New Jersey State Library

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Writ of Certiorari.

New Jersey Supreme Court

NEW JERSEY, SS.:

THE STATE OF NEW JERSEY to PETER O'TOOLE, Clerk of the City of Newark, and the BOARD OF COMMISSIONERS OF THE CITY OF NEWARK, NEW JERSEY, GREETING: We, being willing, for certain reasons to be certified of a certain ordinance passed by the Board of Commissioners of the City of Newark, New Jersey, on or about the 15th day of October, 1930, approving a certain agreement between the City of Newark and the Prudential Insurance Company of America, providing for the acquisition of lands for city use and for an appropriation for such purpose of the sum of $1,200,000 and for the issuance of temporary loan bonds, and for other purposes, we do command you that the ordinance, together with all things touching and concerning the same, as fully and entirely as before you they remain to our Justices of our Supreme Court of Judicature, at Trenton, on the 22nd day of December, 1930, you certify and send, together with this writ, that therein may be done what of right and according to the laws of this State should be done.

WITNESS, Honorable William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this 1st day of December, 1930.

FRED L. BLOODGOOD,
Clerk.

HERMAN W. BRAMS,
Attorney.

This writ is allowed. Let it be sealed. Let depositions be taken by either party upon four days' notice to the other.

WM. S. GUMMERE,
C. J.

Dated Dec. 2d, 1930.

Return to Writ.

To the Honorable, the Justice of the Supreme Court of Judicature of the State of New Jersey.

In obedience to the command of the within writ, we, Peter J. O'Toole, Jr., Clerk of the City of Newark, New Jersey, and the Board of Commissioners of the City of Newark, New Jersey, do send, under our hands and seals to you, the Honorable, the Justices of the Supreme Court of Judicature of the State of New Jersey, an ordinance passed by the Board of Commissioners of the City of Newark, New Jersey, on or about the 15th day of October, 1920, approving a certain agreement between the City of Newark and the Prudential Insurance Company of America, providing for the acquisition of lands for city use and for an appropriation for such purpose of the sum of $1,200,000 and for the issuance of temporary loan bonds, and for other purposes, together with all things touching and concerning the same, as fully and entirely as they remain before us, as appears by the schedule hereto annexed, as we are commanded.

In Witness Whereof, the said Peter J. O'Toole, Jr., Clerk of the City of Newark, New Jersey, has signed this return, and we, the Board of Commissioners of the City of Newark, New Jersey, has caused this return to be signed by our Clerk and attested by the seal of the City of Newark, this 12th day of December, 1930.

Peter J. O'Toole, Jr.,
City Clerk.

(L. S.)

Ordinance.

1.

Ordinance.

An ordinance to authorize the acquirement of lands in the City of Newark for park use, and to authorize the execution of a contract with The Prudential Insurance Company of America for the acquisition of the same, and providing for the financing thereof.

The Board of Commissioners of the City of Newark, do ordain:

1. That whereas: The city desires that in the interest of the public health, safety and morals certain blocks of unsafe and unsanitary dwellings, hereinafter described in the City of Newark, should be replaced in part by new housing facilities constructed in accord with proper standards of sanitation and safety and provided with appropriate parks and playgrounds, and

2. That whereas: The Prudential Insurance Company of America is willing, pursuant to authority of law, to acquire the tracts of land upon which such unsafe and unsanitary dwellings now stand and to construct upon a part of such tracts such new housing facilities and to convey to the City of Newark certain other parts thereof for the purpose of such parks and playgrounds.

3. That an agreement between the City of Newark, and the Prudential Insurance Company of America, a corporation organized under the laws of the State of New Jersey, providing for the erection of new housing facilities and the conveyance of certain tracts of land to the City of Newark for park purposes in connection with the same, a copy of which agreement is hereto annexed

and made a part hereof, be and the same is hereby approved and the Mayor and the city clerk are hereby authorized and directed to execute the same on the part of the city, upon the adoption of this ordinance.

4. That the lands hereinafter particularly described, situate in the City of Newark, shall be acquired by the City of Newark, either by purchase or condemnation, for city use.

First Tract: Beginning in the southerly line of Spruce Street at a point distant 30 feet westerly, measured along the southerly side of Spruce Street from the southwesterly corner of Spruce Street and Somerset Street; thence running southerly along a line 30 feet distant from and parallel to the westerly line of Somerset Street, a distance of 744.77 feet more or less to the northerly line of Waverly Avenue; thence running westerly along the northerly line of Waverly Avenue, 140 feet more or less to a point 30 feet easterly from the northeasterly corner of Waverly Avenue and Barclay Street; thence running northerly along a line 30 feet distant from and parallel to Barclay Street 735.67 feet more or less to the southerly side of Spruce Street at a point distant 30 feet easterly from the southeasterly corner of Spruce Street and Barclay Street; and thence running easterly along the southerly side of Spruce Street 140 feet more or less to the point and place of beginning.

Second Tract: Beginning in the southerly line of Montgomery Street at a point distant 30 feet westerly, measured along the southerly line of Montgomery Street from the southwesterly corner of Montgomery Street and Somerset Street; thence running southerly along a line 30 feet distant from and parallel to the westerly line of Somerset Street, a distance of 688.22 feet more or less to the northerly line of Spruce Street; thence running

westerly along the northerly line of Spruce Street 140 feet more or less to a point 30 feet easterly from the northeasterly corner of Barclay Street and Spruce Street; thence running northerly along a line 30 feet distant from and parallel to Barclay Street 697.15 feet more or less to the southerly line of Montgomery Street at a point distant 30 feet easterly from the southeasterly corner of Montgomery Street and Barclay Street and thence running easterly along the southerly side of Montgomery Street 140 feet more or less to the point and place of beginning.

5. That the total cost of the purchase of said lands shall not exceed the sum of one million, two hundred thousand dollars ($1,200,000).

6. Pursuant to the provisions of Section 13 of Chapter 252, P. L. 1916, as amended, there shall be issued temporary loan bonds of the city of Newark, in an aggregate principal amount not exceeding one million, two hundred thousand dollars ($1,200,000) bearing interest at a rate not exceeding six per centum (6%) per annum, payable semi-annually, for the purpose of temporarily financing the cost of said purchase. All other matters in respect to said temporary bonds shall be determined by the director of the Department of Revenue and Finance, subject to the provisions of this ordinance and Chapter 252 of the Laws of 1916, as amended, and the director of the Department of Revenue and Finance is hereby authorized to issue said temporary bonds at such time or times, and in such amounts as he may deem advisable. The Mayor, director of the Department of Revenue and Finance, city auditor and city clerk are hereby authorized and directed to execute said bonds or so many thereof as the

director of the Department of Revenue and Finance shall deem it advisable to issue.

7. The sum of one million, two hundred thousand dollars ($1,200,000) to be raised by the issuance of such temporary loan bonds is hereby appropriated for the purpose for which said bonds are hereby authorized to be issued.

"8. This ordinance shall take effect immediately, but sections 6 and 7 of the same shall not become effective until the passage of a resolution by the Board of Commissioners approving application by the Prudential Insurance Company for the erection of said housing facilities and authorizing and empowering said company to undertake and carry to completion said project in accordance with the provisions of Chapters 201, and 202 of the Laws of 1929."

THIS AGREEMENT, made in duplicate, the day of , between THE CITY OF NEWARK, a municipal corporation of the State of New Jersey (hereinafter called the "City"), party of the first part, and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a corporation organized under the Laws of the State of New Jersey (hereinafter sometimes called "the Prudential"), party of the second part, WITNESSETH:

WHEREAS, the City desires that in the interest of the public health, safety and morals certain blocks of unsafe and unsanitary dwellings, hereinafter described, in the City of Newark, should be replaced in part by new housing facilities constructed in accord with proper standards of sanitation and safety and provided with appropriate parks and playgrounds, and

WHEREAS, The Prudential is willing, pursuant to authority of law, to acquire the tracts of land upon

which such unsafe and unsanitary dwellings now stand and to construct upon a part of such tracts such new housing facilities and to convey to the City certain other parts thereof for the purpose of such parks and playgrounds;

Now, THEREFORE, the parties hereto in consideration of the mutual covenants hereinafter set forth do hereby covenant and agree with each other, as follows:

1. The Prudential agrees forthwith to take all possible steps to acquire, pursuant to the authority conferred upon it by Chapters 201 and 202 of the Laws of 1929 of the State of New Jersey, the following described tracts or parcels of real estate in the City of Newark, viz.:

> FIRST TRACT: All those tracts or parcels comprised within the block bounded by Waverly Avenue, Barclay Street, Spruce Street and Somerset Street, situated in the Third Ward, and
>
> SECOND TRACT: All those tracts or parcels comprised within the block bounded by Spruce Street, Barclay Street, Montgomery Street and Somerset Street, situated in the Third Ward.

at the lowest prices obtainable which the Prudential is willing to pay therefor, or such parts of said tracts as it may be able to acquire, and to submit to the City a project for the construction upon such tracts or parts thereof of new housing facilities occupying only strips not more than thirty (30) feet deep running from north to south on the block fronts on Somerset and Barclay Streets so that there shall be left vacant an interior strip running north and south on each of such blocks approximately one hundred and forty (140)

feet wide and separating the housing facilities constructed on the respective street fronts.

2. Upon approval by the City of the project thus presented to it by the Prudential pursuant to the provisions of Chapters 201 and 202 of the Laws of 1929 aforesaid, the Prudential, upon the acquisition of the said tracts or parts thereof, will forthwith proceed to construct and carry to completion such new housing facilities.

3. Upon the acquisition by the Prudential of the said tracts or parts thereof and the approval by the City of the said project the City, in consideration of the acquisition of such tracts or parts thereof hereinabove described by the Prudential and of the undertaking on the part of the Prudential to construct such housing facilities will purchase from the Prudential such part of the vacant strip approximately one hundred and forty (140) feet wide running north and south through the interior of each of the said blocks as the Prudential may have acquired for the purpose of parks and playgrounds to be maintained by the City for the benefit of the public at large and will pay to the Prudential as the purchase price thereof such proportion of the total price paid by the Prudential for the said tracts as the area of the strip so purchased bears to the total area of the said tracts acquired by the Prudential, and, in consideration of the premises, the City will acquire for such park purposes, either through private treaty or through the exercise of its powers of condemnation, such portions of said tracts as shall not have been acquired by the Prudential, as aforesaid; provided, however, that in no case shall the City pay a sum in excess of one million, two hundred thousand dollars ($1,200,000.), for the acquisition of the aforesaid vacant strip approxi-

mately one hundred and forty (140) feet wide, running north and south through the interior of each of the said blocks.

In Witness Whereof, the parties hereto have caused these presents to be signed by their respective officers thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested on the part of the City by the City Clerk, and on the part of the Prudential Insurance Company of America by its Secretary or Assistant Secretary, all on the day and year aforesaid.

The City of Newark.

.....

Attest:

.....

City Clerk.

The Prudential Insurance Company of America.

.....

President.

Attest:

.....

Secretary.

2.

Minutes of the Meeting of the Board of Commissioners of April 23, 1930, so far as Applicable to the Ordinance Certified.

Mayor Congleton: Mr. Duffield, President of the Prudential Insurance Company, and some of his associates are here this morning to take up with the City, or to make a statement to us, with reference to the housing proposition. I think it is appropriate that we suspend our regular order of business at this time to listen to them.

Mr. Edward D. Duffield, Prudential Insurance Co.: Mr. Mayor and gentlemen, I have asked the opportunity of coming down at this time and speaking to the Commission on the housing project in which the Prudential has been now engaged for over a year. You will recall, Mr. Mayor, that the inception of the whole matter was originally brought to my attention through you and through Mr. Sinclair's stating that there was in the City of Newark a real need for consideration of the housing problem. Mr. Sinclair, in connection with his work on the Essex County Park Commission, had become disturbed over the conditions which he found in endeavoring to find places for the laying out of parks in our City. He interested you, and you brought the matter to my attention.

The work has been carried on with the feeling that we were engaged in doing a work that would enure to the benefit of the City. We have felt throughout that it was possible to bring the project to a successful conclusion only though the cooperation of the City. I have therefore done my best, Mr. Mayor, to keep you and the Commis-

sioners informed as to the progress of our thought in connection with this matter.

The project has now reached a point where, it seems to us, that if it is carried to a successful conclusion we should have the cooperation of the City, at least in one particular, in rather a definite form. I felt when we were first brought into the matter that there were certain factors which were necessarily controlling if there was to be the benefit which we all hoped would ensue in connection with the whole project. It was my thought then that the project, while of inestimable benefit to the City and to the people of the City, if it were to be of the greatest benefit, should be kept on a business basis. In fact, that was the only way in which the Prudential could cooperate in this matter.

I represent the custodian of large sums of money, none of which belong to the Prudential, all of which are entrusted to the Prudential for investment, in order that we may be able to fulfill our contracts and safeguard the interests of those who have entrusted their needs to us for that purpose. Under those circumstances, it was essential that there should be a fair return on any investment which we made in connection with the housing project; but it has seemed to me that it was even more desirable from a broader aspect, because whatever the Prudential may be able to do in Newark or in any other City would be comparatively slight. We could take care of some families; we could make living conditions better for some people; but if we were tackling the whole problem we would serve best if we were able to demonstrate that buildings of a character which would furnish proper and decent housing facilities could be erected and could afford a fair

return on invested capital. It was our hope that if we pioneered in this project we could demonstrate that fact and induce others to invest their funds with like purpose, in order that the general conditions of housing might be improved in this municipality. It was with this purpose that we entered into the project, which we hope now is reaching a point where we can see a successful launching.

We have been informally assured that we might count on the City's cooperation, but we have not been in a position until recently to suggest how far we feel it is essential that the City cooperate in connection with the whole project. I come to you this morning with a rather definite program. The company has already secured the title to a tract in the Ironbound District at Oxford and Lexington Streets and from Passaic to Fleming Avenue. We have acquired title to that entire tract and we propose there to erect model—I don't like the word "tenements", but that is all-comprehensive. We propose to erect there buildings which will cover that block and which will provide housing accommodations for roughly one thousand families.

You are aware of the conditions of the buildings there, Commissioner Howe. I think the whole assessed value of that tract at the present time is somewhere in the neighborhood of $135,000. By the time that we have completed our operations there, I imagine that there will be an investment on the part of the Prudential of over two million dollars. As I say, without asking the City to join with us in partnership, we will be able to invest this sum to provide accommodations for at least one thousand families and to furnish——

Mr. Hamilton calls to my attention that I am confusing the families with individuals. There will be accommodations for about one thousand persons. I thought that I was getting a little enthusiastic in this matter.

—and to provide in the interior for playgrounds, which the occupants of those houses can utilize for their children and for their own benefit. In one sense it will not be a community project, in that those parks will occupy the center of the block will not be utilized in a general community way. There does not seem to be a necessity for that there, by reason of the parks which have been opened in that locality.

In addition to that, we have purchased and expect eventually to develop a tract on Frelinghuysen Avenue. Just what utilization we may make of that, which is now vacant land, I am not prepared to say. It requires a great deal of study, care, and thought as to how that large tract of land may be best utilized to furnish the maximum of usefulness to the people of Newark in the way of again providing housing to them at a low cost.

The interest that I really have—I won't say the interest, but the major interest that I have had in this project has been not only that we should create something, but that we should remove something. It has seemed to me that if we were to utilize to the greatest of our ability to best serve this community, it would be to go into some neighborhood where present conditions were extremely bad and convert these bad conditions into good conditions, and that if we would remove houses unfit for human habitation but being occupied by human beings, and put in the place of those houses buildings which were suitable and which would furnish good accommodations and provide

proper housing facilities, we would have then served a real purpose and have given to Newark a real benefit, which was our purpose and desire to do.

You will recall, Mr. Mayor, that I asked at the outset of this matter that you make a survey of Newark through the Health Department, through the Police Department, and through the other facilities which you have, in order to determine where best we could carry out this project along the line that I have been speaking of and every source of information you had came to certain blocks in the Third Ward in the City of Newark. We have gone into that Ward and we have acquired properties on the blocks between Barclay and Somerset Streets and going from Montgomery to Spruce to Waverly, two blocks running lengthwise. You Commissioners all are familiar with the location of these blocks. We have by private negotiations acquired there the title or option to about eighty-five per cent. We believe that without coming to you and asking you for condemnation, with the possible exception of two or three properties, the owners of which seem to be determined to insist upon a price which would be exorbitant and utterly out of line with the properties that have been already acquired, that we can probably acquire title to the whole tract through negotiations. If it is necessary we shall come to you and, under the statute, ask for the privilege of condemning or having you condemn them under the provisions of that Act, in order that we may utilize those blocks where it seemed to you, and under the advice which you had, most desirable for us to change the entire condition of a neighborhood in this congested Third Ward.

Now, I am sincerely desirous that that project should be carried out. I believe it would mean much to that community. I believe that there we can and should give consideration to a community project, but it is essential, if that be done, that we should have some cooperation with the City in connection with the financing of that project. In other words we have acquired those two blocks, which we could utilize in their entirety without coming to the City, but if we did so it would destroy the whole project, for this reason: That the cost of acquisition of this land has been higher than in the other two cases that I have mentioned. We propose that in every case we shall figure out in determining the cost for the rental of the various rooms that go into these buildings a mere return on the capital invested. Of course, the more capital invested, the higher the cost of the building, the higher the cost of the acquisition of the land, the more necessary it will be to provide a higher rental in order to furnish a return which seems to me to be requisite that we should receive as trustee. It will be a low return; it will be a fair return, one which will commend itself to the public and to your honorable body, but nevertheless, if you once adopt the principle that these buildings must yield a return at that minute you assume that the higher the cost of acquisition the higher the rentals necessarily must be. Therefore, if we want to carry out the main purpose of this whole project to go into this community and give the people there apartments at a low rental, some method must be found to bring the cost down to a point where it can be done.

That can be done not by asking the City to bear any part of the cost of the housing project. That is the last thing in our mind. As I say, we do not

propose to ask cooperation on the Ironbound proposition or on the Frelinghuysen Avenue tract, but in the Third Ward we ask if the City could see its way clear to utilize such portion of these blocks that we have acquired as will not be necessary for utilization by the Company for the erection of these houses. If the City will take the remaining part of that tract and utilize it for parks in that ward we can carry out this plan successfully.

Now, this is our thought: Assume that these two blotters here are the two blocks that we have. (Commissioner Howe produced a plan.) Mr. Howe apparently has a plan. This will show it, exactly. There are the two blocks I am talking about (indicating). Now, our thought is, gentlemen, that if we could enter into some arrangement with the City by which we proceeded to acquire title to those two blocks running, as I say, from Waverly to Spruce and Montgomery and between Somerset and Barclay, and utilize them, leaving the ends open, erecting buildings along the side of Barclay Street, along the side of Somerset Street, and carry them through those two blocks, but leaving the entire interior space open, and if the City utilize that space for park purposes, dividing the cost between the City and ourselves on what could be an equitable basis, we paying for the part that we utilize for housing and you paying for the part that you utilize for parks, we could then carry out, it seems to me, this project with a reasonable hope of success.

I believe that the City is not only justified in doing this; I believe it is something that the City ought to do. If there is one place in the City of Newark that does require consideration in regard to furnishing a breathing space, independently of

the housing proposition, it does seem to me that the Third Ward is that place. I imagine that it is the most congested ward in the whole State of New Jersey. If that is true, certainly your body must have given, as I know it has, consideration to providing breathing space there, a place in which to gather and a place in which the ordinary utilization of park purposes can be had.

It is our suggestion to you that if you will give consideration to the question of utilizing the interior portion of those two blocks for park purposes, but bearing the cost of acquisition to the extent that you do utilize it, leaving to us to bear the cost of the land that we utilize for housing purposes, we can accomplish the exact purpose for which we entered into this project. In other words, we can go into that community and render a civic service not only to the City of Newark, but the entire community surrounding there.

If you acquire it, it is not merely a park for those who happen to live in these houses; it is a park that can be utilized by all those who live in that crowded area. I believe with all sincerity, Mr. Mayor, that if we jointly, the City of Newark and the Prudential Insurance Company, enter into this project, the results will not be confined merely to those people who happen to live there and those who happen to utilize that, but we will have made a form of cooperation development of which I know of no similar example in the country.

I believe that we will have demonstrated, if we are successful in this, the possibility of going into crowded areas in our great city, of removing these pest holes where human beings are now living under conditions that are certain to promote disease, that are certain to promote crime, and that are certain to destroy all that is best in the indi-

vidual, and substitute therefor in a larger way, possibly, than you or I can imagine, conditions that will be destructive of all those things that have been debasing and drawing down. While it may be a small experiment in one sense and may directly affect a small area, it is nevertheless an attempt at solution of a problem that is not only the problem of Newark, but is the problem of every large municipality of this country.

I urge this upon you not because of the fact that the company that I represent in one sense is directly interested in this. We are interested in the fact that we as a large organization receiving our premiums from the working classes and some in many cases the poorer of our citizens should do something wherever we can to aid those from whom we receive the premiums that are represented by this. So far as the question of a simple investment goes, we are not interested particularly in securing this form of investment, but we are interested in the social problem that is presented here. Feeling that it is within our power, while recognizing and discharging our obligations as trustees, to do something toward the solution of the problem that confronts you and every similar governing body, we come to you with this suggestion that you and we cooperate in endeavoring to see whether, under the method that I have suggested, we cannot offer at least a partial solution of this very complicated question.

It seems to me that the City will be justified amply in doing what I suggest. We will immediately add to the ratables of this particular community. These particular streets will immediately add to the assessable value of the properties adjacent thereto. As I have said to you before, we propose to invest in the Ironbound District, to-

gether with the acquisition cost, something like over two million dollars. In other words, if this arrangement that I have suggested is undertaken by the City, the Prudential will have invested in the project, assuming that the City bears a fair portion of the cost of acquisition of the two blocks, over five millions of dollars in endeavoring to provide housing accommodations for the citizens of your city, and we will have added substantially that sum of your ratables which you will find in the way of ratables assessable for tax purposes.

Now, assuming that you should not feel that you should cooperate in this matter; it seems to me that the project in the Third Ward is impossible from our standpoint. We could utilize that land. We could erect buildings there. We could proceed to rent this, but the rents would probably be at a point at which those who are seeking relief would be unable to pay. Since that is the whole point in the subject, I think that we would inevitably be driven, as an essential proposition, to abandon that thickly settled area with its high price of land and be driven to a point where we would buy the land more cheaply and erect houses at a lower rental. In other words, the acceptance of this suggestion is not essential to the housing program which we have undertaken. I think it is essential if we are to attempt the housing experiment in this particular locality.

I again submit the suggestion to you, with the further suggestion that if it meets with your approval that you adopt some resolution that would enable us to confer—in other words, adopt a resolution approving of this project and arranging for a conference at which this could be determined exactly what portion of the cost of the

acquisition of land the City should bear and what portion the company should bear.

It strikes me, as I say, that a fair proposition would be the one that I have suggested—that each pay for the land it utilizes. Treating the acquisition as a whole, the cost should be divided up. Whatever portion the City utilizes for parks it should bear. Whatever portion the company utilizes for housing it should bear.

I appreciate the opportunity you have given me to present this matter. It is one that we are deeply interested in, one, as I say, that we are going to give the best that we have to the carrying out of successfully, believing that if successful it will be advantageous not only to this City, but will be advantageous to the entire country as an experiment to solve the problem which remains unsolved, but which must be solved if we are going to meet present day conditions and measure up to the obligations that rest upon us.

Mayor Congleton: Mr. Duffield, for the members of the Commission—and I think that I can say for all the citizens of our City—I thank you very sincerely for the manner in which you and your associates have gone into this question. Speaking for myself, I have felt from the time when this proposition was first suggested that the Third Ward was one of the places where we ought to develop, if possible, along the lines proposed. It just so happens that the people of the Third Ward are very anxious for parks in their ward. They have been after us for a long, long time. It seems to me that the proposition that you have put before us today meets that situation very nicely.

I would like very much to go along with you and sit down and see if we can come to some fair and equitable basis for the division of the cost of the land, so that the city will simply be paying its proportion and taking title in fee to the strip that is devoted to park purposes, so that we may have the parks for all time for the people living in the congested community. It seems to me that if we do that we shall make sure that for all time the parks of the blocks used by the Prudential will be devoted to the purposes to which it is now intended to devote them. It would be very difficult for anyone to take the street frontage and devote it to any useful purpose other than the one that you are proposing, because of the lack of depth that would be needed for any other purpose.

I am very glad you have appeared today and explained the proposition in the excellent manner that you have, and I again express our appreciation.

Mr. Duffield: I shall be very glad to answer any questions that suggest themselves to any Commissioner.

Commissioner Murray: I would like to say a word, Mr. Mayor, Mr. Duffield, and gentlemen. This is one of the old wards of the City. The houses were built there many years ago. The crowded conditions grew from day to day and from year to year. Those who live there pay a rental approximately that which is paid in the deteriorated districts of Ninth Avenue from 15th Street to 23rd Street in New York, and from Ninth Avenue to 12th Avenue, where they pay a lot of money and get very little in return.

In many of these houses, which are now being very closely inspected by the Health Department,

it has been found that they haven't driven a nail, put a fastener on a window, corrected a bad toilet condition, or done anything whatever that might have cost a dollar to keep the premises habitable. The result of that has been that these people, because they cannot afford to go anywhere else, have had to stay and take what they got, which was usually very little, although the sum they paid per annum was fairly substantial.

Everyone will agree that environment has more effect upon a young child than any other element in this life. You cannot under the conditions that exist there expect these boys and girls to get a fair chance and comprehensive understanding of the way of right living as long as we keep them as they are. As Mr. Duffield says, it is a social problem, and it is a very intense social problem.

In the matter of the cost of the land, we have to guard against the expense which will be laid upon the City through the exercise of its police powers, because just as long as you keep the conditions as they are, just so long you will have to compete with those who follow the wrong road. To continue the children in these difficulties will mean that when they get to be sixteen or seventeen years of age your Police Department gets them and your Juvenile Courts get them before that. All these expenses can be reduced if the living conditions were right, because these children are as good as any of our children, but they can't get as fair a chance as long as they live there. You can't raise a rabbit in a rat's nest. You can't make a clearly understanding and kindly inclined individual, except in very rare cases, out of these who are crowded and who do not get a chance to live, a chance for their health, by way of light,

air, and sanitation, and so forth, under any circumstances.

I will close simply by saying that it will be my ambition to go along as far as possible to the ultimate object in the attempt to provide there proper living quarters within the means of people who continue to live in the neighborhood, the idea being that this is being done for their particular benefit, but actually and eventually for the benefit of the entire community. I am heartily in favor of it.

Mr. Henry Green, 259 Avon Avenue: May I address a question to Mr. Duffield?

Mr. Duffield: Certainly.

Mayor Congleton: Mr. Duffield, this is Mr. Green.

Mr. Green: Mr. Duffield, do I understand that the Third Ward housing is going to be in the interest of colored people?

Mr. Duffield: Why, we will undoubtedly make arrangements that some portion of it may be occupied by them, but not entirely.

Commissioner Brennan: I understand, Mr. Duffield, that the general plan of the housing, as shown here for the Lexington Avenue side, will be followed in the Third Ward with the exception of the——

Mr. Duffield: With the exception of these inner courts, yes.

Commissioner Brennan: I have been looking at the plan. I think it a God-send if it is possible to erect such places, giving all light and air.

Mr. Duffield: The man who is really more responsible than any other man individually for this whole housing project is Mr. Sinclair, and he has followed our plans. He started up along this road. If the Commission could spare a moment

or two, I would like to ask Mr. Sinclair to say a few words to you.

Mayor Congleton: We will be very glad to hear him. Mr. Sinclair has led a lot of good movements in his County and we are all reaping the benefits of many years of his hard work and his beautiful heart. We are very happy to have him here to talk to us. I know that we will all hear with interest what he has to say.

Mr. Robert S. Sinclair, Essex County Park Commission: Mr. Mayor and gentlemen of the Commission, I think Mr. Duffield is rather too modest. It just so happens that I happen to be the means of sowing a little seed in very fertile ground. The desire was there in the Prudential Company. The spirit was there. I am satisfied that they would have done this thing sooner or later anyway.

In connection with this splendid project for the public good that the Prudential Company and you gentlemen are cooperating to put forward, there is one feature that has been touched upon that I would like to speak about briefly, and that is the utilizing of the interior space in the Third Ward for recreation purposes. Of course, it would have to be for recreation purposes, probably for small children largely. Such recreation grounds must of necessity be local. The larger boys and girls can and will go considerable distances to play fields, but the smaller children cannot, so I say that any playground for them must of necessity be local.

The importance of local playgrounds, of course, is impressed upon us by the appalling toll of life on our public streets through accidents to children. This would furnish an opportunity to take care of a great many, without doubt. You have already

realized that to some extent by roping off certain blocks in the City and restricting them to play areas, during certain times of the day.

His thought of utilizing the interior of blocks probably isn't a new one. If you gentlemen decided to do it, as I hope you will, I am sure you will find that you will receive the backing of all the public spirited citizens of Newark. In the end you will find, too, that other people in the City have been thinking about this very thing.

I remember about three years ago one of the officials of the Young Men's and Young Women's Hebrew Association came to me with the suggestion that the interior of some blocks in the Third Ward should be utilized for playgrounds for children. A a member of County Park Commission I had to explain to the officials who came to me that that is a municipal function and could not be a county function.

Of course, it is unfortunate that when you go into a congested district to seek land for recreation purposes the cost seems to be prohibitive. That is unavoidable. It is not a reflection either, upon the local authorities, because after all this whole question of furnishing playgrounds for children big or little is a matter of comparatively recent growth.

Our secretary, Mr. Kelly, as you know is not a very old man. He tells me that when he was connected with the New York Park development he conceived the idea that it would be a fine thing to have a playground over on the East Side. He got hold of one of the influential officials of Tammany, called him out of an aldermanic meeting one day and told him that he wanted to get some money for establishing a playground on the East Side.

"For God's sake," said the man, "how long since have you become a high-brow reformer?"

So you see that even in those times it was considered that anybody who advocated a playground was a high-brow reformer.

The suggestion in the Third Ward may be properly realized by some when we think that the population of the Third Ward exceeds that of the entire Town of Bloomfield and is probably three-fourths of the population of the Town of Montclair.

Ordinarily, if you go into the Third Ward, for instance, to create a playground, you have to take an area that contains buildings, pay for the buildings, and scrap them. Here is furnished an opportunity for the City to acquire a playground area without necessity for the purchase of buildings and scrapping them, which, it seems to me, is a great opportunity.

I hope, Mr. Mayor, that the City Commission will favorably consider the plea that Mr. Duffield has made for cooperation in the way that he has outlined it in the utilizing of this ground in that way.

Mayor Congleton: Thank you very much, Mr. Sinclair.

Commissioner Howe: I feel that everything has been covered. I am in hearty accord with what Mr. Duffield is doing and with what he, the Mayor, and Commissioner Murray have said.

Mr. Green: Mr. Mayor and Commissioners, I am glad to have been here and to have heard the outline of the undertakings.

I notice in the Evening News this week that as a result of the census taken, the City of Newark in the last ten years has not risen in proportion to what it did in the ten years before, and I be-

lieve that the many shacks that are right within a stone's throw of Broad Street are like a cancerous growth upon the body of the City we know.

I am glad to have heard the proposition about outdoor and open air playgrounds, and I wish that not only you do what has been suggested, but if to see into the future that probably on the other blocks there will be such buildings coming up, whether by other generous or philanthropically inclined people, that you acquire instead of 125 feet that have been suggested for outdoor space, that you add if not an additional 125 feet that these shacks are in now, in order that if any more improvements come that you be ready with playgrounds.

Another thing: While these playgrounds are set aside, it would be fine that for the children one place would be set aside, so that they can throw balls or play tennis without hitting an elderly person if they sit on a bench, so that it will be fine for the older people as well, and I think that the Commission will not object if I make my suggestion that one place be set aside for grown boys and one space for the young generation that have to grow up. I hope that while we have made a step and advance towards progress, that more action will be taken.

I see that New York City is throwing down Chrystie and Delancey Streets. I believe, while I need mention the number of buildings, it is way above what is being undertaken here, but I think proportionately to the size of the City of Newark it is about pro rata on the percentage, and I say that we will have to have some body of men and women in the City, that this City must have municipal research. It is too bad that Princeton College and Rutgers College, situated in the

State of New Jersey, have not yet come to Newark and established some branch of municipal research for to be of assistance to us, but I have hopes and expectations that in the very near future, as we are growing, and I hope at the next census that they will be able to report that Newark has shown growth. I think that Newark is being stunted. I have been here before you a few weeks ago and I remarked that an unnecessarily large number of people that would have lived happily in Newark had to go into Hillside, into Union, into Maplewood and the Oranges, on account of the crowded and unsanitary conditions, when we could have kept our fine citizenship right here and have the taxes come into the City of Newark. I thank you.

Mayor Congleton: Mr. Green, I am very glad to have your views upon this, because I believe that there is none that knows the Third Ward better than you do. It is very helpful if you feel that this proposition that the Prudential is going ahead with in your ward is a worthy one.

Mr. Green: I thank you, gentlemen, for I see you are cooperating with me today.

Commissioner Brennan: I move you, Mr. Mayor, that the Commission endorse the proposition submitted by Mr. Duffield and that this body be empowered to go into conference with the proper officials of the Prudential Company in relation to anything else on the proposition.

Mr. Green: I wanted to state a little while ago that the Third Ward has more of a population than Sussex County entirely, and there they have jails and parks. In the Third Ward we only have candidates for the jails.

Commissioner Murray: I second the motion made by Commissioner Brennan.

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

Yeas: Commissioners Brennan, Gillen, Howe, Murray, Mayor Congleton.

Mayor Congleton: Mr. Duffield, we will be ready to go into conference with you at almost any time that is agreeable to you.

Mr. Duffield: Well, we will go into conference at any time that is agreeable to you. We will arrange it with you.

I appreciate very much the opportunity that you have given us to present this, and I appreciate the cooperative spirit that you have shown. I trust that by working together we will be able to do something of substantial benefit to the City.

Mayor Congleton: We want to thank you for your spirit of cooperation also and for the fine civic attitude that you have taken.

3.

Copy of Minutes of the 27th day of August, 1930, at Which the Ordinance Before Amendment Was Introduced and Passed on the First Reading so far as Applicable to the Ordinance Certified.

The Board of Commissioners of the City of Newark, Do Ordain:

1. That WHEREAS, The City desires that in the interest of the public health, safety and morals certain blocks of unsafe and unsanitary dwellings, hereinafter described, in the City of Newark, should be replaced in part by new housing facilities constructed in accord with proper standards

of sanitation and safety and provided with appropriate parks and playgrounds, and

2. That WHEREAS, The Prudential Insurance Company of America is willing, pursuant to authority of law to acquire the tracts of land upon which such unsafe and unsanitary dwellings now stand and to construct upon a part of such tracts such new housing facilities and to convey to the City certain other parts thereof for the purpose of such parks and playgrounds.

3. That an agreement between The City of Newark and The Prudential Insurance Company of America, a corporation organized under the laws of the State of New Jersey, providing for the erection of new housing facilities and the conveyance of certain tracts of land to the City of Newark for park purposes in connection with the same, a copy of which agreement is hereto annexed and made a part hereof, be and the same is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute the same on the part of the City, upon the adoption of this ordinance.

4. That the lands hereinafter particularly described situate in the City of Newark, shall be acquired by The City of Newark, either by purchase or condemnation, for city use:

FIRST TRACT: BEGINNING in the southerly line of Spruce Street at a point distant 30 feet westerly measured along the southerly side of Spruce Street from the southwesterly corner of Spruce Street and Somerset Street; thence running southerly along a line 30 feet distant from and parallel to the westerly line of Somerset Street, a distance of 744.77 feet more or less to the northerly line of Waverly

Avenue, thence running westerly along the northerly line of Waverly Avenue 140 feet more or less to a point 30 feet easterly from the northeasterly corner of Waverly Avenue and Barclay Street; thence running northerly along a line 30 feet distant from and parallel to Barclay Street 735.67 feet more or less to the southerly side of Spruce Street at a point distant 30 feet easterly from the southeasterly corner of Spruce Street and Barclay Street, and thence running easterly along the southerly side of Spruce Street 140 feet more or less to the point and place of Beginning.

SECOND TRACT: BEGINNING in the southerly line of Montgomery Street at a point distant 30 feet westerly, measured along the southerly line of Montgomery Street from the southwesterly corner of Montgomery Street and Somerset Street, thence running southerly along a line 30 feet distant from and parallel to the westerly line of Somerset Street, a distance of 688.22 feet more or less to the northerly line of Spruce Street, thence running westerly along the northerly line of Spruce Street 140 feet more or less to a point 30 feet easterly from the northeasterly corner of Barclay and Spruce Street; thence running northerly along a line 30 feet distant from and parallel to Barclay Street 697.15 feet more or less to the southerly line of Montgomery Street at a point distant 30 feet easterly from the southeasterly corner of Montgomery Street and Barclay Street, and thence running easterly along the southerly side of Montgomery Street 140 feet more or less to the point and place of Beginning.

5. That the total cost of the purchase of said lands shall not exceed the sum of One Million, Two Hundred Thousand Dollars ($1,200,000);

6. Pursuant to the provisions of *Section 13 of Chapter 252, P. L. 1916, as amended,* there shall

be issued temporary loan bonds of the City of Newark, in an aggregate principal amount not exceeding One Million, Two Hundred Thousand Dollars ($1,200,000.) bearing interest at a rate not exceeding six per centum per annum (6%), payable semi-annually, for the purpose of temporarily financing the cost of said purchase. All other matters in respect to said temporary bonds shall be determined by the Director of the Department of Revenue and Finance, subject to the provisions of this ordinance and Chapter 252 of the Laws of 1916, as amended, and the Director of the Department of Revenue and Finance is hereby authorized to issue said temporary bonds at such time or times, and in such amounts as he may deem advisable. The Mayor, Director of the Department of Revenue and Finance, City Auditor and City Clerk are hereby authorized and directed to execute said bonds or so many thereof as the Director of the Department of Revenue and Finance shall deem it advisable to issue.

7. The sum of One Million, Two Hundred Thousand Dollars ($1,200,000.) to be raised by the issuance of such temporary loan bonds is hereby appropriated for the purpose for which said bonds are hereby authorized to be issued.

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

Yeas: Commissioners Egan, Murray, Mayor Congleton.

Mayor Congleton: I ask to have the further hearing on this ordinance fixed for September 17th, and that the newspaper men give as broad notice as possible to the fact.

Commissioner Murray moved that September 17th, 1930, at 10 A. M. Standard Time, 11 A. M.

Daylight Saving Time, or as soon thereafter as said matter can be reached, and the Board's meeting room, second floor, City Hall, Newark, N. J., be fixed as the time and place when and where said ordinance will be further considered for final passage, and that the City Clerk be and he is hereby directed to publish said ordinance and give public notice of its introduction and passage on first reading as provided by law.

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

Yeas: Commissioners Egan, Murray, Mayor Congleton. Gillen absent.

4.

At a Meeting Held on September 3, 1930, the Following Proceedings Took Place in Respect to Said Ordinance.

Commissioner Gillen: An ordinance having been introduced providing for an agreement to purchase land from the Prudential Insurance Company in the two blocks that that Company has purchased in the Third Ward, the City to purchase these inside lands for park purposes, I would like to make a statement outlining my views regarding the matter.

The facts in connection with the Prudential Insurance Company housing plan in so far as it affects Newark financially must be fully considered. The announcement was made some time ago that the Prudential Insurance Company with its own money intended to purchase land and build rows of houses which would be modern in every

respect and rented at low rentals with the purpose in mind of bringing about better housing conditions in the City of Newark. The company has bought three sites, one in the Third Ward section where it has purchased two blocks at a cost which they say is $1,750,000. These blocks are approximately 600 feet long each. The Company intends to put up rows of houses along the fronts of these streets and to sell the backyard lands to the city at $1,200,000 or nearly three-quarters of the total cost, the company paying about one-fourth of the total cost of the lands. It is proposed contrary to my opinion to buy these backyard lands and to hand them over to me for public park purposes. Hitherto I was under the impression that the Director of the Department of Parks and Public Property should first make the selection of any park or park sites.

The backyard area of these two blocks would amount to 228,300 square feet which at a cost of $1,200,000 to the City would have to pay at the rate of $5.25 per square foot for this backyard land. Within the past two years I have purchased the block which is now Hayes Park West, having a frontage on three streets at the rate of $3.65 per square foot. If the City ever desired to sell this property it would have valuable frontage on three streets, if the city ever desired to sell the backyard property of the Prudential blocks it would not be able to get any price because the property would not have any frontage to speak of. These long narrow backyard strips shaded by two rows of buildings which would keep the sunlight out most of the time are to my mind undesirable for public parks. They would be all right for the accommodation of the people who would live in the buildings to be erected but for the

games that are played by children of all ages they would be entirely unsatisfactory, inadequate and undesirable in every respect and as Director of Parks I will, of course, have nothing to do with them under any circumstances or conditions.

We have already given the Third Ward one park and have purchased a strip of ground fronting on Belmont Avenue for another small park and public playground. This land, by the way, was purchased at the rate of $2.29 per square foot. Compare that price with the backyard lands for which it is proposed to pay the Prudential $5.25 per square foot. Another park and playground was requested by the people of the Third Ward. They wanted it in the vicinity of the Morton Street School where the greatest congestion exists and where the greatest number of children have to be cared for. The Prudential location is several blocks to the south of the Morton Street School. Even if the Prudential plan is accepted the Third Ward people will want a park near Morton Street School. The City cannot afford to spend too much money in any district for this one purpose, necessary as it is. I have been for months canvassing several blocks in the vicinity of the Morton Street School and I find that in the case of three or four of these blocks the majority of the owners are willing to sell at a reasonable price, but a large minority on each block want exorbitant prices. If the City is to purchase there the plan of course would be to buy from the ones who are reasonable and start condemnation against those who are unreasonable just as we did in the purchase of the Hayes Park West site. In this way and only in this way can the City go forward with all the great improvements now contemplated and keep within reason-

able bounds. I am firmly convinced from my investigation that I can buy a block in the vicinity of the Morton Street School with four street frontages at a cost less than one-half the amount asked for the Prudential backyard lands. This kind of a block would be a valuable asset to the City because it would have four street frontages and if ever necessary could be sold at a high price. Backyard lands are no asset and never bring any price.

Is it the purpose of the Commission to run my department against my consent? Would the Commission attempt to dictate the policies of the Mayor's Department against his consent? Would the Commission try to tell Director Egan, Director Murray or Director Howe what policies to pursue in their respective departments against their will, consent and judgment? If I say I do not want these backyard lands for parks, that they are not suitable, is it proper for the Commission to force them on my department? If this is a philanthropic plan would it not be better for this great insurance company to take all the praise and glory for it and not have the taxpayers share in the cost? If the Prudential Insurance Company is going to do something for the people why does it not bear the whole cost? There are scores of other citizens who have built rows of houses in Newark and who have made housing conditions better. These contractors and developers will build more rows of houses. Would they not have the same right to come in and ask the City to share in the cost of acquiring their grounds?

How can the Prudential people say in one breath that they are doing a big thing for Newark and in another breath ask the City to pay nearly three-quarters of the cost of the land they are

purchasing for this housing plan? I am firmly convinced that Newark must now pause and take notice of the vast expenditures which may engulf us in a debt which we may not be able to shoulder. We are buying blocks and blocks of land for the Pennsylvania Railroad. We are rushing into millions of dollars for the acquisition of lands for the New State Highway along the Pennsylvania Railroad. We are rushing into millions of dollars for the acquisition of land for the building of the City Railway.

As an official, a citizen and a taxpayer I will oppose the purchase of the Prudential backyard land, in every way possible.

Mayor Congleton: May I ask Commissioner Gillen the block that you have in mind in either section of the Third Ward you contemplate taking all of the block—from street to street—I mean.

Commissioner Gillen: Right near the Morton Street School—within a block of the Morton Street School.

Mayor Congleton: Of course, we must keep in mind that there were two things to be accomplished in going forward with the Prudential and the scheme that is outlined in the contract. The Prudential Insurance Company attempted to acquire land in the congested sections of the Third Ward inhabited eighty-seven per cent. by colored people. We must all view the situation as we find it. The proper housing of colored people in the City of Newark is a vital question before us all. We talk about good citizenship, yet there has been no real effort made to give the colored people proper living conditions in order to assist them in becoming the citizens that we all want them to be. The Prudential endeavors to buy this land. If they took it all they could not ac-

complish one of the main purposes, to wit: Giving the colored people in that section proper living quarters at a low rental. And one of these entire blocks is to be set aside for colored people. I appreciate the financial situation quite as fully and as keenly as does Commissioner Gillen; and the one thing that appeals to me so strongly in this proposition is that the taxes that we will collect from the Prudential Insurance Company on the buildings that they will build upon the street frontage, will give us more taxes than we are now getting, and will, over the period of the life of the bonds, retire the bonds, meet all the interest during the period, and would give us over and above that two million and a quarter at the present tax rate—$2,299,000. Over the period that the bonds would be issued for, the City will collect more than what it will cost us out of taxes collected from the buildings that the Prudential will build.

With respect to these being long and narrow strips, I do not concede that 140 feet width is a narrow strip. Running through these two blocks we will have park land equivalent to the distance from Kinney Street on our south to the middle of the block between Green and Lafayette Streets, and a width that is greater than the width of Broad Street from building line to building line right there in front of the City Hall; and I would ask all the officials and clerks that work on the front side of the City Hall in the summer time whether or not the sun gets in there. As one who has an office on the front side, I can say that it does very substantially. Most of the other matters that Commissioner Gillen has raised he set forth in a letter which he wrote to me on May 9th, and which I replied to shortly after

returning to the office after having been home ill for a while, and I think I can set forth my side of this question perhaps best by reading the letter that I wrote to Commissioner Gillen, as he has practically read the substance of the one that he wrote me. I said to the Commissioner under date of May 29th: "I do not share with you the opinion which you hold with regard to combining the proposed municipal Third Ward park and playground with the Prudential better-housing project in that congested district, but, of course, we are all entitled to our separate opinions on a question of policy.

"Certainly we are establishing a precedent. It is an excellent one, in my judgment, and if other large interests, with the same humanitarian motives should undertake to improve our city and the condition of our less fortunate people on a broad scale, by acquiring entire blocks in congested districts, in which there exist unsanitary and dangerous housing conditions which are a menace to the health, safety, morals and welfare of the public, and erecting in their place light, airy, modern, healthful homes, I shall always stand ready to go along with them.

"I am, however, very much surprised at the attitude of resentment which you assume at this late day toward your colleagues who issued the recent statement. I cannot help but think that this is the result of an afterthought. If you felt right along that your colleagues were usurping your powers, I cannot understand why you have kept silent all this while.

"You will recall, of course, that all of us took luncheon with Mr. Duffield and his associates on April 9th, a full month before you expressed the protest that others than yourself selected this pro-

posed park site. At that conference, Mr. Duffield outlined to us the general plan, stating that the price of lands in the Third Ward was so high that it would be impossible for his company to proceed with its program, unless the city participated to the extent of purchasing the interior lands for park purposes. As I recall the proceedings, you remained silent both as to the cost of the lands and the proposition that you had not been designated to select the site. In fact, there was not a dissenting voice on the part of any Commissioner. It was agreed by us then and there that Mr. Duffield should appear before the Board of Commissioners at the regular meeting on Wednesday, April 23rd, and outline the matter fully for public consideration, which he did.

"Furthermore, you are recorded as endorsing the Prudential's proposition at the time of its presentation by Mr. Duffield at our April 23rd meeting. The minutes of that meeting, as reported by the official stenographer, show that you made no comment either way. Commissioner Brennan submitted a motion, seconded by Commissioner Murray, that the Commission endorse the proposition submitted by Mr. Duffield and that the Board be empowered to confer with the Prudential officials in relation to the project, and all five Commissioners, including yourself, voted in the affirmative on this motion.

"We next arranged to confer with Mr. Duffield and his associates at luncheon on April 25th, and while it is true that you did not attend this conference you had expected to as late as twelve o'clock on that day. Instead, you sent a letter to Mr. Duffield which was read to us in which you for the first time voiced your opposition to the project. If you will look over your letter again,

you will find that the only reason you assigned for your opposition was your feeling that the agents of the Prudential were paying too high prices for the property. You did not then raise the question that your colleagues were attempting to usurp your powers.

"Recently, your colleagues issued a formal statement to the press endorsing the plan, which I submitted to you prior to its issuance. You did not sign it, but neither did you voice any protest as to our interfering in the matter of selecting a proposed park site.

"As a matter of fact, the selection of the site was not put up to the Board; that question had already been decided by the Company behind the project, long before it came to our attention. We were called upon to determine the question of policy as to whether the City would participate with the Prudential in the development of this improvement. It was purely a question of policy and had nothing to do with the selection of any particular site. As to the advisability of the City's participation in this project there is, of course, room for a difference of opinion, and I respect your judgment in this matter, in the same way in which you judge mine, but I do not feel that, holding the opinion which you now express, you should have sat by all this while without letting your colleagues know about it.

"In your letter you cited certain cost figures with the object of indicating that the Prudential were paying too high prices, but I may point out in the following comparisons the very significant fact that the prices quoted for the Prudential site are very much closer to the assessed valuation of the property than were the purchase prices of several park sites which you as Director of Parks and Public Property purchased for the City.

"The City paid $85,000 for the Belmont Avenue site, four and one-half times its assessed valuation of $18,800; we paid $135,000 for the Waydell Street property, which is three and a half times its assessed valuation of $37,700; we paid $159,000 for Hayes Park North, which is three times its assessed valuation of $52,800; and we acquired Hayes Park West for $366,450, which is three times the assessed valuation of $123,900.

"In comparison with the prices quoted above, may I draw your attention to the fact that the Prudential housing site is being acquired for approximately $1,750,000, which is only two and one-third times the assessments on that property, which total $745,200. Therefore, you can readily see that this property is being bought at considerably lower relative prices than those paid through your Department, if we may take the assessed valuations as a basis for comparison.

"So far as your reference to my objecting to your buying meadow lands to be added to the Port of Newark Development is concerned, I would say that I should consider it helpful if you could procure any of the remaining lands within our area, and there would be no feeling on my part that you were encroaching on my prerogatives."

Commissioner Gillen: Your reference to the first meeting that was held: We were invited to a luncheon in the Prudential Building by Mr. Duffield, but we were led in there like lambs to the slaughter. We had no knowledge at all that the City was going to be asked to pay any part of this business. I dare say that in the beginning of this whole matter when Mr. Sinclair first came down before the Board and spoke about the Prudential taking up this housing plan, that there was no one in this City had in mind that the City would be

asked to participate in the cost of this project, and I say that we should not participate in it. This Prudential Insurance Company either ought to go ahead with it itself or abandon it. If the Prudential Insurance Company or any other company cannot put up these buildings and rent them at a reasonable price, the plan falls by itself. If the Prudential Insurance Company—I do not state the Prudential Insurance Company is quite unselfish in this matter—it is a great, big insurance company, and it is the object of all life insurance companies to better living facilities and better sanitary conditions so the average life may be prolonged and the cost to them in paying death benefits will be less. Now, I have been in the City Hall for a good many years, and I have never seen anything like this before. I have seen the Public Service come along and get us into different plans where we spent millions of dollars for their benefit; I have seen the Pennsylvania Railroad come along and do the same thing; and now comes the Prudential Insurance Company, another great corporation, with money galore, and they want the City to shell out some more millions. Now, I am wondering what will be the next corporation to call upon us for assistance. If they keep on that way you won't have enough money left in the City Treasury to pave the streets with. That is my opinion. Again, the comparison of the values of lands purchased by me for park sites and the lands proposed by the Prudential Insurance Company, there cannot be any comparison along that line. It wouldn't make any difference if Hayes Park West was assessed at a mere thousand dollars, the fact remains still that the City is buying land, and the only way you can compare prices is on a square foot basis. How many square feet are we

buying here and how many square feet could we buy there? If I bought land up at Hayes Park West for $3.65 a square foot, and that with three street frontages, how can the Prudential Insurance Company ask the City to pay $5.25 a square foot for backyard lands? You cannot call them anything but backyard lands. I cannot see the logic of that at all.

Mayor Congleton: I want to agree with Commissioner Gillen that the procedure is new, so far as the City of Newark is concerned, as I recollect, but it is not new to the extent that he indicates, in my judgment, for this reason: You know they have legislation in New York which permits housing, and where the municipality contributes directly and very substantially; and the Prudential undoubtedly could go forward with this project and take all the land if we were willing to give them some exemption that is given in New York. I refer to people in New York under the Housing Act developing houses as the Prudential proposed to develop these, would be tax free for ten years. Here this property is taxed and it is out of the taxes that the Prudential will pay upon the land and buildings within the boundaries of these two particular blocks that will turn back to the City the price we pay for the land, plus the interest that it costs us during that period, and $2,229,000 besides, based upon the present tax rate.

Commissioner Gillen: That won't relieve the rate for the next ten years, Mr. Mayor, not much. It is like the green hills, it is far away.

Commissioner Murray: I recall that meeting, Mr. Mayor. Mr. Duffield said the Prudential was capable of going ahead with the entire proposition itself, except that if there were no participation by the municipality they could not set their

rents at the low figure that it was their ambition to maintain in these premises, and that their concern was not so much on behalf of themselves as it was on behalf of those who would occupy the premises and would be able to live in sanitary modernized quarters, which would not be the case if the City did not participate.

Mayor Congleton: That is my recollection.

Commissioner Gillen: It is a question whether the Prudential wants five per cent, or four per cent, or three per cent.

Commissioner Murray: They are willing to take three and a half.

Commissioner Gillen: If it is a philanthropic institution doing this as a philanthropic move, they ought to do this for almost nothing, because after all, the company will benefit because their purpose is to prolong the life of the citizens so their death claims won't be so large.

Commissioner Murray: As a matter of fact, the life insurance companies want the death rate high. The Prudential cannot do this, representing the policy holders of the Company——

Commissioner Gillen: The directors can decide on what profit they want from it. As I understand, the Metropolitan takes a very small profit on its investments.

Commissioner Murray: Yes.

Mayor Congleton: They could have gone out in Irvington, out in the outlying districts which compare with Long Island, and buy vacant land; but when you go up into the Third Ward and buy land, every inch of which has buildings on it along the street frontages, it costs a great deal more, and our line of taking will pass through practically every building on that property.

Commissioner Murray: They take land in the Twelfth Ward and they are developing that on precisely the same lines without asking any assistance, because the total cost involved was lower.

Mayor Congleton: And they expect to invite bids on the Ironbound District site during this month of September, and they being in a position where they can control the situation are going to limit bidders to Newark contractors; only Newark contractors will be invited to bid on this large construction work.

5.

On the 17th Day of September, 1930, at a Meeting of the Board of Commissioners the Ordinance Was Brought up and There was a Hearing at Which Various Persons Were Heard Speaking in Favor of and Against the Proposal. At the Conclusion of the Hearing, the Ordinance Was Read and an Amendment Was Offered, a True Copy of Which Is as Follows:

Mayor Congleton offered the following amendment and moved its adoption:

Section 3 of the ordinance be amended by amending section 3 of the proposed contract referred to in said section 3 of the ordinance, and made a part hereof, so that section 3 of the said proposed contract shall read as follows:

"3. Upon the acquisition by the Prudential of the said tracts or parts thereof and the approval by the City of the said project the City, in consideration of the acquisition of such tracts or parts thereof hereinabove described by the Pru-

dential and of the undertaking on the part of the Prudential to construct such housing facilities will purchase from the Prudential such part of the vacant strip approximately one hundred and forty (140) feet wide running north and south through the interior of each of the said blocks as the Prudential may have acquired for the purpose of parks and playgrounds to be maintained by the City for the benefit of the public at large and will pay to the Prudential as the purchase price thereof such proportion of the total price paid by the Prudential for the said tracts as the area of the strip so purchased bears to the total area of the said tracts acquired by the Prudential, and, in consideration of the premises, the City will acquire for such park purposes, either through private treaty or through the exercise of its powers of condemnation, such portions of said tracts as shall not have been acquired by the Prudential, as aforesaid; provided, however, that in no case shall the City pay a sum in excess of one million, two hundred thousand dollars ($1,200,000) for the acquisition of the aforesaid vacant strip approximately one hundred and forty (140) feet wide, running north and south through the interior of each of the said blocks."

The amendment was carried by the following votes:

Yeas: Commissioners Egan, Howe, Murray and Mayor Congleton.

Nay: Commissioner Gillen.

6.

A Further Amendment Was Offered Which Reads as Follows:

Mayor Congleton offered the following amendment and moved its adoption:

At the end of section #7 of the ordinance, insert a new section to be known as section #8 of the ordinance, which section shall read as follows:

"#8. This ordinance shall take effect immediately, but sections 6 and 7 of the same shall not become effective until the passage of a resolution by the Board of Commissioners approving application by the Prudential Insurance Company for the erection of said housing facilities and authorizing and empowering said company to undertake and carry to completion said project, in accordance with the provisions of chapter 201 and 202 of the laws of 1929."

The ordinance as amended was then passed to second reading by the votes of Commissioners Egan, Howe, Murray and Mayor Congleton; Gillen "nay".

7.

On October 1st, 1930, a Meeting of the Board of Commissioners Was Held at Which There Was Received a Letter from the Prudential Insurance Company of America as follows:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
Newark, New Jersey

September 30, 1930.

Honorable Jerome T. Congleton,
Mayor of the City of Newark,
Newark, New Jersey.

My dear Mr. Mayor:—

I was prevented by illness from attending the hearing in connection with the ordinance providing for the acquisition by the City for park lands in connection with the Prudential housing project in the Third Ward, and while the Prudential's position was at that time clearly presented by Mr. Hamilton, it seems to me that possibly in the confusion that has arisen it may be wise to re-state it.

You are of course familiar with the whole situation, but our position has been so misrepresented that I am taking the liberty of writing this letter to you, recognizing that practically all I say is a matter of your personal knowledge.

The Prudential was not the moving party in this project, but engaged in the same at the request of yourself, representing the other commissioners. It was your desire as well as ours that not only should the Prudential provide additional housing accommodations for citizens of Newark, but that in so doing they should remove buildings now used but unfit for human habitation. In determining on our location we requested that a survey of the

City should be made by the Police Department and by the Health Department in order that we might be advised as to what location from the standpoint of both health and social conditions would be benefited by the improvements which we were proposing to make. As a result of these two surveys the two blocks in question were recommended to us for the purpose which we both had in mind. These conclusions were concurred in by the social and welfare agencies of the City.

Thereupon we caused a careful investigation to be made as to the probable acquisition cost of the two blocks in question. As a result thereof it soon became evident that if the existing buildings were demolished and new buildings erected in their place unless rentals were obtained on a scale which would be prohibitive to the people whom we were desiring to aid, a reasonable return on the invested funds would become impossible. It was of course recognized throughout all our negotiations that the Prudential could not engage in an philanthropic enterprise, but must conduct the whole project upon a business basis as the funds used for that purpose were held by us in trust for our policy holders. Under these circumstances if the rentals were to be kept at a low rate it was essential that a portion of the land not needed for the buildings should be acquired by the City for park purposes. In order that we might accurately determine that our estimate of cost was based on actual conditions, we acquired options upon a few properties. When these had been obtained and we were satisfied as to the exact situation I asked for the privilege of appearing before the City Commission in order to present the whole situation to them.

At that time I stated to them frankly our reasons for desiring to proceed on this particular site, but emphasizing the fact that it would be impossible for us to do so unless the City was prepared to utilize a part of the land for park purposes. By a unanimous vote the City agreed to the cooperative program. Believing, therefore, that we had the endorsement of the City as to the propositions that in this thickly-settled community it was desirable that the buildings on the two blocks in question should be demolished and the ground used partly by the City for park purposes and partly by the Prudential for housing, we proceeded to acquire title to the land with what we understood was a distinct understanding that the City would repurchase from us the portion it would use. Throughout the entire period of acquisition we have endeavored to keep the City authorities advised both as to the land which we acquired and as to the price which we were paying therefor.

We have now invested a large sum in the acquisition of this land. We have done so relying upon the assurance given by the unanimous vote of the Commission approving in principle the project, and supposnig, as we had every right to suppose, that the carrying out of the project by the City would be treated as a matter of good faith. At no stage has the Prudential urged the City to engage in this project. What the Prudential has done it has done solely with a desire to benefit the City in which its Home Office is located and where many of its employees live. We have supposed that in so doing we were merely meeting the wishes of the City and that we were cooperating with the City rather than asking the City to cooperate with us.

I am frank to say that it is somewhat discouraging at this time to have it suggested in a matter which has had the widest publicity, in which every step has been brought to the attention of the city authorities and published in our local press, that this is now a Prudential project, and that some way or other gain will inure to it in case the City carries out the plan that the Commission approved last April.

You, of course, realize that this form of investment is not of the most attractive character, entailing as it does a comparatively low return, coupled with many difficulties of administration, and that solely from an investment standpoint the Prudential with less difficulty could have utilized its funds in other channels. It has felt justified in doing what it has done by reason of the fact that it has been its desire to cooperate with your administration in advancing the welfare of Newark.

Yours very truly,

EDWARD D. DUFFIELD,
President.

Ordered filed.

8.

There Was a Public Hearing Before the Commissioners at Which Various Persons Were Heard Both for and Against the Proposal, at the Conclusion of Which Action Was Laid Over Until the Meeting of October 15th, 1930.

On October 15th, 1930, the ordinance came up for final consideration and at that time there was a further hearing and various persons spoke in

favor and against the proposal and the Commissioners made statements. The following is a true copy of the statement made by Commissioner Gillen:

Commissioner Gillen: The Prudential Insurance Company announced that they would buy several blocks in Newark and build on them model tenement houses for the purpose of stimulating better housing conditions in the City and for the purpose of giving those of humble circumstances cheaper rents. It was then distinctly and clearly understood by the officials and all that the Prudential was going to pay the entire cost of this operation. The Prudential then decided to buy two blocks in the Third Ward. After they made a survey of this property they asked the City to share the cost. The City could not do this legally, so some representative of the City ingeniously proposed that the Prudential could build on the frontages of these plots and the City could buy backyard lands and have them devoted to park purposes.

After considering the matter fully and after discussing the subject with several citizens, I decided that the City could not do this and announced my opposition. The Prudential paid no attention to this and proceeded with the purchase of the lands and without the City having any voice in the question of price, purchase or value. The Prudential finally agreed to pay one million seven hundred fifty thousand dollars for these two blocks, or at the rate of eight hundred and seventy-five thousand dollars per block, or $5.65 per square foot. We are now reliably informed that the opposite blocks can be bought at the rate of six hundred thousand dollars each. If this be so, the Prudential is paying more than one-half million dollars

in excess of the true value of these two blocks. My department has purchased two park sites in the past two years in the same ward, and at the rate of $3.66 per foot and the other at the rate of $2.10 per square foot. If I could purchase these lands at these prices, why did the Prudential pay $5.65 per square foot? Then the Prudential asks the City to pay for the backyard lands almost three-quarters of the total purchase price of the two blocks. Backyard lands have little or no value, as everyone knows. The real value is the frontage. If the City ever wanted to sell these backyard lands they would bring no price to speak of; therefore, if it were agreed that the City should go in on this scheme, instead of the City paying nearly three-quarters, the Prudential should in all equity pay nearly three-quarters of the total price.

For more than a year I have been surveying blocks in the vicinity of the Morton Street School with a view to placing a park on the whole block there and am reasonably sure that an entire block can be purchased for less than one-half of the amount which the Prudential wants from the City for the backyard lands. When I say backyard lands I mean backyard lands, because these lands lie between the rears of two rows of buildings and are exactly in the same position as all backyards. You could plant them with flowers and shrubbery of the rarest kind and you could sprinkle them with cologne from one end to the other, but they would still be backyard lands. They would never make suitable parks in a thousand years. That was my reason for stating that as Director of the Department of Parks and Public Property I would not accept them, consent to their purchase or have anything to do with them. But

the reply comes back that all the cancers of Newark are going to be cured by this one operation and all the City has to do is to dig its hands into the pockets of its taxpayers and bring out a million two hundred thousand dollars and hand it over to the Prudential. How can this Commission attempt to do anything of this kind? In these days, when the tax rate is dangerously approaching $4.00, when we meet with the greatest difficulty in trying to collect our taxes, when many thousand of people are walking the streets out of employment and poverty and distress are found everywhere, is it the time for the City to dig one million two hundred thousand dollars from the pockets of the taxpayers and hand it over to the great Prudential? If the Prudential found that it could not purchase those particular blocks at the prices quoted and rent the buildings to be erected thereon at reasonable rents, why did it not go a few blocks away and purchase lands at half the price? Whenever a plan of any kind is proposed for the benefit of citizens and the planners run short of money, they rush to the poor old City treasury and through that agency drag that money out of the pockets of the taxpayers. The taxpayers of Newark have reached the eternal limit. If we go any further we will choke them.

It is contended that perhaps in the course of fifty years the increased taxes from the new buildings to be erected by the Prudential will more than offset the amount the City is asked to pay the Prudential. Newark is changing tremendously in normal times. These old blocks of shanties everywhere are bound to give way in the very near future to rows of modern buildings, for business and living purposes. It is highly probable that within the next ten years or so buildings of

greater value than the value of the proposed Prudential buildings would be erected on these blocks or portions of them. There is no advantage there. I am a heavy taxpayer myself in Newark. That is part of my interest in opposing this plan. I might say, Mr. Mayor and gentlemen, that I have developed four tracts of land in the City of Newark, and through my development I have succeeded in having erected on those four tracts of land approximately five million dollars worth of buildings. I have never received a bit of aid from the City of Newark for these operations, and most of these buildings, I might say, are homes, and the rents are moderate and the rooms are renting there now, in most of these homes, at rentals ranging from seven dollars a room upward. There are none of them very high at the present time. This fifty years promise comes to the taxpayers like a beautiful song, like the line from "Kathleen Mavoureen"—"It may be for years and it may be forever".

I have spoken with upward of one hundred business men whom I have met in the Newark Athletic Club and every single one of them, without exception, is opposed to this plan. They will not make their opposition public because they are afraid to antagonize big interests. It is too bad that we are so timid. After all, there is nothing personal in this controversy. Personally, I have the highest respect for Mr. Duffield, the president of the Prudential Insurance Company. I oppose the scheme because I believe the property unfit for the purposes proposed. I believe the plan unsound and inequitable, and I believe that the precedent set would be one of the most dangerous that the City at this time could make, if this ordinance passes I again repeat that this Commission

has no right to purchase those lands for parks without the consent and approval of the Director of the Department of Parks and Public Property, and I warn you that there are several groups of taxpayers ready to fight this matter, even if they have to go to the court as a last resort. So they inform me.

9.

Statement by Commissioner Howe.

Commissioner Howe: Mr. Mayor, Commissioners and citizens: This is one occasion when I cannot agree with my colleague, and those of you who know everything about the makeup of this Commission know that we have often voted together when we were in the minority. Great stress has been laid upon the taxes paid by the citizens of the Third Ward and the great influence they wielded in electing the five members of the Commission. I do not want to be personal, but there are a lot of citizens and friends of mine who saw signs all over the Third Ward last year, "Vote for Ellenstein, Murray, Congleton, Brennan and Gillen, and against John Howe". Why? Are there any of you here ready to answer that question? But I was elected just the same on my record, and my record has been for twenty-seven years in the Department of Taxes and Finance. Great stress has been laid upon the taxes paid. Do you know that the Prudential Insurance Company pays almost three times the taxes that the total Third Ward pays? Do you know that the total taxes paid by the Prudential—and I have it from the books downstairs, furnished by Mr. Fitzsimmons—is on a basis of ratables of $70,-

213,400, and all they have is in a couple of blocks? Do you know that the total amount of personal property assessed in the City of Newark is $190,000,000 and they pay on fifty-six, and all they get is one tax bill for it, which doesn't cost us anything, and they do pay on time? Do you know of all the taxes paid in the City of Newark they pay almost one-tenth of all? What expense are they to us? Now let us be fair. The Prudential Insurance Company—let us take the blame, those of us who agree with this—now, be fair—let us take the blame, and I am willing to take it, even if it meant my recall from this Commission—the Prudential did not want to go through with this proposition, they wanted to fall down on it, and I agree that it is economically sound. Another thing you must remember: Newark has more square feet of park space per acre than any city in the United States. So that the City Commissioners, or those who were ahead of us, were not stingy on that score. It is true that I told these gentlemen that we needed park space up there. I think this proposition is a good proposition, and as Commissioner Murray said a moment ago, this does not interfere with you having more park space. I believe in park space. I was born in the tenement section of the Ironbound District, a product of the tenements, born in a tenement on Market Street in that thickly populated section. What is the result in that section today? Do you know that there are not as many houses in the Ironbound District in 1930 as there were in 1920? Do you know that there are not as many rooms for housing in the Ironbound District as there were in 1910? Just think of that. What does it mean? And take the block that the Prudential Insurance Company razed on Oxford Street, Mott,

Fleming and Passaic Avenue. I myself can recall the names here today of the tenants in those houses whom I visited over fifty years ago. The Joneses, the Flynns, a number of persons. Those old houses were there fairly hanging. If you took one away they would drop down. The Prudential Insurance Company has not asked us to spend one penny in that 1428-feet building down there, and they razed those old shacks and old shanties that were not fit for anybody to live in. Had they asked us to contribute this amount for this one proposition and not these other two I would have opposed it strenuously, but I do believe from an economic standpoint, a sound standpoint—we have analyzed this carefully in the tax board—and the amount of money we will eventually receive from this proposition will redound to the City's benefit as well as to the social betterment of the colored people. Now, anybody knows who knows anything about—I have investigated conditions in that section at the request of my son, who took a great interest in that section—most of you know him, he was the Judge there for four years—in the interest of the colored people, and it is a well known fact that the colored people have been obliged to pay more rent in those houses than the previous tenants who were in them, the white people. Now, I think we have got to be fair. We are not inviting colored people here, and I honestly believe that for their own good there are too many colored people in proportion to the white people in this City, but they are here, and as long as they are here we have got to take care of them, and I, for one, am willing to stand by this proposition; and I want to say that it is the members of this City Commission who are advocating this and forcing it over, if it does go over, and not the Prudential Insurance Company.

10.

Statement Made by Commissioner Murray.

Commissioner Murray: Mr. Mayor and gentlemen, this is an unusual procedure, of course, but we are facing new things all the time and most of the new things we do are based upon experience. When you refer to the taxes repaying to the City the carrying charges and interest and the amortization of these bonds that will be issued in the premises, you refer to something that will be borne by those who come after us and who get part of the benefit for themselves; and the fact that the City is going to gain immediately by it should not be lost sight of. Taxes are not the only things to consider here in so far as they apply to the property itself.

Taxes involve payments through the Department of Public Health, they involve payments through the Department of Public Safety and its various branches. The cost of policing, the cost of inspection, the cost of regulation is a very substantial item in any area, and it is particularly substantial in areas so congested, and living conditions are apt to deteriorate because of the idea of some landlords that they don't have to repair. Now, we have made a very careful inspection of the Third Ward and we are having a re-inspection made there at the present time. The re-inspection is being made for the purpose of finding the number of landlords who comply in any measure with the requirements set forth by the Department of Public Health. I personally was in buildings in those two blocks and I stood in the bathroom and looked out through the corner of the wall, and a nail had not been driven in the place for two years, according to the tenant, and he was paying $27 a month for living in a dump

that was not fit to keep hogs in. In addition to the economic phase we have to consider the social features. You cannot raise a rabbit in a rat's nest and you cannot raise children to be model children where children of ten, twelve and fourteen years sleep in rooms where the sexes are mixed, adult ages, where these children see things that scandalize them and teach practices that are dangerous and teach habits that destroy them. In the City Hospital we get many of them, thirteen-year-old boys and twelve and thirteen-year-old girls, victims of the environment and of the circumstances and surroundings; and it would be a crime for the City to sit by and see this continue any longer than we have to. It should be eradicated. This is done at this time from every possible angle of civic betterment, it is something to help those out who cannot help themselves and give them a chance to live like people, limiting the number of people per room, limiting the number of people per apartment and supervising janitor service so we have no fear of the garbage can in front or not, or the destruction through front or rear windows of the buildings built to give sunlight and air, and which no room in these premises is without sunlight or daylight, much more than can be said about the rooms that are there today; and we have no reason to be swayed by the threat of any landlord; and if we, in the face of the situation that is before us now, were fearful because of the threat of somebody that two years from now they will do something—we may be dead two years from now, we don't know—but dead or living, if we shirk the responsibility that is at our feet in this particular case, the responsibility of providing a better chance for those who will be better when we give

them a chance to be better, and if you give the colored people a chance to advance themselves and put themselves on a higher plane, where they can show they are inclined to be as decent as anybody else in the town, then that would be cowardly and false to our trust; and I think the matter is so meritorious, and those who speak in its favor have been so honestly interested, which cannot be said for some of those in opposition to it, I am in favor of it.

11.

Statement by Mayor Congleton.

