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WRIT OF ERROR.

(Returnable Jan. 22, 1912).

NEW JERSEY, ss.

[SEAL.] The State of New Jersey to the Circuit Court in and for the County of Hudson.

GREETING:

For as much as in the record and proceedings, and also in the giving of judgment in said plaint, which was in our said Circuit Court in and for the County of Hudson, between Michael J. Curley and Martin A. Adams, appellants and respondents, and The Mayor and Aldermen of Jersey City, respondent and and appellant, on proceedings on appeal, from an award of commissioners in condemnation proceedings, in a matter entitled "In the matter of the application of The Mayor and Aldermen of Jersey City, in the County of Hudson, to secure lands of Michael J. Curley and Martin A. Adams," manifest error hath intervened to the great damage of the said Michael J. Curley and Martin A. Adams, as is said; we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given and affirmed, you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching and concerning the same to our Judges of our Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, at Trenton, on the twenty-second day of January next, together with this writ, that the record and proceedings aforesaid being inspected we may cause to be done thereupon for correcting

that error what of right and according to law ought to be done.

WITNESS, Mahlon Pitney, Esquire, Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the second day of January, 1912.

S. D. DICKINSON,
Clerk.

COLLINS & CORBIN,
Attorneys.

RETURN.

The answer of William H. Speer, Esquire, Judge of the Circuit Court, holden in and for the County of Hudson and within named, the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I send to the Judges of our Supreme Court of Errors and Appeals in the last resort in all causes, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as within I am commanded.

WM. H. SPEER,
Judge.

NOTICE OF APPEAL.

(Filed June 16, 1911).

HUDSON COUNTY CIRCUIT COURT.

IN THE MATTER OF THE APPLICATION OF THE MAYOR AND ALDERMEN OF JERSEY CITY, IN THE COUNTY OF HUDSON, TO SECURE LANDS OF MICHAEL CURLEY AND MARTIN A. ADAMS.	*On Appeal from award on condemnation. Notice.*

To the Mayor and Aldermen of Jersey City:

Notice is hereby given that an appeal has been taken by Michael Curley and Martin A Adams, owners of the lands and property hereinafter described, to the Hudson County Circuit Court in and for the the County of Hudson, the County wherein the said lands and property are situate, from the award of John E. Muller, Robert A. Alberts and John J. Erwin, Commissioners appointed by Hon. Francis J. Swayze, Justice of the Supreme Court of the State of New Jersey, to examine and appraise certain lands and property of above named persons, described as follows:

All those tracts or parcels of land and premises situate in Jersey City, Hudson County, New Jersey, particularly described as follows:

Beginning at the corner formed by the intersection of the southwesterly line of Montgomery street with the southeasterly line of Cornelison avenue, and running thence (1) southwesterly along Cornelison avenue sixty-four (64) feet and four tenths (4/10) feet to the northeasterly line of land conveyed

by John J. Toffey, Sheriff, to Patrick Kiernan, by deed dated August 8th, 1881, and recorded in Book 361 of Deeds for Hudson County, page 579, &c.; thence (2) southeasterly along said northeasterly line of land conveyed to Kiernan as aforesaid two hundred and fifty feet more or less to the point of intersection of said last mentioned line with a line drawn parallel with Montgomery street and distant one hundred (100) feet southwesterly therefrom; thence returning to the place of beginning and running thence (3) southeasterly along Montgomery street two hundred and seventy five (275) feet to the most easterly corner of lot eleven (11) hereinafter mentioned; thence (4) southwesterly at right angles to Montgomery street along the division line between lots eleven and twelve a distance of one hundred (100) feet; thence (5) northwesterly parallel with Montgomery street to the termination of the second course above mentioned.

Said lots are known and designated as lots one (1) to eleven (11) inclusive in block twenty-one hundred and eighteeen (2118) on the Official Assessment Map of Jersey City, of 1894.

And that upon the 19th day of September, nineteen hundred and eleven, at ten o'clock in the forenoon, at the Court House in Jersey City, New Jersey, we shall apply to the Hudson County Circuit Court, or a Judge thereof, to frame the issue on said appeal and to fix a day for striking a jury and a day for the trial of the said appeal.

MICHAEL CURLEY,
MARTIN A. ADAMS,

By COLLINS & CORBIN,
Attorneys.

Dated June 12, 1911.

ORDER FRAMING ISSUE.

(Filed Sept. 23d, 1911).

Michael Curley and Martin A. Adams, having given notice of appeal from the award of John E. Muller, Robert A. Alberts and John J. Erwin, Commissioners appointed by the Honorable Francis J. Swayze, Justice of the Supreme Court of the State of New Jersey, on the application of the Mayor and Aldermen of Jersey City, and the appellants having given notice of a motion to be heard at the Court House in Jersey City on Tuesday, the nineteenth day of September, nineteen hundred and eleven, to frame the issue on said appeal, and to fix a day for the striking of a jury and a day for the trial of said appeal, and counsel appearing for the respective parties, Messrs. Collins & Corbin appearing for the said Michael Curley and Martin A. Adams, and James J. Murphy appearing for the Mayor and Aldermen of Jersey City,

It is, on this nineteenth day of September, nineteen hundred and eleven, on motion of Collins & Corbin, attorneys for the appellants, ordered, that Friday, the twenty-seventh day of October, nineteen hundred and eleven, at ten oclock in the forenoon, be, and the same hereby is, fixed as the time for hearing the said appeal before the Hudson County Circuit Court, at the Court House in Jersey City, New Jersey, and

It is further ordered, that the issue for the trial of the controversy between the parties is hereby framed and the issue is what is the amount which the Mayor and Aldermen of Jersey City should pay the said Michael Curley and Martin A Adams, the owners and persons interested in the lands described in the petition before the commissioners in con-

demnation, annexed to and filed with their report, for the lands and property therein necessary and required to be taken by said Mayor and Aldermen of Jersey City, and also for the damages to be sustained by the said owners and persons interested, in consequence of the taking and occupancy thereof by the said Mayor and Aldermen of Jersey City in the premises, and

It is further ordered, that a jury be struck for the trial of said appeal on Friday, the thirteenth day of October, nineteen hundred and eleven, at ten o'clock in the forenoon, before the Circuit Court of the County of Hudson, at the Court House in the city of Jersey City aforesaid, and

It is further ordered, that a view of the premises and property be had.

WILLIAM H. SPEER,
Judge.

ORDER FRAMING ISSUE.

(Filed Sept. 23d, 1911).

Michael Curley and Martin A. Adams, having given notice of appeal from the award of John E. Muller, Robert A. Alberts and John J. Erwin, Commissioners appointed by the Honorable Francis J. Swayze, Justice of the Supreme Court of the State of New Jersey, on the application of the Mayor and Aldermen of Jersey City, and the appellants having given notice of a motion to be heard at the Court House in Jersey City on Tuesday, the nineteenth day of September, nineteen hundred and eleven, to frame the issue on said appeal, and to fix a day for the striking of a jury and a day for the trial of said appeal, and counsel appearing for the respective parties, Messrs. Collins & Corbin appearing for the said Michael Curley and Martin A. Adams, and James J. Murphy appearing for the Mayor and Aldermen of Jersey City,

It is, on this nineteenth day of September, nineteen hundred and eleven, on motion of Collins & Corbin, attorneys for the appellants, ordered, that Friday, the twenty-seventh day of October, nineteen hundred and eleven, at ten oclock in the forenoon, be, and the same hereby is, fixed as the time for hearing the said appeal before the Hudson County Circuit Court, at the Court House in Jersey City, New Jersey, and

It is further ordered, that the issue for the trial of the controversy between the parties is hereby framed and the issue is what is the amount which the Mayor and Aldermen of Jersey City should pay the said Michael Curley and Martin A Adams, the owners and persons interested in the lands described in the petition before the commissioners in con-

HUDSON COUNTY CIRCUIT COURT.

MICHAEL J. CURLEY, *et al.*,

vs.

MAYOR AND ALDERMEN OF JERSEY CITY.

Tried Friday, October 27, 1911, before Judge Speer and a jury.

COLLINS and CORBIN for the Plaintiff.

JAMES J. MURPHY for the Defendant.

It is stipulated between counsel that a map used in several preceding trials may be used in this case.

Mr. Hobart opens to the jury.

WILLIAM H. BROWN, called and sworn on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Hobart.

Q. You are—

Mr. MURPHY—Qualifications admitted.

Mr. HOBART—We might just state—

Q. You are a real estate dealer of many years' experience in Jersey City? A. I am.

Q. How long? A. Twenty years.

Q. Are you connected with a number of companies that handle property in all parts of the city? A. Yes, sir.

Q. Have you made an appraisal of this property of Mr. Curley's on Cornelison avenue and Montgomery street? A. I have.

Q. How many city lots are there? A. Eleven.

Q. Will you state to the jury what your appraisal is and how you arrive at it, please? A. My appraisal for the eleven lots is $10,810. I arrive at that value by placing the full value of the lot on Montgomery street at $1,350. Some of these lots are irregular; or short in depth, and the rear line running off on an angle I have taken that into consideration and applied the Hoffman rule, which adds a greater percentage for the front of the lot than it does for the rear part.

Q. Explain a little more fully what the Hoffman rule is (you see this is another jury). A. The Hoffman rule is a standard which mostly all real estate men use on the division of a lot which is less than 100 feet, the basis being a lot 100 feet in depth and 25 feet in width. They have divided the lot in sections of 5 feet each, placing a value upon each section, the greater value being on the first five feet, and then it diminishes as it goes to the rear of the lot, the rear of the lot being less valuable than the front portion. I have struck an average depth for the entire eleven lots, which is 81 feet, and the Hoffman rule for 81 feet is 91 per cent. of the full value of the lot. These lots are peculiar, being below the grade of Montgomery street and obstructed by a stone wall. I have deducted one-third of the value of the $1,350 lot for the obstruction.

Q. Mr. Brown,—right there—is that where Montgomery street begins to rise towards the hill; is that the reason of the obstruction? A. From the lower end of this property the Montgomery street grade starts to rise up toward the hill. That would leave me $900; deducting $450, or a third less than the $1,350 lot; and 91 per cent. of $900, applying the Hoffman rule, would be $819 per lot as they run. There being eleven lots, at $819 would give

me $9,009. To this amount I have added plottage of 20 per cent.

Q. Explain what is meant by plottage. A. Plottage is an amount which is added to various holdings when they are separate and apart. People having to acquire more than one lot have to pay a greater price. Whether it is known or unknown that the same man is trying to acquire a great tract of land, he has to pay a higher price; so consequently we have to add a certain percentage, and I have taken twenty per cent.

Q. Is this plottage recognized amongst real estate dealers as a basis for estimating valuation? A. It is; and the plottage varies from five to fifty per cent. I have taken twenty per cent., which makes the total amount of my compilation for this plot $10,810.

Q. Now your, basic value for a full lot on Montgomery street was $1,350 in that neighborhood. Will you please explain a little more fully to the jury on what you base your opinion as to that value; that being the starting point, what is the basis for it? A. I compiled a schedule of lands on the exterior or outside of this park area and within two blocks of it—all of the sales that I could find. I found some fifteen sales within the last four years. Of those fifteen sales there are five with improvements, the balance is vacant land. I deducted the value of the improvements after appraising them and it left me for the naked land $92,100, and it left me 68 lots. I divided the total amount of the considerations for the naked land by the number of lots, which gave me $1,350 per lot.

Q. And are those sales all within the last three or four years? A. Those sales are all within the last four years; since 1906.

Q. And are they all in the neighborhood of this land? A. Within two blocks of this park site.

Cross examination by Mr. Murphy.

Q. You mean that those are sales that you have compiled, you got from the records of the Craven Company and other concerns? A. Yes, sir.

Q. And those are sales that you were not directly interested in yourself? A. Three of the sales I made personally; the balance I collected from the records of the Craven office.

