

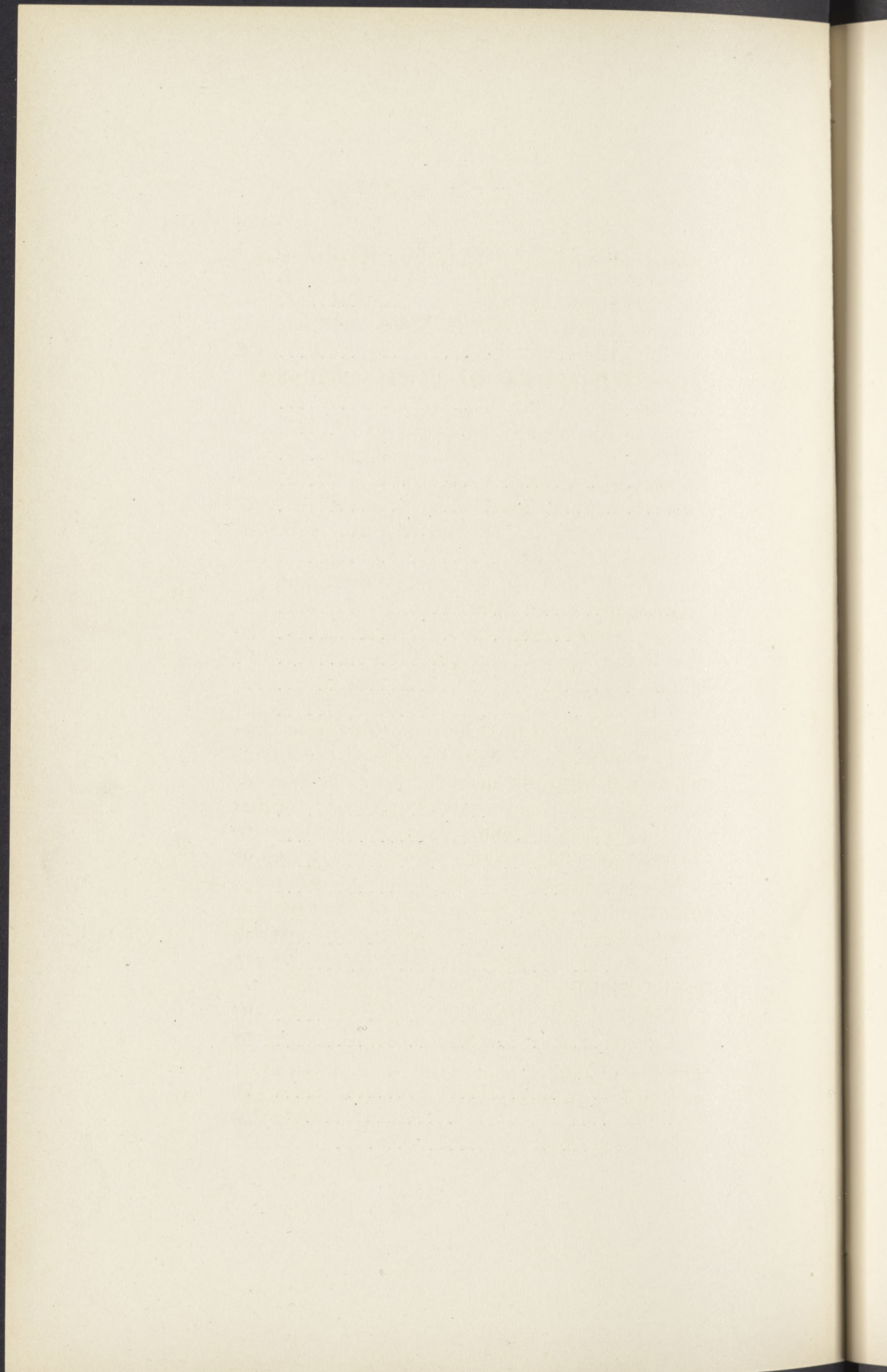
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**Notice of Appeal of Eldorado Restaurant,  
Inc.**

(Filed May 29, 1926.)

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**In Chancery of New Jersey**

Between

THE BOARD OF CHOSEN FREEHOLD-  
ERS OF THE COUNTY OF HUDSON,  
Petitioner,

and

DOMINIC SINISI and LENA SINISI,  
his wife,  
Defendants.

20

TAKE NOTICE that the Eldorado Restaurant, Inc., hereby appeals to the New Jersey Court of Errors and Appeals from the decree in all its parts made by the Chancellor on the advice of Vice-Chancellor John Bentley, in the above cause, awarding to the Eldorado Restaurant, Inc., owner of a leasehold on premises in question, the sum of \$15,426.12, as the present value of the interest of the Eldorado Restaurant, Inc., in the lands and premises taken, and in addition to this sum, the return of its, Eldorado Restaurant, Inc., security deposit of \$1,-175.00 a total of \$16,601.12 on the following points:

30

1. The Court erroneously determined the present value of the leasehold estate of Eldorado Restaurant, Inc., to be \$15,426.12 instead of \$43,272.84.

40

*Petition of Appeal of Eldorado Restaurant, Inc.*

2. The Court based its finding upon testimony not in evidence in this case.

THOMAS J. BROGAN,  
Solicitor of Appellant.

10 I conceive there is good cause for this appeal.

THOMAS J. BROGAN,  
Of Counsel with Appellant.

To

JOHN MILTON, Esq.,  
Solicitor for Appellee.

**Petition of Appeal of Eldorado Restaurant,  
Inc.**

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Filed August 16, 1926.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between

THE BOARD OF CHOSEN FREEHOLD-  
ERS OF THE COUNTY OF HUDSON,  
Petitioner,

and

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DOMINIC SINISI and LENA SINISI,  
his wife, *et al.*,  
Defendants-Appellees,

and

ELDORADO RESTAURANT, INC.,  
a corporation,  
Defendant-Appellant.

On Appeal from  
the Court of  
Chancery.

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To the Honorable the Court of Errors and Appeals  
in the Last Resort in All Causes:

*Petition of Appeal of Eldorado Restaurant, Inc.*

The petition of Eldorado Restaurant, Inc., a corporation, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date May 19th, 1926, in a certain proceeding wherein the Board of Chosen Freeholders of the County of Hudson paid into the said court a certain sum of money representing the value of the lands of the said Dominic Sinisi and Lena Sinisi, his wife, taken by said County of Hudson in condemnation; and wherein the said Dominic Sinisi and Lena Sinisi, his wife, as owners, claimed the said fund and the Eldorado Restaurant, Inc., a lessee of a portion of said premises, claimed a part of said fund as the value of the unexpired leasehold, in this respect, to wit—that the said decree adjudges that the present value of the said Eldorado Restaurant, Inc., leasehold is the sum of \$15,426.12.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the sum is erroneous in that:

1. The Court erroneously determined the present value of the leasehold estate of the Eldorado Restaurant, Inc., to be \$15,426.12, instead of \$43,272.84.

2. The Court based its finding upon testimony not in evidence in this case.

3. It is contrary to the weight of the evidence.

4. There was no evidence to support the value determined by the Court.

Petitioners, therefore, pray that the decree of

*Petition of Appeal of Eldorado Restaurant, Inc.*

the said Chancellor may be, in the particulars aforesaid reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

10

THOMAS J. BROGAN,  
Solicitor for and of Counsel  
with Appellant Eldorado  
Restaurant, Inc.

I consent to the filing of the above petition of appeal within time.

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JOHN MILTON,  
Solicitor for and of Counsel  
with Appellees Dominic  
Sinisi and Lena Sinisi,  
his wife.

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**Answer of Dominic Sinisi, et ux.**

(Filed September 22, 1926.)

**NEW JERSEY COURT OF ERRORS AND  
APPEALS.**

Between

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THE BOARD OF CHOSEN FREEHOLD-  
ERS OF THE COUNTY OF HUDSON,  
Petitioner,

and

DOMINIC SINISI and LENA SINISI,  
his wife, *et al.*,  
Defendants-Appellees,On Appeal from  
the Court of  
Chancery.

and

ELDORADO RESTAURANT, INC.,  
a corporation,  
Defendant-Appellant.

20

The defendants-appellees, Dominic Sinisi and Lena Sinisi, his wife, answering the Petition of Appeal of the defendant-appellant, Eldorado Restaurant, Inc., say that:

1. They admit that a final decree was made as stated in Paragraph 1 of the Petition of Appeal, but deny that the same is erroneous for reasons 1, 2, 3 and 4 stated therein, and prays that the Petition of Appeal may be dismissed with costs.

30

JOHN MILTON,  
Solicitor for and of Counsel  
with Defendants-Appel-  
lees, Dominic Sinisi and  
Lena Sinisi, his wife.

40

*Notice of Appeal of Dominic Sinisi, et ux.*

I consent to the filing of the above answer as of time.

THOMAS J. BROGAN,  
Solicitor for and of Counsel  
with Defendant-Appel-  
lant, Eldorado Restau-  
rant, Inc.

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**Notice of Appeal of Dominic Sinisi and Lena Sinisi, His Wife.**

(Filed May 29, 1926.)

IN CHANCERY OF NEW JERSEY.

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Between

THE BOARD OF CHOSEN FREEHOLD-  
ERS OF THE COUNTY OF HUDSON,  
Petitioner,

and

DOMINIC SINISI and LENA SINISI,  
his wife, *et al.*,  
Defendants.

58/322

In Condemnation.  
On Petition for  
Payment of  
Money Into  
Court.

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The petitioners Dominic Sinisi and Lena Sinisi, his wife, hereby appeal from the final decree made by the Chancellor on the advice of Vice-Chancellor John Bentley in the above entitled cause on May 19th, 1926, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated May 29, 1926.

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JOHN MILTON,  
Solicitor for and of Counsel with Peti-  
tioners Dominic Sinisi and Lena Sinisi,  
his wife.

*Petition of Appeal of Dominic Sinisi, et ux.*

I conceive there is good cause for appeal in the above entitled cause.

JOHN MILTON,

Of Counsel with Petitioners Dominic Sinisi and Lena Sinisi, his wife.

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**Petition of Appeal of Dominic Sinisi and Lena Sinisi, His Wife.**

(Filed June 3, 1926.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,  
Petitioner,

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and

DOMINIC SINISI and LENA SINISI,  
his wife, *et al.*,  
Defendants-Appellants,

On Appeal from  
the Court of  
Chancery.

and

ELDORADO RESTAURANT, INC.,  
a corporation,  
Defendant-Appellee.

30

To the Honorable the Court of Errors and Appeals  
in the Last Resort in All Causes:

The petition of Dominic Sinisi and Lena Sinisi, his wife, the appellants in the above entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his

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*Petition of Appeal of Dominic Sinisi, et ux.*

HONOR EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, bearing date May 19th, 1926, in a certain proceeding wherein the Board of Chosen Freeholders of the County of Hudson paid into the said court a certain sum of money representing the value of the lands of the said Dominic Sinisi and Lena Sinisi, his wife, taken by said County of Hudson in condemnation; and wherein the said Dominic Sinisi and Lena Sinisi, his wife, as owners, claimed the said fund, and the Eldorado Restaurant, Inc., a lessee of a portion of said premises, claimed a part of said fund as the value of unexpired leasehold; in this respect, to wit, that the said decree adjudges that the present value of the said Eldorado Restaurant, Inc., leasehold, is the sum of \$15,426.12.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that:

1. The full value of said leasehold is not more than the sum of \$8,301.44.
2. It is contrary to the weight of the evidence.
3. There was no evidence to support the value determined by the Court.

Petitioners therefore pray that the decree of the said Chancellor may be, in the particulars aforesaid reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

JOHN MILTON,

Solicitor for and of Counsel with Appellants Dominic Sinisi and Lena Sinisi, his wife.

**Answer of Eldorado Restaurant, Inc.**

(Filed August 19, 1926.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between

THE BOARD OF CHOSEN FREEHOLD-  
ERS OF THE COUNTY OF HUDSON,  
Petitioner,

and

DOMINIC SINISI and LENA SINISI,  
his wife, *et al.*,  
Defendants-Appellants,

and

ELDORADO RESTAURANT, INC.,  
a corporation,  
Defendant-Appellee.

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On Appeal from  
the Court of  
Chancery.

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The respondent Eldorado Restaurant, Inc., answering the petition of appeal of the defendants-appellants says:

1. It admits that a final decree was made as stated in Paragraph I, of the petition of appeal, but denies that the same is erroneous for reasons 1, 2 and 3 stated therein, and prays that the petition of appeal may be dismissed with costs.

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THOMAS J. BROGAN,  
Solicitor for and of Counsel  
with Appellee Eldorado  
Restaurant, Inc., a corpo-  
ration.

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*Prefatory Statement.*

I consent to the filing of the above answer within time.

JOHN MILTON,  
Solicitor for and of Counsel with  
Appellee Dominic Sinisi and  
Lena Sinisi, his wife.

10

**Prefatory Statement.**

The Board of Chosen Freeholders of the County of Hudson, for and in behalf of the "County of Hudson," pursuant to the power conferred upon it by an act of the Legislature of the State of New Jersey entitled "An act concerning counties," approved March 4th, 1918, being Chapter 185, P. L. 1918, and also by Chapter 249, P. L. 1922, acquired certain lands and premises of Dominic Sinisi and Lena Sinisi, his wife, in the City of Jersey City, by the exercise of the power of eminent domain in proceedings taken in accordance with the provision of "An act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of 1900)" approved March 20, 1900.

20

Because persons other than the said Dominic Sinisi and Lena Sinisi, his wife, the owners of the said lands and premises, appeared to have interests therein, the County of Hudson conceived that it could not with safety pay the amount awarded directly to the said owners, and pursuant to the statute instituted this proceeding in the Court of Chancery.

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**Petition.**

(Filed June 1, 1925.)

## IN CHANCERY OF NEW JERSEY.

Between

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON, for and in behalf of the County of Hudson,

Petitioner,

and

DOMINICK SINISI and LENA SINISI, his wife, Defendants.

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In Condemnation.  
Petition to Pay  
Award into  
Court.

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To His Honor EDWIN ROBERT WALKER,  
Chancellor of the State of New Jersey:

The petition of the Board of Chosen Freeholders of the County of Hudson, for and in behalf of the "COUNTY OF HUDSON," a body politic and corporate in law of the State of New Jersey, respectfully shows:

1. That on June 11, 1924, your petitioner presented to Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey, a petition, which was subsequently amended by a further petition presented June 21, 1924, copies of which are hereto annexed and made part thereof, which represented that it had by appropriate resolution, determined to acquire the lands and premises mentioned in said petitions for widening the Hudson County Boulevard, and in con-

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*Petition.*

nection therewith, the reconstruction of a bridge to serve as a part and continuation of said Boulevard, and that it had by appropriate resolution authorized the institution of proceedings to acquire said lands and premises by condemnation.

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2. That on the days aforesaid mentioned, a Notice of Lis Pendens and a Supplemental Notice of Lis Pendens, respectively, were filed in the Register's Office of the County of Hudson, in the matter of the condemnation of the lands and premises referred to in said petition.

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3. That an order was duly made by said Justice of the Supreme Court of the State of New Jersey in the above entitled matter, designating the 2nd day of July, 1924, as the day on which Commissioners would be named to examine and appraise the aforesaid lands and premises and to fix the compensation to be paid therefor, and to assess such damages, if any, as should be awarded.

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4. That on the 2nd day of July, 1924, an order was duly made by said Justice of the Supreme Court of New Jersey, appointing Theodore Smith, William C. Heppenheimer and William C. Asper as Commissioners to examine and appraise the aforesaid lands and premises and to fix the compensation to be paid therefor, and to assess the damages, if any, to be awarded to the property owner named in the above entitled matter.

40

5. That the aforesaid Commissioners, after examining the aforesaid lands and premises, and hearing the testimony and considering the proofs offered before them on behalf of the property owner aforesaid and your petitioner, made their report in the aforesaid matter on the 19th day of September, 1924, which report is on file in the

*Petition.*

office of the County Clerk of the County of Hudson, and therein awarded the sum of \$117,720 to the aforesaid property owner, as the compensation to be paid by your petitioner for the acquisition of the aforesaid property, copy of which report is hereto annexed and made part hereof. 10

6. That the defendant Dominic Sinisi and Lena Sinisi, his wife, and the petitioner, The Board of Chosen Freeholders of the County of Hudson, both duly appealed to the Circuit Court of the County of Hudson from the award made as aforesaid by the said Commissioners, and said appeal having duly come on for trial before Henry E. Ackerson, Jr., Judge of said Court, and a jury, on the 14th day of May, 1925, in the Hudson County Circuit Court, and the jury having retired to deliberate upon their verdict, they returned and said they awarded \$140,000 in favor of the defendant Dominic Sinisi and Lena Sinisi his wife, and against the petitioner. The Board of Chosen Freeholders of the County of Hudson, for and in behalf of the "County of Hudson," for the lands and premises so taken and condemned as aforesaid, upon which award a Rule for Judgment was entered in the office of the Clerk of the County of Hudson on May 25, 1925, a copy of which said Rule for Judgment is hereto annexed and made a part hereof. 20 30

7. Your petitioner further shows that it cannot safely pay the amount awarded to the said property owner Dominic Sinisi and Lena Sinisi, his wife, directly to the said property owner, because the following persons appear to have the interest in said lands and premises designated after their respective names: 40

*Petition.*

Dominic Sinisi and Lena Sinisi, his wife,  
Owner.

Domenico Bellezza, Mortgagee.

Louis J. Messano, Mortgagee.

Trust Company of New Jersey, Mortgagee.

10 Andrew Muro, Mortgagee.

George H. Martin, Lessee.

Frank D. Follansbee, Mortgagee.

Eldorado Restaurant, Inc., Lessee.

Mayor & Aldermen of Jersey City.

Frank X. DeSevo, Mortgagee.

Jersey City Boy Scouts of America, Tenant.

James Corubia, Tenant.

Colonial Life Insurance Company of America,  
Mortgagee.

20

8. Your petitioner therefore prays that this Court may make an order, directing your petitioner to pay the amount so awarded into this Court, to be there distributed according to law, upon the application of any person interested therein, and that written notice be given to the owner and to persons interested in the said sum so awarded, that said sum has been paid into this Court, and that such notice so given after said  
30 award has been paid into Court shall have the same effect as if the said sum so awarded had been actually tendered to the owners and other persons entitled thereto.

And your petitioner will ever pray, etc.

THE BOARD OF CHOSEN FREEHOLDERS  
OF THE COUNTY OF HUDSON,

By JOHN M. GIBSON,  
Director.

40 Attest:

WALTER O'MARA,  
Clerk.

*Petition.*

State of New Jersey, }  
 County of Hudson, } ss.:

BE IT REMEMBERED that on this 28th day of May, 1925, before me the subscriber, personally appeared John M. Gibson, Director of the Board of Chosen Freeholders of the County of Hudson, the governing body of the County of Hudson, a body politic and corporate in law, who I am satisfied is the officer who signed the within instrument and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such officer aforesaid, and that the within instrument is the voluntary act and deed of said "County of Hudson," made by virtue of authority of said Board of Chosen Freeholders, the governing body of said "County of Hudson."

10

20

JOHN M. GIBSON.

Subscribed and sworn to before me }  
 this 28th day of May, 1925. }

JOHN J. MCHUGH,  
 Notary Public, N. J.

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State of New Jersey, }  
 County of Hudson, } ss.:

WALTER O'MARA, of full age, being duly sworn according to law on his oath, deposes and says:

I am the Clerk of the Board of Chosen Freeholders of the "County of Hudson," the governing body of the County of Hudson, a body politic and corporate in law. I well know the corporate seal of the Board of Chosen Freeholders of the County of Hudson aforesaid, the petitioner named in the

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*Petition.*

foregoing; that the seal thereto affixed is the proper corporate seal of the said County of Hudson and that the same was so affixed thereto, and that the said instrument was signed and delivered by John M. Gibson, who was at the time and execution thereof the Director of the said Board of Chosen Freeholders of the County of Hudson in the presence of this deponent, as the voluntary act and deed of the said Board of Chosen Freeholders for and in behalf of the County of Hudson, and that the said deponent thereupon signed the same as subscribing witness.

WALTER O'MARA.

Subscribed and sworn to before me }  
 this 28th day of May, 1925. }

JOHN J. MCHUGH,  
 Notary Public, N. J.

N. B. It is agreed that the petition in condemnation, petition to amend the petition in condemnation, report of commissioners and rule for judgment on appeal to the Circuit Court, copies of which are annexed to the foregoing petition be omitted.

**Order.**

(Filed June 1, 1925.)

## IN CHANCERY OF NEW JERSEY.

Between

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,  
for and in behalf of the County  
of Hudson,

Petitioner,

and

DOMINIC SINISI and LENA SINISI,  
his wife,

Defendants.

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In Condemnation.  
On Petition to  
Pay Award  
Into Court.

20

A petition of The Board of Chosen Freeholders of the County of Hudson, for and in behalf of the "County of Hudson," a body politic and corporate in law of the State of New Jersey, having been presented to this Court, from which it appears that on June 11, 1924, it had presented to Honorable JAMES F. MINTURN, one of the Justice of the Supreme Court of the State of New Jersey, a petition, which was subsequently amended by a further petition presented June 21, 1924, which represented that it had by appropriate resolution, determined to acquire the lands and premises mentioned in said petition, for widening the Hudson County Boulevard, and in connection therewith, the reconstruction of a bridge to serve as a part and continuation of said Boulevard, and that it had by appropriate resolution, authorized the

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*Order.*

institution of proceedings to acquire said lands and premises by condemnation.

10 That on the days aforesaid mentioned, a Notice of Lis Pendens and a Supplemental Notice of Lis Pendens, respectively, were filed in the Register's Office of the County of Hudson, in the matter of the condemnation of the lands and premises referred to in said petition.

20 That an order was duly made by Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey, in the above entitled matter, designating the 2nd day of July, 1924, as the day on which Commissioners would be named to examine and appraise the aforesaid lands and premises, and to fix the compensation to be paid therefor, and to assess such damages, if any, as should be awarded.

30 That on the 2nd day of July, 1924, an order was duly made by Honorable James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey, appointing Theodore Smith, William C. Heppenheimer, and William C. Asper, as Commissioners to examine and appraise the aforesaid lands and premises and to fix the compensation to be paid therefor, and to assess the damages, if any to be awarded to the property owner named in said petition.

40 That the aforesaid Commissioners, after examining the aforesaid lands and premises, and hearing the testimony and considering the proofs offered before them on behalf of the property owner and your petitioner, made their report in the aforesaid matter on the 19th day of September, 1924, which report is on file in the office of the County Clerk of the County of Hudson, and therein awarded the sum of \$117,720 to the aforesaid

*Order.*

property owner, as the compensation to be paid by said petitioner for the acquisition of the aforesaid property.

That the defendants, Dominic Sinisi and Lena Sinisi, his wife, and the petitioner, The Board of Chosen Freeholders of the County of Hudson, both duly appealed to the Circuit Court of the County of Hudson from the award made as aforesaid by the said Commissioners, and said appeal having duly come on for trial before Henry E. Ackerson, Jr., Judge of said Court, and a jury, on the 14th day of May, 1925, in the Hudson County Circuit Court, and the jury having retired to deliberate upon their verdict, they returned and said they awarded \$140,000. in favor of the defendants, Dominic Sinisi and Lena Sinisi, his wife, and against the petitioner, The Board of Chosen Freeholders of the County of Hudson, for and in behalf of the "County of Hudson," for the lands and premises so taken and condemned as aforesaid, and that a Rule for Judgment was entered upon said award in the office of the Clerk of the County of Hudson on May 25, 1925.

And it appearing that your petitioner cannot safely pay the amount awarded to the said property owners, Dominic Sinisi and Lena Sinisi, his wife, directly to the said property owners, because the following persons appear to have an interest in the said lands and premises, which interest your petitioner states to be as follows:

Dominic Sinisi and Lena Sinisi, his wife,  
Owner.

Domenico Bellezza, Mortgagee.

Louis J. Messano, Mortgagee.

Trust Company of New Jersey, Mortgagee.

Andrew Muro, Mortgagee.

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30

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*Order.*

George H. Martin, Lessee.  
 Frank D. Follansbee, Mortgagee.  
 Eldorado Restaurant, Inc., Lessee.  
 Mayor & Aldermen of Jersey City.  
 Frank X. DeSevo, Mortgagee.  
 10 Jersey City Boy Scouts of America, Tenant.  
 James Corubia, Tenant.  
 Colonial Life Insurance Company of America,  
 Mortgagee.

It is thereupon on this first day of June, 1925,  
 ordered that the said Board of Chosen Freehold-  
 ers of the County of Hudson, for and in behalf of  
 the County of Hudson, do pay into this Court, the  
 20 sum of \$140,000 and \$4,544.45, adjustments on the  
 beneficial interest of the property owner, total  
 \$144,544.45 plus \$168.63 interest at 6% from May  
 25, 1925, to June 1, 1925. Total amount \$144,713.08  
 to be distributed according to law upon the appli-  
 cation of any person interested therein, as their  
 respective interests may appear.

And it is further ordered that written notice be  
 given to the owners, Dominic Sinisi and Lena  
 Sinisi, his wife, and other persons interested in  
 said lands and premises, that the said sum of \$140,-  
 30 000 and \$4,544.45, adjustments on the beneficial  
 interest of the property owner, total \$144,544.45  
 plus \$168.63 interest at 6% from May 25, 1925, to  
 June 1, 1925, has been paid into this Court by peti-  
 tioner. Total \$144,713.08.

And it is further ordered that such notice so  
 given shall have the same effect as if the sum so  
 awarded had been actually tendered to the said  
 property owners and other persons entitled there-  
 to, as their respective interests may appear.

40 It is further ordered that such notice be given  
 in writing to said property owner and other per-

*Petition of Dominic Sinisi, et ux.*

sons interested in said lands and premises, by serving same personally, and where personal service cannot be had, by advertising such notice once a week for two weeks, successively, in The Jersey Journal and The Jersey Observer, two newspapers published and circulating in the County of Hudson. 10

EDWIN ROBERT WALKER,  
Chancellor of the State  
of New Jersey.

Respectfully advised,  
JOHN GRIFFIN,  
Vice-Chancellor.

**Petition of Dominic Sinisi and Wife.**

(Filed June 9, 1925.) 20

IN CHANCERY OF NEW JERSEY.

<p>Between</p> <p>THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON, for and in behalf of the County of Hudson,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">and</p> <p>DOMINIC SINISI and LENA SINISI, his wife,</p> <p style="text-align: right;">Defendants.</p>	}	<p>In Condemnation. On Petition for Payment of Money Into Court.</p> <p>Petition of Dominic Sinisi and Lena Sinisi, his Wife.</p>	30
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To the Honorable EDWIN ROBERT WALKER,  
Chancellor of the State of New Jersey.

The petition of Dominic Sinisi and Lena Sinisi, 40

*Petition of Dominic Sinisi, et ux.*

his wife, of the City of Jersey City, County of Hudson and State of New Jersey, respectfully shows:

10 1. Certain lands of your petitioner situate in Jersey City, in the County of Hudson and State of New Jersey, have been taken by the Board of Chosen Freeholders of the County of Hudson for the purpose of widening the Hudson County Boulevard, the reconstruction of a bridge, and for other purposes.

