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Writ of Certiorari, 1915-1916.

Filed Oct. 19, 1917.

New Jersey Supreme Court

10

THE BOROUGH OF MIDDLESEX,
Prosecutor,

vs.

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD, and
THE BOROUGH OF DUNELLEN,
and THE STATE BOARD OF
TAXES and ASSESSMENT,
Respondents.

Writ of Certiorari 20

NEW JERSEY TO WIT:

The State of New Jersey to the Inhabitants of the
City of Plainfield, The Borough of North 30
(L. s.) Plainfield and the Borough of Dunellen,
and the State Board of Taxes and Assess-
ment, GREETING:

We being willing for certain reasons appearing by
the affidavit of George W. Harris, Mayor of the
Borough of Middlesex, the prosecutor, to be certified
of the two judgments of the State Board of Taxes
and Assessment, rendered July 24th and 31st, 1917,
relating to the assessment of taxes by the prosecutor 40

Writ of Certiorari, 1915-1916.

on the property of The Inhabitants of the City of Plainfield, The Borough of North Plainfield, and the Borough of Dunellen, which property is situate in the said Borough of Middlesex, and said assessment being for taxes for the years 1915 and 1916, as fully as said judgments and all things touching and concerning the same remain before the said State Board of Taxes and Assessment:

10

We do command you that the judgments of the State Board of Taxes and Assessment, dated July 24 and 31st, 1917, relating to the taxes assessed by the assessor of taxes of the Borough of Middlesex on the lands and real estate belonging to the said The Inhabitants of the City of Plainfield, the Borough of North Plainfield and the Borough of Dunellen situate in the Borough of Middlesex, and all papers, records and matters touching and concerning the said judgments as fully and entirely
 20 as before you they remain, to our Supreme Court of Judicature, at Trenton, on Oct. 26, 1917, you certify and send, together with this writ, that therein may be done what of right and according to the laws of the State of New Jersey ought to be done.

WITNESS, WILLIAM S. GUMMERE, ESQ., Chief Justice of our Supreme Court, at Trenton, this 6th day of October, 1917.

30

WM. C. GEBHARDT,
Clerk.

WM. A. CODDINGTON,
Attorney for Prosecutor.

A True Copy.

WM. C. GEBHARDT,
Clerk.

40

Writ of Certiorari, 1915.

Filed Nov. 23, 1917.

STATE OF NEW JERSEY, SS.

THE STATE OF NEW JERSEY to the STATE BOARD
OF TAXES AND ASSESSMENT and the
[L. S.] BOROUGH OF MIDDLESEX, IN THE COUNTY
OF MIDDLESEX AND STATE OF NEW
JERSEY, GREETING: 10

We being willing for certain reasons to be certified
of a certain judgment or order rendered by the
State Board of Taxes and Assessment on the 31st
day of July, 1917, in a certain tax proceeding en-
titled "In the Matter of Appeal of The Inhabitants
of the City of Plainfield, *et al.* from the assessment
of property in Middlesex Borough, County of
Middlesex, for the year 1915," do command the
State Board of Taxes and Assessment that the
record of the aforesaid judgment or order, and of 20
all the proceedings thereon, including the facts sub-
mitted to you and the grounds of your determina-
tion, together with all things touching and con-
cerning the same as fully and completely as before
you they remain or in your custody or control, you
do certify and send to our Judges of our Supreme
Court at Trenton on the 26th day of October, 1917,
that therein may be done what of right and ac-
cording to law ought to be done.

WITNESS His Honor, WILLIAM S. GUMMERE, Chief 30
Justice of our Supreme Court, at Trenton, this 18th
day of October, 1917.

WM. C. GEBHARDT,
Clerk.

LINDABURY, DEPUE & FAULKS,
Attorneys.

Writ of Certiorari, 1916.

Filed Nov. 23, 1917.

STATE OF NEW JERSEY, SS.

THE STATE OF NEW JERSEY TO THE STATE BOARD
 OF TAXES AND ASSESSMENT AND THE
 [L. S.] BOROUGH OF MIDDLESEX, IN THE COUNTY
 OF MIDDLESEX AND STATE OF NEW
 10 JERSEY, GREETING:

We being willing for certain reasons to be certified
 of a certain judgment or order rendered by the
 State Board of Taxes and Assessment on the 24th
 day of July, 1917, in a certain tax proceeding en-
 titled "In the Matter of Appeal of The Inhabitants
 of the City of Plainfield, *et al.* from the assessment
 of property in Middlesex Borough, County of
 Middlesex, for the year 1916," do command the
 State Board of Taxes and Assessment that the
 20 record of the aforesaid judgment or order, and of
 all the proceedings thereon, including the facts sub-
 mitted to you and the grounds of your determina-
 tion, together with all things touching and concern-
 ing the same as fully and completely as before you
 they remain, or in your custody or control, you do
 certify and send to our Judges of our Supreme
 Court at Trenton on the 26th day of October, 1917,
 that therein may be done what of right and accord-
 ing to law ought to be done.

30 WITNESS His Honor, WILLIAM S. GUMMERE, Chief
 Justice of our Supreme Court, at Trenton, this 18th
 day of October, 1917.

WM. C. GEBHARDT,
 Clerk.

LINDABURY, DEPUE & FAULKS,
 Attorneys.

Return to Writs of Certiorari.

Filed Nov. 23, 1917.

NEW JERSEY SUPREME COURT.

THE BOROUGH OF MIDDLESEX,
Prosecutor,

vs.

10

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOR-
OUGH OF NORTH PLAINFIELD,
and THE BOROUGH OF DUNEL-
LEN, and THE STATE BOARD
OF TAXES AND ASSESSMENT,
Respondents.

On Certiorari.

The State Board of Taxes and Assessment doth²⁰
herewith send to the Supreme Court of the State of
New Jersey the petition, judgment and proceedings
in the matter of the appeals of The Inhabitants of
the City of Plainfield, the Borough of North Plain-
field and The Borough of Dunellen from the assess-
ment of property located in the Borough of Middle-
sex, County of Middlesex, as within it is com-
manded, as by the transcript under the seal of said
Board hereto annexed more fully appears.

30

STATE BOARD OF TAXES AND
ASSESSMENT,

By FRANK D. SCHROTH,
Secretary.

[SEAL]

**Note: Unimportant portions of the
returns have been omitted
from the record.**

40



Notice of Appeal and Reasons.

New Jersey Supreme Court.

THE BOROUGH OF MIDDLESEX,
(Prosecutor)
Appellant,

vs.

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD, AND
THE BOROUGH OF DUNELLEN,
AND THE STATE BOARD OF
TAXES AND ASSESSMENT,
(Respondents)
Appellee.

On Certiorari

10

Notice of Appeal.

TAKE NOTICE that the Borough of Middlesex, 20
prosecutor-appellant in the above entitled cause, ap-
peals to the Court of Errors and Appeals from the
whole and every part of the judgment in said cause.

The grounds of appeal are:—

1. Because the property in question is not used
for public purposes.
2. Because the Borough of Middlesex derives no
benefit therefrom.
3. Because the judgment deprives the Borough of
Middlesex of a part of its taxable property. 30
4. Because a large part of the property in ques-
tion is not used for the purposes for which it was ac-
quired.
5. Because the judgment is contrary to law.

Dated, February 18th, 1918.

WM. A. CODDINGTON,
Atty. of Pltff. in Error,
(Appellant).

To
MESSRS. LINDABURY, DEPUE & FAULKS,
Attorneys for Respondents-Appellee.

Notice of Appeal and Reasons.

NEW JERSEY SUPREME COURT.

10	<p>THE INHABITANTS OF THE CITY OF PLAINFIELD, THE BOR- OUGH OF NORTH PLAINFIELD AND THE BOROUGH OF DUN- ELLEN,</p> <p style="text-align: center;">(Prosecutor) Appellee.</p> <p style="text-align: center;">v.</p> <p>THE STATE BOARD OF TAXES AND ASSESSMENT AND THE BOROUGH OF MIDDLESEX, (Respondent) Appellant.</p>	<p>On Certiorari. Notice of Appeal. 1915 Assessment.</p>
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TAKE NOTICE that the Borough of Middlesex, Re-
spondent-Appellant in the above entitled cause, ap-
peals to the Court of Errors and Appeals from the
whole and every part of the judgment in said cause.

The grounds of appeal are:

1. Because the property in question is not used for public purposes.
2. Because the Borough of Middlesex derives no benefit therefrom.
3. Because the judgment deprives the Borough of Middlesex of a part of its taxable property.
- 30 4. Because a large part of the property in question is not used for the purposes for which it was acquired.
5. Because the judgment is contrary to law.

Dated February 18th, 1918.

WM. A. CODDINGTON,
Atty. of Pltff. in Error
(Appellant)

40 TO MESSRS. LINDABURY, DEPUE & FAULKS,
Attorneys for Prosecutor-Appellee.

Notice of Appeal and Reasons.

NEW JERSEY SUPREME COURT.

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD AND
THE BOROUGH OF DUNELLEN,
(Prosecutor)
Appellee,

v.

THE STATE BOARD OF TAXES
AND ASSESSMENT AND THE
BOROUGH OF MIDDLESSEX,
(Respondents)
Appellant.

On Certiorari.

Notice of Appeal. 10

1916 Assessment.

TAKE NOTICE that the Borough of Middlesex, Respondent-Appellant in the above entitled cause, appeals to the Court of Errors and Appeals from the whole and every part of the judgment in said cause. 20

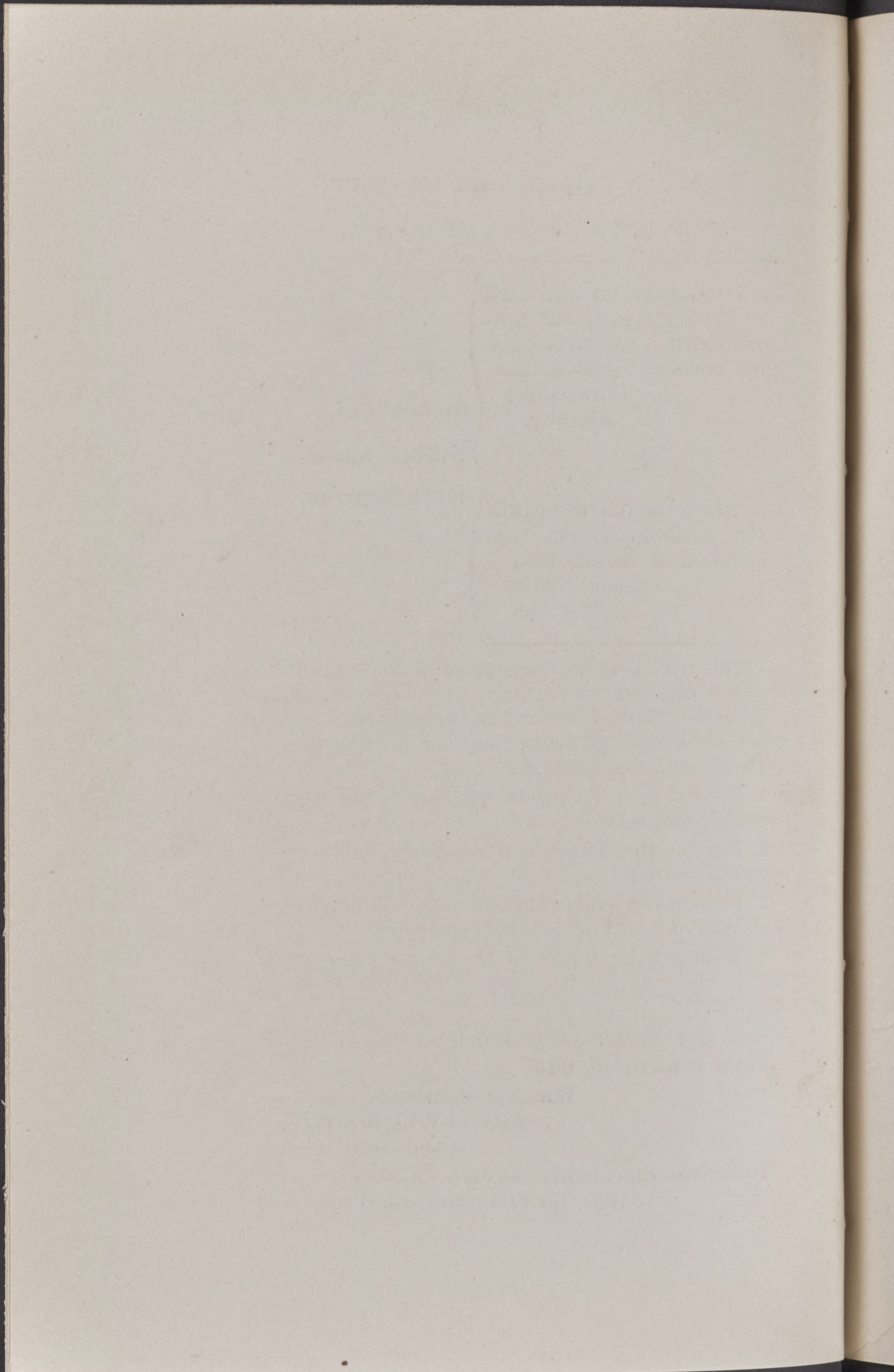
The grounds of appeal are:

1. Because the property in question is not used for public purposes.
2. Because the Borough of Middlesex derives no benefit therefrom.
3. Because the judgment deprives the Borough of Middlesex of a part of its taxable property.
4. Because a large part of the property in question is not used for the purpose for which it was acquired. 30
5. Because the judgment is contrary to law.

Dated February 18, 1918.

WM. A. CODDINGTON,
Atty. of Pltff. in error
(Appellant)

TO MESSRS. LINDABURY, DEPUE & FAULKS,
Attys. for Prosecutor-Appellee. 40



Petition.

Filed Feb. 14, 1916.

State Board of Taxes and Assessment.

In the matter of the application of the INHABITANTS OF THE CITY OF PLAINFIELD, THE BOROUGH OF NORTH PLAINFIELD and THE BOROUGH OF DUNELLEN, for the reduction of the tax assessment for the year 1915 on property situate in the Borough of Middlesex, County of Middlesex and State of New Jersey.

} Petition

10

TO THE BOARD OF EQUALIZATION OF TAXES OF NEW JERSEY:

20

Your petitioners, The Inhabitants of the City of Plainfield, the Borough of North Plainfield and The Borough of Dunellen, in the County of Union and State of New Jersey, respectfully show that they are the owners of certain property situated in the taxing district of the Borough of Middlesex, County of Middlesex, consisting of a tract of land of about 89 acres and a house thereon on Bound Brook Road in said Borough.

That said property has been assessed for the purpose of taxation for the year 1915 at a valuation of land \$27,000; improvements \$11,700; total \$38,700, at which assessment your petitioners are aggrieved because they are advised and believe that the said assessment is levied against property which is exempt from taxation under and by virtue of the terms and provisions of an Act of the Legislature of the State of New Jersey entitled, "An Act for the assessment and collection of taxes", approved April 8, 1903, and the acts amendatory thereof and 40

Petition.

supplemental thereto, and that the said assessment is in excess of its true value.

That an appeal from said assessment has been filed with the Middlesex County Board of Taxation, which appeal said Board disposed of as follows: They the said Board of Taxation did affirm said assessment without prejudice.

Your petitioners have, therefore, not paid the taxes so levied for the year 1915 and pray that the said assessment of Thirty-eight thousand seven hundred dollars (\$38,700), land \$27,000; improvements \$11,700; total, \$38,700, for the year 1915 be set aside and vacated or be reduced to the true value of the property legally taxable.

Dated February 3d, 1916.

THE INHABITANTS OF THE CITY OF
PLAINFIELD, THE BOROUGH OF
NORTH PLAINFIELD and THE
BOROUGH OF DUNELLEN,

By

J. EDWARD ASHMEAD,
Attorney.

STATE OF NEW JERSEY }
County of Essex } ss.

J. EDWARD ASHMEAD, being duly sworn according to law on his oath says: I am the attorney of the above named petitioners and have been duly authorized by them in Joint Meeting assembled to take on their behalf the appeal in the foregoing petition set forth. I have read the said petition and know the contents thereof, and the statements set forth and contained therein are true.

J. EDWARD ASHMEAD

Sworn to and subscribed }
before me this third day }
of February, 1916. }

JOHN KEAN

Attorney at Law

of the State of New Jersey

Petition.

STATE OF NEW JERSEY }
 County of Essex } ss.

CHARLES W. WEEKS being duly sworn according to law on his oath deposes and says that he served a copy of the above petition and affidavit on Stewart Crouse, Clerk of the Borough of Middlesex, personally, this 11th day of February, 1916.

CHARLES W. WEEKS 10

Sworn to and subscribed }
 before me this 11th }
 day of February, 1916. }

G. L. FERGUSON

[SEAL.] Notary Public
 of New Jersey

STATE OF NEW JERSEY }
 County of Essex } ss.

20

CHARLES W. WEEKS being duly sworn according to law on his oath deposes and says that he served a copy of the above petition and affidavit on J. Edward Harned, the Sec'y of the Middlesex County Board of Taxation, personally, this 11th day of February, 1916.

CHARLES W. WEEKS

Sworn to and subscribed }
 before me this 11th }
 day of February, 1916. }

G. L. FERGUSON

[SEAL.] Notary Public
 of New Jersey

30

40

Stipulation and Testimony.

Mr. Ashmead: Title was taken by the inhabitants of the City of Plainfield, Borough of North Plainfield and the Borough of Dunellen, all three of them.

Mr. Coddington: All right. That the assessment made by the Assessor of the Borough of Middlesex was against the City of Plainfield and should be the inhabitants of the City of Plain- 10 field, the Borough of North Plainfield and the Borough of Dunellen.

Mr. Jess: How does it happen that all these different municipalities are owners of these lands?

Mr. Ashmead: This is a case where three municipalities joined together under the Act of 1910 to jointly provide a sewage disposal works and the act provides that the title shall be taken in the names of the three municipalities, and 20 the land is located in the adjoining Borough of Middlesex and they have made an assessment on this and the question at issue is whether or not that land is exempt from taxation.

Mr. Jess: What is that act of 1910,—can you refer to it?

Mr. Ashmead: 1910, page 167, chapter 112, I think it is.

Mr. Coddington: (continuing stipulation) That the Borough of Middlesex is not a part of 30 the municipalities, that it is a separate taxing district, and that they have no relation to each other so far as the making of assessments is concerned. That the proposed sewerage system is to take care of the house sewerage matter and not for surface or street sewerage matter of the three municipalities, namely, Plainfield, North Plainfield and Dunellen; that the stream known as Green Brook or Bound Brook into which the effluent from the sewage disposal plant is con- 40

Stipulation and Testimony.

templated to be emptied is a fresh water stream and not a tidal stream.

Mr. Ashmead: I think that is entirely immaterial in the question of taxes.

The President: If it is a fact you don't object to the state of the facts because they are merely statements of facts between you two and don't bind anybody else.

10

Mr. Coddington: (continuing) That there is an injunction proceeding pending in the Court of Chancery on behalf of the property owners in the Borough of Middlesex to restrain the three joint municipalities from operating a sewage disposal plant on the Darling farm in the Borough of Middlesex, which proceeding is undetermined. That the property assessed by the Borough of Middlesex on which this appeal is taken is not used nor has it ever been used or operated for sewage purposes.

20

Mr. Ashmead: I don't consent to that. The fact is that this plant is in the course of construction. It has not been used, yes.

Mr. Coddington: Except the construction of your works,—put that in.

Mr. Ashmead: Say that the property is now being used for the purpose of constructing these works which are yet incomplete and have not been put into operation. That is the fact.

30

(After argument)

The President: The fact is before the Board that the plant is under way of construction and is not in operation.

Mr. Ashmead: If that appears that is all right; it is satisfactory to me.

Mr. Coddington: I want it to appear very plainly before the Board at this time that the plant contemplated to be built by these joint

40

Stipulation and Testimony.

municipalities and now under construction has not been completed and is not now in use nor has it ever been used to take care of sewerage matter for either municipality.

The President: Maybe you would eliminate some differences if you refer to the taxing date.

Mr. Coddington: On May 20, 1915. That is the date of the assessment from which the appeal is taken. I guess we have that plain 10 enough.

It is further admitted that the acreage assessed as of May 20, 1915, was 90 acres. That there is a lease on the farm—

Mr. Ashmead: Not a written lease; just a tenancy lease.

Mr. Coddington: That there is a lease on the land not required for the disposal plant or the use of the Joint Meeting, at a rental of \$200 per year, payable quarterly in advance; that the 20 tenant is a Mr. Fitch and that this lease arrangement is still in existence and was as of May 20, 1915.

Mr. Ashmead: I don't think you have the date of the purchase of this land, have you?

Mr. Russell: No, I didn't hear the date.

Mr. Ashmead: The property was purchased in the fall of 1914 and contains 90 acres.

Mr. Russell: Can you give the date?

Mr. Ashmead: I don't believe I can give the 30 exact date. In November, 1914. We have the search but it doesn't give the date of the deed.

Mr. Jess: What is the date of the search?

Mr. Ashmead: That was in the spring, March, but the title wasn't passed until fall.

Mr. Russell: Then it would appear, as you have stipulated all the physical facts at issue other than the acreage actually used and the proof of this map, that the issue is the legal application of the exemption law.

Myron E. Fuller—Direct.

Mr. Ashmead: Exactly.

Mr. Russell: That is all that is left, if you can agree upon the acreage and the proof of the map. Go ahead with whichever you wish to take up first.

(After stipulation.)

MYRON E. FULLER, a witness being duly sworn
10 on behalf of the appellant, testified as follows:

DIRECT-EXAMINATION BY MR. ASHMEAD:

Mr. Ashmead: I would like to have this map marked for identification.

Map above referred to marked Exhibit A-1 for identification.

Q. Mr. Fuller, I show you exhibit A-1 marked for identification and ask you if you made up that
20 map?

A. I did.

Q. And does that represent the physical situation of the Darling farm and the proposed sewage disposal plant located on that farm?

A. It does.

Q. Will you explain in detail the different markings on the map?

A. These lines in solid white here (indicating on map) represent the structures of the contractor,
30 that is, the permanent structures. These lines in red indicate temporary structures used by the contractor during the construction. These white solid lines up here near the Bound Brook road indicate the original farm buildings, houses and barns.

The President: This is going into the record. You had better distinguish between dash lines and dotted lines and continuous lines.

(continuing answer)—these heavier white lines
40 crossing the brook near the right of the property

Myron E. Fuller—Direct.

indicate transit lines of the original survey. This double line in the rear of the property crossing the brook indicates forty-two inch effluent of the sewer from the disposal plant; those dotted lines running in from the Bound Brook road to the disposal works represent macadam road, built by the contractor for use in connection with the plant.

Mr. Coddington: I object to that kind of 10 testimony. Let him tell what the lines represent, not what it is used for. I object to that and ask that it be stricken out.

Mr. Ashmead: All right.

Q. Mr. Fuller, I ask you what are the uses to which these representative markings are being put?

Mr. Coddington: I thought you put this witness on the stand to prove the map.

Mr. Ashmead: I put him on the stand to 20 prove what I want to get before the Board.

Mr. Coddington: I don't think you have laid the proper foundation.

The President: Do you want to test the qualifications of the witness?

Mr. Coddington: I thought he was going to have the witness testify that he prepared the map, and what those lines represent that are shown on the map. That is all the Board wants of this map. Certainly that map will not indi- 30 cate to the Board whether this assessment is a proper assessment or not. I am willing to admit the map for that purpose and have him testify for that purpose. The only reason I had for not admitting it was that I wish to cross-examine in reference to some of the lines that I didn't understand.

The President: Your objection here is what?

Mr. Coddington: That this is outside of the bounds of examination of this witness because 40

Myron E. Fuller—Direct.

he is not qualified to testify as an expert further than the preparation of this map.

The President: Point out the objection, the substance of your objection to the answer. What language in the answer is it that you object to?

Mr. Coddington: As to what use the lines on the map indicate.

10 The President: Your contention being there was no use as of May 20th?

Mr. Coddington: That he would not be permitted to testify as to what future use anything represented on that map may be used for.

The President: The objection comes entirely on the witness' statement that the dotted line from the Bound Brook road, running back up to the main plant was prepared by the contractors and used for the purpose of carrying in the material?

20 Mr. Ashmead: No, it is a permanent road to be used in connection with the plant.

The President: The witness is simply describing the various notations, the lines here and when he got to this road he injected that it was constructed by the contractors of this plant. First he is called to prove the map and he shouldn't make any statement outside of that.

Mr. Coddington: That is my intention.

30 Mr. Ashmead: This man has been on this land for two years.

Mr. Jess: The question is whether this map shows the conditions as they exist here and it isn't to draw conclusions.

Mr. Ashmead: I will ask him what were the conditions.

40 Mr. Jess: Prove the map first and then after you prove the map, and if Mr. Coddington objects, after the Board has ruled, then you may undertake to go as far into it as you please,

Myron E. Fuller—Direct.

subject to any objections that may be interposed. Prove the map without any outside opinions or judgments.

Q. Does this represent the situation as of May 20, 1915?

A. It does.

Mr. Ashmead: I would like to reserve my rights. I didn't understand that I should limit 10 the witness.

The President: You yourself stated you simply wanted the witness to identify the map.

Mr. Jess: He has a right to ask him any questions, subject to the objection of the other side.

Q. I ask what use was the property put to or being put to on May 20, 1915.

The President: You want now to ask him what uses that property was put to on May 20, 20 1915?

Mr. Ashmead: Yes.

The President: That is a proper question.

A. That property was being put to use of the construction of the sewage disposal plant.

Q. How far had the work progressed?

A. If I remember, this macadam road and the Bound Brook road into the plant was being built. The site of the sprinkler filters was being excavated and the engineer's office building was being erected. 30

Q. Has the work been progressing ever since?

A. Yes, with the exception of two or three months during the past winter.

Q. And they are still engaged in completing the proposed sewage disposal plant?

A. Yes.

The President: What you are undertaking to state there is that this plant was begun at a certain date, which you will establish and that 40

Myron E. Fuller—Cross.

there has been continuous operation except for the frozen winter months?

Mr. Coddington: Not operation.

The President: Construction. They have been constructing, not operating.

Q. When was the work begun on the Darling farm?

10 A. As I remember it was April 12, 1916.

CROSS-EXAMINATION BY MR. CODDINGTON:

Q. When did you prepare this map, Mr. Fuller?

A. Early in January, this year.

Q. 1916?

A. I put on these —

Q. Just answer the question. When did you prepare this map, this map here?

20 A. I didn't prepare the map in this year. I checked it up this year and put on those figures in red that indicate the situation as it is.

Q. When did you finish this map?

A. I believe it was early in January, 1916.

Q. Did you use this map before the trial of this appeal before the County Board?

A. Yes.

Q. Does this map show how much land is actually used for the sewage disposal beds that you are
30 building?

A. It does.

Q. Are you prepared to state how much land is actually used in the construction of the sewage beds, I mean the plant itself, the sewage plant?

A. Not definitely,—somewhere between two and three acres, I think.

Q. The rest of the land outside of the two or three acres used for sewage disposal work that is now in process of construction is used for what purpose?

40 A. Farming, mainly.

Myron E. Fuller—Cross.

Q. Mr. Fitch is the tenant who rents the farm and uses it for farming purposes, does he not?

A. Yes.

Q. Do you know what rental he pays?

A. Just from what I heard stated here.

Mr. Ashmead: You have that in the records.

The President: It is part of the stipulation.

Q. Will you point out on this map the outside boundaries of the entire ninety acres comprising the Darling farm? 10

A. This is the property line, (indicating on map).

Q. Just describe that so that this Board in reading it over can tell what you mean by saying this?

A. The property line starts at the Bound Brook road, eight or nine hundred feet west of the Lincoln Boulevard and proceeds in a northerly direction. This distance scale I haven't—

Q. Why can't you just designate that with a pen? Can't you state before this Board so they just can see what you mean by the boundaries surrounding the entire ninety acre tract? 20

A. This boundary line is indicated by this heavy dash and dotted line indicated on the map as property line, and goes from Bound Brook Road northerly to Green Brook, and it goes along the center of Green Brook.

Q. Following the various courses?

A. Following the various courses and around to Bound Brook and then it proceeds back the center of Bound Brook to Bound Brook road and then back along Bound Brook road. 30

Q. To the point of beginning?

A. Yes.

Q. You are in charge of the construction work of this sewage disposal plant, Mr. Fuller?

A. I am.

Q. Has any part of the plant been finished and in actual use for sewage disposal purposes?

A. No.

Alexander Milne—Direct.

Q. Mr. Fuller, I call your attention to certain red lines on this map. Do they not represent excavations that were made for the purpose of building the road leading from Bound Brook to the Sewage Disposal work?

A. This number eight here is the key to the additional structures as stated on the map. It is a pit, it is an excavation.

10 Q. And that is not used for any part of the plant except the dirt in building the road, isn't that a fact?

A. Yes, the roads and the fillings around the various structures.

Mr. Coddington: That is all.

ALEXANDER MILNE, a witness being duly sworn on behalf of the appellant, testified as follows:

20 DIRECT-EXAMINATION BY MR. ASHMEAD:

Q. Mr. Milne, are you a member of the Borough Council of North Plainfield?

A. I am.

Q. How long have you been a member of that Council?

A. Five years.

Q. And as a member of that Council are you also a member of the Joint Meeting?

A. I am.

30 Q. How long have you been a member of that?

A. Ever since the Joint Meeting was formed.

Q. Did you have to do with the purchase of the Darling farm?

A. I did, I was one of the sub-committee who purchased the farm.

Q. What was the purpose of the purchases of the farm?

Mr. Coddington: I object to that.

40 The President: That is the whole issue, Judge.

Alexander Milne—Direct.

If they can't prove what the property was purchased for, of course they haven't any case.

Mr. Coddington: I know, but I insist that that isn't the proper way to prove the purpose that is claimed to be a public purpose and a public use. Mr. Ashmead knows how to present his proofs just as well as any member of the Board. 10

Mr. Jess: He can say what their purpose was, can't he? It may not be binding upon you at all.

Mr. Coddington: By the mouth of this witness he can testify what he understands the purpose to be, but I insist that would be inadmissible in this kind of a proceeding. We are all familiar with the legal principle that corporations, whether private or public corporations, or municipal corporations, can only speak 20 through their minute book. This attempt to bring a member of a joint committee here to give testimony as to what he understood by reason of his being on that committee, is, in my opinion, an improper and illegal way to go about proving a matter that is so vitally important as this. If they wish to prove the purpose, in my opinion, it is necessary for them to bring their ordinance book and bring their minute book, their resolution book, because 30 these municipalities can only speak through the medium of that kind of a mouthpiece and not through the medium of a mouthpiece of some member of a sub-committee.

The President: You are evidently correct, only, Judge, the Board went on the assumption that that wasn't a disputed fact.

Mr. Coddington: It is a disputed fact.

The President: Then you are entitled to bring the records. 40

Alexander Milne—Direct.

Mr. Ashmead: After you came to my office and said we could stipulate these things here —

10 Mr. Coddington: We have stipulated that you are proceeding under the Act of 1910. Now, when you wish to bring in a witness to testify as to what he understands a thing to be, and that is a vital point in the case, I insist that isn't a public improvement such as they are trying to inject in this case, and that is going to be my stand.

Mr. Ashmead: What is it you want us to produce?

Mr. Coddington: I want you to proceed in the way in which we have talked over.

Mr. Ashmead: You told me I needn't bring those minute books down here.

20 Mr. Coddington: I don't think it is necessary. I have admitted everything here that I think is essential.

Mr. Ashmead: Do you deny that this property was bought for the purpose of constructing and maintaining this sewage plant?