Q. And in most of those sales there were buildings on the property? A. Five out of fifteen.

Q. And then in fixing the value you fixed the value of the building and then you fixed the land value and made your calculations accordingly? A. No; I appraised the land and fixed my land value.

Q. Oh, well, you had to separate them, didn't you? A. I had to separate them.

Mr. COLLINS—In those five cases.

Mr. MURPHY—Now, now; that is what we are getting at, Judge.

Q. You knew a piece of property cost $15,000, and if you wanted to get the land value you would fix the land value at so much, say $5,000, and the building at $10,000, wouldn't you? A. No; I would take into consideration the other vacant lands in that neighborhood and that would form in my mind an opinion as to what the land value should be.

Q. Yes? A. I would then look over the building and form an estimate as to the value of the building and I would add the two together and that would give me the total value of the property.

Q. Yes; so that when you were making up your land values upon which you base your opinion now you had to take into consideration the value of the buildings? A. I didn't have to take into consideration the value of the building when fixing my land value. I—

THE COURT—He did not ask you that.

(Question repeated by stenographer.)

THE COURT—You are right. You did ask him the wrong question, Mr. Murphy.

Mr. MURPHY—I withdraw that question.

Q. You did say that you arrived at this value of $1,350 by deducting the building values, didn't you? A. On the five pieces of property which were improved I said that I had taken into con—

Q. Yes or no? Did you?

Mr. COLLINS—Did he what?

THE COURT—That is a plain question. He can answer it yes or no.

A. Yes.

Q. Now, these lots are all on Montgomery street on the city map? A. All front on Montgomery street and have frontage also on Cornelison avenue.

Q. Now, when you made your values you considered these lots as Montgomery street lots? A. I did.

Q. Now, I notice according to the map that beginning at Cornelison avenue the first lot is No. 1, and then they run down, No. 1, 2, 3, 4 and so on, down to No. 11. Now, will you give me—first I want to ask you how far is this property at the corner of Cornelison avenue and Montgomery street below Montgomery street; how many feet, about? A. At the present time?

Q. No, as of the 31st of May. There have been some changes there? A. It was about 17 feet.

Q. Yes. Now, what do you fix the value of that lot No. 1? A. I do not fix any value on number one.

Q. I am asking you now on what you fix the value of lot No. 1, fronting on Montgomery street and Cornelison avenue.

Mr. COLLINS—I submit that that is not a proper question. The witness did not fix the values in that way. He has described how he fixed the value of the whole plot and the method of doing it. Now, to ask him what he put on Number 1 itself is not proper cross-examination, because he did not do it that way.

Mr. MURPHY—I will ask him this question:

Q. What is the value of lot No. 1? A. I did not compile it that way. I took the lots as a whole.

Q. Can you tell me what the value of lot Number 1 is? A. No, sir.

Q. Can you tell me what the value of lot Number 2 is? A. No, sir.

Q. Can you tell me what the value of any of those lots are separately? A. No, sir.

Q. Then I understand—would it make any difference in the figures you have given us if you knew that that corner lot was 24 feet below Montgomery street instead of 17 feet? A. It would not.

Q. Not a particle of difference? A. No, sir.

Q. Would it make any difference if you knew that Jersey City bought this property (indicating on map) for park purposes for $738 a lot? A. None whatever.

Q. Have no bearing on your judgment at all? A. No, sir.

Q. It adjoins the property, doesn't it? A. It does.

Q. It is higher than the property in question, that is, it is nearer the level of Montgomery street than the Curley property? A. It is.

Q. It is better property, isn't it? A. Yes.

Q. And yet it would have no bearing on your judgment if you knew that Jersey City bought this property for park purposes for $738 a lot, and this property adjoins the property in question? A. It would not.

Re-direct examination by Mr. Hobart.

Q. Why not? A. As I have stated, my compilation was taken from areas outside of the park.

Q. Why didn't you include anything in the park line? A. Why, in my past experience I have always evaded and kept away from the land in question, and that was taught me in Judge Parker's Court some years ago, that the land under consideration was not good testimony, and I have kept away from it.

Q. So you have not included in these 15 lots any land that was purchased by the city for the same park? A. I have not.

Q. Now, if the city did get some lots adjoining that at the rate of $738 a lot, do you think it was worth that or more than that? A. I think it was worth more; I think the city got a bargain.

Q. Now, reference has been made to that corner lot on the corner of Cornelison avenue and Montgomery street which is below the level of Montgomery street. How about Cornelison avenue; is it on the same level as Cornelison avenue? A. It is about the same level as Cornelison avenue.

Q. So there is access to it from Cornelison avenue? A. There are two fronts to it, with access from both streets. Cornelison avenue is much less than Montgomery street, and I am giving this property the value of fronting on Montgomery street.

Q. And making that deduction— A. For the obstruction to it.

Q. And your deduction is one-third of the total value for that reason? A. Yes, sir.

Q. Just one other question: Have you included in your schedule a recent sale to the Kohl Company? A. I have.

Q. Is that one of the most recent sales in that neighborhood? A. It is—Lehigh to Kohl.

Q. And where is that property located? A. That adjoins the railroad (indicates on map); four lots.

Q. Fronting on Montgomery street? A. Montgomery through to Mercer street.

Q. At what rate was that sold? A. That was at the rate of $1,500 a lot.

Mr. MURPHY—How much? Fifteen hundred?

THE WITNESS—Yes.

Q. Of course that was for full lots? A. That was four full lots.

Q. And have you also included a very recent sale to the Joseph Dixon Crucible Company in that neighborhood? A. I have.

Q. What property is that? A. That sale is Tuite to Dixon, four lots at $9,000.

Mr. COLLINS—Show those.

Q. Do you know where those are located? (Witness indicates on map.) A. Here; there was a

small shanty on there and I looked at the shed at the time of the sale and had a talk with Mr. Keeley, a competent builder, and we concluded that the price of that building was $600.

Mr. MURPHY—I object and ask that it be stricken out.

THE COURT—It may be stricken out. That and what you said about Judge Parker's Court you were not asked.

Q. Well, there was an old shed there? A. There was.

Q. And the property was sold for $9,000 for the four lots including the shed? A. Yes, sir.

Q. State on the record where that property was located. Just name the streets. You pointed it out on the map. I want to get it on the record. A. It is about 285 Mercer street, running through to Wayne street.

Mr. COLLINS—Between what streets?

A. West of Merseles street.

Q. And that of course was also for full lots? A. Yes, sir.

Re-cross examination by Mr. Murphy.

Q. That Tuite sale was to the Dixon Crucible Works, you say? A. Yes, sir.

Q. And the Dixon Crucible Works had the property alongside of them? A. Abutting it.

Q. And the first sale you mentioned; what was that? A. That was Lehigh Valley to Kohl.

Q. And that has railroad connections? A. It can have them, but it hasn't.

Q. It is right alongside of the railroad? A. Yes, sir.

Q. And this Tuite sale you speak of, that property fronted on two streets, Mercer and Wayne? A. It did.

Q. Both improved? A. Yes, sir.

Q. And this property was on a level with the street? A. It was.

Q. Do you think that that is as good a comparison—first, how many blocks away is it from this property under discussion? A. About three.

Q. Three blocks. Now, do you think that that is as good a criterion to go by when you consider that they are improved streets fronting on two streets and the property is on a level with the streets, as it is to compare it with the property alongside of the property in question? A. I do.

By the Court.

Q. Why? A. Using it with my schedule in compiling—

Q. Never mind your schedule. Why is it as good a comparison? A. Montgomery street is improved, has a car line and is really more accessible than this property because it is two blocks off the car line.

Q. And is that the only reason? A. And using it in my schedule, and that is the only way that I have compiled my schedule, with this piece of property in it, and that being one of the elements of value.

Q. But you don't need your schedule to compare two pieces of property, do you? No answer.

Q. If you know that they are there and the advantages are right in front of your face and you see all there is about it, what do you want a schedule for? A. There is only one thing that I can see, that that property is much more advantageous because it has got a railroad siding, that's all.

Q. Well, that is one thing? A. Yes.

Q. And the other hasn't, has it? A. No, sir.

Q. Then the reasons you have given are the only reasons that influence you? A. Yes, sir.

Mr. COLLINS—May I ask a question, instead of whispering it and having it asked through Mr. Hobart?

THE COURT—Yes.

By Mr. Collins.

Q. The Kohl lots, are they, or not, meadow lots? A. They are meadow lots filled in.

Q. And how about the Tuite? A. They are meadow lots filled in.

Q. Do you know where the meadow line is across the property in question, whether any part of this is upland or where the meadow line runs? A. No; I don't know that.

EDWARD F. DALY, called and sworn on behalf of the plaintiff, testified as follows:

Mr. MURPHY—The qualifications of this witness are admitted.

Direct examination by Mr. Hobart.

Q. You are a real estate dealer of many years' experience in Jersey City? A. Yes, sir.

Q. How many years? A. About 35.

Q. Have you examined this property of Mr. Curley on Montgomery street and Cornelison avenue? A. I have visited the property, yes.

Q. And have you made an appraisal of what it is worth in your opinion? A. Yes, sir.

Q. State what your appraisal of the land is? A. About $13,500.

Q. Will you state to the jury how you arrive at that appraisement? A. The lots are irregular.

A. A little louder. A. The lots are irregular and I put a plottage on, making 22,550 feet at 60 cents a foot.

Q. You took it on the basis of so much a square foot? A. A square foot, the same as in the Kohmatter.

Q. That is the sale from Lehigh Valley to the Kohl Company? A. Yes, sir.

Q. Referred to by Mr. Brown? A. Yes, sir.

Cross-examination by Mr. Murphy.

Q. You testified in this case before the commissioners below, didn't you? A. Yes, sir.

Q. And did you testify there that the value of this property was $13,750? A. I think thereabouts.

Q. Well, what is the difference now? A. Well, I have got the number of square feet now, and at that time perhaps I didn't have it.

Q. Well, then, what did you base your valuations on then? A. Sixty cents a square foot.

Q. Did you have the number of square feet at that time? A. Not exactly, but now I have them.

Q. You are sure there is no doubt about this? A. I am certain about this.

Q. Where did you get yonr square feet this time? A. Averaging it up.

Q. Where did you get it from? A. From the map.

Q. And how many square feet do you find? A. About 22,550.

Q. Suppose you knew there was only 20,000 square feet there; would that have any effect on your values? A. That would have an effect of 60 cents a square foot.

Q. Where did you get your square feet when you

testified before the commission below? A. I think it was from this map (indicating), this diagram.

Q. Was the map right then or is the map right now? A. I have looked at the map since that time.

Q. Didn't you look at it that time? A. No, sir.

Q. Then where did you get your figures when you testified below? A. From our small map in the office. Now, since that time I have got it from the City Hall.

Q. Oh, I see. Now did you figure how much a lot is worth? Take No. 1, for instance, at the corner of Cornelison avenue? A. I haven't got the exact size of it.

Q. Well, we will give it to you. That corner lot is 25 feet front on Montgomery street and 64 feet deep; how much is it worih as a lot? A. 25 by 64?

Q. Yes. A. Is it wider in the rear than it is in the front?

Q. Yes; it is wider in the rear; 35 feet in the rear and 25 feet in the front and 64 feet along Corneilson avenue. Can't you give me the value excepting figuring on 60 cents a square foot? Can't you give me the value as a lot? A. If you give me the exact number of feet in it, yes, I can. Sixty cents a square foot.

Q. Now, you have figured the value of this property as so much a square foot? A. So much a square foot.

Q. So that if a lot is 75 feet deep and another one 100, why, you have just applied the same rule, have you? A. Same rule.

Q. So that it doesn't make any difference as to the depth of a lot; your figures are based on so much a square foot? A. So much a square foot.

Q. You have not taken into consideration that there was a corner there? A. No.

Q. Isn't it a rule among real estate men that $\frac{1}{3}$ is

always added for a corner? A. Well, it is where it is accessible, but not there; that faces Montgomery street.