2. Your petitioner was awarded the sum of \$140,000.00 as the compensation to be paid your petitioner for the lands so taken.

20 3. On or about June 1st, 1925, the sum of \$144,713.08, being the amount of said award with adjustments for interest and other items, was paid to the Clerk of this Court pursuant to the statute in such case made and provided.

30 4. The only persons having any interest in the sum so paid into this Court are your petitioner, the owners thereof, Colonial Life Insurance Company of America, a corporation of New Jersey, Domenico Bellezza, Louis J. Messano, Andrew Muro and Frank X. DeSevo, who hold mortgages on the said premises, and the Mayor and Aldermen of Jersey City, who claim liens for taxes, water rent and assessments.

5. The amount so paid into Court is the result of a judgment in the Hudson County Circuit Court entered upon the verdict of a jury on appeal from the award of commissioners in condemnation.

40 6. The petitioner is now desirous that the aforesaid sum of \$144,713.08 less the amounts due to said mortgagees and said Mayor and Aldermen of

*Petition of Dominic Sinisi, et ux.*

Jersey City be paid to them, together with all accumulations of interest thereon.

Your petitioner therefore prays that an order may be made authorizing and directing the Clerk of this Court to pay to your petitioner the said sum of \$144,713.08 with all accumulations of interest thereon, less such sum as may be found to be due to the said mortgagees upon an apportionment of a proportionate amount of their said mortgages to the property covered by their mortgages, not so taken in condemnation as aforesaid; and less such further sums as may be found to be due to the Mayor and Aldermen of Jersey City, for taxes, water rents and assessments as aforesaid.

10

And your petitioner will ever pray, etc.

20

JOHN MILTON,  
Solicitor for Petitioners.

State of New Jersey, }  
County of Hudson, } ss.:

DOMINIC SINISI, of full age, being duly sworn according to law, on his oath deposes and says:

1. I am one of the petitioners in the foregoing petition named. The facts, matters and things contained in said petition are true of my own knowledge.

30

DOMINIC SINISI.

[Jurat.]

40

**Order to Show Cause.**

(Filed June 9, 1925.)

## IN CHANCERY OF NEW JERSEY.

10	Between  THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON, for and in behalf of the County of Hudson,  <div style="text-align: right;">Petitioner,</div> <div style="text-align: center;">and</div> DOMINIC SINISI and LENA SINISI, his wife,  <div style="text-align: right;">Defendants.</div>	In Condemnation. On Petition for Payment of Money Into Court.  Order on Application of Dominic Sinisi and Lena Sinisi, his Wife.
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The Board of Chosen Freeholders of the County of Hudson having presented a petition to this Court for leave to pay into the Court the sum of \$144,713.08, the amount awarded to the owner and persons interested in land of Dominic Sinisi and Lena Sinisi, his wife, by a jury on appeal in the Circuit Court of the County of Hudson,

30 And this Court having by order dated June 1st, 1925, ordered that the petitioner do pay such sum into this Court to be distributed according to law upon the application of any persons interested therein,

And said sum having been duly deposited in this Court and application having been made therefor by Dominic Sinisi and Lena Sinisi, his wife, claiming to be the owner of said premises,

And it appearing from the said petition that

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*Order to Show Cause.*

the following named appear to have an interest in the lands and premises referred to in said petition:

Dominic Sinisi and Lena Sinisi, his wife,  
Owner.

Domenico Bellezza, Mortgagee.

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Louis J. Messano, Mortgagee.

Trust Company of New Jersey, Mortgagee.

Andrew Muro, Mortgagee.

George H. Martin, Lessee.

Frank D. Follansbee, Mortgagee.

Eldorado Restaurant, Inc., Lessee.

Mayor & Aldermen of Jersey City.

Frank X. DeSevo, Mortgagee.

Jersey City Boy Scouts of America, Tenant.

James Corubia, Tenant.

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Colonial Life Insurance Company of America,  
Mortgagee.

It is on this 9th day of June, 1925, on motion of John Milton, Solicitor for and of counsel with Dominic Sinisi and Lena Sinisi, his wife, ORDERED that the parties above named and each of them, within 30 days from the date hereof, present application in writing to this Court in such form as to advise the Court what claim or interest such person may have in the said moneys now in Court, or within such time do show cause in writing why the prayer of the application and petition of Dominic Sinisi and Lena Sinisi, his wife, should not be granted.

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And it is FURTHER ORDERED that a copy of this order be served upon each of the parties above named within five days from the date hereof, either personally or by leaving the same at the residence of such person in the State of New Jersey with any member of his family or person in charge of

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*Order to Show Cause.*

his residence, and where such service cannot be made, that notice of this order be given by publication of such notice once in each week for two weeks successively in the Jersey Journal and Jersey Observer, two newspapers published and circulating in the County of Hudson, the first of said two publications to be made within the said five days, and by mailing within the said time to such persons so not served whose address can be ascertained a copy of the said notice. The form of notice to be so published and mailed in the event of failure to make service either personally or at the residence of any of the parties of this State will be substantially as follows:

20. To .....

By virtue of an order of the Court of Chancery of New Jersey made on the day of the date hereof in a cause wherein the Board of Chosen Freeholders of the County of Hudson, is petitioner, and ..... and you and others are defendants, you are required on or before the..... day of..... next to present application in writing to the Court of Chancery of New Jersey in such form as to advise said Court what claim or interest you may have in moneys paid into said Court by said petitioner, or within said time show cause in writing why the application of Dominic Sinisi and Lena Sinisi, his wife, for the payment of said moneys to them should not be granted.

30. The petition of said Board of Chosen Freeholders of the County of Hudson was filed  
40. so as to permit it to pay into the Court of

*Order to Show Cause.*

Chancery money awarded for the taking of lands by said County of Hudson, which said lands are located in Jersey City, New Jersey, and in which lands said petition alleges that you have had some interest in or lien upon, and you are made defendants of these proceedings so that if you have any claim upon or interest in the same, such claim to or interest in the fund realized by the taking of said lands may be asserted by you. 10

Dated, .....

JOHN MILTON,  
Solicitor for Petitioners,  
Dominic Sinisi and  
Lena Sinisi, his wife, 20  
1 Exchange Place,  
Jersey City, N. J.

E. R. WALKER,  
C.

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**Answer and Claim of Eldorado Restaurant, Inc.**

(Filed July 7, 1925.)

IN CHANCERY OF NEW JERSEY.

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Between

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON, for and in behalf of the County of Hudson,

Petitioner,

In Condemnation. On Petition for Payment of Money Into Court.

Answer to said Petition and Claim for Damages of Eldorado Restaurant, Inc., a Lessee.

and

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DOMINIC SINISI and LENA SINISI, his wife,

Defendants

The answer and claim for damages of Eldorado Restaurant, Inc., respectfully shows:

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The matters and things set forth in the petition of Dominic Sinisi, *et al.*, are true, according to the information and belief of this claimant, Eldorado Restaurant, Inc., except that the claimant above mentioned is entitled to part of the award which has been paid into the Court of Chancery for the benefit of Dominic Sinisi, *et al.*, which the petitioner fails to allege in his petition to this Court.

The claim of Eldorado Restaurant, Inc., is made up as follows:

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(A) Claimant has since January 5th, 1922, been in possession of the ground floor and basement of premises known as 2893 Hudson Boulevard, Jersey

*Answer and Claim of Eldorado Restaurant, Inc.*

City, New Jersey, which are the premises which were condemned by the County of Hudson for bridge purposes, etc., as is in petition in this cause duly recited. The possession and occupancy of the premises by the claimant was under a written lease with said Sinisi, *et al.*, which lease began January 1st, 1922, at a yearly rental of \$4,700 per annum for the first five years and for the second five years at a yearly rental of \$5,700 per annum, making a ten year straight term lease, with the privilege in the lessee of occupying the premises for a further term of five years by renewing lease for that time at a yearly rental of \$6,700 per annum. A copy of said leasehold agreement is annexed hereto and is made part hereof, under which said lessee would be entitled to retain its tenancy and possession of the aforesaid premises for a period of almost twelve years, from the date of this petition.

Premises similar to those in question cannot now be rented by the claimant except at a much increased rental, to wit, \$9,000.00 per annum, or an average increase of \$3,300.00 per annum over and above the amount paid and to be paid by the lessee for its occupancy of the premises in question.

Said lease, therefore, was of great value to the claimant and by reason of the deprivation of the use and occupancy of the premises, it suffers a loss in this particular of \$38,058.33.

(B) The claimant further has on deposit with the said Dominic Sinisi, the sum of \$1,175.00 which the said Sinisi retained as a deposit to apply to any unpaid rent in accordance with the said lease, which sum is now due together with interest from January 1st, 1925.

*Answer and Claim of Eldorado Restaurant, Inc.*

10 (C) Claimant further shows that at the time of its leasing the premises in question from the said Sinisi, he having up to that time conducted a restaurant business in the premises, he, the said Sinisi, exacted from the said claimant and the said claimant paid to the said Sinisi, the sum of \$8,000.00 in cash as and for the good will of the restaurant business of Sinisi, which as above set forth was to be conducted by the claimant under the lease for a period of fifteen years from the making of the same.

20 (D) That at the time of the making of the lease mentioned, the claimant assumed a \$7,000.00 mortgage as a further payment for good will over the term of the lease above mentioned, which mortgage the said Sinisi was obligated to pay at that time, but which claimant fully paid and discharged.

On the last two items of damage, therefore, the claimant alleges a damage to it of \$11,583.33.

30 Your petitioner therefore prays that an order may be made allowing it its damages as above recited which aggregate the sum of \$50,851.66 and that this Court may direct the Clerk in Chancery to pay said sum to it from the amount paid into Court by the petitioner hereinbefore named.

THOMAS J. BROGAN,  
Solicitor for and of Counsel with Petitioner Eldorado Restaurant, Inc.

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(COPY OF LEASE)

40 THIS AGREEMENT, made the fifth day of January, in the year of our Lord, One Thousand Nine Hundred and Twenty-two.

BETWEEN, Dominic Sinisi and Lena Sinisi, his

*Answer and Claim of Eldorado Restaurant, Inc.*

wife, of the City of Jersey City, in the County of Hudson and State of New Jersey, party of the first part.

AND, Eldorado Restaurant, Inc., a corporation of the State of New Jersey, of the second part.

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WITNESSETH, that the said party of the first part, has hereby let, and rented to the said party of the second part, and the said party of the second part, has hereby hired and taken from the said party of the first part,

ALL the ground floor and basement of premises known as No. 2893 Hudson Boulevard, Jersey City, N. J., for the term of ten (10) years, to commence on the 1st day of January, A. D. 1922, at the yearly rent of Forty-seven Hundred (\$4700.) Dollars a year for the first five years of said term which said yearly rental is to be paid in equal monthly installments of \$391.67 a month on the first day of each and every month in advance and at the yearly rental of Fifty-seven hundred (\$5700.) Dollars a year for the second five (5) years of said term, which said yearly rental is to be paid in equal monthly installments of \$475.00 a month on the first day of each and every month in advance.

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And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and to remove all persons therefrom.

And the said party of the second part covenants to pay to the said party of the first part, the said rent as herein specified, to wit: Forty-seven Hundred (\$4700) Dollars a year for the first five years

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*Answer and Claim of Eldorado Restaurant, Inc.*

of said term which said yearly rental is to be paid in equal monthly installments of \$391.67 a month on the first day of each and every month in advance and at the yearly rental of Fifty-seven hundred (\$5700) Dollars for the second five years of said term which said yearly rental is to be paid in equal monthly installments of \$475.00 a month on the first day of each and every month in advance.

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And at the expiration of the said term, or the termination of this lease, the said party of the second part will quit and surrender the premises hereby demised, in as good a state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

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And the said party of the first part covenant, that the said party of the second part, on paying the said rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

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It is hereby agreed by and between the parties hereto that the said party of the second part shall have the privilege of renewing this lease for a further term of five (5) years at the yearly rental of Sixty-seven Hundred (\$6,700) Dollars a year payable in equal monthly installments of \$558.33 a month on the first day of each and every month in advance, under the same conditions as herein contained provided, however, that the said party of the second part give unto the said parties of the first part a written notice in writing six months' prior to the expiration of this lease of their intention to renew.

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This lease is given subject to the following conditions:

*Answer and Claim of Eldorado Restaurant, Inc.*

1. That the said parties of the second part will not use or occupy the said premises or permit same to be used or occupied otherwise than as a restaurant.

2. That the said parties of the second part will not assign said lease or underlet said premises or any part thereof without the previous consent in writing of the party of the first part. 10

3. That the said parties of the second part shall make all interior repairs at their own cost and expense.

4. That the said parties of the second part shall keep the sidewalk in front of the demised premises free from ice and snow under penalty of forfeiture and damage. 20

5. That the said parties of the second part will not do or suffer to be done in or upon said demised premises any act or thing which shall or may be a nuisance, annoyance, inconvenience or damage to the said party of the first part or his tenants or to the occupants of adjoining buildings or to the neighborhood.

6. That the said parties of the second part will not do or permit to be done on said premises anything which may cause the fire insurance rate of said premises to be increased and should they do or cause to be done anything whereby said fire insurance rate shall be increased that they, the said parties of the second part, shall pay the additional cost of insurance under penalty of forfeiture and damages. 30

7. That in the event the water rates levied or to be levied against the entire premises known as No. 40

*Answer and Claim of Eldorado Restaurant, Inc.*

2893 Hudson Boulevard shall exceed the sum of One Hundred (\$100) Dollars per year that then and in that event the said parties of the second part agree to pay such excess as additional rent under penalty of forfeiture and damages.

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8. That no unlawful, immoral or indecent practice shall be permitted on the premises, nor waste or damage be suffered or permitted by the parties of the second part, and said restaurant and premises shall at all times be kept and maintained by the parties of the second part in a clean and sanitary condition.

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9. That all changes, alterations or repairs necessary to said premises in order to fit same for the business of the parties of the second part shall be made and done by the parties of the second part at their own cost and expense and with the consent of the party of the first part. Upon the termination of this lease all changes, alterations, additions, repairs or improvements to or upon said demised premises shall become the property of the party of the first part without liability on his part for the same.

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10. That they will observe all municipal, state and federal regulations in the conduct of said restaurant business at the demised premises.

11. That the parties of the second part will provide and furnish heat for the entire building as required by law at their own cost and expense, under penalty of forfeiture and damages.

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12. That at the expiration of said lease the said parties of the second part will quit and surrender the premises hereby demised in as good state and condition as reasonable use and wear thereof will

*Answer and Claim of Eldorado Restaurant, Inc.*

permit, damages by the elements excepted. It being understood that the landlords shall keep at their own cost and expense pipes, radiators and appurtenances above the demised premises in good order and condition and that should there be a temporary discontinuance of service of heat there shall be no forfeiture of this lease. If any of the pipes, radiators or appurtenances above the demised premises are out of order that then and in that event there shall be no forfeiture of this lease, and the tenant shall not be responsible for any damages occasioned thereby. 10

13. It is hereby stipulated and agreed by and between the parties hereto that this lease shall be subordinate to the present existing mortgage aggregating the sum of Thirty-eight Thousand (\$38,000) Dollars or any new mortgage or mortgages hereafter taken in place thereof up to and not in excess of sixty (60%) percent of the appraised valuation of said premises known as No. 2893 Hudson Boulevard. 20

14. It is hereby agreed by and between the parties hereto that the note for the sum of Eleven Hundred and Seventy-five (\$1,175) Dollars given by the said party of the second part unto the said parties of the first part, which said note matures on the first day of July, 1922, shall be held by the said party of the first part as security for the punctual payment of the rent due or to become due under this lease and at maturity of said note when the money thereof is paid unto the said parties of the first part the money shall be held by the said parties of the first part as like security for the punctual payment of the rent due or to become due under this lease and at the expiration hereof if said rent 30 40

*Answer and Claim of Eldorado Restaurant, Inc.*

has been punctually paid said parties of the first part shall return said money to the said party of the second part together with interest thereon from the date when said money is paid unto the said parties of the first part. The interest on this money shall be paid semi-annually from July 1st, 1922.

15. That the parties of the second part contemplate changing the front of the premises to be demised which will require the filing of plans and specifications with the proper authorities and the tearing down of certain partitions in the premises. The party of the first part hereby grants unto the said party of the second part the permission to make said alterations and will sign any necessary papers required to effectuate same.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals the day and year first above written.

LENA SINISI,  
DOMINIC SINISI,  
ELDORADO RESTAURANT, INC.  
DOMINICK BERNI,  
President.

Attest:

JAMES RAGGIO,  
(Seal) Secretary.

State of New Jersey, }  
County of Hudson } ss.:

BE IT REMEMBERED, that on this 5th day of January, in the year of our Lord One Thousand Nine Hundred and Twenty-two, before me the subscriber, a Master in Chancery of N. J., appeared Dominic Sinisi and Lena Sinisi, who, I am satis-

*Order of Reference.*

fied, are the lessors, in the within Indenture of Lease named; and I having first made known to them the contents thereof, they did acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

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LOUIS J. MESSANO,  
Master in Chancery of N. J.

**Order of Reference.**

(Filed September 15, 1925.)

IN CHANCERY OF NEW JERSEY.

Between

20

THE BOARD OF CHOSEN FREEHOLD-  
ERS OF THE COUNTY OF HUDSON,  
Petitioner,

and

DOMINIC SINISI and LENA SINISI,  
his wife, *et al.*,  
Defendants.

In Condemnation.  
On Petition for  
Payment of  
Money Into  
Court.  
Order of Refer-  
ence.

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The Board of Chosen Freeholders of the County of Hudson having paid into this Court on or about June 1, 1925, the sum of \$144,713.08, being \$140,000.00 the amount awarded as the value of the lands and premises of Dominic Sinisi and Lena Sinisi, his wife, and the damages incurred by the taking thereof by a jury on appeal in condemnation in the Circuit Court of the County of Hudson, plus \$4,713.08 adjustment for interest and other items, and the said Dominic Sinisi and Lena

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*Order of Reference.*

10 Sinisi, his wife, having made application to this Court by petition verified June 8, 1925, for the payment to them of said sum, and this Court having by order dated June 9, 1925, directed that the parties interested therein present their claims to this Court in writing within thirty days from the date of said order, or within such time to show cause why the prayer of the petition of said Dominick Sinisi and Lena Sinisi, his wife, should not be granted,

20 And it appearing from the proofs on file with this Court that a copy of said order of June 9, 1925, was served personally or by leaving the same at the residence in this State with a member of the family or a person in charge of such residence, as directed in said order, upon the following:

Trust Company of New Jersey  
Frank D. Follansbee  
Jersey City Boy Scouts

And it further appearing from the proofs on file with this Court that appearances have been entered herein by the following:

30 Domenico Bellezza  
Louis J. Messano  
Andrew Muro  
Eldorado Restaurant, Inc.  
George H. Martin  
Mayor and Aldermen of Jersey City  
Frank X. DeSeva  
James Corrubia  
Colonial Life Insurance Company of America

40 And it further appearing that of the parties above named claims have been filed in accordance with the proofs of said order by the following:

*Order of Reference.*

Mayor and Aldermen of Jersey City  
 Colonial Life Insurance Company of America  
 Domenico Bellezza  
 Louis J. Messano  
 Andrew Muro  
 George H. Martin  
 Eldorado Restaurant, Inc.  
 Frank X. DeSeva

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And it further appearing that the time allowed to file claims or to show cause why the prayer of said petition should not be granted, as directed in said order, has expired.

And it further appearing that this Court by order dated July 27, 1925, directed the payment to the Mayor and Aldermen of Jersey City of the sum of \$5,918.62, to the Colonial Life Insurance Company of America the sum of \$24,752.00, to Domenico Bellezza the sum of \$10,743.33, to Louis J. Messano the sum of \$4,247.83, to Andrew Muro the sum of \$4,789.33, to Frank X. DeSeva the sum of \$5,368.33, in full of their respective claims, and to Dominic Sinisi and Lena Sinisi, his wife, the sum of \$32,000.00, leaving on deposit with this Court the sum of \$56,393.64 to cover such sums, if any, as may be adjudged to be due or losses alleged to have been sustained, as more particularly set out in their respective petition, of the following:

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30

George H. Martin  
 Eldorado Restaurant, Inc.

and Carlyle Garrison, solicitor for George H. Martin, Thomas J. Brogan, solicitor for Eldorado Restaurant, Inc., and John Milton, solicitor for Dominic Sinisi and Lena Sinisi, his wife, consenting hereto,

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*Order of Reference.*

10 It is on this 15th day of September, 1925, on motion of John Milton, solicitor for Dominic Sinisi and Lena Sinisi, his wife, ORDERED, that the persons who have not filed claims as directed in the order of this Court in this cause dated June 9, 1925, be foreclosed and debarred from participating in said fund.

And it is FURTHER ORDERED that this matter be referred to Hon. John Bentley, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and to advise what order or decree should be made therein.

E. R. WALKER,  
C.

20 We consent to the making of the foregoing order:

C. W. GARRISON,  
Solicitor for George H. Martin.

THOMAS J. BROGAN,  
Solicitor for Eldorado Restaurant, Inc.

JOHN MILTON,  
Solicitor for Dominic Sinisi and  
Lena Sinisi, his wife.

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**Testimony.**

## IN CHANCERY OF NEW JERSEY.

Between

BOARD OF CHOSEN FREEHOLDERS OF  
HUDSON COUNTY,

Petitioner,

and

DOMINIC SINISI and LENA SINISI,  
his wife, *et al.*

On Petition, etc.

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Transcript of testimony taken in the above-stated cause, on petition of the defendants for division of the funds paid into court, taken at the Chancery Chambers in Jersey City on Wednesday, December 9, 1925, at 10 o'clock in the forenoon, before His Honor

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JOHN BENTLEY, Vice-Chancellor.

## APPEARANCES:

JOHN MILTON, Esq., for Petitioners Sinisi.

THOMAS J. BROGAN, Esq., for Petitioner  
Eldorado Restaurant, Inc.CARLYLE GARRISON, Esq., for Petitioner  
Thomas Martin.

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Mr. Milton: Before proceeding with our claim, perhaps a little explanation will be helpful to your Honor: The Board of Freeholders, exercising the power conferred upon it by the Eminent Domain Act, took the entire property of Dominic Sinisi located at the southwesterly side of the Hudson Boulevard just south of the southerly end of the

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*Testimony.*

bridge over the Pennsylvania Railroad's right of way. The premises consisted of the plot of land with a brick building erected thereon which were under lease to Mr. Brogan's client, the Eldorado Restaurant; that is, the major portion. The upper  
10 part of the property was occupied by Dr. Martin, dentist.

Now, then, when Sinisi and the County got through determining the amount which the County should pay, which involved consideration by the Condemnation Commission, an appeal, and a subsequent trial by jury, the County, under the Act which authorizes the condemning power, was unable safely to itself to determine to whom the money should be paid. It then came into court,  
20 and the whole fund was paid into this court, the practice being then unsettled.

I then filed a petition on behalf of Mr. Sinisi and took an order to show cause requiring the claimants named in the County's proceeding to show cause why we shouldn't have the fund or to file their claims within a day fixed by the order, and two persons responded, one being Mr. Brogan's client, the Eldorado Restaurant, and the other Dr. Martin. Mr. Brogan sets up that the Eldorado  
30 Restaurant was in possession of the ground floor and basement of the Sinisi property, under a written lease, by which the occupancy began on January 1, 1922, at a yearly rental of \$4,700 for the first five years, and a second five years at a rental of \$5,700 per annum, with a further privilege of occupying the premises by renewing the lease for a third five-year period if the renewal of the second term was exercised. Premises similar to these cannot now be rented except at a much increased  
40 rental, namely, \$9,000 per annum, or an average

*Testimony.*

increase of \$3,300 per annum over the amount paid by the lessee, so that he claims \$38,000 and some odd dollars and cents on that branch of the case. He next alleges that he has on deposit with us the sum of \$1,175 for back rent. Then he alleges that Sinisi having conducted a restaurant on the premises he, Sinisi, exacted from him, the claimant, \$8,000 in cash for the good-will of the restaurant business which was to be conducted during the period of the lease for 15 years. 10

Mr. Brogan: We abandoned that. That was a mistake, as I understand it.

Mr. Milton: Paragraph D sets forth the payment of a \$7,000 mortgage by the Eldorado Restaurant, or assumed by it, as a further payment for the good-will, and they claim some part of that mortgage. The total claim of the Eldorado Restaurant is stated in its claim as \$50,851.66. I assume, of course, that it will be reduced by reason of the elimination of the \$7,000 item. 20

Mr. Brogan: We computed this \$7,000 for 15 years, making about \$500 a year, roughly.

Mr. Milton: In other words, what Mr. Brogan did to arrive at the \$38,000 was by multiplying \$3,300 by 12 and a fraction years, then adding to that \$1,275, representing the deposit with interest from January 1, 1925, then he took the sum of \$15,000, consisting of the alleged payment of \$8,000 in cash and the \$7,000 mortgage, and applied the remaining unexpired portion of the lease for 12 years and a fraction, and in that way arrived at the sum due his client of \$11,583.33, and the three sums added together make \$50,851.66. 30

The claim of Dr. Martin, I am advised, has been adjusted this morning, so that the only claim we have to deal with today is that of the Eldorado Restaurant. 40

*Abadar J. S. Makray, direct.*

Mr. Brogan: Who has the laboring oar?

Mr. Milton: I think you have.

Mr. Brogan: Your opening correctly recites the facts. I just want, if the Court please, a few minutes to discuss one point with my chief witness.

10 (After a short intermission.)

If your Honor please, Mr. Milton and I have agreed that the lease may be submitted as is without formal proof.

(The same is marked Exhibit P-1.)

ABADAR J. S. MAKRAY, sworn on behalf of the claim of the Eldorado Restaurant, as an expert, testified as follows:

20 *Direct examination by Mr. Brogan:*

Mr. Brogan: Are Mr. Makray's qualifications admitted?

Mr. Milton: Yes.

Q. Mr. Makray, you are in business in the Trust Company of New Jersey Building at 921 Bergen Avenue, Jersey City? A. Yes, sir.

Q. That is in the Journal Square zone, isn't it? A. Yes, sir.

30 Q. And at my request you examined the premises formerly owned by Dominic Sinisi, within which the Eldorado Restaurant kept its store under a lease? A. Yes, sir.

Q. You made an examination of those premises at the time of the condemnation of these premises by the Commission, did you not? A. Yes, sir.

Q. And you made measurements at that time? A. Yes, sir.

40 Q. Now, you have made many leases in the vicinity of Journal Square in the past five years, have you not? A. Yes, sir.

*Abadar J. S. Makray, direct.*

Q. And have collected the data under the various leases extending over a period from 1922, did you? A. Yes, sir.

Q. Now, will you tell the court just what the premises in question consisted of, its measurements and so forth, and what similar premises could be rented for subsequent to the date of the filing of the petition in condemnation.

10

Mr. Milton: That is objected to, if the Court please. The question is so framed that I am forced to object to the latter part of it. The first part is unobjectionable.

The Court: Why not one thing at a time, Mr. Brogan. The question is double.

Mr. Brogan: I think it is treble, but I merely wanted to save time. I will withdraw the question.

