is a reason for explaining the difference between vehicular and pedestrian.

Q I know there is a reason, but I want to get the proportion? A Yes, I think that would be fair.

Q Those persons, pedestrian traffic, they would necessarily cross over to the east side of Broad street in going north? A No; they would probably remain on the west.

Q They would remain on the west side of Broad street? A I think the larger proportion would.

Q And this traffic which never passed heretofore the Watson and Stoutenburgh properties? A That is not quite the fact for this reason. As I have explained, there was William street, which always carried the people into Broad street northward bound.

Q You don't mean to say that people coming down Springfield avenue and South Orange avenue would go into William street if they wanted to go north on Broad? A If they are northerly on Broad street I think the same rule would apply there as on Branford place.

Q You therefore think that the pedestrian traffic coming east on Springfield avenue and west from William street would go down William street? A I am inclined to think that a fair proportion would go down William street.

Q Do you mean to say that the kind of traffic that goes down William street is as great

as the kind of traffic that goes down Springfield avenue? A No, I should not say that by any means.

Q Then, how do you account for it? A It doesn't require so much accounting. A person seeking convenience and desiring to avoid congestion would be apt to take that street; William street would answer the bill for those living or doing business westerly.

Q If you were going north on Broad street, that is north of Market, where is it convenient in going down William street, which is two blocks from Market street, when you can go down Market street? A There are several conveniences. It is not such a convenience to go down, for example, on Springfield avenue, which is quite a congested thoroughfare.

Q Don't you think pedestrian traffic always attracts further pedestrian traffic? A I am inclined to agree with that view.

Q And therefore traffic that would go down Market street, Springfield avenue and down Market street formerly; that is, that was destined to go north of Market street on Broad, was formerly lost to the properties between Branford place and Market street on the west side of Broad street? A Yes, such as were northward bound prior to the opening of Branford place, had no other street if they came easterly of certain other intersecting streets.

Q And fifty per cent., you say, of that traffic that comes down South Orange avenue and Springfield avenue is now diverted into Branford place going north on Broad, if they were going north on Broad? A Yes, we made an estimate for you of fifty per cent.

James A. Berry, cross.

Q That is about right? A It should be spread out over certain territory in certain proportions.

By the Court.

Q Is it your opinion that a pedestrian above High street who was not contemplating taking any vehicle and wanted to get to a point north of Broad might consider whether he would select to follow the south line of Market street or to reach the north line of Market street, perhaps coming by the court house and going diagonally across in order to avoid the congestion at the corner of Broad and Market streets? A If he were going north, your Honor, I think, if you stop to consider, he probably would take the northerly side of Market street at the point of less congestion, which would be the court house.

By Mr. Kalisch.

Q Now, take into consideration the jitney busses that travel down Springfield avenue into Market street. What percentage of those jitney busses do you think are diverted into Branford place?

Mr. Stein. I think I should object to that question because it is a question as to just when the jitney bus traffic came into existence with reference to the legal opening of the street. My own opinion is the jitney bus business began after the street was opened, and not at or before the opening, so that it would not have any bearing on the investigation. I take it this investigation of traffic is only important, at any rate, so far as the witness has stated, as

to what happened prior to the opening. You take a special kind of traffic which did not exist prior to the opening and the investigation would not have any bearing at all. The jitney question has not been brought out on direct examination, and I think, therefore, it is improper cross examination.

The Court. I think there is something in your objection.

Mr. Kalisch. I will restrict it to inquire into automobile traffic.

Q What percentage of the traffic is diverted into Branford place? A At this time?

Q No; at the time prior to the opening or directly after the opening?

Mr. Stein. I object to that unless you limit your question as to the time of the official opening.

Q In making up your appraisements and your estimation of the benefits you took into consideration the future traffic conditions, as well as the present? A If you mean—

Q Didn't you take those into consideration? A In connection with the present.

Q What proportion of the traffic did you consider—I mean automobile traffic—would go down, was diverted into Branford place?

Mr. Stein. At what time?

Mr. Kalisch. The time he made his estimation of the benefits.

A I would determine as of that time that a very considerable proportion of the automobile traffic would go easterly on Branford place.

Q Did you consider that this traffic that went easterly on Branford place would have to pass

Stoutenburgh's and Watson's property going north of there? A If they were going north, yes, at the distance I have stated.

Q Which was a condition that didn't exist prior to the opening? A To a certain extent it did, you know, because Branford place had already been opened for a certain distance to Halsey street.

Q I am speaking of the traffic from Springfield avenue, South Orange avenue; that traffic did not exist prior to the opening. I mean the traffic that went past Stoutenburgh's property and Watson's property? A That can originate and go north past the Stoutenburgh property or the other intersecting streets southerly from Branford place.

Q You don't mean to say there was as much of it as there is now? A I don't think Branford place has affected any traffic west of it.

Q It is taking care of the proportion that originated there and it has taken care of traffic that formerly went down Market street? A Yes.

Q Did you consider that the traffic that went down Market street, Springfield avenue and Market street west of High and also down South Orange avenue if it was going north on Broad, that is north of Market, that that traffic before it went north on Broad went due south in order to turn north on Broad on account of traffic regulations? A It did not have to turn south on Broad to go north on Broad.

Q Do you mean to say, Mr. Berry, that the traffic that goes north on Broad does not have to turn south on Broad first? A I mean just exactly that.

Q And it has never had to turn south on Broad in order to turn around in order to go north on Broad? A The traffic regulations are such that you go easterly on Market and Broad and make the turn on the furthermost turn on your right.

Q That is a fact that you took into consideration in making your estimation of that. Did you take that view of it? A One moment. You are asking me now as to what is occurring with reference to traffic on those points.

Q I am speaking of the time you made the estimation of benefits. Did you consider— A A similar situation existed.

Q That the traffic that was going north on Broad, coming down Market street, did you consider that that traffic did not have to first turn south on Broad, facing the Watson property and the Stoutenburgh property and then center around the island that is situated on Broad street in order to go north. Did you consider that that was not the situation? A I am not sure that I get it clearly, but I wish to answer what my view was. This traffic coming easterly on Market street continued straight ahead to about the middle of Broad street, turning north at that point, meaning nearest to the going corner.

Q And that is the fact that you considered when you made your estimation of benefits of the Stoutenburgh property and the Watson property? No; I don't recall that I took that into particular account.

Q You took into consideration the traffic, didn't you? A Certainly.

Q Then you must have considered that? A There were certain things probably you would pass by.

Q You have testified that a great deal of the traffic formerly passed going south on Broad past these properties has been lost, and didn't you consider the traffic that had been gained by these properties on account of the traffic that came through Branford place? A The traffic that would come from the south on Branford place had been taken care of prior to the opening of Branford place by other intersecting streets, such as William street, Court street, Hill street.

Q We have been over that, the William street traffic. What I want to know from you is whether or not all the automobile traffic, hack traffic of every description that goes north on Broad from Market does not first have to pass the Stoutenburgh property and the Watson property at the time you were making your estimate of benefits to these two properties? A Do you mean to turn north?

Q Yes. A I don't know the exact technic of the traffic regulations there. I know the isle of safety is there.

Q I am asking you whether you didn't consider that was a fact concerning that traffic? A I didn't give that any real thought.

Q Did not? A No, and I have an explanation of it.

Q Didn't you know at that time that you made these estimates of benefits that you couldn't make a lefthand turn at the Four Corners? A No, I didn't know you couldn't make a lefthand turn.

Q What is your opinion about these two properties, the Stoutenburgh property and the Watson property, being affected, if you had taken that into consideration? A Not at all.

James A. Berry, cross.

Q You would not consider the additional traffic that would pass? A No, for the reason that the vehicular traffic would be turning quickly about or around the isle and go north.

Q At the same time there would be more traffic pass those doors? A No; that same traffic they always had.

By the Court.

Q They would turn quickly if the object in view was to make the turn, but if the object in view was to stop at Stoutenburgh's they would not turn quickly? A Then Branford place would not help it in any way.

By Mr. Kalisch.

Q Now, Mr. Berry, have you discussed this question of benefits occasioned by the Branford place opening with other persons during the course of the improvement? A It is more than probable that I have talked it over because I had something to do with it, you might say, its construction.

Q Have there been different opinions expressed about it? A As to what?

Q The benefits to the various properties? A Why, that would be natural.

Q Is that a fact or not, that there have been different opinions expressed about it? A I should think opinions would differ; yes, sir.

Q Have you ever discussed various properties, I mean individual properties, with individual persons the benefits that attached or did not attach? A I do not recall any, but if you tell me perhaps I will remember.

Q No; I am asking you whether you had any special ones? A No, I do not recall any.

Q So that you think that there has been a difference of opinion concerning the benefits that accrue to these various properties, didn't you? A I have no doubt of that at all, not any.

Q Concerning the benefits that have been assessed by the present commissioners in which you disagree with their assessments. You don't mean to say that your difference as to the benefits does not represent an opinion, difference of opinion? A On my part?

Q On their part? A I would say to that the same as they said to me.

Q I don't quite recollect. Did you testify concerning the benefits to properties north of Market on the east side of Broad? A No, I have said, I will state that now, that I do not think that there are any benefits on Broad street northerly from Market by reason of the opening of Branford place, if that is the question.

Q How about the streets that run into Broad street? A The same statement holds good.

Q How about Clinton street property? A I will tell you all about Clinton street.

Q No. Are there any benefits there? A I do not see any.

Q You do not see any? A No.

Q You have a piece of property on Clinton street, where you were assessed $50, and you paid it, did you not? A You might double that; I had a couple of pieces.

Q You made no objections to the assessments, did you? A It might interest you, Mr. Kalisch, to know that I have never personally protested anything in city life; my own assessments I have never questioned.

Q You would rather pay? A The line of least resistance. You could include Franklin

street there, too, Mr. Kalisch; I had a piece there. I haven't questioned that, either.

Q The diversion of traffic, Mr. Berry, does not necessarily reduce the value of property, does it—diversion from a particular street to another street? A Yes, sir; anything that you take from that street in the traffic line that it could accommodate conveniently, I think, is a direct loss.

Q Do you think, for instance, that traffic that goes through a street that has no particular business with anyone on that street is beneficial to that street, if it results in congestion in that street? A Congestion is what we thrive upon, Mr. Kalisch, up to a certain degree.

Q Up to a certain degree? A Yes. There may be overcongestion, as in the case of Mechanic street, for instance.

Q Do you not think that Market street was a congested street? A No, it was broad enough to handle all the traffic that came.

Q Do you not think that Market street was a congested street between Halsey and Broad streets? A Yes, sir; only properly congested to accomplish the best results. That is my way of thinking.

Q And you think that some of the traffic that was diverted from Market street into Branford place—the fact that some of that traffic has been diverted has injured Market street property? A Yes, I think that Market street really could not afford to lose any of its traffic.

Q Do you not know that Market street is benefited as being in close association with Branford place property? A I wouldn't say so.

Q Do you not think that the fact that a new street is opened in close proximity to an old

street, that the new street extends its benefit in a certain measure to the old street? A It may under certain circumstances.

Q You do not think, however, that the present opening of Branford place has extended any benefits to the immediate surrounding territory? A I haven't said that. I do not think that Branford place has in any fashion enhanced Market street; I do think that it has injured Market street, and I do think that it has benefited property southerly from Branford place, to a certain extent.

Q Now, you spoke a moment ago about general benefits and special or peculiar benefits. Will you tell me, Mr. Berry, what you mean by general and peculiar benefits? A I had stated that, I think, previously, but I would be glad to do it again.

Q Yes. A My view of peculiar benefits is this: that if my property be enhanced, if its market value or selling worth be enhanced, by an improvement, I think that is peculiar to me, and to such as I am. So much for peculiar. If I can get more money for my property and if I can get greater rent for my property, then, I think, the benefits to my property are peculiar. General benefits as I understand it, are those which everybody, even though they would have, if you please, no real financial interest in it, can partake of, and that applies to everybody, you might say.

Q And it would not make any difference where the parties lived? A Yes, I think it would make some difference.

Q Well, what difference? A I think perhaps it would be immeasurable, but I will explain it in the fashion that I have sought to do

heretofore. I think that if you were doing business nearer to Branford place or living nearer to Branford place that I would be, who would be doing business further away from it or living further away from it, I think the benefits, generally speaking, would be greater to you, in that you could partake of the use of that street more frequently than I could, and that would apply to a zone, I think, in about the same fashion.

Q What about persons that live near it, that do not have any particular business with Branford place; is it a general benefit to them? A It may be such. They may want to use it later, and it is a convenience and comfort, I think, for ease, and so forth, for anybody in city life.

Q And you think that the nearer you live to it, the greater the peculiar benefits? A Well, I have sought to make clear that it is a pretty fine distinction; it would be difficult to measure.

Q Do you think that a person living on High street gets more benefit from Branford place than a person living up on Belleville avenue? A The same thing could be said of Broad street.

Q Can you not answer that? A Certainly, I can answer it.

Q Well, why? A Well, it is a case of finding it more frequently, perhaps, the same as I would find Broad street, if I lived nearer to it than if I lived at the city line.

Q Is it a greater benefit because that individual has business in Branford place, or is it of greater general benefit because it is an artery which leads to the center of the town? A Well, I think where you break a big block up into smaller pieces there, that is a general benefit always in the center. The blocks are too large in the center of Newark in a great many instances.

Q So that the closer you come to the improvement, or to Branford place, the greater would be the general benefits? A If there were any distinction—I think there is a slight one, perhaps. If there were any, I think that the people nearer by would be the gainers.

Q Well, do you not think there is a distinction? A Slight, very slight.

Q Between what? A Between the more remote and the more accessible, if you please, or nearer by.

Q So that you think that persons living on High street—the distinction is very slight between persons living on High street and persons living somewhere up on Mt. Prospect avenue? A Well, I do not think so for general benefits. I think you would find it hard to explain it absolutely accurately.

Q No, I want to get your idea of what you mean by "slight." A Well, I have said almost immeasurable. The whole city partakes of the benefit of the opening of Branford place, and, in my judgment, talking to that text, Branford place is really more of a general than of a peculiar benefit.

Q What I want to get from you, Mr. Berry, is whether the general benefit which the whole city partakes of is the same as the benefit that a person that lives in the vicinity of the improvement does—the general benefits, now. A Well, I thought I had explained it. My guess would be or my view would be—

Q No, I do not want your guess about it. A Well, my judgment would be that a person nearer by would partake, perhaps, to a slight extent more of the benefit than one more remote.

Q Now, why? A Because of the greater use of it by such a person, probably.

Q And a person living, let us say, up on Mt. Prospect avenue would have a great deal less occasion to use Branford place than a person who lived on High street; that is correct, is it not? A Not necessarily. It might be that the Mt. Prospect avenue man would use the street more than the High street man.

Q That is a special case, and we are now speaking as a general proposition. A Well, all things being equal, I think the man on High street would step more frequently into Branford place, generally speaking, than the man on Mt. Prospect avenue.

Q And the man on South Orange avenue or Springfield avenue would have more occasion to use Branford place than the man on Mt. Prospect avenue, all conditions being equal, as you say? A That is drawing it pretty fine, but I think that if there were any advantage, the near-by person would have it.

Q You do not think that has any effect on rents, do you? A In what respect?

Q A person living on South Orange avenue or Springfield avenue or High street—the fact that you have this new opening leading into the center of the city, whether that would not have an effect on the rents of those streets? A It might have two effects on it, sir.

Q What two effects? A I think it might depress rents more than it would raise them.

Q And the other? A Well, it might be an exception, where one man would raise his rents.

Q Why would he raise the rents? A Well, he might think that his property had gained by the proximity of Branford place.

James A. Berry, cross.

Q Well, the raising of the rents and the getting of the rents, would he get more rents? A My answer is no.

Q He would not? A He would not.

Q You do not think that would have any effect on the rental value of property on those streets? A I have stated that I think that Branford place would detract from business life at that point.

Q Now you are speaking of general benefits? A Well, I was not at that moment.

Q Well, I was speaking of general benefits, whether those general benefits would not have an effect on the rents of the properties where the people live? A No.

Q That is an advantage that they would not have to pay for? A I do not think they could claim anything for that.

Q That is too small—that advantage? A Probably.

Q I call your attention to property at 100 Market street, the Hammerschlag property, block 60, lot 19 (indicating on map). That is assessed for $225. Now, you do not think that there could be an honest difference of opinion as to the assessment represented by $225 concerning the benefits to that property? A I do.

Q You do? A I do think there could be. I am always willing to concede honest differences of opinion.

Q Do you think in this case there could be an honest difference of opinion? A I always wish to credit anybody with an honest opinion.

Q No, do not answer that way.

The Court. Is it necessary to consider the matter from that angle? We are not trying questions of honesty or casting any

aspersions on the commissioners or on the witnesses.

Mr. Kalisch. No. The idea is that the difference is merely the difference in opinion concerning these assessments.

The Court. A difference of judgment. It is admittedly not a demonstrable mathematical matter that we are dealing with; it is a matter lying in judgment.

Mr. Kalisch. Does your Honor strike that out?

The Court. I do not think we have anything to do with honesty in this case; it is merely a question of the propriety of the methods adopted.

Q Have you ever discussed the Hammerschlag property with any one real estate broker? A I do not recall, Mr. Kalisch, that I have; it is likely that I may have.

The Court. I may as well say, as a general proposition, that the rule as to laying a foundation is a rule that applies to testimony in this case. If it is the desire of the other side to contradict statements made by witnesses, none of whom, of course, are parties to the case, so that the necessity exists under the law of evidence for laying a foundation, then the witness's attention may be called specifically to the time and place and statement, that he may be interrogated as to whether he did or did not make certain specific statements to certain specific persons, and then, the foundation having been thus laid, a witness may be put on the stand to contradict that statement.

James A. Berry, cross.

Q I call your attention to property on the west side of Washington street, between Branford place and Market street, lot 73, block 50, which is assessed for $7,500 (indicating on map). A Is that the Chelsea Security property?

Q Yes, Chelsea Security & Investment Company? A Yes, sir.

Q What do you consider the market value of that property to be? A Will you give me the dimensions, if you please, Mr. Kalisch?

Q That appears to be 87 feet on Washington street. I do not see the depth marked here at all. A Well, I will make a statement here along certain lines that will perhaps help you.

Q About 230 feet on Branford place? A Does it touch Branford place?

Q About 120 feet in depth? A 120?

Q Yes. What do you consider to be the market value of that property before the opening?

Mr. Stein. You mean the land?

Mr. Kalisch. Yes, the land—in dollars and cents.

A Well, for the depth stated, say about $1,400 per foot frontage approximately.

Q *(By the Court).* What is the frontage?

A There are 80 odd feet, your Honor, I think.

Mr. Stein. 87, I believe.

Mr. Kalisch. 87 feet.

Q *(By Mr. Kalisch).* $121,800; is that what you consider about to have been the market value before the opening? A If that is 1,400 or 1,500 times 87, that would be substantially correct.

Q Now, it has been assessed for $7,500? A Incorrectly assessed, in my judgment.

Q And you testified that you thought that the proper assessment would be about $5,000; you so testified? A Well, I think probably half, if not exceeding that $5,000.

Mr. Kalisch. Well, we will have to find out just what you did say.

The Court. Was that in today's examination?

Witness. No, sir.

Mr. Kalisch. No, I think that was in last week's examination.

Witness. I recall it.

Q Do you think that $5,000 would be a fair assessment? A I think that would be a maximum assessment, but I would like to explain that also.

Q Now, you think that would be a maximum assessment? A Yes.

Q And you think that the difference of $2,500 between what you think was a maximum assessment and the actual assessment would not represent a fair difference of opinion? I do not mean with regard to impeaching the honesty of anybody making the assessment, but whether there would not be a fair difference of opinion between real estate brokers? A I can quite readily see, Mr. Kalisch, how men would view it from a different angle, and I do not claim that any man would be absolutely correct; there would be some giving and some taking. To my way of thinking, $5,000 would be a generous assessment, but, only to explain that further, I do not conceive that the whole plot is benefited peculiarly, only a portion of it.

Mr. Kalisch. I ask that that be stricken out.

Q I just asked you a simple question, and you have answered it by saying that you can conceive how there would be a difference of opinion between real estate brokers. A Oh, yes.

Q A fair difference of opinion? A Oh, yes; I have no doubt that there would be honest differences in that, as in others.

Q Now, I call your attention to one of these last properties that you spoke about on your direct examination; I call your attention to block 59, lots 11 and 13, known as the Havell property. They are assessed at $1,875, the two lots. You have testified that you thought that $1,000 would be about right. A As to the peculiar benefits?

Q Yes, increase? A Yes, sir.

Q You say the same about that assessment, do you not, as you have said about the immediately preceding one, that there could be a fair difference of opinion among real estate men concerning those— A Well, I do not claim to have a monopoly of correct views with reference to this assessment, Mr. Kalisch.

Q But you conceive that there could be a fair difference of opinion among real estate men concerning the value of that property derived from the opening? A I am sure there are more that know about it than I do.

Q Well, can you not answer that question? A Yes, sir; there would be a difference, probably.

Q Now, there are lots Nos. 8, 9 and 6, on block 59, all three of which were assessed for $900? A That is the Jackson property, I take it?

Q Yes, that is the Jackson property. You have testified that that assessment is too high? A Yes, sir.

Q Perhaps $500 would have been enough? A Maximum.

Q Now, there could be a fair difference of opinion among real estate men on that, could there not? A Oh, I think there always could be fair differences.

Q Represented by a difference of $400 in dollars and cents? A There would be those perhaps that would differ from me.

Q What is the market value of that property directly after the assessment? A The city paid along the line, or at least, we appraised—

Q Those three lots. A I was coming to that, going by certain guide posts. We estimated the property along the line of Branford place at Washington street to be worth there, on the east side, for interior property, as I recall it, $1,200 per foot frontage, so that the Jackson property would fall down in value very considerably.

Q Well, what do you consider the market value of these three lots to have been directly after the opening? A The Jackson property?

Q Yes, those three lots, the Jackson property, 8, 9 and 6? A For what depth?

Q Well, whatever the depth is there? A Well, they have different depths.

Q On Washington street, 8 and 9 represent 59 feet and a fraction, and a depth on Maiden lane of probably 77 feet, and then there is additional property, lot No. 6, which is 23 feet on Maiden lane and has a depth of 59 feet. Just step here a moment and look at the map. It will be much better. A Yes, I know the Jackson property! I can help you on that. (Witness proceeds to map.) There is a frame house on the corner and the brick house here next to the

corner, between it and the Havell property. Now, I will make this statement, if this will help. In my opinion, the values of the Washington street frontage there to normal depth would not exceed, say, $700 to $800 per foot frontage.

Q Well, is that the normal depth? A For the normal depth.

Q That is only 77 feet? A Yes, sir.

Q Now, will you figure out what you consider the value of those three lots? A Yes, I can give it to you now. On Maiden lane, except as it is attached to the Washington street frontage, the value there probably would not be in excess of $100 per foot, but Washington street, and including that Maiden lane frontage, giving it thereby approximately 100 feet in depth, for interior property the value would be, say, $700 per foot, along with the corner, it being a narrow street.

Q (*By the Court.*) You mean on Maiden lane? A Yes, sir; we are speaking of the Jackson property, on the corner of Maiden lane. Interior property, the Jackson parcel would be worth, in my judgment, say, $700 per foot frontage. The corner of Maiden lane, you could add for light and air there, say, twenty to twenty-five per cent., perhaps.

By Mr. Kalisch.

Q That makes that strip worth how much? A Well, call it $700 or $800 average, and there are 60 feet, $48,000 to $50,000 for the land.

Q $48,000 to $50,000? A Yes, sir; maximum.

James A. Berry, cross.

By the Court.

Q Let me see if I understand one thing. I understand that you estimate the Washington street front as $700 or $800 a foot, and Maiden lane would be worth not over $100, except as it is attached to the Washington street front? A Yes, sir.

Q Now, it being attached to the Washington street front, what is your estimate? A That $700 or $800 includes the Maiden lane frontage, making it approximately 100 feet in depth.

By Mr. Kalisch.

Q You say $48,000 to $50,000? A Yes, sir.

Q Well, you cannot make it any closer than that? A I am giving you my best judgment.

Q So that the $2,000 you leave as a leeway for differences of judgment? A Well, I will take the lower figure, if you prefer it.

Q No, I do not prefer; I want your judgment. You leave $2,000 as a leeway for differences of judgment? A I think you cannot get it precise to a dollar.

Q So that when $900 is assessed, you would not want to go to the extent of saying that it is too much by $400, would you? A I do repeat that now.

Q Yet in considering the market value of the property you are willing to say that it is worth from $48,000 to $50,000? A Yes, I do.

Q Leaving a leeway there of $2,000? A Yes. That includes the corner.

Q That includes the corner; this assessment includes the corner? A I have averaged it, you see, to include it; it was for corner values.

Q What I would like to get from you, Mr. Berry, is whether $2,000 difference, $48,000 to

$50,000, whether that represents a difference of opinion among real estate brokers, so that you could not say one way or the other? A I will say that, in my judgment, the fair worth is $48,000. There may be those that would say a little more and probably there are some that would say a little less.

Q There may be some that would say $50,000? A I shouldn't be surprised.

Q Did you appraise that property, the Washington street frontage, for this Branford place improvement? A I did.

Q For the purpose of using some of that property that the city wanted? A Yes, sir.

Q What did you appraise it as, if you recollect? A Interior property, my recollection is, $1,200 per foot.

Mr. Stein. At what point?

Witness. Washington street, the east side.

Q That is the same side of the street as the Jackson property? A Yes, sir; as the Jackson property.

Q Now, just where was that property? A Well, it belonged to the Peddie estate, the corner that was taken, on the north side of Camfield street, now embraced within the lines of Branford place.

Q (*By the Court.*) You say the Peddie estate? A Yes, sir.

Q (*By Mr. Kalisch.*) The north side? A Yes, sir. If you wish me to come there and point it out, I will be glad to do it.

Q Just point it out, if you will. A (Witness proceeds to map.) Well, from Market street, is that?

Q Yes. A (Indicating on map.) Well, here are 100 feet, the alley I approximate to be 120, 180, 207, 227 or 228—I can't see that—247, 258—about 260 feet, the northerly line of Branford place, I should estimate, from the southerly line of Market street.

Q And you think there is a difference of $500 between the property that you appraised and the Jackson property—$500 a front foot? A A fall in values?

Q Yes? A I do think there is that difference.

Q $500? A Yes, sir; I do think so.

Q Now referring again to the Stoutenburgh property, which was assessed $2,250, you say that you think that this assessment is too high? A I do.

Q Well how much too high? A All of it.

Q Well, by that you mean that it is not benefited at all? A I think that it should not have been assessed for peculiar benefits, and that any such were more than offset by injury.

Q What do you consider that property to be worth? A Well, I think that is worth $7,000 per foot frontage; I will state to you.

Q Do you remember how much there is? A Well, per foot, whatever there are. There are, I think, in the neighborhood of 80 feet there of the Stoutenburgh property (referring to map); 88 feet.

Q $7,000 a foot? A Yes, I think that is a fair estimate of its worth.

The Court. The land alone, or the land and building?

Witness. The land alone, your Honor.

Q That makes $616,000; that would be about what you consider the market value? A Well,

if the multiplication holds correct, that is what I say; that would be my view.

Q And this has reference to the time before the opening of Branford place? A Yes.

Q And you do not think that the Branford place opening has raised that value from $616,000 to $618,250; you do not think that is a fact, do you? A I do not think that any benefits accrued.

Q You do not think that that is a fact, do you, Mr. Berry? A What was the question?

Q (Question read.) A I don't think so, nor any benefit.

Q Now, I call your attention to the Hammerschlag property again, and ask you what was the fair market value of that property before the opening? A I have stated, I think, $4,000 per foot.

Q That would make about $80,000? A If there be 20 feet, which I think there are.

Q You have reference to the time before the opening? A Yss, sir; and the land, of course, only.

Q And you do not think that that property as the result of the opening has increased from $80,000 to $80,225? A I don't think so; I don't think any peculiar increase has occurred there at all.

Q Now, take block 73, between Plane and Washington street, on the southerly side, lot 35, Isenberg's property? A Yes, sir.

Q That is assessed for $285.

The Court. What number is that?

Mr. Kalisch. Block 73, lot 35.

A That would be about No. 60 or 62 Market, I think, maybe, your Honor—the third building, probably, easterly from Plane street.

The Court. On the north side?

Witness. On the south side.

Q Do you know what the market value of that property was before the opening? A In my judgment, it is fairly worth not less than $3,000 per foot front; I think I have so stated.

Q And that has— A That would have pretty close to 20 feet, I should think.

Q Twenty-three feet, I think. A Twenty-three feet.

Q That is about— A $69,000.

Q In your judgment, you do not think that since the opening and as a result of it is worth $69,285? A I don't think it has been benefited a bit, and I do think it has been hurt.

Q Take block 57, lot 56, assessed to Gottfried Krueger for $195. Will you tell me what the market value of that property was before the opening? A Yes, sir. Mr. Krueger has two properties there, one westerly from Halsey and one westerly from Broad. Will you tell me which this is?

Q This is easterly from Halsey street and on the south side of Market street (indicating on map). A Yes; street No. 150 Market street.

Q What was the market value of that before the opening? A Approximately about $5,000 per foot frontage.

Q Twenty-four feet, is it not? A Yes, sir.

Q Making— A $120,000, but there is additional depth, with a street in the rear, which I hadn't added to that, and I will make that at that depth and with those conditions, say, $6.000 per foot frontage.

Q Making $124,000? A Yes, sir.

Q (*By Mr. Stein.*) Well, how much is it? A Twenty-four feet frontage apparently, $124,-

000 for 24 feet frontage on Market street through to the alley, Schoolhouse alley.

Q (*By Mr. Kalisch.*) Now, on block 59 there are lots 23 and 24, assessed to Bridget Jackson. A Yes, sir; that was the property that fronted on Camfield street and now fronts on Branford place.

Q You made some comparison between that and the Weber property? A I think the comparison was between that and the Federal—No.

Q The Weber property? A The Weber.

Q Yes. A Oh, yes, further up; Weber was at Plane and Arlington streets. Some reference was made to those two parcels; yes, sir.

Q Can you state what that comparison was now? A Yes, sir. In a general way, I stated that the Weber property was interior land, having frontage on only Plane and Arlington streets, and a portion of it was taken for the opening, leaving the remainder fronting on Branford place. The Jackson property, I stated, always had the frontage on Camfield street, which is now widened.

Q Can you point that out? A Yes, I can find that here, Mr. Kalisch. Here it is (indicating on map).

Q That compared with this (indicating)? A Yes.

Q You say the Weber property was interior property? A Yes.

Q What do you mean by that? A I mean that while the Jackson property fronted on Camfield street—

Q Before the opening? A Prior to the opening—that the Weber property fronted on Plane and Arlington streets, extending through,

and a portion of the Weber property was taken for the opening of Branford place.

Q So that the Jackson property was not benefited, in your opinion, as much as the Weber property; is that the idea? A I don't think so.

Q Will you give me about the market value of the Jackson property, lots 23 and 24, on block 59, before the opening? A Yes, certainly. I don't think it was worth prior to the opening over between $500 and $600 per foot frontage.

Q $500 a foot? A Yes.

The Court. You said between $500 and $600.

Witness. $500 and $600; yes, sir. There might be a difference of opinion there.

Q That makes about $30,000? A Well, not over $30,000; yes, sir; for the land, if there were 100 feet in depth. I think there was a scant 90 feet there.

Q Well, what difference would that make? A Well, say, ten per cent.

Q About $27,000? A Fifty feet?

Q Oh, 50 feet? A Yes. Well, you would not be far wrong, Mr. Kalisch; not over thirty, however.

Q Well, between twenty-seven and thirty? A I will concede that.

The Court. You think the depth is about 80 feet?

Witness. Closer to 90, your Honor.

Q Now, what do you think it is worth now—I mean what do you think it was worth after the opening? A That was because of that proposition?

Q Yes. A Well, I think probably you added to it, say, twenty to twenty-five per cent.

Q Do you think it has increased that much? A I think that would be a generous increase. It already had frontage on the street, and between two important thoroughfares, and you merely widened the street in that case.

The Court. What was the assessment?

Mr. Kalisch. The assessment was $5,070 and $5,065.

Witness. $10,135 over a total of 50 feet.

The Court. Which was the $5,070; was that in 23 or 24?

Mr. Smith. That was on 23.

Mr. Kalisch. Twenty-three.

The Court. And 24?

Mr. Kalisch. Twenty-four is $5.065.

Q So that you think there was an increase in value of about—well, pretty near $7,000? A Well, $125 a foot to $150.

Q Well, you said twenty-five per cent. A I said twenty to twenty-five per cent, if I am not mistaken.

Q Will you swear, taking it at twenty-five, it would be pretty near $7,000? A Not exceeding $150 per foot; probably $125 would be closer.

Q Of course, there would be differences, undoubtedly, of opinion, in real estate brokers about that, would there not? A I cannot repeat that too flatly.

Q And due to the fact that the market value before the opening was, as you stated, anywhere from $27,000 to $30,000— A Yes, sir.

Q —Allowing $3,000 leeway, you might say that there would be the same difference of opin-

ion after the opening? A Well, ten per cent. on the value of the property, central property—

Q Well, I say since you have conceded that the market value may run anywhere from $27,000 to $30,000, leaving $3,000 difference, might there not be the same difference in the market value after the opening? There is nothing to change that difference?

The Court. The same proportional difference.

Mr. Kalisch. The same proportional difference.

A I think I can give you the maximum.

Q Can't you answer that? A Yes, sir; I wish to answer you.

Q There might be the same proportional difference after the opening as before? A Yes, there can always be differences; I cannot emphasize that too much.

Q So that if you added on the $3,000, that would bring up your idea of what the assessment should be to over $10,000? A No, I wouldn't grant you that; no, sir.

Q How do you figure it differently? A I conceive that the property was never worth more than $600 per foot.

Q Well, take your testimony this morning and just now, basing it upon that testimony, in which you have stated that there might be a difference of $3,000—that is, from $27,000 to $30,000—which would represent the market value before the opening, the same proportional difference would exist since the opening? You have so testified. A That would apparently—

Q No, you have so testified. If you think differently about it, you can change your testimony. Now, on the basis of those facts, why

would not the amount of this assessment be correct? A Why, the amount of that assessment wouldn't be correct, Mr. Kalisch. Any assessment for peculiar benefits in excess of twenty or twenty-five per cent. at the outside upon the value of $40,000, would be too heavy.

The Court. If you adopt $30,000 as the value of the land, twenty per cent. would be $6,000?

Witness. Yes, sir.

The Court. And twenty-five per cent. would be $7,500?

Witness. Yes, sir; but I think that $600 per foot frontage was a very generous estimate, and I wish to be so understood.

Q Now, you say that the Jackson property had a frontage on Camfield place? A Camfield street.

Q Or Camfield street? A Yes, sir.

Q That street was what you would call a blind street? A Oh, no, it extended from Washington to Halsey.

Q It ended at Washington? A Ended at Washington.

Q Well, that is a blind street; it ran one block? A Yes, but it was open at both ends. It wasn't blind. That is not what I understand as blind.

Q Well, that is my understanding. It is a street that does not go through. A There is no cul-de-sac at all; you did not end at an alley or a corner; you ended in a wide street.

Q How wide was that street? A Washington street?

Q No, Camfield street? A Oh, I can't say exactly, but I will state probably it was 30 feet, 30 odd feet, probably.

Q How much traffic was there on that street? A Well, not a great deal, of course.

Q Do you know how many houses there were on that street, that one block? A I think probably that I do.

Q About how many? A Why, on the north side there were one, two, three houses and a little garage there, and on the south side—oh, I suppose all together six or seven houses on the street.

Q And it was most of it, or it was all—they were all residences, were they not? A Excepting that little garage, and then the side of the Halsey street properties and the Washington street properties also had siding there, making it, in other words, a mixed street.

Q Now, when Branford place was opened Camfield street was widened, and did not the property fronting on Camfield street receive— A May I beg your pardon?

Q Yes. A When you were talking of Camfield street—I wish to correct that—I was thinking then at the moment of Maiden lane, when I was speaking of residences.

Q Now, let us have Camfield street. A I would like all that reference as to the occupancy on Camfield street to be corrected.

The Court. That affects only your count of the number of houses?

Witness. Yes, sir.

The Court. Can you transfer your mind from one street to the other now, and tell us about the number of houses on Camfield street?

Witness. Yes, sir To a certain extent, the statement holds good as to occupancy, because on the south side of Camfield street

there were residences, or homes, and there was a little business; on the north side there was nothing but business.

Q Now, would you consider that the widening of Camfield street gave practically a frontage on a new street to those properties? A Not a new street; partly new.

Q Well, what percentage of it do you consider was a new street? A Well, I can answer that in this way—

Q Figuring it that way. A Branford place as it now stands, for instance, is substantially 65 feet wide, and Camfield street as it then was was 30 odd feet, I should say, in width.

By the Court.

Q What side of Camfield street was this Jackson property on? A On the southerly side.

Q That line was not changed? A Not any.

Q That street line, I mean? A Not any, sir.

After Recess.

Cross examination (continued) by Mr. Kalisch.

Q Mr. Berry, the street line of Camfield street was changed, was it not? A The southerly side?

Q Oh, you are speaking of the southerly side? A Yes.

Q Wasn't the widening of Camfield street almost equivalent to providing a new frontage on a new street? A I don't think so.

Q Camfield street before the opening was not a used street at all, that is not to an appreciable extent so far as traffic is concerned? A There wasn't much traffic, there couldn't have been.

Q It was only about 30 feet wide? A 30 feet wide, I don't know what the exact width is.

Q You took into consideration in making your mind up concerning these assessments on Camfield street that Camfield street became a continuous street with an opening on two main thoroughfares, did you not? A Yes, sir.

Q And also that between Camfield street and Springfield avenue there were cross streets, such as Washington and Plane streets, Arlington street on which there was quite a little traffic? A Yes, sir.

Q Some of which traffic was turned into Branford place and passing through what was formerly Camfield street? A I suppose that is fair. There would be some, not much, but some.

Q Now, I call your attention to block 60, lot 67, property owned by the Federal Realty Company. A Yes, I know that property. That is in Camfield court.

Q That is assessed at $2,500? A Yes, sir.

Q You consider that assessment too high? A I do.

Q Can you tell what the market value of that property was before the opening? A How many feet frontage are there, if you please.

Q That is 44 feet on Camfield court. A I know the depth would be 57 feet, frontage about 44 feet. I think a fair value of that property at $350 per foot frontage.

Q At $15,400? A That is about it, $15.000, yes, sir.

Q Since the opening you would think it has increased in value? A I don't think so.

Q The rear of that property is about 50 feet from the north side of Branford place? A About 50 feet, I should think.

Q Didn't you think that the fact that the rear part of that property is within about fifty feet of Branford place would give it an advantage which it didn't have before the opening of Branford place? A I do not think any advantage peculiar has been gained by that property.

Q Don't you think that that property now has a possibility by being only within 50 feet of Branford place which it didn't have prior to the opening? A I do not.

Q I call your attention to the property which is assessed to the estate of John D. Peddie, lot 51, fronting on Branford place, between Washington street and Halsey, block 60.

Mr. Stein. I don't think we have any testimony on that subject. We don't represent that corner.

The Court. You may go on.

Q Now, Mr. Berry, the property assessed to the estate of John D. Peddie is about 50 feet in depth, the frontage of the property is on Branford place. You took that into consideration in making up your mind concerning the property assessed to the Federal Real Estate Company? A I had that in my mind. The Federal Real Estate Company's property had not been peculiarly benefited.

Q Did you not, having that in your mind, consider the possibility of the Federal Real Estate property being developed in conjunction with the Peddie property, which is only 50 feet in depth? A I didn't see how it could be developed.

Q Of what value did you consider the property in way of development, how it could be developed? A Being about 50 feet in depth, the

Peddie property—there could be developed, mercantile, I think.

Q On 50 feet of depth? A You couldn't develop what you don't own.

Q Would not the possibilities of the Federal Real Estate Company's property directly in the rear of this property be greater in view of the fact that it could be developed together with the estate of John D. Peddie between it and Branford place? A Only if it were one ownership.

Q Exactly, if it were one ownership it could be developed? A Yes, no question about it.

Q Do you consider the assessment of the Federal Real Estate Company, lot 67, only from the standpoint of its frontage on Camfield court? A I think so.

Q That is to say you consider that since it had no different frontage than what it had formerly or since the opening that there had been no enhancement in market value? A I can see no reason.

Q Was it for that reason, since it did not acquire any new frontage or different frontage than what it had prior to the opening of Branford place, that therefore there had been no enhancement in market value? A Yes, sir.

Q That is the basis upon which you make your opinion? A Yes, sir.

Q Mr. Berry, I call your attention to lot 4, on block 59, which you compared to lot 67 on block 60. Now, lot 4, on block 59 is on Maiden lane? A Yes, sir; that is the Jackson property.

Q And you think that that property, lot 4, was benefited more than lot 67 on block 60? A I don't think the Maiden lane property, known as lot 4, has been benefited peculiarly at all. It

is assessed, I notice, for peculiar benefits, at about $105.

Q You say you don't think it has been benefited at all? A Personally I don't.

Q Don't you remember testifying, "I think the property of John Jackson was benefited more than the land of the Federal Realty Company. I think there was a peculiar benefit to the Jackson property." A I had in mind that the Jackson property—I have never drawn any line. I am familiar with that property. I know it well and I consider that the Washington street frontage inclusively is benefited and that partakes of it being the same ownership.

Q No, I am talking about the Branford property, lot No. 4, facing on Maiden lane and you stated that you thought there was a peculiar benefit to it and that you thought it had more peculiar benefit than lot 67 which faced on Camfield court. A I am ready to explain that.

Q Is that so? A Only in connection with this Washington street frontage.

Q You said nothing about Washington street frontage when you answered the question on direct examination? A I do not recall, but that is my view of it.

Q Do you want to retract that statement? A If I made an error when my attention is called to it I will correct it.

The Court. He said, "I notice in discussing lot No. 4 that if it were not that lot No. 4 opened to the frontage on Washington street I should not consider it benefited at all.

Q I suppose you mean by that lot No. 11 on Washington street. Is that the rear of the Jackson property? A Rear?

New Jersey State Library

Q Yes. A Washington street is the front. If you wish me to I will come there and explain it as far as I am able. Lot No. 4, as I recall is about 70 or 80 feet easterly from the line of Washington street and is back of the Jackson holdings fronting on Washington street, they are being attached.

Q Yes, but they were assessed separately? A They should not have been to my way of thinking.

Q You think that there was peculiar benefit to the Jackson property? A Only to the Jackson property known as Washington street.

Q What do you think is the market value of the Jackson property before the opening? A I have said to you, I think, this morning my estimate of the value. I think the whole parcel, 60 feet, if you remember, was worth about $48,000.

Q Now, I call your attention to lots 105 and 106 in block 67, Osborne Realty Company. A That would be the southwesterly corner of Broad and Branford place.

Q That is assessed for $2,250. Can you give me the market value of the lots 105 and 106 before the improvement? A I think so. You realize that the Osborne Realty Company had been on Branford place.

Q I don't care what you took into consideration. I want your opinion as to the value of it. A How many feet are there.

Q There is 46.77 feet. A And it fronts likewise on Treat place.

Q The depth of the property is 172.88 feet. A About $300,000.

Q Did you consider the frontage on Treat place in making up this market value? A Yes, sir; I took the three frontages.

James A. Berry, cross.

By the Court.

Q What is the third? A Broad street, Branford place and Treat place.

By Mr. Kalisch.

Q Do you think as a result of this opening the market value of that property was enhanced? A I do.

Q Why? A Brings a great deal of additional traffic to it and past it.

Q From where? A The west.

Q Down from Springfield avenue do you mean? A Yes, sir; from the west.

Q Particularly Springfield avenue and South Orange avenue? A Yes, sir.

Q How much more traffic does it bring than what it had? A A great deal more.

Q How much more, how much of an addition has there been to the traffic? A I don't suppose I can measure with exactness, that is a busy corner today, where prior to the time the city took that land over—

Q It wasn't a busy corner? A It was not so busy.

Q You are considering it as of today, I suppose? A Well, the frontage that I referred to is about today, from the moment that improvement was determined upon and the city made the legal opening, that corner immediately enhanced in value.

Q Have there been any sales around there since the opening? A On Broad street?