30 The President: I don't know whether the other members of the Board did, but I understood when Judge Coddington injected into the stipulation the fact that this was purely a house sewage that he did intend to contest the proposition of its being a public venture, but I thought at the same time he was going to do that on the statutes and not on the procedure whereby you had arrived at a point where you could stipulate anything. I don't see why you should have stipulated anything or gotten into the case at all until you had gotten that far along. You say now you don't want them to bring the minutes. What do you want them to do?

40

Alexander Milne—Direct.

Mr. Coddington: I think we have stipulated everything that is necessary to try the issue.

The President: Then what is there that this witness states that isn't stipulated that you object to?

Mr. Coddington: I don't know what he is going to testify to. They are asking what his understanding was by reason of his being on the committee, of the purpose of the purchase 10 of this farm.

The President: The purpose of the purchase of the farm appears to be stipulated.

Mr. Ashmead: That is what I want to get clear on the records.

The President: We thought the stipulation covered all those points.

Mr. Coddington: I thought so to.

The President: Then there is no occasion for you to examine into it. 20

Mr. Ashmead: If that is understood that this was purchased for the purpose of erecting and maintaining a sewage disposal plant.

The President: The stipulation certainly goes on that assumption. Let us have it read. (Stipulation agreed to between counsel read by stenographer).

Mr. Coddington: I don't want to take chances on Mr. Milne, while I have a very high regard for the gentleman, of his saying a whole 30 lot of things which I think might be irrelevant.

Mr. Jess: Does that cover it?

Mr. Coddington: I think that covers it.

Mr. Ashmead: I would like to ask Mr. Milne as to the idea of purchasing a tract as large as the one purchased, what was the controlling idea?

The President: That is why it necessitated so much acreage?

Mr. Coddington: I think that is irrelevant, what was the idea. It doesn't make any dif- 40

Alexander Milne—Direct.

ference what the idea was. We have admitted in our stipulation that they are proceeding under the act of 1910 and this farm was purchased under those proceedings. Isn't that far enough for this purpose. I didn't come here prepared to meet all kinds of testimony that Mr. Milne or somebody else might present with reference to ideas. We are not trying ideas, but a tax appeal based on certain values.

The President: Have you arrived at the place where you will undertake to prove that there is no such amount of land necessary at all for the use which they are going to put this plant to?

Mr. Coddington: I think their own witness has testified to that, that the actual amount of land in use was between two and three acres.

Mr. Ashmead: That is actually occupied by the bed.

The President: The point there is Mr. Ashmead wants to bring out that they have in mind some future use which does not appear at this time and certainly did not on May 20th last year.

Mr. Jess: You see the whole difficulty with this case is; as I see it now, the Board has no way of knowing, as the matter stands, just exactly what the issue is, whether it is a question of valuation—

Mr. Ashmead: There is no question of valuation.

Mr. Jess: If you made a statement of just what the issue is, perhaps we could more intelligently confine it to the issue.

Mr. Ashmead: I can give my idea.

Mr. Jess: Won't you do that?

Mr. Russell: The Board assumes that you will have two points. Is it a fact that you are first going to attack the exemption and then support

your case further by contending that no such amount is necessary, even if it was exempt.

Mr. Coddington: That is it.

The President: Judge Coddington first says that he is going to undertake to establish the fact that the property for the purpose for which it is to be used is not exempt, but is going to further support it by the contention, in the case that we hold it is exempt, that there is no such 10 acreage necessary. Those are the two points he is going to base his case on.

Mr. Jess: The appeal is by the property owner, and the burden is on them at the present time. It seems to me if we have a statement why they think it is exempt, or why it should be cancelled, we would be in better shape to deal with it.

Mr. Coddington: I think it would be well for Mr. Ashmead to state— 20

Mr. Jess: We would like to know the theory on which you are working.

Mr. Coddington: —why this appeal is taken. I am not putting in my case now. The burden is on him. He is the appellant. I can only say this to assist the Board in understanding the appeal, as I understand it, the assessment was made by the assessor of Middlesex Borough as of May 20, 1915, after receiving from the secretary of the Joint Meeting, that is, the secre- 30 tary of Plainfield, North Plainfield and Dunellen, I might say, a statement as to the amount of work that had been put on the sewer beds as of May 20, 1915, and the valuation of the land and the buildings. The appeal was taken by the three municipalities,—if I misstate anything, Mr. Ashmead, stop me—not because they objected to the amount of the assessment either for land or for buildings or for work actually done in the construction of the sewage disposal 40

Alexander Milne—Direct.

plant, but because, as Mr. Ashmead stated at the trial of the case, before the County Board, they believed they were a public improvement and therefore exempt from taxation. Is that right?

Mr. Ashmead: That is right.

10 Mr. Coddington: And we contend now, as we did before the County Board, that they are not exempt and we deny that they are a public improvement in the sense that they claim they are and that they are not entitled to any exemption, and if they should be entitled to any exemption, it is certainly for no more than the amount actually covered by the disposal works.

The President: That is the way I understand the issue you raise.

20 Mr. Jess: Then, under what section of the Tax Act are you claiming exemption, Mr. Ashmead?

30 Mr. Ashmead: Under Section 2 of the Tax Act, which says that the property of a taxing district located in another taxing district used for public purposes, is exempt. This Board has already decided a case that charitable institution improvements in the course of construction are not actually, exclusively used for public improvements, and are not exempt. This does not come under that section, but an entirely
40 different section and the Supreme Court decided twice that property purchased for public use, where the use is not abandoned, is still a public use and will be exempt. There is a case in Jersey City where they bought property for a water supply before the 1910 Act, where they held it for five years and it was still exempt, and we have a case of Verona vs. Newark where they had a Boy's home of one hundred and three acres, and they had every element in that case present in this case, where it was bought merely

Alexander Milne—Direct.

for purposes of isolation necessary for that purpose, and Mr. Coddington, in his injunction suit, contended that we didn't buy enough for isolation, but here he contends we should only purchase three acres.

The President: Your statement there is on the theory that this is admittedly a public improvement, and it isn't exempt, under Judge Coddington's contention, now, because it isn't in operation, and you contend although it may lie 10 there three or four years, it is exempt as a public improvement. He says it isn't a public improvement, but a private sewage. When I say private sewage, I mean for residence purposes and not for the streets, the surface.

Mr. Ashmead: It isn't for surface water, that is true.

The President: He is contending it isn't exempt because of that and the issue is whether or not it is a public improvement. 20

Mr. Ashmead: Of course, there isn't anything in that because we couldn't have gotten it except for public use. What I am trying to get from Mr. Milne is simply their idea as to the extent of this purchase and the purpose of it.

The President: Mr. Jess asked that the issue be stated so the Board will know where you are. You say nothing at all on the proposition that that it is a public improvement and the whole case here hangs on the question of whether or 30 not it is a public improvement.

Mr. Ashmead: That is a matter of law and I am not trying to prove anything on that. You have the facts with respect to that.

Mr. Jess: You are seeking to show by this witness that it was his idea that this much land was necessary?

Mr. Ashmead: Yes, that the land was bought for the purpose of isolating this plant so as to guard the adjoining property. 40

Alexander Milne—Direct.

Mr. Jess: That is, that any surplusage, apparently, while not necessary for the construction of the plant, is necessary for the isolation of it, is that it?

Mr. Ashmead: Yes, that was the purpose.

The President: Was it a matter of policy or a matter of business?

Mr. Ashmead: Business policy.

10 Mr. Coddington: Wasn't it because you couldn't buy any fractional part of it? Isn't it a fact the owner wouldn't split it up and sell it?

Mr. Ashmead: We could easily condemn it.

The President: The first thing that came to my mind was that you had bought ninety acres because you couldn't buy ten from that farm. I don't mean that was the controlling element, but I mean that played a part in your buying exactly ninety acres and it would have been the same if it had been a hundred and twenty or
20 sixty, but you bought exactly what you did buy because a particular owner had that much where you wanted it and he wouldn't sell any less.

Mr. Ashmead: We could have condemned it, and gotten a smaller amount.

The President: We get these things on our minds.

30 Mr. Ashmead: What I want to get before this Board is just exactly the situation. I don't see why Mr. Coddington should object to it. It is a practical situation. This Joint Meeting was formed for the purpose of building a joint sewage disposal plant. And the location was approved by the State Board here.

Mr. Coddington: I take exception to that.

40 Mr. Ashmead: Anyhow this was the location decided upon. The municipalities had a right to condemn. The condemnation act provides that before you can condemn you must nego-

Alexander Milne—Direct.

tiate and in the negotiations an agreement was arrived at for the purchase of this ninety acres. If the man had owned ninety-one acres, we very likely would have taken that, or if he had owned eighty-nine. I don't mean to say the exact amount wasn't fixed by the fact that the man owned it, but I do mean to say that instead of buying three, five or ten acres, the municipalities had in mind the question of isolation of this plant, so that it might be used without offense to adjoining properties. 10

The President: But at the same time you knew that Judge Coddington was attacking your exemption on the grounds that you bought so many acres because the owner had that many to sell, and not that it was necessary. The Board gathered that before you got started.

Mr. Ashmead: Suppose he does. What about that? What I am trying to prove isn't a matter of record. They don't put on the minutes all the thoughts they had. 20

The President: What you are going to be driven to in the final analysis is to prove the necessity for a particular amount of acreage, because it isn't improper to state that the mere fact that you come under the exemption clause does not also establish the fact that because you found a farm of ninety acres and the man wouldn't sell you any less, and you bought it, that the entire ninety acres is exempt. That doesn't necessarily follow, does it. 30

Mr. Ashmead: No.

The President: Therefore you have to prove the necessity for the ninety acres.

The President: What is the pending question?

(Question repeated as follows): "I would like to ask Mr. Milne as to the idea of purchasing the tract as large as the one purchased, what was the controlling idea." 40

Alexander Milne—Cross.

Mr. Coddington: I think that the idea is improper. If they ask this witness if in his judgment this entire acreage is necessary for the construction of this plant, that would be a different question.

Mr. Ashmead: I will let Judge Coddington put the question.

Mr. Coddington: You ask your question.

10 Q. Mr. Milne, why did you negotiate and purchase the acreage which you did?

The President: That is all right, isn't it Judge?

Mr. Coddington; Yes.

A. Because we, as a committee, thought that a farm at least as large as ninety acres would be the very smallest farm which we could get which would so isolate the plant that it would not be objectionable to the surrounding territory.

20 Q. Did you make that report to the Joint Meeting?

A. We did.

Q. And the purchase was made?

A. And the purchase was made on our recommendation.

CROSS-EXAMINATION BY MR. CODDINGTON:

30 Q. Then you didn't buy the entire ninety acres because you thought it was necessary to have ninety acres on which to construct the sewage disposal plant?

A. For purposes of isolation, yes.

Q. No, answer my question, Mr. Milne, be fair with me. You didn't buy the entire ninety acres because you thought it was necessary to have ninety acres upon which to construct the sewage disposal plant?

40 A. Can I elaborate my answer?

Alexander Milne—Cross.

Mr. Jess: Answer it directly first and then elaborate.

The Witness: It is really hard to say yes or no to that.

Q. (Question repeated.)

A. No. Now, can I elaborate?

Mr. Jess: Yes.

The Witness: We didn't buy the ninety acres for the establishment of the plant alone. Anybody knows that ninety acres is too much ground to just build the sewer beds on, but we did feel that we should have a place at least as large as ninety acres to take care of all contemplated enlargements and also to protect the surrounding territory from any nuisance which they might make that would exist.

10

Q. As a matter of fact, your engineer, Mr. Fuller, is correct then that only about two or three acres are now in use for the construction of the sewage disposal plant?

A. As now laid down.

Q. And isn't it a fact that the sewage disposal plant has never as yet been operated for sewage purposes?

Mr. Ashmead: That is in the record.

The President: That is admitted, Judge, in the stipulation.

30

Q. Isn't it a fact that for actual sewage disposal purposes it would not be necessary to use, if the plant should ever get in operation, more than three acres covered by the sewage plant itself?

A. I couldn't say that. Ever is a long while, and I can very readily conceive that long before the contract of the Joint Meeting runs out, they will use four or five times that much actually used in the disposal beds.

40

Alexander Milne—Cross.

The President: The terms of the agreement,—
I don't recall that that has been brought out?

Q. What agreement do you refer to?

A. I think the agreement is for fifty years.

Q. You refer then to the agreement between the
Joint Municipalities?

10 A. The contract between the joint municipalities.

The President: Can you establish the life of
that some time during the case?

Q. You think that is fifty years?

A. I am sure it was fifty years.

Mr. Ashmead: It is for the life of the plant.

The Witness: I thought it was a definite
number of years.

20 Mr. Ashmead: It is indefinite.

Q. I understand it is to run perpetually?

A. I am mistaken, I thought it was for fifty years.

Mr. Ashmead: Until the Legislature changes
the law.

Q. Do you know for what purpose the rest of the
acreage, or the farm known as the Darling farm
was used on the 20th of May, 1915, outside of the
30 actual acreage used for the construction of this
plant?

A. I would say—

Q. No, do you know?

A. I couldn't tell you exactly how many acres were
used for this purpose or how many for that purpose,
but I can give a very close approximation as to how
much was used, so much for cultivated land, so
much for farm buildings and so much for swamp
land.

40 Q. I am not asking that, Mr. Milne?

Alexander Milne—Cross.

A. I can't answer it in any other way, Judge. If you make your question a little clearer—

Q. Outside of about three acres that were actually used for the construction of this sewage plant on the Darling farm, what was the rest of the land used for in May 1915?

A. I have to elaborate on that answer a little bit. I would say possibly twenty acres for farm—

Q. I am not asking that. What was the rest of the farm used for? ¹⁰

Mr. Jess: Was it used for farming or business purposes, or industries?

The Witness: Most of it was used for nothing, that is what I am trying to get out.

Mr. Jess: It wasn't used at all then?

The Witness: Twenty acres, possibly, was under cultivation. One-third of the entire farm is swamp land. 20

Q. Isn't it a fact that Mr. Fitch occupied all of the land that wasn't used for the sewage disposal plant?

A. He had that right to occupy that part.

Q. And isn't it a fact that he had that right, and for that right he paid, or agreed to pay, \$200.00 rent?

A. Two hundred dollars a year.

Q. And agreed to pay that quarterly?

A. Yes, sir. 30

Mr. Coddington: That is all. I wish to offer this statement, certified to by Mr. Chas. M. Dolliver, Secretary of the joint disposal plant. I submitted that to Mr. Ashmead in order to avoid Mr. Dolliver coming here. I offer that in evidence showing the rent of the farm to Mr. Fitch.

Paper above referred to received in evidence and marked Exhibit R-1. 40

William D. Voorhees—Direct.

WILLIAM D. VOORHEES, a witness being duly sworn on behalf of the respondent, testified as follows:

DIRECT-EXAMINATION BY MR. CODDINGTON:

Q. Mr. Voorhees, you are the assessor of the Borough of Middlesex?

10 A. Yes, sir.

Q. And you were the assessor for the year 1915?

A. I was.

Q. Are you familiar with the Darling farm?

A. I am.

Q. And did you make the assessment for the year 1915?

A. I did.

Q. And have you your record here?

A. Yes, sir.

20 Q. Turn to it please?

Mr. Ashmead: I admit he made the assessment.

Q. When you made the assessment, from whom did you get your figures as to the assessment made?

Mr. Ashmead: There is no question as to value here.

30 Mr. Coddington: Then you admit that?

The President: The point being there, Mr. Ashmead, if the Board should find the property is taxable, you would have no objection to the assessment so far as value is concerned?

Mr. Ashmead: Yes, sir.

Q. Did you receive that, (handing paper to witness)?

A. I received that.

William D. Voorhees—Direct.

Mr. Coddington: I offer that in evidence.

The President: What is that?

Mr. Coddington: A certificate from Mr. Dolliver to the assessor dated July 30, 1915, showing the purchase price of the Darling farm to be thirty six thousand dollars and the cost of the work of the construction of the sewage plant, as of May 24, 1915, to be \$8719.20.

The President: That much money had been expended in the progress of the work up to that point? 10

Mr. Coddington: Yes. Now, I wish to state that Mr. Dolliver's certificate certifies as of May 24, 1915, and it is admitted—

Mr. Ashmead: That is the date when the engineer's estimate came in. That is all right.

Mr. Coddington: But it was admitted below and it is here that that statement should be as of May 20, 1915. 20

The President: That is, it applies as of May 20th?

Mr. Coddington: Yes.

Certificate above referred to received in evidence and marked Exhibit R-2.

Q. Mr. Voorhees, do you know for what purpose the land outside of the land occupied by the sewage plant was used in 1915? 30

A. For pasture and farm land.

Q. Occupied by whom?

A. Mr. Fitch.

William D. Voorhees—Direct.

WILLIAM D. VOORHEES, sworn, testified as follows:

Mr. Ashmead: Mr. Jess, there is a copy of the memorandum filed in that case. You will recall to mind the point.

DIRECT-EXAMINATION BY MR. ASHMEAD:

10 Q. Mr. Voorhees, were you assessor in the borough of Middlesex in the year 1915?

A. I was.

Q. And did you make an assessment against the property owned by the City of Plainfield, Borough of Dunellen and Borough of North Plainfield known as the Darling Farm?

A. I did.

Q. I show you tax bill of that year and ask you if that is the valuation you put on the property?

20 A. (After referring himself to paper.) Yes sir.

Q. There is one item here "Value of improvement"—will you state to the Board in what manner that is divided between the farmhouse and the property, and the improvement of the sewage disposal plant?

A. The value of the land and the value of the improvement I didn't separate because there is only one place. I included them all, the building and also the plant, but I allowed, I think it was,
30 thirty five hundred on the three—or, thirty five hundred for the buildings—the house and the barn and the cowshed.

Mr. Jess: That is of the eleven thousand seven hundred dollars.

The Witness: Yes, there is thirty five hundred of that for the barn, house, farm buildings etc.

40 Q. Is it not true, Mr. Voorhees, that here at the hearing before the County Board of Taxation you

William D. Voorhees—Direct.

said you allowed three thousand dollars on the farm?

A. I allowed three thousand or thirty five hundred.

Q. I have a memorandum here of what you testified before the County Board, and at that time you said three thousand?

A. I say now three thousand or thirty five hundred. 10

Q. And eighty seven hundred on the sewage disposal plant improvement. At what rate did you assess the land per acre?

A. At three hundred dollars an acre.

Q. And the acreage at ninety dollars?

A. Yes sir.

Q. Making a total valuation of twenty seven thousand dollars?

A. Yes.

Mr. Ashmead: I think, Mr. Jess, that is all that you wanted. 20

Mr. Jess: I think so.

Mr. Ashmead: That is all.

(Witness excused)

(The stenographer has a note on his paper "This completes the record in the nineteen fifteen case.")

Mr. Ashmead: We will now proceed with the nineteen sixteen appeal. 30

Memorandum.

Filed July 29, 1916

STATE OF NEW JERSEY.

STATE BOARD OF TAXES AND ASSESSMENT.

10 In the matter of the application
of THE INHABITANTS OF THE
CITY OF PLAINFIELD, THE
BOROUGH OF NORTH PLAIN-
FIELD and THE BOROUGH OF
DUNELLEN, for the reduction
of the tax assessment for the
year 1915 on property situate
in the Borough of Middlesex,
County of Middlesex and
20 State of New Jersey.

Memorandum.

For the petitioners, J. EDWARD ASHMEAD.

For the respondent, WILLIAM A. CODDINGTON.

The assessment attacked by this proceeding was
levied by the Borough of Middlesex in 1915 upon a
tract of land, the title to which is vested jointly in
30 the Inhabitants of the City of Plainfield, the Borough
of North Plainfield and the Borough of Dunellen.
The land was acquired in the fall of 1914 by the
three municipalities as the site for a sewage disposal
plant under Chapter 112, Laws of 1910, which is
entitled "An Act to authorize any two or more
municipalities in this State to jointly provide, main-
tain and operate trunk or outlet sewers and sewerage
disposal plant or plants or a system of sewerage and
to otherwise act jointly concerning the collection,
40 removal or disposal of sewage and make contracts

Memorandum.

in relation thereto." At the time of the assessment complained of, the plant was in course of construction, but was not in use. The tract consists of about 89 acres and formerly was known as the "Darling Farm". All of the land, except that portion required for the disposal plant, is leased at a rental of \$200 per year. The purchase price was \$36,000. 10

The claim for exemption is based upon section 3, subdivision 2 of the General Tax Act, which exempts: "The property of the United States and of the State of New Jersey and of the respective counties, school districts and taxing districts when used for public purposes." This provision of the Tax Act is controlling as to the property in question unless its application is affected by Chapter 220, Laws of 1907. This is an amendment to a supplement to the Tax Act, passed in 1906, and is entitled: 20
 "An Act to amend 'A supplement to an act entitled 'An act for the assessment and collection of taxes,' approved April eighth, one thousand nine hundred and three,' which supplement was approved April twentieth, one thousand nine hundred and six." The only change made by the amendment was the insertion after the words "the property of any county" of the words, "which are situated within the limits of any other county." The act of 1906 was declared void by the Court of Errors and Ap- 30
 peals on the ground that it created an unconstitutional classification of property for the purposes of taxation, and further for the reason that it did not include in the class created all the members of such class. The Essex County Park Commission vs. Town of West Orange and Board of Equalization of Taxes, 77 N. J. L. 575.

The amendment of 1907 does not meet either of these objections and was, in fact, passed more than two years before the above case was decided. We 40

Memorandum.

feel, therefore, that we are bound by the decision of the Court of Errors to disregard the act of 1907 in the consideration of this case.

The questions then to be decided are whether the property involved is the property of taxing districts, and if so, whether it is used for public purposes, so as to be exempt under section 3 of the Tax Act.

10 We have no difficulty as to the first question.

Section 9 of the Joint Sewerage Act of 1910, under which the appellants are operating, provides that such municipalities may acquire by purchase or right of eminent domain, lands and real estate, either within such municipalities or beyond their limits, taking title in the joint corporate names of the municipalities. The property assessed was acquired by purchase under this act and therefore is the property of the three taxing districts and ex-
20 empt from taxation if used for public purposes. After carefully considering all the cases cited by counsel in their briefs, and the evidence adduced at the hearing, the conclusion we have reached is that only a small portion of this land was used for public purposes on May 20, 1915, within the meaning of the Tax Act. The testimony of the appellants' witnesses was that from two to three acres of the tract is being developed for actual use as a sewage disposal plant. It is not clear that the use of a larger area
30 is contemplated. The reason assigned for the purchase of so large a tract was that it was thought well to isolate the plant and thus remove objections from adjoining land owners. This does not, in our view, constitute a public use. We regard as our authority for the decision we have reached in this case the opinion of the Supreme Court in *Perth Amboy v. Barker*, 74 N. J. L. 127. In that case Mr. Justice Pitney, speaking for the Court, said: "We find that the one hundred acre tract was not in fact
40 used for public purposes. It had been purchased for

Memorandum.

the purpose of providing for an extension of the water supply system of Perth Amboy, but had not as yet been devoted to that purpose, excepting to a small extent and temporarily, some time prior to the time in question. This property we hold not to be exempt."

While the rule requiring the strictest construction of exempting statutes does not apply to the property of municipalities, the Legislature, nevertheless, has plainly endeavored to establish a policy of requiring lands like those in question to bear some share of the tax burden, and such property should therefore not be exempted unless it is clearly used for public purposes.

We find that three acres of the land assessed by the Borough of Middlesex should be exempt. As to the assessment of \$11,700 upon the improvements, we are unable to decide upon the record as it now stands whether this should all stand or be cancelled. If that portion of the property which is assessed as improvements includes any part of the sewage disposal plant in course of construction, the assessment as to such portion should be cancelled. If by improvements are meant the buildings which stood upon the farm tract when it was acquired by the taxing districts, and such buildings are not being used in connection with the construction of the plant, the assessment should be affirmed. We would suggest that as a basis for the judgment in this case counsel for the respective parties submit a stipulation with respect to the character and use of the improvements. The assessment under review will therefore be reduced in accordance with these findings.

Judgment.

Filed July 31, 1917.

STATE OF NEW JERSEY

STATE BOARD OF TAXES AND ASSESSMENT

10	In the matter of Appeal of THE INHABITANTS OF THE CITY OF PLAINFIELD, <i>et al.</i> , from the Assessment of Property in Middlesex Borough, County of Middlesex, for the year 1915.	}	Judgment
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An appeal in writing having been filed with the
 State Board of Taxes and Assessment, duly verified
 20 according to the rules of practice prescribed by said
 Board, by The Inhabitants of the City of Plainfield,
 the Borough of North Plainfield and the Borough of
 Dunellen, in which it is alleged that an injustice
 has been done the said complainant by the assess-
 ment of real property for taxation for the year 1915,
 located in Middlesex Borough, in the County of
 Middlesex, consisting of about 89 acres of land ad-
 joining Bound Brook Road, on which is located the
 sewage disposal plant etc. of the said The Inhabit-
 30 ants of the City of Plainfield, The Borough of North
 Plainfield and The Borough of Dunellen, and that
 all of said property should be exempt and the assess-
 ment cancelled or the assessed value thereof reduced
 to the true value of that portion of the property le-
 gally taxable.

After hearing evidence produced on the part of
 said complainants, and the said respondent, and the
 argument of J. Edward Ashmead, Attorney for the
 complainant, and William A. Coddington, Attorney,
 40 for the respondent and after considering the same,

Judgment.

it is on this thirty-first day of July, nineteen hundred and seventeen, at a session of the State Board of Taxes and Assessment, ORDERED, ADJUDGED and DECREED, under and by virtue of Chapter 67 of the Laws of 1905, and Chapter 244 of the Laws of 1915, that as to the assessment on land, 3 acres be exempted therefrom, and the total assessment reduced from \$27,000 to \$26,089.90, and that the assessment of \$11,700 on improvements be cancelled. 10

AND IT IS FURTHER ORDERED, That this order be certified to the Collector or Receiver of Taxes of Borough of Middlesex, County of Middlesex.

Attest:

FRANK D. SCHROTH,
Secretary.

L. T. RUSSELL President
GEO. T. BOUTON
FRANK B. JESS
ISAAC BARBER
FREDERIC A. GENTIEU 20
State Board of Taxes
and Assessments

Certificate of Secretary.

STATE OF NEW JERSEY.

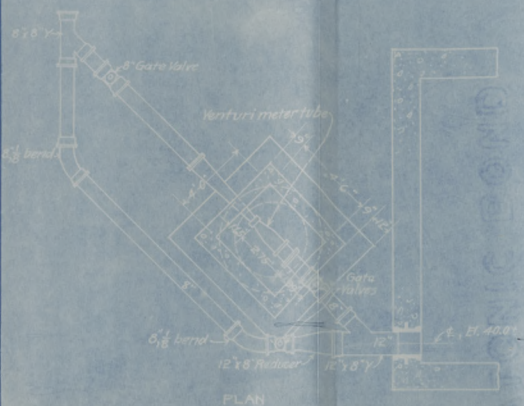
STATE BOARD OF TAXES AND ASSESSMENT.

I, FRANK D. SCHROTH, Secretary of the State Board of Taxes and Assessment, DO HEREBY CERTIFY that the foregoing is a true copy of the judgment in
10 the matter of the appeal of Inhabitants of the City of Plainfield, the Borough of North Plainfield, and the Borough of Dunellen from the assessment of property in the Borough of Middlesex, County of Middlesex, for the year 1915, as the same is taken from and compared with the original, filed in the office of the State Board of Taxes and Assessment, on the thirty-first day of July, A. D. 1917, and now remaining on file and of record therein.

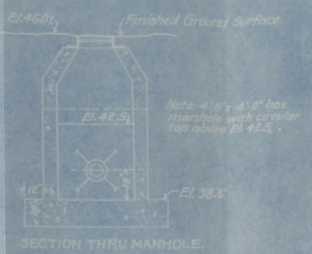
20 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of
[SEAL] the Board, at Trenton, this eighteenth day of August, A. D. 1917.

FRANK D. SCHROTH,
Secretary.

30



METER BY-PASS.
DUNELLEN FORCE MAIN
CONTRACT "A"
Scale 1" = 10'



SECTION THRU MANHOLE.

KEY TO ADDITIONAL STRUCTURES
AT DISPOSAL PLANT

1. Laborers Quarters
2. Revised Location of Laboratory
3. Field Office of Engineer and Contractor
4. Cement House
5. Stone Pile
6. Truck Shed
7. Laborers Quarters
8. Borrow Pit



Acres in Darling Farm = 89.07

JOINT TRUNK SEWER AND DISPOSAL WORKS
FOR THE
CITY OF PLAINFIELD, BOROUGHS OF NORTH PLAINFIELD
AND DUNELLEN
PLAN OF DARLING FARM
SCALE 1" = 200'

Wm. W. Fuller
Engineer

RECORD SHEET No. 12
Sept. 27, 1916.

JOINT MEETING
OF PLAINFIELD
FIELD AND

W. A. CODD
212 Park Ave
Plainfield, N.

DEAR JUDGE:

I find no
papers, regard
farm. The o
that he was al
farm building
of the farm th
plant or the u
rent of \$200, p

Exhibit R-1. 1915.

copy.

JOINT MEETING OF THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH OF NORTH PLAIN-
FIELD AND THE BOROUGH OF DUNELLEN.

APRIL 27, 1916.

W. A. CODDINGTON, Esq.,
212 Park Avenue,
Plainfield, N. J.

10

DEAR JUDGE:

I find no written lease among Joint Meeting papers, regarding the Fitch occupancy of the sewer farm. The correspondence with Mr. Fitch shows that he was allowed to continue in possession of the farm buildings, &c. with right to use such portions of the farm that will not be required for the disposal plant or the use of the Joint Meeting, at a yearly rent of \$200. payable quarterly in advance. 20

Yours respectfully,

CHARLES M. DOLLIVER,
Secy.

30

40

Exhibit R-2. 1915.

copy.

C. M. DOLLIVER,
Plainfield, N. J.

JULY 30TH, 1915.

10 WILLIAM D. VOORHEES, Assessor,
Bound Brook,
New Jersey.

DEAR SIR:

The figures I gave you the other day would appear to me to give you the information you desired. The price paid for the Darling Farm was \$36,000.00. The engineer's estate of May 24th, 1915, for the work on the farm on the sewer beds amounted to \$8,719.20. If there is any other information I can give you,
20 kindly advise,

Yours very truly,

CHARLES M. DOLLIVER,
Secretary Joint Meeting.

D.M.

30

40

State Board of Taxes and Assessments.

Petition.

Filed Feb. 9, 1917.

In the matter of the application of THE INHABITANTS OF THE CITY OF PLAINFIELD, THE BOROUGH OF NORTH PLAINFIELD and THE BOROUGH OF DUNELLEN, for the reduction of the tax assessment for the year 1916 on property situate in the Borough of Middlesex, County of Middlesex and State of New Jersey.

Petition.

10

TO THE STATE BOARD OF TAXES AND ASSESSMENT:

20

Your petitioners, The Inhabitants of the City of Plainfield, the Borough of North Plainfield and The Borough of Dunellen, in the County of Union and State of New Jersey, respectfully show that they are the owners of certain property situated in the taxing district of the Borough of Middlesex, County of Middlesex, consisting of a tract of land of about 89 acres and improvements thereon on Bound Brook Road in said Borough.

That said property has been assessed for the purpose of taxation for the year 1916 at a valuation of land \$27,000; improvements \$50,000; total \$77,000, at which assessment your petitioners are aggrieved because they are advised and believe that the said assessment is levied against property which is exempt from taxation under and by virtue of the terms and provisions of an Act of the Legislature of the State of New Jersey entitled "An Act for the assessment and collection of taxes", approved April 40

30

Petition.