Q. This is not accessible at all, is it? A. Not as a corner.

Q. Now, how many feet is it below Montgomery Street? A. Oh, I should judge about 18 feet.

Q. How much? A. 18 feet.

Q. And suppose you knew it was 24 feet, would that have any effect on your judgment? A. No, sir.

Q. Not a bit? A. No, sir.

Q. You know the property known as the Vanderbeek property, don't you? A. Yes, yes.

Q. And shown here as green on the map (indicating)? A. Certainly.

Q. You made an apprisement of that property for the Vanderbeeks April 15th, 1910, didn't you? A. Yes.

Mr. COLLINS—That is not the only property that is green.

Mr. MURPHY—In Block 2135—no, 2119—that is upside down.

Mr. RYER—2129.

Mr. MURPHY—Oh! 2129.

Q. You made an appraisement for the Vanderbeeks of that property on April 15th, 1910? A. About that time.

Q. Yes; didn't you appraise the Montgomery street lots where I have my finger at $800 a piece? A. I think about that.

Q. Didn't you appraise the property at the corner of Montgomery street and Merceles street at a thousand dollars, the corner? A. Yes, sir.

Q. And the inside lots at $800? A. Yes.

Q. And this property is almost level with Montgomery street, isn't it? A. Some of it and some above.

Q. Do you say that this property, the property in question, known as the Curley property, is more valuable than the property known as the Vanderbeek property in Block 2129? A. You must understand it is not—

Q. Answer that question. Which do you think is the more valuable property, the property known as the Curley property or the property known as the Vanderbeek in Block 2129? A. For factory purposes I would say the Curley.

Q. I don't care for what purpose. Which is the more valuable? A. Well, the Vanderbeek might be a little more.

Q. How much more? A. Well, about—

Q. The Vanderbeek property is on the street, isn't it? A. Yes, some of it is above.

Q. It is on the corner? A. Yes, you have to excavate there, and above you wouldn't have to excavate.

Q. But you would have to fill in? A. No; you could build a cellar there without excavating.

Q. But there is a wall on Montgomery street there, isn't there? A. Yes.

Q. And you are about 21 feet below Montgomery street? A. But you would not have to dig up there for a cellar. You have got your cellars already made.

Q. What would you do, run your cellar out from the wall on Montgomery street? A. No, on the lower tract there and build up, the same as Henry Bryne did on the opposite side.

Q. Well, if you knew that Jersey City bought this property known as the Hoyt property, along-

side of that property in question, for $738 a lot, would it have any effect on your jugement? A. No.

Q. Why? A. Because it would not.

Q. Which do you think is the better property? A. I would just as soon have one as the other.

Q. Why? A. Because I would.

Q. Why? A. Simply my idea; that's all.

Q. Well, it would cost a great deal, wouldn't it, to fill up the property in there? A. You would not want to fill it up to Montgomery street.

Q. How far up would you fill? A. I wouldn't fill it at all; I would just leave it as it is; just pile in there and build on top.

Q. Would you put the piles up to Montgomery street? A. No; just for the foundation.

Q. Yes; then you would have about 20 feet of your building, wouldn't you, below the street—Montgomery street? A. Certainly.

Q. Would you consider that property where your building would be 20 feet below the street as valuable as where the building would be on the street? A. Well, I would just as leave have it as far as I am concerned.

Q. I am asking as to the question of value. A. I think it is just as good as the other.

Q. And the only reasons you say that are for the reasons you have given me; is that right? A. Well?

Q. And the Kohl sale is the sale on which you base you judgment? A. Sure.

Q. The sale to the city was made after the Kohl sale? A. I don't know; but the Kohl sale was made in—

Q. When was the Kohl sale made? A. In July.

Q. July of this year? A. Last year.

Q. July, 1910? A. Yes.

MR. HOBART—That's right.

Q. Suppose you knew the sale of the Hoyt property to the city was later than the Kohl sale, would that have any effect on your judgment? A. Not at all.

Q. Suppose you knew Jersey City bought that property in September, two months after the Kohl sale, would that have any effect on your judgment? A. Not at all.

Q. As I understand it, notwithstanding the fact that you have fixed the value of the Vanderbeek property at $800 a lot, and notwithstanding the fact that the Hoyt property was sold in September, for $738 a lot, they have absolutely no bearing on your judgment in this case because you base your judgment absolutely and entirely on the Kohl sale and nothing else? A. That's right.

By Mr. Hobart.

Q. You spoke of the corner lot about which Mr. Murphy asked you, as not being accessible from Montgomery street. Is it accessible from Cornelison avenue? A. Well, it abuts right on the foundation of the bridge there.

Q. Well, Cornelison avenue; is that on the same grade as that lot, or practically the same? A. About the same.

Q. Now, reference was made to this Hoyt sale. Do you happen to know where the Hoyts live? A. They live out in Pennsylvania, I understand.

Q. H'm! They don't live in town? A. No.

Q. Now, your appraisement for the Vanderbeek, to which Mr. Murphy has referred; was that made before the sale from the Lehigh Valley to Kohl? A. Yes.

Q. So at the time you made that appraisement

you did not have this recent sale to the Kohl Company to guide your judgement? A. No.

By Mr. Murphy.

Q. Nor you did not have the Hoyt sale, did you? A. I wouldn't say that.

Q. Well, the Kohl sale took place in July; the Hoyt sale took place in September; then you could not have had it. A. I guess I didn't have it.

Q. Don't you know whether or not you had the Hoyt sale when you took into consideration the appraisement of the Vanderbeek property? A. No, sir.

Q. You didn't have it? A. No sir; no, sir.

MICHAEL P. KEELEY, called and sworn on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Hobart.

(Qualifications admitted.)

Q. Are you familiar with this property of Mr. Curley's? A. Yes, sir.

Q. Before the city did any work on that property in connection with the new park did you make some soundings? A. Yes, sir.

Q. With a view to determining the amount of the fill? A. Yes, sir.

Q. And have you a memorandum showing what soundings you made? A. Yes, sir.

Q. And have you made an estimate of the amount of fill as it was before any work was done on it by the city? A. Yes.

Q. How much was it? A. I found—

Mr. MURPHY—I object. There is no evi-

dence here that the owner of this property has improved the property.

THE COURT—I suppose the object of this testimony is to show that property without fill was not as good as it was with it, and a certain amount of money has been spent upon it. Of course the fact that fill is there, if they had put a million dollars of fill on it, does not fix the value of it; it simply is one of the elements that the jury may take into consideration in determining the firmness of the foundation and all that sort of thing. But the value of the land is the market value. Whether the fill adds to or detracts from that, the jury will have to settle. It may be no value at all; it may be less value, but whether they put it there can be shown.

MR. MURPHY—There is no evidence to show that it was put there by the owner of this property, and my objection runs to this alone.

THE COURT—What difference does it make who put it there, as long as it is there?

MR. MURPHY—Then I make this point, that there is no evidence here as to the market value of this property as testified to by the experts. Now, testimony of this kind as to the fill there is simply confusing to the jury.

THE COURT—It will not confuse the jury this time, because I will take particular pains to tell them that it is absolutely incon-

sequential except as it may bear on the market value. However, there is this to be said about Mr. Murphy's contention, that it is the thinnest and most tenuous and attenuated kind of evidence that can by any possibility be brought forward as to market value of property.

Mr. COLLINS—At the same time it is legal evidence.

Mr. HOBART—It is important from another standpoint. We want to show what the situation was at the time.

THE COURT—I have shown you what I think about it, and you may put it in.

Q. How much was it? A. 11,300 cubic yards.

Q. Was that before the city had done any work there? A. Yes, sir.

Q. What is the value of the fill? A. Sixty cents a yard.

Q. Have you recently examined the property with a view to seeing the difference between its present condition and what it was at the time you made your previous examination before the city had done any work? A. Yes. sir.

Q. You may state or explain to the jury what that is, so they will understand it when they see it. A. There has been six thousand yards of stuff been removed off this property since.

Q. Does that change the level of it as compared with Montgomery street? A. Well, the grade here is below Montgomery street entirely, you know, but there has been six thousand yards removed since I took the soundings last May.

Q. From which part of the property have the six thousand yards been taken? A. The greater part

of it has been taken from lots five, six, seven, eight, nine, ten and eleven.

Q. That is the easterly end of the property? A. The easterly end of the property.

Q. Did you observe what the nature of the fill was that you found there? A. Mostly cellar dirt.

Q. Was there any stone? A. There was some stone.

Q. What lots was the stone on? A. About the centre lots; that would be about lots 4, 5, 6 and 7.

Q. Is that covered up now, do you know? A. There is some of them there, some of them exposed.

Q. What kind of stone was it, do you know? A. Large building stone, probably an average of 10 cubic feet to each stone.

By the Court.

Q. Do you know when that fill was put there? A. It has been put there from time to time.

Q. Well, I ask you if you know when. "From time to time" does not tell us anything at all. "From time to time" might have been at the time of the flood or some other time; but when? A. It has been put there within the last twenty years.

Q. Well, ten years ago or 12 years ago or six years ago; or how long? A. Well, it has not been —it has taken probably ten years to put that amount of fill there. It has not all been done at once.

Q. You don't know when it was put there, as a matter of fact? A. I have seen it go there, but it has taken a number of years to do it.

Q. It has taken a number of years? A. Yes.

Q. And when did you see it started? A. About twenty years ago.

By Mr. Hobart.

Q. Mr. Keeley, do you know where the line passes as between the meadow land and the upland; are you familiar with that? A. Well, do you mean by the map or do you mean by soundings?

Q. From your own knowledge? A. From my own knowledge it would vary about 100 to 150 feet east of Cornelison avenue surely, but the map shows it to be west of Cornelison avenue; shows a broken line.

Q. But based on your own soundings—A. I would say it is east of Cornelison avenue.

Q. About 100 to 150 feet? A. There is no meadow shows at the nearest point within 100 feet of Cornelison avenue.

Q. Then how many of these lots, about, would be upland? A. Well, I would not classify any of them as upland, because they have been all salt meadow at one time.

Q. Then, what did you mean by putting the line of the meadow land at 100 to 150 feet east of Cornelison avenue? A. The filling has gradually—by commencing at the street line the work of filling has pushed the meadow out, and in making soundings you can't find any meadow show, but the old map shows the meadow line in some cases to be west of Cornelison avenue, but the actual soundings show it to be east of Cornelison avenue.

Q. Now, one other question; have you seen that building on the land sold by Tuite to the Dixon Company? A. Yes, sir.

Q. You are a carpenter and builder yourself, are you not? A. Yes, sir.

Q. Have you examined that building? A. Yes, sir; I examined it about eighteen months ago.

Q. What was the occasion of your examining it?

A. I was retained by a company to buy that property.

Q. Some other company, not the Dixon Company? A. Not the Dixon Company.

Q. What is your estimate of how much that old shanty is worth? A. I appraised the shanty and the fences at $600.

Cross examination by Mr. Murphy.

Q. Do you know where the Sofield property is, across the street on Cornelison avenue? A. Yes, sir; on the southeast corner.

Q. Across the way from this property in question? A. Yes.

Q. Do you know how far Mr. Sofield had to go down there to get solid bottom or rock? A. Well, I don't know the soundings for Mr. Sofield, but I did on the north side of Montgomery street for Mr. Byrne. I put in work there; we only had to go down about ten feet.

Q. What would you say if you knew Mr. Sofield had to go down 17 feet on this corner? A. I would be from Missouri in that case.

Q. What?

Mr. COLLINS—He would be "from Missouri;" you have got to "show him."

A. I would be from Missouri.

Q. Suppose you knew Mr. Sofield had 17 feet on Cornelison avenue here; would it have any effect on your judgment as to what was the meadow line on the property there? A. No, I wouldn't take it, because I would take my own soundings. I would not be governed by that.

Q. Now you were familiar with this property on the 31st of May, weren't you? A. Yes, sir; that was the time I—

Q. Is that (indicating a photograph) the way that property looked on the 31st of May? A. That is about the way it was, yes.