Q Yes. A I do not think so.

Q Or on Branford place? A They own right on Branford place.

Q On the other side of the street? A A similar situation prevailed, one ownership up to Nutria street.

Q Were you called upon to determine the market value of the property at the time of the opening? A The Osborne property?

Q Yes. A I think not, sir.

Q Now, I call your attention to blocks 84, 85, 86, 72, 56 and 55 concerning which you have testified. That is the northerly side of Market street. They are all east of Court House place coming down by Broad street. What is your opinion about that property? A That no peculiar benefit has been conferred upon it by reason of the opening of Branford place.

Q Why not? A Because Branford place tends or tended to divert traffic from it.

Q Didn't you consider that the proximity of Branford place opening to Market street benefits Market street property? A No.

Q Didn't you consider the fact that there is a new frontage opened up within a block of Market street as affecting Market street property? A No, I think that benefit, if there was any benefit, is more than overcome by the injury to Market street.

Q I want to know what the injury is? A Diversion of traffic is a very important injury.

Q What other injury? A Well, it places there a competitor.

Q What do you mean by a competitor? A A parallel street like Market street and tending to take this traffic away from it.

Q Do you think that Branford place as a competitor will rival Market street? A It may never rise to be as important a street as Market

street probably will, but it will always be a menace to the growth of values on Market street.

Q You don't think that two streets like Branford place and Market street can exist together in the City of Newark? A I would not say that but I think each of them probably is apt to have less of an increase than if it enjoyed a monopoly.

Q Doesn't the fact that there is a new frontage indicate that there will be new business activities to the south of Market street? A Quite likely but that new activity is apt to be at the expense of Market street.

Q Don't you consider that on account of that new activity there would be an inter-relation between Branford place and Market street which will enhance Market street values? A I do not.

Q Do you consider that as a general rule or is it really one that applies to the City of Newark? A I think it applies here and may apply generally to certain other places.

Q Is it a general observation, the fact that Branford place is a competitor of Market street, being a parallel street to Market street decreases the value of Market street? A I think it does decrease the value.

Q Does that apply generally to two parallel streets, that is a new parallel street with an old one? A I think where you take parallel streets, that no two streets are apt to be of the same value. One generally will excel the other for value. I think Market street will excel Branford place, but Branford place will always tend to wet blanket the growth of Market street values.

Q Is that idea a general observation to parallel streets, opening a new street parallel with an old street, that that decreases the market

value of the old street? A No, if there were plenty of business or too much on one street I think a parallel street may help the other street, but Market street has not been overdone with business.

Q You don't consider there has been any congestion on Market street? A Yes, that is what they want.

Q Then you think the application is local or does it apply generally? A I cannot say as to outside of Newark.

Q But do you think that is a local observation or general observation? A I will state flatly it applies here.

Q I asked you if that is a local application or if it is general? A I think that would make it local.

Q Does it apply generally? I am asking you if it applies to other parts of Newark? A I think that if a street were opened parallel with Broad street, for example, and if it were equal in width and improvement I think that would hurt Broad street.

Q You are quite safeguarded when you say of equal width and improvement? A If it were not quite as important it would tend to divert business and values from Broad street.

Q So that you think that values in Market street and many parts of Market street, have gone down in value since the opening of Branford place as a result of the Branford place opening? A I haven't said that.

Q I am asking you that? A I don't know that they all have gone down.

Q But will they go down? A I think the trend will be to prevent them rising as rapidly.

Q You have stated in your testimony, the blocks, I have just mentioned that have been injuriously affected. How have they been injuriously affected? A I have stated that the traffic, diversion of the traffic will affect them injuriously.

Q In what way? A Take the people away from it.

Q And result in what? Putting down market values? A That would be a result.

Q So that in your opinion the market values of Market street will go down? A I would not want to say that quite so definitely. I think there will be a recession, a slight recession.

Q How much of a recession will there be? A That I can not measure correctly, of course.

Q How long will it take before that recession takes place? A I think it took place instantly the street was decided upon.

Q So that market prices have gone down on Market street since the opening of Branford place? A There have been a few sales that occured recently that were going through a period of poor condition, in real estate.

Q I am now referring to the Branford place opening as a cause for the recession and I ask you whether the properties have gone down on Market street as a result? A Yes, I think so, because if it doesn't go forward it is not standing still and goes downward so I think Market street is slightly down.

Q And it will go further down? A I think that is apt to be a guess.

Q How much has it gone down? A I can't measure it, I think, very closely but some. I will put myself in the place of a Market street owner.

Q No, a general proposition. What percent-

age has it gone down? A That I can't tell you definitely, but I think it would vary in different places, perhaps.

Q So that as a real estate broker you really would not advise a customer to buy Market street property? A You never can tell what a broker will do.

Q Working for your clients you really would not advise one to take the property of Market at the present value? A I would not say that. There are some who could use Market street and who could not use Branford place.

Q I am speaking now from a speculative point of view or even as an investment? A I would be apt if I were counseling the purchaser, I would be apt to tell them abide time a bit and wait.

Q For it to go down further? A See how things went.

Q What do you mean "to see how things went?" A My judgment is as I have said that that which is not going forward is not standing still and so is apt to be receding and I think that applies to Market street.

Q What would be the idea of waiting if you know about its going down? A In my mind.

Q You think it will go down? A I am inclined to think the trend will not be upward and that means downward.

Q It will become worth less in dollars and cents? A If I own property I would apply for a reduction.

Q The Market street property will become worth less in dollars and cents? A I am inclined to think it will.

Q All on account of the Branford place opening? A No, I said I think that contributes but

it should be borne in mind frankly that the real estate market at this time is by no means inviting.

Q Why? A The absence of money.

Q Then when money becomes plentiful the market will be better? A We will be apt to take a more optimistic view of things.

Q And the market value of the properties will go up again? A Some will.

Q Market street property won't? A I don't think so for some time at least. We can't estimate the future too far.

Q You don't think so for some time. For how long a time does that mean? A Well, I don't think you can measure time that way.

Q I am asking you your own opinion. You said you didn't think so for some time. What did you mean by some time? A We can't tell the future.

Q No, I want to know what you meant by saying the words "some time." How much time does that represent to your mind? A In so far as I am able to look ahead I do not think Market street will enhance in value between Springfield avenue and Broad street for several years.

Q How many years? A I can't look that far into the future.

Q What do you mean by "several years?" You must have had some idea in your mind? A If you insist upon it I would say three to five years.

Q You think that after three to five years that property will go up again on Market street? A No, I haven't said that, but I don't think it will go forward within that time. I can't look beyond that.

Q What is your idea about beyond that time?

Q Do you mean when you say from three to five years that there will be an improvement? A I haven't said that. I have said I do not think that from three to five years will show any advance in Market street property. Beyond that time I cannot tell you.

Q Some will go up? A That didn't apply to Market street?

Q Market street will not go up for some time at least, so that you have some idea of it going up, do you not? A No, I don't. I say to you that within my sight or view I cannot see any rise. You have asked me to limit the time and I want to be as conservative as possible, so I say to you now I cannot see any increase in value in Market street during the next three to five years to come. Beyond that time I cannot see.

Q Resulting from what? A The diversion of traffic to Branford place.

Q What about property in other parts of the city? Will they go up? A Certain residential properties are steadily rising.

Q What about business property? A They are rising, although the last year or two the advance has been by no means noticeable because of other financial conditions.

Q That is the main reason why Market street properties do not go up? A No, I don't think so.

Q When did Market street property cease to go up in value? A I feel this way, immediately, for example, after the indication of the opening of Branford place.

Q How long ago was that? A Two and a half years, probably.

Q You mean to say that properties did not cease to go up before two and a half years ago, property on Market street? A No; I think Market street was holding its own up to about the same time as the general period of real estate depression came upon us.

Q When did the period of real estate depression come upon us? A About, I should think, three years ago, approximately. That was noticeable two and a half, three years ago.

Q That was before Branford place was projected? A About coincident with that time.

Q But the real estate depression is what is uppermost in your mind as the reason for the drop in prices? A No; Market street, for example, suffered from the usual business depression, but that depression, in my judgment, was enhanced, enlarged by reason of the introduction of Branford place as a parallel street.

Q How much enlarged was it, how much of the depression could be attributed to Branford place? A That I cannot measure. I do not think there is any way of doing it exactly.

Q So that you haven't got very much hope for Market street? A I am a hopeful fellow.

Q You have lost all faith in Market street property? A No, sir.

Q Have you any faith yet? A Yes.

Q You think Market street property eventually will recover itself? A I hope so.

Q You hope so? A I can't see it now.

Q Then you haven't any hope? A Yes, three to five years I can see.

Q Beyond that? A Beyond that I can't see at all.

Q Aren't you able to predict beyond five years for Market street? A I am optimistic

and I dislike to think that any part of central Newark can be held permanently down.

Q I am speaking particularly of Market street, which is the central part of Newark? A I hope that after five years—

Q No, not what you hope, what you expect. What is your prediction for Market street property? You need not limit yourself to five years. What is your prediction concerning Market street property, as far as values are concerned? A Well, I would like to make two predictions.

Q One is bad and one is good? A No. I would like to predict—I must predict to the extent of my judgment—Market street will not rise in value for three years at least.

Q That is the best you can give? A I think that is apt to extend over a larger period.

Q It will not rise in value for three years? A I hope—

Q Not what you hope, what your prediction is? What your prognosis is? You have said it would not raise in value during three years. A I think it won't.

Q Beyond three years give us some kind of a prediction? A If they opened another street it will hurt it further.

Q I am talking now about your prediction beyond three years? A If everything stands still—

Q No, not if everything stands still. I am talking about Market street. If anyone was to put the question to you, "What is your prediction for Market street property?" A I would say maybe it would be better.

Q During all the time that these five years are elapsing, of course, Branford place is be-

coming more valuable? A I think it is destined for growth.

Q And notwithstanding the fact that Branford place is becoming more valuable as a street, yet you think after five years that Market street may be better? A If you start low enough at Branford place it is apt to grow into all the more valuable street.

Q Did you testify that you do not think there would be any increase for three years for Market street, and that after three or five years, I think you said, it is likely to be better? A I don't like to say it.

Q And when you say Market street would be better after five years, that is your prediction? You also have in mind the fact that Branford place will also be better, haven't you? A I think Branford place is going to be better right along.

Q And notwithstanding that fact, you think that Market street will be better after five years? Now can you answer that, yes or no? A That is not quite what I said.

Q That is just what you said, as I understand your testimony. A I cannot tell you any more definitely.

Q (Question read.) "And when you say real estate would be better after five years that is your prediction; you also have in mind the fact that Branford place would also be better, haven't you?" A Yes, sir.

Q "Of course you considered that Branford place would be a business street, didn't you?" A I think so.

Q That is the present outlook, at least? A It won't be residential.

Q The traffic on Branford place will be increasing each year? A I think it will fill quite a niche.

Q And it will be more used each year for pedestrian traffic? A I think so, vehicular in particular.

Q And your prediction undoubtedly is that there will be stores on Branford place eventually? A Rather than anything else, I think; yes, sir.

Q And did you in making your prediction consider at all whether there would be a street railway? A I have often wondered about that. We are somewhat cynical at times and have thought that possibly tracks would go through there.

Q Did you have that in consideration when you made your prediction concerning Branford place? A I think it would all tend to jump it forward.

Q Now, I don't just remember what your prediction was concerning property east of Broad street on Market? A I do not think that property easterly from Broad street has been benefited peculiarly by the opening and extension of Branford place.

Q What is the reason for that? A You have not contributed to any ease in access to the property easterly from Branford place, in my way of thinking. There is nothing that you are giving them what they really would not have gotten before. I touched upon that, if you remember, with reference to Mechanic street as the original project was.

Q You think the conditions are the same since the opening as they were before? A I

do not think that the properties have been peculiarly benefited; yes, sir.

Q You don't think they were peculiarly benefited? A I do not.

Q What area is that? From Broad street down to where? A To the Pennsylvania Railroad, we will say. I think it would be safe. There is an elevation there.

Q Do you think there is any increase of traffic on Market street, east of Broad, as a result of this opening? A I don't think so. I don't think there has been any appreciable increase there.

Q Do you remember testifying on your direct examination to blocks 146 and 147 on Market street, in which you said that between Broad and Mulberry street the traffic on Market street was increased but did not increase the market value? A That is what I meant. I said any appreciable increase. I might explain that to you if you will let me.

Q Go ahead. A I think, for example, some traffic that comes down from Branford place might turn into Broad and turn into Market. That might be the case. On the other hand, I am inclined to think that any person bound easterly from Broad street on Market and going through the principal section would probably stick to Market street for its entire distance, generally. There might be some slight increase there, but I don't think you can count it in dollars and cents.

Q There might at least be a difference of opinions concerning that? A I suppose no two of us are alike. I would still adhere to my view.

Q What I meant to say is, you would recognize there might be a fair difference of opinion concerning the increase of value? A Yes, I think there might. I think the other fellow would be wrong, but there is always a difference of opinion.

Q And he would think you are wrong? A I would concede him that privilege.

Q You don't think Market street, east of Broad, is going down in value as a result of this opening? A As it stands today?

Q As a result of this opening? A As it stands today, I don't think so.

Q Considering Branford place from the standpoint of development as a business street, don't you think that it will eventually bring a number of people to the center of the city, I mean to Branford place, from other parts of the city? A To locate for business, you mean?

Q Yes. A I think Branford place would be quite a street.

Q Now, don't you think that as a result of that that rentals will go up in Branford place, eventually? A Yes, sir.

Q And as a result of rentals going up market values will go up? A Market values and rentals, of course, arise concurrently. They will have to do some considerable improving.

Q I understand that will be the eventual outcome? A I think so. I think it will go up.

Q And you look forward to it becoming quite an important business street in the City of Newark? A I think it will be quite a street.

Q And don't you think that the relationship between Branford place as an important street and Market street as a parallel street, only a block away, will result in enhancing the value of Market street? A I do not.

Q Don't you think that the relationship between Branford place and streets within two blocks in each direction will result in benefits to those streets? A No, I think not.

Q You then don't think that the effect that a street has, an important business street in a city like Newark running from one important thoroughfare to probably the most important thoroughfare and the fact that it is in the center of the city, that that has no effect, no beneficial effect upon properties, we will say, two or three blocks, north, south, east and west of it? A No, I don't look at it that way. I have stated that I think property off the line of Branford place and southerly from its southerly line for half a block, or we will call it, say, 300 feet, I think that will be peculiarly benefited. I don't think that is open to real discussion. I do not think property northerly of that street will be benefited beyond what I have stated, say approximately 50 feet, because this property already had Market street, the important thoroughfare, on the side of it.

Q You said that properties on Bank street have risen in value not as a result of Branford place, but in ten or twelve years? A I know of some cases where they have receded.

Q Do you know of property between Plane street and Broad, properties that have not risen in the last fifteen years? A Between Plane street and Broad I think they have risen.

Q What do you attribute that rise to? A Originally to unrecognized value earlier. That is one reason, and the other reason is that most of those central streets have risen in value.

Q As a result of what? A The general growth of the city.

Q Did the increase of value of Market street property and the development of Market street property as business property have any effect on Bank street property? A Well, no; I would not think so; I would not say so.

Q Would you not think that being in proximity to the Four Corners would have any effect on property? A I do think so.

Q How far from the Four Corners, within a radius of how far would you consider that that benefit would extend? A Why, in certain places it extended quite a distance and in other places there was no appreciable gain.

Q Is not that generally the criterion in determining the market value of business properties in the center of the city, the criterion used by real estate brokers, the nearness to or remoteness from Broad and Market street? A No, I wouldn't say that.

Q You think that was not a criterion? A That is one of them, probably.

Q Is it an important one? A I think it cuts some figure, being near the corners, but I can take you remotely from the corners and show you values much in excess of property near to the corner.

Q You can see the effect if you are one block from Market and Broad street, makes your property more value than if you are three blocks? A Yes; I can show you valuable property farther away.

Q In a different center of activity. Springfield avenue you have reference to? A That would be one. Clinton avenue is another.

Q The center of business activity? A The very remoteness from the corner may help some properties.

Q You consider Broad and Market street the center of business activity? A There is no greater in this State.

Q So that the nearness to or remoteness from this corner is apt to have some effect on values? A I think it will have quite some effect on the value.

Q Then you consider its nearness to an important business thoroughfare is affected by it being near that business thoroughfare? A yes, I think everything of that kind has an effect.

Q Therefore if, as you predict, Branford place becomes a very important business thoroughfare the nearness to or remoteness from Branford place will affect the values in a very, very large measure, will they not, or the different streets that are near to or remote from? A Intersecting streets?

Q It all depends on distance to that thoroughfare, doesn't it, the distance from that thoroughfare? A Immediate proximity to it would increase values of property adjacent.

Q You don't want to limit that proximity to 100 feet or more? A Oh, yes; you have to have an end somewhere.

Q You don't restrict it to the measurement of feet? A There comes a time when no further value would exist.

Q Have you given consideration to other streets that are opened in other cities, parallel streets? A In other cities?

Q In New York, for example? A No.

Q Have you ever considered the effect upon properties?

Mr. Stein. I object to that.

The Court. I think it is idle to cross examine on that line unless the examination can be answered and followed up.

Q Do you consider, for instance, Broad street as having, the development of Broad street as a business street, as having an effect on business streets within two or three blocks from it? A You mean intersecting streets?

Q Not exactly intersecting, no. A Parallel streets?

Q Parallel. A Yes, I can measure them up for you a little bit if you would like me to.

Q Beneficial effect? A Well, I think certain streets are injured.

Q By the development of Broad street? A Yes, I think Broad street is so conspicuously a fine street that you can scarcely measure any other condition about Broad street.

Q Will you name me a street that has been injured by the development of Broad street? A For example, I think if there were no Broad street and if Washington street still existed, I think Washington street would be a better street.

Q But Broad street existing and being developed, can you name me a street that has been injured by reason of its development? A No, I would not say that, and neither can any street there as they presently exist injure Broad street. I have said it is so conspicuous it is hard to adopt a standard. Broad street is in a class by itself.

Q Don't you think, for an instance, that Clinton street has been developed? A If you remember, I think you excluded intersecting streets.

Q Clinton street doesn't cross Broad? A But it intersects.

Q It runs to Broad street. I am asking you whether that street has been benefited by the development of Broad street? A I think if I came from Broad street and Clinton I came from the intersection of Clinton street. Perhaps I am wrong. I think Clinton street has benefited considerably by the fact that it extends into Broad street.

Q Because of the fact of Broad street developing? A Yes, I think Broad street has helped Clinton street.

Q And don't you think Mechanic street has been helped by reason of Broad street development? A No, I don't.

Q Why not? A The occupants there are different.

Q Do you think for instance if Mechanic street ran into, let us say, into Mulberry street— A Which it does.

Q There we can compare it. For instance. If it ran into a less important street than Broad that it would be equally valuable? A I suppose because of its running into Broad street it does obtain more value than if it did not run into Broad.

Q What about William street property? Is that benefited by the development of Broad street? A If Broad street would go I think William street would enhance some.

Q For what distance? A Probably on a slight scale up to Halsey street and then perhaps if you please, further on.

Q Each block that is enhanced in value and improvement affects the next succeeding block? A Not exactly. I can show you where it does not.

Q I am now speaking of William street. Each block, for instance, on William street that is enhanced in value, why the next succeeding block is enhanced also? A As you go north of Broad values undoubtedly would be a little better.

Q And that would result in affecting William street, for instance, for at least three or four blocks away from Broad? A I was going to explain to you—

Q Don't explain, but just tell me whether it would or would not. A I don't think so.

Q Would there be any benefit? A There would be in that case that for a reason I stated, which I would like to state—

Q No, you need not state it. If there would be as a result of its nearness to Broad street— A When you went a certain distance there would be no material enhancement.

Q When you went what distance? A I had in mind Washington.

Q That is two blocks? A Two blocks as it is known, but they are long blocks.

Q The property on those blocks by reason of their relationship to Broad and their proximity to Broad is enhanced in value? A Yes, undoubtedly rather than depreciated, but distance from the enchancement would be scarcely noticeable except as you approach Washington street.

Q And has Washington street been enhanced in value by reason of Broad street; enhancement in value? A I don't think so.

Q If Broad street was immediately next to Washington street would you think Washington street would be less valuable? A If there was

no Broad street there I think Washington street would be more valuable.

Q No, I am asking you about Washington street. Does the fact that Broad street is the most important street, if that fact didn't exist do you think that Washington street would be as valuable? A I think all those central streets partake somewhat of the value of the proximity there.

Q So that Broad street up to Washington street inclusive including the two blocks that run east and west are affected by the proximity of Broad street to a certain extent? A On William street?

Q On William and including Washington street too? A Yes, I think so.

Q As a result of the nearness to Broad street does not William street, those two blocks on William street, taking William street for example, are they not more or less influenced in their development as a business street on account of their relationship to Broad? A I think so.

Q Now, then taking the property west on Washington street I ask you whether that property is all that is affected in the development as a business street by reason of its relationship to Washington street and to the two blocks intervening between Broad and Washington street? A Well, not a great deal.

Q Is it some? A I am inclined to think that any street running into Broad street as William street does would be a better street by reason of that than if it did not extend to Broad?

Q I understand you work away from the street? A Yes, sir.

Q The block runs from Washington street on William? A Yes, sir.

Q That you say is more or less affected by its proximity to Washington street and the two blocks between Broad and Washington, those two blocks are affected in their development as business streets by reason of their proximity to Broad street? A You have to draw the line of proximity somewhere.

Q I know we are getting further away all the time. I am talking about that, immediately west of Washington street, which is a business street, and ask you if that is not affected in its development as a business street by reason of its proximity to Broad? A I suppose it is affected.

Q Now, that brings you back, as far back as Plane street. Now, the next block runs from Plane to Washington street and I ask you whether that street is more or less business or residential or is it half and half? A It is half and half. There are a few homes there.

Q I ask you whether that block is more or less affected in its business development by reason of its proximity to— A Between Plane and Arlington?

Q Between Plane and Arlington to a certain degree? I don't want the exact degree. A Between Plane and Arlington there is no real business there. You remember, perhaps, the Board of Health—

Q I know the place. A And the other is a small corner, small residence on the corner, and saloon on one corner, northeast. Yes, I suppose it is somewhat affected, but very inconsiderable, if anything.

Q Washington street is somewhat of a business street, is it not, within the neighborhood

of William street, in fact as far as Court street? A The entire distance.

Q And Halsey street is likewise a business street? A Practically strictly business.

Q More so than Washington street? A Yes, I think the percentage is greater.

Q And both those streets have been affected more or less, beneficially affected in their development as business streets, as a result of their proximity to Broad street the same as to the two blocks that intervenes between Broad and Washington? A Yes, take Halsey street, for certain reasons, yes.

Q And take Washington street? A Not so much.

Q But some? A Yes, I think probably it is helped.

Q Then, why if that is all so why are not streets that are two, three and four blocks away from Branford place and some of them running parallel with Branford place more or less beneficially affected as a result of Branford place development? A You are comparing a level street as Branford place to Market street and there are no tracts in it. You have opened sites for a transaction of business.

Q You say there are no tracts but in making your assessments contemplated the possibility and probability of street railway lines to Branford place? A I took that in mind that Halsey is developed to automobile traffic exclusively.

Q But you have stated it was affected on account of its proximity to Broad street? A I think all the central streets are.

Q Why are they? A That is what you would call general benefits by reason of being close to it.

Q What sort of a benefit did these streets get by being close to Broad street? A If Broad street had had a smooth pavement years ago Halsey street would not be there today with its automobile business.

Q You are now restricting it to that particular business? A That is all there is there.

Q I am talking about the rise in market value which is the benefit to a business street from a real estate standpoint of view. I asked you why they are benefited, why the streets that are within two or three blocks of Broad street are benefited, not alone Halsey street, but Washington street? A I take it it is because they happen to be in the center of the city. I think that is the reason of that.

Q Is that the center of the city? A That is what they know as downtown.

Q You mean center of business activity? A Yes.

Q So the more activity there is the higher the market value of the property of a particular street and the surrounding property? A No, I don't see it that way. There may not be business enough to go around.

Q Don't you contemplate the City of Newark growing at all? A We don't want to brag about it but it is smaller. The recent census shows that.

Q Isn't that due to the present bad condition of the last few years? A We better not go into that too deeply.

Q What has been the growth of the City of Newark in the last ten years? A The increase of population?

Q Yes. A Now, about four hundred thousand and I think the last census indicated about 275,000 to 300,000.

Q Now, do you not contemplate that in the next five years the City of Newark will increase in population?

Mr. Stein. I want to interpose an objection now to this line of examination. It is getting away beyond the question of immediate effect; it is going into speculative regions and prospects.

The Court. I will hear Mr. Kalisch.

Mr. Kalisch. Of course, the question of the latitude to be allowed me is a matter of discretion, and yet the witness tells me that there is not enough business to go around to make Market street and Branford place both prosperous streets. I suppose the growth of the city would have some influence on the opinion concerning that point.

The Court. I fear that the opinion that might be expressed on this subject might not be of much assistance to the Court.

Mr. Kalisch. Sometimes the preliminary questions are not important, but they lead up to something. That is the only way I can apply them.

The Court. Well, I have to rule on this question. I sustain the objection on the ground that it opens a line of inquiry that is so purely speculative that it is not likely to be useful.

Q Then I will ask you to explain your answer in which you say that there will not be enough business to go around. What did you mean by that? A Well, if you keep opening streets, for example, paralleling streets which today are not transacting their fair quota of business, something is bound to suffer. I do not know that I

can make it much clearer than that, and I would apply that rule to Market street.

Q Well, does that rule take into consideration the growth of the city? A I think so. You cannot measure it up, for it isn't happening. There will be a certain growth, but I think we have all been disagreeably surprised in the lack of growth.

Q And did that opinion take into consideration the likelihood of a continued growth in the city? A Well, my experience has been that these reasons are frequently made by what you might call a forward move offsetting the bad effects eventually.

Q You mean to say that people were more surprised by the lack of growth? A I think so.

Q Then you do not consider that there is any congestion in the business center of the city? A Oh, yes, there is congestion, but there are those among us that feel that we want more of it among us there at certain places.

Q For what reason would they want more? A To help business.

Q As a matter of fact, traffic is only useful, or valuable, rather, to streets where there is a retail trade; isn't that so? A No, I don't think so; I think that—do you mean vehicular or pedestrian, or both?

Q No, pedestrian traffic. A Yes, wholesale districts probably are not catering to it; they very often are using the sidewalks and barring off the pedestrians.

Q Now, can you tell me whether it is the general opinion among real estate men that property on Market street west of Broad street will not increase in value within the next five years?

Mr. Stein. I object to that.

The Court. I should think this is hearsay.

Mr. Kalisch. Well, I suppose the opinion of an expert is more or less based upon hearsay. Opinions based upon real estate deals and the general opinion, I think, are proper. They are all based on hearsay—opinions.

The Court. I think this question goes beyond the rule and beyond any exception that I am aware of. I sustain the objection.

Q Have you discussed the probability of the enhancement of the values of Market street properties west of Broad street?

Mr. Stein. I want to object to that also, if your Honor please, unless it is tied up in some way to this opening.

The Court. Suppose it were tied up to that, would the objection be removed?

Mr. Stein. No, of course, there would still be the other objection about hearsay evidence.

The Court. It seems to me it is not desirable to open a matter that cannot be followed up. If the witness had talked with others, how could his results from such conversations be brought before the Court and be consistent with the rules of evidence?

Mr. Kalisch. In this wise. I take it that the rule is, in the confirmation of these assessment reports, that the Court will not disturb an assessment merely because it, sitting as one of the commissioners, might have made a different assessment in amount, and if the assessments are based upon facts

about which men familiar with the market do not agree, then the mere fact that the assessment that was made differed from the one that the Court might make or that the objectors might have considered right would not afford a ground for setting aside the assessment. Now, if real estate men disagree upon the matter, why, it is left, I think, to the discretion of the commissioners, assuming that they acted within the law, and the only way to prove that it is a matter over which men probably would disagree is to ask the question whether there have been any discussions concerning it, and whether they all agreed or disagreed concerning the value of particular properties.

The Court. Well, admitting for the sake of the argument that that is so, what would be the legal way of proving the opinion of real estate men, the evidence of some witness who says he has talked with them or the evidence of the real estate men themselves?

Mr. Kalisch. I do not want to prove the opinion; I merely want to prove that there has been a disagreement, the general fact that they have not agreed upon the subject, without getting exactly what their opinion is as to values—the general fact that there has been a disagreement, a general disagreement, among real estate men, without showing just exactly what their opinion of values was.

The Court. Do you think that is a solid foundation on which to build a commissioners' report?

Mr. Kalisch. No, it is a fact from which could be argued that, in so far as there is a

disagreement among men who are in the real estate market, the fact that there is likewise a disagreement between commissioners and real estate men is sufficient to consider that the report of the commissioners is based upon an opinion which is a fair exercise of discretion and judgment.

The Court. Well, I should be willing myself to assume, from several years' experience, that there would be a difference of opinion about any report of commissioners on any subject. The report is presumptively correct. You offer the report, and then you rest. Then the report is attacked, and attacked by an attempt to show that the commissioners have proceeded on some illegal principle or have reached conclusions that are inherently absurd, and you reply to that by showing that the report is reasonable and alleging that the presumption in favor of its regularity has not been overcome. But I do not see that anything so indefinite as a statement by a witness on the stand that real estate experts do not agree would help the Court.

Mr. Kalisch. Well, probably I might illustrate this further. It is very similar, I might say, to the review of a verdict of a jury by an upper court, in which the Supreme Court very often says that "We disagree," or "We might have disagreed with the jury in reaching the verdict, but the question is as to whether the disagreement would be so great as to indicate that the jury was not prompted by the proper considerations in arriving at their verdict;" and applying that to this situation, that

the disagreement in the real estate world of Newark was so great that we could show that, while the commissioners' report on a particular assessment did not agree with what the experts gave as their opinion, yet the disagreement was not so great as to indicate that the commissioners did not act in accordance with the principles of law.

The Court. Well, this has been my idea. In the first place, the Court—that is the judge of the court—does not make himself a commissioner and act upon his own judgment as to what the assessment ought to be. The law has not committed that subject to him; it has committed it to the commissioners. The commissioners have acted, and the report constitutes the expression of their conclusion. Now, if fifty real estate men should be sworn and should say that they disagree with the report, and if fifty more should be sworn and say that they approve of it, what would it profit? The case would be left very much as it was at first. Unless it is made to appear, not that there was a difference of opinion, but that the commissioners have acted upon some erroneous principles, the report ought to stand. Therefore I think your difference of opinion is not going to help you or help me. I take it for granted that there will be a difference of opinion, or that there is a difference of opinion. What of it? It does not prove anything against the report. It does not prove anything of itself, *per se,* either for or against the report.

Adjourned To December 7, 1915.

SEVENTH DAY.

Tuesday, December 15, 1915.

Cross examination (continued) by Mr. Kalisch.

Q Mr. Berry, you have in your direct examination designated certain blocks which you thought were benefited and others which you thought were not benefited. Now, I call your attention to blocks 88, 87, 70, 62, 54, 53, 63, 69, 89 and 71. They are bounded by High street on the west and Bank street on the south and Broad street on the east and on the north they run to the Morris Canal. Concerning those blocks you have testified that they have not been materially benefited. I ask you what you mean by "materially benefited?" A I imagine the word used there was "peculiarly."

Q Well, I have got it down "materially benefited." A My answer would be, Mr. Kalisch, that they have not been peculiarly benefited.

Q What did you mean by saying "peculiarly benefited?" A If I used that word I would apply it the same as "peculiarly." I believe that is what I stated.

Q Well, you think that the words "materially" and "peculiarly" are the same? A No, not necessarily at all.

Q Well, if you said "materially" how is it then, that you meant "peculiarly?"

Mr. Stein. I object to the question, if your Honor please. The witness has already stated that he does not think that he said "materially."

The Court. Well, it is not very difficult to look it up, if you desire to do so. I do not readily find it on my notes.

Mr. Stein. I think it will be found, if your Honor please, on pages 517 and 518 of

the testimony, in which the witness says he does not believe that those properties have been peculiarly benefited.

The Court. That seems to be the record.

Q You further testified that "I think any improvement of that character generally benefits property in the neighborhood." Do you recall testifying to that? A If it be so written, I will agree to it.

Q Well, I do not want you to agree to anything. Is it a fact? A I do not recall just what I said at that time.

Q Well, is that a fact, that an improvement of that character generally benefits property in the neighborhood? A Well, I meant to say that it is a general benefit.

Q I am asking you whether it is a fact that any improvement of that character generally benefits property in the neighborhood?

Mr. Stein. I object to the form of the question, without specifying what the phrase "that character" refers to. We have taken several hundred pages of testimony, and I think it is unfair to cull out of the testimony two words like those.

The Court. I think it would be better to refer specifically to what you have in mind.

Mr. Kalisch. You were speaking of those blocks, 88, 87, 70, 62, 54, 53, 63, 69, 89 and 71, and you were speaking of them with reference to the effect of the opening of Branford place upon them.

The Court. Perhaps this is what you have in mind, on page 518. After saying that these particular blocks had not, in his opinion, been peculiarly benefited, he was asked: "*Question*: Have they suffered any detri-

ment? *Answer*: Well, I would not say they have been. *By the Court. Question*: Do you think they have had any general advantage? *Answer*: I think generally speaking there is a benefit to anybody to an improvement of that character." Then again: "*Question*: Do you think there may have been a general benefit? *Answer*: There may have been a general benefit," and so forth.

Q Well, I will ask you this question, then: Do you think that the opening of a street like —do you think that the opening of Branford place results in any benefit to the property in the neighborhood? A I do not think so in the neighborhood that you have in mind, which, I presume, is northerly from Market street.

Q Northerly from Market street, southerly from Market street, easterly or westerly from Broad street. A I have stated that southerly from Market street, that portion of it southerly from Branford place, has, in my judgment, been peculiarly benefited; likewise that a certain zone, say 50 feet northerly from Branford place, has been peculiarly benefited; but that property on Market street not only has not been peculiarly benefited, but, in my judgment, it has been injured. Property north of Market street, in my judgment, has not been peculiarly benefited.

Q On account of the diversion of traffic? A It has not been benefited—

Q On account of the diversion of traffic, I say —diversion of traffic from Market street? That is your opinion?

Mr. Stein. Which are you now referring to, Mr. Kalisch.

Mr. Kalisch. Property on Market street.

The Court. The witness is now speaking of property north of Market street.

Q Oh, north of Market street? A Yes.

Q That does not refer to Market street property at all? A I had in my mind a zone north from Market street.

Q Do you mean streets running parallel with Market street or cross streets? A Yes, and any other street.

Q Do you think Washington street has been injured by this opening? A I have not said that.

Q I am asking you, do you think it has been injured? A No, I do not.

Q Do you think it has been benefited? A Not peculiarly benefited, except—

Q Do you think that Halsey street north of Market street has been peculiarly benefited? A I do not think that it has been peculiarly benefited.

Q The property on Plane street, north of Market street has that been peculiarly benefited? A Not in my judgment.

Q Would you say that if Market street had been peculiarly benefited that that would in effect would result in a peculiar benefit to Plane street and Washington street and Halsey street between Market street and the canal?

Mr. Stein. I object to the question, your Honor. It is not based on anything in this witness's testimony.

The Court. I will sustain the objection on the ground that the question is too hypothetical.

Q Now, Mr. Berry, will you give me the market value of lot No. 1, on block 84, before the opening, which is on the north side of Market

street? A It would be about 19 or 21 Market street, I should think.

By the Court.

Q You were asked the market value before the opening. A Yes, in my judgment that land would be worth for a depth of 100 feet—a thousand dollars per foot.

By Mr. Kalisch.

Q Will you give me the market value, not per foot, figuring up yourself, just exactly what the market value in your opinion was before the opening? A If the dimensions be stated to me I will state it to you at that rate.

Q The frontage is 20 feet, about 105 feet in depth. A I would state a thousand dollars per foot.

Q That would make it $20,000? A Yes, sir, for the land.

Q What do you think the market value is since the opening? A Not more and probably a trifle less.

Q You think it is a trifle less. You feel that you are able to say that on a lot worth $20,000 that $75, which is the amount of the assessment, does not represent the increase in market value since the opening? A There has been no increase. On the contrary there has been a deterioration in my opinion.

Q You first said, "no more and probably a little less," so you are somewhat undecided about that? A I will make—

Q No, you are somewhat undecided about that? A No, not at all.

Q You want to change that and say it has deteriorated? A If it is necessary—

Q Is that less or isn't it less? A In my opinion, less.

Q What in your opinion, has made it less? A Diversion of traffic.

Q From where? A Which otherwise would have passed the place.

Q The diversion of traffic that would have gone on Market street and which now goes down Branford place? A South bound traffic, south and east bound.

Mr. Stein. South bound from where?

Witness. South bound from Branford place.

Q From what direction did that traffic usually go that went down Market street? A The west side I am speaking of, traffic from the west side.

Q West of High street? A Yes, sir.

Q From what streets? A Any traffic that would come down, that otherwise would have come down Market street. If it were going south on Branford place will now find its best outlet by turning at High street and going down Branford place, and thus excluding Market street.

Q You think that all the traffic that used to come down Breintnall place and Nelson place and Thirteenth avenue and which formerly went into Market street—let us eliminate Thirteenth avenue—taking Nelson place and Breintnall place, that all that traffic used to go from there down Market street, instead of continuing down into Market street follows over, goes south over High street and then turns down Springfield avenue to Branford place. A Such traffic as would have come down the west side and otherwise would pass Market street, through Market street southward bound

will, in my judgment, the major portion of it turn into Branford place.

Q You, of course, don't think that traffic that went down Market street would continue down Market street until they struck Plane street and then turn over to the south? A Not if they are seeking the easiest way to the destination.

Q You think it is much easier to go down Springfield avenue from High street and then to continue down Market street? A We were speaking of Breintnall place. Springfield avenue does not come down Market street. The court house intervenes.

Q You said it would be much easier for the traffic that comes down Nelson place and Breintnall place to turn over High, that is southbound traffic, turns over High and then down Springfield avenue and then into Branford place. Do you say that is correct? A Traffic that came from the west, not including Springfield avenue.

Q I mean including Springfield avenue. I mention Breintnall place and Nelson place. Do you say that would be a simpler way and easier way for them to go? A In my judgment it would turn on High.

Q And that way you think would be taken in preference to going down Market street as far as Plane and then turning over Plane and if necessary then come down Branford place. You think it is easier to go over High street and down Springfield avenue into Branford place? A I think the High street turn is to be preferred against any street more easterly.

Q Why? A You strike the base of the hill there and come to flat land.

Q Don't you strike more traffic on Springfield avenue? A You don't go on Springfield ave-

nue. Really you strike Branford place at the same time.

Q Isn't that quite a congested section there at High and Springfield avenue, enough to require the constant attendance of an officer? A I don't know about the officer being in constant attendance. I remember seeing an officer, but a provision has been made to take care of the congestion on this corner.

Q I am not asking you about any provision. I am asking you now whether you think that the amount of traffic, whether you don't think that the amount of traffic that is in the neighborhood of High street and Springfield avenue does not make the way that you suggested more difficult than the Market street going east of Market street? A In my judgment it does not.

Q There is no traffic on Market street of any kind, is there? A I would not say that.

Q No, I mean just between Plane and High? A I think there is considerable traffic on Market street.

Q Now? A Yes.

Q What kind of traffic? A All kinds.

Q Automobile traffic? A Yes.

Q Wagon traffic? A Yes, sir.

Q And that traffic has not been diverted into Branford place? A Some of it has.

Q You said a moment ago that traffic on Branford place is quite considerable? A So it is.

Q I am telling you the traffic you consider now quite considerable has not been diverted? A It would be more considerable excepting for the diversion.

Q You think since the opening of Branford place a great deal of that traffic has been diverted

from Market street? A In my judgment it would be—

Q Can you give any reason why the rest of it is not diverted? A Really, no. I imagine more of it will be diverted as more people learn of the convenience of Branford place.

Q You base it all on convenience? A That contributes.

Q You say you imagine more will be diverted when people learn of the convenience of Branford place so you base it on the convenience of Branford place. Did you base it on the convenience of Branford place? A Yes, that is part of it.

Q What is the other part of it? A I can't tell what is in the minds of those who use it or would use it, but I am satisfied that traffic is being diverted into Branford place from the west.

Q As a matter of convenience? A That is one good reason.

Q What about pedestrian traffic? A I think pedestrian traffic southward bound would use it, too, in the same proportion.

Q Do you feel that any of it will be diverted? A Bound to be.

Q Why? A It fills the bill.

Q When? A Always.

Q When do you think it will divert the traffic? A There would be a diversion the minute it was opened.

Q What is there on Branford place to attract pedestrian traffic? A Nobody can stop you going there.

Q What was there on Branford place that would divert, that would cause people to use it immediately after it was open in preference to Market street? A Well, a person coming from

the west and desiring to go in a certain direction would find Branford place a better means of going there.

Q So you think if a person goes down Nelson place and Breintnall place the pedestrian would ordinarily take Market street before the opening of Branford place. Since the opening that person would now go over toward Branford place, over High street and go down Branford place immediately after the widening, is that right? A I think if—

Q Is that right?

Mr. Stein. I object to the question.

A Some persons would undoubtedly.

Q And immediately after the opening that would cause some diversion? A Yes, I think that will grow. It was always there from the time of the opening.

Q What would cause it to grow? A Traffic.

Q What would cause the pedestrian traffic to grow? A Well, I think pedestrian traffic finds its way around like other traffic according to the necessities.

Q But pedestrian traffic would grow if people had business on that particular place, wouldn't it? A Not necessarily. That would be one cause.

Q You have answered it. Would they be apt to use a street that was unimportant in so far as business is concerned, places of business and shops, and so forth in preference to a street that was an old street built up for business and with business houses on it? A Some of them would from the very beginning.

Q What do you suppose would cause them to prefer it, some of them as you say? A Convenience would be one reason.

Q What particular convenience can you name outside of having some business on Branford place? A Well, let me illustrate it if you will for a moment. For the purpose of clearing it up, if a person were to come out of a building, we will state on the westerly side of Plane street southerly from Branford place and desire to go to Washington street on the westerly side from Branford place such a person would not go elsewhere than through Branford place.

Q But we are now speaking of people who are coming out of Nelson place and Breintnall place. A The same situation would apply.

Q What if they wanted to go to Washington street? A If they were desiring to go into any of these cross streets they would be very apt to go down Branford place and turn anywhere they were going.

Q In preference to going down Market street? A I think they would do it as frequently as much as the other way.

Q No more than the other way? A Well, that would come later.

Q Well, that is what I want to find out from you. What would cause it later? A. From the very beginning they would use Branford place in considerable numbers. It fills a want there for the general public, and the traffic will be diverted into it.

Q Now, you say it fills a want. What kind of a want does it fill? A A general want.

Q Well, that is indefinite. What sort of a want was necessary there in that section of the city? A Well, I think the want that was neces-

sary was the opening of that street to go south and east.

Q Well, could not that have been handled on Market street? A I am in accord with the opening, generally speaking.

Q Could not that have been handled by Market street? A Well, those who were doing it did not seem to think so.

Q Well, you have expressed an opinion that it filled a want. Now, I want to know what, in your opinion, the want was that was filled? A Greater convenience, generally speaking, as an outlet to the center of the city, and more particularly to the south side of the city.

Q Was not that want filled by Market street? A Well, Market street was pretty well congested—I will admit that—the corners, but Branford place will assist the people, I think, generally, beyond a doubt, in getting to the center.

Q Well, now, you think that it filled a want by reason of the fact that Market street was pretty well congested? A Well, I—

Q Now, you can answer that yes or no. A Oh, yes, I think Market street is a congested street; it has been.

Q For how long has it been? A Well, the word "congestion" as to streets—

Q You say it has been. Now, tell me how long it has been. A Well, I can speak for myself.

Q Your own experience. You have lived here. A Yes, I have known Market street as boy and man for many years, and if there was any business anywhere it was Broad and Market streets in Newark.

Q How long has it been a congested street? You say it has been. Now, how long has it been? A Well, it has been a busy street for many years.

Q Not a business street? You used the word "congested." I want to know how long it has been congested, in your opinion? A Well, there are degrees of congestion, Mr. Kalisch.