Mayor Congleton: It is not my purpose to reiterate the stand that I have heretofore taken and which I have given as much publicity to as possible. I have not changed my position one bit; it is stronger today than ever. I recognize, as I have heretofore stated, that there is room for an honest difference of opinion. I only want to make clear one or two things. The Prudential did not seek the legislation under which this project goes forward if it goes. The Prudential has not asked us to spend $1,200,000. We have asked the Prudential to go into this project and engage to carry it out in the section of the City where I feel it is most needed. We have agreed to pay for a part of the land to be devoted to park and recreational purposes.

Some reference has been made to the fact that the Prudential intended to stand all of the expense of the project in the Third Ward and that it has come as a surprise to some that the City is going to participate in it. I am sorry if that misunderstanding exists. But I want to make clear that when the Prudential found what it would cost to

purchase lands in the Third Ward in the localities where the health authorities and the police authorities said the new houses were most needed, they reported to the Board of Commissioners, through me, that they could not go forward with the project and give the rents that we all wanted to see fixed. I, in turn, reported that to my colleagues at a conference, and it was in that conference that the scheme that is now before us was worked out, and I was told by a majority of the members of this Commission to so inform the Prudential Insurance Company; and at that time they did not have one dollar of money invested in any of the land, and it was only after they had the assurance of the majority of the members of this Commission that we would take this land for park purposes, provided they would build the houses, and after we had given the subject full consideration, seeing that the taxes that we would get back out of the balance of the property retained by the Prudential would more than pay the interest and retire the bonds, that they went ahead and invested their money. This is an unusual proceeding, perhaps, but I say again, as I have said before, it is not a bit different from what has been going on in New York City for several years. The City participation here is only in a different form. In New York, the people who organized companies and built houses as proposed here received an exemption from taxation for a period of ten years; so that in New York the general public is making their contribution toward getting better housing facilities for the underprivileged, if you please, citizens of our community. I say frankly that I would not be in favor of going in and buying a strip of land such as we are buying, and paying the amount that we are paying, unless there are coupled with it the housing proposition.

Statement by Commissioner Congleton.

The price that we are paying, in my opinion, can be justified because the line of our taking goes through practically every building upon the two blocks that are under consideration. I just want to close by quoting from the report of the Probation Officer of the County of Essex that has just come out since this matter has been before us. He is speaking about juvenile delinquency in the section that we now have under consideration, and he is an impartial person in this controversy. "Based on our experience with these delinquents, we cannot escape the conclusion that unless there is carried out some thinking, planning and provision with respect to the conditions under which large groups of people are living in this particular district, the social problems which they present will continue to grow, and in the next decade become almost overwhelming. It is a decidedly encouraging sign to note the extensive housing development about to be carried out by the Prudential Insurance Company in at least two of the sections mentioned. More of this sort of improvement would be helpful." Because I believe the proposition to be sound from the taxpayers' standpoint, and that it is not going to increase the tax burden, because I believe that it is one of the finest things that the City can possibly do or has ever done toward assisting the underprivileged citizens of our City, I propose to cast my vote in favor of the ordinance.

12.

Statement by Commissioner Egan.

Commissioner Egan: Mr. Mayor, over two years ago at luncheon with Mr. Sinclair of the Park Commission, he asked me to request the late

Mayor Raymond to confer with him in connection with an idea that he had developed having to do with better housing conditions in Newark. Mr. Sinclair, in my opinion, is one of God's noblemen, a man who as a public servant has done unusual good for the community and has done it unselfishly. He explained to me at that time that he had developed a plan in his mind and had partially succeeded in selling the idea to the Prudential Insurance Company, having to do with better housing in the poorer sections of our City. I delivered the message to the late Mayor Raymond, and he, who, everyone recognizes today, was a great public officer and a great civic leader, looked upon it with great favor. He was called to his reward before he had an opportunity to confer with Mr. Sinclair. Then Mr. Sinclair, as I understand it, conferred with our present Mayor, and eventually the matter was presented to the then City Commission. During those days I was the City Clerk of Newark. I had nothing to do with the affairs of the City, so far as being a governing agent is concerned. When this matter was presented to the Commission, my predecessor, the late Commissioner Brennan, whose long years of experience in private life, in labor circles and in public service, gave him wisdom rarely found today, it was his thought that this was a very fine thing for the betterment of Newark. It fell to my lot, because of the passing of the late Commissioner Brennan, to occupy my present post. And as this Prudential plan developed the proposition having to do with the acquisition by the City of this part of the parcel in the Third Ward was discussed by the members of the City Commission. Frankly, my first impression was not a favorable one. I have given it very

serious thought and much consideration. It is something new, but even though it be new it is something in my opinion that is for the betterment of Newark. We of the governing body are charged with many responsibilities, and one of those responsibilities is to lead in the affairs of the City as the spokesmen and representatives of the City of Newark, in the hope of bringing about better conditions. When you look at Newark today you must admit that something new and something unusual must be done in order to reconstruct some of the older sections of our City if we are to continue to feel proud of Newark. Taking the City as a unit, there is no spot within the boundary lines that demands consideration more than the spot within the boundary lines of the Third Ward. Physical structures, to a very large extent, are in a dilapidated condition. The majority of the residents of the Third Ward require assistance and guidance and leadership. From an economic standpoint, from a health standpoint, from a police standpoint and, above everything else, from the social point of view, we have to do the unusual in order to properly protect the youth, as described accurately, and statistically, if you will, by the Probation Officer of the County of Essex. The youth of the community deserves the support and the leadership of the public, professional, commercial and private citizens, and I think, beyond its being selfish to a certain point in creating better health conditions, that the Prudential Insurance Company shows a genuine civic interest in taking this position. And if you will, I think the man of men who deserves credit for this movement is a man who is looked upon as a real citizen, Mr. Sinclair, because he sold the proposition to the Prudential.

Now, in so far as the operation of the plan is concerned, the Prudential in purchasing these plots found that if they were to give a rental within the means of the poorer person, they would have to have some help; and they felt,—and I think properly so,—that the proper agency to appeal to was the City of Newark. No doubt having in mind in their study the background of the great demand on the part of the residents of the Third Ward that better park facilities were needed in that section. They came in and they asked the City to assist in this project, not because they are trying to put over a deal of speculation or a deal that will yield them a large return on their investment; but having as the paramount thought a better Newark, and particularly better housing conditions for the poor. When we look at New York we find they were fortunate in having individuals and groups philanthropically inclined who did much to reconstruct some of the very poorer sections of that great metropolitan city. When we study a city like Chicago and see the tremendous amount of public funds expended to develop parkways, boulevards and parks, it inclines one in public office to feel that sometimes it does not pay to be too timid about the expenditure of public money if in return you are going to do some good for the common cause. The residents of the Third Ward who come here objecting to this are genuine in their opposition, and they are sincere in their opinion. I am of the opinion to a large extent that their attitude is based upon fear and selfishness; fear for the reason that when these new buildings are erected they are of the opinion that they might not be able to rent the older structures so readily; selfishness, because their particular property

owned by them does not come within this particular two-block zone that is being acquired by the Prudential Insurance Company. Someone said something about Springfield Avenue. As a citizen of Newark I have watched Springfield Avenue very closely over the last fifteen years, maybe twenty years; but I have noticed particularly in the last ten years, and more particularly in the last five years, the lack of business on Springfield Avenue as compared with the old days, and I appreciate in my mind that something in major form has to be done in order to rehabilitate Springfield Avenue as a business center. And from my study of the situation, Springfield Avenue today is not the thriving center of business that it was as of old, for the reason that the surrounding neighborhood has become so dilapidated, the type of person who is able to spend in these stores on the thoroughfare has moved out to the fringes of Newark, and into the suburbs, and Springfield Avenue, as one of our fine business streets, is suffering, and suffering severely today, from a business point of view and property owning point of view. Now, if we are to bring back Springfield Avenue as a business center, it is my opinion we must reconstruct the residential territory adjacent to that avenue and I think this is one of the very first substantial moves in that direction. There are so many things that could be said in favor of this project, in my opinion, as against so few things that could be said in opposition to it, having in mind the leadership and wisdom naturally possessed by two great men who governed the affairs of this City, the late Thomas L. Raymond and the late William J. Brennan; realizing that Newark is the melting pot that it is, the metropolitan city that it is, the great industrial center that we have; and rec-

ognizing that these major improvements such as our new office buildings in the center of the city, our proposed new railroad center, our new highways; then if we are to hold within the boundary lines of Newark that which will make Newark a greater and better city, something must be done in order to have those who come to Newark recognize the fact that there is leadership. There are some things in so far as the proposition is concerned that are quite new. Commissioner Gillen is justified, to a large extent, in saying that this should be left within the confines of his department, because after all the park system is one of the divisions of government that is charged to his supervision as a director. There are new features in the fact that we are going into a park building proposition, tieing up closely with a housing problem. If I were to pass upon the more important matter for us to decide upon today for the benefit of Newark, I would say, "Give us better housing first and better park facilities second". It is only yesterday that I conferred with two investigators of the Alms Department who are covering this city because of the conditions existing because of lack of employment, and they told us that ninety-eight per cent. of the homes visited are homes that should be properly recognized and classified as hovels and dens. The poorer people of our community surely are entitled to the leadership that is existent in this city. I am the junior member of this governing body. I do not happen to be in a position where I am charged to the voters of the City directly because of my position. Indirectly I am, because the other four members of this body selected me by their votes to fill the vacancy caused by the late Commissioner Brennan's

death. Politically, anything can be made more magnified than it deserves in substance. So far as the result is concerned politically with reference to me, I have no conecrn. Studying the situation from every angle, recognizing what I believe is necessary to make Newark a better city, Mr. Mayor and gentlemen of the Commission, I wish to announce publicly at this time that I am going to vote in favor of this ordinance.

13.

After the Statements by the Commissioners the Following Proceedings Took Place:

Commissioner Murray moved that the following ordinance be taken up on second reading:

An ordinance to authorize the acquirement of lands in The City of Newark, for park use, and to authorize the execution of a contract with the Prudential Insurance Company of America for the acquisition of the same, and providing for the financing thereof.

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

Yeas: Commissioners Egan, Howe, Murray, Mayor Congleton.

Nays: Commissioner Gillen.

The Clerk then read the ordinance by sections.

Title declared open to amendment.

Section 1 declared open to amendment.

Section 2 declared open to amendment.

Section 3 declared open to amendment.

Section 4 declared open to amendment.

Section 5 declared open to amendment.

Section 6 declared open to amendment.

Section 7 declared open to amendment.

Section 8 declared open to amendment.

The ordinance was declared open to amendment in all its parts.

Commissioner Murray moved that the ordinance be adopted on second reading.

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

Yeas: Commissioners Egan, Howe, Murray, Mayor Congleton.

Nays: Commissioner Gillen.

Commissioner Murray moved that said ordinance be ordered to a third meeting.

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

Yeas: Commissioners Egan, Howe, Murray, Mayor Congleton.

Nays: Commissioner Gillen.

Commissioner Murray moved that the ordinance be taken up on third reading and final passage.

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

Yeas: Commissioners Egan, Howe, Murray, Mayor Congleton.

Nays: Commissioner Gillen.

Commissioner Murray moved that the title of an ordinance to authorize the acquirement of lands in the City of Newark, for park use, and to authorize the execution of a contract with the Prudential Insurance Company of America for the acquisition of the same, and providing for the financing thereof, be taken for its third reading.

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

Yeas: Commissioners Egan, Howe, Murray, Mayor Congleton.

Nays: Commissioner Gillen.

The Clerk then read the title of the ordinance as follows:

"An ordinance to authorize the acquirement of lands in the City of Newark, for park use, and to authorize the execution of a contract with the Prudential Insurance Company of America for the acquisition of the same, and providing for the financing thereof."

The ordinance having been read three times, was then declared to be upon its third and final passage.

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

Yeas: Commissioners Egan, Howe, Murray, Mayor Congleton.

Nays: Commissioner Gillen.

Reasons.

NEW JERSEY SUPREME COURT.

(Filed December 23, 1930.)

SOLOMON SIMON, JACOB L. SOLOMON and PATRICK GALANTE, Prosecutors, *vs.* PETER O'TOOLE, Clerk of the City of Newark, New Jersey, BOARD OF COMMISSIONERS OF THE CITY OF NEWARK, NEW JERSEY, and PRUDENTIAL INSURANCE COMPANY OF AMERICA, Respondents.	Reasons.

The prosecutors write down the following reasons why the ordinance of the Board of Commis-

sioners of the City of Newark brought before this Court by the writ of certiorari issued herein should be set aside:

1. The effect of the ordinance is to permit the use of public funds raised by taxation for other than a public use.

2. The authorization for the expenditure of funds ostensibly for the purpose of purchasing land for a public park is not the real purpose of the expenditure of such funds, the real purpose being to aid and assist the Prudential Insurance Company of America in a housing plan which the City of Newark has no right to directly aid or assist by the expenditure of public funds, the plan of ostensibly expending the public funds for the purchase of lands for a public park being designed to accomplish indirectly what the Board of Commissioners cannot accomplish directly.

3. The lands contemplated to be purchased for a public park are wholly unsuitable for such purpose and the ordinance is a gross abuse of the discretion of the Commissioners.

4. The cost of the lands to be purchased by the City of Newark for a public park is so greatly in excess of their true value for such purpose as that the ordinance authorizing their purchase at such price is a gross abuse of the discretion of the Commissioners.

5. The Board of Commissioners were without legal power to adopt the ordinance brought up.

6. Under the statute in such case made and provided all executive, legislative and judicial powers with respect to public parks is exercisable only by the Commissioner assigned as director to the Department of Parks and Public Property;

the Commissioner assigned as director to the control of the Department of Parks and Public Property has opposed the purchase of said lands for the purpose of a public park, and did not vote in favor of the ordinance, but, on the other hand, voted against the acquisition of said lands for such purpose and has declined to accept said lands for such purposes, and the Board of Commissioners of the City of Newark have no legal power to purchase said lands for a public park over the opposition of the Commissioner assigned as director to the Department of Parks and Public Property.

7. To permit the moneys raised by taxation to be spent for the purposes contemplated by the ordinance would be to deprive the prosecutors of their property without due process of law within the meaning both of the constitution of the State of New Jersey and the 14th amendment of the Constitution of the United States in that it results in the expenditure of public funds raised by taxation for other than a public purpose, and the prosecutors are taxpayers in the City of Newark, and are required to pay a part of the moneys to be expended for the purpose contemplated by the ordinance.

8. The passage of the ordinance is a gross abuse of the discretion reposed in the Commissioners.

9. While the ordinance provides that the lands to be purchased are to be used as a public park, the lands purchased will not, in fact, be a public park.

HERMAN W. BRAMS,
Attorney for Prosecutors.

Testimony.

NEW JERSEY SUPREME COURT.

SOLOMON SIMON, JACOB L. SOLOMON and PATRICK GALANTE, Prosecutors, *vs.* PETER O'TOOLE, Clerk of the City of Newark, New Jersey; BOARD OF COMMISSIONERS OF THE CITY OF NEWARK, NEW JERSEY, and PRUDENTIAL INSURANCE COMPANY OF AMERICA, a corporation, Respondents.	On Certiorari.

Transcript of proceedings in the above entitled suit, taken pursuant to notice, before Nicholas W. Bindseil, a Supreme Court Commissioner of New Jersey, at the office of Merritt Lane, Esq., Prudential Building, Newark, New Jersey, on Monday, December 22, 1930, at 2 P. M.

Appearances:

MERRITT LANE, Esq., for prosecutors.

FREDERICK H. GROEL, Esq., for Peter O'Toole, Clerk of the City of Newark, N. J., and Board of Commissioners of the City of Newark, N. J.

ALFRED O. HURRELL, Esq., and CHARLES B. BRADLEY, Esq., for Prudential Insurance Company of America.

It is stipulated and agreed by and between the attorneys for the respective parties that the testimony may be taken stenographically by the Commissioner and afterwards reduced to typewriting, the signing of the same being waived.

Mr. Lane: I state that I will not argue to the Court that the Prudential Insurance Company has or is paying too much for the property as a whole. I will not argue that the lands as a whole are not worth $1,714,000 or whatever sum it may be that the Prudential is paying.

You stipulate that the lands are to cost as a whole $1,714,000, approximately?

Mr. Bradley: We don't know, but the most that the City would pay would be seventy per cent of that.

Mr. Groel: The most that the City could pay, under the terms of the contract, would be seventy per cent of $1,714,000.

Mr. Lane: I offer in evidence the affidavit of Mr. Hamilton, which reads as follows:

NEW JERSEY SUPREME COURT.

SOLOMON SIMON, Prosecutor, *vs.* BOARD OF COMMISSIONERS OF THE CITY OF NEWARK, NEW JERSEY, and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a corporation, Defendants.	On Application for a Writ of Certiorari. Affidavits.

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

WILLARD I. HAMILTON, of full age, being duly sworn according to law on his oath, deposes and says:

1. I am Vice-President and Secretary of The Prudential Insurance Company of America (hereinafter referred to as "The Prudential") and held and performed the duties of those offices at all of the times hereinafter mentioned. For many years past my duties as Vice-President of The Prudential have included the supervision and management of the Company's real estate situated in the City of Newark and the acquisition from time to time of additional real estate as the same has required for the Company's business, and for the past year have included the acquisition, supervision and management of such real estate as has been and may be acquired by the Company for housing projects pursuant to the provisions of Chapter 201 and of Chapter 202 of the Laws of 1929 of the State of New Jersey.

2. On or about February 10, 1930, Edward D. Duffield, President of The Prudential, acting pursuant to resolutions of the Company's Board of Directors and of the Finance Committee thereof, designated and empowered me to negotiate for, through the medium of agents or otherwise, and to enter into contracts for the purchase by the Company of the whole of two tracts of land in the City of Newark described as follows:

> First Tract—All those tracts or parcels comprised within the block bounded by Waverly Avenue, Barclay Street, Spruce Street and Somerset Street, situated in the Third Ward, and
>
> Second Tract—All those tracts or parcels comprised within the block bounded by Spruce Street, Barclay Street, Montgomery Street and Somerset Street, situated in the Third Ward;

at such prices as I might deem proper, subject to limitations as to the aggregate amount to be paid, and to negotiate for and to enter into such contracts for parts of such tracts at such prices as I might deem proper within such limitations. The purpose of The Prudential in seeking to acquire such tracts, as expressed in the resolutions aforesaid, was and is to construct thereon housing accommodations pursuant to the provisions of Chapter 201 and of Chapter 202 of the Laws of 1929 of the State of New Jersey.

3. Pursuant to the authority thus conferred upon me, I immediately arranged with Feist & Feist, Inc., of 58 Park Place, Newark, New Jersey, a corporation engaged in the real estate brokerage business and well known to me as skilled in the assembling of properties, to negotiate with the respective owners of the several

properties comprising the two tracts above described for the sale thereof to The Prudential or its nominee at such prices, in each instance, as might be approved by me. For this purpose Feist & Feist, Inc., designated one Ralph G. Schwebemeyer, a skilled real estate broker, associated with them, to conduct such negotiations. I instructed Mr. Schwebemeyer that it was essential to the purpose of The Prudential that such contracts be obtained and the assemblage be completed within a reasonably short time, not exceeding, if possible, six months, because I was advised by counsel that the provisions of law under which The Prudential was authorized to acquire such real estate also required The Prudential within one year from the acquisition of any such real estate to present to the City of Newark a detailed project for improving the same. It would have been impossible to comply with such provisions if the assemblage were not completed a reasonable time before the expiration of one year from the acquisition of any part of the tracts in question.

4. From approximately the middle of February, 1930, until the date hereof the said Schwebemeyer has been engaged in obtaining from the respective owners of the several properties comprising the two tracts aforesaid contracts for the sale of such properties to The Prudential, with the result that since February 10, 1930, I have, on behalf of The Prudential, acquired all of the properties and improvements thereon described in the following schedule from the respective owners and at the respective prices therein set forth:

Opening of Case.

SCHEDULE

Location	*Owner*	*Size—Land*	*Improvements*	*Price*
137-39 Spruce St. 142-38 Spruce St.	Rose	50x92	2 1-story frame bldgs; 6 flats	$97,500.
74-82 Barclay St.	Wasserman	100′ Spruce x 140′ Barclay	3 story brick and frame bldgs. containing 10 stores and 10 flats	
65-69 Somerset St.	Bressman & Cooperman	60x97	2 4-story brick apts. Each has 8 5-room apts.	50,000.
91 Somerset St.	Halperin	25x100	3 story frame—1 store—2 flats	8,300.
99-100 Somerset St.	American	50x100	Brick Factory—Frame House	38,000.
122 Barclay St.	Water Co.	25x100	Frame House	
107 Somerset St.	Feinsot	25x100	1 3-story frame house—1 4-room house (rear)	15,500.
113-113½ Somerset St.	Matonti	29½x72	2 frame dwellings	6,500.
34 Barclay St.	Karlinsky	25x100	3 story frame apt. containing 8 apts.	16,000.
36 Barclay St.	Gross	25x100	4 story frame—8 family	16,000.
13 Somerset St.	Lenzy	25x100	3 family frame house	15,500.
25 Somerset St.	Lenzy	25x100	3 family frame house—3 car garage	13,500.
54-8 Barclay St.	Braverman	68½x100	2 4-story brick apts.	62,000.
118 Barclay St.	Star Rlty Inv. Co.	36x100	4 story brick bldg.—containing 2 stores and 16 apts.	40,000.
115-115½-117 Somerset St.	Rubenstein	45x73	3 frame houses with party wall	11,500.
7-9 Somerset St.	Ax	48x99	2 3-family brick houses	23,000.
31-5 Somerset St.	Gollin	75x99	3 family frame houses	30,900.
44-6-8 Barclay St.	Katchen	55x99	2 3-family frame houses	28,000.
140 Spruce St.	Cohen	30x106	6 family frame house	15,600.
147 Spruce St. 90 Barclay St.	Wurtzel	25x106	4 story frame bldg. containing 2 stores and 6 apts.	45,000.
47 Somerset St.	Staniewski	25x100	2 family frame bldg.	7,250.
1-3 Somerset St.	Burrell	54x99	3 story frame bldg.; containing 2 stores and 4 apts.	35,000.
117½ Somerset St. 59 Waverly Ave.	Buckner	15x75	Brick & frame bldg. containing 2 stores and 1 office	17,000.
100-102 Barclay St.	Fershtman	55x100	4 story brick (2 8-fmly) containing 16 apts.	45,000.
130-34 Barclay St.	Wiskind Bros.	75x100	1 3-family stucco and frame; 1 2 family and 1 1 family stucco and frame buildings.	31,000.
42 Barclay St.	Sampson	25x100	Frame House	6,000.
97 Somerset St.	Kaplan	25x100	8 family brick house	18,000.
15 Somerset St.	Kohl	25x99	3 family frame house	11,000.
41 Somerset St.	Aberbach	25x100	2 family frame house	9,500.
105 Somerset St.	Lemkin	25x100	3 family brick house	16,000.
62 Barclay St.	Hochman	25x100	3 family frame house	10,500.
70 Barclay St.	Friedman	25x100	3 family frame house	10,500.
128 Barclay St.	Bechlet	25x100	1 family frame house	6,250.
40 Barclay St.	Siegilson	25x100	2½ story frame containing 2 apts.	10,000.
48-50 Barclay St.	Winarsky	28x100	Frame bldg. containing 1 store & 2 flats also 2 story rear brick bldg. containing 4 2-room apts.	18,500.

Opening of Case.

Location	*Owner*	*Size—Land*	*Improvements*	*Price*
23 Somerset St.	Tkoch	25x97	2½ story containing 3 apts.	11,400.
37 Somerset St.	Baron	25x100	2 family; 3 car garage	9,500.
71 Somerset St.	Weinstein	22x100	4 story brick containing 8 flats	23,500.
95 Somerset St.	Wallner	25x100	1 family frame	4,500.
67 Waverly Ave.	Schreiber	25x83	Frame bldg. containing 1 store and 3 flats	13,500.
65 Waverly Ave.	Waxman	25x84	3 story frame	15,500.
66 Barclay St.	Gould	25x100	3 story frame	12,000.
68 Barclay St.	Lomachinsky	25x100	3 story frame dwelling; brick garage	16,500.
72 Barclay St.	Linn	25x100	3 family frame	12,500.
106 Barclay St.	Goldstein	25x100	Frame bldg. containing 1 store and 3 flats	15,500.
93 Somerset St.	Lava	25x100	1 store frame bldg. also 6 stables	7,000.
134-8 Spruce St.	Chrystal	70x105	Frame & stucco bldgs., containing 5 stores and 11 flats	75,000.
38 Barclay St.	Harris	27x100	3 story frame bldg.	13,000.
64 Barclay St.	Lillien	25x100	3 story frame bldg. containing 1 store & 2 flats	12,000.
114-16 Barclay St.	Congregation B'Nai Jacob	38x100	Synagogue	22,000.
29 Somerset St.	Crecca	25x100	5 family frame	12,500.
103 Somerset St.	Waton & Rudin	25x100	3 family frame	14,000.
69 Waverly Ave.	Kupperman	25x90	3 story frame	11,400.
104 Barclay St.	Afro-Amer. Rlty.	25x100	4 story brick containing 8 families	25,000.
109 Somerset St.	Afro-Amer. Rlty.	25x100	3 story frame containing 6 families	14,000.
19-21 Somerset St.	Kutney	28x99	3 family frame	12,500.
71 Waverly Ave.	G. Helf Const. Co.	25x85	3 family frame	23,750.
45 Somerset St.	Jacob	30x100	3 story frame containing 5 families	14,500.
28-30 Barclay St.	Home Plan, Inc.	50x100	Church Property	28,000.
98 Barclay St.	Gollender	25x114	3 story frame	15,500.
63 Waverly Ave.	Tombach	26x90	3 story frame	14,500.
27 Somerset St.	Stam	25x99	Vacant land	5,000.
111 Somerset St.	Belanowsky	22½x100	2 story frame containing 2 stores & 1 flat	9,000.
39 Somerset St.	J. Kish	25x100	3 story frame	13,000.
89 Somerset St.	Mont	23x100	3 family frame & 2 family frame bldgs.	15,500.
108 Barclay St.	Turk	25x100	3 story brick	16,500.
112 Barclay St.	Silberner	25x100	3 story frame	13,000.
43 Somerset St.	Hirass	25x100	3 story—2 family frame	14,500.
73 Somerset St.	Hollander, et als.	22x85	3 family frame	13,000.
11 Somerset St.	Dvores	27x99	3 family frame	14,500.
120 Barclay St.	Schwartz	25x110	Brick bldg. containing 2 stores & 6 flats	25,000.
32 Barclay St. and 5 Somerset St.	Wallack	23½x210	1 family bldg.	14,000.
52 Barclay St.	S. Finkel, Receiver, Avon Cons. Corpt.	24x210	Vacant land	
133-35 Spruce St., cor. Somerset St.	Interstate Filling Station, Inc.	33½x100	1 story brick garage	19,000.
		63¾x91½	3 story brick bldg. containing 2 stores; 8 families	43,500.

Location	*Owner*	*Size—Land*	*Improvements*	*Price*
81-83 Somerset St.	Fanlee Holding Co.	46x83x100	1 3-family frame—1 2-family frame	27,000.
85 Somerset St.	Portuguese, et als.	23x100	2 family frame	5,500.
110 Barclay St.	Nass, et als.	25x100	1 3-story frame containing 4 families	14,000.
77-9 Somerset St. & vacant plot in rear of 75 Somerset St.	Brody & Green	50x85	2 4-story brick bldgs. containing 16 apts.	50,000.
87 Somerset St.	Berson & Gromer	23x100	1 family frame	6,500.
92-94-96 Barclay St.	Frucht	75x104x111	3 stucco on frame bldgs.—stables in rear	45,000.
124-6 Barclay St.	Wigder	50x100	3 family brick; 3 family frame; 5 brick garages	27,500.
17 Somerset St.	M. C. Rlty Co.	25x100	3 family frame	15,525.
60 Barclay St.	Bernstein	25x100	3 family frame	12,420.
81 Somerset St. (rear)	Baum	15x28	Vacant Land	550.
			Total	$1,652,845.

The properties above described constitute approximately 96.84% of the total area of the said two tracts, and the total price paid or contracted to be paid therefor is $1,652,845.

5. In each instance before entering into a contract on the part of The Prudential to purchase any one of the properties described in the foregoing schedule, I obtained from the said Schwebemeyer a report of his negotiations in respect thereof and approved the price negotiated by him at which The Prudential ultimately purchased or has contracted to purchase the aforesaid properties as above set forth, and in each instance first satisfied myself that the price so approved by me was the lowest at which it was possible for The Prudential to acquire the particular property in question. In many cases the prices first submitted to me by Mr. Schwebemeyer were unsatisfactory and I repeatedly declined to negotiate contracts at such prices, and in all such cases awaited the result of further and extended negotiations before deciding upon a price which I ultimately felt justified in accepting under the conditions. In three

cases, namely, the properties at No. 75 Somerset Street, at Nos. 141 and 143 Spruce Street and at No. 145 Spruce Street, I have declined to accept the prices submitted to me by Mr. Schwebemeyer and have never entered into a contract for the acquisition of those properties. My judgment was based not only upon Mr. Schwebemeyer's report, but also upon my long experience with real estate values in the City of Newark. In judging the reasonableness of the several prices I considered the particular conditions surrounding the negotiations (namely, that shortly after the first contracts were negotiated it became a matter of public knowledge that The Prudential was in course of assembling the properties in question), and modified my judgment in accordance with those conditions.

6. Since the acquisition of each of the several properties above described at various times between the middle of February, 1930, and the date hereon, I have been in complete charge of their maintenance. There have been no additions or improvements whatsoever to any of the properties in question since the several dates of acquisition and there has been expended in absolutely necessary repairs thereon approximately the sum of $700.

WILLARD I. HAMILTON.

Sworn to and subscribed before me this 12th day of November, 1930.

WILSON J. McDONALD,
Notary Public of New Jersey.
My commission expires July 5, 1933.

(Seal)

Mr. Lane: Will you also stipulate that the buildings and improvements have a present value of at least $900,000?

Mr. Bradley: Yes.

Mr. Groel: Yes.

Mr. Lane: Will you stipulate that the prosecutors are taxpayers in the City of Newark?

Mr. Bradley: Yes.

Mr. Groel: Yes.

Mr. Lane: Will you stipulate that the return correctly sets forth the proceedings which it purports to set forth, and where it is stated that various commissioners made certain remarks, those commissioners did in fact make those remarks?

Mr. Bradley: Yes.

Mr. Groel: Yes.

It is stipulated and agreed by and between all the parties to this suit that the statements contained in a certain affidavit of Herbert Simon, dated November 24, 1930, together with the map therein referred to and thereto annexed, both of which are offered on the part of the defendant, the Board of Commissioners of the City of Newark, and marked Exhibits "D-1" and "D-2" respectively, shall be considered as duly proven and the said map shall be admitted as evidence of the location, dimensions and area of the two tracts described in said affidavit; and it is further stipulated and agreed that the number and character and location of the structures existing upon the said tracts on October 15, 1930, are as indicated upon the said map, and that the dotted lines thereon appearing indicate the easterly and westerly boundaries of a strip of land 140 feet wide running through each of said tracts, and that the areas so indicated comprise the tracts of land proposed to be acquired by the City of Newark

under the terms of the proposed contract authorized by the terms of the ordinance, which is the subject-matter of the writ of certiorari herein.

CHARLES P. GILLEN, a witness called on behalf of Prosecutors, being duly sworn according to law, on his oath says:

Direct examination by Mr. Lane:

Q. Commissioner, how long have you been a commissioner of the City of Newark? A. I was Board of Works Commissioner from 1912 to 1917, and City Commissioner from 1917 to the present time.

Q. You are now the Director of Parks and Public Property? A. Yes, sir.

Q. How long have you been Director of Parks and Public Property? A. Nine years.

Q. Have you given your personal attention to the public parks? A. Yes.

Q. As Commissioner of Public Parks, have you negotiated any sales of property to the City for public parks? A. Yes.

Q. Any in the neighborhood of the proposed park? A. Two.

Q. And where? A. One on Eighteenth Avenue, running from Boyd Street to Jelliff Avenue, now known as Hayes Park West.

Q. How far is that from the site of the proposed park? A. About seven blocks.

Q. And is the property that was acquired there comparable with the property that is being purchased here? A. Yes.

Q. And the other? A. The other is on Belmont Avenue, near Waverly Avenue, running through

to Livingston Street, having a frontage of about 100 feet on Belmont Avenue by approximately 250 feet on Livingston Street.

Q. How close is that to the property? A. That is within four or five blocks.

Q. And when was that acquired? A. That was acquired about a year ago.

Q. And when was the first one acquired? A. About two years ago.

Q. And is this property that you last described comparable with the property here? A. The ground is more valuable, but there were no buildings on it of any value.

Q. What I mean, is it comparable so that you can use one to show the valuations? A. Well, the last one on Belmont Avenue has no buildings to speak of. The ground is comparable, of course, with the ground value of the other.

Q. What is your business? A. Real estate agent.

Q. How long have you been in the real estate business? A. Thirty-five years.

Q. And where? A. Newark.

Q. And have you bought and sold property in the neighborhood in which this park is to be established? A. I have.

Q. Extending over a period of how many years? A. Thirty-five years.

Q. And are you familiar with values in that neighborhood? A. I am.

Q. Were you personally familiar and did you have personal knowledge of the negotiations preceding the purchase by the City of these other park sites? A. I negotiated the purchase of them myself, the two I referred to.

Q. So that you know what you paid? A. I know exactly, yes, sir.

Q. Assuming, Mr. Commissioner, that the value of the whole tract that is to be taken is approximately $1,750,000, what would you say would be the value of the part which the City is to take? A. Under the City rule of computing the value of front and rear lands on side streets, the value of 30 feet, the front, which the Prudential proposes to retain for its buildings, would be fifty-eight per cent of the whole. The value of the rear lands would be, therefore, forty-two per cent. In dollars and cents, the value of the front lands would be $1,015,000. The value of the rear lands which it is proposed to give to the City—sell to the City, would be $735,000, that is, under that rule.

Q. Is that a rule usually used in computing the value of properties? A. It is used by the City of Newark in taxation matters and assessment matters.

Q. Leaving out of consideration, Commissioner, any rule, but applying your general knowledge as a real estate man, what would you say would be the value of that inside property? A. These blocks are unusually long. The average city block, as you know, is about 200 feet. These blocks are approximately 700 feet long each. Under the proposed plan, these interior strips which the Prudential proposes to sell to the City of Newark are 700 feet long and 140 feet wide; if the Prudential's plans are carried out— Can I testify along that line? Those buildings which they propose to erect——

Mr. Lane: Go ahead.

A. (Continuing)—those strips would lie between two rows of tall buildings, approximately five-story buildings. The interior of them would not

be very desirable. The 140-foot frontage on each of the two cross streets at each end of those long strips, that, of course, would have the regular street value that property has on those streets, to a depth of 100 feet in on either end. That would leave an interior strip of 500 feet, approximately, by 140 feet wide, which to my mind would not have any great value—any substantial value.

If the Prudential built the full depth of 30 feet, under the City ordinance and the State law, they should have vacant land back of that again, at least to the extent of 10 feet; that would be taking 20 feet off the width of the 140 feet. Then if a private owner owned that property and desired to make some use of that 500 feet interior strip, he could not build on the full width of 120 feet; he would have to leave some room on either side, probably 10 feet more. In that way you could deduct from that 500-foot interior strip at least 40 feet of the width, which could not be used for building purposes, and which would leave little value in the matter of return to any building that might be erected on the inside there. I would, therefore, say that if it were dealings between private parties, private owners, with those interior lands, no purchaser would reasonably pay more than probably one-third of the total cost of the whole two strips.

Q. That would make it approximately somewhere between $500,000 and $600,000? A. Less than $600,000.

Q. Now, Mr. Commissioner, in reaching these values you have not taken into consideration, have you, the fact that the greater part of the improvements are on the lands retained by the Prudential Insurance Company? A. No.

Q. And you have not taken into consideration, either, have you, the corner influence of the eight

corners retained by the Prudential Insurance Company? A. No.

Q. Do you as Commissioner of Public Parks desire this property for park purposes? A. I do not.

Q. And you have consistently voted against it, have you not? A. I have consistently voted against it and spoken against it before the agreement was finally reached between the City and the Prudential, and stated that the lands would not be suitable or proper for public park purposes.

Q. And will you tell me whether those lands are, in your opinion, unsuitable for park purposes? A. They are not sufficiently open to allow for a plentiful supply of air and sunlight. These strips would lie between two rows of tall buildings, and at certain times of the day there would be very little sunshine there, and these buildings would probably prevent the proper circulation of air which is a vital thing in public parks. Public Parks, as I understand it, are usually created for the purpose of giving people breathing places, particularly in crowded sections, and giving them an opportunity to enjoy the full benefit of the air and the sunlight, and in my opinion these long strips in between these tall rows of buildings would not serve that purpose. Then, again, there being no back yards, anyway, which most houses usually have, no matter where they are constructed, those lands would become, to my mind, somewhat similar to back yards. Anyway, as time rolled on, it would be difficult—in a large population in those long rows of houses located upon these lands, more or less as back yard land—to keep them in proper condition, or to maintain them in desirable fashion. They might

be suitable for certain recreation or playground purposes for those that lived in those houses, but eventually the children living there would monopolize the use of them anyhow, and they could not be considered public parks for the use of the whole section generally, and would not eventually be suited for that purpose.

Q. Would there be difficulty as to policing them? A. I think there would be more difficulty than if they were open blocks, with all four sides facing on the streets.

Q. Do you know whether there has been any plan developed for the improvement of these parks, as to what you are going to do with them after you get them? A. There has been no plan, inasmuch as I have expressly stated that I would have nothing to do with them as the Director of the Department of Public Parks, and so forth.

Q. Do you know just how you could start with a shovel to make them as a public park; what you would put in them? A. What you have to put in parks generally is make lawns and pathways and baseball diamonds and tennis courts, plant shrubbery—beautiful shrubbery, flowers.

Q. How long do you think any of them would last down there? A. Not long.

Q. Is it an expensive proposition to convert a city block into a park? A. Yes, there is considerable expense attached to it.

Q. Was there any thought or any suggestion by anybody as to the purchase of those lands for park purposes, those interior lands, before the Prudential sought aid in its housing plan? A. No.

Mr. Bradley: I object to that on the ground——

Mr. Lane: As a characterization of the Prudential seeking aid?

Mr. Bradley: Yes. It is irrelevant and immaterial, and no foundation has been laid for any testimony to the effect that the Prudential has ever sought aid for its housing plan.

Q. Were you present, Mr. Commissioner Gillen, at a luncheon given by Mr. Duffield, President of the Prudential Insurance Company, at which the purchase or the housing plans of the Prudential were discussed? A. I was, the first conference given to the Commissioners, I believe, by Mr. Duffield, if that is the one you refer to.

Q. During the course of the discussion, did Mr. Duffield say anything with respect to the Prudential Insurance desiring aid? A. He did.

Q. Will you tell me what he said, as nearly as you can recall? A. He spoke about——

Mr. Groel: I object to that, and I think it is immaterial what Mr. Duffield said at a luncheon.

Q. Who were present, by the way? A. The five City Commissioners, Mr. Duffield and Mr. Hurrell.

Q. The five Commissioners were there? A. Yes.

Q. What did Mr. Duffield say?

Mr. Groel: I object to that.

A. Mr. Duffield spoke about the three sites that the Prudential had acquired, or was about to acquire, for the housing proposition. He said, in the case of the Twelfth Ward site, the Down Neck site, the Prudential could finance that itself fully, and in the case of the Waverly site, the Frelinghuysen Avenue site, the Prudential could finance

that fully, but in the case of the Third Ward site they had made estimates of the cost of acquiring the properties, and unless the City put in a certain sum of money, the Prudential could not go ahead with that improvement and keep the rents as low as he desired them to be kept. That was about what he said.

Mr. Groel: I renew my objection on the ground that most of this is in the return, and I don't think it is the best evidence.

Mr. Bradley: Do I understand the Commissioner is testifying to what was said at at luncheon?

Mr. Lane: He is testifying to what was said by Mr. Duffield at a luncheon attended by all five Commissioners.

Mr. Groel: Can I repeat my objection, on the ground that it is not binding on the City?

Q. Up to that time had there been any suggestion of the City acquiring these lands for park purposes? A. No.

Q. Who made the first suggestion that the lands be acquired for park purposes, and when?

Mr. Bradley: I object to that question, on the ground that it is incompetent as well as irrelevant.

A. Mr. Duffield.

Q. And when? A. At that luncheon.

Q. Under this plan of the Prudential what are the buildings to be built of?

Mr. Groel: I object to that; there is nothing in the evidence to indicate that there is any plan.

A. They say the buildings will be similar to the plans already filed for the Prudential housing—the Prudential buildings in the Twelfth Ward; built of brick and mortar.

Q. And five stories high, as I understand? A. Five stories high is my understanding.

Q. At any time, either at the conferences of the commissioners or elsewhere, was any suggestion ever made that the City should purchase these lands for park purposes, except in connection with the Prudential housing plan? A. No.

Q. You are a taxpayer of the City of Newark also? A. I am.

Mr. Bradley: No cross-examination.
Mr. Groel: No cross-examination.

JOHN A. LINNETT, a witness called on behalf of the prosecutors, being duly sworn according to law, on his oath says:

Direct examination by Mr. Lane:

Q. Mr. Linnett, where do you live? A. 75 Scheerer Avenue, Newark, New Jersey.

Q. What is your business? A. Realtor.

Q. How long have you been in that business? A. About twenty-five years.

Q. And where? A. In the vicinity of Hayes Circle during the entire period.

Q. In Newark? A. Yes.

Q. Are you familiar with the lands which are involved in this dispute? A. I am.

Q. Have you bought and sold or been interested in the buying and selling of comparable lands in the vicinity? A. I think so.

Q. Over what period of years? A. About twenty-five years.

Q. And besides negotiating the sale of lands, do you do also considerable appraising work? A. I do.

Q. And for what period of time have you been doing that appraising work? A. Possibly the last twenty years; more particularly during the last five.

Q. Assuming that the purchase price of these lands as a whole—the whole two blocks, is approximately $1,750,000, what would you say would be the value of the interior lands which are to be taken by the City of Newark? A. I figured that from a slightly different angle, from a comparative standpoint. It would be the relation of fifteen thousand seven hundred and six to twenty-eight thousand.

Q. What does that mean in dollars and cents? A. I didn't know that I was to use the figure of $1,750,000 ratio. I would say the value would be $981,303.

Q. How do you get that, Mr. Linnett? A. By applying the Hoffman-Neil Rule for depth, which for 30 feet is 49.47, giving credit to Prudential Insurance Company for the fact that the corner is 30 feet. I mean the full 100 feet in depth, and taking into consideration that the City would be acquiring 560 feet frontage with full depth, and then applying the Hoffman-Neil Rule to the balance.

Q. Have you taken into consideration anything with respect to any improvements? A. I have not.

Q. What value have you put upon the interior lands to the depth, after a depth of 100 feet? A. I didn't consider that any of it was over 100 feet

in depth, because the approximate distance from street to street was 200 feet, being 100 feet in depth for each street.

Q. Have you taken into consideration the fact that when these interior lands have been acquired by the City, the ownership of the exterior lands is in one party, and the interior lands in another? A. I have not taken that into consideration. I have taken the value as it stands, that is, attempted to differentiate between the value of the one piece as against the value of the other.

Q. So that your valuations are put on as if the land is in the present condition of single ownership? A. Yes.

Q. Do you know for what purpose the lands could be used commercially after the ownership is split up—those interior lands? A. I do not, except in connection with 140 feet fronting on the street, it might be possible to make use of it, provided the zoning ordinance would allow you to build a factory building 140 feet on each street running right straight back, or a garage.

Q. That is about the only use you could think of, isn't it? A. Practically the only use; the extreme depth would interfere with that, 700 feet.

Cross-examination by Mr. Groel:

Q. What is the Hoffman rule that you mentioned? A. It is simply a rule that real estate men use, which is based upon a basic theory, that the front one-half of a 100-foot lot is worth two-thirds of the entire plot.

Q. Do you think that the Hoffman rule is applicable to a situation like this? A. As applicable as any of the depth rules.

Q. Is this the usual situation that you would have in valuating property? A. Yes.

Q. Have you ever had occasion to value property in a situation similar to the layout that we have here? A. Oh, yes, I have used it many times.

Q. What properties have you valuated similar in character to this one, by this rule? A. We have used the same principle in the valuation of the property which was acquired by the City of Newark for park purposes up on Washington Avenue.

Q. Was that an interior strip? A. Part of it had to be considered as an interior strip.

Q. Why? A. Because of the depth. I cannot give you the exact figures on that at the present moment, because I haven't my data here, but I know that we made use of the Hoffman-Neil rule at that time.

Q. The Washington Avenue property that was acquired for park purposes is bounded by what is now Broadway, a street that runs perpendicular to Broadway, and a street that runs parallel with Broadway, does it not? A. Yes.

Q. So it is not exactly the same situation. or anything like the same situation that we have here, is it? A. I would say that there were things by which it might be compared.

Q. But it is not the situation that we have here at all? A. It is not exactly the situation, no, it is not exactly.

Q. It isn't partly the situation; there is no interior land there? A. Yes, there is interior land there; that is why I made the remark. There is interior land.

Q. What interior land is there? A. If I remember correctly, the distance there between the two streets was greater than 200 feet, so it did create interior land.

Q. What two streets? A. Washington Avenue and Wakeman Avenue, is it, the other street?

Q. But that land is paralleled on the other side by the street that runs between those two streets? A. Yes.

Q. Have you ever appraised a strip of land running through one block from street to street? A. I wouldn't want to say positively about that. In connection with condemnation work down at Hillside, we had a long strip of land which was interior, but whether it would be exactly comparable to this, I wouldn't want to say that it was. I wouldn't want to say so.

GEORGE F. HEWSON, a witness called on behalf of prosecutors, being duly sworn according to law, on his oath says:

Direct examination by Mr. Lane:

Q. Where do you live? A. 781 Clifton Avenue, Newark.

Q. What is your business? A. Realtor.

Q. How long have you been in that business? A. Nineteen years.

Q. Are you familiar with the property that is in dispute here? A. Yes, sir.

Q. Have you bought and sold property—comparable property in the neighborhood? A. Yes, sir.

Mr. Groel: Are you going to qualify him further?

Mr. Lane: Do you want to cross-examine?

Mr. Groel: Yes.

Cross-examination by Mr. Groel:

Q. What property have you bought and sold in this immediate neighborhood? A. I sold 148 Monmouth Street.

Q. Who was the buyer in that case? A. I don't remember; it was about six years ago.

Q. You don't recall who the buyer was? A. No.

Q. Who was the seller? A. I don't recall the name. I didn't expect to be called to qualify as to sales or values, or else I would have acquired that information.

Q. That is the only property that you have sold up there? A. No, I have sold property on Belmont Avenue.

Q. Whereabouts on Belmont Avenue? A. Near Kinney Street.

Q. What piece? A. About 348 Belmont Avenue.

Q. When did you sell that? A. 1925.

Q. Who was the buyer in that case? A. The buyer was a man named Falici.

Q. Who was the seller? A. I think a man named Abrahms.

Q. What was the purchase price? A. Somewhere about $26,000.

Q. You don't know exactly? A. No, about $26,000.

Q. Did you sell any other property up there? A. I did sell other property, I cannot recall them just at the moment. I didn't expect to be called on to testify as to values of properties, or else I would have brought my data.

Mr. Groel: What do you want to use this man for?

Mr. Lane: The same questions as I ask the others.

Mr. Groel: I object to them as being incompetent.

Further direct examination by Mr. Lane:

Q. In your business, Mr. Hewson, have you had occasion to value street frontages and interior property? A. Yes, sir.

Q. You are doing that constantly? A. Yes, sir.

Q. And do you know the usual rules that are applied to cases such as we have here involved? A. Yes.

Q. Are those rules generally over the whole city of Newark? A. Yes.

Q. Now, assuming, Mr. Hewson, that the value of all of these lands, that is, the two blocks, approximately, is $1,750,000, what would you say the value of the interior part to be taken by the City of Newark would be? A. About $735,000.

Q. How do you reach that? A. I took the whole property—the value of the whole property, which was $1,750,000; I take the Newark rule for depth, taking 30 feet of the front, which gave me a figure of fifty-eight per cent; fifty-eight per cent was $1,015,000; deduct $1,015,000 from the total figure, leaving a figure of $735,000.

Q. Now, Mr. Hewson, did you take into consideration that when the City of Newark acquired those lands, the front lands would be in one ownership, and the interior lands would be in another ownership? A. No, sir; I did not.

Q. Do you know what use, assuming now the two different ownerships—what practical use those interior lands could be put to? A. They might be used successfully for garages for the properties in question that are proposed to be built on the front.

Q. That is the 140 foot front? A. Yes.

Q. Is there any other use that you can think of? A. The ends could be used for residence purposes or apartment houses of the type which are proposed to be built on the front.

Q. If the ends were used for that purpose, what value would the inside lands have, in the middle of that block? A. They would still be only useful for garages or——

Q. That is, pertinent to the houses? A. Pertinent to the houses.

Q. Leaving out of consideration any particular rule, what would you say that any willing purchaser would be willing to offer for those lands —inside lands? A. I don't think that you would get a willing purchaser to purchase those inside lands separate and apart from the front on either one of those streets; if you did, the price would be considerably less than the price I have indicated here.

Q. Have you taken into consideration either the fact that most of the improvements on these lands are on the lands which are retained by the Prudential? A. Yes.

Q. Did you understand what I have asked you: you haven't taken into consideration any improvements at all? A. No, sir; I have not.

Mr. Groel: In the first place, I want to object to this witness's testimony, on the ground that it is incompetent. I have no cross-examination.

Mr. Lane: That is all we have today. I shall produce probably one other expert, who will testify in exactly the same way, and one other park man, who will testify to the same effect as Commissioner Gillen has testified, as to its usefulness for park purposes.

Mr. Bradley: Are you ready now for our witnesses?

Mr. Lane: Yes.

Lee F. Hanmer, for Respondents—Direct.

LEE F. HANMER, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. What is your occupation? A. I am Director of the Department of Recreation of the Russell Sage Foundation.

Q. How long have you been Director? A. Since 1911 or 1912; I cannot quite remember now; it was at the least 1912.

Q. What have been your duties as Director of the Russell Sage Foundation? A. To study problems with reference to public recreation matters and to give counsel and advice to those seeking that kind of a system in the development of their local public recreation projects.

Q. What was your occupation previous to your connection with the Russell Sage Foundation? A. I was Supervisor of Physical Training in the New York City Public Schools, having responsibility for the organization of school athletics and laying out athletic grounds for the Board of Education.

Q. What did you do previous to that? A. I was in charge of public welfare for the Copper Queen Mining Company of Bisby, Arizona, and part of that responsibility had to do with public recreation.

Q. Was that the first position you had after you graduated from college? A. Immediately after college——

Q. Where did you graduate from? A. Cornell University.

Q. Did you graduate with a degree? A. Yes.

Q. In what? A. Bachelor of Science.

Q. What is the Russell Sage Foundation? A. Russell Sage Foundation consists of a fund given by Mrs. Russell Sage for the improvement of social and living conditions in America.

Q. What is the Department of Recreation of the Russell Sage Foundation? A. It is one of the Foundation's departments, having responsibility for the recreation aspects of this general welfare work of the Foundation.

Q. What is the work that this Department of Recreation does? A. My first work in that department was to assist in the development of children's playgrounds throughout the United States where I was delegated by the Foundation to serve as the field secretary for the newly organized Playground Association of America. We were helping that Association get on its way, and I served for some time as the field secretary. That was before I was Director of the Department, beginning 1907, and I travelled throughout the United States visiting cities, advising with municipal authorities and citizen organizations about the development of playground and school athletics and general recreation.

Q. Did any of the work involve the recommendation to municipal or governmental bodies of the proper location in congested areas, of parks or playgrounds? A. Yes.

Q. Where were such recommendations made? A. You mean the cities in which the recommendations were made?

Q. Yes. A. Among the many cities, I would mention Los Angeles, New Orleans, Pittsburgh, St. Louis, Washington, D. C., and many others. I travelled in every State of the Union.

Q. At the present time, then, you are engaged in advising many municipal organizations

throughout the United States concerning recreational developments and as to equipment and desirable areas for the location for such developments? A. Yes.

Q. I show you this map, marked Exhibit D-2; are you familiar with the property bounded by Waverly Avenue, Somerset Street, Spruce Street, Montgomery Street and Barclay Street, in the City of Newark? A. I have seen the property, yes, sir, driving around in that vicinity for the purpose of looking over that area.

Q. You are familiar with the character of buildings in this area surrounding them? A. As I observed them at that time.

Q. And the people living in those buildings and the character of the people living in those buildings? A. I cannot go very far on that, sir.

Q. You are familiar with these two particular blocks? A. Yes, sir.

Q. In your opinion, do you think that an area of land approximatley 140 feet in width and some 1,433 feet in length, bounded on the easterly side by buildings to be used for residence purposes, thirty feet in depth, with ends open at the northerly and southerly sides, as a fit and suitable area for the establishment of a municipal park and playground site? A. Yes, sir; if it is designed for the younger children. It would not do for athletics, such as baseball, but it would make an excellent playground for children.

Q. What are the reasons that caused you to reach this conclusion? A. May I talk a little bit, to make clear my reasons? We have constantly to study the whole problem of property locations with respect to accessibility for the children using play areas, and the question of street crossings and hazards incident to getting to and from the

playground. We have found that it is highly desirable to locate playgrounds for small children as near as possible to their homes, and with as few street crossings as may be. Two reasons I would state for that; the first is that parents are not willing in crowded cities for their small children to go any distance to the playground; and the second is that the playground is much more extensively used by the children if it is very near their homes. They will not go any distance to play voluntarily.

Q. Do you know if in the field of playground and recreational work in America there are any authorities on this subject, who favor the establishment of parks and playgrounds, particularly of this character in areas similar to this? A. Yes, sir; within the last few days I have had a conference with Mr. Thomas Adams, Director of the Regional Plan of New York and Environs, who is an international authority on such planning and regional planning at that conference——

Mr. Lane: I object to that. I object to any statement made by somebody at a conference; I object to it as hearsay.

Q. Go ahead. A. May I properly say that in my contact with Mr. Adams in connection with the New York Regional plans and studies in which I have participated, I have very definitely in mind that Mr. Adams favors the purchase and development of interior spaces, when they are of appropriate size, as a children's playground.

Mr. Lane: I move to strike that out as hearsay.

Q. Are there any municipal developments comparable to this one in this vicinity, that you know

of? A. I haven't sir, had opportunity to check extensively on this, but I know of one municipal playground in Manhattan, West 59th Street to 60th Street, I think that goes straight across the center of a block in its narrowest portion, using this interior space as a public playground immediately adjoining buildings occupied by families, that would be similar in a way, but not exactly identical with this.

Q. Is the area as large as the area to be used in this particular instance? A. No, sir, it is not.

Q. What is the area of the blocks proposed to be used by the City of Newark bounded by Waverly, Somerset, Montgomery, Spruce and Barclay Streets, and the buildings on the easterly and westerly side? A. After seeing this map and taking the dimensions indicated on the map I figured that the block bounded by Spruce, Barclay, Montgomery and Somerset contains an open interior space, according to this plan, of 96,982.2 square feet, or 2.226 acres—a little over two acres. The other block in question has a little larger interior space. Apparently that amounts to 103,652.5 square feet, or 2.379 acres, making a total in the two of 4.605 acres—over four acres and a half in the two.

Q. This particular park area in New York City that you referred to, do you know what the area of that is? A. I do not know the area; I should guess that it was about 150 acres, and the block I would assume would be a 200 foot width block; approximately, 150 by 200. That is an estimate.

Q. In any case, it is much smaller than this? A. Very much.

Q. Is there any other park site in New York City or this vicinity that is comparable to this? A. I remember advising with Park Commissioner

Stover, of Manhattan, several years ago, on laying out a municipal playground on East 81st Street, in which interior lands were taken adjoining residences. My memory of that would be that it occupied about one-half the length of the long block and running back to the buildings on the opposite side of the property, using that interior—what you would call interior area, and also the frontage on 81st Street. That was acquired by the Park Department and developed as a children's playground and field house, and usual playground equipment.

Q. Was the area of that plot as great as the area of the parcels under consideration here? A. No. I should think that—I don't know just how deep these buildings were, but more than 30 feet, I am sure, and if it were a 200 foot block, I should expect with 150 feet in depth, a piece 300 feet long. I think that is generous. Probably less than 300 feet.

Q. Do you think that the fact that there were buildings to be used for housing purposes on the easterly and westerly sides of these strips, would make the strips undesirable for the establishment of a playground and park facilities? A. No, sir, I would not. With that width of 140 feet between the buildings, and open at the end, I should think it would be very desirable for children's playgrounds.

Q. Do you think that a width of 140 feet is sufficient space between these two lines of buildings for the creation of sufficient air and light for the people who will use the interior areas? A. For those using the recreation grounds?

Q. Yes. A. Yes, sir, I do.

Cross-examination by Mr. Lane:

Q. You have stated that one of the reasons why you think this is peculiarly situated for a public park is its accessibility, and the fact that children will not be obliged to cross public streets? A. Yes, I did.

Q. That is the main thing that is in your mind? A. Yes, sir; I think you covered the two points I made; one was accessibility; the other was being near their homes, and the other, they were not required to cross streets.

Q. That means that the usefulness of that park is confined to the residents of those houses on each side of the public park? A. I wouldn't say so.

Q. Who else can get to it without crossing a public street? Others will have to cross public streets to get to the playgrounds, of course? A. Yes.

Q. And several of them? A. Yes.

Q. And so far as those others are concerned, that element of desirability is absent, isn't it? A. I would think not entirely.

Q. Why not? A. Because they are nearby; one street to cross instead of many.

Q. Have you estimated what the population of the houses will be? A. No, I have not.

Q. Have you any idea? A. No, I know nothing about the building plans.

Q. Do you know what kind of tenants are supposed to live there? A. No, I do not.

Q. Do you know what the rents are going to be? Do you know that they are going to be tenements? A. No, I just understood that they were to be occupied by families; that is all I know, not to be commercial buildings for factories or stores.

Q. You did not know that they were to be tenements and to be erected under a housing plan which would secure a minimum rent? A. I understood that they were to be erected by some plan whereby the rents would be moderate.

Q. Do you know the character of tenants that live in that neighborhood, and who are expected to occupy these houses? A. Yes, as I observed, from seeing the people such as were in the streets. I visited no homes.

Q. These elements that I have referred to, which you do not know or are not familiar with, isn't it rather important that you should know that, and they have something to do with the desirability of these two blocks of interior lands for park purposes? A. I would not think so, unless I was making a study of the whole district to determine where playgrounds ought to be located. I was simply testifying as to the desirability of this kind of area where houses are supposedly to be used by families. I haven't made any plans for the district at all, any study of locations in general.

Q. One element is of importance at least, and that is the number of people who are supposed to occupy these houses, isn't it? A. As regards the amount of use that would have to be made of them.

Q. That goes into the desirability of that property for park purposes? A. I got a general impression, sir, of that situation by the fact that I noticed three public schools in the vicinity which would indicate that there were a number of children around there.

Q. That isn't quite my question. The number of families that are going to occupy these houses, that are going to line this public park, isn't that an element to be taken into consideration with

respect to the desirability of that land for park purposes? A. I should think so; it would be one element.

Q. Did you know that these houses were going to occupy every foot of land up to the public park? A. So I understood.

Q. And that they would have no back yards? A. Yes, that was my understanding.

Q. That is the inevitable result of that? A. I don't know quite what you mean.

Q. Isn't the inevitable result of that, that these parks will be the back yards of these houses, isn't that just as sure as night follows day? A. It would be where the children would be likely to want to play, I should think.

Q. That would be where the children would be likely to want to play, and it would be where the occupants of the houses would want to do what is ordinarily done in a back yard; isn't that true? A. I think that would depend on the construction of the houses.

Q. How would the construction of the houses, unless they were blank walls——(interrupted) A. If the services were provided for from the front, I don't see how there would be any need to have any back yards for that purpose.

Q. You knew that most municipal ordinances and the like require that a certain amount of the plot should not be built on? A. Yes, I do.

Q. And what is the purpose of that? A. I suppose it is for light and air.

Q. Do you know of any case where a public park has been constructed as here, between two rows of houses running the length of the block, and the houses built flush with the park line, and the backs of the houses facing the park? A. No, I do not.

Q. You have had a great deal of experience, haven't you? A. Yes.

Q. And you are pretty familiar with municipal parks over the country? A. Yes. I would not say that there were none of that kind, but I just don't know of them, not exactly that type.

Q. The park that you have been talking about over in New York, on 59th Street; was it? A. Yes, West 59th Street.

Q. And near what? A. I should think it was between Ninth and Tenth Avenues, if I remember correctly.

Q. That parks cuts through a block? A. Right straight through.

Q. And faces the side of the house which happens to be on two streets, one house in front, and one house on one street and one house on the other street? A. That is right.

Q. There is a house on each corner, and it is the side of the houses? A. Yes.

Q. That is an entirely different situation from what is proposed here, isn't it? A. Somewhat different, only they use this interior space, and it is immediately adjoining the houses.

Q. And one house, or four houses? A. Yes.

Q. You don't call that comparable to this strip which is utilized with the back yards of a whole line of houses? A. Not absolutely. I was asked if I knew of anything approximately similar.

Q. Is it anywhere near comparable? A. I should think it had the elements of similarity, sir, in that it immediately adjoins the homes, and did occupy the interior space as well as the front.

Q. What kind of houses are those that are on the 59th street side? A. They are tenement houses, mostly occupied by colored people, as I remember it.

Q. Do you know how that park came to be there? A. No, I don't know the history of that, how the City did come to acquire it.

Q. Do you know when it was established? A. No.

Q. This 81st Street park, where is that? A. That is on East 81st Street. I think the avenue on the west of that block is Madison; that is as near as I can remember. I think Madison Avenue on the west, and on the north side of the block, facing 81st Street.

Q. The situation there isn't at all comparable with the situation here, is it? A. It is, in that they have taken this back yard area and included it in the playground, and the playground comes up immediately to the rear of these houses and the sides of those.

Q. How many houses are there involved there? A. I cannot tell; do you want me to guess?

Q. Yes. A. I should say about ten, something like that.

Q. And does this park face on a public street? A. Yes, on 81st Street.

Q. 150 feet? A. I think more than that. I think the depth is about 150 feet on the avenue.

Q. 300 feet? A. And I think 300 feet on 81st Street.

Q. 300 feet faces on the public street? A. Yes, on 81st Street.

Q. And then it runs back 150 feet? A. Approximately, I would think.

Q. It runs from one street back to the— A. To the rear of the houses.

Q. And the property line of the houses facing on the other street? A. Yes.

Q. Do you know whether those houses are flush with the park? A. I don't know, but I would

guess that there was some little space there between the edge of the park and the houses. I am pretty sure there is a little back yard space there.

Q. Does that park occupy the whole block? A. Oh, no, only this portion of the block (indicating).

Q. Does it occupy a corner? A. Yes.

Q. Do you think that a situation where a park is constructed on a corner of two streets and runs back, one is on one street 300 feet and on another street 350 feet, and its rear line up to the property lies on the other side of the ordinary back yard space between that line and the houses, is comparable to the situation that we have here presented? A. With respect to its accessibility for the children, and the use of some interior space.

Q. That is with respect to its accessibility to the children residing in the houses, the back yards of which face the park? A. And all around the block, because they wouldn't have to cross any streets to get to it; they would go on the sidewalk to get to it, and of course there are children across the street. You couldn't get playgrounds without having some of the children who use them, to cross the street. We havn't been fortunate enough to do that yet. I wish that we might be.

Q. Have you in mind any other instances than those which you have referred to, which you would consider at all comparable in the situation that we have here? A. I don't recall any just at this moment, sir, because I haven't gone into the thing far enough. If it was desired, I should be glad to make some further investigation and give you the memoranda.

Q. Do you know, or have you computed what the effect of two rows of houses extending for seven hundred feet, five stories in height, would have

upon the light that would permeate into that interior 140 feet? A. I have not computed it, no, sir. I just have the general impression of the shadows that would be cast.

Q. Do you know how many hours a day the sun would shine on the whole of that 140 feet? A. No, I do not. Looking at your direction arrow on this map, I should expect, since it is open at the southern end, that there would be a period in the day, of a few hours, when the sun would shine the full length of the block.

Q. There would be a very few hours— A. In the middle of the day.

Q. —if not a very few minutes, that each square foot of that 140 by 700 feet would get sunlight, isn't that right? A. Yes, there would be a few, when the whole thing would get it. Would you permit me to say, sir, that shade is very desirable on a playground?

> Mr. Lane: Yes; some playgrounds are not being used very much, because there is no shade at all in the hot weather, in the summer.

Q. You are testifying with respect to the desirability of this plot as a playground? A. Yes.

Q. Only? A. Yes, that is right.

Q. And not as a public park? A. I should hope it would be landscaped and beautified by some planting.

Q. Landscape and beautification require sunlight? A. We will get considerable sunlight.

Q. There is a way by which you can compute exactly how much sunlight there will be? A. Yes, considering the height of the buildings.

Q. It would vary at different times of the year, too, wouldn't it? A. Yes.

Q. As a matter of fact, it would vary every day in the year? A. Yes.

Q. Do you know of any municipality which at the present time permits the occupation of every square foot of property for building purposes? A. No, I do not. I don't know the details of that. There are zoning ordinances that fix the ground coverage that may be used, but just the details of it, I don't know.

Q. How many times have you been in this neighborhood? A. Once recently. I was reminded by Mr. Kelly as I came in, that some years ago I was over there looking at another playground. Just once, to look this over.

Q. When was that you looked it over? A. Last Thursday afternoon, the eighteenth.

Q. Did you examine the vicinity to ascertain whether there were any other more desirable sites for a playground or public park? A. No, I did not, with that in view; we drove around the general similar vicinity, and noted what it was.

Mr. Groel: The witness is only offered to show the availability of this particular layout for park and playgrounds. I didn't ask him any questions as to the others.

Q. Have you ever been asked to advise in a situation similar to this? I am excluding the 81st and 59th Street sites. A. I advised on the 81st Street; no, I have never had a case where the municipality was proposing to lay out a playground covering the whole interior of the block. I should be glad to, however.

Q. And what was the advice sought from you then? A. From Mr. Stover?

Q. Yes. A. Whether that would be a desirable location for a playground. That was before it

was acquired by the City, and on the character of its layout, what it should be chosen for—small children or larger, or whether it should be divided into areas, some for small and some for older, and what kind of equipment should be put on it.

Q. Have you taken into consideration the difficulty or the lack of difficulty of policing that park and keeping it clean? A. No, I didn't sense any special difficulty there over any other playground, because it will have its custodians who will care for it the same as on any play space.

Q. Doesn't the fact that the whole line of the park, 1,400 feet, is to be faced with a block of tenement houses, have some effect on the difficulty of keeping it clean and policing it? A. I should expect it would; it would be a factor; not very great, though.

Q. Have you reached any conclusion as to how much of that interior would be available for park purposes, or do you consider it all available for park purposes right up to the house line? A. If you would include walks and planting and areas for grass and so forth, and park purposes, I should say "Yes". If I were laying it out, I should have a sidewalk on each side and some planting bordering on the center space developed for recreation.

Re-direct examination by Mr. Groel:

Q. In reaching your conclusion that these areas were desirable for park and playground purposes, would the fact that there are buildings on the easterly and westerly sides, which prevent the children from going out into Somerset and Barclay Streets, influence you in making that decision? A. No, I wasn't thinking of that. I was thinking more of the accessibility for them to get

onto the playground. I don't know what the construction of the buildings would be. Maybe they would have easy access to the street, for all I know.

Q. Would it be a desirable thing to keep the children off the streets? A. Very.

Q. And if buildings were erected alongside of the playground, would that tend to keep children off? A. I should say it would.

Q. Mr. Lane asked you if you had had occasion to recommend to any municipality the establishment of park and playground area exactly similar to this, with buildings on both sides Your answer was— A. Yes.

Q. If such a question had been put to you by a municipality in the United States, what would be your recommendation? A. I would have. I should recommend a playground, the same as I am in this case.

Q. Your recommendation would be the same as you have given? A. Yes.

Re-cross-examination by Mr. Lane:

Q. Have you ever, when a city has proposed to erect a playground, recommended that it shouldn't? A. I am afraid I haven't. The tendency is all in the other direction.

Q. One more question with respect to the 59th Street plot, that I overlooked; do the sides of the houses in that case come flush to the park? A. My impression is that they do; they come directly up to the play area.

Charles J. Storey, for Respondents—Direct.

CHARLES J. STOREY, a witness called on behalf of respondents being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. What is your occupation? A. I am the executive secretary of the City Recreation Committee of the Welfare Council of New York City since last July.

Q. Before that time what was your occupation? A. I was eight years with the Regional Plan of New York, which is connected with the Sage Foundation, in charge of their recreation surveys.

Q. Previous to that what was your occupation? A. I was connected with several organizations, known as the National Child Welfare Association, and during the War, with the Committee on Training Camp Activities, which concerned recreation facilities.

Q. Previous to that what was your occupation? A. I had a number of recreation surveys—small jobs in New York City, right after I left college.

Q. In connection with your work of the National Child Welfare organization, what duties did you perform? A. I was a field secretary and travelled over the country giving advice on child welfare programs in different cities.

Q. Did you ever make any surveys as to the requirements of municipalities of playground and park facilities? A. That came in generally in my work then, which was principally on general child welfare and concerned playgrounds, but most of my experience with actual playground work has been with the Regional Plan in the last eight years.

Q. What has been your work with the Regional Plan? A. Studying New York City in regard to

its municipal recreation facilities, especially, which would be provided on a plan, such as open spaces for playgrounds and small neighborhood parks.

Q. Have you made any recommendations to the officials of the City of New York regarding playground and park areas in congested districts? A. Yes, in 1928, the Chief Engineer—Tuttle—of the Board of Estimate, asked my help in laying out a plan, selecting plots for the City to purchase for playgrounds under a special appropriation, and I gave considerable help to him on that. Early last spring, the comptroller, who had charge of the expenditure of money for special playgrounds, asked my help, which I gave him, in working out the details of a plan for playgrounds in all boroughs, which he presented to the Board of Estimate.

Q. Was that recommendation acted upon? A. Yes. It is being acted upon now. Of course, I was consultant, and they took my advice on the matter, and other people's, too; the park commissioners, naturally.

Q. Were any of the recommendations that you made for the location and establishment of parks and playgrounds in congested areas, actually carried out, or plans made for the actual carrying to completion of these recommendations? A. One, under Engineer Tuttle, has been actually bought. The others, of course, in their method of procedure, they cannot always buy the plots which are recommended. They buy those nearby.

Q. Are they proceeding to acquire some of the others besides this one? A. Yes.

Q. Have you made any recommendations in addition to those, in the State of New Jersey, for the development in a municipality of park and play-

ground facilities surrounded by buildings? A. I have been on the Consulting Committee of Radburn, which is a privately organized housing corporation, which is putting in a city up near Paterson.

Q. Are you familiar with the tract of land bounded by Waverly Avenue, Somerset Street, Montgomery Street, Barclay Street and Spruce Streets, in the City of Newark? A. Yes, I visited it.

Q. You are familiar with the buildings on those lands? A. When I visited it.

Q. And the character of the neighborhood? A. Yes, from my trip there.

Q. In your opinion, do you think that a strip of land approximately 140 feet in width and 1433 feet in length, bounded on the easterly and westerly sides by buildings 30 feet in depth, to be used for residential purposes, and with the northerly and southerly end open on the streets, is fitted and desirable for the establishment of park and playground facilities by a municipality for the public at large? A. Yes, I think that is a suitable project.

Q. What are the reasons that bring you to that conclusion? A. Talking on this particular one, the accessibility of the small children to it, especially those which live in the houses right along by this playground; that is the principal reason which would be different from any other plot that you might have there, if it didn't have the buildings on it.

Q. How does that compare with the other parks and playgrounds in the City of New York, in area? A. I understand it has over four and one-half acres, which it is proposed to devote to parks, and there are many—there are a number of play-

grounds in New York City in congested parts, which are very much smaller than this plot.

Q. Are these areas in New York that you have in mind, surrounded at all by buildings occupied by people for dwelling purposes? A. The two I have in mind, one, the 59th Street playground which Mr. Hanmer spoke of, which is less than a quarter of an acre, and is cut crossways of the block, with tenements on either side of it, and open on the opposite streets. There is another one, the Yorkville playground, at 101st Street and Second Avenue, which is taken out of the side of a block on the long side, out of the center of the block, and it is surrounded on three sides by residential buildings. Those are the only two that come to my mind just now.

Q. In New York City, in addition to these two, are there any park or playground areas of less number of square feet than the number of square feet in those particular areas? A. Yes, there are several playgrounds. These two I have cited are very much less than this area.

Q. In reaching your conclusion which you have expressed, did you endeavor to make any plan as to how you would develop this particular area, if you had been requested by the City of Newark to make such a plan? A. To clarify my mind, I made a rough sketch of what might be laid out, showing certain neighborhood park qualities and playground qualities.