Q. Now, you say there was some filling taken out of the lots near Cordelison avenue? A. Yes, sir.

Q. And was there some filling put in the lots next to the Hoyt property? A. That may be. I—

Q. I mean by the Park Commission? A. Lots 12 and 13.

Q. This right here (indicating)? A. Yes.

Q. How much filling has been put in there?

Mr. MURPHY—It is my idea. I want the jury to know the property just about as it was at that time.

Mr. HOBART—Of course.

Q. How much filling is in there now? A. There is none being put there.

Q. I mean by the city. A. None.

Q. There is no filling here (indicating) at all? A. There is none being put in there. There has been filling taken off there.

Q. Where has the filling been put in by the city on that property? A. None on that property.

Q. None on this properry at all? A. No, sir; it has been all removed from there.

Mr. HOBART—It has been taken away.

Q. Will you say that this property (indicating on photograph) this Curley property is not filled in up as high as this pipe, this water hydrant, since the 31st of May, 1911? A. That it has not been filled in? You mean to ask me has the filling come out further on Cornelison avenue; is that what you mean?

Q. No; according to that picture now that water hydrant there is three or four feet above the street . A. This is a picture. Now, where do you want to locate? This water pipe is located on the curb line.

THE COURT—Listen to the question.

Q. Listen; listen. You see that water pipe there? A. That water hydrant, yes.

Q. Now, that is about three or four feet above the street level, isn't it? A. At that time.

Q. According to this picture? A. Yes.

Q. Now, will you say that this—that the earth there at that water pipe is not up to the top of that hydrant? A. At the present time?

Q. Yes. A. Yes, it is.

Q. You will see it is not? A. It is. It is. They come out to the building line; they come out to the curb line.

Q. Then what do you mean by saying that there has not been any soil put on this Curley property since May 31st? A. Any soil? They have taken off 600 yards off there.

Mr. HOBART—Six *thousand*.

A. I will give you every station there and where they have taken that off.

Mr. COLLINS—Does he mean six hundred?

Mr. HOBART—He means six thousand.

THE WITNESS—Six thousand, I mean.

Mr. COLLINS—They have taken off in some places and put on other places?

A. They haven't put any on in any place on this property; they have removed it off this property; they have put on on part of Mr. Kiernan's.

By Mr. Hobart.

Q. Is the Kiernan property—can you show it on the map so the jury will understand? A. This (indicating) is the Kiernan property, from this line to this.

Q. Yes; it immediately adjoins the Curley property on the south? A. It adjoins the Curley property from this point to this (indicating).

By Mr. Murphy.

Q. You say that as far as this hydrant is concerned, that the property to-day looks just the same as it does in that picture? A. No, no.

Q. Then what is the difference? A. It has been filled in here in the front. At the time that this picture—

Q. Wait a minute! What is being filled in here in the front? Is that on the Curley property? A. The filling that is being put in—

Q. Is that on the Curley property? A. No, no.

Q. Then where is it filled in if it is not on the Curley property? A. On the street.

Q. It is not any of it on the Curley property? A. No; it was taken off the Curley property.

Q. Then there is no fill on the Curley property at all at this section; that is there has been none put on there? A. No; it has been taken off.

PLAINTIFF RESTS.

DEFENDANT'S TESTIMONY.

THOMAS A. RYER, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Murphy.

Q. You are in the real estate business in Jersey City and have been for how long? A. Over ten years.

Q. Do you know this property known as the Curley property? A. I do.

Q. And will you tell us what you consider the value of that property as of the 31st of May, 1911? A. $5,700.

Q. And tell us how you arrive at that figure? A. I placed a value on lot 1, block 2,118.

Q. That is the corner of Cornelison avenue and Montgomery street? A. Corner of Cornelison avenue and Montgomery street, $500. Lot 2, $400. Lot 3, $400. Lot 4, $450. Lot 5, $450. Lot 6, $500. Lot 7, $500. Lot 8, $550. Lot 9, $600. Lot 10, $650. Lot 11, $700, making a total of $5,700.

Q. Have you made any allowance for plottage? A. I have.

Q. And your figure is what? A. $5,700.

Q. Did you have any sales you took into consideration when you made these values? A. I did.

Q. And what sales did you have? A. This property itself was sold—on April 28, 1908, lots Numbers 1 to 11, the property in question, was sold to Martin A. Adams for $4,400, an average price of $525 a lot.

By the Court.

Q. When was that? A. April 28, 1908.

Q. This same property that Mr. Curley now owns? A. This same property was purchased by

Martin A. Adams from Catherine J. Harrington for $4,400. There are not eleven full lots; there are 8.38 lots, which makes an average price for a full city lot of $525.

By Mr. Murphy.

Q. Have you finished your answer? A. No, I have not. After making the appraisement of this property I purchased from the Hoyt estate the adjoining lots, lots 12 to 23, on Montgomery street.

Mr. COLLINS—I would like to make the same point we did yesterday, in the other case. He is now about to give values of property within the park site.

THE COURT—Yes, and I haven't any doubt what the law is, that he has a perfect right to give it, and I will allow it. Where they are bought by open sale between the parties I think the law is perfectly settled in this State that he has the right.

Mr. COLLINS—My objection is that he has no right to give values of lands within the park site, which are a part of the general condemnation.

THE COURT—Yes. I will allow it.

Plaintiff's counsel asks an exception, which is hereby allowed and sealed accordingly.

WILLIAM H. SPEER,
Judge. [SEAL.]

A.(continuing)—in the same block and adjoining the Curley property I purchased from Joel J. Hoyt 16.26 lots at $738 a lot. This was also Montgomery street frontage.

Q. And what other sales did you have? A. I purchased from the Browning estate in the rear—

Mr. COLLINS—Same objection.

THE COURT—Same ruling.

Plaintiff's counsel asks an exception, which is hereby allowed and sealed accordingly.

WILLIAM H. SPEER,
Judge. [SEAL.]

A. (continuing)—about 200 feet in the rear of this property, or 200 feet southeasterly of it, rear lots for a little over $400 a lot.

Q. Now, I suppose you real estate men in arriving at your values take the sales that you have personal knowledge of and then compile other sales that you hear of; is that true? A. We do. We inspect every sale we can get hold of. I have four hundred sales in this territory which I inspected and analyzed.

Cross-examination by Mr. Collins.

Q. Mr. Ryer, you have made no sale yourself in this territory outside of the—well, that is a purchase—you made no— A. Define the territory, will you, Judge?

Q. Well, I mean east of the—down on the meadows east of Cornelison avenue. A. No.

Q. And Mr. Browning—who sold at the rate you mention—'s price was $2,000 more for the tract, wasn't it? A. When I first went to him, yes.

Q. And don't you know that he sold it for less than the estimated value for the reason that it was to go into a park? A. He did not.

Q. Do you know anything about it? A. Well, from my conversations I gather that I know that he did not state so.

Q. He did not state it; you say he made no such statement as his reason? A. I had considerable difficulty to buy the property. We had four or five meetings and—

Q. The Hoyts live at Lancaster, Pennsylvania, I believe? A. Newcastle, Pennsylvania.

Q. Was their price higher than that which was finally arrived at? A. No; they stated they wanted a certain price, this price, for the property, and we paid it to them.

Q. They gave a certain price— A. And stuck to it.

Q. You say that you have allowed for plottage. The price per lot that you have given, added up, makes the exact sum that you said the value of the plot is, the whole plot, doesn't it—if you add up the figures you have given? A. If you add up my figures you get about $700 a lot.

Q. No; you have given the price per lot. A. I have.

Q. And if you add those up do you get the figure you say the whole property is worth? A. I do—$5,700.

Q. Then you did not take the separate lots and add them up and add the plottage? A. I didn't; I added it first.

Q. You say you have included plottage in fixing the price of the lots? A. Yes.

Q. How can that be done? I do not see how that can be possible. A. Very readily; in getting the base value we can take a value of a lot at $300, and if the plottage value is ten per cent. the lot is three hundred and *ten*.

Q. What is your base value? A. Twenty per cent. less than the average I have placed on it. That is, after we take our base value in these particular lots we must apply the Hoffman rule to get

the depth. You see each lot has a different depth.

Q. Very well. Then you agree with Mr. Brown in both respects, that for shallower lots than 100 feet deep you apply the Hoffman rule— A. Absolutely.

Q. And you also agree that where one man owns a number of lots the value for that plot as a whole would be more than taking the lots singly with different owners? A. Generally.

Q. And that is what you call plottage? A. Yes, sir.

Q. Now, I want to know what is the basic value per full lot that you started with for a full lot 25 by 100? A. On Montgomery street?

Q. Well, are you taking it differently from Montgomery street, taking some Montgomery and some Cornelison avenue? A. I am asking you that. This also faces on Cornelison. My original value for a lot on Montgomery street was $800 for a full lot 25 by 100, filled to grade.

Q. If it was owned by one individual? A. If it was owned by one individual. Now, in plottage it would be 20 per cent. more than that.

Q. That would make $960, and yet you haven't given $960 for any lot. A. There isn't any lot that is up to the grade of Montgomery street, that's why. If there had been I would have.

Q. Oh! Then your basis of $800 a lot is for a lot on the grade of Montgomery street? A. Yes, sir.

Q. Well, if you have a lot to the grade of Montgomery street and you want to improve it, don't you have to dig a cellar? A. Possibly, yes.

Q. Now, if you have got a lot that is below grade and you can utilize it why should its value be less? A. Why should not its value be less?

Q. Why should it be less than a lot at grade? A. I make it less.

Q. Why should it be if you can utilize it? A. Because it is necessary to fill some portion of it to make it level with Montgomery street.

Q. You don't have to make it level with Montgomery street and then dig it out for a cellar? A. No; certainly not.

Q. Well, take lot 11, which is only 6 feet below Montgomery street; isn't that right? A. The front portion is, I should judge, about 8 feet below Montgomery street and the rear portion is more

Q. Well, call it 8 feet below Montgomery street, fronting on Montgomery street; wouldn't that lot be even more valuable than if it were meadow land at the level of Montgomery street? A. I don't think so.

Q. Wouldn't the fact be that you have got your cellar all provided for you without excavation? A. Well, in this case you haven't your cellar provided for without excavation, because you must pile to put a building on it before you can get a cellar.

Q. I am not speaking of the foundation of a building. Of course you can drive your piles— A. We have to consider that in making up our value, you know.

Q. So you have to have piles on all this meadow land, that is, irrespective of its level? A. No.

Q. You have to drive piles to put a building on? A. You have for certain buildings. You can build on Montgomery street lottage filled to grade. For instance on the Vanderbeek lot you can put some character of buildings on there without piling. They are up to the level, and you can put factory buildings on there without piling or digging a cellar.

Q. What they call corduroy foundation? A. Yes; you could put a corduroy foundation.

Q. You would not have a cellar, as you say; and

if the Curley property was up to the level of Montgomery street and was meadow land you could not have a cellar there, could you? A. No; you couldn't.

Q. Now, if you have land that is meadow land, below the level of the street, you can drive your piles at the natural level and cap them and then put your foundation walls up to the building and have a cellar, can't you? A. You can.

Q. That is what I wanted to know. Now, furthermore, isn't this the fact, that where you can get access to property from Cornelison avenue you can have a building on the level of Montgomery street and you can have a building that hasn't a cellar at all, but is above ground from Cornelison avenue? A. You can.

Q. You know Harrington's place across there, by Mercer street viaduct—I notice as I drive up the Mercer street viaduct—Mr. Harrington has an office building that he enters from the Mercer street viaduct and he has a building that is on the level of the ground below, that is below the Mercer street viaduct, hasn't he? A. He has.

Q. Now, that same sort of construction could be had on this property, could it not? A. It could.

By the Court.

Q. If the land then was of a character to permit the digging of a cellar the fill would be a positive detriment to the property, wouldn't it? A. According to their contention I should judge it would.