Q Well, the degree of congestion that you were thinking of when you said it was congested, how long has it been that congested? A For years it has been a busy street, for years.

Q It has been congested for years? A Well, not what you would call injuriously congested.

Q I am using your language. You say it has been congested? A Yes, sir.

Q For years? That is correct? A Yes, sir; that is correct.

Q And Branford place relieves that congestion, in your mind—in your opinion? A It relieves it too much, in my mind. The congestion is very much needed in business streets.

Q Was that congestion something that got worse as the city grew? A I wouldn't call it growing to make it worse; I would call it bettering it. Now they will stop it.

Q Well, no, I mean by this outlet of Branford place. That congestion was continually growing, was it not—progressing? A Yes, I think that business was growing there.

Q The congestion was growing there as a result? A Not too fast; it was coming all too slowly.

Q You think that it ought to have been more congested? A I would want it.

Q Well, just how congested would you want it? A As a mercantile trader there, it could not be too congested to please me.

Q For the general merchant, the good of the merchants on Market street, you think that it should still be more congested than it was before

the opening? A If I were a merchant, I should want it that way—congested—but I am not everybody, and neither are the merchants on Market street everybody. The convenience of the public must be served.

Q Do you think that the persons that come down from Thirteenth avenue and Breintnall place would follow the line of least traffic in going easterly from High street? A Do you mean vehicular or pedestrian?

Q Pedestrian. A I wish to make that clear. I think that the percentage of vehicular traffic—

Q No, pedestrian. A That would be less than the vehicular that would be diverted into Branford place, in my judgment.

Q So that the greater percentage of pedestrian traffic that formerly went down Market street from Breintnall place and Nelson place remains on Market street? A No, I would not say that there would be a heavy loss of all kinds of traffic, but that loss, in my judgment, will be greater probably as to vehicular traffic than it will be as to pedestrian traffic. I think that the north side of Market street, that you have mentioned above, will suffer even more—

Q Are there any stores between High street and Pierson's alley— A Yes, sir.

Q —which is the north side of Market street? A Yes, sir.

Q Well, will you just tell me what stores there are there? A One of them is rather a famous store.

Q What? A I said that one of those stores is rather a famous store, well known to all men in Newark, I think.

Q The restaurant? A I had that in mind.

Q What is the next one? A The next above that was a store occupied at various times for a

druggist, a bank, and so forth; at this moment I do not know the mercantile occupancy, but such it is and was.

Q There are only three properties— A The school—

Q —devoted to business between High street and Pierson's alley, on the north side of Market street; isn't that so? A And the larger percentage of them are given over to mercantile—

Q No. There are only three properties? A There are three, and then comes the school building.

Q And west of Court House place is St. Paul's Episcopal Church? A That occupies the block from Court House place westerly to High street, on the north side of Market street.

Q So that there are really three mercantile properties, or properties—no, four—business properties? A Three or four; that is quite right.

Q Now, do you think that vehicular traffic would improve those four properties? A I think all traffic would.

Q Do you think that vehicular traffic would improve those four properties? A Yes, I think so.

Q Have you any idea what values were per foot of the property that you have just given us —let us say the market value of about ten years ago?

Mr. Stein. Is that important, if your Honor please? I object to the question.

Q Has there been an increase in market value of the property between High street and Pierson's alley within the last ten years? A I think there has.

Q To what extent? A Well, I cannot tell you exactly, but I will give you my view. Covering what period of time?

Q Ten years. A Ten years?

Q Yes, that is the time that such an increase would be observable. A I cannot measure the percentage as remotely back as that, but there has been an increase; I would state that.

Q Do you know to what it was due? A Well, I think largely to the fact that it was central property—

Q Well, what difference did that make?

Mr. Stein. Why do you not let him answer?

Mr. Kalisch. He finished his answer.

The Court. Do you wish to add something to that?

Witness. Yes, I did, your Honor. I think, for example, the erection of this court house has contributed somewhat to benefiting the property. There are other things to be said that increased it. There is but one sidewalk on the north side of Market street—on Market street, westwardly from Pierson's alley, that you have mentioned, and such traffic as pedestrian traffic as passes there is confined to that one side. Those conditions did not always exist, so that I think you have, so to speak, concentrated such traffic, pedestrian, as there is on that side. I think enjoying the monopoly of the traffic there contributed to it.

Q Has there not always been more traffic on the north side of Market street than on the south side of Market street? A The north side of any street is the better side in Newark, generally speaking.

James A. Berry, cross.

Q You have mentioned the fact that it was centrally located property. You mean by that it is nearer to Market and Broad street? A That seems to be considered the center.

Q And by reason of the fact of those two streets increasing in traffic, and, hence, in value, the effect is to increase property that is close to it? A Some of those properties are enhanced thereby; others perhaps would grow into greater prominence if there were no such streets as Broad and Market streets.

Q That is, say we did not have Broad and Market streets, then the other streets, like Bank and Academy streets, would be the main streets? A I sometimes think that the forefathers made them too fine so as to make others look insignificant.

Q Now, Mr. Berry, can you give me the market value before the opening of lots Nos. 7 and 8 in the same block, block 84, numbered 17 and 19 Court House place?

The Court. Those are the street numbers?

Mr. Kalisch. Those are the street numbers. That is, before the opening.

A Do you know the dimensions of those lots?

Q Yes, one of them is 20 feet front on Court House place and the other one is 26, and the depth, I should say, is about— A (After referring to map). They are somewhat shallow. Those lots appear to be about 80 feet in depth and extend through to and touch upon property fronting on Market street: In my judgment, those lots are worth at that spot $200 per foot frontage.

Q Now, this lot being 20 feet, that would be $4,000? That is, 17. A 20 feet, $4,000 for the land.

Q Now, since the opening of Branford place what do you consider the market value of those lots? A About the same.

Q Now, do you think, therefore, that the assessment of $30, say, on lot No. 8, the market value of which was $4,000, does not represent the increased market value of that lot since the opening? A I do not think those lots should be assessed at all for peculiar benefits.

Q Do you think they were injured as a result of the opening? A Probably they would partake a little of the injury inflicted upon Market street, which they almost immediately adjoin, by reason of the deflection of traffic.

Q What are they, residential or business properties? A Well, it is a small street, not properly adaptable for business, except in connection with Market street.

Q Do you know whether they are business properties or residential properties. A They were residence properties, and I believe them to be such today.

Q And in considering that they might have been injured. do you consider them as residential properties or as business properties? A It is residential property upon a business street touching upon Market street, so that it would eventually, in my opinion, probably develop into business property.

Q Ycu think that Court House place will probably be a business street? A In connection with Market street only. I can explain that, if you wish.

Q That is true of both properties, 7 and 8? A If they touch upon the Market street property, which I believe they do.

Q Well, now, just explain what you mean by that: that in connection with Market street property they would be business properties? A I mean, taking the plot in question, for example, that is now owned by the City of Newark, the public school property, if that were sold for mercantile uses, the user or purchaser of that property would find it desirable to use Grove street for loading and unloading, or for access, ingress and egress, various purposes in connection with the Market street frontage.

Q And that is what gives it the character of business property? A That is, I think, a pretty fair explanation of the reason for it.

Q Well, do you recall testifying yesterday concerning the property owned by the Federal Real Estate Company, being lot 67, on block 60? A Yes, sir.

Q And do you remember being asked whether that property, by reason of being 50 feet from Branford place and bordering on the property of the estate of John D. Peddie—whether those facts did not make the property owned by the Federal Real Estate Company more valuable, and do you remember saying that you did not think so, because they were owned by two different people? A I do not think that the Federal Real Estate Company's property has been benefited peculiarly by the opening of Branford place.

Q That is not an answer to my question. I would like you to explain that answer that you gave yesterday, or, rather, reconcile that answer that you gave yesterday concerning the Federal Real Estate Company's property with the answer that you give now concerning the property here, lots Nos. 7 and 8 on Court House place, and as to which you said that it could be considered busi-

ness property, taken in connection with the public school which faces Market street. I would like to have you reconcile those two answers.

A I do not think so.

Q You cannot reconcile it? A No, I can reconcile anything I have stated, I think.

Q Well, that is what I asked you to do. A But I do not think that the property of the Federal Real Estate Company is benefited, because it is within 50 feet of Branford place or because it borders upon the Peddie property, which extends in from Branford place.

Q Why would it not be just as feasible to consider the likelihood of the Federal Real Estate Company's property being sold in conjunction with the property owned by the estate of John D. Peddie, which fronts on Branford place, and making an additional depth for the Peddie property of some 80 feet? A I am dealing with it as I find it, in two ownerships.

Q Well, do you deal with these two properties on Court House place as you find it, as two ownerships? A I am dealing it as one ownership, as I explained it to you. I said if a merchant purchased the Market street property or was using it, that he would find the Grove street property desirable for his use, loading and unloading, ingress and egress.

Q Would that affect your idea of the market value of that property? A Which property?

Q The property on Court House place? A Yes.

Q Would it affect it considerable? A No, I say to you now that that property is worth—

Q No, you can answer that question yes or no. Would it affect it considerably? A Not very materially.

Q But to some extent? A Probably.

Q Well, you have said it once. A Well, I will repeat that now.

Q So do you not think the same would apply to the property of the Federal Real Estate Company, considering that it would be possible to purchase enough of the property of John D. Peddie, fronting on Branford place, and using it in connection with the Federal Real Estate Company's property, so that there would be a rear entrance to the Federal Real Estate Company's property? A If one person purchased the whole property, unquestionably there would be two streets.

Q Very well, that is the assumption of fact which would affect your opinion in regard to the Court House place property? A I have stated where there is one ownership.

Q If the same situation prevailed down here concerning lot 6 of the Federal Real Estate Company property your opinion after considering that fact, your opinion of the value of that property would change? A If one person should buy the other person's property I think that perhaps there would be the man to deal with it. Today there is no benefit attached to the Federal Real Estate Company's property.

Q Why do you think there was an injury to the lots 7 and 8 on Court House place? A An injury?

Q That is what you said. You said that the only use that could be made of those two properties would be in connection with the property that faced on Market street, the public school property and that in view of that fact that there was a diversion of traffic from Market street, that

therefore, lot 7 and 8 were affected thereby? A You can turn property to almost any use.

Q That is what you said? A I don't recall.

Q You say you don't recall saying that? A Not in the way you have put it.

Q You have stated that you thought the property on Court House place— A Yes, sir.

Q —Was injured as the result of the opening. Do you recall that? A I would like to put it my own way, according to my recollections—

Q Don't you recall saying that? A Not quite. I don't know that I can recall what I did say. I think I said to you that in my judgment Market street was injured slightly by the opening of Branford place at the point you mentioned and that Court House place to a certain degree partook of the injury that was inflicted upon Market street.

Q And the reason for that that you gave was what? A If Market street is reduced in value I think the immediate adjacent property to it would feel it likewise.

Q Why? A Because of the value that attached to Market street and to the immediately adjacent property.

Q Didn't you say when I asked you the question as to whether Court House place was a residential street or a business street and you said it was? A Residential bordering on business.

Q And that considering it as a business street it was injured because of the injury to Market street? A It would feel right there.

Q Didn't you give as an illustration that if the school property, the corner school property, was sold and used for commercial purposes that the use that might be put to 7 and 8, would be in

conjunction with that property? A I think that it would.

Q Didn't you say that? A Yes, I did not quite in those words, but I think that is the fair substance of it.

Q So that the injury to Market street would extend to 7 and 8 for that reason? A I think if any change occurred to Court House place by reason of the opening of Branford place that there would be a slight reduction in value.

Q So that the proximity of lots 7 and 8 to the school property is what in a measure affects the value of those two properties? A I think any property touching upon a very important street in that fashion. I didn't finish my answer.

Q Go on. A Another reason that gives benefit and value to Court House place is this: Market street is on the side of a steep hill and loading and unloading that I have mentioned for mercantile uses could not occur with convenience upon that street and in addition to that the trolley goes by. Now, cross streets would feel the effect either side. Perhaps I have picked out one—there may be other uses that it could be put to along the line. Now, the same situation does not apply to Camfield court and Branford place.

Q You started out to say that any property bordering upon an open street affected and then you stopped. Affected what? A Affected values. Values are affected thereby.

Q And how far does it affect those values? A I will illustrate—

Q No, how far. Don't illustrate.

Mr. Stein. I think the witness ought to be permitted to do that.

A It isn't quite as satisfactory as I should like to have it, but I will make my answer accordingly. Property bordering upon an important thoroughfare immediately adjacent to the property of that important thoroughfare unquestionably partakes of some of the values touching to the improved property. I wish to bring that down and apply it as between Branford place and Camfield court if you wish me to.

Q No, you answer the questions I put to you. I will ask you this question. I direct your attention to the property, lot 67, Federal Real Estate Company, and ask you now whether the value of that property is not affected by its proximity to the Peddie property? A I answered that. I do not think that it is.

Q Now, take lot No. 13 on Court House place, No. 7 Court House place, lot 13, block 84, and tell me what in your opinion was the market value of that lot before the opening of Branford place? A What are the dimensions, if you please?

Q That is about 127 feet? A Yes, perhaps I can help you, Mr. Kalisch. I might make this statement that if the 25 feet by the normal depth, say 100 feet, the value was in my opinion, it is $150 per foot frontage. If the depth were less than that it would be a trifle less, of course, proportionately.

Q It is 20 feet on Court House place? A $150 per foot, if the depth be substantially 108 feet.

Q It is 126 feet. A Well, I would add to that 10 per cent., $165 per foot.

Q That is $3,300? A For 20 feet, yes, sir.

Q What was the market value of that property after the opening of Branford place? A The same as it was before to my way of thinking.

Q So you think that the assessment of $29 on that property which is worth $3,300 does not represent really the peculiar benefit which that property enjoyed as a result of the opening? A I don't think any peculiar benefit attached to that property.

Q Have you considered the possibilities of this square? I point to the square occupied by the court house and by the hall of records, county property. Have you considered the possibility of that square becoming a very important center as a result of the opening of Branford place? A It is a pretty important center without that opening.

Q Have you considered that as a result of the opening that it will become a much more important center by reason of the traffic that goes up and down Branford place as you say? A You couldn't get past it anyhow no matter which direction you were going. You have to pass this center.

Q I ask you whether or not you considered— A There will be a change in the traffic which will go more on a certain side.

Q Have you considered the possibility of that square becoming a very important center? A I repeat it is an important center today.

Q Have you considered the possibility of this becoming a still more important one with more traffic, more congestion? A I am willing to grant you that.

Q Do you think it will, as I say, rival Belmont avenue and Springfield avenue? A It would not be rivaled. They are different zones.

Q Do you consider that right in that neighborhood, say in the neighborhood of that square, the streets that bound it, that properties will go up

in market value in the future? A I am inclined to think values will rise.

Q Do you say that a portion of the value or market value is contributed to by the opening of Branford place, at the terminus of the opening, I mean? A Not very much of it.

Q Then, you don't think that property west of High street has had any peculiar benefit as the result of the opening of Branford place? A I think I have stated the properties that, in my judgment, were peculiarly benefited.

Q One of them is the West Side Trust Company? A Yes, I think that property has been peculiarly benefited.

Q Has any other property on High street, on the west side of High street between Springfield avenue and, let us say, Thirteenth avenue, been benefited? Has it or has it not? A I have stated those that I thought were.

Q Some of them were? A Yes, sir.

Q As a result of the opening of Branford place peculiarly benefited? A I have mentioned certain properties that would be benefited peculiarly.

Q So that would not the values of those properties increase in time? A I hope so.

Q Don't give us your hopes. I want to know what your prediction is about that little section.

Mr. Stein. I want to note a general objection to this style of questioning as to whether properties will increase in time. I think that is altogether too remote in regard to this examination. We are dealing entirely with the question of the immediate effects of the opening.

The Court. I will not interfere with the questioning.

Q I want to know what your prediction is as to the rise in market value of property in the section occupied by the court house and the hall of records as a result of the opening? A As a result of the opening?

Q Yes. A I don't think it would be very much benefited at certain places as a result of the opening, but there are certain places that will be peculiarly benefited as a result of the opening.

Q Do you think that if there had been no opening that the rise in value would have been the same? A Yes, and then there is another thing to state there. There may be some injury. I wish to make clear to you.

Q You say you think that if there had been no opening the rise in value would have been the same in the section I have alluded to? A In some cases unquestionably, but in others that is not true.

Q Don't you think that the rise in value in that section that I have referred to would have the effect of increasing the market value of this particular lot, No. 13, in block 84, known as 5 Court House place? A I don't think it would materially affect it.

Q You remember stating yesterday that you thought that by reason of the increase in value of Broad street property that William street up to Plane, I think, and a little vest of Plane and that the cross streets, Halsey street, Washington street and Plane street, were favorably affected by the increase of value of Broad street property. Do you remember so testifying? A I do not, sir, and I did not. I recall very well what I said about it.

Q Do you remember testifying as follows, on page 693: "And has Washington street been enhanced in value by reason of Broad street, enhancement in value? *Answer*: I don't think so. *Question*: If Broad street was immediately next to Washington street would you think Washington street would be less valuable? *Answer*: If there was no Broad street there I think Washington street would be more valuable. *Question*: No, I am asking you about Washington street. Does the fact that Broad street is the most important street, if that fact didn't exist do you think that Washington street would be as valuable? *Answer*: I think all those central streets partake somewhat of the value of the proximity there. *Question*: So that Broad street up to Washington street inclusive including the two blocks that run east and west are affected by the proximity of Broad street to a certain extent? *Answer*: On William street? *Question*: On William and including Washington street, too? *Answer*: Yes, I think so." A That is quite different from what you now ask me.

Q As a result of the nearness of Broad street: "*Question*: As a result of the nearness to Broad street, does not William street, those two blocks on William street, taking William street for example, are they not more or less influenced in their development as a business street on account of their relationship to Broad? *Answer*: I think so." You recall so testifying? A Such as you have now read perfectly, but that is in discord with the question you last asked me. Increase in values I think you stated in the last question.

Q Don't you think business development on a street increases business values? (Question read). "Do you remember stating yesterday

that you thought that by reason of the increase in value of Broad street property that William street up to Plane, I think, and a little west of Plane and that the cross streets, such as Halsey street, Washington street and Plane street, were favorably affected by the increase of value of Broad street property.'' A That is quite a different question.

Q What is the difference? A You spoke of increase in value.

Q I said favorably affected. A I wish to now make clear this. We did not discuss the increased value on Broad street at William street because we had not touched upon it. I say to you now that William street undoubtedly is influenced in its value favorably by reason of the fact that it does run into Broad street, if that will clear it up.

Q You don't mean to say, you didn't say yesterday that the property on the two blocks on William street going west from Broad were not enhanced in their value by reason of their proximity to Broad? Do you mean to say you didn't say that? A Whatever the record states I will abide by.

Q That is so, that they are enhanced in market value? A William street is benefited by reason of the fact that it does run into Broad street.

Q They are enhanced in market value? A If you prefer the words ''enhanced'' I will repeat it, yes, sir.

Q And up as far as Plane street? A Yes, I think so. It is a more valuable street than if it did not run into Broad.

Q Will you now tell me, why, applying the rule of proximity to Broad, why the property on

Court House place known as 7 Court House place would not be increased in value by reason of its proximity to this square occupied by the court house and hall of records? A I think if it were not or had not gone into such close proximity to those conditions it would not be worth as much as it is.

Q Suppose that it was next to Broad street, suppose it might be? A We find discrepancies wherever we turn.

Q That is a residential property? A It has been.

Q Is it now? A There is a church across the street, two churches, there is a rectory there. It isn't busy if that is what you wish to clear up.

Q What sort of property is on Bank street between High and Court House place? A The corner is ex-Mayor Haussling's home. In the rear of that is a stable and cigar factory fronting on Court House place, and there is a store, southwest corner, an Italian grocery.

Q What sort of property is on Bank street between Court House place and Pierson's alley? A There are chiefly old homes there. Down below there are stores.

Q Is it strictly speaking a residential street? A No, sir, not strictly speaking.

Q Is is not business? A Small mercantile there. There is a store on the corner, for instance, northwest.

Q Have you stated whether or not properties fronting on Bank street were at all benefited by this opening? I believe you stated they were not benefited? A North of Market street, in my judgment, no property has been peculiarly affected.

James A. Berry, cross.

Q I call your attention to property on Pierson's alley which is designated as lot No. 8, block 85. I ask you whether you think that that property was peculiarly benefited? A Peculiarly benefited?

Q Yes, as a result of the opening? A I do not think so.

Q Now, returning again to this property that faces Court House place, I note it runs to the rear of property on Bank street, the property on Bank street, being lot 20 and 24 on block 84, known as 134 and 132 Bank street. Those two lots being owned by the same person that owns the Court House place, lot No. 13, all of which is owned by Bartolomeo Zazalli. A Do you mean, if you please, No. 7 on Court House place?

Q That is the one we have been referring to that runs into the rear of the two properties on Bank street that I have referred to? A That is shown here as being connected with one property on Bank street.

Q How wide on Bank street is that property it is connected with on your map? A About 26 feet, I think.

Q It also runs to the rear of the property next door to it, known as 24 Bank street, does it not? A It would not be 24 Bank street, because the numbers there would be hundreds.

Q No, I don't mean there. I mean 133 Bank street. A The Bank street property that is indicated on this map as being connected with Grove street or Court House place property would be 134.

Q Can you give me the market value of that property at 134 Bank street? A I think so.

Q Before the opening? A Yes, sir; I think so.

Q What was it? A I think a fair value for that would be $125 a foot for the usual city lot, depth of 100 feet. I think that lot is but 80 odd feet.

Q About $3,200? A If there be 26 feet.

Q Are you reckoning that value in connection with the property that faces Court House place? A I was answering as of its—

Q Regardless of increase? A I think by reason of its attachment of being attached to the Court House place property, forming an L, I think each of these properties would be enhanced in value.

Q Have you considered the properties on Washington street, south of Market? A Yes, sir.

Q What do you say considering say lot No. 6, on block 66, on the corner of Washington street and Camfield court? What have you got to say concerning the effect to that property? A Property on Washington street at the corner of Camfield court—let me see, one moment—

Q That is the southeast corner? A I do not think the easterly corner of Washington street and Camfield court have been peculiarly enhanced in value by the Branford place opening.

Q What did you consider the market value of that was before the opening? A Well, right on the corner—

Q Yes, the corner of the lot? A If you take for example, 25 feet on the corner of the alley—what is the depth of it, if you please?

Q It is 60 by 80. A That is different. That depth on the corner, $1,500.

Q Worth $90,000? A Not for 25 feet.

Q 60 feet by 80? A My values were based upon 25 feet on the corner.

Q Give me what the market value of that property was before the opening? A I suppose it would be fair to make that an average of $1,350 per foot front, so that if there were 60 feet it would be $81,000. The corner is worth, in my judgment, as I have stated, not less than $1,500 per foot for 25 feet and for the depth mentioned.

Q And since the opening what do you consider to be the market value? A Not any more.

Q Has it been injured any? A Well, it is so close to Broad street—that the injury would be very small, if any, but it has not been benefited peculiarly.

Q Why do you say that? A I think it is so conspicuous there, the main street, that any detraction there by reason of the introduction of a new street south of it would not be injurious.

Q Would not be injured by reason of what? A Would not be measurably injurious.

Q Why would not it be? A I think because that is so plainly in evidence there, the other street from Market street, it would stand, if you please, uninjured.

Q Don't you consider that Market street was injured? A Market street property unquestionably but there is a difference between a parallel street and a street running at right angles.

Q Don't you think if there is a difference in market value on Market street that would affect market value on Washington street? A No, I don't think so. Washington street stands on its own base.

Q Washington street is a valuable street regardless of Market street? A Washington street is a valuable street.

Q If Market street wasn't there do you think Washington street would be just as valuable? A If Washington street had a monopoly it would be worth a great deal more.

Q I say if Market street wasn't there would Washington street be equally as valuable? A It might be more valuable if it was the only street.

Q And its values are not affected by Market street? A I think it is affected. I think that is the fair view.

Q Why do you say that it suffered an injury which was offset by being near Market street as a result of the opening? A That it had suffered injury?

Q Yes. A Well, I don't know that I do put it quite that way.

Q You say that it was injuriously affected but that by reason of its proximity to Broad street the injury was offset? A Nullified. I think it will remain, if you please, about the same.

Q If it wasn't injured then, it would be worth more? A Well, I look at it this way. By reason of Branford place having been put through right southerly from this property certain traffic that was bound to go by this property is not now so bound. It can reach south without being in evidence from this property or without seeing this property and transient traffic again enters into the question there.

Q Doesn't it receive a lot of traffic from—rather, does not a lot of traffic go by that property or near that property which never went near it before? A It would be this way—

Q Does it or does it not? A I should say no and I would like to explain.

Q You have answered it. What about the property that comes down Branford place that has been deflected from Market street. Is not that property which comes near this property which did not go near it before? A It would have been near it before on Market street.

Q Would it be as near? A You have slit it up.

Q You think then that where there was one street on one side of the property where lots of traffic went down that it is more valuable than if the property is in the center of two streets where lots of traffic came down. Do you say that? I think you can answer that yes or no. A It is pretty difficult.

Q I would like to have an answer yes or no to that.

(Question read). A Under certain circumstances, yes, sir.

Q Now, then, as a result of the opening of Branford place is there more traffic diverted into the side streets than before the opening of Branford place? A It depends on what part you have reference to.

Q I am speaking of the streets that are out from Market street? A Which side of those streets?

Q Plane street, Shipman street, Washington street, Halsey street, south? A If you mean northerly from Branford place the answer would be one way and southerly it might be the other way. I think traffic has been diverted from those cross streets, northerly from Branford place.

Q I am not asking you that. I am asking you whether traffic has been diverted from Market street southerly through the cross streets? A By reason of Branford place?

Q Yes. A Yes, I think it has.

Q To any great extent? A Well, to a considerable extent, too much to help Market street and enough to injure it.

Q So that as a result of the opening of Branford place then Washington street has received traffic from Market street which it didn't have before that, is that true? A No, that is not the fact.

Q You have just stated that traffic has been diverted from Market street south through the cross streets, than ran into Market street, Washington is one of those cross streets, is it? A Southerly from Branford place.

Q Is it southerly from Market street? A Southerly from Market street would not hold good.

(The stenographer reads from the record as follows: "*Question*: I am asking you whether traffic has been diverted from Market street southerly through the cross streets? *Answer*: By reason of Branford place? *Question*: Yes. *Answer*: Yes, I think it is.")

Q What do you mean by that? A I mean its eastbound traffic, having a southerly direction in mind, would come down Branford place and turn southerly on those cross streets; that traffic heretofore would come down—or prior to the opening of Branford place would come down Market street, and then turn south, so that properties on those cross streets between Market street and Branford place have now lost the benefit of the traffic.

Q What do you mean by saying that it would divert from Market street south on the cross streets? A On the cross streets?

Q Yes, from Market street, not from Springfield avenue, from Market street. A Well, it may be that I misunderstood the question.

Q Well, you have heard the question read just now and you heard your answer read. Now I want you to explain that. What you mean by saying that it would divert traffic from Market street south through the cross streets? A Well, I think I can clear that for you.

Q Well, do. A Traffic eastwardly bound and for a southerly destination would come down Branford place, and if it were turning to Washington street, it would turn at Branford place and Washington street.

Q But that is not traffic that comes in from Market street; that comes in from Springfield avenue, does it not? A You do not divert from one street by intersecting streets—

Q One moment. You were then speaking of traffic that came down Branford place from Springfield avenue, because Branford place runs into Springfield avenue? A Yes.

Q Now, what I want you to explain is what you meant when you said the traffic was diverted from Market street southerly on the cross streets; that is what I want you to explain. A Traffic that had not been on Market street could not be diverted therefrom.

Q Then I want to know what traffic you had in mind when you said that traffic was diverted from Market street southerly on the cross streets. A Yes, I will explain that to you.

Q Well, explain it. A I had in mind that property north of the line of Branford place had lost the benefit of traffic that theretofore would have been obliged to go past it. That is the explanation of my answer.

Q I cannot understand the explanation. Maybe you do. But I would like you to give me an explanation of your answer when you said that traffic from Market street was diverted southerly through the cross streets. What did you mean by that? A I mean just what I have now stated: that traffic that would have come down, or would come down, Market street and was bound in a southerly direction now can come down Branford place and go in that direction, and be lost to all property northerly from Branford place to Market street.

Q And that you consider traffic going from Market street southerly along the cross streets? A I think that is what you had in mind and what I had in mind.

Q That is what you consider being traffic going from Market street southerly along the cross streets; is that right? A Well, I thought there was confusion—

Q No. A That is my view.

Q I am asking you whether you thought, or whether you think, that is traffic going from Market street southerly along the cross streets; is that what you think is such traffic? A No, that is not it; it is as I have explained to you.

Q Well, you have explained it. A Yes.

Q And you tried to give us what you understood. Now you say it is not what you understood, and I want you to explain that question and answer. A I will explain it by stating that traffic that heretofore was obliged to come down Market street and turn into the intersecting, or southbound, streets was obliged to pass certain properties between Market street and Branford place, which properties that traffic is not now obliged to pass.

Q We understand that; that you have told us a number of times; but you have not yet told us what you mean by the traffic that goes southerly from Market street through the cross streets.

Objected to as repetition.

The Court. I think the difference between the two views is the point of diversion. The witness apparently regards as Market street traffic that which has heretofore been in the habit of following Market street, that would not go through cross streets, like Washington street, if it were southbound. Now, the witness regards that as still Market street traffic, because it comes down Market street from above, but it does not go into this cross street at the corner of Market and Washington streets—the cross street at the corner of Branford place and Washington—and it is only by tracing it back on its line until you find it on Market street that you can call it Market street traffic. I think that is the difference in the point of view between counsel and witness.

Q The traffic that formerly went down Market street and that has been diverted now goes down Branford place? A Such as has been diverted, yes, from Market street to Branford place.

Q That is what I said. Now, that traffic went down Market street formerly? A Yes.

Q And none of that traffic went through the cross streets? A Southbound traffic eastwardly bound on Market street was bound to go through those cross streets.

Q Well, did it go through Washington street? A Some of it.

Q How much of it? A Well, according to its relative importance. Washington street, I think, would carry more of it, for example, than Plane street; Plane would carry more than Arlington street.

Q Would you think that any of the traffic would go south on Washington street unless the destination of that traffic was some particular place on Washington street? A Oh, yes.

Q It would go regardless of that? A Yes.

Q As a means of getting south, to the southern end of the city? A Yes, sir. You cannot tell where it would eventually lead to, nor the whim or thought, if you please, of an operator or driver.

Q So that all of it did not go south on Broad? A No, those streets serve their purpose; each carries its part.

Q Do you think that any of the traffic that comes down Branford place goes south on Washington? A I do.

Q Not very much? A Well, I am not so sure about that.

Q Do you think a good deal? A Considerable.

Q So that the properties, then, which are in close proximity to Branford place are very much benefited as a result of being near the section where there has been increased traffic? A They are peculiarly benefited in a certain way, on a sliding scale.

Q And you do not think that the fact that a property between Branford place and Market street, such as I have named, being lot No. 6 in block 60, would be benefited by reason of the fact of its being between two streets which are centers of traffic, on the respective corners of

Branford place and Market street? A I do not think that particular property at that distance has been peculiarly benefited.

Q You have stated that? A Yes.

Q Now, I want to know whether you think that a piece of property which was formerly south of a street where there was considerable traffic, and is now between two streets where there is considerable traffic, is not benefited? A Yes, that might be benefited.

Q That is true, is it not? A Not absolutely true.

Q Well, what is there about it that is not true? A I would be glad to explain it. I think that property immediately adjacent to the new street, to fit it into Market street and Branford place—I have stated a number of times that I believe property—

Q No, I do not want what you have stated a number of times; I want you to state what there is about that statement that is not true. A I was about to state it; I will explain it, if you please.

The Court. The witness will make an effort to answer the question as directly as possible.

Witness. Yes, sir. 50 feet north from the new street, in my judgment, or to a distance of 50 feet northerly, property has been benefited by the opening of the new street. Now, that property would have been more benefited excepting for the loss caused to it by traffic that has been diverted by the new street.

Q You have stated that, in your opinion, Branford place would develop into quite an important business thoroughfare? A I think it

will develop into an important business thoroughfare.

Q And you have also stated that it has taken considerable of the traffic away from Springfield avenue and Market street? A Yes, sir.

Q And considerable of that traffic turns into Washington street—that traffic on Branford place going east? A Yes, sir.

Q Yet you think that that property—I refer to lot No. 6—was better situated, as far as its value was concerned, by having merely one street on one side of it, an important street, than by being in the middle of two important streets? A Yes, sir.

Q That is your opinion, is it? A Yes, I think—

Q That is your opinion? You can answer that yes or no. A Those are not quite my words or—

Q I do not care for your words, but that is the sense of what you tried to convey, is it not? A Not absolutely.

Q That is true, is it not? A Not absolutely.

Q Will you tell me what there is about it that is not true? A Yes, sir; I wish to tell you that. The traffic that was southwardly bound would come eastwardly bound down Market street, and that traffic would pass the Washington street properties that are now lying between Branford place and Market street. The traffic that does not come down Market street now and does come down Branford place is lost to a large extent to those properties intervening between the two streets, so that there is less injury, but a gain may be obtained by reason of the proximity to the new street, so that certain properties between the two streets would be benefited and certain would not be benefited.

Q So that 50 feet from the Branford place opening there would be a benefit? A In my judgment, about 50 feet northerly from Branford place would be benefited, yes, generally.

Q 60 feet would not? A Well, you have got to stop somewhere. You might put it at 48 feet.

Q But you place it at 50 feet? A I think that would be a fair average, 50 feet.

Q That is a mere matter of opinion, I suppose. You have no particular rule by which you arrive at that? A I can talk in this case only for myself.

Q Now, do you consider that there has been any diversion of traffic from Market street to Branford place going west on Branford place, or what would formerly have gone west on Market street? A Yes, I am inclined to think there has been—there would be.

Q What sort of traffic do you think has been diverted from Market street to Branford place going west? A From Broad street, I suppose you mean?

Q Yes, from Broad street. A Yes. Well, both kinds of traffic.

Q Do you mean traffic that has to do with properties in Branford place? A Well, whatever they might have to do; but when I said "both kinds" I meant vehicular and pedestrian.

Q Well, now, just what pedestrian traffic do you think has been diverted—what kind of pedestrian traffic has been diverted from Market street that would have gone west on Market street and that has been diverted into Branford place? A Well, we will select, for example, the person who was bound for the court house, coming from the southerly direction; such a person would find Branford place would serve his convenience more than Market street.

Q Any other? A I think that is a representative type, and there are many such.

Q What about stores, let us say, on Market street, on the south side of Market street? A Yes, sir.

Q Do you think that any of that traffic has been diverted into Branford place? A Traffic?

Q In other words, a person that wanted to reach stores on the south side of Market street, is it your opinion that they would use Branford place for that purpose, coming down Nicholson street or Plane street, or wherever he happened to be? A Traffic originating on Market street and bound in a westerly direction, I think, would remain on Market street.

Q Pedestrian traffic, too? A Yes, I think that is so.

Q They would prefer to be on a street where there is considerable traffic? A No, not for that reason, but to go elsewhere would be no convenience to such people.

Q Well, suppose they came from the southern part of the city? A You said starting from Market street, I think, Mr. Kalisch.

Q No, I say supposing that pedestrian traffic came from the southern part of the city and was endeavoring to reach some store on Market street, let us say, between High and Broad streets, on the south side of Market street, do you think they would be apt to turn up Branford place or continue on to Market street and go up? A I think that most of those people coming and bound for a business place on Market street, I think, would be apt to stay on Broad and turn at Market.

Q So that the only pedestrian traffic that you consider that would use Branford place would be

court house traffic? A Oh, no. I illustrated it here.

Q What other traffic? A Well, take, for instance, a pedestrian seeking to reach Howard street; he would be very apt, if he came from south of Branford place, to turn right straight up Branford place, up through to Stirling street, to Howard street.

Q That is, if he walked? A Yes, and if he drove.

Q If he drove, too? A Yes, I think so; more particularly in the latter case, I think.

Q Do you think that people having business places on the side streets would use Branford place—the side streets, I will say running from Springfield avenue south or from Market street south? A And southerly from Branford place or northerly?

Q From Market street and from Springfield avenue. A Well, I think that anybody—let us pick out any one of those streets, say Plane street—coming from south of Branford place would turn up Branford place, if the destination were a door or two away either way.

Q You think, therefore, that a person that wanted to strike a piece of property or a place of business between Branford place and Market street would be apt to walk on to Market street? A No, excepting in this fashion: I think if he were bound for a place right adjacent to Branford place, he would go up Market street; if he were bound for a place close to Market street, he would go up Market street.

Q Why? A It would be almost equally near.

Q What would cause him to turn if it was not nearer? A I think likely turning on the side streets.

Q There is no less turning if you go up Branford place and strike off to the right than there is if you go up Market street and strike off to the left, is there? A No, but I think the tendency of all of us is to reach it by what we think is the nearest line, so that if the property I was bound for were nearer to Market street than it would be to Branford place, I think I would be just as apt to go up Market street, and maybe a little more so.

Q Maybe a little more so? A Well, I would have in mind that my destination was nearest to the other street.

Q Well, then, you think where it is nearer you would go by the street that it is nearest to, would you? A I think you would have that in mind, if you had anything—

Q And is that the main thing that you would have in mind? A Well, that is one that occurs to me when I am talking with you.

Q And you mean to say that Branford place would not be used by persons that were trying to reach properties between Branford place and Market street? A Oh, no, I wouldn't say that, but I think the proportion would be as I have stated it.

Q Now, let us take vehicular traffic. Do you think that all persons trying to reach properties between Branford place and Market street would be more apt to choose Market street than Branford place? A No, I think that Branford place would appeal to such.

Q And they would use Branford place, then, for the purpose rather than Market street for the purpose of reaching these properties in between Branford place and Market street? A Probably to a larger extent than pedestrians would.

Q Now, that is a means of access which those properties did not have before? A No, I think not, you would have to get there before through Market street.

Q Through Market street? A Yes, sir; they would get you just the same.

Q So that there are now two means of access to the properties between Branford place and Market street, whereas before there was only one? A There are two taking care of what one was theretofore taking care of.

Q Do you know whether properties have been assessed higher for the purposes of taxation, let us say, on William street since the opening of Branford place? A I do not, sir.

Q Do you know whether they have been assessed higher for the purposes of taxation on Market street since the opening on Branford place?

Mr. Stein. Is that important, if your Honor please? I object to this examination.

The Court. If it is important, the best evidence would be afforded by the tax books.

Mr. Kalisch. It may be a fact that operated on his mind.

The Court. The best evidence is not the recollection of the witness.

Mr. Kalisch. Well, it is not so much whether it is so or not, but it is whether or not such a fact operated on his mind in forming his opinion?

The Court. You may ask him that question, if you wish to.

Q Do you know whether or not properties have been assessed higher for the purpose of taxation?

The Court. No, the question is, "Was your judgment in making your estimates influenced by your understanding that the fact was one way or the other on that subject?

Q Has it been? A Not at all.

Q Do you think that property on William street has been affected by the opening of Brad ford place? A Peculiarly benefited?

Q Yes. A I do not think so.

Q Have you gone over all these properties within the zone of assessments—I mean individually? A No, I do not think so, Mr. Kalisch.

Q Did you make up your mind concerning these properties merely by consulting a map, or did you go about and inspect some of the properties? A I inspected a lot of them and the map—

Q Not all? A Not all of them, but I would make this statement: I doubt that there is any property within the zone, for example, as indicated on that map with which I am not more or less personally acquainted.

Q But you made up your mind concerning these properties upon the general principles of benefit—I mean as to the general benefits—covering a section, and when you made up your mind that a particular section was not benefited, then you deduced that no lot in that section was benefited; in other words, you did not take these pretty nearly 3,000 lots and individually go over them, did you? A No, sir; I did not.

Q You first determined what was, in your opinion, the zone of benefits, or particular sections that were benefited, and then you deduced that a particular property in that zone was or was not benefited, did you not? A I think that is a fair of putting it.

Q How long did you spend upon this work? A This particular work, you mean?

Q Yes. A Quite some time.

Q Well, about how long? A Well, if I carry you back to the time that I did the work for the city—

Q No, not for the city; I mean in preparation for these cases in which you appear as the expert. A Well, this particular—within the last few weeks I have gone over it many times.

Q Well, how long? How much time in the last few weeks did you spend in making up your mind? A Well, I couldn't precisely state, but I will say that I have spent considerable time.

Q How was your time spent, consulting records or talking to people or looking at properties, or what? A Well, I have talked with people, too, I might say.

Q How many concerning this? A Many people.

Q Real estate brokers? A Well, probably, I suppose; I couldn't name them—

Q Well, how many? A Well, my acquaintance is not very limited.

Q I know. I am asking you about how many people you spoke to concerning this— A I would say a large number.

Q Did they all agree with you? A Well, I couldn't say that either, but I think that I have the general consensus of opinion of those with whom I conversed.

Q And you think that there are not any of them that would not testify that these assessments are right? A Well, cross examined by you, they might change, but I think I have in mind, Mr. Kalisch, the general consensus of the fair observers.

Q What you consider to be the fair observers? A Well, if I am any judge, I suppose, that is it.

Q What was your idea in consulting these other brokers? A Well, I suppose curiosity was part of it, to see how closely the other fellow would agree with me.

Q Were you doubtful at all about your own opinion concerning these assessments? A Well, I hadn't doubted—I am pretty emphatic myself --I hadn't doubted that my views were correct, but neither would I doubt that others would deem them to be incorrect.

Q So that it took you two weeks at least to make up your mind concerning these assessments? A Well, it did not. My mind really has been of a certain view, but I think my study of the situation has tended to confirm my judgment then made. I think that would be a better way of putting it.

Q Did you make up your mind before you were consulted by these objectors? A Well, it is a long time since the objectors first started, if you remember, under the days of the old commission, and at that time I must say that I think the real studying of the situation commenced, as to what was fair, and so forth.

Q Well, had you been consulted by the objectors who had filed their objections to the confirmation of the last report? A I had been by a number of them.

Q And then you started to make a study of these assessments? A It probably is the fact that I went into it even more sharply then than I had previously done.

Q So that your work simply included the talk with other real estate brokers and consulting the map and seeing some of the property? A Well,

I not only talked with real estate brokers and saw the map and the property, but I talked, I suppose, with a great number of people who might not be classed as real estate brokers—citizens, property owners and men of my acquaintance.

Q Property owners who had been assessed?

A Well, not necessarily that. I am in daily touch with all kinds of people.

Q Tell me the names of some of the real estate brokers that you talked with?

(Argument.)

Q Now, Mr. Berry, can you tell me the names of some of these brokers that you talked with concerning this Branford place opening and that helped result in making up your mind concerning these assessments?

Mr. Stein. Does your Honor admit that question?

The Court. I have stated that I saw no objection to getting the names of the persons with whom Mr. Berry talked.

Mr. Stein. I do not want to argue the matter after your Honor has ruled, but I would like to have a word. I will not argue it if your Honor says it is too late.

The Court. Oh, no, I would be glad to hear from you.

Mr. Stein. This witness has testified that after all his conferences with various people, real estate men, citizens, that merely tended to confirm the opinion that he had already himself, by an independent investigation, come to. Now, when we go beyond that, and the question is asked as to who were the persons with whom he conferred, there can be no possible object in going into that, because it would be quite impossible to pro-

duce these witnesses to find out just exactly what the nature of the conference was; it would be quite useless to ask a question of that sort, because it seems to me to be an improper sort of fishing excursion in getting the names of these witnesses, and I cannot see that the proceedings is helped one way or the other.

The Court. I do not see myself how it can be followed up to any useful purpose, but if Mr. Kalisch wants to get a list of names, I see no objection to it.

A I do not recall the names of those with whom I talked, but here I see a gentleman there who reminds me that I did discuss it with him (indicating).

Q Who was that? A Mr. Fiedler. Possibly if others of my acquaintance stepped into the court room, their faces might refresh my memory.

Q Do you remember how many you spoke with? A Oh, I think probably, all in all, not speaking of real estate agents—

Q I am speaking of real estate agents. A Oh, real estate agents?

Q Yes. A Well, I cannot tell how many, nor can I remember the names of those with whom I conversed.

Q Was it more than a dozen of them? A Well, it is not probably there were more than a dozen real estate men.