(Sketch produced.)

Mr. Groel: I will ask to have it marked for identification.

(Marked Exhibit D-3 for Identification.)

Q. Mr. Storey, will you explain this layout which you have produced? A. This roughly takes about

two-thirds of the space for playgrounds, which would be open, and about one-third of the space for grass and bushes and small trees, to give it a parklike quality, which it should have. This parklike quality would be for the older people to use it in the evenings, for a place to sit in the warm weather, and it would be more than just a children's playground in the daytime. As I say, it could serve both purposes, for the older people and children; it would all depend on how the space was designed.

Q. You think, though, that this space which is proposed to be acquired by the City of Newark will make a satisfactory park and playground area? A. Yes, I think so.

Q. And the fact that the buildings would be parallel on the easterly and westerly side, would it make it fitted or unfitted for these purposes? A. No, it would have the advantages that the small children in those homes could go right out their doors, right onto the playground, and that is a great necessity in a crowded section.

Mr. Groel: I offer in evidence Exhibit D-3 for identification.

(Marked Exhibit D-3.)

Cross examination by Mr. Lane:

Q. In other words, these two strips would make good strips for back yards? A. I wouldn't say they were exactly back yards, in the sense of being used for back yards, because here they would really be parks and places for children to play.

Q. Wouldn't they be what we really mean by back yards? A. Some back yards are used for dumping grounds and all sorts of stuff.

Q. Quite likely that these back yards will be used for the same purpose. A. I think that would be a question of how they were managed, the administration of them.

Q. There would be a tendency that way, wouldn't there? A. Of course, there is a human tendency to throw things out of the window, but still as a matter of education, I don't think that is unsurmountable. These people who would live here would have these playgrounds for their children, under, I suppose, a play leader, so that they wouldn't be digging up in places where they shouldn't be. Unless it was administered properly, it would be a detriment, not only to those houses, but to the entire neighborhood.

Q. Exactly. Will you tell me what leads you to believe that the residents of these houses—tenements, five stories high—who had no other back yard, wouldn't, at least, attempt to use this property, which is where a back yard ought to be, for the ordinary purposes a back yard is used for, including dumping and everything else? A. I can only reply to that, it would be a matter of park administration, whether that could be prevented or not.

Q. It would be a matter for the police, wouldn't it? A. It would be a matter of education.

Q. Education, plus a big stick in the hands of the policeman? A. We have that with playgrounds now; if they are not looked after carefully, they certainly get into an awful sight.

Q. Yes, but where you get in that physical condition that a back yard would be, the difficulty is a great deal greater, isn't it? A. I think if those buildings were there, and the park and playground were there, when the people came along to rent the houses, they probably would sense that, and

they could do it in two ways: they could rent it to the people that they thought would take care of those things—desirable tenants, the same as they do in any model housing scheme.

Q. You consider this part of a model housing scheme, don't you? A. Of course, the houses have a good deal to do with it.

Q. The two go together? A. The two go together.

Q. You wouldn't think for a moment of putting a public park there, if the structures which are now on there were going to remain, would you? A. No.

Q. Nobody else would, in your opinion, would they? A. Of course, unless it was going to be improved that way along the site, there wouldn't be much use of doing it.

Q. Hardly; one rests on the other, does it not? A. Yes, that is my opinion. As I understand it, this is not a proposition of leaving the ramshackle buildings there, and selling this center piece to the city, but it is combined with the proposition to build on the other site, to an even line of 30 feet, and the other is going to be empty; it will be a public park.

Q. A public park is a misnomer, isn't it; you mean a beautiful back yard, don't you? A. The city planning space which is operated by the park departments, at least, in New York City, is park property; playgrounds are public property.

Q. Do you know of any place in the United States which has come to your attention, where there is a situation like this? A. It is unique, as far as I know. We haven't had a chance to look it up, whether there is anything like this.

Q. How many years have you been connected with public park— A. Most of my experience has been in the last eight years with the Regional

Plan, and I had opportunity to study a good many plans.

Q. No other municipality, up to this time, with all this development of public parks in the last twenty-five years, has ever hit upon this kind of a thing, have they? A. Not exactly, except those instances that I told you of.

Q. Play grounds where they have carved out parks, you don't call those instances comparable, do you? A. They are, as far as the surroundings of the space are concerned.

Q. Do you know how many people are going to occupy these houses? A. No, I haven't the least idea.

Q. That is something to do with the question of desirability of that property for park purposes, hasn't it? A. Well, in some ways it has. If there are a great many children there, that would be a very desirable place for all those children to play. If that is five stories, there will be a good many children there.

Q. Radburn, near Paterson, that is a private enterprise? A. Yes.

Q. And as a part of their housing plan, the people who are building it are providing for these outlets for each block, or something of that kind? A. I didn't give that as a comparison to this; that was just a matter of my advice to them.

Q. Has your advicve which has been given to other municipalities, or other boards, ever not been followed? A. Yes, often they don't follow it, because they don't proceed with the plans; there are lots of plans, but they are not always carried out.

Q. Do you know of any instance, and if you do, tell me about it, where you have advised a municipality not to establish a public work? A. No, but of course, negatively I wouldn't advise a spot where they might not be the proper thing.

Q. Do you know of any place where you advised them not to put it at the place proposed; and if so, give the instance? A. No, I cannot tell you.

Q. You want public parks; that is your disposition, isn't it, to want them, and if you can get them, you are going to create them? A. There is little difference between parks and playgrounds.

Q. Playgrounds? A. You can put a public park in one spot where a playground wouldn't be a place for it at all.

Q. But you haven't happened to have presented to you a case where the playground should not be put in the spot where the municipality wanted to put it? A. I cannot remember any.

RANDALL D. WARDEN, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. What is your position? A. Director of physical education of the City of Newark.

Q. And have been for how long? A. Since 1904.

Q. And previous to that what was your occupation? A. I was professor of physical education, in New York City.

Q. For how long a period? A. Two years.

Q. What were your duties in the City of Newark and what are your duties now as Director of Physical Education? A. I have the direction of the physical welfare and health of the seventy thousand children of the City of Newark.

Q. And in connection with your duties, do you have anything to do with control and regulation and establishment of playgrounds? A. I have in a way, now. When I came to Newark, in 1904, there were about five playgrounds in the city, and I was made director of the playgrounds as well as director of physical education, and from that time until 1929 I was not only the Director of Physical Education, but the Director of Playgrounds.

Q. In connection with your work as Director of Playgrounds, did you have occasion to advise the officials of the City of Newark or the Board of Education as to any areas that were desirable or fitted for the establishment of playground sites? A. Yes, I did.

Q. As a result of those recommendations was anything done by the Board of Education and the City officials? A. Nearly all of the playgrounds that have been established in Newark, except the municipal playgrounds established under the Playground Commission, which was in existence for a few years in Newark—all the playgrounds that have been established were recommended by me.

Q. So that all the playgrounds that have been established in the City of Newark since you have been Director of Physical Education in this City, have been established as a result of your recommendation? A. Yes, sir.

Q. What other experience have you had, in addidition to what you have already mentioned, in this sort of work? A. I organized and developed a school—a normal school of physical education, in 1917, and was the President of that institution, up until about 1920. That institution graduated teachers of physical education and teachers of playgrounds, and those teachers are employed in many cities of the country.

Q. Are you still connected with any institution that seeks to train individuals for this sort of work? A. I am still connected with that institution as a lecturer.

Q. You give courses there? A. Yes, sir.

Mr. Lane: Are those all the questions you want to ask on his qualifications?

Mr. Groel: Yes.

Q. Are you familiar with the property located in the City of Newark, bounded by Waverly Avenue, Somerset Street, Montgomery Street, Barclay Street, and Spruce Street? A. Yes, I know that locality very well.

Q. Are you familiar with the type of people that live in that vicinity? A. Yes, sir.

Q. Are there any schools in that vicinity? A. Yes, sir.

Q. Where are they located? A. There is one on Monmouth Street, one on Montgomery Street, and there is one at Belmont Avenue, one at Charlton Street, one at Eighteenth Avenue.

Q. In any of those schools have any playgrounds been established for the children in that neighborhood? A. Yes.

Q. In your opinion, do you think that a strip of land 140 feet in width, approximately 1433 feet in length, running north and south, bounded on the westerly and easterly sides by buildings to be used for residence purposes, 30 feet in depth, is a fit location for the establishment of a playground in this particular section?

Mr. Lane: I object to that question upon the ground that the witness is not qualified.

A. I do.

Q. And what are the reasons? A. In the first place, I would say the main reason is the amount of area that is given over to recreation, in comparison with areas throughout Newark, it is a very large area; and in the second place, I would tell what the other witnesses have said, that its accessibility is a very great factor in favor of this location. I would like to stress the point of shade, that was touched upon. Shade is a great factor in a playground. Playgrounds need shade more than any other element, during the summer, at least, and very few of the Newark playgrounds have sufficient shade. Here is an opportunity to establish a very suitable recreation point for summer. I think, too, that there is ample opportunity for sunlight, plenty of sunlight. I think that the fact that mothers could have an oversight of their small children in the rear of their homes would be a very splendid factor for development of a playground. I think that the whole community would be interested in a playground with the beauty and accessibility that would be developed—a strip 1400 feet long by 140 feet wide.

Q. You think there is sufficient area in this particular strip for playground purposes, for children living in this vicinity? A. Yes. I think taking into consideration the fact that there are large playgrounds nearby, such as the Charlton Street playground, the municipal playground that has been put in by the Park Commission—the Park Department, makes it doubly advantageous, because these parks could be used for the older boys, while this plot of ground could be utilized for the younger children of the neighborhood.

Q. The fact that buildings to be used for residence purposes would border the easterly and westerly sides of this area—would that fact make

it unfitted for playground purposes? A. I think it would be an advantage.

Q. Are there any playgrounds in this particular locality used by children in the negihborhood, which are bordered by buildings? A. Yes, there are several that have the backyards run up to the playground, and others that have the sides of the buildings on the playground.

Q. Are there in that locality any that are bordered on three sides by buildings? A. Yes.

Q. What are those? A. I think of Waverly Avenue, of Camden Street, and I think South Eighth Street, I am not quite sure. South Eighth Street has it on two sides, at least. South Eighth Street has the buildings running the backyards up to the playground line, but the two that I have mentioned would be Waverly Avenue and Camden Street.

Q. Are there any areas in the City of Newark used for playground purposes or in connection with park purposes, that come under your jurisdiction, which are as large or larger than this area? A. There is one play space that I know of that is larger. That is what is known as the Newark School Stadium, in Roseville Avenue.

Q. With the exception of that particular site, are there any others? A. I think not.

Q. The majority, then, are— A. Not more than an acre or acre and a half, something of that sort.

Cross-examination by Mr. Lane:

Q. Counsel has been referring to this strip as a strip 1,400 feet long. Do you understand that the street bisecting Spruce Street is to be eliminated? A. No, I understand that that street is to go through there, but the opening there will permit the development of the plot for recreation as a whole.

Q. But the street is going to remain a public street? A. Yes.

Q. Do you know of any instance in the City of Newark or elsewhere, where a public park serves as a back yard for a house? A. I cannot mention places, but there are places throughout the United States where they have developed backyards, and there have been treatises written upon the advisability of developing backyard playgrounds.

Q. Do you know of any instance? A. I am sorry; I cannot quote any instance.

Q. These instances which you have referred to in the City of Newark, the houses have their backyards? A. Yes.

Q. What is your remedy for preventing this public park being used for the purpose that backyards are usually used for? A. I take it that the ashes and coal and that sort of thing will be taken out the front. I understand that there will be no opportunity for gardens to be developed in the backyards, but my experience with playgrounds, gardens and backyards are a great detriment to the management of a playground.

Q. You would rather have the houses flush with the park, so that everything coming from the houses can be thrown down and land in the park, and the like of that? A. I imagine that this will give an opportunity to make a great change in the slovenly way that tenements live.

Q. You think that people who live there will be educated by the presence of the park not to do those things? A. I can see that there will be difficulty. I can see that it will not be all a bed of roses.

Q. There will be considerable difficulty, won't there? A. I wouldn't say that there would be any more difficulty than we have in the management of playgrounds where they now lie. We are troubled

now with complaints of balls coming over fences into gardens and ruining flowers, and truck gardens and things of that sort.

Q. That is the other way around; that is things coming from a playground on private property. I am now talking of things coming from private property to the playgrounds. A. Playgrounds will have to suffer now, instead of private owners.

Q. I suppose you will have baseball on this public park? A. No. This cannot have baseball, as we know baseball.

Q. You couldn't have anything that involved the throwing of anything, could you? A. Yes, there are certain games; dodge ball and back ball, and things of that sort will be played.

Q. I don't suppose there would be any danger to the windows in those houses? A. We obviate that difficulty by screening windows, and I suppose that if the people that own the houses want to prevent damage, they will screen their windows.

Q. How many people are going to live in these tenements, do you know? A. I haven't any idea.

Q. How many apartments in each tenement? A. I wouldn't know.

Q. That is an element to be taken into consideration, what the population of this park is going to be? A. Yes. The greater the population, the more necessary the playground.

Q. And what is the population of these particular park buildings? You think the population of the park buildings will pretty nearly fill that playground? A. No, I don't think so, because if it has four and one-half acres, that is a pretty large piece of ground, and there will be room for their children.

Q. How far from this proposed playground are the other playgrounds located in the neighbor-

hood? A. One is a block away, one is two blocks away, and one is three blocks away; others probably five blocks.

Q. And those are in connection with schools? A. All except the one that the Park Department has developed.

Q. And these schools are how far away? How far away is the one that the Park Commission has established? A. That is about, I should say, six blocks away; I am not quite sure about that, but that is the farthest away of them all.

Re-direct examination by Mr. Groel:

Q. Mr. Warden, these playgrounds that are in this particular vicinity, you testified on direct examination that buildings bounded the sides of some of them? A. Yes.

Q. Have you ever had any complaints made to you as Director of Playgrounds, by any of your subordinates, that the people living in these buildings bounding these playgrounds do use them as a dumping ground? A. No, sir; I have no recollection of that sort, no, sir.

Q. As a matter of fact, there is a playground on Somerset Street, is there not, in connection with the Monmouth Street school, right across the street? A. Yes.

Q. Have you ever had any complaints from the people in charge of that playground, that stuff was thrown from the windows of the adjoining buildings in that area? A. I don't think we ever had any such case at all.

Q. Do you have any trouble in supervising the control and policing of this playground? A. Because of the fact that these buildings border on the side of it, we have had trouble in the neighborhood, due to the fact that the children got into

the playground at night and made noise and disturbance, but never any complaint from the people in charge of the playground that the neighbors interfered with the playground at all.

Q. Is baseball played on any of those playgrounds? A. They play a game that is similar to baseball; we call it indoor baseball. Mr. Barrett calls it another name still. He is the new director. It is played with a fourteen-inch soft ball, and the ball does not travel very far when hit.

Q. Are you an employee of the City of Newark, or Board of Commissioners of the City of Newark, or Board of Education? A. Board of Education.

Re-cross-examination by Mr. Lane:

Q. All these houses that you have referred to, on public parks, or bounding public parks and playgrounds, have their own backyards, haven't they? A. Oh, yes, I know of no case where the property abuts a playground that hasn't a back yard, but I do know of cases where sides of apartments, perhaps four-story apartments, are built up, and windows are directly on the playground, right in that neighborhood. The Prince Street playground has such an apartment, a tall apartment with windows, right on the line.

Q. But they have their own back yards? A. Yes.

LEWIS R. BARRETT, a witness in behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. What is your occupation? A. Director of Recreation of the City of Newark.

Q. How long have you been director? A. Since April 16, 1929.

Q. And what was your occupation previous to coming to Newark? A. Superintendent of Recreation for Des Moines, Iowa.

Q. How long were you there as superintendent? A. Possibly eight years.

Q. What was your occupation previous to that? A. I was connected with the athletic department of Grinnell College.

Q. What connection? A. Football.

Q. You entered the athletic department of Grinnell College upon graduation from college? A. On graduation from college I went into the Army and was there for two years; on my discharge from the Army, I went there.

Q. What degree did you receive from Grinnell College? A. Bachelor of Science.

Q. In connection with your work as Superintendent of Recreation at Des Moines, Iowa, did you have occasion to make any recommendation to the officials of that municipality as to the location of park or playground sites? A. Yes, sir.

Q. Did you make any such recommendations? A. Yes, sir.

Q. Were those recommendations acted upon? A. In some cases, yes.

Q. In how many cases were they acted upon? A. I would say approximately eight.

Q. What was the result of those recommendations? A. The eight that I spoke of were playgrounds that were established upon my recommendation.

Q. Eight playgrounds were established? A. Yes.

Q. Did you have anything to do with park work in the City of Des Moines? A. Yes, I was connected with the Park Department directly as Superintendent of Recreations and had the general administration of both school and park playgrounds.

Q. Did you recommend sites for the location of parks? A. Yes, sir; in connection with a recreation or park survey that was made in Des Moines by Bartholomew Hanland, City Plan Engineer of St. Louis, Missouri; I worked in conjunction with him on that recommendation, making the recommendation for the establishment of parks.

Q. Since you have been in Newark have you made any recommendations for the establishment of any playground in the City of Newark? A. Yes, sir.

Q. Where? A. Garfield School, in connection with the Garfield School, concerning the acquisition of more property for playgrounds; Oliver Street, South Market Street; that is all I can think of.

Q. Are you familiar with this area in the Third Ward of the City of Newark, bounded by Waverly Avenue, Somerset Street, Spruce Street, Montgomery Street and Barclay Street? A. Yes.

Q. Are you familiar with the character of the people living in that vicinity? A. Yes.

Q. Have you had occasion as Director of the Playground Department of the City of Newark, to supervise any playground activities in that vicinity? A. Yes.

Q. Are there any playgrounds under your supervision in the vicinity that you supervise? A. Yes, sir, there are four.

Q. In your opinion do you think that an area approximately 140 feet in width, 1433 feet, approximately, in length, and bounded on the easterly and westerly sides by buildings to be used for residence purposes, approximately 30 feet in depth, with the northerly and southerly ends open, facing Waverly Avenue, Spruce and Montgomery Streets, and with the middle open, is a fit place for the establishment of a playground for the inhabitants of that particular section of the City of Newark?

Mr. Lane: I object to that on the ground that the witness has not qualified.

A. Yes, sir.

Q. What are the reasons that lead you to that conclusion? A. It is an unusually large area for a city the size of Newark; the size of the area would allow for development as a small children's playground in that neighborhood park; the fact that it has buildings on the east and west sides, protecting the area from Barclay and Somerset Streets, is an advantage. It shelters the playground. It makes an excellent place for a small children's playground. It would fit in admirably well with the school playgrounds we have in that particular vicinity, because there we are troubled a great deal with small children being forced out into the street, when the older girls and boys are in that playground. Such an area as this would provide a place for the small children; not only the small children in the apartments adjoining there, but the small children in the neighborhood.

Q. The fact that the buildings border the easterly and westerly sides of this area, when this building will be occupied by families for residence purposes, do you think that that fact makes this particular area unfitted for playground purposes? A. No, sir.

Q. You say you have supervised the playgrounds there in this vicinity? A. Yes.

Q. Just what are those playgrounds; let us have them. A. There is a playground in connection with Monmouth Street School, that lies on Somerset Street, that lies right back of Montgomery Street. There is a playground in connection with the Montgomery Street School, which lies right back of that. Then the Prince Street playground is a block up here, on Waverly Avenue (indicating); these are the three immediate playgrounds.

Q. These playgrounds are under your supervision? A. Yes.

Q. Have you ever had any complaint by your subordinates, who are in charge of these playgrounds, that the people living in the houses adjoining, have been dumping or throwing things out of the windows and out of these houses, into these playgrounds? A. No, sir; I don't remember of any such complaints.

Q. Have you ever had any difficulty policing or controlling these playgrounds? A. Only from the standpoint of balls, and so forth, going into the back yards of the adjoining property; not from the standpoint of the abutting property owners throwing things into our property.

Q. What is the area of these playgrounds that you have mentioned in comparison with the area of this particular strip, larger or smaller? A. Much smaller. The total area of the three play-

grounds would be about one-fourth of the total area in the two blocks under discussion.

Q. Are there buildings surrounding these playgrounds that you mentioned? A. Yes, sir.

Q. Do you think that the fact that buildings will border these particular areas, makes them unfitted for playground purposes? A. No, sir; I do not.

Q. Are you employed by the Board of Education of the City of Newark, or by the Board of Commissioners of the City of Newark? A. I am employed by the Board of Education, but I might add——

Mr. Groel: That is all.

Cross-examination by Mr. Lane:

Q. How much population has Des Moines? A. In the neighborhood of 170,000.

Q. How much has the City of Newark? A. I think roughly about 450,000.

Q. According to your judgment, the fact that this public park is lined with the rear of these houses, is a betterment, not a detriment. You would rather have the houses there than have the plot open for playground and park purposes? A. For a small playground, sure.

Q. Do you know of anybody else who has expressed that view? A. I think it is quite generally recommended by city planners and recreation people throughout the country, that in cases similar to this, that the area which is usually used for back yards be put together into one plot and used for playground or neighborhood park.

Q. What do they use, then, for the use to which they usually put the areas usually used for back yards? A. They think of this as front yards.

Q. Front yards? A. Certainly; the back yard is usually the street.

Q. And this is not going to be the back yard of those houses, but it will be the front yard of those houses? A. Certainly; that is the way I would think of it.

Q. At any rate, it is a yard appurtenant to the house? A. It might be considered such.

Q. It is not a question of what it might be considered; it is. A. It would be, if it was a private development; when it is put into one large piece and developed as a neighborhood park, I question whether it is a back yard.

Q. Is it a neighborhood park or two block park? A. I think that would be generally accepted as a neighborhood park.

Q. A two-block park in that location, a two-block park appurtenant to the rears, and forming the front yards, of the houses, that is a neighborhood park, is that right? A. Certainly.

Q. You say all over the United States you have been improving these interior areas. Will you give me a single instance? A. The statement I made was that it was quite generally accepted by city planners.

Q. You say it is a thing that is quite generally accepted by city planners. Will you tell me any instances where it has been generally accepted and carried out in some city by city planners? A. The City of Radburn.

Q. That is a private development? A. Yes.

Q. Give me some instance where somebody has carried out the plan of the city planners and a municipal authority established a park like this, forming front yards in the rear of the houses. A. I think there are instances, but I cannot recall any of them. If I am not mistaken, I think there is one in Memphis, Tennessee, but I wouldn't say definitely.

Q. You wouldn't say definitely? A. No.

Q. Will you tell me someone in authority in Memphis, Tennessee, who I can write to, who will tell me? A. You can write to the Chairman of the City Planning Commission.

Q. Do you know of any other instance? A. No, I haven't made an investigation of that. I simply know it is generally recommended.

Q. Do you know how many people are going to live in these houses? A. I haven't the slightest idea.

Q. Do you know how many tenements there are going to be in them? A. No, sir.

Q. That has something to do with it, as to the availability and practicability of this thing as a public park? A. The more people live there, the more practical and the more it should be available for park purposes.

Q. Will you tell me whether the people living in those houses, having considered this park as a front yard, will they consider, do you think, the street as the back yard, and use that street for the purpose back yards are usually used for; and if not, what will they use for back yards? A. I am not able to say as to that. In all probability, ashes, garbage and so forth, will be collected on the street side as they are now.

Q. Yes, I know. Do you anticipate any difficulty in policing this park and keeping it clean? A. Not any unusual difficulty, not any more difficulty than we have in similar areas used for playground park purposes.

Q. You don't think that the fact that these houses are flush with the park line, adds a difficulty? A. No, sir.

Q. Not at all? A. No, sir; I see no reason why they should.

Q. How old are you? A. Thirty-eight years of age.

Q. You have been here while the other witnesses have testified, haven't you? A. Yes.

DAVID I. KELLY, a witness on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. Where do you live? A. 54 Boyden Street, East Orange.

Q. What is your occupation? A. Secretary and Director of Recreation of the Essex County Park Commission.

Q. And have been for how many years? A. I have been associated as Director of the Playground and Recreation Department since 1906.

Q. What did you do previous to that? A. Previous to that I was Director of the Playground Department and Park Department of New York City, in 1903, 1904 and 1905.

Q. What did you do previous to that? A. Previous to that I was studying engineering, and in college—Cooper School of Engineering.

Q. What are your duties in connection with the Essex County Park Commission at the present time? A. Lay out and supervise all the recreation facilities of the County Park Commission and the executive secretary of the department.

Q. Have you had occasion to recommend to the Park Commission the establishment of playground sites in Essex County? A. I recommended the areas within the parks that are laid out for playground areas and also assist in drafting plans for the work.

Q. What areas in Essex County have been laid out under your direction? A. Weequahic Park, Branch Brook Park, West Side Park, Independence Park, River Bank Park, Irvington Park, Congressional Equipment Park, Bloomfield Park, Glenfield Park, Grover Cleveland Park, Vailsburg Park.

Q. Mr. Kelly, are you familiar with the section of the Third Ward of the City of Newark bounded by Waverly Avenue, Somerset, Montgomery, Spruce and Barclay Streets? A. I am. I had occasion to make two surveys of it.

Q. You are familiar with the character of the people living in that section? A. I am.

Q. Are you familiar with the playground facilities available to the inhabitants of that section? A. Very well.

Q. In your opinion do you think that an area 140 feet in width, approximatley 1,433 feet in length, running north and south, bounded on the easterly and westerly side by buildings 30 feet in depth, to be used for residence purposes, and with the northerly and southerly ends open, is a fit and proper place for the establishment of a playground for the inhabitants living in that vicinity? A. I do.

Q. What are the reasons that caused you to make that statement? A. In the survey that we first made of this entire neighborhood, upon the application of the West Side Improvement Association, that a park be established in this neighborhood, we found that this neighborhood is very thickly populated; that the nearest large park to it was Weequahic Park, which is a mile away, and on a direct center line, the large park to the north was Branch Brook Park, and to the west, about a mile, is West Side Park, and to the east was Independence Park, and Independence Park could not

be considered as influencing this neighborhood at all, because of the intersection of Broad Street, and the big busy section of Newark, so that the three parks were considered. We found that this area was woefully lacking in any playground and park facilities. We made a survey of the section just west of this, over Belmont Avenue, as to its availability for park purposes. We found very much the same condition in that section west of Belmont Avenue, which we used as a dividing line, as we found in this area east of the line. We found here several school buildings with playgrounds. The playground area was not in any way comparable to the fixed or splendid area that we set aside for large population in any district. The standards that have been followed for years is 100 square feet per child, and the areas here, as I recall it, were approximately one-half of that area in the school districts. Then we took a survey later than that, made by the Boys Survey Committee of the Rotary Club of Newark, and we took this section and called it the Central Section of the City—that is, the section north of Clifton Avenue, south of Central Avenue, west of Broad Street and east, I think it was, of Tenth Street. There we found a situation that called for action, and we so recommended it in our survey. We found a large child population here, especially large, up to the age of eleven years. That type of child will not travel, or a child of that age will not travel very far to a playground, and it is not safe for it to so do. In our report we recommended that the play areas in this area be extended. I believe as a result of that survey 10,000 square feet was added to one playground—I am quite sure it was the Montgomery Street School nearby, and the other areas were improved and added facilities. So that this proposed area to be

used as a playground will fit in with these recommendations, and with the best advice that we could get at the time that we made the survey. The smaller children that go to the three schools here in this district must find it difficult to travel over long distances, because of the congestion and the traffic in those streets. Barclay Street, Somerset Street, Waverly Avenue, Spruce Street and Montgomery Street are fairly busy streets. The streets to the north and to the south and east and west are fairly busy streets, and we have found, and our report so shows, that the vast majority of the children in that neighborhood play in the streets. So that for that reason I would say that an area of this kind, of this size, would be a very desirable and a very necessary thing in that location.

Q. You think that because the easterly and westerly sides of the area are bounded by buildings that are used for residence purposes, would make it unfitted for playground purposes? A. No; quite the contrary.

Q. You think there would be any difficulty in policing that area? A. I do not. There would probably be a little more difficulty than you would find in policing an ordinary street, but not much more.

Q. Mr. Lane has referred to this area between these two buildings to be used for residence purposes, as a back yard area. Do you consider it of such a character? A. No, I think it is high time that we change the character of the rear of some of the buildings where poor people are compelled to live, and give them backyards, because most of the buildings that are erected today for the poor are for three families in the front and three in the rear, and there is no reason why the three tenants in the rear should always be known as the back yard people. That can be changed readily, and

I don't see—the back yard of yesterday will not be the back yard of tomorrow in the building of modern houses.

Q. Do any of the playgrounds that the Essex County Park Commission has jurisdiction of, lie in sections of the County of Essex that are somewhat similar in character to this section? A. The only one that would anywhere near approach it, is one we have in Newark, at Garside Street and Mount Pleasant Avenue and Sixth Avenue. There the playground is a small plot that runs directly to the line of the property owners on Prospect and on Garside Street, and there are tenement houses on both of those streets.

Q. Do you have any difficulty in policing that area? A. No.

Cross-examination by Mr. Lane:

Q. How many houses are there? A. Two; one on Mount Prospect and one on Garside Street.

Q. And they have their own back yards, haven't they? A. They have their own; it is the side of the building that they abut on.

Q. You talked about the back yard of yesterday and the back yard of tomorrow. How about the back yard of today? A. The back yard of today, Mr. Lane, we are trying very hard to get rid of in congested areas, simply because they are useless and unsanitary.

Q. You think this is a good proposition, any way, by getting rid of back yards? A. This park properly inhabited by people, living in these houses, in addition to serving as a community center.

Q. What community do you refer to? A. We have found from actual count and experience, and from the surveys that have been made by other

people, the children of school age up to twelve years old, go five blocks to a playground, and they will go to a playground that faces directly; that is, if they can see a playground by looking up the street, they will go to it, or they will turn probably one corner and go to it.

Q. I thought you said that children up to eleven years wouldn't go and should not be permitted to go to playgrounds, if they had to cross a busy street. A. Eight to twelve years of age will be the older, second grade of children that will go to a playground five blocks, and those four or five years old will not.

Q. You said in your direct examination—is eleven where you put the age? A. Up to eleven would go five blocks.

Q. Would not go five blocks? A. They will not.

Q. And up to eleven they should not be permitted to cross busy streets? A. No, I don't think they ought to be.

Q. You said Waverly, Montgomery, Barclay and Somerset are busy streets? A. Yes.

Q. The neighborhood that you are going to serve, if served properly, is bounded by Montgomery, Barclay, Waverly and Somerset Streets? A. Yes.

Q. Do you know how many people will live in those tenements? A. Only from discussion with people that I saw in the neighborhood, who stated about 600 families, and only from what I have seen in the newspapers.

Q. Do you know what the minimum rent is? A. No, I don't know anything about it.

Q. They are supposed to be model tenements, with a fixed and maximum rental? A. I don't know anything about that; all I know about the type of houses is what I have heard in discussion

here, and reading in the papers that they will be model houses.

Q. You say "we" made a survey, and so forth; who are "we"? A. I made it with the committtee composed of—we had R. F. C. Rippon, who was the expert engaged by the Rotary Organization, and on that commission was Mahlon L. Drake, E. Allen Smith, Charles A. Gammon, secretary.

Q. That was a committee of the Rotary Club, called the Boys Work Committee? A. Yes.

Q. And when was that survey made? A. It was made in 1927.

Q. There are two public parks there in that neighborhood established by the City of Newark recently, aren't there? A. Yes, the Hayes Park.

Q. The one located at Belmont, near Waverly, what is that known as, do you know? A. The Eighteenth Street Park.

Q. Eighteenth Avenue and Jelliff Avenue, which one is that? Do you know what that is known as? A. No, I think he called that the Eighteenth Avenue. Hayes Park West is the Eighteenth Avenue.

Q. The one at Belmont, near Waverly? A. I didn't regard that in the survey, because that was not established at that time.

Q. You didn't regard either of those in this survey? A. No, they were not established at this time.

Q. You have not mentioned them as public parks in that vicinity, in your direct testimony? A. No.

Q. So that there are two public parks in addition to the ones that you mentioned? A. They are established since that survey.

Q. Do I understand that you prefer to have this property used for park purposes, with the build-

ings abutting, rather than to have it clear ground right out to the public street? A. The question wasn't put to me as a preference.

Q. I am putting it to you as a preference now. What is your answer? A. If that entire area from Somerset to Barclay, and from Waverly to Montgomery, without any buildings at all, were made into a playground, it would be a very desirable thing to do.

Q. A much more desirable thing than to serve as ornamental back yards to those houses, wouldn't it? A. I don't like the "ornamental" back yards, Mr. Lane, but it would be a very desirable, and perhaps give a very much broader and bigger, play area.

Q. Altogether more desirable, wouldn't it be? A. Without the buildings?

Q. Yes. A. No question about it. That would give you a play area there of 200 feet by 700 feet, and another one, the same area, 200 by 700, and that question was taken up in the treatment of large areas here. We discussed it with the City Commissioners, or one or two of them, and the question came up at that time of taking so much assessed real estate out of the district.

Q. You told me that you would not have any more difficulty in policing these parks than policing ordinary parks; is that right? A. No, I didn't say that; I say not any more than policing an ordinary street.

Q. Considerably more than policing the ordinary park, wouldn't you? A. I think you would, because you would have more people. There are more children there than we would have in our parks.

Q. Drawn right from these two blocks? A. Drawn right from that immediate neighborhood and those two blocks.

Q. What would the people living in those houses use as their back yards, for the purposes for which back yards are in this day used? A. As I understand it, the development of the new type houses and especially those that are built for a perhaps more fit class of people, they don't have back yards any more. The new apartments don't have back yards; they are facing them on the corners, and the service is so arranged that you don't have to have back yards.

Q. Does the City of Newark permit you to erect a house without leaving some of the space vacant? A. That is due to the tenement house laws, I understand, which provides for certain shafts and that sort of stuff, for light purposes; those are called courts. The courts that are used in these modern apartments are not back yards; they are courts.

Q. So the back yard, in your judgment, has been abolished? A. I hope so; that is, if we can carry them out.

Q. People no longer throw things down from windows? A. They will throw as much as they did in the street, but that is a matter of city regulation. In other cities, in my own experience in New York, we had difficulty with the people throwing things out on the street, the same as we do here.

Q. So that you think that the people throw as much out of the front windows as they do out of the back windows? A. They did do that until the city controlled it.

Re-direct examination by Mr. Groel:

Q. You mentioned the fact that there are certain streets surround this particular area; are there any parks or playgrounds that you know of in Essex County where children can have access to these parks or playgrounds without crossing any streets? A. No, unfortunately.

Q. So that in all of the playgrounds in Essex County that you know of the children, to get to those playgrounds, have to cross a street? A. With the exception of where the playground is located on the end of the street, such as the one I first mentioned, at Garside Street. There the children from one square block can get to that playground without crossing any street.

Re-cross-examination by Mr. Lane:

Q. Do you think that children should be given playgrounds accessible, so that they should not cross a street to get to them? A. If it is possible. We all know, that is, all who are interested in playgrounds, that that is important, and what we plan to do is to try and locate playgrounds so that there will be as few streets to cross as possible, and especially heavy traffic streets.

Q. There is nothing impossible about it, if the City of Newark in the Third Ward wants to proceed to buy the interior of each block and establish what I have called, and which you reject, the ornamental back yards? A. That all depends, Mr. Lane, upon the ability of the City to carry on such projects, and those in charge of it, I presume, have that fully in mind, when they consider any playground, as to how much assessed valuation of the City can be taken out without really hurting the City. I think if it were within the economic ability of the City to have such arrangement, we would.

Mr Groel: We may want to take a little more testimony.

The further taking of testimony in this cause is adjourned to a day to be agreed upon.

Case.

NEW JERSEY SUPREME COURT.

SOLOMON SIMON, JACOB L. SOLOMON and PATRICK GALANTE,
Prosecutors,

vs.

PETER O'TOOLE, Clerk of the City of Newark, New Jersey, BOARD OF COMMISSIONERS OF THE CITY OF NEWARK, NEW JERSEY, and PRUDENTIAL INSURANCE COMPANY of AMERICA, a corporation,
Respondents.

Transcript of further proceedings in the above entitled suit, taken pursuant to adjournment, before Nicholas W. Bindseil, a Supreme Court Commissioner of New Jersey, at the office of Merritt Lane, Esq,. Prudential Building, Newark, New Jersey, on Friday, January 2, 1931, at 2 P. M.

Appearances:

MERRITT LANE, Esq., by JOHN J. CLANCY, Esq., and HERMAN W. BRAMS, Esq., for Prosecutors.

FREDERICK H. GROEL, Esq., for Peter O'Toole, Clerk of the City of Newark, N. J., and Board of Commissioners of the City of Newark, N. J.

ALFRED HURRELL, Esq., and CHARLES B. BRADLEY, Esq., for Prudential Insurance Company of America.

Louis L. Bonda, a witness called on behalf of Prosecutors, being duly sworn according to law, on his oath says:

Direct examination by Mr. Clancy:

Q. Where do you live? A. 42 Hopkins Place, Irvington.

Q. What is your business? A. Real estate.

Q. How long have you been in that business? A. For the past eleven years.

Q. And where? A. In Newark.

Q. Any particular locality? A. In the entire city of Newark.

Q. Do you know the location of the property acquired by the Prudential Insurance Co.? A. I do.

Q. Spruce and Somerset Streets? A. Yes.

Q. Are you familiar with that location? A. Very familiar; in fact, I was born there.

Q. And lived in that neighborhood for how long? A. For approximately nineteen years—eighteen years.

Q. Have you made any sales of real estate in that neighborhood? A. I have.

Q. When? A. I have made approximately eight or nine sales in the last five or six years.

Q. And what were they? A. 1925, 39-41 Charlton Street, Cooper to Steinbrick; 1924, 185-187 Court Street, Vogel Estate to Frank Lipanick, at which particular time I appraised all the property in the Third Ward for the Vogel Estate.

Q. What property? A. They owned the corner of Court and Howard Streets. I sold them two buildings there and I appraised the corner of West and Court Streets for them.

79 Prince Street, Cantor to Prager; 52 Barclay Street, Litwin to Rosencrans. That was in 1924.

In 1924, 614 High Street, that was the former home of James Nugent, to Gottlieb;

1925, 81 Hillside Place, Cooper to Steinbrick;

1925, 68-70 Broome Street, Wigler Estate to Kugel & Spieler.

Q. Were these sales which you handled yourself? A. Exactly, I was the broker for every one of those sales.

Q. And are the properties which were sold by you, which you have just testified to, comparable properties to those included in this block purchased by the Prudential? A. They are.

Q. Are you familiar with the property purchased by the Prudential—this housing project? A. I am very familiar with it.

Mr. Clancy: Do you dispute his qualifications?

Mr. Groel: Yes.

Cross-examination by Mr. Groel:

Q. What was the date of the last sale you mentioned? A. April 22, 1925.

Q. And these sales that were enumerated by you are the only lands which you have negotiated in this area? A. They are actual sales I have negotiated; but since that time I have tried to negotiate other deals, but it has been impossible to bring the purchaser and seller together.

Q. So that you have not made any other sales in this area with the exception of those you have enumerated? A. No, sir.

Q. This property that you mentioned, this first property on Charlton Street, who do you say was the purchaser of that property? A. Steinbrick.

Q. What kind of property was it? A. That was a two-family house. That was torn down and a garage was built on it.

Q. And the property on Court Street, what was that? A. That was a corner plot, consisting of two buildings, one corner store and two flats above and a three family house adjacent to it.

Q. Did you sell the property or did you appraise the property? A. I appraised it and sold it both.

Mr. Groel: I object to this witness as incompetent and not qualified to testify in this case as to values at the present time of lands in this vicinity.

Further direct examination by Mr. Clancy:

Q. How many sales have you attempted to make of properties in this immediate vicinity since your last sale?

Mr. Groel: I object to the question as to what sales he attempted to make.

A. In the last six months, in fact, as late as two weeks ago, I have been trying to sell a piece of property that belongs to the West Side Trust Company, 85 Monmouth Street. In the last two months I have been negotiating with a building and loan which has a piece on Charlton Street, 184 Charlton Street, and in the last year I tried to sell a piece on Spruce Street adjacent to Somerset Street, and in fact, any number of deals in that locality in the last two or three years.

Q. How many, did you say? A. I could safely say in the neighborhood of fifteen to twenty deals.

Q. Assuming that the purchase price of this land as a whole, from Waverly Avenue to Montgomery Street, across Spruce Street, along Barclay and Somerset Streets is approximately $1,750,000, what would you say was the value of

the interior lands which were to be taken by the City of Newark, which lands have a frontage of 140 feet on Waverly Avenue and Spruce Street and a like frontage on Montgomery Street, and running the entire length of the block for a distance of 735.20 feet in the first block from Waverly to Spruce Street and 697.20 feet in the second block from Spruce to Montgomery Street?

Mr. Groel: I object to the question on the ground that the witness is not competent or qualified to answer.

A. My appraisal of that particular piece of property, on the assumption that the purchase price was $1,750,000 would be $635,000.

Q. How do you arrive at that figure of $635,000? A. I have taken the respective value of one unit and have compared the 70% of the rear where 30% in the front is the major effect and have found the rear to be approximately 42 and 6/7ths% of the value. I then took the approximate amount of square feet in the entire tract and divided that by the price paid for the entire tract and got the value per square foot. I took 42% of that and received the value per square foot of the inside piece and then took the four frontages of 140 feet by 100 and multiplied that by the value per square foot that was actually paid for the property. I then took the inside value and multiplied that by the value of 42 and 6/7ths% and received that figure. I added both figures together and received the value of $635,000. In that I included, or I took into consideration, the value of corner influence—plottage, and the fact that it was inside property and took the proportionate amount of outside property in proportion to the full amount.

Q. And what percentage did you allow for corner influence and plottage? A. Ten per cent.

Q. What rule did you use in arriving at your valuations? A. I also took the approximate rule used by the City, the method used by the City for depth, which was 58% and rechecked my figures and they checked in proportion to the amount.

Q. Did you in determining your valuation of the inside property take into consideration the fact that the outside property for the length of the inside property having no street frontage, would be in one ownership and the inside land in another ownership? A. I did.

Q. What would you say in your opinion that any willing purchaser would be willing to offer for this inside land?

Mr. Groel: I object to that.

A. At the present time, if a suitable purchaser could be gotten for the property, I would say between approximately $400,000 and $500,000.

Q. Do you know of any use to which that inside property could be put? A. Only to some particular specialty use. It could not be sold to an individual outside of the fact that he wants it for any particular use.

Q. Do you know of any use that could be made of that property? A. Warehouse or garage purposes with stores in front.

Further cross-examination by Mr. Groel:

Q. As I understand it, you say that the value that you reached for the interior lands is $635,000? A. Yes, that is right.

Q. In reaching that figure did you use the figure $1,650,000 or $1,750,000? A. I used the figure of $1,750,000.

George F. Hewson, for Prosecutors—Recalled —Direct.

Q. Do you understand that the land which the City of Newark is to acquire is 140 feet in width? A. That is right.

Q. And 1433 feet in depth? A. That is right.

Q. And that the land which the Prudential is to acquire is 30 feet in width? A. That is right.

Q. Being two strips of that width and 1433 feet in length. A. That is right.

Q. And you say as a real estate man the value of that interior land is only $635,000? A. I do.

GEORGE F. HEWSON, heretofore sworn, recalled on behalf of the Prosecutors for further

Direct examination by Mr. Clancy:

Q. Mr. Hewson, you testified at a former hearing in this case? A. Yes, sir.

Q. Have you in your experience made sales of comparable property to the property involved in this suit? A. I have.

Q. In that immediate neighborhood? A. I have.

Q. When did you make such sales and what properties were affected by such sales, giving the locations and the dates? A. I sold a property at 310 Belmont Avenue on May 12th, 1923.

Q. From whom to whom? A. Adolf Cotel to Antonio Amen. Property at 79-81-83 Thirteenth Avenue, Newark, corner of Howard Street, on April 11th, 1924, Ida Stepner to Morris Sobin.

67 Avon Avenue, Newark, Quinn to Argyois, that was in April, 1923.

702 High Street, Newark, under date of August, 1929, Henry R. Eisenberg at al., to Thomas J. O'Mera.

George F. Hewson, for Prosecutors—Recalled —Cross.

Jones Street and South Orange Avenue, under date of May, 1924, Newark Cleaning & Dyeing Company to Herman Inlander.

37 Barclay Street, Newark, Joseph and Esther Cooper to Connie Jeffrey. The contract was signed on June 1st, 1927; title passed July 2nd, 1928. The purchase price was $6,300.

314 Belmont Avenue, Newark, Moe and Selma Weinstein to Anthony Bellucci, date about January, 1923.

Cross-examination by Mr. Groel:

Q. Mr. Hewson, when you testified in this matter before why didn't you have a list of these properties at that time? A. Because I was advised by Mr. Lane that the question of qualifications, inasmuch as I was nineteen years in the real estate business, that the question of qualification would not be necessary.

Q. And yet you were familiar with all these properties at that time? A. Yes.

Q. When I asked you what properties you sold you could only tell me of two properties, isn't that so? A. Yes, but I advised you at the time that I did not come prepared with any list; that whatever prices I quoted would be entirely out of my head.

Q. You did not even know what the purchase price was, did you, in this case? A. Not exactly.

Q. And you did not know who the buyers and sellers were? A. It was a matter of going back many years and it is hard to carry those things in your head, Mr. Groel.

Q. These properties are not comparable with the property in question, are they? A. Of the same general type.

George F. Hewson, for Prosecutors—Recalled
—Cross.

Q. What is this property on Belmont Avenue which you speak of, which you sold in 1923? A. That was a twelve family brick house and tenement.

Q. How far is that from the other property that you sold on Belmont Avenue? A. It is close to the other property.

Q. How far? A. One is 310 and the other is 314, both in the same block.

Q. What part of Belmont Avenue is that? A. Near Avon Avenue.

Q. How about this property on High Street? A. That is right near—between Longworth Avenue and the next street there—right near Longworth Street.

Q. Is that comparable property? A. Yes, four blocks away.

Q. What kind of a building on it? A. It had at this particular time an old-fashioned one family building on it.

Q. Do you consider the one on Jones Street and South Orange Avenue comparable property? A. I do, yes, sir.

Q. What kind of property was that? A. One story garage property.

Q. Take this property on Jones Street and South Orange Avenue, what was the purchase price of that? A. $22,000.

Q. What was the character of the building on that property? A. It was a one story brick garage property used for the storage of cars and general garage purposes.

Q. Analyze that sale for me, please? A. I cannot analyze it.

Q. How can you reach a conclusion as to land values in this section of comparable property when you cannot even analyze the properties that

you say you sold? A. I am not here to analyze any property, I am only differentiating between front and rear property.

Q. Can you analyze any of these properties? A. Yes, I can.

Q. What one can you analyze? A. I can analyze the Barclay Street property.

Q. Why didn't you analyze this one on South Orange Avenue? A. Well, I did not think it was necessary in this quotation.

Q. Just exactly where is this Jones Street property? A. Jones Street is about 100 feet north of South Orange Avenue, maybe not quite 100 feet, it is right on the butt end of the street.

Q. Well, then, it is Norfolk Street and not Jones Street ? A. I think it is Jones Street as far as Thirteenth Avenue.

Q. Don't you know that Jones Street only runs from Belmont Avenue to South Orange Avenue? A. I will correct that and make it Norfolk Street.

Q. Then it is Norfolk Street now? A. Yes.

Q. You say of all these properties you have mentioned you can analyze one of them? A. Yes, I can analyze more than one of them.

Q. How many more? A. Possibly two, three or four.

Q. Can you analyze this Cooper property on Barclay Street? A. Yes.

Q. Suppose you analyze that sale of yours. Did you analyze this before you came here? A. No, sir.

Q. You are doing it now? A. Yes.

Q. Then how can you reach an opinion as to the value when you have not analyzed it? A. I haven't the answer that I could give you here for analyzing sales. I am only testifying with re-

spect to the value of this property, only as appertains to the division of it.

Q. You have not analyzed any sales? A. I have already answered that.

Q. What is your answer? A. My answer is that I have already told you that I have analyzed the Barclay Street.

Q. You analyzed the Barclay Street sale but did not analyze any of the others? A. Yes.

Q. What one? A. I analyzed the 310 Belmont Avenue.

Q. And what was the purchase price of 310 Belmont Avenue? A. $23,000.

Q. What was the value of the building on that? A. About $14,000.

Q. What did you figure the land value to be? Will you figure this out now or have you analyzed it? A. I can figure it for you.

Q. I don't want you to figure it now, have you analyzed it? A. No, I have not in this connection.

Q. You have not analyzed any of them have you? A. Yes.

Q. What is the front foot land value of any of these properties that you have given? A. Give me time and I will. I did not come prepared to analyze these sales for you. I can analyze them.

Q. Then you have not analyzed any of these properties have you before you came here today? A. Yes, sir—no. You will not put answers in my mouth. I will answer as I want to answer them.

Mr. Groel: I move that answer be stricken out.

A. Not any general analysis, no.

Q. Have you any particular analysis? A. What do you mean by particular analysis?

Q. I am taking the words out of your question? A. I can analyze any of these sales you ask me to, and I can analyze every one of them.

Q. You did not analyze them before you came here today? A. No, I did not have to analyze them in this connection.

Mr. Groel: I move that be stricken out. It is not responsive to my question.

Further direct examination by Mr. Clancy:

Q. When you testified the last time you gave as your opinion that the value of the inside lands was about $735,000? A. I did.

Q. And you gave that value on the theory or the assumption that the inside and the outside lands were owned by a common owner, did you not? A. Yes.

Q. Assuming that the outside lands and the inside lands were owned by separate and distinct owners, what is the value of the inside land?

Mr. Groel: I object to that question on the ground that the witness is not competent to testify as to the value not qualified to testify as to the value of the inside lands.

A. I would not ascribe a value of over $500,000 to the inside property, the back yard property.

Further cross-examination by Mr. Groel:

Q. The last time you testified, Mr. Hewson, you testified that the value of the inside land was $735,000, is that right? A. Yes.

Q. Now I understand that you are changing that, is that right? A. No, I am not changing it at all, I still say it is $735,000.

George F. Hewson, for Prosecutors—Recalled —Re-direct.

John A. Linnett, for Prosecutors—Recalled —Direct.

Q. Then your testimony last week, Mr. Hewson, was that the value of the interior lands was $735,000? A. Yes.

Re-direct examination by Mr. Clancy:

Q. Did you place that valuation on the interior lands with the understanding that was owned by the same owner who owned the outside strips? A. Yes, by the same owner.

JOHN A. LINNETT, heretofore sworn, recalled by the Prosecutors for further

Direct examination by Mr. Clancy:

Q. Assuming, Mr. Linnett, that the purchase price of the lands involved is $1,750,000, what, in your opinion is the value of the inside strip owned by a separate and distinct owner from the outside strip?

Mr. Groel: I object to the answer to this question on the ground that the witness is not qualified and competent to answer it.

A. $568,750.

Q. And how do you reach that figure and upon what do you base it? A. I base that on the general theory of the Hoffman-Neil rule allowing for the fact that there are 560 running feet of front property and giving the benefit to the remainder of 25% of the total value, reduc-

ing it down to a percentage theory, because the value of the interior is 91/280ths of the whole.

Q. What do you mean when you say 560 running feet? A. There are 140 feet on the four respective streets. I am giving the full value to that.

Q. And from what depth did you figure the full value of these 140 feet strips? A. 100 feet.

Q. And does the interior behind that 100 feet depreciate accordingly? A. The next 100 feet is assumed to depreciate to 35% of the value of the front, and then beyond that it would presumably depreciate still further, but I have not depreciated it beyond that 25%. I have taken the entire rear as one unit.

Q. That would give a more favorable complexion to the valuation? A. Yes.

Cross-examination by Mr. Groel:

Q. The last time you testified in this matter you testified that the value of the land was $981,303? A. Yes.

Q. You now testify that it is worth $568,750? A. Under entirely different circumstances. I qualified that answer by saying in the hands of one owner.

Q. All of the property being in one owners? A. It is an actual fact now you practically have three owners because you have the front with one street in the hands of one owner, the interior in the hands of another, and while the other strip must be in the hands of the owner of the first part, it is divided.

HOWARD L. HAINES, a witness called on behalf of the prosecutors, being duly sworn according to law on his oath says:

Direct examination by Mr. Clancy:

Q. Where do you live? A. 687 Sanford Avenue, Newark.

Q. What is your business? A. Real estate.

Q. How long have you been in that business? A. Nine years.

Q. Where? A. In the City of Newark.

Q. Are you familiar with the lands which are involved in this suit? A. I am.

Q. Have you bought or sold or been interested in the buying and selling of comparable lands in the vicinity of the lands involved in this suit? A. I have acted as broker in the sale of property in that district.

Q. Can you tell me what sales you made in that district of comparable properties in the immediate vicinity, and when you made them? A. On September 28th, 1922 I sold the property 102 Monmouth Street.

Q. What kind of a house was that? A. Eight family brick tenement.

Q. What other sales did you make? A. On February 5, 1923 corner of Hillside Place and Rose Street—80-82 Rose Street.

Q. What kind of property was that? A. Twelve family cold water apartments.

Q. Tenement house? A. Cold water apartments.

Q. What others? A. On April 20, 1923, I sold the property 62-66-68 Madison Avenue.

Q. What kind of property was that? A. Three six family apartment houses, cold water flats.

Q. Besides negotiating the sale of land did you do any appraisal work? A. I am a director of three different building and loans, for all of which I have appraised and do appraise property.

Mr. Clancy: Do you wish to cross-examine him on his qualifications?

Cross-examination by Mr. Groel:

Q. These are the only sales you have made in this neighborhood, are they, Mr. Haines? A. My sales have been very general throughout the City. I have selected those three sales as being possibly the most closely related.

Q. These are the only ones in that vicinity that you have made? A. Those are the only ones that I have looked up.

Q. Will you please tell me what the purchase price of that piece on Monmouth Street was? A. I can recall, $10,300.

Q. Who was the buyer? A. The buyer was Enerich Soos. The seller was Leshins.

Q. What was the number of front feet on Monmouth Street? A. I did not come here with the idea of analyzing sales. The sales took place in the past. I came here with the idea that I was to qualify as an expert witness.

Q. So that you have not analyzed any of these? A. None of these sales have been analyzed. I would not analyze them.

Further direct examination by Mr. Clancy:

Q. Assuming, Mr. Haines, that the purchase price of these lands as a whole, the whole two blocks, is approximately $1,750,000, what in your

opinion is the value of the interior lands which are to be taken by the City of Newark?

Mr. Groel: I object to that question on the ground that the witness is not competent and qualified to answer it.

A. I have made my calculations on the basis of $1,650,000. It is a matter of arithmetic to change those calculations.

Q. Suppose you do that and give us your figure? A. $735,000.

Q. How did you arrive at that figure? A. By taking the standard established by the City in the depth of frontage of 30 feet, allowing 58 per cent of the value on the 30 feet.

Q. 30 feet depth? A. On the 30 feet depth.

Q. So that the interior, on the basis of that rule— A. Would remain 42 per cent.

Q. Would be 42 per cent of the value of the whole? Is that right? A. Correct.

Q. Does your figure remain the same as to the value of that interior property whether it is owned by the same or separate owners? A. It would not.

Q. Would it be worth more or less if owned by two separate and distinct owners? A. Less.

Q. How much less? A. Do you want me to put a value on it and analyze the value?

Q. I want to know what in your opinion it is, assuming that the whole of that property is to be purchased for $1,750,000, is the value of the interior land owned by an owner separate from the owner of the outside exterior lands? A. As I understand it, the value is already established by the price that was paid, so I have to accept that value.

Q. You are accepting the value that I gave you in my question, $1,750,000 for the whole. I am

now asking you what in your opinion is the value of the interior lands owned by a separate owner from the owner of the exterior? A. $250,000.

Q. Why is it worth so much less owned by a separate owner than if it were owned by a common owner? A. The interior lands are, as far as I see, only useable for the frontage—only useful to the owner of the front.

Q. How much of that frontage of 140 feet on each street is useful? A. I have arrived at a figure in this way, I have taken four plots of 120 feet by 350——

Q. And you divided that interior land into—— A. Into four equal plots allowing ten feet for each side which must be left for light and air for the properties that are to be built.

Q. Is that ten foot line on each side a requirement of the Building Code or the Tenement House Law, or some city or municipal ordinance? A. Yes.

Mr. Groel: I object to that question on the ground that he is not qualified to answer.

Q. Can you elaborate on the answer you have given, that you have divided it into four plots of 120 feet by 350 feet? A. I put a front foot value on 120 feet by 350 feet of depth, an exorbitant value of $500 a foot.

Q. Making $60,000, if I compute it correctly, for each of the four units into which you have split it? A. I have not got my computations here.

Further cross-examination by Mr. Groel:

Q. Mr. Haines, you understand, do you not, that the City of Newark is purchasing from the Prudential Insurance Company a strip of land

140 feet in width and 1433 feet in length? A. They are to purchase?

Q. That is what it is proposed? A. It is proposed to purchase, yes.

Q. And you understand that the Prudential will retain two strips of land along the side some 30 feet in width and 1433 feet in length? A. Yes.

Q. Do I understand you correctly to say that the value of the interior land in separate ownership is worth $250,000? A. Yes.

JAMES H. WALKER, a witness called on behalf of prosecutors, being duly sworn according to law, on his oath says:

Direct examination by Mr. Clancy:

Q. Mr. Walker, by whom are you employed? A. By the City of Newark.

Q. In what capacity? A. As a forester, and I have charge of the parks.

Q. And in what department are you employed? A. In the Department of Parks and Public Property.

Q. And in any particular subdivision of that office? A. The shade tree division.

Q. How long have you been in the Department of Parks and Public Property? A. Since 1907.

Q. And all during that time since 1907 has your work dealt with parks and public property and park properties for the City of Newark? A. Yes, and shade trees as well.

Q. Are you familiar with Waverly Avenue, Barclay Street, Somerset Street, Spruce Street and Montgomery Street? A. Yes.

Q. Are there any playgrounds in that vicinity? A. There is one at the Eighteenth Avenue School,

not far from there; one at Prince Street and Waverly Avenue.

Q. Are you familiar with that neighborhood from the standpoint of population, whether it is sparsely or densely populated? A. Yes, sir; it is densely populated.

Q. Is that plot of ground fronting 140 feet on Waverly Avenue, Spruce Street and Montgomery Street, for a length of approximately 1400 feet, a suitable plot of ground for a park? A. There is a limit to what could be grown there in the way of trees or shrubbery or lawns.

Q. Why? A. Because of the location as regards houses and people. A park has to be left open.

Q. Would that strip of land with a row of buildings on each side from the street front to the entire 30 feet in depth, of five stories of approximately 50 to 60 feet in height, add to its adaptability as a space for a park? A. An open space would be much better.

Q. Why? A. Because of the air currents and air circulation.

Q. Could trees be grown there successfully? A. A limited number in the center part of it could be grown, but trees in that locality are all of them dying. We planted those trees at various times, but have not been successful.

Q. Could those trees prosper or flourish in that section in that particular strip of ground which is to be used by the residents of the immediate neighborhood, and possibly the adjoining neighborhood, as a playground or park? A. If we made provision for their roots, they would grow.

Q. What provision would you need to make for their roots? A. Natural soil conditions.

Q. Should they need to be protected? A. Not above the reach of anybody—six or seven feet above.

Q. I meant at the base, at the root, at the ground. A. We would have to make some provision, so that the people couldn't tramp the ground down, pack the ground down.

Q. And to protect the ground from the people who walk or play there, would you need to erect some fort of a fence? A. Yes, sir.

Q. Or protection? A. Yes, sir.

Q. And what would be the area of the ground enclosed by a fence or whatever protection was put up there, with respect to the size of the tree? A. The area ought to be nearly as large as the spread of the tree.

Q. And it would follow naturally that the more trees, and the larger the trees, the more ground would be taken up by these fences, and the less available for park or playground purposes? A. The more trees that we had there, the better the trees would grow, because they would in a way protect each other from sudden changes of temperature.

Q. Would the buildings on each side of that strip, casting their shadows, be conducive to good growth? A. Not to trees planted real close to buildings. In the center I don't think it would affect them much.

Q. You are, of course, familiar with the parks in the City of Newark? A. Yes.

Q. Do all those parks have sidewalks or walks through them? A. Yes, practically.

Q. What is the width of those walks? A. Well, there is no stipulated width, some of the walks are four, five and six, up to twelve feet wide.

Q. And if roller skating were to be done in that park the walks would be correspondingly wider? A. Yes.

Q. What width are the sidewalks, roller skating walks, generally or usually? A. We make them

about twelve feet wide where there is roller skating.

Q. Now with that property being used by a number, a great number of children in that densely populated neighborhood could you keep a lawn there? A. No, you could not.

Q. What kind of plants would flourish, or vegetation would flourish or grow there? A. About the only thing in the shrubbery line would be privet, California privet.

Q. Why is an open space more desirable for park purposes, Mr. Walker? A. It is less subject to air currents, when the air is very hot and dry, the shrubbery suffers from wind coming down a long street. You notice it right in Military Park, the trees are all sered by the winds coming down Broad Street, very hot and dry.

Q. Would those houses erected, or that row of houses erected on both sides of this proposed park or play ground have that effect? A. Yes, sir.

Q. Now, in your experience and from your experience with parks in the City of Newark, do you find or has it been your experience that the younger children, up to the ages of say ten to twelve years, use the park more than older children? A. No, I think you have a larger crowd of children around eighteen to nineteen years of age, particularly in the evening.

Mr. Groel: I object to that. This man is a forester. He is not qualified to testify as to play ground facilities.

Cross-examination by Mr. Groel:

Q. What is your title? A. Forester for the City.

Q. Forester in what department of the City

of Newark? A. Department of Parks and Public Property.

Q. Who is the director of that department? A. Director Gillen.

Q. Have you ever laid out any play grounds? A. Yes.

Q. Does it necessarily follow that for play ground area there must be trees or shrubbery? A. Play ground area?

Q. Yes? A. No, I would not think so.

Q. Are you familiar with the play ground in the rear of the Monmouth Street School directly opposite this property? A. No, I am not.

WILLIAM J. COLEMAN, called as a witness in behalf of the prosecutors, being duly sworn according to law, says:

Direct examination by Mr. Clancy:

Q. How long have you been connected with the Department of Parks and Public Property? A. Since 1908.

Q. What is your title? A. Arboriculturist.

Mr. Clancy: It is stipulated by and between counsel that the witness, who is an employee of the Department of Parks and Public Property with the title of Arboriculturist, would testify to the same effect as the preceding witness and that his testimony, both on direct and cross-examination, would be the same as that of the preceding witness.

Further hearings in this matter adjourned to Tuesday, January 6th, 1931, at 2:30 P. M.

Transcript of further proceedings in the above entitled suit, before Nicholas W. Bindseil, a Supreme Court Commissioner of New Jersey, at the office of Merritt Lane, Esq., Prudential Building, Newark, New Jersey, on Tuesday, January 6, 1931, at 2:30 P. M.

Appearances:

MERRITT LANE, Esq., JOHN J. CLANCY, Esq., and HERMAN W. BRAMS, Esq., for Prosecutors,

FREDERICK H. GROEL, Esq., for Peter O'Toole, Clerk of the City of Newark, N. J., and Board of Commissioners of the City of Newark, N. J.

CHARLES B. BRADLEY, Esq., and ALFRED HURRELL, Esq., for Prudential Insurance Company of America.

EDWARD D. DUFFIELD, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Hurrell:

Q. Mr. Duffield, you are the president of the Prudential Insurance Company of America? A. I am.

Q. And have been for the past two years? A. Yes.

Q. And sometime previous thereto? A. Right.

Q. And are familiar as president, with the various circumstances and negotiations leading up to the so-called housing project? A. I am.

Q. And have had, in a general way, supervision of that up to date? A. Yes, I have.

Q. You are familiar, also, with the situation as regards the so-called Third Ward Housing Plan, Mr. Duffield? A. I am.

Q. I read you, Mr. Duffield, extracts or excerpts from Commissioner Gillen's testimony before the Commissioner, on December 22, as follows:

> "Q. Was there any thought or any suggestion by anybody as to the purchase of those lands for park purposes, those interior lands, before the Prudential sought aid in its housing plan? A. No."

And further:

> "Q. Were you present, Mr. Commissioner Gillen, at a luncheon given by Mr. Duffield, President of the Prudential Insurance Company, at which the purchase or the housing plans of the Prudential were discussed? A. I was, the first conference given to the Commissioners, I believe, by Mr. Duffield, if that is the one you refer to.
>
> Q. During the course of the discussion, did Mr. Duffield say anything with respect to the Prudential Insurance desiring aid? A. He did.
>
> Q. Will you tell me what he said, as nearly as you can recall?
>
> * * * * * *
>
> A. Mr. Duffield spoke about the three sites that the Prudential had acquired, or was about to acquire, for the housing proposition. He said, in the case of the Twelfth Ward site, the Down Neck site, the Prudential could finance that itself fully, and in case of the Waverly site, the Frelinghuysen Avenue site, the Prudential could finance that fully, but

in the case of the Third Ward site they had made estimates of the cost of acquiring the properties, and unless the City put in a certain sum of money, the Prudential could not go ahead with that improvement and keep the rents as low as he desired them to be kept. That was about what he said."

And further:

"Q. Up to that time had there been any suggestion of the City acquiring these lands for park purposes? A. No.

Q. Who made the first suggestion that the lands be acquired for park purposes, and when?

* * * * * *

A. Mr. Duffield.

Q. And when? A. At that luncheon."

Mr. Duffield, will you state what you know of the matters testified to by Mr. Gillen, and state what took place at the luncheon to which the Commissioner refers, and specifically, I ask you, did the Prudential seek the City's aid? A. They did not.

Q. And what were the circumstances which led to the Prudential becoming interested in housing? A. The circumstances relate back, Mr. Hurrell, to the fall of 1928. Sometime during the fall I remember Mr. Sinclair coming to see me and endeavoring to interest me, and through me interest the Prudential, in providing housing accommodations in the city, by reason of the fact that the Park Commission had proposed to lay out some new parks, and in the investigation of properties available for that purpose, he had become very much shocked at the housing conditions he found,

and thought that the Prudential should co-operate, or rather should initiate a movement for the erection of better housing facilities for the people of Newark, removing the old slums and placing model houses in their place.

Q. And did he ask you whether you would become interested as president of the Prudential and interest your company?

Mr. Clancy: I object as immaterial and hearsay.

A. He did.

Q. And what did you reply to him on that first inquiry?

Mr. Clancy: I object as immaterial and hearsay, and not binding upon the prosecutors.

A. I told him that while I was personally interested in the problem that he presented, I felt that it would be impossible for the Prudential to proceed, under the law as it then stood, it not being a legal investment of Prudential funds; and that unless the law were changed, we could not possibly invest our funds in that kind of a security. He suggested our obtaining a change of the law, and I told him that I was not willing to be active in the matter, because I was certain that our motives would be misconstrued if we should attempt to do anything of the sort.

Q. Was there any other person, or did any other person represening the city government, talk with you in reference to the same plan? A. Subsequently, I should say some weeks after that, Mr. Sinclair returned, accompanied by Mayor Gongleton. They both urged me very strongly

to interest the Prudential in this matter, and I then told them of the difficulty in regard to the law as it then stood, and the Mayor and Mr. Sinclair then asked me if the law were changed, without effort on our part, would we then be interested, and I told them that that was a question I thought for the City to determine, but that if the law were changed, I would certainly be interested myself, and I would endeavor to interest the Board of Directors in making that form of investment.

Q. And did you do that subsequently? A. I did.

Q. And what was the Board's reply to you, that you replied to the Mayor and Mr. Sinclair?

Mr. Clancy: I object.

Without objecting to each question, I object to all these conferences and talks between Mr. Duffield and the members of the Board or Mr. Sinclair, as not binding upon the prosecutors, and immaterial and irrelevant.

A. Subsequently, I took up with the Board—I explained the desirability of it, and I explained that I felt a fair return could be had on the money invested, and that it would serve a distinct public purpose if that investment were made, with the result that a committee of the Board of Directors was appointed, and we retained a housing expert, by the name of Veiller. While the legislation which the City had had introduced was pending in the Legislature, I called a meeting of that committee, at which Mayor Congleton was present, to discuss what could be done, on the assumption that the legislation would be acted upon. And Mr. Veiller, the secretary of the American Hous-

ing Association—I think he was secretary—he was recommended to us by several persons interested in housing matters, as being an outstanding housing expert in this country.

Q. Do you recall about the date of that conference? A. That was sometime in February, 1929.

Q. And the Mayor was present at that conference? A. The Mayor was present at that conference.

Q. And will you state what was said and done at that conference?

Mr. Clancy: I make the same objection to the question, as immaterial and irrelevant, and not binding upon the prosecutors, and as hearsay.

A. At that conference the Mayor and myself both stated what was our hope and expectation in connection with this whole matter. Mr. Veiller stated that the question of what we were to do depended very largely upon the persons that we were seeking to benefit by the housing enterprise. He said that he felt that it would be impossible for us to pay demolition costs, acquire the property and erect the buildings thereon, unless we charged a rental therefor, which would take it away from the poorer classes; and the Mayor and I both said that one thing we hoped would be accomplished as a result of the Prudential's investment in housing, would be not only the erection of new buildings, but the demolition of buildings which were unsanitary and of a crime-breeding character. Mr. Veiller said that if that were done, he felt that the cost would require in the way of rental a larger amount than the laboring classes would be able to pay, and he outlined then as the

only feasible plan, that which was subsequently adopted in connection with the Third Ward improvement, namely, that if the City would acquire land for parks and the Prudential take a portion of the land which they had acquired for parks and erect the houses thereon, that under those conditions, the demolition cost being borne partially by the City and partially by the Prudential, it might then be feasible to carry out what both the Mayor and I felt was quite an essential feature of the whole program.

Q. And that suggestion he made was, as you say, the one that is under discussion in the Third Ward; that is, having the whole interior strips of the blocks open at both ends, and buildings being on the sides? A. Exactly.

Q. And Mr. Veiller, as you have stated, thought that that was the only way in which the Prudential could get any return on its investment?

Mr. Clancy: Same objection to this question.

A. Of course, I explained to the Mayor, the first time I ever talked to him, and he recognized it, and there has never been any question of that, that the Prudential could not engage in a philanthropic enterprise, that we were the custodians and trustees of funds entrusted to us by our policy holders, and we must invest those funds so as to receive a fair return; that I felt that it could be done in this housing enterprise in a way which would be fair to the policy holders, and at the same time beneficial to the solving of the problem with which the Mayor was disturbed, namely, inadequate housing facilities for the people of Newark. And at that time, Mr. Veiller outlined this as a plan which could accomplish a

fair return to the Prudential on its invested funds and give the City what they wanted in the way of a park with playgrounds and housing as an adjunct thereto. In other words, he outlined a single plan, which involved the erection of houses on the strips, on the side, and a playground, or park, in the middle.

Mr. Hurrell: I suppose you will concede, Mr. Clancy, legislation was afterwards passed?

Mr. Clancy: Yes.

Q. And afterwards the legislation which the City prepared and recommended was passed? A. Yes.

Q. Then after that, Mr. Duffield, after the February meeting in 1929, between that time and through that summer and fall, what were your activities, or what was the course of the negotiations? A. I was discussing this matter constantly with the Mayor and frequently with members of the Commission. I cannot specify individual conferences with members of the Commission. Usually I saw the Mayor and he would say he would discuss the matter at a Commission conference, and he would return to me, and we would discuss further, as a result of such conferences he had had. I do remember discussing the matter with the late Commissioner Brennan, and I remember discussing the matter with Commissioner Howe from time to time, and the discussion at that time was on the basis of providing two or more of these housing enterprises—if I may use that term—one to be located in the Ironbound District, and the other to be located in the Third Ward, and possibly some to be located elsewhere.

Q. Who picked out the locations? A. I asked the Mayor if he would not, through the police de-

partment and the health department, find out what were the most desirable locations for accomplishing the purpose that we both had in mind, which was the placing of these buildings where they would be of the greatest value, both from a health standpoint and a recreational standpoint, as a deterrent for crime, if I may use that term. He told me that he was going to take it up with the health department and with the police department and have them suggest certain tracts which they thought were desirable. It was at that time assumed that any development which the Prudential made, would be made in the way in which it is now proposed to make in the Third Ward—both in the Ironbound District and the Third Ward, and wherever else we went, because it was then assumed that if the rents were to be kept at a figure which would meet the needs of those whom we were seeking to relieve, this would be requisite. He came back sometime in the fall—I think it was sometime in September or October, 1929—and at that time had plotted out the various pieces of property which had been determined upon, as a result of the survey which he had caused to be made, through the police department and the health department. Among those was the plot that we subsequently acquired in the Ironbound District, and the plot which we subsequently acquired in the Third Ward. I then began to take up the question of the acquisition of these tracts, and I discussed with the Mayor—I remember particularly one afternoon, when we practically decided that the two most desirable plots, if we could get them, were the ones which we did acquire, the one in the Ironbound District, and the one which we subsequently acquired in the Third Ward.