Mr. Collins—I didn't get that.

The Court—I say, according to the discussion, if the fill was on the property and you could dig a cellar, the fill would be a detriment and not an advantage. I

asked him that. He says according to the way it is put that would be so.

Mr. COLLINS—I don't quite understand that. If there is fill on the property and you could dig a cellar—?

THE COURT—Yes; that is what I gathered from your questions and I asked Mr. Ryer if that was not a fact.

By Mr. Collins.

Q. This is not a property which in its natural condition you could dig a cellar in at all, is it? A. No; you could not, not without piling.

Q. Well, if you fill it up to some extent—suppose the amount above the natural meadows is greater than you would want to have for a cellar, and you fill in up to the level that you have the bottom of your cellar, then the filling is no detriment, is it? A. You mean for a cellar?

Q. I don't understand you. A. You mean for a cellar?

Mr. MURPHY—I don't understand *you*, Judge.

Q. I mean this: You have got a piece of land with a street alongside of it, higher up, as it is when you get up toward Cornelison avenue, than you would want to have the depth of a cellar. Now, you could fill in up to the point where the floor of your cellar would be, couldn't you?

(No answer.)

Q. Don't you understand me? A. I don't understand you.

Q. Suppose you want a cellar that is ten feet deep. A. Yes.

Q. And suppose along Montgomery street, half

way down the property, that the depth down to the natural meadow is 20 feet deep. A. Yes.

Q. Then if you want a cellar only ten feet deep you fill in the lot the other ten feet, don't you? A. Oh, yes; you would have to fill in ten feet if the depth is 20 feet.

Q. In that case the fill would not be any detriment? A. I don't think it would be in that case.

By the Court.

Q. Well, what would it be in this case, a case of this kind, the fill that is there; would it be advantageous or disadvantageous, or what would it be? A. Why, I think that the more fill there is there the more advantageous it is to the lot, absolutely; and in making my calculations I have figured that the nearer the lot to the Montgomery street grade the more valuable the lot in my judgment.

Q. Can you tell us what the state, or condition, of the fill was on the lot in 1908 when the transfer was made from Harrington to Adams for $4,400? A. The city—I imagine it is the city—have been dumping there continuously on this entire tract, and it would be impossible to tell just how much fill—

The part of the answer as to who did the dumping there stricken out.

Q. But about what level was the fill laid in 1908, when the transfer was made from Harrington to Adams? A. There has been some fill, but not an awful lot, since that time.

Q. Not an awful lot? A. Not an awful lot. There have been some rocks put in there, and that is the principal fill since the time the lots were transferred to Mr. Adams.

By Mr. Collins.

Q. When did Mr. Adams sell to Curley? A. The record of the sale from Adams to Curley was January 21st, 1910.

Q. You have examined that deed? A. I have.

Q. What is the consideration? A. $11,000.

Q. Now, then, did you consider that? A. I did.

Q. And did you consider the sale from the Lehigh Valley Company to Kohl? A. I did.

Q. Four lots at $6,000? A. I did; $1,500 a lot.

Q. And that is plain meadow land, isn't it? A. No, that is filled meadow land.

Q. That is filled meadow land? A. Yes, sir; to grade of Montgomery street.

Q. The grade of the meadow wasn't much different from the grade of the street, was it? A. No,—I don't think I get you.

Q. The streets are on about a level at that point with the meadow land? A. But these lots are filled up to the grade of Montgomery street.

Q. I know, but I want to know at that point what the difference of level between Montgomery street and the meadow was. A. I don't know, but I presume a—

Q. I don't want presumptions. A. Well, I don't know.

Q. Did you take into consideration the sale of Tuite to Dixon? A. I did.

Q. Well, now, those sales and others which you have examined make a very much higher average than eight hundred and odd that you gave for the Montgomery street lots, do they not? A. You can't arrive at values from average.

Q. What do you go by? A. An analysis of the sales. For instance, I can't take the last three or four years and say there have been twenty sales

and the sales were for $20,000, and that makes the lots average a thousand to-day. I don't consider that.

Q. How far back did you go? A. I have taken every sale I could discover in the last ten years.

Q. Ten years? A. Ten years.

Re-direct examination by Mr. Murphy.

Q. How far below Montgomery street were these lots on the 31st of May, Mr. Ryer? A. The westerly end of them—

By Mr. Collins.

Q. Which lots?

Mr. MURPHY—The Curley lots.

A. The westerly end was 24 feet 8 inches.

Q. You mean at the corner of Cornelison avenue? A. Yes.

Q. How much? A. 24 feet and 8 inches. The easterly end was about 10 feet?

Q. Do you know whether that lot (indicating photograph) represents the condition of that property on the 31st of May, 1911? A. The picure is correct. I was there and helped take it.

Mr. COLLINS—Taken from what point; where was the camera?

Mr. MURPHY—I want to offer this.

A. Where was the camera?

Mr. COLLINS—Where was the camera?

A. From the middle of Cornelison avenue; that is, we stood over in front of Mr. Sofield's building

in taking this picture, stood right in there (indicating on map), on the other side of the street.

Photograph marked in evidence D 1.

By a Juror.

Q. Can you tell me the high water level of these lots?

Mr. COLLINS—What is that?

Q. Where the capping of the piling would have to be cut off in order to be below the water? A. I can't tell you that; I don't know.

Q. What I want to get at is this: How much filling there would have to be in order to give a dry cellar to any buildings that would be built on that; would it be six, eight, ten feet? A. I don't know that. One of the engineers could tell you that. It is an engineering problem, I believe.

PERCY A. GADDIS, called and sworn on behalf of the defendant, testified as follows:

Direct examination by Mr. Murphy.

Q. Mr. Gaddis, you are in the real estate business? A. Yes, sir.

Q. And have been how long? A. About twenty years.

Q. And you know this property known as the Curley property? A. I do.

Q. And have you fixed a value on those lots? A. I have.

Q. Will you just tell us what you fix the value of those lots at as of the 31st of May, 1911, beginning at lot No. 1 at the corner of Cornelison avenue and Montgomery street? A. Do you wish base

value, with plottage or without? I can give it to you either way you like.

Q. Give it to us both ways. I want to know what the value of that property was on the 31st of May, 1911? A. Lot No. 1, corner of Cornelison avenue, $750. Lot No. 2, $450. Lot No. 3, $475. Lot No. 4, $500. Lot No. 5, $525. Lot No. 6, $550. Lot No. 7, $575. Lot No. 8, $600. Lot No. 9, $625. Lot No. 10, $650. Lot No. 11, $675, making a total of $6,375 for the plot of 11 lots of varying sizes.

Q. $6,375? A. Yes.

Q. And does that include plottage? A. That includes plottage.

Q. Now, did you make any sales in this immediate neighborhood? A. Yes, sir.

Q. Where were they? A. I made them in three sections surrounding the park. One, shown on this map, on the corner of Montgomery street and Baldwin avenue; I sold a parcel there in Block 1892, lots 21 and 22. The corner of Cornelison avenue and Dupont street, Block 2107, I sold on that corner two lots; and 152 Bright street, just about a block and a half east of the park limit I sold. Those are within the past few years.

Q. I suppose you, like most real estate men, take the sales that you have personal knowledge of and then the sales that you would hear about and investigate and base your values upon those? A. I do.

Q. Did you know when you made these values of the Hoyt sale? A. I did.

Q. And of the Hull Browning sale? A. I did.

Q. And of other sales in that neighborhood? A. I did.

Cross-examination by Mr. Collins.

Q. Mr. Gaddis, the sale you have made of property on the west side of Baldwin avenue is on the top of the hill, isn't it, on the palisade rock? A. Yes, sir.

Q. And that was improved property, wasn't it, a building on it? A. Yes, sir; a three-story brick building on it.

Q. And the other property you have referred to, on Mercer street, was an improved property—a building on it? A. Yes, sir. I got it for $1,750 with a large building on it that rented for fifteen dollars.

Q. And how about the other piece; was that improved? A. No, sir; that was vacant. $450 for two lots; comparative property exactly.

Q. Where is that? A. Right at the corner of Dupont street here (indicating on map).

Q. You did not take into consideration the Kohl sale, did you? A. I did.

Q. You said you did, didn't you, down below? A. You allude to the Kohl property that runs through from Montgomery street to Wayne?

Q. No. I don't; that is the Tuite property. A No. I beg your pardon, Judge.

Q. I am asking you about the Kohl property? A. You mean those on the side track next to the railroad?

Q. Yes? A. Of course I consider them.

Q. You didn't, or did? A. Running from Mercer street to Montgomery street.

Q. I am speaking of the Kohl property now? A. Yes; we are both talking about the same thing.

Q. Didn't you testify yesterday in the suit between Forbes and the city in condemnation that you did not take into account the Kohl sale? A. I be-

lieve I said that. It was an error in so doing if I did.

Q. H'm? A. It was a mistake on my part in doing so, because it was made later and I of course considered it.

Q. It is not a question of whether you knew of it; it is a question of whether you took it into consideration? A. I certainly did.

Q. You say now that you said yesterday that you didn't, although you say now to-day you did? A. If I said so it is a mistake.

Q. I am asking you if you said so or didn't say so? A. I don't know. You know me, and whether I—

Q. Didn't you just say that you did not take it into consideration? A I may have said so. I say if I did say so it is a mistake.

Q. Now you fix the corner lot—take that as a sample for testing you—$750 for the corner lot? A. Yes.

Q. What was your base value of that lot? A. My base value of that lot?

Q. Yes? A. Six hundred and eighty-two—or—

Q. Where do you get that base value from? How do you arrive at that base value? A. My knowledge of sales in the vicinity and property, what it had sold for in Montgomery street,—comparative property, meadow land below grade,—and adding to it—if that is base value; I should say a little less because there is an addition because of its being a corner there. The base value is $500.

Q. Then you add for being a corner lot, how much? A. I add to that lot $282, because it is larger, wider; we have a greater depth.

Q. That makes $782? A. I said $682, and $500 as a base, that is $182 difference.

Q. If you take $500 as a base and add $282 for

the corner it makes $782? A. No, $682 is what I said was the base value for a corner. If you take the base without its being a corner, an inside lot there would be worth $500.

Q. So you say now you add to that for being a corner $282. You said that just now? A. $182.

Mr. COLLINS (to the stenographer)—What did he say?

THE STENOGRAPHER (reading)—"The base value is $500. Question. Then you add for being a corner lot, how much? Answer: I add to that lot $282, because it is larger, wider; we have a greater depth." Question: That makes $782. Answer: I said $682 and $500 as a base. That is $182 difference."

Q. Oh! $182. That makes $682. A. And 10 per cent. for the plottage brings it to $750 in round figures.

Q. What per cent. for plottage? A. Ten per cent. is all I have indicated.

Q. In the main you have been guided by the sales of the Browning property and the Hoyt property, have you not? A. No, sir.

Q. What else? A. My personal acquaintance with the property for the past thirty years, together with my business experience of more than twenty, and the knowledge of all things—elements—in that vicinity.

Q. Well, isn't the test—of course it is for His Honor to say what the legal test is—but don't you understand the test to be sales? A. I do.

Q. Now, then, I am asking you as to sales. I am not asking you to have the jury pass upon your opinion as to whether Mr. Gaddis is a good valuer of

property or not; that would be very unsafe, with you or anybody else. Now, as to sales, what do you base it on? A. I base it on a knowledge of all the sales—

Q. I want to know what sales you base it on? A. The sales that have been enumerated by your witnesses and ours, some four or five hundred; a bookful if you want them.

Q. Including the Curley sale? A. Undoubtedly; I have taken that into consideration, an element, knowing what it was purchased for.

Q. What did you put the Curley property in at, the sale at $4,400 or at $11,000? A. I knew better than to put it in at the $11,000.

Q. You put it in at the $4,400? A. I didn't put it in at anything. I have said it was worth $6,300, fifty per cent. more.