20

Q. Please give us the general layout of the premises, describing them as comprehensively as you can, giving the measurements and such other facts as will aid the court in securing a general idea of the situation. A. The property consisted of a three-story building, fully improved, on a lot 2490 square feet area, with a store and basement leased to the Eldorado Restaurant Company, and of this area of 2490 square feet 2147 is occupied by the store and 1500 square feet in usable space in the cellar. The store and basement have been used for the purpose of conducting a restaurant business.

30

Q. (By the Court): The restaurant is 2100? A. 2147 square feet, and 1500 in the cellar. The cellar space, after deducting the walls and heating apparatus, coal-bins and stairs leading down to it amount to a total of 343 square feet, which reduces the total space to 2147.

40

*Abadar J. S. Makray, direct.*

- Q. That is by actual measurement? A. Yes.
- Q. You have a copy of the lease there; do you know what that lease provided? A. Yes, sir.
- 10 Q. Was there any additional burden, besides the paying of rent, placed upon the lessee by that lease? A. Yes, sir.
- Q. What was it? A. The furnishing of heat for the tenants of the owners who paid no rent to the Eldorado Restaurant Company.
- Q. In other words, this defendant covenanted to heat the building to the satisfaction of the landlord? A. Yes, sir.
- 20 Q. Now, have you analyzed the rent payments to be made under that lease, and are you ready to testify to what the net average cost per square foot the premises return to their owner?

Mr. Milton: I object to that. Answer that "yes" or "no."

A. Yes.

Q. What is it?

Mr. Milton: Now, I object.

Mr. Brogan: What I meant to say is this: The question is involved.

- 30 Q. From your analysis of the lease, and from your analysis of the additional burden which you have just mentioned as put upon the lessee, are you ready to testify to the cost to the lessee per square foot over the period of the lease, the average net cost? A. Yes, sir.
- Q. What is the average net cost to the lessee?

40 Mr. Milton: That is objected to. I think we ought to have some understanding of what the legal rule is. What the cost of operating this building is to the lessee I

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don't think is material or relevant to the issue here. As I see it, the issue here is, what portion of the fund in court is the claimant entitled to as representing the value of his leasehold, and that is all.

The Court: But how are you going to arrive at the value of the leasehold? 10

Mr. Milton: The courts have already pointed that out. The present Chancellor, writing the opinion in *Holcombe v. Trenton White City Co.*, when sitting as a Vice-Chancellor, said this —

The Court: What report?

Mr. Milton: That is in 80 Equity, page 153. It is a very long opinion, and the question arose in this wise: It was a receivership and the assets were insufficient to pay the debts. Application was made to assess the stockholders, upon the ground that the stock which they held represented an issue for which no consideration had been paid. One of the considerations coming to the corporation which issued the stock was a lease, so that it became necessary to determine whether or not that lease had a value at the time the stock was issued when the lease was turned over by the promoters of the company. The present Chancellor, after reviewing the legal questions involved in assessing the stock and so forth, outlines the method to be followed in valuing the lease, and he sums it up by saying: 20 30

The true method of calculating the value of an unexpired lease is not by ascertaining the yearly rental value and then multiplying the figures by the num- 40

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ber of years the lease has to run, but by calculating its value by the annuity tables—that is, by multiplying the annual value by the value of one dollar per year for the number of years in the unexpired term, citing *West Jersey Railroad Co. v. Thomas*, 23 N. J. Equity, 431. There, there was a guaranteed net rental. It was a railroad lease, one railroad guaranteeing the net return, and it was a fixed annual rental on a lease. The Court said:

The value of this for fifteen years and four months can be ascertained exactly by annuity tables, which are calculated with as much certainty as the multiplication table, and of which courts will take notice as they do of that table.

By these tables, one dollar per annum for fifteen years and four months, calculated at the rate of lawful interest in this state, is \$9.22, which makes the value of \$14,444 yearly income for the term \$133,163, or more than \$26,000 less than the amount awarded. This calculation, thus made upon the evidence produced by the defendants themselves, of the annual income of the road, and made on mathematical principles, is correct, and shows the value of the lease.

So that I say, Your Honor, the only question in this case is, what is the annual value of this lease—what is the market value of it—and then we will apply the mathematical proposition to be obtained.

The Court: I get no assistance from the table of mortality.

Mr. Milton: No, the Inwood tables are the recognized ones, and we have used them in our proofs.

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The Court: What do you say, Mr. Brogan?

Mr. Brogan: I have nothing to say; I just press the question. I concede what Mr. Milton has said, in its entirety. He has certainly stated the rule, and that is exactly how the case has been proved and that is exactly the theory upon which we proceeded in the petition, as Mr. Milton has. I am trying to show by this witness what the tenants are paying today under this lease with all its terms and conditions, and if that is not a pertinent question I am greatly mistaken. However, I will reframe the question. 10

Mr. Milton: Mr. Brogan has stated something that I think perhaps requires a further explanation: He has stated that I have correctly stated the rule in regard to the measure of damages in the ascertainment of the amount of the fund that the claimant is to get. If that is so and his concession is to be understood that way, then I think his claim ought to be modified. It means, it seems to me, and I think we are entitled to know it, that the claim for any payment for good will of the business must be eliminated from his claim. In paragraph C there is an allegation that he paid \$8,000 for the good will of a restaurant business. 20 30

The Court: I don't think this is the time to argue that question, but had better be left until the proofs are closed.

Mr. Milton: Perhaps that is so, but it will control the extent of the proof.

Mr. Brogan: Let us have it now and find out where we stand. If the Court does want it I am ready to argue it. 40

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The Court: You still claim the \$8,000 as a part of the amount to be paid?

10 Mr. Brogan: Yes, sir. I say this, that the \$8,000 was paid as a consideration to Sinisi for getting out of this business and letting this present occupant in in contemplation of the 15 years occupancy.

20 The Court: I think I would rather deal with it at the close of the case than now. I am going to overrule the objection to the question that is pending, on the ground that other consideration may move from the tenant to the landlord than the amount of money to be paid each month or year or other period, and that is what I understand Mr. Brogan desires to do. For instance, if the tenant is under a duty, as it has been intimated here, that he is to supply the entire building with heat, although he doesn't occupy the entire building, I think that is clearly a consideration moving from him to the landlord in the nature of rent, or the equivalent of what we always consider rent. (Addressing the witness) Now, do you remember the question?

30 Mr. Brogan: I will reframe the question.

Q. Mr. Makray, from your analysis of the lease, and from your analysis of the additional burden which some of the conditions of the lease, that is, heat, put upon the tenant, will you tell us what the net rent per foot per year averaged the Eldorado Restaurant?

The Court: Why per foot?

40 Mr. Brogan: Well, if the Court please, in my preparation of this case I can find that

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no one is able to take properties and say that John Jones' place is exactly like the one under consideration. The method of the real estate men I have talked to is, to figure out the square-foot area and then apply that to the whole.

10

A. For a period of the first five years it is \$1.84, plus 7 cents per square foot for heat; for the second period it is \$2.35, plus 7 cents per square foot for heat; and for the third period of 5 years it is \$3.12, plus 7 cents per square foot for heat; which averages for unexpired term \$2.35, plus 7 cents per square foot for heat, or \$2.42.

Q. Now, the condemnation petition was filed as of January, 1924, wasn't it?

20

Mr. Milton: June 11, 1924, is the date stated in the petition.

The Court: What is this, the date of the presentation of the petition in condemnation?

Mr. Milton: Yes, sir.

Q. Then on the 11th of June, 1924,—will you tell us as closely as you can what it would cost the petitioner, that is, the Eldorado people, to obtain similar premises, or as near as may be, in a similar location.

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The Court: I understood that you weren't going to attempt to base your damages on such an admeasurement.

Mr. Brogan: If the Court please, as I understand it, the rule is that the value of the present lease would have to be taken and then the application of the well-defined rule as to the money value or the amount of

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10 difference between the first lease value and the second lease value. That is what I understand the rule to be that is laid down in the opinion in 80 Equity, to which Mr. Milton has referred to. That is what I am asking this witness today to do. I am approaching it in my own humble way, but I am approaching it none the less.

The Court: Well I confess that I don't know what the rule of damages is, except as read by Mr. Milton, and while it seems to me that the opinion in that case of *Holcombe v. Trenton White City Co.* is very clear, that any difference between what this lease costs the tenant and what a similar lease in some other building cost him is out of the case, and I understood you to agree with him.

20

Mr. Brogan: Well, I agreed that that was the rule.

The Court: You agreed that that was the case.

Mr. Brogan: Yes, that that was the case, but I certainly didn't agree to the philosophy that Your Honor has extracted from it; in other words, it might mean that to you, but to my immature mind it doesn't mean that.

30

The Court: Don't make any comparison of minds. Well, you read that case in 80 Equity. It seems to me, Mr. Brogan, that it is clarity itself. I would like to know what you draw from it different from what I am drawing.

Mr. Brogan: Now, I say this: It seems to me to be the most elementary principle that before I can proceed to the application of the annuity tables I must first have a sum

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upon which that application must be predicated; in other words, suppose this witness says the premises, or premises like those, would cost \$10,000 a year, and it appears that we are only paying \$5,000. Ergo, our damage is \$5,000 a year. That is as far as we have gone. Now, a dollar to me at the end of ten years is worth so much today; therefore, to that damage there is applied the annuity rule, which gives the net damage as of today. In other words, it is a system of discounting the damage. 10

The Court: Yes, but you are proceeding on the hypothesis that at the end of 11 or 12 years from now if this Eldorado Company sits down and waits patiently that it will get a certain amount of money. That isn't true. It seems to me that what the Chancellor points out in that case is not simply the mathematical rule for the assessment of damages which will be adopted as a matter of policy but the simplicity with which it can be applied. In the Follansbee case I think I adopted as a rule the difference between what Follansbee paid for his lease on the Darling property and what he would have to pay in the general neighborhood when he was evicted by the city. 20 30

Mr. Brogan: Perhaps I don't make myself clear. My question is, what will the Eldorado Company have to pay in that zone, and I say to you, sir, that the opinion stands for what I am contending today.

The Court: The opinion says nothing about establishing the damages that will be sustained by the tenant; it says that you 40

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must take the yearly rental value. Now, what does "yearly rental value" mean? It means the amount of money that this corporation was to pay, whether in money or money's worth, then multiply that by the figures to be found in this table.

10

Mr. Brogan: I will agree to that.

Mr. Milton: Now, may I have that just a moment and I will point out what was in the Chancellor's mind. My notion of the way to ascertain the rental value is by an expert. Where the question of the rental value is concerned I think it is ascertainable in this wise, if it is a fixed, absolute sum such as existed in the West Jersey case that I just read to Your Honor, which arose as the result of a guarantee. There, there was a definite return to the beneficiary of the lease. Ordinarily, value is fixed by an expert opinion, and I think where it is not capable of proof such as existed in the West Jersey case, rental value is to be ascertained as the result of calling someone competent to testify upon the subject, and I think he must be asked the question, "What is the rental value of the *locus in quo*?" For illustration, in the Emery case, where I read to Your Honor from Vice-Chancellor Emery's opinion; there the Master found that the tenant was paying the full rental value of the premises under lease and, hence, was not entitled to any part of the fund. Let me read to Your Honor what the Vice-Chancellor said: (Counsel reading from report.)

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The Court: Do you understand that the rule is as Mr. Milton has said, that you es-

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establish the rental value of the premises in question, and then from that you establish whether or not the tenant is paying that value, or more than that value, or less than that value?

Mr. Brogan: Yes, sir.

10

The Court: Well, I didn't understand it until it was explained to me. Then Mr. Milton is a little bit out of order.

Mr. Milton: For the witness to testify what it would cost the tenant to acquire the right to occupy other premises similarly situated?

The Court: Yes.

Mr. Milton: I don't think it is at all relevant. That isn't the test.

20

The Court: No, no; that isn't the test, I understand that, but when you come to the cross examination you can bring that out.

Q. Mr. Makray, for the purposes of this question let us assume that in June, 1924, the Eldorado premises were untenanted; in your opinion, would the Eldorado people have to pay more rent than the average figure you mention for the term of the lease which they actually had, or less rent, or the same rent?

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Mr. Milton: Just a minute. That is objected to.

The Court: Ask him what the fair rental value is.

Mr. Brogan: I submit, sir, I would like to have Your Honor's ruling on it. The question is addressed to whether or not there should be a difference, extending over a term of 11½ years, according to the an-

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nuitly table, in favor of the lessee or whether or not the lessee was paying the fair value as of that date, or was overpaying.

The Court: Well, what is your objection, Mr. Milton?

10 Mr. Milton: My objection is that it is not competent.

Mr. Brogan: The witness's qualifications, let me remind counsel, are admitted.

Mr. Milton: Well, I don't dispute that.

The Court: The witness is an expert. I will overrule the objection and the answer may be given.

A. More.

20 Q. I beg pardon? A. He would have to pay more than he did before.

Q. How much more?

Mr. Milton: I object, for the same reason, as not material or relevant.

The Court: I will take it.

A. The difference between \$2.35 and \$5.25, or \$2.67.

*By Mr. Milton:*

30 Q. Between \$2.35 and \$5.25? A. No, between \$2.58 and \$5.25. The average for the 15 years is \$2.58.

Q. You said \$2.42 before. A. I will tell you why \$2.35.

Mr. Brogan: May I have a moment's recess, please?

(The Court takes a recess for five minutes.)

40 Mr. Brogan: If the Court please, I wanted, in accordance with the rule that is

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pointed out by the Chancellor, to have it definitely settled by the Court, and to strike out that first paragraph A in my answer and amend it in accordance with the rule laid down by the Chancellor, so that if the case goes up it will be accurate. 10

The Court: Any objection?

Mr. Milton: I want to see the amendment before I decide that. I don't know what it is going to be.

Mr. Brogan: Well, suppose the first paragraph of A and the second paragraph of A stand, and instead of the 3d and 4th clauses of the paragraph the amendment read: "By reason of the deprivation or of the cutting off of the lease of the claimant the claimant has suffered a loss of \$50,000" just in round figures. 20

Mr. Milton: Does that mean, Mr. Brogan, that the paragraph commencing with the words, "Premises similar to those in question" be stricken out?

Mr. Brogan: No, it means "Premises similar to those in question cannot now be rented by the claimant except at a much increased rental," and strike out the rest. 30

The Court: And then substitute for the following paragraph what you have said?

Mr. Brogan: Yes, sir. In other words, your Honor, then no question whatever will come up on the pleadings.

The Court: No, I don't suppose there can if you go through this final hearing with Mr. Milton consenting.

Mr. Milton: I think that is all right. Of course, it increases the amount that could 40

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be awarded to the complainant by some thousand dollars.

Mr. Brogan: Well, I have stricken out 7.

Mr. Milton: Well, I might expect to lose 5.

10 Mr. Brogan: Well, I will make it 45, then.

Mr. Milton: That's all right; let it stand.

Mr. Brogan: It's all right for you.

Q. Now, Mr. Makray, have you arrived at any calculation of damages to the claimant, by reason of the cutting off of this lease? A. Yes, sir.

Q. Have you, in reaching that conclusion, been governed by the annuity tables that are in use? A. Yes, sir.

20 Q. And will you tell us how much, in your opinion, and applying the annuity tables, the claimant has been damaged by the cutting off of this lease in condemnation.

Mr. Milton: I object.

Q. What I want to know, Mr. Makray, is, how much in your opinion, has the claimant been damaged, upon your computation, or, what is the increased cost this man would have to pay if he entered into a new lease for like premises in June, 1924? How much would his damage be by entering into that new lease? A. \$43,275.

30 Q. In making up that figure you have, of course, taken into consideration the added burden of furnishing heat by the lessee, have you not? A. Yes, sir.

Mr. Brogan: Is it quite clear to the Court just exactly the location of this building, that is, the building that was there?

40 The Court: Yes, I have eaten there.

*Abadar J. S. Makray, cross.*

Q. Mr. Makray, where is the present Universal Security Company building located? A. Directly in the rear line of the property of Sinisi, or where Sinisi has been, facing the new Boulevard.

Q. Do you know what rental is being paid for store property in the Universal Security Company's building today? 10

Mr. Milton: Answer "yes" or "no."

The Court: Do you know?

A. I can't answer that; it is not rented.

*Cross examination by Mr. Milton:*

Q. Mr. Makray, first, will you give me the details of the \$43,275, which you say will be the amount of the damage sustained by the tenant by reason of his having to rent other premises similarly located? A. I establish an average figure of \$5.25 a square foot as against \$2.58 a square foot for the unexpired period of the lease; that is to say, from the day of dispossession. 20

Q. And what date is that? A. June 1st, 1925.

Q. So that you have taken June 1st, 1925, as the date of eviction and as the date from which you start averaging the rental? A. No.

Q. No? A. No. 30

Q. What effect did you give June 1st, 1925? A. Between June 1st, 1924, and June 1st, 1925, the Eldorado Company has been in possession; therefore, if there was any benefit of the \$2.58 a square foot, averaging it from June 1st, 1924, to the expiration of the date, they received it by being in there.

Q. Well, do you mind saying again what effect you gave to June 1st, 1925; why do you select that date? A. Because that is the time when their lease actually ceased. 40

*Abadar J. S. Makray, cross.*

10 Q. And is the period which you have taken into consideration in arriving at the sum of forty-two and some odd thousand dollars; does that begin around June 1st, 1925? A. No, the figures arrived at start with June, 1924, and that amount is applied from the date of June, 1925.

Q. Applied from June 1st, 1925? A. Yes.

*By the Court:*

Q. Is that the time that the company was obliged to get out of the building? A. Yes, sir.

*Cross examination resumed:*

20 Q. Do you know that they were, in fact, ousted June 1st, 1925? A. That is my information; yes, sir.

Q. You don't know that, as a matter of fact? A. It is the information I received that I considered a matter of fact.

Q. From whom? A. For instance, next door neighbor has been dispossessed June 1st, 1925, and at the same time notice was served on these same people.

Q. Well, how do you know that? A. Well, I happened to see it; it is directly under my window.

30 Q. You saw the service of the notice? A. No, not the service of the notice; their quitting business.

Q. What I am trying to find out is, how did you find out. Did somebody tell you it was June 1st? A. I noticed in the month of July, or on July 1st, they weren't in possession.

Q. So that, on July 1st you noticed that the tenant was out? A. Yes.

40 Q. And you assumed that it was June 1st, 1925? A. Yes.

*Abadar J. S. Makray, cross.*

Q. So that the period, then, to which you have applied these figures runs from June 1st, 1925, to the expiration of the lease? A. Yes, sir.

Q. What day is that? A. With the privilege of renewal to January 1st, 1937.

Q. And how many years and months are embraced in that period? A. That embraces 11 years and seven months. 10

Q. Now, then, with the net excess of \$2.67 per square foot, what did you do then after you ascertained that? A. I computed the total amount for the unexpired period and then applied the annuity table.

Q. Let's see: \$2.67 per square foot—how did you arrive at the annual excess? Did you apply the \$2.67 to the 2,147 square feet in the store? A. Yes, sir. 20

Q. What did that give you? A. That gave me \$5,632.49.

Q. 2,147 square feet in the store times \$2.67— A. Is \$5,632.49.

Q. Then I assume that you applied the \$2.67 to the 1,500 square feet in the cellar? A. No, I did not.

Q. What did you do? A. I deducted from the yearly rental 50 cents per square foot for the cellar space. 30

Q. I don't understand that. Why did you do that? A. Because the usage of the cellar space is of some value to the tenant, and the cellar space was included in his rental.

Q. Then did you deduct 50 cents a square foot? A. Yes, sir, for each cellar space square foot.

Q. So that you deducted \$750 a year from the \$5,632.49? A. No, that is already deducted in the estimate. 40

*Abadar J. S. Makray, cross.*

Q. What was it deducted from? A. This is the area and it is done this way: He paid \$4,700 the first five years and I put the cellar space at \$750; that is \$3,950, giving an average of four—

10 Q. I see what you mean; we will come to that a little later. What did you do with the \$5,632.49; did you multiply that by 11 years and 7 months?  
A. Yes.

Q. And you got what total? A. \$65,243.19.

Q. A grand total. Now, then, did you apply the annuity tables to that sum? A. Yes, sir.

Q. And found that the present value of that sum was \$43,275? A. No, the present value of that sum was \$46,000; and then I deducted the cost of heating at 7c per square foot also.

20 Q. As applied to the store? A. 7c per square foot for the entire building.

Q. How many square feet are there in that building? A. 2147 square feet for the three stories.

Q. That is practically 21c times 2147? A. Yes, sir.

Q. And that gave you how much money? A. \$5,200.

Q. \$5,200 for the 11 years? A. Yes, sir.

30 Q. Now, then, that would result in what? You deducted, you say, what? A. I got the rental total and then discounted —

Q. What did you do? A. Got the total rent, \$65,243.19, and applied the annuity tables.

Q. What did you do with the \$5,200? A. I also applied the annuity table, giving me the round figure of \$3,500, and I have deducted the \$3,500 from \$46,000, giving me \$42,375.

40 Q. All right. Now, Mr. Makray, the controlling factors in the estimation or calculation of this

*Abadar J. S. Makray, cross.*

damage are two, are they not: First, the square foot rental actually paid, as you fixed it; and the square foot rental of what the tenant would have to pay to secure other premises similarly situated?  
A. Yes.

Q. And you also fix upon these particular premises, if the tenant had to rent them on June 11, 1924, this same rental value per square foot that you gave to other premises similarly situated? Is that clear? 10

Mr. Brogan: Do you understand that question?

A. I can't get it clearly.

Q. In other words, it is synonymous in your mind—the rental value of the particular premises, the Sinisi property, if it were vacant and a new tenant were going in—that is the same as the rental value of other premises similarly situated in the same general neighborhood; is that right? A. Yes. 20

Q. And that is \$5.25 a square foot? A. Yes, sir.

Q. Will you be good enough to state to me now what the total rental upon that basis for this property would have been—I mean, per year, of course. A. \$11,271.75. 30

Q. Now, Mr. Makray, you did value this property for the County of Hudson as an expert in the condemnation proceedings between the County and the owner of the property, Mr. Sinisi? A. Yes, sir.

Q. What value did you place upon the premises in question—the entire property—as of June, 1924? A. I think around 100 or 110 thousand dollars.

Q. Let me read to you from the testimony taken at that time: Were you asked this question and 40

*Abadar J. S. Makray, cross.*

did you make this answer, referring to the Sinisi property?

Q. What value did you place upon that property as an entirety? A. \$90,000.

10 Do you brush aside with the wave of the hand \$10,000? A. Well, I can't recall that. That is why I said from \$100,000 to \$110,000.

Q. What was the actual rental in June, 1924, that that property was bringing? A. Well, I can't recall, Mr. Milton. I haven't got my papers here.

Q. Well, did you have the figures when you calculated the damage that would be sustained by the tenant in this proceeding? A. I had the papers in reference to the Sinisi property.

20 Q. I mean the Sinisi property. A. I have in reference to the Eldorado Company, but not for the rest of the tenants.

Q. You mean, you had the lease? A. Yes.

Q. And that is all you did have? A. Yes.

Q. What value, Mr. Makray, would you have given to the property in June, 1924, if it had been producing at that time an annual rental of \$11,000 odd dollars that you stated was the result of the application? A. In proportion to its increase.

30 Q. So that you will be able to fix a figure in addition to stating a principle as you have done, let me refresh your recollection: Didn't you make this statement—

I stated that the entire property was valued from its revenue-producing value, and if that land would be independent of the building—vacant land—it would be worth \$54,000; I also stated that it does not necessarily follow that the market value of the land is represented by the value of the land

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*Abadar J. S. Makray, cross.*

and the value of the building; the market value of the two does not necessarily represent the market value of the entire. For instance, you have a whole lot of breweries which were erected for over \$300,000, and you won't get more than \$40,000 for them on the same land. That does not mean that the building is worth only \$10,000, while it did cost \$300,000 to erect. What it produces in revenue is the value of the property. 10

Did you make that statement? A. Yes, sir.

Q. Didn't you also testify at the same time that the gross rental obtained, or the information that you obtained in respect to the rental, show that they were \$9,020? A. I think so. 20

Q. Now, then, taking the gross rentals as they existed in June, 1924, \$9,020, will you add to those gross rentals the additional rental coming from the store and the basement, upon the basis that you have fixed the rental value at \$5.25, and give me now the gross total rental on that basis.

Mr. Brogan: I object, as immaterial and irrelevant.

The Court: I overrule the objection.

Mr. Milton: Do you want me to state the purpose of the question? 30

The Court: I see it.

A. It will be approximately \$14,500.

Q. So that the total gross rental, on the basis of that store being worth \$5.25, would have been \$14,000 or in excess of \$14,000? A. No, a total of \$14,000.

Q. \$14,500? A. Approximately.

Q. All right. What would have been the value of this property June 11, 1924, if the rentals had 40

*Abadar J. S. Makray, cross.*

been as you say \$14,500? A. It would have been around \$140,000.

Q. And you, Mr. Makray, said this property, based upon its revenue-producing value, was only worth \$90,000, didn't you? A. I didn't say so.

10 Q. You didn't say that? A. Yes, when you created —

Q. That is enough; your lawyer will take care of the rest of it. That value of \$140,000 was kind of a rough-and-ready value which you gave quickly out of your mind just now? A. Yes.

Q. And was it still on the application of the 10% rule? A. No, 8½.

20 Q. And do you get the value of \$140,000 by capitalizing on a basis of 8½ upon the rental of \$140,000? A. No, sir.

Q. If you were giving an arithmetical apportionment based on an 8½% return what valuation would be shown? A. 8½% is applied by me to net rental and not gross rental.

Q. Well, what was the method that you pursued when you testified before? A. As I stated, net.

Q. Then do you arrive at a value of \$140,000 on a gross rental of \$14,500? A. Approximately about that much.

30 Q. What information, Mr. Makray, did you have which enables you to fix the cost of heating the building at 7 cents a square foot? A. Experience, and diagrams furnished by the Building Owners' and Managers' Association, and I compared the same with this character of building.

Q. Now, you pick up some pamphlet and run it through your fingers — A. I beg pardon; this is not a pamphlet; this is the biggest association in the United States.

40 Q. I didn't mean to assassinate the character of

*Abadar J. S. Makray, cross.*

that association by calling it a pamphlet; I am speaking of that book you have there.

The Court: He says it is a book of the Building Owners' Association.

Q. Would you mind closing that book for a moment. (Witness closes it). Do you know what the coal bill for this building was in any one year? 10  
A. No, I do not.

Q. Did you go to the proprietor of the Eldorado Restaurant to find out what it cost them for an engineer or fireman service to run the furnace? A. I did not.

Q. Did you go to Sinisi to find out from him what it cost him to run the buildings from a heating standpoint, for the coal or fireman's service? 20  
A. I did not.

Q. What you did, then, I take it, was to read a book—I won't call it a "pamphlet," a book—issued by an association, which told you that, in the experience of this association generally any brick building would cost 7 cents a square foot to heat it? A. No; that book calls for 3 cents per square foot.

Q. And you doubled it? A. Because of the smaller size of the building, yes. 30

Q. What is the date of the issuance of that book?  
A. The date of the issuance of this book is 1923.

Q. And what association issues it? A. The Building Owners' & Managers' Association.

Q. Of what? A. Of the United States.

Q. And does the experience that is stated in this book include Jersey City? A. Why, some of the men are in Jersey City; whether they furnished the data or not I don't know; but it includes every city in the United States. 40

*Abadar J. S. Makray, cross.*

10 Q. Would you mind reading what it says about this 3 cents per square foot for heating. A. It is given per square foot, figuring on experience with 22 independent buildings it ranges from \$1.90 to \$2.86, averaging \$1.91; and comparing fuel, oil and steam and coal and steam, the oil is \$1.91 and the coal is \$3.09.