Q Did you speak more than once to any particular one? A I wouldn't say that even; I would not pretend to mention the number of times, but I think it is very probable that I talked a number of times with a great many people.

Q And you cannot remember one but the gentleman who is here? A Well, I see Mr. Fiedler here, and I know I did talk with Mr. Fiedler concerning it.

Q And you do not remember any other real estate broker that you spoke with? A At this moment I do not recall any other names.

Q Now, what was the map that you had before you in making up your mind concerning these assessments? A I had several maps.

Q Well, what kind of maps? A One map just similar to that (indicating).

By Mr. Stein.

Q You mean Exhibit B? A Yes, I should say the map that is now hung before me there, Exhibit B.

Q And Exhibit C, in back of you? A Yes, sir, C I also had, and I think there was one smaller map. I am not so sure of that at this moment.

By Mr. Kalisch.

Q And where did you do this work? A In several places; I did some of it at my office and some of it I did at home.

Q And did you confer with the attorneys when you did the work at any time during the procedure of working out these assessments? A Yes, sir; I talked with the attorneys, oh, yes.

Q And did either one of the attorneys tell you which ones of the properties they were interested in to the extent of filing objections to the assessments? A The maps were marked, as I recall it, with colored pencils.

Q And the colored pencils indicated the zones which were objected to by Mr. Stein and Mr.

Smith? A It indicated particular properties that were objected to, as I recall it.

Q And in forming your opinion concerning these particular properties, you knew that you would be asked to testify for the purpose of wiping out these assessments, if possible? A Oh, no, the attorneys—

Q No? A No, sir. The attorneys told me to study the situation, and as a result of my study be ready to give my evidence.

Q For what purpose? A For the purpose of determining the fairness or unfairness of the assessments.

Q And you knew that they were objecting to these particular assessments which covered the property that you were told to study? A I considered that likely; I assume that to be the fact, whether I was told it or not.

Q Now, Mr. Berry, take block No. 164, which is bounded by Market street, Mulberry street, Mechanic street and Broad street, lots Nos. 20 and 23, facing on Market street (indicating on map). Do you think that those properties are peculiarly benefited? A 20 and 23?

Q Known as the Ward property. A Oh, the Marcus L. Ward property?

Q Yes. A Yes, I know that property.

By the Court.

Q Are they on the same side of the street? A On the southerly side of Market street.

Q One number is odd and the other is even, I see. I wondered whether they were both on the same side of the street? A Yes, it so happens, your Honor.

Mr. Kalisch. Lot number, not street number, your Honor.

James A. Berry, cross.

The Court. Oh, yes, I was thinking of street numbers.

Witness. I do not think these lots have been peculiarly benefited.

By Mr. Kalisch.

Q You are not very positive about that, though, are you? A I will answer that they have not been.

Q Why not? You say they were not injured. You will not say that they were injured as the result of the opening of Branford place? A No, sir; I think they remain as they were before.

Q Can you tell me what the market value of those properties was before the opening? A Well, I would like to have the depth, unless you prefer that I should set it as of 100 feet in depth.

Q Well, it runs back to Mechanic street—No, it does not run back. A Yes, those lots are exceptionally deep.

The Court. Have they access by lane or alley to any other street on the rear or on the side?

Mr. Kalisch. Yes, it appears to run into a property that faces on Mechanic street. I am not so sure whether that is a part of the Ward property.

The Court. I know that block is honeycombed with alleys. There are ways of getting through.

Mr. Kalisch. There are no alleys, but the property becomes narrower in the rear and runs into Mechanic street. It is very much the shape of the neck of a bottle—the rear end of the property.

The Court. You mean that either of these lots runs through to Mechanic street?

Mr. Kalisch. No, half of each lot. The frontage on Market street, for instance, is about 70 feet.

The Court. Of both lots?

Mr. Kalisch. Of both lots. And then the property runs back 148 feet, and then from the east and west it narrows; the width of it becomes less, and it goes on towards Mechanic street.

The Court. It reaches Mechanic street?

Mr. Kalisch. Yes, sir.

The Court. How wide is it at Mechanic street?

Mr. Kalisch. At Mechanic street it is 42 feet.

Mr. Stein. I think that is a separate lot, your Honor, and a separate assessment.

Mr. Kalisch. It is all assessed to the estate of Marcus L. Ward.

By the Court.

Q Is that the way you understand it, Mr. Berry? A Yes, sir.

Q It has a front on Market street and Mechanic street both? A Yes, I can identify it now; I did not think of it in that fashion.

Mr. Stein. If I may be permitted to interrupt, I want to say that I am satisfied that a mistake is being made. On this map it clearly shows that the Mechanic street frontage is assessed separately, as a separate lot, which has not not been designated by separate number. We are now speaking of two lots, and the Mechanic street frontage does not constitute a part of either of these two lots. There is another lot which has not

yet been numbered, which, to be sure, adjoins these two lots and is assessed to the same owner, but the number of the lot has not been given, and we should consider that there are three lots, if we consider the Mechanic street frontage.

By Mr. Kalisch.

Q Before I refer to that, I want to ask you this question: Will you point out the properties on block 164 that have been peculiarly benefited? A Yes, sir. Not any of the properties on Market street, in my opinion, have been peculiarly benefited. Not any properties on Mechanic street, to my way of thinking, have been peculiarly benefited, but I do think that property on Broad street has been peculiarly benefited to a certain extent.

Q Do you mean to say that there has not been an increase of traffic on Mechanic street since the opening? A I am satisfied that there could not be any increase.

Q I am asking you whether you mean to say that there has not been an increase of traffic on Mechanic street since the opening. Answer that yes or no. A No, no increase.

Q Pedestrian traffic? A Pedestrian traffic, the same answer.

Q So that all the traffic that comes down Branford place turns north on Broad street and goes down Market street? A No more traffic enters Mechanic street by reason of Branford place than would have entered it by reason of Market street.

Q Prior to the opening of Branford place what streets ordinarily would be used by traffic going west from Broad street? A Market street for one.

Q Yes. A William street.

Q What traffic would go up Market street, more than would go up William? A Well, I think that is fair.

Q Out of Mechanic street; I am speaking of Mechanic street. A Well, either direction.

The Court. What is the question?

Mr. Kalisch. Whether more of the traffic coming out of Mechanic street would go up William street?

The Court. I did not know that that was your question.

Mr. Kalisch. Yes.

Q Is that your idea? A I think more would go up Market street than would go up William street.

Q So that none of the traffic from Mechanic street has been diverted from Market street into Branford place? A That does not follow; it has been diverted.

Q Well, very much of it? A Well, I think that Branford place would take considerable of the westbound traffic from Market street—

Q From Mechanic street? A —that had originated in Mechanic street; yes, I think so.

Q Well, why do you think that? A Why, it is directly opposite.

Q Do you think it would be more convenient for them to go up that street than up Market street? A For some of them; yes, sir.

Q And do you think that any traffic, for instance, from Nelson place, Breintnall place and Thirteenth avenue that was going down to Mechanic street would prefer to use Branford place rather than Market street? A I think, as I have stated, that a great deal of that would come

down Branford place, even though it were bound for Mechanic street.

Q Then you do not consider that the fact that there is a street such as Branford place, which takes care of traffic from and to Mechanic street, is any benefit to Mechanic street? A By no means. Traffic bound for Mechanic street before the opening of Branford place would go there through Mechanic street, anyhow.

Q But you have just testified that the traffic that comes from Mechanic street and goes to Mechanic street would use Branford place because it is a more convenient street, being directly opposite Mechanic street. A Some of that traffic undoubtedly would use Branford place and divert it from Market street, to the injury of Market street.

Q You do not think that that fact does not in any way benefit the Mechanic street property? A I do not think that it does.

Q Well, why not? A Well, that might be a general benefit, for the convenience of others, but I do not think that it benefits Mechanic street property. I have explained heretofore, I think, that Mechanic street property, or Mechanic street—

Q No, I do not want any explanation about what you explained heretofore; I want your explanation of your answer now.

Mr. Stein. Well, he is trying to give it to you, Mr. Kalisch.

Mr. Kalisch. No, I do not want any explanation as to what he said before. He said it did not benefit Mechanic street to have Branford place directly opposite.

Mr. Stein. He is bound to give you the same answer, as you have repeated the question so often.

The Court. If Mr. Berry can give his answer without reciting what he has previously said, he may do so.

Witness. I do not think it has benefited it.

Q And do you think that any traffic has been diverted from Market street east of Broad street —that is, eastbound traffic? A Eastbound? It could not be, Mr. Kalisch. Perhaps I could correct you.

Q No, I am asking you whether any of the traffic has been lost to Market street east of Broad? A No, Mechanic street still remains the same.

Q You do not think that traffic that comes eastward from Breintnall place, Nelson place and Thirteenth avenue, and which prefers to go down Branford place—you do not think that that traffic is lost to Market street? A No.

Q East of Broad? A No, I do not, easterly from Broad, I do not, sir.

Q And that none of the traffic that comes down Branford place goes down Mechanic street in reaching any of the cross streets below Broad? A Only such traffic as prior to the opening of Branford place would have come down Market street and gone into Mechanic street for its own business.

Q I am speaking about cross streets east of Broad. A Well, Mechanic street connects east of Broad, and there is no street until you come to Mulberry along Market.

Q What about properties that are situated, let us say, between Green street and Lafayette

street, near Mulberry street—would any of the traffic that comes down Branford place reach those streets by going down Market street? A Yes, sir.

RECESS.

Cross examination (continued) by Mr. Kalisch.

Q Mr. Berry, you have testified that some of the traffic that comes down from Breintnall place and Nelson place by reason of this opening is diverted over High street and down Springfield avenue into Branford place? A Yes, sir.

Q Can you say just about what percentage of the traffic has been diverted? A I don't think you can tell correctly, but there undoubtedly would be a considerable diversion, I think.

Q You think there will be a considerable diversion of this traffic over High street down on Branford place, traffic that used to continue down Market street? A Yes, sir.

Q Prior to the opening of Branford place was there any great amount of traffic that came from the south and went down Market street instead of Springfield avenue? You say from south High street, from Springfield avenue west of High and South Orange avenue, Stirling street, is there any great amount of traffic from those streets before the opening of Branford place that would go over High and use Market street? A Yes, sir, there was considerable traffic. If you went further I believe from the certain intersecting streets that would be diverted into the center of the city through those other streets.

Q You mean beyond William street? A Yes, sir.

Q North of William street? A Yes, take it from there southerly.

Q The traffic that formerly went east of Market street that came from the south, the south end of the city over High street and also from Springfield avenue, South Orange avenue and Stirling street could use Market street only in going to properties that were on the north side of Market street say down as far as Plane street, wouldn't they? A They would come down Springfield avenue in reaching over there, most of them, I think.

Q Then you mean to say that that traffic that formerly used Market street would only use it to get to properties that were on the north side of Market street between High and Bank? A No, traffic that formerly used Springfield avenue to reach Market street will probably not be diverted.

Q No, I mean before the opening? A They have Springfield avenue only to reach there coming from south of Springfield avenue and above Plane.

Q Didn't they use Market street also, traffic that came from Springfield avenue, South Orange avenue and Stirling street and in the southerly direction of High? A Southwesterly from High.

Q Didn't they come over High and down Market? A No, they would come over High and turn down Springfield avenue.

Q You don't mean to say that Market street didn't get some traffic that came down Springfield avenue, South Orange avenue, Stirling street and the southern part of High street? A I think that no proportion of the traffic came across Springfield avenue to go down Market street to reach around westerly from Plane street as you have stated.

Q Would they use it to reach any other point? A I do not see why they should go so many hundred feet out of their way only to come back to the same point they could have reached on an easier line.

Q So that Branford place has not diverted any traffic from South Orange avenue, Springfield avenue and Stirling street and High street, has not diverted any of that traffic from Market street since that traffic never used Market street formerly in going to it? A From the point on Market street that you first specified, Plane street for instance, I would state flatly that in my judgment all that traffic could still come down Springfield avenue to reach the north side of Market street if that were its destination.

Q It never used Market street for any purpose, the traffic that came over south on High street? A Southwest from the corner of Springfield avenue and High street?

Q You mean from right here (indicating on map)? A Yes, sir.

Q That is pointing to the northeast corner of High and Springfield avenue? A Taking either the northwest or southwest corner traffic eastwardly bound there can have no motive in going north at right angles to reach Market street only to come down again in Market street at a point that could be reached and have saved those few hundred feet of an eastward grade.

Q Now, I call your attention to the property of Mr. Sachs. A Yes, I know Mr. Sachs' corner.

Q In block 203? A It is the southwesterly corner of High and Nelson place.

Q Not on the corner. A There is one building on the corner and next door is Mr. Sachs.

Q Did that receive any benefit by reason of the Branford place, by reason of the opening of Branford place? A I do not think so.

Q Do not you think there has been an increase in traffic past the property? A To the property's detriment. That is residential property.

Q Property directly across from High street? A Mr. Sachs' residence.

Q You think the property is not fast becoming business property? A There is not any in that block.

Q That block has got only about seven plots on it? A That makes it unanimous for residential uses.

Q Isn't there a business right on the apex of Breintnall place and Nelson place? A That apex, however, is situated westerly from High street.

Q That is further up into the residential section? A No, I would not say that.

Q Wouldn't you call Nelson place residential? A Yes, sir, Nelson place itself is residential.

Q Would not you call Breintnall place residential? A Only partially. There is a drug store for example just above.

Q Where? A On the corner of Summit and Breintnall place.

Q That doesn't prevent it from being a residential section, the fact that there is a drug store there? A It doesn't make it residential.

Q Isn't a drug store generally to be found in residential sections? A They are found in residential sections.

Q And the fact that the court house is across the street from Sachs' property indicates to you that this in a sense ceased to be desirable residential property? A I don't think so.

Q Is it considered purely as residential property, in assessing the price is it fixed on the viewpoint of being residential property? A Both sides of the street are not residential. But the side upon which Mr. Sachs' property, which you have mentioned, is located it is strictly residential.

Q By which you mean now that all of the properties now are used for residential purposes? A Yes, sir.

Q Isn't there a store on the corner of Thirteenth avenue and High street? A I do not think so, three-story brick building.

Q Isn't there a vacant lot in between? A There are two vacant lots northerly from that property.

Q So that there is about four houses on that block? A Well, there are four, I think.

Q In judging the value of that property you would not judge it as being residential property, would you? A I think you would be bound to do that dealing with it at the present.

Q What did you consider the property to be worth a foot, the Sachs property to be worth a foot before Branford place was opened? A I think $400 per foot there would be a fair estimate of its worth.

Q And that is considering it from the viewpoint of being a residential property in a residential street or block? A That is what it is worth no matter what viewpoint you take it.

Q In arriving at that value do you arrive at it by considering it as a residential property? You can answer that yes or no. A Yes, I do.

Q That is the general opinion about that block, that it is a residential block? A That is all it is.

Q That is the opinion about it among real estate brokers? A I can talk only for myself. As far as I am concerned I know it to be residential and residential only.

Q You mean by that the houses there are used for residential purposes? A Yes, sir.

Q What about the future of that block, the near future? A Well, if you are dealing in futures I would be glad to state what I would predict for it, but I have no absolute knowledge or certainty.

Q We can't get at your knowledge on prediction. A We know that it has been under option for an extension of this building.

Q What is your prediction as to whether it would cease to be a residential property in the very near future?

Mr. Stein. It is unimportant, this line of inquiry.

The Court. I will allow the question.

A High street is a residential street.

Q I am now speaking of that particular block, that where Mr. Sachs' property is. Can you tell me whether in the very near future that particular block will cease to be a residential block? A I really do not think that it will be.

Q You think it will always remain a residential block? A There is a difference between always and near future.

Q Well, in the near future, two or three years? A I think it will.

Q And in five years? A Well, five years is, as I stated yesterday, remote, but for two or three years my judgment is that it will remain residential in character.

Q Do you look upon it as residential in character in dealing in real estate around that sec-

tion? A I would try to deal for it if the owners wished me to, I think from the nature of things there with conditions adjacent, that it is apt to remain residential.

Q What is your reason for that? A Take this building in which we are now sitting. This bars the possibility of business being transacted along High street where this building stands, but I think that will be tendency to injure the residential tendency and the business tendency exactly opposite.

Q You think that the court house injures the future character of the block as a residential block? A Some of the blocks, I think it would have that affect.

Q That particular block? A I think so because of the fact that there is business sufficient around it.

Q How do you account for the location of a theater within half a block? A That is not on High street. That is on a business thoroughfare.

Q It is within, I should say, 100 feet of it, isn't it? A Yes, sir, I should think about 100 feet. The apex of that angle sets back. I can't explain the owner's peculiar idea. It isn't what I would have done with it.

Q How do you account for, let us say, stores on the block on the corner of, let us say, Stirling and High streets? There is a store there? A It is right adjacent to the active business of Springfield avenue.

Q You don't mean to say that that particular block is going to remain residential for the next three or four years, do you? A I think it will unless some such occurrence which I have just referred to should come about, the extension of the public building here.

Q In considering the market value of this property, the future possibility of it becoming business or do you consider it merely as remaining a residential street? A I think that will remain residential in character for the time I have stated. I can readily see into the future, or at least that perhaps that I know that values might be enhanced by reason of business uses. Usually speaking business property sells for higher prices than residential property.

Q Hasn't the property in that block gone up in value? A Beyond the figure that I mentioned?

Q No. Has it not gone up in the last five or six years? A I think so.

Q You don't attribute that to the fact that it is a residential street, do you? A I certainly don't attribute it to business reasons when there isn't any business there.

Q Don't you attribute it to the possibility of its becoming a business street in the near future? A They may be pure guesses. I am not inclined to that view.

Q Does a residential street go up in value? A Some of the residential streets.

Q I mean the old residential streets? A It depends again, if you please. There are old residential streets, which are still rising. There are others which are falling.

Q When an old residential street goes up in value is it due to the fact it is a residential street? A There is this to be said.

Q Is it due to the fact that it is a residential street? A Yes, there are some streets that come into value because they are residential.

Q They may be going up in value because they are residential streets? A Yes, sir; there are some.

Q And you think the development around that particular property has been such to increase its value as a place of residence, do you? A I know that it has increased. I know that it has been residential.

Q And you think the development that has gone on around that property has been such as to increase in value as a place of residence? A It has not been increased by reason of the development around it.

Q What has increased it? A It has grown steadily in value because of its own intrinsic worth.

Q Due to what? A It is a residential block in the heart of the city that is not menaced by business conditions opposite.

Q You have stated it as a result of its being a residential property. A No, I stated—

Q It has always been in the same place. You will admit that, won't you? A Well, I have to.

Q What do you mean when you say on account of the fact of its being in the heart of the city? What do you mean by that? A There are places which are in close neighborhood association with business centers, and which are devoted exclusively to residential uses and that has a tendency, I think, to maintain the residential values there. I live in such a place right now.

Q You think then by reason of the fact that it is in close association with business activities that that increases the values? A If it were too close I should say no, but if it be sufficiently close not to be injured then I would say yes.

Q Then you think that as long as it maintains just that degree of proximity that it maintains

its value? A I think it will hold its value when it stands as it does.

Q Do you think that the business activities are closing in about that property? A They can't close in further.

Q Why not? A For the reason I stated. The church is diagonally across, St. Paul's Episcopal Church is on the corner—northeast corner of Market and High, on the northwest corner is an apartment, on the southeast corner is the court house property and business can approach no closer to that property really than the block below.

Q What about the whole two blocks that run from Springfield avenue and approach it from the south? A Thirteenth avenue intervenes.

Q Assuming it does, that is south of it. A That is all court house or County of Essex property.

Q All that (indicating on map)? A No, on the easterly side of High.

Q I am talking about the westerly side of High, what about that. A That is southerly from Thirteenth avenue.

Q Southerly from Sachs' property? A Yes, southerly is all residential until we come to the corner, southwest of Fifteenth and High.

Q There is a possibility of that being developed as business property? A Anything is possible, but it is not probable.

Q You think it will always remain residential? A I can't see so far.

Q What about the property on Nelson place adjacent to the theater? A Yes, sir; Nelson place running for a comparatively short distance will never be business property. It is bound to be residential in character.

Q What makes you say that? A I have just stated the reason. Being a short street to my way of thinking that cannot become business in character.

Q Because it is a short street it cannot become business in character? A Yes, sir.

Q Take Breintnall place. Do you think that can become business? A Breintnall place is residential.

Q I know what it is. I am asking you whether that can become business property? A Oh, yes, it can be. It is the right wing of Bank street going east. It is residential yet chiefly. There is only one or two breaks.

Q As a matter of fact, isn't all the property west of High street and north of Springfield avenue, east of Bank street fast becoming business sections? A No, sir.

Q And doesn't the Sachs property get an increased market value by reason of the traffic you stated this morning turns in from Breintnall place and Nelson place into High street and down Branford place? A I do not think it gets any increased value. I am inclined to think it gets decreased value.

Q Has it decreased in value? A I think traffic there—

Q Has it decreased in value? A It would with the—

Q Has it decreased in value? A Well, I would not say that.

Q You say no? A I will say no it has not decreased.

Q Then, you don't think that the traffic would decrease the value? A I think traffic would be apt to do it.

Q It has had that traffic for some time. You don't think it has decreased? A Residential property?

Q You don't think it has decreased in value, yes or no. A We will make it no. I will not say yes at this moment.

Q Now, what sort of business houses are on Mechanic street chiefly? A Wholesale and manufacturing.

Q I mean between Mulberry and Broad? A Yes, sir; I will enumerate some of them?

Q Plumbing establishment? A Plumbing supplies and then there is piping, mercantile life of that general character.

Q The traffic that comes into Mechanic street is generally such traffic as carries piping and such material? A A great deal of it would be in bringing it in or taking it out.

Q And a great deal of that pipe that is carried in the wagons that use that street protrude from the rear end of the wagon, necessitating the use of a red flag? A Anything longer than the wagon necessarily would protrude.

Q I am asking you concerning the Mechanic street property, the Mechanic street traffic, whether that particular traffic consists of wagons that contain long piping? A There are plenty of vehicles that carry long piping as well as short piping.

Q In Mechanic street traffic? A Yes, sir.

Q You don't think that such traffic, that going to or from Mechanic street, or let us say take, going to Mechanic street, coming down we will say Springfield avenue, derives any benefit by going to Mechanic street by way of Branford place? A I think that it derives a general benefit.

James A. Berry, cross.

Q People that have business with Mechanic street business houses, particularly such business where it is necessary to carry this kind of traffic we have been speaking of, doing business with such houses in Mechanic street, they didn't get a special or peculiar benefit from the opening of Branford place? A They got the same general benefit, but anybody else can partake of it, to Mechanic street.

Q Don't you think it is more of a convenience to persons engaged in that kind of traffic to use Branford place rather than carry that traffic down Market street and around Broad into Mechanic street? A Yes, sir; I do think.

Q And the same going out of Mechanic street west of High? A Yes, I think it is a convenience to such visitors.

Q So that don't you think as a result of that that property is more or less peculiarly benefited? A No, sir; I do not consider. Those bound for Mechanic street would get there anyhow.

Q I am asking you whether as a result of the Branford street opening whether the access to Mechanic street is not now more convenient? A For the visitors?

Q I am not talking of the visitors. I am talking of the traffic that gets down there? A Traffic from the west is convenienced in reaching Mechanic street.

Q Don't you think that a more convenient access and egress to or from a street increases its value? A Not necessarily. Mechanic street cannot take care of any additional traffic.

Q I am not asking you that. I am asking you whether of the traffic they actually do have in Mechanic street, if a more convenient access is

provided for that traffic into Mechanic street, whether that did not affect Mechanic street property? A Only provided Mechanic street can take care of it.

Q The traffic that it does take care of? A I do not think that Mechanic street is peculiarly benefited.

Q I am not asking you that. (Question repeated). "So that don't you think as a result of that that property is more or less peculiarly benefited?" A I don't think that Mechanic street is peculiarly benefited.

Q I am asking you whether as a result of having a more convenient access to Mechanic street for the purpose of Mechanic street property than it had prior to the opening of Branford place whether that didn't increase the value of Mechanic street property? A I have answered. I do not think that it does.

Q Isn't the traffic such as I have described that is to be found in Mechanic street more or less a detriment to such a street as Market street? A I don't think so. Market street is a fine wide street.

Q So that you think that traffic which carries long piping that protrudes from the end of the wagons that carry it, goes down a street like Market street, which you said is a congested street, is not a detriment to a street, is not a detriment to Market street? A No, sir.

Q You don't think it is a detriment? A No, I do not.

Q And you think that with such traffic on it Market street is more desirable for pedestrians and for other wagons? Can you answer that yes or no? A That is not necessarily so.

Q Do you think that such traffic as Mechanic street had is a benefit to Market street? A No, I should not say so.

Q So that if this traffic is diverted down Branford place it is not a detriment to Market street? A No, I think not.

Q No, yes or no. A It is a detriment to divert—

Q No, I don't want such a general statement. You have stated that this traffic is not a benefit to Market street. Now, I ask you whether then if you divert this traffic which is a benefit to Market street away from Market street, whether that injures Market street? You can answer that yes or no. A I would like to correct what I think is an erroneous statement by you of my answer. I have not said that traffic on Market street is a detriment. I consider traffic a benefit.

Q (Question read). "Do you think that such traffic as Mechanic street has is a benefit to Market street? A No, I do not think so." That is your answer. A Yes, but it explains itself.

Q That is the answer. You don't think it is a benefit to Market street to have such traffic, so I ask you now whether if you take away that sort of traffic, divert it into Branford place, whether that is a detriment to Market street?

Mr. Stein. I object.

(Argument follows).

Q You don't think that the diversion of this traffic which eventually reaches Mechanic street, a diversion of that traffic from Market street to Branford place is a detriment to Market street, do you? A I do.

Q When such traffic went down Market street it wasn't a benefit, was it? A I think all traffic on Market street—

Q Now, we know general statements that you have made. I mean that particularly traffic? A It is a benefit.

Q You have stated here a few moments ago it was not a benefit. I would like to have you reconcile these two statements. A I would be glad to clarify it.

Q No, reconcile it . A They don't need reconciling. I say this. The question you asked was in substance, this: Whether the traffic on Mechanic street was a benefit to Market street.

Q No, you can't possibly understand it that way. A No, I have been describing traffic that went down Market street, then south on Broad into Mechanic street.

Q I have been asking you whether a more convenient access from the westerly part of the city into Mechanic street was a benefit to Mechanic street and you said it was not. Then I further asked you whether such traffic that was on Market street was a benefit to Market street and you said it wasn't and then I asked you whether the diversion of such traffic injured Market street and you said it did. Now, I would like you to explain to me why you say now it is a benefit to Market street? A I do not wish to be considered as ever having considered that the diversion of traffic from Market street was a benefit to Market street.

Q Now, I am speaking of the special kind of traffic, I referred to? A Any kind.

Q You think any kind of traffic on Market street benefits Market street? A Yes, sir, I do.

Q Don't make any difference what it is? A I can't think of any that would hurt it.

Q You think the big trucks laden with heavy iron, long piping, would be beneficial to Market street? A I think so, yes, sir.

Q You think it would make it any more convenient to travel on? A It might be this—

Q Do you think it would make it a more convenient street to travel on? A No, I would not say it would be more convenient.

Q Do you think that by using a street like that a person could proceed more rapidly through a street with such traffic on it than he could through a street that didn't have such traffic? You can answer that yes or no. A Undoubtedly traffic would prevent rapid travel.

Q And particularly such traffic? A Such traffic never travels rapidly.

Q I mean such traffic would prevent other traffic from traveling rapidly? A That is the kind of congestion Market street wants, plenty of traffic.

Q That kind of traffic? A All kinds.

Q But that particular kind? A Oh, not necessarily.

Q Don't you think that is good traffic for Market street? A That is one of the contributing factors.

Q You think that helps make Market street valuable? A Contributes its quota.

Q Now, does the property just east of Broad street, designated as blocks 146 and 147, the northerly side of Market street, between Broad and Mulberry street. You have testified concerning that part of Market street that the traffic was increased but not the market value. Do you recall that? A I do, that Market street easterly from Broad on which side of the street?

Q North side? A I have not so testified to my knowledge.

Q Then you say the traffic has not been increased? A I do not think it has been.

Q None at all? A I doubt it. I don't think so.

Q You don't remember testifying that the traffic was increased but did not increase the market value. Do you recall testifying that way? A I think not as to the north side of Market street.

Q Either side of Market street I referred to. A You have asked me as to the north side.

Q I refer to the two blocks on the north side of Market street and ask you concerning that? A Easterly from Broad on the north side of Market I am quite sure we have not touched upon, but I do recall you referred to the south side of Market. The north side of Market street has not been benefited in any peculiar fashion, and not any part of it.

Q You spoke of railroad property. You have referred to what railroad? A I think the Newark & New York Railroad Company's property was mentioned. I know that it was.

Q Popularly known as the New Jersey Central? A Yes, New Jersey Central.

Q Don't you think there is a more convenient means of access to the depot of the Jersey Central or the Newark & New York Central Railroad by way of Branford place than if Branford place was not there? A I do not think so.

Q So you think that a person, for instance, coming from Stirling street west of High or from South Orange avenue or from Springfield avenue or from Nelson place or from Breintnall place wanting to get a train at the Jersey Central would make quicker time coming down Springfield avenue than he would going down Branford place? A I beg your parden—You are talking of the Central Railroad passenger—

Q That is what I am talking about. I am talking about the Jersey Central station. A I think the traffic going there would be convenienced and generally benefited.

Q So you do think that the Newark & New York Railroad has been benefited, that is, the use of the property, the actual value of the use of that property as a railroad property has been enhanced by the opening of Branford place? A I do not think so.

Q Don't you think that the Branford place increases the value of the use of the property when it provides an easier access to the railroad station? A It benefits, but it—

Q No, don't you think that the value of the use of the Central Railroad property is increased when an easier and quicker access is provided to the railroad station by means of Branford place? A I do not think so.

Q And as a result of that the value of that property is increased? A I do not think so.

Q Don't you think that access to a railroad station is a very important factor in determining the value of the use of railroad property? A It may be.

Q Don't you think it is a very important factor? A Convenient for the patron?

Q Convenient for those that don't use it is of no consequence at all. I am now speaking of its use as a railroad property with reference to the patrons? A I do not think Branford place has enhanced the value of the railroad property.

Q You think it was just as well if the railroad station was away up on Fourth avenue where the Erie station is? A If there were the one railroad—

Q No; I am not talking about that. You don't think the location of the station is of any consequence, so far as increasing the value of its use as railroad property? A You mentioned Fourth avenue.

Q No.

The Court. You are asking a very general question and you are asking an expert. I think he should be allowed to answer it in his own way.

Q (Question repeated.) A Yes, sir; I think it probably is of advantage.

Q Now, then, when you open up an additional means of access to a railroad station, does not that increase the value of the use of the property as a railroad property? A I do not think so.

Q Why not? A Those bound to the Central Railroad, those coming from a central direction to the Central Railroad would still have Market street whereby to reach the Central Railroad, but it would get their business anyway. Those coming from a southwesterly direction would still have Broad street and William street and the other streets whereby they can reach the same place. Branford place is of no great benefit to those, but it is a convenience to those seeking to reach the railroad.

Q Don't you think that the convenient access to the railroad makes it a more desirable and popular railroad than if it didn't have that access? A If you have enough routes of access you don't increase the traffic a bit.

Q We are now talking about traffic? A The railroad routes need not be increased a bit. There were many means of reaching the railroad without Branford place.

Q You think people living, as the City of Newark extends its population out further west of High street, you don't think that Branford place is a much desired improvement for the purpose of reaching, we will say, the railroad station? A That is the general benefit conferred upon them which the railroad did not need.

Q And by conferring that convenience of benefit upon them doesn't that in a measure, increase the value of the uses of the railroad property? A Not necessarily.

Q What would you consider would increase the value of the Central Railroad property?

Mr. Stein. I think that question is too broad and general.

The Court. I think the witness ought to answer the question.

A The use of railroad property, of course, can be enhanced by the railroad increasing its own property.

Q I am talking of the Central Railroad now. A We are talking of the Central Railroad, and we all know its uses, and by increasing your railroad, purchasing additional property—but so far as the city conferred upon it this increased use, I cannot see the necessity for that.

Q Not the necessity. I am not asking about the necessity. I am asking what increased the value of railroad property? A Proximity of patrons would be one.

Q Any other? A Yes, I think there would be some other reasons for increased use.

Q What are they? A If the railroad, say there was competition and there were two railroads for example. I think that the railroad that you could get to most conveniently and all other

things being equal and going in the same direction would probably be the gainer in business.

Q Any other? A But I do not think where a road has a monopoly at a given point and where the means of approach are presumably sufficient I do not think you can increase its business thereby. It can take care of what comes and no more business will come to it probably than had theretofore come, but those who do come may come by the additional route.

Q You don't think that a person coming from New York to Newark would be more or less attracted to the Central Railroad Company if he was going westerly, say in the direction rather, near to Branford place and west of High street? A I should not think so.

Q You think he would take Market street in preference? A If they depended upon that for the gain in business they would fall down.

Q Next to the Central Railroad on Broad street is there an alley way that connects with the railroad? A Yes, there is a driveway beneath the building.

Q Does that connect with the railroad property? A It goes into it.

Q Does some of the freight go through that alley way? A The express is there, or was.

Q Does some of the Central Railroad Company's freight go through this alley way and then load on the freight cars? A I am not so certain but it is my idea that that is for the express business.

Q Can you say no freight goes through that alley way for the Central Railroad? A I should not like to say—

Q Do you know whether it does? A I cannot tell you.

Q My judgment is as I stated, for express business.

Q You don't want to say that such freight, say trunks and such things are not shipped by way of the Broad street entrance? A Well, I am not sure that trunks are freight.

Q I am asking you if they are shipped? A no, I—

Q You have never seen them locked up there? A No, I never saw them, locked up in the freight station either. Most trunks go through the other way.

Q Is there any yard that connects the express office with the Central Railroad? A I am not so sure of that now either. It may be that there is one goes in back of the Express Company's old place.

Q Did you examine that property at all? A I have been through there a number of times.

Q Did you examine it for the purpose of giving your testimony in this case? A I don't think I did.

Q Didn't you go over that? A That particular spot, I should not think so.

Q Didn't you go over the Mulberry street end of it? A Yes, I have been there any number of times.

Q I mean in examining it for the purpose of rendering an opinion in this case? A No, I wouldn't say that.

Q What is the last time you have been in it, the freight yard? A Well, I was down there right beside it, for instance, last week.

Q What is the last time you were in it, in the freight yard? A I cannot tell you the exact time. It had to do with certain work there adjacent to the Kilburn property.

Q What is the last time you were in the freight yard? A I cannot tell you precisely.

Q I want to know approximately? A I should say I was in the rear of the Mulberry street freight yard approximately a year or thereabouts ago.

Q You don't know what the conditions that existed there now are? A No.

Q You don't know what they used that for so far as your personal observation is concerned? A They have the freight storage house.

Q And have you been in it? A Recently, no, sir.

Q Not in a year? A I don't think so.

Q So you don't know what the conditions are at the present time? A Yes, I think I know the conditions have not changed. I come by there very frequently.

Q You haven't been in it, the freight yard? A I know what the freight yard is.

Q Do you know where the Newark Warehouse is there? A I certainly do.

Q How do you get into it? A That fronts on Mechanic street.

Q Where is the entrance to that Newark Warehouse? A There is an entrance on Mechanic street.

Q Is that the same entrance you use to go into the railroad freight yard? A No, the yards are down at Mulberry street. That is below Ward street.

Q There is an entrance that runs in from Mechanic street into the Central Railroad property. Is that the entrance to the Newark Warehouse? A There is an entrance between Mulberry and Lawrence, a driveway in the yard, but I was speaking of the warehouse below.

Q The warehouse adjoins the Central Railroad property? A It is two blocks.

Q That entrance is on Mechanic street. Does that take you into the Central Railroad freight yard? A Into the yard, yes, sir.

Q Does that yard lead into the Newark Warehouse? A No, sir.

Q You can't get into it from that yard? A Not from that side. You have got to go easterly.

Q But that entrance that you take from Mechanic street permits you to go easterly into the freight house? A On the tracks, oh, yes.

Q Does that property that the Newark Warehouse occupies face on Mechanic street or does it abut Mechanic street? A The warehouse building?

Q Yes. A Yes, sir.

Q How much frontage on Mechanic street does it abut? A A considerable frontage extends down towards Ward street.

Q And that extends which way? A Southerly on Ward street to the tracks, to that house there.

Q That warehouse is owned by the Central Railroad Company? A One of its constituents. The Newark Warehouse Company is the name of it.

Redirect examination by Mr. Stein.

Q You were speaking, Mr. Berry, about the traffic from the west which was southbound on Broad street. Before the opening that traffic went down Market street. How much of that traffic do you consider would go down Branford place since the opening? A If it were southbound?

Q Southbound? A A very considerable portion of it.

Q And is that true of vehicular traffic as well as pedestrian traffic? A I think it would apply more heavily in the case of vehicular traffic.

Q As to the traffic northbound on Broad street coming from the west, I think that you have stated that the traffic now over Branford place so far as the vehicular traffic is concerned would be about 75 per cent., 50 to 75 per cent? A I made some reference to percentages and I think that is about what I stated.

Q Could that percentage be as much as that with regard to the pedestrian traffic coming west and northbound on Broad street? A No, I think the percentage of vehicular traffic would be the heavier.

Q I understand there would be some pedestrian traffic northbound on Broad street which would be west of Market street? A Oh, yes.

Q By way of Branford place? A Yes, sir.

Q There was considerable testimony about the effect of the northbound traffic on the Stoutenburgh property, between Branford place and Market street—speaking always of the traffic that comes from the west. Just how many traffic stations does the vehicular traffic have to pass on its way to Broad street, east on Market street? A Well, there is a traffic station, or stoppage, for example, at Halsey street, and, of course, when you come to Broad there is likewise a stoppage. At Market street I do not at this moment recall the exact condition, but I feel quite certain you would be stopped there likewise.

Q Where? A At Market and Washington streets. So that that would make it three stops at least before you would cross Broad street.

Q At any rate, you would encounter the Washington street trolley crossing at that point? A Yes, and that is the reason I gave for that belief, that there is traffic stoppage there.

Q Would those facts, in your mind, have anything to do with inducing vehicular traffic northbound on Broad street, and which came from the west, to take the longer route by way of Branford place instead? A I think the longer route there, if you mean through Branford place, would really be the shorter route eventually; you would save time.

Q Now, a vehicle going east on Market street before the opening, eastwardly toward Broad street, desiring to go north on Broad street, would have two ways of getting there, would it not—or just what ways would it have? A Yes. You would turn at Broad to the south and then turn north, or you would go right across Broad and turn at Market street across Broad.

Q You would go across Broad? A Yes, sir; eastwardly on Market street.

Q How far eastwardly? A Well, a short distance only, and then you would turn again and go north, which, I think, probably would be the more convenient way of the two.

Q Now, in the latter method, in going across Broad street, down Market, and then turning to the north side of Market, vehicle traffic would not have to pass the Stoutenburgh property? A Not at all.

Q But if instead of doing that it turned south on Broad street, around the isle of safety, if you please, and then turned north on Broad street, it would be obliged to pass the Stoutenburgh property? A Yes, sir.

Q And that is before the opening that you are speaking of? A Yes, certainly, before the opening.

Q Now, take that same traffic and view it as to the course it would probably take after the opening. It would probably go down Branford place, would it not—that vehicle? A Yes, I think it would.

Q And it would go to the east side of Broad street? A If it were going north, it would be obliged to go to the east side of Broad street.

Q You are speaking now only of the northbound traffic on Broad street? A The northbound traffic would be obliged to go on the easterly side of Broad.

Q And in that way it would not pass the Stoutenburgh property at all? A Only at the remotest point.

Q You mean by the distance across the street? A Yes, sir.

Q There would still be the isle of safety between the two sides of the street? A Yes, sir. There are two isles of safety there.

Q You have testified, I believe, that, in your opinion, the value of the land of the Federal Real Estate Company, situate on Camfield court, and the most southerly line of which is located about 50 feet northerly of Branford place, was not benefited peculiarly by the opening, and we were comparing this morning that property with the property adjoining the schoolhouse property, right across the street here on Market street. A Yes, sir.

Q The property north of the land of the Federal Real Estate Company is owned by the Peddie estate, is it not? A South, I believe.

Q South, I should say. A Yes, sir.

Q And in considering the question as to whether or not that land had been benefited—namely, the Federal Real Estate Company's land—what did you take into consideration with reference to its proximity to Branford place? A I, of course, do not believe that it has been benefied, and it has no access to Branford place, but is about 53 feet, I think, northerly from Branford place. Now, I think the effect there might be injurious to the property of the Federal Real Estate Company, and, if you wish me to, I could state why.

Q If you please. A Yes, sir. By reason of the shallow depth of the lands of the Peddie estate upon the northerly side of Branford place, any use to which it would be subject would necessarily carry the building back to its extreme line, and then such a mercantile building would be shallow enough, and too shallow, probably, and in doing that you would come right against the building which the Federal Real Estate Company has erected recently, to its detriment and injury, in my judgment. If the land upon Branford place were deeper, a person building thereon could obtain probably its best use by building, say, on ninety per cent. of the lot, thus leaving light and air behind. He is driven to the necessity, under present conditions, of going the limit of his lot, and in so doing may injure the Federal Real Estate property.

Q What I had in mind particularly was whether you had considered the likelihood, or the probability, of the Federal Real Estate Company acquiring title to the Peddie property? A I cannot see that; I think that is pure guesswork—speculative; I cannot say that. If you were driving people into the real estate business, perhaps, or seeking to, that would be the trend.

Q So that the mere proximity of 50 feet to the street would not give it any special value? A I do not think so.

Q You have referred also, Mr. Berry, to a couple of pieces of property that you own on Clinton street and one on Franklin street— A Yes, sir.

Q —on which you have paid the assessments. A No, I have not.

Q Or, at least, to which you have not objected? A I have not objected.

The Court. You hope to pay it?

Witness. If I can save sufficient, your Honor.

Q The fact that you have not objected—has that influenced your opinion as to whether this has or has not been peculiarly benefited? A I would not say that; I would not think so.

Q You think what? A I am free-handed; I can reach my conclusions. The fact that I have not objected does not mean that I indorse it; I do not.

Q You think that neither of those properties has been benefited? A I do not think so. I do not like to discuss my affairs. I am like you lawyers; I am here for a cause.

Q Do you consider, Mr. Berry, that any of the property that you have placed outside of your zone of peculiar benefits has received any peculiar benefit by reason of its intimate association with Branford place? A I do not know of any.

Q In speaking of the depressing tendency on values of real estate on Market street by reason of the addition of additional business property in Branford place, did you take into consideration the conditions of Market street as they then

existed; namely, at the time of the opening? A Yes, sir.

Q I believe you have stated that there were quite a large number of properties for rent vacant at that time? A There are.

Q And still are? A There were; yes, sir; and still are.

Q So that an addition of available business sites in the immediate neighborhood would rather hurt than help Market street? A I am pretty positive about that.

Q Would that necessarily follow in the remote future when Market street property should be pretty well developed and all the stores occupied? A I am not sure that I got that question correctly.

Q (Question read). A May I ask a question?

Q Well, I had better add to the question: Would the addition of business sites on Branford place at such a time when Market street property is well occupied, and, let us say, that there is not sufficient property to satisfy the demands for business property—would the addition of additional business sites on Branford place at such a time necessarily tend to depress the values? A No, I do not think so then.

Q There are definite periods of depression and booms, I take it, in values of real estate? A Unfortunately, yes.

Q And these periods are of rather longer duration with regard to real estate than with regard to values of other property, are they not? A Yes, sir; I have heard it said, and I believe it to be true, that real estate—

Mr. Kalisch. I object to what you have heard said.

Witness. All right, sir.

Q Give us your own opinion. A Yes, I will give you my opinion: that real estate is about the first to feel the depression and about the last to recover from it.

Q You stated this morning that you were in accord with the opening, generally speaking, Mr. Berry. Do you mean that you considered that, generally speaking, it has created some benefit? A General benefit? Yes, sir.

Q In what respect are you not in accord with the opening? A Well, I am not in accord with the opening, for example, to the extent that it has injured Market street; but for the general benefit of particularly the westerly side of the section, I think it will serve its purpose.