Q. But in taking it into consideration you put it at the basis of $4,400? A. I didn't put it—in considering it I knew of the deed of record for the $11,000 and I also knew of the one of record for the $4,400.

Q. But the one you considered was the $4,400? A. No, no. I considered both. A property, because the record shows it was sold at a certain price doesn't say it is worth that. You gentlemen both know that.

Q. Then when you take other sales that you have examined throughout the county, examine the records, you don't take the consideration stated? A. Not swallow it whole,—if I may use a little slang.

Q. What do you go by then? A. That is where my personal knowledge and acquaintance of a long time comes in, and that is why I mentioned it, because I could see things that the mere record does not show; what I hear,—those elements.

Q. Then the jury must base their judgment on an estimate of your skill rather than on sales; is that

so? A. They have to base their judgment on everything considered. I do not ask them to base it on me personally.

MICHAEL P. KEELEY, recalled.

MR. COLLINS—Mr. Dixon (a juror) asked a question. Will you kindly ask this witness, Mr. Dixon?

By a Juror.

Q. My question was, does anyone know as to the high water mark in that locality? A. The high water mark?

Q. Yes. A. Now the water line of the sewer at this point here (indicating on map), at the intersection of York street and Cornelison avenue, is 4 foot 6 inches below the established grade of the street.

Q. Four feet 6 inches? A. Yes, sir.

ANOTHER JUROR—Below the established grade of the street?

THE WITNESS—Yes.

Q. So that the capping of any pile foundation would have to be at least four feet— A. The capping of any pile would have to be at least six feet six inches to get water enough to keep it immersed all the time.

Q. At least one and a half feet below the high water mark? A. Yes, sir.

Q. How much filling is required to bring the ground up to the grading? A. Well, the ground on Mr. Curley's property that is now on trial here has been all 'way above the grade.

Q. Aren't these lots sunken lots? A. No, sir; not at that point. These lots here (indicating on map) are not sunken. You see this plot here (indi-

cating) is the plot that is now under consideration. The elevation of Montgomery street above Cornelison avenue at this point is in the neighborhood of 23 feet. There is a bridge going underneath Montgomery street on Cornelison avenue. Now, as you gradually slope down the ascent to the hill on Montgomery street is about a 5% grade. As you come down the 275 feet you come—at the time I took the levels here there was parts of these lots filled as high as the grade of Montgomery street; for instance, on lots 9, 10 and 11; but since that time the city has removed all this surface filling and taken it over on the sunken lands which was beyond this land here (indicating) and on this part here (indicating).

MR. COLLINS—Taken it off the Curley property and put it on Kiernan's?

A. Taken it off Curley's and carted it over to part of the Kiernan property and part of the Jersey City Paper Mill Company property which was all sunken land. The paper company had a reservoir to cool their hot water there and that has been all filled in by earth taken from here (indicating), which was at the surface.

TESTIMONY CLOSED.

JUDGE'S CHARGE.

GENTLEMEN OF THE JURY:

The issue to be tried by you is very simple and has resolved itself in this case apparently very much into a clear dispute of fact.

The city of Jersey City for the purpose of making a park, desired to acquire, amongst other land, the land in question in this suit, and under the law governing such subjects, what is known as the law of eminent domain, the city appointed commissioners, the commissioners met and an award by those commissioners was made, and from that award thus made, with the sum mentioned in which you have nothing whatever to do, the parties both appealed, —neither of them being satisfied with the amount fixed by the commissioners,—to this Court, and that made it necessary that the case should be tried before you.

Now, something has been said by counsel, somewhat serious in one way and somewhat facetious in another, with respect to what property you shall look at when you go down there. Fortunately we are not obliged to rely on what men think should be looked at, for the statute distinctly fixes that the property to be taken shall be the property to be viewed, and therefore your view when you shall go, after I have charged you in the case, to look at the property shall be a view of the property to be taken in this suit and not a view of other property.

Now, then, all that you have to settle in the case is, "What, on the 31st of May, 1911, was the market value of the property which you have heard the testimony concerning today? As bearing upon that question of market value and of your duty in the circumstances, the law has said these things:

"The law gives as compensation to the owner of

land taken for a public use its fair price for any use for which it has a commercial value of its own in the immediate present or in reasonable anticipation in the near future."

Another case says:

"In ascertaining what is just compensation for lands taken under the right of eminent domain the law has established the legal rule that if the whole property be taken (and the whole property is taken in this case) the market value of the property as between an owner willing, but not compelled, to sell and a purchaser desiring, but not compelled, to buy is the measure of compensation."

Another case has stated the same rule—and I give you these rules in differing words; they all mean the same thing, but it tends to clarify in your minds probably the idea that lies behind them—as follows:

"A jury in assessing the value of lands are not to be governed by the prices which they would bring at a forced sale, but by such price as they believe the lands would bring in the hands of a prudent seller at liberty to fix the time and conditions of sale." Now, it is that market value that you are to fix in this case from the testimony in the case as illustrated by the view that you take of the property when you shall go to view it.

So much for your duty there.

Now, as soon as I discharge you you will be taken in charge by the officers of the Court and will go to the property to have a view of it. If any person when you are making this view, or while you are going to or returning from it, shall talk to you about this property, I desire to have the person to whom he talks report it to the Court so that that person

thus talking may be punished for contempt of Court. You have now before you all the evidence that you are entitled to have in deciding the case, and all that remains is for you to make your view. Of course, the property will be pointed out in its boundaries. It is vacant property and will be pointed out in its boundaries. So much a shower, who will be appointed, may say to you, but beyond that you are not to listen to anything; and then you are to come back here and retire and consider of your verdict and give such sum as you find to be the market value of the premises, under the rules I have given you.

Now, whoever the showers are, you are just to point out the lines of the land. You are not to become enthusiastic or otherwise; just indicate in a dispassionate manner the lines of the land.

I might say this to the jury: I do not want to be understood, in saying that you are only to view the land in question, that you are not to see how that land is situated with respect to the surrounding property. That, of course, you are to look at and take into consideration.

The jury leave, in charge of a Court officer and accompanied by showers, to view the property.

Mr. Collins—I think your Honor's last statement probably puts everything right, but for safety's sake I will except to your limiting the view to the property, and what you said last.

The Court—All right; your idea being what?

Mr. Collins—My idea being that they could look at any of the things that have been referred to in evidence as bearing upon the questions they have got to determine. I do not see how you could escape

letting them look at that which was in their view from the lot, although it was not surrounding it.

THE COURT—If you take the Harrington property—I just state this because I want your point—you said, in summing up, that they have a right to look at the Harrington property. Now, that property does not surround it; it is not on the same side of the street; it is separated by Montgomery street, and it is quite a distance from it. My ruling is that if they would have a right to look at the Harrington property they would have an indubitable right to go up on Baldwin avenue and see how that property up there looked. Then they would have a right to go any distance. I only wanted to get your point.

Exception allowed and sealed accordingly.

[SEAL.]

RULE TO SHOW CAUSE.

On due application in behalf of Michael Curley and Martin A. Adams, it is ordered, that the Mayor and Aldermen of Jersey City show cause before this Court on the seventeenth day of November, A. D. 1911, at 10 o'clock a. m., at the Court House in Jersey City, why the verdict in above stated cause should not be set aside and a new trial granted therein. The granting of this rule shall not be a waiver of the bills of exception of said Curley and Adams upon the admission in evidence of the price paid by the Mayor and Aldermen of Jersey City for the Browning property and Hoyt property, within the limits of the park embracing the lands of said Curley, mortgaged to said Adams, condemned for park purposes.

WM. H. SPEER,
Judge.

Entered Nov. 8, 1911, on motion of
COLLINS & CORBIN,
Attorneys for Appellants.

REASONS.

The appellants Michael Curley and Martin A. Adams, write down the following reason why the verdict in above cause should be set aside:

The damages awarded by the jury were inadequate.

COLLINS & CORBIN,
Attorneys.

OPINION.

HUDSON COUNTY CIRCUIT COURT.

MICHAEL J. CURLEY, *vs.* THE MAYOR AND ALDERMEN OF JERSEY CITY.	*In Condemnation.*	10

COLLINS & CORBIN, Esqrs., for plaintiff.

JAMES J. MURPHY, Esq., for defendant.

WILLIAM H. SPEER, Circuit Judge.

In this case I have examined the evidence in the light of the brief submitted by plaintiff's counsel. There was evidence in the case which would well warrant the jury in finding as they did. If the evidence of Ryer is legal, as I have no doubt it is, it was clear authority and basis for the finding of the jury; if it was not legal, no harm can result to plaintiff as he has preserved an exception to its admission. I have no hesitation in saying that I do not find any fault with the verdict of the jury at all. If I had been sitting on the jury I should have found as they did. It was for the jury to weigh the evidence. William H. Brown, plaintiff's witness, upon whose testimony much of plaintiff's brief relies, on pages 9 and 10 of the case, expressly admits that he did not consider, in making up his estimate, the land sold to Jersey City for $738 per lot, and yet he admits that this was better land than that under condemnation, and was sold by the owner to Jersey City, by voluntary agreement. It was also property immediately adjoining

the land under condemnation. Assuming the testimony as to such sale to be legal (and under Hadley v. Freeholders, 44 Vroom, 198; and Brown v. New Jersey Short Line, 47 Vroom, 795, I can see no room to doubt its admissibility in this State). Brown admittedly left out of his calculation that sale which was of land of the greatest substantial similarity, and closest in geographical and chronological proximity to that under consideration. There was ample evidence upon which the jury could find as they did. There is no evidence or suspicion of bias, partiality, prejudice, or corruption in their finding. They saw the land. Under the circumstances I see nothing to do but deny the motion for a new trial, which I aecordingly do.

RULE DISCHARGING.

A rule to show cause having been granted in the above entitled cause on the eighth day of November, A. D. 1911, and returnable on the seventeenth day of November, A. D. 1911, Collins & Corbin appearing for Michael J. Curley and Martin A. Adams, and James J. Murphy, appearing for the Mayor and Aldermen of Jersey City, and the Court having heard the arguments of counsel for the respective parties,

It is, on this 28th day of December, A. D. 1911, ordered, that the said rule to show cause be discharged and final judgment entered in favor of Michael J. Curley and Martin A. Adams against

the Mayor and Aldermen of Jersey City for sixty-three hundred ($6,300.) dollars without costs.

WILLIAM H. SPEER,

Judge.

JUDGMENT.

Therefore to try the issue above joined let a jury be struck and come before the said Circuit Court, at Jersey City aforesaid, on the twenty-eighth day of December, A. D. one thousand nine hundred and eleven, as yet of the term of December in the year of our Lord one thousand nine hundred and eleven who neither, &c., by whom, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid, at which day before the Circuit Court, come the said parties by their attorneys aforesaid, the jurors of the jury above mentioned also come, and who to speak the truth of the matters aforesaid being returned, empanelled and sworn, and the evidence of the parties being submitted and the attorneys of the parties being heard and the Judge having charged the jury they say that they find in favor of the appellants Michael Curley and Martin A. Adams and against the Appellee the Mayor and Aldermen of Jersey City, and they assess the damages of the appellants on the occasion of the premises, at the sum of six thousand three hundred dollars, over and above their costs and charges by the said appellants about their suit in this behalf expended.

Therefore, it is considered that Michael Curley and Martin A. Adams, appellants as aforesaid, do re-

cover against the Mayor and Aldermen of the city of Jersey City Appellee as aforesaid, their damages aforesaid in manner aforesaid found, without costs and charges by the said Court now here adjudged and which said damages in the whole amount to six thousand three hundred dollars and the said appellants in mercy, &c.

Judgment entered and signed this twenty-eighth day of December, A. D. 1911.

WILLIAM H. SPEER,
Judge.

Attest:

JOHN F. CROSBY,
Clerk.

ASSIGNMENT OF ERRORS.

(Filed February 6, 1912).