Q. Per square foot? A. Per square foot.

Q. \$3.09 per square foot? A. Yes, sir.

Q. Per year? A. Per year, yes.

Q. And this building was heated by coal? A. Yes, sir.

Q. And those figures are the result of experience gathered in the operation of office buildings, are they not? A. Yes.

20 Q. Of the size somewhat similar to the First National Bank building? A. From 3 to 4 stories up to 40.

Q. Now, it is a well-known fact, Mr. Makray, that it costs a great deal more per square foot to heat a small two-story building than a larger one. A. That is why I doubled it.

Q. On the basis of \$3.09 per square foot for coal you doubled it to \$7.00? A. 7 cents a square foot.

30 Q. I am unable to apply it. A. 3.9 cents, not dollar.

Q. Three cents and nine one-hundredths of a cent? A. Yes, per square foot.

Q. Mr. Makray, what is the total square foot area in the building? A. Three times 2,147 square foot is the rentable area.

Q. And on that basis it would cost how much to heat this building? A. Approximately \$400.

Q. That is for coal alone? A. Yes.

40 Q. For the entire expense? A. Yes, for the entire expense.

*Abadar J. S. Makray, cross.*

Q. Did you fix a square-foot rental value on this property when you testified before the Condemnation Commissioners? A. I really don't know; I can't recall.

Q. If you had been asked, would you have said that the square-foot rental value of the property in June, 1924, was \$5.25? A. No, I would not. 10

Q. You would not? A. No.

Q. Why not? A. Because every time there is a condemnation you create a certain condition and the property has to be rented to suit those conditions.

Q. If you had been asked, when you testified for the Condemnation Commission whether or not this property had a rental value of \$5.25 per square foot, you would have said "no"? A. I would have said "no." 20

Q. What would you have fixed as the square-foot rental value of the property in June, 1924, had you been asked?

Mr. Brogan: That is objected to. It is merely academic in the light of the witness's testimony, and its materiality depends wholly upon the proposition as to whether the theory upon which part of his answer is predicated is tenable legally. In other words, when he says that this lease was cut off, there was that much of that leasable property in that zone lifted out; therefore, any man wanting a lease would have to go out and, because of these condemnations, find himself confronted with a new situation which makes for higher value. It seems to me, your Honor, that Mr. Milton's question would have no bearing upon this whatever. 30 40

The Court: I suppose it is done for the

*Abadar J. S. Makray, cross.*

purpose of attacking the truth of his testimony as an expert.

Mr. Milton: Yes, for that very purpose.

The Court: I will overrule the objection.

10

A. Under the conditions where it is not necessary to establish a partial rental, I accepted the conditions as they were.

Q. What I asked you, Mr. Makray, was this: Had you been asked to furnish the information what square-foot rental value would you have put upon the store and basement of the Sinisi property in June, 1924, as of that date.

20

Mr. Brogan: Well, if the Court please, I object to it. It supposes a condition which is contrary to the fact. Now, in ruling upon my objection the Court must bear in mind that this witness's testimony is the result of weeks and months and the collection of data. Now Mr. Milton comes in at the 11th hour and says, "Assume a condition that doesn't exist, what would your answer have been." Manifestly, that has no bearing upon this case.

30

The Court: If it cannot be answered that is for the witness to say. The question is, "If you had been asked the question before the condemnation how much a square foot of the building should have rented for as of June, 1924, what would your figure have been."

A. I would have requested at least six weeks' time to prepare myself to answer.

40

Q. Do you mean to say, Mr. Makray, that when you took the stand and testified before the Con-

*Abadar J. S. Makray, cross.*

demnation Commission you hadn't then ascertained the square-foot rental value of that property as of June, 1924? A. As to the lease, yes.

Q. What was it? A. \$1.84 on that day.

The Court: We are talking about what the square-foot value was that was actually paid by the Eldorado. 10

A. That was the question.

The Court: That is what we are talking about now.

Q. Now, do you mean, Mr. Makray—so that we will have no misunderstanding about it—that the square-foot rental value of the Eldorado premises, store and basement, on June 11, 1924, was \$1.84 a square foot? A. \$1.84 a square foot for the store and 50c a square foot for the basement. 20

Q. So that it would be a total of \$2.34 per square foot for the total? A. You can't add that; they're two different things.

Q. I see. Well, for all of the premises together, assume that I was the tenant on the store floor and the basement, what was the square-foot rental value of the property occupied by me in that building on June 11, 1924? A. You'll have to give me time to figure that out. 30

Q. Go ahead.

A. (Witness figures with pencil and paper and then replies.) Approximately \$1.25.

Q. Per square foot? A. Yes, sir.

Q. And now will you take into consideration the obligation upon me to heat the entire building; what would have been the square-foot rental value of that premises occupied by me, the store and basement, on June 11, 1924? A. \$1.35. 40

*Abadar J. S. Makray, cross.*

10 Q. So that, Mr. Makray, if the tenant were paying under his lease \$1.91 he was paying per square foot, which includes the obligation to heat the entire building, more than the rental value of the property at that time? A. He would be paying more than what his lease calls for.

Q. His lease calls for payment on the basis of \$1.84? A. For the store alone? No. You asked me about the combination of store and cellar, plus heat, and that amounts to \$1.35.

Q. Now I ask you for the rental value per square foot, combined store and basement, with the obligation to heat the entire building on June 11, 1924. A. According to the lease, \$1.32.

20 Q. I didn't ask you according to the lease; I asked you, as a real estate expert, what was the rental value per square foot of the premises occupied by the Eldorado Restaurant, plus the obligation to heat the entire building, on June 11, 1924. A. That's the same question that you put to me before, and I answered you that it takes time to study the conditions as of that date to arrive at the square-foot rental value.

30 Q. Mr. Makray, you prepared yourself to testify as an expert in this case? Right? A. Yes, sir.

Q. You were one of the experts that was retained by the County of Hudson to testify before the Condemnation Commissioners? A. Yes, sir.

Q. Were you retained to testify on the jury trial? A. No.

Q. But you did prepare yourself to testify in 1924, with respect to the value of this property as of June 11, 1924, did you not? A. Yes, sir; as to the value.

40 Q. And you did ascertain what the actual gross rentals were? A. Yes, sir.

*Abadar J. S. Makray, cross.*

Q. You ascertained what the expense of operating the building was and what the net rentals were? A. Yes.

Q. And you fixed in your mind a value to be given as of that date, of \$90,000, based upon those rentals? A. Yes, sir.

10

Q. Do you mean to say that you cannot now, in the light of all that experience, in view of the fact that you have prepared for two trials, you cannot now state what the square-foot rental value would be of that portion of the property occupied by the Eldorado Restaurant on June 11, 1924? A. I cannot, because there was no necessity for preparing for that particular question.

Q. How long would it take you to prepare to answer that question, namely, what was the square-foot rental value of those premises occupied by the claimant here on June 11, 1924? A. As I stated before, it would take me about six weeks to go back from that date five or ten years.

20

Q. So you are not now testifying as to the square-foot rental value of the premises occupied by the Eldorado Restaurant on June 11, 1924? A. I am, as a result of the condemnation, but not previous to the condemnation.

30

Mr. Brogan: I object to this line of cross examination, because it is potently predicated upon the theory that the property remained as usual after the condemnation. In other words, Mr. Milton is asking this witness, I understand, what, as of such and such a date—which was the time of the condemnation—was the value of the property occupied by the Eldorado Company, and this witness says, these properties were lifted out of existence, they were taken away

40

*Abadar J. S. Makray, cross.*

10 and converted into a county road, and, therefore, on the day following—the next minute after condemnation—anyone seeking a store must consider this neighborhood of all these properties obliterated and gone forever. Therefore, would it not be well for Your Honor to give us a ruling on this point.

The Court: That is not what Mr. Milton is talking about; not what the rental value was after the petition for condemnation was filed but at the time it was filed. Now, it seems to me that is a fair question for a real estate expert.

20 Mr. Brogan: To test his credibility and knowledge; yes, sir. But suppose we have this situation: Suppose that the property was leased to the Eldorado Company for \$2.50, and suppose that this witness or someone else is paying only 50c. What possible benefit can that be to anyone, in view of the fact that the next day, or the next minute, the property is wiped off the map. The county owned the property and accepted no rent for it, as I understand. It never owned the property until the money was paid into this court; the money wasn't talked about until June, 1925.

30 The Court: Why go into that? What difference does it make?

40 Mr. Brogan: All right; I am perfectly willing to have a ruling on the proposition now, namely, that we are confronted with a physical situation in the Tube Zone, and this property has been taken away from us and the prospective tenants, and that anybody seeking a lease of it cannot get it because the

*Abadar J. S. Makray, cross.*

property doesn't exist. Mr. Milton says he is asking the question to test Mr. Makray's knowledge and reliability as a real estate man. If that is his purpose I will withdraw my objection on the record. If he has any other purpose in offering it, it is immaterial and irrelevant in this case, because it postulates a state of facts that did not and could not exist. 10

The Court: Frankly, I don't know what other purpose Mr. Milton may have in the cross examination, and I certainly am not going to compel him to disclose it; but I think that this line of examination is admissible for the purpose of affecting the weight to be given the witness's testimony as an expert, and for that reason I shall refuse to curtail his examination along this line. 20

Mr. Brogan: Will Your Honor say on the record that you are receiving it solely on that ground.

The Court: Mr. Brogan, your objection is noted, of course. I cannot do that. If it is admissible I have got to receive it.

Q. Now, Mr. Makray, will you be good enough to tell me what the rental value was on June 11, 1924, of that portion of the Sinisi building which was occupied by the Eldorado Company, the claimant here? A. I can't value that, Mr. Milton; I have to go by the lease. 30

Q. And the testimony which you have given here on direct examination of the rental value of the premises so occupied by the claimant here, then, is not as of June 11, 1924? A. It is for a similar place in the same location, after the condemnation is 40

*Abadar J. S. Makray, cross.*

through, to be rented by the Eldorado Restaurant, and I stated that to be \$5.25.

10 Q. So that your value of \$5.25 per square foot for premises similarly situated is after the improvement for which the—or in aid of which—the condemnation proceeding was begun has been completed? Right? A. No, it is the result of creating such conditions as well as the Plaza and the Bridge.

20 Q. So that you say, assuming that the Plaza and the Bridge have been projected, connected with which are the condemnation proceeding,—assuming that they are in existence, then \$5.25 is the square-foot rental value of property similarly situated; is that right? A. No, the condemnation proceeding for the taking of the Sinisi property creates a new condition, because it takes away 600 square feet of frontage in that section.

30 Q. I want to get clearly on the record and in mind just what your prices are in this section as a result of the withdrawal from the available market for rental, the stores of the Sinisi property and other properties involved in this condemnation—the market value or the rental value of premises similarly situated, you say is \$5.25; is that right? A. Yes, sir.

Q. And is that true whether or not the improvement contemplated by the county is completed and consummated? A. Well, the fact, Mr. Milton, is that all the stores there in the neighborhood of the Sinisi property have to vacate at the same time with the Eldorado, and those people were in the market to rent; therefore, the demand was greater than the supply.

40 Q. Right. So that what you say, under your theory, in substance, is this: This condemnation

*Abadar J. S. Makray, cross.*

proceeding and one instituted by Jersey City, causing the demolition of the Journal Square building owned by Mr. Lerner and his associates, the Renrel building opposite Journal Square building owned by the Stuyvesant Realty Company, wiping out the Jersey Journal building and the Mahoney building not only but the Sinisi building itself, together with the Goldberg property; and I have now named, have I not, all of the properties named in the condemnation south of the bridge; as the result of the demolition of the buildings on those properties and the devotion of those properties to public use, it creates a condition which makes the rental value of stores similarly situated to the Sinisi building \$5.25 per square foot? A. Yes, sir. 10

Q. Is that right? A. Yes, sir. 20

Q. All right. Now, then, that condition did not exist, did it, on the 11th day of June, 1924, when the County of Hudson went to the County Clerk's office and lodged its petition starting the condemnation proceedings? A. That day created it.

Q. But it didn't exist, did it, physically? A. No.

Q. On that day the condemnation commissioners had not appraised the Journal Square property? A. No. 30

Q. And, so far as you know, the city condemnation hadn't begun? A. No.

Q. They came after? A. Yes.

Q. Isn't it a fact, Mr. Makray, that in valuing the whole Sinisi property—the whole fee, all of it,—the Condemnation Commissioners fixed its value as the physical conditions existed on June 11, 1924?

A. Yes, sir.

Q. And you testified to the value of the whole Sinisi property, from the door-knob to the roof, as of June 11, 1924? A. Yes, sir. 40

*Abadar J. S. Makray, cross.*

Q. And fixed the value at \$90,000? Right? A. Yes, sir.

10 Q. And what you are now doing in estimating the value of this lease, is to take a condition after June 11, 1924, when the Sinisi property is wiped out, and saying that the value of the lease shall be estimated as of the condition that exists after June 11, 1924? A. Yes, sir; after wiping out the conditions.

Q. Now, Mr. Makray, I want you to name for me a single store in this general neighborhood which is renting today for \$5.25 per square foot. A. George Callas, \$7.14.

Q. Where is it located? A. Rowland Building.

20 Q. Where is that located? A. That is located on Journal Square, or what is now known as Journal Square.

Q. That isn't in the Journal Square building but the Rowland building? A. The Rowland building.

Q. What business is it there? A. Candy and light lunch.

Q. Has the concern opened yet? A. Yes, sir.

Q. When? A. December 1st.

Q. December 1, 1925; is that right? A. Yes, sir.

30 Q. When was the lease made? A. October 14, 1925.

Q. Now, that is at the corner of what streets? A. Corner of Sip and Journal Square.

Q. How many square feet in the store? A. 1261 square feet.

Q. How large is the store? How many square feet are included in that? A. 1261 square feet.

40 Q. And you think a store located in a building at the corner of Sip Avenue and Journal Square, containing 1200 square feet, is comparable to a store with 1261 square feet? A. Yes.

*Abadar J. S. Makray, cross.*

Q. In arriving at the square foot value? A. Yes, sir.

Q. What is the rental to be paid in the lease of October, 1925? A. \$8,800 until 1927, \$9,300 until 1929, \$11,300 in 1930, \$11,750 in 1931, 1932 and 1933, and \$13,000 in 1934 and 1935.

10

Q. Are you familiar with the rentals in the Nalley building? A. Yes, sir.

Q. Is there a lease made there? A. Yes, sir.

Q. When was that made? A. April 27, 1922.

Q. And how many square feet are involved? A. 2,150 square feet.

Q. Have you the graduated rental? From \$3,000 to \$3,600.

Q. The business there is a restaurant, is it not? A. Yes.

20

Q. And the Nalley building faces directly upon the so-called Plaza, does it not? A. Yes, sir.

Q. And the plot is opposite the location of the Sinisi building, isn't it, across the Boulevard? A. Well, the front line of the building is at right angles to the front line of the boulevard where Sinisi was located.

Q. What other lease, Mr. Makray, are you able to furnish us information of where the rent is at least \$5.25 per square foot? A. In the same block, Michael Star's place, \$7.27, for 330 square feet.

30

Q. And do you think that a store containing 330 square feet is a fair basis for comparison in rental value with a store containing 2,170 square feet? A. The square-foot rental is comparable.

Q. You think it offers a basis upon which to judge the value of the store premises occupied by the Eldorado Restaurant, do you? A. Yes, sir.

Q. When was this lease made? A. In October, 1925.

40

Q. Is that store opened, too? A. Yes, sir.

*Abadar J. S. Makray, cross.*

Q. When was that opened? A. Also on December 1st. Might be a couple of days one way or the other.

Q. Are there any others? A. Louis Palmer, of the surety property, pays \$12.60 per square foot.

10 Q. How much is that? A. 238 square feet.

Q. That is a cigar store? A. No, orangeade. Then Peter Chrones, 1050, pays \$5.23 and has two leases.

Q. And when were the two last leases made? A. They were made in April, 1920.

Q. That is some five years ago? A. Yes, sir.

Q. Where is the Ramp? A. What I call the Ramp is at the intersection of the Hudson County Boulevard and the Tube station.

20 Q. It is a narrow entrance from the Boulevard into the main doorway of the Summit Avenue tube station; is that right? A. Yes, sir.

Q. How many thousands of people do you suppose, in a given day, pass through that passageway? A. Altogether too many.

Q. The fact is that that is a part of the Brisbane property? A. Yes, sir.

30 Q. And the Brisbane property is the highest peak—it is the peak of values? A. We all consider it so.

Q. And you have taken these two stores, a property conceded by all as the peak of values, as a basis of comparison of the rental value? A. If I had not taken them as a basis I would have taken them into consideration.

Q. You have taken them into consideration? A. Yes, sir.

40 Q. And they are very small stores? A. One of them is 1,650 square feet and compares favorably with the Sinisi property.

*Abadar J. S. Makray, cross.*

Q. And the other is how many, 200? A. 300 around—235, and one is 483 square feet.

Q. Are you familiar with the lease made by the Oyster Bay Chop House? A. I am not; it is not on record.

Q. You say it is not on record? A. Not to my knowledge. 10

Q. Let me state these facts as the basis of a question: Assume that there was a lease made by the Margolies Holding Company for the Oyster Bay Chop House in October, 1925, involving 2,280 square feet, at a rental of \$3.94 per square foot for the first five years, \$4.38 for the next five years, \$4.73 for the next five years, and \$5 a square foot for the period from 1940 to 1946, being a period of 21 years all together; would that have affected your judgment as to the square-foot rental value of the property in question if you had known that? A. I would have included it in my average rental. 20

Q. Would you have reduced the average of \$5.25? A. I don't know.

Q. Can you tell me whether it would or not? A. It may have reduced the value, I think, but I'm not positive.

Q. You know the location of this property? A. Yes, sir. 30

Q. Where is it? A. It is next adjoining Nalley's property, if I recall that. It is next adjoining Nalley's restaurant.

Q. Which will be facing the new Plaza, will it not? A. Yes.

Q. The Oyster Bay Sea Food and Chop House runs a restaurant business, does it not? A. Yes, sir.

Q. And it has been located in that general neighborhood for some time, hasn't it? A. I think they moved two or three times. 40

*Abadar J. S. Makray, redirect.*

Q. It was in the Journal Square Building on the Hudson Boulevard? A. Yes.

Q. And the Oyster Bay and Chop House was one of the tenants dispossessed by the taking of the Journal Square Building? A. So I understand.

10 Q. And they located in the immediate neighborhood under this lease, didn't they? A. Yes, sir.

*Redirect examination by Mr. Brogan:*

Q. Just tell me where the Oyster Bay premises are. A. The Oyster Bay premises are approximately 60 feet west of the Plaza to be created and Sip Avenue.

20 Q. Show us on this plan. A. This is the corner of Sip and the to-be-created Plaza, and this is the region here.

Q. Will you point it out to me, please? A. This is Sip Avenue and this is the Plaza to be created.

Q. And is this the Nalley building? A. That is the Nalley building, and this is the Oyster Bay building.

The Court: Are you going to offer that at any time?

Mr. Brogan: Why yes, I will offer it.

30 *By Mr. Milton:*

Q. Did you make it? A. I put in the square-foot area but not the rental values.

The Court: Let it be marked.

(The same is marked Exhibit P-2.)

40 The Court: Now, on this exhibit, P-2, the witness has marked the letter A where the old Rowland building was; and "Oyster Bay" has been written in in the premises where the Oyster Bay Sea Food & Chop House is located.

*Abadar J. S. Makray, redirect.*

*Redirect examination resumed:*

Q. So that this property, the Oyster Bay property, is on what was formerly known as Wilkes Street, isn't it? A. Yes, sir.

Q. Now, isn't it a fact, Mr. Makray, from your personal knowledge, and from your personal knowledge of conditions gathered from your real estate work, that you can lease property today for less money than you could in 1924?

10

Mr. Milton: I object. He says, "Isn't it a fact?" it is leading.

Mr. Brogan: I withdraw it.

Q. Is the Nalley building, in your judgment, as good a location as was had in the Sinisi building?

20

A. Very close.

Q. And, in your opinion, Mr. Makray, was the year 1922, for the making of leases, comparable as to values to those paid in the year 1924? Answer that yes or no.

Mr. Milton: I object.

The Court: Well, he is asked to answer yes or no.

Mr. Milton—"Is it comparable?" That can't be answered by yes or no.

30

The Court: How do you expect me to know what is going on in your head after you have studied and prepared this case, and you sit there and say "I object" and no ground is stated. I am left in the dark.

Mr. Milton: I withdraw my objection and beg your Honor's pardon.

Q. (By the Court.) Were the two years comparable, 1922 and 1924? A. No.

40

Q. (By Mr. Brogan.) In which of those years,

*Abadar J. S. Makray, redirect.*

1922 and 1924, could you lease property in this section for the least sum of money? A. 1922.

Q. A lease was pointed out by Mr. Milton for this Nalley building; is it within your purview to know about that? A. Yes, sir.

10 Q. And it was made when? A. April 27, 1922.

Q. In your opinion, could such a lease have been written in June, 1924, between these parties for this sum?

Mr. Milton: I object, on the ground that it calls for a conclusion.

Mr. Brogan: It is his opinion I am asking for.

20 The Court: I think that is purely speculative, Mr. Brogan.

Mr. Brogan (addressing the stenographer): Strike it out.

Q. In 1924 were similar properties leased, according to your knowledge and records?

The Court: Similar to the Nalley building?

Mr. Brogan: Similar to this Nalley and Malone building.

30 A. In size or price?

Q. In size, similar property. A. No. The only one that Mr. Milton just referred to, and that is just three times in price.

40 Q. That is what I wanted you to point out. Could you give us the gradual increase in per cent. for the leasing of properties of this character from 1922 to and including 1925? A. The only leases on record, to my knowledge existing there, are the leases in the so-called Knickerbocker building, now occupied by the Bergen National Bank and some

*Abadar J. S. Makray, recross.*

other stores, where they graduate from \$2,400 up \$3,000 each and every year, which represents, approximately, 15% a year for the expiration of five years; that is to say, beginning in 1925, and at the end of 1930 it would be 50% higher, as it is graduated, according to these leases.

10

Q. Do you know what Sinisi was paid for his building? A. I don't.

Q. I mean, do you know what the award of the condemnation commission was in that case? A. I imagine it was around \$140,000.

Mr. Milton: We can state it on the record. My recollection is, \$117,000, and upon appeal the jury fixed \$140,000. I don't know the exact figures.

20

Recess until 2 P. M.

*Recross examination by Mr. Milton:*

Q. Mr. Makray, this morning you said, in answer to my question on cross examination, that on the basis of \$5.25 per square foot for the premises occupied by the Eldorado Restaurant it would make the gross rental of the entire building \$14,500? A. Yes, sir.

Q. Now, you and I have apparently overlooked the upper portion of the building: If you accept the same percentage of increase to the upper portion of the building it would make an annual rental approximately of \$18,000 a year, wouldn't it? A. It would, Mr. Milton; but I don't know, at the time of the condemnation, what the tenants on the second and third floor paid, whether fully 100% of the rent or not. That I don't know and have no knowledge of at the present time.

30

Q. Well, \$18,000 a year value would be conservative under those circumstances, assuming the

40

*Abadar J. S. Makray, redirect.*

same percentage of increase? A. If you assume that; but I can't say.

Q. If you assume it. A. If you assume it, yes.

Q. Now then, in testifying for the Condemnation Commission you fixed the operating or running of the building \$2,500 a year, didn't you? A. I think so.

Q. So that assuming the same percentage of increase, with a gross rental of \$18,000, would leave you a net rental of \$1,500? A. It would.

Q. Now, capitalized on the basis of 8½%, what would be the value of that property? A. It would run up around \$250,000.

Q. It would be more than that, wouldn't it? A. I don't know. You see, we are assuming.

Q. Yes, assuming what I have said, can you give us an answer? A. Around \$250,000.

Q. And yet you fix the value of that building as of June 11, 1924, the entire property, rather, at \$90,000? A. Yes, sir.

Q. Based on the rental value? A. Based on actual leases.

Q. And on the basis of 8½% return? A. Yes, sir.

Q. *Examination by Mr. Brogan:*

Q. In other words, that building was tenanted by persons having leases at a low figure?

Mr. Milton: Don't lead the witness.

The Court: No, Mr. Brogan; you shouldn't lead.

Q. Well, suppose we put it this way: Was the value that you gave of that property at that time predicated solely upon the leases then in existence on the property in question? A. Yes, sir.

*Abadar J. S. Makray, redirect.*

Q. And the rental, of course, actually paid thereunder? A. Rentals actually paid.

Q. Now, in computing your figure of \$5.25 per square foot for similar property—in making up your calculation or opinion—did you take into consideration certain leases, and what leases did you take into consideration? A. I took leases into consideration of properties that were not involved in condemnation, because they were eliminated. 10

Q. Did you take into consideration leases then in being in 1924 and to extend for a period coterminous with the present leases? A. I took every lease from 1924 up to 1937.

Q. I just want to make this clear: In figuring your values did you as a matter of fact take into consideration the leases that were inaugurated in 1924? A. Yes, sir. 20

Q. Or in being in 1924? A. All those made in 1924 or which were in existence in 1924.

Q. You know about the Calles situation? A. Yes, sir.

Q. Are the properties comparable? A. Next adjoining.

Q. Do you know what Calles paid for the lease of the premises? 30

Mr. Milton: I object. I don't know whether he made any.

Mr. Brogan: I will reframe the question.

Q. Was Calles the original party to the lease of his premises or did he acquire it by purchase?

A. Acquired it by purchase.

Q. Do you know what he paid for it?

Mr. Milton: Yes or no.

A. Yes, sir. 40

*Abadar J. S. Makray, redirect.*

Q. How much?

10 Mr. Milton: I object, on the ground as immaterial, irrelevant and incompetent. You see, the transaction that took place must be obvious to the Court. What happened in the Calles purchase was that he obtained a going business with a lease. Now, I don't see how the amount paid for an established business, part of which, or an asset of which, was a lease of the premises, can be said to furnish testimony which is competent to form the basis of comparison to establish values of the premises in question.

20 Mr. Brogan: Before your Honor rules on that may I ask one or two more questions which will elucidate the proposition?

The Court: Yes.

Q. Do you know at what time Calles went into possession of the premises that he occupies? Yes or no. A. Yes, I do.

Q. About what time was it? A. March, 1921.

30 Q. When he entered into possession of the premises subsequently opened up by him or taken over by him, did he step into a new business or did he close the place, or what did he do? A. Closed the place.

Q. For how long? A. Three months.

Q. When he entered the premises, which I assume he did, did he open up the business with the same equipment that was there? A. No.

40 Mr. Brogan: Now, I submit, if the Court please, that a man who buys a going business, in no instance would he close up the business for a period of three months.