Q I think you have stated something about Mechanic street in connection with the opening, so far as the general success of the opening is concerned. A Yes, sir. The general benefit to the public will come, in my judgment, when the improvement be completed, and I mean by that the extension of Branford place through Mechanic street into Ferry street, as originally outlined.

Q Then you consider that the opening as now completed is merely partially successful? A Oh, it is an unfinished improvement, in my judgment.

Q You stated, Mr. Berry, that you had not made any specific examination of all these properties for the purpose of testifying in this proceeding, but that you had examined some of them specifically, but that you were familiar, nevertheless, with the entire territory. I wish you would give us exactly the extent of your familiarity with the entire zone of assessment, and to

what extent your knowledge might or might not have been improved by a further examination. A I am absolutely familiar, if I do say it, with the zone of that assessment; I know the properties, most of them, well and intimately. I might state that I lived by far the larger number of my years on Bank street, within the zone mentioned, and as boy and man I have traversed that ground practically every day and sometimes several times a day, dealing and lending, and so forth. I think that I know practically every property there.

Q What section are you now referring to? A Within the zone of this assessment, more particularly that portion of it westerly from Broad street.

Q Do you consider that a further examination by you at this time would have assisted you any further in your testimony? A It might have added somewhat to my knowledge, but, generally speaking, I think it would be mere surplusage.

Q What property was it that you have specifically examined for this proceeding? A What property?

Q What property, in what area did the property lie that you have specifically examined? A Well, I have been through Branford place, for example, a large number of times very recently, and through the intersecting streets a great many times; I have been through the other blocks several times, most of them, recently.

Q Up and down Market street, of course? A Oh, yes, sir.

Q And Broad street? A And Broad street.

Q Mr. Kalisch asked you as to the opinion that you have received from others with whom you had conferred with regard to these assess-

ments. I would ask you this, Mr. Berry: In the various conferences that you may have had with other real estate men or other citizens, whether you found any that would make the zone of the proposed assessments for peculiar benefits any larger than what you have made them.

Objected to.

Objection sustained.

Q I just want to get your opinion, Mr. Berry, as to this traffic, the traffic with the long pipes, that Mr. Kalisch has referred to, that finds its way to Mechanic street, and which before the opening would go up and down Market street to and from Mechanic street. The question was asked you whether or not you considered that kind of traffic to Market street a benefit to it, and I believe you answered that you did so consider it.

Mr. Kalisch. No, he did not answer that.

Mr. Stein. Or that it was a benefit.

Mr. Kalisch. He thought it was not a benefit; he did not think it was a detriment, but he thought it was not a benefit.

Mr. Stein. Well, I will ask him the question now, if there is any misunderstanding about it.

Q Do you consider that that kind of traffic was a benefit or a detriment to Market street? A I thought I made it clear that I wanted all the traffic on Market street for its benefit.

Q I so understood you, Mr. Berry. Well, do you then say that that kind of traffic was a benefit to Market street? A That includes the piping, long and short, and all other kinds of traffic.

Q Can you give us any detailed reasoning as to why you considered that kind of traffic a

benefit to Market street? A Yes. Market street is a fine, wide street, and can take care of all the traffic that comes to it, and it never has been so crowded with traffic as to be injurious. All the traffic that would come Market street will swallow, and to Market street's benefit. No injury can be inflicted upon Market street by increasing traffic there.

Q Well, will you give us some example, limiting it to this particular kind of traffic, as to how it will be a help to Market street to have it? A Well, every vehicle and every person passing retail mercantile occupancy tends to benefit that occupancy—benefit the property.

Q You mean because of the possibility or likelihood of purchasing there? A And it advertises to that many more persons, if you please, the place that is being gone through.

Re-cross examination by Mr. Kalisch.

Q You said something about the opening of Branford place creating a general benefit. You recall that now, do you not? A Yes, sir.

Q And furthermore that it will serve its purpose and that it is an unfinished improvement? A Yes sir.

Q You have also stated that when it is extended through Mechanic street the benefit will come? A Yes, sir.

Q Now, just explain what you mean by that. A The question of traffic upon Branford place rests, to a large degree, as to whether that traffic can be carried through upon a straight line to the easterly side of the city and from the easterly side to the westerly side with convenience to those using it.

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Q Well, in what way would that be a benefit? A That would be a general benefit, I think, to everybody.

Q And you say now that there is a general benefit? A Not now; completed there will be—

Q You have said now that there is a general benefit. A Yes, some.

Q What is the different kind of benefit that you have now as compared with the benefit that you would have if it went through Mechanic street? A I think probably generally only half the benefit that they would if the street were carried through, and I think it should be.

Q It is a question of degree, then? A Yes, sir; they would get a greater benefit if the street were extended further.

Q You think it would serve its purpose. What purpose? A It would serve the purpose of a convenience generally to the people.

Q Well, do you think that if Mechanic street is widened and the improvement is finished according to what your idea of finishing it is, peculiar benefits will result? A Yes, they will be more widely—peculiar benefits?

Q Yes, A Yes, to property along the line, undoubtedly.

Q What did you mean to say when you said that "they would be more widely?" A Well, I will accept Webster's definition.

Q Now, you said "they would be more widely" just now, and you stopped short. What did you intend to say then? A They would be more widely distributed.

Q In what direction? A Eastwardly and westwardly.

Q On that street? A Along the line of that street and eastwardly and westerly from it.

Q Easterly and westerly from it? A Yes, sir.

Q Well, you do not mean to say that you were speaking of Branford place, do you? A I supposed that was the street that you had in mind.

Q But I mean the benefits extending more widely; you did not have reference to Branford place benefits, did you? A Yes.

Q Because they are benefited now, are they not? A Yes, but not as much as they would be if the street were extended further.

Q But the territory more widely is what I have reference to. A I will explain that to you. If you open Mechanic street or widen Mechanic street and made it the continuation of Branford place easterly and through the railroad into Ferry street, I would say by that that you had widened the influence of that benefit.

Q Easterly and westerly, you said. A Well, it would be at the westerly end of Mechanic street and at the easterly end likewise.

Q It would be at the easterly end of Mechanic street? A Yes.

Q Now, you mean to say that Mechanic street would be the only street that was benefited? A No, I would apply the benefits peculiarly there about in the same fashion as I am seeking to here.

Q So that you do not think there would be any further peculiar benefit? A Oh, yes, I do think so. Along the line of Mechanic street? No question about that.

Q No, I do not mean on Mechanic street or Branford place at all. A Yes, there would be both kinds of benefits.

Q North and south of the improvement? A Yes, there would be peculiar benefits attaching

eventually along the line on both sides for a certain distance.

Q North and south of the improvement? A Yes, sir; in about the same proportion as I have sought to show westerly from Broad. Then there would be the general benefits in addition.

Q No, I am now speaking of north and south of the improvement, if it were finished by widening Mechanic street, as you have suggested, whether those peculiar benefits would extend further north and south than you say they do now? A Would they extend westerly from Broad?

Q No, northerly and southerly. A As applied to westerly from Broad at present?

Q Yes. A Yes, sir.

Q As a finished improvement? A Yes, the application of the peculiar benefits would be in about the same proportion for the distance northerly and southerly from the opened street as is now the situation, according to my view, or should be, westerly from Broad.

Q I do not quite get you. I should like to know in what way the benefits would differ after the improvement was finished—finished as you have explained what a finished improvement of that kind is—how those differ from what you say the benefits are now north and south of the improvement? A Well, when I speak of the improvement I have in mind north and south of Branford place as it is open.

Q North and south of Branford place? A Yes, sir.

Q In what way would they differ if the improvement was finished from what the peculiar benefits are now in the condition that Branford place is now? A I am not certain that I grasp

the question, but, if you wish me to, I will state my judgment as to the effect of the widening of Mechanic street.

Q No, I do not want that. A I thought that was what you wanted.

Q No, that is not what I want. You stated that this is a finished improvement? A Yes, sir.

Q That it will serve its purpose; that when it is extended through Mechanic street the benefit will come? A Yes.

Q Now, how would the benefit be different to properties north and south of Branford place after the improvement is finished in comparison to what the benefits are now? A A person seeking to go eastwardly would find himself very much convenienced by reason of the widening of Mechanic street and carrying it through.

Q That is not what I am asking you. I want to know if it would cover a different territory, whether the peculiar benefits would extend beyond what you think they extend to now, north and south of the improvement? A I will explain that the peculiar benefits, I think, would apply in the same ratio, say 50 feet from the northerly side of the opened street, and along paralleling to Market street, and in a general way, the same distance southerly from Branford place, meaning 300 feet.

Q I do not quite get that. You say 300 feet north of Branford place? A No, sir; I say 50 feet north. If you carry it 300 feet, you would be out into Market street—not on the curb alone, but in the street.

Q So that you do not think that the benefits would extend north of Branford place if the Branford place improvement were finished? A On the additional opening?

Q Yes. A 50 feet additional northerly would be, in my way of thinking, the line of peculiar benefits.

Q And how many feet to the south? A I would apply the south similarly—

Q 50 feet to the south? A Oh, no.

Q How many feet to the south? A A greater distance south.

Q Well, how much? A Well, I have said I think approximately 300 feet would be right.

Q That would bring it almost to William street? A No, William street ceases at Broad, but Lafayette street is practically an extension of William.

Q Well, I am speaking of south. A Yes.

Q I am not speaking on the east side of Broad street, but on the west side of Broad street. A Oh, I beg your pardon! I supposed we were dealing with the extended street easterly from Broad.

Q Oh, no. As a result of this finished improvement, would you extend the benefits accruing as from the opening of Branford place further north and south of Branford place than what you think they are now? A I think those properties along the line of Branford place, and say, within 50 feet northerly from it and 300 feet southerly, would be apt to be subjected again to peculiar benefits.

Q Then you do not think that you would get beyond that with this new opening of Mechanic street? A For the zone of peculiar benefit?

Q Yes. A I don't think you would get much beyond that.

Q So that it would not accomplish very much of a purpose after all, would it? A Oh,

yes, it would accomplish a great general purpose.

Q What would be the general purpose? A The means of getting east and west and west and east would be very much enhanced for people generally.

Q Would that improve the property conditions in the neighborhood? A The traffic is always an improvement.

Q And would the entire area be increased in value, do you think? A I think the zone of 50 feet northerly from the present line of Branford place, and, say, 300 feet southerly, would be most increased—

Q You have stated that before. I am asking you now about the general benefits—whether it would increase the value of the property in the neighborhood between, say, William street and Bank street west of Broad street? A Not so far away, but it would increase, I think, for the distance that is now increased by reason of the present street opening.

Q So that there would be no difference in the increase in value? A Yes, I think there would be an additional increase, but not in the same proportion.

Q Well, what difference would there be—what would the difference consist in, in including more territory? A More territory would be accessible from this district west, and that district west would be accessible from more territory east.

Q Well, would that be the zone of benefit? A Of peculiar benefit—I don't think I would extent it any further on the west than it is now.

Q I am speaking of general benefit.

Mr. Stein. You just said "peculiar benefits."

Mr. Kalisch. No, the "zone of benefit," I said. I am speaking of general benefit; that is what I was speaking of before.

Witness. Yes, general benefit.

Q How far would you extend that zone? A I wouldn't extend that any further than at present; I think the general benefit serves everybody today to a certain extent.

Q How far would you extend that zone? A Well, persons would gain the advantage, I suppose, at a remote point more than property would. I do not think you could measure it in pennies or dollars and cents.

Q I am not asking you in dollars and cents; I am asking you how far the general benefit would be extended? A I think everybody almost up to the city line would be generally benefited.

Q More benefited by that extension of Mechanic street than what they are now by the present Branford place? A Well, I am inclined to think the general benefit would be increased for everybody.

Q And you think that people up in the north end of Newark would be generally benefited? A They would partake of the general benefit.

Q People in Belleville would be generally benefited? A We are not acting for them.

Q Well, there is no line of demarcation if there is a personal benefit, is there? A I can only deal with the city.

Q Well, I want to know what your idea of this benefit is? A I think Newark is a benefit to Belleville every way you take it.

Q And you do not think that the nearer property is to the improvement the more valuable it would be? A The near property is to that improvement, it would be peculiarly benefited, but after you pass a certain line the benefits are general and general only, to my way of thinking.

Q I am talking of general benefits now. A Yes. Outside of a limited zone it is all benefited.

Q But the nearer you get to the improvement that more the benefit is? A Well, generally, oh, yes, but the more people take advantage of it, I think.

Q Well does it not become more valuable as you get near the improvement? A Well, it is hard to measure degrees in general benefits, I think.

Q Well, it is not any harder to measure it in general benefits than it is in peculiar benefits, is it? A I think so.

Q Is not property that is on Bank street, for instance, more generally benefited than property that lies out on Bloomfield avenue?

Mr. Stein. I object to that. I think it is not cross examination, your Honor.

The Court. I will say that I think the testimony that has been taken in the last half hour will be of very little assistance in helping the Court to decide the questions that will arise in this case. I have intentionally allowed almost all the latitude that counsel have desired in this case at the outset, for the purpose of making a broad start. I hope that we will be able hereafter to confine the testimony more closely to practical questions.

ADJOURNED UNTIL DECEMBER 8, 1915.

EIGHTH DAY.

Wednesday, December 8, 1915.

WILLIAM C. FIEDLER, sworn in behalf of Richard C. Jenkinson, *et als.*, objectors.

Direct examination by Mr. Stein.

Q Mr. Fiedler, what is your business? A Real estate broker.

Q And how long have you been in the real estate business? A About ten years.

Q Where is your office located? A In the Firemen's building, corner Broad and Market streets.

Q In the city? A In the city.

Q Are you familiar with the values of real estate in and around the corner of Broad and Market streets? A I think so. I do a general real estate business, but I specialize principally in the center portion of Newark.

Q Have you had occasion to qualify at any time as an expert in any legal proceeding? A Yes, several times.

Q Your work consists of what in the real estate line? A Selling and leasing principally —mortgaging real estate.

Q Is your work confined to the central portion of the city? A No, I handle real estate all over Essex county, principally Newark, but I devote most of my time and attention to property in the central portion of Newark.

Q Do you consider yourself reasonably familiar with the rise and fall of values of real estate in the zone of assessment in this matter? A I think so.

Q Will you give us the names of owners of properties for whom you have sold or leased?

Mr. Kalisch. I object to that.

The Court. Is the qualification sufficient?

Mr. Kalisch. I think so. I just objected to that question that he asked.

The Court. I think the witness is sufficiently qualified, if that is the object of your question.

Mr. Stein. Yes, sir.

Q Were you familiar with the situation in the heart of the city before the opening of Branford place? A Yes.

Q Did you have anything to do with the appraising of any real estate in connection with the opening? A Yes, I appraised two or three properties in that zone connected with the opening.

Q You know just what property was taken for the widening of the street, don't you? A I know the zone; I do not remember each particular property; I know about.

Q Will you state just what property was taken for the widening? A Well, that property—

Q Not mentioning names. A That property from the west side of Washington to Springfield avenue in a westerly direction, and Camfield street, formerly between Washington street and Halsey street, was widened on the north side.

Q Now, which of that was taken for the widening of Branford place, which of the territory that you have mentioned? A You mean between Washington and Halsey streets?

Q Well, I want you to state. A That on the northerly side.

Q And the rest of it, west from Washington street, was taken for the opening? A Yes.

Q Now, have you given consideration to the effect of the opening and widening of Branford place? A Yes, a great deal of consideration.

Q Are you familiar with the properties embraced within the zone of assessment of the commissioners? A Yes.

Q And are you familiar with these maps, Exhibits B and C, Exhibit B being immediately in back of me and Exhibit C in back of you? A Yes, I have looked them over and examined them.

Q And having particular reference to the properties outlined in red on Exhibit B? A Yes, sir.

Q And the properties outlined in white on Exhibit C? A Yes, sir.

Q Have you also given consideration to the difference between general benefits and peculiar benefits? A I have.

Q Tell us what you understood to be the difference between those two kinds of benefits acquired by an opening of a street like Branford place? A Peculiar benefits, in my opinion, are such benefits as will add to the market value of the property, an enhancement in the market value which accrued to a certain particular property as a direct result of an improvement; it is a benefit which can be measured in dollars and cents; whereas general benefits are those which an entire community may enjoy, which do not add anything to the value of the property. Speaking broadly, I should say, that peculiar benefits are those which apply to land and general benefits are those that apply to individuals.

Q From that point of view, have you given consideration to what, in your opinion, has been the result of the opening and widening of Branford place upon the property embraced within the zone of assessment, so far as peculiar or general benefits are concerned? A Yes.

The Court. Is not this a little aside from the precise point? The same question might be asked in the same words if the witness were on the stand ten years from now. He would then look back for ten years. The real point is whether the assessment when it was made was a valid assessment. The commissioners who made it gave to it their attention in view of facts within their knowledge and observation and in view of their reasonable expectations for the future; but they did not have the gift of prophecy. It would be severe to hold them to that test. If the witness can throw his mind back to the time when the assessment was made, then his testimony will perhaps be more useful to us.

Mr. Stein. Yes, sir; I was leading up to that.

Q In giving your answer I want to have you direct your mind back to the summer of 1914, about the time when this opening was accomplished as a legal opening, and, viewing the situation as of that time, tell us what you consider were the properties that were affected by immediate peculiar benefits as of the date of the legal opening. A With reference to those properties that have been peculiarly benefited, not generally benefited?

The Court. You are asked now as to peculiar benefits.

Witness. Yes, sir. At that time I considered the matter very thoroughly; I examined the city atlas, went over the territory near the opening, and I came to a conclusion as to what I thought was the area that was peculiarly benefited.

Q Now, what is that area? A I think, in my opinion, the property abutting or fronting on the new street has been peculiarly benefited, also some of the property on the intersecting streets running north and south.

Q How about the property between Halsey and Broad streets on old Branford place? A Formerly Camfield street?

Q No, between Halsey and Broad streets? A Oh, Halsey and Broad? I think that those properties received peculiar benefits.

Q What about any property west of the opening itself? A In my opinion, some of that property west has been improved, or has been peculiarly benefited.

Q Will you state just how far west? A I should say the corners, the intersection of High and Springfield avenue; the property immediately opposite the opening, that triangle, owned by the county, and for a very short distance west on Springfield avenue, and for a very short distance north on High street.

Q Will you kindly step to this map, Exhibit B and point out just which lots you consider were peculiarly benefited in the vicinity of High street and Springfield avenue? A (Indicating on Exhibit B.) In block 231, lots 6, 8 and 9—

Q State how bounded? A Bounded by Springfield avenue, High street and Stirling street. I am in doubt as to lot No. 11.

Q How is that located? A That is immediately west of the property which I have just described. In block 232, bounded by Stirling street, High street and Thirteenth avenue, lot No. 5; in block 2496, lot 34, the southwest corner of Springfield avenue and High streets, in the block bounded by Springfield avenue, High street and William street, and perhaps lots Nos. 30 and 31. I am not so sure about them. In block No. 79, bounded by High street, Springfield avenue and Shipman street, lot No. 15, and, as I said before, the triangle property, bounded by High street, Springfield avenue and Thirteenth avenue, owned by the Board of Freeholders.

Q Now, take the easterly end of the opening which was Halsey street and Branford place. How far easterly do you consider, always as of the time of the opening, that these peculiar benefits extend? A You refer to the west of the opening or east of the opening?

Q East of the opening? A And of Branford place?

Q You have already stated, I believe, that all properties abutting on Branford place. A May I look at the map?

Q Yes. A (Witness walks to map).

Q Will you state whether you consider that any of the properties on Branford place, between Halsey and Broad which was not strictly the new street, it was the old street, was it not? A Yes, sir.

Q Whether any of those properties have been benefited? A In my opinion they have.

Q How far east of the opening at Broad street would peculiar benefits extend easterly? A Not including Broad street, but east of Broad street?

Q East of Broad street? A I don't think any of that property east of Broad street has been peculiarly benefited.

Q What I mean is, measured from the west side of Broad, easterly from the west side of Broad? A Then you include Broad street.

Q I include Broad street. A The property immediately opposite the opening of Branford place on Broad street on the east side, in my opinion, has been peculiarly benefited.

Q Will you specify just which property you refer to? A In block 165, bounded by Broad street, Mechanic street, Lafayette street and Mulberry street, lot No. 11, in my opinion has been peculiarly benefited.

Q Is that the property of the National State Bank? A The property of the National State Bank. In block 164, bounded by Broad street, Mechanic street, Market street and Mulberry street, lot No. 1, I think, this has been peculiarly benefited.

Q Where is that? A That is on the northeast corner of Mechanic street and Broad.

By the Court.

Q The office building there? A Yes, the Globe building.

By Mr. Stein.

Q Now, how far do you consider that the peculiar benefits extended on the intersecting streets southerly from Branford place, naming the streets? A The intersecting streets, known

as Arlington street, Plane, Washington, Halsey streets, property in those streets south of Branford place in my opinion, have been peculiarly benefited for a distance I should say 250, 300 feet; half a block approximately.

Q Half a block to where, toward where? A Half a block south from Branford place.

Q Do you refer to William street, half a block from William? A I would take William street as the next thoroughfare, which would divide some of that property.

Q What about Shipman street, or you failed to mention Shipman street? A I include Shipman street.

Q Extending the benefits about half way down William? A About half way down.

Q How about the west side of Broad street measuring, always down southerly from Branford place? A The west side of Broad street southerly from Branford place, I consider the property has been peculiarly benefited about half the distance to William street.

Q Now, what about the east side of Broad street measured southerly from the point where Branford place would intersect Broad street if prolonged across the street? A The east side of Broad street south from Branford place?

Q Yes. A My opinion about half that block has been peculiarly benefited.

Q Half the block to— A To Lafayette street.

Q Toward Lafayette street? A Yes, sir.

Q Now, take the intersecting street, north— measure northerly on Branford place, beginning at Shipman street? A The intersecting streets north of Branford place have been peculiarly benefited. Property on those streets

has been peculiarly benefited for a very short distance, perhaps 50 feet.

Q Speaking now for the moment generally as of all the intersecting streets measured northerly from Branford place?

The Court. I understand the statement of the witness to be beginning at Shipman street and coming on down but the benefits extend, I understood the witness to say, 50 feet.

Witness. I refer particularly to Washington street, Plane street and Halsey street. I don't know just how far Shipman street extends. There was only one property on Shipman street north and I include that as having been peculiarly benefited.

By Mr. Stein.

Q What is that lot and block number? A It is block 78, lot No. 14, bounded by Springfield avenue, Shipman street, Arlington street and Branford place.

By the Court.

Q You include the whole of that lot? A No, I include that lot, No. 14, in that block.

Mr. Smith. Between Branford place and Springfield avenue that is the only property.

Q I intended to ask whether you think peculiar benefits inured to the whole of that frontage all the way from Branford place to Springfield avenue? A On Shipman street.

William C. Fiedler, direct.

By Mr. Stein.

Q Take the street immediately east, Arlington street, how far north of the intersection do you consider the peculiar benefits extended? A About 50 feet north of Branford place, on Arlington street I consider the property has been peculiarly benefited.

Q And Plane street? A Plane street is about the same distance and also Washington street and Halsey street.

Q Referring particularly to the property on the west side of Halsey street north of Branford place, part of that property which is within the 50 foot limit, is assessed to the Chelsea Real Estate Security Company, Chelsea Security and Investment Company, referring particularly to lot 50 in block 75, and part of that property extends beyond the 50 foot limit. What would you say especially regarding that property? A In arriving at benefits, that property has enjoyed peculiar benefit, as the result of the opening of Branford place I would consider it as a plot and in arriving at a figure I would consider the plot as a whole although I would not calculate that over 50 feet, strictly speaking, has been peculiarly benefited. I would not include from my analysis of that block No. 50 the lot No. 39.

The Court. Fronts on Market street but adjoins this.

By Mr. Stein.

Q How about lot 47, which adjoins it on the north and fronts on Washington street? A That has not been peculiarly benefited in my opinion.

Q This lot No. 50 that you have just referred to has a frontage on Washington street of about 87 feet, has it not? A Yes, sir.

Q And what distance is the most southerly line of that lot from the northerly line of Branford place? A Approximately nine feet.

Q So that the most northerly line of lot No. 50 would be about 98 feet? A That is about it.

Q From Branford place? A Yes.

Q And what would you say with regard to the assessment of $7,500 imposed upon this plot, No. 50 by the commissioners? A I am inclined to think it is rather high.

Q Has this lot any frontage whatsoever on Branford place? A No.

Q What increased value do you consider this property has acquired by reason of the opening, lot 50? A Lot 50 is within about nine feet of the new street and it is brought out more conspicuously since the opening of Branford place and from an advertising point of view it has an additional value. It is perhaps a little more accessible now coming from the southerly section of Newark than it was.

Q My question was as to what increase in value do you consider it received by reason of the opening? A How much?

Q In amount? A Perhaps $5,000, I think would be a pretty heavy assessment and one that would about measure the value of peculiar benefits.

Q Now, going directly across the street I call your attention to lots 5 and 6 assessed to the Metropolitan Realty Company, $1,875, lots 5 and 6 begin in block 60. A In my judgment

those two lots have not been materially benefited.

Q I might ask you at the same time about the lot of the Federal Real Estate Company, situate on Camfield court, being lot 67 in block 60? A I do not believe that lot has been materially benefited.

Q Going down to Halsey street, how far north of the opening do you consider peculiar benefits extended? A About 50 feet. I should judge, looking over the map, that on block 60, bounded by Branford place, Washington street, Market street and Halsey street, plots Nos. 48 and 49 have been peculiarly benefited. I am not sure that plot 43 in that block has been peculiarly benefited.

Q And does the 50 foot distance apply as well to the other side of Halsey street; namely, the easterly side? A The easterly side? I think that would be about it on the easterly side.

Q Now, what about the westerly side of Broad street, how far north would you extend the peculiar benefits? A Not beyond the Globe building, which is known as the—

Q I am speaking of the westerly side. A Oh, the westerly side, north? 50 feet, about.

Q *(By the Court).* Toward the north? A North of Branford place.

Q *(By Mr. Stein).* Would that include any of the property assessed to Caroline B. Stoutenburgh, being lots 84, 86, 88 and 90 in block 57? A It would not.

Q How far is the most southerly point of that plot from the northerly line of Branford place? A A little less than 100 feet.

Q Between 95 and 100 feet? A About that.

Q Now, take the easterly side of Broad street. How far north would the peculiar benefits extend? A In my judgment, not beyond plot No. 1 in block 164.

Q *(By the Court).* Is that the Globe building? A Yes.

Q *(By Mr. Stein).* What about all the rest of the territory, Mr. Fiedler, embraced within the assessment of the commissioners? What would you say as to the effect on the rest of the territory of this opening? A I do not believe that the opening of Branford place has been of any peculiar benefit to properties outside of the area that I have designated.

Q Now, in coming to these conclusions, as of what time have you considered the opening? A At the time that the city took title to the properties—the legal opening.

Q And in arriving at the conclusion that you have, what elements of value did you consider? A Very many elements are to be considered, some of which are the important element of traffic, what effect traffic will have on business property or residential property, the trend of traffic, traffic regulations; the availability of additional property for certain purposes, in some cases putting it in competition with certain other properties in that zone; proximity to certain streets, some of which perhaps have been injured because of its proximity and some perhaps that have been benefited; shape, size, location; and, of course, I took into consideration at that time the probabilities which would be reasonable for a man familiar with real estate conditions to anticipate with a reasonable degree of certainty.

Q How about the question of accessibility? A Accessibility, of course; that is an important factor.

Q How about the question of grade of streets? A The wideness of Branford place and the grade of that street are two elements which play an important part, too.

Q How about the grade of other streets leading into Branford place? A That would have an effect.

Q Give us an example of the question of traffic, how that entered into your consideration. A Traffic for a business street is very, very valuable. A diversion of that traffic to another street means loss of business for merchants on that street, which will result in lower rentals, lower values—market values. I have in mind one striking example of what the effect of traffic would be. When the Park place stations opened, thereby taking a great deal of that traffic that usually used to come out at the Broad street station of the Pennsylvania Railroad—

Q You mean the Broad street or the Market street station? A When the Park place terminal, the Park place stations, opened at Saybrook place, and took that traffic which usually went down Market street, or coming from another direction it came up Market street, that had an immediate and disastrous effect on values on lower Market street in the vicinity of the Pennsylvania station. It reduced rentals, in some instances fifty per cent., and in one particular case—

Mr. Kalisch. I object to particular cases.

The Court. I think the witness may be allowed to state illustratively what he has in mind.

Witness. In one case a piece of property that we have the management of, on Market street near the station, we rented a store for $125 a month, and now we are getting $60 a month for it, and I attribute that fall directly to the fact that traffic has been diverted from Market street to Saybrook station, or Park place.

Q How did the question of traffic influence your mind—speaking now of the opening of Branford place and any properties that you may consider have been affected adversely or otherwise by the opening?

A One of the objects of the opening of Branford place was to relieve—

Objected to.

The Court. I have some doubt as to the answer which you began with those words—the answer being to a question as to your own way of dealing with the subject of traffic in its relation to Branford place. Without reference to what you supposed to be the object that somebody else had in view in opening the street, can you give us your own idea as to traffic in its relation to Branford place?

Witness. Branford place, in my opinion, was opened for the purpose—

Q No, Mr. Fiedler, do not give us your opinion as to the object of the opening. Tell us, rather, what effect it was likely to have upon the property in the vicinity, so far as traffic is concerned, without going into the ques-

tion of the object of the opening. A I consider that a diversion of traffic, which was reasonably certain would occur by reason of the opening of the new street, would take traffic away from Market street, for instance. Traffic means a great deal to Market street. Every individual that traverses Market street is a potential buyer.

By the Court.

Q Now, can you illustrate a little more fully, Mr. Fiedler, and tell us why you think it is reasonable to anticipate that traffic would be diverted from Market street by Branford place? A For vehicular traffic I knew that Branford place would be used, because it would be a wide street, particularly by those who were heading south from Branford place; no car lines; it would be more convenient and save a little time, and perhaps be safer. For pedestrian traffic it would probably mean the saving of time for those southward bound. And all of that, of course, would mean a diversion of traffic from Market street, and in a good many instances a diversion of traffic which would have used the intersecting streets north from Market street, who now use Branford place and go —south from Market street, I mean, and who now go south from Branford place.

By Mr. Stein.

Q This traffic in a southerly direction, both vehicular and pedestrian, that you have referred to, where does that originate, east or west? A It originates both east and west of the opening of Branford place.

Q Take the traffic that originates west of the opening. Can you be a little more specific as to

where— A Yes, I think the traffic eastward bound west of the opening of Branford place originates, or comes, from South Orange avenue and Springfield avenue chiefly; some of it comes from Thirteenth avenue, High street a little of it.

Q Stirling street? A Not so much, not enough to make a great deal of difference. Stirling street is only a one block street.

Q And what about the traffic that is westward bound and goes up Branford place? A That would probably come from Market street, Mechanic street, Lafayette street and the southern section of Newark, Broad street and some of the intersecting streets.

Q The traffic that you have mentioned, going east and west on Branford place, before the opening, what streets would that traffic take? A I think most of it used Market street.

Q What about the traffic that is bound northerly of the opening, north, say, on Broad street, referring now particularly to the vehicular traffic and the traffic that comes from the west going easterly? A In my judgment, the traffic eastward bound and headed in a northerly direction has not been much changed.

Q I am speaking now of the vehicular traffic. Is that what you are speaking of? A Yes.

Q I want you to view this situation, of course, from the time of the opening. What you considered the certain probabilities were, what about the pedestrian traffic coming from the west and bound north on Broad? A I don't believe that the pedestrian traffic from the west bound north was greatly changed.

Q Is there any difference in that respect between pedestrian and vehicular traffic coming

from the west? A Yes, I think the vehicular traffic, in my opinion, would be more apt to use Branford place heading north than the pedestrian traffic.

Q Why? A Branford place is a wide thoroughfare, easier to drive on than Market street, on account of the less traffic that is there and the congestion on Washington street, Broad street, and perhaps on account of the traffic regulations, they could turn north easier at Branford place than they could at Broad street and Market street, while the pedestrian traffic would not be much inconvenienced if they continued.

By the Court.

Q One sidewalk is more or like another than one street is like another? A That is the idea.

By Mr. Stein.

Q And what about the traffic which is bound on Branford place which originated north of it, speaking now first of the vehicular traffic? A I think perhaps the same conditions would prevail coming north and heading west. The vehicles would probably rather use Branford place, but not to any great extent.

Q Now, what effect do you consider that this diversion would have upon Market street values? A Detrimental effect.

Q Your answer refers to what part of Market street? A West of Broad.

Q Both sides of the street? A Both sides of the street.

Q You have mentioned the trend of traffic. Just what do you mean by that? A I think the trend from the western section of Newark is downtown.

Q Toward the east? A Toward the east.

Q Toward Broad and Market streets? A Toward Broad and Market streets, toward the center.

Q How long has that situation existed? A So long as I can remember. I was in business at the junction of South Orange and Springfield avenues for many years and that was the one condition that we had to contend with. People were inclined to shop downtown and anything that makes it more convenient for those living on the hill to get downtown will help business downtown.

Q And what effect will it have on the business occupying Springfield avenue and South Orange avenue, that greater convenience and ease of getting downtown? A I think it will not have a beneficial effect.

Q Now, you have spoken of the question of traffic in its relation to business property and in its relation to residential property. How would the increase in traffic affect residential property? A Traffic in my judgment hurts residential property.

Q What kind of traffic are you speaking of? A Chiefly vehicular traffic. Anyone living in a nice quiet neighborhood, would be apt to be—would be inclined to move if there was much vehicular traffic on the residential street disturbing sleep, dust and noise.

Q What kind of a street is Stirling street? A Stirling street is a residential street.

Q What about the question of traffic in its relation to Stirling street? A I do not believe that as far as Stirling street is concerned traffic has been changed to any great degree, so while there have been—I don't think the property has been harmed, but it has not been increased.

William C. Fiedler, direct.

Q You have spoken of the question of accessibility of forming an element of increased value. Will you give us an example where the question of accessibility has entered into your determination in fixing the line of peculiar benefits taking in all these lots? A Well, the lots that are now fronting on Branford place having frontage now are accessible. Some of that property west of the opening has two thoroughfares. If pedestrian or vehicular traffic is bound eastward instead of using Market street they may use Branford place. Another street has been accessible.

Q Will you give us an example of inaccessible property, if you please, so far as it relates to the opening? A That plot owned by the Federal Real Estate Company.

Q You mean lot 67 in block 60? A Lot 67 in block 60.

Q What about lot 40, block 73 assessed to the Prospect Improvement Company? A That has not been made any more accessible. It is a part of Market street frontage in my opinion, rather part of the Market street block I should say.

Q Is it the rear of other lots fronting on Market street? A It is the rear of other lots fronting on Market street.

Q Which have been separately assessed? A Yes.

Q What about the nature of the street, Branford place, as to whether it is a new street? Have you anything to say on that subject? A Yes, Branford place in my judgment will be used westerly by traffic which will go through bound in either direction, east or west, and I do not believe that the increased traffic south of Branford place on the intersecting

streets, with the exception of Broad street possibly, will increase very much.

Q You have mentioned the question of competing business. Just what do you mean by that? A For instance, Branford place will compete with Market street to this extent. A merchant perhaps not having a great deal of capital who would like to locate on Market street and who would be compelled to purchase there if Branford place were not in existence would by reason of the lower rentals be inclined to try it out on Branford place, thereby losing a tenant for a Market street property.

Q What about the situation as it existed at the very time of the opening with regard to occupancy of Market street properties? A I don't quite get you.

Q I want to know whether or not Market street properties just at and before the time of the opening, whether they were well occupied, whether they were rented or vacant? A No, there were many vacant on Market street, and any additional renting area was not necessary as far as Market street was concerned. Most of the other streets parallel to Market street running east and west were not in such competition. What Market street has I believe Branford place will have for the reason that Branford place is a wide street. It is very close to Market street, the grade does not amount to much excepting its extreme westerly point and I believe that Market street was injured for many reasons psychologically. The amount that Branford place was even spoken of it had its effect on Market street.

Q In what way? A Market street owners knew there would be a street that would pos-

sibly take business from Market street and stores might be established there and be harmful.

Q So that the question of proximity that you have mentioned in having its effect upon values might have a detrimental as well as a beneficial effect? A Branford place in its relation to Market street from the standpoint of proximity surely is harmful.

Q Harmful to what? A I think it affects values.

Q Harmful where, harmful to Branford place or Market street? A Harmful to Market street.

Q Mr. Fiedler, do you consider that it is possible to fix the amount of peculiar benefits that property has enjoyed by reason of such an opening of Branford place without first determining what the market value of that property was before and then what it was at the time and as a result of the opening? A Peculiar benefits as far as my knowledge is concerned represents an additional value, an additional market value to real estate and in order to ascertain additional value in my judgment it was necessary to know what the former value was.

Q If by the opening of Branford place property which was formerly on the first block from Market street should be placed on the second block from Market street, even though the distance from Market street has not been changed, would that fact play any part in the question of value? A Yes, it is an important psychological effect. From my point of view as a broker, if you offer property in the first block

from Market street it is more easily sold than if it is in the second block, or rented.

Q You say it is a psychological effect? A No doubt.

Q Do psychological effects play any part in determining real estate values? A I think so.

Q Will you give us an example, if you will, of property that is affected in that way in this zone? A I would like to refer to something not in the zone as illustrating the point I am trying to make.

Q Not in the zone that you have fixed for peculiar benefits? A In this zone of discussion I would like to refer to the announcement of the memorial committee last week, having selected a site on South Broad street. The power of that announcement, the psychological effect of that announcement, has brought about a real estate movement not very strong but I can notice it in that section in Newark. It is not certain that that will go through. It is somewhat in the air but it has had its effect.

Q I don't think you quite understand my question. Mr. Fiedler, I want you to give me an example of a property which has been placed on the second block from Market street by this opening which was formerly on the first block. A The Jenkinson property is on the second block which formerly was in the first block.

Q That would be lots 64, 67, 68, 93 in block 73, and which property I noticed is assessed for $2,250, by the commissioners. How has the effect that that property is placed in the second block from Market street affect the question of peculiar benefits on the property in your opinion? A It has hurt it some. I don't

think that that makes a great difference in the value of that property. Some.

Q There are compensating benefits? A Yes, there may be more traffic that would compensate it for the harm that has been done for the reason of the location in the second rather than the first block.

Q For example, if Branford place had been placed on the other side, to the south of the Jenkinson property rather than to the north of it so that the Jenkinson property would still obtain the benefits of the new street by reason of its close proximity—I am placing it now about 25 feet north of the new street—and so that the Jenkinson property would still be on the first block in from Market street, do you consider that that property would have enjoyed a greater degree of benefits? A No doubt.

Q What then, do you say with regard to the amount of the assessment that the commissioners have imposed upon this property $2,250? A I haven't analyzed that particular plot. It would be difficult for me to give an estimate. It would not be accurate.

The Court. Which block and lot is that?

Mr. Stein. They are lots 64, 67, 68 and 93 in block 73.

Q Mr. Fiedler, have you considered the general layout of the lots on Branford place with reference to the question of speedy or slow development of property on Branford place itself? A Yes. Most of the lots are irregular in shape, and it will be necessary for property owners to get together, give and take, and square out plots in some instances and make them more available for the purposes for which they would be adapted.

Q And what, then, do you say with regard to the speedy or slow development of property along that street? A It will take considerable time.

Cross examination by Mr. Kalisch.

Q Mr. Fiedler, you say that the lots on Branford place are irregular in shape? A Some of them are.

Q Are a great many of them? A I have not counted them.

Q And you say that it would be necessary for the property owners to get together, to shape their lots properly before the development of that street would take place? A Yes, sir.

Q Well, did you have reference to the shape or the dimensions of the lot when you speak of it as being irregular? A The shape principally.

Q Well, now, just what do you mean by that? Just explain. A May I refer to the map?

Q Yes, certainly. A (Indicating on map). For instance, in block 78, bounded by Shipman street, Orange street, Nicholson street, Branford place and William street, Augusta street, there is a plot, plot No. 25, having a frontage of 10 feet on Nicholson street, or a depth of 10 feet on Branford place. Now, in that particular case the two owners, the owners of plots Nos. 25 and 26, got together, and I believe No. 25 was sold to the owner of No. 26, squaring out that plot. Now, take that strip known as lot No. 54 on block 73, bounded by Plane street, Market street, Washington street and Branford place (indicating on map). It is very narrow. It is

pretty hard to determine what that is worth in its present condition. It is about nine feet wide at Washington street. I do not know what can be done with it in its present condition.

Q You mean that depth is on Branford place? A Nine feet on Branford place. It has a frontage on Branford place of about 200 feet.

Q Standing by itself, of course, you do not think that the property would be available for very much, do you? Is that your idea? A Not a great deal.

Q Well, now, has it been your experience in real estate matters that property owners do get together and shape their lots to make them available? Does it work out that way? Has that been your experience, particularly in the opening of a new street? A Sometimes they do not get together. It all depends upon how anxious either party may be. I can refer to one case in particular, if you want me to.

Q No, we will get to that case in a moment. For instance, the last case that you mentioned gave a depth on Branford place of 10 feet at one end, at the Washington street end? A Of nine feet.

Q Or of nine feet. And you have testified that that would not be available for very much; in fact, hardly anything. I do not suppose it would, would it, standing alone? A I do not know what it could be used for.

Q So that in order to make that property available it would be necessary to take part of the property next to it and add it on, or else the property next to it take the nine feet and make it part of that plot, one or the other? A Yes.

Q That would be the only practical way of dealing with that nine feet? A Yes.

Q Now, then, for instance, in determining the value that stands next to the nine feet, as an example, would you consider the practicability of taking that nine feet, or of selling that to the owner of the nine feet—the probability of it? A It is so purely speculative that it should have no important place in one's consideration of the value of either piece.

Q You would not give it any consideration? A I would, some, but it is too uncertain.

Q Well, all future market values are more or less uncertain, are they not? A I do not think so.

Q You say you would give it some consideration, would you not? A Some.

Q And it would undoubtedly, if you give it some consideration, have some influence on values? A No, I wouldn't give it that consideration that could be measured in dollars and cents.

Q You do not think that the possibility of acquiring nine feet that would make a property a frontage on Branford place would enter into your consideration at all in striking the market value? A Yes, it would enter into my consideration.

Q In what respect? A If I were the owner—

Q Not the owner. A In my opinion, the owner of the adjoining property would be very foolish to add to the value of his property in his mind on the possibility of obtaining the property which will give him perhaps an outlet or a frontage on another street.

Q Would not a real estate broker give that consideration? A Oh, a real estate broker would use it in trying to effect the deal.

Q And that would undoubtedly be used by a real estate broker for psychological purposes, would it not? A As an argument.

Q As an argument? A Perhaps.

Q Now, is a property that has a depth of 50 feet, let us say, on Branford place very available? A Not very, but it is available; you can use 50 feet.

Q For some purposes? A Yes.

Q And if there were property in the rear of that 50 feet and you were endeavoring to sell the 50 feet, you would probably use as an argument the probability of acquiring the property in the rear of the 50 feet, so as to give the 50 feet a proper depth? A As a broker, yes, I would endeavor to—

Q That would be one of your arguments that you would use in endeavoring to strike a value with a man that intended to buy or wanted to buy property? A Yes.

Q So that property, for instance, that faces on Camfield street directly north of property of the estate of John D. Peddie, which only has a depth of 50 feet, would be considered and urged —the possibility of purchasing it would be urged by you in striking the value or in endeavoring to sell the property to the estate of John D. Peddie, would it not? A Not in that particular case.

Q That is one of the exceptions? A Yes.

Q Is it not a recognized rule among real estate brokers in straightening out lines to give two feet of rear property for one foot of front

property? A I never knew of that rule; I never heard of it.

Q You never heard of it? A I never heard of it.

Q You have testified that Branford place will have through traffic? A Chiefly.

Q Chiefly. And by that you mean that traffic that comes from west of High street and uses Branford place will be the traffic that has no business along the line between High street and Broad street? A Chiefly, I said.

Q Now, that traffic that formerly was on Market street, that through traffic that formerly used Market street, did you consider that a benefit to Market street— A Yes.

Q —between High and Broad? A No doubt.

Q Did you consider that the diversion of such traffic from Market street to Branford place a detriment? A Undoubtedly.