Afterwards, that is to say on the 22d day of January, nineteen hundred and twelve, in the Court of Errors and Appeals, in the last resort in all causes in the State of New Jersey, come the said plaintiffs in error, Michael J. Curley and Martin A. Adams, by Collins & Corbin, their attorneys, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in said bill of exceptions; and in the giving of verdict and judgment aforesaid, there is manifest error, to wit:

1. That at the trial of said cause in the Hudson County Circuit Court, one Thomas A. Ryer, a witness called on behalf of the defendant in error, was asked to give his opinion as to the value of the property under condemnation, and after testifying in re-

gard thereto, the examination of said witness proceeded as follows:

"Q. Did you have any sales you took into consideration when you made these values? A. I did.

"Q. And what sales did you have? A. This property itself was sold—on April 28, 1908, lots Numbers 1 to 11, the property in question, was sold to Martin A. Adams for $4,400, an average price of $525 a lot.

By the Court.

"Q. When was that? A. April 28, 1908.

"Q. This same property that Mr. Curley now owns? A. This same property was purchased by Martin A. Adams from Catharine J. Harrington for $4,400. There are not eleven full lots; there are 8.38 lots, which makes an average price for a full city lot of $525.

By Mr. Murphy.

"Q. Have you finished your answer? A. No, I have not. After making the appraisement of this property I purchased from the Hoyt estate the adjoining lots, lots 12 to 23, on Montgomery street—"

And thereupon counsel for plaintiffs in error objected to testimony as to price paid for said lots purchased from the Hoyt estate, on the ground that the witness was about to give values of property within the park site, which are a part of the general condemnation. The witness was then allowed to testify as to the prices paid by him for said Hoyt lots, and stated that he purchased from Joel J. Hoyt 16.26 lots at $738, which ruling of the Trial Judge in the admission of evidence as to the prices paid for the said Hoyt lots was erroneous and to the injury of plaintiffs in error.

2. That at the trial of said cause in the Hudson County Circuit Court, one Thomas A. Ryer, a witness called on behalf of the defendant in error, was asked on direct examination the following question:

"What other sales did you have?"

to which said witness replied as follows: "A. I purchased from the Browning estate in the rear—" Thereupon the witness was interrupted by counsel for plaintiffs in error, and objection was made to the witness testifying to the purchase price of lots bought from the Browning estate, on the ground that the witness had no right to give values of land within the park site which was a part of the general condemnation; and thereupon said witness was allowed to testify as to the price paid for said Browning lots; which ruling was erroneous and to the injury of the plaintiffs in error.

Wherefore said plaintiffs in error pray that the judgment aforesaid, by reason of the errors aforesaid, may be reversed and for nothing holden, and that they may be restored to all things which they have lost by reason of said judgment.

COLLINS & CORBIN,
Attorneys of Plaintiffs in Error.
(Common joinder filed.)

NEW JERSEY

Court of Errors and Appeals.

MICHAEL J. CURLEY AND MARTIN A. ADAMS, *Plaintiffs in Error,* *vs.* THE MAYOR AND ALDERMEN OF JERSEY CITY, *Defendant in Error.*	*In Error to Hudson Circuit.*

Brief of Collins & Corbin in favor of Plaintiffs in Error.

This writ of error reviews a judgment entered in Hudson County Circuit Court in condemnation proceedings prosecuted by the defendant in error against the plaintiffs in error, owner and mortgagee respectively, of lands condemned by the defendant in error for park purposes in Jersey City. Hereafter, for convenience, we will refer to the plaintiffs in error as the land owners and to the defendant in error as the City.

After an award made by commissioners, an appeal was duly taken therefrom, and thereafter an order was made framing the issue between the parties, namely, what amount should be paid by the city to the land owners for the lands described in the condemnation petition and for the damages sustained in consequence of the taking and occupancy thereof by the city.

At the trial the principal evidence was that of real estate experts called to testify as to the value of the property taken. The land condemned included eleven lots known as numbers one to eleven inclusive, in block twenty-one hundred and eighteen, all fronting on Montgomery street in Jersey City; each lot is 25 feet front, and the depth there of varied from 64.4 feet (lot number one), to 100 feet (lots numbers ten and eleven). The entire tract was taken, so no question was involved as to damage to remaining land. The only question submitted to the jury was the value of the land that was taken. The values sworn to by the several experts were as follows:

Witnesses for land owner:

Brown, $10,810.00 (p. 9, l. 20).
Daly, 13,530.00 (p. 17, l. 40; p. 18, l. 5).

Witnesses for city:

Ryer, $5,700.00 (p. 33, l. 28).
Gaddis, 6,375.00 (p. 45, l. 15).

The verdict of the jury was six thousand three hundred dollars, and judgment was entered accordingly (p. 60, ll. 1 to 10).

The land owners applied to set aside this verdict as inadequate, and rule to show cause was allowed, reserving certain exceptions (p. 56). This rule was discharged and motion for a new trial denied (p. 58). Thereafter the present writ of error was sued out by the land owners.

The rule to show cause provided that the granting thereof should not be a waiver of the bills of exception upon the admission in evidence of the price paid by the city for the Browning property and the Hoyt property, within the limits of a park em-

bracing the lands of Curley and Adams, condemned for park purposes (p. 56, ll. 1 to 20). The evidence referred to was admitted against the objection of the land owners, and exception was duly taken therto on the ground that the witness had no right to give the price paid for lands within the park site which were a part of the same general condemnation (p. 34, l. 10 to p, 35, l. 10. It so happens that one of the two purchases by the city for this same park, known as the Hoyt property, adjoined the land of Curley (p. 34, l. 38, to p. 37, l. 40). The price paid by the city for this property was at the rate of $738 per lot. The land owners' expert, Mr. Brown, admitted that in fixing his values he had not taken this sale into consideration (p. 13, ll. 1 to 35; p. 58, l. 10).

The verdict of the jury shows that the city's expert, Ryer, who fixed the value at $5,700, did take into consideration the two sales to the city; one of them being the sale at the rate of $738 per lot. Indeed, that is all he went on except the fact that Adams paid only $4,400 for the property when he bought it at a bargain in 1908 (case, p. 33). He was silent as to sales in the neighborhood establishing the subsequent advance in land values and ignored the fact which he admits he knew that Adams sold the property to Currey in 1910 for $11,000 (case, p. 42). It is only fair, however, for us to admit what the case does not explicitly disclose that Curley only paid $1,000 down, giving his bond and mortgage to Adams for the residue of the price.

On redirect examination (case, pp. 42, 3) the witness perfunctorily said that he considered all sales within ten years, but it is self-evident that he disregarded all other sales than the one to Adams and the two sales to the city of lands within the park limits.

The verdict can only be accounted for on the theory that the jury gave full credence to Ryer (disregarding the other testimony), and then added a small amount for the value of the fill, as testified to by Keeley (p. 24 and following). Practically the same result is arrived at in a different way. Starting with the rate of $738 per lot paid by the city for adjoining lands, we may apply the so-called Hoffman rule as testified to by Mr. Brown, and which no one disputes. The average depth of the lots was 81 feet. According to this rule, the value of a lot 81 feet deep is 91 per cent. of the full value; 91 per cent. of $738 gives us an average value of $671 per lot, or a total of $7,381 for the eleven lots. But the lots now in question are not so favorably located as the adjoining lots purchased by the city, for the reason that there is an obstructed frontage, due to the gradual rise on Montgomery street as it extends in a westerly direction. The jury may therefore have taken the value for unobstructed lots of an average depth of 81 feet at $7,381, and made a deduction for the obstructed frontage, and thus arrived at a value of $6,300.

From either point of view it is apparent that the purchase by the city of the adjoining lots at the rate of $738 was the controlling circumstance upon the jury in arriving at the amount of their verdict. The question is therefore squarely presented whether the testimony admitted on behalf of the city to show the amount paid for adjoining lands bought for the same condemning purpose, was legal. The Court below in refusing a new trial expressly did so on the basis of what the city paid for the adjoining land (case, p. 57).

We submit that the admission of such testimony was illegal, both on reason and authority. The usual test of the value of property is the price as

between a willing uncompelled buyer and a willing uncompelled seller.

The test does not apply to a sale to a party having the power to condemn, for the reason that the condemning party has the advantage, and by the exercise of the power of condemnation can compel the land owner to give up his property, while remaining free to abandon the condemnation—in New Jersey, even after verdict on appeal from ~~owner~~ award (Comp. Stat., 2187, pl. 15). The owner is not in the position of a willing seller, because if he does not accept the price offered by the condemning party, he still runs the risk of losing his property by condemnation proceedings. This power in the condemning party must necessarily have an influence upon the owner in fixing his price, as he knows that even if he does not accept the price offered, he still cannot retain his property.

The reason for the rule is summed up in Lewis on Eminent Domain, Vol. II, Third Edition, Sec. on 667, p. 1147, as follows:

> "What the party condemning has paid for other property is incompetent. Such sales are not a fair criterion of value, for the reason that they are in the nature of a compromise. They are affected by an element which does not enter into similar transactions made in the ordinary course of business. The one party may force a sale at such a price as may be fixed by the tribunal appointed by law. In most cases the same party must have the particular property, even if it costs more than its true value. The fear of one party or the other to take the risk of legal proceedings ordinarily results in

> the one party paying more or the other taking less than is considered to be the fair market value of the property. For these reasons such sales would not seem to be competent evidence of value in any case, whether in a proceeding by the same condemning party or otherwise."

The Trial Judge in discharging the rule to show cause, cited as his authority for the conclusion that such testimony was legal, the cases of *Hadley vs. Freeholders*, 73 N. J. L., 197, and *Brown vs. U. S. Short Line R. R.*, 76 N. J. L., 795. We submit that neither of these cases is controlling, if even pertinent.

The Hadley case was in the Supreme Court and of course not binding on this Court. Passaic County was condemning property of Mrs. Hadley, bordering on the Passaic River, for the purpose of constructing an approach to a bridge over the river. One of the errors assigned was the admission of testimony as to the price paid to a land owner (one Zabriskie) by the Freeholders of Bergen County for land directly across the river upon which the other abutment of the bridge apparently was to rest. The Supreme Court held that this evidence was competent, citing as authority, the case of *Laing vs. United New Jersey R. R. Co.*, 54 N. J. L., 576, to the effect that it is proper to admit in evidence sales of other lands in the neighborhood, "where there is a substantial similarity between the properties." The Court said that the Zabriskie tract was similar to the Hadley tract, and therefore was a fair criterion of value. It will be seen that the point now under consideration was not presented to the Court. We do not question the rule that evidence as to the value of lands having a substantial

similarity to the land condemned is proper; but that rule, we submit, is subject to the further rule that if the substantially similar lands were purchased by the party condemning and for the same purpose then evidence of the value of such lands is not admissible. In the Hadley case it should be noticed that it was the County of Bergen which purchased. while it was the County of Passaic which was condemning. In the Laing case and in the Brown case each of which came to this Court the property sought to be compared with that under condemnation *was* purchased by the same condemning agency, but the testimony was *excluded*. True, the ground of exclusion was dissimilarity of the lands sought to be compared and there may be an *inference* that if they had been similar the evidence would have been admissible; but the point now being urged was not made in either case. The decisions are therefore *not* authoritative on that point.

Indeed, there is inferential authority to the contrary.

In *Montclair R. R. v. Benson*, 36 N. J. L., 557, a railroad company brought proceedings to condemn lands for the construction of its line. At the trial in the Circuit Court, on appeal from the award of the commissioners, the Court rejected the testimony of a real estate agent called on behalf of the railroad to show at what price he had offered for sale the property adjoining that of the plaintiff. The action of the Trial Court in so doing was unanimously affirmed by this Court.

> "The evidence overruled would have introduced other collateral issues, and if admitted would have entitled the plaintiffs to show that the adjoining owner was under some pressure to sell, or that there

> was some circumstance which induced him to offer his property below its actual worth. And it might well be that the damages caused by the building of the railroad entered into his computation of the value of his lands."