*Abadar J. S. Makray, redirect.*

Therefore, it is manifest that counsel's objection on that score is not well taken. If, on the other hand, he took out the equipment in toto, which I understand the witness to testify he did, manifestly he wasn't buying that business. The only thing left was the lease and what he paid for it. That seems to me to be the material part of the transaction. 10

The Court: Even though he might not have had any use for the other property wasn't he obliged to pay for it in order to get the tenant out? Isn't it the common practice for one who wishes a certain piece of property—isn't it the common experience for the owner to say, "Well, I wouldn't have this except in connection with that," and isn't it plain that what Calles wanted what he had to pay for? 20

Mr. Brogan: But after the transaction was entered into he closed the place for three months. I submit, it isn't reasonable to suppose that the business as a going concern was worth very much.

The Court: What will Mr. Makray tell us about that? 30

Mr. Brogan: I don't know.

The Court: Will he tell us that some figure was paid which represented not only the price of the leasehold but also of the business and personal property and equipment?

Mr. Brogan: Yes, and I think from that the Court may draw the conclusion that he paid nothing for the business as such and very little for the equipment, and the Court 40

*Louis Bondi, direct.*

can get some idea of the value of a lease in 1921 which was to extend for a period of years beyond the time with which we are concerned.

The Court: I don't see how it could.

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Mr. Brogan: Well, I now make a formal offer to prove by this witness that a certain sum of money was paid for the leasehold, including the fixtures and business, such as there was, under these circumstances, it being closed immediately after being taken over by Mr. Calles, for the purpose of establishing the value of a leasehold in 1921, which was to extend for a period of years beyond the time with which we are concerned, and I understand your Honor overrules that offer?

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The Court: I do.

Mr. Brogan: Well, I wish to have my objection noted. That is all.

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LOUIS BONDI, sworn on behalf of the petitioner, testified as follows:

*Direct examination by Mr. Brogan:*

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Q. Mr. Bondi, you are one of the members of the corporation known as the Eldorado? A. Yes, sir.

Q. And that company is owned by yourself and your partner? A. Yes, sir.

Q. And at the time you came there, which was in 1922, you had certain money transactions with Mr. Sinisi? A. Yes, sir.

40

Q. Now, at that time will you tell us what, if anything, you paid for the lease as a cash consideration and what, if anything, you paid for the going concern and the chattels?

*Louis Bondi, direct.*

Mr. Milton: I object as immaterial and irrelevant.

The Court: My attention was diverted for a moment; this witness is partner of whom?

Mr. Brogan: Partner with a man named Berni, both of whom make up the Eldorado Company. I offer this witness to show that at the time when they took the Sinisi property over they paid Sinisi \$7,000 for the business as such and all the chattels, and \$8,000 cash for a 15-year lease, and the purpose which I offer it for is, that two and one-half or three and one-half years of this leasehold had expired and we are entitled to a return pro rata, the amount that is coming to us, of that \$8,000. In other words, assume that there were four years consumed; four-fifteenths of the \$8,000 has gone from that. It seems to me, as a matter of law, when \$8,000 was paid for a 15-year lease that ought to be prorated from that time.

Mr. Milton: I ought to have established on the record in the regular way that there was a written contract between these parties and that this man cannot be heard with respect to the transaction; secondly, that the purpose of the testimony, as I understand it, is to show that this witness, with other persons who afterwards caused the incorporation of the present complainant, purchased a business, including the personal property, from the defendants, and it was for the acquisition of that business and such good will as might be said to exist, the personal property as well as the lease, that the \$15,000 were paid, and I object to the re-

*Louis Bondi, cross.*

ceipt of any testimony purporting to establish a claim for any pro rata part of such money.

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The Court: This goes directly to the part of the money that this claimant seeks to recover from Sinisi. There is no jury here, and I can deal with the objection when the proofs are closed and when I come to decide the case, and for that reason I will overrule the objection.

Mr. Brogan: At this time, sir, without going through it formally, may I introduce this contract?

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Mr. Milton: Is the claim abandoned on that?

Mr. Brogan: Yes, it is. When this witness testified that he paid \$15,000 the question arises what was the eight for.

Q. Now, Mr. Bondi, will you tell me what the \$8,000 in cash was paid for? A. For the lease.

Q. What was the conversation between you two gentlemen—you and Sinisi—at the time you purchased?

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The Court: This, of course, is subject to your objection.

Mr. Milton: I have been assuming that.

A. The conversation was \$15,000, and \$8,000 was paid for the good will and \$7,000 chattel mortgage to cover the furniture and fixtures.

*Cross examination by Mr. Milton:*

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Q. Mr. Bondi, I show you a paper dated December 30, 1921, and ask you if that is your signature? A. Yes, sir.

*Louis Bondi, cross.*

Q. Your signature is on there with Dominick Berni and James Regio? A. Yes, sir.

Q. And they are the two gentlemen who are associated with you? A. Yes, sir.

Q. In the acquisition of that restaurant business from Mr. Sinisi? A. Yes, sir.

10

Q. And this is the paper that was prepared and signed by you at the time you bought the business? A. Yes, sir.

Q. And who are the witnesses, Joseph—— and Louis J. Messano? A. Who is our lawyer.

Q. Joseph —— was a member of the New York bar who had acted for you and your associates? A. Yes.

Q. And Mr. Milton was acting for Mr. Sinisi? A. Yes.

20

Q. A member of the New Jersey bar? A. Yes, sir.

Q. And this paper was signed at the time you purchased the business? A. Yes, sir.

Q. And at the time that you purchased the lease? A. Yes, sir.

Mr. Milton: I ask that the paper be marked in evidence.

(The same is marked Exhibit D-1)

30

Mr. Milton: I move to strike out the testimony of this gentleman in regard to Mr. Sinisi.

Mr. Brogan: I cannot understand under what circumstances. This witness hasn't been impeached at all, because I can well imagine in deals of this kind how easy it is to make a mistake in the terms. He said \$8,000 was for the lease. I will withdraw the witness.

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The Court: I don't understand that there

*Dominic Sinisi, direct.*

is any attack on the credibility of the witness, but merely the interposition of the rule that requires evidence of written documents.

Mr. Brogan: That is all. That is our claim.

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TESTIMONY OF RESPONDENT SINISI.

DOMINIC SINISI sworn in his own behalf, testified as follows:

*Direct examination by Mr. Milton:*

Q. You are Dominic Sinisi, the defendant here, are you? A. Yes, sir.

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Q. And you were the owner of the land and building on the Boulevard that the County took for widening the Boulevard? A. Yes, sir.

Q. When did you build the building? A. I put up that building—I think it was in 1919.

Q. 1919? A. I think it was.

Q. And after the building was finished did you open a restaurant business there? A. I did; I opened a restaurant business there.

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Q. How long did you operate that business before you sold it to Mr. Bondi, the last witness? A. It was about a year and a half.

Q. Where is the heating plant? A. The heating plant is downstairs in the cellar.

Q. What kind of a plant is it, hot water? A. No, steam-heating plant.

Q. And do you know how much it cost you to heat the building? A. Oh, yes.

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Q. How much? A. Well, I used no less than 35 tons of coal to heat the whole building, and I had a man that used to work for me; I used to give him \$6 extra the year round to take care of the steam-heating plant.

*Dominic Sinisi, cross.*

Q. What did you pay for the coal? A. Well, between \$400 and \$450 for coal.

Q. And \$6 a week to the man? A. I used to give him \$6 a week the year round to take care of it.

*By the Court:*

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Q. \$6 the year round? A. He used to work for me all the year around and I paid him \$6 extra for taking care of the steam-heating plant.

*Cross examination by Mr. Brogan:*

Q. How much of his services all the year around was rendered in connection with supplying heat to the buildings? A. Well, from the first of October until the latter part of May, according to the weather.

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Q. Then in no one year would he be engaged in supplying heat for the tenants more than six or seven months? A. No, sir; but I had this man working for me, and that is how I got him so cheap. I gave him \$6 a week the year around.

Q. In the winter time what other work did he do? A. General cleaning the restaurant.

Q. So that out of this \$6 a week that you paid him for supplying heat and which only occupied him six to seven months of the year, would you say that one-third of those wages were paid for supplying heat? A. I used to give him \$6 a week steady. He was a very good man and his whole salary was \$14 a week the year around, because he was a very good man and he was worth it. I used to pay him \$20 a week and he would do my cleaning and taking care of the heating plant, but the \$6 I paid him extra was for taking care of the heating plant.

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Q. So he worked for you before you gave him

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*Thomas A. Ryer, direct.*

this heating plant job, and he got \$14 a week for that work? A. Yes.

Q. Then when you put up your building you gave him an additional \$6 a week in order to take care of the heat? A. That's it.

10 Q. And you paid him that extra amount the year around? A. Yes, sir.

Q. Although he didn't have to take care of the heat more than six or seven months of the year?

A. I paid him that the whole year. I didn't like to cut the man down.

Q. Would you be surprised if I produced bills here to show that the amount of coal used in that place in 1923 and 1924 was 18 tons a year? Would that surprise you? A. It would surprise me.

20

THOMAS A. RYER, sworn on behalf of the respondent, Sinisi, as an expert, testified as follows:

*Direct examination by Mr. Milton:*

Mr. Milton: I understand that Mr. Ryer's qualifications are admitted?

Mr. Brogan: Yes, sir.

130 Q. Mr. Ryer, have you placed a valuation upon the lease of the premises in question held by the Eldorado Restaurant Company as of the condemnation date, June, 1924? A. I have.

Q. And before stating what it is, will you be good enough to tell the Court how you arrived at the valuation? A. I made a study of the leases of all the stores in this section, as far back as stores have been rented, to arrive at my valuation.

40 Q. Have you prepared a schedule of those leases which you made a study of? A. No, but I have my memoranda and data here on practically all of the leases.

*Thomas A. Ryer, direct.*

Q. Will you illustrate how some of these leases were given consideration in arriving at the rental value of these premises in question. A. Well, take the lease of the store in the Nalley building, 10 Journal Square, which is property that was leased on May 1st, 1922, for restaurant purposes at \$3,000 a year, or \$1.62 a square foot. So far as the store is concerned, it is very similar to the Sinisi, the only difference being the location. The lease ran to April 30, 1927, and then an increase was made to \$3,600 per year, or \$1.95 per square foot. I had to take into consideration as to whether or not the location was similar and whether the depth was similar, and how it affected the rental value, and I took all of the leases into consideration. But I don't think that you can say that a lease such as the Nally cigar store in the Renrel building, which was a piece of property directly to the south of the property in this case, where the frontage was large and the depth was very small and the average rate was \$16.66 per square foot—I don't see how you could apply that average to a store next door that was 102 feet—

Mr. Brogan: I object to his giving reasons now as to what he did or did not do. He was asked to illustrate how in one case he came to arrive at the value of a lease, and he is now giving something else that is clearly irrelevant at this time.

The Court: I think you can only object upon the ground that the testimony is inadmissible for some reason, because it is immaterial, irrelevant or incompetent. Mr. Milton is the only one who can object on the ground that it is not responsive.

Mr. Brogan: I withdraw my objection.

*Thomas A. Ryer, direct.*

A. Shall I go on?

The Court: Yes.

10 A. —102 feet in depth by the rental paid for the front portion of a store. I had to take into consideration the frontage and depth in all of these leases, which I did before I arrived at what, in my judgment, was a fair valuation of this property on a certain date.

When I arrived at a fair valuation on a certain date I then endeavored to arrive at a fair valuation of the lease during the period that it ran up to its expiration, and I valued it in that manner. I then endeavored to find out what the market value was, as shown by the Inwood tables. In other words, what the market value would be at the price paid.

20 Q. What are the Inwood tables? A. Tables for the purpose of arriving at the valuation of a lease or annuity, giving you what would be its value 20 years hence.

Q. They are recognized standard rules? A. Recognized standard rules and used by all real estate men that are in the selling or leasing business.

30 Q. Now, have you prepared a schedule showing what rental value you placed upon this particular lease? A. I have.

Q. Will you be good enough to state it please? A. Under the lease—first, I might say that I went to the Sinisi building before it was destroyed, and I took measurements of the store occupied by the Eldorado Restaurant, and I found that they occupied 2,051 feet of actual area, and I used that as being the area leased by Mr. Sinisi; and, in addition to that, they had the usual cellar space under the store. Usually, the cellar space doesn't come

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*Thomas A. Ryer, direct.*

into the valuation of a store lease; that is, it doesn't in my judgment. I found, from the date I took it, from August 1, 1925, up to the first period of the lease, which would be December 31, 1925, which would be a period of five months, and in that period under the lease the Eldorado Restaurant would have to pay more, \$1,958.30 under their lease. In my judgment, the value of the store rental for that same period was \$2,563.75. 10

Q. What is the factor; how much per square foot? A. \$3 per square foot.

Q. Now then, during the period of the lease, will you give us the rent to be paid and the rental value, stating the value per square foot? A. From January 1, 1926, to December 31, 1926, the rental to be paid under the lease was \$4,700. In my judgment, the value of that period was \$6,460.65. 20

The Court: Per year?

A. Per year, or \$3.15 per square foot just for that year.

From January 1, 1927, to December 31, 1927, the amount to be paid under the lease was \$5,700, and, in my judgment, the value of the lease was \$6, 83.68, or \$3.31 a square foot.

From January 1, 1928, to December 31, 1928, the rental under the lease was to be \$5,700. My valuation was \$7,122.86, or \$3.48 per square foot. 30

For the next three years, that is, from January 1, 1929, to December 31, 1931, \$5,700 per year was to be paid under the lease. My valuation was \$7,122.86 per year, making a total rental to be paid of \$35,158.30 and a total rental value, in my judgment, of \$44,299.52. For that renewal period running from January 1, 1932, to December 31, 1936, \$6,700 per year was to be paid under the lease. 40

*Thomas A. Ryer, direct.*

10 My valuation per year was \$7,122.86. This makes a total to be paid under the lease from August 1, 1925, to December 31, 1936, of \$68,658.30, and the value, in my judgment, for the same period is \$79,913.82. This shows a difference in rental value over the rental to be paid under the lease of \$11,255.52.

20 Q. Having ascertained that, Mr. Ryer, did you then take the tables and apply the calculations set up in those tables to the value, so as to arrive at the value at the present time? A. I did, and I find that \$8,011.74 was the amount indicated by the Inwood tables as being the value of these deferred payments; and to arrive at the market value of the lease, in view of the fact that these payments were not yearly and the Inwood tables giving me the yearly payments, I added 6% per year that a man would get on his money monthly instead of yearly, making a total of \$8,301.44 as the value of this lease, in my judgment, over the rental to be paid.

Q. The lease in question here contains a provision requiring the tenant to furnish heat to the entire building? A. It does.

30 Q. Have you deducted from the present value of the lease, namely, \$8,301.44, the cost of furnishing that heat? A. I have not from the figures that I have. About two-thirds of the cost of the heat was to be supplied by the tenant, and I haven't taken that into consideration in my figures. I don't know what that amounts to, but what it amounts to is to be deducted from my figures.

40 Q. Based upon Mr. Sinisi's statement that \$400 was the cost of coal and approximately \$300 for services of a fireman, or \$700 in all, what similarly should be deducted from the \$8,301.44? A.

*Thomas A. Ryer, direct.*

If that would be a fair figure, between \$450 and \$500 per year would be chargeable to the lease.

Q. So that the difference between the rent and the rental value in each year would be correspondingly reduced? A. It would.

Q. So that in each year you would reduce the rental value? Perhaps that would be a better way to express it. A. No, I don't think I would do that. I would endeavor to find out what the amount of cost involved would be for the supplying of that heat to the rest of the building, and whatever that was during the period of the lease I would deduct from my figures of \$8,301.44, and if \$500 was a proper figure I would multiply that by 5 years and 11 months, as well as the \$750 approximately, and I would deduct that from the lease. 10

Q. The net value of that lease would be \$8,301.44; the leases testified to by Mr. Makray this morning, particularly the lease in the Rowland building, and I am not so certain about the leases in the Brisbane property, but, first, the leases in the Rowland building; do they include heat or not? A. They do. 20

Q. Is a lease under which heat is to be furnished by the landlord not the owner of the building more valuable than when it is not to be furnished by the owner? A. It is. 30

Q. Is that observation true with reference to the furnishing of heat in the leases in the Brisbane property? A. It is.

Q. So that, as I recollect it, the leases which Mr. Makray testified were in excess of \$5 per square foot, or equal to \$5.25 per square foot all included the furnishing of the heat by the owner? A. To the tenant, yes, in the figures that he mentioned. That doesn't come into this question. 40

*Thomas A. Ryer, direct.*

Q. Of course, in this particular instance it is without heat, and you have taken that into consideration, I assume, in arriving at the rental value of the property? A. Yes, sir.

10 Q. Mr. Ryer, what have you to say as to the comparability of the Oyster Bay Sea Food and Chop House in October, 1925— A. It was comparable.

Q. Are you familiar with that lease? A. I am.

20 Q. How comparable is the location in which the Oyster Bay and Chop House is with the Sinisi property? A. I should say at the present time it was probably a little more valuable than the Sinisi at the time of the condemnation, due to the Plaza in front of it and the widening of Bergen Avenue and Sip Avenue.

Q. And have you made any analysis of the rent paid under that lease? A. I have a memorandum of what they are and the number of square feet in the stores.

Q. Does that lease include the furnishing of heat by the owner? A. It does. It started in October, 1925, and runs in five-year periods to 1940, and then a further six-year period to 1946.

30 Q. What square-foot rent is payable under the provisions of the lease? A. \$3.94 for the first period; \$4.38 for the second period; \$4.73 for the third period; and \$5 for the last period.

Q. The last period is for how long? A. Well, six years, running from 1940 to 1946, and this shows an increase of about—well, for the first period of about 2.2% per year for the first five years—no, 5% per year—no, 2.2% for the first five years; 1.6% for the second five years; and 1% a year for the last six years.

40 Q. Was the Oyster Bay Sea Food and Chop

*Thomas A. Ryer, cross.*

House Company a tenant in one of the buildings that was removed as a result of this condemnation? A. It was; they were in the Journal Square Building.

Q. Property of the Lerner Associates? A. Yes.

Mr. Milton: I don't want to confuse it in the mind of the Court with the Journal Square Building; that is the reason I emphasize that.

10

Q. And was the store in which the Oyster Bay had a lease—was that vacant and available for a lease at the time the Eldorado Restaurant property was taken in condemnation? A. No, it wasn't constructed at that time; it was constructed at a later date.

20

Q. Some time after the condemnation proceedings were begun? A. Yes.

Q. What property is it, Mr. Ryer? A. It is the vacant land of the Rowland property that was leased to the Schulte Corporation, and they, in turn, to the Mitchell & Moore people, who, in turn, leased it to the Margolies Holding Company.

*Cross examination by Mr. Brogan:*

Q. Mr. Ryer, is the Oyster Bay property finished yet? A. Yes, and occupied.

30

Q. Since when? A. I couldn't tell you the exact date, but they are in there now, Mr. Brogan.

Q. They haven't been in there for a month, have they? A. I don't think so; possibly about a month. They haven't been in there long. I don't know the exact date; I know they are in there now.

Q. Didn't they open it on Thanksgiving? A. Yes.

Q. Then they were in there about 10 or 12 days? A. Yes, I didn't say they weren't.

40

*Thomas A. Ryer, cross.*

Q. Isn't this figure of rental that you have given us taken from the Oyster Bay lease of \$3.94, graduated up to \$5—isn't that predicated upon an 11-year lease and net rental of \$4.20? A. I haven't figured it, but that may be true.

10 Q. I just want to check my figures. A. You see, on the first 10-year period—

Q. First eleven. A. The first five years is at a certain price, and you can take the next five years at another price. You only want it roughly, don't you? About \$4.20 per square foot. I haven't continued the decimal; it is \$4.20 something; I haven't continued the decimal. I say \$4.20 and something per square foot.

20 Q. Mr. Ryer, I dare say that you have figured up already the average on the Eldorado-Sinisi value that you put on it; what is the average there? A. That will take me several minutes to figure, but the greater part of it I can give to you roughly if you want it. I should say, roughly, \$3.40.

Q. Well, I make it \$3.35. A. Well, that would be about right; three years at less than \$3.48 and 9 years at \$3.48 might make such a difference and at the same time it might not, and the figure might be as you say.

30 Q. \$3.35? A. Well, about \$3.35 per square foot.

Q. Now, you said a few minutes ago, in answer to Mr. Milton, that this Oyster Bay property was slightly better than the Sinisi. A. I think so. That is, you understand, I am taking the Sinisi as it was and taking this property as it is.

40 Q. And yet on your own figures you make a difference of 85 cents per square foot in favor of the Oyster Bay property as against the Sinisi? A. That is the average, Mr. Brogan; that is the average that you have asked me to give you.

*Thomas A. Ryer, cross.*

Q. Well, wait: Is there anything unfair about it? A. Yes, absolutely.

Q. Well, then, do you want to be taken over it year by year? A. I don't want to be taken over it. You are taking a lease that is being made now under new conditions, running 11 years. I should say that you would have to take the same year, 1925, and find out what I have found out. 10

Q. Have you any idea, as between those two figures that you have given us—one which is a fixed reality, namely, the Oyster Bay proposition, and the other which you have estimated, what the difference in percentage is between your valuation on the one hand and the actual rate on the other? A. I should say about 33 1/3% more; not quite that, but roughly 33 1/3% more. The Oyster Bay is paying that for the Journal Square Building, that much more than I have valued the Sinisi Building in 1925. 20

Q. And you think that such a discrepancy and such a difference between the average figures in both cases, namely, 33 1/3% on the one hand and 85 cents on the other hand is a slight difference? A. Yes, that indicates the difference, in my judgment.

Q. You think that 33 1/3, or one-third, is a slight discrepancy? A. When you say "slight," I say there is a difference between the two properties, Mr. Brogan: You might call it slight or anything you like; it is 33 1/3%. 30

Q. You said, did you not, that the Oyster Bay property was slightly more valuable? A. Well, supposing I say 33 1/3% more valuable instead of "slightly." I meant that it was more valuable. I want to straighten out your mind on that.

Q. You don't have to straighten out my mind, 40

*Thomas A. Ryer, cross.*

because you couldn't; you will have to make your statement on cross examination of your direct to the court. A. But, pardon me, you don't know what I meant by "slightly."

10 Q. In other words, by "slightly" you meant "greatly"? A. I don't get you, Mr. Brogan.

Q. Now you said, and I want you to correct me if I am wrong, in making your estimate of your value, that all leases went as far back as stores have been rented. Did you say that? A. I did.

Q. How far back did that go? A. Back to 1900 in this section, or about that.

20 Q. And did your estimate of values, on premises like the Sinisi property, receive any impetus or element of vigor at all from the figures culled from the 1900 on leases? A. Certainly. When you say "From the 1900 on leases," you mean up to date?

Q. Certainly. In other words, is there an element in your computation that has been taken from agreements with regard to leasing that went back in 1900? A. No, excepting knowing the history, that's all.

30 Q. Did you import in your opinion any element taken from any lease made between 1900 and 1910? A. I don't think so.

Q. Between 1910 and 1915? A. I don't think so.

Q. Did it receive any element of a leasehold agreement made between 1915 and 1920? A. I think from 1919, yes; but prior to that, no, because the real increase started here in about 1919.

40 Q. So with the factor of 19 years you started with your values from 1900 and you ran them up to existing leases, some of which will extend to 1946; is that right? A. Yes.

Q. Now, will you tell us as a background just

*Thomas A. Ryer, cross.*

how you arrive at the values of a leasehold from 1919 to 1925? A. I studied each lease, found out how much area was covered by the lease, what the obligations under the lease were, so as to get a fair story of the rental value, with heat and without heat, and then I tried to find out what frontage it had and the depth, and then I had to make up my mind what, in my judgment, was the valuation; and then I applied it to the Sinisi store without heat, and that is the valuation I arrived at in the last analysis, based upon a study of all these leases, because there are no two stores alike. I don't think there is a store that has been leased that is identical to the Sinisi property. 10

Q. Did you, this morning, know about that lease which Mr. Makray testified to, which showed 1924 rental of over \$7 a foot? A. Do you mean was that one of the leases on the Sinisi property? 20

Q. No, the Howland building we are talking about. A. That lease was just made.

Q. Did you know about that when counsel asked you this morning? A. I knew there was a lease made upon that store, but what the terms of the lease was I didn't know.

Q. In other words, Mr. Ryer, you assumed there was a lease because you knew a tenant had entered recently? A. That's all. 30

Q. You didn't ascertain anything about the figures? A. No.

Q. Do you remember that Mr. Makray testified that his figure was \$5.17, taking into consideration the heat? A. I was under the impression it was \$5.25.

Q. With your comprehensive experience of 25 years you certainly ought to know whether that is a high figure or a low figure? A. It is a low figure. You didn't ask me that. 40

*Thomas A. Ryer, cross.*

Q. Is it not the lowest figure? A. It is the lowest figure that I notice here, but it was a figure that was made in 1922.

10 Q. Now, as an expert and as a business man in the real estate business do you think that you could get premises of this character today for that figure, \$1.62 and \$1.95? A. Certainly not. If I could I would have placed a lower figure on the Sinisi property. I think it is three times.

Q. Did any of the leases that you considered in coming to a conclusion, some of which arose in 1919—did any of them expire or are they all in being today? A. No, some of them have expired and were re-let.

20 Q. The point is this: I certainly think that anything in 1919 and which have expired prior to the date of the condemnation certainly ought not to be considered in this case. A. I haven't mentioned any.

Q. I understood you to say that some of them since 1919 have expired. Did they enter into your basis of value? A. No. You didn't ask me that, Mr. Brogan. Of course, I considered leases that run up to 1923, we will say, and then expired and re-let again.

30 Q. And now actually in existence? A. Yes.

Q. Now, will you tell me, Mr. Ryer, what other leases, outside of the Nalley building lease and the Oyster Bay House lease, that you considered in arriving at the \$3 per square foot? A. On September 20, 1924, 14 Journal Square was leased from January 1, 1925, to December 31, 1931, at \$6,000 per year, or \$2.72 per square foot, being 2200 square feet. That is at the present time occupied by the Sport Shop under that lease. On 40 January 1, 1932, the rental increases from \$6,000

*Thomas A. Ryer, cross.*

to \$7,200 per year, and the term then runs to December 31, 1937, at \$3.27 per square foot.

On July 1, 1921, a store consisting of 2300 square feet, at 18 Journal Square, was leased for restaurant purposes for five years, ending July 1, 1926, at \$4,800 per year, or \$2.08 per square foot, up to July 1, 1926. 10

Q. How many square feet are there in that? A. 2300. That is in the Corral building. A store was leased for a period of five years at \$2.60 per square foot, July 1, 1926, to July 1, 1931; and for a period from July 1, 1931, to July 1, 1936, it was leased at \$3.12 per square foot. And the other leases that I have gone into are for small frontages and small depths.

Q. Did you consider the lease made a short while ago, in 1925, for the Ritz restaurant? A. Where is it located? 20

Q. Tonnele Avenue and the Boulevard. A. I did not.

Q. Why not? A. I didn't have the data on that.

Q. Well, suppose that I give you the data: The rental runs there at \$3.48 per square foot up to 1929; \$4.38 up to 1934; \$5.28 up to 1939; \$6.18 up to 1945. Would you say that this property was so well located, or as valuable as a site, as the property under condemnation? A. If the store was 21 feet in width I would say that it would be a higher figure than I would put upon it. Is this figure for a store 21x54 feet or 60 feet? If so you would have a different proposition, because there you are renting front space and no rear as you are in the Sinisi building lease. 30

The Court: I don't understand that. What do you mean? 40

*Thomas A. Ryer, cross.*

A. I mean by that this: If you have got a store 20 feet deep with plenty of width it is more valuable than the rear part.