Q. Do you remember a specific talk with the Mayor in reference to the Third Ward as compared with the Ironbound District? A. I remember discussing with the Mayor, in my office, and I think that the Mayor and I went down and looked at the district in the Ironbound, but I am not sure of that, but I remember the Mayor saying to me that while he felt that the park or playground in the Third Ward was desirable, he had some hesitation of urging us to proceed on that theory in the Ironbound district, because a park had recently been opened within a few blocks of the tract which we were proposing to acquire, and which we subsequently did acquire, and he felt that that met the needs of that particular district for park and playground purposes. I then said to him, "Well, we will see what we can acquire the Ironbound District property for, and it may be that we can work out a plan there in which the rents will be a little higher than they would be in the Third Ward, and meet a need in that district without carrying out the Veiller plan of a combination of park and housing", and that I think took place sometime in the fall of 1930.

Q. In the meantime, Mr. Duffield, had you been making preliminary surveys as to the cost of the plot you say the City had suggested to you in the Third Ward, the cost of the two blocks in question? A. I think, Mr. Hurrell, that that was subsequent to a meeting which the committee had—I mean the committee of the directors, the Housing Committee of the Prudential—with the Mayor, sometime in January, 1929, or 1930.

Q. Do you remember a conference had with the Mayor and any of the other commissioners, either individually or together, as to the cost and possibility of erecting buildings in the Third Ward, where it had been indicated to you that they would

be desirable? A. Yes, I recall that. I think, as I say, Mr. Hurrell, that that took place subsequent to a meeting which I do remember quite distinctly did occur in January, 1930, at which time the Mayor said to me that he felt that any contribution which the City might make in the way of the purchase of the land, to keep down the cost of those buildings, must be absolutely limited to the land which they acquired for park or playground purposes. I said to him that I had never had any idea of doing anything else; that so much of the land as we acquired and used, we would expect to pay for. And he suggested at that time, if I remember rightly, that he thought the City would probably need about two-thirds of the land and we need about one-third. Subsequent to that time, and before any land was purchased, I do not know that I had, myself, any conference with either the Mayor or the City Commission, beyond the informal discussion which had existed from the start to the finish. Whenever I discussed that with either the Mayor or any of the City Commission, the assumption on my part—which I think was a reasonable assumption, from this conversation—was, that it was recognized that this was a joint enterprise to the extent that if the City acquired parks, we would put houses alongside of them.

Q. What assurances were given you thus informally that when the plot was picked out, that the City would purchase the interior strip? A. If I hadn't supposed that that was a settled matter, I certainly would never have bought one foot of land in the Third Ward. I say I bought it—I never would have permitted the Prudential to buy it.

Q. Do you recall, Mr. Duffield, about when you first began to purchase in the Third Ward or take

options, and so forth? A. I think it was sometime in the latter part of February, 1930.

Q. Subsequent to that, when you had begun, or the Company had begun to acquire land, did you come to a conclusion as to about what it was going to cost for these two blocks? A. I think we reached a conclusion in regard to that, about the time of the luncheon to which Commissioner Gillen has referred.

Q. And at that time you took that up, did you, with the commissioners, at that luncheon? A. Yes, I took that up at that luncheon.

Q. Did you take up the whole housing plan and report to them what the status of it then was? A. I did.

Q. What is your recollection of what you said at that luncheon? A. My recollection of that is, Mr. Hurrell, that instead of my seeking the aid of the City in carrying out this project, I thought I was at that luncheon relieving the City from any necessity of acquiring lands for parks in the two tracts which we had acquired, and which at the time that we gathered, I assumed that the Commission thought that we would expect them to do—I said to them that we had worked out plans in regard to those other two tracts. The one in the Ironbound District, we would be able to erect buildings there without the City placing any money for parks or playgrounds in them, because we had succeeded in acquiring the land at a low price, and I recognized that a park already existed there, there was probably no need for the City carrying out our idea of a joint tract and housing program in that vicinity. The same thing existed in connection with the Frelinghuysen Avenue tract, that was adjacent to Weequahic Park, and I could see that the City would probably

not feel justified in carrying out our idea of a joint park and housing program in that vicinity, and it would be unnecessary, but that as to the Third Ward, we would have to go along with plans we had always discussed, if it were to be carried through to success. And my only difference of opinion as to what occurred there, between what the Commissioner has testified to is, that I am quite sure that the Commissioner was mistaken in saying that that was the first time that it had been discussed. It had been discussed throughout in the way that I had indicated.

Q. As a result of that meeting in April, Mr. Duffield, did you go before the City Commission within a short length of time? A. We discussed at that luncheon which was held for the purpose of making formal that which had been informal—we discussed what should then be done, and it was deemed wise that I should appear before the City Commission and make a statement. The reason that we had theretofore acted informally was because it was felt that if either the City or ourselves should start out to acquire these two blocks in the Third Ward and it became known that they were to be utilized for that purpose, the price would at once become prohibitive, and it was therefore thought advisable that we should continue our negotiations for the purchase of that property quietly, and keeping back from the public knowledge of the fact that we were interested in it. It was thought that we had then acquired sufficient to enable us to make the matter public, and I suggested that I should go before the Committee and state publicly what I had said to them in that luncheon conference.

Q. Mr. Duffield, I have shown you heretofore a copy of what purports to be an address of

yours made before the City Commission on April 23, which is in the return. You made that speech? A. I did.

Q. Before the City Commission? A. I did.

Q. Whereupon, as the return shows, the Commission unanimously expressed approval of the idea in principle? A. It did.

Q. At that time the question of the exact cost to the City of the 140-foot strip down the interior of the two blocks had not been settled, had it? A. No, it had not.

Q. And in your conferences after this resolution of the Commissioners was passed, what was the theory upon which the maximum amount of $1,200,000 was arrived at as the City's portion? A. At this luncheon to which I have referred, we discussed not the question of the City acquiring for park or playground purposes this interior strip, but what would be a fair division of the total cost of acquiring those two blocks, between the City using a portion for park and playground purposes and the Prudential using a portion for housing purposes. Prior to that time the Mayor had suggested a limit of two-thirds of the total cost of any tract acquired, as the limit which the City ought to be expected to take and utilize. I haven't a very clear recollection, but I think that that was the start of our discussion at the luncheon—I know I said at that luncheon that it seems to me that the fair method of division, instead of trying to arrive at an arbitrary figure, such as two-thirds or three-fifths, or three-fourths, would be to treat the whole tract as one purchase, for a common purpose, the City to utilize a portion, and the housing of the Prudential, a portion, and that it seemed to me that a fairer method, one

less liable to misconstruction, would be to have the Prudential pay that portion of the whole cost which the portion of the land is occupied bore to the whole land, and the City to do the same. Subsequent to that, I remember having a conversation—I wouldn't call it a conference—an informal talk with the Mayor and Commissioner Howe, at which Commissioner Howe said that he felt that there should be a maximum placed as to the City's cost of the purchase, on the theory that I understood was substantially agreed to at the luncheon. I will say, in fairness to Commissioner Gillen, that at the luncheon he raised the question of whether I thought that that was fair, considering that the interior land was to be taken by the City as against the exterior land by the Company; and my reply to him was, that I felt that it was a joint project to the extent that each was doing something that they desired to have done; that we were doing this largely in the interest of the City, and certainly at the urgent request of the City, and that it should be a joint project in the apportionment of cost; and I had, what seems to have been a false impression, that the Commissioner acquiesced in that view. There was nothing definitely settled. We are discussing it informally. I am merely trying to indicate the impression which was left upon my mind. I don't know whether I answered your question.

Q. In relation to the $1,200,000 as the maximum, how was that arrived at? A. Subsequent to that meeting, and possibly subsequent to the public meeting at the City Hall, I had a talk with the Commissioner while, I think, the Mayor was present; in fact, I am sure he was, and that Commissioner Howe said to me that he felt a

maximum should be placed as to the amount that the City could invest. At that time we had substantially determined what the cost would be, but there were still some tracts left to be acquired, and Commissioner Howe felt that there should be a maximum placed of $1,200,000 to carry out the plan, which seemed to me to be a fair division. I was entirely willing, after consultation with Mr. Hamilton, and believing that it would not interfere with the object I had in view, of low rentals, to agree that that should be the maximum that the City should pay for the land which it was expecting to acquire.

Q. That $1,200,000 representing, then, as I understand your answer, about seventy per cent. of what you supposed, from the best figures you could get, would be the— A. Entire cost. I understood that the City would take approximately seventy per cent. of the tract, and as you say, that represented seventy per cent. of the cost.

Q. And represented also seventy per cent. of the area? A. Yes.

Q. If you succeeded in getting the total cost down, the City was to benefit under the contract? A. Yes. The real purpose of putting that in there, was to assure Commissioner Howe, and through him to assure the Commission, that if in finally assembling these tracts, we were forced to pay an exorbitant sum for one or two tracts, or we had to pay a sum which would carry it beyond that, that the Prudential would pay it, and not the City.

Q. Then, Mr. Duffield, you contradict Commissioner Gillen in his statement, that the Prudential sought the City's aid, and nothing had been said before, or up to the time of that luncheon, as to

the method of apportioning the cost of acquiring the property?

Mr. Clancy: I object to the question, because it calls for a conclusion on the part of the witness.

A. I repeat, I wouldn't like to contradict the Commissioner, but I think his memory is bad. At no time did I ask the aid of the City in connection with this matter. The City was constantly asking the aid of the Prudential, and certainly the question of the City acquiring a portion of any land which the Prudential took or sought to acquire for housing purposes, for the use by the City of parks and playgrounds, was an integral part of the whole plan from the first meeting of the Committee to the day on which we presented the matter at the City Hall. I ought to add to that, I do not recall that I personally ever discussed the matter with Commissioner Gillen, but I certainly did discuss it with the Mayor; he certainly reported to me from time to time his conferences with the Commission, and I certainly did discuss it informally with members of the Commission, when I met them from time to time, but I simply do not recall any specific conference with Commissioner Gillen, but I do wish to make it clear, that neither at that luncheon nor elsewhere, did I ask any aid from the City.

Q. Mr. Duffield, there never has been, or is not now, any question of the City going into partnership with the Prudential in this investment, is there? A. There certainly is not. I assume a partnership would mean both questions of profits and losses. I have no idea that the City will assume any obligation in regard to the financing

of these buildings, in regard to the payment for the land on which they stand, or in regard to assuring us any return thereon. The only partnership, if a partnership at all, is, that we were willing to cooperate with the City in what we believe to be a public improvement.

Cross-examination by Mr. Clancy:

Q. You knew, did you not, Mr. Duffield, that Commissioner Gillen was the Director of the Department of Parks and Public Properties? A. Why, certainly.

Q. And you knew that his department had jurisdiction and control over public parks in the City of Newark? A. I don't know the extent of his jurisdiction. I knew he was Commissioner in charge of parks.

Q. Didn't you think when you were negotiating, or when you were discussing these matters, that the proper person to discuss them with was Commissioner Gillen, under whose department the parks came? A. No. I think if I had been seeking the aid of the City in a matter in which I was interested, I would probably have gone to Commissioner Gillen, but as the City was urging me to go ahead, I assumed that the Mayor was the responsible head of the City.

Q. After Mr. Sinclair came to you and later returned with Mayor Congleton, did Mayor Congleton represent to you that he was coming to you on behalf of the City, or that he was coming to you as an individual? A. I assumed that he was coming there representing the City, and in fact, for this reason: I had stated to Mr. Sinclair that I certainly would not go ahead on the part

of the Prudential and seek this legislation; that if it came as a result of public sentiment, I would be willing to co-operate, and that if the Prudential moved in the matter, it would certainly be misconstrued. When Mr. Sinclair returned with the Mayor, he said, "I thought the best evidence of public sentiment would be the City of Newark. I have taken it up with the Mayor, and the Mayor has discussed it with the Commissioner, and they are anxious to have you go ahead." So I naturally assumed that he was representing the City at that time.

Q. He didn't tell you that he did, did he? A. I don't recall; the conversation was very informal. He was seeking my aid in a large matter. I cannot tell you what was said. I am trying to give you the general impression.

Q. Do you recall whether or not he told you that the City Commission had authorized him to see you on this project? A. If you mean by formal vote, I assumed they hadn't, although I do recall that the matter was discussed.

Q. You never discussed this project personally with Mr. Gillen, all through the entire negotiations, did you? A. I cannot answer that.

Q. Have you any recollection that you ever did? A. I have no definite recollection, except that the matter was common knowledge; it was discussed in the press. I have talked with any number of people about it; I never saw him officially, if that is what you meant.

Q. It wasn't discussed in the press very much before your appearance before the City Commission, was it, Mr. Duffield? A. Of course it was.

Q. How long? A. During the campaign, when the present City Commission was elected, I remember particularly the Mayor making a speech, which I think if you will examine the files of the Newark Evening News you will find an account of it, in which he went at length into it, and discussed, not only the question of housing, but that it was to be along lines of what is now proposed in the Third Ward.

Q. Did he in any of his speeches, or at any time during that campaign did it appear that the Prudential was to undertake that project? A. Yes, he said at that time that he had interested—or that the City had been able to interest the Prudential in assisting in the solution of the housing problem. I think I recall that distinctly.

Q. There was nothing definite in mind at that time, was there? A. Very definite.

Q. How long had your negotiations been going on, or your conferences with Mr. Sinclair and your housing expert, Mr. Veiller, and Mayor Congleton, before the luncheon at the Newark Athletic Club? A. At the Prudential. I am afraid your chronology is wrong. That luncheon took place only last spring, and this matter dates back until the fall of 1928.

Q. Then my chronology is correct. I had that in mind. How long ago was that, a year or year and a half? A. As I say, the matter became more or less definite from the first meeting of the Committee, which took place—at which Mayor Congleton was present, and took place in January, 1929, and the luncheon, I should say, was held in the latter part of March or April, 1930, and during that time practically everything had become very definite.

Q. And all during that time you had never taken the matter up personally, so far as your recollection serves you, with Commissioner Gillen, who was the Director of the Department of Parks and Public Property? A. I had never taken the matter up with anyone in an official way, except through the Mayor, who had shown an interest in it, who had come asking our aid, and whom I was seeking to co-operate with. He was going back to his Commission, and I was going to my Board of Directors, and as the matter developed, it was discussed in that way. Informally I would see Commissioners from time to time and discuss it with them, and I certainly assumed when we met for luncheon at that time, that every Commissioner was thoroughly advised as to the situation. There was certainly every indication at that luncheon that they were thoroughly advised. In fact, I think Commissioner Gillen will agree with me, that his only dissent at that luncheon was about a discussion as to the question of price which should be paid by the City, not at all as to the program, which I think he was familiar with.

Q. Had you ever informed him of the program or the negotiations, either formally or informally, during that time? A. As I say, my negotiations were entirely with the Mayor; he was the one who had come to me, and I assumed that he represented the City in coming, and I negotiated—if you call it negotiation—throughout with him.

Q. And the first time that you discussed the matter in the presence of Commissioner Gillen was at this luncheon? A. I won't say that. I may have, but that is the first time I can definitely recall it. But I don't say that it hasn't been done before. If the Commissioner says it hasn't, I will agree with him.

Q. At the time of the luncheon, or at the time of your appearance before the City Commission, had you or the Committee of the Directors of the Prudential Insurance Company worked out any definite plan or lay-out of this housing project? A. You mean plans had been drawn for the houses themselves?

Q. Or the plan itself for the whole scheme, the use of the block. A. My dear Sir, that was practically an integral part of this plan from its inception, in February, 1929, and we had a very definite idea from then on.

Q. Had the plans been reduced to paper? A. No; there were no plans drawn, but the idea of a plan, with a park and playground in the center and with the Prudential housing plan placed alongside.

Q. Did you make any mention of that at the luncheon, when the Commissioners were present, as to the probable layout of the houses and the park? A. Why, certainly, it was discussed, but that is why, as I say, the Commissioner's memory is faulty, because he certainly expressed no surprise at that time, except his idea that the interior land should be turned over at a lesser basis, and I tried to illustrate to him the idea, that that was a project which covered the whole thing, and had always been considered as that, and therefore the suggestion I was making was a fair one.

Q. And was it your idea, Mr. Duffield, that the City would pay for the land which it acquired, in proportion to its area, and also in proportion to its cost? A. Yes.

Q. And it was your idea that the Prudential was to pay for the land which it used in the proportion which it cost? A. Yes.

Q. You know, do you not, Mr. Duffield, that the cost of land depends upon a number of factors, such as frontage on streets, corner influence, and things of that sort? A. I am not a real estate expert. I assume what you say is true.

Q. Didn't it seem logical, as Commissioner Gillen suggested to you at that time, that in view of the fact that the Prudential was using the exterior, or street frontage lands, that the cost to the Prudential should be much greater than suggested? A. It certainly did not. If this had been a proposition in which the Prudential had gone to the City and asked their aid in carrying out a project, what you say might be true; but the contrary was the fact. The City had come to us, and asked us to carry out the project. If the City had acquired this land for park purposes, and then had sought to have us erect buildings thereon, I don't think it would have been unfair to suggest to them to treat the matter as a whole, and each pay a portion of the acquired land, in the same relation to the total cost as the portion which they occupied bore to the total plottage. I thought it was a fair plan, and think it is a fair project now.

Q. Did you ever suggest to Mayor Congleton that the City buy the land for park purposes and sell so much to the Prudential? A. I did, and in fact, had it not been for the necessity of future legislation, I am inclined to think that that might have been carried out. It was suggested at the very first meeting that it might be desirable to accomplish it in that way.

Q. You testified—and if this isn't so, I want you to correct me—you testified that you recognized this as a joint enterprise, and that if the City was acquiring parks, you would put houses alongside of them; is that what you meant to tes-

tify to? A. Substantially, yes. I don't know but what I may not have expressed it clearly.

Q. Was it the intention at the outset that the City acquire the land? A. We were engaged in what I thought was—as you quote me—a joint enterprise. The details of whether the City was to acquire the land and we were to purchase from them, or we were to acquire the land and the City purchase from us, was under discussion, and to be decided as to the most advantageous way. What we were seeking to do was to provide a building in which we could charge a low rental, always recognizing, as the City recognizes, that we must have a fair return on our investment.

Q. Realizing that, as you put it, it was a joint venture, and that the City was not to be in any partnership with the Prudential, nor was the City to make any money out of it, didn't you believe that the Prudential should pay the cost, considering that they were getting the frontage and not the rear land?

Mr. Groel: I object to the use of the expression "realizing"; I think that is too broad.

A. I have told you repeatedly that I thought that the fairest plan which could be devised to separate the cost of this between two parties, having a joint interest in it, was the one that was finally determined upon, and I repeat that again: I still think it is.

Q. You stated that the Prudential, as I understand your testimony, was not a philanthropic institution; that they desired to pay for what they got? A. I did.

Q. And you didn't think at the same time that the City of Newark was a philanthropic munici-

pality or institution to defray part of the Prudential's cost, did you? A. No, but I think that the City of Newark had a very much more definite duty toward the citizens of the Third Ward than the Prudential had, and I thought that the City of Newark was interested in procuring what they will procure in that locality, if this enterprise was put through. I thought it was more to the interest of the City of Newark than it was to the Prudential that this matter should go through successfully. I didn't wish to put one penny on the City which I did not think it fairly should bear; neither did I wish to assume one penny for the Prudential which I thought was properly a charge against the City.

Q. Did you believe, Mr. Duffield, that legislation was to be enacted so as to enable the Prudential to take up this project? A. I knew it would have to be enacted, when it was originally brought to my attention.

Q. Do you know why, if it was the Prudential's understanding, or the understanding of the City, that the City would share in this project, why provision was not made for that in the legislation which made this project possible? A. I have never understood that there was any legislation necessary to enable the City to acquire this land for park or playground purposes, whether we owned it or anybody else.

Q. You understood that there was legislation necessary, in order that the Prudential could go ahead with the project? A. There certainly was.

Q. And it was in your opinion a joint project or joint enterprise to the extent that you were being aided by the City? A. I have never stated that we were being aided by the City in any way. It is contrary to the facts. We are not being aided. Whether this matter goes through or whether it

doesn't, we are not being aided in the least, and we have never sought the City's aid in connection with it.

Q. Was the exact cost of the City's share of this project ever settled or broached in the presence of Commissioner Gillen? A. That I cannot tell.

Q. Was it ever suggested or settled or broached by you? A. The exact cost?

Q. Yes. A. I wouldn't say so. Possibly prior to this luncheon to which you refer, and even at that time, the cost was not exact; that was the reason for inserting the $1,200,000 in it.

Q. Did the Mayor ever inform you that he had advised the other Commissioners that the City was to share in the cost of this project? A. He certainly did.

Q. Can you fix the time? A. Frequently; I cannot fix the exact time, but as I say, he and I would confer; I would take the matter up with my Board of Directors; he would take the matter up with the City Commission and report back to me what he had done, and I have no doubt that he did.

Q. There was no official action taken by the City of Newark prior to May, 1930, with respect to the City's sharing in the cost? A. I think there was action taken at the meeting which I attended, which I think was in April, and in which the City approved of the project by unanimous vote of the Commission.

Q. Do you know whether there was any official action, by resolution or otherwise, prior to May, 1930? A. I think, as I say, it was taken on the day on which I appeared before the Commission, and which I think was in April, 1930, in which the Commission unanimously approved the plan.

Q. And that was the first time, in your opinion,

that the City approved the plan? A. Officially?

Q. Officially, from the time of your negotiations, approximately a year and a half prior. A. I think that was the first official action by the City.

MAYOR JEROME T. CONGLETON, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. Mr. Congleton, you are the Mayor of the City of Newark? A. I am.

Q. And have been for how long a period? A. Since the latter part of October, 1928.

Q. Are you familiar with the proposed Housing Plan of the Prudential Insurance Company, of the City of Newark? A. I am.

Q. And particularly the proposed Housing Plan in the Third Ward of the City of Newark? A. I am.

Q. You have been familiar with that since its inception? A. I have.

Q. You have heard the testimony of Mr. Duffield in this matter and the testimony that was given by Commissioner Gillen in this matter; what is your recollection of the facts, in so far as the answers to the questions propounded to them are concerned? A. My recollection is that Mr. Duffield has stated the matter very accurately.

Q. What were the circumstances which originally led the City to become interested in this matter? A. When I assumed office in October, 1928, I found on the desk of my predecessor, unopened, a letter from Mr. Robert S. Sinclair,

President of the Essex County Park Commission, calling attention to the deplorable housing conditions in certain sections of the City; and shortly thereafter Mr. Sinclair called upon me, to ask if I had seen that letter. I told him I had, and he and I had quite a long discussion over the matter, and I became greatly interested in the subject, and Mr. Sinclair and I visited Mr. Duffield to see if we could first get Mr. Duffield interested in the matter; and if so, if he could then get his Company interested in the proposition of their investing moneys in the building of model apartments in the congested sections of our city, where adequate facilities for play and recreation, both by adults and children could be provided. We were successful in the matter, and on December 24—the day before Christmas—1928, at a meeting of the City Commission, I announced to the Board of Commissioners what had been taking place—at a public meeting this was—and they approved of the proposition. Mr. Duffield, on December 26, after my statement had appeared in the public press, likewise made a statement. Very shortly thereafter, the City Commission, at one of our formal conferences, again took up the matter and discussed it. I should say at the earlier meeting of the Commission, the matter was referred to a City conference—it being our habit to have weekly conferences before our regular weekly meetings. In the early part of January this matter was taken up in conference by the Commissioners, discussed pro and con, and we directed the corporation counsel of the City of Newark to prepare the necessary legislation which would enable corporations to invest funds in a project of the kind under discussion. That was done. Senator Wolber introduced the bills for us. There were public hearings

upon it. They were passed and the Governor signed them. While the legislation was pending, and as a result of a direction given to me by the City Commissioners in the meeting when the corporation counsel was directed to prepare the legislation, I continued negotiations or conferences with the Prudential. I did that at the direction of the Board of Commissioners. In the early part of February, I met with the Housing Committee of the Board of Directors of the Prudential Insurance Company, and the expert that has been referred to, Mr. Veiller, was present, and discussed the matter along the lines that Mr. Duffield has described.

I was asked what the City would do with respect to the plan that he outlined, of establishing parks in those blocks, or whatever blocks might be decided upon, and I said that I was without power to say at that time, but that I would take it up with the Board of Commissioners and ascertain their views, which I did; and I remember distinctly of a meeting with the same Housing Committee of the Prudential in November of 1929, when I reported back to them what my colleagues in the Board of Commissioners had told me to report, that we would take a part of the land for park and playground purposes, saying that we felt that the outside price that we should pay, should be for the proportion of the land that we took, as it bore to the whole tract. The question of that value was discussed back and forth. I discussed it with some of my colleagues and that decision was arrived at after I had talked with real estate men, based also upon my own experience of many years as corporation counsel, in the direction of cases before the Board of Local Assessment Commissioners for Local Improvements,

on the basis that the line of taking went through practically every building upon the tract, and from that experience I knew that in condemnation or in the proceedings that I have described, where you cut through buildings, as they will be cut through in this case, that I would be called upon to pay practically the total value of the buildings upon the property, and that value plus the value of the inside land, and I don't care how you arrive at it, would justify, in my judgment, the price that we agreed to pay.

Q. Did you have any conferences with the Commissioners after January first, 1930, in regard to this matter? A. Yes, we discussed the matter back and forth in many of our meetings; not in our formal open meetings in the council room, because at this time it was not thought wise to let it be known, the blocks that had been decided upon; and as early as January, 1930, after I had reported back to Mr. Duffield, and the meeting of the Housing Committee, the attitude of the majority of the members of the Commission, as to the apportionment of cost, the blocks were definitely fixed and the Prudential sought options and contracts upon the property.

Q. Did the City render any assistance in determining where the park land should be located? A. It did. Commissioner Brennan at my request, requested the Police Captains in the two sections then under discussion, to give him a report as to the particular localities in their precincts where they thought the conditions were the ones that we were looking for, and I have the original reports from the Captains of those precincts, addressed to Commissioner Brennan, in my possession.

Q. Will you produce them? A. (Producing same.) I likewise asked Commissioner Murray if

he would have the Board of Health make a survey and a report, and the ones from the Police Captains are dated February 4, 1929, and February 5, 1929. I have in my possession the original report from Dr. Craster, the health officer, to Commissioner Murray, giving a result of the survey made by the Health Department as to the localities. So that we were seeking to interest the Prudential in going into the localities where we felt the poorest housing conditions existed, and so because of that, these surveys were made. I also had some surveys made by the Bureau of Social Service, which used to be the Bureau of Associated Charities. They also made some surveys and gave me some information, which I in turn turned over to the Prudential.

Mr. Groel: I offer these reports in evidence.

Mr. Lane: I object to them on the ground that they are hearsay.

(Marked Exhibits D-4, D-4A, D-4B and D-4C.)

EXHIBIT D-4.

March 26, 1929.

Hon. John F. Murray, Director of Public Works, City.

From: Dr. Chas. V. Craster, Health Officer.

Subject: HOUSING IN NEWARK.

My dear Director:

I am sending you herewith the report of the Sanitary Division upon dilapidated and run-down property existing in the City of Newark. This report does not pretend to cover the loca-

tion of every undesirable or worn-out dwelling but to indicate in a general way the places in the city where such conditions can most readily be found.

The accompanying map shows undesirable blocks where the majority of the houses situated therein do not conform to standards of modern living conditions. It must not be assumed that these various dwellings outlined in the report are unfit for human habitation—far from it—but the majority are just able to meet the minimum standards of the sanitary code and are unsuitable and disgraceful from the point of view of our living conditions today.

The colored and foreign elements of the population not being accustomed to the high standards of living set in this country naturally gravitate towards the houses where short-term rentals are permissible and no leases asked. This means that in many cases exorbitant rents are charged to the ignorant or the careless, far in excess of the value of the accommodations provided. Many of our old frame buildings are insanitary by reason of vermin, lack of up-to-date plumbing, ventilation or heating and have far outlived their usefulness as suitable places where personal hygiene can be enjoyed and where families can be cared for and children reared.

The provision of modern tenement buildings for our wage-earners is a crying need in our city today.

Yours very truly,

(signed) Charles V. Craster
M.D., D. P. H.
Health Officer.

C/O
Enc.

A

Augusta St.	22-36
Adams Street	Both sides between Market & Ferry Sts.
Arch St.	Both sides between New & Warren Sts.
Academy St.	Both sides between Plane St. & Wallace Pl. 191-243 & 220-224

B

Broome St.	Between Spruce St. & Waverly Ave.
Boylan St.	50-93
Bleecker St.	Between Lock & Hoyt Sts. 154-191
Boyd St.	West Side. 11-25
Boyd St.	East Side 14-32
Bergen St.	Between Warren & Cabinet Sts.
Bruen St.	74-84 & 50-56

C

Charlton St.	Beween Spruce St. & Waverly Ave.
Canal St.	78-116
Chambers St.	West Side between Market & E. Ferry Sts.
Clover St.	Between Chambers & Ferguson Sts.
Camden St.	Both sides between Warren & Cabinet Sts.
Crane St.	5-15
Colden St.	Both sides between Warren St. & Morris Canal
Coel Pl.	West Side

D

Durand St.	7-47
Downing St.	27½-43 & 45-49

E

Eighth Avenue	1-10 & 115-117½

F

Fourteenth St.	64-74
Ferguson St.	East Side between Market & E. Ferry Sts.
Ferry St. E.	North Side between Chambers & Ferguson Sts.
Fleming Ave.	28-74
Freeman St.	17-37
First St.	Both sides between Central Ave. & Warren St.

G

H

Holland St.	2-54
Hoyt St.	Between Bleecker & New Sts. 36-48 & 37-49
Howard St.	Both sides from So. Orange Ave. to W. Kinney St. 199-201
Hayes St.	Both sides from So. Orange Ave. to Springfd. Ave.
Halsey St.	Both sides from W. Kinney to Crawford Sts.
Hartford St.	From Norfolk to First St.
High St.	385

J

Jacob St.	1-15 & 17-43
Johnson St.	Between Dawson St. & N. J. RR. Ave.
Jefferson St.	Between Market & Ferry Sts.
Jackson St.	Between Market & Ferry Sts.
Jefferson St.	45-49 & 58-60
Jones St.	One side between So. Orange Ave. & Springfd. Ave.

K

Kinney St. W.	Both sides between West St. & Morris Ave.
Kinney St. E.	Between Mulberry St. & N. J. RR. Ave.

L

Lackawanna Ave.	83 105
Livingston St.	East Side 34-50 West Side 67-99
	Both sides from Springfd. to Avon Ave.
Lexington St.	2-54
Longworth St.	Both sides Washington to High St.
Lewis St.	Both sides W. Kinney St. to 17th Ave.

M

Morton St.	Both sides from High St. to Belmont Ave. 76-90
Mulberry Pl.	Both sides
Madison St.	Between Market & Ferry Sts.
Monroe St.	Between Market & Ferry Sts.
Mt. Pleasant Pl.	1-9

Mott St.	18-56
Madison St.	68-70
Monroe St.	56-58 & 55-57
Mt. Prospect Pl.	Entire
Monmouth St.	Both sides Montgomery St. to Waverly Ave.
Montgomery St.	Both sides High St. to Belmont Ave.

N

Nassau St.	68-86
Nassau Pl.	1-10
Nicholson St.	13-15-17
New St.	Between Lock & Hoyt Sts. & Between Summit & Camden Sts. 221-231
Newton St.	Both sides So. Orange Ave. to 14th Ave.

O

Oxford St.	5-57 & 2-54
Orchard St.	5-35 & 43-47

P

Pennington St.	Between Dawson St. & N. J. RR. Ave.
Plane St.	Both sides between Central Ave. & William St.

R

Rankin St.	Both sides between So. Orange Ave. & Springfd. Ave.
Rutgers St.	Both sides between Bank St. & Wallace Pl.

S

Springfield A.	462
South St.	Between Dawson St. & N. J. RR. Ave.
So. Seventh St.	473-445
Shipman St.	36-42
Somerset St.	Between Waverly Ave & Spruce St. both sides & Montgomery St. to Avon Ave.
Smith St.	74-152
Searing St.	31-35 & 32-36 Both sides between Warren & New Sts.
Summit Pl.	Between Lock & Searing Sts.
Sixth St. No.	Between Nineteenth St. & Delavan Ave.
Sheffield St.	2-18
Sumner Ave.	2-18
Sayre St.	Both sides between Springfd. A. & W. Kinney St.
Spruce St.	Both sides between Monmouth St. & Belmont Ave.
Summit St.	53-140
School St.	12-14

T

Tichenor St.	Between Dawson St. & N. J. RR. Ave.
Telford St.	32-62.

U

Union St.	9-21

V

Vesey St.	Between Dawson St. & N. J. RR. Ave.
Van Buren St.	Between Market & Ferry Sts.

W

Warren Pl.	Both sides between New & Warren Sts.
Warren St.	108-175-193
Walnut St.	65-107
Wilburton Pl.	Entire
Waverly Ave.	Between High & Bergen Sts. both sides
Wickliffe St.	16-18 & 29-35

EXHIBIT D-4A.

DEPARTMENT OF PUBLIC SAFETY
William J. Brennan, Director
POLICE DIVISION
OFFICE OF CAPTAIN

THIRD PRECINCT NEWARK N. J. February 4, 1929

Hon. William J. Brennan,
Director of Public Safety,
Newark, N. J.

Sir:

In compliance with your order of Thursday afternoon, I made a survey of this precinct and find there are five centres of congestion located as follows:

#1. All that territory lying within Passaic Ave. on the north, Waydell St. on the east, Ferry St. on the south and Mott St. on the west.

#2. All that territory bordering on Independence Park.

#3. All that territory lying within Magazine St., Wilson Ave., Rome St. & Darcy St.

#4. All that territory within Pennington St. New Jersey Railroad Ave. and Pacific St.

#5. All the territory lying within Jefferson St., Passaic Ave., Van Buren St. and Ferry St.

In each of these districts I have suggested two sites that are occupied by old buildings, are overcrowded and are somewhat of a health or fire risk. A short description follows each suggested site.

Proposed site for Centre #1.

The block surrounded by Ferry St., Fleming Ave., Brill St. and Christie St. This block contains a number of old two family houses, a few three family houses and a few old buildings.

or

The block surrounded by Ferry St., Foundry St., Waydell St., and Passaic Ave. This block contains a number of old two family houses, a few old buildings and quite some vacant space. Both of these sites are convenient to the various industries in this section of the city and those in Kearny, *i. e.,* Ford's, Western Electric, Etc.

Proposed site for Centre #2.

The block surrounded by Oliver St., East Kinney St. Van Buren St. and Pulaski St. This a very congested block and is filled with old houses and buildings. There are also four newer houses in this block.

or

The block surrounded by Chestnut St. Van Buren St., Oliver and Adams St's. This block is not as congested as the above but does contain a small church and a small school and a factory that is for sale. Both these sites are convenient to car and bus lines and to the Port Newark industrial section.

Proposed site for Centre #3.

The block surrounded by Komorn St., Kossuth St., Maine St. and St. Francis St. This site is occupied by a few old houses and a large part of it is vacant space.

or

The block surrounded by Rome St. Kossuth St. Niagara St. and Wilson Ave. This block is partly filled with old houses and a few old buildings. Both these sites are located within one of our industrial centres.

Proposed site for Centre #4.

The block surrounded by Garden St., Pacific St., East Kinney St. and McWhorter St. This site is occupied by old two family houses and is located in the centre of a colored settlement. It is convenient to car lines and the industries in this section and in Port Newark.

Proposed site for Centre #5.

The block surrounded by Market St. Jackson St. Passaic Ave and Van Buren St. This site is occupied by three story frame buildings on Market St. The rest of the site is occupied by old frame houses and buildings.

or

The block surrounded by Market St. Somme St., Passaic Ave. and Filmore St. This site is filled with two story frame houses. There is also a filling station on the corner of Market and Somme St's. These sites are convenient to all the industries in this part of the city and those in Harrison.

Respectfully submitted,

M. J. Bolger, Captain.

Exhibit D-4B.

Department of Public Safety
William J. Brennan, Director
Police Division
Office of Captain

Fourth Precinct Newark, N. J.

February 5th, 1929

Honorable William J. Brennan,
Director of Public Safety,

Sir:

In compliance with your order of Thursday January 31st, 1928 relative to a survey and report of living conditions, properties, etc. in this precinct, I submit the following facts for your in-

formation as I know them to be from my own observation.

Block bound by Montgomery, Spruce, Broome and Prince Streets.

A great many of these buildings are old frame structures, that have been remodeled and are of the three story type, ground floors are fitted and used for store purposes, the rest of the building used for living quarters.

A great many of the buildings that were made to house three and six families have doubled that number in them, ninety-five per cent. of the occupants in these buildings are colored. It is a common thing to find white and colored living in the same building. The sanitary conditions of the buildings and the condition the occupants are living under are very unhealthy.

The same conditions prevail in the following blocks.

Prince, Montgomery, Charlton and Spruce Streets.

Charlton, Prince, Spruce Streets and Waverly Ave.

Part of block bound by Prince, Broome, Spruce Streets and Waverly Ave.

Barclay, Broome, Spruce Streets and Waverly Ave.

Barclay, Broome, Montgomery and Spruce Streets.

West side of Broome Street from West Kinney to Montgomery Street.

Respectfully submitted,

GEORGE P. FOHS,
Captain Fourth Precinct.

EXHIBIT D-4C.

Waverly District choice of poorest block:

Bounded by—Barclay (South)
Montgomery (West)
Clayton (East)
West (North)

North End District choice of poorest block:

Bounded by—Drift St.
8th Ave.
Factory St.
Clifton Ave.

Roseville District report as follows:

The poorest housing conditions for families under my care exist in the block between Summit St. and High St. embracing numbers 179-153. The block is bounded by Summit, High, Bank and Academy St.

At 179 Academy St. is a dilapidated frame tenement. The first floor was formerly used as a store, but it is in such a state of deterioration that the store has been abandoned. One family under the care of the Social Service Bureau lives on the second floor in four rooms, whose only recommendation is that they are light. The rooms are not fit for human habitation, as the structure is ramshackled, and a good hard storm might easily demolish it.

The visitor does not feel that the family living in these surroundings could be changed by improved housing conditions alone, but through skillful case work. However, such poor housing

near the city's main thoroughfares is not a compliment to a progressive City like Newark.

(From Miss Atkins—Roseville District)

Q. Did you attend a luncheon, held at the Prudential Insurance Company, which was referred to in the testimony by Commissioner Gillen and Mr. Duffield? A. Yes; all five Commissioners were present.

Q. What is your recollection of what took place at that luncheon? A. Very largely as described by Mr. Duffield. He told us how they had been progressing in the Third Ward; he told us about the Ironbound location, and Frelinghuysen Avenue, I think, and reported on the progress that had been made in the acquiring of land in the Third Ward; and we suggested, by reason of the options that they had then obtained, or purchases that they had made, that the time was ripe for Mr. Duffield to come before the Board and make a public announcement; and we then and there at that luncheon fixed on the day that Mr. Duffield should appear, and he did, as arranged with us, appear and make the statement that has been referred to, that is a part of the return.

Q. At that luncheon did Mr. Duffield ask the City to assist it in carrying out this project, because it was not financially able to do so? A. No, sir; that matter was discussed first, to my recollection, in February, 1929, that no one could go into that heavily congested section and buy the lands and build the apartment houses that we were all hoping to see built, and fix rents at a price that the people that we were attempting to take care of could pay. And it was because of that discussion that I went back and discussed

with my colleagues the park and playground strip in the center of the block.

Q. Then in all these proceedings, as I understand it, the Prudential did not seek the aid of the City?

Mr. Lane: I object to that, Mr. Groel. Mr. Congleton is not only Mayor, but he is a lawyer; he does not need to have words put in his mouth.

Mr. Groel: I withdraw it.

Q. Did the Prudential seek the City's aid in this matter at any time? A. They did not, and on the contrary, we sought their aid, and were delighted when we found that we could get a company like the Prudential, which was willing to invest a part of their trust funds in a project of this kind; and I have a very distinct recollection of hearing Commissioner Gillen say, on that December 24, 1928, when I made the announcement, that he was glad that there were some corporations left that still had a soul.

Q. Was any written statement ever given out by the Commissioners of the City of Newark in connection with this matter? A. After Mr. Duffield had been before the public meeting and a motion had been passed approving of it, the Commission took it under consideration, and we desiring to make our position to the public clear, a statement was prepared, and four of the Commissioners signed it. I have the original here, signed by Commissioner Howe, Commissioner Brennan, Commissioner Murray and myself. That statement was issued on May 6, 1930.

Mr. Groel: I offer it in evidence.

Mr. Lane: I object to it as hearsay.

Mr. Groel: It is admitted that these are the signatures of the Commissioners?

Mr. Lane: Yes.

(Marked Exhibit D-5.)

EXHIBIT D-5.

Students of economic and social evils state emphatically that bad housing and lack of proper recreational facilities rank first among the contributing causes of crime. We can not hope to raise our boys and girls to decent citizenship if we handicap them with bad environment, offering no places for proper play and recreation.

Our city has shown its interest in its future citizens by maintaining parks and providing such opportunities for recreation as may have been possible. The value of such places to our younger generation is immeasurable. In our judgment, no boy or girl deliberately chooses to take the wrong road. They go wrong because it is made easy for them; because we do not sufficiently interest ourselves in giving them every possible opportunity to take the right road. We believe every right-thinking citizen sees the wisdom of safeguarding the morals of the disadvantaged boys and girls of the congested sections of our city by affording them constructive measures of safety. Public parks and playgrounds will not solve the problem, but they will have a vital bearing on the solution.

To view the problem at hand from another standpoint, it is fundamental that congested, unsanitary and dangerous housing conditions are a menace to the health, safety, morals and welfare of the public. The correction of these conditions is essential to the general good. The only way in which to accomplish such purpose is by the ac-

quisition at fair prices of the lands and buildings where such conditions exist, demolishing all unsanitary and unsafe buildings, and constructing new housing facilities under proper supervision, in accordance with proper standards of sanitation and safety, at a cost which will permit of rentals within the means of the lower wage-earners. Such a program as we have outlined can be successfully undertaken only through the investment of private funds for the purpose.

It will be recalled that during the latter part of 1928 and early in 1929, the Prudential Insurance Company, after mature study, proposed going into some of the congested districts of our city where living conditions were at the lowest ebb, and building there model apartments, provided the necessary legislation could be obtained. Thereupon, the Board of Commissioners had the necessary bills drafted by its Law Department and introduced into the Legislature. After public hearings, they were enacted by the Legislature into the required laws containing proper safeguards to protect the funds thus invested by the Prudential and to assure the lowest possible rentals to the tenants. After all, it must be borne in mind that the Prudential acts as trustee for its policy-holders who are the actual owners of the funds to be used.

Then, over a long period of time, surveys and inspections of contemplated sites were made by the Company but always a stumbling block was encountered in the high costs of the sites, usually by reason of their being completely occupied by buildings. Notwithstanding the difficulties encountered, the Prudential succeeded in purchasing sites in two different sections of the City. One of these is a full block in the Ironbound section,

located between Lexington and Oxford Streets and Passaic and Fleming Avenue, for the development of which construction contracts are expected to be let shortly. Within this block there will be ample playground space for the use of the people living in the buildings surrounding it. The other is a large tract of land on Frelinghuysen Avenue between Evergreen Avenue and McClelland Street, which is being held for future development.

Both of these sites, it might be well to mention, have been purchased by the Prudential with its own funds and will be developed in their entirety without any financial assistance from the City.

Since the housing project was first begun, surveys have been made in the Third Ward. The Board of Commissioners of the City of Newark is pledged to the location of parks and playgrounds in the congested sections of this Ward, and here the City co-operated with the Prudential to the fullest extent, lending the use of its Health Department and Police Department, and calling upon the various social service bureaus in determining the locations where the most good might be accomplished. Finally, it was decided that the two blocks bounded by Barclay, Somerset, and Montgomery Streets and Waverly Avenue represented the locality upon which to concentrate.

But in this most highly congested section of the city, the Third Ward, the high cost of property was found to be an almost insurmountable obstacle. The Prudential had undertaken to obtain contracts or options upon the property in these two blocks and succeeded in getting control of 87½ per cent. of the area. The Company has found, however, that the purchase price of the

properties is so great that the chief purpose of the enterprise—low rents—would be defeated unless some arrangement could be reached whereby the city could take a part of the land for park purposes. This proposition, presented to us last week by Mr. Duffield, President of the Prudential Insurance Company, on behalf of his Company, would appear to solve the problem.

Under the scheme now proposed, the City would purchase the strip of land through the center of these two blocks, running north and south, approximately 140 feet in width, for the length of the blocks—about 1400 feet, or more than a quarter of a mile. Upon the land which the Company will retain, it will construct fireproof, sanitary, brick apartments, five stories high, thus reducing the fire hazard in a considerable area, and renting the same at the lowest possible rates. Under the law, the Company is limited to a maximum return of 6 per cent. upon its investment, but Mr. Duffield, speaking for his Company, has publicly emphasized on many occasions that it will accept the lowest possible return consistent with its duty to the policy-holders.

The park would be open at both ends of the two blocks and there would be access to it through passageways on Barclay and Somerset Streets, thus affording opportunity not only for the children living in the apartments but also for those in the neighborhood to play in safety off the streets, which would be of great benefit to the entire section.

Convinced of the merits of the plan, the next question to which we must turn our attention is whether the city is in a position, without adding further burdens to the taxpayers, to spend additional sums of money for the purchase of park

lands. After lengthy consideration, with all of the facts before us, we are fully convinced that the answer is yes. And we believe that we can clearly justify our conclusion to the entire satisfaction of a large majority of the people who have given any consideration to the subject.

The laws under which the Prudential is proceeding, it should be clearly understood, do not provide for any tax-exemption and there is no intention or desire on the Company's part to seek exemption on any property it acquires anywhere in the City in connection with this whole program.

The property being acquired by the Prudential and the buildings and improvements which it intends to place thereon will add millions to the ratables of Newark, upon which they will pay in the same manner and at the same rate as any other tax-payer.

The two blocks under consideration in the Third Ward, with improvements thereon, are assessed for a total of $745,200, which at the present tax rate of $3.94 produces in money the sum of $29,360.88. Assuming that the City should pay $1,300,000 for the land which it takes for park purposes, and that the Prudential pays for and retains the frontage along Barclay and Somerset Streets and erects thereon buildings which would produce tax ratables of $2,500,000—and our discussions with the Company's representatives indicate that this is a conservative estimate—the City would receive in taxes at the present rate the sum of $98,500 a year.

If the City, in order to pay for said park lands, issues bonds for $1,300,000, at 4 per cent. (and our recent sales have demonstrated that this can be done), they can under the law be issued for a period of 50 years. All bonds now issued by

municipalities are serial bonds which means that within one year after the issuance thereof, and each succeeding year during the period, a proportionate amount thereof must be retired. In order to retire $1,300,000 worth of bonds over a period of 50 years, it would be necessary to retire $26,000 of bonds each year. The first year we would have to pay interest on the full amount of the issue—$1,300,000—which at 4 per cent. would be $52,000, making with the $26,000 a total of $78,000, but we would receive in taxes from the investment made by the Prudential Insurance Company the sum of $98,000. Each succeeding year, the interest amount would be reduced by the amount of bonds previously retired.

Issuing bonds and retiring them in the manner stated, we would have to pay over the period of 50 years $1,300,000 of capital and $1,326,000 in interest, or a total of $2,626,000, all as shown on the sheet attached, but we would receive during the same period in taxes on an assessment of $2,500,000, with a tax rate of $3.94, the sum of $4,925,000, or $2,299,000 more than we paid for the land, all from taxes paid by the Prudential Insurance Company. And all of us know, who have given any thought or study to similar improvements, that the establishment of a park increases the value of surroundnig properties, which enhancement also adds to the city's revenue. This is shown in connection with every park ever developed within the limits of the City of Newark.

(signed) JEROME T. CONGLETON
(signed) JNO. F. MURRAY, JR.
(signed) WILLIAM J. BRENNAN
(signed) JOHN HOWE

Mayor Jerome T. Congleton, for Respondents—Cross.

Cross-examination by Mr. Lane:

Q. Mayor, you said that in arriving at the cost to the City, or the amount the City would pay for this strip of land, that you took into consideration the fact that if the City were to condemn, you would have to cut into or across almost all of the buildings located upon the site, and that there would be considerable damage accruing by reason of that fact. Did you at any time contemplate the City, in connection with the Housing Plan of the Prudential, establishing a public park or recreation ground in two blocks, or in a block, by cutting through the middle of the block? A. Every single one of the Commissioners had pledged to give parks in the Third Ward, and when I discovered this, I, for one, was tickled to death, so that I could redeem my pledge to the people that I made during the campaign, and work out a proposition which would be self-sustaining. At that particular time, by reason of commitments previously made by the City, I, for one, did not feel that we could go in and buy a full block, or two blocks, for a park; and when I found that we could pay for this and be money in pocket, out of taxes that would be paid by the Prudential upon the land they retained, and from the buildings that they erected upon it, I was tickled to death.

Q. That does not answer my question. I asked whether at any time it was ever contemplated in the City of Newark to establish a public park or recreation ground by cutting through and taking interior land in a block or blocks situated such as this? A. Up to this time, no; not as far as I know.

Q. The result of doing that would, of course, be to make public park and recreation grounds cost out of proportion? A. No, not in my judgment.

Q. Don't you think that the City could acquire, if it desired to establish a public park of that kind, by private purchase, either one or both of those blocks, and sell off the outside strips and make the inside strip cost net to the City considerably less than the proportion of the area that the inside strip bears to the whole area?

Mr. Groel: I object to the question, on the ground that it is not proper cross-examination.

A. I am not a real estate man, as you know, but from my long years of experience, I would say No. Based upon that experience, if we went in there to buy that property, we would have to pay, in my judgment, practically the full value of the two blocks, by reason of the owners claiming a damage to the remainder, and one of the strong appeals to me in this proposition is, that because the strips are only 30 feet deep, it practically assures the City of having houses of the kind that I want maintained there in perpetuity, although the act only requires them to keep them there for 25 years, I think it is; because a 30 foot strip would be very hard to utilize for any other purpose, some 1,400 feet long.

Q. I don't think that answers my question. The question was, whether or not, if the City proposed to establish playgrounds or recreation grounds in the interior of the block, it would not be more advantageous for the City to acquire both blocks, and sell off the outside strips?

Mr. Groel: Same objection.

A. In my judgment, no; for the reasons that I stated, that it would be hard to find a purchaser for a strip 1,400 feet long and 30 feet deep.

Q. And it would be equally hard to find a purchaser for an interior strip 1,400 feet long, with an outlet only of 150 feet bisecting the 1,400 feet, wouldn't it?

Mr. Groel: Same objection.

A. Not for a purpose of this kind, such as we are dealing with now.

Q. Such as the proposed public park and recreation ground? A. Yes.

Q. There is only one purchaser for that, and that is the City of Newark? A. I don't know about that. The Essex County Park Commission would, if this works out satisfactorily.

Q. It would be extremely hard to find a purchaser to purchase any such piece of ground with utilitarian purposes? A. I don't know. I can imagine many purposes for which that property could be used.

Q. You stated that the City sought the aid of the Prudenital; for what? A. To invest some of its funds in the erection of model apartment houses in the heavily congested sections of our city, so that they might be rented to the less fortunate of our citizens, so far as income is concerned, at the very lowest rents.

Q. Did you ask Commissioner Gillen, Director in charge of Public Parks, to make a survey and report? A. I don't know that I did. Commissioner Gillen knew what was being done, I assumed, because it was taked over in our conferences.

DANIEL W. MCGEE, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. What is your business? A. Builder.

Q. Where are you engaged in this business? A. My office is at 142 First Street, Newark.

Q. How long have you been engaged in this business? A. About forty-four years.

Q. Are you engaged in it at the present time? A. I am.

Q. Are you familiar with the present day building costs? A. I am.

Mr. Lane: I admit his qualifications.

Q. Are you familiar with the property in the Third Ward of the City of Newark, bounded by Waverly Avenue, Barclay Street, Spruce Street, Montgomery Street and Somerset Street? A. I am.

Q. Have you examined the buildings located on that property? A. I have.

Q. Are you familiar with the proposed plan by which the City is to buy a strip 140 feet in width, and some 1433 feet in length, running through the center portion of this land? A. I am.

Q. And have you examined all the buildings located in these two blocks? A. I have.

Q. Have you examined the buildings located in those two blocks with respect to what portion of the buildings would lie upon City's land and what portion would lie upon the land to be owned by the Prudential Insurance Company? A. I have.

Q. As a result of your examination of all the buildings located in those two blocks, what in your

opinion is the value of all the buildings and improvements located on the property which the City will acquire? A. 556,450.

Q. And what is the value of all the buildings and improvements that will be located on the two strips of land to be retained by the Prudential Insurance Company? A. $360,828.

Q. What is the total value of all the buildings located on the two blocks in question? A. $917,278.

Q. If the City were to tear down all the buildings and improvements located on its tracts, would there be any damage to the buildings located on the Prudential's tracts? A. There would.

Q. What would be the extent of that damage? A. It would vary from fifty to one hundred per cent.

Q. Approximately, in dollars and cents, what would be the damage? A. If you took the minimum of fifty, it would be about $180,000, but in my judgment it would run higher.

Cross-examination by Mr. Lane:

Q. Have you the details of the valuations that you have placed upon the buildings located on the strip retained by the Prudential? A. I have.

Q. Will you produce it? A. I have a list here of every building on the site. There are a number of sheets. There are some forty-one pages. If there is any specific building——

Q. I want each and every one of them, commencing with the one on the north corner of Waverly and Somerset Street. A. The building you refer to is designated on the map as No. 117½ Somerset Street; also 57 Waverly Avenue. That is a two story and basement, brick and frame, with stores and apartments. The size of the building is 16 by 45, 32 feet high. Its present replacement

value would be $7,372; with a depreciation of fifty per cent would leave a present day value of $3,686.

Q. The next building. A. The next building is 117 Somerset Street; two story and basement, frame house, size 15 by 45, by 30 feet; replacement value would be $5,467; depreciation 66⅔ per cent, leaving a present day value of $1,823.

Q. The next one. A. The next one is known as 115½ Somerset Street. 115½ Somerset Street is a two story and basement frame house. The replacement value is $5,467; with depreciation of 66⅔ per cent, leaves the present day value of $1,823.

Q. The next one. A. The next one is known as No. 15 Somerset Street, two story and basement frame house, 15 by 45, by 30; replacement value $5,467 and depreciation 66⅔ per cent, present day value $1,823.

Q. The next one. A. 113½ Somerset Street, two story and basement frame house, 15 by 45 by 30; replacement value $5,467; depreciation 66⅔ per cent, leaving a present day value of $1,823.

Q. The next one. A. 113 Somerset Street; two story and basement frame house, 15 by 45 by 30; replacement value $5,467; depreciation 66⅔, leaving a present day value of $1,823.

Q. The next one. A. The next one, 111 Somerset Street, two story and basement frame, containing two stores and one apartment; size of the building, 18 by 70 by 30; replacement value $11,340; representation 50 per cent, leaving present day value of $5,670.

Q. The next one. A. 109 Somerset Street; three story basement, three family, frame, 25 by 70 by 36; replacement value $17,010; depreciation 50 per cent; present day value $8,505.

Q. The next one. 107 Somerset Street, three story basement and frame three-family; 22 by 50 by 30; replacement value $11,286; depreciation 60 per cent, leaving present day value of $4,515.

Q. The next one. A. 105 Somerset Street, three story and basement, brick, three family, 22 by 72 by 40; replacement value $22,176; depreciation 33⅓ per cent, leaving present day value of $14,784.

Q. The next one. A. 103 Somerset Street, three story and basement, frame, three family, 22 by 60 by 36; replacement value $12,830; depreciation 60 per cent; $5,132 present day value.

Q. The next one. A. 101 Somerset Street, two story and basement, frame house, 22 by 30 by 24; replacement value $3,960, with depreciation of 60 per cent, leaves present day value $1,584.

Q. The next one. A. 99 Somerset Street, one story brick factory building, 25 by 30 by 15; replacement value $3,375; depreciation 33⅓, leaving present day value of $2,250.

Q. The next one. A. 97 Somerset Street, four story and basement, brick apartment house, 25 by 70 by 50; replacement value $30,625; depreciation 33⅓ per cent, leaves present day value of $20,417.

Q. The next one. A. 93 Somerset Street, one story frame shed, 25 by 70 by 12; replacement value $3,150; depreciation 66⅔ per cent; present day value $1,050.

Q. The next one. A. 95 Somerset Street; one and ½ story and basement, frame, one family; that was in such bad shape that we put no value on it at all; it is just about ready to crumble.

Q. Next one. A. 91 Somerset Street; three story and basement, frame, stores and apartments; 25 by 30 by 36; replacement value $8,100; depreciation 50 per cent; present day value $4,050.

Q. The next one. A. 93 Somerset Street, one story, frame shed, 25 by 70 by 12; replacement value $3,150; depreciation 66⅔ per cent; leaves $1,050.

Q. Are you giving me now the value of the buildings on the strip reserved by the Prudential? A. I am giving the strip reserved. I will have to explain that to you a little bit. In most of the buildings here on both blocks, portions of the buildings are on the strips going to the Prudential, portions of it are going to the parts within the City line. I have appraised every building in the whole block and I think I have apportioned the part of it that is on the City land as against the other.

Q. I am interested in the apportionment. I am not questioning your value on the buildings as a whole, but I am trying to find out why it is that the value of the buildings on the plot for park purposes is greater than the value of the buildings on the part used by the Prudential. A. To give you a better explanation of it, in most cases, if you will notice, from the recitations that I have made so far, there were two and three story buildings in some cases shown, and in other cases, one and one and a half stories, until, as you get down the block, you get into a number of brick apartment buildings, three and four stories high, most of them four stories high, which are from 70 to 80, and in some cases 90 feet in depth; so that when you come to those buildings, the apportionment of them running back is what makes the difference in the cost. In addition to that, between two strips of 30 feet on Waverly Avenue, on Spruce and on Montgomery Street, on both sides of Spruce Street that would be, there are a number of buildings which are exclusively within the City's line. There are also on the rear

of the property, facing both streets, a number of very substantial buildings, factories, brick, and garages, and other buildings for other purposes.

Q. I am interested in the method of apportionment, and I want to get at the figures. A. If you want, I can dissect every building, if you want it.

Mr. Lane: I do, and you will have to stay here until you dissect enough to find out how you apportion them.

The Witness: If you take the property 28-30 Barclay Street——

Q. Take the property 117½, the first one we started with. A. 117½ Barclay Street is a property 45 feet deep; present day value of that is $3,686. The Prudential's portion of that is 30 feet, the City's, 15; or in other words, the Prudential gets two-thirds and the City one-third. On that property I have split $3,680 into three parts, and apportioned $2,457 to the Prudential, and $1,229 to the City. That same proportion happens to exist on that first group of buildings; or, in other words, from 117½ back to 113 Somerset Street, they are all the same size and depth. When you take the next building, 111, that is a building that is 70 feet deep, the present day value of which is $5,670. I have apportioned that three-sevenths to the Prudential and four-sevenths to the City, the Prudential's part amounting to $2,430, and the City's part, to $3,240.

Q. Have you adopted that rule of apportioning the buildings, on each building? A. On every building that I cite.

Q. You adopted the method by which you apportioned by the length of the building? A. Yes, by the actual value of the building projecting on either side.

Q. You have used the length of the building as the basis of apportioning? A. There is no other method.

Q. I didn't ask you that. Is that the basis you used? A. Yes.

Q. In each and every case? A. Yes.

Q. You disregarded the fact that in some instances the buildings narrow toward the rear? A. No, I did not.

Q. Then you didn't use the basis of length of building? A. In all cases where the buildings narrowed toward the rear, the depth of the building was reduced by sufficient in its depth to square up the uneven portions, so that the depth that I finally apply is the depth that that would be, if the line was straight across the back.

Q. Let us go to 101 Somerset Street, then. A. 101 Somerset Street, we have taken the depth of that building at 30 feet, and in the apportionment of it, the whole thing went to the Prudential. The whole value has been allotted to the 30 foot strip.

Q. Why did you give the whole benefit of that to the Prudential, when it extends further back into the land retained by the City, or taken by the City, than to building 117½? A. I have given the Prudential the value of the building, so that would become 30 feet. All of the rest of this ground is built up solid with buildings, brick buildings in here (indicating). The balance of that I have given to the City by treating it as the rear of building 120 Somerset Street and 101 Somerset Street, but taking the 30-foot line, I have given the full value of the outside portion of that to the Prudential.

Q. I assume that you have done that in every case? A. Yes. But conditions are different there than in any other place on the block, for the reason that all of the City's—the same owner owns prop-

erty over here on Barclay Street, and this entire space has been built up; it does not show on that drawing, but the buildings are here; so you have a solid group of buildings right through the block, so that was the reason. There was no other way of doing it, only to take the 30 foot, giving them the solid measurement and value for that on the street, putting the balance of it into the rear property.

Q. 101 Somerset Street, the value of that building as a whole is how much? A. In order to arrive at the value there, you have got to take into consideration on that the method that I have used in figuring here 122 Barclay Street, the rear of that and the rear of 99 and 101 Somerset.

Q. The building 101 Somerset Street is one solid building, isn't it? A. It is not now; there are other buildings built right up to it.

Q. I don't care whether there are other buildings up to it or not, it is a building integral to itself? A. No, it is not.

Q. It is not? A. No.

Q. You mean to say that that building wasn't built at one time? A. The building itself might have been built at one time, but it has been added to, so that now the whole space on the rear of that is building, and not ground.

Q. I don't care; it is a frame building, isn't it? A. That portion on the street front is frame; the parts in the rear are brick.

Q. All of them? A. Yes.

Mr. Lane: The map that has been introduced in evidence is wrong, because it shows it as frame and brick buildings alongside of it and separated. I am talking about the map introduced in evidence by your own people.

Witness: Since that drawing was made, evidently that has been changed, because they are utilizing this.

Q. If you value a building, you don't value it because it is utilized for this or that. A. I am not putting any value on it for utility, but I am trying to make it clear, while that shows what might be taken as a separate unit, it is one unit now, just as the Prudential Building on Broad and Bank has been added to, the other part wouldn't be considered separate buildings.

Q. How did you get the value of the 30 feet front on Somerset Street? A. I figured the value of the building two-story and basement frame house, 22 by 30 by 24 feet high; replacement value at $3,960, with a depreciation of 60 per cent, which is $1,584.

Q. Where did you get the figure $3,960? A. By taking the size 22 by 30 by 24, that portion of the building that is within the 30 foot line.

Q. Then in making your valuation of that building you disregarded the value of the building as a whole, but drew an imaginary line 30 feet back, and said this front part of the building is worth so much money, is the way you arrive at it? A. It is the only way you could get it.

Q. There is a perfectly possible way by taking the whole of the building, and then dividing it? A. You cannot put the same price on a brick building that you put on a frame. Everybody knows that there is a big difference in their value.

Q. But the frame part of it goes back still 15 or 20 feet, doesn't it? A. It goes back some distance, yes.

Q. Then why didn't you take so much of it as was frame and value the whole, and get your proportion, instead of drawing an imaginary line

down through the center of the building, or somewhere down the middle of the building, and say the front part of this building is worth so much money? A. You cannot very well in a case of that kind do that. You would have to go to work and eliminate from your calculations, additions and extensions, and so forth. That happens to be the only case in the whole site that has a condition of that kind. It is treated different than any of the others for that reason, because in that case you have the whole block built across.

Q. Why didn't you take the value of the whole structure, including brick and frame, and then apportion it? A. Because it is contiguous to property on the other street.

Q. How did you value the rear portion of 101? A. The rear of 99-101 Somerset Street, one-story brick building and additions.

Q. An addition? A. That is, there is a one-story brick factory building, and then there is an addition to that factory building projects into the open gaps shown there. I have taken that. There is a total in one of these buildings of 50,000 cubic feet, $14,000; for the other portion of it, $2,500, and for a third portion, $4,062, making a total of $20,562.50, with a depreciation of 20 per cent, $16,450, being its present day value.

Q. What is included in that; show it to me on the map? A. It takes in all this strip across here, with this piece on the back of adjoining property.

Q. That is 99? A. Yes.

Q. Where does the rear of 101 go? A. I cannot make it clear to you, because this drawing isn't exactly as the conditions are there. If you go to the site, you will find that this porch (indicating) shown on the map is not there.

Q. You say this map, then, is wrong, or this plan? A. I say that there are some slight modifi-

cations in the building over there that makes a change. I took the buildings on the site as I found them, without any reference to a map.

Q. For a moment let us go to 87 Somerset Street. A. That is a three-story and basement, one-family frame, 12 by 60 by 36 high; replacement value $6480; depreciation 50 per cent, leaves present day value $3240.

Q. How much of that have you put on the Prudential and how much on the City? A. Half and half.

Q. Why? A. Because that is the proportion that it bears to it.

Q. How? Not if this map is right. A. I made a mistake; I picked out the wrong one. The building at 87 Somerset Street is a building that is 12 by 60 by 36 feet. It is figured 60 feet deep, 12 feet wide; taking the narrow part and put this narrow piece (indicating) on the end, so as to equalize the thing, would be practically the same way. If it worked around the other way, there the cubical contents would be the same.

Q. You are going entirely too fast for me. What I want to know what the replacement is that you put upon that building? A. The replacement value on No. 85 is $3025.

Q. We are talking about 87. A. $3240 is replacement.

Q. How much on the City and how much on the Prudential? A. Half and half.

Q. Is that a correct representation of the building as it appears on the map? A. It is filled out some here (indicating), outside of that.

Q. It is filled out some in the front? A. Yes.

Q. Then how do you get half and half? A. By apportioning, taking the building and scaling it out so as to make one line of the building 12 feet wide and 60 feet long.

Q. But the building on this map isn't 60 feet long by any manner of means. A. I am talking about the building on the site.

Q. As that building appears upon the map it is wrong? A. It may be. It is not that way on the site.

Q. Do you say that the map which is in evidence is incorrect with respect to the way in which that building now appears? A. I would have to check back the building; according to my notes, or whether the map is wrong—I believe there is some additions to that.

Q. So that you cannot tell from your notes as to whether the map is wrong or not? A. Not positively, no.

Q. If the map is right, your apportionment is wrong, isn't it? A. If the map is right, in that particular case, I might be wrong on the apportionment.

Q. It is not a question of "might be," it is a question of you are. A. That depends on how you view it.

Q. Then you give me some explanation as to how you could be right if the map is right. A. The only way I can explain it is that in most cases—in fact, in all of these cases, we tried to square them up. There are a few buildings that are a little off their ordinary shape, and that happens to be one of them.

Q. And what do you mean by squaring them up? A. In order to arrive at the cubical contents of the building, instead of trying to pick out every little angle and fill out the gaps, and equalizing it.

Q. Will you tell me how you take it off of that building, and where you take it to square it? A. You take it off either the back or off the side. I

took it, apparently, from the side, from the figures I have here.

Q. And then squared it up to about that little jog which is here now on the front, and you put it in the back, is that right? A. I assume so.

Q. And 60 foot long? A. Yes.

Q. Then you had a strip 12 foot wide? A. Yes.

Q. That is the only way by which you can make that building 60 foot long? A. Yes.

Q. Then you divide it in two? A. Right.

Q. Notwithstanding the fact that at least 80 per cent of the cubical contents of that building, in fact, are in the front? A. There isn't quite 80, no matter what way you square it up, but aside from that, the value of that building in dollars and cents is insignificant.

Q. I don't care whether it is insignificant or not. I am trying to get at your theory. If you repeat these insignificant changes in sufficient number, you get an appreciable result. A. You don't happen to have enough buildings on that site to do it.

Q. You told me a few moments ago that the only one which needed special treatment was 101. There is apparently another one, only a few doors away. A. I said that is the only case on the whole site where the ground is built solid from street to street.

Q. It is not the only case on the whole site where the building needs special treatment, is it? A. I don't know that I said special treatment; I don't recall having said so. What I said was, that this was the only case in the site where the buildings project.

Q. It is the only case in the site where the building needs special treatment? A. I don't know what you mean by "special treatment".

Q. Is that the only way you can answer that question? A. I don't know what is in your mind.

Q. You started out by telling me distinctly that in all cases you had taken the length of the building, and you had apportioned so much of the value to the City, as the length existed on the City line, and so much of the length to the Prudential as the length existed on the Prudential's line, and I pointed out to you wherein the buildings narrowed on the Prudential's, and you said you made allowance for that. I am attempting to find one instance where you made allowance for it. Then I brought you up to 101, and you said that needed a special method of calculation, and you told me, as I recall it—I may be wrong—that that was the only one. Now, we come to No. 87, and I find that that needs special treatment. That is what I mean by special treatment, and I think it is clear. Now, is there any other building on that plot that needed a special method of calculation? A. I don't believe so.

Q. As a matter of fact, if you have, for the purpose of squaring off, taken this part which is in the front and added it to the rear, and put it on the City's line, where it never was, and then divided it in two, you are wrong, aren't you? A. That would seem so.

Q. Assuming that that map is right, that is the only way by which you could reach your proportion of fifty-fifty, isn't it? A. Right.

Q. Have you a rule? A. I think so.

Q. Will you tell me what percentage of that building now is on the Prudential's line? A. That portion that is in there now is about 18 feet.

Q. I am trying to get at percentages. It is easy enough to do it. What is the scale of that? A. About 40 feet to the inch.

Q. It is about 20 per cent. It actually figures out just about what I said, 80 per cent on the City and 20 per cent on the City? A. Right.

Q. Let us go to this building here. Will you turn to your figures on the building on lot 21, 75 Somerset Street? A. Two-story and basement brick and frame building, store and apartments; replacement value $9,000; depreciation 66-2/3 per cent; leaving present day value of $3,000.

Q. Now your apportionment. A. Three-fifths on the Prudential and two-fifths on the City.

Q. How do you reach it? A. By the fact that the property, the building is 50 feet deep; that is a ratio of 30 and 50.

Q. Yes; you think that is a fair ratio in that case? A. I don't know why it wouldn't be.

Q. For the simple reason that the first 15 feet, approximately, is brick and the rear is frame, that is the reason? A. I took care of that brick building by the price I applied to it.

Q. I know that, in making up your value; but when you came to apportion, you apportioned three-fifths on the Prudential and two-fifths on the City, where the two-fifths on the City is all frame, and the three-fifths on the Prudential is half of it brick. A. In working out a problem of this kind I followed the methods that we always use.

Q. I didn't ask you that. A. I considered the apportionment absolutely fair.

Q. Then you consider brick buildings worth the same as frame? A. No, I do not.

Q. You consider the depreciation on brick buildings the same as frame buildings? A. No, I do not.

Q. Then by what theory do you consider the apportionment of a building which is partly brick

and partly frame, upon a length basis? A. The building in this case is partly brick; the brick portion is one story high; the balance of it is two. We assume the price and ratio right straight through to equalize the value straight through the building.

Q. How does that answer the question? A. It does answer it.

Q. Is that the best answer you can make? A. I don't see what is wrong with it.

Q. Because one part of it is brick; the other part is frame. Brick work is worth more than frame work. The depreciation you have on frame buildings usually is 66⅔ and on brick buildings, 20 per cent. A. No, the depreciation is not always 66⅔; in make of the frame buildings it is less.

Q. I have listened to all you talked about, and most of them are 66⅔. A. You happened to pick out the worst buildings on the site.

Q. You started down here and down there, and it is a known fact that the buildings are ready to fall. There are buildings on this site that are depreciated as low as 20, 30, 50 and 60. There are all kinds of depreciation on the buildings, depending on the condition.

Q. Pick me out a frame building you have depreciated 20 per cent. A. I haven't said I have depreciated a frame building 20 per cent. I said the depreciation runs from 20 up.

Q. I thought you said depreciation on frame buildings; there were differences in the depreciation on frame buildings, and most of your frame buildings, and you said I have given the worst of them and given 66⅔; whereas, most of your frame buildings, I assume, would depreciate less than 66⅔. Show me one, if you can. A. Some of

these I think we went over were depreciated less than 66⅔.

Q. Any of them less than 50? A. I don't recall now. Here is a frame building, corner of Spruce, 146-148 Spruce, that is only depreciated 50 per cent.

Q. What is the number? A. 146 and 148.

Q. Spruce and Barclay? A. Yes.

Q. Will you turn to your figures on the building 38 Barclay Street? A. That is three stories and basement, three family, frame; the replacement value is $12,636; depreciation 50 per cent; leaving present day value of $6,318.

Q. And your apportionment? A. Three-fifths on the Prudential and two-fifths on the City.

Q. How do you get it? A. The building is 50 foot deep; ratio of 30 and 50.

Q. You observe the fact that the building that is on the City's land is narrower than the building on the Prudential's property? A. The total length of that building over all as it is now, is about 65 feet. I reduced 15 feet off that to square up these ends here (indicating). You can measure it, if you want to; you will find that it is 65 feet.