8, 1903, and the acts amendatory thereof and supplemental thereto, and that the said assessment is in excess of its true value.

That an appeal from said assessment has been filed with the Middlesex County Board of Taxation, which appeal said Board disposed of as follows: They the said Board of Taxation did affirm said assessment.

10 Your petitioners have, therefore, not paid the taxes so levied for the year 1916 and pray that the said assessment of Seventy seven thousand dollars (\$77,000), land \$27,000; improvements \$50,000; total \$77,000, for the year 1916 be set aside and vacated or be reduced to the true value of the property legally taxable.

Dated February 2, 1917.

20 THE INHABITANTS OF THE CITY OF
PLAINFIELD, THE BOROUGH OF
NORTH PLAINFIELD and THE
BOROUGH OF DUNELLEN,
By J. EDWARD ASHMEAD
Attorney.

STATE OF NEW JERSEY, } ss.
County of Essex. }

30 J. EDWARD ASHMEAD, being duly sworn according to law on his oath says: I am the attorney of the above named petitioners and have been duly authorized by them to take on their behalf the appeal in the foregoing petition set forth. I have read the said petition and know the contents thereof, and the statements set forth and contained therein are true.

J. EDWARD ASHMEAD.

Sworn to and subscribed before me }
this 5th day of February, 1917. }

40 STIRLING D. WARD
Attorney at Law of New Jersey.

Petition.

STATE OF NEW JERSEY }
 County of Essex } ss.

HAROLD J. BROWN, being duly sworn according to law on his oath deposes and says that he served a copy of the above petition and affidavit on Stewart Crouse, Clerk of the Borough of Middlesex, personally, this seventh day of February, 1917.

HAROLD J. BROWN 10

Sworn to and subscribed before me }
 this 8th day of February, 1917 }

STIRLING D. WARD
 Attorney at Law of New Jersey.

STATE OF NEW JERSEY }
 County of Essex } ss.

HAROLD J. BROWN, being duly sworn according to 20 law on his oath deposes and says that he served a copy of the above petition and affidavit on J. Edward Harned the secretary of the Middlesex County Board of Taxation, personally, this seventh day of February, 1917.

HAROLD J. BROWN

Sworn to and subscribed before me }
 this 8th day of February, 1917 }

STIRLING D. WARD 30
 Attorney at Law of New Jersey.

Charles M. Dolliver—Direct.

STATE BOARD OF TAXES & ASSESSMENTS.

10	<p>THE INHABITANTS OF THE CITY OF PLAINFIELD, THE BOROUGH OF NORTH PLAINFIELD and THE BOROUGH OF DUNELLEN,</p> <p style="text-align: center;">vs.</p> <p>BOROUGH OF MIDDLESEX.</p>	} On Appeal from the Decision of the County Board.
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APPEARANCES:

J. EDWARD ASHMEAD, for the appellants.

WILLIAM A. CODDINGTON, for the respondents.

Hearing in the above-entitled matter was held in
the County Record Building, New Brunswick, New
Jersey, May 24, 1917, before Commissioners Jess
(in the chair), Bouten, Gentieu, and Barber.

CHARLES M. DOLLIVER, sworn as a witness on be-
half of the appellants, testified as follows:

DIRECT-EXAMINATION BY MR. ASHMEAD:

Q. Where do you reside?

A. I live in the borough of North Plainfield.

30 Q. During what period were you the clerk of the
Borough of North Plainfield?

A. 1911, '12, '13, '14 and '15.

Q. And what relations have you to the joint meet-
ing of the inhabitants of the City of Plainfield, the
Borough of North Plainfield and the Borough of
Dunellen?

A. I am secretary of that meeting.

40 Q. And how long have you been secretary of that
meeting?

Charles M. Dolliver—Direct.

A. Since its inception.

Q. Will you produce a copy of the contract between these three municipalities joining together—

Mr. Ashmead: Well, just change that. Mark that for identification.

(Paper marked P-1 for identification.)

Q. I show you a paper marked P-1 for identification and ask you what that is. 10

A. This is the original contract between the City of Plainfield, Borough of North Plainfield and Borough of Dunellen regarding the joint sewer project, wherein they agreed to undertake the proposition jointly.

Q. Now,—

Mr. Ashmead: Mr. Coddington has waived formal proof of this contract and I offer it in evidence; but he reserves the right to object to it on such grounds as he sees fit in reference to its materiality. 20

Mr. Coddington: That is right. I object to the admission of this contract in this case because of its irrelevancy and immateriality.

Mr. Jess: The objection is overruled.

(P-1 for identification received in evidence.) 30

Q. Have you the minutes of the joint meeting?

A. Yes, sir; I have the first volume.

Mr. Jess: Mr. Ashmead, are you going into this case as if it had never been heard before this board?

Mr. Ashmead: No. The reason I introduced the contract, if the Board please, is that that shows this was a permanent project, and also provides for enlargements of the disposal plant 40

as the requirements increase. It is relevant, I think, on this exemption question. I am going to confine myself to the issue, but the record will be a little different than present at the last time, because there we stipulated a lot which I would rather have the documents in for at this time.

10 Mr. Jess: And the changes are such changes as may have taken place since the assessment of 1915 was made?

Mr. Ashmead: I say the proposition is exactly the same, but I will have to introduce new evidence to support our position in this case, and I am intending to do it by showing this contract and the resolution of the joint meeting declaring that this was necessary for these purposes. That is the reason I wanted to get this in.

20 Mr. Jess: I only want to make this clear: You can consider that the Board will assume for the purposes of this case that all the facts which were found and the law which was announced in the former case will be controlling in this case.

Mr. Ashmead: Yes; I understand that, as far as this Board goes.

30 Mr. Jess: Now, if you want to make a record for some other purpose——

Mr. Ashmead: That is the idea. I want to get the thing finally settled.

Q. Have you the minutes of the meeting at which the agreement for the purchase of the Darling farm was passed upon?

A. Yes; I have the minutes of the meeting in which the plot of John Darling and his wife was
40 accepted by the joint meeting.

Charles M. Dolliver—Direct.

Q. What meeting is that?

A. Meeting of March 11, 1914.

Mr. Ashmead: I want to introduce that resolution and have it marked; and I have a copy which I may give to the Board instead of the original record.

Mr. Coddington: I object to the introduction 10
of this resolution in evidence for the same reasons as stated before.

Mr. Jess: The objection will be noted and overruled.

Mr. Ashmead: For the information of the Board, I am introducing this resolution to show that these three municipalities in formal meeting passed upon the necessity of buying this property for the purposes of a sewage disposal plant, and declared that it was necessary 20
for that purpose.

(Papers marked P-2 and 3 in evidence.)

Q. Have you the resolution by which the deed was accepted of the Darling farm?

A. Yes, sir.

Q. What meeting was that?

A. September 9, 1914.

Mr. Ashmead: I also introduce that resolu- 30
tion.

Mr. Coddington: I object to the introduction of that resolution for the same reasons, and for the further reason that these resolutions should not be considered binding on the Borough of Middlesex. It does not appear that the Borough of Middlesex had any voice in the matter or had any notice of any such resolution being passed. 40

Charles M. Dolliver—Cross.

Mr. Jess: The objection will be noted and overruled.

(Paper received in evidence, P-3a.)

Mr. Ashmead: I now offer a certified copy of the deed for the Darling farm.

10 Mr. Coddington: I object to the offer for the same reasons.

Mr. Jess: Objection is overruled.

(Paper marked P-4 in evidence.)

CROSS-EXAMINATION BY MR. CODDINGTON:

Q. Have you the letter in reference to the leasing of the farm for the year 1915-1916?

A. Not with me now.

20 Q. There was such an agreement or writing introduced in the case before this Board on the hearing of the 1915 assessment, was there not?

A. I don't know; I didn't attend that hearing.

Q. Weren't you at that meeting?

A. No.

30 Mr. Ashmead: So far as that goes, Mr. Coddington, I will be perfectly willing that the Board might on this hearing consider the evidence that was introduced on that hearing with reference to that point.

Mr. Coddington: That is all.

(Witness excused.)

The Board: Then it is agreed, is it, that the record made in that case, or the evidence introduced in that case shall be considered by the board in this case.

Mr. Ashmead: I think so.

40 Mr. Coddington: Yes; I think the evidence

James R. McClintock—Direct.

was the same with the exception of the increased valuation for the year 1916.

Mr. Ashmead: The situation is not at all different, you see. It is the same thing and there is no point as to the valuation, but just simply as to the extent of the exemption.

JAMES R. McCLINTOCK, a witness sworn on behalf 19
of the appellant, testified as follows:

DIRECT-EXAMINATION BY MR. ASHMEAD:

Q. Mr. McClintock, where do you reside?

A. I reside in Brooklyn.

Q. Do you have any connection with this sewage disposal improvement made by the City of Plainfield, the Borough of North Plainfield and the Borough of Dunellen?

A. The firm of George W. Fuller, of which I am 20
a member, were the engineers on the project.

(Map marked P-5 for identification.)

Q. I show you P-5 for identification and ask you what that is.

A. This is the map of the Darling farm showing the location of the sewage disposal works.

Mr. Jess: Where?

The Witness: I don't know as I remember 30
the county; it must be in this county.

Q. Are these the disposal works recently built by the City of Plainfield, North Plainfield and Dunellen?

A. They are.

Q. Located on what is known as the Darling farm?

A. Yes.

Q. In the Borough of Middlesex?

James R. McClintock—Cross.

A. Borough of Middlesex.

Q. Now, will you explain that map to the Board, showing the part that is occupied by the different construction—or different structures on there as of May 20, 1916?

A. Well, this is the outside boundary of the farm; this being the Bound Brook road.

10 Q. With reference to that, is that taken from the deed which has been introduced in evidence?

A. It is from surveys that were run out in accordance with the deed.

Q. Excluding the exceptions made in the deed?

A. Yes; the deed includes some additional pieces that were later cut off. The deed goes 'way back. This is the farm——

20 Mr. Jess: Now, Mr. McClintock, as you describe this map will you do it in such a way as when it appears on the record it will be easy to read the map? Mention the descriptions shown here—simply to indicate it, you know.

Mr. Coddington: Now, before this map is introduced or referred to I would like to enter an objection, or cross-examine this witness first,——

Mr. Jess: Yes.

Mr. Coddington:—then enter my objection.

30 Mr. Jess: You may do that.

CROSS-EXAMINATION BY MR. CODDINGTON ON THE
MAP:

Q. Mr. McClintock, what is your business?

A. Civil engineer.

Q. Did you make the survey of the Darling farm?

A. Yes, sir—no; it was made under my direction, though.

40 Q. Did you have anything to do with the actual

James R. McClintock—Cross.

work of making the survey and measurements yourself?

A. No; I did not make the measurements.

Q. That map does not include all of the purchase in the deed from Darling to the municipality, does it?

A. Yes; this includes all. 10

Q. All of the land mentioned in the Darling deed?

A. All of the land mentioned in the Darling deed is being transferred; that is, it represents the net amount after deducting the exceptions.

Q. I thought you said a while ago there was a part below here that was not indicated.

A. The deed is written to describe a larger area, and then they have reduced it to this area by cutting off certain sections, one being here and one or two parcels here. It is a rather involved deed, if you remember. 20

Mr. Coddington: Now I object to the introduction of this map in evidence because it does not appear that Mr. McClintock had anything to do with the actual measurements or actual survey; and, therefore, he is not competent to testify as to the accuracy of this map as compared with the descriptions in the deed. 30

Mr. Jess: Well, what is the answer to that, Mr. Ashmead? It may be very important.

Mr. Ashmead: He said it was made under his direction and he was in charge of the work out there. He is the man in charge of it, and this map will conform with the deed if any one will take the trouble to pry it out.

The Witness: I personally have checked it up with the deed. So far as making the actual 40

James R. McClintock—Cross.

measurements with the tape line and transit, I call on the staff to do that.

Q. But you had nothing to do with making the measurements yourself? All you know about the matter is what your employes reported to you; is that right?

10 A. That is right.

Mr. Ashmead: Have you checked that up with the description and distances in the deed?

A. I did.

Mr. Ashmead: And did you find it to be in accordance with those courses and distances?

The Witness: Yes.

Mr. Jess: I think unless there is a question that he has not checked it up with the deed, that that would be sufficient, wouldn't it, Mr. Coddington?

20

Mr. Coddington: I think not.

Mr. Jess: An engineer can take a deed and if he is a competent engineer he can check it up.

Mr. Coddington: My point is that if the description in the deed is erroneous and the map follows that description and not an actual survey made by actual measurements, then what good is the map? You start out with a wrong hypothesis.

30

Mr. Jess: Yes, but then you have got to assume that the deed is erroneous to do that. I think this: that this witness might testify that he has checked this property up with the deed and that it truly represents the description of the property as shown in the deed. Don't you think he can do that as an engineer? And then if you say the deed is wrong, that is another matter.

40

Mr. Coddington: I don't know whether the deed is right or wrong. I never had it checked up and I never had the different surveys; and this man does not know anything about the measurements and the survey because he had nothing to do with it. He does not know any more about the map than I do, and I had nothing to do with it. All he knows is what was reported to him by his employes, and I submit that is not the proper way to prove a map. If you are going about the survey you should have the man here who made the actual survey and let him testify how he made the measurements, when he made them, and whether he did actually make them on the ground or whether he relied on the description in the deed and drew the map from the deed. 20

Mr. Jess: That is right; but I am only saying now that this witness can testify that he has checked the map with the deed, and that his map shows the description of the property as disclosed by the deed. Now whether it is accurate or not——

Mr. Coddington: He may testify he checked it up with the deed, but my point is that they are showing a map here that was made from actual survey, and they have not got the man here who made the actual survey to testify as to the accuracy on the ground from the measurements that he took in making his survey, regardless of whether the deed is right or wrong. 30

Mr. Jess: You can not introduce this as evidence of the result of the actual survey, Mr. Ashmead. 40

James R. McClintock—Direct.

Mr. Ashmead: No; I am introducing it as illustrating the property as shown by the deed.

Mr. Jess: It will be admitted for that purpose, and subject to your objection, Mr. Coddington.

10 Mr. Coddington: I do not understand it is necessary to take any exceptions before this board.

Mr. Jess: No; it is not.

(P-5 for identification received in evidence.)

DIRECT-EXAMINATION BY MR. ASHMEAD CONTINUED:

Q. Now, Mr. McClintock, will you explain what the map shows, and do it in such a way that one reading your testimony in connection with the map
20 may understand the particular features about which you are talking?

A. Well, the map shows the so-called Darling farm, which is a tract of land bounded on the north side by Green Brook, on the west side by Bound Brook, on the south side by the highway known as Bound Brook Road, on the east side by a boundary line. On this map are shown the location of the sediment tanks, sludge drying beds, sprinkling boilers, and final sediment tanks which make up the
30 sewage disposal works constructed by the Plainfield joint meeting. The total acreage of this Darling farm, as shown by this map, is 88.51 acres. The acreage actually occupied by the structures built is 6.68 acres. In addition to this there is shown an area of 4.72 acres which includes the site for additional future sprinkling fillers, which was excavated as a "borrow pit" for the construction of the present structures.

40 Q. What do you mean by "borrow pit"?

James R. McClintock—Direct.

A. It is an area, the volume of excavation that is removed where you need additional earth work to make fills; literally, borrow the earth from one portion to use it elsewhere. There are also indicated—

Mr. Jess: Just one question while you go along. Was that borrow pit there at the time of this assessment, May 20, 1916? If you know. 10

The Witness: I could not be quite certain. I am pretty sure that part of it was removed at that time. I am not absolutely sure. There is a further area of 2.97 acres which is occupied by a road extending from the highway into the disposal plant; a fourth area of .78 acres is occupied by a four-inch water line extending into the structures.

Mr. Jess: What was the area? 20

The Witness: .78.

Q. Mr. McClintock, in reference to these respective areas you should testify as to the conditions on May 20, 1916 so far as you know.

A. Well, on May 20, 1916 the first area referred to was substantially occupied. The second area I think was in part occupied.

Q. Do you know about how much of it was occupied? 30

A. No; I can't be very definite on that.

Mr. Jess: What was the total? I had it 4.72; is that right?

The Witness: That is the second area.

Q. Was it that or more?

Mr. Coddington: He says he does not know.

A. I am not sure; I could not say.

Q. Proceed. 40

James R. McClintock—Direct.

A. But I am sure that a portion of it was occupied by the approach road; the second area and the third area were occupied by the approach road. This approach road is built practically the first thing in constructing a plant. The fourth area was not occupied at that time by the water line; that was put in later, I am sure.

10 Q. Now with respect to this portion where are indicated some buildings designated as barn, what are they and how are they occupied?

A. The original farm buildings are shown on this map consisting of a house, barn, shed, hayrack, and corn crib.

Q. About what acreage is covered by those buildings?

A. Roughly two acres I should say.

20 Q. What is their use and for what are they fitted? For what use are they fitted?

A. Well, the house is occupied at present by the superintendent of the plant.

Q. Is it necessary in these operations of these plants to have a superintendent or not?

A. It is desirable to have the superintendent at hand.

Q. Where he is available at all times?

A. Yes.

30 Q. Now, what was the condition of the house on May 20, 1916?

A. It was occupied by Mr. Fitch, who acted as a caretaker for the joint meeting.

Q. With the construction work going on?

A. Well, you might say he was a watchman, watched the farm and construction work. He was not a contractor.

40 Q. Is it necessary in connection with these disposal plants to provide lands for the purpose of de-

James R. McClintock—Direct.

positing the sludge from the beds in case it can not be disposed of?

A. Well, it is very desirable to have space to deposit sludge, because it is not always possible to dispose of it otherwise. In some cases farmers are glad to take it away; in other cases there is difficulty in getting them to take it away. The simplest way of disposing of it is to use it for fill about the plant. 10

Q. In your opinion as an engineer was it reasonably necessary for the joint meeting to procure a farm of the size of this in order to take care of the present and immediate future needs of sewage disposal.

Mr. Coddington: I object to that question.

Mr. Jess: On the ground that he has not qualified?

Mr. Coddington: Not qualified. 20

Mr. Jess: Well, that is good ground.

Q. Well, Mr. McClintock, will you tell the board what your qualifications are with reference to sewage disposal?

A. I am a graduate of the Massachusetts Institute of Technology in sanitary engineering; for eleven years I have practiced sanitary engineering. From 1906 to 1912 I was on the staff of the firm of Herring & Fuller in connection with the design and 30 construction of sewage disposal and water works. From 1912 to 1916 I was a member of the firm of George W. Fuller, specializing in sewage disposal and water supply works. Since the first of the year I have been a member of the firm of Fuller & McClintock bearing on similar line of work.

Q. How long has been your total experience, then, in connection with sewage disposal matters?

A. Eleven years. 40

James R. McClintock—Cross—Direct.

Q. Now will you answer the previous question?

Mr. Coddington: One moment. I would like to cross-examine.

CROSS-EXAMINATION BY MR. CODDINGTON AS TO
QUALIFICATION:

10 Q. How many plants, sewage disposal plants such as this, have you ever constructed—same, I mean, as this?

A. Well, at least twenty. We worked on probably more, in various ways, as to plans or construction.

Q. All exactly the same as this?

A. No; I should not say that they were exactly all the same; some bearing on similar features.

Q. Were any of them exactly the same as this in every detail?

20 A. No; obviously not.

Q. Isn't this the only plant of its kind that you have ever constructed—in exactly the same way as this was constructed—

A. The——

Q. Just answer my question.

A. This is the only plant of its kind in every specific detail; yes.

Q. That is all.

30

DIRECT-EXAMINATION BY MR. ASHMEAD CONTINUED:

Q. Are there any two plants alike in every specific detail?

A. Not that I know of.

Q. The plants of which you have spoken were plants of the same general character as this?

A. Yes.

Mr. Coddington: I object.

40

Mr. Jess: Objection noted.

James R. McClintock—Direct.

Q. (Repeated by the stenographer.) In your opinion as an engineer was it reasonably necessary for the joint meeting to procure a farm of the size of this in order to take care of the present and immediate future needs of sewage disposal?

A. It was very advisable.

Q. Was it in your opinion reasonably necessary?

A. It was reasonably necessary; I would say that.

Mr. Jess: You say as an expert that in your opinion it was reasonably necessary that for the present needs and the needs of the immediate future—it was necessary to acquire a farm of 78 or 80 acres? ¹⁰

The Witness: Yes.

Mr. Coddington: 90 acres.

Mr. Jess: 90 acres.

The Witness: Yes; we would advise that. We have elsewhere.

Mr. Jess: Lots of sewer plants serving municipalities as large as these have not anything like that area, aren't there? ²⁰

The Witness: Yes, that is true; but it is usual where it is possible to get a reasonable area; I think it is done almost without exception.

Mr. Jess: That is a very important question here, and we want your best, well-considered judgment as an expert. ³⁰

The Witness: We certainly would advise it; in fact, we did advise the committee at the time this matter was taken up.

Q. Advised them to buy the whole farm?

A. Advised them to buy the whole farm.

Mr. Coddington: I object to that answer and ask that it be stricken out as irrelevant and immaterial.

Mr. Jess: That will be stricken out. ⁴⁰

James R. McClintock—Direct.

Q. What did you advise the City of Plainfield, and North Plainfield and Dunellen with respect to the advisability of buying the whole farm at the time of its purchase?

Mr. Coddington: I object to that question as immaterial for this purpose, whether the City of Plainfield, and Dunellen and North Plainfield were advised by engineers or not.
10 We are trying a tax case and nothing else.

Mr. Jess: Yes; I think, Mr. Ashmead, that is probably not proper.

Mr. Ashmead: If the Board please, the issue here is certainly whether the amount purchased was reasonably necessary, and any municipality certainly has the right to rely upon experts along the line in which they are building the improvement. The municipalities in this case employed Mr. George W. Fuller's
20 firm, which stands at the head in the country, or among the best firms in the country, and they have given this subject the greatest attention. They have been studying the matter for years——

Mr. Jess: Let me interrupt you there. You see, that is all true; but here is a witness—you first have to show that he knew definitely as to the advice that he had either as a member
30 of the firm given, or that there was some letter in which they had given it. I do not think it ought to be admitted as it stands.

Q. Do you know, Mr. McClintock, the advice that your firm gave to these municipalities with respect to the reasonable necessity of buying this whole farm?

Mr. Coddington: I object.

Mr. Jess: The objection is overruled. He
40 may answer "yes" or "no".

James R. McClintock—Direct.

Q. (Last question repeated by the stenographer.)

A. Yes.

Q. What was that advice?

Mr. Coddington: I object. That is immaterial, as to what advice his firm gave the municipalities in reference to the purchase of any tract of land. We are trying the issue of 10 whether this entire tract of land, or any part of it should be exempt from the taxation imposed upon it by the Borough of Middlesex. What bearing can it possibly have as to what advice a mechanical engineer or an expert gave to any one of these municipalities about the purchase of 90 acres, or 100 acres, or a thousand acres?

Mr. Jess: This question is certainly raised, 20 assuming that a certain portion of this land is entitled to exemption—we must assume that now—certainly it becomes a relevant matter to determine how much of the land; and the testimony of competent engineers or experts would be relevant, wouldn't it?

Mr. Coddington: I think where they introduce a deed and a map and have pointed out how much of that land is used for sewage disposal beds and how much for other purposes, 30 it is as far as this board should go. I do not think this board should require expert testimony on the land outside of the land actually occupied by the sewage disposal beds, except to show the facts, what the nature of the land is, what it is used for, and how much.

Mr. Jess: I will overrule you on that, Mr. Coddington. But at the same time there was an objection made to the last question. For 40

James R. McClintock—Direct.

the present we will admit the answer to that, until we see what the answer is.

A. The advice was that it would be desirable to buy the entire farm.

Q. By "desirable" what do you mean?

A. The best thing to do.

Q. Well, with respect to the necessity.

10 A. Well, to allow—

Mr. Coddington: Now, one moment. I object. It does not appear that this witness was present.

Mr. Jess: That is the fault with this testimony.

Q. Mr. McClintock, were you present at these conferences between your firm and the committee or the representatives of these municipalities at the
20 time this matter was discussed?

Mr. Coddington: I object to that. This board well knows that municipalities and corporate bodies only talk through their minute book. Any discussions they may have had *pro* and *con* between representatives of this firm or any other firm and themselves are irrelevant and not admissible.

Mr. Jess: The objection is overruled.

30 A. I was present at conferences with committees having the purchase in charge.

Q. And what was the advice that was given at those conferences at which you were present with respect to this matter?

Mr. Coddington: I object to that question.

Mr. Jess: Unless the witness can answer in specific language what advice was given and by whom and to whom, the objection will be sus-
40 tained.

James R. McClintock—Direct.

A. Well, the advice was given in informal conversation between myself and Mr. Fuller and the right-of-way committee.

Q. Composed of whom? Whom was the committee composed of?

A. Mr. Godfield, Mr. Mill, and I think Mr. Randolph.

10

By Mr. Coddington:

Q. Were there minutes kept of those interviews?

A. I don't think so.

Mr. Jess: Well, so far the witness has testified that the advice was that it was desirable.

By Mr. Ashmead:

Q. Now, what do you mean by "desirable" in reference to the necessity?

20

A. Well, in order to provide——

Mr. Jess: That is objectionable,—

Mr. Coddington: I object to that question, too.

Mr. Jess: —because what he meant might not be what was meant when they used that word. I think, Mr. Ashmead, that you ought to be held down very strictly on this branch of the case and that is what we are going to try to do; because you realize and the board realizes 30
certainly that it is very important; and we do not propose to get in any hearsay if we can avoid it, or anything that won't stand the strictest test, because we have got to decide how much of this land was reasonably necessary. We have the testimony of this witness—that is our view of it—that in his opinion this much was desirable.

40

James R. McClintock—Direct.

Q. At these conferences what was said with respect to the reasonable necessity of acquiring this whole farm?

10 Mr. Coddington: I object to that question. How can anything that was said by anybody in an informal meeting bind the municipality or bind the Borough of Middlesex?

Mr. Ashmead: I am going to follow this up by a member of the committee that had this in charge, and show that it was reported to the joint meeting and was before them at the time they passed these resolutions which we have already introduced in evidence.

20 Mr. Jess: Well, you may ask him if he said anything about the reasonable necessity of buying ninety acres.

Q. Did you say anything about the reasonable necessity of buying it?

Mr. Coddington: I object to that question.

Mr. Jess: All right; the objection is overruled.

A. I advised the committee that it was reasonably necessary to buy the ninety acres.

30 Mr. Jess: Now, just what did you say, Mr. McClintock, to the committee?

Mr. Coddington: I object to that question for the same reason.

Mr. Jess: The objection will be noted.

The Witness: I can not recollect the exact words.

40 Mr. Jess: Then all the testimony on that line will be stricken out of the record, except as to his opinion.

James R. McClintock—Direct.

Mr. Ashmead: Do you mean to say that you have got to give the exact words of this advice?

Mr. Jess: Yes, in this case, in view of the testimony of this witness, that is precisely what I mean; that it was said that it was desirable, and the question being not whether it was desirable, but whether it was reasonably necessary for the purposes of this plant that they should have ninety acres. The board is going to rule that unless he can tell the language that was used we won't accept the evidence. 10

Q. Now, Mr. McClintock, can you tell the language, or can you report in definite language the remark or the opinion and advice that was given by you with respect to the reasonable necessity of acquiring this whole farm?

Mr. Coddington: I object to that question. 20

Mr. Jess: The objection is overruled.

A. I can not, of course, recollect the exact wording.

Q. What was the purport of it and as near as you can recollect it?

Mr. Jess: Why do you pursue that, Mr. Ashmead? You say you have testimony that will cover it, and it is admissible testimony. This won't have any weight with the board. 30

Mr. Ashmead: It may not have any weight, but I do think it is important in this case, and to have this record now so when the board considers it, or not—so that we may show what was before the joint meeting at the time they passed the resolutions which we have already introduced in evidence. We have here the testimony of an engineer advising the reasonable necessity. He has testified—I want to show 40

James R. McClintock—Direct.

that that advice was communicated to the joint meeting, and that in view of that advice they passed the resolution. That is my object.

Mr. Jess: Well, we will permit you to get on the record what the answer is—whatever is necessary for your purposes.

10 Mr. Ashmead: I would like to ask him—of course, no one can possibly recollect word for word an oral conversation, but it is perfectly admissible under the cases for them to testify, not word for word, but what was the purport and the essence of that conversation.

Mr. Jess: Well, when the test is whether the words “reasonably necessary” is the issue here, it seems to me he must do something more than testify as to the purport. However,—

20 Mr. Ashmead: In so far as it relates to reasonable necessity.

Mr. Jess: That is the view we take of it.

Mr. Ashmead: Well, do I understand that you exclude the answer?

Mr. Jess: Yes, sir.

Mr. Ashmead: Or permit the answer and not consider it?

30 Mr. Jess: We will not consider any part of his testimony as to what may have been said at any of these meetings with references to the desirability of purchasing this tract of land.

Mr. Ashmead: I have asked him as to the reasonable necessity, and I have asked him to give that as nearly word for word as he could.

Mr. Jess: I understood the witness to say he could not do that.

The Witness: I can not give word for word. I can give the idea.

40 Mr. Jess: Can you say whether the words “reasonably necessary” were used?

James R. McClintock—Direct.

The Witness: No; I could not say that. The idea was given. It was a series of conversations.

Mr. Jess: Well, that is your interpretation of the idea.

The Witness: I mean it was not a definite statement; it was a series of conversations.

Mr. Jess: We understand your difficulty, Mr. McClintock; it is, of course, very hard to repeat just exactly the language that was used. All that you could do would be to give your impression of what was used, wouldn't it?

The Witness: Yes.

Mr. Ashmead: I ask an objection. I still think I ought to have on this record—I still think that he should be permitted to state as nearly as he can what was said on the subject. As to the weight that the board shall give that, that is another matter.

Mr. Jess: I think that you get all that you want, Mr. Ashmead, by having me exclude it.

Mr. Ashmead: I realize I have his opinion, but the board may not consider it. I realize it is a close question.

Mr. Coddington: I was going to say, Mr. President, that I understand from this witness that these interviews and conferences were not even with the joint meeting; they were informal meetings and conferences with subcommittees, which certainly ought not to be evidence before this board.

Mr. Ashmead: No; he has not said that.

Mr. Coddington: That is what I understand.

Mr. Jess: Well, there is no question.

Q. I will ask you to state just as nearly as you can what was said, what advice was given as to the

James R. McClintock—Cross.

reasonable necessity of acquiring this whole farm for sewage disposal purposes.

Mr. Coddington: I object to that because the witness has already testified that he could not tell.

Mr. Jess: The objection is sustained.

Mr. Ashmead: That is all.

10

CROSS-EXAMINATION BY MR. CODDINGTON:

Q. Mr. McClintock, do I understand that your opinion is that the entire acreage, nearly ninety acres, are necessary for this sewage disposal system?

A. Yes.

Q. Do you consider all of those buildings, such as the barn, corn crib, shed, and the hayrack, and the house necessary for this sewage system?

20

A. I consider them advisable—

Q. No. Do you consider them necessary—all of those buildings?

A. I consider them necessary enough to warrant their obtaining them, keeping them; surely. Nothing is absolutely necessary. I don't know how to define "necessary".

Q. Is any of those buildings I have mentioned absolutely necessary for this sewage system?

30

A. None of the buildings are absolutely necessary.

Q. That is what I thought. Now, how much acreage is there outside of the actual acreage occupied by the disposal plant?

A. Approximately 82 acres.

Q. Did you know that before this same board on the appeal of the 1915 taxes it was admitted on behalf of the joint committee that approximately

40

James R. McClintock—Cross.

between two and three acres were actually used at that time?