Q What was the benefit of through traffic on Market street to Market street? A Well, through traffic, as far as Market street is concerned, does that mean express traffic which starts from one point and stops at another point, east of a certain point?

Q I asked you whether the traffic that you referred to was the traffic that had no business between High street and Broad street and you said that that was the traffic that you referred to. I ask you now what benefit was that to Market street, between High and Broad? A Shopkeepers on Market street display their wares in the windows; the windows are a very important factor to storekeepers, and a display of goods may be seen from an automobile or from a wagon and by pedestrians.

Q Advertising purposes? A Oh, no; that, of course, but it will attract buyers into the store. They may not buy what they see in the window, but the fact that they went in, salesmanship will sell them something.

Q I am now speaking of persons that are bound for a point beyond Broad street, east of Broad, who have no business between High street and Broad street, not purchasers of goods, in stores between High and Broad street, but persons who are bound for a point east of Broad.

The Court. Well, I understood the witness to have in his mind the possibility of a person who was bound somewhere beyond Market street, who might be attracted by what he saw in going through Market street and so perhaps become a customer, or something of that kind.

Witness. There is nothing to prevent anyone from stopping, even though bound for the meadows.

Q You think the diversion of that traffic was a detriment to Market street? A There is no question about it, in my mind.

Q Do you consider that there was any congestion on Market street? A Yes, but not more than the merchants wanted or needed.

Q Do you know that there has been under consideration for some time past a means of diverting some of the traffic which helped congest Market street from Market street?

Mr. Stein. I object to that question, if your Honor please.

The Court. You may say yes or no to that.

A You asked me—

Q (Question read). A Yes, but not—I don't think that any property—

Q Now, you have answered the question; you have said yes. Do you know whether that project was under consideration by the merchants of Market street? A I never heard of that; I don't think that any merchant wants to divert traffic.

Q Do you know whether that project was under consideration by the Market Street Business Men's Association? A I do not.

Q You do not know that? A No.

Q You do not know whether it was or not? A No.

Q Now, you have said that persons with not much capital will go on Branford place, whereas formerly they would try it out on Market street? A They would be compelled to try it out on Market street, if they wanted to be downtown.

Q Well, were the rents very high on Market street? A In some sections, very high, and others not so high.

Q And you consider that they would find lower rentals on Branford place? A I think so.

Q Have there been very many empty places on Market street prior to this opening? A There were some; I don't recall how many.

Q Near Broad street? A Not so much, no.

Q There were some, were there not, right on the first block west of Broad on the southerly side of Market street? A How far west?

Q Well, in that first block, up to Halsey street. A I don't remember any which were vacant on Market street in the first block, ex-

cepting on the northerly side, when Bamberger moved, they were vacant for a little while.

Q No, I mean on the southerly side. A Perhaps the Century building, at 142 Market street, was vacant there for a little while; I don't know.

Q For a little while? A Yes.

Q Do you know how long? A I am not certain as to the time.

Q Was it not vacant for pretty near a year? A I don't think so.

Q Do you know whether or not the office building, the Lawyers' building, was filled with tenants prior to the opening of Branford place? A I don't think it was full.

Q It was quite empty, was it not? A But that was due—

Q One moment. It was quite empty, was it not? A I don't know how empty it was; it was not full; but there is a reason for that.

Q And what about the Century building—offices? A There are reasons for that having vacant offices, and good reasons.

Q And what about the Telephone building? A The same reasons.

Q That was prior to the opening of Branford place? A Yes.

Q Now, you have said something about the Jenkinson property, on Washington street, not being benefited, and in connection with that you testified that the fact that the property was in the second block from Market street had an injurious effect on the property. Is that correct? A A slight injurious effect, yes.

Q And you further said that if Branford place had been put on the south of the Jenkinson property that it would have increased the

value of the Jenkinson property by reason of being put in the first block; is that correct?

Mr. Stein. No, I do not think he said that.

A No, I don't think that is correct.

Q Well, just what did you say about that? I want to get what you said. A The element that we were considering was as to whether the property would be affected if it was in the first block. I said that the Jenkinson property suffered a little by reason of the fact that it was located in the second block. I did not say that the Jenkinson property as a result of the opening of Branford place has not been peculiarly benefited; I said that perhaps the peculiar benefits offset the harm that the property has suffered by reason—

Q I understand that. Mr. Stein asked you what the effect of placing Branford place south of the Jenkinson property would be. A As far as that one element is concerned, it would be better for the Jenkinson property if it were in the first block rather than in the second block.

Q Well, why? A For the reasons that I have stated before. My experience has been that it is easier to sell, it is easier to rent property in the first block than it is in the second block. I have property on William street and I know that is one of the arguments that is brought up, in the second or third block.

Q The second street, that is the street immediately south of the main street, is an important street why the property I take it is more benefited than if the second street is an unimportant street? A It would have some effect.

Q So that property which would be between Branford place and Market street on Washington would be beneficially affected, whereas, it would not be if there was no street south of Market on Washington. Do you understand what I mean? A I don't quite get you.

Q What is your opinion concerning the comparative values of property which is situated between two important streets in comparison with property that is situated south of one important street and there being no second street? A You refer, of course, to the Branford place and Market street. We can't discuss that as a general proposition.

Q Why not? A Generally speaking, you have to analyze conditions. Now, I say, the element of traffic will more than offset the element of one block or another block in this case.

Q You have testified that Branford place will become an important thoroughfare and will take considerable traffic from Market street. That is your view, is it not? A I have not testified that Branford place would be a very important thoroughfare.

Q Won't it be an important thoroughfare? A I don't know. It will be a business thoroughfare probably.

Q It will be a competitor of Market tsreet? A It will be a competitor of Market street to a certain extent. It will never be the equal of Market street.

Q Do you think that if a property lies between two streets where there is considerable traffic it is not more benefited than if it is immediately south, or not immediatelv south, but if there are not two streets? A If traffic

has been diverted from certain points it would hurt it. As far as the Jenkinson property is concerned it was in the first block.

Q Now, I am asking you in reference to placing it on the other side of Branford place. Do you know what I mean? A Yes.

Q You have testified that you thought it would be benefited if Branford place was south of the Jenkinson property instead of north? A That is right.

Q Now, I am asking you whether the fact that a property is situated between two important streets such as Market street and Branford place that it is a better situation from a market value standpoint than if no Branford place had been there? A In determining that—

Q No, answer yes or no.

The Court. No, I don't think you can hold down an answer to yes or no on questions of this kind, having more than one consideration. I think it is proper he should answer it more in his own way.

Q (Question repeated.) A My answer to that would be that in determining as to what I consider were the peculiar benefits on a particular property I would have to consider the various elements that enter. One element may tend to depreciate property slightly, another element may tend to increase the property or decrease it and I would have to weigh the degrees of benefit or harm before arriving at a conclusion.

The Court. Go ahead and do that.

A In this particular case the Jenkinson property will undoubtedly be more valuable if it were in the first block. On the other hand, if it were in the first block it would suffer as a re-

sult of loss of traffic which perhaps had been diverted from Market street and now go down Branford place and I maintain the loss of traffic will have an effect on the market value in excess of the benefit it would derive if it were in the first block.

Q What about traffic that came over Branford place and went over Washington street to the north? A As I said before I think Branford place will be used chiefly for through traffic.

Q You don't imagine that traffic that comes from the southerly side of the city, say South Broad street, that wants to get over to Washington street or to Plane street, that it is going to go around Market street, or say on the north side of Market street, in the vicinity of Washington? A I don't think there will be any difference because before the opening it was quite convenient for anyone to go without Washington street.

Q But, I am talking of traffic that comes from South Broad street. It is a convenient thoroughfare where it can go north to Market street in the vicinity of Washington street. Do you think that that traffic would go all the way around the adjoining part of Market street in preference to going up Branford place and into Washington street? A No, I do not. I think they probably would use Branford place and go over Washington street.

Q One moment, you have answered that question.

The Court. Go on, finish your answer.

A The amount of that traffic would be very little.

Q That traffic formerly would have gone up Market street, would have to go up Market street, in fact? A Not necessarily. It could have gone up Court street and got into Washington street that way.

Q But there is not very much traffic on Court street formerly or now? A I don't know just how it is there but there is considerable traffic on William street.

Q There are trolley cars that go over Washington street and that would be a feature that would probably affect a man's—the direction in which a man is going, vehicular traffic? A That would not be such an important factor downtown for the reason that Halsey street is a nearer street, Plane street stops at Court street so that anyone going south would preferably take Washington street even with the car line.

Q So that Washington street had considerable traffic before the opening? A Quite a little, yes.

Q You don't mean to say now that there wasn't considerable traffic that formerly went from South Broad street up Market street where the traffic had any particular occasion to stop in front of property on the north side in the vicinity of Washington street, do you? A There was some traffic but as I said before not enough to make any difference in the value of a piece of property.

Q That traffic now, a great deal of it goes up Branford place and over Washington street into Market, does it not? A I don't think there is a great deal.

Q Doesn't that traffic go up Branford place and north on Washington? A No, it can come up William street.

Q Why didn't it come up that way before? A Perhaps it did.

Q But you testified that a good deal of it came up Market street? A I don't think it did.

Q (Question read). "You don't mean to say now that there wasn't considerable traffic that formerly went from South Broad up Market street where the traffic had any particular occasion to stop in front of property on the north side of Market street in the vicinity of Washington street?" So that there was some traffic that used Market street for the purpose of getting to Market street in the vicinity of Washington street? A There was some.

Q Now, that traffic, I say now, considerable of it reaches Market street in the vicinity of Washington street by going up Branford place and north on Washington, doesn't it? A I said that, but not enough to make any difference.

Q In your opinion it was more than offset by the diversion of traffic that usually came from Market street south? How much traffic was there that turned from Market street to go south on Washington? A I have no figures. I can't tell that.

Q Was it a great deal? A A great deal more than went south from Market street than perhaps came from the other direction.

Q For what purpose, go to places on Washington street? A Probably.

Q But beyond that very little traffic went over Washington street south? A Some traffic went south.

Q Very little traffic went south? A Washington street is very wide, south.

Q South of Market street is a wide street? A As compared with Halsey.

Q For the purpose of traffic? A It is wide, yes.

Q Do you consider it in connection with the trolley cars that go along Washington street, notwithstanding that it is a wide street for the purpose of traffic? A As I explained before, comparing it with Halsey street which is a very narrow street, and Plane street, which is a short street, stops at Court, probably would be inclined to use Washington street.

Q How wide is Plane street, do you know? A I don't know exactly.

Q Do you think it is wider than Washington street? A I don't say that.

Q Or do you think it is? A I haven't measured it. I don't know. I say that Plane street is a street that stops at Court. It is not a through street.

Q How much further is Washington street? A Washington street?

Q How much further does it go? A Goes to Clinton avenue, I think.

Q About two blocks further? A Perhaps—

Q Makes a turn? A Perhaps a mile.

Q A mile from— A From Court street.

Q Yes. A I haven't measured, I should judge so.

Q Clinton avenue goes a mile further than Plane street goes? Is that your idea of it? A I haven't measured it. I should say right about that, perhaps less, because it is a big distance.

Q But the travel over Plane street for traffic is much more convenient than over Washington street as far as Court street, is it not? A As far as Court street, perhaps.

Q Is there any question in your mind about it? A I am not certain about it at all.

Q You think that where there are trolley cars it is more convenient to travel, traffic can be taken care of more easily than where there are not trolley cars? A No, but Washington street is a better street. It is known as a new street. I don't think that anybody would take Plane street and then Washington street. They would follow Washington street right through.

Q Isn't it a matter of convenience in saving time? A Yes.

Q Do you think traffic would save more time and have more conveniences on Washington than it would have on Plane street? A I don't think it would be much less. I don't think it would be any less.

Q You have said that traffic on Market street has been diverted. Does that include traffic, eastbound traffic and westbound traffic or just eastbound traffic? A I believe there has been more eastbound traffic diverted than westbound traffic, but both.

Q Is there both or isn't there both? A Yes.

Q There wasn't very much westbound traffic diverted from Market street? A Not as much as eastbound traffic.

Q Was there very much eastbound traffic diverted? A Westbound, a little, not as much as that coming from the other direction.

Q That is by comparison. I am asking you now whether in your opinion there was much westbound traffic diverted? A Some.

Q How would that continue this way, west of Broad? A If it were going up Market street?

Q Yes. A It might continue on Market street, might turn over and go up Branford place.

Q I am talking now of the traffic that has been diverted to Branford place, how that would continue as to Broad? A It would depend largely upon where it was bound for.

Q I am talking about the traffic that has been diverted from Market street, the westbound traffic that would continue west of Broad in what way? A It might come up Branford place, it might take William street, Court street.

Q Notwithstanding that it might have before Branford place was opened? A Yes.

Q I am talking about traffic that has been diverted from Market street to Branford place going west beyond that?

The Court. In consequence of the opening of Branford place.

Q In consequence of the opening of Branford place? A As I said before, I don't think it is much.

Q You have said it is some? A Some.

Q I want to know how that some gets into Branford place from Broad street going west? A It turns at Broad to the left, goes up Branford place or—

Q The Branford place traffic is what I am talking about, which way that would get into Branford place? A Some of it—

Q Well, how else would you get into Branford place excepting by going in from Market street over Broad and up Branford place? A You were speaking only of that traffic which has been diverted from Market street.

Q Into Branford place? A That would probably take Broad street.

Q And in doing that it would have to pass the Stoutenburgh property and the Watson property, would it not? A Yes.

Q And that is traffic which didn't pass there before? A Yes, but so little—

Q That is traffic that did not pass there before? A Yes.

Mr. Stein. You are speaking of vehicular traffic?

Mr. Kalisch. Yes, vehicular traffic.

Q You have testified that northerly from Branford place on Shipman street, about 50 feet, property was benefited peculiarly? A I qualified that by saying the one piece of property, the only one that there is.

Q In what way was that benefited? A It received new frontage on Branford place, got some of that traffic, got light and air with a frontage on three streets instead of two as formerly.

Q The frontage of that property is Springfield avenue, isn't it? A It has three frontages.

Q Would you not arrive, would you consider it as frontage on Branford place or Springfield avenue? A Well, Springfield avenue property is increased, more valuable than Branford place property at that point.

Q I am asking you whether you would consider that property as fronting on Springfield avenue or would you consider it is fronting on Branford place? A In that case I probably would consider it as fronting on Springfield avenue.

Q No question about that, is there? A I don't know. It has a greater frontage on Branford place.

Q You think then that you would consider it as fronting on Branford place, would sell it as fronting on Branford place? A If the frontage of one street is a great deal larger than the

frontage on another street, and as a real estate broker I could present the property in a more favorable light by referring to the larger frontage I might consider the Branford place frontage as against Springfield avenue.

Q And you would consider this the rear of that property? A I haven't noticed that particularly.

Q I am asking you, the illustration presents that property around it. A Here is what I am trying to show. If a property on a street, if the property has a frontage on a street of lesser value but a frontage that is so much greater in extent than the frontage on Springfield avenue for instance, if a piece of property had a frontage of two feet on Springfield avenue, and I thought that property was worth $2,000, a thousand dollars a foot, and that property had a frontage of 150 feet on Branford place and Branford place was worth $300 a front foot why it would be better for me as an owner of that property or as a real estate broker to speak of that property as Branford place property rather than Springfield avenue property.

Q Now, this property, would you consider that fronting on Springfield avenue or Branford place? A I would say Springfield avenue.

Q You spoke of Branford place being an additional means of getting down town for people living west of Broad, South Orange avenue, Springfield avenue and you assigned that as a reason for benefiting downtown property, assigned that as being a benefit to downtown property. Do you remember so testifying? A Something—

Q Something to that effect. You gave as an illustration the fact that you had been in business on South Orange avenue. A I said that

the reason of great convenience, general convenience to get down town would have a detrimental effect on property west of High street.

Q And a beneficial effect on downtown property? A Yes.

Q That is true, is it? A Yes, sir.

By the Court.

Q The trend down town? A Yes.

By Mr. Kalisch.

Q Do you, therefore, think a means of access to a certain property benefits the property? A I think it does.

Q And has an effect on its market value to a certain extent? A Yes.

Q Now, I call your attention to the property owned by the Newark & New York Railroad, popularly known as the New Jersey Central, on Broad street. Now, do you think that the fact that Branford place is in close proximity to the Central Railroad station on Broad street that it adds to the value of that property for railroad purposes?

Mr. Stein. Just what block and lot?

Mr. Kalisch. It is block 165, lots 106 and 107.

A You speak of the entire railroad property all the way back to Mechanic street or just the Broad street property?

Q Lot 106, the Central Railroad station used for passenger purposes. What have you to say about that? A I don't think that that has been peculiarly benefited.

Q Does Branford place afford an easier means of access to the station than that railroad had before Branford place was opened? Yes,

but I don't think that it would have any effect on the general convenience rather than a peculiar benefit.

Q What did you mean by peculiar benefit in relation to this property? A Well, I say that the traffic that could get to the station easier as a result of the opening of Branford place would not be enough to make any material difference as value of that property.

Q The market value you are speaking of? A Market value, yes.

Q Do you think it would increase the value of the property as a railroad property, not market value, but to the use to which that property is put regardless of market value? A With particular reference to it as a railroad property, I think not.

Q You don't think it would increase the efficiency as a railroad property? A I don't think so.

Q You have testified a moment ago that easy access to property affects market value. Now, you say that the convenient access, or the easy access, to the Central Railroad property does not affect market value. What do you mean by that? Do you want both of those answers to stand? A I would compare Branford place property with the railroad property. If you open a new street and thereby give access to new frontage, that property has been peculiarly benefited as a result of the opening of that street; but the railroad property has always been on Broad street, and I say that the additional traffic that may get to the railroad as a result of the opening of that would not be sufficient to change my opinion as to what I consider the market value.

Q What you consider the market value? A Yes.

Q Well, what do you consider to be the market value? A Of the railroad property?

Q Yes.

Mr. Stein. I object to that, if your Honor please.

Mr. Kalisch. I can ask him to explain his own answer.

Mr. Stein. I do not think it is important in this case what the market value of the railroad property is.

The Court. Is the assessment predicated on market value in this case?

Mr. Stein. We assume that it is predicated on the enhanced value of the use rather than on the market value.

Mr. Kalisch. The witness has made an answer. I do not suppose I will be foreclosed from asking him what he means by his answer, in connection with the questions that I asked him concerning the value of railroad use, and he has given an opinion about it, and if he merely considered it from the viewpoint of market value, I believe I have a right to ask him that.

Mr. Stein. The question is not as to what the witness means, but it is directly as to what he considered the market value was. You did not ask him for his meaning.

Mr. Kalisch. No, he used the words "market value."

(The stenographer reads from the record.)

The Court. Well, is it not enough to say that the question of market value is irrelevant?

Mr. Kalisch. But if that has been a fact that he has been considering in giving these answers concerning the value to the railorad, I think it would affect his testimony quite considerably.

The Court. At this point that seems to have been the thing to which the witness's mind was directed with respect to this railroad property, or one of the things; that is, market value.

Mr. Kalisch. Well, when I asked him what he considered market value, I did not mean in dollars and cents; I meant what did he consider to be market value. It does not make any difference to me what the market value is in dollars and cents, but what he considered to be the market value. It is merely in explanation of his own answer.

The Court. I do not think we have anything to do with the market value. I sustain the objection.

Q What consideration did you give to market value in determining the additional value that the Branford place opening gave to the railroad property?

Mr. Stein. I object to that question.

The Court. I think that is admissible for the purpose of seeing whether the witness employed a factor in his calculation that was inadmissible, and so might vitiate his mental process.

Q (*By the Court.*) What effect, if any, did you give to market value? A I believe I understand your question. I knew what the market value of the railroad property was prior to the legal opening of Branford place, and I knew

what the value of that property was at the time of the legal opening, and I know what the value of it is today.

Q (*By Mr. Kalisch.*) Market value? A Market value.

Q And that is the way you arrived at your opinion as to the value that the railroad property had? A As to peculiar benefits?

Q I mean as to peculiar benefits? A Yes.

Q That is the method that you employed, is that right? A Yes, sir.

Q And when you employed that method you considered that the opening of Branford place, affording an additional means of access to the property, did not increase the market value of that property? A No.

Q That is the conclusion that you arrived at? A With reference to the railroad property?

Q With reference to the railroad property; is that right? A Yes, that is my conclusion.

Q Now, get the market value of the property out of your mind for the present, and take this view. Do you think that the value of the use of the property as a railroad property is enhanced as a result of the opening of Branford place—not the market value of the property, but the value of the use of it as railroad property? A Only to the extent that it may be a little more convenient for some people to get there—general convenience, general value.

Q So that not the market value, but the value of the use of the property as railroad property, is enhanced A Not a great deal.

Q But some? A Some.

Q Now, on the west side of Broad street, you have considered property about half the distance to William street as being benefited? A Yes, sir.

Q That is, south of Broad? A South, that is right.

Q Now, what caused that benefit? I mean how did the opening of Branford place cause that benefit to accrue? A Additional traffic, perhaps, the fact that the traffic which heretofore used Market street now comes down Branford place, and they can shop there, where formerly they shopped on Market street.

Q Well, I do not quite get what you mean. A The traffic which has been diverted from Market street to Branford place formerly may have found it convenient, by reason of the fact that it passed the property on Market street, to shop there, and, coming down Branford place, might shop on Broad street south.

Q Now, what are you talking of, the vehicular traffic? A Both.

Q You mean to say that some of the traffic that goes down Branford place would, as the result of going down Branford place, find it more convenient to shop on Broad street south of Branford place? A I think so, yes.

Q Do you think that the proximity to a street such as Branford place would affect the market value of property? A I think it would.

Q And the relationship of any particular street to a new street would affect the market value? A Well, just what do you mean by "relationship?"

Q Why, I mean such a thing as business relations between persons on Market street and people that will eventually come on Branford place, and the commercial intercourse between the two streets, whether that would affect, in your mind, Market street values? A You spoke of two elements, proximity and also relationship.

Q Yes. A Now, which one do you want me to—

Q Both. You have answered as to proximity. Now let me hear what you have got to say about relationship. A About relationship?

Q Yes. A That would all depend on just exactly what point you have reference to. There is no doubt in my mind that Broad street has been benefited as a result of its close relationship to Market street, and Market street has, on the other hand, been benefited by reason of its relationship to Broad street; but Arlington street or Springfield avenue—or Market street—has not been benefited by reason of its close relationship to Arlington street. So that it all depends on which particular point you are viewing it from or referring to.

Q I am talking about Market street and its relationship to Branford place. A I say that Market street has been injured by reason of its close relationship to Branford place.

Q You think, then, that if Branford place developed into an important business thoroughfare that Market street values will go down? A Well, in answering that question I would have to consider the growth of the city. I believe that Newark is going forward and not backward, and it is possible—

Q Well, now, do you think that values will go down on Market street? A Further than they are now?

Q Yes. A That depends to a large extent on general conditions. If the prosperity that seems to be abroad at this time continues, I think that Market street will in time increase in value.

Q Do you think that Branford place will increase in value? A Undoubtedly.

Q Do you think that there will be enough traffic in the city for both streets and enough business for both streets? A There may be, if the city grows.

Q Do you not think there will be? A That is so speculative that it would be pretty hard for me to answer that; that is so far in the future.

Q Well, you have stated that you think that Branford place will be an important thoroughfare? A I did not say that.

Q Well, do you not think it will be? A It will be important as compared with Bank street; it will not be important as compared with Market street.

Q So that the rents on Branford place will never be as high as Market street rents? A I do not think so, no.

Q And what, in your mind— A But the rents on Branford place near Broad may be higher than the rents on Market street near the easterly opening.

Q On Market street near the easterly opening? A The westerly opening, I mean.

Q Well, that is on account of its proximity to Broad street? A Yes.

Q Do you not think that the fact that Broad street has been greatly developed in the last ten or fifteen years has affected values on Washington street and on William street and on Halsey street? A What do you mean by the development of Broad street?

Q As a business thoroughfare. A Well, it always was a business thoroughfare.

Q I am saying the development as a business thoroughfare. It is a question of degree. I say that with that development Washington street and Halsey street and Bank street and William

street have likewise as a result of it increased in their market values? A In some cases, yes; and in other cases, no. The paving of Broad street, for instance, has hurt Halsey street. Halsey street has been used as an automobile street. Broad street, I think, is the logical place, but the pavement was bad.

Q I am asking you now whether you do not think that the development of Broad street as a business street did not increase the market values of parallel streets, say two or three blocks east and west of Broad street? A Oh, no doubt it has had its influence, but the difference in values are so great between Broad street and Bank street that it apparently has not had a very great effect.

Q What has been the comparative values between Bank street property as the values stood fifteen years ago as compared with what it is today on Bank street? Have they gone up or down? A What portion of Bank street?

Q The first block or two—the first two blocks. A I attribute the increased value of Bank street property in that section more to the fact that the Prudential has put up its building there than to any benefit it may have received from Broad street.

Q Well, take William street. Has William street property gone up in the first two blocks? A Since how long?

Q Well, the last ten or fifteen years? A Yes, but not due so much to the influence of Broad street as to the fact that real estate men picked out William street as a good street for automobile concerns and induced them to locate there.

Q So that you think that if Broad street was just a street like Plane street, say, that William

street, the first two blocks west of Broad, would be just as valuable? A Oh, no; I do not say that.

Q Well, now, then, you do say that Broad street has had its influence on William street property? A Yes, but I say that there are other elements which contributed perhaps as much to the increased value of some of these side streets as much as Broad street.

Q As much as Broad street? A Perhaps.

Q Well, what do you mean by "perhaps?" Are you not sure? A Well, I haven't got right down to figures and figured it out. You spoke of Bank street—

Q No, take William street. A Well, I will take William street. There is not much more activity on William street today than there was ten years ago, except for automobile concerns.

Q Do you not think that property on William street, the first two blocks, has gone up fifty per cent? A Yes, but, I say, not due only to the influence of Broad street.

Q No, but is not the biggest part of that increase due to the proximity of Broad street and the development of Broad street? A I am not so certain about that, no.

Q So that if Plane street were where Broad street is it would go up just the same—not quite the same amount? A I do not say that either.

Q Well, I would like to get your idea about it, just about how much the influence of Broad street helped to increase values of William street?

Mr. Stein. One moment. I was wondering whether we had not gotten away beyond the line of our inquiry now, in considering what the effect would be if Plane street

was where Broad street is, and what the effect would be on William street if Plane street were shifted to where Broad street is.

The Court. Well, it is not the first attempt to reconstruct the city that we have had. I hardly know where to draw the line. I think the witness may answer this question, if he can.

A I said before that Broad street has undoubtedly had its influence, but there were other causes that contributed to the growth of those streets; just how much I don't know.

Q Well, the biggest part of the growth of William street values is due to Broad street influence, is it not? A Basicly, yes, I suppose so; yes, originally.

Q Now, do you not think that the bringing in to the center of the city of a street which is a wide thoroughfare, such as Branford place, and the opening up of new frontage on a street such as Branford place, influences beneficially the property in the vicinity, parallel streets as well as cross streets? A I do not think so, no.

RECESS.

Cross examination (continued) by Mr. Kalisch.

Q In your testimony this morning you referred to block 231, lots 6, 8 and 9, as being benefited, peculiarly benefited by the opening of Branford place. Have you considered whether those lots, block 231, bounded by Stirling street, South Orange avenue, Howard street and High street, lots 6, 8 and 9, do you consider that the amounts that they were assessed was excessive?

Mr. Stein. I object to the question. That is not part of the direct examination in the

first place and in the second place these lots are not represented by us and thirdly they are not objected at all, so the question as to whether these three lots which were put in the zone of peculiar benefit, were excessively assessed or not cannot possibly be material.

The Court. I think you may ask the question.

Counsel for Richard C. Jenkinson, *et als.*, objectors, prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

By Mr. Stein.

Q Do you know the amount of the assessment? A $750.

By the Court.

Q Altogether? A I think it is. I haven't taken that property and analyzed it to see just how much the peculiar benefits were.

By Mr. Kalisch.

Q You can't say whether that amount is excessive? A I don't think it is excessive.

Q You think it should be assessed more?

Mr. Stein. I object to that.

Q You think it is too little? A As I said before, I haven't analyzed that particular lot and in order to answer that question correctly I would have to consider it further.

Q What makes you think that they were peculiarly benefited? A Well, that plot is in the first place at the intersection of High and Springfield avenue and that is quite a central point in that section. A lot of traffic is dis-

tributed from that point, east and west or north or south, in fact.

Q Hasn't there always been a lot of traffic distributed from that point? A Yes, but that particular property is brought out more conspicuously from an advertising point of view. It can be seen easier.

Q It can be seen from Springfield avenue, that property which you claim was benefited? A Not any more so—you mean west and south?

Q Yes. A Not any more so than before.

Q That is just the point? A I mean traffic coming—

Q You said it can not be seen any more so now than before? A That is for traffic coming from a westerly section of Newark and going east, but the traffic coming up Branford place would see it quite a distance.

Q You say the traffic going west of Branford place would not be so much as the traffic going east?

Mr. Stein. I don't think that correctly expresses the testimony.

A In other words the peculiar benefits that apply to that particular property apply more to the High street frontage than the Springfield avenue frontage in that case.

Q Why? A Because it is seen coming up the street.

Q Isn't it seen from Springfield avenue? A Yes, but not so much.

Q You don't see it until you get out toward High street, do you? A Well, you see it after you pass Shipman street and perhaps for a greater distance.

Q You would see it from Springfield avenue when you passed Springfield avenue? A East of High?

Q Yes. A Yes.

Q You can see it going west on Springfield avenue before the opening just as well as you can see it now since the opening? A I don't think so. You have two ways of seeing it now. You gain additional traffic, traffic coming from the southerly section of Newark you gain some of that.

Q All that traffic formerly went up through Springfield avenue? A Market street.

Q Market street, didn't it? A Yes.

Q Then the same traffic that sees that property now saw it going up Springfield avenue before, didn't it? A Its value as I say is that it is brought out conspicuously and more so than it was before.

Q Show me in what way it is brought out more conspicuously. A There is a plaza which has been formed there which was not there before.

Q There is no more people that go up Springfield avenue since the opening than before the opening, is there? A There are some more people perhaps, perhaps not. I don't think there is so much difference as far as Springfield avenue west is concerned.

Q I mean Springfield avenue west. There isn't much difference, is there? A I don't think so.

Q Well, so far as that corner being more prominent, it isn't seen by more people coming up Springfield avenue than before the opening? A I think so.

Q From where? A It would be seen by more people but it stands out in greater prominence than it did before.

Q It stands in the same place? A The same way as the National State Bank on the corner of Mechanic and Broad.

Q Now, there is nothing that makes those three lots more prominent as a result of that opening to more people than theretofore? A Probably not, but it perhaps brings it to their attention more than it did before.

Q Why do you say that block 232, lot 5, is peculiarly benefited? A Where is that?

Q That is No. 493 High street, in block 323, which is bounded by Thirteenth avenue, High street, Stirling street and Howard street? A About the same thing as the other property. This corner has been brought into greater prominence.

Q You can't see it from Branford place, can you? A No, you can see it when you come to this point.

Q You could see it then before Branford place was there? The minute you get up to the point you indicate? A Not as prominently as now.

Q Why not? A Because it is a fact that that property has been brought out in greater prominence than it was before.

Q The same amount of people pass High and Springfield avenue as passed it before the opening, as pass it now? A Maybe a little.

Q As a result of the opening? A Yes.

Q On Springfield avenue? A At this particular point.

Q From where? A Coming down this way, coming down Breintnall place.

Q Do you think that traffic coming from Breintnall place would use Branford place in preference to Market street? A Some of it would, not a very large percentage.

Q That would not increase the market value of that lot, would it? A That wasn't an important consideration, no, but it would have some effect.

Q What effect? A It received the benefit of a little additional traffic.

Q Would that increase the market value of that street? A At that particular point I think it would. The other property north of that point is all residential. That happens to be a business property on that corner.

Q Why do you say that property, that the National State Bank property has been peculiarly benefited? A For several reasons. First, you can see it from almost every part of Branford place going in an easterly direction. It has an advertising value.

Q And is the Globe building the same reason? A The Globe building cannot be seen so well, but it is brought out into greater prominence by reason of the opening of Branford place.

Q The people that come down east on Branford place formerly? A It gets the benefit of additional traffic, too, which is bound north or south.

Q The traffic that came east on Branford place formerly used Springfield avenue and Market street? A Yes, there is an offset there.

Q That was true particularly of traffic that went south on Broad? A Yes.

Q So that the people now, the people that use Branford place to come south on Broad formerly used Market street and then turned south on Broad, is that correct? A I don't get that.

Q The traffic that formerly went down Branford place for the purpose of going south on

Broad, formerly went down Market street for the purpose of going south on Broad, now has been diverted into Branford place, is that correct? A Yes.

Q What other traffic goes down Branford place? A It might get some of that traffic that headed east which now goes down Branford place which formerly went down Market street and turned to the left.

Q Branford place gets that? A I think that property has additional traffic.

Q What other traffic does Branford place get in your opinion besides the traffic that formerly went down Market street and headed south on Broad? What traffic besides that traffic? A It might get a little of the traffic westbound of Market street, not much so.

Q And outside of that no other traffic into Mechanic street? A I don't think there is much traffic into Mechanic street.

Q Is there any? A There may be some.

Q As a result of the opening there may be? A The traffic does not help Mechanic street. I think it rather hurts it.

Q Now, the same traffic, therefore, that went down Branford place, that goes down Branford place and past the National State Bank building in front of it would also be able to see the National State Bank going south on Broad from Market, could it not? A Yes, I believe that these benefits that the National State Bank property has received is more from an advertising point of view than anything else.

Q In reference to Branford place? A Yes.

Q Is that more on account of the building than on account that the land that is there? A We are considering the land.

Q Then is it on account of the attractive building of the National State Bank rather than on account of the particular locality? A I think the locality is the important consideration. The building, of course, helps.

Q That really is the main element in considering the prominence of that locality? A The building?

Q Yes. A I know if that building were elsewhere—of course they would not have the advertising advantages it has now.

Q But if there was no building on it at all it would not be so prominent a locality, would it? A I don't think it would affect the locality. I think the locality is a prominent place.

Q But, of course, I mean it would not make the locality so prominent without the building as with the building? A Well, it is a beautiful building and, of course, it attracts attention where mere land would not.

Q The National State Bank property, which means the building and the land, was as prominent to the persons that walked south on Broad street from Market as to the same people that walked down Branford place? A No, I don't think so. It is at the head of Branford place and you can see it for a great distance.

Q You walk right towards it as you come toward Market street from Branford place, do you not? A Yes, sir; it is like the end of a magnificent park.

Q Does that not make Mechanic street a more prominent street, the fact that it is right at the end of Branford place as you go toward it? A It might make Mechanic more prominent, but, as I say, the effect of traffic on Mechanic street would be detrimental rather than beneficial.

Q Why? A On account of the nature of the business done on Mechanic street.

Q What is the nature of the business? A Plumbing supplies and—it is used by concerns who do a great deal of loading and unloading, and anything which interferes with the loading and unloading is a detriment.

Q You are speaking now of through traffic; traffic that goes through Mechanic street is what you have reference to, have you not? A I don't know. I say this, that any additional traffic to Mechanic street would perhaps be harmful rather than beneficial.

Q But if Mechanic street is made a more convenient street to reach by virtue of having Branford place opposite, does it not make it a more popular and more valuable street for those that are on Mechanic street? A Not in that case; I don't think so.

Q You think that the fact that traffic is now able to reach Mechanic street from the western part of the city by way of Branford place, that that does not make Mechanic street a better and more valuable street for those that are engaged in business on it than if that same traffic had to reach Mechanic street by way of Market street? A No, I think the only benefits that property owners on Mechanic street derive are those of a general character. It might be a little more convenient for concerns on Mechanic street to ship their wares, but that would not add to the value of their property.

Q Well, is that not a very important element when there is considerable loading and unloading to be done on Mechanic street? A I don't think it is an important consideration when a concern located in a certain section distributes its goods all over the county; the addi-

tion of one more street would not be of any great benefit to Mechanic street.

Q But do you not think that when Mechanic street has an additional means of access and has a more convenient means of access for the purposes of the businesses of that particular street that it makes property on Mechanic street more valuable? A No, I don't think so.

Q Why not? A Because I say it is more of a general benefit. There is a little convenience which is added, but it is more than offset, perhaps, if traffic went through there and interfered with loading and unloading.

Q What do you consider the general benefit? You say more of a general benefit. What do you mean by that? A General benefits?

Q Yes. A They are, in my opinion, benefits which are enjoyed by the entire community, perhaps even by those who live outside of your city. I think that Branford place has been a general benefit to a great many people living in South Orange, for instance. It is not measurable in dollars and cents; it is convenient to individuals.

Q What is the convenience to individuals on Mechanic street by reason of the opening of Branford place? A I can't see any great convenience to anybody.

Q Well, then, what is the general benefit? A The general benefit that a supply house on Mechanic street has one more thoroughfare that it may use in distributing its goods.

Q Is not that a benefit to the supply house? A A general benefit, but not measurable at all.

Q Who participates in the benefit to that supply house besides the person that owns the

supply house? A It may be a general benefit to a plumber in South Orange to get there.

Q And is his benefit the same as the benefit of the particular supply house, or is it a different benefit? A I think both benefits are about alike.

Q The man that has the property and the business on Mechanic street has the same benefit in his business as the man that deals with him; is that right? A It is an element, but I can't bring it right down to anything that would represent a money consideration.

Q The man that has the business and supply house on Mechanic street has the same benefit as the man that deals with the supply house; is that right? A The man who—

The Court. Your illustration of the South Orange man, the man that lived in South Orange and buys of a Mechanic street house, is what Mr. Kalisch has in mind. That is what suggested the question. The question is whether you think that the advantages that those two parties receive are the same.

Witness. They are similar in their nature.

Q You do not think that the benefit to the people that are on Mechanic street and are in business on Mechanic street is local? A No.

Q You do not think that Mulberry street would be an attractive place for persons engaged, say, in the plumbing business? A There are other streets that—

Q You do not think that Mechanic street would be an attractive street for persons that were engaged in the plumbing business?

Mr. Stein. Are you viewing it from this time, Mr. Kalisch, or what time are you viewing it from?

Mr. Kalisch. Oh, as of the time that he was testifying about.

A There are other streets that would be just as adaptable for the purposes for which Mechanic street is used.

Q You do not think that Mechanic street would be attractive for persons engaged in the plumbing business, do you? A Not particularly, no.

Q How many plumbing establishments are on Mechanic street? A Excepting by reason of the fact that there are a few there, and it would probably bring about a concentration of certain lines, that is all.

Q You do not think that, in considering the advisability of establishing a plumbing establishment on Mechanic street, Branford place would be taken into consideration, would it? A I think perhaps it would be taken into consideration to the extent that if there was any additional traffic through Mechanic street that it would probably induce an intending lessor or an intending buyer buying for his particular purpose, which is more or less wholesale, to get away from it.

Q Well, have they? A I know of one concern that got away from there. I do not know just exactly when that was, but traffic there was an important consideration.

Q Since the opening? A I do not say that; I don't know just exactly when that was, but Roe & Conover found it better to do business outside.

Q And there was considerable congestion of traffic before the opening in Mechanic street, was there not? A Yes, sir.

Q And Mechanic street remained a street where plumbers conducted business—a great many plumbing establishments? A I think so, yes.

Q Notwithstanding that congestion of traffic on Mechanic street? A Yes.

Q Now an additional means of getting out of Mechanic street and a more convenient means of getting out of Mechanic street, in your opinion, would not affect beneficially the Mechanic street property? A I do not think so.

Q Now, you make the distinction between general benefits and peculiar benefits. You say that general benefits are enjoyed by persons, or are more or less personal in their character, while peculiar benefits inure to the property; is that right? A Let me have that question again, please?

Q (Question read). A That is about it.

Q Now, there are different degrees of general benefit, are there not? A I presume so, yes.

Q And what considerations enter into the opening as to what degree of benefit inures to a particular person?

Mr. Stein. Do you understand that, Mr. Fiedler?

Witness. Yes, I think so. I will illustrate that.

Mr. Kalisch. Yes.

A I live on Seventh street, and I usually come down South Orange avenue; I drive my car, and I use Branford place in preference to Market street. Now, that is a general benefit to me; it is a convenience; but it surely has not added to the value of my property in Seventh street.

Q If you lived, say, in North Newark, and you wanted to go down to your office in the Globe building, you would not consider that you were receiving any benefits from the opening of Branford place, would you? A I think so, yes.

Q Well, what particular benefit or what general benefit would you receive? A Why, it is hard to say just exactly what benefit it would be; it would be so general in its nature that it would be pretty hard to describe it at all.

Q Would you say there was any tangible— A I think any improvement in a community—a monument is a benefit to an entire community.

Q Depending upon the proximity to the monument? A No, not necessarily.

Q Of course, that is more or less ornamental, not useful. Take, for instance, suppose you live down below the railroad, say on Mulberry street, and you went up to the Kinney building, would you feel that in taking that trip you would derive any benefit from the fact that Branford place was opened? A Not as far as that particular trip was concerned, no.

Q Well, you gave as an illustration the fact that you lived up on Seventh street and used Branford place as a means of getting downtown? A Well, I do use Branford place.

Q That is the benefit that you get from Branford place, is it not? A Yes.

Q So that the general benefit that you get from the opening of Branford place is the benefit that comes from a probable use of Branford place? A No, not necessarily.

Q Well, show me any other benefit. A It helps the city generally.

Q In what way? A More avenues; it makes it more convenient for everybody to get to various sections of the town.

Q But that is based upon the probable use of an individual of that street, is it not? If you eliminated from your mind the probability of a use of that street you would not be able to see any general benefit, would you? A It would be pretty hard to imagine such a thing, that a street was opened and could not be used.

Q Well, I mean any general benefit that you get would be based upon a probable use of the street? A No, I meant every use of that street, and it may be a benefit to my mother-in-law to use that street; that is a general benefit to a community; to that extent it would be a general benefit.

Q Well, I say the probability of the use and the likelihood of your using it would influence you in making up your mind as to whether there was a general benefit to an individual, isn't that so? A The benefits in that case would be more practical than they would be if it were a monument, a statue or a park, or something like that, yes.

Q Now, the people that are living in the vicinity of Branford place would be more likely to use Branford place than those that were living at a great distance; that is a fact, is it not? A Not necessarily.

Q People that are living, let us say, around Howard street would be more likely to use Branford place in going downtown than people that were living in Bloomfield, or, let us say, in North Newark? A Perhaps so, yes.

Q And people that are living in Bank street above High street, or, in fact, all of the property west of High street between, let us say, Court street and Academy street, would be more likely to use Branford place in getting downtown than

persons below the railroad; isn't that so? A Quite likely.

Q I am talking of general benefits now. So that it all depends upon the proximity to the opening as to whether or not a person derives a general benefit from the opening? A I don't believe that.

Q Does not that determine in your mind the degree of benefits? A Perhaps generally speaking, as far as the whole neighborhood is concerned, perhaps so, but not as far as individuals are concerned.

Q The degree of general benefit derived by a person living near is greater than the degree of benefit derived by persons living at a greater distance and in a different direction than where the first person resides? A Perhaps not. Perhaps I, who live on Seventh street, use Branford place a great deal more than some living on Bank street within a short distance of the new street.

Q You do not think that people living on Bank street use Branford place—I mean west of High street? A Not as a general proposition, no.

Q What about people living on Nelson place? A I think they would be apt to continue down Market street.

Q What about Thirteenth avenue? A Vehicular traffic may turn to Branford place coming down Thirteenth avenue.

Q Nelson place, however, you think they continue down Market street? A Pedestrian traffic I am speaking of with reference to Nelson place. There would not be much vehicular traffic on Nelson place, because it stops at Howard street, I believe.

Q Now, does not the rental value of property increase as the result of it being located in a place where it is within easy and convenient access to a business section, such as Market and Broad streets and the vicinity of Market and Broad streets? A In that particular case, no.

Q No, not that particular case; I am talking generally now. A Well, I have got to discuss this situation.

Q Well, I know. We will get to that in a moment. A The saving of time, the convenience to anyone who may live, say, for instance, within walking distance of the Four Corners, would not be so great as to make an apartment in that section much more desirable.

Q Well, wouldn't they use Branford place in preference to Market street? A If they were southbound probably they would, but that would not induce them to pay ten cents a month more rent. You do not get anywhere much faster.