Q. You used the rule to determine that this building was 65 feet feet long and you apportioned three-fifths on the Prudential? A. Do you mean in asking that question if that is how I arrived at it, or are you referring to the rule, using the rule for checking up?

Q. Using the rule to check up. That isn't the way I made up the measurements. The measurements were actually taken at the building. If you check that as nearly as you can get it on this small scale, it shows it 64 feet. Taking the larger map it shows 65. The extra 15 feet taken off the

end will square off the two L's, and that is why I took the total as 50 feet.

Q. By what method did you value these buildings? A. On a cubic foot basis; on the cubical contents basis.

Q. And what method of valuation; what did you use as the cubical content basis? A. That varied, depending on the type of the building.

Q. Take the building corner of Somerset and Waverly, the building we talked about. A. That row of buildings, 117½ Somerset Street, I figured that at 32 cents a cubic foot.

Q. Where did you get those figures from? A. That is about what buildings of that type cost.

Q. How do you know? A. I know from experience, and I know that is the prevailing rate of estimating buildings of that type.

Q. Are you a builder? A. I am.

Q. And constructing buildings at the present time? A. I am.

Q. Brick and frame? A. All kinds.

Q. How long did you take to make these valuations and apportionments? A. On these buildings?

Q. All the buildings. A. I have been working on it now pretty near three months.

Q. The apportionment? A. I don't know what you mean by the apportionment.

Q. Between the value of that portion of the building on the Prudential site and the value of that portion of the building on the City site. A. I probably spent—I don't know the exact time, I didn't keep track of it.

Q. About how long? It is pretty hard to say; I cannot tell you how long I have been on it; I have been working on the whole proposition off and on for about three months.

Q. I am only interested in that part of it which has to do with the apportionment. A. I have kept no record of the time I spent on that part of the work.

Q. When did you begin that portion of the work? A. As the work went along it was apportioned.

Q. You apportioned it as it went along? A. Yes. When the building was finished and transferred to the sheets—the tabulation sheets, it was apportioned.

Q. Were they presented to the City or to the Prudential Insurance Company? A. These sheets?

Q. Yes. A. No.

Q. Your apportionment, was that presented to the Prudential or to the City? A. No. I told the City what it amounted to; there was no formal report made.

Q. When did you tell the City, and whom did you tell? A. I don't know just when; it is several days ago; probably a week or more ago.

Q. A week or more ago? A. I don't just recall the time.

Q. That was the first time you reported it either to the Prudential or to the City? A. No; my preliminary report on those buildings was made long ago; I have no record of the dates. I have no record of when I reported that apportionment.

Q. I am only interested in when you told the City or any representative of the City, and if so, whom; or the Prudential, or any representative of the Prudential, and if so, whom, the apportionment of the value of those buildings between the two sites—between the two portions, the City portion and the Prudential portion? A. I was just trying to figure back when I made my first report of valuation; it was well over a month

ago, probably two months ago, and it was, I imagine, about the same time; I don't recall.

Q. Did that report contain a statement as to how much of the value of the building was to be on the Prudential property and how much on the City? A. My original report gave a value of the entire tract.

Q. Did it apportion? A. My first report did not apportion.

Q. When did you first report it or apportion; when was it given to anybody? A. I haven't got any records of the date.

Q. About when? A. I cannot say.

Q. A few days ago? A. Longer than that.

Q. How much longer? A. I haven't any recollection.

Q. Haven't any recollection at all? A. I don't recall just when it was.

Q. Who told you to make the apportionment?

A. I was retained by the City to make this estimate and apportionment.

Q. When? A. About three months ago.

Q. To make the apportionment? A. No; to make up an estimate of the value of those buildings.

Q. When were you instructed to make the apportionment? A. I suppose it was sometime within the last six weeks or two months.

Q. After the commencement of this suit, wasn't it? A. It may be.

Q. Having knowledge that it was within the last six weeks or two months, can you tell me when it was you made your report, and to whom you gave your report? A. All the reports that I made on this have been made to the City representatives.

Q. Who? A. Mr. Groel and the legal department.

Q. That is the law department? A. Yes.

Q. Can you tell me when you made your report to the law department as to this apportionment? A. I cannot.

Q. But you gave it to Mr. Groel? A. Yes.

Q. Did you make any written report? A. No.

Q. You never have made a written report? A. No.

Q. You took the amount per cubic foot and applied that cubical content amount to the cubical contents of the whole building, didn't you? A. I did.

Q. As a general rule, and when you are dealing with a building as a building structure, that may be fairly accurate, may it not, or is fairly accurate? A. It is considered accurate in all cases.

Q. Is it accurate in apportioning buildings or the value of buildings between front and rear? A. On buildings such as you have here, there is no difference.

Q. In all cases? A. Practically.

Q. And irrespective of the fact that the front of the building may be higher than the back of the building? A. The cubical contents—that is all provided for in your cube.

Q. I understand that, but it doesn't apply if the lower portion of the building is in the rear, as it usually is, does it? A. No.

Q. Have you made allowance for that? A. I have allowed just the value that I considered was the right proportion to be allotted to each section.

Q. So that you were not bound by any rules at all? A. Only what I usually use in work of this class, or in any appraisal work.

Q. Will you take your building 110 Barclay Street? A. Three story and basement, frame building, 20 feet by 60 by 36; replacement value

$11,664; depreciation 60 per cent; present day value $4,665.60. In computing these I invariably have dropped off the cents.

Mr. Lane: That is all right; I don't care about the cents.

Q. Now, your apportionment. A. That building is 70 feet deep. I have apportioned three-sevenths to the Prudential and four-sevenths to the City, or in other words, $4,666 is the total; $2,000 went to the Prudential and $2,667 to the City.

Q. How do you get that 70 feet deep? The building is 20 feet by 60 by 36, and in using your proportion you use 70, and you put three-sevenths on the Prudential and four-sevenths on the City. How did you come to do that? A. I know there is a discrepancy, and I think I know how that is made up.

Q. You can by looking at the diagram? A. Yes.

Q. What you have done is to square up the rear part? A. Yes.

Q. The result of squaring up the rear part is to add more of the building on the City site than is actually there, by the extent of upwards of 10 feet? A. No, you are wrong there.

Q. If that is the way you did it, you cannot get 70 feet; you get about 50? A. No.

Q. If it is 60 feet over all and you pull down part of it, you reduce, not add; what you have done, is to add it? A. No, there is a discrepancy there of 10 feet.

Q. I know there is a discrepancy there of 10 feet, and the way the discrepancy occurs is, that you have squared it up by taking this little part of it (indicating) and putting it right here (indicating)? A. No.

Q. Then will you tell me how you got 70 feet? A. There is an error, a discrepancy, that I cannot reconcile right off now. I don't see it here. I cannot pick from my notes just what caused it.

Q. The fact is that not only is there only 50 per cent of this building in length over all on the City's ground, but the part which is on the City's ground is narrower than the part which is on the Prudential's ground; isn't that so? A. It would seem so, yes.

Q. And yet you assess on that building more of it to the City than you do to the Prudential? A. That is very easy to explain. On all of those buildings along here, the more expensive part of the building is in the rear; all your plumbing fixtures, sinks and all of that is in the rear.

Q. Is that the way you did it? A. No, but I am trying to explain. There is more stuff in the back than front.

Q. Is that what you did in this case? A. No, in this case I don't know; there is a difference there of 10 feet; I cannot say right now what caused it. There is an error somewhere there in that particular building.

Q. See if we cannot find some more errors. You have already conceded that your apportionment on 87 Somerset Street is wrong, if the building is as depicted on this map. Will you turn to your building 106 Barclay Street? A. Three story and basement, frame, 25 by 65 by 38; its replacement value is $18,525; depreciation 50 per cent; leaves a present day value of $9,262.50.

Q. Your apportionment—did you say how long the building was? A. 65 feet. Six-thirteenths on the Prudential and seven-thirteenths on the City.

Q. How do you get that? A. That is the ratio between 30 and 65.

Q. Do you observe that that building has a very distinct, approximately 12-foot jog on all the City property? A. In other words, the total depth of that building, there is over 70 feet, so that if you take that off and put it in there, it just about squares it.

Q. What is the amount of the length that you use? A. 65 feet.

Q. You didn't take 60 feet; you took 65 feet? A. That is what I testified, 65 feet.

Q. You apportioned on the basis of 65 feet, didn't you? A. Yes.

Q. You just told me a moment ago that if you measured 60 feet you would get to about the point that you marked on the ruler? A. What we did in this case was to take enough off the rear to square this up, which gives us 65 feet.

Q. I am trying to find out how you did it. A. That is the way I have done in all cases, where the buildings jog, take off enough to square off the angles.

Q. In the one instance that you did that, that I directed your attention to, you have squared it up by loading it onto the City? A. It would seem that we did in that case, but that buliding had practically no value.

Q. I am trying to see if you didn't do it in this case, too. A. There is one thing that I want to go on record on: I don't expect to be pinned down to any scale measurements, with a scale of 40 feet to the inch. You cannot figure buildings that way. That is just a rough approximate, and that is all. In order to check those buildings, you have got to check them on the site; measure them on the site.

Mr. Lane: You need not worry; we will check every one of these buildings that you referred to, on the site.

Q. Looking at the map for a moment, do you say that that map shows a building 70 feet long? A. I don't know what that shows, only what we measured.

Q. You measured 65, but you say that measurement was not the right measurement, because you squared up something. A. I made allowance for that.

Q. I am trying to get at where you made it and how you made it. A. By taking it off the rear and putting it on wherever there is a jog. Here is a matter of comparison——

Q. I don't want any comparison. A. I want to show you; there are the figures right here (indicating).

Q. Confining yourself to this building 106, say whether or not— A. There was sufficient taken off the rear of that building to square it up to a depth of 65 feet.

Q. That doesn't mean anything to me, because I am trying to find out whether you took off sufficient or didn't. Do you say that that building is over all 70 feet long on the ground? A. I say that it's greater dimension is more than 70 feet.

Q. You say that it is more than 70 feet on the ground? A. Yes.

Q. And by the greater dimension, you refer to this little what? A. The little extension that is there.

Q. What kind of an extension is it, do you know? A. Yes.

Q. What? A. Frame.

Q. How high? A. The height of the building.

Q. That little square thing? A. Yes.

Q. Is the height of the building? A. Yes.

Q. What is that square thing used for? What is it? A. I didn't go in it.

Q. Couldn't you tell from the outside what it was there for? A. It may have been there for a toilet.

Q. Do you say, irrespective, leaving that out of consideration, that that building is 70 feet long on the ground? A. The building 70 feet long on the ground?

Q. Yes. A. Practically so, yes.

Q. You think that more than one-half of that building is on the City? A. I do.

Q. You say you reduced it 5 feet for the purpose of making up this jog? A. Right.

Q. Will the 5 feet from 70 by the width make up for the jog? A. Practically so.

Q. Have you any figures where you make that computation? A. No.

Q. How could you make the computation if you didn't have the figures; or did you just go by your eye? A. I figured a 65 foot building.

Q. How did you get your 65 feet? A. I tried to explain it to you.

Q. You had to use a pencil and paper to do it, didn't you? A. Sure; I have got that there.

Q. Show me how you reduce your 70 to 65. A. By taking off sufficient to square up there.

Q. Show me in your figures; you say you have them. A. I don't have to do that kind of work in figures. Any practical man can tell how much to take off the back of that building to square up that angle.

Q. Then when I asked you whether you did it by your eye, why didn't you say "yes"? Did you do it by your eye? A. We measured the buildings and allowed where there was a jog in the length; took off enough from the rear to square it up.

Q. You have repeated that several times; please don't repeat it again, unless I ask you. A. You are repeating the question.

Q. I am not; I asked you whether or not you took off sufficient as you judged by your eye, or whether you did it was a pencil and paper? A. By my eye.

Mr. Lane: Why didn't you say that fifteen minutes ago, and stop this discussion?

Q. Will you look at your plot 85 Somerset Street? A. 22 by 55 by 30; replacement value $9,975; with 66⅔ depreciation, leaves $3,025.

Q. Now your apportionment. A. Six-elevenths on the Prudential and five-elevenths on the City.

Q. You are sure you have got the right one? A. I have 85 Somerset Street.

Q. That is the one I mean. Will you tell me whether there appears to be on that map 25 feet on the City line? A. This building is built back to this point (indicating) with a brick addition. The brick addition is entirely on the City line.

Q. That map is wrong there? A. There is the notation, there is your depth; the brick addition is built out there.

Q. The same height as the front building? A. The same all the way through, and in that case the brick portion of it happens to be on the City.

Q. Correct. Will you look at your building 83? A. 83 Somerset Street, three story and basement, three family, frame, 22 by 55; replacement value $11,761; depreciation 60 per cent; present day value $4705.

Q. Apportionment. A. Apportionment, six-elevenths on the Prudential and five-elevenths on the City.

Q. And the basis that you used was a length of how much? A. 55 feet.

Q. So that there is 25 feet on the City? A. 25 feet on the City and 30 on the Prudential.

Q. Going to what point of that building? A. It will come back there to the line of the building next to it, which is also 55.

Q. How about that line there (indicating); did you measure it? A. I did.

Q. Will you tell me that distance from this red line to that street line is 30 feet, and the distance from here to here (indicating) is 25 feet? A. I don't make that statement; I am not paying any attention to that red line. The building is 55 feet deep, and the City is taking the balance, excepting 30, so there is a difference between 30 and 55. I don't know whether that red line is in that or not.

Q. So you cannot depend on these maps at all? A. That red line is not part of the map.

Q. Let us go to this map, Exhibit D-3. It is admitted that this map is correct. Do you mean to say, looking at this map, which is the one in evidence, that the distance from Somerset Street to that black line is 30 feet, and the distance from that first jog to that black line is 25 feet? A. That is what it happens to measure.

Q. But look at it with your eye. A. I am not figuring from my eye, I am figuring from a tape.

Q. Does it appear so on this map? A. It appears so on the map; it might appear on the map, but it doesn't look like the right proportion.

Q. It doesn't look like the right proportion on the map, does it? A. It doesn't seem so, looking at it, but in checking up, we find that it is practically accurate.

Q. If you take this map, recognizing that the distance between Somerset Street and the black line is precisely 30 feet, you find that up to the second jog it is a distance of 20 feet, not 25 feet, and up to the end of the building it appears on this map it is 25 feet, does it not? A. Yes; I would

say that that map scaling it as close as you can scale with an inch to 80 feet, shows that building would be 58 feet to the far part—the extreme end.

Q. I am using this map and I am using this rule, and I am asking you to follow me; I am putting this rule on the building in question, and I am measuring, so as to get it precisely right. The distance from the black line to Somerset Street, I have it right here, have I not? A. Yes.

Q. And there is precisely one, two, three of those little sections, whatever that may be, on this ruler; is not that so? A. Yes.

Q. I am putting that rule exactly at the top of the first— A. You want to bring your rule down; you are on the upper end of the black line.

Q. I will bring the rule down, if you want it, and move it in any way you please. With that rule exactly at the top of the second jog, and on the black line are precisely two of those little squares. A. 2½ of those sections.

Witness: Have you got a magnifying glass?

(Glass produced and handed to witness.)

If you look through that glass, you will find that in this small square here, where it is divided into smaller lines, each one of them is a quarter of the eighth.

Q. Look at it again and tell me whether you think that that line is on the quarter of the eighth? A. You should be below the black line.

Q. All right; is it right now? A. Why not take the over-all and take 30 feet off?

Q. 2½ of those squares, isn't it, which will make it just 25 feet? A. Yes, as it stands now. We won't split hairs on it. That measures up there to the end of that, as near as I can read that drawing, 58 feet.

Q. Look at it once again. You tell me that where I have the rule now, which is at the end of the first jog, and on the black line, so that the black line runs right into the other black line, that that isn't exactly two of those little squares? A. It is two and almost a quarter, what I would call 22 feet.

Q. You think that your eye tells you that that is more than two figures? A. That is what I figure it from that scale—22 feet, and the other is 28 feet, so you will find the average will easily be 25 feet.

Frederick H. Groel, a witness called on behalf of the Prosecutors, being duly sworn according to law, on his oath says:

Direct examination by Mr. Lane:

Q. When was it that Mr. McGee was directed by you to make an apportionment between the value of the structures on the City property and the value of the structures on the Prudential property? A. He was first employed by us at the commencement of this action, and at that time we asked him when he made the appraisal of all the buildings on these two tracts, which was about November 25, 1930—we asked him to give us a rough estimate, which he did, in very rough form; but after that time, he continued to work on this matter, and after December 22, 1930, I told him to give us an accurate report as to the number of buildings and improvements on the Prudential's land and those on the City's land.

Q. The first time he was employed, as I understand you, was November? A. About November, 1930; about November first, 1930; that is approxi-

mately when it was—the end of October or first part of November.

Q. It was after the notice of the application for the writ of certiorari was given and after the passage of this ordinance? A. It was after the passage of the ordinance, yes.

The further taking of testimony is adjourned to Wednesday, January 7, 1931, at 11 A. M.

Transcript of further proceedings in the above entitled suit, before Nicholas W. Bindseil, a Supreme Court Commissioner of New Jersey, at the office of Merritt Lane, Esq., Prudential Building, Newark, New Jersey, on Wednesday, January 7, 1931, at 11 A. M.

Appearances:

MERRITT LANE, Esq., and JOHN J. CLANCY, Esq., for Prosecutors.

FREDERICK H. GROEL, Esq., for Peter O'Toole, Clerk of the City of Newark, N. J., and Board of Commissioners of the City of Newark, N. J.

CHARLES B. BRADLEY, Esq., and ALFRED HURRELL, Esq., for Prudential Insurance Company of America.

Mr. Lane: I want a description of the building, the valuation of the building, the basis used, or the price per cubic foot used, the apportionment of the valuation between that portion standing on the Prudential property and that on the City property, and the method of apportionment. That is in effect what I asked the witness with re-

spect to the buildings that I have already inquired specifically about.

Mr. Bradley says that disposes of the building experts for the time being. Of course, I reserve the right, when that comes in, if I want to, to further cross-examine Mr. McGee.

Mr. Bradley: Will you accept that statement, when presented to you, as an exhibit, and cross-examine?

Mr. Lane: Yes, as to what the witness would testify to, if he were interrogated as to the method by which he arrived at the valuation and the proportion, subject, of course, to my cross-examination on any specific item.

Mr. Bradley: That is understood.

GEORGE B. MAYBERRY, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. What is your business? A. Building contractor and appraiser.

Q. How long have you been engaged in that business? A. About thirty years in the building business, and about fifteen years in appraising.

Q. Are you familiar with building costs at the present time? A. I am.

Q. And have you had occasion to make any appraisals of buildings of the character located in the blocks bounded by Montgomery Street, Barclay Street, Waverly Avenue, Somerset Street and Spruce Street? A. I have.

Q. Have you had occasion to make any appraisals of buildings to be acquired by the City of Newark for the opening and widening of streets? A. I have.

Q. And in what particular instances? A. I worked for the owners on Mulberry Street, Washington Street, Commerce Street, Jones Street.

Q. Have you examined the buildings that are located on the two blocks which I have just described above, situated in the Third Ward in the City of Newark? A. I have.

Q. Have you examined the buildings and improvements with respect to what portion of the buildings that would lie within what would be known as the City's property, under the ordinance which this action is taken to review? A. I have, yes.

Q. As a result of your examination of all those buildings located on these two blocks, what in your opinion is the value of all the buildings and improvements located thereon? A. The present day value, less depreciation, is $917,278.

Q. And what in your opinion is the value of the buildings and improvements lying in the City's strip, that is the strip 140 feet wide and 1,433 feet long, running through the center of those two blocks? A. $556,450.

Q. What is the value of the buildings and improvements lying in the two strips 30 feet wide and 1,433 feet long, parallelling the strip that is to be sold to the City. A. $360,828.

Q. If the City were to destroy all the buildings located on the land it is to acquire, would there be any damage to the buildings that rest upon the lands embraced in these two strips 30 feet wide and 1,433 feet long, parallelling the City's strip? A. Yes.

Q. About what would that damage amount to? A. It would affect nearly every building except the buildings on the corner of Spruce and Barclay, and Spruce and Somerset, and Spruce and Waverly Avenue, the two or three buildings that do not overlap.

Q. And approximately, what would that damage amount to, in dollars and cents? A. Approximately, $200,000.

Q. Did you work with Mr. McGee in the preparing of this? A. I did; my figures are identically the same as Mr. McGee's.

Cross examination by Mr. Lane:

Q. They are identical? A. Yes; we worked together on it and made figures exactly the same.

Q. You have been appraising property for a number of years, haven't you? A. Yes.

Q. And testifying in court for a number of years? A. Yes.

Q. Have you ever known of a case where two contractors, or two real estate experts, ever identically agreed upon valuations? A. No, and Mr. McGee and I didn't agree at first, but we kind of got together on it and settled the differences and agreed on these prices.

Q. So that this is not your independent judgment, but a judgment reached after consultation with Mr. McGee? A. Yes.

Q. And vice versa? A. Yes.

Q. In your affidavit, sworn to on November 10, 1930, you said that the present day value of the property was $933,035. Now you say $917,000. When did you change your mind? A. When I went back and made some checks, and took some buildings out which I thought had no value to them, and some changes in them, after Mr. McGee and I met and went over them together.

Q. When did you make your valuations? A. My valuations?

Q. Yes. A. About the first of November.

Q. When were you first asked to separate the value of the buildings, that portion to be retained by the Prudential and that portion to go to the City? A. The last couple of weeks.

Q. And at the time you were first retained, did you have Mr. McGee's figures before you? A. I didn't at that time, no, sir.

Q. Did you and Mr. McGee go up to the property together? A. The first time?

Q. Yes. A. Yes, sir.

Q. Can you tell me, without too much trouble, what particular items lowered your estimate from $933,031 to $917,000? A. Not without getting my original papers and checking back.

Q. Did you know at the time that Mr. McGee's estimate of value, as indicated in his affidavit of November 25, 1930, was $997,733? A. I knew approximately what it was. I didn't know exactly.

Q. What was your first approximate value? A. I haven't the figures here—around nine hundred —whatever that affidavit was.

Q. $933,035; so that both you and Mr. McGee brought your figures down from nine hundred and thirty-three to nine hundred and seventeen? A. Yes.

Mr. Lane: I will ask this witness to prepare a schedule, if he will, similar to what I have asked from Mr. McGee, and suspend the cross examination in the interim, and I also want to have it understood that there is included in what I asked Mr. McGee—I assume he understands it—that the amount of depreciation—the percentage of depreciation in each case is to be given.

Mr. McGee: I understand that.

Mr. Lane: Will you also, Mr. McGee, indicate in schedule form, if you can, how you reach the figure of $200,000 as the damage put down to the buildings on the Prudential site, if the City destroyed their portion of the buildings on the City site, and that applies to Mr. Mayberry.

Q. And I suppose, Mr. Mayberry, that if the Prudential destroyed the buildings on their site, it would very seriously affect the buildings on the City site? A. It would.

Q. Indeed, in most instances it would render them worthless, wouldn't it? A. It would.

Re-direct examination by Mr. Groel:

Q. Did you make the same sort of examination when you prepared the affidavis which you filed in this case, which you made after filing that affidavit? A. Approximately the same thing.

Q. And the opinion that you give now is the opinion as a result of conferences you have had with Mr. McGee in this matter? A. Yes, sir.

Q. Are the figures and amounts stated by you and him at this time your opinion as to the value of the respective improvements of the various portion of property in question? A. Yes, sir.

Q. Did you measure these buildings yourself? A. Mr. McGee and I measured these buildings.

Q. On the ground? A. On the ground.

Re-cross-examination by Mr. Lane:

Q. What did you use to measure them? A. We used a tape measure for the lengths and widths, and a rule in cases of heights. In some cases we

took ceiling heights to determine our heights. In some cases we used height over all, as we call it—the average height. If it is a double pitched roof, we take the average height of the pitch of the roof to the bottom of the cellar.

Q. Have you any figures here, your working sheets, which show how you did that? A. No, I have not.

Q. Are they in existence? No, those figures we took at the building and marked them on our sheets.

Q. Marked the result on the sheets? A. Yes.

Q. Did you use a pencil and paper? A. Yes; in fact—

Q. I am not talking about your absolute—A. Your story height?

Q. Yes. A. Yes, in cases. Here is a case of basement 8 feet high; first floor of 9 feet; second floor, 9, and this was a flat roof. We took an average of 10—third floor, and give it a further pitch. This building happens to be 65 feet long, and on 65 feet it would be about 24 inches for the full pitch of 65 feet, and we took one-half, making the total height of 36 feet.

Q. To get those averages, you used your eye, didn't you? A. No, we used a rule to measure the ceiling height in those cases.

Q. I know that, but to get your average for the pitch? A. No.

Q. How did you do it? A. By measurement.

Q. That is why I want those figures, your working sheets. A. If it measured 11 feet on one side and 9 on the other, the average was 10.

Q. That is in that case? A. Yes; I didn't do it in all cases.

Re-direct examination by Mr. Groel:

Q. Mr. Mayberry, if all these two blocks were owned by the City of Newark, instead of being owned by the Prudential, and the Prudential were to destroy the buildings located on the two 30-foot strips, would there be any damage to the buildings located on Spruce Street and Waverly Avenue, and in the rear of the property, by the destruction of the Prudential buildings?

Mr. Lane: I will concede on the record that there will be no damage to buildings located wholly on City property.

DANIEL W. MCGEE, recalled for further

Cross-examination by Mr. Lane:

Q. Did I understand, Mr. McGee, you testified that the present day value of the property is $917,000? A. I did.

Q. In your affidavit, sworn to on the twenty-eighth day of November, 1930, you stated that the present day value was $997,733? A. I did.

Q. How did you come to reduce the value from nine hundred and whatever it is, to nine hundred and seventeen? A. In the first estimate of nine hundred and ninety-seven or whatever that happens to be there in that affidavit, I inspected the property and put a value that in my judgment seemed to indicate what the buildings were worth. I afterwards measured the buildings, and when the actual contents of them were reduced to figures, they showed a lower result.

Q. In that same affidavit, you stated that you made a careful inspection of each and every improvement, to determine the character and extent of each improvement; you considered both workmanship and material, and you arrived at a present day replacement value of such improvement, and that you deducted a reasonable amount for depreciation in each case. You considered after you had made that examination, that you were in a position to speak as to the value of those improvements, did you not? A. I did.

Q. You said, "Upon this basis, I confidently rest my opinion that the sum of $950,000 represents a low present day value of the improvements in question"? A. I did.

Q. You were wrong, weren't you? A. If you take into consideration the different methods used, as I said, and the first time I went over there I did inspect each building and jotted down what in my opinion was the value of them. I figured the depreciation, and the details of those figures showed me a present day value, which I assumed at that time to be nine hundred and whatever that affidavit says. I afterwards made a very much more detailed examination of the property, by taking actual measurements in each case, and in the computation of the measurements taken and appraising it, and the depreciation, it gave me a lower result, and considering the methods employed in both cases, the discrepancy between them is very slight.

Q. It is $80,000? A. Yes.

Q. That isn't a small sum in these days? A. It is a small sum as comparing a building by one method of appraising it, and the other by an actual appraisement.

Q. When you made your appraisal for the first time, you knew it was going to be used in court? A. I did.

Q. You wanted to use the best method you could use to give the court accurate information? A. I used the best method that I could use for the time allotted to get it prepared, and I did not have sufficient time to take actual measurements, so I gave what I considered a fair estimate of what my judgment indicated those buildings were worth.

Q. Your confidence, however, was misplaced? A. I wouldn't say that.

Q. Then your opinion was wrong? A. I don't agree on that.

Q. Well, in your affidavit you said this, "In my opinion"—it is unqualified—"In my opinion, the buildings and improvements now situated on said tract have a present day value of at least $950,000. This valuation of the buildings is a low one, and it is my belief that upon more extended study, this valuation would prove to be lower than that which might reasonably be attributed to them." Now, your opinion was wrong, and your belief was wrong; isn't that so A. Well——

Q. Is it right or wrong? That is an easy question to answer. A. It might be easy and it might not, depending on how you view it.

Q. It can be answered either Yes or No. A. I still maintain that the opinion that I quoted in that affidavit, based on the way that the estimate to that time was prepared, was correct. I found on a more detailed examination and measurement of the buildings, that I was a litle high in the first estimate.

Q. We will leave out your opinion, then. Your belief was wrong, wasn't it? A. If you want to put it that way.

Q. You say your belief is that "upon a more extended study, this valuation would prove to be lower than that which might reasonably be attributed to them" A. I thought that the measurement of those buildings would indicate a higher value.

Q. Then your eye wasn't very good at that time? A. That may have been.

Dr. Charles F. Kraemer, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. Dr. Kraemer, what is your business? A. Real estate.

Q. And when you say real estate, what do you mean by that? A. Buying, selling, appraising and building and operating real estate.

Q. How long have you been engaged in that business? A. Thirty-five years.

Q. In the City of Newark? A. City of Newark.

Q. Are you connected with the City government? A. Yes.

Q. In what capacity? A. Real estate manager at Port Newark and industrial representative of the Department of Affairs, and expert to the Tax Department and the Commission of Assessments and Improvements.

Q. Are you familiar with the two tracts of land, situated in the Third Ward in the City of Newark, bounded by Waverly Avenue, Barclay Street, Montgomery Street, Somerset Street and Spruce Street? A. Yes, sir.

Q. Are you familiar with the character of the people living in that vicinity? A. Yes, sir.

Q. Have you made any sales of property—of comparable property in that vicinity? A. Yes.

Q. Are you acquainted with the value of property in that vicinity? A. Yes, sir.

Q. In connection with your duties as real estate expert of the City of Newark, have you had occasion to make any appraisals for the City of Newark of property in various parts of the City that is comparable to this?

Mr. Lane: Objected to upon the ground that making of appraisals is not a qualification to express an opinion of value.

A. Yes.

Q. Have you had occasion to testify in proceedings involving the acquisition of property by the City of Newark?

Mr. Lane: Same objection, that testifying isn't a qualification.

A. Yes.

Q. What proceedings have you testified in?

Mr. Lane: Same objection.

A. The purchase of seventy-five to eighty properties on Academy Street, from Plane to Wickliffe Streets; the purchase of properties on Monmouth Street for the Board of Education; the purchase of properties on Commercial Street, Commerce Street, Mulberry Street, Bergen Street, widening.

Q. Did you testify in the opening and widening of Washington Street? A. Yes.

Q. In the opening and widening of Branford Place? A. Yes.

Q. The opening and widening of Clinton Avenue? A. Yes.

Q. Are you familiar with the methods of appraising real estate in the City of Newark, as used by experts in testifying in legal proceedings? A. Yes, sir.

Q. Are you familiar with the so-called depth rule? A. Yes.

Q. Are you familiar with the Hoffman Rule? A. Yes.

Q. Hoffman-Neill Rule? A. Yes.

Q. So-called City rule? A. Yes, sir.

Q. Now, Dr. Kraemer, what are the depth rules used for? A. The measuring of depths of City lots that are shorter or longer than the average standard City lots.

Q. Are these rules used for determining the value of buildings? A. No, sir.

Q. Can you apply them in any way and manner to determine the value of buildings? A. No, sir.

Q. If I were to tell you that a piece of property was 25 feet front, 100 feet deep, and that on that piece of property there was located a building which extended over the greater portion of it, and I asked you to apply these depth rules, could you tell me what the value of the 70 foot depth in the rear of that property is—when I say "value", I mean the value of, we will say, the land—70 feet of land in the rear? A. No, sir.

Q. By application of these depth rules in the same situation, could you tell me the value of the land and that portion of the building resting on the rear 70 feet? A. No, sir.

Mr. Lane: Nobody else could.

Q. By the application of these depth rules, if I gave you the value of the building, could you tell me the value of the building and the land resting on the 70 feet in the rear? A. The total value?

Q. Yes. A. By the application of the rule?

Q. Yes. A. No, sir.

Q. By the application of these rules, if I were to tell you the value of the building, could you tell me the value of the 70 feet of land in the rear, exclusive of the building? A. Yes.

Q. Dr. Kraemer, assuming that the value of the land and the buildings and improvements located on the property bounded by Montgomery Street, Spruce Street, Waverly Avenue, Somerset Street and Barclay Street, was $1,750,000; and assuming that the value of the buildings and improvements located on that property is $917,217; and assuming that the value of the improvements and buildings located on the central strip 140 feet wide, 1433 feet in length, running through the center of these two parcels, was $556,450, in your opinion do you think that a price of $1,200,000 for the land, buildings and improvements in this interior strip, 140 feet wide, 1,433 feet long, running through the center of these two blocks, is a fair and reasonable price?

Mr. Lane: Objected to on the ground that the witness is not qualified to answer the question.

A. Yes, sir.

Q. How do you reach that opinion? A. Reviewing the size of this property in detail, so as to get the dimensions before us accurately, the dimensions of the Block A, which is the block bounded by Waverly Avenue, Spruce, Barclay and

Somerset Streets, we have 199.93 feet on Waverly Avenue and Spruce Street; we have 735.20 feet frontage on Barclay Street; we have 745.55 feet on Somerset Street; Block B, being the block bounded by Spruce, Montgomery, Barclay and Somerset Streets, we have a frontage of 199.62 feet on Spruce and Montgomery; 697.30 on Barclay Street, and 688.26 on Somerset Street; this gives us a square area in Block A of 148,074 square feet, and in Block B, 138,546 square feet, making a total square area of 286,620 square feet, or approximately 6.58 acres. This property in question being divided as follows: Block A, 30 feet by 735.20 feet on Barclay Street, between Waverly Avenue and Spruce Street, would equal 22,056 square feet; this being the first portion taken by the Prudential. And the second strip would be 30 by 745.55 on Somerset Street, between Waverly Avenue and Spruce Street, or 22,366.50 square feet. Making a total of 44,422 square feet in Block A.

In Block B are shown 30 feet by 697.20 on Barclay Street between Spruce and Montgomery Streets, or 20,916 square feet; and a strip on Somerset Street, between Spruce and Montgomery Streets, of 30 by 688.26, would equal 20,647.80 square feet, or a total of 41,563.80 square feet. Making the total square feet of the land taken by the Prudential 85,985.30 square feet.

The central strip to be acquired by the City of Newark would be apportioned as follows:

Block A having 735.20 feet frontage on one side, and 745.55 feet frontage on the other, would have an average frontage of 740.37 feet on Block A.

Block A having 697 feet on one side and 688.26 on the other, gives us an average of 692.73 feet on the other site; or a total of 200,634 square feet

as the area that the City is taking; making the grand total of the entire area 286,619.30 square feet.

The total area having been established, and it having been stipulated, as I understand, that the total consideration for this land is $1,750,000, and that the improvements thereupon are $917,217, we have a naked land value of $832,782.18, or a value per square foot of $2.9055, or an approximate front foot value of $290.55.

Applying this calculation to the Prudential land area, we have $249,830.29, and to the City of Newark's 200,632 square feet, $582,945.09; giving us a total land value for the entire area taken, $832,782.18.

A recapitulation of these figures is as follows:

Land acquired by the City of Newark, $582,945.09;
buildings and improvements as testified to by the experts, 556,450.82;

making a total value of the City's land and buildings about to be taken, $1;139,395.91.

Inasmuch as this item covers approximately 140 parcels of land, and as I have allowed no damages to any of the abutting lands which have been taken, I consider that this $1,200,000 is a very fair marketable value for this piece of land.

Q. Dr. Kraemer, do you believe that the depth rules could be applied in this case for the depreciation of the value of the land that the City is to acquire? A. Not very easily.

Q. Why not? A. Because it is a unique position that we are placed in. We are dealing in six and one-half acres of land. The depth rules

were primarily established for valuing city lots, standard size lots, 25 by 100, as we find them in Newark, and not to areas of this dimension.

Q. If you were to apply the depth rules, what would be the result of your calculations? A. As a matter of checking up my figures, I had used the following calculations in the above method: having established the basic front foot value of $290.55, and having applied that to the frontage in order to arrive at the holdings of the Prudential's lands of the 30 feet, I find by using the Hoffman Rule on two lateral streets, we would have a frontage value of $127.84 a front foot; and this applied to the total frontage on these two streets would be 2,860.20 front feet, or $366,420.74.

And applying this on the City's strip, I have applied it as follows: There are four frontages on Waverly Avenue, Spruce and Montgomery Streets, of 140 feet each, or a total of 560 feet frontage, which frontage partakes of a full depth value, $290.55 a front foot, or $162,708. I have left 2,066.20 front feet on the lateral streets, which I have approximately made the rear lands, on the basis of 56 per cent, being the difference between the 44 per cent allowed for the front and 100 per cent of the total lot depth, and I find that my inside strip is worth $366,191.40, or a total value of the inside strip of $498,899.40. Adding to this the improvements $556,450, I have a total value, under this method, of $1,055,350.22.

Q. Doctor Kraemer, you say that you have purchased for the City of Newark, property that is comparable to this. Is that right? A. Yes, sir.

Q. In this section? A. Yes.

Q. In any of those purchases which you have made for the City, has there ever been a situation where you have purchased less than the entire depth of the lot? A. Oh, yes.

Q. And in your purchases of property of this character, have you ever allowed the owners of the property when purchasing for the City, any damages for the injury to the remainder of the property that was left? A. In many cases, yes, sir.

Q. Have you allowed for damages for the buildings? A. Oh, yes.

Q. Where there was such damage? A. Yes.

Q. Now, then, in this particular case, if you were to purchase this property for the City of Newark, would you allow damages to the remainder, to be considered as a part of the consideration which the City would pay to purchase this property?

Mr. Lane: I object to that as incompetent, as to what he would do.

Q. If you used the same methods that you are using at the present time?

Mr. Lane: I object to that.

A. I am inclined to think that I would have to allow damages where we go through the center of buildings and rear parts of buildings, and where we reduce the land areas of city lots.

Q. If you allowed the principle of damages to remainder, so far as lands and buildings are concerned in this particular case, would the price of $1,200,000 for this central land with the buildings thereon, be in excess of $1,200,000, or less? A. I am inclined to think that 140 parcels of land of that kind would absorb at least $200,000, and that added to my figures would bring it up to $1,300,000.

Q. What sales of comparable property in this vicinity have you made, Doctor? A. I sold 118

Barclay Street May 11, 1926; I sold 158 Barclay Street the early part of 1926, and I sold 37 Montgomery Street in 1925.

Q. What is the character of these properties? A. All similar to the ones under discussion. I think one is on the same block.

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Cross-examination by Mr. Lane:

Q. Doctor, did you make these sales yourself? A. Yes.

Q. Who were the owners of 118 Barclay Street? A. Frank Slavitt.

Q. Who was the buyer? A. N. Wigdorchick.

Q. What was the purchase price? A. $50,000.

Q. What kind of a house is that? Four story

20 tenement.

Q. Brick? A. Yes, sir.

Q. Was that sale or exchange? A. I think it was part exchange.

Q. You conducted the negotiations yourself? A. In conjunction with one of the salesmen that I I employed.

Q. 158 Barclay Street, who was the seller? A. Slavitt was the seller.

Q. And the purchaser? A. Simon Carig.

30 Q. What kind of a building was it? A. Two and one-half story I think that was; that was 1926.

Q. How much was it? A. $9,000.

Q. Exchange? A. No, that was a sale.

Q. 37 Montgomery Street, how far is it from the *locus in quo?* A. Which?

Q. How far is 37 Montgomery Street from this property? A. Right in the vicinity there.

Q. How far away? A. I should say about—

40 which property?

Q. From any part of this property. A. Montgomery passes this property. It is just two blocks below.

Q. Two blocks east of Barclay Street? A. Yes.

Q. Who was the purchaser? A. Catherine Brown.

Q. Who was the seller? A. David Lockwood.

Q. What was the price? A. $8,700.

Q. What kind of property was it? A. Three story frame.

Q. Sale or exchange? A. No, sir, sale.

Q. You conducted the negotiations in respect to that property? A. Yes.

Q. Since 1926 have you sold any property in that neighborhood? A. No, I bought.

Q. Where? A. On Monmouth Street, for the Board of Education.

Q. How far away? A. About three blocks, I think.

Q. How large a tract of land? I bought six or eight houses there—five or six houses.

Q. Mr. Kraemer, do you say that each square foot of property in the interior of this tract is worth the same as each square foot of property on the exterior of the tract? A. Is that a question?

Q. Yes. A. I say so, yes, sir.

Q. And why do you say it? A. When purchasing a square area of five and one-half acres of land, that is the only fair equitable way that we can approach the value of such land.

Q. Nothwithstanding the fact that the front part of it can be used and a great deal of the interior part cannot be used at all? A. That isn't the fact; all of it can be used.

Q. With the same availability? A. I should say so.

Q. It certainly cannot be used with the same availability when it passes in separate ownerships, can it? A. I should say it can.

Q. So that even in separate ownerships, each square foot of this property is worth the same? A. That is my opinion.

Q. And the interior property, without street frontage, except through the outlets on the four streets, right to the center of the block is worth per square foot the same as the property on the corner of Waverly Avenue and Barclay Street, is that right? A. In approaching the interior area as one parcel.

Q. Is it right? A. Yes.

Q. There is no corner influence, no difference between the square foot which is on the corner of Waverly Avenue and Barclay Street and the square foot which is in the middle of the block? A. Not when you are approaching five and one-half acres as one parcel.

Q. I am not asking you that; I am asking in separate ownership. A. In separate ownership.

Q. Do you mean that, Doctor? A. I do.

Mr. Lane: I have no further cross-examination.

Mr. Groel: Do you regard this parcel as it is purchased by the City of Newark as being in separate ownership?

Witness: No, sir.

Q. Have you changed your mind as to the difference in value between the front and rear if in separate ownership? A. No, sir.

Q. And so that notwithstanding the fact that the Prudential Insurance Company can by reason of the fact that there is to be established in the rear of these 30-foot strips a public park, erect

buildings and maintain them on that street, with corners, still, so far as the land value is concerned, it is worth precisely the same per square foot on the streets as it is in the middle? A. I would be inclined to think that central area that the City has acquired is of much greater value.

Q. For sale purposes? A. For sale purposes.

HENRY C. BEACH, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. What is your business? A. Real estate.

Q. How long have you been engaged in the real estate business? A. Twenty-seven years.

Q. Whereabouts? A. City of Newark.

Q. Have you had occasion to appraise any property for the City of Newark during this period of time?

Mr. Lane: Objected to as immaterial, and incompetent.

A. I have.

Q. Have you had occasion to testify as a witness for the City of Newark as to real estate values in matters in which the City of Newark was particularly interested?

Mr. Lane: The same objection.

A. A great many cases.

Q. In your activities as a real estate man, have you ever bought or sold any property in this vicinity that is comparable to the property located in the Third Ward, bounded by Montgomery

Street, Barclay Street, Waverly Avenue, Somerset Street and Spruce Street? A. I have.

Q. Where? A. 3 and 5 Beacon Street.

Q. What was the purchase price of that?

Mr. Lane: I object to that, unless you tell us when it was.

Q. When was it? A. These sales were all by myself personally within the last two and one-half or three years. I have not the exact dates, but they were made within two and one-half to three years.

Cross-examination by Mr. Lane:

Q. Where is Beacon Street, and where are 3 and 5 Beacon Street in reference to this property? A. About three blocks away; the same class of property, colored tenements.

Further direct examination by Mr. Groel:

Q. What other sales? A. 20 Jones Street, a piece of vacant land, lot 25 by 32 average, sold for $5000. 26 Jones Street, lot 30 by 65, $6500. 38 and 40 Jones Street, lot 52 by 63, $8500.

Q. Were there any buildings? A. No buildings on the land; three sales. 36 Jones Street, 30 by 63, $6200, one building. 313 Norfolk Street, lot 25 by 100, four story brick building; a little small house in the rear, $26,000. 291-295 Norfolk Street, 71 by 100, and 307-309 Norfolk Street, 60 by 100, price $62,000. There was a factory building on that. Two three-story, three-family; one, three-story, six family, and one one-story building. 206 Norfolk Street, lot 30 by 97, price $10,000, two and one-half story frame building. 194-196-198 Norfolk Street, lot 60 by 97, two three-story frame and one two-and-one-half story building, price $22,000. Those are all sales made by myself.

Mr. Groel: Do you want to cross-examine?

Cross-examination by Mr. Lane:

Q. Jones Street is how close to the property? A. Three blocks.

Q. And Norfolk Street is how close? A. About four, and a couple of them are on the fifth block.

Q. You say those sales were all made within the last two and a half to three years? A. Yes.

Further direct examination by Mr. Groel:

Q. Is this property comparable to the property in question? A. Yes, it is.

Q. Are you familiar with the character of this property bounded by Montgomery Street, Somerset Street, Waverly Avenue, Barclay and Spruce Streets? A. I am.

Q. Are you familiar with real estate values in that vicinity? A. I am.

Q. Mr. Beach, assuming that the purchase price of the property bounded by Montgomery Street, Somerset Street, Waverly Avenue, Barclay Street and Spruce Street, for the land, buildings and improvements situated thereon, is $1,750,000; and assuming that the value of the buildings and improvements on this entire property is $917,217; and assuming that the City is to purchase the central portion of the property, which is 140 feet wide and 1433 feet in length, running through the center of it, and that the value of the buildings and improvements on that central portion is $556,450, in your opinion do you think that the price of $1,200,000 for the land and improvements situated in the central portion, 140 feet in width by 1433 in length, running through the center of the two blocks, is a fair and reasonable price? A. I do.

Q. Why do you think so? A. I have analyzed it, and taking the total value of the property $1,750,000, and the value of the buildings given by the builders, $917,217.82, leaves a land value for the whole $832,782.12, and in this total area there are 286,620 square feet, which I divided into $832,782.12, the value of the whole land, which gives me a value of $2.9055 per square foot. I then took the number of square feet that would be acquired by the City, 200,634.70, at $2.9055 per square foot, which gave me a figure of $582,945.09 as the value of the center piece of land to be acquired by the City.

Then I add the builders figures for the value of the buildings wholly on the part of the land to be acquired by the City, and the value of the buildings on the land to be acquired by the City is $556,450.82, making a total value of the land, and buildings, to be acquired by the City, of $1,139,395.91.

Q. Mr. Beach, are you familiar with the so-called depth rules that are used by real estate experts? A. I am very familiar with some of them, and know of all of them.

Q. Do you think that these depth rules are applicable for the purpose of determining the value of the land and buildings situated in this strip to be acquired by the City, going through the center? A. I do not.

Q. What are the depth rules usually used for? A. The depth rules are generally used in valuing a city lot for a certain depth, when it is a shallow lot, or it runs deeper than 100 feet. The rules all work on a unit value of 1 by 100.

Q. Are they used in determining the value of buildings? A. Never to my knowledge.

Q. If I were to give you the value of the buildings as $556,450, situated on the strip acquired by the City, and ask you to apply the depth rules to

the land, what figure would you reach as the value of the land, if you did that, on a depth rule? A. Using the Hoffman Rule I would reach a land value of $498,899.40.

Q. What is the total value, then, which you placed upon the land and improvements in question, using that method? A. $1,055,350.22.

Q. Mr. Beach, if the City were to acquire this interior land from the owners, would there be any damage to the lands parallelling the same, the 30-foot strips which run along the easterly and westerly sides of the tract? A. If the City were taking it by condemnation?

Q. No, if the City were to negotiate for it. A. Absolutely a damage.

Q. And about what would that damage be? A. That damage representing a 30-foot plot, would at least run, just roughly, without figuring it out, 70 to 80 per cent.

Q. So that if you were to include in your figures that you have given, that is, your first calculation, a damage to the remainder of the land that was left, would your amount which you have given be greater or less? A. Greater.

Q. Greater than what? A. Than the amount of $1,200,000.

Mr. Lane: I object to that on the ground that he isn't qualified to answer this question. It involves a construction of buildings as well as the real estate item.

Mr. Groel: I withdraw that question.

Further cross-examination by Mr. Lane:

Q. Where is your office, Mr. Beach? A. 972 Broad Street.

Q. I suppose if the taking by the City of the interior tract and cutting through of the buildings

would injure the buildings on the Prudential's site, the taking of the outside strips by the Prudential and the cutting through of the buildings would injure the property on the City's site, wouldn't it? A. If the Prudential cut some of those buildings in half from the front, it would do certain damage.

Mr. Groel: I object. He testified to damage to land.

Mr. Lane: I withdraw it.

Q. If there would be a damage by the taking by the City, to the Prudential's property, the taking of the Prudential property would be a damage to the interior, wouldn't it? Just reverse it.

Mr. Groel: I object on the ground that it is irrelevant, immaterial and not proper cross-examination.

A. Taking the whole thing as in one ownership, as it is today, and the contract that is in existence, there would be no damage to the Prudential; where, if the City condemned this land and took it, they would have to pay for the total destruction of buildings and damage to remaining land.

Q. I understand that. Now, we will just reverse it. We will assume that it is today in one ownership, and somebody came along and took the 30 feet in the front, there would then be a damage to the remaining land, wouldn't there?

Mr. Groel: I object to that question on the ground that it is immaterial, irrelevant and improper cross-examination.

A. That would be entirely depending on what they took the 30 foot frontage for.

Q. I assume that they took it for the purpose for which they are now purchasing it, to wit, to build buildings on it.

Mr. Groel: I object on the same ground as before.

A. I wouldn't consider there was any damage to the City property, as it does not destroy the City property, if they are purchasing it.

Q. In other words, if you go down through the center of a block and you take a property, there is a damage to remaining lands, but if you go along the edges of the block and take the frontage, there is no damage to the interior lands; is that right? A. If you have a mutual agreement——

Mr. Lane: I am not talking about a mutual agreement.

Witness: We have to consider it.

Q. That wasn't the way you considered it when counsel asked you about the City taking and condemning; and I am assuming the same hypothesis, and reverse the position. Do I understand you to tell me that there would be no damage to the remaining land? A. If there is a contract on record for the sale of this property at a certain figure, there would be no damages.

Q. There would be no damage if you took the interior, to the exterior land? A. We are not claiming any damage.

Q. Then what is all this talk about? A. Eh?

Q. You have been asked questions about damage. Can't you answer my question in the same way in which you answered the question for the other side, and never mind what the result of

your answer may be? Counsel on the other side asked you if the City came down and condemned the interior of these strips, whether or not there would be a damage to the remaining lands. You said there would. I am now asking you, if some buyer came down and condemned the exterior lands, whether there would be a damage to the interior lands. That can be answered yes or no. A. Why, sure; there would be.

Mr. Lane: Then, why didn't you say so a long time ago? I asked the question several times exactly in that form.

Witness: I didn't understand your question that way.

Q. Can you tell me what the damage to the interior lands would be?

Mr. Groel: I object to that for the same reasons.

A. I cannot.

Q. Can you give me an estimate? A. Not offhand.

Q. It would be considerable, wouldn't it? A. To the interior lands?

Q. Yes, cutting off the frontage. A. Yes.

Q. Considerable; and yet, as I understand it, the interior lands are worth, per square foot, precisely the same as the exterior land? A. Let me answer one question at a time. You asked me if there would be a damage to inside land; there absolutely would.

Q. And it would be considerable? A. Yes.

Q. Now, you say that the value of the interior land per square foot is precisely the same as the value of the exterior land? A. In taking the whole thing in one ownership.

Q. You don't agree with Dr. Kraemer, that if it was in different ownerships, the value would be the same? A. I am appraising it myself. I am not appraising it for Dr. Kraemer or anybody else.

Q. That does not answer the question. I will put it in a different form. Assuming it to be in different ownerships, would the value of the interior per square foot be the same value as a square foot of the exterior?

Mr. Groel: I object on the ground that it is immaterial and irrelevant.

A. Absolutely.

Q. The same? A. The same.

Q. So you mean to say that assuming that there are two separate ownerships of this property, the value per square foot on the corner of Waverly and Somerset Street, if that is the street, and the value of a square foot in the interior lands, is precisely the same?

Mr. Groel: Same objection.

A. Absolutely the same.

Q. You don't agree that the value of the land is the figure which was given to you by counsel, to wit, $832,782.12, do you, as the result of the calculation given to you by counsel? A. That is a result from taking the price of $1,700,000.

Q. I know that. You don't agree that that is the value, do you? A. Certainly; I have nothing else to go by.

Q. Exclusive of what was given you, and what was put on for you, is that your opinion as to the value? A. Yes.

Q. Then will you tell me why you, on the twenty-fourth of May, 1930, swore to an affidavit in which you said, after bounding the lots, "In my opinion a fair value of the land comprised within the said two tracts above described is $721,740?" A. For the simple reason those figures were made up hastily from a map which wasn't accurate, and since then I have gone into the matter in detail and figured it out, so as to reach the value of the land—the value that has been paid for the property, which has been agreed upon.

Q. Have you made an independent investigation of the value of this land since you swore to your affidavit on the twenty-fourth of November, 1930? A. I have since that time.

Mr. Lane: I want to say right now for the record, that is not departure from my stipulation. I do not intend to question the value of the land as a whole. It is for the purpose of testing the witness. I want that understood.

Q. When? A. Since that time I have looked up a number of sales which I had made; those that had buildings on them, I have analyzed—those that have buildings on, much the same class of buildings that are down on these two blocks, colored tenants; some of them pretty shaky houses, two and one-half story, three-family, six-family and four story bricks; and on an analysis of those sales, I think that the analysis of the sale 135 Beacon Street shows a valuation of 2.80 a square foot. That sale was between two and a half and three years ago.

20 Jones Street, a lot 25 by 32, I sold for $5,000

subject to an assessment of $125 per front foot, making the value $325.

26 Jones Street I sold for $6,500, making a value of $216 a foot, subject to an assessment of $125 a foot. 38-40 Jones Street, $182 a foot, subject to $125 assessment.

36 Jones Street I sold for $6,200, which shows $206 a front foot, with an assessment—that had already been assessed at $125.

313 Norfolk Street shows $280 a front foot.

The sale at 291 and 295, and 307 and 309 Norfolk Street, which was in one sale, shows a valuation of $230 a foot.

I also analyzed the sale which was quoted by Mr. Hewson here, of a garage about 130 feet north of South Orange Avenue; the price was $22,000. Mr. Hewson gave that price and I know at the time it was purchased, that Mr. Inlander told me that that is the price he would pay for it, and an analysis of that shows $250 a front foot.

I also have a record of 52 Jones Street—I didn't sell this property, but I saw the contracts, to the Polish Building and Loan Association—25 by 61, which shows a valuation—vacant land—at $252 a front foot, subject to $125 assessment.

54 Jones Street, 25 by 61, sold for $6,000, shows $240 a foot, subject to an assessment of $125 a foot.

Q. Now, do you think you have answered my question? A. I think that answers your question and shows the reason why I have increased, and agreed to increase, the value of my lands. These sales show me that the value of the property is higher than what I estimated it, just before a hurry call, from looking at the land.

Q. You didn't have this information before you

when you made this estimate, did you? A. Not all these sales, no.

Q. Most of them are right in your own office? A. Yes.

Q. Yet you didn't go to that source of information and determine, when you knew you were making an examination which was to be put in the form of an affidavit to go before the court—you didn't go to your own office for the source of information which you had? A. I had not analyzed any of those sales. I knew of the sales, but I didn't realize that they figured as much per square foot, and that the depth for these valuations were from 61 to 65 feet—from 32 average to 65 feet in depth.

Q. I have noticed that as you gave us these figures you gave them per front foot, and not per square foot. A. That is per front foot for that depth. If we figured it out at 100 foot depth it would be a great deal more.

Q. You usually figure such property per front foot, don't you? A. Not always.

Q. Where did you ever participate in a sale in which the value was fixed, or price discussed at so much per square foot, rather than per front foot, for city property, for residential purposes? A. On Chancellor Avenue, where the property ran over 300 feet.

Q. And none of this property runs over 300 foot deep? A. Yes.

Q. Where? A. From Waverly Avenue, from Spruce Street and from Montgomery Street, it is over 300 feet.

Q. And you would figure, if you were selling property on these streets—you would figure per square foot, and not per front foot? A. Not necessarily. The conditions that would arise in

the selling or the appraising would govern the way I did it.

Q. Now, Mr. Beach, I read you a part of your affidavit. Let me read a little bit more of it. After referring to your valuation of $721,740, you go on and tell the Court: "I have reached this valuation by considering recent sales of land in the immediate vicinity and of generally similar character, and by making an analysis of such sales and a comparison of the properties so sold, with the properties comprising the tracts above described"—you tell the Court you made a rather intensive examination, don't you? Now you tell me you went down in a hurry and looked over the ground. A. And measured it up and figured out what I thought it was worth. I just glanced at this, and I didn't have time; they were in a very great hurry for it.

Q. Why didn't you tell the Court that you made an analysis of such sales? A. I did, some of them; where there were buildings on the ones that I sold, I have an analysis of them.

Q. You also told the Court, "I have taken into consideration the character of the locality, its proximity to the main arteries of traffic and transportation, the density of population, the eight corners of the two tracts in question, and the approximate 3,500 feet of frontage upon five different streets." The corners had some influence, didn't they, and street frontage had some influence, didn't it? A. Why, certainly, when I took it that way.

Q. That is the way you told the Court you took it. A. I did, too; sure, I did.

Q. Now, you tell me that the interior 25 square feet is worth precisely the same as the exterior square foot on the corner. A. I say the inside

land, for the purpose for which it is to be used, is just as valuable as the short frontage. You cannot take a part and make a street frontage of it. If you are going to sell off a piece and use the back for a park, the whole piece becomes then park, and every foot in that park is worth just as much—one foot is worth just as much as the other, in my opinion.

Q. I don't say one foot of park isn't worth as much as the other. How about the one foot in the park and the one foot on the exterior? A. That is a question that would be hard to answer.

Q. That is a question you did assume to answer about fifteen minutes ago, by telling me it would be worth exactly the same. A. If you will let me answer questions when you ask them, I will try to answer them. If you are going to interrupt me, I cannot answer them.

Mr. Lane: If you will answer my questions, we will get along quicker.

Witness: I will as far as I can, but when I try to answer them, please let me do it; don't try to shut my wind off.

Q. That is a question you did assume to answer about fifteen minutes ago, by telling me it would be worth exactly the same. A. I don't know whether I said that or not; I don't recall.

Q. That is what you did say. I ask it again, so we may be certain about it. I asked you fifteen minutes ago distinctly, that if you assume that these two tracts are in separate ownerships, whether the square foot—each square foot in the interior would be worth precisely the same as a square foot in the exterior, and you said it would; and I even went to the extent of putting a square foot on the corner of Somerset Street and

Waverly Avenue, and one in the interior of the lot, and you said it would be worth the same. A. I say so yet.

Q. Can you say why you told the Court that in considering the value of this plot as a whole, you took into consideration and gave weight to—because I assume you gave weight to it, if you took it into consideration—the eight corners of the two tracts in question, and the approximately 3,500 feet of frontage upon five different streets? Now, how do you square that with your statement now, that the interior, without frontage, per square foot is worth precisely the same as the exterior with the frontage? A. I didn't know at that time what the property on the interior was to be used for. I didn't know what the contract between the Prudential and the City was, and I appraised that as it appeared to me at that time, without gaining that information that I ought to have had time to get and look into, and there was no other way for me to do it, except the way I did at that time. Later, when I was informed of what was doing there, and what was actually the conditions, it changed my views entirely, and I still say that the inside land is worth just as much per square foot as the land on the outside.

Q. So that there should not be taken into consideration in determining the value of these lands, the eight corners of the two tracts in question and the approximate 3,500 feet on five different streets? A. Yes, they are all taken into consideration; the whole thing is a plot; the value of $1,750,000 includes corner influence, plottage and anything else.

Q. Do you consider in making that calculation that the interior is worth precisely the same as the exterior? A. Yes.

Q. Are you considering that the whole piece is being taken as a public park? A. I am considering that the whole property is being taken by the Prudential.

Q. For public park purposes? A. For their housing plan.

Q. That is not a public park, is it; that is not a public purpose? A. With the understanding with the City of Newark, which is in concrete form, in the form of a contract, that they are to take the inside portion for park and playground purposes.

Q. You wouldn't say, Mr. Beach, that for sale purposes the interior of that land per square foot is worth as much as the exterior, will you? Never mind park purposes. A. To the City of Newark, yes.

Q. For sale purposes? A. That is sale to the City of Newark.

Q. Not for sale purposes; for mercantile purpose, for residential purposes, or any other purpose, factory purpose. A. For factory purposes, yes, but for residential purposes, no.

Q. You could put a factory all the way through there, and put a very big factory in there, and it would be worth as much per square foot—— A. Absolutely.

Q. ——as the exterior would be for whatever purpose the exterior could be used? A. Absolutely. Factory purposes are always figured on a square foot, on large areas.

Q. Yes, I know that. I know that fully well, but here is an interior part which you say for factory purposes it could be used. Do you say that for factory purposes, a square foot of the interior is worth precisely the same as a square foot of the exterior, which may be used not only for fac-

tory purposes, but for residential purposes, or any other purpose which requires a street frontage? A. If you are going to sell that interior piece of ground for factory purposes, the last foot on the most center part of that block is worth just as much as a foot front——

Q. That isn't my question. Is it worth as much as the exterior square foot? A. Absolutely, for a factory, yes.

Q. The exterior square foot can be used for any purpose—never mind for factory. A. You asked about factory.

Q. You suggested factory. I am asking whether in the open market, for any purpose for which any of this property can be used, you can sell a square foot in the interior for as much as you can sell a square foot of the exterior. That is a simple question. A. You always have to have a frontage to make it marketable.

Q. And the extent of the frontage has something to do with it? A. Oh, yes. If it runs 300 feet deep lots of people wouldn't buy it, because there would be too much land; where you could sell 100 feet to a better advantage than you could the next 100 feet added onto it.

Q. You also told the Court, "I have always considered the elements of exceptional plottage and of such an unusual assembly by one owner of all the property comprised within these two tracts, with the resulting increase in the aggregate value of the many properties comprising the tracts." You did that in arriving at your value of seven hundred and twenty-one thousand plus, did you not? A. Yes.

Q. Now, you tell me that your fair value is not that at all, but is $832,700 plus; is that right? A. That is right.

Q. Did you realize the fact that the $721,740 as the value of the land, plus the value of the buildings given by Mr. McGee in his affidavit, of nine hundred and some odd thousand dollars, would approximately result in the purchase price of $1,700,000; whereas, now, by the decrease in the value of the buildings, to make the purchase price $1,700,000, the land has got to be increased? Have those figures any significance to you? A. The decrease of the value of the buildings throws a greater value into the land. There is no question about that.

Q. Throws it into the land, is right, isn't it? A. A. Absolutely.

Q. Now, you say you have used the Hoffman-Neill Rule, the so-called depth rules, corner influence rules, and what-not, which are used in valuing city property and lots? A. Yes.

Q. The hypothesis is that the exterior of the lot is worth more than the interior, isn't it? A. Yes.

Q. But you don't think that rule should be used in the purchase of these city lots, or in putting a value on these city lots? A. I was not appraising these properties as individual properties.

Q. That is what is going to be bought, isn't it? A. Why, no. You mean the City?

Q. The Prudential. A. The Prudential bought them, yes.

Q. And with the City as a partner in the enterprise?

Mr. Groel: I object to that.

A. I don't know as they were partners in the enterprise.

Q. With the understanding, then, that part of it was to go for a city park, is that right? A. It is only rumored; I don't know of my own knowledge. I know that I have heard it, and heard it

talked, but I have never seen the contract, only in the newspaper. I don't know whether that is correct or not.

Q. So you don't know it, do you; is that right? A. Only by hearsay.

Q. And yet you have been telling me two or three times, when you were stating the assessed value of this property, and talking about damage, that you were considering it from the standpoint of the fact that there was a contract in existence, and a completed transaction, in which the City was going to get this land. In one instance you know it, and the other, you don't know it. Do you? A. I said I know it from hearsay. I didn't say I didn't know it.

Q. So you permit hearsay to affect your valuations, is that right? A. When it comes from reputable people like the Mayor and several others, I will take their word for it.

Q. Certainly, you know it, don't you? A. Yes, I know it from being told.

Q. Now, this Hoffman rule that you have applied, how did you apply it? A. To the whole property. I took the 140 feet on Waverly Avenue and Montgomery Street and the 280 feet on Spruce Street, making a total of 560 feet by 100, and multiplied that by 290.55, which gave me a figure of $162,708; I then took the balance of the frontage on Barclay and Somerset Streets at $290.55, and the Hoffman Rule is 56 per cent for the rear lands, 70 feet, which gave me a valuation of $167.71 per front foot, and there being 2,066.20 feet of frontage, I multiplied that by 167.71, which gave me a figure of $336,191.40, making a total of $498,899.40. I then added the value set by the builders on the property, on the City land, of $556,450.82, which gave me a total of $1,055,350.22.

Q. Did you apply the Hoffman Rule on the valuation of the Prudential property? And never mind taking the value that you got for the value of the Prudential property and deducting it from the value of the whole, but did you apply the rule? A. I applied the rule.

Q. Let us see how you applied the rule. A. I gave a value of $127,842 for a depth of 30 feet; there being a frontage of the Prudential land of 2,866.20 feet frontage for a depth of 30 feet, I multiplied that by 127.842, which gave me a valuation of $366,420.74.

Q. Then you added the buildings, I suppose? A. Yes—I think I got the figure wrong there. $160,000.

Q. For what? A. For buildings.

Q. $160,000 for buildings? A. Yes. Wait a minute, until I get this straight. The value of the Prudential buildings, by the builders, is $360,828. It was on another sheet.

Q. That makes a total? A. I haven't added the total.

Q. $727,218.74, is that right? A. Yes.

Q. You have completely ignored corner influence, haven't you? A. The corner influence is included in the value of the square foot.

Q. I am not talking about square foot; we are using the Hoffman Rule now, which does not depend on the square foot, but on front foot. A. The corner influence is used on the value of the front foot.

Q. So that you have given the corner influence to the middle of the block? A. I have analyzed that as showing a value of $290.55 per front foot.

Q. And you told me how you did it, and you didn't take into consideration any corner influence at all, did you? A. Oh, absolutely. It was

all included; we arrived at that figure from $1,750,000.

Q. Will you tell me where in the application of the Hoffman Rule you have given any influence at all to corners? As I understand it, you have taken a front footage value, to begin with, of 2.9055. Will you show me where you have in that 2.9055 given any influence at all to corners? A. Is this from the Hoffman Rule?

Q. No. In reaching your front footage, which you used as the basis of application of your Hoffman Rule. A. I didn't reach any such figure as that. I reached $290.55 for 1 by 100.

Q. That is what I meant; that has nothing to do with the corner influence, has it? A. It is in there.

Q. How do you reach 2.9055 and what amount do you give to corner influence, which you included in that figure? A. I reached the figure of 2.9055 by taking the value of $1,750,000, deducting the builders' value of buildings from that, which gives me a land value of $832,782.12. I divide that by 286,620 square feet, which gives me a valuation per square foot of 2.9055, of $290.55 per front foot.

Q. You are going too fast for me. You get a square foot value of 2.9055, and then how do you get your front foot value? A. Why; your square foot value is always—your front foot value is always figured on 1 by 100, which gives you a value of the front foot of $290.55, or $2.9055 per square foot.

Q. So that as I understand it, you first get, in determining the front foot value of a piece of property, your square foot value; then you multiply your square foot value by 100; is that the

way you get it? A. In this case we first get the square foot value; lots of other cases we leave out our front foot value.

Q. Isn't it going around the barn backwards, to get your square foot value first and then try to reduce your square foot value to front foot value? A. Absolutely not.

Q. It is not? A. No.

Q. Can you show me any authority which recognizes the obtaining of front foot value of land by taking a square foot value and multiplying it by 100? A. I cannot refer you to any books that are published, but from my experience, and I use that system, and I think my opinion and my experience is just as good as some of these fellows who publish books—I can show you where they make mistakes, lots of them. I think my experience for seventeen years appraising property for the City of Newark and private individuals, I think my system of arriving at values is just as good as any set system, and I don't think there is any set system for arriving at values on different pieces of property. You have to arrive at your values as you find the properties, not as some book says.

Q. The way you got your square foot value was simply to take the purchase price and divide it into the number of square feet? A. Absolutely.

Q. So that you think you can get your front foot value by multiplying your 100 by whatever it is? A. Absolutely. You can work it around the other way, too, and you can put your front foot value on there, and it will show the same thing, in square foot value.

Q. What do you consider,—leaving out of consideration entirely what the property was purchased for—what do you consider a front foot on that street to be worth?

Mr. Groel: I object to that. We are assuming that the value is $1,750,000 for the land and buildings.

Q. On what street?

Q. Any one of these streets. A. I would consider the average, taking the streets right straight through, I wouldn't hesitate at all to put a front foot value of $290 to $300 a foot.

Q. The front foot value of each one of those lots—not each one, but the front foot value of a great many of these lots; differ; don't they? A. No.

Q. You don't mean that, do you? A. Maybe I don't understand your question.

Q. The front foot value of a great many of these lots differ, do they not? A. Not a great many of them.

Q. The corners do. A. If you analyze it that way, it makes a difference.

Q. It makes a considerable difference? A. Not a great deal of difference; not in a residential neighborhood.

Q. So in your opinion, corner influence has little to do with it? A. Corner influence on a 70 foot lot desn't amount to much.

Q. Does corner influence on a 100 foot lot amount to anything? A. Yes, more than on a 30 foot lot.

Q. Does it amount to very much? A. That would entirely depend on the value of the corner lot, and general conditions. It is impossible to figure down to just what it would be, without having a specific piece of ground to value.

Q. It is an important thing, isn't it? A. Corner influence?

Q. Yes. A. Oh, yes.

Q. And the fact that there are eight corners here is important, isn't it? A. Sure.

Q. The only way by which you can build up a value which is scientific for this outside property, is to take each and every lot and put a value on each and every lot, and add them together, isn't that right, as it was before the Prudential purchased? A. Yes.

Q. Exactly as it was before the Prudential purchased it? A. Absolutely; as it is today, you wouldn't do that. You would value the thing as a whole.

Q. You value the interior at the same amount as you do the exterior, notwithstanding the fact that after it went into separate ownership, different uses could be made of it; is that right? A. That is right.

Re-direct examination by Mr. Groel:

Q. When you made this affidavit on November 24, 1930, did you make this affidavit on the assumption that the value of the land and buildings on these two blocks was $1,750,000, and that the value of the buildings was $917,000? A. I did not; I simply got the value of the buildings and use my own value of the land.

Q. When you expressed your opinion on direct examination that you thought $1,200,000 was a fair and reasonable price for the purchase of the lands and buildings on the property to be acquired by the City, was it based on the assumption that the value of the land and buildings on the entire two blocks was $1,750,000, and that the value of the buildings was $917,217? A. It was.

Re-cross-examination by Mr. Lane:

Q. 313 Norfolk Street you said was sold for $26,000 in the last two and one-half to three years? A. Yes.

Q. Will you tell me who the seller and purchaser were? A. A man by the name of Iannecelli was the seller.

Q. Who was the purchaser? A. Mada Realty Company, a corporation of the State of New Jersey.

Q. 291-295 and 307-309? A. That was Max Fuer to Mada Realty Company.

Q. Are those north of Thirteenth Avenue? A. No, sir, they are south of Thirteenth Avenue.

Q. I think you told me how many blocks they were away from this land. A. Three to five blocks; I didn't look it up to count it.

Q. Are these properties on Norfolk Street—is that a neighborhood of tenements with colored people? A. Yes.

Q. And so is Jones Street? A. Yes, there are a lot of colored people on Jones Street.

Q. Is this territory that we are talking about, these two blocks, inhabited by colored people? A. Yes; 3 and 5 Beacon Street is also occupied by colored people, and has been ever since the sale, because I still have charge of them, and there are colored tenants in all of them.

Q. At very low rentals? A. We think it is pretty good rent for what they get. We don't get very big rents.

Q. There is very little value there—sale value I am talking about now, not builders' construction value—outside of the land? A. Oh, yes; in normal times there is always a demand for that class of property. Where we were getting $30 and $35 rent, we are now taking $22 and $25, or whatever

we can get, and in normal times when people are working we get good income. Where I was collecting out of the Mada Realty Company's property $900 to $950 a month, I have dropped as low as $465 last month. When men are working there is a demand for that kind of property for investment. Just at present, as you know, there isn't a demand for anything.

Q. The Beacon Street property is near South Orange Avenue? A. Yes, south of South Orange Avenue.

Q. That has a South Orange Avenue influence? A. No, sir. When that was sold, that was before Jones Street was opened—no, I don't think it has any South Orange Avenue influence.

Q. Right next to South Orange Avenue? A. There are colored people all through that street, and Beacon Street is only a block long.

Q. The character of the buildings on these lots, most of the buildings, are old and within a short space of time will have to be removed, won't they? A. Not necessarily, no. 313 Norfolk Street——

Q. I am talking about the buildings we are discussing here on these lots taken by the City.

Mr. Groel: I object; he isn't competent to testify.

A. Oh, no; there are a lot of those buildings could stand for years. You mean down at Barclay and Somerset Streets?

Q. Yes? A. A lot of them could stand for years; there are a lot of good brick buildings down there, and some frame buildings there that are in good condition.