A. Yes.

Q. For the sewage disposal plant?

A. Yes.

Q. And were you present at that hearing before the tax board in the 1915 appeal? 10

A. No.

Q. Do you know that it was admitted by the joint sewage committee that the farm, buildings, and land outside of the land actually used for the disposal plant had been leased to a man by the name of Fitch for two hundred dollars a year?

A. Well, I don't know what happened at the hearing. I have heard that. I don't know whether I heard it as coming from the hearing or coming from the lessee. I heard the fact. 20

Q. Do you know of your own knowledge that Mr. Fitch, or a man by the name of Fitch, paid two hundred dollars to the joint committee for the farm land and buildings outside of the land occupied by the sewage disposal plant?

A. I understand that is so; yes.

Q. When did Fitch leave?

A. I don't remember.

Q. Aren't you there all the time? 30

A. No.

Q. Aren't you there most of the time?

A. No.

Q. Haven't you been there most of the time for the past two years?

A. No; not most of the time.

Q. And you had charge, had you, of the construction of the plant?

A. General charge; yes. 40

James R. McClintock—Cross.

Q. And you say you were not there most of the time while that was going on?

A. You said the last two years; the last year I have been there comparatively little; two years previous to that, that was 1914 and 1915, I was there a good deal. I would not say most of the
10 time. I was there perhaps——

Q. Do you know when the tenant, Mr. Fitch, vacated this property?

A. No; I do not.

Q. You don't know. Do you know whether a part of this land at the present time has growing crops upon it?

A. I believe it has; I have not been out there for some——

Q. And weren't those crops put in there by Mr.
20 Fitch, the tenant?

A. I don't know as to that.

Q. Do you know when the crops were put in?

A. No.

Q. You know they are there now?

A. I believe they are there.

Q. What kind of crops are they?

A. I don't know.

Q. What do they look like?

30 A. I have not been out there since, I guess, this spring; I haven't seen any crops out there this spring. I thought you were speaking of last year.

Q. I am speaking about last year and this spring, both. What crops did you notice there last year?

A. I noticed some corn, as I recollect.

Q. Anything else?

A. No; I paid no attention to it.

Q. Don't you know that Mr. Fitch had a large
40 part of the acreage of this farm put down in winter

James R. McClintock—Cross.

corn, and that that winter corn is still growing now?

A. No.

Q. You know there is winter corn growing there now, don't you?

A. From hearsay. I am under the impression. I didn't pay any attention to it.

Q. It was put down last year, was it not? 10

A. I don't know anything about the crops; I didn't pay any attention to them.

Q. You have been on the ground?

A. I might be on the ground and not even notice the crops.

Q. You would certainly know whether there was a bean crop there, or winter crop, or corn crop?

A. I could walk over that ground and not notice the crop.

Q. Aren't you a pretty observing young man? 20

A. Not of bean crops.

Q. How about corn and potatoes and grass?

Mr. Jess: Well, Mr. Coddington, why go further into that?

Mr. Coddington: Well, I am about through with that.

Q. When was the last time you were on this property?

A. I think it was about the latter part of March. 30

Q. This year?

A. It may have been the middle of April; I don't remember.

Q. Now I call your attention to the map, date on the map says May 23, 1917. Do you know what that date refers to?

A. It refers to yesterday.

Q. And you say you have not been on the property since March; is that right? 40

James R. McClintock—Cross.

A. The date refers to when the map was made.

Q. You say you were not on the property since March?

A. My recollection it was the last of March; yes, sir.

Q. And this map was made in May, 1917?

10 A. This tracing of the map was made yesterday.

Q. Then you didn't have anything to do with the making of the map, did you?

A. Yes, considerable to do with the making of the map.

Q. Did you draw any part of the lines on that map—personally?

A. No.

Q. Isn't it a fact that this is the first time you saw that blueprint, when you came in here this
20 morning?

A. No; it is not a fact.

Q. When did you see it first?

A. I saw the tracing first yesterday when it was sent out to be blueprinted.

Q. Where was it prepared?

A. It was prepared in our office.

Q. Where?

A. In New York.

30 Q. Where were you yesterday?

A. In my office.

Q. All the time?

A. No; I was in Newark part of the time.

Q. Who prepared this tracing for this map?

A. Our architect, Mr. Bull, made the tracing.

Q. Had he ever been on the Darling farm to your knowledge?

A. Yes; I think he was.

40 Q. Do you know whether he had anything to do

James R. McClintock—Cross.

with making the actual survey on which this map is based?

A. I know he didn't.

Q. Now you say you were looking after the interests of the joint committee under the direction of Mr. Fuller, engineer. Can you tell me how much of the sewage disposal plant was actually built and constructed as of the 20th of May, 1916, in value— 10
approximate value?

A. I can give you the amount of the monthly estimate.

Mr. Ashmead: That is entirely irrelevant. It is not proper cross-examination, and there is no question as to the valuation, no point raised as to that. It is merely to the extent of the exemption.

Mr. Jess: I guess that is right. I do not 20
think it is proper cross-examination.

Mr. Coddington: Possibly it is outside of the strict rule of cross-examination, but as this witness is the one who had the matter under supervision, I thought perhaps he might be permitted to tell how much of that sewage disposal plant had been completed up to May 20, 1916.

Mr. Jess: Well, yes. Do you take that as 30
your testimony?

Mr. Coddington: That part of it; yes.

Mr. Jess: You may do that.

Mr. Ashmead: I think that is entirely irrelevant. There is no issue raised here as to valuation. It is merely confined as to whether or not these improvements are exempt.

Mr. Jess: What I had in mind was that it might have some bearing upon the question of the land actually occupied. 40

James R. McClintock—Cross.

Q. (Repeated by the stenographer.) Now, you say you were looking after the interests of the joint committee under the direction of Mr. Fuller, engineer. Can you tell me how much of the sewage disposal plant was actually built and constructed as of the 20th of May, 1916, in value—approximate value?

10 A. The value of the work to date——

Q. I don't mean the date.

A. The value of the work to May 31, 1916, as shown on the monthly estimate No. 12, was \$110,248.90.

Q. And was there much of a change in the total value that you have given us between the 30th of May, 1916 and the 20th of May, 1916?

A. I should say very little.

20 Q. Now, Mr. McClintock, notwithstanding you are called by the other side, I want to ask you if this system that has been installed by the three municipalities could not be as successfully operated on, say, eight to ten acres of land as upon ninety acres of land?

A. Not as successfully, I should say.

Q. I mean from the scientific standpoint.

A. From the scientific standpoint not as success-
30 fully.

Q. Why?

A. Well, on account of lack of convenience for disposing of sludge; on account of the possibility of odors extending to the neighbors; and on account of the advisability of having a resident superintendent at the plant.

Q. In giving your answer as you have given it, referring to odors, I ask you if it is not a fact that
40 you consider the large acreage outside of the acre-

James R. McClintock—Cross.

age actually occupied by the sewage disposal plant more from an odor standpoint than from any other?

A. Well, I should say about equally from an odor standpoint and from a sludge disposal standpoint.

Q. Isn't it a fact that when negotiations were pending for the purchase of this farm that you could not have purchased any division of the farm from Mr. Dowling, but that it was necessary to purchase the whole, because he would not have his farm cut up and sold in part for sewage purposes and retain the balance?

Mr. Ashmead: I object to that as immaterial. The Act gave them the right to condemn. It was not depending upon Mr. Darling.

Mr. Jess: It is objectionable, I think, also, unless you can show that he negotiated the sale or purchase of the farm, Mr. Coddington.

Q. Well, if I understand you, you actually used for sewage disposal purposes 6.68 acres; is that right?

A. Actually occupied by the structures.

Q. Of the sewage disposal plant. That is what I am asking.

A. That is used, I say—occupied.

Q. Now, you don't occupy this tract of—what is that? (Indicating.)

A. This refers to the strip; that is of the white line. (Aside) Approximately 73 acres; 72 acres not occupied.

Q. I understand that there are about 73 acres that are not actually used for sewage disposal works?

A. I say "occupied"; not "used".

Q. Well, occupied.

James R. McClintock—Cross.

A. If I might be permitted to make that plain——

Q. No, just answer my question. That is right, is it?

A. About 73 acres not occupied.

Q. Now, you do not consider it necessary for two acres of ground to be used by a superintendent, do you, out of this tract in order that he might be within easy access of the plant.

A. Not for his personal use, no.

Q. Isn't it a fact that he would be just as accessible if he had a house built on a fifty-foot lot by 150 feet in depth, as upon a two-acre tract?

A. I think you need a team, though.

Q. No, answer my question; I don't talk about teams.

A. He would be just as useful.

Q. Wouldn't he be just as accessible?

A. Just as accessible.

Q. It is not necessary to have a corn-crib, a shed, a barn, and a large ten- or twelve-room house on a two-acre tract of land in order to have a superintendent accessible to these works, is it?

A. It is necessary to have some person——

Q. No, answer my question, please.

A. It is not necessary to have anything.

Q. It is not necessary to have anything more than a house to live in and a fairly good-sized lot, isn't that right?

A. I don't know as it would be necessary to have that.

Q. Now, wouldn't the superintendent be just as accessible if he lived over on the Green Brook side of that property? Wouldn't he be more accessible than to live 'way up here on the road leading from Dunellen to Bound Brook?

James R. McClintock—Cross.

A. You mean over here?

Q. Yes, sir.

A. No, sir; I think this is the natural place for him to be; it is the entrance to the plant.

Q. I am not asking you about the natural place. I am asking you about the accessibility.

A. I think it adds to the accessibility, being at the entrance to the plant where people would naturally call on him if they were coming there. 10

Q. I thought his work was principally to look after the management of this plant, and not to look after callers. Is that right?

A. It depends on who the callers are.

Q. Do you know of any callers necessary to call upon him out of necessity who would not call if he lived down on the Green Brook Road just the same as though he lived where he is living on the highway between Dunellen and Bound Brook? 20

A. If he lived on the Green Brook side they would doubtless call on the Green Brook side.

Q. One road is just as passible as the other, isn't it?

A. Well, there is no road on the Green Brook side unless you cross private property.

Q. I am referring to the road leading by the Rice property, right opposite the sewage disposal plant.

A. You mean and go across the right of way? 30

Q. Yes, sir.

A. That is not, strictly speaking, a passageway.

Q. I am not speaking about passageway. I am asking you if it is not just as convenient.

A. In my opinion it is not as convenient.

Q. Why?

A. Because this is the entrance of the plant, and it is the logical way for some man to live in this house. 40

James R. McClintock—Cross.

Q. How far is the house where he does live from the disposal plant?

A. It is about eighteen hundred feet.

Q. How far is it from the Green Brook road opposite the Rice property to the disposal plant?

A. I think it is about the same distance.

10 Mr. Ashmead: How much do you say?

Mr. Coddington: About eighteen hundred feet, he said.

The Witness: May be it is twelve.

Q. Isn't it shorter from the Green Brook Road than from the Bound Brook Road?

A. About the same, I should say.

Q. You have not the Green Brook Road delineated on this map, have you?

20 A. No.

Q. Did you leave it out for any particular purpose?

A. The paper was not large enough.

Q. Is that the only reason?

A. It has no bearing.

Q. I say is that the only reason—because the paper was not large enough?

A. Or probably I didn't want to put it on.

30 Q. All right. Now I call your attention to the location of your sewage disposal plant as regards the center of the Darling farm, and ask you if the sewage disposal plant was purposely constructed in the center of the Darling farm to avoid being a nuisance, to avoid particular obnoxious odors to people who might live on the outskirts, or the adjoining property to the Darling farm.

A. Partly on that account and partly to secure favorable grade conditions.

40 Q. And isn't it a fact that when you said you con-

James R. McClintock—Cross.

sidered it necessary for this large tract of land to be purchased for this purpose you had largely in mind the fact that there would be obnoxious odors emanating from this plant?

A. That is an important factor.

Mr. Coddington: I wish to call the board's attention to this deed that has been admitted 10 in evidence over my objection. There is no consideration mentioned in that deed, except one dollar and other valuable consideration. I think it is quite necessary that testimony be given as to what the true consideration for that property was if the deed is to be considered of any moment at all, outside of the description.

Mr. Jess: Well, the deed was not put in for the purpose of showing value, but for the purpose of showing the description. That is all 20 I had in mind.

Mr. Coddington: I don't know. I just merely call the board's attention to that.

Mr. Jess: All right.

By Mr. Jess:

Q. You give as the area occupied by the sewage disposal plant 6.68 acres; that is correct, is it? 30

A. Yes.

Q. Now, you spoke of the sludge beds.

A. Sludge drying beds.

Q. Well, are they included in that?

A. Yes; they are right here. (Indicating.)

Mr. Ashmead: I think you had in mind the sludge disposal.

Mr. Jess: That is what I mean.

The Witness: The sludge beds are dried until it is about fifty per cent. moisture and 40

then spread around or may be carted away by the farmers.

Q. Kind of fertilizer?

A. It has some fertilizing values; it is surely helpful on some soils; on some farms they don't like it.

10 Q. Do they ordinarily provide in the construction of these plants for the disposal of that material in that way?

A. Pretty generally, yes; in some cases they barge sludge to water.

Q. Is that usually taken into consideration in estimating the amount of land that would be necessary for the purposes of a disposal plant?

A. I think it is.

20 Q. Was it in this case? If you know.

A. It was.

Q. Now, you spoke of odors as being one of the factors which led to the acquirement of this area. This plant that you have there is supposed to be free of any objection of that sort, isn't it?

A. Not entirely so. You would expect odors to a distance of perhaps two hundred feet from the structures, and the idea of the larger area is like as to any engineering structure: you provide what
30 you call a factor of safety; that is, you at times have some special combination of circumstances and some unknown factors. In order to cover those you have to allow two or three times the margin that you want to figure on. That is practically almost general in engineering design.

Q. Well, if the odors would ordinarily extend two hundred feet, what would be the additional margin of safety that you think ought to be allowed as expressed in feet?
40

James R. McClintock—Cross.

A. Well, I think there ought to be an isolation of a plant of this size, or rather the size space it ought to be, at least twelve hundred feet.

Mr. Jess: I want to say this now: If counsel wish to have noted on the record objection to any questions that are being asked, do not hesitate.

Mr. Ashmead: No. The situation in this case is that these people from Middlesex have an injunction, in which they say we must have a half a mile reservation, and here they say we should have none. Now, we are perfectly willing to have the facts before the board, and the fact is, as I expect to show by the next witness, that at the time the plant was located in this vicinity there was great objection to it, and that was one of the things that were considered by the joint meeting in purchasing this farm, because of the particular conditions here, to take care of any possible objection. That will come out by the next witness.

Mr. Jess: Mr. Gentieu suggests he would like to have this question asked: Was this plant in operation on May 20th last; that is, 1916?

The Witness: Not in operation.

Mr. Jess: Not in operation; or any part of it?

Mr. Ashmead: When did it begin operation?

Mr. Jess: Do you know that?

The Witness: Yes; 26th of last November.

Mr. Gentieu: What had you done with the sludge that you had made up to that time?

The Witness: We haven't any yet. The sludge stays six to nine months in these tanks until it reaches a non-odorous condition; then

it is taken out and dried; so we haven't accumulated enough to remove yet.

10 Mr. Jess: It was suggested having a large farm to dispose of that sludge. Suppose the conditions were such that you could not acquire this large tract of land, what would you then have done with the sludge? From an engineering standpoint what would you have done? How would you have contemplated disposing of that sludge then?

The Witness: Well, at "Northland" recently we figured on barging it to some distance in the lake and dumping it.

Mr. Jess: Do I understand it is not feasible to barge from here?

20 The Witness: Why, you would have to haul it, to haul to some other dump, unless you could arrange with farmers to cart it away.

Mr. Jess: How much of this land do you think you would require to dispose of that sludge? How much will you use? All of the farm?

30 The Witness: We probably will cut several hundred yards there in the course of a year, and in the course of ten or twelve years we will build up several thousand yards. Ultimately I presume that would cover a good share of this area.

Mr. Jess: And after about five years you could come back on the part you first covered and put on another layer?

The Witness: Yes, put on a good deal; it would gradually rot away.

40 Mr. Jess: How many acres would you cover in five years? Practically a small area, wouldn't it be?

James R. McClintock—Cross.

The Witness: In five years.

Mr. Jess: Yes. Would it be an acre?

The Witness: No, I think it would be four or five or six acres, at least; say a foot layer on four or five or six acres.

Mr. Jess: Do you cover that with earth? You don't just lay it on top of the ground, do you? 10

The Witness: Yes; sludge in good condition is not troublesome. It could be ploughed in. If you were farming you would probably grow something on it.

Mr. Jess: Is it of any value to farmers? would they be glad to have it given to them, or buy it, or haul it away free of cost?

The Witness: In some soils the sludges—they seem to like it. In other cases they don't like it. The fertilizing value is relatively small, relatively stable. 20

Mr. Bouten: You have stated that 200 feet was the area which ordinarily should be allowed for protection to property—two hundred feet beyond the plant. Is that an absolute requirement, or does that provide for fairly average conditions?

A. That is fairly average conditions, with everything operating right—sludge condition, bacteriological action, and so on. 30

Mr. Bouten: Anything beyond that, the distance would be a thousand feet, depending on your individual judgment and the strength of the winds? Some judgments might say a mile or two miles?

The Witness: Yes, some might. That is a question of judgment. 40

Mr. Jess: One other question: I want to ask what is the capacity of this plant?

The Witness: It has a present capacity of about forty thousand people.

Mr. Jess: Forty thousand people. And how does that compare with the estimated requirements of the municipalities?

10 The Witness: That would take care of them for the next three or four years, perhaps; four or five years, I expect.

Mr. Jess: That is, the plant as it has been contracted for, it is estimated will take care of the needs for three or four years—only?

The Witness: Well, it might be run five or six years, though the plant should be somewhat overloaded.

20 Mr. Jess: Then would it be necessary, in your judgment, at the end of that time—the end of the four—or five-year period—to take more of the land than is at present occupied?

The Witness: In my judgment, within five years they will make some extensions.

Mr. Jess: Well, that is what I mean. When they make extensions it will mean that they will take in more land than you have said in your testimony is now occupied?

30 The Witness: Yes.

Mr. Jess: That is correct?

The Witness: Yes.

Mr. Gentieu: About how much more will be required for double the population? About one-fourth more area than now occupied?

The Witness: For double?

Mr. Gentieu: For double the population.

40 The Witness: Well, about six and a half acres more, we will say. Practically double

James R. McClintock—Cross.

this which is occupied here. There would be another set of tanks here like that.

By Mr. Ashmead:

Q. Mr. Coddington said that there were three acres actually occupied by the beds, at the last meeting, and there are now more. Will you explain that? 10

A. That three acres—I referred to the net lines of the structures. The acreage, as I have taken it, as occupied by the plant, includes the toes of the slopes. There are embankments around these structures and we have to slope off to natural ground; and, of course, there is also space necessary at the structures; and the 6.68 acres includes the total area occupied.

Mr. Jess: The land occupied, is this reasonably necessary? 20

The Witness: Yes; the three acres is area necessary.

Q. Mr. Coddington had you answer some questions with respect to the 73 acres and you asked to have an opportunity to explain, which he denied you. What is it you wanted to explain, do you remember? A. No; I don't remember just that point. 30

Mr. Ashmead: That is all.

By Mr. Coddington:

Q. Do you know the present approximate population of the three municipalities: Plainfield, North Plainfield and Dunellen? A. Approximately 35,000, I think.

Q. And your plant has a capacity as now con- 40

structed to take care of 40,000 population without overloading it?

A. 35,000 to 40,000, I should say.

Q. You say you have not had occasion to use any land as yet for sludge purposes? A. No.

10 Q. Do you know about when you may be compelled to take care of sludge from that plant? A. Probably in two months.

Q. And have you any idea as to the amount of sludge in that length of time that will probably have to be provided for? A. Oh, perhaps 150 or 200 yards, offhand.

20 Q. And from your experience with plants similar to this when would your next sludge necessity arise after the one that you just referred to? A. It depends on how it is operated; it might be a fairly small amount at frequent intervals, or it might be a large amount, say twice a year or three times a year.

Q. Well, would there be an amount say twice a year of more than 150 yards? A. I won't attempt to give any quantities of sludge, closely.

Q. Well, I am asking you about. I don't expect you to come down to the ounce. A. Offhand I would say it would average five or six hundred yards a year.

30 Q. Now, isn't it a fact, Mr. McClintock, that in most places where plants similar to this are operated that you have no difficulty in disposing of the sludge to farmers, either at a price or by gift? A. I think they have considerable difficulty in places; other places they have no difficulty.

Q. That depends entirely upon the richness of the sludge, I suppose?

A. It varies from year to year in the same plant.

Q. But if the sludge from this plant should be

James R. McClintock—Cross.

reasonably well permeated with certain essences I suppose it would be beneficial to farm property, would it not?

A. I think it is going to be difficult to dispose of it on account of the relatively large amount of soap fat in it.

Q. But that you have not tried out yet?

A. That I haven't tried out. 10

Q. That is a problem with you as well as the "wind"! Do you know how many plants similar to this are in operation at the present time, where they can quite readily dispose of their sludge either by gift or a price?

A. They have very little trouble at Baltimore in disposing of sludge.

Q. Any other places you know of?

A. I don't think they have much trouble at Toronto disposing of it. 20

Q. Any other places you know of?

A. At Chatham I think they have had trouble at times.

Q. What was the reason there, do you know?

A. No.

Q. Wasn't it because of the sewage disposal plant being located at a place where it was quite inaccessible for farmers to cart it from?

A. It may have been. 30

Q. May have been. Isn't it a fact that the location of the Plainfield plant is quite accessible to farmers who want to buy or carry sludge away, to get it from the plant?

A. It is quite accessible if they like the quality of the sludge.

Q. I understand you are only twelve to eighteen hundred feet from the main thoroughfare?

A. About that. 40

William J. Buttfield—Direct.

Q. Now, have you any reason to assume that there would be more soap fats in the Plainfield sludge than in the Baltimore or Toronto sludge?

A. Yes.

Q. Why? Because the people of Plainfield are cleaner?

A. The water is relatively hard——

10 Q. Use more soap?

A. Yes; more soap on account of the hard water; the accumulation of the soap fat has been quite a problem both in the old plant and in this one.

Q. You do know that sludge from the old plant had been disposed of by the City of Plainfield in the past, do you not?

A. I don't know the facts.

20 Q. Oh, you didn't have anything to do with that. That is all.

[Witness excused.]

Recess to two o'clock P. M.

AFTER RECESS.

WILLIAM J. BUTTFIELD, sworn as a witness on
30 behalf of the appellants, testified as follows:

DIRECT-EXAMINATION BY MR. ASHMEAD:

Q. Mr. Buttfield, where do you reside?

A. North Plainfield, New Jersey.

Q. Have you had any connection with this project of the City of Plainfield, North Plainfield and Dunellen?

A. Yes.

40 Q. Were you on the original committee that had

William J. Buttfield—Direct.

charge of choosing the location of the Darling farm?

A. I was.

Q. Were you on the committee that had charge of the joint meeting for the negotiations for the purchase of the Darling farm?

A. I was.

Q. Will you in your own way detail the circumstances that surrounded the purchase, or that existed at the time of that farm's purchase, particularly in respect to the amount of land that was included in the purchase. 10

Mr. Coddington: I object to that question. It seems to me it is quite immaterial whether Mr. Buttfield was interested on the committee or not that had charge of the purchase of this property several years ago. I think the only question that this board is to consider is whether that comes properly under the tax act, and I do not see what difference it would make whether Mr. Buttfield was a member of that committee, had in charge the purchase of the property or not, any more than any member of this board who might be on a similar committee. The question is whether this property is over-assessed, and whether any part of it should be exempt or not, and, if so, how much. It seems to me those are the questions we are to try. 20

Mr. Jess: We will admit the question for the present.

A. For several years prior to the acquisition of the farm in question there had been a number of attempts to solve the problem of taking care of the sewage—

Mr. Coddington: I object to this line of evidence, if the board please; it is irresponsive. 40

William J. Buttfield—Direct.

Q. (Repeated by the stenographer.) Will you in your own way detail the circumstances that surrounded the purchase, or that existed at the time of that farm's purchase, particularly in respect to the amount of land that was included in the purchase.

10

Mr. Coddington: It seems to me that this question is entirely irrelevant, as to whether Mr. Buttfield should go on and give a great, long dissertation upon how he was interested in the purchase of this property, what led up to it and all that sort of thing. It is utterly irrelevant and it is inadmissible. It is not evidence that could possibly be admitted in a court of law—a question of this kind—I take it. He might go on and tell for twenty years back he had in mind a scheme for constructing a sewerage system, not only for Plainfield, but for North Plainfield and Dunellen. He will tell you what his ideas are—that would not help you in this proceeding. It is a tax appeal; it is not a question of what his ideas might be or what any other person's ideas might be.

20

30

Mr. Jess: Well, we will take the answer so far as it is responsive to the question that was asked. We will have to reserve the matter of ruling upon its relevancy until we have heard the evidence. Now, do you understand the question?

The Witness: I think so.

A. (Continuing.) Growing out of those attempts a number of plans had been formulated and submitted to the State Board of Health, and there had

40

William J. Buttfield—Direct.

been great opposition to having any disposal works within that vicinity——

Mr. Jess: I do not think that is relevant.

Mr. Ashmead: If the board please, it is relevant on whether or not the action of the municipalities in buying this property was reasonable, in taking the whole farm. I think that I have a right to show the situation at the 10 time, the difficulties that were confronting them, and it ought to be admitted upon the issue as to whether or not their action was reasonable in purchasing the farm.

Mr. Jess: Well, isn't the question, after all, whether the amount of land which you are seeking to have exempted here is an amount which is reasonably necessary for the purpose of this sewer plant? 20

Mr. Ashmead: That is exactly the issue upon which I am questioning.

Mr. Jess: But that answer Mr. Buttfield is giving is not addressed to that.

The Witness: It was a preamble.

Mr. Ashmead: He is coming to the point, and I am confining my question to the point.

Mr. Jess: You may proceed.

A. Well, there was finally submitted to the State 30 Board of Health three alternative sites, this one amongst them——

Mr. Coddington: Now, if the board please, how is that going to be admissible as against the Borough of Middlesex; to tell what the State Board of Health did? The State Board of Health can speak for itself. If they want the State Board of Health here why don't they produce the secretary of the board and the 40

William J. Buttfield—Direct.

minutes of the board, and the resolutions referring to this matter? Why, it is wholly inadmissible for this man to come here and tell what the State Board of Health said without producing any evidence from the records of the state board. We do not want to be bound by any such evidence as this. It is not right.

10 Mr. Jess: You may proceed.

A. (Continuing.) ——and after consideration of the plan submitted, or the alternative sites submitted, the State Board of Health designated this site on account of the fact——

Mr. Coddington: I wish to interpose another objection.

Mr. Jess: Your objection is noted.

20 Mr. Coddington: I want it understood that all this evidence is objected to on behalf of the Borough of Middlesex.

A. (Continuing) The State Board of Health designated this site as the one upon which they would approve disposal works, on account of the possibility of isolating the disposal works within its confines.

Mr. Coddington: I object again.

30 Mr. Jess: Now, Mr. Coddington, we will save time if you will let Mr. Buttfield proceed. So far as he has gone yet there is not anything that would be evidence in this case.

Mr. Coddington: If you put it that way, all right. But I want it understood that my objection goes to all this line of evidence.

A. The committee appointed by the joint meeting in recommending the purchase of this Darling farm
40 as a whole was governed by the advice of the con-

William J. Buttfield—Direct.

sulting engineers—George W. Fuller—that in their opinion it was necessary to acquire the entire site for the purposes of not only the disposal works themselves, but to secure the joint meeting against any possible objection that might arise and to meet the objections that had been raised against the erection of disposal works anywhere in that vicinity; that is to say, that there should be a good margin of safety, not only for the needs of the disposal works themselves, but for any objection that there might be by adjoining property owners; and in recommending the purchase to the joint meeting the committee was governed by that consideration, and also by the further consideration that there was an unknown quantity of how much land would actually be needed for disposal work purposes. By that I mean the disposal of the sludge which comes from these beds and has to be spread out or gotten rid of some way. 10 20

Mr. Jess: You were a member of that special committee?

The Witness: Committee of three; I was a member of it.

Mr. Coddington: I wish again to renew my objections to the testimony of Mr. Buttfield on the ground of materiality, and it should be excluded because it is not proper evidence in a case of this kind. 30

Q. What was the situation, Mr. Buttfield, with respect to the fear of adjoining property owners that this plant might constitute a nuisance?

Mr. Coddington: I object to that.

Mr. Jess: The objection is sustained.

Q. Were there objections to your knowledge, and investigated by the committee— (Question withdrawn.) 40

 William J. Buttfield—Direct.

Q. Did the property owners of the immediate vicinity object to the location of this plant there—

Mr. Coddington: I object to that question.

Q.—on the ground that it might constitute a nuisance?

Mr. Coddington: I object to that question. It is immaterial in this case. We are not trying an injunction case now.

10

Mr. Jess: The objection is overruled.

A. There had been numerous—

Mr. Jess: You are speaking of your own knowledge, now, objections that came to you as a member of the committee?

The Witness: Yes, sir.

A. There had been a great many objections, and very strenuous ones.

20 Q. And were those objections reported to the joint meeting at the time or before it took action on the purchase of this farm?

Mr. Coddington: I object to that as immaterial.

Mr. Jess: Objection overruled.

A. They were reported to the joint meeting at the time the recommendation was made looking to its purchase.

30 Q. And with respect to these other items was there a report made—these other items which you have mentioned?

A. A verbal report.

Q. What is the situation with respect to the ability of Plainfield to dispose of its sludge from its disposal plant, if you know?

Mr. Coddington: I object to that.

40 Mr. Ashmead: It was already asked, about that same question.

William J. Buttfield—Cross.

Mr. Jess: That question has been raised.
That is admitted.

A. There is a large quantity of sludge which the city has notified anyone they could take, and I have endeavored personally to get someone interested in this new conservation of food proposition to take some of that away, but they all repeated that it is of no value and it would not pay to 10
cart it.

Mr. Ashmead: I think that is all.

CROSS-EXAMINATION BY MR. CODDINGTON:

Q. Which plant were you just referring to when you referred to sludge in your last answer?

A. To the old Plainfield.

Q. I thought so.

A. Not to this plant. 20

Q. Now, you understood that we were trying the new plant case?

A. Yes.

Q. Then why did you refer to the old plant case without calling the attention of this board to what you had in mind?

A. You speak of Plainfield. It is distinguished from the joint meeting. This is not the Plainfield plant. 30

Q. Do you expect this board to understand what you had in mind without telling them?

Mr. Jess: I think that the question was as to the City of Plainfield plant. I do not know what the board understood, but I understood that he was not referring to this plant.

Q. Have you ever tried to sell any sludge from the new plant?

A. I have tried to get people to take it away. 40

William J. Buttfield—Cross.

Q. Have you seen any sludge from the new plant?

A. From the new plant?

Q. Yes, sir.

A. No.

Q. Then you don't know anything about the availability of sludge from the new plant yet, do you?

10 A. Pardon me, Mr. Coddington; won't you come a little nearer to me?

Q. (Last question repeated by the stenographer.)

A. I do not.

Q. Then the reports that you testified about—you referred to the old plant, and not the new?

A. Entirely, as far as the availability of that sludge on hand is concerned.

20 Q. You do not think it will make any difference in the quality of the sludge because Dunellen and North Plainfield are hooked on in addition to Plainfield, do you?

A. I have no opinion on that subject.

Q. How is that?

A. I am not a chemical engineer.

Q. Well, haven't you consulted your chemical engineers with reference to the availability of disposing of sludge from the new plant?