10 The Court: What you mean to say is this, that a store located as this Ritz restaurant is would be worth a higher rent if it was 21 x 54 than if it was 21 x 100?

A. Not a higher rental but a higher square-foot rate. I mean, if you have got a store 20 x 100 you might not get that amount of money for it because you have got the rear part that isn't as valuable. That is an important item in renting stores.

20 Q. Let me ask you this, Mr. Ryer: What you have stated is true generally, but isn't it a fact that where people are conducting a restaurant the rear part of the store is just as valuable as the front?

Mr. Milton: Just a minute: The illustration used is not a basis for establishing the value of a lease on a property. There are decisions on that.

30 The Court: That is true, but this is cross examination of your witness and the question is designed to test the weight to be given to his opinion as an expert.

A. Why, I don't think any more so than a haberdashery or any other kind of a store. They have got to have frontage and the more frontage they have got the more advertising they have. Of course, there are some parts that can be used for restaurant purposes to good advantage in the back.

40 Q. Do you know anything about the place I am talking about? A. I don't know anything about it other than the building itself cannot be over 64 feet in depth at the outside, because that is on top of the hill.

*Thomas A. Ryer, cross.*

Q. So that what you have said about those premises is not said with a great deal of authority since you know nothing about it? A. I told you I didn't know about that.

Q. Do you know that Hugo Bermann paid \$7.08 for a small store per square foot per year? A. I know that. That is in the Trust Company building. 10

Q. Do you know that Michael Steris, who is located in the Rowland Building, pays rent, in 1925 \$7.25; 1926, \$9.09; 1927 and 1928, \$10.90; 1929, \$12.10, and 1930 \$13 for a store in that building? A. Those are all different sized stores. They are small stores, and of course you get big rental for small stores—big square-foot value—just the same as the Orangeade lease. 20

Q. Do you know that the average rental that Calles paid for 1260 square feet is \$8.55 per square foot per annum, which is graduated from \$7.14 to \$10.35, ending ten years from now? A. When you say "Calles," it doesn't mean anything. Is it that flower man in the Journal Building, or the new Calles store just started in the Rowland building?

Q. That's it. A. He may pay that.

Q. You know, do you not, the case of Chronis, which is \$10.50 per square foot for his store? A. \$5.42 per square foot. 30

Q. And you know that that was closed in 1920, do you not? A. Yes.

Q. And in the case of Daniel Roe; he pays \$5.20 a square foot for his store and the values run considerably over \$5? A. What about Roe?

Q. He pays \$5.77. A. Roe is up on the corner of Sip Avenue and Enos Place.

Q. And on the easterly side? A. That is on the southern side, isn't it? 40

*Thomas A. Ryer, cross.*

Q. That would be the easterly side of the building. A. No, the westerly side. That is the corner of Enos Place, and he pays \$3.20 for the first three years and \$3.52 for a second period of two years. He pays \$3,000 for it and his area is 18x52, \$9.36 a square foot.

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Q. Mr. Ryer, are you quite sure that that store is not 13 feet wide and 40 feet deep? A. It is not. The present store occupied by him is 18x52 on the corner of Sip Avenue and Enos Place. I measured it.

Q. We measured it, too, and we have it 13x40. A. I will measure it again for you.

Q. And give it to the Court tomorrow? A. Yes.

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Q. Now, you, too, testified in the case of the County against Mr. Sinisi, and you testified on the part of the property owner, I believe? A. I did.

Q. And you said that this building was worth how much at that time? A. I don't remember. My impression is somewhere around \$137,000. Now, that is only my recollection; I haven't the figures with me.

Q. You testified \$138,000. A. Maybe I did; I wouldn't say it wasn't \$138,000; it was somewhere along there.

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Q. Now, how did you arrive at that figure, \$138,000 value? A. That was my judgment of what Mr. Sinisi ought to get for his property; that is what it is worth; that is what he could get a fair return on, in my judgment.

Q. I imagine it was your judgment or you wouldn't have so testified; but on what did you predicate it? A. On sales in the neighborhood.

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Q. And you threw aside all idea of leasing it? A. I didn't throw aside all idea of leasing it; I took the amount it was worth, but it didn't appear

*Thomas A. Ryer, redirect.*

to me that the leases were as much as they ought to be.

Q. If a client of yours, who was in the habit of taking your advice on real estate, were to come to you and say that he intended to buy the Sinisi property, and told you that it was leased for 12 years for the amount of money this was leased for, would you have permitted him to have bought it for \$138,000? 10

Mr. Milton: That is objected to.

Mr. Brogan: Certainly, your Honor, that is within the scope of cross examination.

The Court: When?

Mr. Brogan: In 1924.

The Court: I think that might be taken into consideration. I will overrule the objection. 20

A. I might have nothing to do with permitting him to do it. It is a question of what I would advise him to do. That is a different matter.

Q. Advise him to take it or not? A. I don't know that I would.

Q. In other words, the net rental of \$6,500 which this building produces, would be about 4¼% on that value? A. As I told you, I disregarded the rental in making my valuation. I didn't think the rental was enough. 30

*Redirect examination by Mr. Milton:*

Q. As to the size of the Ritz property: The map which was offered in evidence, Exhibit P-2, discloses that the left-hand corner of it contains 1,336 square feet in the Ritz property? A. I think it does.

Q. Is that about the area that you had in mind 40

*Louis Bondi, direct.*

when you said it was not more than 64 feet in depth and about 24 feet in width? A. I had no area in mind because I don't know what it was, but I know this, that the building cannot be more than 65, because the lots there are 65.

10 Q. The difference of 85 cents per square foot, as Mr. Brogan expressed it, or about 35%, between the Sinisi property and the Oyster Bay property,— will you say whether or not that is accounted for by the fact that the Oyster Bay Company gets its heat from the owner and in the other case the heat is not furnished by the owner? A. Of course, that would make a difference in the value as well as the location. It would make a difference in Sinisi having a higher rate.

20 Q. So that as regards the Oyster Bay property, the tenant being furnished with heat it results in a higher rent? A. Of course, those things have to be taken into consideration, I think, when you value rentals.

Mr. Milton—The defendant rests.

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PETITIONER'S REBUTTAL.

30 LOUIS BONDI, recalled on behalf of the petitioner, in rebuttal, testified as follows:

*Direct examination by Mr. Brogan:*

Q. Mr. Bondi, have you the amount of coal you burnt in that place in 1924 in heating that building? A. About 18 tons of coal during the winter of 1923 and 1924.

Q. Who attended to the fires? A. One of the workingmen of the restaurant.

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*Louis Bondi, cross.**Cross examination by Mr. Milton:*

Q. Mr. Bondi, of course you had no idea that you were to be examined in respect to the amount of coal burnt to heat this property until you heard Mr. Sinisi talk about it a few minutes ago; is that so? A. Yes, sir. 10

Q. And you had no access to any records or data which would enable you to testify definitely with regard to the quantity of coal? That's right, is it? A. Yes.

Q. You have sat in the court-room ever since Mr. Sinisi testified? A. Yes, sir. I have all the records and we used about five tons of coal a month in the winter and in the kitchen about two tons a month. 20

Q. It is evident you don't understand my question. What I asked you is this: Since Sinisi was on the stand you have been in the court-room? A. Yes.

Q. And you haven't had any chance to look up any records? A. No, sir.

Q. You have sat here all the time, and your testimony is the result of your having thought about it since Sinisi was on the stand an hour ago? A. No, sir. 30

Q. What is wrong about that? A. I have the record already.

Q. You have the record? A. Yes, and we use five tons a month in the winter time and two tons of coal a month in the summer time.

The Court: I will take notice that the witness hasn't been out of the room since Mr. Sinisi testified. You needn't waste any more time on that. 40

A. Two tons for the range in the kitchen and

*Louis Bondi, cross.*

three tons for the heating plant a month is what we use.

Q. Two tons of coal a month the year round?

A. For the kitchen, yes, sir.

Q. 24 tons of coal for the kitchen? A. Yes, sir.

10 Q. And 3 tons of coal a month for the heating plant? A. Yes, sir.

Q. How many months in the year? A. Six months.

Q. And you want this court to understand that you heated this three-story building, of the size of the Sinisi building, with three tons of coal a month? A. Yes, sir.

Mr. Brogan: We rest.

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**Opinion.**

(Filed April 22, 1926.)

## IN CHANCERY OF NEW JERSEY.

Between

BOARD OF CHOSEN FREEHOLDERS OF  
HUDSON COUNTY,  
Petitioner,

and

DOMINIC SINISI and LENA SINISI,  
his wife, *et al.*,

and

DANIEL MAHONEY and ELSIE  
MAHONEY, his wife, *et al.*,  
Defendants.

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On Petition, etc.

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April 22, 1926.

*Caldes v. Mahoney.*

BENTLEY, V-C.:

On application for distribution of a fund awarded upon condemnation of land and deposited in this court.

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On June 11th, 1924, the Board of Chosen Freeholders of the County of Hudson filed a petition under P. L. 1922, Ch. 249, for the condemnation of certain lands and buildings. Such proceedings were had thereon that the damages were fixed at \$125,000 and, thereafter, the condemning authority, feeling that it could not safely pay the fund to any of the claimants thereof, deposited the same with accrued interest in this court, pursuant to the pro-

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*Opinion.*

10 vision of Section 8 of the Eminent Domain Act of 1900, the practice thereof to be followed. There have been withdrawn amounts sufficient to pay and discharge certain undisputed liens upon the lands condemned, and the present function of the court is to divide the fund remaining according to the respective interests of the former owner of the land and tenants who previously occupied the same under leases which had not expired at the time of their eviction by the public authorities.

20 One of the lessees was one Caldes, who entered under a lease dated July 7, 1921, for the term of 14 years. Under its provisions the rent for the first four years was at the rate of \$8,600 per annum; for the next five years, at an annual rent of \$9,600; and for the last five years, at an annual rent of \$11,600. This lease was for the entire premises approximating 2,350 square feet of floor surface on the first story, besides about 1,600 square feet of cellar surface, all of which was occupied by Caldes and in which he conducted the business of a restauranteur. A story above the restaurant was underlet to a furrier named Kriegel and comprised 1,887 square feet of floor surface, for which he paid \$3,780 a year. Under both these leases it became 30 the duty of Caldes to supply all heat necessary for the entire building in addition to other incidental expenses such as repairs, and water-rents in excess of a certain figure.

40 The respective experts for the different parties differ radically and extremely in their figures, as might be expected. For Caldes, it is contended that the square-foot rental paid by him for his tenancy amounted to \$2.55. In his behalf it is also urged that the prevailing rate of rent he would have had to pay at the time of the filing of the

*Opinion.*

petition to condemn, was \$5.25 and, consequently, that every square foot of floor space comparably situated that Caldes could secure in that neighborhood would have cost him \$2.70 per year more than the former rent reserved. I think, for a number of reasons pointed out in the brief submitted on behalf of the lessor, that these figures cannot be accepted at their face value. For example, it must be apparent to anyone that his witness fell into error when he placed the same value per square foot on the 1,600 square feet of cellar space that he assigned to the floor space on the ground floor in which the restaurant business was conducted. It would be difficult to name many legitimate businesses for which a cellar would be more appropriate and valuable than a floor level with the street and having a more or less large outlook thereupon. Again, in fixing the rental value in June, 1924, he undertakes to compare small spaces facing upon a busy public street with a large business space facing upon a busy public street, in which the more valuable front portion is lumped with the rear. For example, he bases his judgment partly upon a small optical goods store only 339 square feet in area, leased in 1925 for a period of five years, at an average rental of \$7.08. This property is, all of it, in the front of the building immediately off the sidewalk of the street upon which it is located. I do not think that he would contend that if this store extended 1,761 square feet farther to the rear, that the assumed area would rent upon the same square-foot basis, or \$12,300 per year. It is rather striking that in the stores of larger area the square-foot values relied upon by this witness are strikingly less. For example, in one store of 2,250 square feet the rate

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*Opinion.*

10 drops to \$2.88, as compared with his estimate of \$5.25, and in another of 2,140 square feet the square-foot value is \$2.79. It is instructive, in this respect, to observe in the first-mentioned lease of these large areas that at the square-foot rental of \$2.88, the lessee sublet a small portion of the front at \$4.80 for the first period of the tenancy and at increasing amounts thereafter. Another prevalent infirmity is disclosed by what has been shown in the store containing 339 square feet, namely: that nearly all of the leases upon which he leans to support his estimate were executed after the filing of the petition in condemnation and at a time when the improvement for which the lessor's property has been condemned was an assured event and, of course, the values of the adjoining properties had been influenced by that fact.

20 In the testimony for the lessor, the reverse of two of the foregoing criticisms may be applied: First, to sustain a large square-foot rental under the lease of Caldes the cellar, which was certainly of some value, is completely and expressly ignored. It seems unnecessary to do more than point to this fact. In the second place, many of the leases upon which this witness relied in arriving at the rental value of the condemned property in June, 1924, were executed a considerable period of time before the filing of the petition to condemn. It is common knowledge that property values in this neighborhood have been rising over a long period of years. It is true that the increase was greatly accelerated after the determination of the county to construct the local improvement; but it is equally true that during the next few years prior to June, 1924, there had been a continuous and appreciable increase in values. Therefore, leases

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*Opinion.*

executed prior to that month, while of some value are subject to be discounted as proof, just as is the case with those leases entered into after that time.

Thus, it is apparent that neither witness's testimony as to the respective rental values is absolutely accurate, and the truth as to that value in June, 1924, lies somewhere between the figure for which the tenant contends and the figure as maintained by the lessor. After an examination of the lists of leases made up by the respective experts, I think that the sum of \$17,000, in round figures, fairly represents what the lessee would have been obliged to pay as rent in excess of that named in the lease, in a similar building comparably situated. I have not the Inwood tables or any other means of capitalizing or establishing the aggregate of the damages inflicted upon this lessee. It is a matter of mechanical computation, however, upon which I have no doubt the respective experts can agree and inform counsel. In addition, this tenant is entitled to the return of his deposit of \$3,000 without any deduction, and with interest.

There is a statement in the brief filed upon behalf of the lessee which, if true, would seriously impair the fundamental argument of counsel for the lessor and, more important, would be destructive to the propriety of this decision. It is said:

The attorney for Mahoney, in the brief submitted by him to this court, in referring to the testimony of Mr. Makray, states that "he gives an area for the store floor of 2,350 square feet, but adds to that 1,600 square feet in the cellar, and finds for this total that Caldes paid an average of \$2.55 per square foot." We respectfully urge that no such statement is made by Mr. Makray. If

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*Opinion.*

10 Mr. Makray had added the 1,600 square feet of the cellar space to the 2,350 square feet of floor area, Caldes' store rent would have been less than \$2 per square foot. This is clearly manifest from the testimony in the case.

20 With this statement I violently disagree. The lease shows, that during the period of the first four years the rent of that portion of the premises under consideration would have amounted to \$34,400. During the next period of five years, \$48,000. And during the last period of five years, \$56,000. These sums added together amount to \$140,400. Dividing that total by 14, the number of years over which the payments were made, gives a quotient of \$10,029 which represents the average annual rent. Adding the 1,600 square feet of floor space in the cellar to the 2,350 square feet in the restaurant floor gives the result of 3,950 square feet. Dividing this last number into \$10,029 (the average annual rent) secures the result of \$2.54, approximately, as I calculate it. This is almost exactly the figure given by the witness, and the fraction of a cent difference may be readily explained.

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*Eldorado Restaurant, Inc., v. Sinisi.*

40 For convenience, the pertinent portions of the foregoing opinion will be considered as applicable and as if repeated herein. This controversy involves the lease of another store used for restaurant purposes, in the same neighborhood as the foregoing, and contains about 2,100 square feet of floor area besides 1,500 square feet of cellar. For the tenant, his expert estimates the damage that he has sustained by reason of the condemnation, as

*Opinion.*

\$43,275, while the expert sworn in behalf of the lessor places it at \$8,301.44, less a very rough calculation of the amount that it would have cost the lessee to heat the building, as required by his lease, for the remainder of the term. I assume, although I do not find that he said so, that it is intended that the final amount to be deducted for expenses of heating the building would also be obtained by operating upon the heating expense in gross by the annuity tables.

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It is inconceivable that either of these figures ought to be blindly accepted, for reasons already sufficiently indicated.

In passing, it may be said, the lessee admits in his brief "that the rear part of a store is not as valuable as the front part." He does deny, however, that if a small portion of the front is separated from the rear by a lease, it is relatively more valuable. And that is exactly what was done in the Bermann store lease cited by his witness.

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After a comparison of the testimony and the leases examined, it would seem that the additional expense to which this lessee would be put to establish himself in similar premises comparably situated would be approximately \$21,000 for the remaining period of his lease. The total damages can be computed and then the necessary computation of the net damages made by the experts.

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The lessee, at the time he entered into the lease, paid to the lessor the sum of \$8,000 for the goodwill of the latter's business, which the former took over and continued to operate. It is now insisted that this purchase money, or perhaps some portion thereof, should be returned to the tenant. I think that cannot be true. So far as the tenant is concerned, it is water that has gone over the dam.

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*Opinion.*

10 The continuance of the business has not been prevented by the landlord and he has received no compensation for anything except the land taken. Had the good-will of the business been condemned, it would seem to me as if the tenant would have  
20 been entitled to the entire award therefor. But that was a private transaction between the parties, pursuant to which the lessor retired from the business he had conducted and inducted the lessee into it and turned the same over to him. In the absence of any special covenants, the transaction was then complete, and the lessor had fully performed his part of the bargain, and had earned and taken exclusive title to the consideration therefor. He did not in any way guarantee the  
20 continuance of the business, its success, or that the purchaser would be left undisturbed in its conduct for any period of time, great or small.

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*Kriegel v. Caldes.*

30 Having been reliably informed that the claim of the Jersey City Bill Posting Company in this fund has been satisfactorily adjusted by the parties, there only remains a consideration of the rights of Kriegel to be determined. Caldes sublet to Kriegel the upper floor of the building in which the former carried on his restaurant business, containing 1,887 square feet, for which he received a rent of \$3,780 per year. In my opinion, the damage to this sublessee by reason of the condemnation, amounts to about \$1,500 from which the amount to be awarded him may be calculated in the manner above referred to.

40 Counsel for this lessee's lessor states, at the conclusion of his brief, that while he does not believe that the former has sustained any damage, never-

*Opinion.*

theless, if it should be determined otherwise, the owner of the fee should be made to compensate him. With both of these conclusions I disagree. In the first place, while Kriegel undoubtedly paid all, or nearly all, that his lease was worth in 1922, there must have been some increase in value during the next two years through which there was a constant soaring of land values in the vicinity. Of course, the increase was nothing like so rapid as that which followed thereafter, but there was a steady mounting of prices that would make this subtenant entitled to some compensation.

In the second place, there is no relation between Kriegel and Mahoney. Besides that, Caldes parted with the upper story of the building, so far as use and occupation thereof is concerned, and Kriegel stands in precisely the same relation to him that he does to Mahoney, the owner of the fee, for the purposes of this discussion. If Caldes were only to be compensated for the loss of that portion of the premises which he physically occupied, it would, of course, be inequitable to compel him, out of his share of the award, to make Kriegel whole; but, as I analyze the testimony, the amount already apportioned to Caldes covers the damage sustained by the loss of the possession of the entire building, and such was unquestionably admitted to be his right by the owner. For example, Mahoney's witness places the value of the entire building for rental purposes for the year 1926 at \$10,999. In his cross examination, upon being asked what the rental would be worth at that time if the building were still standing, he said that it would be \$3 per square foot for the portion Caldes occupied and \$2 per square foot for the remainder. Now, multiplying his figures of the premises occupied by

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*Opinion.*

Caldes by the factor of 3 gives a result of \$6,702, and multiplying the unquestioned area of the remainder, namely, 1,887, by 2 we get \$3,764. Adding these two figures, gives a total of \$10,466, which is, of course, remarkably close to the figure given for  
10 the gross rental value when it is considered that the square-foot value was given instantly in answer to a question asked upon cross examination. Not only did Mahoney concede the right to Caldes to be paid for the loss of possession of the premises rented to Kriegel, but I have assumed such loss in arriving at the damages to be paid to Caldes. Consequently, the amount apportioned to  
20 Kriegel will be deducted in the decree from the sum heretofore set out as representing the damages which Caldes has sustained.

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**Final Decree.**

(Filed May 17, 1926.)

## IN CHANCERY OF NEW JERSEY.

Between

THE BOARD OF CHOSEN FREEHOLD-  
ERS OF THE COUNTY OF HUDSON,  
Petitioner,

and

DOMINIC SINISI and LENA SINISI,  
his wife,  
Defendants.

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In Condemnation.  
On Petition for  
Payment of  
Money into  
Court.

This cause coming on to be heard in the pres-  
ence of John Milton, solicitor for the petitioners  
Dominic Sinisi and Lena Sinisi, his wife, and  
Thomas J. Brogan, solicitor for claimant Eldorado  
Restaurant, Inc., and the court having examined  
all the papers and proceedings had herein, and  
having taken proofs orally and in open court, and  
having heard and considered the arguments of  
counsel thereon, and it appearing that the Board  
of Chosen Freeholders of the County of Hudson,  
pursuant to the statute in such case made and  
provided, paid into this court on or about June 1st,  
1925, the sum of \$144,713.08; \$140,000 of which rep-  
resented the amount awarded by a jury on appeal  
in condemnation in the Circuit Court of the County  
of Hudson as the value of the lands and premises  
of Dominic Sinisi and Lena Sinisi, his wife, and  
the damage incurred by the taking thereof, and the  
balance, \$4,713.08, adjustment for interest and  
other items; that after making the payments di-

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*Final Decree.*

10       rected to be made by orders of this court heretofore made and entered herein, there remains on deposit with this court approximately \$55,000 with accumulated interest; that when the lands and premises were so taken as aforesaid, the Eldorado Restaurant, Inc., was in possession of the ground floor store and basement therein under a written lease with said Dominic Sinisi and Lena Sinisi, his wife, made January 1st, 1922, and expiring December 31st, 1931, a period of ten years, at an annual rental of \$4,700 for the first five years, and thereafter at \$5,700 per annum; with the privilege on the part of the Eldorado Restaurant, Inc., of renewing the lease for a further period of five years to December 31, 1936, at an annual rental of 20       \$6,700, the lessee under the terms of the said lease to provide heat for the entire building; and the Court being satisfied that the present value of the said leasehold estate of the said Eldorado Restaurant, Inc., calculated according to the annuity tables is \$15,426.12, and that in addition to such sum the said Eldorado Restaurant, Inc., is entitled to be paid the further sum of \$1,175.00, the amount deposited by it with Sinisi as security for the faithful performance of the terms of the said lease, 30       making a total of \$16,601.12; that the claim of the Eldorado Restaurant, Inc., for \$8,000 paid in cash to Sinisi and the assumption of a mortgage for \$7,000 which said Sinisi was obligated to pay, representing the purchase price of the good-will of the restaurant business carried on in the premises, should be disallowed; and that the petitioners Dominic Sinisi and Lena Sinisi, his wife, are entitled to the balance of the fund in court with all 40       accumulations of interest:

*Final Decree.*

It is on this 17th day of May, nineteen hundred and twenty-six, ORDERED, ADJUDGED and DECREED, that the present value of the estate of the Eldorado Restaurant, Inc., in the lands and premises taken, calculated according to the annuity tables, is the sum of \$15,426.12, and that in addition to this sum the said Eldorado Restaurant, Inc., is entitled to the return of its security deposit of \$1,175.00, making a total of \$16,601.12; 10

It is FURTHER ORDERED, ADJUDGED and DECREED that the claim of the Eldorado Restaurant, Inc., for the loss of the good-will of the business carried on in the premises be and the same is hereby disallowed;

And it is FURTHER ORDERED, ADJUDGED and DECREED, that the clerk of this court be and he is hereby authorized and directed to pay to the Eldorado Restaurant, Inc., or to Thomas J. Brogan, its solicitor, the sum of \$16,601.12, and to pay to Dominic Sinisi and Lena Sinisi, his wife, or to John Milton, their solicitor, the balance of the fund in this cause together with all accumulations of interest thereon. 20

E. R. WALKER,  
C. 30

Respectfully advised,  
JOHN BENTLEY,  
V. C.

40

The first part of the paper is devoted to a general  
 discussion of the problem. It is shown that the  
 problem is equivalent to the problem of finding  
 the minimum of a certain function. This function  
 is defined as follows:

Let  $f(x)$  be a function defined on the interval  
 $[a, b]$ . Then the minimum of  $f(x)$  on this  
 interval is the value of  $f(x)$  at the point  
 where  $f(x)$  is smallest.

In the second part of the paper, we consider  
 the case where  $f(x)$  is a polynomial. It is  
 shown that the minimum of  $f(x)$  on the  
 interval  $[a, b]$  is attained at one of the  
 endpoints or at a point where the derivative  
 of  $f(x)$  is zero.

Finally, we consider the case where  $f(x)$  is  
 a continuous function. It is shown that the  
 minimum of  $f(x)$  on the interval  $[a, b]$  is  
 attained at a point where  $f(x)$  is continuous.

99

**New Jersey Court of Errors and Appeals**

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,  
Petitioner,

*and*

DOMINIC SINISI and LENA SINISI,  
his wife,  
Defendants-Appellants  
and Respondents,

*and*

ELDORADO RESTAURANT, INC.,  
a corporation,  
Defendant-Appellant  
and Respondent.

On Cross Appeals  
From the Court  
of Chancery.

**BRIEF OF  
THE ELDORADO RESTAURANT, INC.**

**The Facts.**

On June 21st, 1924, the Board of Chosen Freeholders of the County of Hudson, New Jersey, by petition to the Supreme Court under the Eminent Domain Act took steps to acquire certain lands in Jersey City, on the Hudson Boulevard near the Pennsylvania Railroad Cut, in the vicinity of what is now Journal Square Station, for the building of a new and wider bridge across the said Pennsylvania Railroad Cut on the Hudson Boulevard.

Among the parcels that were thus acquired in condemnation was land and building belonging to

Dominic Sinisi and Lena Sinisi, his wife, which land was on the northwesterly side of said Hudson Boulevard, just south of the Pennsylvania Railroad Cut. The lot contained 2,490 square feet.

There was an award made by the condemnation commissioners, who were appointed by the Supreme Court and an appeal to the Hudson County Circuit Court which on May 14th, 1925, resulted in a verdict in favor of the property owners, said Dominic Sinisi and Lena Sinisi, his wife, of \$140,000, as compensation for the land and premises.

The Eldorado Restaurant, Inc., was also made a party defendant to the condemnation proceedings because it was the owner of a leasehold under which it would be entitled to retain possession of the ground floor and the cellar of these premises for a period of almost twelve years from the date of the award in the Hudson County Circuit Court. The lease was made on January 5th, 1922, under which the Eldorado Restaurant, Inc., had a lease for ten years with a renewal privilege of five additional years. The said lease will be found in The State of the Case, pages 30 to 36.

The Eldorado Restaurant, Inc., maintained a large restaurant business in the premises rented by them under this lease agreement as aforesaid. Their rent for the first five years was \$4,700 per annum, or \$391.67 per month; for the second five years \$5,700, or \$475.00 per month, and the third five years \$6,700, or \$558.33 per month. In the premises the company installed suitable fixtures for the restaurant business which they were conducting in the premises.