Q. Jones Street has been recently opened and widened and paved, hasn't it? A. Yes.

Q. Is it a main artery? A. Yes.

Q. Does it cross South Orange Avenue? A. Jones Street runs from Springfield Avenue to South Orange Avenue.

And 3 and 5 Beacon Street are right next to South Orange Avenue? A. 32 feet away.

Q. And Jones Street not only connects South Orange Avenue and Springfield Avenue, but it is a part of it, a connecting street, making a main artery across Newark? A. It is considered now one of the main highways crossing the upper part of the city.

Q. You think that property is comparable to the property we are discussing? A. That was sold before Jones Street opened or anything done there. I made that sale prior to anything being done there—before the ordinance was passed.

Q. When was that street widened? A. I cannot tell you offhand.

Mr. Casale: The latter part of 1927.

Q. This property you have been talking about having sold on Jones Street must have been sold before that time? A. That was sold after the street was widened, before all of the improvements were put in.

Q. With knowledge that the improvements were going to be put in? A. Yes.

Q. Do you consider that property comparable? A. Absolutely, I do; it shows sales from $350 to $400 a foot there.

Q. Are those some of the sales that you took into consideration in putting a value upon this property? A. Absolutely.

Q. You consider that that property, which is a part of the main artery, widened, with trolley

cars on it, the front foot value on that street is comparable—that kind of property is comparable with those two blocks? A. I take them into consideration and make my deductions, and compare the two and compare values, and put a value onto it from that and from the other sales.

Q. What is comparable to Jones Street property and the property here under discussion? A. It is all colored people.

Q. Is that comparable property? A. Cheap tenements, and has been for years.

Q. Is that the only element of comparability? A. The whole section, the whole neighborhood, outside of its being a 100-foot street, it is just the same thing as Spruce and Waverly Avenue.

RECESS.

JAMES A. BERRY, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. You are a resident of the City of Newark? A. Yes.

Q. And a real estate broker? A. Yes.

Q. And have been for thirty-five years? A. A little more.

Q. Bought and sold property throughout the City of Newark during that time? A. Yes, sir.

Q. Have you ever purchased any property for park lands? A. Yes, sir.

Q. For whom did you purchase property for park lands? A. Essex County Park Commission,—a number of properties.

James A. Berry, for Respondents—Cross.

Q. Have you purchased property for them recently? A. Yes, sir.

Q. Are you familiar with the property in the Third Ward of the City of Newark, bounded by Waverly Avenue, Somerset Street, Barclay Street, Spruce Street and Montgomery Street? A. Yes, sir.

Q. And are you familiar with the character of the people living in the vicinity, and the character of the buildings there? A. Yes, I know the caliber of the residents in that neighborhood and also the property.

Q. Are you familiar with land values there? A. Yes, sir.

Q. Have you made sales of comparable property in that vicinity? A. Yes, sir.

Q. And what sales did you make? A. I sold the property No. 87 Somerset Street.

Q. Did you make any other sales? A. I assisted in acquiring for the City a number of parcels right in that zone.

Q. On what streets, do you recall? A. Monmouth Street, for the school.

Q. Did you make any other sales of comparable property? A. In the City?

Q. Yes. A. Yes.

Q. Where? A. The most recent was on Van Buren and Polk streets.

Q. What was the character of the properties that you sold there? A. I should say precisely similar to the properties in question, occupied by colored folks; small stores; cold water tenements.

Cross-examination by Mr. Lane:

Q. How far is the property on Monmouth Street that you acquired for school purposes, or assisted in acquiring for school purposes, from the

property in question? A. Monmouth Street is the next street easterly,—about two blocks.

Q. And when? A. I have the record here and will state it for you. I should state off-hand four or five years—April 8, 1926.

Q. What do you mean when you say you assisted in purchasing that property? A. I mean that I was employed by the City of Newark, the Board of Education.

Q. For what purpose? A. Acquiring the options or appraising the property, and bought on my figure.

Q. What did you do yourself in reference to it? A. I appraised it.

Q. How far is the property on Van Buren Street and Polk Street from the property in question? A. I should say about two miles, maybe two and one-half—a colored district.

Q. Exclusively colored? A. No, it was—by the way, it was getting very rapidly into being exclusively colored. There are some Spaniards, Portugese, and here and there I found Armenians.

Q. It is the other side of the Pennsylvania Railroad? A. Yes.

Q. In the district that they call Down Neck? A. Yes.

Q. Not in the Third Ward? A. No, sir.

Q. 87 Somerset Street, you say you sold; when did you sell that? A. Within the past six months.

Q. Will you give me the date? A. I haven't it with me; I can get it for you by phoning, if you wish.

Q. Can you give me the name of the purchaser and seller? A. Yes—the vendor?

Q. Yes. A. Samuel Berson; he had a partner, I forget his name.

Q. The vendee? A. The vendee, Prudential Insurance Company.

Q. That was one of the pieces of property which was purchased for the purposes of this enterprise? A. That is the one piece where you had the question yesterday as to the building dimensions.

Q. The property was purchased for the purpose of this enterprise? A. Yes, evidently.

Mr. Lane: I object to the witness' qualifications.

Further direct examination by Mr. Groel:

Q. Did you represent the Prudential Insurance Company or did you represent the vendor in that last sale? A. I represented the vendor and was present at the settlement and saw the money paid over and collected mine.

Mr. Lane: I still object to the witness' qualifications.

Q. Mr. Berry, assuming that the value of the property bounded by Waverly Avenue, Somerset Street, Barclay Street, Spruce Street and Montgomery Street, is $1,750,000; assuming that the value of the buildings and improvements located on the property in question is $917,217; assuming that the value of the improvements on the property to be acquired by the City 140 feet wide, 1433 feet in length, running through the center of the two tracts, or blocks, is $556,450, in your opinion do you think that the price of $1,200,000 for the land and buildings on the strip running through the center, 140 feet wide by 1433 feet long, which the City is to acquire, is a fair and reasonable price?

Mr. Lane: I object to that on the ground that the witness is not qualified. May it be stipulated that I object to any questions which are asked which call for the expert opinion of the witness, on the same ground, so I will not have to interrupt continually?

Mr. Groel: Yes.

A. I do consider it a fair and reasonable price.

Q. Why do you think it is a fair and reasonable price? A. Taking the whole project into account, I have made a calculation here, and I am advised that it is stipulated between the parties in interest, the counsel, that the total value is $1,750,000. By deducting from the stipulated figure of $1,750,000, the amount of the value of the buildings as shown by expert builders—$917,217.82, we find a balance remaining, which in my judgment represents the value of the land, or $832,782.18. Taking the total area of the land which is set down at 286,620 square feet, and dividing that into 832,782.18, we reach a value per square foot of 2.9055. Now, the portion of the land that is allotted to the City is 200,634 square feet, which multiplied by 2.90 plus, reaches a figure of 582,945 plus. The square footage in the tracts retained by the Prudential amounts to 85,985.30, which multiplied in the same fashion, gives us $249,825. There are odd pennies, of course, but we are trying to overlook them. Taking the City's acquirement of land at $582,945 and the Prudential's share of the land at $249,825, and adding thereto the buildings overlapping on the City's land, $357,622; the buildings wholly within the lines of the City's land—$198,828.82, and the balance of the buildings—$582,945, we reach a total of $1,139,395.91, or approximately $60,000 short

of the $1,200,000 that is mentioned as being the City's share of the price of the land.

Q. Is there any other method that could be used or has been used, to determine the value of this land? A. Personally, Mr. Groel, might we say that the most exact method of calculating the land values to include everything, was to do as I have done—by the square foot. Of course, there is another method, and that would be applying the percentage rules again.

Q. You think those rules are applicable to this situation? A. No, I don't.

Q. But if you did use that method, what would the result be that you reached? A. That would come to $1,055,350 and some cents, without allowing any damages to remainder.

Q. Just how would you work that out, Mr. Berry? A. I have here a calculation showing that the percentage on the Prudential's holdings of 30 feet in depth would be 1.27842; that would leave a balance of 56 per cent to be accounted for, for the remainder, which I calculated at 56 per cent. coming to the figure 1.6271, and the other would be 1.27842.

Q. Have you anything further to say as to that calculation? A. Well, if you will ask me, I will be glad to, if I can. It might be summed up in this way: so far as I am concerned my figures then would show $336,191.40—that is for 2066.22 feet. Add for 560 feet, being 140 feet frontage on each of the three main arteries running east and west, would be $162,708; added to $336,191.40 gives us $498,899.40, which under that method of calculation, to my way of thinking, would be the value of the City's land, accepting the percentage for depth rule. The buildings, as stated previously, I think would be $357,622; and wholly on the City's land,

again, $198,828.82; the total of these last three items coming to $1,055,350.22, if my calculations are precise.

Q. Mr. Berry, if the City were to buy or take this interior land running through the center of these two blocks, would it be any damage to the land that parallels the land through the center,—the 30-foot strips 1,433 feet in length? A. We really are not confronted, in my judgment, with that proposition. The answer from me would be, undoubtedly.

Q. To what extent would you say that the land on the sides, 30 feet in width, would be damaged? A. The land alone?

Q. Yes, the land alone, without the buildings. A. If we had that to deal with, which we have not, I should say probably it would be in the ratio of 70 and 30 as between the two joint interests there.

Q. Let me repeat the question, and just answer the question. I say that if the City were to acquire this land in the center of these two blocks— A. Oh.

Q. ——140 feet in width and 1,433 feet in length, running through the center of those two blocks, would there be any damage to the land on the side, the strips 30 feet in width, 1,433 feet in length? A. Yes, I think they would be damaged from 60 to 70 per cent.

Q. Can you give us that in dollars and cents? A. Having the total value of the land that remains with the Prudential, which is set down at $249,825, and assuming 60 per cent of that, it would be in the neighborhood of $147,000 to $150,000.

Q. Mr. Berry, you testified that you are familiar with the depth rules? A. Yes, sir.

Q. Are those rules applied in the determination of the value of buildings? A. No, sir.

Q. If I were to give you——

Mr. Lane: We concede that. How could you apply it?

Mr. Groel: Will you concede that if you don't know the value of the buildings you cannot determine the value of the land, where you have a composite piece composed of land and buildings, and you have one price for that?

Mr. Lane: I won't concede that.

Q. Mr. Berry, if I were to tell you that the value of a piece of property 25 feet frontage and 100 feet deep was worth $25,000, and on that property there was located a building which occupied a considerable portion of the area, without knowing the value of the building, could you tell me what was the value of the land in the 70 foot of land in the rear? A. No, sir.

Q. By the application of the depth rules? A. I assumed that is what you intended—no, sir.

Q. Could you tell me the value of the land—70 feet of land in the rear, and the value of the building resting upon that 70 feet, if you knew the value of the building, by the application of the depth rules? A. No.

Q. If I were to tell you the value of the building, could you tell me the value of the 70 feet of land in the rear, by the application of the depth rules in this particular case? A. I think so.

Q. Do you think that by the application of the depth rules in this particular case, without any knowledge as to the value of the buildings, and assuming that the value of the land and buildings

is $1,750,000, could you determine the value of the land and buildings lying in this strip to be acquired by the City? A. Of the land and buildings?

Q. By using the depth rules? A. You could not apply the depth rules to the buildings.

Q. Could you determine the value of the land, not knowing the value of the buildings, by the application of the depth rules? A. Yes, I think so.

Q. You understand my question? A. I am not sure that I do.

Q. I will repeat it. Assuming that the purchase price of a piece of property is $1,750,000—and when I say a piece of property, I mean these two particular blocks—A. Yes.

Q. Not knowing the value of the buildings on these blocks, could you determine by the application of the depth rules what is the value of the land? A. No, sir. I understood it the other way around, that I was to assume I knew the building value.

Q. Do you think that the depth rules are applicable, even knowing the value of the buildings, for the determination of the value of the inside land? A. No, I don't think so.

Q. You say you don't think so; do you know so? A. The answer I would give you would be No.

Cross-examination by Mr. Lane:

Q. If you knew the value of the whole, including the land and structures, could you ascertain the value of the part, by taking the ratio of the square footage of the part and the whole? A. I am not quite certain I grasp that.

Q. I will illustrate it. If as a matter of fact, the land to be taken by the City is two-thirds of the whole, leaving one-third to the Prudential, in square footage, and the value of the whole, including land and buildings, is $1,750,000, could

you determine the value of the respective one-third and two-thirds? A. I could do that, I think, only as to the land; I could not include buildings.

Q. I understand that. I am now assuming that the $1,750,000 represents a figure for both land and buildings. A. If we are to call it all land——

Q. I am not asking you to call it all land; I am telling you to assume that there are buildings on it, included in that purchase price of $1,750,000, could you determine the value of one-third of the square footage from those figures alone? A. Not if it included buildings.

Q. Then the fact that the City is taking a certain proportion of the square footage of the land can have no influence at all in determining how much of the composite purchase price should be paid by the City; that is so, isn't it? A. I understood that it was agreed that the total purchase price was $1,750,000, and that the share to be charged against the City for its proportion of the land is $1,200,000.

Q. Well, does that answer my question? A. Well, it was intended to.

Mr. Lane: Well, it doesn't. Will you repeat the question?

(Question repeated by the Commissioner.)

Witness: My only opinion is that the ratio is produced by the parties between themselves. That would come back to seven-tenths and three-tenths.

Q. That is of the whole purchase price of $1,750,000? A. Yes.

Q. And the seven-tenths and the three-tenths is precisely the proportion of area taken, isn't it? A. Yes, sir.

Q. And the seven-tenths and three-tenths results in precisely the figures $1,200,000 and $1,700,000; is that right? A. I think pretty close to that.

Q. Pretty close to it? A. Yes.

Q. The $1,700,000 represents both land and buildings, and a greater proportion of its buildings than land, is that right? A. We have read off the proportions; there is nine hundred and some odd buildings, which leaves—we have the figures 556; call it fifty-fifty; fifty per cent of that $1,750,000 represents buildings.

Q. Now, do you say that it would be a fair way to apportion that $1,750,000, which includes both land and buildings, to the two separate interests in the proportion that they are acquiring the land? A. Yes, sir, I do say it.

Q. Upon what hypothesis can you say that when buildings on one part may be entirely different, as has been proven by experts, is entirely different in value than buildings on the other part? A. I think that would even up throughout. I think that where you find a good part of the buildings on the land in the City's strip, that it would be found in other places not to be so much —buildings not to have so much depth. And on the whole, from my own observations there, and disregarding the more precise figures, perhaps, of the competent building experts, my thought would be that it would be about as I have stated.

Q. That would mean, if you used this average figure, that the same amount, or the same proportionate amount of buildings should be on each tract, two-thirds and one-third, wouldn't it? A. Two-thirds of the value of the plot would have to be on the interior and one-third of the value of the plotting would be on the exterior.

Q. I used the term three and seven-tenths? A. Yes.

Q. Three-tenths of the value of the buildings would have to be on the exterior and seven-tenths of the value of the buildings would have to be on the interior?

Mr. Groel: I object to this testimony as to buildings; the witness is not competent to testify as to buildings.

A. I think it comes back in the matter of buildings to about fifty-fifty.

Q. Come back to fifty-fifty in the matter of buildings? A. In and out.

Q. If it comes back to fifty-fifty, then your proportion of three-tenths and seven-tenths is out of the way? A. No, I wouldn't say that.

Q. Then if the value of the buildings is fifty-fifty, and the value of the land is three and seven-tenths, how can the value of the whole be three and seven-tenths? A. We know, Mr. Lane, that the frontage there has been estimated by the builders at approximately $200,000; I think one hundred and ninety-eight on the exterior land, and that the remainder of the buildings would be on the interior land, or $337,000 it has been testified to here.

Q. You haven't added the value of the buildings on the land which goes to the City. You said, I think—I may be mistaken—$357,622 as the overlap buildings. A. $357,622.

Q. $198,828.82 as buildings wholly on the land to be taken? A. $198,828.82.

Q. Where did you get those figures from? A. From the builders' estimates.

Q. From anything that has been testified to here, or from something you got somewhere else?

A. I believe I heard the builders testify, at least Mr. McGee, one of them here, and besides that I have discussed the matter with Mr. McGee, and that is my recollection of what he told me.

Q. Do I understand you that Mr. McGee told you that $198,828.82 represented the value of the buildings wholly upon the lands to be taken by the City? A. That is my recollection; yes, sir.

Q. And that $357,622 represented what? A. Overlapping buildings.

Q. What do you mean by that? A. Buildings that were in and out on both——

Q. Damage to the overlapping buildings? A. No.

Q. The value of the overlapping buildings? A. Yes, the present day value, correct.

Q. So that you think that the overlapping buildings should be wholly added onto the City's share? A. I think the City should pay its share of those buildings.

Q. You didn't take the City's share; you added $357,622, which you told me is the total value of the overlapping buildings.

Mr. Groel: I object to that; he didn't say that.

A. No.

Mr. Lane: He did say it.

Mr. Groel: I don't think he understood your question.

Mr. Lane: Let him say so. The question was plain.

Q. I ask you again what the $357,622 represents. A. Buildings overlapping on the City's land.

Q. The value of the whole building? A. No, sir; the portion of it on the City's land.

Q. And that figure you got from Mr. McGee? A. Yes, and I think I heard him testify to that here.

Q. Now, I understand you to say that the value of the exterior strip is $249,825, approximately, and the value of the City strip is $582,945; that is right, isn't it? A. That is correct, sir.

Q. And that is considering the value of those lands as parcels of land; that is true, isn't it? A. Yes.

Q. I understand you further to say that if the City came along and condemned this interior property, there would be damage to the exterior of the lands to the extent of——

A. I approximated it at 60 odd per cent.

Q. Which would be approximately $147,000; that is right? A. Yes, substantially correct; I didn't make an exact calculation.

Q. Then taking $147,000 from $249,000, it gives you $102,000? A. Approximately.

Q. So you say that if the City came along and condemned the property through the interior of this land, the lands on the exterior, including the two street frontages and the corners, would be worth but $102,000? A. Yes, that would be maximum, too.

Q. Only worth $102,000, of that frontage; is that right? A. Maximum. Yes.

Q. Which would make the interior land, without street frontage except for the 140 feet intervals four times, worth $669,000, or some such figure as that; is that right? A. I don't know where you got your figures. I assume you add 102 to 582.

Q. No, I didn't; I added 147, which you said would be the resultant damage, to 586. A. Yes.

Q. And would make the value of that interior strip of land six times and over the value of all of this street frontage; is that right? A. If you will pardon me, I disagree, when you are talking of interior lands.

Q. I don't know what it would be if it were not interior land. A. The Prudential is the owner of the land, and it is conveying to the City, of its own volition, the portion not required for its model tenements.

Q. We are talking about condemnation now. That is what Mr. Groel was talking about. A. And if condemnation were resorted to, and you reject the lands out on the present streets with 30-feet entire depth, I cannot imagine what you could do with those lands 30 feet deep, to get a reasonable purchase price back, or the interest thereon.

Q. Then as I understand it, the value of those lands consists of the fact that the Prudential Insurance Company, by reason of its agreement with the City, can build tenements on those lands which will have their outlook upon a public park, is that right? A. That will be really the frontage of the model tenements.

Q. Now, you stated that you had used a depth rule. What depth rule did you use? A. The Hoffman Rule.

Q. How many rules are there? A. I think I counted sixteen or seventeen.

Q. How many are well known in this district? A. The best known, I think, is the Hoffman-Neill Rule, the Hoffman and the Davies Rule, and then we have what we call the City Rule.

Q. How does the City Rule differ from the Hoffman Rule? A. I could tell you by comparison, if you wish me to. I have it here. Now, we

have it. (Producing papers.) In what way to you wish me to proceed?

Q. I want a comparison between the Hoffman Rule and the City Rule. A. For what depth would you say?

Q. Any depth. A. Take the 30 feet we are dealing with, among others; the award there would be 44 per cent in the Hoffman Rule; in the City it would be 58 per cent.

Q. That is for the 30 feet? A. Yes, sir; I started out 30, because that is our best known figure here.

Q. I assume that that runs along the same proportions? A. No, there is a pick up each way.

Q. We are dealing with 30 feet; let us confine ourselves to that. Under that City Rule you give to the exterior lands, the outside lands, 58 per cent? A. Yes, if there were condemnation.

Q. And under the Hoffman Rule? A. 44 per cent.

Q. Let us compare it with the Hoffman-Neill Rule. A. I have that here also, by luck. Take 30 feet under the Hoffman-Neill Rule and there would be 49.47 per cent for 30 feet.

Q. And it is approximately fifty fifty? A. I think so. I use that term elsewhere, and I think it is good here.

Q. What other rule did you mention—the Davies Rule? A. I mentioned Davies. I haven't it with me, but it is a rather well known rule.

Q. Why is it that you selected the Hoffman Rule to make your comparison? A. Because in my judgment that is the best known rule in the metropolitan area.

Q. Can't you tell me why, then, the City of Newark, when it adopted its rule for the purpose of valuing property, did not adopt the Hoffman

Rule? A. No, I am not a city employee and am not an official, so I cannot answer for them. I am busy answering for myself.

Q. You were a witness in the Mulberry Street condemnation proceedings, weren't you? A. Yes, sir; several of them.

Q. By whom were you retained in that matter? A. By the Casebolt Estate.

Q. The property owner? A. Yes.

Q. And you were testifying as to values? A. Yes.

Q. And you used a depth rule, didn't you? A. Yes; that was condemnation.

Q. I don't care whether it was condemnation or what it was, you used a depth rule? A. Yes.

Q. And you used the City Rule, the Newark Rule? A. I really have forgotten, but I assume what you tell me is true.

Q. Don't you remember that you used the Newark Rule? A. I am inclined to think that I did.

Q. Yes. Now, you are using the Hoffman Rule? A. All right.

Q. Well, why? A. Well, I think the Hoffman Rule is just as good as the City Rule, at least, as good.

Q. You used the Newark Rule when you were representing a property owner—retained by the property owner, because the Newark Rule gave you more money; and you are using the Hoffman Rule in this case, where you are retained by the Prudential Insurance Company, because the Hoffman Rule gives the City less money; that is right, isn't it? A. No, I wouldn't say that.

Q. If you wouldn't say it, then I would like to know why, in valuing property in the city, where in one instance you represent the property owner,

you have a rule which happens to give you more money; and in another instance, in the City of Newark, you adopt another rule which will give the property owner less money; what is the explanation? A. That is a mere assumption on your part. I might have used the Hoffman-Neill Rule and given the Prudential more money, or vice versa.

Q. Wait a minute; the Hoffman Rule gives you how much? A. 44.

Q. And the Hoffman-Neill Rule gives you 49? A. That is it.

Q. That isn't beneficial to the Prudential; the Hoffman is more beneficial than the Hoffman-Neill, isn't it? A. That would be more beneficial, perhaps, to the City by five points.

Q. The Hoffman-Neill Rule? A. Yes.

Q. Then you might not then have used the Hoffman-Neill Rule and given more benefit to the Prudential?

Mr. Groel: I want to object to all this cross-examination as to the Hoffman Rule, because the witness did not testify that he reached his conclusion, based upon that rule, that this was a fair and reasonable price, $1,200,000, for the central land.

Mr. Lane: Will you answer the question? You made calculations according to the depth rule, and by accident you selected the Hoffman Rule. I want to know why by accident you adopted the Hoffman instead of the Newark Rule.

Witness: We were not bound by any particular rule. It is within our discretion, I think, to exercise what we deem to be our best judgment. I may have used the rule last year, and today I would discard it.

Q. Do you now discard the Newark Rule? A. Yes, in this matter I made my calculation otherwise.

Q. Do you now discard the Newark Rule and say that it is not a fair rule to use in valuing property in the City of Newark of a residential character? A. I would not cast any aspersions on the fairness of the Newark Rule. I think they are all fair.

Q. Then you think that applied to the same conditions, a rule which gives to the front 30 feet 58 or some odd per cent of the value—— A. 56 would be more accurate.

Q. ——56 per cent of the value, and also a rule which gives 44 per cent to the front 30 feet, both rules are good? A. I think both rules are good, as I have stated, and that the average real estate man would not go wrong in accepting or dealing with either one.

Q. And then when you were asked by M. Groel, as I assume you were, to apply a depth rule and give your calculations based upon a depth rule, I am wondering why it was that you happened to select the Hoffman Rule as the depth rule which you would apply. Will you tell me why? A. Because I think it was my privilege to have adopted any of the rules.

Q. Then I ask you again, why didn't you adopt the Newark Rule, when you did adopt the Newark Rule when you were testifying for owners of property in the Mulberry Street improvement? A. I might answer that by interjecting a question, and saying why should I, when my judgment in this instance made me do the other things?

Q. Then there is no significance, of course, in the fact that when you were testifying for the property owners in the condemnation proceed-

ings, the interests of the property owners required that a larger proportion of the value should be allotted upon the front, and when you are testifying here for the interest of the City and the Prudential Insurance Company, requires that a less proportion should be allotted on the front? There is no significance in that at all? A. No. I think you have unduly stressed a slight difference.

Q. Slight difference! Is 14—12 per cent a slight difference? A. I think in a volume of $1,750,000 we are splitting hairs.

Q. The bigger the volume, the greater the difference in dollars and cents. A. Not in percentage.

Q. I am not talking about percentage. The greater the difference in dollars and cents—and after all, we are not using percentages. A. It is percentage applied to the whole in the last analysis. Figure it out, and figure the Newark Rule, how much difference in dollars and cents there is.

Q. Assuming it was condemnation and the rule which was employed, there would be a difference of 14 points on 30 feet, and applying that 14 to the—you can take the $1,200,000, it would make a difference of—I don't know, two hundred odd thousand dollars perhaps. A. All right, Sir, but we have something further to say about that. We are not confronted with that situation.

Q. You repeated that several times. I am only asking you to calculate. A. And I want it set down, too.

Q. It makes a difference of approximately $200,000, taken off of one and put onto the other. A. No, I wouldn't say that, because I have my own honest views as to this transaction.

Q. In obedience to the request of the City, you made a calculation, and in that calculation you

used the Hoffman Rule. Will you please make the same calculation and use the Newark Rule, and tell me how much the value of the frontage is? A. It would come to 58. I think you stated that, too, by the way.

Q. How much would it be? A. Start from the same base of that million, or whatever the Prudential's share would be in that land, 85,985 plus square feet, it would make a difference of 14 points on the eighty-five, or about eleven to twelve thousand—a mental calculation.

Q. You want to stand on that as the difference, eleven or twelve thousand, or fourteen thousand, in eight hundred and thirty-two thousand to deal with? A. No, I am glad you corrected that, because we come back to the City's plot there—the value of the City's land there, $249,825—I said "City's"; I mean Prudential's—$249,825; take 14 points, would be about $30,000 in round numbers. And while we are correcting things, we might as well make a better correction. The same matter on the lands for the City; instead of being placed at $120,000, I think it should come to five hundred and eighty-two, as we are dealing with land, and instead of the total that you have set down, it would be $78,000 to $80,000; and taking the $582,945 and multiplying by 14, you get about eighty plus thousand dollars.

Q. You are going to add it to both sides; you are going to have 114 per cent. instead of 14 per cent? A. If you use the 14 per cent. in each case, that is what it would be.

Q. So that you made up the value of the City land at $582,945; is that right? A. The City's acquirement, $582,945.

Q. You want to add 14 per cent. to that, to the City's acquirement? A. No, the City's acquire-

ments would be about 140 feet of depth, generally speaking.

Q. Then where do you get your $70,000 you are talking about? A. I went back with the 14 points, where it should have been measured, for its own depth.

Q. Yes. A. We didn't carry the total down, but you take 70 feet on one street, the City and Mr. Hoffman would be just one point apart.

Q. Well, now, in order to demonstrate that—you have your figures there, in which you applied the Hoffman Rule, haven't you? A. Yes, I have.

Q. Won't you take those figures now and give us, as you go along, both with respect to the value of the City property and with respect to the value of the Prudential property, and apply the City Rule? A. Instead of the Hoffman?

Q. Exactly. A. We will do a little calculation. We took the square foot value of 2.9055; we took it by Hoffman at 44 per cent. Now, we will take it by Newark, as they call it, at 58 per cent. Do you wish me to make the exact calculation?

Q. Yes. A. So that instead of 2.9055 I will give you now the square foot value according to the Newark depth rule.

Q. The square foot value according to the Newark depth rule? A. Did I not so state?

Q. Yes; go ahead. A. I have it.

Q. How much? A. 1.685, without going into it any further for decimals. Now, do you wish me to make the calculation for 70 feet of depth?

Q. Yes, I want you to make the same calculation as you did with respect to the Hoffman Rule, and give us concrete figures at the end. A. We will take 2.9055 again—for what depth do you want?

Q. The same as you did with the Hoffman Rule. A. Where we used the 56?

Q. I don't know what you used. A. That would be 68 per cent.

Q. What would be 68 per cent? A. The same as I figured for the Hoffman.

Q. I am not asking you to use or interweave the Hoffman and the Newark Rule; I am asking you to do the same thing with the Newark Rule as you did with the Hoffman Rule. A. Very well; there being 56 in the Hoffman Rule of percentage remaining in the land, instead of 56 we would now calculate at 68, which I will take for you—1,957, without going further into decimals. Now, do you wish me to calculate the effect of that on the footage?

Q. Yes. A. Then I will multiply first—we will call it 2866.20 feet—that is the total Barclay and Somerset Street frontages. We will multiply that by 1,685, or 1.97.

Q. The value is greater in the front, and the frontage cannot be less in proportion than the rear. A. That is just it. That 56 and 68 are dealing now with what you call the rear lands—what I call the rear frontage.

Q. Oh. A. But I will calculate according to my lights, the last 30 feet deep on the basis of the 58 per cent.

Q. That is what I am trying to get at, the value of the Prudential land. A. You don't mind if I discard fractions or pennies?

Q. No. A. We don't bother with them in real estate.

Q. How much does it make? A. $482,521.60.

Q. As against $249,825 according to the Hoffman Rule; that is right, isn't it; that is a difference of upwards of $200,000, not $30,000? A. Well——

Q. That is your application of your Newark Rule, which makes a difference of approximately $200,000, which is a substantial figure. A. Let us see whether it does. I disagree with you.

Q. Well, all right, if you disagree with me, it is because your figures are wrong. A. I disagree with you in my judgment, because my figures are right, and yours are wrong.

Mr. Lane: I used yours.

Witness: I have my own here.

Q. You just said that you were calculating the value of the exterior 30 feet. You have told me that it would amount according to the Newark Rule, to four hundred and eighty some odd thousand dollars. Your figures given—as I have them; I may be mistaken, but your figures given, as I thought, in the testimony, as the value of the land, applying the Hoffman Rule, was $336,000. I may be wrong. A. You may not always be wrong, but you are now, for 30 feet of depth measured according to the Hoffman Rule by percentage total 1.2784.

Q. Don't go all through the calculation; give me the result. A. The Hoffman brought us to $366,420.

Q. Then it is a difference between $480,000 and $366,000, or a difference of $120,000; that is a substantial figure. A. That is your mental quick calculation, but you are still wrong.

Q. How far wrong? A. $4,000. Not so much, between friends.

Q. $125,000? A. $116,000.

Q. That is still a substantial sum, isn't it; and if you apply the Newark Rule, instead of the Hoffman Rule, you add that to the exterior property, and of course you deduct it from the interior

property. A. Now, we will come to the measurement of value in dollars and cents, of what you term the interior property.

Q. There is no use in going through that calculation, because the sum of two parts cannot equal more than the whole. All you have to do there is to deduct the 426 or whatever it is, unless your calculations are all wrong, from the whole purchase price; because the sum of two parts cannot equal more than the whole. A. No, I think it would go the other way.

Q. All right; then go through the figures. A. I think they will show that the percentage ought to go the other way.

Mr. Lane: If that is so, I will tell you before you start, I don't see how I can escape the conclusion that the base figure you use, which was the value of the whole, can be right, because the sum of the value of the parts cannot equal more than the value of the whole.

Witness: I think that is assuming, again, what is not the fact. We are not contending, nesessarily, with the sum of two parts. Here is the sum. And I have made a calculation here, which comes to $566,074. Now, what do you wish me to do; add the two of them?

Mr. Lane: Yes, if that is the way you think the value of the whole should be obtained.

Witness: I am not thinking it, because I don't think the whole procedure is showing the real facts.

Mr. Lane: All right, then, add them.

Q. You have now given the value of the Newark part, the part that is to be retained by the City of Newark, according in the City Rule; you have given the value of the part that goes to the Prudential, according to the City Rule; is that right? A. No sir; it is wrong.

Q. That is what I asked you to do? A. We have only half of it. We have taken one side.

Q. If you got $900,000 already between both of them, and taking one side, and take the other side, both sides being alike, you will get $1,800,000 as the value of the land with a base figure of eight hundred and some odd thousand? A. I want to say that if we proceeded in condemnation according to the table, we would run over one million eight hundred.

Q. I didn't ask you to proceed in condemnation, or any other way? A. We never use the table except that way.

Q. You were given in the beginning the factor that the value of this land as a whole was $833,-000. You were asked to split it up by applying the Newark Rule. You have told me that the value of the part which the Prudential is to take, applying the Newark Rule, is $482,000 approximately. Now, you tell me that the value retained by the City of Newark, one-half, is $586,000, which at once gives us a value of two parts of a whole of upwards of $900,000, which is at least $70,000 more than the value of the whole which you have given as the base? A. I will show you what that is exactly.

Q. I would like to know? A. I cannot explain what you appear to think is a difference. Because we have used as your suggestion the depth rules?

Q. Yes? A. We come to a figure which is nine hundred plus thousand dollars.

Q. With only one-half of it, as you say? A. I may have said half; I meant the fraction.

Q. Is there something more to add to that? Because, if there is, add it? A. We are through with that addition now, for the present, and by reason of those percentage rules, you have advanced our figure, and when you said $1,800,000 I agree with you, according to this system, that you have brought up the cost of this property—it would have run $100,000 more, if not two.

Q. Now, Mr. Berry, the Hoffman and the Newark Rules are precisely the same, so far as theory is concerned, except the difference of percentages; isn't that right? A. I don't know what you mean there by the word "theory," but I will say this to you, that where one goes short in the beginning, or vice versa, the other goes in, in the end, or vice versa, and the average at the middle is pretty nearly exact.

Q. You were asked by the counsel for the City to apply a depth rule, and you applied the Hoffman Rule, and as a result of applying the Hoffman Rule to both pieces of property, you reached a value on the Prudential part and a value on the City part, which added together equalled exactly $833,000; so there was no difficulty, apparently, in applying the Hoffman depth rule, in making the sum of the parts equal the whole.

Now, I have asked you to apply the Newark Rule, which is precisely the same thing in theory as the Hoffman Rule, except that it changed its percentages. And applying the rule in the same way that you applied it—or I assume so; I asked you to—as you applied it in your answer to the question of the City, you cannot make the sum of the parts equal the value of the whole. A. Not according to your hypothesis.

Q. My hypothesis is nothing except to apply, in one case, the Hoffman Rule, and in the other case, the Newark Rule. That is the only thing I asked you to do. A. You wish me to correct you?

Q. Yes; I am here to be corrected, if you can do so. A. I do it with deference. When we selected the Hoffman Rule and applied the percentage of 44 for 30 feet of depth, that apparently left 56 per cent, which we have been told is to be used for the remainder——

Q. Yes. A. —but if you came along with your purchase, assuming from an unwilling seller, and applied the percentage rules, we wouldn't go at it quite that way;——

Mr. Larne: No.

A. —because if we had a certain number of feet left to deal with, we would get the additional percentage, and the rule, perhaps, in the application of these rules, is, frankly, to take up the slack and make amends for the shortage. Your buildings have been reduced; you should be paid for it, and then it must be considered, too, that when you depart from the standard foot and have less to sell, you are always put on your defense to explain; whereas, everybody accepts the standard footage depth.

Q. Yes. Now, do you think you have corrected me? A. I don't know that I have, but I thought I was setting things right.

Q. You told me—I may be mistaken—that in one instance, by the application of the Hoffman Rule, which is a rule of percentages, you can make the sum of the two parts equal the value of the whole, and by the application of the City of Newark Rule, which is also a rule of percentages, you cannot make the sum of the parts equal the

value of the whole. A. I didn't make that statement, but I heard you make it.

Q. But let me see you do it, for goodness sake. Let me see you apply the Newark Rule and get the value of the part retained by the Prudential and the value of the part retained by the City, under the Newark Rule, and have the sum of the two equal $833,000, which is the base value. Mr. Berry, haven't you made your mistake here? I heard you say you multiplied 1.9 something by two thousand and something 2.9055. In your later figures, when you were applying the Newark Rule, you multiplied 2866.20 by 1.975, which gave you the value of five hundred and sixty-six. Now, I ask you what that 2866.20 is. A. Oh, I will explain that. 2866.20 is the land left after certain deductions of 560 feet.

Q. Is that the square footage? A. No, that would be the foot frontage, running lengthwise on the side streets.

Q. Running lengthwise on the side streets? A. Yes.

Q. Where did you get 2866.20 running lengthwise on the side streets; you only got 140 four times? A. After deducting four times 140, that is 560 feet.

Q. From what? A. Because of the frontage, of the shortage on the three streets, we have remaining 528.66.

Q. Why do you multiply to obtain the value of the interior land 1.975 by 2,866.20, which is the front footage, and there is no front footage? A. You can square it, if you wish. Who says there is none?

Q. Because it is all interior, except four times 140. A. I dissent from it to this degree. The Prudential is the sole owner of this interior land,

and the real frontage will be on what you choose to call the interior land. I don't see why you should call 140 feet of width, 108 feet wider than Broad Street, rear land, as against a 55-foot street, namely, Somerset Street.

Q. In other words, then, you have considered, in applying your City Rule, the Prudential property as front land, and in applying your City Rule, you have also considered the part retained by the City as exterior land? A. No.

Q. That is the explanation which will tell you why you make the sum of the parts equal more than the value of the whole, but if there is any other explanation, I would like to know it. A. I don't quite agree with that, of course.

Q. Is that the way you applied the Hoffman Rule? A. We applied the Hoffman Rule just in the same fashion as we did the City Rule. We took the 44 per cent for the 30 feet of depth, and then we assumed that 56 per cent would be the depth rule thereafter for the other land, that being all we had to deal with. It comes back to the same situation as deducting the value of the buildings from the $1,750,000, and leaving eight hundred and thirty-two to be apportioned over the whole for the square foot.

Q. You applied the Hoffman Rule, you got 56 per cent on the interior land; that give you a figure of 1.627. What did you multiply 1.627 by to get three hundred and thirty-six? A. By the whole length.

Q. Give me the figure. A. You can do it another way round, if you wish.

Q. How did you do it? A. I have the calculation here somewhere; do you want the figures?

Q. Yes. A. We took the same figures that we used, 2.90 plus, namely $200,634 for the City land, and $85,985 for the remaining land.

Q. That is on what basis? A. At the respective figures of 1.6271 and 1.2784.

Q. What was that figure 87, or whatever it is; that is area, isn't it? A. That is 85,985 square feet area.

Q. Won't you do the same thing in applying the Newark Rule? A. I thought we had. On the 85,985 square feet would be $109,708.

Q. What do you mean; the value? A. Yes.

Q. Go on. A. That $200,634 apportioned to the City, it would be $326,431.

Q. And add the two together. A. I have it; $436,139.

Q. In other words, according to the Newark Rule, the value of the whole is worth less than one-half of the base value that was given you as the value of the whole, to wit, $833,000? A. I don't consider the rule on the percentage applies at all.

Q. I didn't ask you that. Do you mean to say that you cannot figure there,—applying the Newark Rule to these two pieces of property, you cannot figure a result which will give you $833,000, if you add the two together? A. Oh, no, that don't come to that.

Q. I know it doesn't, unless you got it way above, and now you make it one-half. Something is wrong in Denmark; isn't there? A. I made the calculation, because you directed me to do so, but I had no faith in the percentage tables.

Q. You as a real estate man tell me that applying the Newark Rule, without any exception, to all of this property, that dividing the property into two parts, some interior and some exterior, you cannot figure the value of the two parcels to equal the value of the whole, with which value you started, to get your base for the application

of the two rules? A. I object to the percentage rule, as I told you, and I base—

Mr. Lane: Won't you answer my question?

Witness: I think you are wrong.

Mr. Lane: Will you answer my question?

A. The Newark Rule, as you say, would reduce—

Q. The Newark Rule, which is a rule more favorable to exterior land, because it loads more on the exterior land—I mean more favorable with respect to value, produces a result with respect to the value of the exterior land which is less than the result produced by the application of the Hoffman Rule, which is less favorable to the loading of value upon the exterior land; is that right? A. It would seem to indicate that the Newark Rule is wrong.

Q. And where; because your two-thirds produces a result less than a rule which gives you one-third? A. Well, I don't know, but the Newark Rule I know we have used it, and we have used the other rule, but I don't think the Newark Rule is feasible.

Q. Why did you use it when you were testifying in the Mulberry Street improvement? A. The chances are that I used it then because I assumed it was right.

Q. Now you assume it is wrong? A. You have now indicated to me that it is.

Q. So that you, as a result of this cross-examination, have demonstrated to yourself, or had it demonstrated to you, that the Newark Rule is wrong, because it won't—? A. My Newark friends, I won't lean down on them, but I know the Hoffman Rule is known, where the Newark

Q. Your estimate was $681,050, wasn't it? A. I have forgotten the figures. I would have answered $700,000 approximately.

Q. That is the statement in your affidavit, $681,050? A. I will take your word for it; I accept it.

Q. That seems to be a rather peculiar sum. It comes down into cents. Will you tell me how you reach it? A. I haven't the calculation here.

Mr. Groel: I object to that as not proper cross examination. The witness hasn't testified to anything in the affidavit.

Witness: I do not recall the methods by which I then reached that figure, and I don't consider it today as being of any real interest, in the light of my additional information.

Q. Have you got your calculations? A. I certainly have it; not with me, but I think maybe I can dig it up for you.

Mr. Lane: I wish you would.

Witness: I certainly will try; but as it was of no use, it may be that I do not possess it.

Mr. Lane: What is that?

Witness: As it was of no use to me today, I don't know whether I possess it.

Mr. Lane. I wish you would look and see.

Q. Can you tell me generally how you reached that valuation? A. Oh, I don't know. I think at that time, probably——

Mr. Groel: I object to that question also.

Mr. Lane: You may have an objection to this whole line.

A. (Continuing) I think at that time probably that I took my atlas and perhaps made a measurement of the whole, and look up, perhaps, one or two or three records, and from that made an estimate hastily for the purpose of that affidavit.

Q. You knew that affidavit was going to be used in court, to convince the Court, did you not? A. I assumed an affidavit made of this kind would be for the Court's use?

Q. You said you did it hastily? A. Hastily—the time was rather short, I think, as I look back, to put it in.

Q. I am wondering why you did not tell the Court that that was a hasty examination, instead of telling the Court this: "I have reached this valuation by considering recent sales of land in the immediate vicinity and of generally similar character, and by making an analysis of such sales and a comparison of the properties so sold with the properties comprising the tracts above described. I have taken into consideration the character of the locality, its proximity to the main arteries of traffic and transportation, the density of population, the eight corners of the two tracts in question and the approximately thirty-six hundred feet of frontage upon five different streets. I have also considered the elements of exceptional plottage and of such an unusual assemblage by one owner of all of the property comprised within these two tracts with the resulting increase in the aggregate value of the many properties comprising the tracts." There isn't very much else of a general nature that you could have considered, is there? A. I think that fairly expresses all the elements that should enter into the calculation.

Q. And your intent was, when you signed this affidavit, to represent to the Court that you had

made a careful examination, wasn't it? A. There is no doubt of that. If I said it, I meant it at the time.

Q. You also said, "in reaching this valuation I have employed only the most conservative base rates and have applied the factor of plottage at a rate well within the reasonable requirements of the case"? A. Yes.

Q. Now, you agree here that plottage value is to be considered? A. All right, and I still agree with it.

Q. But you don't consider that the depth rule has any consideration in arriving at value? A. No, sir; I don't now.

Q. You also agree that the eight corners of the two tracts in question have some influence? A. Yes, and I did there.

Q. But you don't give much influence to those eight corners? A. I gave their right value influence, because they are incorporated in the total of the values of the land.

Q. But these eight corners remain on the Prudential property? A. But even so, they got another corner for it, if you want to be analytical.

Q. Where is that? A. The same 30 foot street.

Q. The inside part? A. That is a corner.

Q. In each instance you call that a corner? A. That is a corner.

Q. That is a street corner? A. Yes; I wasn't haggling about it, but it is.

Q. In reaching these valuations of interior property, have you conceived that the interior property had two streets running parallel to them all the way, the 1400 feet, one street on each side? A. Of course; we cannot deny it; they are there.

Q. Is that the way you made your valuations? A. I don't say that I——

Q. That is the question I ask you. A. I tell you now, that while you have mentioned corners on insignificant streets, I am mentioning corners on what will be a very important street.

Q. Those are corners on insignificant streets, are they? A. Comparatively, on the 140 foot strip.

Q. You might as well compare Bank Street with other or inconsiderable streets? A. As compared with Broad Street.

Q. I am not comparing it with Broad Street. A. It is, compared with the park lands.

Q. If they are inconsiderable, then I am wondering why it was that you told the Court that you took into consideration the proximity to the main arteries of traffic and transportation? A. They were the best corners we had at that time.

Q. Which were the best corners? A. Those streets, Barclay and Somerset, but now we have an equally good, and in my judgment, a much better proposition, fronting on the park.

Q. My question was whether or not you considered, in arriving at the value of this interior property, that there were two streets, on each side of the interior property, running for 1400 feet? A. I think now that those two streets do contribute a bit to the additional value of the City's land.

Q. These two theoretical streets? A. No, they are there.

Q. No, no, they are not there. In order to create a corner to compensate for these other eight corners, you have got to create a street, haven't you? A. Not necessarily.

Q. Let me show you on the map: this is the corner that you state is a corner equivalent to this corner. A. As it is there.

Q. How does that become a corner, if you don't put a street through there? A. When the street goes through, there is a corner on the strip.

Q. Yes. Is that the way you are valuing all this property? A. The question raised about the corners, I tell you now that the City has a corner there on each of the four positions.

Q. In considering the value of this interior property, have you considered this as an inside piece or as a corner? A. I will say that I took the square footage, divided it into the cost, and reached my value, and that includes corners.

Re-direct examination by Mr. Groel:

Q. When I asked you the question in your opinion did you think $1,200,000 was a fair and reasonable price for the central land that the City was acquiring, and your answer was "Yes", did you reach your conclusion based upon the application of any depth rules? A. I thought I made that clear by saying I did not.

Q. When you gave calculations by means of depth rules, was that for the purpose of showing that $1,200,000 was a reasonable price? A. Yes, sir.

Q. But it was not the reason that caused you to answer that it was a reasonable price? A. It comes back to what I stated, of embracing and deducting therefrom the value of the buildings as per the estimates of the contractors or building experts.

Q. You think the depth rules are applicable for the determination of land values, as far as this central land the City is to acquire is concerned? A. Where you are taking the land away from an owner, undoubtedly the depth rule must prevail. Where that owner sells of his own volition, he can exercise his discretion as to what he will charge, and the other will pay. There is no depth rule in that transaction.

Re-cross-examination by Mr. Lane:

Q. To sum it all up, Mr. Berry, so far as your own personal judgment and method of arriving at this valuation of $1,200,000 is concerned, you take the value of the land as a whole, and divide the value into the proportion of area; that is what you have done? A. I think that is correct.

Q. That is what you have done, isn't it? A. To get at the value of the land.

Q. Can't you answer Yes or No? A. I don't know; I have a preference sometimes for expressing myself.

Q. I am cross-examining, and I am entitled to Yes or No, if you can give it. If you cannot, that is another thing. A. If you will kindly repeat that question, I will endeavor to give you a Yes or No answer.

Q. I will repeat the question. You have reached your result by taking the value of the lands as a whole, the area of the land as a whole, and apportioned the value of the parts, as the area of the parts bears to the area of the whole? A. Yes.

DR. CHARLES F. KRAEMER, recalled for

Further direct examination by Mr. Groel:

Q. Doctor, you are a real estate expert of the City of Newark; you testified to that? A. Yes.

Q. You testified that you were familiar with depth rules as they are used by real estate experts? A. Yes.

Q. What was the first depth rule that was ever used in determining the value of land taken for condemnation purposes? A. The Hoffman Rule.

Q. What is the City Rule, in so far as its application to the determination of land is concerned? A. It is a rule adopted by the City for taxing and assessment purposes, and it is not applicable to any appraising of lands by the real estate appraisers.

Q. What is the rule that is most generally used in determining the value of land? A. In the City of Newark, and by the City of Newark's department, the Hoffman Rule.

Cross-examination by Mr. Lane:

Q. In what kind of cases? A. The Hoffman Rule?

Q. Yes? A. As to valuing properties for street widening and street openings, street acquisitions and land acquisitions, and so forth, for public purposes.

Q. Condemnation cases? A. Not necessarily. In private negotiations, the department that I am head of at the present time, in acquiring property for the City of Newark, use nothing but the Hoffman Rule in arriving at our ultimate value of the property.

Q. Do you know where the Hoffman Rule was initiated? A. Yes.

Q. Where? A. New York City, by Judge Hoffman.

Q. When? A. Back in 1890.

Q. Conditions, I suppose, haven't changed at all since 1890? A. There have been three or four modifications of it. Mr. O'Neill made a modification of it some five or six years later, and Mr. Bernard made a modification of it. The City of Cleveland made a modification of it; the City of Chicago made a modification of it; the City of Baltimore, and there have been modifications to the extent of about fifteen or sixteen instances.

Q. You are using an old rule of 1890? A. 1890, and we feel that it is the most equitable rule, and it has been used by our assessing departments ever since, in taxing; and when I say assessing department, I mean the assessing for benefits and improvements. There is a difference in those departments.

Q. Involving condemnation? A. Acquisition of lands.

Q. These modifications have been modifications in the line of adding more by percentages to the front than the Hoffman Rule as originally initiated in 1890 added, have they not? A. It is strange to say that isn't so. The adding to these rules have only practically pertained to the first fifty feet, and the remainder of the depth of these lots have increased in many instances.

Q. How about the Hoffman Rule? A. They very slightly changed some of the ratio dimensions.

Q. Changed it with a 30-foot basis, from 44 per cent, according to the Hoffman Rule, to 49 per cent, according to the Hoffman-Neill Rule? A. It changed it slightly.

Q. Five per cent is quite a percentage? A. Yes, and we don't agree with them at all.

Q. And that change came out as early as 1895? A. Yes.

Q. Now, the conditions existing in 1895 in the metropolitan district were entirely different from the conditions existing today, weren't they? A. As to what?

Q. As to the way business was carried on, as to the method of improvement of property, as to the density of population, density of business, and the like of that; in those days we rode in horse cars and we drove carriages, and we had buildings for business perhaps four and five stories high, built

of stone and the like; today we ride in automobiles, among other things, and our method of doing business is entirely different, isn't it? A. Generally speaking, you are correct.

Q. And our method of living is different. In those days we lived in private houses. Today is an age of apartment houses, and the like? A. Yes.

Q. That is a change? A. Yes.

Q. Now, you say that those changes in living conditions, density of population, and so forth, and a number of things which have changed since 1890, has had no effect upon the application of the Hoffman Rule? A. Not in accordance with our opinion. The mathematical (basic, fundamental principle that was involved in the Hoffman Rule seems most suitable to us today.

Q. When was the Newark Rule promulgated? A. Back in 1889.

Q. And that rule is still being followed by the Tax Department? A. In a general way, yes.

Q. Will you tell me why one department of the City government uses one rule, and another department of the City government uses another rule?

Mr. Groel: I object.

A. That I cannot explain why they do. I only know we do use it, and we feel that from a standpoint of our work, we are more equitably applying an exact rule, when we apply the Hoffman than the City—than in applying the Newark City Rule—because the Newark City Rule is very promiscuous and elastic and general in its application, and it lays down some principles that I cannot agree with, and I don't think anybody else that knows anything about appraising lands will agree with.

Q. Of course, there is no significance in the fact that when it comes to the acquisition of property which does not involve expenditure of City's moneys, but the obtaining of City moneys, that the City uses the Newark Rule; and when it comes to the acquisition of property, when the City is paying out money, it uses the Hoffman Rule; there is no significance in that, is there? A. I wouldn't exactly say so, but I don't know anything about the other departments. I haven't anything to do with them.

Q. Has the Newark City Rule been changed from time to time? A. The Newark City Rule has never been changed. Mr. Guter, who originally originated the rule, and I will say at that time I sat in conference with him on the matter, wanted to get some kind of a yard stick by which he could have the assessors make assessments that he thought were fairly equitable, and he finally landed upon that rule, trying to follow Judge Hoffman's general application of the rule. I don't think he succeeded very well, because the promulgation of it, as you will find it in the City Rule now, is very promiscuous. He goes on and says that in addition to the 100-foot lot, for every other 100 feet in depth, 60 per cent be applied in a general way; and he also makes the statement he will apply 50 per cent for corner influence. Anybody in the real estate business knows that the application of corner influence depends entirely upon the class of streets on which this influence deals with, and it is never 50 per cent, and can vary from 5 per cent up to 100 per cent. So I say that rule is not applicable to real estate valuations and appraising.

Q. If you say it was never 50 per cent, how in the world can you say it differs between 5 and

100 per cent? A. I say it is never steadfastly 50 per cent, but they allow it down to 50 per cent, even to this day, for taxing purposes.

Q. You say the rule was initiated in eighteen hundred and when? A. 1890 about.

Q. The Newark Rule? A. Yes.

Q. I thought you said the Hoffman Rule was initiated—when? A. About that time; the Newark Rule, maybe 1900; it is around that. I was elected school commissioner in 1890; it is about 1895—four or five, around that time.

Q. About the same time as the Hoffman-Neill Rule came out? A. That came out about 1890, a couple of years before.

Q. You told me the Hoffman Rule came out in 1890; the Hoffman-Neill Rule came out— A. The Hoffman-Neill Rule, that was about two or three or four years after Judge Hoffman's original view of the rule.

Q. Then the Hoffman-Neill Rule came along and increased the percentages, and then the Newark Rule came along and still further increased it? A. They changed them promiscuously. I don't think it was generally increased. It was a change in some directions, and lowering in other directions, of a hundred-foot depth lot.

Q. These modifications of the Hoffman Rule are not, in your opinion, improvements on the Hoffman Rule? A. Not in my opinion. Many think they are improvements and are using them. I do not use them, but adhere to the old school.

Continuation of proceedings in the above entitled suit, before Nicholas W. Bindseil, a Supreme Court Commissioner of New Jersey, at the office of Charles B. Bradley, Esq., Prudential In-

surance Company, Newark, New Jersey, on Wednesday, February 18, 1931, at 2 P. M.
Appearances:

MERRITT LANE, Esq., and JOHN J. CLANCY, Esq., for Prosecutors.

FREDERICK H. GROEL, Esq., for Peter O'Toole, Clerk of the City of Newark, N. J., and Board of Commissioners of the City of Newark, N. J.

CHARLES B. BRADLEY, Esq., for Prudential Insurance Company of America.

EDWARD J. MAIER, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. Mr. Maier, what is your business? A. Real estate.

Q. Where do you carry on this business? A. 40 Clinton Street.

Q. How long have you been engaged in it? A. Twenty-five years.

Q. Have you sold any property in the City of Newark in the last few years? A. During the past five years I have sold possibly two hundred parcels.

Q. In the City of Newark? A. Yes.

Q. What were some of the parcels which you sold in the City of Newark?

Mr. Lane: I object to that as too general.

A. I sold fourteen parcels up in the Hill section of Newark and vicinity of the Third Ward. I have sold property of every kind, almost, throughout the City. I have sold a number of industrial plants—concerns like the General Electric Company, Carrier Engineering Company, the Okonite-Callender Cable Co., G. E. Gillespie Company, Hanovia Chemical & Manufacturing Company, and a number of other large concerns.

Q. Have you ever developed any tracts for residential purposes? A. Yes, during the past five years I developed the property which was formerly the Essex County Country Club property, consisting of some sixty-odd acres, development known as the Upper and Lower Enclosures, in West Orange; the Northfield Estates, in Northfield; Waverly Park, in Waverly; Elwood Park, in Irvington; West Orange Estate, in West Orange.

Q. Have you ever acted as witness in legal matters, in which the opinion of an expert was required as to the value of lands?

Mr. Lane: Objected to as immaterial.

A. I have made appraisals and testified in over one hundred cases during the past year in connection with condemnations and matters of every kind. I have also made appraisals for other purposes, for some of the large manufacturing concerns. I have made appraisals for Wilkinson & Co., Rubber & Celluloid Products Company, Baker & Co., Star Electric Company, and a number of other large concerns. I have also made appraisals for the State Highway Department and for the Park Commission; made twenty or thirty appraisals in Belleville for the Essex County Park Commission within the last year.

Q. Are you familiar with the property located in the Third Ward of the City of Newark, bounded by Somerset, Barclay, Montgomery Streets and Waverly Avenue? A. I am.

Q. Are you familiar with the character of that neighborhood? A. I am.

Q. Have you made any sales of comparable property in that vicinity? A. Yes, I have.

Q. What sales have you made? A. I made a sale at the southwest corner of Broome and South Orange Avenue, sold for George Zimmerman to W. E. Fenner.

Q. What was the character of the property? A. That was a three-story frame building front, with one-story hall in back; southeast corner of Bruce and Bank Streets, sold for Stuyvesant Company to Standard Homes Co.; 74-78 Wallace Street, corner of Thirteenth Avenue, sold for Bertha Klein to Blum Building Co.; 117 Sixteenth Avenue, sold for Samuel Scheckner to Frank Leskin; 73 Thirteenth Avenue, sold for Frank B. Eaton to Michael Megaro; 140-142 Thirteenth Avenue, near Richmond Street, sold for May Barkman to Nicholas Stanislaus; 454 Fifteenth Avenue, near South Seventh Street, sold for Antonio Mercuro to William Allen; 149 Hudson Street, corner of Hartford Street, sold for Peoples Investment & Realty Co. to Daniel Crecca; 73 Thirteenth Avenue, near Howard Street, sold for Michael Megaro to Michael Guiliano.

Q. In what period of time were these sales made? A. There are several others—within a period of five years, running from 1925 to 1929, to 1930. I haven't sold anything in the last year.

Mr. Groel: Do you want to cross-examine?

Mr. Lane: Yes, sir.

Cross-examination by Mr. Lane:

Q. When you used the expression fourteen parcels in the Hill section of the Third Ward, where did you mean? A. Those are some of the fourteen parcels. I didn't call them all. There were some more.

Q. These are the fourteen parcels that you referred to? A. Part of them; there are a few more.

Q. These tracts of land which you developed in West Orange, Essex County Country Club, Northfield, Livingston, and so forth, are about eight miles from the *locus in quo?* A. Oh, yes.

Q. You stated that you had been testifying in a great many cases. There have been cases in which you have been excluded as not qualifying, haven't there? A. There was one case.

Q. Which was affirmed by the Court of Appeals? A. I believe so.

Q. Where was the property? A. In Bloomfield.

Q. 74-78 Wallace Street, how far is that from the *locus in quo?* A. About 3,000 feet as the crow flies.

Q. That is over half a mile, isn't it? A. Yes.

Q. And it is on the other side of South Orange Avenue? A. Yes.

Q. Do you call that comparable property? A. It is property of a comparable character.

Q. How and why? A. The types of buildings and the type of property within the two blocks. The instant properties contain many various types of properties, and I think any of the properties in the what we call the Hill Section are generally comparable. They may not be similar entirely, but I think for purposes of valuation they may be comparable.

Q. What are the elements of comparability? A. The use.

Q. And used for what purpose? A. Stores and dwellings—cheap dwellings and tenements and stores.

Q. What class of tenants? A. Some of these——

Q. Wallace Street I am now talking about. A. I guess there are white tenants in Wallace Street. Some of the neighborhoods are black, for Bruce and Bank is black.

Q. We will come to those in a moment. We will confine ourselves now to Wallace—74 to 78 Wallace Street, what kind of property was it? A. That was a vacant lot.

Q. Did you sell that yourself? A. I was in on the transaction; it was sold through my office, and I handle all the matters that go through my office.

Q. Did you yourself conduct the negotiations? A. I assisted in the negotiations.

Q. What did you do in the way of assisting? A. It was the practice always in our office for me to come in at the final consummation of any transaction, at the time of the drawing of the agreement, whether the agreements were drawn in our office or in the lawyer's office, and in all those cases I have actually taken part in the consummation of the negotiations.

Q. 74-78 Wallace Street, where was the contract drawn? A. I don't recall that now.

Q. How do you remember that you were in on the closing of the contract? A. Because I have handled all the transactions that passed through my office.

Q. There are no transactions in your office without your being present when the contract is signed? A. I wouldn't say that was so.

Q. That is what you did say. A. Either that or at the closing; I was either there or at the closing.

Q. What do you mean by the closing? A. At the time the title was passed.

Q. So that in every instance where title passed through your office, you were either present at the time the contract was drawn and executed, or you were present at the time the transaction was closed; is that right? A. I don't recall an instance in which it was not so.

Q. Will you say that every transaction that went through your office you were there present at the time the transaction closed or at the time the contract was drawn? A. To the best of my knowledge.

Q. Have you a distinct recollection of 74-78 Wallace Street? A. I have not.

Q. So you are relying upon your general recollection? A. Yes.

Q. And the information that you got as to these prices, where did you get them from? A. From the contracts.

Q. Where was the contract that you got that from? A. In the files of the corporation.

Q. Files of your corporation? A. Yes.

Q. And when did you get that? A. Within the past—oh, within the past month.

Q. 117 Sixteenth Avenue, how far is that from the *locus in quo*? A. Oh, I would say that is about the same distance, maybe not quite as far. It may be a little bit further; I think it is nearer than Thirteenth Avenue.

Q. It is half a mile? A. It is pretty close to it.

Q. Is that on the other side of South Orange Avenue, too? A. Yes.

Q. And what are the elements of comparability with reference to that? A. That was a tenement

building and store; three story tenement and store.

Q. Sale or exchange? A. Sale.

Q. When? A. 1926.

Q. And when was 74-78 Wallace Street sold? A. That was the latter part of 1925.

Q. Sixteenth Avenue property, colored or white? A. That is white.

Q. Have you any distinct recollection of that, or did you get that information from the contract? A. No, I got all the information in the same manner in which I testified to the other one; there is nothing more definite with relation to any of those.

Q. 73 Thirteenth Avenue, how far is that from the *locus in quo*? A. That is about 3,000 feet; it is on a direct line with—it is at Howard Street, and Howard Street is a direct line with Barclay and Somerset Street as you go across town.

Q. Other side of South Orange Avenue? A. Yes.

Q. Right near the Court House? A. Yes, the block above.

Q. White or colored tenants there? A. White.

Q. When was that? A. That was in 1926.

Q. 142 Thirteenth Avenue, I suppose that is the same. A. That is near Richmond Street; it is a little bit further up the hill.

Q. Further away from the *locus in quo*? A. No, it is not further away, but it is further up the hill than the last one, 73.

Q. About the same distance from the *locus in quo,* isn't it? A. It is about the same.

Q. What kind of property was that? A. That was a dwelling house. I think that was a three-family. I don't recall exactly whether that was a three-family—three story frame dwelling.

Q. White tenants? A. Yes.

Q. What year was that sold? A. That was in 1927.

Q. 454 Fifteenth Avenue, how far is that from the *locus in quo*? A. That is further; that is three-quarters of a mile.

Q. What kind of property was that? A. That was just a three story building with a store in it.

Q. When? A. 1927.

Q. White tenants? A. Yes, Italians.

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

Q. 149 Hudson Street. A. That was a brick apartment, dwelling or tenement.

Q. How far is that from the *locus in quo*? A. I would say close to three-quarters of a mile.

Q. White tenants? A. Yes.

Q. When was that? A. 1928.

Q. That was a brick apartment house? A. Brick tenement, cold water apartment, no heat.

Q. Renting for about how much? A. Renting for about $12 a month, I guess.

Q. You mentioned a place, Bruce and Bank Streets, where is that? A. That is a nigger neighborhood.

Q. Where? A. On that block.

Q. How far from the *locus in quo?* A. Between half and three-quarters of a mile.

Q. That is right up Bank Street here, isn't it? A. Yes, it is beyond where it makes a turn, though.

Q. What kind of a property was that? A. That was a vacant plot.

Q. When? A. 1925-1926—the latter part of 1926.

Q. Corner of Broome and South Orange Avenue? A. That is about 2400 feet away.

Q. That is within 100 feet of being half a mile? A. No.

Q. Pretty near? A. Pretty nearly, but not accurately.

Q. What kind of property was that? A. That was a store building with tenements above and in the rear there was a meeting hall.

Q. When was that sold? A. That was in 1926.

Q. South Orange Avenue is a main business street, isn't it? A. Yes, fairly prominent street.

Q. It is a main street, business street, that goes all the way from Newark to South Orange, doesn't it? A. Yes.

Q. And then goes on over the hill to God knows where? A. Yes, California, I guess.

Mr. Lane: I object to the qualifications.

Further direct examination by Mr. Groel:

Q. Did you make any other sales in addition to these, Mr. Maier? A. As I say, I made about 200 sales in the last——

Q. Of those fourteen sales, what other sales did you make? A. I don't recall where we stopped. 97 Bruce Street, near Thirteenth Avenue, I sold for Samuel Harris to Nicola Fiorello; 207-213 South Orange Avenue, near Morris Avenue, sold for Berdino Georgio to Frank Elbert; 436-444 South Orange Avenue, sold for William Mate to Harry Davimos; 694-700 Springfield Avenue, sold for Barney Wernstock to James Crecca; Morris Avenue, near Fifteenth Avenue, sold for Estate of Percy R. Pyne to Abram Schechman. That is the complete list.

Further cross-examination by Mr. Lane:

Q. 97 Bruce Street; how far is that from the *locus in quo?* A. All these Thirteenth Avenue

properties are approximately 3000 feet from the property.

Q. When was that sold? A. That was in 1925. Q. What kind of a house was that? A. That was a small frame house.

Q. What kind of a neighborhood was that? A. Italian neighborhood generally.

Q. 207-213 South Orange Avenue, near Morris Avenue; how far is that way? A. I would say that is 2500 feet or so.

Q. What kind of property was that? A. That was a business property.

Q. Morris Avenue, which Morris Avenue is that; is that a main thoroughfare? A. No, it is a cross street.

Q. When was that sold? A. 1926.

Q. 436 South Orange Avenue; how far is that away? A. That is quite some distance; that is a mile or more.

Q. What kind of property was that? A. That was partly vacant; it had some small building on it; it is a business neighborhood.

Q. Sold for business purposes? A. Yes.

Q. 694-700 Springfield Avenue; how far is that? A. That is a mile and a half or two miles.

Q. Springfield Avenue is the main road leading from Newark to Springfield, Summit and beyond, isn't it? A. Yes.

Q. Is that business property? A. It was a cheap tenement house.

Q. Is it a business neighborhood? A. No.

Q. Has it any local name, that neighborhood? A. Not that I know of.

Q. How near the Irvington line is it? A. It is at Nineteenth Street, probably three blocks from the Irvington line.

Q. Springfield Avenue is potentially business all the way to Irvington, isn't it? A. Not at this point; very bad right here.

Q. Not even potential business? A. Pretty far away, I mean in time, far away in time, for potentiality.

Q. When was that sold, that Springfield Avenue property? A. That was in 1928 or 1929.

Q. 436 South Orange Avenue, when was that? A. I don't recall the date of that; I haven't the date here of that. Sometime between 1925 and 1929, and in the order in which it came, I think it is very likely about 1928 or so.

Q. You didn't note the date of that contract? A. I had it, but I didn't make note of it.

Q. How is it you have the date of all the others and didn't get the date of that? A. Because I made a list of them, and I didn't put the date on this one when I was making the list.

Q. Morris Avenue, near Fifteenth Avenue, how far is that away? A. That was the last one; I would say that is 2500 feet away.

Q. What kind of property was that? A. Just a frame dwelling, cheap frame dwelling.

Q. When was that? A. 1926.

Q. Is Fifteenth Avenue a main street or not? A. You would hardly call it a main street; it is one of the streets running to the west, through the city.

Q. Of the two streets, Fifteenth Avenue and Morris, which would you consider the main street? A. I think Fifteenth Avenue is the main street. Is that on the other side of South Orange Avenue from this property? A. Yes.

Mr. Lane: I haven't the least idea where these places are. I still repeat my objection.

Further direct examination by Mr. Groel:

Q. Are you acquainted with the fact that it has been agreed in this case that the value of the land and buildings located on the two blocks bounded by Somerset Street, Waverly Avenue, Barclay Street, Spruce Street and Montgomery Street, is $1,750,000? A. I am.

Q. And that the value of the buildings and improvements is not less than $900,000? A. Yes.

Q. And that the City's witnesses have testified that the value of the buildings and improvements located on these two blocks is $917,000? A. $917,-278 is the figure that I have.

Q. And that under the proposed contract, the City is to purchase from the Prudential the central portion of those two blocks, being 140 feet in width and running through the length of the blocks, at a price of $1,200,000? A. That is what I understand.

Q. With these facts in mind, have you made an appraisement to determine the amount which should be allocated for the central portion which the City is to acquire, and the amount for the portion which the Prudential is to retain? A. I have.

Q. Give us your method and the result of that method.

Mr. Lane: Objected to on the ground that the witness is not qualified.

A. The two blocks are to be divided into parcels as follows: (1) A thirty-foot strip extending along the full frontage of Somerset Street from Spruce street to Waverly Avenue; (2) a thirty-foot plot extending along the full frontage of Barclay Street from Waverly Avenue to Spruce Street; (3) a 140-foot strip extending through the center of the

block from Waverly Avenue to Spruce Street, having 140 feet of frontage on each of the streets named. That is the one block. And in the other block there is a repetition of the same arrangement—two thirty-foot streets fronting on the longitudinal streets, and a 140-foot strip running through the center, with 140 feet on each of the short length blocks.

The Insurance Company is to retain plots 1 and 2 in each of the blocks, to conist of the four thirty-foot strips fronting on the long sides of the blocks.

The City to acquire parcels 3 in each block, consisting of the 140 foot strip running through the block.

For the purpose of this division or apportionment of the cost, I have used the figures of 200 feet frontage on the end streets and 1400 feet in length for the two blocks, although those dimensions are not exactly correct, but I think for this purpose it is satisfactory.

The sum to be allocated over the parcels described being $1,750,000. The first step of consideration is that there will be two separate ownerships: one ownership consisting of four thirty-foot parcels, and the other ownership consisting of the 140 foot strip through the center.

For the purpose of properly apportioning or distributing the cost of acquiring these tracts over the several parcels, it is necessary to establish a relative value of each parcel to the other. The highest utility of each of these parcels must therefore be ascertained, if a correct basis of valuation to determine the ratio of such apportionment is to be employed.

Inasmuch as the stipulated cost to acquire the two tracts is represented as $1,750,000, and as the

cost of acquiring the buildings and other improvements on the property is stated to be $917,278, it follows that the cost of acquiring the land of the entire tract is $832,722.

Now, that these parcels are assumed to be grouped under separate ownership, that future utility is not limited alone to any use which either the Insurance Company or the City could make of them, the relative values are based upon the highest and best use for which a willing buyer would purchase, and the distribution of the cost to acquire should be made upon the ratio in direct proportion to the respective values as so indicated, the highest utility of each particular parcel must therefore be found.

The neighborhood in which these two blocks are located is one of the most densely populated in the City, housing the poorest classes, both white and colored.

The buildings, the major portion of which are frame and poorly maintained, include dwellings, tenements, stores, garages, stables, factories, churches and other miscellaneous types usually found in such districts.

Owing to the density of population and the many activities engaged in by the occupants, the values in this section have always been well sustained, and owing to the fact that there are no vacant plots available, in the district, land values are relatively high.

The assemblage of these two blocks therefore required an expenditure considerably in excess of an investment which the present highest use of the property could support, and now that consideration must be given to the subdivision of the property into the parcels described, such apportionment can be made only by means of first ascertaining the percentage of relationship which

each of the parcels bears to the other so far as value is concerned.

Parcel A—A parcel of land having 700 feet of frontage by a depth of 30 feet, in a district such as has been described, would have limited uses on account of the shallow depth. It would be restricted to a housing project or to an improvement which would have tenements or small stores in part. This does not indicate that these are the only uses which may be made of the property, but it does appear that this is the highest and best use of the land.

Parcel B—The two strips each having 140 feet of frontage at each end, and a length of 700 feet through the blocks, can be put to the higest utilization by cutting through the entire length of the two blocks a 40 foot street having lots of 50 feet in depth on each side. The length of these 50 foot strips would be the same length as the 30 foot strips on the outside, and would have all the same facilities and uses.

A plan to improve the entire property with apartments or tenements, after having cut through the 40 foot street, including all the necessary public utilities, appears to be the most practical and feasible method to develop this tract for its highest and best uses.

An examination of these tracts, one group having a depth of 30 feet and the other group having a depth of 50 feet, will be found that for utilization in the construction of apartments or tenements the ratio of rentable area per square foot of land will be greater in the deeper tracts.