A. We have.

30 Q. When?

A. Oh, at various times.

Q. Lately?

A. No.

Q. For what purpose?

A. When this—when this farm was purchased that question was one of the questions that came up.

Q. When was the farm purchased?

40 A. Oh, in the year 1914.

William J. Buttfield—Cross.

Q. And the subject of sludge came up 'way back there, did it?

A. Yes.

Q. And about the availability to sell it?

A. That whole question was gone into at that time.

Q. Well, I say was that part of the question gone into?

A. Yes, yes.

Q. What position do you now hold with reference to this project? 10

A. I am a member of the operating committee, appointed by the joint meeting to operate the plant.

Q. And what position did you hold when the farm was purchased?

A. I was a member of the committee appointed to secure the rights of way and site.

Q. You are familiar with the location of the plant now? 20

A. I am.

Q. What is the name, if you know, of your new superintendent?

A. Mr. Downs.

Q. Is he a man with a family?

A. He had a wife.

Mr. Ashmead: I object to this as being entirely immaterial.

Mr. Jess: I do not see its relevancy; but it may be. What is it? 30

Mr. Coddington: Well, I was going to follow that up and ask him if there was necessity to acquire a farm, etc., for him to live in.

The Witness: I know he had a wife. He may have a child.

Q. You being familiar with the location of the farm, in your opinion do you think it necessary for the superintendent to have two acres of land and 40

William J. Buttfield—Cross.

a house, corn crib, barn, sheds, in order to be getatable at all times of the day and night?

A. It is certainly necessary for him to have a house.

Q. What is that?

A. It is certainly necessary for him to have a house.

Q. Two acres of land?

A. Not necessarily, no.

10 Q. Corn crib?

A. That is, I should say, advisable, if you are going to keep a team of horses, which is contemplated.

Q. A barn?

A. Same.

Q. Sheds?

A. Same.

20 Q. You have not been using the farm for that purpose since it has been purchased, have you?

A. I am not able to answer that because I was only appointed a member of the operating committee in December of 1916. Since that time it has not been used for that purpose; that is, for keeping a team.

Q. Do you know whether there is any growing grain on the property now that was planted last year?

30 A. No; there is none. There were some cow peas been planted over the farm this year for the purpose of turning it under later on, making it more sightly. I think a portion of it is being cultivated by the poor farm owned by the City of Plainfield, without, of course, any compensation to the joint committee.

Q. When were you last on the farm?

A. Last Sunday.

Mr. Coddington: That is all.

40 (Witness excused.)

William D. Voorhees—Direct.

WILLIAM D. VOORHEES, sworn as a witness on behalf of the appellants, testified as follows:

DIRECT-EXAMINATION BY MR. ASHMEAD:

Q. You were the assessor of the Borough of Middlesex in 1916?

A. Yes, sir.

Q. You made the assessment on what is known¹⁰ as the Darling farm owned by Plainfield, North Plainfield and Dunellen?

A. Yes.

(Tax bill marked P-6 for identification.)

Q. I show you tax bill marked P-6 for identification and ask you if that correctly sets forth the assessment made on the Darling farm in 1916.

A. That is my recollection. I can tell by referring to my book.²⁰

Q. Will you do that?

A. Excuse me; I have to go out to the other room to get it.

(Witness leaves the room and returns with a book.)

A. (After referring himself to the book) Yes, sir; that is correct.

Q. The item of value of land is \$27,000.00. What³⁰ rate per acre is that? What valuation did you place on it per acre?

A. Three hundred dollars.

Q. The item of value of improvements is \$50,000.00; and how much of that is placed on what has been referred to as the farm buildings?

A. I make that three thousand dollars.

Q. And is the remainder of it on the sewage disposal improvements?⁴⁰

William D. Voorhees—Cross.

A. Yes, sir.

Mr. Ashmead: That is all.

CROSS-EXAMINATION BY MR. CODDINGTON:

Q. Mr. Voorhees, you are familiar with the location of this farm?

10 A. Yes.

Q. And do you know whether there is any growing grain planted on that farm?

A. Yes, sir.

Q. How much?

A. I should judge there was about twenty acres, at least.

Q. What kind of grain?

A. Rye.

20 Q. Do you know when it was planted?

A. Late in the fall of last year.

Q. Of which, 1916?

A. Yes, sir.

Q. And it is still growing there now?

A. Yes, sir.

Q. Do you know by whom the grain was planted?

A. I am not sure; but I think Mr. Fitch planted it.

30 Q. Fitch?

A. Fitch.

Q. He was the tenant referred to in the hearing before this board of the 1915 tax appeal?

A. I would not be sure he planted it, but he was on the farm at that time. I suppose he was running it. He may have sub-let it; I don't know about that.

40 Q. Are you acquainted with the present superintendent?

A. I am not.

Mr. Coddington: That is all.

(Witness excused.)

Mr. Ashmead: That is our case.

Mr. Coddington: There are one or two admissions that I recall were made in the trial of this case before this board in 1915, and I ask counsel on the other side now if he will admit those subjects to save time. One, Mr. Ashmead, is that the out-fill sewer pipe line empties into Green Brook, a spring-water stream and not a tide-water stream. 10

Mr. Ashmead: Whatever admissions were made before are admitted now. The out-fill empties into Green Brook, which is not a tide-water stream.

Mr. Coddington: And further, that the sewerage system under construction and referred to in this case is one that takes care of private sewage matter and not storm sewage or street sewage of the various municipalities. 20

Mr. Ashmead: Yes; that is so.

Mr. Coddington: Now, there are some other admissions that I do not recall, if the board please, in the other case which I would like to have considered, and which we have consented heretofore to have considered in this case. 30

Mr. Jess: All admissions in the other case apply here.

Mr. Ashmead: Yes.

Mr. Coddington: Under these circumstances at the present time I am obliged to ask the consideration of the board at some future day, when I can produce testimony to offset the testimony of Mr. McClintock on certain points. As I now view the situation, I think it would 40

William D. Voorhees—Cross.

only take about five or ten minutes, possibly, to cover the ground that I wish to cover by our expert. If I had known that Mr. Ashmead was going to have an expert here today I would have been prepared and gotten it out of the way at this time. It is as embarrassing to me to ask the indulgence of the board at this time in order to avail myself of expert testimony as it is to the other side, and possibly more, because we are the ones that are doing without the money that we think we are entitled to. You see, the 1915 tax appeal had not been disposed of. Therefore, if the Borough of Middlesex is entitled to receive the tax money on that appeal, we have not been in position yet to recover it; because the appeal was not closed until this morning; and I would like to have the whole matter submitted to the board as soon as possible, and if you should meet anywhere within twenty or thirty miles of this place—even Trenton—within an early date, I would make it a point to be there with this witness, at the convenience of Mr. Ashmead and the board.

Mr. Ashmead: I object to any delay in this matter. This board will remember that we had a hearing in reference to the 1915 taxes and the decision was properly rendered; and in the memorandum it was set forth or suggested that we stipulate to facts which had already been testified to by the assessor before the county board, and I have been from that day until today trying to get a stipulation on those facts about which there was no dispute, on which we were willing to take the assessor's statement, and we never were able to close that up until the assessor was called here and

William D. Voorhees—Cross.

we went into that case for that purpose. When this case came up I was anxious to bring it on soon after December and arrange through the secretary for an early hearing, provided I could get the consent of the county board and the other side. I got the consent of the county board but I never could get the hearing up until it was set down in regular course. 10
Now, it is appreciated that these taxes in so far as they are sustained, if they are sustained at all, are costing these municipalities at the rate of 12 per cent. interest. It is entirely in their interest and we insist upon an early disposition—as early a disposition of this case as the board can conveniently make. It is a matter of importance and should not be dragged on indefinitely. 20

Mr. Jess: You do not object, Mr. Ashmead, to this request that it be continued for the purpose of putting in additional testimony, do you? Of course, with the understanding, if it were continued, that you would have the opportunity, if you wish, to rebut it.

Mr. Ashmead: I do not want to draw this thing out. I do not want to appear to be in a position of trying to foreclose the other side from producing any testimony they see fit to offer; but it seems to me that they can not produce any testimony that is different from what has been produced, and certainly they have been taking the opposite position in all this other litigation in reference to this plant, and this is merely one phase of a matter that is being extended already too long. 30

Mr. Coddington: I am not responsible for the extension, Mr. Ashmead. I have been 40

William D. Voorhees—Cross.

ready to try this case at any time the state board set it down for. We have not asked for any extensions. The fact that I did not assent to the stipulation you prepared was because it was a matter I could not consent to. I submitted it to my clients and they objected to it. I told you at any time if you could get a hearing before the state board I would produce the assessor at our expense so that you might complete the case.

10

Now, we are just as anxious to have this case completed as the other side and may be more so, and we are the ones that are being withheld of the money. Any day that this board will designate I will have my expert—a meeting either here, Newark, Jersey City, Trenton or anywhere else.

20

Mr. Jess: Well, the earliest day is the 26th. We could give you the 26th of June with the understanding that you would not take more than half an hour.

Mr. Coddington: I won't take five minutes.

Mr. Jess: Because there are other cases down there.

Mr. Coddington: I won't take five minutes.

Mr. Jess: Is that agreeable, Mr. Ashmead?

30

Mr. Ashmead: Why, as far as I know.

Mr. Jess: Suppose we put it down, and if you find it is impossible to be here—

Mr. Ashmead: Well, so far as I know it is convenient. You understand I would like to expedite the matter and get this case finally disposed of.

Mr. Jess: Eleven o'clock.

Mr. Ashmead: That is at Trenton.

40

Mr. Jess: Yes.

Testimony.

STATE BOARD OF TAXES & ASSESSMENT.

INHABITANTS OF THE CITY OF
PLAINFIELD, THE BOROUGH OF
NORTH PLAINFIELD, and the
BOROUGH OF DUNELLEN,
Petitioner,

vs.

BOROUGH OF MIDDLESEX,
Respondent.

Testimony.

10

TRANSCRIPT of testimony taken in the above en-20
titled cause on Tuesday, July tenth, 1917, at
eleven o'clock A. M., in the State House, Tren-
ton, New Jersey.

Present:

MR. RUSSELL, President.

MR. BOUTON.

MR. JESS.

MR. GENTIEU.

DR. BARBER.

30

APPEARANCES:

J. EDWARD ASHMEAD, Esq., for the Petitioner.

WM. A. CODDINGTON, Esq., for the Respondent.

Assessment of 1916 on a tract of land of
about 89 acres and improvements thereon on 40

George W. Johnson—Direct.

Bound Brook Road in said Borough of Middlesex, assessed:

	Assessed :	Wants reduced to:
Land,	\$27,000	Wants the assessment
Imp.	50,000	set aside and vacated,
	\$77,000	or reduced to the true
		value of the property
		legally taxable.

10

Appeal to County Board dismissed.

Partly heard May 24 at New Brunswick, and continued.

NOTE: This property was before the Board for 1915 and is still pending. The Board found that 3 acres should be exempt, but as to the assessment on improvements the record was insufficient to show whether this should all stand or be cancelled. The record in this case (1915) was completed by the testimony of the Assessor at the hearing in New Brunswick on May 24th.

20

The President: The Board is ready, gentlemen. Let us have the case of the Borough of Plainfield.

Mr. Coddington: At the last session of the Board in New Brunswick, the case was held open for the purpose of allowing me to produce an engineer. I believe that was all that was to be done. I am ready this morning to offer Mr. George W. Johnson, an engineer.

30

GEORGE W. JOHNSON, a witness being duly sworn on behalf of the respondent, testified as follows:

DIRECT-EXAMINATION BY MR. CODDINGTON:

Q. Mr. Johnson, where do you live?

40

A. New York City.

George W. Johnson—Direct.

Q. What is your profession?

A. I am a hydraulic engineer and sanitary expert.

Q. How many years have you followed that profession?

A. Twenty-two years continuously.

Q. Have you had any experience in the construction of sewage disposal plants such as Plainfield 10
has put in?

A. Such matters have been specialties with me for the past twenty-two years, as before stated.

Mr. Ashmead: I have no objections to Mr. Johnson's testifying.

Mr. Coddington: You admit his qualifications?

Mr. Ashmead: Yes.

Q. Are you familiar with the Plainfield sewage 20
disposal plant, Mr. Johnson?

A. I am, yes, sir.

Q. Do you know that the acreage acquired by Plainfield, North Plainfield and Dunellen is approximately ninety acres, known as the "Darling Farm"?

A. I do, yes, sir.

Q. Can you state, in your opinion, how many acres are necessary for the operation of the Plainfield 30
plant as now constructed?

A. The plant as now constructed is located on a strip of land of approximately eleven acres in area, a strip of land over all which is about 1,000 feet by 500 feet; the actual inside dimensions of the structures making up the disposal works total about two and two-thirds acres. The actual outside area covered by the various structures in this plant occupies a total space of about three and one-half acres. 40

George W. Johnson—Direct.

Q. Does that include the driveway leading from the main road to the plant?

A. The three and one-half acres mentioned only include the structures themselves without the roadways.

Q. Exclusive of the driveways?

A. Yes, sir.

10 Q. Then, the three and one-half acres are all that are necessary for the operation of this plant as at present constructed, is that right?

A. That is all the ground that is covered by the existing structures, yes, sir.

Q. In your opinion, is it necessary that any more ground than three and one-half acres should be occupied for the operation and maintenance of this sewage disposal plant?

20 A. It is not necessary, no, sir, for the operation of the plant, physical operation.

Q. Taking into consideration the possibility that the plant might have to be enlarged as the towns grow, in that event how much more land would be necessary to take care of double the population that the plant now is supposed to take care of?

30 A. The plant as now built was designed to care for the sewage of 40,000 people; doubling that capacity and making the plant capable of caring for the sewage of 80,000 people would double the areas already mentioned; that is to say, the outside limits of the structures would cover a total area of about seven acres.

Q. In your opinion, is it necessary that ninety acres, or approximately ninety acres of land, should be utilized for the maintenance and operation of this sewage disposal plant?

A. It is not physically necessary, no, sir.

40 Q. Is it necessary for any other purpose?

George W. Johnson—Cross.

A. It is usually difficult to secure the actual area of ground required for the construction of such plants as these, and frequently necessary to obtain a considerably larger area due to the fact that objections are raised on the part of the owner of the property to be secured, that the ground nearby the disposal plant will deteriorate in value and not be useful for other purposes than disposal of 10 sewage.

Q. The land outside of the land actually occupied by the sewer plant could be utilized for farming purposes, could it not?

A. It could, if the soil is suitable.

Q. Is there any other reason why any more land than the land actually occupied by the sewer plant should be held for sewage purposes than the elimination of odors that you have referred to?

A. No, I think not. 20

CROSS-EXAMINATION BY MR. ASHMEAD:

Q. The word "necessary" as used by you was in the sense of being physically necessary, was it not?

A. It was.

Q. And not in the sense of it being reasonably necessary with respect to the conditions that might prevail at sewage disposal plants. It did not take into consideration the possibility of isolation, did 30 it?

A. It did not.

Q. It did not take into consideration the provision for any land being acquired for the purpose of the deposit from the sludge beds, did it?

A. It only included the areas required for sludge drying purposes; what disposition would be made of the dry sludge I have no knowledge.

Q. Yes. Some disposition must be made of that 40

after it is taken from the sludge beds, must there not?

A. Yes, it is usually used for fill.

Q. And land would have to be acquired for that purpose or else the sludge carried off the premises and deposited somewhere else?

10 A. That is right.

Q. Have you in all your experience ever known of a case where a municipality acquired land, limited to the amount physically to be occupied by the beds?

A. Not precisely, no.

Q. What is the general practice with respect to acquiring land for sewage disposal plants?

20 A. I think you might generally say it is considered wise to obtain property which will allow of the isolation of the plant so that no offensive odors will be carried out of the property or so that the plant itself will not prove an eye sore to passers by.

Q. What, in your opinion, would be the probability as to the distances which odors might be carried from this plant?

A. Certainly not less than a half mile.

30 Q. How far is the plant from the farthest point in the boundary line?

A. I couldn't tell you that.

Q. Much less than half a mile, is it not?

A. I should imagine it was.

Q. What is the total size of the boundary, do you know, can you give it approximately?

A. I understood ninety acres in the entire plant.

Q. What frontage would that have on the road?

40 A. The strip of land now occupied by the disposal works is about 1,000 feet long.

Q. I am talking now with respect to the farm. How far is its boundary line from the plant?

A. That, I said, I could not say.

Q. It is much less than one-half of a mile?

A. I wouldn't attempt to say because I have no knowledge of the boundary lines.

Q. How far would be the distance across a tract of land of this shape containing ninety acres? 10

A. If this plot of land was a true rectangle and a plant of double this size were placed in the middle of it, the nearest distance from the boundary of the disposal site to the nearest boundary line of the rectangle enclosing the total ninety acre plot would be 400 feet.

Q. Is it your opinion, or is it not your practice when you are called upon to advise as to the location of sewage disposal plants to recommend that a large tract of ground be acquired so that the plant may be properly isolated? 20

A. That has been so in the past, but more recently we are beginning to believe in methods of sewage treatment which can be carried on with less nuisance, which will permit of the establishment of such plants in more built up sections.

Q. Did you not recommend at Allentown that a large plot of ground be acquired, and in that report that you made to Allentown refer to the judicious decision of the Plainfield authorities in acquiring this particular piece of land for sewage disposal premises? 30

A. There are three answers to that. The first one is that the recommendation which you called attention to was made before—

Q. First, did you make such a recommendation?

A. Such a recommendation was made, yes, sir. This recommendation was made before the exploita- 40

tion of this new and relatively inoffensive method of sewage treatment was developed.

Q. But after the purchase of this land by this Joint Meeting?

A. I think so. The second is that the nearest point from the Allentown disposal plant to the
10 nearest highway was 750 feet. The third point is that in the immediate vicinity there were located fertilizer works, either belonging to the City or private parties. These works in themselves are a nuisance and the installation of a sewage disposal plant nearby could not have created much additional nuisance in any event.

Q. If you had been called upon by the Joint Meeting in this case, would you, in view of the antagonism that prevailed in this vicinity, have advised them to have acquired a tract of land smaller in extent than that acquired so as to bring the disposal plant nearer to the adjoining property owners than that now located on this tract?

A. I would not have recommended this site, in the first place.

Q. That is not my question. Suppose the State Board of Health had made a decision that this was the only site on which they would permit a sewage
30 disposal plant by these municipalities, and then the municipalities had come to you and asked your recommendation as to the amount of land that they should buy, would you have, under those conditions, advised them to have decreased the size of the plot?

A. On those assumptions, which are, I believe, in some measure untenable, it would have been difficult to have recommended that this plant be
40 less isolated than it now is. I don't know the

George W. Johnson—Redirect.

outlines of this property; I don't recall I have ever seen a map of it.

Q. I will show you one. That is a map (indicating) that is already in evidence before the Board.

A. This map of the Darling Farm which you show me, dated May 23d, 1917, shows that the disposal plant was not located with particular refer- 10
ence to the maximum isolation, it being located on or near the northern boundary, so far as the final settling basins,—I should say so far as the preliminary settling basins and the sludge drying beds are concerned. These are among the chief factors of nuisance production. It is to be stated, however, that the sprinkling filters, which themselves are probably the greatest factor of nuisance production, are located on this map substantially 20
in the centre of the plot. In endeavors to guard against nuisances through the carrying of odors from the disposal plant to property outside the boundary lines, I don't believe that the isolation is any too great.

Q. Do you not think it was reasonably necessary to so isolate that plant?

A. If the plant had to be located on this site that is probably so.

Mr. Ashmead: That is all.

30

REDIRECT-EXAMINATION BY MR. CODDINGTON:

Q. Mr. Johnson, as the plant is now located, in your opinion, is the acreage that they have sufficient to prevent the odors from going outside of the boundaries of the farm?

A. It is not.

Q. I call your attention to the necessity of more than seven acres of land for the maintenance and 40

George W. Johnson—Redirect.

operation of this plant, do you know of any use that the municipalities can make of the land outside of the three and one-half acres actually used in the maintenance and construction of their present sewage system than for farming purposes?

10 Mr. Ashmead: I object to that as immaterial, as speculation.

The President: You are in a position to answer that question?

The Witness: Yes, sir.

The President: You may answer it.

A. The remainder of the ground within this plot could be used for agricultural purposes and for certain industries considered offensive, like soap works or garbage incineration, fertilizer works and
20 the like. It could not be used for building lots, that is out of the question.

The President: We understand then, Mr. Johnson, that it could be used only for a kindred plant?

The Witness: That is so, yes, sir.

Q. Or for farming purposes?

A. Yes, sir.

30 Q. Could not the present plant be operated just as successfully on three and one-half acres of ground that it now covers as upon the whole ninety acre tract?

A. It could be physically operated just as well, yes, sir.

Q. Then it is not necessary, physically speaking, to make use of the whole ninety acre tract?

A. No, sir.

Q. For the operation of this plant?

40 A. No, sir.

George W. Johnson—Recross.

RE-CROSS-EXAMINATION BY MR. ASHMEAD:

Q. By that you mean it is not necessary from the mechanical operation of the plant, and do not take into consideration the question of isolation?

A. That is true.

By Mr. Bouton:

10

Q. Have you considered the method of ingress and egress to the plant so that it could be utilized for the purpose for which it has been bought?

A. There must be a driveway, of course, into and out of the plant.

Q. That is an addition?

A. That is in addition to the acreage herein stated.

By Mr. Jess:

20

Q. I want to ask a question somewhat on the line asked by Mr. Ashmead and it is this, Mr. Johnson. Suppose you were at this time retained by this Joint Meeting to recommend the site for this sewage disposal plant, and you were asked to take into consideration all of the factors that you would consider as an engineer, both as to the actual physical use of the land, the reasonable provision for development of the plant, with the growth of population, and all other conditions that you would take into account as an engineer, are you prepared to say what, in your judgment, or what you would recommend as the proper size or the proper area of land to be devoted to this purpose?

30

A. Well, you see, to answer that question I have to assume that you mean that this site must be used.

Q. Yes, sir.

40

George W. Johnson—Recross.

A. That this type of plant must be used?

Q. Yes, sir.

A. And all other conditions are as they now exist.

Q. Yes, sir.

A. Well, there is no other answer than that for the sake of isolation you must put this plant in
10 the middle of a pretty large piece of property, at least as large as the Darling Farm.

By Mr. Jess:

Q. The President suggests this question. Is the plant placed on this site to the best advantage, in your judgment?

A. From a standpoint of economy and construction, I think it is.

20 By the President:

Q. We mean from the standpoint of area necessary for isolation and all other purposes which we have been discussing.

A. It is necessary to get certain heads and drops down through the different parts of the plant, and the topography of the land, the beds, lends itself to the location of the present structure as there.

30 By Mr. Jess:

Q. I am going to leave out of consideration isolation and ask you this question. If you were asked to suggest the area of ground that would be reasonably and properly necessary for the construction of a sewage plant disposal bed, taking into consideration reasonable growth for a present population of 40,000 people, what would your answer be as to that, including the ingress and egress?

40 A. For a plant of this type?

George W. Johnson—Recross.

Q. Yes, sir.

A. Located on this site, the topography being the same?

Q. Well, we will say so, yes, sir.

A. Seven acres,—Did you say 80,000 people?

Q. Forty thousand people.

A. Three and one-half acres.

Q. You always consider what will be the probable growth, don't you? 10

A. That then assumes double the capacity; then the answer remains seven acres, and to that would have to be added the driveway, whatever distances that would take up. I don't know that, of course, it depends on how you come into this plot into the plant and how you issue from it.

Q. Then all land in addition to that seven acres would be for the purpose of securing isolation? 20

A. Yes, sir.

Q. And making the plant unobjectionable to surrounding property?

A. That is the idea exactly.

By Mr. Bouton:

Q. You stated, in answer to a question by Mr. Coddington, that the remainder of the ground could be used for farming purposes. Now, would the remainder of the ground be such that it could be used for farming purposes, the same as farms in any other section away from this, or would there be by reason of the contiguity of this plant such ground as would only be used for farming purposes under stress? 30

A. No.

Q. Do I make my question clear?

A. You do. No, I think this would make good farm land; as a matter of fact, there are hun- 40

George W. Johnson—Recross.

dreds of sewage plants located in the middle of tremendous areas of farm land.

Q. And would be taken by farmers who wanted the ground just as readily as ground away from it?

A. I won't say that; I am afraid not, because there is an odor around a sewage disposal plant
10 that is not at all pleasing. I mean to convey to you the idea that farms are cultivated in the immediate vicinity of sewage disposal works at numerous places throughout the world; crops grow very well.

Q. I should think they would grow better.

A. They grow very well, anyway.

Q. What I wanted to get at was whether this would be as valuable for farming purposes to one who wanted to come along and till the land and
20 operate it and raise crops. Would there be something of an offensive character? Would he choose that the same as anything else, whether the plant were there or not?

A. There is a great difference in people; some people do not mind the smell from sewage disposal work, and other people will smell it before it has ever been put into operation. That is the only thing that would govern that.

30 Q. A smell-less individual would not have any difficulty?

A. They would not mind it at all. I have seen Japanese working farms near sewage disposal plants.

By the President:

Q. There would not be any way of your undertaking to put an element or percentage of damage,
40 from your experience and observation, on ground

George W. Johnson—Recross.

lots used for farm purposes immediately adjoining a sewage plant?

A. I am afraid I am not qualified to give you an answer to that question.

Q. Would you say from your experience and observation that in putting a value for taxation purposes, or appraising purposes, that there would be a depreciation in the market value of the lands adjacent for farm purposes? 10

A. That is another aspect—I think——

Q. Naturally we understand that an improvement, a residence or anything of that kind, would not be considered. We are talking about farm purposes. Assuming this fact for that and only for that, what would you say?

A. It probably would be measurable; there probably would be a measurable depreciation chargeable because of the presence of this disposal plant close by these farms. 20

Q. You feel there would be a substantial depreciation?

A. I think it would be claimed—and the purchaser probably could get away with it—whether there would be a real depreciation or not is problematical.

By Mr. Bouton:

30

Q. In reality it would not be as marketable for farming purposes as other lands?

A. It is the esthetic objection only, I should imagine, that would come into consideration. Of course, there is a possibility that flies and the fine spray that comes from this plant would carry disease germs, and if it did then the farmer probably would, if he happened to contract any disease working on his farm, bring suit for damages. 40

George W. Johnson—Recross.

By the President:

Q. Well, now, the Board recognizes that you would be a much better judge of that, on account of your experience and profession than the individual members of the Board would. The Board, I think, also would agree that we would recognize
10 you as a witness of average sensitiveness and sensibilities and that you would be about as good a measure as we could go by. What would you do if you were put in the position of purchasing a farm of tillable land there with other tillable land in that neighborhood at greater distances, how would you be affected, to what extent?

A. If I had that property and proposed to operate it for profit as a farm, the uncertain element in
20 arriving at any conclusion of that sort would rise in the objections that might be raised by the men who actually did the manual labor. Personally, I am pretty familiar with sewage plants and don't mind the odors which arise so much as some people.

Q. Then you would not want to put any depreciation on this that the Board could measure, if it came to that point?

A. I am afraid I could not; I don't think I am qualified to do that and I might mislead you if I
30 started in to guess. I know there is a depreciation; there is no question about that. I don't know whether you gentlemen have seen such plants or not, but I can show you a picture of one that will give you an idea of about what the appearance is. Those are two (handing pictures to the Board) pictures of the Atlanta, Georgia, sprinkling filter. You see the sewage is thrown into the air in the form of a fine spray, and this picture shows the
40 spray a good deal better, and in being thrown into

George W. Johnson—Recross.

the air in that fashion it becomes a very fine mist, and that mist will travel some distance if it has a strong wind back of it.

By Mr. Jess:

Q. Is that the type that is used here in Plainfield? 10

A. That is the type that is used in Plainfield, precisely the same thing.

Q. Is that the modern, most improved type?

A. It is the type that has the most accredited standing in sewage disposal practice up to the present time, or at least had that standing up to a year or two ago. There is another method now that is coming into use quite generally that is unoffensive, or relatively unoffensive, and probably 20 in a large number of cases will supplant this method.

RE-CROSS-EXAMINATION BY MR. ASHMEAD:

Q. Mr. Johnson, in your examination by the Board you mentioned the question of flies, and I believe in your examination in the Seeley case you also mentioned the question of mosquitoes breeding 30 about these plants. They are two further reasons why isolation is necessary and desirable, are they not?

A. Yes, sir, I think they are.

Mr. Ashmead: In this hearing at New Brunswick we introduced some exhibits. Mr. Jess, I will give you such as you want. There is the deed showing the property, and here is the map showing the location, and then this is the con- 40

tract between the municipalities showing it as a permanent proposition. The Act also provides—they are authorized to buy more land than is necessary, and here are the minutes whereby this land was bought, and whereby it appears that the question of necessity was passed upon by the municipalities in joint meeting assembled. There is the tax bill and here is a brief, which is similar to the one I filed in the case before, with some additions to it, with cases showing that exemptions are not confined to the land actually used but extend to all land that is reasonably acquired and which is reasonable for the purpose. These are all copies; the originals were introduced here. These are our carbon copies.

10
20 Mr. Coddington: My objection at the time was that they were all immaterial.

Mr. Ashmead: We had the original records, you remember, at New Brunswick.

(The hearing thereupon adjourned.)

30

40

Judgment.

Filed July 24, 1917.

STATE OF NEW JERSEY

STATE BOARD OF TAXES AND ASSESSMENT.

10

In the matter of Appeal of THE
INHABITANTS OF THE CITY OF
PLAINFIELD, *et al.*, from the
Assessment of Property in
Middlesex Borough, County
of Middlesex, for the year
1916.

Judgment.

20

An appeal in writing having been filed with the State Board of Taxes and Assessment, duly verified according to the rules of practice prescribed by said Board, by The Inhabitants of the City of Plainfield, the Borough of North Plainfield and the Borough of Dunellen, in which it is alleged that an injustice has been done the said complainant by the assessment of real property for taxation³⁰ for the year 1916, located in Borough of Middlesex in the County of Middlesex, consisting of 89 acres of land adjoining Bound Brook Road, on which is located the sewage disposal plant, etc., of the said The Inhabitants of the City of Plainfield, The Borough of North Plainfield and The Borough of Dunellen, and that said property should be exempt and the assessment vacated or reduced to the true value of the property legally taxable.

40

Judgment.

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of J. Edward Ashmead, Attorney, for the complainant, and William A. Coddington, Attorney for the respondent, and after considering the same, it is on this twenty-fourth day of July, nineteen hundred and seventeen, at a session of the
 10 State Board of Taxes and Assessment, ORDERED, ADJUDGED AND DECREED, under and by virtue of Chapter 67 of the Laws of 1905, and Chapter 244 of the Laws of 1915, that as to the assessment on land, 5½ acres be exempted therefrom, and the total assessment reduced from \$27,000 to \$25,331.40, and that the assessment of \$50,000 on improvements be cancelled.

And it is further Ordered, That this order be
 20 certified to the Collector or Receiver of Taxes of Borough of Middlesex County of Middlesex.

L. T. RUSSELL, President.

GEO. T. BOUTON

FRANK B. JESS

ISAAC BARBER

FREDERIC A. GENTIEU

State Board of Taxes and Assessment.

Attest:

30 FRANK D. SCHROTH,
 Secretary.

Certificate of Secretary.

STATE OF NEW JERSEY

STATE BOARD OF TAXES AND ASSESSMENT.