There was paid into the Court of Chancery the amount of the award of \$140,000, by the Board of Chosen Freeholders of the County of Hudson. The other tenant, we understand, has released his

claim for a consideration, and there now remains to be determined only the value of the unexpired leasehold of the Eldorado Restaurant, Inc.

This case was tried in the Court of Chancery (V. C. Bentley), and the Court allowed as the amount of damages sustained by the leaseholder as the value of the unexpired term of the lease, the sum of \$15,426.12, and ordered the return of the security deposit paid by the tenant of \$1,175.00, with interest, making a total of \$16,601.12. Of course, under the lease the tenant was entitled to the sum of \$1,175.00 with interest, which was the amount paid to the owner at the time of the making of the lease as a deposit for the good faith of the tenant.

We contend in fixing \$15,426.12 as the value of the leasehold, the Court below erred in its conclusion, because its reasoning was predicated upon conditions and figures set forth in the Court's opinion which are contrary to the facts in the record and in the lease itself.

### **Grounds of Appeal.**

1. The Court erroneously determined the present value of the leasehold estate of the Eldorado Restaurant, Inc., to be \$15,426.12, instead of \$43,272.84.
2. The Court based its finding upon testimony not in evidence in this case.
3. It is contrary to the weight of the evidence.
4. There was no evidence to support the value determined by the Court.

## POINT I.

### **The conclusion of the Court of Chancery is not based on the conceded facts.**

The lease (page 31, Case, lines 16 to 20) leases "all the ground floor and basement of premises" in question.

The property *in toto* consisted of a three-story building on a lot 2,490 square feet area, with a store and basement (which is the part of the premises leased and occupied by the restaurant company); the store consisting of 2,147 square feet and the cellar consisting of 1,500 square feet (see Case, page 45, lines 27 to 34).

Witness for the owner fixes the area of the store at 2,051 square feet (see Case, page 98, lines 35 to 40). This witness, Mr. Thomas A. Ryer, does not compute the area of the cellar space, which also is included in the lease, and nowhere in the case, to our knowledge, is the measurement of the cellar space, as fixed by Mr. Makray disputed.

Now the Court in its opinion (Case, pages 117-126) decided three cases which were similar, namely, the case of Caldes against Mahoney (the said Caldes being a lessee and Mahoney being the owner of the premises next adjoining the premises of Sinisi); the Eldorado case now under discussion, and the lease claim of Kriegel, who was a sub-lessee of Caldes in the Mahoney Building.

In deciding the Eldorado case the Court says in its opening sentence "for convenience the pertinent parts of the foregoing opinion will be considered as applicable and as if repeated herein." The "foregoing opinion" means the Caldes opinion, so that this case stands or falls on the ac-

curacy of that opinion. The Court below then decides that the damages of the Eldorado Restaurant Company would be \$21,000 a year, which on applying the Inwood Tables gives a net amount of \$15,426.12. *The Court, in fixing the value of this leasehold, adopted the square foot rental area as found in the computation of the Caldes lease square foot value.* The premises immediately adjoin each other.

We will now attempt to demonstrate to this Court that the Court below, in arriving at the square foot value of the Caldes lease, which was made to apply in the instant case, erred in its conclusions, because the conclusion is founded upon a mistaken idea of the conceded facts.

In the Caldes opinion at page 122, lines 10 to 30 the Court says the amount that would have to be paid for 14 years, to wit, for the first four years \$34,400; for the next five years \$48,000, and for the next five years \$58,000, makes an aggregate of \$140,400 which divided by the number of years gives a result or average yearly rental of \$10,029.

The Court now points out that the store square foot space is 2,350 square feet plus the cellar floor space of 1,600 square feet, gives a total of 3,950 square feet. This, it will be remembered is the Caldes store and cellar and *not the Eldorado*, and the Court thus arrives at an annual square foot rental of that property of \$2.54. This, then is the Court's *conclusion*; namely, *that \$2.54 is the square foot value of the property occupied by Caldes' store and cellar for restaurant purposes*, and this value is applied to the Eldorado Company as well. The point we make is that this gross rental of \$140,400, is not the rent that would be paid over this period of 14 years for the *restau-*

*rant (store and cellar) in question*, but it is the rent for the ENTIRE BUILDING, consequently this square foot value for "that portion of the premises in question" is manifestly erroneous. This rental of \$140,400 is the rental for the 3,950 square feet plus the second or top floor of the Mahoney Building, which is sublet to Kriegel for \$3,780 per year (Case, Opinion, page 124, line 34), therefore the annual rental mentioned above of \$10,029 should have deducted from it the sum of \$3,780, which is the rent of the top floor used by Kriegel. In other words, the \$10,029 is the rent for the entire building and the square foot area of the entire building is 5,837 square feet and not 3,950, because to the 3,950 square feet should be added the square foot area of the top floor, namely, 1,837 square feet.

Because of the misapprehension of the facts by the Court below, one of two things should be done, either divide the annual rental of \$10,029 by 5,837 square feet and thus obtain the average rental per square foot of the entire building or to ascertain the value of the restaurant property (Caldes' store and cellar), subtract from \$10,029, the sum which Kriegel pays for the top floor to Caldes, which would result in the sum of \$6,249 being the rental paid for the restaurant property or \$1.58 per square foot for said property, and not \$2.54 as the Court below found.

Now the Court has said that the value of the restaurant property was \$2.54 per square foot, and we have shown under the Court's reasoning that it, in fact, should be \$1.58 per square foot, leaving a difference of 96c per square foot. It was necessary to go into these figures in the Caldes case because the Court in arriving at the value of the Eldorado lease has expressly said

that the reasoning governing Caldes' case applied to the Eldorado case.

That the Caldes leasehold, therefore, was worth 96¢ per square foot more over a period of fourteen years than was allowed for it, is no concern of ours, but when the same elements of value are applied as the Court said it did apply "the pertinent portions of the foregoing opinion", it becomes the very crux of the case under consideration.

Nowhere in the opinion do we find the Court ascertaining the *present value per square foot for comparable property* which these lessees would have to pay in that immediate neighborhood. Suppose, for instance, the Court had determined that comparable property would rent for \$4.00 per square foot per annum, it is manifest that the Court in arriving at the figure of \$2.54 per square foot, awarded us in its computation a damage of the difference between these two figures, what we were paying and what we would have to pay, or \$1.46 per square foot advance. Now, if we have proven and I think we have, that we were paying a rent of 96¢ per year per foot less than what the Court found we were paying, or \$1.58 per square foot per annum, our damages on this lease per square foot per annum instead of being \$1.46 would be \$2.42 per square foot per annum extended over the period of eleven and one-half years. Working this out in figures, the store contains 2,147 square feet and the cellar 1500 square feet, which totals 3,647 square feet, which multiplied by 96¢ would give an additional factor of damage of \$3,537.59 per year, which multiplied by 11 years would give a total of \$42,913.47 gross and on the application of the Inwood Tables would result in a net sum of \$31,039.42 advance over the figures of the Court below.

## POINT II.

### **Lessee's computation of lease value was accurate in law and in fact.**

Counsel for the owner argues strenuously that the lessee in attempting to show the value of its lease, enhanced that value by speculative theory and by considering benefits and advantages that would arise from other condemnation proceedings. This is far from the fact and counsel is in error on some of the statements made in his brief. In speaking of the plaza established, counsel says on the second page of his discussion "the proceedings initiated by the county preceded the acquisition of the plaza property by the city, etc.", and attempts to show that the lessee enhanced its lease value from this improvement that was not a reality and was merely speculative. This is far from the fact. Counsel does not prove this statement by any reference from the testimony taken and printed in the State of the Case, but we shall prove the contrary to be the fact.

We, too, are in the same position, we cannot point to anything in the testimony, but we can point to the records of the Court in which these proceedings were initiated, and if any of these statements made by us are inaccurate we invite counsel for the opposition to point it out at the oral argument.

Part of the Plaza property, to wit, property of the Jersey Journal Association and Sullivan was acquired in 1923 by a condemnation commission appointed by former Justice Francis J. Swayze, then the Justice holding the Hudson County Circuit. The petition was filed on January 19th,

1923. The other properties were acquired in 1924 by condemnation wherein Justice James F. Minturn, who succeeded Justice Swayze as the presiding Justice of Hudson County, appointed commissioners who were General William Heppenheimer, Theodore Smith and William C. Asper.

Let us be specific, the properties of Kerbaugh, Kelly and the Commonwealth Company in this neighborhood were acquired by the County of Hudson in condemnation, the petition in which matter was filed May 3rd, 1924. The properties of Mahoney, Kiernan, Rathjen, Sullivan, Simpson M. E. Church, Coughlin and the Goldberg-Wahl Company were acquired by condemnation, the petition in which matter was filed June 11th, 1924. The property under consideration (*Sinisi et als*) was acquired by condemnation, the petition in which was placed on file in the Clerk's Office on June 21st, 1924. Certainly, therefore, all of these properties were acquired in point of time and in theory of law before the *Sinisi* property and certainly also the lessee's witnesses, legally and in fact, were justified in treating these several properties as non-existent in determining the value of the lease attaching to the *Sinisi* property. Counsel makes a general statement that these properties were not acquired until after the property under consideration. This is an error and it will be noted that in his brief no dates are set forth, but merely a generalization.

Perhaps these facts should have appeared in the testimony taken before the Court below, but everyone, including the Court was so familiar with the facts that it was a matter of common knowledge. If this is true, therefore, counsel's attack upon the testimony of the witnesses for the lessee falls of its own weight. The argument that the

lessee's expert was influenced by speculation is not supported by either argument or fact. We might point to the fact that the witness for the owner, Mr. Ryer, throughout his testimony advances the leasehold value as its term goes on. Is not this just as speculative, and is not such progression deserving of the same attack as is levied against the lessee's presentation of its case?

At the outset in the analysis of the testimony of Makray, we submit that the testimony must be taken as a whole, and not skip from page to page inserting question and answer at random to suit the purpose of the argument sought to be made effective. We point out also that the value to be ascertained was not as of June 11th, 1924, because the petition filed on that day was abandoned when an amended petition was filed on June 21st, 1924 (see Case, page 17, line 31). Note Counsel's cross-examination, page 69, which is quoted in the brief:

Q. If you had been asked when you testified for the condemnation commission whether or not this property had a rental value of \$5.25 per square foot, you would have said no. A. I would have said No.

Certainly the witness would have said No, because the property in fact was under lease for \$4,700 a year for the first five years and so on in accordance with the lease and any other answer would have been contrary to the fact which stood in the way of any other answer.

The issue in the case we respectfully submit is this: Taking the conditions as we found them in June 1924, and remembering that all the other condemnations for the Plaza so called, and for the building of the wider bridge were either

finished with or the proceedings under way earlier in point of time than this particular condemnation involving the property under consideration, what was the value of this lease then or what would the lessee have to pay then for similar premises, similarly located? What legal rule or what rule of common sense would impel the witness to consider stores and buildings that were legally beyond consideration because they had been actually acquired by the County of Hudson or by Jersey City for public purposes, is not apparent. And so too, in Counsel's brief, quoting from page 73 of the record, we find this question:

Q. So you are not now testifying as to the square foot rental value of the premises occupied by the Eldorado Restaurant on June 11th, 1924? A. *I am*, as a result of the condemnation, but not previous to the condemnation.

If the situation was not thus considered by this expert real estate witness for the lessee, how else could it be considered? If we consider this area as to its physical state before June, 1924, we are begging the entire question. If the witness considered the physical situation and did not take into consideration "the result of the condemnation" which mean the obliteration of a great many properties, certainly the lessee would be entitled to little damage because he could go out and make leases without any great increase of value. It was the condemnations that wiped out the available stores in that vicinity and created a scarcity that could not supply the demand and that is the reason the lessee has been so substantially damaged.

We submit that the very question asked by counsel at page 75 and quoted in counsel's brief and answered by the witness, is a comprehensive ex-

pression of the witness' theory of this case when he says that the figures given "is for a similar place in the same location after the condemnation is through to be rented by the Eldorado Restaurant and I stated that to be \$5.25".

Counsel also argues that the witness Makray testified before the commissioners in condemnation that the fee was worth \$90,000 (pages 64 and 78). We submit that in view of the fact that the total rent of the property was about \$6,700 a year, that this value on its revenue producing basis was about right as the rule is generally applied. It was based upon *capitalized net income considering an ironbound lease that tied up the Sinisi property to the Eldorado Company for eleven and one-half years, and excluded any higher possible rental*; but the condemnation commission decided that the property was worth more than \$90,000, and in the Hudson County Circuit Court a struck jury decided that the property was worth \$140,000, *is it not, therefore, manifest if the property was worth this sum that the Eldorado Company had a very cheap lease, and as of June 1924 would have been compelled to pay a greatly increased rent for similar premises*. Counsel blows hot and cold on the same proposition. If the property was worth \$140,000 as it proved to be, the rental then for the first five year period should have been in excess of \$10,000 and for the second and third five year periods should have been proportionately greater, thus making a very substantial loss to the tenant, who would have to lease in adjoining property where the land figured at over \$100,000 a lot. The improvement on this property, both witnesses agree was of not much consequence, so that the great bulk of the value that went to make up this award of \$140,000 was for a lot, less in

area than the ordinary city lot 25 by 100 with an old frame building on it. Counsel also argues and applies Makray's present square foot value to his appraisal of the value of the fee. We submit this is erroneous because in making up his present rental value, Makray had to be governed by the value placed on the land and building by the statutory tribunal, to wit, a struck jury, so that he starts out in this computation with the proposition that the premises were worth \$140,000 and not \$90,000 and fixes the leasehold's damage to be \$43,000 in round numbers. We submit that this is low, the term of the unexpired lease was eleven and one-half years, and it is common knowledge that in ten years the owner of any building devoted to business or industry gets in rent the full value of the building.

The comment of counsel that some of the leases used by Makray were made subsequent to June, 1924, is of no great importance. We should point out, however, in the list submitted in his brief that the so-called Calles lease, page 78, is not a lease of a candy store, but of a light lunch restaurant and candy shop. And that the other lease of the Star Company, page 79, while made in October, 1925, is helpful as an indication of what would have to be paid in 1925, even though a lease were actually entered into in 1924, presuming as we think we have the right to do, that a lease of premises for this kind of business would be for a number of years.

The Court will note that the Chrones lease (Case, page 80), was made in 1920 and carries \$5.33 per square foot as a rental basis, even as far back in 1920. Mr. Ryer's witness for the owner invokes the Oyster Bay and Chop House lease (page 102, Case, line 10). This lease indisputably

was made in 1925. We submit also that Mr. Ryer's testimony (page 102, lines 30 to 40), wherein he testifies concerning this Oyster Bay Company lease, that the increase of 2.2% is entirely in error, certainly the difference between a rental which he mentions of \$3.94 and \$4.38 is closer to a 10% than a 2% increase.

Let us examine the testimony of Mr. Ryer and see upon what he predicates his testimony that should be so conclusively sustained as the true value. He says (page 96 of his testimony, line 35) that his testimony is based on "a study of the leases of all stores in this section as far back as stores have been rented, to arrive at my valuation." He does not mention any lease except the one of the Nally Building, which was made in 1922. Is it fair to consider leases that were made "as far back as stores have been rented" in this vicinity? The time was not so many years ago when lots could be bought for \$5,000, and now indeed, they bring the stupendous sum of \$140,000 each. Are we to be bound by leases that were made as far back as 1900, when conditions were so unlike what they are today? And so, on his direct examination this witness does not mention a single lease except the one just mentioned and the Oyster Bay lease referred to.

If there was any vice in Mr. Makray's taking into consideration leases made in 1925, what about the leases considered by Mr. Ryer? (see Case, page 108, line 30, etc.). There he admits he considered a lease made September 20th, 1924, to begin January 1st, 1925, and to run to December 31st, 1931. At page 109, line 13, he cites lease commencing July 1st, 1926, running to 1931, and again 1931 to 1936; this he considered in his appraisal, because the rental value was low, while

he refused to consider the Ritz Restaurant lease (Case, p. 109, lines 20 to 40), because the rental was high, and this is a restaurant property it will be noticed and not a sport shop as is the former lease. He apparently did not consider the leases to which his attention was invited; the Berman lease at \$7.08 (Case, page 111, line 9); the Steris lease (line 14), rental \$7.25; for 1925 Calles, rental \$8.55 (line 23); Chronis (line 30), rental \$5.42 per square foot; Daniel Roe (line 35), rental \$5.20 per square foot.

At page 102 of Mr. Ryer's testimony it is apparent that, even in his judgment, the Oyster Bay property and lease is most comparable with the Eldorado-Sinisi lease (lines 10 to 20). This witness (lines 20-40) gives the rental that is paid for the 1st, 2nd, 3rd and 4th five-year periods. Now our lease ran to 1936, and under it it is well established what rent is being paid. The same has been sufficiently set forth above. Let us analyze these two properties and see if we can make a parallel which might be of assistance to the Court in determining this question.

The Eldorado Company vacated the premises in question on July 1st, 1925, or thereabouts. Its rent under its lease from that date to Dec. 31st, 1926, was \$2.29 per square foot. The Oyster Bay lease calls for \$3.94 per square foot for the same time, or a difference of \$1.65 per square foot, which multiplied by the square foot area, taking Mr. Ryer's figures 2051 square feet, results in the sum of \$5,076.22; from January 1st, 1927 to October 1st, 1930 the rental under Eldorado lease would be \$2.78 per square foot, whereas under Oyster Bay lease it would be \$3.94 per square foot, or \$1.16 per square foot advance, which sum multiplied by the square foot area for the term of three

years ten months totals \$9,128.43. From October 1st, 1930 to December 31st, 1931 Eldorado would pay \$2.78 per square foot. Oyster Bay lease calls for \$4.38 per square foot, or \$1.60 advance, which multiplied by the area for the term totals \$3,828.56; from January 1st, 1932 to October 1st, 1935 Eldorado Company would pay \$3.26 per square foot under its lease, while Oyster Bay lease calls for \$4.38 or \$1.12 per square foot advance, which multiplied by the area for the term makes a total of \$8,805.61; from November 1st, 1935, to December 31st, 1936, the end of the Eldorado lease term, it would pay \$3.26 per square foot, while Oyster Bay lease calls for \$4.73 per square foot, a difference of \$1.47, which multiplied by square foot area and by the term gives us \$3,518.63. This would be the end of the Eldorado lease. These figures make a total damage by this one comparison, which is not the most favorable comparison for our argument by any means, of \$30,457.45. These figures are Mr. Ryer's figures, not ours, and for the sake of making our position clear, we will set forth the figures in schedule form:

ELDORADO RESTAURANT Co. 2051 sq. ft. area.

*Ryer's  
Figures.*

7/1/25 to 12/31/26.....	1½ yrs.	
Sinisi	\$2.29	
Oyster Bay	3.94	
\$1.65 more		
2051 sq. ft. @ \$1.65 for 1½ yrs.....		\$5,076.22
1/1/27 to 10/1/30.....	3 yrs.	
Sinisi	\$2.78	
Oyster Bay	3.94	
\$1.16 more.....		7,137.48
2051 sq. ft. @ \$1.16 for 3 yrs. 10		
mos. ....		1,990.95
10/1/30 to 12/31/31.....	1 yr.	3,281.60
	2 mos.	546.96
Sinisi	\$2.78	
Oyster Bay	4.38	
\$1.60 more.....	1 yr. 2 mos.	
1/1/32 to 10/1/35.....	3 yrs.	
	10 mos.	
Sinisi	\$3.26	
Oyster Bay	4.38	
\$1.12 more.....	3 yrs. 10 mos.	6,891.36
		1,914.25
11/1/35 to 12/31/36.....	1 yr.	
	2 mos.	
Sinisi	\$3.26	
Oyster Bay	4.73	
\$1.47 more.....	1 yr. 2 mos.	3,015.97
		502.66
Figured at Oyster Bay lease rate.....		<u>\$30,457.45</u>

We believe that under Point I, we have demonstrated that the Court erred in the actual working out of its own theory, due to a misapprehension of the facts in regard to the Caldes Building and leasehold.

We submit, that if we have prevailed upon that point, it is ample justification for setting aside

the court's decree and finding in favor of the leaseholder in the sum fixed by Mr. Makray of \$43,272.84. Whether the value of the leasehold be determined from the value of the building or from the leases mentioned in the record, we submit that this value of \$43,272.84 for a lease that had 11 years and 7 months to run is in line with common knowledge and the rules as to real estate values in connection with leases.

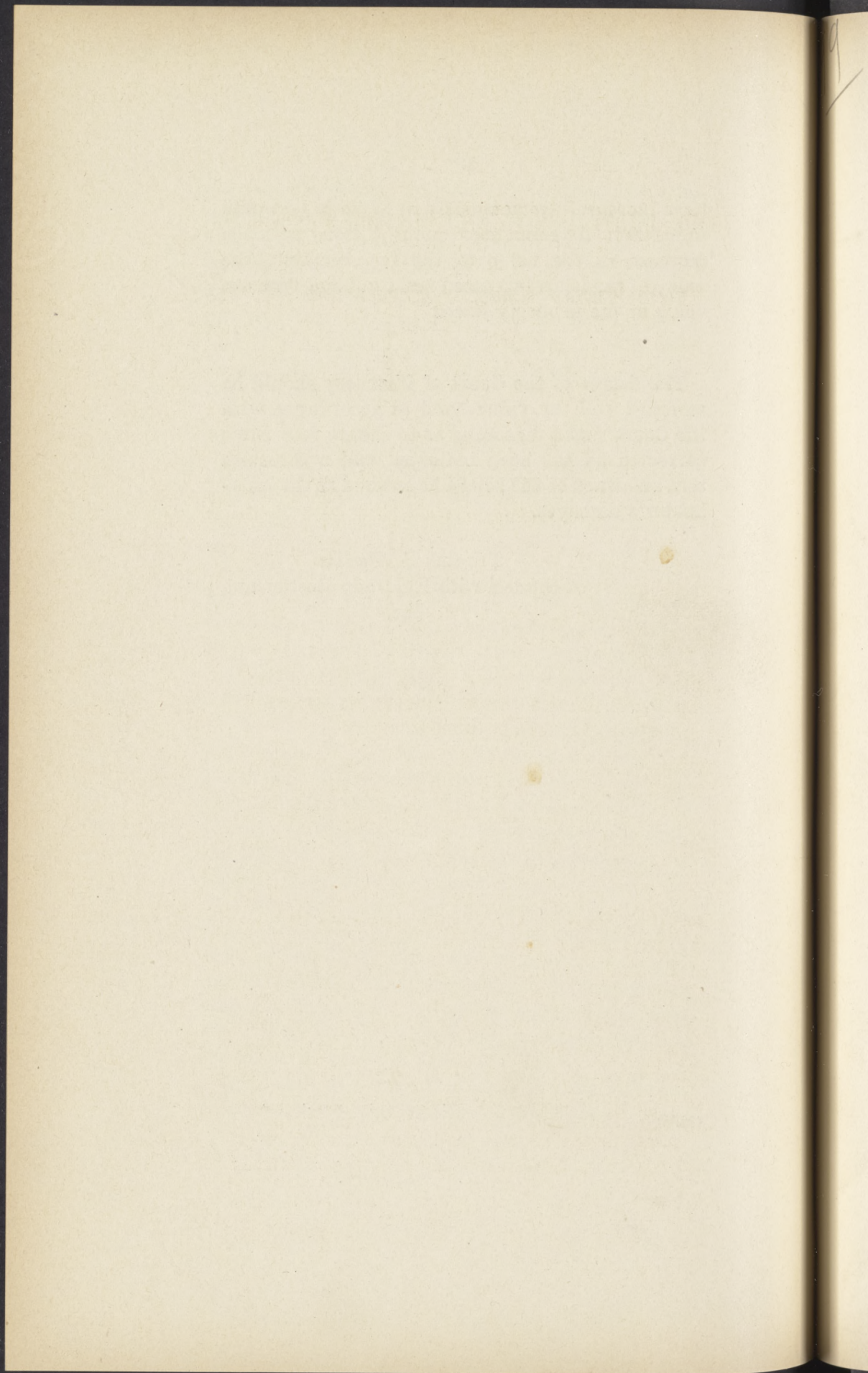
The witness Makray before the Condemnation Commissioners, basing his valuation on a rental return of \$6,700 at that time, said that the property was worth \$90,000. It was decided judicially that the property in fact was worth \$140,000, which is an increase of about fifty-five per cent. over Makray's figures in late 1923 or early 1924. Isn't it true beyond argument that the lowest possible value, therefore, that could be paid upon this lease would be fifty-five per cent. more than the parties were paying? In fact it amounts to a good deal more than this because even in the light of the award the leaseholder had a very advantageous and cheap lease. Now, for the first five years the rent was \$4700 per annum and had one and one-half years of the first five year period still to run. If we plus this sum by fifty-five per cent. we find the damage is in the neighborhood of \$2900. If we plus the second five year period by fifty-five per cent. the increased value would amount to \$15,175, and if we plus the third five year period in the same way we arrive at a damage of \$18,425, which even under this method of computation, not by any means the most favorable one to the lessee, we find the increased value of the lease in question to be \$37,485.

The lease, of course, was made in 1922, and considering the rent paid under it, the property must

have increased tremendously in value to be worth \$140,000 in 1924 and consequently, along with the increase in the value of the fee, certainly the value of the lease increased hand in hand with the value of the property itself.

The decree of the Court of Chancery should be modified and the value fixed in accordance with the Court's own reasoning as to square foot value corrected as has been indicated and a direction that an award of \$43,272.84 be entered as the leaseholder's damages.

THOMAS J. BROGAN,  
Of counsel with Eldorado Restaurant,  
Inc.



## New Jersey Court of Errors and Appeals

THE BOARD OF CHOSEN FREE-  
HOLDERS OF THE COUNTY OF  
HUDSON,

Petitioner,

and

DOMINIC SINISI and LENA SINISI,  
his wife,  
Defendants-Appellants  
and Respondents,

and

ELDORADO RESTAURANT, INC.,  
Defendant-Appellant  
and Respondent.

On Cross Ap-  
peals from the  
Court of  
Chancery.

### REPLY BRIEF FOR DOMINIC SINISI AND WIFE.

There are several inaccuracies in the brief for the tenant which, if allowed to go uncorrected, might lead to confusion. We therefore take the liberty of presenting this supplemental brief calling attention thereto.

On page 6 it is said that, "the court has said that the value of the restaurant property was \$2.54 per square foot." The Court said nothing of the kind. It did say that under its lease the Caldes concern was required to pay at that rate. In this it was amply supported by the testimony of the witness Makray. This inaccuracy follows a long review of the opinion in the *Caldes* case, the record of which was not before counsel, nor was he present at that trial. The fact is that in

the trial of that case, counsel for the tenant and his witness Makray deliberately ignored any part of the premises except the store and cellar, on the theory that the upper floor, sublet to Kriegal, was paying its full rental value and therefore did not enter into the consideration of the case.