In other jurisdictions the decisions are quite uniform in favor of Mr. Lewis' reasoning, and testimony like that under review is excluded.

A leading case is *Peoria Gas Light & Coke Co., vs. Peoria Terminal R. R. Co.*, 146 Ill., 372, 34 N. E., 550, 21 L. R. A., 373. This was a condemnation proceeding by a railroad company. The railroad company was permitted by the Trial Court to prove what it had paid other property owners for right of way along the same line, and the admission of that evidence was assigned for error. Judgment was reversed, the Court saying:

> "The theory upon which evidence of sales of other similar property in the neighborhood at about the same time is held to be admissible is that it tends to show the fair market value of the property sought to be condemned; and it cannot be doubted that such sales, when made in the free and open market, where a fair opportunity for competition has existed, become material and often very important factors in determining the value of the particular property in question. But it seems very clear that, to have that tendency, they must have been made under circumstances where they are not compulsory, and where the vendor is not compelled to sell at all events, but is at liberty to invite com-

> petition among those desiring to become purchasers. Accordingly, among the various decisions in this or other states to which our attention has been called, or which our own researches have discovered, we find none in which the price paid at a forced or compulsory sale has been admitted as competent evidence of value."

The Court then cites Section 447 of Lewis on Eminent Domain (2d edition), and in support of the text of that author refers to the many adjudged cases, and then concludes:

> "We are referred to no decision in this state in which the opposite view as to the admissibility of evidence of the character of that now under consideration has been taken. In fact, so far as we are aware, the question has never been passed upon by this Court, and we are therefore at liberty to adopt the rule which seems to us to be most fully supported by reason and authority. Acting upon that principle, we are disposed to concur in the rule supported by the authorities above cited, and to hold that the evidence of the prices paid by the railroad company to other property owners for right of way along its line was incompetent and was improperly admitted."

The doctrine in this case has been followed in several later Illinois cases (*Chicago, &c., R. R. Co. v. Scott*, 225 *Ill.*, 352; *Schuster v. Sanitary District of Chicago*, 177 *Ill.* 629), and has recently been applied so far as to compel separate trials where, un-

der Illinois practice they might have been joint as to property in same block owned by different owners —because one owner had settled with the condemning party. The case is *South Park Commission v. Ayer*, 86 N. E., 704; 237 Ill., 211. This was a proceedingto condemn for park purposes certain lots in Chicago. The land owners in this case owned the southerly two-thirds of a half block, the northerly one-third belonging to another party. The appellants or land owners sought to have the case so far as related to their property, tried separately, on the ground that there had been an agreement between the city and the owners of the north one-third with reference to compensation, and that this agreement would necessarily appear to the jury, and would prejudice the interest of the appellants, for the reason that the jury would be inclined to fix the value of appellants' ground upon the same basis as that which the city and the owners of the north one-third of the ground had adopted when they agreed as to the value of that land.

It was held error to refuse to give the appellants a separate trial on the ground that the course pursued by the city resulted in its obtaining indirectly the benefit of a state of facts, evidence of which if offered directly would have been incompetent; and in discussing this question the Supreme Court of Illinois said:

> "It is entirely apparent to us, and must have been to the jury, that some agreement had been entered into by which the owners of the north one-third of the ground had agreed to accept as compensation a sum fixed by the evidence for the petitioner as the value of that property. The law is that it is not competent to

> prove what the petitioner has paid for other property purchased by it for use in the same enterprise. The property owner, realizing the power of the petitioner to take his property, may prefer to take less than the real value, rather than incur the expense of a litigation, where he can in no event obtain more than its actual value. As is said by the authorities, such a sale is in the nature of a compromise, and for that reason is not a fair measure of value. (Citing cases above cited).

The Peoria Gas Light Co. case was approved by the Supreme Court of Missouri in a very elaborate opinion, too long for profitable quotation, in *Met. St. Ry. Co. v. Walsh*, 197 *Mo.*, 392, 94 *S. W.*, 860, where many adjudged cases are cited and the rationale of the doctrine declared is exhaustively stated.

A very well considered case is *Simons vs. Mason City, etc , R. R. Co.*, 128 Iowa, 139; 103 N. W., 129. This was a proceeding by a railroad company to condemn lands for right of way. The land owner was permitted, over objection, to show what the company had paid to others per acre, for rights of way over their land. This was held to be error. The Court said:

"The overwhelming weight of authority is to the "effect that such testimony as was given in this "case as to the amounts paid for other tracts is in- "admissible." (Citing the Peoria case and many others). Continuing the Court said:

"Indeed, there are but two cases which seem to "hold to the contrary. They are Wyman v. Com-

"pany, 13 Metc., 316, which is fully explained and "limited in the Presbrey case, *supra* (103 Mass., 1), "and Langdon v. New York, (N. Y.), 31 N. E., 98. "But the latter was not a condemnation case. In "New York the rule in such cases is in accord with "that in other States. See *In re* Thompson, 14 "L. R. A., 52; 127 N. Y., 463; 28 N. E., 389. "There are many reasons which might be advanced "in support of this almost, if not quite, universal "rule. In the first place, such sales are almost always "the nature of a compromise. The landowner, on "the one side, may force a sale; and the railway "company, on the other, must have the land, even "though it costs more than its value."

This is a convenient place to refer to the Massachusetts cases. The Presbrey case cited is perhaps not very useful, as it related to a case where the sum paid the adjoining land owner was not only for the value of the part of his land taken, but also for damages for the part not taken. There are later cases, however, that deprive the Wyman case cited of any authority in Massachusetts. They are:

Cobb vs. City of Boston, 112 Mass., 181. Proceedings by the city to take certain lands to raise the grade thereof so as to abate a nuisance; held that evidence of the sum paid by the city by agreement with another land owner for another lot similarly situated, was not admissible. The Court said:

> "A price so fixed by compromise, when there can be no other purchaser, and the seller has no option to refuse to sell, and can only elect between the acceptance of the price offered and the delay, uncertainty and trouble of legal proceedings for an assessment, is not a reasonably fair test

> of market value. It is in no sense a sale in the market" (p. 183).

Sawyer v. City of Boston, 144 *Mass.*, 470; in proceedings to condemn lands by the city for a park, evidence of the price paid by the city for other lands sold for park purposes was excluded. Held that this ruling was correct.

> "The settlement was made when it was apparent that if Fottler (the land owner) did not agree with the city, his land would be taken for the park, and so far as appears, the case is like Cobb. v. Boston, 112 Mass., 181."

Providence, &c., R. R. Co. v. City of Worcester, 155 Mass., 35. Proceedings to take land by a city for the construction of sewage works. Held that an agreement between the city and the owner of adjoining land taken for the same purpose was inadmissible, both because the negotiations as to price had not been completed, and "because a price so fixed is not a reasonably fair test of market value" (p. 40).

> Also 16 Cyc., title "Evidence," page 1137.
>
> Elliott on Railroads, § 1036, page 732.

The New York case referred to in *Simons v. Mason City &c. R. R. Co.*, should be consulted. It is re *Thompson on Appeal of Butler*, 127 N. Y., 463; 14 L. R. A., 52. This was a proceeding by the Commissioner of Public Works of the city of New York to acquire the right to divert water from the Bronx River. The land owner offered to show the price that the city had paid in the purchase of similar rights of other owners of property along the river. The offer was overruled,

and this was affirmed by the New York Court of Appeals.

After referring to decisions in various States and after classifying New Jersey as one of the States holding that evidence of sales of similar property was not admissible, the Court said:

> "The reasons assigned for the conclusion reached in the cases last cited are, in the main, that the test in legal proceedings is, What is the present market value of the property which is the subject of controversy? It may be shown by the testimony of competent witnesses, and on cross-examination, for the purpose of testing their knowledge respecting the market value of land in that vicinity, they may be asked to name such sales of property, and the prices paid therefore, as have come to their attention. But a party may not establish the value of his land by showing what was paid for another parcel similarly situated, because it operates to give to the agreement of the grantor and grantee the effect of evidence by them that the consideration for the conveyance was the market value, without giving to the opposite party the benefit of cross-examination to show that one or both were mistaken. If some evidence of value, then prima facie a case may be out, so far as the question of damages is concerned, by proof of a single sale, and thus the agreement of the parties which may have been the result of necessity or caprice would be evidence of the market value of land similarly

situated, and become a standard by which to measure the value of land in controversy. This would lead an attempt by the opposing party to show,—*first*, the dissimilarity of the two parcels of land; and *second*, the circumstances surrounding the parties which induced the conveyance,—such as a sale by one in danger of insolvency, in order to realize money to support his business, or a sale in any other emergency which forbids a grantor to wait a reasonable time for the public to be informed of the fact that his property is in the market; or, on the other hand, that the price paid was excessive, and occasioned by the fact that the grantee *was not a resident of the locality, nor acquainted with real values*, and was thus readily induced to pay a sum far exceeding the market value. Thus each transaction in real estate claimed to be similarly situated might present two side issues, which could be made the subject of as vigorous contention as the main issue, and, if the transactions were numerous it would result in unduly prolonging the trial, and unnecessarily confusing the issues, with the added disadvantage of rendering preparation for trial difficult."

The words I have italicized are very pertinent because in the case in hand the Hoyts were residents of Newcastle, Pennsylvania (case, p. 36), probably not acquainted in Jersey City values, and it well may be sold for too low a price in ignorance of advancing values so clearly proved by the land owners from recent sales of property in the neighborhood.

Other cases are—

Cincinnati Iron Co. v. C. S. Ry. Co., 9 Ohio C. C., 103. Evidence of sales by other lot owners made by compromise held inadmissible.

Spokane, etc., Ry. Co. v. Lieuallen, 3 Idaho; 381; 29 Pac., 854. Evidence as to price paid for property adjacent to that condemned should have been stricken out.

Oregon R. Co. v. Eastlake, 102 Pac., 1011 (Ore). In condemnation proceedings by a railroad company, held that what the condemning party has paid for other property to be used in the same enterprise is incompetent whether offered as substantive evidence or on cross-examination as a test of an expert's knowledge of value, approving Lewis on Eminent Domain.

Coate v. Memphis R. Co., 111 S. W., 923 (Tenn.). This was a proceeding to condemn lands for railroad purposes. The land owner offered evidence to show what the company had paid for other lots in the neighborhood of his land. The testimony was excluded.

The ruling of the Trial Judge was affirmed on the doctrine of Lewis on Eminent Domain.

Port Townsend So. R. Co. v. Barbare, 46 Wash., 275; 89 Pac. 710. This was a petition to condemn lands for railroad purposes. The land owner was permitted by the Trial Court to show sales of other lots in the same vicinity to the company, and the prices paid therefor. The Court said:

> "We think this was error. Proof of sales of similar property to that in question made at or about the time of taking is almost universally approved," citing Lewis on

Eminent Domain. But purchases by the condemning party are incompetent, and are inadmissible in evidence to prove market values, again citing Lewis.

Followed in *State v. Spokane County*, 104 Pac., 148.

This very general trend of adjndication, with really nothing to the contrary, is well worth the most careful consideration; while the reasoning of the various cases cited is very persuasive. Such reasoning is very strongly applicable to the case of a public park or like improvement. Land owners are likely to be influenced by a feeling of public spirit or more selfishly because of general benefit to other lands they may own in the vicinity. They may even be willing to donate their lands in the park limits or to sell them at very much less than their value. In the case in hand, Mr. Browning'-price for his land was $2,000 more than he afters wards sold it for (case, p. 35), and when the witness who negotiated for the city was asked if Mr. Browning did not sell the land for less than its estimated value because it was to go into a park, all the witness could say was: "He did not state so." (Idem).

We submit that the testimony of sales of lots to the city of land within the park limits was illegal and that its admission must have worked harm to the land owner.

The judgment should be reversed and a venire de novo awarded.

COLLINS & CORBIN,
Attorneys for Plaintiff in Error.

GILBERT S. COLLINS,
GEORGE S. HOBART,
Of Counsel.