I, FRANK D. SCHROTH, Secretary of the State Board of Taxes and Assessment, DO HEREBY CERTIFY that the foregoing is a true copy of the judgment ¹⁰ in the matter of the appeal of the Inhabitants of the City of Plainfield, the Borough of North Plainfield and the Borough of Dunellen from the assessment of property in the Borough of Middlesex, County of Middlesex, for the year 1916, as the same is taken from and compared with the original, filed in the office of the State Board of Taxes and Assessment, on the twenty-fourth day of July, A. D. 1917, and now remaining on file and of record ²⁰ therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this eighteenth day of August, A. D. 1917.

FRANK D. SCHROTH,
Secretary.

[L. S.]

30

40

Exhibit

Plainfield

AGREEMENT made this Third day of November, One thousand nine hundred and thirteen, Between the Inhabitants of the City of ~~Plainfield~~, in the County of Union and State of New Jersey, party of the first part, the Borough of North Plainfield, in the County of Somerset and State of New Jersey, party of the second part, and the Borough of
 10 Dunellen, in the County of Middlesex and State of New Jersey, party of the third part, each of said parties being a municipality of the State of New Jersey.

WHEREAS, pursuant to the terms and provisions of an act of the Legislature of the State of New Jersey entitled "An Act to authorize any two or more municipalities in this state to jointly provide,
 20 maintain and operate trunk or outlet sewers and sewage disposal plant or plants or a system of sewerage, and to otherwise act jointly concerning the collection, removal or disposal of sewage and make contracts in relation thereto," approved April 8, 1910, and the acts amendatory thereof and supplemental thereto, and of all other acts of the said legislature relating to the matters included herein, each of the parties hereto has determined to unite
 30 with the other parties hereto upon the terms and conditions hereinafter set forth; (1) to jointly provide, maintain and operate a system of conveying or conducting the sewage from said municipalities from the points within said municipalities hereinafter designated to a point on the Darling Farm at or near the intersection of Green Brook and Bound Brook in the Township of Piscataway, now in the Borough of Middlesex, and to jointly construct, maintain and operate upon the said
 40 Darling Farm a plant, works and station, with the

Exhibit.

appliances and appurtenances necessary for the treatment, rendering and disposal of the said sewage; (2) to construct, maintain and operate the said system of sewerage herein described for the joint benefit of the parties hereto in such manner as will render the most efficient service to said parties and to each of them; and to that end to keep the said system of sewerage in good repair and 10 effective operation, and to make all necessary alterations, additions and enlargements thereto and therein as the needs of the said parties, and each of them, may from time to time require;

Now, THEREFORE, in consideration of the premises, and of the mutual covenants and agreements herein contained, each of the parties hereto covenants and agrees with the other parties hereto as follows: 20

FIRST. That it has agreed, and does hereby agree, with the other parties hereto to jointly with them provide, maintain and operate a system of conveying or conducting the sewage from said municipalities from the points within said municipalities hereinafter designated to a point on the Darling Farm at or near the intersection of Green Brook and Bound Brook, in the Township of Piscataway, now in the Borough of Middlesex, and to jointly 30 construct, maintain and operate upon the said Darling Farm a plant, works and station, with the appliances and appurtenances necessary for the treatment, rendering and disposal of the said sewage. The sewage from the City of Plainfield is to be conducted from a point in the City of Plainfield about nine hundred and fifty (950) feet southerly from the intersection of Green Brook and Rock Avenue. The sewage from the Borough of North 40

Exhibit.

Plainfield is to be conducted from a point in the Borough of North Plainfield at or near the intersection of Rock Avenue and Green Brook road. The sewage from the Borough of Dunellen is to be conducted from a point in the Borough of Dunellen at or near the intersection of Bound Brook Road and Warrenton Road.

- 10 The said system of conducting or conveying said sewage shall consist of a forty-two (42) inch trunk sewer, beginning at a point at or near the intersection of Rock Avenue and Green Brook road, in the said Borough of North Plainfield, and extending thence in a westerly direction through the Township of North Plainfield across Rock Avenue and Green Brook road and private lands to a point at or near Jefferson avenue at the foot of the Watchung Mountains in the said Township of
- 20 North Plainfield; thence in a southwesterly direction through private lands along the foot of said mountains to a point at or near the easterly line of the Cramer Farm about eight hundred and forty (840) feet more or less northerly of Green Brook road in the said Township of North Plainfield, and thence in a southerly direction through private lands to a point at or near the intersection of the westerly line of the Cramer Farm and Green Brook
- 30 road in the said Township of North Plainfield; two twenty (20) inch inverted siphons extending from the last named point to Green Brook and thence to, under and across Green Brook to the said disposal works, plant or station on the said Darling Farm at or near the intersection of Bound Brook and Green Brook in the said Township of Piscataway; now in the Borough of Middlesex two twenty (20) inch inverted siphons extending from the beginning
- 40 point of the aforesaid forty-two (42) inch trunk

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sewer in the said Borough of North Plainfield along the northwesterly side of Rock Avenue under and across Green Brook to a point in the City of Plainfield about nine hundred and fifty (950) feet southerly from the intersection of said Green Brook and Rock Avenue; and an eight (8) inch force main extending from the said forty-two (42) inch trunk sewer at a point about two thousand (2000) feet 10 northeast of the Warrentville Road in the said Township of North Plainfield, thence across private lands and the said Green Brook road to, under and across Green Brook, thence across private lands and through Schwartz avenue in the said Borough of Dunellen to a point at or near the intersection of Bound Brook road and Warrentville road in the said Borough of Dunellen.

The said forty-two inch trunk sewer shall be of reinforced concrete except where it is necessary to use cast iron and shall be built with such culverts, siphons, manholes and other fittings, appliances and appurtenances as may be found necessary for its proper construction, maintenance and operation. 20

All of the said twenty (20) inch siphons shall be of cast iron.

The said eight (8) inch force main shall be of cast iron.

The said plant, works or station for the treatment, rendering and disposal of sewage shall consist of a preliminary settling tank in two units, a sludge-drying bed, a sprinkling filter in two units, with a double dosing tank, a final settling tank in two units with a small sludge pumping station and a laboratory. 30

The said preliminary settling tank shall be constructed in two units of the Imhoff type. Each of these units shall be approximately five thousand 40

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(5000) square feet in surface area and about twenty-one (21) feet deep, and shall be divided into three double compartments. Each of said units shall be of ample capacity to provide for an average daily flow of two (2) million gallons of sewage in the upper or sedimentation compartment. The sludge compartment of the said tank shall have a
10 combined total capacity for at least one year's storage of sludge, and shall be constructed entirely of reinforced concrete banked around the outside with earth, and shall be provided with a system of cast iron pipes for the removal of sludge.

The said sludge-drying bed shall be adjacent to the preliminary tanks and shall be approximately eighty-four (84) feet by one hundred and sixty (160) feet in size and surrounded with a low concrete wall. The said bed shall consist of about
20 thirteen (13) inches in average depth of graded sand and gravel underlaid by a system of tile drains.

The said sprinkling filter shall have a total area of about one (1) and seventy-five (75) one hundredths acres, with an average depth of filtering material of about six (6) feet. The said filter shall be surrounded with earth embankment paved on the inside with concrete and shall have a concrete and tile floor. Through the center of each of the two
30 units there shall be a reinforced concrete pipe gallery containing a main distributing pipe and a main collecting channel. The distributing system shall be of cast iron pipe with sprinkler nozzles of proper spacing and size to provide for evenly distributing sewage over the surface of the stone. Provision shall be made for properly dosing the beds by means of a double dosing tank and siphons.

The said final settling tank shall have two units,
40 each of which shall have a total surface area of

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approximately twelve hundred (1200) square feet and shall be about seventeen (17) feet deep and similar in construction to the above mentioned preliminary settling tank. Adjacent to these tanks there shall be a pump house, similar in size and construction to the laboratory building hereinafter mentioned, containing a centrifugal pump driven by an electric motor, with piping connections to permit the pumping of sludge from the final settling tank into the inlet of the preliminary settling tank. There shall also be an effluent sewer consisting of a double inverted siphon of twenty (20) inch cast iron pipe, running from said disposal plant under Green Brook and Bound Brook to the south bank of Bound Brook, and a forty-two (42) inch reinforced concrete sewer running from said last mentioned point into Bound Brook at a point about four hundred and fifty (450) feet below Green Brook road. The said double inverted siphons and said concrete sewer shall be built with such gate chambers, culverts, manholes and other fittings, appliances and appurtenances as may be found necessary to their proper construction, maintenance and operation. In connection with the disposal plant there shall be an adequately equipped laboratory. The laboratory building shall be about twenty-two (22) feet by twenty-five (25) feet outside dimensions and built of brick with concrete foundations and slate roof.

The above system of sewerage shall in all respects be constructed throughout in accordance with the plans and specifications prepared and executed in triplicate by George W. Fuller, Esq., bearing date August 1, 1912, one copy of which is now on file in the office of the Clerk of the Inhabitants of the City of Plainfield, another copy of which is now

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on file in the office of the Clerk of the said Borough of North Plainfield, and the other copy of which is now on file in the office of the Clerk of the Borough of Dunellen.

SECOND. That it has agreed and does hereby agree with the other parties hereto to jointly construct, maintain and operate the said system of sewerage herein described for the joint benefit of
10 the said Inhabitants of the City of Plainfield, the said Borough of North Plainfield and the said Borough of Dunellen, in such manner as will render the most efficient service to the said municipalities and to each of them, and to that end to keep the said system of sewerage in good repair and effective operation, and to make all necessary alterations, additions and enlargements thereto and therein as the needs of the said municipalities,
20 and each of them, may from time to time require.

THIRD. That the percentage of the capacity of such system of sewerage and sewage disposal plant, to the use of which each of the said municipalities shall be entitled shall be as follows: Of the said two (2) twenty (20) inch inverted siphons extending from the beginning point of the aforesaid forty-two (42) inch trunk sewer in the
30 said Borough of North Plainfield along the northeasterly side of Rock Avenue under and across Green Brook to a point in the City of Plainfield about nine hundred and fifty (950) feet southerly from the intersection of said Green Brook and Rock Avenue as aforesaid, the said Inhabitants of the City of Plainfield shall be entitled to the use of seventy-five (75) per cent., and the said Borough of North Plainfield shall be entitled to the use of twenty-five (25) per cent. of the capacity
40 thereof. Inasmuch as it is not contemplated that

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the said Borough of North Plainfield will have use for its said percentage of capacity of the last mentioned two (2) twenty (20) inch inverted siphons, such Borough shall have the right from time to time to rent its said percentage of capacity thereof to any corporations, individuals or municipalities that may require the use of said two (2) twenty (20) inch siphon, or any portion thereof, 10 under any contract or contracts, which may be entered into by the Joint Meeting provided for by said Act with such corporations, individuals or municipalities, before the Inhabitants of the City of Plainfield shall have the right to rent any portion of its said percentage of capacity of the said two (2) twenty (20) inch inverted siphons. The said Borough of Dunellen shall be entitled to the full capacity of the eight (8) inch force main 20 above mentioned. Of the remaining portions of the said system of sewerage and sewage disposal plant, and of every part thereof, the said Inhabitants of the City of Plainfield shall be entitled to the use of sixty-eight (68) per cent., the said Borough of North Plainfield twenty-five (25) per cent. and the said Borough of Dunellen seven (7) per cent. of the capacity thereof.

In case it shall happen that any of the said municipalities shall require for its own needs a 30 greater percentage of capacity of the said system of sewerage and sewage disposal plant, or of any part thereof, than is herein provided, it shall, upon obtaining the consent of the said Joint Meeting so to do, have the privilege of renting from either or both of the said other municipalities any portion of the surplus capacity of said other municipality or municipalities for such period of time and upon such terms and conditions as may be agreed upon. 40

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FOURTH. That the percentage of the total cost, expenses and other liabilities incurred in connection with or resulting from the construction, maintenance or operation of any and all of the said works and improvements to be paid by each of such municipalities shall be as follows: The said Inhabitants of the City of Plainfield shall pay the total cost, expenses and other liabilities incurred
10 in connection with or resulting from the construction, maintenance and operation of any and all connections with the said works and improvements authorized by it. The said Borough of North Plainfield shall pay the total cost, expenses and other liabilities incurred in connection with or resulting from the construction, maintenance and operation of any and all connections with the said works and improvements authorized by it. The said Borough
20 of Dunellen shall pay the total cost, expenses and other liabilities incurred in connection with or resulting from the construction, maintenance and operation of any and all connections with the said works and improvements authorized by it, and also the total cost, expenses and other liabilities incurred in connection with or resulting from the operation of the said eight (8) inch force main.

FIFTH. Except as hereinbefore is expressly provided, of the total cost, expenses and other liabilities incurred in connection with or resulting from the construction of the said works and improvements, and all damages, if any, resulting from the maintenance of such works and improvements, the said Inhabitants of the City of Plainfield shall pay and discharge sixty-eight (68) per cent, the said Borough of North Plainfield twenty-five (25) per cent., and the said Borough of Dunellen seven (7)
30 per cent. thereof: Except as hereinbefore is ex-
40

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pressly provided, the total cost and expenses incurred in connection with or resulting from the maintenance, repair, cleaning, supervision and operation of any and all of the said works and improvements shall be divided between and paid by the three said municipalities in proportion to the amount of the sewage delivered into said works and improvements from each of the said municipalities respectively, and the cost, expenses and other liabilities incurred in connection with or resulting from any additions or enlargements of the said works and improvements which may hereafter be made shall be divided between and paid by the said municipalities in proportion to the requirements of the said respective municipalities in excess of the capacity to which each of said municipalities is entitled.

SIXTH. That the sewage from each municipality shall be measured by an approved type of recording instrument, installed, controlled, maintained and operated by the said Joint Meeting.

SEVENTH. That each of the said municipalities may from time to time at its own cost and expense appoint one or more inspectors who shall at all times be given full opportunity to inspect the work of construction of the works and improvements hereby authorized, and of any and all materials used therein, and also the operation of the said works and improvements during and after the completion thereof.

EIGHTH. That after the completion of the said works and improvements, and upon the written consent of the engineer employed by the said Joint Meeting, one or more of the said municipalities may commence to use the works and improvements

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hereby authorized in advance of any other of such municipalities, provided, however, that the said municipality or municipalities so using the same shall assume and bear the whole cost and expenses incurred in connection with or resulting from the maintenance and operation of the said works and improvements during the period that it or they so make partial or exclusive use thereof.

- 10 NINTH. That all collecting sewers, including house connections, constructed within each municipality, and connected with said joint sewerage system, works or improvements, shall be water tight to avoid as far as is practicable, the infiltration of the ground or surface water into said sewers. None of the said municipalities shall use, nor permit its property owners, or any of them, to use the collecting sewers constructed within its limits,
20 or any of them, for any purpose other than that of sanitary sewers.

TENTH. That in order to accomplish the purposes of this contract, and of the laws of New Jersey, in pursuance of which it is made, it will do or cause to be done any and all things which it may by law be authorized to do, and which will advance or tend toward the accomplishment of the said purposes, or any of them, without delay.

- 30 ELEVENTH. That in the event of any disagreement between the Inhabitants of the City of Plainfield, the borough of North Plainfield and the Borough of Dunellen concerning the accomplishment of any of the purposes hereof, the matter or matters in dispute shall be referred to three (3) arbitrators, one of whom shall be chosen by each of the said municipalities through its governing bodies. In case two
40 of such municipalities each choose an arbitrator

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and the other of such municipalities should neglect or refuse so to do for the period of twenty days after being requested thereunto by either of the said other municipalities, the two arbitrators so chosen shall then choose and designate in a writing to be filed with the clerk of each of such municipalities a third arbitrator who shall thereupon have the same powers and perform the same duties as if he had been chosen by the municipality so neglecting or refusing to choose an arbitrator. In case the arbitrators so chosen shall not reach a unanimous decision as to the matters referred to them, the Chancellor of the State of New Jersey shall be requested to appoint two other arbitrators to meet with the three already appointed; a decision by a majority of the board of arbitrators so appointed shall be binding upon the said municipalities. In case the Chancellor shall fail to appoint such additional arbitrators within ten days from the date of such request, a majority of the arbitrators already chosen as hereinbefore provided shall select the said two additional arbitrators, and a decision by a majority of the board of arbitrators so appointed shall be binding upon the said municipalities and each of them.

TWELFTH. This agreement is made and executed in triplicate on behalf of the Inhabitants of the City of Plainfield, party of the first part hereto, by its Mayor and City Clerk, pursuant to an ordinance entitled "An ordinance authorizing the 'Inhabitants of the City of Plainfield' to unite with the 'Borough of North Plainfield' and the 'Borough of Dunellen' to jointly provide, construct, maintain and operate a system of conveying and conducting the sewage from said municipalities from certain points within said municipalities to a point near the intersection of Green Brook and Bound Brook in the Township

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of Piscataway; to jointly construct, maintain and operate such plants, works and stations as may be necessary for the treatment, rendering and disposal of said sewage, to fix and prescribe the percentage of the capacity of the said works or improvements to which each of said municipalities shall be entitled; to provide for the apportionment of the costs, expenses and other liabilities of the construction, maintenance and operation of the said works or improvements, and to authorize the making and execution of a contract providing therefor", which said ordinance was duly passed by its Common Council on the fifth day of May, 1913, and approved by its Mayor on the fifth day of May, 1913.

THIRTEENTH. This agreement is made and executed in triplicate on behalf of the Borough of North Plainfield, party of the second part hereto, by its Mayor and Borough Clerk, pursuant to an ordinance entitled "An ordinance authorizing the 'Borough of North Plainfield' to unite with the 'Borough of Dunellen' and the 'Inhabitants of the City of Plainfield' to jointly provide, construct, maintain and operate a system of conveying and conducting the sewage from said municipalities from certain points within said municipalities to a point near the intersection of Green Brook and Bound Brook in the Township of Piscataway; to jointly construct, maintain and operate such plants, works and stations as may be necessary for the treatment, rendering and disposal of said sewage; to fix and prescribe the percentage of the capacity of the said works or improvements to which each of said municipalities shall be entitled; to provide for the apportionment of the costs, expenses and other liabilities of the construction, maintenance and operation of the said works or improvements, and

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to authorize the making and execution of a contract providing therefor," which said ordinance was duly passed by its Borough Council on the Third day of October, 1913, and approved by its Mayor on the Fourth day of October, 1913.

FOURTEENTH. This agreement is made and executed in triplicate on behalf of the Borough of Dunellen, party of the third part hereto, by its Mayor and Borough Clerk, pursuant to the provisions of an ordinance entitled "An ordinance authorizing the 'Borough of Dunellen' to unite with the 'Borough of North Plainfield' and the 'Inhabitants of the City of Plainfield' to jointly provide, construct, maintain and operate a system of conveying and conducting the sewage from said municipalities from certain points within said municipalities to a point near the intersection of Green Brook and Bound Brook, in the Township of Piscataway; to jointly construct, maintain and operate such plants, works and stations as may be necessary for the treatment, rendering and disposal of said sewage; to fix and prescribe the percentage of the capacity of the said works or improvements to which each of said municipalities shall be entitled; to provide for the apportionment of the costs, expenses and other liabilities of the construction, maintenance and operation of the said works of improvements, and to authorize the making and execution of a contract providing therefor," which said ordinance was duly passed by its Borough Council on the Sixth day of October, 1913, and approved by its Mayor on the Seventh day of October, 1913.

IN WITNESS WHEREOF the Mayor and City Clerk of the said Inhabitants of the City of Plainfield,

 Exhibit.

party of the first part, have signed this agreement and caused the corporate seal of the said municipality to be hereto affixed and attested; the Mayor and Borough Clerk of the said Borough of North Plainfield, party of the second part, have signed this agreement and caused the corporate seal of the said municipality to be hereto affixed and attested; and the Mayor and Borough Clerk of the said Borough of Dunellen, party of the third part, have signed this agreement and caused the corporate seal of the
 10 said municipality to be hereto affixed and attested, the day and year first above mentioned.

The words "now in the Borough of Middlesex" interlined on pages 1-2 and 3 before execution.

INHABITANTS OF THE CITY OF PLAINFIELD,

[Signed] By PERCY H. STEWART

Mayor.

J. T. McMURRAY

[SEAL] City Clerk.

20 Attest:

J. T. McMURRAY

City Clerk.

BOROUGH OF NORTH PLAINFIELD,

By ROBERT CLARK, JR.

[SEAL] Mayor.

C. M. DOLLIVER

Borough Clerk.

Attest:

30 C. M. DOLLIVER

Borough Clerk.

BOROUGH OF DUNELLEN,

By CHARLES E. RICHARDS

[SEAL] Mayor.

WILLIAM P. DEERING

Borough Clerk.

Attest:

40 WILLIAM P. DEERING

Borough Clerk.

Exhibit

**Extract from Minutes of the Joint Meeting,
March 11, 1914.**

Whereupon Mr. Milne introduced the following resolution :

WHEREAS, in the opinion of this Joint Meeting¹⁰ it is necessary to acquire the farm known as the Darling Farm situate in the Borough of Middlesex, in the County of Middlesex; and

WHEREAS, John Darling and Elizabeth Darling, his wife, the owners thereof, have submitted the following offer :

To the Joint Meeting of the Inhabitants of the City of Plainfield, The Borough of North Plainfield²⁰ and The Borough of Dunellen.

We, John Darling and Elizabeth Darling, his wife, of the City of Plainfield, County of Union and State of New Jersey, in consideration of the sum of Thirty-six thousand Dollars (\$36,000.), to be paid to me as hereinafter provided, do hereby offer to well and sufficiently convey unto The Inhabitants of the City of Plainfield, The Borough of North Plainfield and The Borough of Dunellen, their³⁰ successors and assigns, by warranty deed, free from all encumbrances, except as herein noted, the following described property :

All that certain farm premises in the Township of Piscataway, now Borough of Middlesex, County of Middlesex and State of New Jersey :

FIRST. Beginning at a stone in the center of the road being the Northwest corner of a lot of land of John Boice also the Southeast corner of a lot of⁴⁰

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John Giles; thence with the road South 75 degrees 03 minutes West ten chains 98 links to another stone in the center of said road and Southwesterly corner of said Giles; thence with said Giles land North two degrees West 26 chains 11 links to a pin oak stump for a corner also a corner of Peter Vail; thence along the line of said Vail North 87 degrees West, 4 chains 90 links; thence North 41½ degrees West, 86 links to a birch sapling marked standing on the South side of Green Brook; thence down said Brook and binding on the same the several courses thereof to Samuel Vail's corner; thence with his line South 62 degrees 12 minutes East 5 chains and 60 links to a stump and corner of the said Vail; thence along said Vail's line South 21 degrees East 19 chains and 70 links to the center of the aforesaid road; thence along the same North 89½ degrees West 3 chains and 78 links; thence South 51 degrees East 1 chain and 20 links to Bound Brook; thence up said Brook the several courses thereof to the line of John Smalley; thence along said Smalley's line North ten degrees East 2 chains and 60 links; thence along the same and Joseph F. Warren's line North 86 degrees East 16 chains 46 links to a stump; thence along the line of said Warren 82¾ degrees East 6 chains and 28 links to a stone and corner of said Warren; thence along his lands and lands of said Boice North 2 degrees 12 minutes West 14 chains 40 links to the place of Beginning. Containing 110¾ acres of land strict measurement.

Also lot of land adjoining the above described farm:

BEGINNING at a stone planted in the middle of the stage road leading from Plainfield to Somerville; thence running South 75½ degrees West 10 chains and 96 links to a stone in the middle of the aforesaid

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road; thence North $84\frac{1}{2}$ degrees East 10 chains and 69 links to a stake in the line between lands of the said above described farm and land formerly belonging to the heirs of Cornelius Boice, deceased; thence North 3 degrees 20 minutes West 1 chain 84 links to the place of BEGINNING. Containing $96/100$ acres, more or less. 10

Also another lot adjoining the said farm :

BEGINNING at a stake on the bank of the Green Brook and corner of said farm formerly Garret Lane's; thence with the line of said Lane South 60 degrees 53 minutes East 4 chains and 90 links to a corner of said Lane; thence with the same South 21 degrees East 10 chains and 33 links to the old channel of the Brook (Bound Brook); thence up said Brook on the Northerly side thereof crossing the same and binding thereon its several courses to a willow tree on the most Southerly point of the island; thence down the Easterly side of the mill race and binding thereon its several courses to the mouth of Green Brook; thence up the said Green Brook its several courses binding thereon to the Place of BEGINNING. Containing $10-82/100$ acres. Including all the lands between said Lane on the East to the Mill race on the West, Green Brook on the North to the South coming to a point. 20 30

Also another lot adjoining the said farm.

BEGINNING at the Northeast post of the bridge crossing the Bound Brook near said Lane's Farm; thence South $87\frac{3}{4}$ degrees East 4 chains 84 links along the public highway to a line of lands belonging to said Lane; thence with his line North 21 degrees West 7 chains and 77 links to the old channel of the said Bound Brook; thence up the same and 40

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binding thereon the several courses thereof to the place of BEGINNING. Containing 2-2/10 acres.

Excepting therefrom a piece of land and premises as conveyed by Alexander Dunn to Emily Liebe, April 1, 1887, containing 36-37/100 acres as fully described in Book of Deeds, 212, pages 133.

The foregoing description being taken from a deed made by Alfred G. Dunn and Elizabeth H., his
10 wife, to John Darling, the subscriber hereto which deed is dated January 30, 1902, and is recorded in the Middlesex County Clerk's Office in Book 332 of Deeds, pages 520, &c.

It being the intention of this offer to include all the premises known as "The Darling Farm."

Subject to the right of way of Halsey F. Northrup his heirs and assigns, to lay, operate and maintain a pipe line across said premises, recorded in Deed
20 Book 211, page 656, Middlesex County Clerk's Office.

The said sum of Thirty-six thousand dollars (\$36,000) to be paid as follows: Five thousand dollars (\$5,000) within one day from the date of the acceptance hereof, and the balance of Thirty-one thousand dollars (\$31,000) upon delivery of the deed to be made at the convenience of the parties at any time within sixty (60) days from the date of the acceptance hereof.

30 The foregoing offer, if accepted at all, must be accepted within ten (10) days from the date hereof.

Dated

March 3rd, 1914. (Signed) JOHN DARLING
(Signed) " ELIZABETH DARLING
E. M. LAING.

and

WHEREAS, in the opinion of this Joint Meet-
40 ing it is advisable and for the best interests of the

Exhibit.

municipalities composing said Joint meeting to accept said offer:

NOW THEREFORE BE IT RESOLVED that the said offer be and the same is hereby accepted.

Mr. Rushmore seconded the resolution and upon roll call the same was carried by the following vote.

Plainfield:	<i>Ayes</i> Nine	<i>Nays</i> None
North Plainfield:	<i>Ayes</i> Six	<i>Nays</i> None
Dunellen:	<i>Ayes</i> Five	<i>Nays</i> None

10

Exhibit

Extract from Minutes of the Joint Meeting, September 9, 1914.

20

On motion of Mr. Clark duly seconded by Mr. Blatz, the following resolution was proposed:

Be it resolved that the action of the representatives of the Joint Meeting in closing title to the Darling Farm be ratified and confirmed and that the title to the said farm subject to the two rights of way in the deed mentioned be accepted.

Be it further resolved that the deed for the said farm be recorded at once in the Clerk's office of Middlesex County.

30

This resolution was adopted by the following vote:

Plainfield:	<i>Ayes</i> Nine (9)	<i>Nays</i> None (0)
North Plainfield:	<i>Ayes</i> Five (5)	<i>Nays</i> None (0)
Dunellen:	<i>Ayes</i> Three (3)	<i>Nays</i> None (0)

40

Exhibit P-4.JOHN DARLING *et ux*

TO

THE INHABITANTS OF
 THE CITY OF PLAIN-
 10 FIELD COUNTY OF
 UNION *et als*

THIS INDENTURE made
 the eighth day of Sep-
 tember in the year of
 our Lord one thousand
 nine hundred and four-
 teen, Between John
 Darling and Elizabeth
 Darling his wife of the

City of Plainfield in the County of Union and
 State of New Jersey of the first part; and The In-
 habitants of the City of Plainfield County of Union,
 The Borough of North Plainfield County of Somer-
 set and The Borough of Dunellen County of Mid-
 dlesex all of the State of New Jersey as tenants in
 common of the second part:

20 Witnesseth that the said parties of the first part
 for and in consideration of valuable considerations
 and the sum of one dollar lawful money of the
 United States of America to them in hand well and
 truly paid by the said party of the second part at
 or before the sealing and delivery of these presents
 the receipt whereof is hereby acknowledged and
 the said party of the first part therewith fully
 satisfied contented and paid have given granted,
 30 bargained, sold, aliened, released, enfeoffed, con-
 veyed and confirmed and by these presents do give
 grant, bargain, sell, alien, release, enfeoff, convey
 and confirm to the said parties of the second part
 and to their successors and assigns forever.

ALL those tracts or parcels of land hereinafter
 particularly described situate lying and being in
 the Borough of Middlesex (formerly Township of
 Piscataway) in the County of Middlesex and State
 of New Jersey.

40 The First Tract:—Beginning at a stone in the

Exhibit P-4.

center of the road being the northwest corner of a lot of land of John Boice, also the southeasterly corner of a lot of John Giles thence with the road south seventy five degrees and three minutes west ten chains and ninety eight links to another stone in the center of said road and southwesterly corner of said Giles thence with said Giles land north two degrees west twenty six chains and eleven links to a pin oak stump for a corner, being also a corner of Peter Vail; thence along the line of said Vail north eighty seven degrees west four chains and ninety links; thence north four and a half degrees west eighty six links to a birch sapling marked, standing on the south side of Green Brook, thence down said brook and binding on the same, the several courses thereof, to Samuel Vail's corner; thence with his line south sixty two degrees and twelve minutes east five chains and sixty links to a stump and corner of said Vail thence along said Vail's line south twenty one degrees east nineteen chains and seventy links to the centre of the aforesaid road thence along the same north eighty nine and a half degrees west three chains and seventy eight links thence south fifty one degrees east one chain and twenty links to Bound Brook thence up the said brook the several courses thereof to the line of John Smalley thence along said Smalley's line north ten degrees east two chains and sixty links thence along the same and Joseph F. Warren's line north eighty six degrees east sixteen chains and forty six links to a stump thence along the line of said Warren eighty two and three quarter degrees east six chains and twenty eight links to a stone and corner of said Warren thence along his lands and lands of said Boice north two de-

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grees and twelve minutes west fourteen chains and forty links to the place of beginning. Containing one hundred and ten and three quarter acres of land, strict measure.

The Second Tract: Adjoining the above described farm. Beginning at a stone planted for a
10 corner in the middle of the stage road, leading from Plainfield to Somerville thence running south seventy five and a half degrees west ten chains and ninety eight links to a stone in the middle of the aforesaid road thence north eighty four and a half degrees east ten chains and sixty nine links to a stake in the line between lands of the above described farm and land formerly belonging to the heirs of Cornelius Boice deceased; thence
20 north three degrees and twenty minutes west one chain and eighty four links to the place of beginning. Containing ninety six one hundredths of an acre of land more or less.

The Third Tract: Adjoining the said farm, Beginning at a stake on the bank of the Green Brook and corner of said farm formerly Garret Lane's thence with the line of said Lane south sixty degrees and fifty three minutes east four chains and ninety links to a corner of said Lane; thence with
30 the same south twenty one degrees east ten chains and thirty three links to the old channel of the brook (Bound Brook) thence up the said brook on the northerly side thereof crossing the same and binding thereon its several courses to a willow tree on the most southerly point of the island thence down the easterly side of the mill race and binding thereof its several courses to the mouth of Green brook thence up the said Green Brook its several
40 courses binding thereon to the place of beginning.

Exhibit P-4.

Containing ten acres and eighty two hundredths of an acre including all the land between said Lane on the east to the mill race, on the west, Green Book on the north to the south coming to point.