By reason of the narrowness of the 30 foot strips and the shallowness of the buildings which could be erected thereon, the amount of space required for public halls and stairways would be

proportionately greater than in the 50 foot strip, for the reason that the arrangements of buildings on the 30 foot strip would of necessity require a stairway to each pair of apartments on every floor, while the public hall and stairway facilities on the 50 foot strip would accommodate a group of four apartments on each floor.

The 50 foot strip would also be applicable to other and more flexible arrangements.

This advantage of the 50 foot strip over the 30 foot strip would represent a difference in square foot value of at least 10%.

Now, that the relative highest use of these parcels has been found, a distribution of the cost of acquiring the entire property may be proceeded with.

The land value of the entire property as stipulated, equals	$832,722.00
The cost of placing the through street 40 feet in width	25,000.00
Net remaining sum for distribution	$807,722.00

In computing this, we find that the inside area as compared to the outside area is 62.5 as to 37.5 by reason of the fact that the outside area represents one, or 100 per cent., and the inside area, so far as its facilities are concerned, would represent 110 per cent., which would give 83.62 units to the inside, and 76.02 units to the outside, giving a ratio value as $5,225 is to $2,850.75; or in percentage, 64.7 per cent. as to 35.3 per cent.

If we take our original sum of $807,722—our net sum of $807,722, and we divide this at this ratio of percentage, the result is $522,596 for the inside land, and $285,126 for the outside land.

We must then make a charge of the $25,000, which is deducted, to the outside land, by reason of the fact that the outside land has the improved street, and the inside land has not. The result of that is that we then have $522,596 for the inside land, and $310,126 for the outside land.

If we take the cost of acquiring the buildings as $917,278, by reason of the fact that these buildings are scattered over the tract, it is only fair and equitable to apportion the cost of acquiring same in the same ratio between the separate ownerships as that determined by the highest use of the land after the subdivision. On this basis the distribution of the cost of acquiring the buildings would be $593,479 for the inside tract, and $323,799 for the outside tract.

The total result of the distribution being $1,116,075 for the inside tract, and $633,925 for the outside tract.

The foregoing analysis based upon the highest utility of the property being accomplished by the cutting through of an interior street and the improvement with apartment or tenement houses, indicates a relative value of approximately $1,116,000 for the inside tract, as compared with $634,000 for the outside tract; and further, that the outside lands are less valuable than the inside lands when figured by the square foot. The reasons are as follows:

1. The outside lands are less flexible in architectural design and would be more costly of construction per square foot of usable area by reason of additional stairways and greater area of building walls required in proportion to the usable space within.

2. The outside lands would face the slum section while the inside lands would face the newly developed street.

3. Owing to the inside tracts being divided only into two parcels and the outside tracts being divided into four parcels, the interior lands, in addition to having the uses already stated, would be available for more uses, such as motion picture theatres, auditoriums, combinations within a single block of apartments and garages, open parking spaces, individual garage units and business developments.

4. The usual advantage of higher utility with greater plottage, it being possible to utilize this plot as a single unit 140 by 700 in each block.

Taking these added facts and features into consideration, it would appear that an apportionment to the inside tract of $1,200,000 of the cost of acquiring the property is reasonable.

Cross-examination by Mr. Lane:

Q. When were you first asked to examine this matter? A. Sometime in January I think.

Q. Of this year? A. Yes.

Q. And about when? A. I should say about three or four weeks ago—three weeks ago.

Q. Were you familiar with the testimony which had been given by the preceding experts called by the City? A. Generally.

Q. Did you have a conference with them? A. I talked with Dr. Kraemer—he is the only one I talked with.

Q. And you heard from Dr. Kraemer about how he testified, and so forth? A. Not in any great detail.

Q. You knew that he had testified in no wise along the lines that you have testified, didn't you? A. Yes—generally, I would say "Yes."

Q. You knew that he had testified, and you knew that the other City experts had testified, considering this property to be vacant property, didn't you? A. To be vacant property?

Q. Yes. A. No, I didn't know that.

Q. I mean as to the relative value of the lands, now; not of the buildings, of course. A. They may have testified with relation to the full value and distributing that. I haven't actually read any of their testimony in detail.

Q. Of course, not, but you were told by Dr. Kraemer generally what theories they had used in arriving at the value, weren't you? A. Yes, generally.

Q. And you know that they hadn't used anything that remotely was like the theory that you have advanced now, don't you? A. Yes.

Q. And was it you who suggested this theory of getting at this value—what you call highest utility? A. Yes.

Q. Did Dr. Kraemer tell you that he testified and the other City experts had testified that the value of the interior property is equal to the value of the exterior property per square foot? A. No, I don't think he did.

Q. He didn't tell you that? A. No.

Q. Did any one suggest to you that the method of getting at a reasonable proportion between this exterior land and interior land was by developing a street through the interior land and putting some apartment houses on it? A. Yes.

Q. Who? A. Mr. Babcock.

Q. Who is Mr. Babcock? A. He is a real estate expert, recognized throughout the country as

such; a man who has written a book on the subject; he is very highly held by the National Association of Real Estate Boards; a man who has written many articles with relation to the technique of the art of appraising, and a man who is held very highly by real estate men throughout the country as an authority on the subject of appraisals and as to the best methods.

Q. When did Mr. Babcock make this suggestion to you? A. He made this to me way back in December, I guess.

Q. In December—I thought you said you had no connection——

A. I hadn't been retained in the matter at that time.

Q. Then you spoke to Mr. Babcock about it before you were retained? A. Yes.

Q. About this particular subject matter? A. Yes.

Q. How did that come about? A. Because I am interested in appraisal work. I am keeping myself at the highest possible standard in the art of appraising. It seemed this was a very interesting subject, and for my own information I thought I would seek the advice of a man whom I regarded as the highest authority in the country on this subject.

Q. And did you have any particular matter in mind when you sought the advice of Mr. Babcock? A. No, except from a civic standpoint; that is, I was interested; it was a big project going on in Newark, and I wanted to be posted on it.

Q. Did you have this particular thing in mind, this Prudential housing plan? A. Absolutely.

Q. So you were the man who originally approached Mr. Babcock on this subject, is that right? A. That is correct.

Q. You approached Mr. Babcock on this subject without having consulted either the Prudential or the City? A. Yes.

Q. Then it was you who brought Mr. Babcock to the attention of the City, I suppose, and the Prudential? A. Correct.

Q. And the result of that is that you were using the suggestion made by Mr. Babcock, who comes from Chicago? A. Yes.

Q. You have developed a plan which your twenty or thirty years' experience in the City of Newark hadn't led you to suggest before, is that right? A. I had a plan which was quite similar, but was not quite the detail of the plan which we finally worked out. I had a plan using the interior land with a 20-foot strip on either side, and using the 100 feet in the center, which is one of the features which may be still developed to a higher efficiency, depending upon what the future owners would want to do with it.

Q. I suppose it was your civic feeling that led you to go to this trouble of communicating with Mr. Babcock, and go to the trouble of getting Mr. Babcock, or bringing Mr. Babcock to the attention of the Prudential and the City, is that right? A. It was originally, yes, and thorough another course also.

Q. What is the other course? A. The other course was the request of Mr. Gillen.

Q. When? A. Sometime in December, I think.

Q. Are you being paid for your testimony? A. By the City?

Q. Yes. A. I hope so.

Q. And it wasn't at all the expectation of your compensation acting in conjunction with your civic pride that led you to bestir yourself, as you have, was it? A. No, I was hoping to be employed

by anybody, and seek to give them the best advice I could.

Q. I understand you are going to erect apartments on this interior strip, is that right? A. I would say that that is the highest utility; it is not necessary to erect the apartments in order to find the highest utility of the property.

Q. Have you considered the practicability of erecting apartments on each 50-foot strip, or 30-foot-strip—covered with apartments? A. Yes.

Q. Can it be done? A. Yes.

Q. How? A. It can be done by planning an apartment that would conform——

Q. Have you gone into the plan? A. Yes.

Q. Have you got a plan here to show me the length and breadth of your apartments and all that sort of thing? A. Yes, we have.

Mr. Lane: Let me see it.
(Witness produces same.)

Q. How deep are your apartments? A. The apartments are 20——

Q. How deep is your apartment house? A. The plan is here, it is a very irregular shaped building; the average depth—which forms this plan in conformity with the building code of Newark, which allows for 15 per cent court in the rear, and built on only 70 per cent of the entire area of the plot, and both the 50-foot plot and the 30-foot plot are developed accordingly.

Q. Where is your 30-foot plot? A. It goes with this line here (indicating); this piece here is set over here (indicating), and this is your general layout; your line goes through the center of this (indicating).

Q. You develop both a 30-foot plot and a 50-foot plot? A. Yes; we develop both 30 and 50-

foot plots in order to show the relative comparability of the two.

Q. And you developed the 30-foot and the 50-foot plots precisely the same as if they were in common ownership, didn't you? A. No, not necessarily. There is just a dividing wall at the end of the property. There is a very decided space there, and both plots were developed as if they were in separate ownership.

Q. You think either of those would be susceptible of development as you have them developed there, if either one or the other adopted their right to build up their back wall solid with their line? A. This plan is a plan which I understand——

Q. I am not asking about that. You have put the apartments on the 30-foot strip and the apartments on the 50-foot strip a certain distance from the property line. A. That is the requirement, sir.

Q. Is there any requirement of the building code of Newark that the apartment houses should be built a certain distance from the rear line? A. I understand so, 15 per cent.

Q. Is it the requirement of Newark that an apartment should have so much vacant space on the lot, whether in front or rear? A. Both.

Q. You are sure of that? A. Yes.

Q. Will you give me the code which requires a certain amount of that vacant space to be in the rear? A. I don't know that we have the code here.

Q. You say that is the code? A. I say that that is the code, so far as my knowledge is concerned.

Q. What is your knowledge? A. My knowledge is that the code requires 15 per cent of the lot to

be in the rear, and the total area to be built on to be limited to 70 per cent.

Q. You say that the code requires that the 15 per cent— A. Of the depth.

Q. I understand 15 per cent of the depth, but does the code say anything about the depth being either in the front or rear? Do you know? A. I am not sure.

Q. As a matter of fact, the code would permit you to build over a certain percentage of the lot without regard to your percentage left, and if the property owner on the front put his rear line up against his property line—the rear line of his building on his property line, you couldn't do that? A. If the code did not permit it, you couldn't.

Q. And vice versa, if the man who had the inside tract wanted to put his apartment up there —the rear line of his apartment on his rear line, you couldn't use the front part that way, could you? A. Those are details that will entirely depend upon the code.

Q. You just said you didn't know whether the code required you to have 15 per cent in the rear or whether it permitted you to have 15 per cent in the front, or on the side? A. I said it required 15 per cent in the rear.

Q. If it does, you are wrong? A. Yes, then I may be wrong.

Q. Did you pay any attention when you were developing this sketch, to what the Prudential Insurance Company intends actually to do with the 30 feet in front? A. No, I didn't consider that at all.

Q. What they actually intend to do with the land is a matter—a company like the Prudential Insurance Company, if it suggests a plan, isn't the plan which it actually suggests and intends

to pursue, so far as the record shows, a better indication of the highest and best use of that property, than some theoretical idea based upon the judgment of somebody from Chicago? A. Owing to the fact that the Prudential project is a quasi-philanthropic proposition, I don't feel that knowledge of a value as to the highest use of a property would be of assistance.

Q. Did you know that the Prudential Insurance Company intended to erect its buildings on this rear line? A. I did not.

Q. The development of this 50-foot strip that you have created by running a street through the center in the manner that you have indicated, would be prevented, if, as a matter of fact, the Prudential Insurance Company built these apartment houses with the rear line of the buildings on the rear property line, wouldn't it? A. I made a——

Q. Wouldn't it be prevented—as an expert, I am asking you; look at your plans, if you know what they mean? A. If the Prudential Insurance Company would have any different rights than the owner of the 50 feet, with the relation of the use of 30 feet, that would be so.

Mr. Lane: I move to strike that out as not an answer. Never mind other rights.

Q. If the Prudential Insurance Company did in fact build its apartments on their rear line—on their rear property line, you couldn't carry out this plan for the development of the entire strip? A. This particular plan?

Q. Yes? A. No, but you might carry out another.

Q. I know. We have got this one now. I suppose if you had time enough you could develop any number of plans? A. Yes.

Q. Where did you get your price or cost of putting in these streets? A. From the city engineer.

Q. So that you yourself know nothing about it, do you? A. No, only from the information which I had from him.

Q. Where did you get your figure of 10 per cent? A. I got that in my judgment as to the highest utility from the years of experience I have had and the many projects which I have handled, buying property and selling it.

Q. Give me a project which you have had in which you have had to figure the relative value of exterior and interior land which led you to conclude that upon the facts as you stated them there was a difference of 10 per cent, instead of 12 or 9 per cent? A. The question of exterior or interior land wouldn't enter into it.

Q. What would enter into it? A. Just comparability of the two sites that were presented.

Q. So it wouldn't make any difference on the 10 per cent, if they were both exterior or interior? A. No, if there were elements that would in my judgment make up 10 per cent.

Q. What experience have you had in comparing comparable lands of different depths, which would indicate to you that the 10 per cent—the figure you arrived at—was the figure to take? A. That is my experience every day in the conduct of my business, when I make comparisons of one property with the other, and determine upon values anywhere. It is all a question of comparability and similarity, and that is what we are doing every day. That is our whole business. There is nothing else to it.

Q. Then you cannot give me any basis for this 10 per cent, except that your general experience is sufficient to permit you to do it? A. Yes.

Q. Then what is the basis? A. The basis for it is that the 30-foot strip cannot be utilized to the efficiency as the 50-foot strip can, by reason of the fact that the 50-foot strip permits of more flexible arrangements in building; and furthermore, it is not even necessary to put in—it may not even be necessary to put in those streets.

These other matters that I testified to with relation to the use of that plot in its entirety, 140 by 700, is a plot of great area and it may be subject to many uses, with a limited——

Q. As for instance? A. As for instance, the erection of stores on the ends, and possibly an auditorium or some theatre, or something of the kind, at another point further in, and possibly be used for parking space further in, or individual garages, or at another end possibly a garage with apartments taking up the balance of the block. With such an arrangement as I had originally thought of, with a 20-foot drive running around the side, 100-foot tract in the center, 100 by 500 or 600 feet, would accommodate a very wonderful housing proposition. So that there are many utilizations for this larger tract as compared to the very limited and cramped space of the 30-foot tract.

Q. Will you give me a place where the interior of a lot like that has been used for all these or some of the purposes you indicated? A. Pretty near every block in the Times Square district has a theatre in the middle of the block, which suggests simply an arcade district.

Q. You are comparing this district with Times Square locality? A. I can compare the same theatre use; it may not be the same grade of theatre, but it would be the same type of use.

Q. Give me some place, if you can, where in a vicinity such as this, not in Times Square, New

York, or the middle of the City of Chicago, any such proposition has been carried out. A. I don't know of any other place where a plot 140 by 700 exists in the center of a plot and a 30-foot strip on either side. I know of no such other case.

Q. You never heard of a proposition just like this before, have you? A. No.

Q. Have you taken into consideration the benefits flowing to the exterior 30 feet by the fact that under the arrangement and agreement between the Prudential Insurance Company and the City of Newark, none of these things are going to be done to this outside plot, but the plot is to be a public park, which will be continuously kept as a back yard for the 30-foot strip? A. I gave no consideration to that at all.

Q. Why not? A. Because I did not believe that it was a proper consideration in determining a distribution of a given or stated figure over two parcels, or two ownerships.

Q. You have developed a plan here that might be used. Why didn't you take into consideration precisely what the contract between the City of Newark and the Prudential Insurance Company contemplated, to wit, that this was to be a public park, and that the Prudential Insurance Company was to put up the apartments which might overlook that public park from their rear windows? A. Public parks or public institutions do not form a basis of valuation.

Q. Do you say that it does or does not add anything to the 30-foot strip that they leave, the easement or the outlook upon this public park? A. I have not examined it from that angle, and would prefer not to pass judgment on it.

Q. Would you say that there was any value which was added to the 30-foot strip, if in fact

those apartments are to have an outlook upon a public park? A. It would be very desirable.

Q. Yes, it would be very desirable and would be very advantageous, both from a monetary standpoint and esthetic standpoint, for the 30-foot strip? A. I would say so.

Q. My understanding is that you appraised this as if in separate ownerships? Right? A. Yes, sir.

Q. Well, you knew at the time that you made the appraisal in separate ownerships, that this 140-foot strip was to be a public park, didn't you? A. That was not the information on which I based my appraisal.

Q. Did you know, I asked you? A. I know all about these things being talked about and being in the papers; I don't know that it is going to be a public park. I know it is proposed to be.

Q. It will be if these proceedings are not successful; you know that, don't you? A. Yes.

Q. So that you know as a fact that the moment this ownership became separate, the 30-foot strip would have the advantage of a public park in the rear, didn't you? A. Yes.

Q. You gave no consideration to that at all, when you were appraising these lands as in separate ownerships? A. Yes; I didn't regard the personnel of the ownership; I regarded it as two parcels of land to be appraised in cold blood as two separate ownerships, whatever the owners may wish to do with them in the future.

Q. You think it is a proper way to appraise property when in one ownership, and to get the relative values of two different parts of it, to appraise it as if in separate ownerships? A. I didn't regard this as being in one ownership.

Q. It is in fact in one ownership, the Prudential Insurance Company? A. At the present time.

Q. Yes, that is what we are looking at, at the present time. A. But there was a line drawn through there for my 30 feet from either side, which separated it, and the purpose or object of my appraisal was——.

Q. But at the present time— A. It is in one ownership. The object of my appraisal was to ascertain the value of the various parcels as divided by those lines.

Q. But at the present time it is in fact in one ownership, isn't it? A. So far as I know.

Q. Have you testified in condemnation cases? A. I have.

Q. In preparing yourself to testify in condemnation cases, where the City is taking, or the condemning authority is taking a part of a man's land, do you value the parcel taken by the street or condemning authority and the part remaining as if in separate ownerships, or as if in one ownership? A. I take them as if in separate ownerships.

Q. In separate ownerships? A. Yes.

Q. So that you would when condemning a 40-foot street through a piece of land, consider the 40-foot strip as if it were not part of or contiguous to the remaining land? A. I take the valuation of the part taken in separate ownership; I take the parcel of the part remaining in separate ownership, and I place a value upon those, and if by reason of the taking there is any damage to the part remaining, that is a separate item, but the value of the various parts as if separate ownership.

Q. The effect of it is when you get all through your calculation, you appraise it as if it were in one ownership, don't you? A. That is the method; you can state that as you please.

Q. Isn't that the fact? A. I won't say it is right; I would rather have it stated the way I have stated it.

Q. So if you take it in separate ownership, the part taken, and then add to it the part remaining, you don't take it as if it were in one ownership? A. That is an entirely different element. The damage to the part remaining is an element which is away from the value of the separate ownerships.

Q. And which results in the sale price being considered as if in one ownership, or can't you answer it? A. Yes; the value of the original ownership—the value of the separate ownerships—of the separate or divided parcels, the difference between the value of the separate or divided parcels and the value of the property in any one ownership, as regarded as damage, and the total of the three items equals the value of the whole prior to the taking.

Q. Might this difference be 15 per cent instead of 10 per cent? A. It might.

Q. And it might be 5 per cent, I suppose? A. No, I think my present figure was a very low figure.

Q. Very low? A. The fact of the matter is I gave the consideration as a limit of the highest use, to the apartment house or tenement house use, and while there were these other elements which I mentioned afterward, with relation to their arrangements and flexibility, I did not figure those into the percentage, so that I think the leeway is rather above the ten than below.

Q. It might be even 20 per cent? A. It might.

Q. Or 25? A. I wouldn't say that.

Q. At any rate you have given us the benefit of only one-half of what you consider to be the

extreme figure; is that right? A. No, I haven't given any benefits at all. I stand by my figure of 10 per cent in the figure which I gave as being reasonably correct.

Q. You think there would be a considerable difference in the value of the rentability of these apartment houses, because the apartments on the outside strip face a street which is in the slums, and the apartments on the inside strip face a new street cut through, and you would have to walk around the corner to get in the slums? A. I think there would be a slight difference there.

Q. And with the apartments facing the slums having an open space between them and the apartments facing the new street, you think there would be a difference in rentability of those two types of apartments; is that right?

Witness: I didn't get the last——

Q. You think there would be a difference in rentability or amount of the rent that you could get from an apartment which faced this public street and an apartment which faced this new street, where two apartments, so far as the rears were concerned, had open space between them? A. I believe that rear apartments, there wouldn't be any difference—there might be a slight difference on account of the access being to the street facing the slums and having to use that for their entrance.

Q. You really think that there would be a difference in the amount of rents that you could get for those two sets of apartments? A. Oh, yes; it may make a difference, a very slight difference.

Q. Built as part of a common plan? A. Yes.

Q. What would you consider the difference to

be in percentage? A. It might be—in an apartment that would rent for $12 a room, it might be a matter of $11 a room.

Mr. Lane: I move to strike out this witness's testimony, because he has used a basis of calculation which finds no support in any authority.

Further direct examination by Mr. Groel:

Q. Mr. Maier, have you ever used this method of proving values in any legal proceeding in which you have testified? A. This method of utility?

Q. Yes. A. Yes, I have just recently been using this method in the Park Commission cases in Belleville, appraising the utility of the entire property, including land and building, as opposed to the division or separation of land and building values.

Q. Is this method used by any other expert? A. It is regarded by many experts—in fact, I think now it is becoming the opinion of the majority of experts that it is really the basis for all valuations, and that it is nearer to the correct method than any method that has yet been used by any of the experts.

Cross-examination by Mr. Lane:

Q. Have you computed the cost of erecting these apartments? A. No, I have not.

Q. Have you computed the rent you could get for them after you build them? A. No.

Q. How do you know it is practical? A. I did not base this appraisal upon the fact that the valuation or that the sum of the cost given to me was the value of the property; the fact of the

matter is that at this value I do not know that it would be practical.

Q. If you don't know it would be practical on this valuation, what in the name of common sense is the use of considering it at all as the highest possible use, but impracticable use on this valuation? A. The valuation given to me of $1,750,000 was not an appraisal of mine. It was not a figure which had to do with the use or utility of this property. I based the value of the—the relative value of the two tracts, upon their relative utility, and then after having procured their relativity to one another, I distributed the given sum of $1,750,000 accordingly, without regard as to whether that was $500,000 or $10,000,000. To me it did not represent the value of this tract.

Q. Did you reach any independent judgment as to what you considered the value of this tract to be? A. I think not. I have not placed any appraisal on it.

Q. The fact is that this land is going to cost a certain amount of money, isn't it, $1,250,000? A. The inside piece.

Q. The fact is that it is going to cost whoever buys it $1,200,000? A. Yes.

Q. And when a man thinks of making a use of property, he thinks of what he is going to get out of it, doesn't he? A. I assume that that is what he would do.

Q. And the test of what a willing buyer will pay for it, is the amount that he can afford to pay and use the land for some purpose and get a profit question as to the price—the stipulated price being the worth of the property.

Q. Perhaps that is so; we will concede that. That means that you have got to pay $1,200,000 for this property, so it is worth $1,200,000. Now,

what use would you make of the property? You say that you can use it in the way that you have indicated, but you say you don't know whether that is practical or not, because you don't know whether if you use it in that way you are going to be able to get any income on your investment. That is the effect of it? A. Yes.

Q. And no man is going to put it to this highest practical use unless he is going to get a profit on his investment, is he, or for philanthropic purposes? A. That would not in any way alter the highest and best use of this property. It might alter the pocket-book of the man who owned the property, but it wouldn't alter its highest and best use.

Q. It might affect the highest and best use of it? A. If it were the City, and they make a park of it, it may be worth ten million dollars.

Q. Ten million dollars it may be worth as a public park? A. To the City as a public park, in clearing away slums and improving a section like that, it may be of very, very great value, far beyond any other use that could be made of it.

Q. You are not talking about monetary value now? A. The result would be so.

Q. You told Mr. Groel something about using this method in some condemnation case? A. Yes.

Q. You don't mean to say that you were permitted in a condemnation case to go on and testify as to what you would put on land and erect structures on those lands? A. No, the method of highest utility was what I used.

Q. You only testified generally with respect to that? A. Yes.

Q. That is all you were permitted to testify to? A. I testified my whole case was based upon the highest utility of the property.

Q. Now, in this case you have actually erected apartment houses on it? A. No, I have carefully stated that that is the highest utility.

CHESTER MUELLER, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. What is your occupation? A. Civil engineer.

Q. And where are you employed? A. With the City of Newark, in the Board of Streets and Water Commissioners.

Q. In what capacity? A. As principal assistant engineer.

Q. What are your duties as such? A. To make preliminary studies, estimates, prepare contracts, plans and specifications for the construction of streets and pavements.

Q. In the City of Newark? A. Yes.

Q. Are you familiar with the property bounded by Montgomery Street, Somerset Street, Waverly Avenue, Barclay Street and Spruce Street, in the City of Newark? A. I am.

Q. And they are the streets that bound this property? A. Yes.

Q. In your opinion what would be the estimated cost of grading, curbing, flagging and paving a 40-foot street running through the center of these two blocks, from Montgomery Street to Spruce Street and Waverly Avenue? A. The cost would be approximately $25,000. The actual figures that I prepared show it would probably be less than that.

Cross-examination by Mr. Lane:

Q. Have you prepared plans and specifications? A. No, sir.

Q. How can you make an estimate without it? A. We make a preliminary sketch basing that upon the existing streets.

Q. Have you made a preliminary sketch? A. Just made a tentative sketch that I used to get the figures from.

Q. Will you let me see your tentative sketch? A. Yes (producing same); it is rough.

Q. It gives you nothing except the street lines and the width of the street and the length of the street? A. That is all that is necessary to base an estimate upon.

Q. Do you know the grade of the street? A. We know that the grade of the street wouldn't affect the nature of the pavement, but we know the direction of the flow of the water, and therefore we know what catch basin facilities to provide; that information is given there by these arrows.

Q. Do you know how many buildings you have got to demolish to put the street through? A. That wasn't within my province.

Q. You do know that this street, if it is put through, has got to rip into a few buildings, don't you?

Mr. Groel: I object as not proper cross-examination. The witness only testified as to cost of grading, paving and curbing a 40-foot street through these two blocks.

Q. You do know that, don't you? A. The buildings will have to be demolished?

Q. Yes. A. Yes, sir.

Q. You made no estimate as to what it would cost to demolish the buildings?

Mr. Groel: I object for the same reason as to the previous question.

A. No, sir.

Q. Will you give me your estimate? A. If you turn the sheet over, the estimate is given in detail.

Q. These figures for the doing of work, where did you get those from? A. Those are based on the prevailing prices that the City has had to pay during the last paving season.

Q. Which was when? A. The year 1930, between April and November.

Q. Where is this 200 square yards sheet asphalt resurfaced on old base? A. In putting in a new street between existing streets like that, to eliminate valley gutters in intersecting streets, we repave these particular spots to make an easy approach to the intersecting street.

Q. Is that ground level? A. Fairly so.

Q. How did you reach the number of cubic yards of earth excavation? A. That is based on the square yards of pavement that will be laid, and figuring a depth of nine inches for the thickness of the pavement, and the average additional cut of three inches to get to the surface, makes a cut of twelve inches.

Q. Is there not rock there? A. Not that I know of. From our past experience in paving the streets in that vicinity, their final estimates show no rock excavated, so it is safe to assume there will be none in that particular section.

Q. What has been your experience with respect to your preliminary estimates and final

estimates? A. We have come within five per cent of them, and we always try to exceed what the final estimate will be, in our preliminary estimate, so I consider that a generous figure. Not by more than five per cent, however.

Mr. Lane: I would like this statement put in as his testimony.

Mr. Groel: All right.

"February 17, 1931.

ESTIMATED COST OF GRADING, CURBING, FLAGGING & PAVING.

Street—parallel to and between Somerset St. & Barclay St.
From—Waverly Avenue to Montgomery St.
Length to be paved—1485 feet.
Roadway Width — 28 "
Street " — 40 "

4,460	sq. yds. asphalt penetrated macadam pavement 6" thick	@	$1.70	$ 7,582.00
170	sq. yds. sheet ashpalt pavement on a 6" base	@	3.30	561.00
200	sq. yds. sheet asphalt resurfaced on old base	@	2.35	470.00
10	tons additional binder	@	12.00	120.00
15,140	sq. ft. 5" cement walk	@	.25	3,785.00
2,880	lin. ft. 5"x16" granite curb	@	2.20	6,336.00
120	" " "12' Radius curb	@	2.78	333.60
1,550	cu. yds. earth excavation	@	1.50	2,325.00
4	double inlet catch basins	@	270.00	1,080.00
120	lin. ft. 12" tile pipe	@	2.50	300.00
1	cu. yd. additional concrete	@	12.00	12.00
	Engineer's Estimate			$22,904.60"

Mr. Lane: I move to strike out the testimony of this witness because it is immaterial and not the proper method to arrive at the value of land.

FREDERICK M. BABCOCK, a witness called on behalf of respondents, being duly sworn according to law, on his oath says:

Direct examination by Mr. Groel:

Q. Where do you live, Mr. Babcock? A. Evanston, Illinois.

Q. In what line of business are you engaged? A. In the appraisal of real estate, the making of reports on the feasibility of real estate projects.

Q. Where is your place of business? A. Bankers Building, Chicago, Illinois.

Q. What is the name of your firm? A. William H. Babcock & Sons.

Q. Of whom does the firm consist? A. Of my father, William H. Babcock, and my brother, Henry A. Babcock, and myself. The head of our accounting department is Mr. Carlton A. Tower; the head of our architectural department is Mr. John S. Small, of the American Institute of Architects. Our staff includes architects, accountants, appraisers and engineers.

Q. Of what does your real experience consist? A. Rendering of valuation reports on real estate projects of various sorts, and studying into the feasibility of major public improvements, the supervision of building construction, rendering of consultation service of all sorts in connection with real estate investments.

Q. Has your work been confined to the Chicago district? A. No, it has not.

Q. Where have you done work in addition to Chicago? A. In Milwaukee, Detroit, Cleveland, Baltimore, Savannah, Los Angeles, St. Paul, Minneapolis, Atlanta, Hamilton, Grand Rapids, St. Louis and other places.

Q. Name some of the larger and more important engagements in valuations where you have been retained outside of Chicago specifically. A. Outside of Chicago?

Q. Yes. A. We made a valuation of the Cleveland Terminal Tower Building, in Cleveland; we made a rather elaborate study of the regrade and resubdivision project in connection with Bunker Hill in Los Angeles; appraised the Lord Baltimore Hotel, in Baltimore; appraised the post office in St. Paul; Union League Club, in Detroit.

Q. What was this work that you did in Los Angeles? A. In Los Angeles it was not a valuation problem in that case. There has been a movement out there, a general project to move Bunker Hill, comprising something like four or five hundred acres of land, about seventy blocks of land, that are located on a hill, one end of the hill being right at the very center of the business district of Los Angeles. It averages about 110 feet above the surrounding grades, parts of which are higher than that. It is the most densely populated in Los Angeles. We were retained by the City and County of Los Angeles and by the promoting group to render a report on the economic feasibility of the removal of the hill.

Q. How much property has your organization appraised? A. Up to the first of the year, a total of the actual valuations that have gone out over our signature, where actual surveys were made,

is approximately $636,000,000. In addition to that, however, there have been any number of reports and services that we have rendered clients in connection with properties, many of those being valuations as a matter of fact where our reports were of a more preliminary character and were adverse to the actual projects—those would total somewhere in the neighborhood of $400,000,000. Altogether the valuation work done in our office totals something in excess of a billion dollars.

Q. Mr. Babcock, have you done anything in the matter of writing, teaching and lecturing along lines pertaining to real estate valuation? A. I have.

Q. What have you done in that regard? A. The specific thing along that line that everyone refers to first in connection with me seems to be the publication of a book on real estate appraisals. The name of the book is, "The Appraisal of Real Estate," published by the Macmillan Co. in 1927. I write that book at the request of the National Association of Real Estate Boards. I have written a large number of articles for magazines of various sorts, that appeared through the years, and I imagine there must be twenty or twenty-five of those by now that I have written. As to lecturing and giving addresses, I have given any number of those before trade organizations, real estate boards, and so on.

Q. Have you done any teaching? A. Yes, I taught classes in appraising at North Western University, and for the Chicago Real Estate Board in connection with the College of Commerce at the Y. M. C. A. in Chicago.

Q. Is this book that you referred to used at all in any of the colleges or universities in the coun-

try? A. Yes, it is the standard text book, I believe, in practically all of the appraisal courses in any university. I don't know how many universities. I do know, however, that there are twenty-two of them; I have that list.

Q. Is there any other book of that particular character in the field of real estate appraisal published at the present time? A. There are some books on valuation methods in general that have been published in Great Britain that are on the same subject, but in America it is the only book covering the appraisal field in general. Of course, there are valuation books that have been—perhaps six or eight different volumes, that have appeared from time to time, that have been written, describing particular methods of appraisal for taxation purposes; but so far as I know, mine is the only American book covering the general field of appraisal of real estate.

Mr. Groel: Do you want to cross-examine on the qualifications?

Mr. Lane: Yes.

Cross-examination by Mr. Lane:

Q. You feel yourself qualified to express judgment on the valuation of property anywhere in the United Etates? A. Not offhand opinions; no, sir.

Mr. Groel: Methods of valuation.

Q. Methods of valuation in every part of the United States? A. Yes.

Q. In suppose in the whole world? A. Yes.

Q. I suppose methods of valuation to be used over the United States and over the world are the same, is that right? A. I think so, yes, sir.

Q. They don't vary with conditions at all? A. I don't think so.

Q. One single method, and that method approved of and referred to in your book by you, is the method to be used in making valuations over the entire terrestrial globe? A. I didn't say there was one method.

Q. The method which you have evolved? A. I haven't evolved any particular method.

Q. What have you done? You have written on methods evolved by others? A. In the most part, most of my contributions have been in finding other methods and describing the inadequacy of certain methods and bolstering up others. Outside of certain angles of technique I haven't invented any appraisal method.

Q. So that you think and you repeat that you are sufficiently expert to determine in any place in the world what method of valuation should be adopted? A. Yes, sir.

Q. How old are you? A. Thirty-three years old.

Q. And when did you start to get this information which give you the knowledge upon which you can say that you can determine in any part of the world what method of valuation should be used? A. I began this sort of study in this field in about 1914.

Q. That is a period now of sixteen or seventeen years? A. Yes, sir.

Q. And at that time you were sixteen years old? A. Yes.

Q. What is your particular job with your concern? A. I am one of the partners in the firm.

Q. What is your job; what do you do? A. I supervise all of our engagements; I make valuations; I study into the economic problems that are

involved in the various engagements that we have, and I operate the business.

Q. How much of this six hundred million appraising work which has been done did you yourself personally appraise? A. I have had personal contact with every bit of it, and there are fully two-thirds of those jobs where I was the chief leader and was the appraiser.

Q. When did you start to make these appraisals? A. 1922.

Q. So that in the nine years that have elapsed since 1922, you personally have appraised in projects which you have recommended, upwards of four hundred million dollars worth of property? A. Yes.

Q. And of the projects which were rejected in those nine years, how much did you personally appraise? A. Probably two hundred and fifty millions, perhaps.

Q. So that you have appraised over six hundred million? A. Yes.

Q. What are the different elements which are taken into consideration in appraising property? A. The first and primary element is utility; the second element that should be taken into consideration in any appraisal is the element of the property concept.

Q. That is a new word to me; what is that? A. "Property" in the way that an appraiser uses it, is exactly the same as "property" used by the attorneys. By "property" we mean an ownership in a single entity—a single operating unit. The single piece that could be used would be one where—first of all, a man would have to define what he meant by the specific property which he is appraising, and that calls for a description—a very definite definition of the prop-

erty he is appraising. We consider its utility and its potential utility.

Q. What is the next step? A. The next step in every event is the prediction of renting expediency based on that utility. The fourth step is the discovery of the present value of your earning expectancy.

Q. Any other element? A. That covers the method.

Q. The method of arriving at what? A. Value.

Q. And what is value? A. And under that concept that I have described, there is the amount of money that a man would be warranted in investing in the purchase of the property.

Q. That is only another way of saying that it is what a willing purchaser would pay for the property, isn't it? A. It is not precisely that; it is what a willing purchaser would be justified in paying for the property.

Q. So it does not make any difference as to the value of property, as to whether there is a willing purchaser in existence or no? A. There would have to be a willing purchaser.

Q. Then how does your definition of value differ from mine, which is what a willing purchaser would pay? A. I presuppose a purchaser; I said it was the amount of money that a purchaser would be warranted in investing, so I have a purchaser too.

Q. Why do you draw a distinction between what a willing purchaser will pay and what he would be warranted in paying? A. Because it is a practical proposition. I am aware of the fact that many people do buy real estate and pay more for it than they should.

Q. And some people refrain from buying, although a willing purchaser, if you could find

such a gentleman, would be warranted in paying a certain amount for that real estate; that is true? A. Yes.

Q. So that it is correct, isn't it, that presupposes a willing purchaser; the value of real estate is what a willing purchaser would pay, or do you disagree with that? A. I agree with it, provided that it is the informed purchaser. That is the only additional element that I believe I am injecting.

Q. What difference does it make whether he is an informed purchaser or uninformed purchaser, if in fact he would pay good money? A. It is a question of the definition of value again, and there is a difference in the two concepts of value, and you draw the—

Q. You don't agree in the concept of value which is the law in this State, the value is that which a seller willing to sell, but not obliged to sell, will sell for, and a purchaser willing to buy, but not obliged to buy, will buy for? Now, I want to know whether that conception of value is your conception of value, or whether it is not. A. It is, provided the purchaser presupposed is an informed purchaser. That would be my concept of value, and that would be the value—difference, I would say.

Q. That makes an awful lot of difference, because you inject the informed purchaser; the informed purchaser may decline to buy, or may buy, when the public wouldn't, and it is what the public would do, informed or uninformed, which makes value. Do you insist upon putting the proviso to the definition of value which I have given you, which is the value by which we, in this State at least, are bound by, because the Court has said so? A. I am afraid I do.

Q. Value differs from day to day, doesn't it? A. Yes, sir.

Q. Value differs with density of population? A. Yes, sir.

Q. Value differs with accessibility to facilities? A. Yes, sir.

Q. Value differs with the psychology of the community, doesn't it? A. Yes, sir.

Q. But you are so informed of the psychology of all the peoples in the world that you can determine what method is to be used in a particular case in this part of the world, in arriving at value; is that so? A. I will have to answer Yes.

Q. The psychology of Chinse as well as the psychology of the gentlemen from Malay, and the English in Australia and the English men in England, the latter two, who differ, perhaps, in psychology, as much as the island next door to England differs from the English psychology,—but you still say that you can determine value which you have already stated depends on psychology?

Mr. Groel: I object to that question as improper cross-examination.

Mr. Lane: Because I have indicated that the psychologies of different peoples differ?

Mr. Groel: No, the witness testified as to methods.

Mr. Lane: He said the methods differed with psychology. He may have misspoken, and wants to correct himself.

Witness: I didn't understand myself to say the methods. You said values—the city transportation and all these other things affected values, and I agreed.

Mr. Lane: Then I followed that up by a question, Mr. Babcock, in which I said, then the methods to be used in different

places differ with the psychology, and you said Yes. If you want to correct yourself on that, correct yourself, and when you do, I will ask you another question.

Witness: I do want to correct myself.

Q. Then you say that the methods to be employed in any given case does not differ with the psychology of the community? A. No.

Q. Although the value differs with the psychology of the person? A. Yes.

Q. But the method is the same? A. Yes.

Mr. Lane: I object to any testimony by this witness on the ground that he is wholly unqualified.

Further direct examination by Mr. Groel:

Q. Assume that there are two city blocks, contiguous to each other at their short ends, 200 feet in width and 700 feet in length, and each divided into two ownerships, the one ownership comprising the lands running along the longitudinal streets to a depth of 30 feet and the other ownership comprising the lands running through the center of the two blocks being 140 feet in width and fronting on the cross streets and approximately 700 feet in length in each block. How would you determine the relative values of the land in the two ownerships?

Mr. Lane: Same objection.

A. In discovering relative land values in the problem cited, I would determine, first of all, what represented the highest and best utility of each of the two properties, and illustrate the method by an example: if for example, in this

particular problem the outer strips of land, the outer ownership, these lands were properly improved for the highest and best use of them, with their use as the sites of apartments, I would have to discover, first of all, the best apartments that could be put there to produce the highest land value of which they were capable. And in connection with the inside land in that case, for the purpose of illustration, I would immediately recognize that there is inadequate street access to fully develop the land, and we can assume that we run through the street proposed, 40 feet in width, along the center line of the two interior tracts—that would give us tracts 50 feet deep in there, and we will assume that the same utility is possible there, namely, that that land could be devoted to apartment use. It would then be a case of discovering the relation between the intensity of use on the inside and the intensity of use on the outside, or the qualities of those two uses. In case of the inside land it might be possible, because of the greater depth, to plan apartments of a higher quality and a better grade, although the investment in buildings representing that might be identical with the corresponding accommodations on the outside. And in the case of the outside property, we might find that the fact that the depth is shorter would give less flexibility in the designing, and would produce fewer apartments. Ultimately we would bring that down to a basis whereby we could say that the utility per square foot of one tract over against the utility per square foot of the other tract differed by some ratio or other, which would have to be determined directly through the agencies of architecture, and ascertain the relative productivity of the properties. Given that relationship which

was based on the utility per square foot, that utility multiplied by the land areas that would be occupied by buildings that would exist on the new street through the center, the resulting figures could be said to be in the direct ratio to the relative valuations of the two ownerships in this property. There is one correction that would have to be added to that. That would be the fact: in developing inside land, it would have to be recognized that there would be an expense to the owner of the property in connection with the development of that street—an expense that the outside owner would not have to undergo. A correction in the ratio would have to be made for that. I might point out in connection with this method, that it includes this concept in connection with the ownerships. If as a matter of fact, the inside land were to be used by the City for park purposes, and if the outside land, as a matter of fact, were to be used by the Prudential Insurance Company for philanthropic purposes, the same method would still apply, inasmuch as the values of the tracts to them, after they acquired them, couldn't be greater than the cost they would have to meet in purchasing any exactly equivalent sites from private owners, and private owners would not sell at a figure other than the figure on which they could get a fair rate of return. Therefore, the maximum value to the Prudential Insurance Company and the maximum value to the City would be represented by the uses of these properties if they were in private ownerships. So that I say that the relative values of the properties are discovered through the agency of the study of the utility of the properties in private ownership.

Q. Mr. Babcock, have you read the testimony of the witnesses for the prosecutors in this case, in which they used the depth tables? A. I have.

Q. What do you call the method and of what does it consist? A. As I read the testimony, the method used is what might be called the depth table and rear lot method. The method consists, in the case of the outside strips, in the application of the factor for 30-feet of depth there, of the depth table, and in connection with the interior, the central land, the application of a factor representing the difference between the depth table factor for 100 feet and for 30 feet.

Q. Do you consider such a method a proper method for determining the value of land? A. No, never.

Q. Why not? A. First of all, it uses depth tables. Depth tables purport to be figures with co-efficiency representing the variations in the values of land of different depths fronting on the same streets. In this particular case the two ownerships do not front on the same streets. Secondly, I could point out that in connection with that rear lot method using the difference between two depth factors in the table, that method is based on the assumption that in any given tract of land, the total value present in the land is constant and is not varied or modified in any way by the running through it of ownership lines-property lines, cutting it up in any shape or form. As a matter of fact, the introduction of any property line into any tract of land immediately modifies the value. It becomes two ownerships and the utility becomes different.

Thirdly, in this connection I might say that depth tables in general are unsatisfactory and unreliable. The various systems of comparative

valuations that have been evolved, differ considerably among themselves. While the principle of depth tables, namely, perhaps a very deep lot, is not worth twice what a lot half of its depth would be worth, is therefore sound, the fact remains that in the lower ranges of these depth tables the variations are specific and usually are entirely unreliable. Most of these comparative valuation systems provide a single depth table. It is my knowledge that in different types of properties, full increment of depth of lots affects values in a very different way. There is a much greater premium on depth in an apartment property than there would be in hotel property.

Fourthly, I might say that the use of that rear lot method utterly ignores the ability of the owner of the inside tract to give himself greater street accessibility; it ignores the possibility of running through the street that I described formerly.

Q. Do you think that the way in which the experts for the prosecutors applied the depth methods in determining the relative values of the tracts in this case, is a proper method? A. I do not.

Q. Why not? A. Because of the fourth point that I mentioned before, the use of the rear lot method is wrong anyhow. The use of the depth table is wrong, and in this case we have got a wrong method wrongly applied.

Mr. Lane: There is only one right method. Go on.

A. (Continuing.) The use of that rear lot formula in this case ignored the ability of the owner of the central lands to increase the street accessibility. In any comparative valuation method, it would be manifestly incorrect to apply the method

until the land had been put in condition so that it was capable of its highest and best utility. It seems to me that in this case, if depth tables were accessible at all, which I don't believe they are—at least the depth factors should have been used for the frontage on the new street.

Q. Did you hear the testimony of Mr. Maier in this case? A. I did.

Q. Are you familiar with the method that was used by him in determining the relative values of the respective ownerships? A. I am.

Q. Is that method used in the United States to any extent in determining the value of lands? A. I believe it is.

Q. Where is it used? A. It is used very generally.

Q. Is it a proper method to use in this case? A. It is.

Q. Are there any authorities in the field of real estate appraisal that use this method besides yourself? A. Sure.

Q. Who are they? A. Among them I can mention Peter Hansen, the Chairman of the Traffic Division of the National Association of Real Estate Boards; there is Philip Krishern, of New York City; Alvin Register, of Jacksonville, Florida; John P. Hooker, of Chicago; Mark Levy, of Chicago.

Q. What is the occupation of these men?

Mr. Lane: Experts.

A. And every one that I mentioned is a real estate broker.

Cross-examination by Mr. Lane:

Q. Did your concern appraise any of the farm lands in the Northwest? A. No, sir.

Q. Or did Mark Levy, of Chicago, appraise or sell any of those farm lands about ten years ago, that you know of? A. I don't know anything about it.

Q. Do you know who did appraise the farm lands in Milwaukee and Chicago? A. I don't even know what you refer to.

Q. You know that the farm lands in the Northwest appraised for mortgage purposes, are worth about ten per cent of what they were appraised for, don't you? A. I don't know.

Q. You don't appraise farm lands? A. No, sir.

Q. Only built-up property? A. City property, urban properties.

Q. Did you read the testimony of the experts for the Prudential and the City? A. Yes, sir.

Q. Did they adopt the proper method of arriving at the valuations? A. No, sir.

Q. Everybody is wrong, then, except Mr. Maier? A. Yes, sir.

Q. And Mr. Maier was taught by you; is that right? A. We certainly had conferences about it. I don't know that I taught him the whole method.

Q. He said that you suggested it; I am wondering whether you did agree with him. Is that right? A. Yes, that is true, of course.

Q. Did you ever hear of any expert in the State of New Jersey, which is the soverign State, all by itself, using that method? A. I don't say that I have heard of them.

Q. And this is the method that you would use in taking two blocks of land, whether located in the City of London or in the City of Newark? A. Yes, sir.

Q. Or Tokio? A. Yes, sir.

Q. The old-fashioned method of going out and finding out what the sales are of properties com-

parable in the immediate vicinity is all wrong? A. I haven't said that.

Q. Is it? A. As a complete method, it is wrong.

Q. Are you an engineer? A. No, sir.

Q. Aside from your real estate experience which you have gathered, what is your technical education? A. I am a graduate with a degree of Bachelor in Science with Northwestern University in the Department of Economics and the School of Commerce.

Q. Do you appraise buildings? A. No, sir; if you mean do I estimate the cost of buildings, I do not; I have appraised buildings.

Q. You appraise their value? A. Yes.

Q. You can appraise the value of a building without knowing the cost? A. Yes, sir.

Q. And without knowing the cost of replacement? A. In many cases, yes, sir.

Q. How? A. In the cases of buildings that are not—do not represent the highest and best investment of the land, the values of the buildings are never contingent or have any relation to the replacement cost or construction.

Q. I know that; what does it have relation to? A. We determine the residual—in those cases we determine the total value of the property and we determine the value of the land under conditions of its highest and best use, and whatever total value is left over, we ascribe to the building that is now on the site.

Q. So the value of the building consists of the difference between the value of the whole plot and the value of the land if put to its highest and best use; is that right? A. Yes.

Q. How do you get at the value of the whole? A. Through a study of the utility and a potential productivity of the property.

Q. That would give you the value of what? A. The property as a whole.

Q. Including the building? A. Yes.

Q. Aren't you arguing in a circle? A. No, sir.

Q. I thought you said that the value of the building consisted of the difference between the value of the land, if put to its best and highest use, and the value of the whole? A. I did.

Q. Now, you say you arrive at the value of the whole by considering the value of what, if put to its best and highest use? Certainly not the building? A. The property as an entity. We determine the productivity of the property as a whole, as an entity.

Q. What is your concept; what do you begin on? A. Just as I stated when you originally asked me my concept of value. Each given property which comprises land and building, as an entity, had a productivity and future productivity, which is the basis of its total value, and if that building does not happen to be the highest and best use of the land, and the land is appraised separately, assuming it is improved to its highest and best use, and the difference between the total value and the land value is the value of the building.

Mr. Lane: I may be very dumb, but you haven't answered so I can understand it, how you reach the value of the whole. You have land and you have a building. You have a building which does not measure up to the highest and best use which you can put the land to, and yet it has a value. Now, you tell me that you reach the value of that land by taking the value of the real estate, if put to its highest and best use, and you put the value of the building, irrespective

of its cost or the cost of replacement, at the difference between the value of the land if put to its highest and best use, and the value of the whole.

Q. Now, I want to know how you reach the value of the whole, which includes both land and building. You say if the value of the whole is put to its best use—do you mean this building that is on there? A. The value of the whole is based upon a prediction of the renting power of the property.

Q. Renting power of what property? A. The property in its present condition, and any future condition that an owner could afford to put it into —its net earning power.

Q. You don't mean to say that you consider the value of the whole—the value of the land, if put to its best use, plus the value of a building that would be put there to make that use effective, do you? A. No, I do not.

Q. Then I cannot see where one of the elements in your valuation is arrived at by deducting the value of another of your elements not used for that purpose, but if put to its highest and best use. How can you get the value of the whole if one of your parts is out? A. May I explain it again?

Mr. Lane: Yes; if you have any other explanation than what you have given. If you have no other explanation, then I prefer to rest in dumbness, as someone else may be able to understand.

A. (Continuing) The basis of appraisal of a property, where the building does not represent the highest and best use of the property, but

where the buildings themselves have a value, would be as follows:—

You start with a study of the potential utility of the property as a whole.

Mr. Lane: Yes; I carry you so far.

A. (Continuing) That study would result in what would probably be the best program for the utilization of the property. It would obviously include a plan for the ultimate removal of the existing building and its replacement with a structure representing the then highest and best use of the site. These two successive uses of the site —the first being the existing building throughout its remaining usable life, and the second being the future highest and best use of the building— will give us the earning expectancy. It will not be a constant level amount. That earning expectancy, then, has a present worth. If you take the present worth of that earning expectancy, securing a figure which represents the total value of the property today, the earning expectancy used is the net earning expectancy. The cost of the future new building is one of the deductions from that earning expectancy, and the present value earning expectancy is the total present value of the existing property, in its present condition.

Then the land is appraised as a vacant site under conditions of its highest and best use at the present time. That amount deducted from the total valuation already made will give the value of the existing building, and at no point is it necessary to calculate the replacement cost of construction of the existing building.

Q. Let me see if I understand that. First, I will ask you this question: How do you arrive at the value of the land alone, if put to its high-

est and best use? A. By exactly the same process. We assume the land is vacant. We then make a study of its utility—possible utility, and calculate what it would cost to erect a building representing the highest and best use of the site if vacant already, or figure the earning expectancy of that building at the present worth of that; deduct from that the cost of improving the site, and the remainder is the raw value of the land today.

Q. As near as I can gather that, the value of the whole, as you put it, and the value of the land if put to its highest and best use, are precisely the same. In each instance you presuppose a building on it, and figure the earning capacity, and in each instance you deducted the cost of the new construction. If two plus two equals four, then the value of the land and the value of the whole must be the same. What is the difference between the two that you say represents the value of the old building? A. That, of course, is not true, because in the calculation where I arrived at the whole value, the cost of constructing the ultimate building was long deferred.

Q. But you use a different method in figuring the present worth of the prospective earnings, is that right? And if so, why? A. I wouldn't say it is true. It is exactly the same method.

Q. Although in one instance the cost of the new building is long deferred, and in the other instance is taken off at once. Is that the difference? A. Yes, that is the difference. It is the difference in time.

Q. Not difference in time; difference in money. A. It is the same thing.

Q. So that you arrive at these values precisely the same, except that in one instance you defer

your payments, and in the other instance, you take off at once; so that the value of the whole building will be the present value of the deferred payments, is that right? A. No, not at all. I don't see any logic to that.

Q. I don't see any logic to your whole proposition, but at the same time, where is the mistake in it? A. There isn't any mistake in it.

Q. In mine, I mean. You say there is no logic in it? A. You are utterly ignoring the earning power of the existing building.

Q. That is a new element you have injected. You said that you didn't give me that or consider that. You said the value of the whole was based upon the value of the whole if put to its highest and best use, which included what? the present value of the earnings; which presupposed the erection of a building which would be put on the property and put to its highest and best use. That is the value of the whole. You told me the value of the land alone is the highest and best use that the land—or based upon the highest and best use that the land can be put to, and we all presuppose a building built upon this land—taking the earnings and getting the present value of the earnings. Then you say the difference between the two is the value of the old building. Now, you are talking something about earnings of the old building, and you haven't taken that into consideration. A. Yes, I did; I took that very definitely into consideration.

Mr. Lane: Then I didn't hear you.

Witness: Then I will go over it again. To discover the total value of the property in its present condition, I stated that I would study out a program of utilization of the property, and that program in this

particular case would be a program where the old building remained on the site for a period of time, following which period it would be replaced with a new building, and I stated that the total value of the property was the present worth of the net earning expectancy of that property. And further stated—I don't know that I stated it, but it is very obvious that the early part or early expectancy is produced by the existing building.

Q. Do you think that the method which you have now stated to be the method by which you arrive at the value of the whole is the same method that you described to us a little while ago? A. Yes, it is exactly the same.

Q. You say that you arrived at the present value of the earning capacity of the old building, and then presuppose that it is replaced by a new building; then, the expectancy of the new building. Take the present value of the earnings of that building, how long a life do you give to these things? A. What things?

Q. The old buildings and the new building? A. That is an economic problem. It depends entirely on the age of it. Those lives may run anywhere in a case of this sort, from one to forty years.

Q. That has got to be taken into consideration? A. Yes.

Q. That method of arriving at value is much better than the old method, of going out to find out what a man will give for it; is that right? A. Four and one-half billion dollars of defaulted securities in this country would indicate so.

Q. You consider that four and one-half billion dollars of securities that have been defaulted has been due to that? A. Very largely so.

Q. And yet you concede that the actual value of land is what you can get for it? A. No, I was very definite on my concept of value at the start.

Q. That isn't right, then? A. No, sir.

Q. Can you tell me what good it does to have land you cannot sell? A. It may make you a return.

Q. So all of your hypotheses are based upon earning capacity? A. In some form or other.

Q. Which has got to enter into the consideration before you reach a proper value? A. Yes, sir.

Q. And you think you are sufficiently expert to take a problem in any city and acquire, by inquiry or otherwise, sufficient data to permit you upon this theory of yours to appraise the value of property? A. I didn't make the statement that I could do it in any case; I can do it in many cases.

Q. Can you do it in any case? A. Not in any case, no.

Q. Why not? A. We don't know enough about the local data.

Q. Can't you inform yourself as to the local data? A. Where we can, we can apply the process, and we do that.

Q. Have you ever declined to appraise because you couldn't get the data? A. Frequently.

Q. Haye you ever appraised any property in New Jersey? A. No, sir.

Q. Have you ever been asked to, except this? A. I wasn't asked to, this time.

Q. Have you ever been asked to testify before this time, in New Jersey? A. No, sir.

Q. Did you draw these plans which have been referred to by Mr. Maier? A. No, sir; I had them drawn, however.

Q. These apartments are the product of your office? A. Yes, sir; I had one of our architects draw it.

Q. It is labeled "William H. Babcock & Sons, Chicago, Illinois. January 12, 1931" You made no estimate of cost? A. No, sir.

Q. You made no estimates of return? A. No, sir.

Q. Is that drawn by your architectural staff? A. Yes.

Q. Anybody who is an architect or an engineer can take a certain space of land, so many feet long and so many feet wide, and lay out almost anything, can't he?

Witness: I don't understand your question.

Q. He can put buildings on it? A. Obviously.

Q. No particular expertness is required to produce a plan of that kind? A. No.

Q. It is an ordinary architectural job, isn't it? A. Yes.

Q. Whether it is practical depends on innumerable equations, doesn't it? A. It depends entirely on the local situation; in Newark, in this case.

Q. That, of course, includes the amount of rents? A. Yes.

Q. Cost of production? A. Yes.

Q. And what you have got to pay for land? A. Yes.

Q. What is your definition of the highest and best use? A. My definition of the highest and best use is that it is a characteristic of land, to commence with, that it is that particular utilization of the property, by means of buildings, or other improvements, which produces the highest

rate of return and the highest degree of productivity, or the productivity having the highest present value of the land.

Q. All based on earnings, or anticipated earnings? A. It is all based on anticipated earnings in some form.

Q. What are the elements that go into your anticipated earnings? A. There are innumerable elements.

Q. Give some of them. A. Transportation facilities; the ability of the City to absorb apartment space, in this case; cost of constructing buildings; level of taxation; the attractiveness of real estate as an investment; the interest rate has a bearing on it.

Q. The life of the building? A. The life of the building would have a bearing.

Q. The anticipated ability of the community to absorb— A. That would be more accurate than to say that the actual ability of the community to absorb; that is the market element.

Q. And the anticipated rate to absorb depends on innumerable equations? A. Yes.

Q. Anticipated leaving or coming-in of industries? A. Yes.

Q. Anticipated growth or decline? A. Yes.

Q. And after you get all through, it is a guess, isn't it? A. No, sir.

Q. A certainty? A. No, sir.

Q. What is it? A. It is simply to the best of our ability to collect all of those various factors to which you have referred into a bundle, and based on those, make the most suitable production possible, and secure the present value.

Q. It makes a darn big bundle, too, doesn't it? A. Yes.

Q. And all that is necessary to arrive at a conclusion as to the value of land by this method, which you say is—I understood you to say—is the only proper method? A. I still say it is the only proper method.

Q. And none of the other methods even approach the problem? A. No.

Continuation of proceedings in the above entitled suit before Nicholas W. Bindseil, a Supreme Court Commissioner of New Jersey, at the office of Charles B. Bradley, Esq., Prudential Insurance Company, Newark, New Jersey, on Friday, March 20, 1931, at 2 p. m.

Appearances:

MERRITT LANE, Esq., and JOHN J. CLANCY, Esq., for Prosecutors;

FREDERICK H. GROEL, Esq., for Peter O'Toole, Clerk of the City of Newark, N. J., and Board of Commissioners of the City of Newark, N. J.;

CHARLES B. BRADLEY, Esq., and ALFRED HURRELL, Esq., for Prudential Insurance Company of America.

DANIEL W. MCGEE, recalled for further cross-examination by Mr. Lane:

Q. Since the last hearing, have you made a research of these properties? A. I have made a recheck on my quantities and dimensions.

Q. Will you produce your recheck? A. I have it.

Q. Are there any changes? A. There are.

Q. Will you tell me in what respects? A. The values of the buildings are not changed, but in the apportionment I found a few errors.

Q. Which ones? A. On the building No. 99 Somerset Street, the apportionment originally given to the Prudential on that site was $2250; it should have been $2880, making an increase of $630 on the Prudential's share of it.

Q. How much should it be now? A. The Prudential's portion should be $2880.

Q. And it was what? A. Originally, $2250.

Q. What accounts for the correction? A. That building was originally on the assumption—the original figure was based on a 30-foot depth.

Q. That gives me one side of the equation; what is the other? A. Now, in taking the building on the recheck, it was figured on the basis of the whole building, which was 100 feet deep, and then apportioned on the basis of 3/10ths to the Prudential and 7/10ths to the City. In other words, it increased that to $2880, and $6720 on the City's part. And the original figuring on that, I had taken that 30-foot strip, as I explained to you at that time, and I figured the rear portion all as a separate unit. Now, it is all considered as one.

Q. Which is right? A. Either one would be right.

Q. Both methods are right; each method reaches a different result? A. Yes.

Q. How can that be? A. I don't know. There is a little more on this method going to the Prudential—that is, the division of it.

Q. I cannot conceive of the two methods, each being equally right, producing results as different as those results are, and I don't know of any such thing as a thing which is near right or nearly right; it is either right or wrong. Is one wrong or the other right? A. These happened to be.

Q. Which is right? With two different figures, they cannot be both right. Which is right? A. I take for granted this one—$2800.

Q. Which is right? A. $2880.

Q. Which method was right? A. Well, either method, I would still claim, could be used. It might give a little different result.

Q. Do you call this a little different result? A. It is not a very material one.

Q. What percentage? A. Somewhere around twenty or twenty-five—about that.

Q. Twenty-five per cent of $300,000 is how much? A. It would be $75,000.

Q. That is a considerable sum when you take it in the aggregate? A. Yes, but this building does not involve any such money as that.

Q. I know that particular building doesn't. Why didn't you use the method you have now used, when you first made your calculations? A. I thought that the other way might have been a little quicker.

Q. Any other changes? A. Yes.

Q. What are they? A. 95 Somerset Street.

Q. What is the change now? A. On 95 Somerset Street there is a valuation of $1084. There are some old buildings on the rear there. Through some error $1084 was apportioned to the old building, which had no value, instead of to the front building; so it is just transferring it from one to the other. I originally reported that building as having no value.

Q. The front as having no value? A. Yes.

Q. Whereas, it is the front that had the value, and the rear didn't? A. Yes, that is the point, and I changed the figure to where it belonged.

Q. How did that oversight occur? A. I don't know; it was simply an error.

Q. Any other changes? A. No. 87 Somerset Street; that is an L building on which originally I, in order to bring it to a line, took a portion from the front and put it on the rear, making the building 60 feet deep. It makes a little difference in the values; so in reapportioning it, I have taken the front part of it, which gives the front portion of that building as 20 foot 6, 15 feet deep and 36 feet high, having a value of —11,070 cubic feet, replacement value of $2988, with a depreciation of fifty per cent, which amounted to $1494, leaving a present-day value of $1494, which has all been placed on the Prudential.

Q. What was it before; what was the present-day value before? A. The present-day value of the building?

Q. Yes. On your old report. A. Taking the front and rear, my value is the same, excepting——

Q. How was it allocated? A. It was allocated before fifty-fifty. You see there is another piece to that that I didn't divide before. The rear portion is 12 feet wide and 30 feet long, which has a replacement value of $3499, and a depreciation of 50 per cent, leaving present-day value of $1749. That rear portion is divided half and half, half to the City and half to the Prudential.

Q. How does that change the situation? A. We added $748 to the Prudential figure.

Q. How did that error occur? A. Well, I don't know; just in the matter of the way it was figured.

Q. Which method was right? A. Well, the present method is apparently closer.

Q. Why wasn't the present method, then, used before? A. The method used throughout was to try and square these buildings as near as possible, and it was a give and take proposition. In

some cases the City got a little the best of it, and in other ways the Prudential got it. It wasn't a case of trying to split down to a fine point or anything; it was to get a very close approximate.

Q. Is that why you use the value per cubic foot, the same both front and rear? A. It is the same building; it would be bound to be the same price.

Q. The rear of the building is worth as much per cubic foot? A. In some cases it is worth more.

Q. Any other changes? A. At 110 Barclay Street, in the description that I gave originally of 110 Barclay Street, which was a building 20 feet by 60 by 36, making a cube of 43,200, at 27 cents, gave a replacement value of $11,664, with a depreciation of 60 per cent, left the present-day value $4,666. When that was taken off originally on the apportionment sheet, there was an error, you remember, calling it 60 and 70, which gave at that time the Prudential share of $2,000. They should have had 50 by 50, or in other words, $2,333. That is an addition to the Prudential of $333.

Q. How did that error occur? A. That is an error I cannot account for. As I told you before, the building was 60 feet deep, and it should have been apportioned 60 feet, but in some way or another it was apportioned as 70 feet.

Q. What else? A. Those are the only changes, except there are three other buildings that when they were apportioned, the apportionment didn't go where it should have gone.

Q. Where are they? A. No. 7 and 9 Somerset Street; that is a three-story and basement brick duplex six-family, 44 by 65, 40 feet high—114,400 cubic feet; at 35 cents a foot is $40,040; depreciation of 33 1/3, $13,347; leaving present-day value, $26,693.

The apportionment of that should have been 6/13 to the Prudential and 7/13 to the City, but the whole thing went into the City column, which hadn't been split; so there is $12,320 to go on the Prudential column, on that account.

Q. How did that error occur? A. I don't know. It was just a case where it wasn't apportioned, that was all. That same thing happened on two——

Mr. Lane: Just a moment.

Q. Do these buildings go all the way from the front to the rear, a solid structure? A. You mean that shaft through the center, that light court?

Q. Whatever it is. A. There is a light shaft through the center of that on the rear part.

Q. Commencing at the 30 foot line? A. Just about.

Q. Give any consideration to the reduction of cubical contents of the two sides, because of the existence of that light shaft, or whatever it might be? A. No, that light shaft is very much—that rear portion of that building is very much more expensive than the front portion, due to these two additional brick walls, which have to be placed there to create a light shaft.

Q. Is that the reason you did not take into consideration the reduction of the area because of the light shaft? A. A small area like that, in cubing a buildings, they never make deductions for small items.

Q. How wide is the light shaft? A. I don't really know. I could scale it from that drawing, but that isn't absolutely accurate.

Q. Don't you carry in your mind, to enable you to say how many feet or inches there are? A.

There are 142 buildings, and I certainly couldn't memorize them all.

Q. This is a peculiar one, isn't it? A. There are other peculiar ones, too. It would seem, as near as you can scale it, that it is about four feet.

Q. Will you tell me how many cubic feet there are contained in that light space? A. I will give you an approximation of it from the scale——

Q. It would be four times 40 times 35, wouldn't it? A. Not quite. The height of that building is 40.

Q. That would be four times 40, and the length is 35, isn't it? 30 on the Prudential and 35,—so it would be 35 times 40, wouldn't it? A. 5,600 cubic feet.

Q. Figured at 35 cents per cubic foot, that would be $1,960? A. If I were going to use that method, I would use a much higher figure than 35 cents. You have got two brick walls there that you must consider in the value of that portion of the building. Those walls run all the way from the foundation to above the roof, and naturally increase the cubic foot price, very materially if you are going to figure on an opening of that description.

Q. But that isn't the reason why you didn't take into consideration that that was light and not enclosed rooms? A. I took that building as a solid, and didn't add anything to the rear portion, figuring that we had some leeway on the cubical contents.

Q. What is the next one? A. 142-148 Spruce Street—that is on the top of page 7 of my report. The same condition applied there that it did on the one I just quoted. There should have been $12,600 apportioned to the Prudential.

Q. How in the world did that happen? A. The same way as before; I cannot account for it. In the apportionment they didn't split that building.

Q. Is that a single building? A. No, it is a group of buildings.

Q. Does it include the building on the corner? A. It takes in the corner building, yes.

Q. And the line runs right through the building next to the corner, doesn't it? A. Approximately so, yes.

Q. Leaving a little less on the City than on the Prudential? A. No, just the reverse. You have got three whole buildings and part of the third one.

Q. No, no; I mean where the line runs between the single building—the line runs through the single building. A. That is a row of buildings; they are all hooked up together.

Q. You told me that before, but they are separate buildings, aren't they? A. No.

Q. All built together? A. Apparently so.

Q. All right, what is the next one? A. 118 Barclay Street. I have another one of these same conditions. There is $12,915 there that should have been put in the Prudential column.

Q. How was it before? A. It was in the City column.

Q. All of it? A. Yes.

Q. How in the world did that happen? A. I don't know; it simply got into the wrong column. I cannot account for the reason.

Q. Was it the stenographer's fault, the typist's fault, or whose fault was it? A. I am not able to place the responsibility.

Q. Have you your original working sheets, in which you, in your own handwriting, put it in the different columns? A. I haven't got my original sheets here. I have all of my revised sheets.

Q. I am talking about your original sheets. A. I haven't them with me.

Q. You had them with you before? A. Yes.

Q. And you read from them? A. Yes.

Q. And they were in your handwriting? A. Some of them. The apportionment sheet was in my handwriting, part of them.

Q. It isn't difficult under those circumstances to fix the responsibility for the mistake, is it? A. It is sometimes difficult to say why a mistake happened. It just happened.

Q. No, I mean fix the present responsibility for it. A. I am responsible for this whole estimate. If any of my employees makes the error, it reflects on me just the same.

Q. With respect to this particular thing, it is an apportionment which was in your handwriting, so that the error must have been yours? A. Possibly.

Q. Now, then, was it possible or actual? You didn't take these figures from someone else? A. No, we can assume that it was.

Q. I ask you how it happened. A. I cannot account for it. It was an error; it was in the wrong column.

Q. Any more of them? A. No, that is all.

Q. Are those all the changes? A. That is all.

Q. Are those all the errors that you found? A. That is all.

Q. Where are the errors that indicate that you added to the Prudential things that should not have been added to the Prudential, and you omitted to add to the City those things which should have been added to the City? I have listened with some care for those. A. I didn't.

Q. What is there to indicate in your original estimates you made an error, putting in the Prudential column something which should not have

been in the Prudential column, and left out of the City column something which should have been in the City column? A. I don't quite understand the question, unless you want to know just what the details are. In the original estimate, it was carried out the same as this one, with three columns.

Q. What I want to know is, is there any instance that you have there, in which in your original estimate you made a mistake, by adding too much to the Prudential and not adding enough to the City? These all seem to be cases where the error has been in omitting to charge to the Prudential something which should have been charged to the City. A. These are all that I have found. I haven't found any the other way.

Q. Can you explain how it is that in these rather numerous errors, ten of them at least, I think, the error was always in adding to the City and omitting to add to the Prudential? A. No, but where you have 142 buildings, with a vast number of figures before you, it is sometimes very easy for a figure to get into the wrong column.

Q. I can conceive that, but what I cannot conceive—other people may conceive—is, how with this vast number of houses and the numerous mistakes, all of the mistakes should have happened to have resulted in relieving the Prudential and burdening the City. I should think there would have been at least one where the error was the other way. There doesn't seem to have been even one of those. Is there any explanation, except it just happened so? A. No explanation, except the error has been made. It had been corrected in this revised report.

Q. How does that revised report affect the situation? A. That will make the Prudential's share $401,457.

Q. As against what? A. I think it was $360,829.

Q. Or a difference of— A. $40.629.

Q. And it will make the City's share how much? A. $515,821.

Q. As against what? A. $556,450.

Q. Are you quite satisfied that these estimates are correct? A. I believe them to be.

Q. Are you as satisfied that these estimates are correct, as you were when you testified that your other estimates were correct? A. I feel that those estimates are correct.

Q. You felt the same way about your first estimates, didn't you? A. Yes.

Q. I suppose you are as likely to be mistaken on these estimates as you were on your first? A. I don't think anybody is infallible. I don't think there are any errors there, but there may be.

Q. Are there any of those errors except these where you made the apportionment, or omitted to make the apportionment—are there any of those errors with respect to computation which involved buildings about which you were not mistaken on your cross-examination? A. The ones where these changes occur, do you mean?

Q. Yes. A. I don't know that I quite got that question.

Q. I mean are there any of these buildings which you have mentioned here on your examination today, that I didn't call to your attention on your cross-examination before? A. Yes, those last three that I quoted.

Q. Those are the ones in which there was an error made with respect to the apportionment? A. Yes.

Q. But so far as the others are concerned, those are all buildings to which I directed your attention on cross-examination? A. Yes, we talked of them during that examination.

Q. Have you made an examination to see whether or not any of the other buildings which are along this street, are not subject to the same criticism as I directed to your attention on your cross-examination, or did you confine your examination to those to which I directed your attention? A. No, I went thorough the whole thing. If I hadn't gone through it, I wouldn't have found these other errors.

Q. So you think there are no buildings along this improvement where with respect to the method of computation the same criticism may not be directed to them, as was directed to the buildings which were specifically called to your attention? A. No, it is my belief that these buildings now are properly apportioned and properly figured in every way. I think, if you will recall, when I handed you this statement, I told you that if you found on the check and examination, that there was any discrepancy, I would be very glad to go over it with your builder, and I would change it if there was any discrepancy.