On page 6 the correctness of the statement in our main brief is challenged, that the proceedings initiated by the county preceded the acquisition of the plaza property by the city, and the statement is made that, "Counsel does not prove this statement by any reference from the testimony taken and printed in the state of the case." On page 4 we refer the Court to page 77 of the testimony and on page 5 of the brief we refer the Court to pages 69 and 76 of the record. And on page 8 (at bottom) we quote from the testimony of the witness Makray, and repeat the quotation in part here, from page 76 of the record:

"Q. This condemnation proceeding and one instituted by Jersey City, causing the demolition of the Journal Square building owned by Mr. Lerner and his associates, the Renrel building opposite Journal Square building owned by the Stuyvesant Realty Company, wiping out the Journal building and the Mahoney building not only but the Sinisi building itself, together with the Goldberg property; and I have now named have I not all of the properties named in the condemnation south of the bridge; as the result of the demolition of the buildings on those properties and the devotion of those properties to public use, it creates a condition which makes the rental value of stores similarly situated to the Sinisi building \$5.25 per square foot?  
A. Yes, sir.

"Q. Is that right? A. Yes, sir.

"Q. All right. Now, then, that condition did not exist, did it, on the 11th day of June, 1924, when the County of Hudson went to the County Clerk's office and lodged its petition

starting the condemnation proceedings? A. That day created it.

“Q. But it didn’t exist, did it, physically?

A. No.

“Q. On that day the condemnation commissioners had not appraised the Journal Square property? A. No.

“Q. And so far as you know, the city condemnation hadn’t begun? A. No.

“Q. They came after? A. Yes.”

Could anything be plainer? These questions and answers were asked in the presence of counsel, who had ample opportunity to correct them. They are printed in the state of the case before this Court, which was served on counsel. He filed no dissent to them, nor in any way attempted to challenge their correctness. If the witness was misled in any way (and it is difficult to see how he could be) the way was open to set him right. We assert that it is too late now, by statements *aliunde*, to create a condition before this Court that was not before the Court below.

On page 10 it is urged that the value of the leasehold should not be computed as of June 11, 1924, because ten days later an amended petition was filed, resulting in the abandonment of the first petition. We do not follow the reasoning which considers a proceeding to have been abandoned by the filing of an amendment to one of the pleadings. Further on on that page the brief bodily lifts but one question put to the witness, ignoring the next question but one preceding it, where the witness was not confined to any particular date in June, as follows (p. 69):

“Q. If you had been asked, would you have said that the square foot rental value of the property in June, 1924 was \$5.25? A. No, I would not.

“Q. You would not? A. No.

“Q. Why not? A. Because every time there

is a condemnation you create a certain condition and the property has to be rented to suit those conditions."

Then follows the question to which counsel seems to object, in oversight of the fact that it was not limited to a particular date, but covered the whole month of June when read in connection with that which precedes it.

On page 12 appears an argument the logic of which we are unable to follow. The witness had been a witness before the condemnation commission on behalf of the county. On that side of the case he was endeavoring to convince the commission that the property had a low value. In this proceeding, on the other side of the fence, he is attempting to establish a high value for the leasehold, notwithstanding his admission, quoted above, that he would not have testified then to the value he calculates now. It was perfectly proper to ask the witness about his former testimony, and the net result of the record here is to prove that the condemnation commission did not agree with him, and that his testimony in the two cases is not consistent. On this point too, we call attention to the fact that the witness did not base his present appraisal on the determination of either the condemnation commission, or of the jury on appeal. He justifies his present figures on grounds not tenable, and on theories not approved by the law.

It is proper in closing to direct attention to an error into which the learned Vice-Chancellor unconsciously fell, in the *Caldes* opinion (p. 120, line 34), in assuming that "It is common knowledge that property values in this neighborhood have been rising over a long period of years." This is an error of law, in the first place. Increases in property values are not the subject of common knowledge, in a limited locality. As a matter of practical fact, it cannot be, and was not assumed

that the rate of increase was matter of common knowledge. That is a matter which had to be ascertained from experts. The experts testified as follows:

Ryer, page 106:

“Q. And did your estimate of values, on premises like the Sinisi property, receive any impetus or element of vigor at all from the figures culled from the 1900 on leases? A. Certainly. When you say ‘from the 1900 leases’ you mean up to that date?”

“Q. Certainly. In other words, is there an element in your computation that has taken from agreements with regard to leasing that went back in 1900? A. No, except knowing the history, that’s all.

“Q. Did you import in your opinion any element taken from any lease made between 1900 and 1910? A. I don’t think so.

“Q. Between 1910 and 1915? A. I don’t think so.

“Q. Did it receive any element of a leasehold agreement made between 1915 and 1920? A. I think from 1919, yes; but prior to that, no, because the real increase started here in about 1919.”

The witness Makray (p. 83, top of p. 84) testified that property could be rented cheaper in 1922 than in 1924, but (p. 85, line 4) starts his historical treatment in 1925, after the condemnation, and based on a condition not existent at that time.

To sum up, the testimony of the witness Makray is incompetent, being based on a false assumption, and should be ignored. This would leave for consideration only the testimony of Ryer, which retains conditions existing at the time of the condemnations, and projects them into the future—the only legal and just method of appraising a leasehold such as this.

JOHN MILTON,  
Of Counsel with Sinisi.

APPEAL PRINTING CO., 22 THAMES ST., NEW YORK CITY

[5864]

## New Jersey Court of Errors and Appeals

THE BOARD OF CHOSEN FREEHOLD-  
ERS OF THE COUNTY OF HUDSON,  
Petitioner,

*v.*

DOMINIC SINISI, *et ux*,  
Defendants, Appellants  
and Respondents,

and

ELDORADO RESTAURANT, INC.,  
Defendant, Appellant  
and Respondent.

On Cross Ap-  
peals from  
the Court of  
Chancery.

### **BRIEF FOR DOMINIC SINISI AND WIFE, OWNERS.**

These appeals bring up for review a decree of the Chancellor, advised by Vice-Chancellor Bentley, apportioning a fund paid into that Court as the result of a condemnation proceeding instituted by Hudson County against property owned by Dominic Sinisi and wife, and occupied in part by the Eldorado Restaurant, Inc., as tenant.

The fund amounted originally to \$144,713.08, but by various consent orders for the payment of taxes and mortgages was reduced at the time of the hearing to \$56,393.64 (Case, p. 127). All other claims having been satisfied, the litigation in the Court of Chancery was confined to the owner and tenant, the question at issue being the value of the leasehold estate of the Eldorado Restaurant, Inc.

### The Facts.

Prior to December 30th, 1921, Sinisi, the owner, had conducted a restaurant business in the premises (p. 94). On that date he agreed to sell the business and personal property to the Eldorado Company, about to be formed, and to give them a lease of the store and basement (cellar) portion of the premises (p. 92). This lease was afterward executed, dated January 5th, 1922, to run for a period of ten years from January 1st, 1922, at an annual rental of \$4,700 for the first five years, and \$5,700 for the second five years. It was further provided that the Eldorado Company, at its option, might have a further term of five years at an annual rental of \$6,700. In addition the tenant agreed to heat the entire building at its expense and to pay any water rates in excess of \$100 per annum (p. 30).

On June 11th, 1924, when the lease had run two years and six months, and still had seven (or twelve) years and six months to run, Hudson County instituted the condemnation proceedings by the filing of its petition (p. 17), and thereafter the usual proceedings were had, commissioners were appointed and made their award, appeal was had and a struck jury finally awarded \$140,000 as the value of the whole fee (p. 13).

The actual occupation terminated June 1st, 1925, when the county took possession (p. 59). At that time the Eldorado Company had been in possession three years and six months, and the unexpired term amounted to six (or eleven) years and six months. Other portions of the lease which may be pertinent to this discussion, are:

- (1) The premises are not to be used for other than restaurant purposes (p. 33).

(2) All improvements are to be made by the tenant and to become the property of the landlord (p. 34).

At the hearing before the learned Vice Chancellor the Eldorado Company (tenant) contended for \$43,272.84 as the value of its leasehold (p. 58) and reasserts that claim in its notice and petition of appeal (p. 3). The owner (Sinisi) contended for a value of \$8,301.44 (p. 100), and reasserts that claim in its petition of appeal (p. 8). The Vice Chancellor found a value of \$15,426.12 (p. 129).

### **Discussion.**

Before discussing the testimony, it may be convenient to invite attention to some legal principles applicable to the case, first pointing out that the fund in court represents the value of the entire fee at the time the petition was filed, June 11th, 1924. Consequently, the values of the various estates in the land must be ascertained as of that date.

The value of a leasehold interest is the difference between the market value of the lease, and the rent actually paid.

*Hudson Co. v. Emmerich*, 57 N. J. Eq., 535;

*West Jersey R. R. Co. v. Thomas*, 23 N. J. Eq., 431, 434, 36 C. J., 56, 282;

*Elliott on Contracts*, Secs. 2240, 2241, 2242.

The true method of calculating the value of an unexpired lease is not by ascertaining the yearly rental value and then multiplying the figures by the number of years the lease has to run, but by calculating its value by the annuity tables: that is, by multiplying the annual by the value of one dollar per year for the number of years in the unexpired term.

*West Jersey R. R. Co. v. Thomas*, 23 N. J. Eq., 2131, 434;

*Holcombe v. Trenton White City Co.*, 80 N. J. Eq., 122, 153;

*Newark v. Cook*, 133 Atl. Rep., 875, 878.

The correctness of the application of these principles was conceded by counsel for the tenant on pages 53 and 54 in the case.

Both Sinisi, the owner, and the Eldorado Company, tenant, sought to establish values by expert real estate witnesses, each calling one witness of admitted qualifications. The tenant called one Makray, who testified to a value of \$43,275.00 and the owner called Mr. Ryer, who testified to a value of \$8,301.44. This vast difference arose because of differences in the methods adopted by each in approaching the study of the subject. We contend that the testimony of the tenant's witness was based on an erroneous conception of the law and the fact, and hence is worthless.

At the outset, for a better understanding of the situation, it is proper to relate that the condemnation proceeding which brought this fund into existence, is part of a comprehensive improvement undertaken by Hudson County in what is known as the Journal Square section of Jersey City. At this point the Hudson Boulevard was widened, bridges thrown over the Pennsylvania Railroad and an extensive Plaza created. This development required the acquisition of entire tracts of land and the demolition of buildings. The City of Jersey City cooperated in this project by widening streets under its jurisdiction in this vicinity, notably Sip and Summit Avenues (p. 77). It also acquired portions of an entire block, resulting in the creation of the Plaza, so-called. The proceedings instituted by the County preceded the acquisition of the Plaza property by the City so that

any anticipated enhancement in value from this improvement had not matured and was merely speculative at the time the condemnation in this case began. The cost of this improvement was enormous, and inevitably resulted in sharp advances in values, both in sales and rentals, during the very time the properties were being acquired by purchase and condemnation. Sales values increased because of the improvement itself, and rental values increased not only for the same reason, but also because the improvement necessitated the acquisition of store properties resulting in a substantial decrease in the number of sites available for store purposes. This of course brought into operation the law of supply and demand (pp. 69, 76). The property in question, with others in the vicinity, was wiped out of existence, being transmigrated into part of the roadway or plaza.

This situation was what led Mr. Makray astray. His testimony throughout shows that his mind was strongly influenced by conditions not only created by the condemnations and negotiations relating to the various properties, but also by the speculative atmosphere of enhancement created by anticipation of the completed development.

On his direct examination Mr. Makray testified (Case, p. 45) that the store premises occupied 2147 square feet, and the cellar had a usable space of 1500 square feet; he then (p. 51) calculated that the rental under the lease per square foot for the first five years of the lease was \$1.84 plus seven cents for heating, for the second five years \$2.35 plus seven cents, and for the last five years \$3.12 plus seven cents. He finds an average of \$2.35 plus seven cents or \$2.42 per square foot for the unexpired term. He then, ostensibly as of the date of filing the petition in condemnation, fixes the value of this leasehold at \$5.25 (pp. 56, 59). Com-

muting this over the term he arrives at a total loss of \$43,275 (p. 58).

On cross examination (p. 59) he fixes the average of the rent paid at \$2.58 a square foot instead of \$2.42.

The serious defect in his testimony is that he fixes a rental value as of June 1st, 1925, the date the county took possession (p. 59) and not as of June 11th, 1924, the date the condemnation began (pp. 69, 78). During this year values had increased. He admits (p. 69) that his value of \$5.25 does not relate to the earlier date and that its true value was \$1.35 (p. 71). We quote from his testimony (*italics ours*):

(Page 59):

"I establish an average figure of \$5.25 a square foot as against \$2.58 a square foot for the unexpired period of the lease; that is to say, from the day of dispossession.

"Q. And what date is that? A. June 1st, 1925."

\* \* \* \* \*

(Page 69):

"Q. If you had been asked, would you have said that the square foot rental value of the property in June, 1924, was \$5.25? A. No, I would not.

"Q. You would not? A. No.

"Q. Why not? A. Because every time there is a condemnation you create a certain condition and the property has to be rented to suit those conditions.

"Q. If you had been asked, when you testified for the Condemnation Commission whether or not this property had a rental value of \$5.25 per square foot, you would have said 'no'? A. I would have said 'no.'"

\* \* \* \* \*

(Page 73):

"Q. So you are not now testifying as to the square foot rental value of the premises oc-

cupied by the Eldorado Restaurant on June 11, 1924? A. I am, as *a result of the condemnation*, but not previous to the condemnation.”

(Page 75, *et seq.*):

“Q. Now, Mr. Makray, will you be good enough to tell me what the rental value was on June 11, 1924, of that portion of the Sinisi building which was occupied by the Eldorado Company, the claimant here? A. I can't value that, Mr. Milton; I have to go by the lease.

“Q. And the testimony which you have given here on direct examination of the rental value of the premises so occupied by the claimant here, then, is not as of June 11, 1924? A. It is for a similar place in the same location, *after the condemnation is through*, to be rented by the Eldorado Restaurant, and I stated that to be \$5.25.

“Q. So that your value of \$5.25 per square foot for premises similarly situated is after the improvement for which the—or in aid of which—the condemnation proceeding was begun has been completed? Right? A. No, *it is the result of creating such conditions as well as the Plaza and the Bridge.*

“Q. So that you say, assuming that the Plaza and the Bridge have been projected, connected with which are the condemnation proceeding, —assuming that they are in existence, then \$5.25 is the square-foot rental value of property similarly situated; is that right? A. No, the condemnation proceeding for the taking of the Sinisi property *creates a new condition*, because it takes away 600 square feet of frontage in that section.”

The 600 feet the witness speaks of refers not only to the property of Sinisi but other adjoining property which had not been taken at the time of the condemnation of the property in question.

(Page 76 continued):

“Q. I want to get clearly on the record and in mind just what your prices are in this sec-

tion as a result of the withdrawal from the available market for rental, the stores of the Sinisi property and other properties involved in this condemnation—the market value or the rental value of premises similarly situated, you say is \$5.25; is that right? A. Yes, sir.

“Q. And is that true whether or not the improvement contemplated by the county is completed and consummated? A. Well, the fact, Mr. Milton, is that all the stores there in the neighborhood of the Sinisi property have to vacate at the same time with the Eldorado, and those people were in the market to rent; therefore, the demand was greater than the supply.

“Q. Right. So that what you say, under your theory, in substance, is this: This condemnation proceeding and one instituted by Jersey City, causing the demolition of the Journal Square building owned by Mr. Lerner and his associates, the Renrel building opposite Journal Square building owned by the Stuyvesant Realty Company, wiping out the Jersey Journal building and the Mahoney building not only but the Sinisi building itself, together with the Goldberg property; and I have now named, have I not, all of the properties named in the condemnation south of the bridge; as the result of the demolition of the buildings on those properties and the devotion of those properties to public use, it creates a condition which makes the rental value of stores similarly situated to the Sinisi building \$5.25 per square foot? A. Yes, sir.

“Q. Is that right? A. Yes, sir.

“Q. All right. Now, then, that condition did not exist, did it, on the 11th day of June, 1924, when the County of Hudson went to the County Clerk's office and lodged its petition starting the condemnation proceedings? A. That day created it.

“Q. But it didn't exist, did it, physically? A. No.

“Q. On that day the condemnation commis-

sioners had not appraised the Journal Square property? A. No.

"Q. And, so far as you know, the city condemnation hadn't begun? A. No.

"Q. They came after? A. Yes."

This testimony indicates quite clearly that the witness is testifying to value as of a time not warranted by the law and is based upon conditions which did not exist until long after that time. As a matter of fact, the improvement which will result in increases of value has not been completed at the present day. It is therefore apparent that the witness is speculating instead of appraising values upon actually existing conditions.

(Page 77 continued):

"Q. Isn't it a fact, Mr. Makray, that in valuing the whole Sinisi property—the whole fee, all of it,—the Condemnation Commissioners fixed its value as the physical conditions existed on June 11, 1924? A. Yes, sir.

"Q. And you testified to the value of the whole Sinisi property, from the door-knob to the roof, as of June 11, 1924? A. Yes, sir.

"Q. And fixed the value at \$90,000? Right? A. Yes, sir.

"Q. And what you are now doing in estimating the value of this lease, is to take a condition after June 11, 1924, when the Sinisi property is wiped out, and saying that the value of the lease shall be estimated as of the condition that exists after June 11, 1924? A. Yes, sir; after wiping out the conditions."

The testimony of this witness demonstrates its own absurdity. He was a witness before the commissioners in condemnation (p. 63) and testified that the value of the entire fee was \$90,000 (pp. 64, 78) and that this value was based in part on its revenue-producing value (p. 64), and in this proceeding calculates the total *difference* between the rental paid and the rental value at \$65,243.19

for the unexpired term (p. 62). If we apply his figure of \$5.25 per square foot, the total value testified to by him, instead of \$2.67, the excess in rental value, we have an annual rental of \$11,271.25 or a gross rental for the unexpired term of eleven years of \$123,989.25, more than his opinion of the value of the entire fee. The present value of this sum commuted is \$82,240. This is a remarkable demonstration of a part equalling the whole. If we apply this sum to the award of the jury (\$140,000) we find Mr. Makray appraising an eleven-year leasehold at 58% of the value of the entire fee. Indeed, the witness admits that on his appraisal of rental value the property would be worth \$250,000 (p. 86).

It is interesting to contrast this witness' ideas of value at the time of the condemnation proceedings when he was a witness for the County with his present views. We quote from his testimony.

(Page 63):

"Q. Now, Mr. Makray, you did value this property for the County of Hudson as an expert in the condemnation proceedings between the County and the owner of the property, Mr. Sinisi? A. Yes, sir.

"Q. What value did you place upon the premises in question—the entire property—as of June, 1924? A. I think around 100 or 110 thousand dollars.

"Q. Let me read to you from the testimony taken at that time: Were you asked this question and did you make this answer, referring to the Sinisi property?

"Q. What value did you place upon that property as an entirety? A. \$90,000."

(Page 64):

"I stated that the entire property was valued from its revenue-producing value, and if that land would be independent of the

building—vacant land—it would be worth \$54,000; I also stated that it does not necessarily follow that the market value of the land is represented by the value of the land and the value of the building. The market value of the two does not necessarily represent the market value of the entire.

\* \* \* \* \*

“Q. Did you make that statement? A. Yes, sir.

“Q. Didn’t you also testify at the same time that the gross rental obtained, or the information that you obtained in respect to the rental, show that they were \$9,020? A. I think so.

“Q. Now, then, taking the gross rentals as they existed in June, 1924, \$9,020, will you add to those gross rentals the additional rental coming from the store and the basement, upon the basis that you have fixed the rental value at \$5.25, and give me now the gross total rental on that basis.”

\* \* \* \* \*

(Page 65):

“A. It will be approximately \$14,500.

“Q. So that the total gross rental, on the basis of that store being worth \$5.25, would have been \$14,000 or in excess of \$14,000? A. No, a total of \$14,000.

“Q. \$14,500? A. Approximately.

“Q. All right. What would have been the value of this property June 11, 1924, if the rentals had been as you say \$14,500? A. It would have been around \$140,000.”

\* \* \* \* \*

(Page 67):

“Q. Would you mind closing that book for a moment. (Witness closes it.) Do you know what the coal bill for this building was in any one year? A. No, I do not.

“Q. Did you go to the proprietor of the Eldorado Restaurant to find out what it cost them for an engineer or fireman service to run the furnace? A. I did not.

“Q. Did you go to Sinisi to find out from him what it cost him to run the buildings from

a heating standpoint, for the coal or fireman's service? A. I did not."

\* \* \* \* \*

(Page 72):

"Q. Mr. Makray, you prepared yourself to testify as an expert in this case? Right? A. Yes, sir.

"Q. You were one of the experts that was retained by the County of Hudson to testify before the Condemnation Commissioners? A. Yes, sir.

"Q. Were you retained to testify on the jury trial? A. No.

"Q. But you did prepare yourself to testify in 1924, with respect to the value of this property as of June 11, 1924, did you not? A. Yes, sir; as to the value.

"Q. And you did ascertain what the actual gross rentals were? A. Yes, sir.

"Q. You ascertained what the expense of operating the building was and what the net rentals were? A. Yes.

"Q. And you fixed in your mind a value to be given as of that date, of \$90,000, based upon those rentals? A. Yes, sir.

"Q. Do you mean to say that you cannot now, in the light of all that experience, in view of the fact that you have prepared for two trials, you cannot now state what the square-foot rental value would be of that portion of the property occupied by the Eldorado Restaurant on June 11, 1924? A. I cannot, because there was no necessity for preparing for that particular question."

These quotations from this witness's testimony show its utter worthlessness as a guide, or influence in the application of leading principles to the ascertainment of the value of this leasehold.

Following is a list of store properties cited by Mr. Makray in support of his values:

Page 78:

Calles Candy Store	1,261 sq. ft.	\$7.14 per sq. ft.
		October, 1925.

Page 79:

Star	330	“ “	\$7.27 per sq. ft. October, 1925.
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Page 80:

Palmer Orangeade	238	“ “	\$12.60 per sq. ft.
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Page 80:

Chrones	1,050	“ “	\$5.33 per sq. ft. April, 1920.
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The last two are situated on property which the witness admits is considered by all the real estate men to be at the peak of values (p. 80), and one is less than half, the other about one-ninth, the area of the property in question.

It is to be noted also that not a single store cited by the witness is a restaurant although lease in question restricts the premises to that use.

Taking the testimony of this witness as a whole, we respectfully submit that his conclusion as to value is unworthy of consideration not only because of the manifest inconsistencies in his testimony, but also because he approaches his study of the subject from an illegal and incompetent viewpoint in refusing to consider values prevailing at the time of the beginning of the condemnation proceeding instead of later, when the proceeding itself had created an artificial value not recognized by law.

We do not overlook the finding in the *Emmerich* case, 57 N. J. Eq., 535, 538, to the effect that the respective rights of the parties, landlord and tenant, are to be ascertained as of the time of the making of the award. But that proceeding was under the Boulevard Act of 1888 (P. L., 397, 400) which contained no provision such as that embraced in Section 6 of the Eminent Domain Act of

1900, to the effect that the value must be ascertained as of the time of the filing of the petition.

The owner called as his expert Mr. Thomas A. Ryer, an expert of conceded qualifications (p. 96). His testimony is direct and confident, shows an earnest study of the situation in accordance with legal principles, and is singularly free from the natural partisanship of a retained expert.

He made a study of all leases in the section, beginning with its development as a commercial center (p. 96). He is frank to admit that based on his study the leasehold had a value greater than the rental paid. He points out (p. 97) the fallacy of using an arbitrary square-foot unit without regard to shape and proportion, width, depth, etc. He does use the square foot as a *basis*, but not as the sole determining factor. The leases observed by him are as follows:

Nalley Restaurant	\$1.62 to \$1.95 per sq. ft. —May 1, 1922
Oyster Bay “	\$3.94 to \$5.00 per sq. ft. —October, 1925
14 Journal Square “	2200 sq. ft. \$2.72 per sq. ft.—September, 1924
18 Journal Square “	2300 sq. ft. \$2.08 per sq. ft.—July, 1926
Corrall	\$2.60 to \$3.12

Analyzing the lease and values from year to year and calculating present value according to approved tables he ascertains the total rental value to be \$8,301.44, from which the cost of heating should be deducted (pp. 98, 99, 100).

And (pp. 109 *et seq.*) he demolishes the application of the higher rates referred to in the tenant's testimony by pointing out (what is not contra-

dicted) that small stores of slight depth compared to width, command a higher square foot rental. In addition to this all these places are heated by the landlord, whereas in the case in hand the tenant bears the expense of heating in addition to the rent.

The question of heat may seem comparatively unimportant, but it demands attention if only for the sake of the atmosphere created by the witnesses. The first witness for the tenant (Mr. Makray) testified to heating cost on an estimate basis furnished in a publication of a Building Association (p. 67). While he was testifying Mr. Bondi, one of the stockholders, was present, and later was sworn (p. 90) but did not utter a word with relation to the cost of heating. Later Mr. Sinisi was called (p. 94) and testified to having run a restaurant in the premises, and that the actual cost of heating was \$400 to 450 a year for coal, plus \$312 a year for labor (p. 95). After the landlord's case closed Mr. Bondi was recalled in rebuttal and for the first time testified to the actual heating (p. 114). Even his testimony does not give the cost in money but states they burned "about" 18 tons of coal during the Winter of 1923-4, the labor being performed by one of the restaurant hands. Assuming coal to have been \$15.00 a ton this would give a cost of \$270 a year. But Mr. Makray estimates \$400 a year, which is based on a calculation of his figures of seven cents a square foot applied to three times 2147 square feet, or \$420.87.

It is to be noted that Mr. Makray based his testimony from estimates obtained from a book, and that he neglected to inquire either of Sinisi, the former tenant, or of his own client, the present tenant, as to the actual cost of heating (p. 67).

Some question was made of the claim amounting to \$15,000, in addition to the market value of the leasehold. Testimony was permitted respecting negotiations preceding the making of the agreement to sell the business and for the making of the lease. Counsel has attempted to prorate the payment of \$7,000 for the chattels and good-will of the business and \$8,000 for a fifteen-year lease. Aside from the reasons given in the opinion of the Vice Chancellor (p. 123) it is respectfully submitted that the practical effect of this transaction was to increase the total rental paid. In other words, the tenant in addition to the payments provided in the lease paid the additional sum of \$15,000 for the business and the subsequent lease. In considering the value of his leasehold as of the time of the condemnation this sum must also be taken into consideration in ascertaining the difference between what the tenant paid and the market value of the leasehold. In other words, the tenant was not paying the sum specified in the lease but was paying those sums plus the \$15,000, thereby increasing the amount that he was actually paying for the estate which it held in these lands. The necessary result of this situation requires that the results testified to by the experts should be discounted because they based their estimates upon the rental figures written in the lease. It is almost elementary that where a person pays a premium or bonus for the acquisition of a leasehold estate the amount so paid should be added to the amount of the rentals paid in order to accurately arrive at the amount actually being paid for the enjoyment of the leasehold.

The Vice Chancellor found certain items in his opinion and upon that finding the figures were calculated and written in the decree at \$16,601.12.

\$1,175 of this is properly chargeable against the landlord and payable to the tenant. As to the balance, \$15,426.12, it is sufficient to say that there is nothing in the evidence on either side to lend any support to this valuation.

**The decree of the Court of Chancery should be reversed and a direction to reduce the figures to \$8,301.44 plus the sum of \$1,175.**

JOHN MILTON,  
Solicitor for and of Counsel with  
Dominic Sinisi and Wife, Owners.