The Fourth Tract:—Adjoining said farm. Beginning at the northeast post of the bridge crossing the Bound Brook near said Lane's farm; thence south eighty seven and three quarter degrees east 10 four chains and eighty four links along the public highway to a line of lands belonging to said Lane; thence with his line north twenty one degrees west seven chains and seventy seven links to the old channel of the said Bound Brook; thence up the same and binding thereon the several courses thereof to the beginning. Containing two acres and two tenths of an acre of land.

Excepting out of the above described premises the 20 land conveyed by the said Alexander Dunn to Emily Liebe containing thirty six acres and thirty seven one hundredths of an acre of land by deed dated April 1st, 1887 and recorded in Middlesex County Clerk's Office in Book 212 of Deeds for said County pages 133 &c.

Beginning in the middle of the road leading from Dunellen to Bound Brook where the road is intersected by the brook dividing the land of said Dunn and land of M. H. Close and at a northerly corner 30 of said Close's land from thence running along the middle of the said road south 86 degrees 45 minutes east 12 chains, 10 links thence still along the same south 88 degrees 30 minutes east 10 chains, 72 links thence still along the middle of the same north 78 degrees east 13 chains 59 links to a corner of lands of Peter Conover; thence with his line south 1 degree 45 minutes west 14 chains 30 links thence still along his line north 79 degrees west 6 chains 17 40

Exhibit P-4.

links; thence along the same and lands of M. H. Close west 16 chains 40 links thence along the line of said Close south 14 degrees west 2 chains 44 links more or less to the middle of the aforesaid brook; and thence down the brook the several courses thereof to the place of beginning. Containing 36.37 acres.

10 Being the same premises as conveyed to the said John Darling by deed of Alfred G. Dunn and wife dated January 30th 1902 and recorded in Book 332 of Deeds for Middlesex County pages 520 &c.

This conveyance is made subject to the rights of way and other rights in said land as conveyed by the following deeds; (1) Alexander Dunn to Halsey F. Northrup recorded in Book 207 of Deeds for Middlesex County pages 35 &c. (2) deed of Alexander
20 Dunn to Halsey F. Northrup recorded in Book 211 of Deeds for Middlesex County pages 656.

Together with all and singular the houses, buildings trees, ways waters, profits privileges and advantages with the appurtenances to the same belonging or in anywise appertaining.

Also all the estate right title interest, property, claim and demand whatsoever of the said parties of the first part of in and to the same and of in and to every part and parcel thereof. To have and To
30 Hold all and singular the above described land and premises with the appurtenances unto the said parties of the second part their successors and assigns to the only proper use, benefit and behoof of the said parties of the second part their successors and assigns forever.

And the said John Darling doth for himself his heirs executors and administrators covenant and agree to and with the said parties of the second part
40 their successors and assigns that he the said John

Exhibit P-4.

Darling is the true lawful and right owner of all and singular the above described land and premises and of every part and parcel thereof with the appurtenances thereunto belonging and that the said land and premises or any part thereof at the time of the sealing and delivery of these presents are not encumbered by any mortgage judgment or limitation or by any encumbrance whatsoever by which the 10 title of the said party of the second part hereby made or intended to be made for the above described land and premises can or may be changed charged altered or defeated in any way whatsoever.

And also that the said party of the first part now have good right full power and lawful authority to grant bargain sell and convey the said land and premises in manner aforesaid; And also that he the said John Darling and his heirs will warrant se- 20 cure and forever defend the said land and premises unto the said parties of the second part their successors and assigns forever, against the lawful claims and demands of all and every person or persons freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

In Witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN DARLING (L. S.) 30
ELIZABETH DARLING (L. S.)

Signed sealed and delivered in the presence of WILLIAM M. STILLMAN

STATE OF NEW JERSEY }
County of Union } ss:

Be it remembered that on this eighth day of September in the year of our Lord one thousand nine 40

Exhibit P-4.

hundred fourteen before me the subscriber a Master
 in Chancery for said State personally appeared
 John Darling and Elizabeth Darling his wife who
 I am satisfied are the grantors in the within deed
 of conveyance named; and I having first made
 known to them the contents thereof and thereupon
 they acknowledged that they signed sealed and de-
 10 delivered the same as their voluntary act and deed for
 the uses and purposes therein expressed. And the
 said Elizabeth Darling being by me privately ex-
 amined separately and apart from her husband did
 further acknowledge that she signed sealed and
 delivered the same as her voluntary act and deed
 freely and without any fear threats or compulsion.

WILLIAM M. STILLMAN,

M. C. C. of N. J.

Received and recorded September 9, 1914 at 8:00
 20 A. M.

[SEAL]

BERNARD M. GANNON, Clerk.

STATE OF NEW JERSEY, }
 County of Middlesex, } ss.

I, BERNARD M. GANNON, Clerk of the County of
 Middlesex, DO HEREBY CERTIFY, That the foregoing
 is true, full and correct copy of a certain Deed as
 the same is on record in my office in Book No.
 30 551 of Deeds on pages No. 326 etc.

IN TESTIMONY WHEREOF, I have hereunto set my
 hand and affixed my seal of said county, this 17th
 day of May A. D. 1917.

BERNARD M. GANNON

[SEAL]

Clerk.

Petitioners' Exhibit P-6.

Page 16. No. 7.

Block.....Lots 89 acres & improvements

Bound Brook Rd..Street or Avenue

TAXES FOR 1916

BOROUGH OF MIDDLESEX, N. J.

Mr. CITY OF PLAINFIELD

Your Tax for the year 1916 in the Borough of Middlesex, New Jersey, has been assessed as follows:

Value of Land..... \$27,000
 Value of Improvements..... \$50,000
 Value of Personal Property. \$.....

Total Valuation..... \$77,000..Rate \$1.83 per \$100.. \$1,409.10
 Poll Tax..... \$.....

Total Tax..... \$1,409.10

Yours Interest and Costs is....	} SEE OTHER SIDE	\$.....	20
Your Discharge of Record is...		\$.....	
Your Advertising and Costs is..		\$.....	

Your total costs are..... \$.....

\$.....

Total Assessed Value in the Borough of Middlesex, N. J.:

Land	\$442,830.00	
Improvements	\$679,993.00	
Personal Property.....	\$255,940.00	30
Second Class Railroad Property.	\$ 14,600.00	
Public Service Corp. Property.	\$136,845.00	

Total Valuation.....\$1,530,208.00

Kindly make your checks payable to "Nelson M. Giles, Collector." Post Office Address: R. F. D., Bound Brook, N. J.

Petitioners' Exhibit.

The following amounts are deemed necessary to be raised for all purposes:

State School.....	\$ 3,832.52....	Rate per \$100....	\$.25
County	\$ 7,951.88....	Rate per \$100....	\$.52
Special School....	\$11,738.00....	Rate per \$100....	\$.76
Borough	\$ 4,500.00....	Rate per \$100....	\$.30
			\$1.83
	\$28,022.40		

READ THE OTHER SIDE

10 Received payment,

 Collector.

Dated..... 191....

If a receipt is desired by mail a 2c stamp **MUST** be sent for return postage

TO BE DETACHED ONLY BY THE COLLECTOR

Page..... No.....
 1916

20 Mr.....
 Your total tax is..... \$.
 Your costs and interest is..... \$.
 Your net tax is..... \$.

NOTICE

30 The Commissioners of Appeal in cases of Taxation having been dispensed with, taxpayers are hereby notified that appeals from the assessment must be made in writing and filed with the Middlesex County Board of Taxation on or before December 20th, next, after which a day will be set for a hearing, of which due notice will be given. Blank appeal forms will be furnished on application to J. Edgar Harned, Woodbridge, N. J.

Taxes unpaid December 20th will be returned for prosecution and interest at the rate of 12 per cent per annum will be charged on the same, in accordance with the laws of this state.

40 In accordance with the law, the Borough Clerk will cause to be printed in a newspaper or in

Petitioners' Exhibit

pamphlet form, the names of each delinquent taxpayer, and the amount of the tax, immediately after the settlement between the Borough Council and Collector, which takes place on December 31st, 1916.

AND ALSO

In accordance with the law, all taxes not paid by February 1st, next after, will be returned to the County Clerk, with interest and costs added and be a first lien upon such property.

Taxpayers, PLEASE notice your duty and be kindly disposed, thereby relieving all unpleasantness concerning taxes.

BILL OF COSTS:

Interest	\$.....	
Discharge of tax from record.....	1 00	20
Collector, selling	25	
Preparing tax certificate.....	50	
Acknowledgment to certificate....	50	
Advertising sale	1 25	
Recording certificate	75	
Preparing discharge of certificate..	50	
Recording discharge of certificate..	50	
Postage	25	
	<hr/>	
Total bill of costs.....	\$.....	30

ACCOMMODATION—The subscriber will receive axes at his office and residence on Harris Lane, every day except Saturday, until December 20th, between 7 A. M. and 2 P. M. and on Saturday between 7 A. M. and 12 noon.

NELSON M. GILES, Collector.

If a receipt is desired by mail a 2c stamp MUST be sent for return postage

40

18



BOUNDARY LINE

GREEN BROOK

6.68 ACRES

SPRINKLING
FILTERS

SPRINKLING
FILTERS

FUTURE
SPRINKLING
FILTERS

4.72 ACRES

.78 ACRES

2.97 ACRES

Total Acreage = 88.51

JOINT TRUNK SEWER AND DISPOSAL WORKS
FOR THE
CITY OF PLAINFIELD, BOROUGHS OF NORTH PLAINFIELD
AND DUNELLEN
MAP OF DARLING FARM

SCALE 1" = 100'
MAY 23, 1917

BOUNDARY LINE

HIGHWAY

BOUNDARY LINE

Manhole

Blarny

Stand

Carry
Crib

Manhole

Reasons

NEW

THE BOBOL

THE INHABITANTS
OF PLAINFIELD
OF NORTH
THE BOARD
and the
TAXES AS

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**Reasons of the Borough of Middlesex,
1915-1916.**

Filed Oct. 19, 1907.

NEW JERSEY SUPREME COURT.

THE BOROUGH OF MIDDLESEX,
Prosecutor,

vs.

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD, and
THE BOROUGH OF DUNELLEN,
and the STATE BOARD OF
TAXES AND ASSESSMENT,
Respondents.

Reasons in 10
Certiorari.

The prosecutor, by Wm. A. Coddington, its attorney, prays that the Judgments of the State Board of Taxes and Assessment rendered July 24 and 31, 1917, reducing and cancelling the assessments of taxes for the years 1915 and 1916 on certain real estate of the Respondents The Inhabitants of the City of Plainfield, The Borough of North Plainfield, and The Borough of Dunellen in the Borough of Middlesex be set aside and reversed for the following

REASONS:

1. Because the assessments made by the Assessor of Taxes for the Borough of Middlesex were made according to law. 30

2. Because the said property so assessed is subject to taxation under the taxing laws of this State.

3. Because said judgments are contrary to the law and the facts.

Dated, October 3rd, 1917.

WM. A. CODDINGTON,
Attorney for the Prosecutor. 40

**Reasons of Borough of Middlesex,
et al., 1915 Assessment.**

Filed Nov. 2, 1917

NEW JERSEY SUPREME COURT.

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD and
THE BOROUGH OF DUNELLEN,
Prosecutors,

v.

¹⁰ STATE BOARD OF TAXES AND
ASSESSMENT and the BOROUGH
OF MIDDLESEX,
Defendants.

On Certiorari.
Reasons.
1915 Assessment.

The prosecutors, by Lindabury, Depue & Faulks, their attorneys, pray that the judgment of the State Board of Taxes and Assessment, rendered July 31, 1917, on appeal by the prosecutors from the assess-
²⁰ ment made by the Borough of Middlesex on the property of the prosecutors known as the Darling Farm for the year 1915, may be set aside and the said assessment cancelled for the following reasons:

FIRST: Because the assessment made by the Assessor of Taxes for the Borough of Middlesex was made contrary to law.

SECOND: Because the property so assessed was at the time of the assessment and still is owned by
³⁰ The Inhabitants of the City of Plainfield, The Borough of North Plainfield and The Borough of Dunellen, taxing districts of the State, and was and is used for public purposes, and therefore exempt from taxation under the laws of this state.

THIRD: Because said judgment is contrary to the facts and the law.

Dated Oct. 27, 1917.

LINDABURY, DEPUE & FAULKES.
Attorneys for Prosecutors.

**Reasons of City of Plainfield et al.
1916 Assessment.**

Filed Nov. 2, 1917.

NEW JERSEY SUPREME COURT.

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD and
THE BOROUGH OF DUNELLEN,
Prosecutors,

v.

STATE BOARD OF TAXES AND
ASSESSMENT and the BOROUGH
OF MIDDLESEX,
Defendants.

On Certiorari.

Reasons.

1916 Assessment. 10

The prosecutors, by Lindabury, Depue & Faulks, their attorneys, pray that the judgment of the State Board of Taxes and Assessment, rendered July 24, 1917, on appeal by the prosecutors from the assess-²⁰ment made by the Borough of Middlesex on the property of the prosecutors known as the Darling Farm for the year 1916, may be set aside and the said assessment cancelled for the following reasons:

FIRST: Because the assessment made by the Assessor of Taxes for the Borough of Middlesex was made contrary to law.

SECOND: Because the property so assessed was at the time of the assessment and still is owned by The Inhabitants of the City of Plainfield, The Borough³⁰ of North Plainfield and the Borough of Dunellen, taxing districts of the State, and was and is used for public purposes, and therefore exempt from taxation under the laws of this State.

THIRD: Because said judgment is contrary to the facts and the law.

Dated, October 27, 1917.

LINDABURY, DEPUE & FAULKS,
Attorneys for Prosecutors. 40

THE UNIVERSITY OF CHICAGO

Opinion by Supreme Court.

Filed Jan. 17, 1918.

NEW JERSEY SUPREME COURT.

THE BOROUGH OF MIDDLESEX,
Prosecutor,

v.

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD, AND
THE BOROUGH OF DUNELLEN,
AND THE STATE BOARD OF
TAXES AND ASSESSMENT,
Respondents.

10

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD, AND
THE BOROUGH OF DUNELLEN,
Prosecutors,

v.

} On Certiorari.

THE STATE BOARD OF TAXES
AND ASSESSMENT, AND THE
BOROUGH OF MIDDLESEX,
Defendants.

20

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD, AND
THE BOROUGH OF DUNELLEN,
Prosecutors,

v.

THE STATE BOARD OF TAXES
AND ASSESSMENT AND THE
BOROUGH OF MIDDLESEX,
Defendants.

30

Argued November term, 1917 before Justices Gar-
rison, Bergen and Black.

WILLIAM A. CODDINGTON, and GEORGE W.
ANDERSON, for the Borough of Middlesex.
LINDABURY, DEPUE & FAULKS and J. EDWARD
ASHMEAD, for the City of Plainfield.

Per Curiam:

Writs of *certiorari* were allowed in each of the
above stated causes to review an order made by The 40

Opinion by Supreme Court.

State Board of Taxes and Assessments relating to the taxes assessed for the years 1915 and 1916 against the City of Plainfield and the boroughs of North Plainfield and Dunellen. The facts are not in dispute, and sufficiently stated for the consideration of the question to be determined are: That the city of Plainfield and the boroughs of North Plainfield and Dunellen, with the sanction and approval
10 of the State Board of Health, purchased a tract of land containing about ninety acres, situate within the limits of the Borough of Middlesex, for the purpose of building and maintaining a sewage disposal plant which requires buildings and land for the proper treatment and disposal of sewage refuse; that the borough of Middlesex caused the entire tract to be assessed for taxes for the years 1915 and 1916; that the city of Plainfield and the boroughs of North Plainfield and Dunellen appealed to
20 the County Board of Taxation of the county of Middlesex which confirmed the assessment; that the land owners then appealed to The State Board of Taxes and Assessments which modified the assessments for each year by exempting the buildings and the land then in actual use for filtering bed, and affirmed the assessment as to the residue of the land and made its order to that effect. Neither of the parties were satisfied with this order. The Borough of Middlesex claiming that the order
30 was erroneous because no part of the assessment should have been cancelled, and the assessed municipalities because, as they claim, no part of the land should be subjected to the payment of taxes. If the contention made by the assessed municipalities, that none of the land should be assessed, is correct, then the complaint of the borough of Middlesex would have no foundation, for if no part of the land is assessable for taxes it could not hold even what the State Board allowed, and the entire
40 assessment would be swept away, therefore we will

Opinion by Supreme Court.

first deal with the question whether, under the statute relating to exemptions from taxes, this land is assessable for taxes to any extent. The statute which controls is section 3 of the general act of 1903 relating to taxes, C. S. vol. 4, p. 5078, attempts to modify or alter it, P. L. 1906, p. 273 and P. L. 1907 p. 534, having proved abortive. *Essex Co. Park Commissioners v. West Orange* 77 N. J. L. 575. *Secaucus v. Huber* 87 N. J. L. 464. 10

The statute exempts the property of counties, school districts, and taxing districts, when used for public purposes and the only question argued on behalf of the Borough of Middlesex and the reason it urges in favor of the assessment is that the land is not used for public purposes within the meaning of the taxing act, and it is insisted that because the use of this property is limited to Plainfield, the Boroughs of North Plainfield and Dunellen, it is not a public use. We do not think that this claim is 20 sound. The law under which the purchase of the land was made P. L. 1916 p. 167, is general in its terms applying to all municipalities, and when it is invoked by a municipality or municipalities it is done in furtherance of a public use. The argument of the Borough of Middlesex seems to be that because the sewage plant cannot be used by all the people in the state, but only by a portion, it is not a public use. We think the statement of the proposition is a sufficient indication of its unsoundness. 30

This is all that is urged by the Borough of Middlesex, but if it be necessary to go beyond this we are of opinion that the acquisition of this tract of land was necessary and reasonable for the public use intended. The actual occupation of a portion of the land by the disposal works is not the measure of public use. It was necessary to have a considerable tract of land to provide increased facilities to dispose of the refuse matter, and, as we think, very necessary to properly provide for its isolation so as not to 40

Opinion by Supreme Court.

become a nuisance in the neighborhood. The extent and character of different cases must depend upon existing conditions.

Mr. Johnson, a civil engineer, called on behalf of the Borough of Middlesex, while not approving of the location fixed by the State Board of Health, said, "It is to be stated however, that the sprinkling filters, which of themselves are probably the greatest
10 factor of nuisance production, are located on this map, substantially in the center of the plot.

It endeavors to guard against nuisances through the carrying of odors from the disposal plant to property outside of the boundary line. I don't believe that the isolation is any too great."

It seems to us that the municipalities were bound to purchase a tract of land of sufficient dimensions to prevent the intended use from becoming a nuisance, and that this element should be considered in
20 determining whether the property is held for a public use.

The assessments against the prosecutors, The City of Plainfield and the Boroughs of North Plainfield and Dunellen for the years 1915 and 1916 will be set aside with costs.

The writ held by the Borough of Middlesex will be dismissed with costs.

30

40

Order for Judgment.

Entered Jan. 23/18.

NEW JERSEY SUPREME COURT.

10 THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD AND
THE BOROUGH OF DUNELLEN,
Prosecutors,

v.

THE STATE BOARD OF TAXES
AND ASSESSMENT AND THE
BOROUGH OF MIDDLESEX,
Defendants.

On Certiorari.
Order for Judgment.

(1915 Assessment.)

20

This case having been submitted on briefs, and the court having read the arguments of counsel and inspected the proceedings removed by the writ of *certiorari* allowed therein, and having duly considered the reasons filed, and being of opinion that the assessment therein complained of should be set aside;

It is, on this twenty-third day of January, 1918,
ORDERED that the said assessment be and the same
30 is hereby set aside, with costs against the said Borough of Middlesex.

Entered January 23, 1918,

On motion of

LINDABURY, DEPUE & FAULKES,
Attys. of Prosecutors.

40

Order for Judgment.

Entered Jan. 23/18.

NEW JERSEY SUPREME COURT.

THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH
OF NORTH PLAINFIELD AND
THE BOROUGH OF DUNELLEN,
Prosecutors,

v.

THE STATE BOARD OF TAXES
AND ASSESSMENT AND THE
BOROUGH OF MIDDLESEX,
Defendants.

On Certiorari. 10

Order for Judgment

(1916 Assessment)

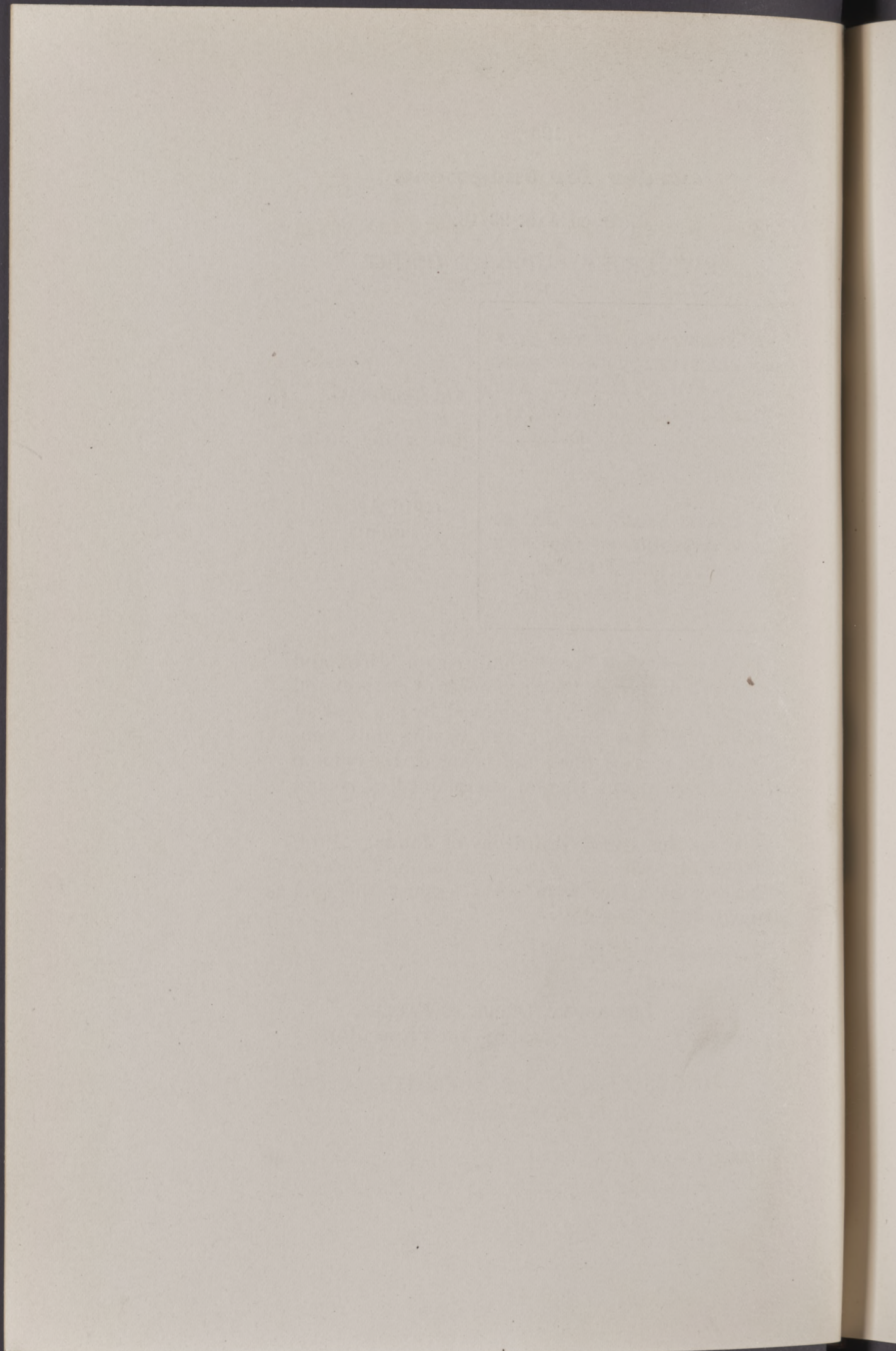
This case having been submitted on briefs, and the court having read the arguments of counsel and inspected the proceedings removed by the writ of *certiorari* allowed therein, and having duly considered the reasons filed, and being of the opinion that the assessment therein complained of should be set aside; 20

It is, on this twenty-third day of January, 1918, ORDERED that the said assessment be and the same is hereby set aside, with costs against the said Borough of Middlesex. 30

Entered January 23, 1918.

On motion of

LINDABURY, DEPUE & FAULKS,
Attys. for Prosecutors.



New Jersey Court of Errors and Appeals.

THE BOROUGH OF MIDDLESEX,
Prosecutor-Appellant,
vs.

THE INHABITANTS OF THE CITY OF
PLAINFIELD, THE BOROUGH OF NORTH
PLAINFIELD, and THE BOROUGH OF
DUNELLEN, and THE STATE BOARD OF
TAXES AND ASSESSMENT,
Respondents-Appellee.

**1915 and
1916
Taxes.**

THE INHABITANTS OF THE CITY OF
PLAINFIELD, THE BOROUGH OF NORTH
PLAINFIELD and THE BOROUGH OF
DUNELLEN,
Prosecutors-Appellees,
vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT and THE BOROUGH OF
MIDDLESEX,
Respondents-Appellants.

**1915
Taxes.**

THE INHABITANTS OF THE CITY OF
PLAINFIELD, THE BOROUGH OF NORTH
PLAINFIELD and THE BOROUGH OF
DUNELLEN,
Prosecutors-Appellees,
vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT and THE BOROUGH OF
MIDDLESEX,
Respondents-Appellants.

**1916
Taxes.**

BRIEF FOR THE BOROUGH OF MIDDLESEX.

By Chapter 112 of Laws of 1910 the City of
Plainfield, The Borough of North Plainfield and

The Borough of Dunellen were authorized by *special act*, under the machinery of that Act, to establish a joint sewerage system and plant, without provision whereby any other municipality or any other part of the public could derive any benefit therefrom. There is nothing in the Act with reference to the specific location of the plant or its taxation. They established such a plant in the Borough of Middlesex, in the County of Middlesex; the City of Plainfield being in the County of Union, The Borough of North Plainfield in the County of Somerset, and The Borough of Dunellen in the County of Middlesex. For the purposes of the plant they purchased a farm known as the Darling Farm, containing about 90 acres of land. For the purposes of the plant they only used and required about 5 acres. The balance of the land is let for a money rent. The property was assessed in toto by the Taxing District of the Borough of Middlesex for the years 1915 and 1916. Appeals were taken to the Middlesex County Board of Taxation by the three municipalities and the assessment confirmed. Appeals were then taken to the State Board which confirmed it as to the land not in use for sewerage purposes and from which the municipalities were receiving a rental, and annulled as to the property actually used. The municipalities appealed by *certiorari*, claiming the whole property to be exempt. The Borough of Middlesex appealed by *certiorari*, claiming that the whole property is taxable. It being agreed that the cases shall be heard together, this brief is intended to cover all issues.

1.

The Constitution provides that "property shall be assessable for taxation under general laws and by uniform rules according to its true value". The

general laws from the time of the Constitution provide for the levying of taxes by the different municipalities which, by later laws, are designated as taxing districts. The combined municipalities claim the property to be exempt under the provision of the General Tax Act of 1903, Article 1, Sec. 3, Par. 2, which provides that all property of the United States and of the State of New Jersey and of the respective counties, school districts and taxing districts *when used for public purposes* shall be exempt; also under the decision of the Supreme Court in the case of *Camden County vs. Washington Township*, 60 L., p. 367, and *Newark vs. Verona Township*, 59 N. J. L., p. 96, and also under divers other cases which other cases are not applicable.

There is nothing in the law or in the cases except those cited, nor nothing in the general taxing laws by which it can be concluded that the Legislature ever intended that property of one taxing district located in another should be exempt. Neither has the question been passed upon by the Court of Errors and Appeals, so far as we have been able to discover.

To tax municipal property within its own boundaries would of course be an anomaly, because such taxes would have to be raised upon other property in the taxing district and paid by the taxing district to itself. This is the view of the Court in *Perth Amboy vs. Barker*, 45 Vroom, p. 127. But where the property is in another taxing district this contingency does not arise. The municipalities in question upon acquiring the property in the Borough of Middlesex took, if the contention of the combined municipalities is true, a part of its assets without its deriving any benefit therefrom. Under this proposition arises the question:

2.

What is public property within the meaning of the taxing act which should be exempt?

The use of this property is limited to the three municipalities, which constitute only a part of the public. If the property was within their own domain, it would undoubtedly be exempt. But the Borough of Middlesex, nor its inhabitants, have no interest in it whatsoever nor can derive any benefit from it, and to say that the property is exempt *would be to deprive the Borough of Middlesex of a part of its taxable assets* and compel its inhabitants to make up the loss by increased taxation, which would be a rank injustice.

“What is meant by the public is not any corporation like a city, town or county, but the body of the people at large. The people of the neighborhood—the community at large—without reference to the geographical limits of any corporation, constitute the public. The people are the public.”

Am. & Eng. Ency., p. 302 (see *Baker v. Johnston*, 21 Mich. 335).

“An object may be public in one sense and for one purpose, when in a general sense and for other purposes it would be idle and misleading to apply the same term.”

People v. Salem, 20 Mich. 452 (4 Am. Rep. 400).

“The question as to what constitutes a work of internal improvement must be tested by the benefits to be derived by the public and not by its extent or cost.”

Un. Pac. R. Co. vs. Commrs., 4 Neb. 450, 451.

“When a Municipal Corporation engages in things not public in their nature it acts as a private individual. * * * The test whether powers exercised by a municipal corporation are public or private is whether they are for the benefit and emolument of the corporation or for public purposes.”

Bailey v. Mayor, etc., of New York, 3 Hill (N. Y.) 531.

In the case of *Millburn vs. So. Orange*, 55 N. J. L. p. 254, the Court cited the case of *County of Richmond vs. County of Lawrence*, 12 Ill. 1, wherein the Supreme Court of Illinois said: “A grant may be made to a public corporation for purposes of private advantage and although the public may also derive a common benefit therefrom, yet the corporation stands on the same footing as respects such grants as would a body of persons upon whom like privileges were conferred.”

The municipalities claim that no part of this property is taxable, but this has been decided otherwise in the case of *Newark vs. Clinton Township*, 49 L. 370, in which it is held: “If a city purchase a farm situate in another municipality, although for the purpose of obtaining a place for burying the poor who die in the city, and use the bulk of the premises for farming purposes to derive pecuniary profit therefrom, *the whole property will not be exempt from taxation, but only such reasonable quantity as have been set apart and is being used for the burial of the dead.*” And also in the case of *Schinkel vs. Fairview*, 76 N. J. L. 445, in which the Court held: “While it is true that the property (about 62 acres) proposed to be devoted to cemetery purposes is not the property of the borough in the sense that the borough has the title to it, yet while it is used for general purposes and not for cemetery purposes, it is in a sense an asset of the

Borough and produces an income by way of taxation."

The municipalities rely upon *State vs. Gaffney, Collector*, 5 Vroom, 131, but the land there in question was bought for a specific purpose, and while not utilized it was likely to be called into requisition at any time. Also *Newark vs. Verona*, 39 N. J. L. 94; this is not a parallel case because the city of Newark bought a farm and *established a Home and the farm was intended for the maintenance of its inmates.*

The Act of 1906 and Amendment of 1907 referred to in the brief of the combined municipalities was intended to obviate just such difficulties as this, but unfortunately the Act and its amendments fails to cover all the classifications of property contained in the General Taxing Act of 1903, and is therefore declared unconstitutional by the Court of Errors and Appeals, thus leaving it to the courts to determine how far the exemption provisions of the General Taxing Act of 1903 extend.

3.

The General Taxing Act of 1903 could not have anticipated the Act of 1910 drawn and enacted for the benefit of the combined municipalities. No such scheme was ever thought of at that time.