Q Do you not think that is one of the considerations in determining rental values of property—easy access to the center of the city? A Yes, but you don't make it a great deal easier for pedestrian traffic.

Q Take, for instance, vehicular traffic, automobile traffic? A That surely would not make much difference.

Q That would not make any difference? A As far as rentals is concerned.

Q The fact that a piece of property is within easy access to the shopping districts of the city, and within easy access to the railroad stations, in your opinion, would not make any difference in rental value? A You are taking people away from the shopping district when you take them down Branford place.

Q I am asking you whether the fact that you have got an easier and a more convenient access to the shopping center of the city and the railroad stations of the city does not increase rental value?

Mr. Stein. Where do you mean, Mr. Kalisch?

Mr. Kalisch. In any particular locality.

A Anybody coming from the western section of Newark on a shopping trip does not save a great deal of time, if they want to reach the shopping district of Newark whether they come down Branford place or Market street.

Q Do you mean to say that a person going down Branford place with an automobile does not get down quicker during business hours than he would if he goes down Market street and Springfield avenue? A Well, yes, I think there is a saving of time, but it cannot be measured in dollars and cents.

Q I do not ask you to measure the time it saves in dollars and cents; I am asking you whether that would not be chosen as the more easy means of access? A Branford place?

Q Yes. A Yes, I think it would.

Q And I say that when such an easy access is opened, does not that have an effect on rental values of the properties that are within a zone which would ordinarily use that means of access? A No, I don't think so.

Re-direct examination by Mr. Stein.

Q By your last answer—at what place do you consider that values would not be increased by the additional traffic on Branford place taking the traffic, say, from the west? A At what place?

Q Yes. You say the values and rental values would not increase by reason of the additional traffic of Branford place. I want to know what values you considered would not increase? A Values west of High.

Q Values on Branford place, how about that? A They certainly have been increased by reason of the traffic which that acquire.

Q In discussing this question of decrease of general benefits you have taken your home on Seventh street as the beginning point. Assuming that that was located about a mile distance from Branford place and Broad street and that you came over Branford place in your automobile on your way to the office; assuming again, that you lived in Forest Hill section and had your office in the Globe building that you lived exactly one mile away from the corner of Branford place and Broad street, in the latter case you would not be likely to use Branford place quite as frequently as in the former, would you? A No.

Q Well, you might use it occasionally to go up to the western section of the town? A Yes.

Q Is that an example of what you consider to be the different degrees of general benefit? A I presume so.

The Court. You are leading on re-direct.

Q Would you consider that in either case that your property in the Forest Hill section or the Seventh avenue section had been peculiarly benefited? A No, sir.

Q You have spoken of the convenience to an owner of Mechanic street, for persons who are likely to shop on Mechanic street. If the traffic that would come on Mechanic street from Mulberry, west on Mecchanic street, would the Mechanic street business man acquire any addi-

tional business from that source by reason of the opening of Branford place? A I don't think so.

Q Take the business that formerly came from the south on Broad street and proceeded northwardly through Mechanic street. Do you consider that a Mechanic street owner would acquire any additional business from that source? A No, sir.

Q Take the business that came from the northern end of Newark thence in a southerly direction on Broad street from Mechanic, do you think a Mechanic street owner would acquire any additional business from that source by reason of the opening of Branford place? A No, sir.

Q Take the business that came from the western section of the city, the business, if you please, that had formerly come down Market street and then turned into Broad and then into Mechanic, that now comes down Branford place instead. Do you consider that a merchant on Mechanic street would obtain any additional business by reason of that opening? A I do not think so.

Q What then do you say with regard to that opening with reference to that traffic that came from the west as to whether it increased values or not on Market street? A In my opinion Mechanic street property has not been peculiarly benefited. Perhaps it has been injured. I am not so sure about that.

Q How? A If you get additional traffic as a result of the opening of Branford place it has probably been injured on account of the congested condition that appeared there that has existed right along.

Q In referring to the Peddie property this morning on cross examination by Mr. Kalisch,

you stated as a real estate broker you might use the fact that the Peddie property was within 50 feet northerly of—I don't mean the Peddie property, I mean the property of the Federal Real Estate Company—if that property was located 50 feet northerly from Branford place and adjoined the Peddie property that you as a real estate broker would use that as an argument in favor of two owners getting together.

Mr. Kalisch. He didn't say that. He said he would use that as an argument in making a sale.

Q Would you consider the probability of your ability to make such a sale as an element in determining whether or not the market value of the Federal Real Estate Company's property had been increased by the opening of Branford place at the time of its opening? A I can answer that question by referring to an experience which I had in connection with the Peddie property.

Q Can you tell us without referring to that? A I am simply going to try to show that it would be almost impossible to make any sort of an arrangement with the Peddie estate.

Q Will you answer the question, whether you would consider the probability of making such a sale an element in fixing the increased value of the Federal Real Estate Company's property? A No, sir.

Q Would your answer apply as well if you knew Mr. Peddie's attitude about making a sale? A Yes, it would be so purely speculative. It would be an element—while it would be considered it would not be at all possible to put any value on it.

Q You say that there were vacancies on Market street in the Lawyer's building, Century building and the Telephone building. All those are office buildings, are they not? A Yes, sir.

Q Where were the vacancies, on what floor? A Where were the vacancies?

Q On what floor of the buildings? A On the upper floors.

Q What were the ground floors used for? A For business.

Q Retail business? A Retail business.

Q Any vacancies on the ground floor? A The Century building was vacant for some time. I do not remember how long.

Q That is 142 Market street? A 142 Market street.

Q Just west of Halsey street, is it not? A No, east of Halsey.

Q The vacancies in those office buildings above the first floor, did Branford place have anything to do in your opinion with those vacancies? A Nothing whatever. Those buildings, the upper floors of those buildings, were more or less vacant because of the more modern buildings that were available.

Q Office buildings? A Office buildings, and it is perfectly natural for a lawyer or real estate broker to want to be in a building that provides all the facilities which these buildings did not have.

Q How about vacancies further west on Market street, taking both sides of the street, if you please, were there many vacancies before the opening? A Not as many as there were after the opening.

Q Do you connect the vacancies of business properties on Market street before the opening

with the opening? A I think the vacancies on Market street were due more to general conditions than to the opening of Branford place.

Q And about how many vacancies were there, do you suppose? A I didn't count them. I don't know. On the north side of Market street between Washington and Plane—I won't answer that question definitely. I don't know.

Q Can't you give us an estimate? A I think there are more vacancies now than there were on both sides of Market street, west of Washington street particularly.

Q We have dealt with the Jenkinson property on Washington street, Mr. Fiedler. Considering the effect there would have been on it if Branford place had been cut through at a point south of the Jenkinson property, if that had been done would your estimates of the benefits to the Jenkinson property depend to any extent upon the distance that the Jenkinson property was from the opening? A Certainly.

Q If it were a greater distance than— A It would apply to a distance of about 50 feet.

Q What would apply, in what way? A If the Jenkinson property were located in the first block from Market street more than 50 feet north of Broad street, I do not believe there would have been any material difference in the market value of the property.

Q Now, take the property on Washington street as it actually exists or as it existed at the time of the legal opening between Market and Branford place. I understood you to say this morning you considered there would be some slight additional traffic along Washington street in a northerly direction from Market as the traffic had come from south of Broad and went

up westerly on Branford place and then went by Washington street property to Market. What about the traffic that before the opening was bound for points on Washington street south of the present line of Branford place and traffic that originated, let us say, on South Orange avenue, Nelson place, Thirteenth avenue, Breintnall place and Bank street. Before the opening how would that traffic be likely to get down to Washington street south of the present line of Branford place? A With reference to any particular property or to just Washington street?

Q Speaking of Washington street entirely. A There would probably be a slight increase in traffic going in a northerly direction on Branford place from Washington street.

Q Do you understand my question? I am speaking of the traffic before the opening. A I understand. I am telling you.

Q Originated on South Orange avenue, Nelson place, Thirteenth avenue, Breintnall place and Bank street and that desired before the opening to get to a point on Washington street down to the present line of Branford place how was it likely to get there? A That traffic would mostly come down Branford place.

Q But before the opening I am speaking? A It would come down Market street.

Q And after the opening? A It comes down Branford place.

Q Washington street runs all the way down to Clinton avenue, doesn't it? A I think it does.

Q What percentage, then, of that property do you consider, if you are able to give it, do you consider as lost down to that part of Washington street which lies between Branford place and

Market street and which formerly had the benefit of it? A What percentage of the Market street traffic?

Q What percentage of the traffic that formerly went down Market street and turned into Washington street and went south on Washington and which now goes down Branford place instead and turns south on Washington? A It is rather difficult to answer that question but I should judge at least 50 per cent.

Q Would you say that the amount of traffic which the Washington street properties, between Branford place and Market street, have lost by that diversion was compensated by the additional traffic that the same Washington street owners attained by the opening of Branford place? A By no means.

Q You spoke of the diversion of the westbound traffic. I don't know whether you made it clear as to the source from which the westbound traffic originated. Take the traffic coming west on Market street from Broad, the vehicular traffic. Do you consider that much of that has been diverted from Market street by reason of the opening? A Very little, as I testified this morning, on account of traffic regulations at Broad and Market streets. Vehicular traffic would be obliged to turn right and go up Broad street north and get around the platform, the island, and they probably would continue west on Market street. Very few would continue south on Broad street to Branford place in my opinion and then go westward.

Q I think you stated that some of that traffic would turn south on Broad street and then go up Branford place, some of the vehicular traffic that came from the east on Market street to-

ward Broad would turn south on Broad and go up Branford place? A Well, what I referred to particularly was pedestrian traffic. Of course, vehicular traffic cannot turn at that point to the left.

Q Well, do you think that was pedestrian traffic? A Not a great deal, no.

Q Would the additional pedestrian traffic that Stoutenburgh attained in that way in your judgment be compensated by the loss it sustained to pedestrian traffic from the west that formerly went down Market street and at the time of the opening would go down Branford place. A By no means.

Q You have stated with regard to the Central Railroad property, lot No. 109, block 165, that you considered that the market value of that property had not been increased by this opening. What effect do you consider this opening would have upon the use of that property as railroad property? A I do not believe that the Central Railroad property has been peculiarly benefited. I do not believe that that property has been enhanced in value as a result of the opening of Branford place. It perhaps has made it a little more convenient for individuals who live west of Broad street to get to the Central Railroad station but I don't think that it would have any effect on the market value of the Central Railroad property.

Q I am not asking you about the market value of that property. I am asking you about the effect upon the use of that property for the purpose for which it is placed, whether there would be any increased value to the use of that property to the owners of it as railroad property? A Certainly not.

Q Do you consider that the added convenience to patrons of the road in getting to and from that station would add anything to the value of the use of the property, to the railroad company? A I don't think so.

Q Do you think that the railroad would obtain any additional passengers or freight, or rather passenger business, because we are now speaking merely of the depot, by reason of this added convenience to the public in getting there?

Mr. Kalisch. I object to that. I don't think it is material at all.

The Court. I will allow the question.

Q (Question repeated). Which it would not have obtained if Branford place had not been opened? A I do not think that the Central Railroad's income will be increased at all.

Mr. Kalisch. I ask that that be stricken out.

The Court. I will allow it. That is the only way of answering this question.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q You have spoken of these lots in block 231 being lots, 6, 8 and 9 at the junction of Stirling street, High street and Springfield avenue as being brought into greater prominence by reason of this opening and you have stated that you can see that property in two ways. What do you mean by seeing it in two ways? A You can see it coming up Market street and you can see it coming up Branford place.

Q Isn't that true also of the property of the National State Bank building on Broad street

directly opposite Branford place? A Yes, even to a larger degree.

Q Before the opening that could be seen how? A Before the opening it could be seen from Halsey street. I don't remember whether it could be seen from Washington street or not, but no further west excepting the top of the building perhaps if you were on the hill.

Q Of course, you could see it from Market street? A Market street.

Q How about Mechanic street, the opening of Mechanic street as to your ability to see that from the westerly opening of Branford place? Do you understand the question? A You have asked me what effect—

The Court. Whether you can see it.

A Whether I can see Mechanic street—

Q From the westerly opening of Branford place. A I can't say sure that I can. I don't remember that exactly.

Q Won't you step here to the map. Is it not a fact that the southerly line of Mechanic street is located slightly to the north of the northerly line of Branford place? A Looking at the map it seems so. I don't remember having seen it.

Q And that the northerly line of Branford place if projected easterly to the east side of Broad street would about cut the building of the National State Bank in half? A Perhaps it would.

Q Look at the map and see. A According to the map it would.

Q Now, Mr. Fiedler, do you consider the property that has received a benefit by widening merely has received as great a percentage of benefits as properties that have acquired a brand new opening?

William C. Fiedler, re-cross.

Mr. Kalisch. I object to that as not redirect.

Mr. Stein. I think that criticism is so. Mr. Kalisch did not ask about that and I should have included it in direct examination.

The Court. You may ask it as an omitted question.

Q Applying the question to Branford place do you consider that a property that is situate as I say between Washington street and Halsey street on the southerly side and which obtains nearly the benefit of a widening obtained as much a percentage of benefit as property which got the benefit of a complete opening? A In my judgment property which now has a new frontage on a new street has been more particularly benefited than a property on a street which has merely been widened.

Re-cross examination by Mr. Kalisch.

Q Why do you say, Mr. Fiedler, that the National State Bank by reason of its being seen from a point further west than where it formerly could be seen has increased the peculiar benefit?

Mr. Stein. I object to the question. We have already gone into that and he has already given the reason on cross examination.

The Court. I think the subject is pretty well exhausted.

Mr. Kalisch. I will withdraw that question.

Q You say standing in Branford place that the south side of Mechanic street is hidden from view?

Mr. Stein. I don't think he said so. He distinctly stated he did not say so. He went to the map and gave us some information which is on the map.

A It looks that way as far as the map is concerned.

Q But that the National State Bank is plainly in view? A Yes, sir.

Q The Globe building is likewise hidden from view standing in Branford place, is it not? A I think it is.

Q Now, you said something about vacancies. Properties on Market street west of Washington. Will you enumerate for me the properties west of Washington street that have become vacant since the Branford place opening and as a result of the Branford place opening? A I didn't testify to that. I didn't say that was due to the opening of Branford place.

Q Was it or was it not? A I said it was due more to general conditions than anything else.

Q Are there any vacancies west of Washington street on the north side of Market that are due in any degree to the opening of Branford place? A It is a pretty hard question to answer. I don't know.

Q You stated on cross examination that in dealing with the Federal Realty Company's property, which is lot No. 67 on block 60, that in making a sale you would represent the lot in connection with its development with the Peddie property. Do you recall so stating this morning? A I don't think I said that. I would like to have that question repeated.

(Question read).

Q That is the question I ask you now. A That is what you ask me now?

Q Yes.

Mr. Stein. I do not think that is what he said this morning.

Mr. Kalisch. Yes, he said that with reference to the psychological effect.

Mr. Stein. I have my notes here, and from my notes it would appear that he said that he would use that as an argument with a prospective purchaser.

Q Well, do you recall saying that? A I do not think I said that with particular reference to this particular property.

Q Yes, in connection with that piece of property. A Because I know the conditions so well there that—

Q Do you remember saying what Mr. Stein has read in connection with that particular property? A As far as arguments are concerned with reference to that particular property?

Q Yes. A I don't remember that.

Q Do you say now that you did not say it? A I will not say that. The question might have been confused in my mind. I say now that in that particular case I would not use that as an argument, as a result of experience that I have had there.

Q You are interested in property on Market street, are you not?

Mr. Stein. I object to that, if your Honor please. That is not re-cross examination. That was not brought out at all.

The Court. Nevertheless, I think it may be proper for the purpose of showing interest.

Q Are you not? A Yes, sir; I am interested in property there and elsewhere.

Q How many properties are you interested in on Market street? A Directly, one.

Q And indirectly? A My father has a property on Market street.

Q And any others, directly or indirectly? A Only so far as a broker would have connection with a particular piece of property. I am all the time negotiating—not any more so there than elsewhere, though.

Q Your father has a piece of property, or rather, William H. Fiedler—that is your father? A That is my father, yes.

Q He has a piece of property on Market street— A No. 80.

Q —known as No. 80 Market street? A Yes.

Q That is directly west of Washington street, on the south side of Market; is that right? A Yes, sir.

Q Where is the other property that you are interested in indirectly? A I am interested in No. 21 Market street, opposite the court house, formerly known as Jake the Barber's.

Q That is a property that has been objected to? An objection has been filed to that assessment, has it not? A I think so.

Q Are there any other properties that you are interested in within the zone of assessment? A Yes.

Q Where are they? A I own property on South Orange avenue, near Jones street.

Q Has that been assessed for benefits? A Yes.

Q Any objections filed? A Yes.

Q What other property? A I own property on Plane street.

Q Has that been assessed for benefits? A Yes.

Q Have objections been filed? A Yes.

Q What other property? A Property on Arlington street.

Q Has that been assessed? A Yes.

Q And objections filed? A Yes.

Q What other property? A I think that is about all.

Q Now, are you indirectly interested in any other properties? A Merely as broker.

Q Within the zone of assessment? A Yes.

Q Properties that you take care of for the owner, is that what you mean? A Yes.

Q And have you filed any objections to the assessments against any of those properties for the owners? A Well, there is only one that I call to mind now—that is on Beaver street—that we have entire charge of.

Q Have you filed objections to the assessment on that property, or has it not been assessed? A I don't know whether it has been assessed, but it is on Beaver street, near Market.

Q But you do not know whether objections have been filed to that? A I don't know; I had nothing to do with that part of it.

Q And there are no others that you can call to mind that you are interested in either directly or indirectly? A Excepting as a broker who has negotiated leases and sales in that zone.

Q No, I mean properties in which your interest requires you to file objections against the assessments. A I don't think so, no, I don't recall.

William C. Paul, direct.

Re-direct examination by Mr. Stein.

Q How much is that assessment up on South Orange avenue near Norfolk street?

Mr. Kalisch. I object to that.

The Court. Is that one that was objected to?

Mr. Stein. Yes, sir.

Mr. Kalisch. I object to it as not being re-direct examination, and I further object to it on the ground that the only relevancy of the testimony that has been elicited is to show the fact of his interest, but not in dollars and cents—what his interest is. That would appear to open up quite a broad inquiry.

The Court. I think we have gone quite far enough. I sustain the objection.

WILLIAM C. PAUL, recalled in behalf of Richard C. Jenkinson *et als.*, objectors.

Direct examination by Mr. Stein.

Q Mr. Paul, have you prepared some additional figures for us with regard to square foot and running foot assessments? A I have.

Q I want to obtain the square foot and running foot assessments on some of the blocks on Market street. What is the average square foot assessment on the block on the south side of Market street from Plane street to Washington street?

The Court. One block?

Mr. Stein. Yes, sir.

The Court. What is the number?

Mr. Stein. The block is 73. I am asking for the average square foot assessment.

A 9.9 cents per square foot.

Q And the running foot? A $12.30.

Q Which property have you taken as a basis there? A That is the Isenberg property.

Q Lot No. 35, it is? A That is right.

Q And the block immediately to the east, between Washington and Halsey streets, being block No. 60, what square foot assessment is there? A 11¼ cents.

Q And the front foot? A $11.25.

Q And that is based upon the Hammerschlag lot? A Correct.

Q No. 19? A Right.

Q And the block immediately to the east, between Halsey and Broad streets, being block 57, what is the square foot assessment. A 6.8 cents.

Q And the front foot? A $8.12½.

Q In that same block, but on the Broad street frontage, take the Stoutenburgh property. What is the square foot assessment there? A 25½ cents.

Q And the front foot? A $25.52.

Q The property in block 78, on the south side of Springfield avenue, between Shipman and Arlington streets, what square foot assessment do you find there? A 20½ cents.

Q And the front foot? A $15.02.

Q Is that based upon the Reiboldt lot? A On the Reiboldt property.

Q That is lot No. 63, is it not? A Right.

Mr. Stein. These properties that I have specifically designated are all properties outlined in red and represented by us.

Q Now, take the property of the Prudential Insurance Company, between Bank and Market streets on Broad. Which property there have

you given the assessment on? A On the entire property.

Q Is that the one that is assessed for $950? A $950.

Q $950? A $950.

Q That is in block 54, is it not? A Yes, sir.

Q And is bounded by Academy street and Broad street, and not, as I stated a moment ago, by Market street? A No, not on Market.

Q And what is the square foot assessment there? A 1½ cents.

Q And the front foot? A $6.50.

Q Is that on the Broad street frontage? A On the Broad street frontage.

Q Now, were there any other calculations that you made on the square foot and front foot assessments, Mr. Paul? A I have made quite a number of them, but—

Q Any in that location, in that locality? A Only those of the comparisons that we had the other day.

Q Have you found that you made some error in the calculation the other day on the square foot and front foot assessment on property of the Federal Real Estate Company? A Yes—not in the Federal Real Estate Company, but in the Jackson plot. The property of John Jackson, in block 59, lot No. 4, assessed at $105, I stated was 37.3 cents per square foot. That occurred in simply typewriting my sheets. It should be 3.7 cents—a question of a decimal further over simply. At the same time I wish to call attention to block No. 60, lot No. 59, which on the map appears as having 33.75 feet frontage on Branford place, when it actually has 53.75—an error in putting down the figure.

Q Now, you were comparing the other day the assessments per square foot and per front foot between the Jackson property that you have just referred to and the property of the Federal Real Estate Company. Have you those figures handy there? A I have.

Q Will you please give us those figures again, with the correction? A The Federal Real Estate Company, block 60, lot 67, assessed at $2,500, as against the Jackson property, block 59, lot No. 4, assessed at $105; the Federal plot is assessed 18 1/3 times more than the Jackson plot.

Q By square foot or by running foot? A That is by square foot. And by front foot, 25½ times.

Q And what is the square foot assessment of the Federal Real Estate Company? A The Federal Real Estate Company, the square foot is 71 cents.

Q And of Jackson? A 3.7 cents plus.

Q And the front foot assessment of the Federal Real Estate Company? A $65.77.

Q And the Jackson? A $2.58.

Q Now, have you computed the percentage of assessment, of the total assessment, that was put upon property owners and how much has been placed upon the city? A I have—You desire the figures of the old report or the present report?

Q The present report. A The present report. The average assessment on Branford place is twenty-six per cent.

By the Court.

Q What is this? A Of the total assessment, twenty-six per cent.

Q Well, I thought you were asked to give the percentage put upon property owners and the percentage put upon the city. A Well, I happen to have them separated. I can give them to you as a total. That would be 48.6 per cent.

Q That is on property owners? A On property owners.

Q And on the city the difference? A The difference, 51.4 per cent.

By Mr. Stein.

Q Can you give us those percentages by the old report? A On the old report it was 62 per cent. on the property owners and 38 per cent. on the city.

Q Now, take the new report. How much of the 48.6 per cent. that was assessed upon property owners was assessed on owners fronting on Branford place—what percentage of the whole? A You mean of the old report?

The Court. No, this report.

Q No, this report. A Of this report. 26 per cent. on Branford place.

Q And that would leave a balance of— A 22.6 on the owners outside of Branford place.

Q Now take the old report. Of the 62 per cent. placed upon property owners, what percentage of the total was put upon Branford place owners? A 31 per cent. on each, 31 per cent. on Branford place and 31 per cent. on the property outside of Branford place.

Cross Examination Waived.

Mr. Smith. Your Honor, I would like to place on the record a statement as to two properties which we represent as counsel, and to which we wish our testimony to ap-

ply, which are not marked in red on the map, Exhibit B. I will just read the names of them into the record.

The Court. You have objected?

Mr. Smith. They are objectors, yes, but their objections were filed by Messrs. Lehlbach & Johnson, and they have asked us to appear as counsel, and we desire the testimony that was taken to apply to these properties.

The Court. You may say what they are.

Mr. Smith. Block 73, lots 9, 10, 11, 12, 13, 14 and 91, all assessed to the estate of Israel Baldwin, $1,800. The other property is on block 74, lots 25 and 23, fronting on Plane street, and lot 8, fronting on Arlington street, assessed to Florence D. Bankoff.

Now, there are some other properties, as to which objections were filed by Mr. Charles A. Woodruff, in which we are counsel also, and which we wish to speak of in the same way: block 85, lot 16, assessed to the estate of Lucia DiMenna, assessed $50; also property in block 84, lot 17, James and Nicola DiMenna, $42; block 405, lot 18, Francesca Penzino, $23; block 405, lot 20, Emido Tarullo, assessed for $16.

Now, your Honor, I think, with a few exceptions, that finishes our case. Mr. Kalisch is willing to stipulate that we may introduce some further facts with reference to specific properties. Those facts we expect that we can stipulate upon, so that it will merely mean the presentation of a stipulation.

There is another question which I expect to agree on with Mr. Kalisch, and that is

some figures as to actual traffic conditions. The City Plan Commission have some figures, and I have not had a chance to go into them, but we think that possibly we can agree on those.

Now, there is one final matter, and that is the question of our calling the other two commissioners and taking their testimony. Mr. Kalisch has agreed with me that we may have that matter left open in closing our case, because it may be that we shall be able to stipulate that their testimony will be the same as Mr. Van Duyne's, or it may be that Mr. Kalisch will desire to call them himself, so that the matter whether we desire to call them or not will be left open.

(Counsel argued).

ADJOURNED.

Monday, January 24, 1916.

Mr. Stein. There are some facts, may it please the court, which Mr. Smith and I have from time to time taken up with Mr. Kalisch with regard to a proposed stipulation. Mr. Kalisch and I have not yet quite agreed upon the matter, and I came up here this morning for the purpose of taking the matter up with him. There may be a few additional facts that, I think, we can agree upon by stipulation that we would like to have before the court.

The Court. I might as well pass upon the question which Mr. Smith referred to at our last meeting, with respect to the scope of cross examination.

The point was this. Mr. Smith, representing objectors, called Mr. Van Duyne and examined him on direct examination. Mr. Kalisch then, on behalf of the city, proceeded to cross examine him. Mr. Smith, when one question was asked, objected that in a case where the witness appeared to be friendly to the cross examiner, the scope of cross examination ought to be restricted in respect to the form of questions, and that on such an examination of a friendly witness the questions ought not to be leading. Mr. Smith was not prepared to cite authorities, but a few days later did. This question came up on the 30th of November, and on the 2d of December Mr. Smith favored me with some authorities which satisfied me that, within the discretion of the court, that rule is a recognized rule.

The question that was objected to is this: "Mr. Van Duyne, you testified this morning that you went along reducing the assessments, reducing them from the points of the improvement in both directions. By that did you mean that you reduced them by comparing the old report with this new report, or did you mean that as you went away from the improvement in both directions that the assessment became less and less?" Then came the objection, and, after some discussion, the witness, on hearing the question repeated, said, "Yes," which, of course, as the question was in the alternative, was no answer. Then came the question, "Which, the former or the latter?" Then there was another objection. Then came the answer: "The assessment became less and less. We

had nothing to do with the old report." Then it proceeds: "That is, they became less and less as a consequence of the assessments that you placed upon these properties? A Answer: Yes, at each one."

I think the question, if not strictly leading, is at least a suggestive question, because it suggested two alternatives, implying, of course, that that covered the whole field. I am inclined, therefore, to sustain the objection to that question and to strike out the question and the answer.

Mr. Smith having been granted a general objection to that line of testimony, I read on to the end of Mr. Van Duyne's cross examination to see whether there were any other questions that came within the rule. I found nothing else which I think justifies the court in ruling out any question and answer on that ground.

Mr. Kalisch. Your Honor, in view of that decision, that places me in a position where I am unable to elicit from the witness an explanation of the answer given under direct examination, which is what I desired when I asked the question placing before him the two alternatives.

The Court. There is only one answer involved.

Mr. Kalisch. One answer, but I mean by that that he gave certain testimony in the morning's session which I wanted cleared up in my mind; I wanted to understand what he meant when he said that he reduced the assessments as he went away from the improvement, and that I wanted explained, and it was merely the form in which I put the

question to him that became objectionable because it was leading, or, as your Honor says, suggestive.

The Court. Well, you did go on and ask him other questions to which I do not object. Perhaps you had better let me see whether you think you are prejudiced by my ruling.

Mr. Kalisch. Of course, if the matter is cleared up by subsequent interrogation, I do not want to ask the question again of Mr. Van Duyne.

The Court. The question is on page 265; the examination proceeds on page 269. I think you can tell in five minutes. Take as much time as you want to.

Mr. Kalisch. (After examining transcript of testimony). Well, the question that your Honor ruled on was the first question that was asked, I believe?

The Court. Yes, the first question asked.

Mr. Kalisch. And none of the other questions?

The Court. Yes, it was followed up by other questions of somewhat the same tenor, which, it seemed to me, were not objectionable. They were pointed questions, but had to be in order to call the witness's attention to what you had in your mind.

Mr. Kalisch. I think it is covered.

The Court. It seems to me so.

December 13, 1915.

On objections filed by Keasbey Real Estate Association, block 57, lot 79.

Mr. Smith. May it please the court, Mr. Keasbey has been to see me and asked me

to handle this case as counsel, and he was willing to have me stipulate that the case which was presented on our behalf should stand for his case. I might, I suppose, just put a statement of his property on the record, and it can be added to our record. The property is block 57, lot 79, assessed to the Keasbey Real Estate Association, $225. The property is located on the southwest corner of Broad and Market streets. I desire to apply the testimony that we took to Mr. Keasbey's case, as that is covered by our testimony, because we took testimony as to the Watson case, which surrounds it.

The Court. And do you wish to offer any further testimony?

Mr. Smith. No, sir; only such testimony as we have reserved the right to offer the other day. We made certain reservations by stipulation with Mr. Kalisch on the record as to some traffic data and the question about calling the other commissioners.

The Court. You do not desire to offer any testimony especially applicable to lot 79 on block 57?

Mr. Smith. No, your Honor; we will rest on our case.

December 13, 1915.

On objections of Emma C. Ludwig, block 59, lot 27.

Mr. Smith. Mr. Hood has asked me to handle his case as counsel, and he was willing to have me stipulate that the case which was presented on our behalf should stand for his case. I might, I suppose, just put a statement of his property on the record, and

it can be added to our record. The property is block 59, lot 27, assessed to Emma C. Ludwig, at $6,125, and the property is located at 42 and 44 Branford place. I desire to apply the testimony that we took to Mr. Hood's case.

The Court. The same stipulation as before?

Mr. Smith. Yes, sir.

December 16, 1915.

On objections of Charles N. Lockwood, block 165, lot 22, No. 22 Mechanic street, and Antonio Faccidomo and Angelina Faccidomo, his wife, block 88, lot 33, No. 132 Academy street.

Mr. Smith. If your Honor please, I want to note two more properties to which we wish to apply the testimony taken under the other obpections. The application is made as counsel with Messrs. Rosinger, Mayer & Albano.

The Court. All the lots are covered by the objections of those gentlemen?

Mr. Smith. Yes, sir. There are just two properties: the property of Charles M. Lockwood, block 165, lot 22, No. 22 Mechanic street, assessed for $350; also property of Antonio Faccidomo and Angelina Faccidomo, his wife, block 88, lot 33, No. 132 Academy street, assessed for $19. I want to have the same understanding as to the testimony already taken; that is, we will cross-examine on the city's case with the others.

Charles N. Lockwood, *et al.,* Objectors, Rest.

January 6, 1916.

On objections of Peter Winkler and A. C. Navatier.

Mr. Smith. We appear for Winkler & Navatier, and would like to stipulate that our testimony should extend to their case in so far as the same is applicable.

The Court. They object both as Winkler & Navatier and also individually?

Mr. Smith. Yes, sir.

The Court. You represent them both?

Mr. Smith. Yes, sir.

The Court. Have you anything to offer?

Mr. Smith. Nothing more than to stipulate that our previous testimony should go to their case.

January 6, 1916.

On objections of King-Marsac Company.

ROLLINS C. MARSAC, sworn in behalf of King-Marsac Company, objector.

Direct examination by Mr. Smith.

Q Mr. Marsac, your property is located at 272 Washington street? A Yes, sir.

Q That is on the northeast corner of Washington street and Branford place, is it not? A Yes, sir.

Q And the assessment was $4,200? A Correct.

Q When did the King-Marsac Company purchase the property? A In May, 1914.

Q And what was the price paid for it?

Objected to.

The Court. I will allow it.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A $9,500.

Q That was after a deed had been given by the previous owner to the city for the part taken for Branford place, was it not? A Yes, sir.

Cross examination by Mr. Kalisch.

Q What was the size of that property before the city took? A We didn't own it before the city purchased it.

Q Well, where did it face, where was the frontage? A Faced on Washington street.

Q Between? A Between Branford place and Market.

Q Between Branford place and Market, on the east side of Washington? A Yes, sir.

Q How far north of Branford place? A How far north before the street went through?

Q Yes. A In the neighborhood of 13 feet, I believe.

Q Was it the corner property? A Yes, sir.

Q Or is it now the corner property? A It is now the corner property, yes, sir.

Q How many feet were taken? A About 13 feet were taken, leaving a balance of 11 feet, a little over 11 feet, 11.61 feet.

Q And you bought that property after the city had taken a portion of it? A Yes.

Q Or a portion of what was the original plot? A Yes, sir.

Q And you are now a corner property? A Yes, sir.

Mr. Smith. I wish to stipulate in this case, your Honor, that the testimony that

New Jersey State Library

we took in the Jenkinson matter shall apply to this case.

Q You bought that property subject to the assessment? A Yes, sir. Of course, it was long before the assessment—

Q Does that appear in the deed? A In our agreement.

Mr. Kalisch. Have you got that agreement, Mr. Smith?

Q Have you got that agreement? A Yes, sir.

Q Does that appear in the deed also? A Here is what appears in the agreement (handing paper to counsel). The assessment was not made at that time; we had no idea what it was.

Q The deed was given after the assessment? A Oh, no.

Q Before the assessment? A Yes; the deed was given thirty days after that agreement, I believe.

Mr. Kalisch. I would like to offer this in evidence.

Mr. Smith. On your case?

Mr. Kalisch. Of course, you will not have them here when I have my case. Will you offer them in evidence?

Mr. Smith. No. Why do you not read into the record that part of it? Suppose you read it right into the record now. That is all you want, is it not?

Mr. Kalisch. Yes.

Mr. Smith. Suppose you read it into the record now, or I will stipulate, if you want it, that the agreement on sale contains that provision.

Mr. Kalisch. Well, you can read it into the record, I think.

Mr. Smith. No, you can.

Q How many feet front did that property have before the city took? A I don't know exactly; I believe your map will show there.

Q Are you familiar with values around there? A Yes.

Q Do you know what property sells for a front foot? A Yes.

Q About how much? A Well, I should judge in the neighborhood of that property it would sell for in the neighborhood of $1,000 a foot.

Q You think $1,000 a foot? A Yes. That is, nearer to Market street it would be more valuable, of course.

Q $1,000 a foot? A From that property of ours south, I should say.

Q What about property north, toward Market street? A That runs around $1,500 a foot.

Q (*By the Court*). What are your street numbers, Mr. Marsac?

Mr. Smith. 272 Washington street.

A 272 Washington street.

Q (*By Mr. Kalisch.*) How many feet have you got there? A 11.61 feet.

Q (*By the Court.*) That is, after the city had taken 13 feet? A Yes, we never owned the whole.

The Court. No.

Mr. Kalisch. I understand that.

Q (*By Mr. Kalisch.*) Do you consider the fact that it is a corner property adds to the $1,500?

Objected to.

Mr. Kalisch. Adds to the value, I mean.

The Court. Do you object to that?

Mr. Smith. I do not believe it makes much difference.

The Court. I will allow it.

Q Mr. Marsac, answer the question. A Adds to the price of it?

Q The market value. A Yes, being the corner, it does.

Q Well, what do you add to the $1,500 to arrive—

Mr. Smith. One moment. I do not think this witness has testified that it was $1,500.

Mr. Kalisch. He says $1,500 a foot.

Mr. Smith. At Market street.

Mr. Kalisch. North of Branford place. He says south of Branford place it was $1,000 and north of Branford place it was $1,500.

Witness. North of this property, nearer Market street.

Q Well, how nearer Market street? A Well, within a radius of 100 feet from Market street.

Q And between 100 feet and Branford place, what do you consider? A $1,000.

Q And it is no more valuable north of Branford place than it is south? A It is more valuable north of Branford place than it is south, certainly.

Q Then it is more than $1,000, is it not? You have given $1,000 as being the value of the property south of Branford place. A Well, I said south of Branford place, but I meant when I said that south of this property, or including this property. You asked me the value of our property; I said $1,000 a foot.

Q No, I asked you the value of Washington street property par front foot, and you told me $1,000 south of Branford place, and then I asked you north of Branford place, toward Market street, and you said it was $1,500 a foot. Now, you say it is $1,000 a foot and that $1,500 only applies to a distance of about 100 feet from Market street? A Well, when I said $1,500 I meant the property nearer to Market street than our corner. I figure the value of our property $1,000 a foot.

Q But being a corner property, do you not add one-third of the value? A Not on that corner, because it is only 11 feet front.

Q Well, that makes your property there worth $11,000? A Yes.

Q According to your statement? A Yes.

Q You bought it for $9,000, you say? A Yes.

Mr. Smith. $9,500.

Witness. $9,500.

Q You bought it quite cheap, did you not? A Yes, sir; we thought so. Before we get through it may cost us more.

Q (*By the Court.*) $4,200 was your assessment? A $4,200; yes, sir.

Q (*By Mr. Kalisch.*) You consider that property, then, worth $11,000 now, or do you consider that was the price before the opening? A I consider it worth $11,000 now.

Q Do you consider it worth $11,000 before the opening?

Mr. Smith. I object, your Honor. This witness has not testified to anything before the opening. He bought the property after the deed to the city, and he is not produced here as an expert.

The Court. I sustain the objection.

Mr. Kalisch. He says he was not benefitted. I am trying to find out whether he was on his own property. That is the only way I can find out as to whether there was a difference in value before the opening and since the opening.

The Court. The witness has not qualified as a real estate expert. The mere fact that he is owner does not give him any particuler status as to values.

Mr. Kalisch. He has offered the value of his property as sustaining his objection for the purpose of showing the market value of the property.

The Court. I sustain the objection to the question now asked.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Would you sell the property for $11,000 now, Mr. Marsac?

Objected to.

Objection overruled.

A I am not the owner of the property myself; I can't say whether—I might say I would sell it and the rest of the firm object—

Q Would you advise that as being a fair value for it?

Mr. Smith. I object to what the witness would advise this company to sell the property for. That is not evidence.

The Court. The question is substantially as to whether, in his judgment, that would be a fair price. I think he may be asked that question.

Q What do you say about that?

(Question read.)

A What was the price?

Q $11,000. A Would that include this assessment? In other words, if we sold the property for $11,000, would it include the $4,200 assessment?

Q No, I want you to consider it regardless of the assessment. I am talking about the value of the property, not the expense that you are under.

Mr. Smith. As of what date?

Mr. Kalisch. Since the opening.

Mr. Smith. Then that would include the assessment.

Mr. Kalisch. It would include the improvement?

A That would be a fair value—

Q What? A You want to know if we would sell the property for $11,000?

Q Yes. A After paying for the assessment for the street improvement?

Q No, without the assessment first. A Without any assessment for any street improvements?

Q No, with the street improvements. A Do you know what the street improvements amount to?

Q I mean the opening of the street, not grading or anything of that sort, just the opening of the street. A Well, the opening of the street assessment is $4,200.

Q Well, what would you consider, then, to be the fair value of that property since the opening of the street?

Mr. Smith. He has testified to that. There is not any assessment yet, so far as that is concerned.

Mr. Kalisch. Well, the property has been assessed.

Mr. Smith. No, it has not. It is only a report; it is unconfirmed yet. There is no lien on the property.

Mr. Kalisch. That is all.

The Court. Do you wish to call any more witnesses?

Mr. Smith. No, your Honor.

By Mr. Smith.

Q What is the property used for, Mr. Marsac? A Well, it is vacant now. There is only a signboard on it—$25 a year—a bill posting sign.

Mr. Smith. I would like to show by this witness what the assessments for curbing, grading, flagging and paving were.

Mr. Kalisch. I do not think that makes any difference.

Q Have you got that? A Yes, sir.

Mr. Smith. I think it is a factor in determining the value of the property at the present time.

The Court. Why, you may have those figures, if you desire them.

Witness. For grading, curbing and flagging, $513.

Q What is the paving? A And paving—grading, curbing, flagging and paving, $513.

Q (*By Mr. Kalisch.*) What was the income of the property when you bought it? A Nothing.

King-Marsac Company, Objector, Rests.

Frederick R. Pilch, direct.

January 6, 1916.

On objections of Prospect Improvement Company.

Mr. Smith. There was some discussion as to whether the property was in one tract or several tracts. It is assessed in several tracts. I want to prove the fact.

The Court. Do you want to put in a deed?

Mr. Smith. Yes, sir.

FREDERICK R. PILCH, sworn in behalf of Prospect Improvement Company, objector.

Direct examination by Mr. Smith.

Q Mr. Pilch, objections were filed in the name of the Prospect Improvement Company as to the property known as 68, 70 and 72 Market street, were there not? A Yes, sir.

Q Has there been a change in the title of the property since the objections were filed? A Yes, sir; the property was sold by the sheriff of Essex County on foreclosure sale to Burt M. Decker.

By the Court.

Q Who is now the present owner? A Who is now the present owner?

Mr. Smith. About when was that sale?

Q Who was the former owner? A Prospect Improvement Company.

Mr. Smith. Prospect Improvement Company.

Witness. The sale was consummated about two months ago.

Frederick R. Pilch, direct.

By Mr. Smith.

Q Now, I show you a deed from Fairchild-Baldwin Company to Prospect Improvement Company, dated July 12, 1911, and recorded in Book F 49 of Deeds for Essex county, at page 579, and ask you if that is the deed to the Prospect Improvement Company for this property (paper shown to witness)? A Yes, sir.

Q You are an attorney at law, are you not? A Yes, sir.

Q Can you tell me from an examination of that deed as to what is included in the description? A Why, all of the property—

Q You might look at this map. A Well, on that map there are four tracts delineated which are included in this one description as one tract.

Q There are four assessments? A And there are four assessments. This description includes a right of way to Washington street.

Q Can you tell me how this property is assessed for taxes? A It is assessed in three pieces.

Q And those are the three street numbers? A Street numbers.

Q And there is no separate tax assessment for the property in the rear? A No separate tax assessment.

Q (*By the Court.*) What are the street numbers? A 68, 70 and 72 Market street.

Q (*By Mr. Smith.*) Has there been any reduction in the rents derived from this property since the opening?

Objected to.

A I can't tell that—

(Question withdrawn.)

Q Is that property all rented at the present time?

Objected to.

Objection withdrawn.

A No, not all of it.

The Court. We have already had testimony as to this property?

Mr. Smith. Yes, sir.

The Court. Who was it that testified, Mr. Berry?

Mr. Smith. I think Mr. Berry testified to it, and I think Mr. Fiedler.

Cross examination by Mr. Kalisch.

Q Did the property that was sold since the objections were filed constitute all of that strip? A Yes.

Q And how many deeds were given, one? A One.

Q And that description followed the description in this deed that you have now in your hand? A Yes, sir.

Q Now, you say that the property has been assessed for the purposes of taxation as three plots? A The tax bills for 1914 were three in number, and covered these three pieces. I paid that.

Q And prior to that? A I don't know. The tax of 1915 was likewise.

Q There was never any objection made to that method of assessment? A Not to my knowledge.

Q I mean dividing that up into three plots? A Not that I know of.

Q For the purpose of taxation? A You see, we have only had this property—

Q No, I say there has been no objection to dividing the property in that way for the purpose of taxation? A No.

Mr. Smith. He says not to his knowledge.

Witness. Not to my knowledge. We have only had this property about two months.

Q You received only one tax bill, did you not? A I received two tax bills, 1914 and 1915, and paid them.

Q That is, you received three each year? A Three each year.

Q And those were paid? A Well, 1914 has been paid; 1915 has not yet.

Q Well, 1914 was paid? A Yes.

Q And you had charge of the property then? A They were paid as a part of the settlement with the Prudential Insurance Company when it foreclosed its mortgage, when my client took title.

Q So far as you know, no objection was ever made? A So far as I know.

Q To the method of dividing the property for the purpose of taxation? A So far as I know. Of course, I do not know, Mr. Kalisch.