The Act of 1910 provides for a sewerage system for the benefit of private property and further provides that the cost shall be assessed upon private property benefited thereby (Sec. 11). This makes it only a quasi public improvement, and does not come within the meaning of "*public use*" under the taxing laws, because its use is limited.

The Supreme Court seems to have conceived the idea that the remainder of the farm not actually used by the sewerage plant was necessary for the purposes of isolation, and for that reason to have reversed the State Tax Board in its judgment allowing an assessment on the farm except the portion used for the sewerage plant. The facts are, as shown by the testimony, that only $3\frac{1}{2}$ acres are used for the plant at this time, and that only 7 acres will be necessary to double its capacity. (See State of Case, testimony of George W. Johnson, pp. 68, 76 and 77.)

It further appears that this was a valuable farm, for which the municipalities paid \$36,000 (see State of Case, p. 4), upon which there are improvements consisting of a large and extensive dwelling house and other farm buildings. These buildings, it seems, were assessed independent of the land for \$3,500., and the land at \$300. an acre. (See State of Case, testimony of Assessor Voorhees, pp. 30 and 31.)

It also appears that the farm, independent of the $3\frac{1}{2}$ acres used for sewerage purposes, was leased by the municipalities for \$200. a year to a man named Fitch. (See State of Case, testimony of McClintock, pp. 29 and 30 and testimony of Voorhees, p. 63.)

The evidence as a whole shows that the joint municipalities bought the whole farm in order to get the site they desired for their plant and for no other purpose, and that the remainder of the land for the growing of crops has not been injured, and that this land for the growing of crops and the pasturing of cattle, together with the use of the buildings, is made a source of income by the three municipalities. Therefore it would seem that this reason advanced by the Supreme Court is without merit.

The Borough of Middlesex has a vested right and

duty to assess all lands within its boundaries under the Act of 1903. To deprive it of that right, without benefit, would be to take from it its property without compensation.

It is respectfully submitted that the judgment of the Supreme Court in all three cases should be reversed, and the assessment levied by the local assessor and confirmed by the Middlesex County Board of Taxation be affirmed.

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of Counsel, with Borough of Middlesex.

New Jersey Court of Errors and Appeals.

THE BOROUGH OF MIDDLESEX,
Prosecutor-Appellant,

vs.

THE INHABITANTS OF THE CITY OF
PLAINFIELD, THE BOROUGH OF NORTH
PLAINFIELD, and THE BOROUGH OF
DUNELLEN, and THE STATE BOARD OF
TAXES AND ASSESSMENT,
Respondents-Appellee.

**1915 and
1916
Taxes.**

THE INHABITANTS OF THE CITY OF
PLAINFIELD, THE BOROUGH OF NORTH
PLAINFIELD and THE BOROUGH OF
DUNELLEN,

Prosecutors-Appellees,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT and THE BOROUGH OF
MIDDLESEX,

Respondents-Appellants.

**1915
Taxes.**

THE INHABITANTS OF THE CITY OF
PLAINFIELD, THE BOROUGH OF NORTH
PLAINFIELD and THE BOROUGH OF
DUNELLEN,

Prosecutors-Appellees,

vs.

THE STATE BOARD OF TAXES AND
ASSESSMENT and THE BOROUGH OF
MIDDLESEX,

Respondents-Appellants.

**1916
Taxes.**

**BRIEF FOR THE INHABITANTS OF THE CITY
OF PLAINFIELD, THE BOROUGH OF NORTH
PLAINFIELD, AND THE BOROUGH OF DUN-
ELLEN.**

This is an appeal from the judgment of the
Supreme Court, setting aside the assessments of

taxes made by the Borough of Middlesex for the years 1915 and 1916 against the sewage disposal plant of the City of Plainfield and the Boroughs of North Plainfield and Dunellen, located on the Darling Farm, in the Borough of Middlesex.

The Supreme Court held that the property assessed was used for public purposes, and therefore exempt from taxation (Case, pp. 120, 124, 125, 126).

The Borough of Middlesex contends here, as in the court below, that the use of lands for a municipal sewage disposal plant is not a public use, and therefore that none of the lands in question, or the improvements, should be exempt.

The City of Plainfield and the Boroughs of North Plainfield and Dunellen contend that such use is a public use, and that property so used is exempt from taxation, and that all of the property in question was within the exemption at the time each of the assessments under review was made.

The pertinent facts are as follows:

In November, 1913, The Inhabitants of the City of Plainfield and the Boroughs of North Plainfield and Dunellen, under the authority of Chapter 112 of the Laws of 1910 (P. L. 1910, p. 167) entered into an agreement to jointly provide, maintain and operate a system of conveying the sewage from said municipalities to the Darling Farm, and there construct, maintain and operate a plant, works and station, with the appliances and appurtenances necessary for the treatment, rendering and disposal of the said sewage. They further agreed to construct, maintain and operate the said system of sewerage for the joint benefit of the said municipalities in such manner as would render the most efficient service to them and to each of them; and to that end to keep the said system of sewerage in good repair and effective operation, and to make all necessary alterations, additions and enlargements

thereto and therein as the needs of the said municipalities, and each of them, might from time to time require (Case, 1915 assessment, p. 5; 1916 assessment, p. 86).

The Act of 1910 expressly provided (Sec. 5, p. 175) that such joint contracting municipalities should not build or operate such sewage disposal plant or plants except under such conditions as should be approved by the State Board of Health. Plans were prepared and three alternative sites were submitted to the State Board of Health, and after consideration of the alternative sites submitted, the Board designated the "Darling Farm" as the one which they would approve for disposal works on account of the possibility of isolating the disposal works within its confines (Case, 1916 assessment, pp. 51-52, lines 23-27).

In recommending the purchase of the Darling Farm as a whole, the committee having the matter in charge was governed by the advice of consulting engineers. In their opinion it was necessary to acquire the entire site for the purpose, not only to provide for the disposal beds themselves and their effective and economical operation, but also to take care of all contemplated enlargements, and to protect the surrounding territory from any nuisance by reason thereof (Case, 1916 assessment, p. 19, lines 1-20; p. 34, lines 29-40; p. 38, lines 29-40; p. 39, lines 1-5; p. 44, lines 1-40; p. 52, lines 38-40; p. 53, lines 1-20; 1915 assessment, pp. 24 and 25).

Upon receipt of this report, the Joint Meeting, at a regular session, after full consideration of all the circumstances pertaining thereto, passed a resolution authorizing the purchase of the Darling Farm, in which it expressly declared that in its opinion it was necessary to acquire the whole farm as a sewage disposal site (Case, 1916 assessment, p. 101, lines 10-14), and on or about September 8, 1914, acquired the Darling Farm by deed of pur-

chase (Case, 1916 assessment, p. 106), the total area thereof being 88.51 acres (Case, 1916 assessment, p. 14, line 32).

The construction of the sewage disposal works began on or about April 12, 1915 (Case, 1915 assessment, p. 12, line 8). They were completed and put in operation on November 26, 1916 (Case, 1916 assessment, p. 41, lines 33-35).

Exhibit A-1 (Case, 1915 assessment, p. 40) shows the situation as of May 20, 1915. The lines in solid white represent the permanent structure; the lines in red indicate temporary structures used by the contractor during the construction; the solid white lines near the Bound Brook Road represent the farm buildings, house and barn. The double line in the rear of the property crossing the tract indicates the 42-inch effluent outfall sewer from the disposal plant to the brook. The dotted line running in from Bound Brook Road to the disposal works represents the macadam road built by the contractor for permanent use in connection with the plant (Case, 1915 assessment, p. 8, lines 28-40; p. 29, lines 1-10). On May 20, 1915, the macadam road from the Bound Brook Road into the plant was being built, the site of the sprinkling filter was being excavated and the engineer's office building was being erected (Case, 1915 assessment, p. 11, lines 27-32). The area actually occupied by the sewage beds was three acres (Case, 1915 assessment, p. 12, lines 28-36). This three acres was the area covered by the structures themselves and did not include any allowance for slopes or embankments around the beds, or area between the sewage disposal tanks, sprinkling filters or drying beds, or include any provision for the disposal of the dried sludge or provision for any enlargements that might be necessary to meet the immediate growing needs of the municipalities (Case, 1916 assessment, p. 45, lines 8-20). It, of course, included no area necessary for the proper isolation of the plant.

Exhibit P-5, Case, p. 116, shows the situation as of May 20, 1916. On this map is shown the location of the sediment tanks, sludge beds, sprinkling filters which make up the sewage disposal works. The acreage actually occupied by the structures built was 6.68 acres. In addition there is shown an area of 4.72 acres which included the site for additional further sprinkling filters which had been excavated as a "borrow pit" for the construction of the existing structures (Case, 1916 assessment, p. 14, lines 22-40). There is shown a further area of 2.97 acres which was occupied by the road extending from the highway to the disposal plant, and a fourth area of .78 acres to be occupied by a four-inch water line extending into the structures (Case, 1916 assessment, p. 15, lines 10-20). There is also shown the farm buildings covering about 2 acres (Case, 1916 assessment, p. 16, line 18). There is also shown the 42-inch trunk sewer leading from the municipalities to the works, and the 42-inch effluent outfall sewer from the works to the brook.

It appeared that owing to the increasing population of the municipalities in question, the present plant would likely have to be enlarged within the next five years (Case, 1916 assessment, p. 44, lines 1-40). It also appeared that in the operation of such plants, provision must be made for the disposal of the dried sludge, which could be accomplished most conveniently and economically by spreading the same over the land adjacent to the sewage disposal plant (Case, 1916 assessment, p. 16, lines 38-40; p. 17, lines 1-10; p. 35, lines 1-4; p. 40, lines 10-21). It further appeared that in the operation of such plants it is advisable and the municipalities contemplated having a resident superintendent at the plant and to keep a team of horses to use in connection with the operation thereof in removing the sludge from the beds and

disposing of it by spreading it over the adjoining land (Case, 1916 assessment, p. 34, lines 33-40; p. 35, lines 1-4; p. 56, lines 38-40; p. 58, lines 1-18). The farm buildings were acquired for these purposes. On both May 20th, 1915, and May 20th, 1916, these buildings were occupied by Mr. Fitch, who had the privilege, upon payment of \$200 per year, to farm such of the land as was not necessary for the uses of the joint sewage project (Case, 1915 assessment, p. 7, lines 15-20; 1915 assessment, p. 41). Mr. Fitch was a caretaker for the Joint Meeting and watched the plant and construction work (Case, 1916 assessment, p. 16, lines 30-40).

The engineers produced by both sides agreed that a plant of the character in question should be properly isolated, and that the Darling Farm, taken as a whole, was of no greater area than was reasonably necessary for this purpose (Case, 1916 assessment, p. 19, lines 1-20; p. 28, lines 13-17). The expert produced by the Borough of Middlesex testified on this point as follows:

“Q. What is the general practice with respect to acquiring land for sewage disposal plants?”

A. I think you might generally say it is considered wise to obtain property which will allow of the isolation of land so that no offensive odors will be carried out of the property or so that the plant itself will not prove an eye-sore to passers by” (Case, 1916 assessment, p. 70, lines 18-25).

Referring to Exhibit P-5 (Case, 1916 assessment, p. 116), he said:

“The sprinkling filters, which themselves are probably the greatest factor of nuisance production, are located on this map substantially in the centre of the plot. In endeavors to guard against nuisances through the carrying of odors from the disposal plant to prop-

erty outside the boundary lines, I don't believe that the isolation is any too great" (Case, 1916 assessment, p. 73).

* * * * *

"By Mr. Jess:

"Q. * * * Suppose you were at this time retained by this Joint Meeting to recommend the site for this sewage disposal plant, and you were asked to take into consideration all of the factors that you would consider as an engineer, both as to the actual physical use of the land, the reasonable provision for development of the plant, with the growth of population, and all other conditions that you would take into account as an engineer, are you prepared to say what, in your judgment, or what you would recommend as the proper size or the proper area of land to be devoted to this purpose?

A. Well, you see, to answer that question I have to assume that you mean that this site must be used.

Q. Yes, sir.

A. That this type of plant must be used?

Q. Yes, sir.

A. And all other conditions are as they now exist?

Q. Yes, sir.

A. Well, there is no other answer than that for the sake of isolation you must put this plant in the middle of a pretty large piece of property, at least as large as the Darling Farm" (Case, 1916 assessment, pp. 75-6, lines 1-12).

For the year 1915 the Borough of Middlesex assessed the property at a total valuation of \$38,700., made up as follows: 90 acres of land at \$300 per acre, \$27,000; improvements, \$11,700., of which \$3,000 was assessed upon the farm buildings and \$8,700 on the sewage disposal plant in course of construction (Case, 1915 assessment, p. 31, lines 1-30). The Middlesex County Board of Taxation affirmed the assessment, and on appeal to the State

Board it adjudged and decreed that as to the assessment on the land 3 acres should be exempted therefrom and the total assessment reduced from \$27,000 to \$26,089.90, and the assessment of \$11,700 on improvements be cancelled (Case, 1915 assessment, p. 36).

In the year 1916, the Borough of Middlesex assessed the property at a total valuation of \$77,000, made up as follows: 90 acres of land, \$27,000; improvements, \$50,000, of which \$3,000 was assessed upon the farm buildings and the balance against the sewage disposal plant in course of construction (Case, 1916 assessment, p. 59, lines 30-40). The Middlesex County Board of Taxation affirmed the assessment, and on appeal to the State Board it adjudged and decreed that as to the assessment on land, 5½ acres should be exempted therefrom and the total assessment reduced from \$27,000 to \$25,331.40, and that the assessment of \$50,000 on improvements be cancelled (Case, 1916 assessment, p. 83).

The State Board filed no opinion on the 1916 appeal, but stated at the hearing that the facts which were found and the law which was announced on the 1915 appeal would be controlling on the 1916 appeal (Case, 1916 assessment, p. 6, line 22). In each case it confined the exemption to the land absolutely within the area of the sewage disposal beds and allowed no exemption for land acquired for any other use. It allowed nothing for slopes and embankments to hold the side of the structures in place; nothing for sludge disposal; nothing for roadways and pipe lines or for curtilage to the superintendent's dwelling place, and nothing for enlargements. As to the isolation of the plant, it said:

“The reason assigned for the purchase of so large a tract was that it was thought well to isolate the plant and thus remove objections

from adjoining land owners. This does not in our view constitute a public use" (Case, 1915 assessment, p. 34, lines 30-34).

Neither of the parties were satisfied with the judgment of the State Board of Taxes and Assessment. Both obtained writs of *certiorari* to review the Board's finding. The Supreme Court, in disposing of the case, said:

"The argument of the Borough of Middlesex seems to be that because the sewage plant cannot be used by all the people in the state, but only by a portion, it is not a public use. We think the statement of the proposition is a sufficient indication of its unsoundness.

"This is all that is urged by the Borough of Middlesex, but if it be necessary to go beyond this we are of opinion that the acquisition of this tract of land was necessary and reasonable for the public use intended. The actual occupation of a portion of the land by the disposal works is not the measure of public use. It was necessary to have a considerable tract of land to provide increased facilities to dispose of the refuse matter, and, as we think, very necessary to properly provide for its isolation so as not to become a nuisance in the neighborhood."

The judgment of the Court below should be affirmed.

The Tax Act of 1903 (Sec. 3, Comp. Stat. Vol. 4, p. 5078) provides:

"3. Property Exempt. The following property shall be exempt from taxation under this act, namely.

* * *

"(2). The property of the United States and the State of New Jersey, and of the respective counties, school districts and taxing districts, when used for public purposes, but this exemption shall not include public property

paid in for debts, or on foreclosure of mortgages given to secure loans out of public funds, or out of money in court, which property shall be taxed unless devoted to public uses."

In 1906 (P. L. 1906, p. 273) this act was supplemented as follows:

"All lands, the property of any county and all lands, the property of any taxing district, which are situated within the limits of any other taxing district, shall be subject to taxation by the taxing district within which such lands are situated at the true value of such lands without regard to any buildings or other improvements on such lands notwithstanding any exemption provided for in the act to which this is a supplement."

The constitutionality of this latter act was immediately tested in the courts, and the Court of Errors held that the classification of property used in the act was in contravention of the Constitution, and the act therefore void. *Essex County Park Commission v. West Orange*, 77 N. J. L. 575.

In 1907 (P. L. 1907, p. 534, Comp. Stat. Vol. 4, p. 5084) the act was amended to read as follows:

"All lands, the property of any county, *which are situated within the limits of any other county*, and all lands, the property of any taxing district which are situated within the limits of any other taxing district, shall be subject to taxation by the taxing district within which such lands are situated at the true value of such lands without regard to any buildings or other improvements on such lands, notwithstanding any exemption provided for in the act to which this is a supplement."

The only change the amendment made in the act of 1906 was the addition of the words which are italicized above. The amendment did not in any way eliminate the unconstitutional classification of

property used in the act of 1906, and consequently for the same reason that the act of 1906 was held unconstitutional, the act, as amended in 1907, is also unconstitutional. See *Borough of Secaucus v. Huber*, 87 N. J. L. 464.

The law applicable to the situation under discussion, therefore, is the act of 1903, which expressly exempts from taxation lands of taxing districts (including cities and boroughs) "when used for public purposes". If, therefore, the Darling Farm on May 20, 1915, and May 20, 1916, was being used for public purposes, it was exempt from taxation, and the present assessment should be set aside.

The Borough of Middlesex in its endeavor to sustain the assessment may rely upon the case of *Institute of Holy Angels v. Fort Lee*, 80 N. J. L. 545, in which it was held that where a building in course of erection, although intended to be used for religious purposes, but which is not yet actually used therefor, is not exempt from taxation. But such cases, we submit, have no application to the present situation. They arise under the exemption clause concerning property used for charitable purposes which exempts only buildings *actually* and *exclusively* used for particular purposes when *owned by corporations of this state* authorized to carry on such charities, and the land whereon the same are situated necessary to the fair use and enjoyment thereof not exceeding five acres in extent for each (Comp. Stat. Vol. 4, p. 5079, Sec. 4; P. L. 1913, p. 570).

The words "actually and exclusively" were inserted in the clause concerning property used for charitable purposes for the express purpose of removing the doubt which previously existed as to the taxability of property held by charitable organizations prior to its actual use for such purposes.

In *Institute of Holy Angels v. Fort Lee*, 80 N. J.

L. 545, the Court, in speaking of *Presbyterian Board v. Fisher*, 68 N. J. L. 143, said:

“The doubt suggested in that case as to the taxability of property where preparations were making before or at the time of the assessment to appropriate and use the property for the charitable purpose is removed by the change in the language of the act and the insertion of the words ‘actually used.’”

In the clause under consideration these words, “actually and exclusively”, have never been inserted, which, in itself, demonstrates that the legislature intended that a different rule should be applied in such cases. In fact, at the time the act of 1903 was passed, there had been repeated decisions of the courts to the effect that as to private corporations, the legal implication is in favor of the tax, and exemptions are construed accordingly, while as to public corporations, the legal implication is the opposite.

As was stated in *Camden County v. Washington Township* (1897), 60 N. J. L. 367:

“Decisions limiting general words of exemption in charters of private corporations to such property as may lawfully be held for charter purposes are not authority for the defendant’s contention. In such cases the legal implication is in favor of the power to tax, while, as against municipal corporations, the legal implication is the other way. As to individuals or private corporations, there must be express words to exempt; as to public corporations there must be express words to tax.”

And again in *Newark v. Belleville* (1898), 61 N. J. L. 455, at page 457, the Court said:

“In *Newark v. Verona Township*, 30 *Id.* 94, there was a public use and the property was held exempt. Other cases cited relate to property held by railroad and other private corpo-

rations, and are therefore not applicable. As to such corporations the legal implication is in favor of the tax and exemptions are construed accordingly, while as to public corporations the legal implication is the opposite."

It is fundamental that in the absence of express words to the contrary, public property of the various instrumentalities of government, including cities and boroughs, when used for public purposes, is not subject to taxation. The immunity rests upon the most fundamental principles of government, being necessary in order that the functions of government be not unduly impeded and that the government be not forced into the inconsistency of taxing itself in order to raise money to pay over to itself. *A. & E. of Law*, Vol. 12, pp. 367-9.

In this state the legislature under the acts of 1846, 1866, and 1894 (P. L. 1894, p. 351; Gen. Stat., p. 3320, Sec. 200) went so far as to exempt from taxation the property of counties, townships, cities and boroughs of this state even though not used for public purposes. *Newark v. Belleville*, 61 N. J. L. 455.

When the law was changed in 1903 so as to exempt property only when used for public purposes, the legislature intended and did, in fact, merely restore the common law rule of exemption of public property from taxation "when used for public purposes".

In *Trustees of Public Schools v. City of Trenton*, 30 N. J. E. 667, at page 681, Justice Depue, speaking for the Court of Errors and Appeals, said:

"Inasmuch as taxation of public property would necessarily involve other taxation for the payment of the taxes so laid, and thus the public would be taxing itself in order to raise money to pay over to itself, the inference of law is that the general language of statutes

prescribing the property which shall be taxable, is not applicable to the property of the state or its municipalities. Such property is, therefore, by implication, excluded from the operation of laws imposing taxation, unless there is a clear expression of intent to include it. *Cooley on Taxation*, 131. Hence crown lands and the property of the state, or its political sub-divisions, are not taxable under general statutes providing for taxation. *Att'y Gen. v. Morris*, 2 M. & W. 159; *Mersey Docks v. Cameron*, 11 H. of L. Cas. 443; *Inhabitants, &c., v. County Com'rs*, 4 Gray 500; *Worcester County v. Worcester*, 116 Mass. 193; *State v. Gaffney*, 5 Vr. 131. Under the general tax law of this state, public property, whether belonging to the state or its subordinate political divisions, such as counties, cities, towns and townships, is not liable to taxation."

The defendants may contend that the present case is distinguishable because of the fact that the property is located in a municipality other than the one by which it is owned. In *Perth Amboy v. Barker*, 74 N. J. L. 127, the court, upon this point, said:

"Nor do we see any force in the argument that under the Tax Law (1903) the exemption only extends to lands located within the bounds of the municipality that owns them. If this were the extent of the exemption it would have a very narrow limit, for so far as the taxes laid by such municipality itself are concerned the exemption would be of no practical benefit; any taxes laid by it upon its own property would be paid out of its own treasury and returned into the same treasury. We think the main purpose of the exemption clause is to exonerate property owned by one municipality or taxing district from taxation at the hands of another of these governmental agencies."

See also *Essex County Park Comrs. v. West Orange*, 77 N. J. L. 575.

Also, there is nothing whatever in the argument that land used for a municipal sewage disposal plant is not used for a public purpose. The same point was made in connection with land used for a municipal water system in the case of *Perth Amboy v. Barker*, just cited. The court on this point said:

"The first tract, called ten acres in the assessment, but comprising in fact only five acres, is that whereon is situate the main pump works of the public water supply system of Perth Amboy, by means whereof water from a pond nearby, and occasionally the water from certain artesian wells that are located upon another part of the five acres, is driven to the city. This tract we find, as matter of fact, was used for public purposes, if the water works themselves constitute 'public purposes', within the meaning of the Tax Law. It was used for the maintenance and operation of the water-supply system. The dwellings were and are likewise devoted to the same public purpose, they being occupied by the engineers and other employes engaged upon the water works; the same is true of the power-house and sheds.

"It is argued that the 'public purposes' contemplated in the Tax Law are only governmental purposes, strictly so called, and not such as are carried on for the mere convenience of the people of a municipality or to supply some personal need, such as water, light or the like. This, we think, is too narrow a view of the exemption clause, our opinion being that the furnishing of a general water-supply, when authorized by statute (as admittedly it is in the present case) is authorized because it is a public purpose, and that land held and used for such a purpose is within the exemption."

The disposal of sewage, as well as a general water supply, when authorized by statute (as admittedly it is in the present case) is authorized be-

cause it is a public purpose, and property held and used for such a purpose is, we submit, clearly within the exemption.

The State Board relied upon this same case in refusing exemption to that portion of the land not actually occupied by the improvements. But in the *Perth Amboy Case*, while the land had been purchased for a water supply, it has never been used for any purpose only temporarily, and that use was some time prior to the assessment date. It was not being used at all on the date of the assessment in question. The public purpose for which it was acquired had been abandoned, whereas here the land was purchased for a public purpose to which the municipalities owning it immediately thereafter began to devote it, and the project was well under way when the tax of 1915 was assessed, and almost completed when the tax of 1916 was assessed. It has since been completed and was actually put in operation on November 26, 1916 (Case, 1916 assessment, p. 41, lines 33-36).

In *State v. Gaffney*, 34 N. J. L. 131, the court expressly held that land purchased by Jersey City for a reservoir *five years before the assessment, but never used*, was exempt from taxation. The court said:

“It is true that the property was not in actual use when the assessment was made, but there was then no indication of any abandonment of the purpose to use it for a reservoir; on the contrary, it is clear that it was held for that necessary purpose, and without being used for any other. *Cook v. State*, 4 Vroom 474.”

Nor does the fact that at the time the assessments in question were made, the watchman, Mr. Fitch, was permitted at a nominal rental to farm the portion of the land not required for the physical location of the disposal plant or the construction work then going on, affect the present ques-

tion. Such use was merely incidental to the public use, and the lands as a whole remained exempt from taxation.

Hackettstown v. Mount Olive, 63 N. J. L. 191.

In *Newark v. Verona Township*, 59 N. J. L. 94, the court held that lands in the Township of Verona purchased and held by the City of Newark for the purposes of the Newark City Home, being reasonably necessary for the proper seclusion and employment of the boys committed to it, are not taxable, and that the fact that a portion of it was farmed and the products sold did not take any part of it out of the exemption. The court said:

“Even in the absence of an express provision exempting the property of the state and its political subdivisions from taxation such property is by implication excluded from the operation of laws imposing taxation unless there is a clear expression of intention to include it. *Trustees v. City of Trenton*, 3 Stew. Eq. 667.

“In *State v. Gaffney, Collector*, 5 Vroom 131, it was declared by this court that under a provision exempting from taxation lands held by Jersey City for the construction of water works, real estate was exempt, although not in actual use for such purpose, if it was not held for speculation and was reasonably necessary to meet the increased and growing demand for water.

“In exemptions to railroad corporations, which are more strictly interpreted than those in favor of municipal corporations, the word ‘necessary’ does not mean ‘indispensable’, but embraces all things suitable and proper for carrying into execution the granted powers. *State v. Hancock*, 6 Vroom 537.

“The entire tract owned by the City of Newark consists of one hundred and three acres, of which, forty-four acres have been assessed by the township of Verona.

“The number of inmates in the ‘Home’ has

increased from one hundred and thirty, in 1880, to two hundred and fifty-eight in 1894.

"The case shows that these boys are employed in clearing up and cultivating these lands, and that the whole tract is necessary, in a legal sense, to the successful maintenance and operation of the institution, and in a short time they will be indispensably necessary if the number of inmates continue to increase in the ratio of the past.

"The fact that the garden products raised upon the premises in one year were more than sufficient for the supply of the 'Home' and that the city sold such excess to the amount of about \$100, does not affect the right to exemption. The lands are not held or used for the purpose of raising products for sale; the city cannot lawfully engage in the business of farming for profit, nor claim exemption for lands so used; that is not a public purpose. In this case the excess of production is merely incidental and therefore cannot impair the rights of the city in any respect.

"The case of *Newark v. Township of Clinton*, 20 Vroom 370, is relied upon to sustain the assessment.

"Upon the facts as they appeared in that case an assessment was properly imposed upon part of the lands of the city. The court found from the evidence in the case that only two acres had been practically set apart for burial of the dead, only one-half of which, up to the time of the assessment, a period of over ten years, had been used for that purpose. The remainder of the premises was used so as to derive pecuniary profit to the city therefrom.

"It must be remarked also, with reference to this case, that the exemption was put by the court upon that provision in the tax laws relating to cemeteries and not upon the clause exempting municipal property. Cemeteries owned by churches and private corporations are included in the former provision.

"The claim to exemption in this case may be rested upon a rule no more liberal than that applied to a railroad corporation in *State v. Haight, Receiver*, 6 Vroom 40. There, where

the railroad had not been completed, the immunity was extended to property not actually used for other purposes, which had been acquired as the means of carrying into effect the objects of the charter, and which was fairly within the plan of the work and necessary for the business of the company when its road was finished. To the like effect is *United New Jersey Railroad Co. v. Jersey City*, 28 Vroom 563."

See also *Camden County v. Washington Twp.*, 60 N. J. L. 367, affirmed by the Court of Errors and Appeals, 61 N. J. L. 695, where the court reviewed the cases of *State v. Gaffney*, and *Newark v. Verona Twp. supra*, and reaffirmed their undoubted applicability to the present case (60 N. J. L. 367, 370).

In fact, as in the case of *State v. Gaffney, supra*, the claim to exemption in this case may be rested upon a rule no more liberal than that applied to railroad companies in the cases of *State v. Haight, Receiver*, 35 N. J. L. 40, and *United New Jersey Railroad Company v. Jersey City*, 57 N. J. L. 563, reviewed in the case of *Newark v. Verona Twp. supra*.

As was said by Mr. Justice Depue, in *State, Morris & Essex RR. Co. pros. v. Jersey City*, 36 N. J. L. 56, 61:

"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."

Also, in *New Jersey Junction Railroad Co. v. Jersey City*, 63 N. J. L. 120, it was expressly held:

"Lands owned by a railroad company adjacent to the main right of way and reasonably

necessary or convenient for the purposes of a railway, or used incidentally for such purposes and not actually used for other purposes, are exempt from general taxation, and are only subject to the special taxation imposed by the state board of assessors. If the lands are of such reasonable quantities as may be fairly anticipated to meet the emergencies of railroad uses, it is subject only to state taxation, although it may not at the time be wholly devoted to such use or at the time absolutely necessary for such use, so long as it is not devoted to any other use or purpose."

The municipalities in question were under a duty to provide for the disposal of their sewage, and the act under which they acquired the property in question expressly authorized them to acquire such land as was necessary for this end, either within such municipalities, or any or either of them, or beyond the limits of any of the same (Chap. 112, P. L. 1910, p. 167, Sec. 9). The amount of land necessary for the purpose of the project in question was within their discretion. Undoubtedly they had a right to provide not only for their present but for their reasonably prospective needs due to increasing population and for the most economical disposition of the dry sludge from the sewage disposal beds. They likewise had a right to provide the facilities for the proper operation of the plant, including provision for a resident superintendent, who might watch it carefully, as well as proper isolation in order that it might not become a nuisance to property in the neighborhood. That the land acquired was no more than sufficient for these purposes is undisputed, having been testified to by both Mr. McClintock, an engineer of experience, who appeared on behalf of the Inhabitants of the City of Plainfield and the Boroughs of North Plainfield and

Dunellen, as well as by Mr. Johnson, also an engineer of repute, who appeared on behalf of the Borough of Middlesex (see pp. 6-7 of this brief).

Upon this issue the Supreme Court expressly found that the acquisition of the land in question "was necessary and reasonable for the public use intended" (Case, p. 122). This finding as to the quantity of land required being a finding of fact, is final, and will not be reviewed on appeal. *Yellow Pine Co. v. Board of Assessors*, 72 N. J. L. 182.

The Supreme Court's determination that the ascertained use is a public use, is the only question before this court. Upon this issue, for the reasons stated, we submit that the judgment of the Supreme Court should be affirmed, with costs.

LINDABURY, DEPUE & FAULKS,

Attorneys for the Inhabitants of the
City of Plainfield, The Borough of
North Plainfield and The Borough
of Dunellen.

J. EDWARD ASHMEAD,
Of Counsel.



MEMORANDUM

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MEMORANDUM

TO :