Mr. Smith. I will offer that deed in evidence.

Re-direct examination by Mr. Smith.

Q How is the property developed as far as buildings are concerned? A That is one building divided into three stores.

Q And lofts? A And apartments above, lofts.

Re-cross examination by Mr. Kalisch.

Q You mean one building covering the— A 68, 70 and 72.

Q That is, one building? A One building.

Q And that covers the three lots? A Three lots. It is divided by partitions, you know.

Q Are there any fences in the back? A No.

Q There are no rear fences at all? A Not at all.

Q The property is not inclosed in the rear? A It is inclosed on one side.

Q On which side is it inclosed? A On the side toward Washington street.

Q The east side? A The side toward Washington street is partly inclosed; it is not entirely inclosed.

Q With a fence? A There are remnants of fences there.

Q Going back how far? A I can't answer that.

Q Well, is there a fence running east and west? A Running east and west—what do you mean?

Q Is there a fence running east and west—

Mr. Smith. Along the rear, you mean?

Mr. Kalisch. Along the rear of the property.

A No.

Q There is no fence at all? A There is no fence at all.

Q So that the very rear of that property is uninclosed? A Uninclosed.

Mr. Smith. You are referring, I suppose, to the present time?

Witness. At the present time, yes.

Q Was it ever inclosed? A I can't answer that.

Q What? A I don't know.

Q I mean during the time your client had it? A Oh, no. He only has had it two months, Mr. Kalisch. That property in the rear is quite open, Mr. Kalisch. There are remnants of a few fences, and the buildings in some places seem to be on the line.

Q You do not front on Branford place, do you? A No, sir.

Q There is a little property in between your property— A Property belonging to the Neu estate.

Q Joseph Neu? A Yes. Our frontage is on Market street.

Q And, fronting on Market street, what is the depth? A 243 feet and a fraction of a foot.

Mr. Smith. I want to offer this deed in evidence—from the Fairchild-Baldwin Company to the Prospect Improvement Company.

(Deed marked "Exhibit Prospect 1.")

Prospect Improvement Company, Objector, Rests.

January 12, 1916.

On objection of John B. Oelkers.

Mr. Smith. We want to have our case apply with reference to the additional piece of property on Mechanic street of Mr. Oelkers.

John B. Oelkers, Objector, Rests.

January 12, 1916.

On objections of Gottfried Krueger.

Mr. Smith. Your Honor, there is one piece of property that was omitted by mistake on our list of objectors, and that is the case of

Gottfried Krueger. He is an objector, and our objection is broad enough to cover all his property, but in the schedule attached to it there was one piece of property omitted.

The Court. Where is the property?

Mr. Smith. The property is on Academy street, 53 Academy street, block 63, lot 52, assessed to Gottfried Krueger for $15. It is a small piece.

The Court. We will consider that your objections cover that lot. It is a clerical error.

Mr. Smith. I think so, yes.

Gottfried Krueger, Objector, Rests.

January 12, 1916.

For objectors appear Messrs. Coult & Smith, by William A. Smith, Esq.; William T. Day, Esq.; Henry H. Dawson, Esq.; Alfred F. Stevens, Esq.; Leo Stein, Esq.; Clarence S. Blake, Esq., and others.

For the City of Newark (respondent) appears Harry Kalisch, Esq., City Attorney.

Mr. Kalisch. If your Honor please, I was going to state that, so far as the city is concerned, we want to expedite matters as much as possible, and I think that there are some facts which the city wants to present which can be done by stipulation. I spoke to Mr. Smith about it yesterday. One of the facts is concerning the assessment on the Central Railroad property. I am informed by the commissioners that some of that property which is assessed was leased for different purposes to different tenants. I believe that upstairs there was a gymnasium, and I think

it was leased also for lodge purposes—the G. A. R.—and I think we can stipulate with Mr. Smith as to the use to which that property is put. That is a fact, is it not?

The Court. You might stipulate with Mr. Smith, but that would not bind anybody else.

Mr. Kalisch. No, but he represents the Central Railroad.

The Court. It only has reference to that?

Mr. Kalisch. Yes, sir.

Mr. Smith. I have no objection to stipulating to what the fact is. I told Mr. Kalisch that there are about five pieces of property where there is a special tax with reference to the assessment; that is, they are assessed in parcels when it is one property, which I consider to be an illegal method of assessment. I thought we would agree on those, so as to avoid confusion, and we would stipulate whatever the facts are. It could be obtained by simply looking at the property.

The Court. That would be part of your case?

Mr. Smith. Yes. We will get that stipulation up and just file it. There will be no difficulty about proving it. Then there is a matter with regard to traffic that Mr. Kalisch wants me to show what I have got with reference to it. I think we can stipulate as to that.

Mr. Kalisch. Then there is also the additional fact of the method that the taxing authorities pursued in taxing these properties, where they have been cut up, as you

say, into several parcels for the purposes of assessment. I want to show that they have been taxed in the same manner as they have been assessed, in parcels, and that no objection has ever been made to the method of the taxing board in taxing the property as separate parcels, if that is the fact, and that we can stipulate.

Mr. Smith. I think we can cover all these things by stipulation, because there is no dispute about the facts.

Mr. Kalisch. Now, this morning I want to ask Mr. Van Duyne one or two questions. The other commissioners I do not propose to call, with this exception: only insofar as they apply to Governor Fort's objections, which, of course, I cannot go on with this morning on account of Governor Fort being absent. On the 24th he will be present, and then I shall put on one or two of the commissioners.

The Court. In respect to the Halsey matter?

Mr. Kalisch. In respect only to the Halsey matter.

HARRISON R. VAN DUYNE, recalled in behalf of the City of Newark (respondent).

Direct examination by Mr. Kalisch.

Q Mr. Van Duyne, on the second day of this hearing you testified as follows, on page 157, to questions that were put to you by Mr. Smith: "*Question*: Did you consider, Mr. Van Duyne, that in order to determine the increase of market value by reason of this improvement it was necessary for you to have what you considered

the market value was before the opening? *Answer*: No. The discussion of the market value before the opening was entirely immaterial. We may have discussed it. We dealt with increases in market value." I now ask you to explain what you meant by that answer. A I do not remember making that answer. I recall in reading the testimony the day after calling your attention to that answer, and also calling your attention to the fact that I had testified a number of times before, and I say now that I have testified a number of times since, that the measure of the benefit was the increase of the—the measure of the peculiar benefit was the increase in market value that accrued to the property on account of the opening and the widening, and to ascertain the measure of its benefit it was necessary to have and to know—to arrive at the market value of the property before the opening and to arrive at the market value of the property after the opening, the difference being the peculiar benefit to this property.

Q And that is the method that you pursued in assessing all these properties? A That is the method, and I have since so testified a number of times.

Q So that the answer that you gave to the question that I referred to is incorrect? A I do not even remember giving that answer.

Q (*By the Court.*) If you did, it is not correct? A If I did, it is not correct.

Cross examination by Mr. Smith (for Richard C. Jenkinson, *et als.*, objectors).

Q You say, Mr. Van Duyne, that you did determine what the market value of the property was before you determined the peculiar benefit

derived from this improvement? A We determined the market value of the property before the improvement and after, and the difference was the peculiar benefit.

Q How did you arrive at the market value of these properties? Did you have any method of determining it?

Mr. Kalisch. I object to that. I do not think that is cross examination. I merely asked him to explain an answer that he gave, and he explains it by saying it was incorrect, if he made the statement that appears in the testimony, and the method that he pursued was—or, rather, that he did consider market value before and after the improvement; but as to the means of arriving at the market value, I do not think that is cross examination.

The Court. I think it is.

Counsel for respondent prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A The assessment commission is made up of men who have lived in Newark practically all their lives, who have been on the streets of Newark a great deal in following their businesses, and we felt that we were, without necessarily being real estate experts, fairly familiar with Newark property, and, to a great extent, we arrived at the market values by carefully considering the property, by inspections on the ground, and from the judgment of men perhaps even more familiar than we were as to those values.

Q You say to a great extent you arrived at it in this way. In what other way did you arrive at it, if any? A I think I have covered the ground.

Q You said "to a great extent." Is there any other way in which you arrived at it, other than you have stated? A I think that that covers the ground.

Q Did you make any examination of the assessed value for taxing purposes of any of these pieces of property in the determination of the market value? A Not to my recollection.

The Court. You mean the figures at which the assessors—

Mr. Smith. Assessed for taxing purposes.

Witness. I do not remember having done so.

Q Did you have a list of those assessed valuations before you? A My recollection is that we did not; I do not remember such a list.

Q What were the men on whose judgment you relied to any extent in the determination of these market values? A They may have been real estate men, some, and—

Q I do not ask you that. Who were they? A I cannot remember who the men were.

Q You mean that you cannot remember, or cannot tell me, any man on whom you and your brother commissioners placed reliance—in whose opinion you and your brother commissioners placed reliance—in determining the market values of these properties? A No, I do not remember.

Q You do not remember? A I do not remember.

Q Have you not testified, or has not one of the commissioners testified, in this case with reference to at least one man?

Objected to.

The Court. The question is rather broad.

Q Well, in your presence? Did you not yourself refer to Mr. Frank Bock in some testimony you have given in this case?

Mr. Kalisch. I object to that. If the question is limited to the sort of reference made to him, whether or not he asked him as to his opinion—

The Court. I suppose that is what the question meant.

Mr. Smith. Yes.

Mr. Kalisch. My recollection of the testimony is that he distinctly said that he does not remember whom he spoke to. That is the testimony of the first day—the first book.

(Question read.)

The Court. The question is not very definite, but it means whether you referred to that gentleman as one whose opinion you had relied upon as to real estate values. Do you remember about that?

Witness. Yes, I think I remember that in my testimony with regard to the assessment on the Halsey estate property that I made a statement that there was a record in the office of an appraisal by Mr. Frank Bock.

Q Well, you have consulted with Mr. Frank Bock on several occasions about the values of these properties, have you not? A I do not remember.

Q Have you not consulted him and asked him to testify in these proceedings?

Mr. Kalisch. I should like to know when that was.

The Court. Make the question more definite.

Mr. Smith. Well, at any time.

The Court. That is too broad.

(Question withdrawn.)

Q Mr. Van Duyne, is there any piece of property among the pieces assessed in this entire area which you can tell me the market value of as determined by you as commissioner, or the commissioners with you, before you fixed the amount of peculiar benefit which you assessed against it? A There are over three thousand pieces of property in the area benefited. I cannot take one and give you now special or particular information in regard to it.

Q So that it would be useless, would it not, for me to go over these different properties marked out in red, and ask you specifically as to each one what the market value was which you determined on as to that particular piece of property? A Yes.

Q You could not give it to me, could you? A I could not give it to you.

Q Can you give me the market value which you fixed upon Miner's theater, owned by the Chelsea Security Investment Company, which was assessed at $7,500, located on Washington street? A No. I have a very clear recollection of the commissioners considering that both in the office and on the ground, but I do not recollect the figures.

Cross examination by Mr. Day (for the New York Telephone Company, objectors).

Q Mr. Van Duyne, at what figure did you ascertain the market value of the telephone company property? A I do not recollect, Mr. Day.

Q Either before or after the opening? A I do not recollect.

Q Did you employ any expert, or confer with any expert, at the time of the opening as to the assessed values of the property other than Mr. Bock? A I do not recall on this particular property conferring with an expert; we may have done so, but I do not recollect.

The Court. You are speaking of the telephone company property?

Witness. I am speaking of the telephone company property.

Q Is there any specific property in the zone of assessment upon which you ascertained the market value, according to your present recollection? Can you pick out any property and state what the market value that you ascertained was? A Well, I answered that question to Mr. Smith, Mr. Day. I cannot.

Q You cannot? A No.

Q Did you not confer with people in the taxing department of the city as to the market value? A Not to my recollection.

Q There was no guiding spirit there that you relied upon? A No.

NEW JERSEY SUPREME COURT.

RICHARD C. JENKINSON, *et als.*,
Prosecutors,
vs.
TYLER PARMLY, *et. als.*,
Defendants.

Monday, August 14th, 1916, Newark, N. J.

Before Herbert W. Knight, Supreme Court Commissioner.

Appearances: William T. Day, Esq., for the New York Telephone Co.

Harry Kalisch, for the City of Newark.

Leo Stein, Esq., for Richard C. Jenkinson and others.

(It was stipulated between Harry Kalisch, Esq., attorney for the City of Newark, and Day & Day, Esqs., attorneys for the New York Telephone Company, and Coult & Smith, Esqs., and Stein & Stein, Esqs., attorneys for Richard C. Jenkinson and others, that the testimony about to be given by witness Charles F. Kraemer should apply to both writs of certiorari and could be used in the case of the New York Telephone Co. and the other of Richard C. Jenkinson and others.)

DR. CHARLES F. KRAEMER sworn for the Prosecutors.

Direct examination by Mr. Stein.

Q You have been a member of the Board of Street and Water Commissioners of the City of Newark? A I have.

Q Do you know when you first became a member of that board? A I think 1911, I will have to verify these facts from the records, I don't remember the exact date.

Q How long did you continue as a member? A Five years—no, four years.

Q When did you go out of office? A I was in one term, I was appointed to fill a vacancy. It must have been four years.

Q When did you go out of office? A 1914, December; January 1, 1915.

Q Then your term of office covered a period of time, during which the discussion took place relative to the opening and widening of Branford place? A Yes, sir.

Q During that time, also, an ordinance was adopted for the opening and widening of that street? A It was.

Q Were you president of that board at any time? A I was not president when this ordinance was adopted, I believe.

Q Were you president at any time? A Yes, I was president of the board.

Q How long? A The year of 1914.

Q You are fully familiar with the proceedings relating to the opening and widening of this street? A In every phase and detail of it.

Q Tell us what was the original object of the opening and widening of that street?

Mr. Kalisch. I object to that upon the grounds that it is immaterial what the object was, and upon the further ground it would be hearsay for this witness to give what the object was since the object must have been in the minds of others besides himself.

A The objects for opening Branford place were to my mind fourfold and having been sponsor for the commissioners I used these fourfold objects for the reason of defending the ordinance:

First, to create a highway from Ferry and Market streets to High, running as near parallel with Market street as possible for the reason of relieving Market street vehicular traffic which entered it at the east from Market and Ferry streets and afforded an easier method of reaching the western section of the City of Newark.

Secondly, considerable discussion with reference to keeping certain promises which in a form were implied when Branford place was originally opened between Broad and Halsey streets, it was stated that the city officials were going to open up Branford place to High street, and we were continually requested to carry out these promises. It was stated that large sums had been paid for the front foot value when these sales were made, and these amounts had actually been paid because such promises were fresh in the minds of the purchasers.

Q You are speaking of property between Halsey and Broad streets on Branford place?

Mr. Kalisch. I want to ask to have stricken out the testimony in which the witness says, "It was stated," etc., all that he testifies to was stated to them. It is hearsay and I ask that it be stricken from the records.

Q Proceed. A I might state that these were requests made by property owners on Branford place to us as commissioners.

Thirdly, a large amount that was located between Halsey and High street in the rear of Market street frontages and which was con-

sidered assessed very low by the taxing officials, had a bearing point, as by opening up this thoroughfare it would increase the tax revenue for the City of Newark.

Q Which property? A All the property west of Halsey street and in a driect line with High street.

Q You mean the property in the rear of the Market street frontage? A They are today eliminated by Branford place, and it places these properties on a street front.

Fourthly, the sociological conditions that existed in this entire property, including Augusta street and Shipman street, and all these adjacent streets in that immediate vicinity.

Q Nicholson street? A Yes, it all had strong influence and bearing on furthering this opening of Branford place.

Q What were the sociological conditions? A The very worst that existed in the City of Newark, and from police records the most troublesome sections, requiring continual attention. The properties were infested by low dives and low characters and conditions were so bad it was worth a person's life to walk through the streets, crimes were committed publicly, and property was at its lowest ebb; it could not be rented or sold, and it necessitated wiping it out to eliminate the conditions.

Q To what extent did those conditions exist that you intended to wipe out? A Shipman street existed, and Nicholson street—

Q But, what I am getting at, did it extend as far as William street on the south? A Yes, and as far as Market street, on the north.

Q Now which of these reasons for the objects sought to be accomplished—were they all

of equal weight or was there some principal objects and some minor objects?

Mr. Kalisch. I object to that question on the same ground that it is immaterial and hearsay.

A The principal object for opening Branford place from Ferry street to High street was based on an investigation ordered by the Board of Works through their engineers and primarily was to relieve the vehicular traffic at the four corners.

Q Where? A Particularly at that time in the early stages from the Market street depot west towards Broad and Market streets.

Q On Market, you mean? A On Market.

Q You mean west of Broad, or west to Broad? A West to Broad.

Q Where is Ferry street located with reference to Broad and Market street? A Ferry street meeting Market street at right angles terminates into Market street like the larger part of a funnel to the spout, taking up the volume of traffic into one narrow street at the Market street depot.

Q Where is it located? A Practically east, the outlet of Market street where Market street runs into South Market street.

Q It meets Market street at the Pennsylvania Railroad? A Yes, sir.

Q That is New Jersey Railroad avenue? A Yes, sir.

Q You have a junction there of what streets? A South Market street, Ferry street and New Jersey Railroad avenue, all terminate into the plaza.

Q How about River street? A River street is somewhat north of Market street, and also

adds as a feeder, not primarily into Market street.

Q About how many city blocks east of River street, this— A This junction.

Q Yes, about how many city blocks is that east of the corner of Broad and Market street? A Five.

Q Do I understand you to say that the primary reason was to relieve the vehicular traffic on Market street west of Ferry street? A Yes, sir. West of Ferry street it was the primary object to relieve the traffic on Market street east from the Market street depot to the four corners.

Q Would that not be west? A That would be west from Ferry street and Market street; yes, sir.

Q And by what method was that relief to be gained? A By the opening of Branford place, as contemplated to run from Ferry street practically west over the route now occupied by East Mechanic street under the Pennsylvania Railroad through Market street westward to Broad street, and then westward to High.

Q It was not carried out that way? A No, sir.

Q Can you tell why?

Mr. Kalisch. I object to that as immaterial, irrelevant and it is hearsay.

Q Tell us why the entire improvement was not made? A From the outset, and in making the various examinations of the properties, we were about to require for this improvement, the legal department ran across obstacles to titles of property occupied by the Pennsylvania Railroad which subsequently necessitated our going into court and testing out the legality of their occupancy. While this matter rested in

court, in order to expedite matters we divided the project into two parts and passed the ordinance to open up Branford place from Halsey to High streets, the same to proceed immediately and to take up the continuation of the work just as soon as the legality in the status of the land of the Pennsylvania had been established as to the completion of the work from Broad to Ferry street.

Q Just where does the land lie with reference to Mechanic street and Ferry street, this line of the Pennsylvania railroad the title to which was in dispute? A In a direct line eastward and westward of Mechanic street and East Mechanic street.

Q So the work of the other half east of Broad street was left for the future? A It was deferred, yes.

Q What then, with regard to the completion of the primary object of the opening and widening of Branford place has it been actually effected by the ordinance as it has been adopted?

Mr. Kalisch. I object to that on the ground that it calls for an opinion of the witness and it is immaterial.

Q Before answering that question, I ask you what is your business? A Real estate investments.

Q How long have you been in that business? A Fifteen to twenty years, fifteen years definite.

Q Are you familiar with the value of property throughout the center of the City of Newark? A Yes, sir.

Q Bought and sold? A Yes, sir.

Q Appraised? A Yes, sir.

Charles F. Kraemer, direct.

By Mr. Kalisch.

Q Are you in the real estate business now? A Yes, sir.

Q Why did you tell, this morning, to Mr. Fiedler, you were out of the real estate business? A Yes, sir; but I will clarify that somewhat—it needs qualifying—you overheard a conversation which has no bearing upon my occupation. I am in the real estate business and have been continually.

Q Didn't you state to Mr. Fiedler that you were now in a business that had real estate beaten a mile? A I desire to qualify that because you overheard a conversation—

Q You stated that? A I did state it; yes, sir.

Q How long have you been out of real estate business? A I am still in the real estate business.

Q Where is your office? A No. 776 Broad street.

Q You still hold yourself out as a real estate agent? A Yes, sir.

Q What did you mean when you made that statement? A That I am now devoting my time to it theoretically, rather than selling it practically.

Q What is the difference? A I am hiring out my services in writing real estate opinions for the real estate magazine, and I have not been practicing salesmanship for the last four months.

Q So that you don't buy and sell? A Not within the last four months.

Mr. Kalisch. I object to this testimony, he is not a qualified expert.

Further direct examination by Mr. Stein.

Q You consider yourself as capable of judging real estate now as you were four months ago?

Mr. Kalisch. He is not an expert on who is an expert, that is for the Court to say.

A I consider myself thoroughly competent as to its value in the City of Newark.

Q What then would you say, Doctor, was the effect of opening and widening Branford place from Halsey street to High upon the original primary object which the Board of Works had in mind when this project was first under discussion?

Mr. Kalisch. I object to this on the ground that it is not a matter for expert knowledge of a real estate expert.

A I should say the work was only partially completed as to the original contemplated layout of the entire property.

Q Did it or not have the effect—I am speaking of the ordinance as actually adopted—to relieve the vehicular traffic on Market street, west to Broad, from Ferry? A I don't think it had any effect on that condition.

Q So that the primary object of the opening was not carried out? A Not to my way of thinking.

Q How about the secondary objects of the opening, how were they affected by the opening, as actually contemplated by the ordinance which was actually adopted?

Mr. Kalisch. I object to that question upon the ground that it has reference to conditions that existed after the work was accomplished, after the improvement was accomplished.

A By accomplishing these purposes, it raised a tax valuation.

Q Where? A In the territory west of Halsey to High street on Branford place, and in the immediate vicinity of the various streets that ran into Branford place north and south of Halsey, cleaned out and relieved the sociological conditions that I mentioned previously in my testimony.

Q Then, what would you say, generally, with regard to this improvement, as to its effects, either on particular properties or on the City of Newark at large as the ordinance was actually adopted? A I would like to ask a question myself; are you referring to the improvement as it was completed?

Q No; speaking of the time that the ordinance was actually adopted and the property acquired by the City of Newark, for the opening, so that you had a theoretical though not an actual opening? A I just don't know what to answer.

Q Perhaps the question is a little awkward. I am asking now for the effect upon the City of Newark and upon particular properties of the opening of this street in accordance with the ordinance as actually adopted, and I ask you to consider the street as of the time when the title to the various properties in the bed of the street had actually been acquired by the city, but before any work of grading, curbing or flagging had been done. Was that improvement one that benefited private property especially or one that benefited the city at large? A May I interpose a question, I don't grasp what you are driving at. Just before you said when the property was acquired there had been no improvement, it was only a theoretical improve-

ment; so you ask if that improvement was of benefit and if any work had been done, how can I answer that?

Q Answer the best you can. A If the ordinance was being carried out in theory and subsequently developed practically it was going to be of benefit to the property, particularly abutting on that street, primarily, and secondly, the greater area that fed that street or would utilize that as a highway from the western part of the city to Broad street.

Q How would it affect the city? A It was a general improvement benefiting the entire city.

Q Which would you consider greater, the benefit to the public at large or private owners?

Mr. Kalisch. I object to that, that question is unintelligible for these reasons that the general benefit to the public at large does not mean increase in market value; therefore not comparable.

A I think primarily, that the greater benefit of the carrying out of this ordinance resulted to the public generally, secondly to the property fronting on Branford place.

At this point a recess was taken until 1:45.

After Recess.

Cross examination by Mr. Kalisch.

Q Dr. Kraemer, you tesified this morning that the objects which prompted the Board of Works to open up Branford place were fourfold, and you named as the first one, to create a highway from Ferry street to High for the purpose of relieving traffic, was that the most important one? A Primarily.

Q That was the prime object, is that correct? A Yes, sir.

Q And that was to be accomplished by connecting Broad street opposite the easterly end of Branford place with Ferry street through Mechanic street? A Yes, sir.

Q Do you know at the time that this Branford place progress was up, who the owners were of any of the properties along Branford place?

Mr. Stein. I object to that on the ground that it is totally immaterial.

A Do you refer to the extension of Branford place from Broad to Halsey?

Q No, from Halsey to High? A Yes.

Q Before the street was open, do you know who they were? A Yes, sir.

Q Can you name some of them?

Mr. Stein. This is subject to the same objection. That it is immaterial and incompetent.

A One of the owners was Mrs. Neu, I will have to refer—I can't refer to them, if I can later I will give them to you.

Q Don't you know any besides Mrs. Neu? James Smith, Jr., did he own any? Did he own any above Halsey? A Yes, near Arlington.

Q On the line of Branford place? A Yes.

Q Did the former Mayor own any? A Yes.

Q Along the line of Branford place? A Yes.

Q How many, if you know, did former Mayor Haussling own? A I don't recall all these details, it is a matter of record.

Q Well, now, Doctor, do you remember when this litigation over the Mechanic street property started, do you remember that? A Yes, sir.

Q You say that while the matter was in court, testing the legality of the title of the Mechanic street property the Board of Works of which you were then a member passed a resolution to open up Branford place from Halsey to High street? A I don't know that I used those words, during that period we proceeded with the work.

Q I want to fix a time as near as I can. A Permit me to interrupt you, I am not going to set upon the exact dates, they are a matter of record.

Q I want it approximately; I will try to refresh your memory. You say that while the title to some of the Mechanic street property was being tested by litigation in the courts of this State that the Board of Works of which you were then a member passed a resolution to open up Branford place from Halsey to High street. Is that correct? A I will not permit that to be the statement at all, I will make the statement in these words: that the fact of an obstruction in the title having occurred in the lands that were required in order to continue with the improvement to Ferry street, that precluded us in going on with that entire project, but we went on with the western half of it.

Q These other three objects that you spoke of this morning, in addition to the first object that the Board of Works had in view as a result of the opening of Branford place, they were minor objects? A Secondary objects, but important objects.

Q What I mean is, if the first object did not exist you would not have opened the street? A I believe so.

Q Then there was no occasion for opening the street from Ferry to Broad? A Oh, yes, there was.

Q Was that the main object? A To create a lateral highway from Ferry to High street.

Q Now, if you didn't have that object in view, would you have gone on and opened this street anyway? A Quite likely, if they would have given it consideration.

Q Would that have relieved the traffic after the opening of Mechanic street? A I stated before that it was only one-half of the project and we had no more idea that would relieve the traffic in completing one-half of the work—we wanted to complete the entire project.

Q So, you would not have opened Branford place at all if you didn't have also in view the opening from Ferry street to Broad, that is what I mean, to complete the proposition? A You are perfectly right, that is the primary understanding.

Q Then, the opening of Branford place from Ferry to Broad was futile— A That I did not say.

Q —in the sense that you would not have made the improvement if you did not have in mind that you were going to open up Ferry street to Broad, that was the completion of the whole thing? A I hesitate to say yes to that.

Q Is it important or not? A It was secondary. Subsequently it was necessary to open it from Broad to High street to accomplish this secondary object. The primary object of the engineering proposition that brought about the project was the opening of the street in its entirety—what we expected was to open the street in its entirely, I would not have done that if I

was entirely stopped from opening it from Broad to Ferry.

Q You mean if you were stopped before you started? A Yes.

Q Now, Doctor, do you know the cost of this opening from Halsey to High street? A I know of the cost.

Q Do you know the amount? A I don't recall.

Q As much as one million dollars? A Yes.

Q Do you mean to say that while the title to this property in Mechanic street was in question, and in litigation that you, notwithstanding that, and notwithstanding Mechanic street was an important, and the important part of the improvement, the Board of Works passed an ordinance to expend one million dollars without knowing what the result of that litigation would be? A We were assured by counsel we would win.

Q But you didn't? A We won the larger part.

Q Why didn't you continue the improvement? A Extending Branford place to Ferry street?

Q Yes. A The matter was taken up between the engineering department and the Pennsylvania Railroad three or four weeks such a conference took place, and the Pennsylvania were granted certain privileges along their line with *quid pro quo*.

Q And was that proposition in existence when you were on the board? A The demand of the Pennsylvania Railroad in anticipation of this opening; yes, sir.

Q What was the result? A In my capacity as president of the board, I turned it down.

Q You turned it down? A Yes, sir.

Q That was after the resolution to open Branford place? A Oh, yes; a long while after.

Q And after the litigation had been tried and won and lost on appeal? A And lost on appeal? No, the Pennsylvania only lost one portion of the appeal.

Q Was there not a litigation in which the question of continuing Branford place underneath the railroad track of the Pennsylvania, was not that in court? A No, sir.

Q It was not? A No, sir.

Q This is a solid wall, is it not? A Yes.

Q How did you expect to go through it? A The litigation in court was a question whether or not the Pennsylvania were holding land down there without title, from the city, and in order to establish the right to go through that wall, endeavoring to prove that such was the case, they were holding land without title, one portion of it was proved and other portions could not be proved for lack of proper evidence, of records which we could not obtain.

Q The going through of that wall was a matter of condemnation? A They insisted and expected such enormous returns for releasing to us, we turned them down and said we would test out their legality as an occupant of that land.

Q Had you then passed the resolution to open up Branford place? A Whether or not that day preceded or was directly after, I don't know.

Q Then while the matter was in litigation a resolution was passed? A The litigation with reference to the Pennsylvania, and the opening of Branford place ordinance were all about the same time, whether it preceded or was directly after I will have to refer to the minutes of the meeting.

Q I don't want the exact date, all I want to know is whether the litigation had been completed on appeal when you passed the resolution to open Branford place? A I don't know.

Q You have stated in your evidence this morning it was within two years and you have stated in your evidence this morning that while the matter was in court you went ahead and passed a resolution to open up Branford place from Halsey to High street? A Yes, I believe that is true.

Q You say that the opening of Branford place from Halsey street was only one-half of the project, what do you mean? A One-half of the contemplated project.

Q Well, in what sense? A I supposed the opening was to extend from Ferry street to High.

Q Well, you mean that it did not accomplish the same purpose as if it extended to Ferry street? A Absolutely not.

Q Why not? A The very fact that the primary object was to relieve vehicular traffic on Market street eastward, due to the fact these two arteries or funnels opened into that narrow neck choking the traffic as it came to Broad and Market streets, the four corners, was the primary object of creating this highway parallel to Market street.

Q Didn't it relieve the congestion at Broad and Market streets? A What?

Q (Question repeated.) A I would not like to say that exactly.

Q Do you mean to say there is not a great deal less traffic on Market street from High to Broad from what there was before the opening? A I am told so.

Q Is there? A I have never counted it. They say it is a fact.

Q A great deal less? A I am not competent to state. The engineers tell me there is a marked difference.

Q Does it not relieve the traffic at the four corners? A That has been the object.

Q So that the project of relieving vehicular traffic at Broad and Market streets is a success? A Primarily, looking at it from the western end; but not as we had anticipated, we were trying to create that relief from the other end.

Q I know, but your object also was to relieve the traffic at the four corners, that was the primary object? A Yes, that had something to do with it; yes.

Q You say now, another object was to increase tax ratables, opening Branford place west of Halsey? A Yes.

Q Just what properties? A The entire property in that zone that is now occupied by Branford place.

Q Was it your view that it would increase tax ratables? A Absolutely.

Q Assuming now, that the entire project was not carried out, meaning the Mechanic street end of it, would you still be of the opinion that it has increased the tax ratables? A Yes.

Q Why? A Property that was formerly rear end property to buildings consisting of yards, rear ends on Market street, had no particular value, because it had no particular access, now becomes property fronting on a main highway, giving it an opportunity to be used for marketable property.

Q Take the property on Washington street, taking the New York Telephone Company property, for instance, did that not have an approach

by way of Camfield street already before Branford place was opened? A That, I don't think, had a rear approach, Camfield street terminated on Washington street, and the New York Telephone Company was on the westerly side.

Q Was opposite? A Yes, sir.

Q Didn't the New York Telephone Company have a means of access by way of Camfield street? A There is a big difference of approach in going to property through a ten or twelve-foot alley inhabited by the cheapest kind of people than a sixty-foot wide street with modern buildings.

Q Camfield street was a narrow, slightly inhabited passageway? A At its very best a dangerous neighborhood to proceed through.

Q What reason? A Dives, criminals and colored people lived in that neighborhood.

Q Was it a street much used? Was there much traffic on Camfield street? A Not any to speak of.

Q How wide was that street? A A narrow street, probably 20 feet wide.

Q Was it a straight street? A Apparently straight, it had some little crooks in it.

Q Sidewalks? A Very narrow, dangerous, with a lot of basement openings in it.

Q You would not call that very much of an approach to the New York Telephone Company property? A No, it was a detriment to that company, for if one of their subscribers walked up there they were in danger of injuring themselves before they got to the building.

Q That is some kind of an approach, is it not? A In case of emergency, a fellow could get through and then find his way out.

Q Was it considered a bad reputation? A I always considered it so.

Q Infested with disorderly houses? A Yes. Had everything you would call disorderly.

Q So you think the interior property, using the New York Telephone Company property as an example, acquired a new means—an absolutely new means of access by the opening and widening of Branford place to and from Halsey street to High? A Among that other property should not be included the New York Telephone Company property. It was a modern property before this took place and cannot be compared with these back yards and old rookeries that existed and had no frontage at all, that were shut in and unapproachable; the New York Telephone Company was a modern and up-to-date building.

Q I am not speaking of the building, I am only speaking of the land, we only assess the land values. A It had an influence on all that property, even had an influence on the New York and New Jersey Telephone Company as to its being placed upon a corner.

Q You have spoken of the sociological conditions around Shipman and Augusta streets, do you mean that the opeening of Branford place has eliminated those conditions? A It has had a very beneficial effect, just how entirely it has eliminated them I don't know, but it is much better than it has been.

Q It has made a new means of access to this building, made it more prominent? A I believe today property there is worth more, it is utilized by better people and the change has driven out the other kind of people and it is entirely different to-day from what it was before.

Q Are you familiar with the conditions as they were just before Branford place was opened

in the neighborhood of High street, or rather Springfield avenue and High street? A Yes, sir.

Q Can you say whether or not the effect of the opening of Branford place has been to divert traffic to any large extent into Branford place from Springfield avenue, which otherwise would have gone down Springfield avenue? A I certainly would say so. It has diverted traffic down Branford place.

Q And that diversion of traffic takes place regardless of where the traffic is bound, to the southern or the northern part of the city? A I am not competent to speak on that question primarily I have never watched it from that end.

Q Did you say there has been in contemplation the acquiring of the right to continue Branford place to Market street and underneath the Pennsylvania Railroad bridge? A I don't speak officially, I say the matter is still pending before the officials.

Q Would you say that they have in mind—in contemplation, any such project? A I am not in a position to say that, I cannot say that.

Q What you heard are rumors? A The exact version that took place between the commissioners, at a meeting that I attended.

Q Has there been any resolution passed by the present Board of Works looking to that end? A No, sir.

Q Or has there been any discussion upon the question by the present Board of Works officially at any of their meetings? A That, I don't know.

Q Was there any resolution passed by the old Board of Works, after the litigation had been finished, looking to that end? A No, sir. I would say that the present Board of Works—

Q I mean the Board of Works of which you were a member? A Litigation had not been finished at that time.

Q Then, the Board of Works that immediately succeeded you? A That I do not know. I have not kept a record of their minutes.

Q You mean the litigation had not been finished before you went out of office? A I think the last appeal was still pending.

Re-direct examination by Mr. Stein.

Q Dr. Kraemer, when you speak of the intention of the Board of Works, of which you were a member, the commission's intention to open the street all the way down to Ferry street, do you refer now to your own personal opinion or to that of the board as expressed at public meetings? A That of the entire board.

Mr. Kalisch. I want to move to strike out that question and answer on the ground that it is purely hearsay and the best evideence would be the members of that board themselves.

Mr. Stein. We have one member here, who was only the president of the board.

Q You said, in answer to one of Mr. Kalisch's questions, notwithstanding the fact that the street was not opened to Ferry street, it nevertheless had the effect of raising certain property values? A Yes, sir.

Q To what extent, in your opinion, were these property values raised; I don't mean as to the amount, but as to the area? A It had direct bearing on all properties fronting on Branford place.

Q You mean increase in values? A Yes, sir; making it desirable and tenantable.

Q And it also had a direct effect on all the property on the side streets that ran into Branford place? A Possibly one-half block north and south were particularly benefited by such an opening.

Q How far west of Broad street, if at all, would you say increase of values had occurred? A I don't think it affected the property east of Broad street.

Q How far west of High street? A That is problematical, I don't think the area west of High street was particularly affected, but I feel the entire city was benefited or would have been benefited if the project went through.

Q What do you mean? A I take it you mean what effect this opening would have had upon certain area west of High street; are you referring to the improvement as it extended from Broad to High street?

Q As it extended from Halsey to High street, take it as of the time of the legal opening, before it was actually improved, flagged and curbed. A It has been a general benefit to the entire city.

Q Discussing it from the general benefits, to what area would you limit the peculiar benefits enjoyed by reason of the opening? A The abutting property, the property within one-half a block or within that latitude, on the tributary streets, lateral streets. Outside of that I can't see any effect outside of the general benefit on all the properties in the City of Newark.

Re-cross examination by Mr. Kalisch.

Q Don't you think that the opening up of a new frontage affects more than one-half block either side of that street? A No; I don't think so.

Q Assuming that Branford place develops into an important business center, don't you think that it will spread its influence to the extent of affecting market values beyond one-half a block north and south? A One-half a block is a long distance to be affected by the opening of a street.

Q Can you tell me whether Washington street is affected by the development of Broad street? A Which development are you referring to?

Q I mean, does not Washington street receive any additional value by reason of the increase in values on Broad street? A No, sir.

Q So that if Broad street was not there Washington street would be just as valuable? A No; that requires an explanation. Washington street receives its emphasis in value due to the fact that Broad street is so crowded, that the business is driven to the next nearest street.

Q So that the development of Broad street forces its traffic into Washington street and into Halsey? A You say the development; it is not that, but the fact that Broad street has reached its limit in supply and demand and having reached that limit, is forcing business into the next nearest street.

Q If the four corners, let us say, were not there—did not exist—all these nearby streets would be as valuable as they are today? In other words, if Halsey street was more than a block from the four corners, it would be as valuable as it is today? A What comparison are you trying to make?

Q I am asking you a simple question. You think Market and Halsey streets derive their value from their proximity to the four corners? A Yes; they do.

Q Does Market and Washington street derive its value from its proximity to the four corners? A It does.

Q So that the farther away we go the less valuable it becomes? A The corner of High and Springfield avenue may become more valuable than Broad and Market streets some day.

Q Because of local conditions? A Yes.

Q You mean sympathetic influence? A Yes. I wish to state that the supply and demand of business on Broad street is forcing traffic into the neighboring streets.

Q Up? A Yes.

Q Property two blocks from Branford place would therefore be affected in value if Branford place grew to be an important commercial street? A If the same conditions existed also on Branford place and the supply and demand was limited the same as it is on Broad street, it would have to be answered yes. You are putting only a theoretical question and the influence of market value on the opening of Branford place will not have that affect on more than one-half block for many years to come.

Q You mean to say, then, that the present values, without considering the future developments of the street, are not affected? A Present values are not affected.

Q You considered Branford place as it is today, didn't you? A Yes, sir.

Q You didn't consider the future of the street in determining the value of the lateral street? A I took the condition as it is, not what it is going to be.

Q Don't you think Branford place will develop into an important business street? A I think so.

Q Don't you know the values of Branford place will go up to a considerable extent in the future? A It is problematical.

Q Do you mean to say that Branford place in going up in value to a great extent in the future does not affect the value of property more than one-half a block away? A I absolutely do.

Q You consider that that property which is only one-half a block away—one block north of Branford place is affected? A Directly.

Q That is in reference to market value? A Yes, sir.

Q What causes the increase in value in property which is one-half a block north of Branford place? A The additional facilities for reaching traffic centers or important centers, east, north, south and west.

Q Let us take Washington street, does the opening of Branford place make more traffic on Washington street north of Branford place? A Absolutely. It is a mathematical proposition. When there are three or four highways leading to one opening and there has only been one before, there is more traffic.

Q Where does that traffic come from? A All over the city.

Q Goes into Washington street? A Yes, sir.

Q Covering what area? A One-half block north or south.

Q Name the streets. A Washington street, Halsey street—

Q You say Washington street north of Branford place, between Market street and Branford place—there has been increased values—increased rentals? A The rentals are worth more than before that improvement was made.

Q That, you say, is due to traffic? A Greatly, pedestrian and vehicular traffic.

Q That pedestrian and vehicular traffic is due to the opening of Branford place? A I attribute a great deal to it.

Q You mean that is also true of traffic on Halsey north of Branford place? A Yes.

Q And Halsey south of Branford place? A Yes, sir.

Q Going there by reason of Branford place being there? A Yes.

Q How does the traffic from the southern part of the city increase because of Branford place, coming north on Halsey street or Washington street, from the southern part of the city, what causes that to increase? A I don't intend to admit that. Did you ask me whether the traffic coming from Branford place increases going into those side streets?

Q I asked you whether there was increased traffic on Halsey and Washington streets between Market and Branford place, whether there was increased traffic as a result of the opening of Branford place? A Yes, that is absolutely so.

Q Is that so of the property that is south of Branford place? A Yes, sir; the same diversion that takes place northerly takes place southerly, the same influence that diverts traffic into these lateral streets, north and south, is prevalent as a magnet north and south into Branford place.

Q It is small—insignificant? A It is marked, noticeable.

Q Has traffic any bearing on the value of property? A Yes, sir.

Q Any great bearing? A Decided bearing.

Q Will you tell me now, you say there has been— A There has been a marked increase of traffic on these streets that ran into Branford place from the southern end of the city.

Q In what way? A Branford place causes traffic to increase in these side streets.

Q Does the presence of Branford place affect the amount of traffic on these streets? A Yes; the traffic that heretofore came east on Market street from the hill and formerly only had Market street to do down and reach the four corners, today is split, as it were, into two streams, one-half coming down Branford place and one-half down Market street.

Q It is only going in the one direction? A The traffic that heretofore carried the people from the eastern end of the city and from the center up to the hill to their homes. Today pe destrains can walk up Branford place and leave Market street aloof. You will find them going north and south on Market street, and Shipman the same thing. So noticeablee is it that you only have to spend five or ten minutes between six and seven o'clock and you would be surprised to see the thing is an ocular demonstration.

Q Is that so of traffic going north on these streets too? A It has its influence too, but possibly not as marked.

Q How about Thirteenth avenue, is there a tendency of the traffic that comes down Thirteenth avenue to use Branford place or any of these streets, Breintnal place? A I am not sure about Branford place, but it has an effect on Thirteenth avenue in utilizing that street The city had in mind an improvement which would relieve traffic but when the freeholders bought the plot of ground for the Court House annex it eliminated the triangle and thus had its influence on the matter of the Branford place opening.

Charles F. Kraemer, re-cross.

Q This traffic you spoke of coming from the southern part of the city going north towards Branford place, just how far down does that traffic commence? A It is problematical.

Q How far does it commence? How far south? A I could not say how far south. Not more than a block or two I don't think the influence would be felt. The peculiar influence you are probably leading up to, as to the influence upon property values, is the diversion of the traffic in and out of these streets from Branford place and in the magnetic powers of drawing the traffic north and south from other streets.

Q Does it do that? A It does, it has that effect.

By Mr. Stein.

Q Considering that the street as originally contemplated all the way from Ferry street down actually going through, and assuming that the cost of opening Branford place as it has actually been opened, assessed to the extent of about fifty per cent. on private property owners, do you consider that is a fair and reasonable kind of assessment to be placed upon private property owners or that it is too high? A Assuming that it is about fifty per cent., that would make about $450,000 or $500,000.

Q On the limited area? A Yes.

Q I think it is an outrage perpetrated by the City of Newark which should have been paid by the tax payers generally throughout the city.

By Mr. Kalisch.

Q Did you see the first report that was submitted for condemnation by the old board? A I did.

Q Did you help make up that report? A No, sir.

Q Did they seek your advice about it? A No; if they had it would have been a general assessment upon all the tax payers, outside of the abutting property owners, because it was well known that this was a general improvement to the entire city and not to any special class, just as the opening of Central avenue, and it should have been considered in the same light.

Q So that your judgment about it is that it should come out of the city tax fund? A General tax levy with the exception of the abutting property owners, and from the peculiar benefits they received, they could well afford to pay the special assessment.