Q. Have you referred in your testimony to 77 Somerset Street? A. You mean today?

Q. Yes. A. I don't think so. No, I don't believe I did.

Q. Will you tell me how you arrived at the apportionment of 77 Somerset Street? I suppose you arrived at it as indicated on page 28 of your present memorandum. A. It is a four-story and basement brick apartment, eight-family, 24 by 80 by 50 feet, 96,000 cubic feet, at 35 cents, gives replacement value of $33,400; depreciation 25 per cent., leaves present-day value of $25,200.

Q. I notice that on the back of these buildings, there is a dark line here; what is that, brick? A.

In some cases it is brick, and in some cases it is wood. That is a back stairway.

Q. Was that included or not? A. I cannot say offhand now.

Q. I notice that there are what appear to be light spaces, which take away from the cubical contents of the buildings in the rear. A. They were figured in solid.

Q. Have you referred to 108 Barclay Street this morning? A. I don't think so.

Q. Will you refer to 108 Barclay Street? A. That is on page 16 of my report. Three story and basement, brick, six-family, 25 by 70 by 40, 70,000 cubic feet, at 35 cents, $24,500; depreciation 33⅓ per cent., leaving present-day value of $16,333, three-sevenths on the Prudential and four-sevenths on the City.

Q. From what point to what point was the 70-foot depth measured? A. From the front to the back.

Q. Any consideration given to the fact that there are two instances along the rear part of that set in? A. I don't know of any.

Q. The width on the front is 25 feet, isn't it? A. 25 by 70, yes. I am talking about this building (indicating).

Q. I am talking about this one; what is that? A. 110.

Q. Let us go to 110. A. That is a three-story and basement, four-family frame house, 20 by 60, 36 feet high.

Q. The depth was figured from what point to what point? A. From the front to the rear.

Q. How many feet is that back from the 30-foot line? A. May I explain something? What Mr. Lane is looking at there, which he seems to think is a jog in the side of the building, reducing the

quantities, is not so. It is a stairway that is enclosed at that point.

Q. It is an ordinary stairway? A. Stairway enclosed, it is a wooden stairway. The whole building is frame. Then there is a little jog behind that.

Q. There is not a little jog; there is quite a jog. A. I don't know.

Q. Let us get this right. The jog which you have referred to as a little jog, reduces the width of the building to how much? What was the length of the building? A. The other day I quoted it as 60 feet deep. Then put the rule on the front and see where 60 feet will bring it.

Q. You told me it was from one end to the other. If you are wrong, correct it. A. I cannot recollect. I wouldn't attempt to talk from memory as to how these dimensions were. If there is a question, I will go on the site and check them, but I cannot do it here.

Mr. Lane: We cannot do it.

Witness: I don't know why.

Mr. Lane: I don't think you will get the Supreme Court to go up and check up and look at it.

Witness: Why not have your builder go up and check it with me?

Q. Will you tell me now what I ask you, which is to take this ruler and tell me what width that jog reduces the building? A. You asked me how much that takes off or adds to?

Q. I asked you what the width of that thing was, not the depth. A. Apparently 6 feet wide and 10 feet deep, by that scale.

Q. Any consideration given to that? A. I presume that there was. I am giving that building

60 feet deep, and the main portion is 58. If you take that piece there and take 6.2 you get your 60 feet in depth.

Q. Now, Mr. McGee, I wish you would look at 108 on your map and 108 on our map, and then tell me whether or not it does not appear that there are less cubical contents in the rear than there are in the front? A. I wouldn't say so. I wouldn't attempt to try to check on an 80-foot-to-an-inch scale, because a fraction of a hair is equal to a couple of feet. If there is any discrepancy, I will be glad to go up and check it on the building; I cannot check it on this map.

Mr. Bradley: You cannot tell by looking at the map?

Witness: My eye would tell me that they are as nearly right as they can be, looking at these drawings.

Q. That is, the eye of a builder, who is accustomed to examine plans? A. Yes.

Q. Mr. Bradley just suggested a moment ago that you cannot tell by looking at a map the cubical contents of the building. You can tell by looking at a map the cubical contents of the building, if the height is precisely the same. You need three elements to determine the cubical contents: you need the depth, the width and height. A. You are using the map for checking.

Q. The width and height are given on the map. A. There is a width and depth given there, but not the height.

Q. If you estimate the height, then you can tell by looking at the map what the cubical contents are by taking the height? A. Yes.

Q. Will you look at 106 Barclay Street? The distance of 65 feet on 106 Barclay Street was fig-

ured from what point to what point? A. I presume from the front to the rear.

Q. Was any consideration given to the jog in that building? A. This piece here (indicating)?

Q. Yes. A. There isn't any there; the stairway is there.

Q. What kind of a stairway? A. Wooden.

Q. Stairway on the outside of the building? A. Yes, with porches over, on the floors, at each floor landing.

Q. The ordinary staircase that goes on the outside of a house, to get to the different flats in the rear? A. Yes.

Q. Rear tenement stairways on the outside, is that right? A. Yes.

Q. You figured those things in as cubical contents of the building? A. I did.

Q. Will you look at 50 Barclay Street? A. Two-story and basement, frame, one store and two flats; cement block front, 20 by 65 by 32 feet high; 41,600 cubic feet, at 30 cents a foot, $12,480 replacement value; 50 per cent depreciation, leaving present day value of $6,240.

Q. Does that house start at the street line? A. I don't recall; I cannot tell from memory.

Q. Will it show on your map?

> Mr. Groel: I object to any testimony as to this map. It is not in evidence. There is no indication as to what the map is, or whether it is drawn to scale, or what it represents.

Q. Is this map which I am looking at, which you produced and which we have used consistently up to this point, drawn to scale, Mr. McGee? A. It is supposed to be.

Q. Will you look at your map and see whether or not you can tell whether the house goes all the way to the street line, or whether it does not, or whether you can tell? A. From the way that map looks, it would seem that the building is set back a few feet from the street.

Q. How many feet? A. I don't know positively; I can give you an idea.

Q. Give me the idea. A. About seven feet.

Q. If that building sets back seven feet, your apportionment is wrong, and more should be added to the City's share, should it not? A. No.

Q. Why isn't it wrong? A. Measuring that building, we have taken it from the street line back, and in describing the building, I told you it has a cement block front where the store portion has been added to it. As I told you before, I cannot memorize all of those buildings. When I try to tell you about the buildings, it is somewhat of a vague recollection.

Mr. Lane: I ask that the map which the witness has been using be marked in evidence. I am offering it, together with this witness's testimony, as illustrative of his testimony.

Mr. Groel: I object to the admission of this map in evidence, because there is no indication of what the map represents, whether it is a map drawn to scale or photostatic copy of some atlas. There is no evidence to indicate whether it is a correct representation of the buildings as they are on the site today or at an earlier date, and there is no indication as to the origin of the map, or where it came from.

(Marked Exhibit A, March 20, 1931.)

Mr. Lane: I suppose, Mr. Groel, you will want to offer the witness's revised figures?

Mr. Groel: Yes; he has testified to them on cross-examination.

Mr. Lane: He has a complete set of revised figures?

Mr. Groel: No, I won't offer it.

Mr. Bradley: Does not the stipulation entered into at the time Mr. McGee testified, cover that? Isn't it to be considered as the testimony of this witness?

Mr. Lane: The revision?

Mr. Bradley: It should be marked or identified in some way.

Witness: This copy that I have here is a carbon copy; it is not the original.

Mr. Lane: Where is the original?

Witness: I am not sure where the original is, whether it is in the office or whether it went to the City Hall.

Mr. Lane: By that you mean the City Counsel's office?

Witness: Yes.

Mr. Bradley: I think it properly should be marked in evidence as offered directly by the City.

(Marked Exhibit 2, March 20, 1931.)

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

(Exhibit 2—March 20, 1931)

"Appraisal"

Value of buildings on blocks bounded by Barclay, Somerset, Spruce and Montgomery Streets, and Waverly Ave., Newark, N. J.

D. W. McGee,

Builder

Newark, N. J.

Descriptions and values of buildings on blocks bounded by Barclay, Somerset, Waverly, Spruce and Montgomery Streets.

		Pru. Share		*City Share*	
1 Somerset St. Cor. Montgomery St. Three story & Bsmt. Frame & brick. Apt. & stores. 29′0 x 62′0 x 38′0 = 68324 cu. ft. @ .30	20497.				
Less dep. 50%	10248.				
Present day value	10249.	15/31—	4959.	16/31—	5290.
3 Somerset St. Two family house. Three story & bsmt. 22′0 x 50′0 x 34′0 = 37400 cu. ft. @ .27	10098.				
Less dep. 66⅔%	6732.				
Present day value	3366.	3/5—	2020.	2/5—	1346.
Rear. Frame garage. 20′0 x 20′0 x 12′0 = 4800 cu. ft. @ .15	720.				
Less dep. 50%	360.				
Present day value	360.				360.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share	*City Share*
7-9 Somerset St. Three story & bsmt. Brick duplex house—six family. 44′0 x 65′0 x 40′0 = 114400 cu. ft. @ .35	40040.		
Less dep. 33⅓%	13347.		
Present day value	26693.	6/13— 12320.	7/13— 14373.
11 Somerset St. Three story & bsmt. three family frame house. 20′0 x 60′0 x 36′0 = 43200 cu. ft. @ .27	11664.		
Less dep. 40%	4666.		
Present day value	6998.	1/2— 3499.	1/2— 3499.
13 Somerset St. Three story & bsmt. Three family frame house. Rear brick extension. 22′0 x 55′0 x 36′0 = 43560 cu. ft. @ .27	11761.		
Less dep. 50%	5880.		
Present day value	5881.	6/11— 3207.	5/11— 2674.
15 Somerset St. Three story & bsmt. Three family house. 22′0 x 40′0 x 36′0 = 31680 cu. ft. @ .27	8554.		
Less dep. 66⅔%	5702.		
Present day value	2852.	3/4— 2139.	1/4— 713.
17 Somerset St. Three story & bsmt. Three family frame house. 22′0 x 45′0 x 36′0 = 35640 cu. ft. @ .27	9622.		
Less dep. 66⅔%	6414.		
Present day value	3208.	2/3— 2139.	1/3— 1069.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

			Pru. Share		*City Share*	
	19-21 Somerset St. Three story & bsmt. Three family frame house. 25′0 x 45′0 x 36′0 = 40500 cu. ft. @ .27	10935.				
10	Less dep. 66⅔%	7290.				
	Present day value	3645.	2/3—	2430.	1/3—	1215.
	23 Somerset St. Two and one half story & bsmt. Frame house. 20′0 x 40′0 x 27′0 = 21600 cu. ft. @ .25	5400.				
	Less dep. 66⅔%	3600.				
20	Present day value	1800.	3/4—	1350.	1/4—	450.
	25 Somerset St. Three story & bsmt. Three family house (frame). 25′0 x 40′0 x 36′0 = 36000 cu. ft. @ .27	9720.				
	Less dep. 66⅔%	6480.				
	Present day value	3240.	3/4—	2430.	1/4—	810.
30	Rear—25 Somerset St. One story brick. Three car garage. 25′0 x 20′0 x 15′0 = 7500 cu. ft. @ .20	1500.				
	Less dep. 33⅓%	500.				
	Present day value	1000.				1000.
	29 Somerset St. Three story & bsmt. Five family frame house. 25′0 x 60′0 x 36′0 = 54000 cu. ft. @ .27	14580.				
40	Less dep. 50%	7290.				
	Present day value	7290.	1/2—	3645.	1/2—	3645.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share		*City Share*	
31 Somerset St. Three story & bsmt. Three family frame house. 20′0 x 40′0 x 36′0 =					
31680 cu. ft. @ .27	8553.				
Less dep. 66⅔%	5702.				
Present day value	2851.	3/4—	2138.	1/4—	713.
33-35 Somerset St. One story frame office bldg. Open shed. Frame two story stable. Granite block paving.					
18′0 x 50′0 x 10′0 =	9000.				
20′0 x 80′0 x 10′0 =	16000.				
20′0 x 25′0 x 20′0 =	10000.				
	35000.				
35000 cu. ft. @ .20	7000.				
Less dep. 66⅔%	4666.				
Present day value	2334.	1/2—	1167.	1/2—	1167.
Coal yard.					
37 Somerset St. Two and one half story & bsmt. frame house. 20′0 x 50′0 x 28′0 =					
28000 cu. ft. @ .25	7000.				
Less dep. 50%	3500.				
Present day value	3500.	3/5—	2100.	2/5—	1400.
Rear 37 Somerset St. One story brick. Three car garage. 25′0 x 20′0 x 15′0 = 7500 cu. ft. @ .20	1500.				
Less dep. 33⅓%	500.				
Present day value	1000.				1000.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

			Pru. Share		*City Share*	
39 Somerset St. Three story & bsmt. Three family frame house. 20′0 x 50′0 x 36′0 = 36000 cu. ft. @ .27		9720.				
Less dep. 50%		4860.				
Present day value		4860.	3/5—	2916.	2/5—	1944.
41 Somerset St. Two and one half story & bsmt. frame house. 20′0 x 35′0 x 28′0 = 19600 cu. ft. @ .25		4900.				
Less dep. 60%		2940.				
Present day value		1960.	6/7—	1680.	1/7—	280.
43 Somerset St. Two and one half story & bsmt. frame house. 25′0 x 50′0 x 28′0 = 35000 cu. ft. @ .25		8750.				
Less dep. 50%		4375.				
Present day value		4375.	3/5—	2625.	2/5—	1750.
Rear—Two story brick and frame. Two family house. 25′0 x 28′0 x 26′0 = 18200 cu. ft. @ .25		4550.				
Less dep. 50%		2275.				
Present day value		2275.				2275.
45 Somerset St. Three story & bsmt. frame bldg. 25′0 x 55′0 x 36′0 = 49500 cu. ft. @ .27		13365.				
Less dep. 66⅔%		8910.				
Present day value		4455.	6/11—	2430.	5/11—	2025.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share	*City Share*
47 Somerset St. Two and one half story & bsmt. frame house. 20′0 x 50′0 x 28′0 = 28000 cu. ft. @ .25	7000.		
Less dep. 66⅔%	4666.		
Present day value	2334.	3/5— 1401.	2/5— 933.
49 Somerset St. Three story & bsmt. frame house. 22′0 x 26′0 x 33′0 = 18876 cu. ft. @ .28	5285.		
Less dep. 66⅔%	3523.		
Present day value	1762.	1762.	
51 Somerset St. One story brick store. 30′0 x 25′ x 16′0 = 12000 cu. ft. @ .35	4200.		
Less dep. 50%	2100.		
Present day value	2100.	2100.	
134 Spruce St. cor. Somerset St. Three story & bsmt. Frame & stucco. Stores & flats. 25′0 x 40′0 x 36′0 = 36000 cu. ft. @ .32	11520.		
Less dep. 50%	5760.		
Present day value	5760.	5760.	
136-138 Spruce St. Three story & bsmt. Frame & stucco. Stores & flats. 39′0 x 50′0 x 36′0 = 70200 cu. ft. @ .32	22464.		
Less dep. 50%	11232.		
Present day value	11232.		11232.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

			Pru. Share	*City Share*
	140 Spruce St. Three story & bsmt. Frame & stucco. Six family. 27'0 x 50'0 x 36'0 = 48600 cu. ft. @ .32	15552.		
	Less dep. 50%	7776.		
10	Present day value	7776.		7776.
	142-144-146-148 Spruce St. Three story & bsmt. Brick, frame & stucco. Stores & flats. 100'0 x 50'0 x 36'0 = 180000 cu. ft. @ .35	63000.		
	Less dep. 33⅓%	21000.		
20	Present day value	42000.	3/10— 12600.	7/10— 29400.
	78 Barclay St. One story brick store. 16'0 x 40'0 x 16'0 = 10240 cu. ft. @ .35	3584.		
	Less dep. 25%	894.		
	Present day value	2690.	3/4— 2018.	1/4— 672.
	74-74½-76 Barclay St. Three story & bsmt. Frame—stores and flats. 59'0 x			
30	45'0 x 36'0 = 95580 cu. ft. @ .30	28674.		
	Less dep. 66⅔%	19116.		
	Present day value	9558.	2/3— 6372.	1/3— 3186.
	72 Barclay St. Three story & bsmt. Three family house. Frame. 22'0 x 45'0 x 36'0 = 35640 cu. ft. @ .27	9622.		
40	Less dep. 66⅔%	6414.		
	Present day value	3208.	2/3— 2138.	1/3— 1070.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share		*City Share*	
70 Barclay St. Three story & bsmt. Three family frame house. 25′0 x 45′0 x 36′0 = 40500 cu. ft. @ .27	10935.				
Less dep. 66⅔%	7290.				
Present day value	3645.	2/3—	2430.	1/3—	1215.
68 Barclay St. Three story & bsmt. Frame three family house. 22′0 x 40′0 x 36′0 = 31680 cu. ft. @ .27	8553.				
Less dep. 66⅔%	5702.				
Present day value	2851.	3/4—	2140.	1/4—	711.
Rear—68 Barclay St. (New) One story cement block three-car garage. 25′0 x 42′0 x 15′0 = 15750 cu. ft. @ .20	3150.				
Less dep. 20%	630.				
Present day value	2520.				2520.
66 Barclay St. Three story & bsmt. Three family frame house. 22′0 x 40′0 x 36′0 = 31680 cu. ft. @ .27	8553.				
Less dep. 66⅔%	5702.				
Present day value	2851.	3/4—	2140.	1/4—	711.
64 Barclay St. Three story & bsmt. Frame store & apt. Three family. 25′0 x 35′0 x 36′0 = 31500 cu. ft. @ .27	8505.				
Less dep. 66⅔%	5670.				
Present day value	2835.	6/7—	2430.	1/7—	405.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

			Pru. Share		*City Share*	
	62 Barclay St. Three story & bsmt. Three family frame house. 22′0 x 45′0 x 36′0 = 35640 cu. ft. @ .27	9622.				
	Less dep. 66⅔%.....	6414.				
10	Present day value.....	3208.	2/3—	2138.	1/3—	1070.
	60 Barclay St. Three story & bsmt. Three family frame house. 25′0 x 43′0 x 36′0 = 38700 cu. ft. @ .27	10449.				
	Less dep. 66⅔%.....	6966.				
	Present day value.....	3483.	30/43—	2430.	13/43—	1053.
20	54-56-58 Barclay St. Four story & bsmt. Brick duplex apt. 60′0 x 80′0 x 50′0 = 240000 cu. ft. @ .35.....	84000.				
	Less dep. 33⅓%.....	28000.				
	Present day value.....	56000.	3/8—	21000.	5/8—	35000.
	52 Barclay St. One story brick garage. 33′0 x 98′0 x 20′0 = 64680 cu. ft. @ .25	16170.				
30	Less dep. 20%.....	3234.				
	Present day value.....	12936.	15/49—	3960.	34/49—	8976.
	50 Barclay St. Two story & bsmt. Frame one store, Two flats. Cement block front. 20′0 x 65′0 x 32′0 = 41600 cu. ft. @ .30.....	12480.				
	Less dep. 50%.....	6240.				
40	Present day value.....	6240.	6/13—	2880.	7/13—	3360.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share		*City Share*	
Rear — Two story cement block house. 28′0 x 30′0 x 24′0 = 20160 cu. ft. @ .30	6048.				
Less dep. 40%	2409.				
Present day value	3639.			3639.	
(Four Flats)					
46-48 Barclay St. Three story & bsmt. Three family frame building. 26′0 x 40′0 x 36′0 = 30240 cu. ft. @ .27	8164.				
Less dep. 66⅔%	5442.				
Present day value	2722.	3/4—	2041.	1/4—	681.
Rear—Building no value.					
44 Barclay St. Three story & bsmt. Frame house. 22′0 x 35′0 x 36′0 = 27720 cu. ft. @ .27	7484.				
Less dep. 66⅔%	4989.				
Present day value	2495.	6/7—	2138.	1/7—	357.
42 Barclay St. Two and one half story & bsmt. One family frame house. 22′0 x 35′0 x 29′0 = 22330 cu. ft. @ .25	5582.				
Less dep. 66⅔%	3722.				
Present day value	1860.	6/7—	1594.	1/7—	266.
40 Barclay St. Two and one half story & bsmt. Three family frame house. 22′0 x 35′0 x 29′0 = 22330 cu. ft. @ .25	5582.				
Less dep. 66⅔%	3722.				
Present day value	1860.	6/7—	1594.	1/7—	266.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

			Pru. Share		*City Share*	
	38 Barclay St. Three story & bsmt. Three family frame house. 26′0 x 55′0 x 36′0 = 51480 cu. ft. @ .27	13900.				
	Less dep. 50%	6950.				
10	Present day value	6950.	6/11—	3790.	5/11—	3160.
	34-36 Barclay St. Four story & bsmt. Frame duplex-eight family house. 45′0 x 65′0 x 45′0 = 131625 cu. ft. @ .28	36855.				
	Less dep. 50%	18428.				
20	Present day value	18427.	6/13—	8505.	7/13—	9922.
	Rear—One story frame bldg. 16′0 x 18′0 x 15′0 = 4320 cu. ft. @ .25	1080.				
	Less dep. 50%	540.				
	Present day value	540.				540.
	32 Barclay St. One and one half story frame house. 18′0 x 45′0 x 18′0 = 14580					
30	cu. ft. @ .25	3645.				
	Less dep. 66⅔%	2430.				
	Present day value	1215.	2/3—	810.	1/3—	405.
	73 Montgomery St. Frame church. 38′0 x 90′0 x 38′0 = 129960 cu. ft. @ .30	38988.				
	Less dep. 50%	19494.				
40	Present day value	19494.	1/3—	6498.	2/3—	12996.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share	*City Share*
133-135 Spruce St. Three story & bsmt. Brick stores and apartments. Two stores & eight family. 63′0 x 58′0 x 40′0 = 146160 cu. ft. @ .38	55540.		
Less dep. 50%	27770.		
Present day value	27770.	10/21— 13222.	11/21— 14548.
Rear—135 Spruce St. One story frame. Two car garage. 20′0 x 20′0 x 12′0 = 4800 cu. ft. @ .20	960.		
Less dep. 50%	480.		
Present day value	480.		480.
137 Spruce St. Two and one half story & bsmt. Two family frame house. 22′0 x 40′0 x 32′0 = 28160 cu. ft. @ .27	7603.		
Less dep. 66⅔%	5069.		
Present day value	2534.		2534.
139 Spruce St. Two and one half story and bsmt. Two family frame house. 20′0 x 40′0 x 32′0 = 25600 cu. ft. @ .27	6912.		
Less dep. 66⅔%	4606.		
Present day value	2306.		2306.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

			Pru. Share	*City Share*
	141 Spruce St. One & two story & bsmt. Brick & cement block bldg. One story—cement block. 25′0 x 35′0 x 20′0 = 17500 cu. ft. @ .30	5250.		
	Two story & bsmt. 20′0 x 65′0 x 33′0 = 42900 cu. ft. @ .35	15020.		
		20270.		
	Less dep. 40%	8108.		
	Present day value	12162.		12162.
	143 Spruce St. Three story & bsmt. Frame & stucco. One store & two flats. 25′0 x 67′0 x 40′0 = 67000 cu. ft. @ .30	20100.		
	Less dep. 50%	10050.		
	Present day value	10050.		10050.
	145 Spruce St. Two & three story and bsmt. Brick & frame. Two stores—three flats. Frame and brick. 25′0 x 40′0 x 40′0 = 40000 cu. ft. @ .35	14000.		
	Brick—two story. 18′0 x 40′0 x 30′0 = 21600 cu. ft. @ .35	7560.		
		21560.		
	Less dep. 40%	8624.		
	Present day value	12936.	1/6— 2156.	5/6— 10780.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share	*City Share*
147 Spruce St. Four story & bsmt. One store & three flats. Frame bldg. 25′0 x 68′0 x 50′0 = 85000 cu. ft. @ .30	25500.		
Less dep. 50%	12750.		
Present day value	12750.		12750.
Rear—One story brick store. 14′0 x 25′0 x 15′0 = 5250 cu. ft. @ .35	1838.		
Less dep. 50%	919.		
	919.		919.
90 Barclay St. Two story & bsmt. Two family frame house. 20′0 x 28′0 x 25′0 = 14000 cu. ft. @ .25	3500.		
Less dep. 66⅔%	2334.		
Present day value	1166.		1166.
92 Barclay St. Two story & bsmt. Frame & stucco house. 18′0 x 25′0 x 25′0 = 11250 cu. ft. @ .25	2812.		
Less dep. 66⅔%	1875.		
Present day value	937.		937.
Rear—Two story frame and brick stable. 25′0 x 55′0 x 20′0 = 27500 cu. ft. @ .23	6325.		
Less dep. 50%	3162.		
Present day value	3163.		3163.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share		*City Share*	
94 Barclay St. Three story & bsmt. Frame & stucco. Three family. 25′0 x 35′0 x 36′0 = 31500 cu. ft. @ .30	9450.				
Less dep. 50%	4725.				
Present day value	4725.	6/7—	4050.	1/7—	675.
96 Barclay St. Three story & bsmt. Frame & stucco. Three family. 25′0 x 45′0 x 36′0 = 40500 cu. ft. @ .30	12150.				
Less dep. 50%	6075.				
Present day value	6075.	2/3—	4050.	1/3—	2025.
Rear—94-96 Barclay St. One story frame and C. I. bldg. 50′0 x 50′0 x 20′0 = 50000 cu. ft. @ .15	7500.				
Less dep. 66⅔%	5000.				
Present day value	2500.				2500.
98 Barclay St. Three story & bsmt. Frame & stucco. Three family house. 22′0 x 55′0 x 36′0 = 43560 cu. ft. @ .30	13068.				
Less dep. 50%	6534.				
Present day value	6534.	6/11—	3564.	5/11—	2970.
100 Barclay St. Four story & bsmt. Brick apts. Eight family. 25′0 x 65′0 x 50′0 = 81250 cu. ft. @ .35	28437.				
Less dep. 33⅓%	9479.				
Present day value	18958.	6/13—	8750.	7/13—	10208.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share	*City Share*
102 Barclay St. Four story & bsmt. Brick apt. Eight family. 25′0 x 65′0 x 50′0 = 81250 cu. ft. @ .35	28437.		
Less dep. 33⅓%	9479.		
Present day value	18958.	6/13— 8750.	7/13— 10208.
104 Barclay St. Four story & bsmt. Brick apt. Eight family. 25′0 x 65′0 x 50′0 = 81250 cu. ft. @ .35	28437.		
Less dep. 33⅓%	9479.		
Present day value	18958.	6/13— 8750.	7/13— 10208.
106 Barclay St. Three story & bsmt. Frame—one store. Three flats. 25′0 x 65′0 x 38′0 = 61750 cu. ft. @ .30	18525.		
Less dep. 50%	9262.		
Present day value	9262.	6/13— 4275.	7/13— 4988.
108 Barclay St. Three story & bsmt. Brick—six family. 25′0 x 70′0 x 40′0 = 70000 cu. ft. @ .35	24500.		
Less dep. 33⅓%	8167.		
Present day value	16333.	3/7— 7000.	4/7— 9333.
110 Barclay St. Three story & bsmt. Four family frame house. 20′0 x 60′0 x 36′0 = 43200 cu. ft. @ .27	11664.		
Less dep. 60%	6998.		
Present day value	4666.	1/2— 2333.	1/2— 2333.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share		*City Share*	
112 Barclay St. Three story & bsmt. Frame — three family house. 25′0 x 45′0 x 36′0 = 40500 cu. ft. @ .27	10935.				
Less dep. 60%	6561.				
Present day value	4374.	2/3—	2916.	1/3—	1458.
114-116 Barclay St. Two story & bsmt. Frame & brick Synagogue. Front part frame (two story). 25′0 x 50′0 x 30′0 = 37500 cu. ft. @ .27	10125.				
Less dep. 60%	6075.				
Present day value	4050.	3/5—	2430.	2/5—	1620.
Rear—Two story & bsmt. Brick bldg. 25′0 x 34′0 x 30′0 = 25500 cu. ft. @ .32	8160.				
Less dep. 40%	3264.				
Present day value	4896.				4896.
Rear—Two story & bsmt. Frame. 25′0 x 16′0 x 26′0 = 10400 cu. ft. @ .27	2808.				
Less dep. 60%	1685.				
Present day value	1123.				1123.
116 Barclay St. One and one half story & bsmt. Frame house. One family. 14′0 x 25′0 x 22′0 = 7700 cu. ft. @ .25	1925.				
Less dep. 60%	1155.				
Present day value	770.		770.		

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share	*City Share*
Rear — side extension on brick bldg. at 114 Barclay St. Two story frame. 16′0 x 10′0 x 16′0 = 2560 cu. ft. @ .27	691.		
Less dep. 60%	415.		
Present day value	276.		276.
118 Barclay St. Four story & bsmt. Brick stores & apts. Front part of bldg. (30′0 depth) 36′0 x 24′0 x 50′0 = 43200 cu. ft.			
20′0 x 6′0 x 50′0 = 6000 cu. ft.			
43200 cu. ft.			
6000 cu. ft.			
49200 cu. ft. @ .35	17220.		
Less dep. 25%	4305.		
Present day value	12915.	12915.	
Rear Section. 28′0 x 50′0 x 50′0 = 40000 cu. ft. @ .35	24500.		
Less dep. 25%	6125.		
Present day value	18375.		18375.
120 Barclay St. Three story & bsmt. Brick apt. & stores. One store—three family. 25′0 x 63′0 x 40′0 = 63000 cu. ft. @ .35	22050.		
Less dep. 25%	5512.		
Present day value	16538.	10/21— 7875.	11/21— 8663.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share		*City Share*	
122 Barclay St. Two story & bsmt. Two family frame house. 17′0 x 48′0 x 26′0 = 21216 cu. ft. @ .27	5728.				
Less dep. 66⅔%	3819.				
Present day value	1909.	5/8—	1194.	3/8—	715.
Rear—One story brick factory. 25′0 x 44′0 x 16′0 = 17600 cu. ft. @ .30	5280.				
Less dep. 20%	1056.				
Present day value	4224.				4224.
124 Barclay St. Three story & bsmt. Three family brick house. 25′0 x 55′0 x 40′0 = 55000 cu. ft. @ .35	19250.				
Less dep. 33⅓%	6417.				
Present day value	12833.	6/11—	6999.	5/11—	5834.
126 Barclay St. Two story & bsmt. Two family house. 15′0 x 51′0 x 26′0 = 19890 cu. ft. @ .27	5370.				
Less dep. 50%	2685.				
Present day value	2685.	10/17—	1580.	7/17—	1105.
Rear — 124-126 Barclay St. One story brick & cement block garage for 5 cars. Cement block partitions. Cement block fence. Cement paving. 50′0 x 20′0 x 15′0 = 15000 cu. ft. @ .23	3450.				
Less dep. 10%	345.				
Present day value	3105.				3105.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share	*City Share*	
128 Barclay St. One and one half story & bsmt. Two family frame house. 25′0 x 25′0 x 22′0 = 13750 cu. ft. @ .25	3438.			
Less dep. 66⅔%	2292.			10
Present day value	1146.	1146.		
130-132-134 Barclay St. Two and one-half and three story & bsmt. Frame house. 65′0 x 40′ x 36′0 = 93600 cu. ft. @ .27	25272.			
Less dep. 66⅔%	16848.			
Present day value	8424.	3/4— 6318.	1/4— 2106.	20
Five family.				
Rear — 130-132-134 Barclay St. One & two story brick stable & garage. (Two story rear of 134 Barclay St.) 25′0 x 25′0 x 24′0 = 15000 cu. ft.				
One story rear 130-132 25′0 x 50′0 x 16′0 = 20000 cu. ft.				30
26′0 x 28′0 x 16′0 = 11648 cu. ft.				
20000 cu. ft.				
15000 cu. ft.				
46648 cu. ft. @ .20	9330.			
Less dep. 33⅓%	3110.			
Present day value	6220.		6220.	40

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

			Pru. Share	*City Share*
	Cement yard. Frame Shed ..... 10'0 x 30'0 x 10'0 = 3000 cu. ft.	No Value.		
10	136 Barclay St. Three story & bsmt. Three family frame house. 20'0 x 25'0 x 36'0 = 18000 cu. ft. @ .27	4860.		
	Less dep. 66⅔%.....	3240.		
	Present day value.....	1620.	1620.	
	71 Waverly Ave. and 140 Barclay St. Three story & bsmt. Three family frame house. 25'0 x 45'0 x 36'0 = 40500 cu. ft. @ .27	10935.		
20	Less dep. 66⅔%.....	7290.		
	Present day value.....	3645.	3645.	
	69 Waverly Ave. Three story & bsmt. Three family frame house. 22'0 x 50'0 x 36'0 = 39600 cu. ft. @ .27.....	10692.		
	Less dep. 66⅔%.....	7128.		
30	Present day value.....	3564.		3564.
	67 Waverly Ave. Three story & bsmt. One store & two family frame bldg. 22'0 x 56'0 x 36'0 = 44352 cu. ft. @ .27	11975.		
	Less dep. 66⅔%.....	7983.		
40	Present day value.....	3992.		3992.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share	*City Share*
65 Waverly Ave. Three story & bsmt. One store & two flats frame bldg. 22′0 x 50′0 x 36′0 = 39600 cu. ft. @ .27	10692.		
Less dep. 66⅔%	7128.		
Present day value	3564.		3564.
63 Waverly Ave. Three story & bsmt. One store & two family frame bldg. 22′0 x 50′0 x 36′0 = 39600 cu. ft. @ .27	10692.		
Less dep. 66⅔%	7128.		
Present day value	3564.		3564.
117½ Somerset St. Two story & bsmt. One store & two family brick & frame bldg. 16′0 x 45′0 x 32′0 = 23040 cu. ft. @ .32	7372.		
Less dep. 50%	3686.		
Present day value	3686.	2/3— 2457.	1/3— 1229.
117 Somerset St. Two story & bsmt. One family frame house. 15′0 x 45′0 x 30′0 = 20250 cu. ft. @ .27	5467.		
Less dep. 66⅔%	3644.		
Present day value	1823.	2/3— 1215.	1/3— 608.
115½ Somerset St. Two story & bsmt. One family frame house. 15′0 x 45′0 x 30′0 = 20250 cu. ft. @ .27	5467.		
Less dep. 66⅔%	3644.		
Present day value	1823.	2/3— 1215.	1/3— 608.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

			Pru. Share		*City Share*	
	115 Somerset St. Two story & bsmt. One family frame House. 15′0 x 45′0 x 30′0 = 20250 cu. ft. @ .27	5467.				
	Less dep. 66⅔%	3644.				
10	Present day value	1823.	2/3—	1215.	1/3—	608.
	113½ Somerset St. Two story & bsmt. One family frame house. 15′0 x 45′0 x 30′0 = 20250 cu. ft. @ .27	5467.				
	Less dep. 66⅔%	3644.				
	Present day value	1823.	2/3—	1215.	1/3—	608.
20	113 Somerset St. Two Story & bsmt. One family frame house. 15′0 x 45′0 x 30′0 = 20250 cu. ft. @ .27	5467.				
	Less dep. 66⅔%	3644.				
	Present day value	1823.	2/3—	1215.	1/3—	608.
	111 Somerset St. Two story & bsmt. One family frame store & flats. 18′0 x 70′0 x					
30	30′0 = 37800 cu. ft. @ .30	11340.				
	Less dep. 50%	5670.				
	Present day value	5670.	3/7—	2430.	4/7—	3240.
	109 Somerset St. Three story & bsmt. Three family house. Frame. 25′0 x 70′0 x 36′0 = 63000 cu. ft. @ .27	17010.				
	Less dep. 50%	8505.				
40	Present day value	8505.	3/7—	3645.	4/7—	4860.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share		*City Share*	
107 Somerset St. Three story & bsmt. Three family frame house. 22′0 x 50′0 x 38′0 = 41800 cu. ft. @ .27	11286.				
Less dep. 60%	6771.				
Present day value	4515.	3/5—	2709.	2/5—	1806.
105 Somerset St. Three story & bsmt. Three family brick. 22′0 x 72′0 x 40′0 = 63360 cu. ft. @ .35	22176.				
Less dep. 33⅓%	7392.				
Present day value	14784.	5/12—	6160.	7/12—	8624.
103 Somerset St. Three story & bsmt. Three family frame house. 22′0 x 60′0 x 36′0 = 47520 cu. ft. @ .27	12830.				
Less dep. 60%	7698.				
Present day value	5132.	1/2—	2566.	1/2—	2566.
101 Somerset St. Two story & bsmt. Two family frame house. 22′0 x 50′0 x 24′0 = 26400 cu. ft. @ .25	6600.				
Less dep. 60%	3960.				
Present day value	2640.	3/5—	1584.	2/5—	1056.
Rear—Two story brick factory bldg. 25′0 x 20′0 x 24′0 = 12000 cu. ft. @ .30	3600.				
Less dep. 20%	720.				
Present day value	2880.				2880.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

			Pru. Share		*City Share*	
	Rear—One story brick factory bldg. 25′0 x 20′0 x 16′0 = 8000 cu. ft. @ .30....	2400.				
	Less dep. 20%.....	480.				
10	Present day value.....	1920.				1920.
	99 Somerset St. One story brick factory bldg. 25′0 x 100′0 x 16′0 = 40000 cu. ft. @ .30	12000.				
	Less dep. 20%.....	2400.				
	Present day value.....	9600.	3/10—	2880.	7/10—	6720.
20	97 Somerset St. Four story & bsmt. Eight family brick apt. house. 25′0 x 70′0 x 50′0 = 87500 @ .35	30625.				
	Less dep. 33⅓%.....	10208.				
	Present day value.....	20417.	3/7—	8750.	4/7—	11667.
30	95 Somerset St. One and one-half story & bsmt. One family frame house. 20′0 x 25′0 x 26′0 = 13000 cu. ft. @ .25	3250.				
	Less dep. 66⅔%.....	2166.				
	Present day value.....	1084.		1084.		
	93 Somerset St. One story frame and cor. iron shed. 25′0 x 65′0 x 12′0 = 19500 cu. ft. @ .15.....	2925.				
	Less dep. 66⅔%.....	1950.				
40	Present day value.....	975.	5/11—	443.	6/11—	542.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share		*City Share*	
Rear—One story frame and cor. iron shed. 25′0 x 20′0 x 14′0 = 7000 cu. ft. @ .15	1050.				
Less dep. 66⅔%.....	700.				
Present day value.....	350.			350.	10
91 Somerset St. Three story & bsmt. Three family frame bldg. Stores & apts. 25′0 x 30′0 x 36′0 = 27000 cu. ft. @ .30.....	8100.				
Less dep. 50%.....	4050.				
Present day value.....	4050.		4050.		
89 Somerset St. Three story & bsmt. Three family frame house. 23′0 x 50′0 x 36′0 = 41400 cu. ft. @ .27	11178.				20
Less dep. 66⅔%.....	7452.				
Present day value.....	3726.	3/5—	2235.	2/5— 1491.	
Rear—Two story & bsmt. frame house. 22′0 x 30′0 x 24′0 = 15840 cu. ft. @ .25	3960.				
Less dep. 66⅔%.....	2640.				30
Present day value.....	1320.			1320.	
87 Somerset St. Three story & bsmt. Three family frame house. Front Portion. 20′6″ x 15′0 x 36′0 = 11070 cu. ft. @ .27.....	2988.				
Less dep. 50%.....	1494.				
Present day value.....	1494.		1494.		40
Rear Portion. 12′0 x 30′0 x 36′0 = 12960 cu. ft. @ .27	3499.				
Less dep. 50%.....	1750.				
Present day value.....	1749.	1/2—	874.	1/2— 874.	

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share	*City Share*
85 Somerset St. Two story & bsmt. Two family frame house. 22′0 x 55′0 x 30′0 = 36300 cu. ft. @ .25	9075.		
Less dep. 66⅔%	6050.		
Present day value	3025.	6/11— 1650.	5/11— 1375.
83 Somerset St. Three story & bsmt. Three family frame house. 22′0 x 55′0 x 36′0 = 43560 cu. ft. @ .27	11761.		
Less dep. 60%	7056.		
Present day value	4705.	6/11— 2568.	5/11— 2137.
81 Somerset St. Two story & bsmt. Two family frame house. 20′0 x 60′0 x 30′0 = 36000 cu. ft. @ .27	9720.		
Less dep. 60%	5832.		
Present day value	3888.	1/2— 1944.	1/2— 1944.
79 Somerset St. Four story & bsmt. Brick apt. eight family. 26′0 x 70′0 x 50′0 = 91000 cu. ft. @ .35	31850.		
Less dep. 25%	7962.		
Present day value	23888.	3/7— 10238.	4/7— 13650.
77 Somerset St. Four story & bsmt. Brick apt. Eight family. 24′0 x 80′0 x 50′0 = 96,000 cu. ft. @ .35	33600.		
Less dep. 25%	8400.		
Present day value	25200.	3/8— 9450.	5/8— 15750.

Exhibit 2, Annexed to Testimony of Daniel W. McGee.

		Pru. Share	*City Share*
75 Somerset St. Two story bsmt. Frame & brick. Stores & flats. Four family. 20′0 x 50′0 x 30′0 = 30000 cu. ft. @ .30	9000.		
Less dep. 66⅔%	6000.		
Present day value	3000.	3/5— 1800.	2/5— 1200.
73 Somerset St. Three story & bsmt. Three family frame house. 20′0 x 60′0 x 36′0 = 43200 cu. ft. @ .27	11664.		
Less dep. 66⅔%	7776.		
Present day value	3888.	1/2— 1944.	1/2— 1944.
71 Somerset St. Four story & bsmt. Brick apt. Four family. 22′6″ x 70′0 x 50′0 = 78750 cu. ft. @ .35	27562.		
Less dep. .25%	6890.		
Present day value	20672.	3/7— 8859.	4/7— 11813.
65-67 Somerset St. Four story & bsmt. Brick apt. house. Sixteen families. 60′0 x 75′0 x 50′0 = 22500 cu. ft. @ .35	78750.		
Less dep. 25%	19687.		
Present day value	59063.	2/5— 23625.	3/5— 35438.
		401457.	515821.

Pru. Share $401457.
City Share 515821.

$917278."

Mr. Lane: Are you through?

Mr. Groel: Yes.

William H. Kennedy, for Prosecutors—
Direct—Cross.

WILLIAM HAROLD KENNEDY, a witness called on behalf of Prosecutors, being duly sworn according to law, on his oath says:

Direct examination by Mr. Lane:

Q. Where do you live? A. 10 Peck Ave., Newark, N. J.

Q. What is your business? A. Builder.

Q. How long have you been in the building business? A. Sixteen years.

Q. And where? A. West Hudson and Essex County; Hudson County.

Q. Is that your employment at the present time? A. Yes.

Q. Are you accustomed to ascertain the value of buildings and so forth? A. Yes.

Q. Did you examine any of the buildings mentioned in this housing plan? A. Yes, sir.

Q. Which buildings did you examine? A. I examined numbers 1, 3, 7, 9, 15, 17, 25, 29 and 37 Somerset Street, and 68, 62, 64, 66 and 32 Barclay Street.

Q. Are those the only buildings that you did examine? A. Yes that is all.

Q. Did you examine them for the purpose of determining or checking upon the figures of Mr. McGee? A. Yes, sir.

Q. Will you take the buildings in such order as you desire to take them and tell what your measurements showed and appraisal?

Mr. Groel: May I cross-examine?
Mr. Lane: Yes.

Cross-examination by Mr. Groel:

Q. What sort of buildings have you been constructing and erecting through the past sixteen

years? A. One-family, two-family, six-family, fifteen-family, churches, schools, theatres, factories.

Q. What are some of the buildings that you did erect and where are they? A. I did the Pallantina Sisters Charity building, in Kearny.

Q. What other buildings? A. I did buildings for them up in Monroe, New York State.

Q. I want buildings in Essex County; what buildings have you built? A. I realtered Commissioner Gillen's office building, on Broad Street; did alteration of the Wilson Avenue School, Monmouth Street School, Park Avenue stores, a row of stores on Park Avenue, a row of stores on Main Street, East Orange, work for the General Electric Company, Woburn Degreasing Co.——

Q. Where did you do this work for the Woburn Degreasing Co.? A. In Harrison.

Q. Was this work that you did construction work, constructing new buildings or repairing the buildings? A. New buildings.

Q. Complete new buildings? A. Yes. I don't say all; there were some repairs.

Q. The repairing of Commissioner Gillen's office building wasn't rebuilding? A. No, that was an alteration.

Q. Did you build these buildings or did you work for someone? A. No, I built them myself, my own company.

Q. What does your company consist of? A. Myself.

Q. Just yourself? A. That is all.

Q. Of these buildings that you have mentioned, which were complete new buildings and which were alterations and store front? A. The Pallatina Sisters was a new building, the stores up in

Park Avenue, the stores in Main Street, East Orange.

Q. All the rest were alterations? A. And I can give you considerable other new buildings, if you want them.

Q. All these that you mentioned? A. They are half and half, half alteration and half new buildings.

Mr. Groel: I object to this witness's qualifications on the ground that he is incompetent to testify.

Further direct examination by Mr. Lane:

Q. Have you had technical education? A. Yes.

Q. What? A. Four years in Newark Tech, six years in Columbia University.

Q. Will you go ahead and proceed with your testimony? Take the first building you want to refer to, Mr. Kennedy. A. No. 3 Somerset Street is a two-family, three story frame dwelling. The main body of the house is 30 by 34 by 22; there are 12,340 cubic feet in the main body; the rear end of the house is an extension of 16 by 12 by 34; there are 5548 cubic feet in the rear; a total of 17,988 cubic feet at 27 cents; 66 per cent depreciation.

Q. The valuation that you put on it is $4866? A. Yes.

Q. And you used the same price per cubic foot as Mr. McGee did, did you not? A. Yes, in this case.

Q. The discrepancy arises in the cubical contents, does it not? A. Yes.

Q. And Mr. McGee has stated that the cubical contents of the front part of that building is 22 by 50 by 34; where is his error? A. In the back.

Q. That is, he has included the back in the front? A. He has included it solid right through.

Q. So that his figure of 10,098 upon his same method of calculation with respect to the price per cubic foot, would be $4,866? A. Yes, sir.

Q. You have apportioned this how? A. I have apportioned two-thirds to the Prudential and one-third to the City.

Q. He apportioned three-fifths and two-fifths. What have you to say about that method of apportionment? A. In his figures he cannot do anything else but take fifths.

Q. Did you measure this yourself? A. Yes, sir.

Q. In your apportionment, arriving at two-thirds and one-third, did you actually apportion the cubic footage between the portion on the City property and the portion on the Prudential property? A. Yes, sir.

Q. So that you get 12,340 cubic feet on the Prudential property? A. Yes, sir.

Q. That being on Prudential property, 30 feet by 34? A. By 22.

Q. And the rear end on the City property, being 16 by 12 by 34? A. Yes, sir.

Q. Is there a shed in the rear of that? A. No, not in this house.

Q. No. 3? A. Yes, sir; there is a shed.

Q. How have you arrived at the cubical contents and the value of that? A. There is a shed 20 by 20 by 12; it is 4800 cubic feet; it is just plain pine board such as used in factories; is nothing there at all, only one side; 10 cents a cubic foot I allowed, less depreciation of 80 per cent. Depreciation very bad.

Q. Mr. McGee has computed the value of that at 15 cents per cubic foot. What have you to say with respect to 15 cents? A. It is too much money for that type of building.

Q. And he has given depreciation of only 50 per cent; you have allowed 80. Why 80? A. Because it is in bad shape; there are no walls to it. There are only four posts and one side wall.

Q. 7 and 9 Somerset Street, Mr. McGee has charged or computed the value of that at 35 cents per cubic foot; what have you to say with respect to that? A. A three-story brick duplex house of that type can be built for 30 cents.

Q. The next building that you looked at? A. 25 Somerset Street, three story, three-family house. The main body of the building is 25 by 30 by 36, 27,000 cubic feet. In the rear is one story, 12 by 15 by 12, 3780 cubic feet. Next to that is attached to it, what we call a lean-to wood shed, 5 by 15 by 8, 600 cubic feet. I have taken 31,380 cubic feet all told. I have allowed a price of 27 cents a cubic foot. This type of house can be built for from 22 to 25 cents a cubic foot.

Q. Figuring it at 27 cents, which is the figure of Mr. McGee, what amount do you get? A. I get $8,472.

Q. Less depreciation? A. 60 per cent, $5,083, present-day value $2,389.

Q. You have apportioned six-sevenths to the Prudential and one-seventh to the City? A. Yes.

Q. Or a total to the Prudential of—? A. $2040.

Q. And to the City—? A. $340.

Q. Mr. McGee arrived at a conclusion that there are 36,000 cubic feet in the building, instead of your figure of 31,380 cubic feet. How is the discrepancy explained? A. I suppose through the one-story in the rear, he has taken as a solid on the second floor and continued it through, over his length and width.

Q. And in fact it is a one-tsory? A. One story.

Q. What is the next building that you looked at? A. 29 Somerset Street, three story, five-

family house, 25 by 50 by 36; main body of the building has 45,000 cubic feet; there is a question on the rear porch, 6 by 25 by 36. That would make a total of—in that porch there are 5400 cubic feet, making a total of 50,400 cubic feet.

Q. The cubic footage given by Mr. McGee on that building is 54,000 cubic feet. Can you explain the discrepancy? A. No, I cannot, unless he got the length of his building—

Mr. Groel: I object to that.

Q. You made the measurements yourself, Mr. Kennedy? A. Yes.

Q. And these are the measurements which you made? A. Yes.

Q. You have included in that, 5400 cubic feet for the rear open porch, haven't you? A. Yes.

Q. And that rear open porch is what kind of an open porch? A. Just a plain open porch, balustrade, common rise and tread.

Q. And including that, you only get 50,400 cubic feet, as against Mr. McGee's 54,000 feet? A. Yes.

Q. What is the next one? A. 37 Somerset Street, two and one-half story, basement, frame house; main body of building 30 by 17 by 28, or 14,280 cubic feet; rear one story extension is 20 by 17 by 12, or 4,180 cubic feet; the total cubic feet are 18,460, at 25 cents, or $4,615; less depreciation of 50 per cent, $2,307; present-day value $2,306; four-fifths to the Prudential, or $1,840, and one-fifth to the City, or $460.

Q. You have got four-fifths to the Prudential and Mr. McGee has three-fifths to the Prudential. What is the discrepancy? A. The discrepancy is in—

Mr. Groel: I object to any speculation as to how Mr. McGee reached the figures.

A. It is in the rear extension.

Q. That is the rear one story extension—

Mr. Groel: I object to that.

Q. Mr. McGee arrived at 28,000 cubic feet. Can you get 28,000 cubic feet in that building, unless you include that rear extension as solid with the building? A. That is the only way you can get it.

Q. What is the next one you looked at? A. 32 Barclay Street, one and one-half story frame house; main body of the building 14 by 28 by 18, or 7,136 cubic feet, at 25 cents; rear one-story extension shed 14 by 12 by 12, 1,680 cubic feet at 12 cents; rear wood shed for storing wood, connected to house, 8 by 26 by 10, 2,080 cubic feet, at 10 cents; total cubic feet of all buildings 10,896.

Q. Now, Mr. McGee in his figures on that has given the cubic footage as 14,580 cubic feet. How can he arrive at that figure?

Mr. Groel: I object to how he can arrive at that figure.

A. By making a mistake on the rear extension and making it all solid.

Q. He has also used throughout a value for cubic footage of 25 cents; what have you to say with respect to that? A. 25 cents is all right for the main part of the building.

Q. How about the other part? A. The other part is 12 cents and the wood shed would be 10 cents a cubic foot.

Q. How have you arrived at the value? A. I have taken the value of the wood shed in the back at 10 cents a cubic foot, $208; 75 per cent depre-

ciation on that, or $116; present-day value, $92. The value of rear one story extension connected to house, 12 cents a cubic foot, or $201, less 50 per cent depreciation, $100; present-day value $101.

Q. You now mentioned seven out of the thirteen in all which you examined? A. Yes.

Q. What have you to say with respect to the value of these buildings on the front and rear? A. Well, it is true the rear of the building is sometimes equal to the cost or value of the whole main part of the buildings, and sometimes more, but in this case, ninety per cent of them are less.

Q. Why? A. In the first place, the average house has just one toilet and a sink. The front of the house was very elaborately constructed, not only on the exterior, but the stair wells, the balustrates, the newels and the stairs themselves.

Q. Go on, tell us more about the rear. A. The rear is just plain construction, plain window frames, plain sash, clap-boards. In some cases the extensions have no cellars, just brick piers. The front part of the house has a cellar, brick sills and cellar.

Q. How about the stairways on the outside of the building? A. The outside of the house and the stairway is an ordinary plain pine stairway, nothing elaborate at all.

Q. How about the trim on the inside? A. The trim on the inside is plain cypress. In some cases it is oak and in some cases it is chestnut. Different types.

Q. Generally speaking, what is the comparison between the front and the rear of houses like these? A. Do you mean in price per cubic foot?

Q. Yes. A. The house cost 25 cents a cubic foot all told, a house of that type in the rear

about 20 cents. In the front I would divide it and give 25 cents to the front.

Q. How about that portion which is included in wood sheds and stair case? A. You would have to take that as an individual proposition because it is only about 10 cents a cubic foot, just wood shed, just plain pine board, there is nothing to it at all.

Cross-examination by Mr. Groel:

Q. As I understand it, you examined the buildings you testified to here, that is, the various ones Mr. Lane has examined you on? A. Yes, sir.

Q. Do you know how many buildings there are on this site? A. I could not tell you that, about a hundred and some odd.

Q. 142 buildings, but these particular buildings you did examine? A. Yes, sir.

Q. You did not examine any other buildings? A. No, sir.

Q. Yet you tell me that ninety per cent of these buildings are worth less in the front than they are in the rear. How can you say ninety per cent are worth less in the front than they are in the rear when you have not examined them? A. I have been walking around in the back yards.

Q. You have been walking around in the back yards, then you change your statement, you have examined them?

Mr. Lane: He did not change his statement. I object to that.

A. I just looked at them.

Q. You just looked at them? A. That is all.

Q. You feel that by just looking at them you can determine that they are worth less in the

front than they are in the rear? A. Generally, yes.

Q. Does that apply to brick buildings as well as frame buildings? A. Yes, sir.

Q. Even when there are grays to light shades, etc.? A. Yes, sir.

Q. Now, as I understand it, you say that these buildings are mostly plain buildings, the trim is plain, etc. Did you go into these buildings? A. The ones I examined, yes, sir.

Q. But you did not go into any of the others? A. No, sir.

Q. Yet you say the trim on the inside is plain, how do you know it is plain when you did not go into them? A. I was answering the question on these buildings?

Q. Oh, just on the buildings you examined? A. Yes, sir.

Q. How many buildings did you examine altogether? A. About thirteen.

Q. About 13 out of 142? A. Yes, sir.

Q. As a matter of fact, in buildings of this character isn't it quite frequent to put the toilets and the plumbing facilities in the rear of the buildings? A. I said they were there.

Q. Yes, and isn't that a considerable item of expense in the construction of a building, the plumbing facilities? A. Not the plumbing they have got in there.

Q. In any building is it an item? A. Sure it is an item of expense.

Q. It is a considerable item of expense? A. Absolutely.

Q. So that if the plumbing is in the rear of most of these buildings it would mean that the rear is more valuable than the front? A. No, sir.

Q. Even though the plumbing were located in the rear? A. No, sir, there is no comparison with the type of plumbing and that type of house you got with the construction in the front of those. You could not compare it and give it a difference in the cubic foot, so the whole price was so much per cubic foot.

Q. Isn't plumbing one of the largest items of expense in the construction of any building? A. It is, if it is a modern house, yes.

Q. Even if it is not a modern house? A. No, there are only two fixtures, you got two sinks and a toilet.

Q. How about labor? A. The cost of that, speaking offhand, there is no comparison, as I said before, between what little plumbing they have in those houses and the construction of other houses in front.

Q. As a matter of fact, whether they have old construction or new, doesn't the plumbing work have to be run out to the center of the street, the sewer tapped and all that work done to connect these? A. Yes, sir.

Q. Isn't that an item of expense in putting in the plumbing facilities? A. Yes, sir.

Q. What is there in the front of the building that makes it so much more expensive in this building for the plumbing work? A. I have not said it was any more expensive for the plumbing work. I meant for that type of construction, in the front it cost so much to duplicate or build a building of that type. For the amount of plumbing work that is in there, there would be no comparison for what is on the front of it.

Q. Is it what is on the front that makes it so expensive? A. The average house is of special design, the window heights, the casings of the

doors are all heavy special design, the doors and stair openings, the moldings are different, Scotia, Coronia, Egg and Dart and Rosetts, which all cost more to turn out in the mill.

Q. As I understand it, all these houses are specially designed houses with elaborate fronts?

Mr. Lane: I object to that. He did not say any one of the houses were specially designed houses.

Mr. Groel: He said all.

Mr. Lane: He did not say anything about it.

Q. Well, was every house that you have examined here of this special construction that you speak of? A. There is none of them special construction, just a unique design, that is all.

Q. You mean to say most of these houses are of unique design? A. Yes they are, at the time when these houses were constructed, that period of architecture, then it was unique.

Q. Because it is unique does that make it expensive? A. Yes, sir, it does, because these buildings, you have Coronia and fluted columns all through the building, where are you going to have fluted columns today in the average building.

Q. You examined 25 Somerset Street, you said, didn't you? A. Yes, I have got 25 Somerset Street.

Q. Now what was there particularly elaborate about that building in the front? A. Well, just as I explained to you before——

Q. Let's have it exactly? A. The window frames have got elaborate design——

Q. In what respect is it elaborate? A. In regard to its moldings, the way the architect designed it.

Q. What is the window frame worth? A. That type of window frame, I could not tell you, but an ordinary window frame you can get for about $2.50 to $3, I guess, but that type of window frame you could not.

Q. You can get it for two or three dollars, then the replacement value of these window frames would be perhaps thirty per cent. more if they are as elaborate as you say? A. Oh, yes, fifty per cent., some of them.

Q. Fifty per cent. How many window frames were there in this house? A. I don't know, I could not tell you offhand.

Q. How many on the front? A. The average room, there is two, sometimes three.

Q. I know, but in this particular house? A. In this particular house I should judge anywhere from five to six.

Q. You don't know? A. No, maybe seven.

Q. About seven, and you say fifty per cent., so that the total amount of the window frames would run about $35? A. No, you said $3 apiece.

Q. Yes. A. No, the average window frame of that type would run you anywhere from $25 to $30 to get it today.

Q. $25 to $30? A. Sure, and they have to be made in a mill, all these moldings are usually shaped by hand with special knives.

Q. What kind of a house is this house you are talking about? A. It says here, it is a three-story, three family house.

Q. Who occupied that house? A. Some colored people, so far as I know. I went there and colored people let me in.

Q. Is it a house of unusual characteristics, so far as replacement of the house is concerned? A. No, I would not say that, not inside.

Q. Nor outside, either, is it, as a matter of fact? A. Not at that time when they were building that type of building, but today to make that type of house it would.

Q. Well, now, you are talking about the replacement value, aren't you, in your testimony? A. Yes, sir.

Q. And you subtracted depreciation, didn't you? A. Yes.

Q. Then why do you say that now it would not cost as much as it did before? A. Well, there are other parts of the building besides that. That is not the only part.

Q. How about this house 29 Somerset Street, next to 25 Somerset Street, when you were testifying as to the cubical content of the building erected on that property, did you take into consideration anything in the rear of the property, any building in the rear? A. Yes, I allowed $340 for it.

Q. $340, what is that building in the rear? A. It is a one story 12 x 15 x 12, 3,780 cubic feet, woodshed there attached to it, what you call an old fashioned lean-to. It has only got three walls.

Q. Is that attached to the house? A. Yes, made out of pine boards.

Q. Made out of pine boards and attached to the house itself? A. Yes, sir.

Q. Now in the rear of the house, in the yard, is there any building? A. I did not see anything else.

Q. You did not see anything else? A. No.

Q. As a matter of fact, there is a one story brick three car garage in the rear, isn't there? A. Not when I was there—25—what are you talking about?

Q. 25 Somerset Street. A. Yes, there is a garage, a new one, about a year or a year and a half old.

Q. You did not put that into your figures? A. I did not take that into consideration because it is O. K., the building is all right.

Q. Yes, and in figuring your proportion between the Prudential and the City of Newark you gave the City of Newark one-seventh and the Prudential six-seventhsf A. I did not say so at all.

Mr. Lane: The question is unfair because his testimony is that on 29 his apportionment is only on the front part.

Witness: Yes, sir, it is just on the front part of the building from the street line back, no garage at all, because the garage there, that is all right, an up to date garage.

Q. What would it cost to construct a two-car garage today? A. It all depends what you built it out of—frame?

Q. Frame garage. A. Two cars, to build it anywhere from $300 to $500, if you want an average one, runs around $300.

Q. How much would that be per cubic foot? A. I can figure that up easy enough for you—about from ten to fifteen cents a foot.

Q. Ten to fifteen cents? A. Yes, sir, a modern garage with your coment floor and footing courses.

Q. And that is—what was the amount Mr. McGee allowed per cubic foot for the frame garage in the rear of 3 Somerset Street, was it not? A. Yes, but that is a different construction, what I figured.

Q. What is different between that construction and what you figured? A. No. 3 Somerset Street,

there is nothing there but four posts and a few bricks for the footing course, there is no floor in it, there is no doors, and if there were doors, why there were only about one or two, so far as I could see. The type of construction was very poor, and on the finished garage that I gave you a price on you have a clapboard or novelty siding; on this garage there was nothing but just plain North Carolina pine, ten-inch ship lap.

Q. What kind of a roof was on this garage? A. A rubberoid roof.

Q. Was it a peaked or flat roof? A. A flat roof.

Q. What depreciation did you allow for the building? A. Eighty per cent.

Q. Eighty per cent; do you ever allow a depreciation on any building to the extent of 80 per cent? A. If the building is there, I would, if there is enough there to allow any depreciation on.

Q. Can a building be used that has a depreciation of 80 per cent? A. That building cannot be used unless you build it over.

Q. It is being used? A. No; how can that be used when there is only one wall to it?

Q. Only one wall? A. Sure.

Q. How does the roof stand if there is only one wall? A. You got your corner posts, intermediate posts, eaves, roof beams and wall.

Q. There is more than just one wall; there is a building there? A. I would not say there was a building; no front in it.

Q. As a rule, that is true of most garages where the doors are open? A. Well, the doors are there, whether they are open or not.

Q. So that building has doors, it has posts, it has walls, it has a roof; it is a real building, after all, is it not? A. No, I would not say it was a building.

Q. What more do you want for a building? A. I would not even keep my Ford in that place up there.

Q. Do you have the total of the value of all the buildings that you have examined? A. No, sir, I do not.

Q. Well, I wonder if you could total that up for me? A. I don't know whether I can do it now or not. I will see if I got it all here. Do you mean altogether?

Q. There are only thirteen. A. And the other divided up——

Mr. Lane: There are not thirteen. In six instances he found——

Witness: Do you want the total value?

Q. I want the total value that you placed on the buildings.

Mr. Lane: Seven out of the thirteen he examined at random.

Mr. McGee: All in a row, though.

Mr. Lane: That is the best way to examine at random, to take something and go right along, one after the other.

Witness: $35,823.

Q. Now, will you just give me the street numbers of the buildings? A. The street numbers?

Q. Yes. A. No. 3.

Q. 3 Barclay Street? A. Somerset.

Q. The individual amount, No. 3 Somerset? A. $4,866, No. 3 Somerset Street.

Q. Now, will you let us have the next? A. No. 3 Somerset, rear shed, $480.

Q. Next one, please? A. Nos. 7-9—it is only the question of the cost of those two houses—take No. 25 Somerset Street, $8,472; No. 37, $4,615;

and No. 32 Barclay Street, $2,192; 29 Somerset Street, $15,200. Now I will give you 7-9, $34,320.

Q. How many buildings did you examine? A. Thirteen.

Q. And of the thirteen buildings that you examined— A. There are seven all told——

Q. You differ with Mr. McGee in his figures on seven? A. On seven, yes.

Q. Each of the buildings that you read off a moment ago are the buildings where you differ with him in his figures? A. Yes, sir.

Further cross-examination by Mr. Bradley:

Q. Mr. Kennedy, when did you make your examination of these buildings? A. I started in a week ago, and I have been up there off and on——

Q. When were you furnished with a copy of Mr. McGee's schedule? A. Sometime last week.

Q. Did you have it before you made your examination of the buildings? A. I had it with me when I was there.

Q. When did you check up the discrepancies that you found? A. I made the measurements on the job and took them in to the office and checked them up.

Q. Do you know Mr. McGee? A. Do I know him?

Q. Yes. A. No, sir, but I have heard of him.

Q. You have not seen him then since you checked up your measurements? A. This is the first time I have seen him.

Q. You have no knowledge whatever of the facts upon which his schedule was based? A. No, sir.

Q. And the architecture that you have spoken of as being unique in some of these houses, what is the characteristic of that architecture that

makes it unique? A. Well, it makes it more expensive, it is very expensive.

Q. In what respect is it expensive, what makes it expensive? A. Well, the design, for example, in the height of the window, the casing of the sash or frame, or the jamb, instead of being plain like that (indicating) is all in decorative molding, rosetts and scrolls.

Q. Mill work? A. Mill work, and it is all done with special knives.

Q. And those houses are somewhat out of date as to architecture, aren't they? A. Yes, sir.

Q. Built, would you say, somewhere in the 1880's or 1890's? A. Well, sometime around that.

Q. There is no demand for that kind of work nowadays, is there? A. No, sir, it is prohibitive for the cost.

Q. Well, even if it were not, there would be no demand for it as a matter of general taste, would there? A. I don't know, I would not say that. More or less the architects, manufacturers and builders have been trying to put something in the mind of the public which is plain, and naturally they lean that way.

Q. And they have been very successful? A. And they have been very successful; it is just like the modernistic architecture of today.

Q. Was all that woodwork thirty, forty or fifty years ago done by machines? A. No, I would not say in all cases, in some cases it is done by hand.

Q. It would be now, wouldn't it? A. Yes, sir, they work it out by knives, special knives, in some cases they would have to hew it out maybe a little by hand work.

Q. Did you ever build a house nowadays with wood of that kind? A. I have not built a house

with wood of that type, I have not, no sir, but I have been under the supervision of a man who constructed houses of that type when I was about, maybe around thirteen or fourteen years old.

Q. How long ago was that? A. Well, that is about sixteen or seventeen years ago.

Further cross-examination by Mr. Groel:

Q. Mr. Kennedy, of the seven buildings of the thirteen that you examined, in which you disagreed with Mr. McGee, do I understand that the total value you placed upon those buildings was $70,145? A. Of the seven that I gave you—did I give you seven figures or six?

Q. Six figures. A. Yes, sir.

Mr. Lane: I offer the computation made by the witness as illustrating the witness's testimony.

(Marked Exhibit B for Prosecutors)

Mr. Groel: May I call Mr. McGee back?

Mr. Lane: I have no objection to your doing that, but I don't want you to understand that I have closed.

Mr. Groel: When you say you have not closed, you mean you have not closed so far as your witnesses are concerned?

Mr. Lane: So far as my witnesses are concerned. I have no objection to your calling Mr. McGee now.

DANIEL W. MCGEE, heretofore sworn, recalled for

Further direct examination by Mr. Groel:

Q. You have heard the testimony of Mr. Kennedy? A. I have.

Q. And you heard him read the figures on the six buildings in which he differed with you as to the amounts?

Mr. Lane: Seven, please.

Witness: He only quoted as to six.

Mr. Lane: He differed as to seven, but he didn't quote one to him.

Q. Have you the method by which you arrived at your figures on the six buildings on which he gave the figures? A. I have.

Q. What is the total value you placed on those buildings? A. $78,711.

Mr. Lane: That all can be arrived at by checking the figures, can it not, it is a mere matter of computation?

Witness: That is all.

Q. Are you certain of your figures? A. I have copied them right from my report here.

Cross-examination by Mr. Lane:

Q. That is a difference of $8,000, isn't it? A. Yes, approximately.

Q. That is approximately $1,000 a building, is that right? A. About that.

Q. Upon the same proportion there would be about 73 buildings, $1,000, would amount to $73,000, wouldn't it?

Mr. Groel: I object to that question.

Q. It would, wouldn't it?

Mr. Groel: I think it is an unfair question.

Mr. Lane: Your question was pure mathematics, my question is also pure mathematics, both questions were directed to——

Mr. Groel: I based it on this particular building.

Mr. Lane: I am basing it on percentage.

Mr. Groel: That is the unfair part of it.

Mr. Lane: I am not going definitely to close this afternoon, although at the present time I don't think I shall have any more testimony.

Mr. Bradley: And when can you let us know?

Mr. Lane: By next week.

Mr. Bradley: Some time during the next week. I would like, if possible to get the whole thing printed up now.

Stipulation.

NEW JERSEY SUPREME COURT.

SOLOMON SIMON,
Prosecutor,

v.

PRUDENTIAL INSURANCE COMPANY,
and others,
Defendants.

On Certiorari.
Stipulation.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to this action that the voters of the City of Newark, at a special election held for that purpose on November 13, 1917, adopted the Commission Form of Government, pursuant to the provisions of an act of the Legislature of the State of New Jersey, entitled:

> "An Act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this state" (approved April 25, 1911),

the title to which act was amended to read as follows:

> "An Act relating to, regulating and providing for the government of cities, towns, townships, boroughs, villages and municipalities governed by boards of commissioners or improvement commissions in this State" (approved April 2, 1912);

and,

IT IS FURTHER STIPULATED AND AGREED that at the organization meeting of the present Board of Commissioners held May 21, 1929, which Board of Commissioners was elected at a regular election held for that purpose on May 14, 1929, the following resolution was adopted by the Board of Commissioners of The City of Newark:

Stipulation.

"Resolved by the Board of Commissioners of the City of Newark that Charles P. Gillen be and he hereby is designated and appointed Director of the Department of Parks and Public Property."

"Resolved by the Board of Commissioners of the City of Newark that all of the executive, administrative, judicial and legislative authority and duties relating to the Public Parks, Shade Tree Bureau, Smoke Abatement Bureau, Bureau of Weights and Measures, Dog Pound, Centre Market and Market, Facilities, all public buildings, except those owned in the name of the City and devoted to the Department of Public Affairs, and Municipal Soldier's and Sailor's Aid Bureau, Printing and Stationery, be and the same are hereby distributed into the Department of Parks and Public Property; and the Director of the Department of Parks and Public Property is hereby vested with all of the powers, authority and rights now or heretofore vested in or given by any statute, charter or ordinance relating to the Public Parks, Shade Tree Bureau, Smoke Abatement Bureau, Bureau of Weights and Measures, Dog Pound, Centre Market and Market Facilities, all public buildings, except those owned in the name of the City and devoted to the Department of Public Affairs, and Municipal Soldier's and Sailor's Aid Bureau, Printing and Stationery, and shall perform all of the duties now or heretofore or hereafter imposed by law with respect thereto."

Merritt Lane,
Attorney of Prosecutor.

Frank H. Boettner,
Frederick H. Groel,
Attorneys of Defendant,
The City of Newark.

Charles B. Bradley,
Attorney of Defendant,
Prudential Insurance
Company of America.

Opinion of Supreme Court.

(Filed June 18, 1931.)

NEW JERSEY SUPREME COURT

No. 237—May Term, 1931.

Solomon Simon, Jacob L. Solomon and Patrick Galante,
Prosecutors,

vs.

Peter O'Toole, Clerk of the City of Newark, New Jersey, Board of Commissioners of the City of Newark, New Jersey, and Prudential Insurance Company of America,
Respondents.

Argued May 7, 1931; Decided June 18, 1931.

Syllabus.

Pursuant to chapters 201 and 202 of the Laws of 1929, the Board of Commissioners of the City of Newark adopted an Ordinance. It recited that "in the interest of the public health, safety and morale certain blocks of unsafe and unsanitary dwellings * * * should be replaced in part by new housing facilities constructed in accord with proper standards of sanitation and safety and provided with appropriate parks and playgrounds," and the willingness of the Prudential Insurance Company to acquire the lands upon which the objectionable dwellings stand, and to construct upon a part thereof such new housing facilities, and to

convey to the city certain other parts for the purpose of such parks and playgrounds. It authorized the execution of a contract between the city and the company, set forth in the ordinance, for carrying out such purposes, and for financing the cost of purchase by the city of that portion of the blocks to be converted into parks and playgrounds. In the agreement the company agrees to take all possible steps to acquire the blocks at the lowest possible prices, to submit to the city, and upon approval to complete, a plan for the construction of new housing facilities occupying strips 30 feet deep on two fronts, leaving a vacant strip 140 feet wide separating the housing facilities, and in consideration thereof the city agreed to purchase of the company such 140 foot strip "for the purpose of parks and playgrounds to be maintained by the city for the benefit of the public at large," paying to the company as the purchase price such proportion of the total price paid by the company for the lands acquired by it as the area of the lands purchased from the company bears to the total area acquired by the company, the city agreeing to acquire for park purposes, either by treaty or condemnation, such portions of the tracts as have not been acquired by the company; *provided, however, that the price to be paid by the city for the 140 foot strip shall in no case exceed $1,200,000;*

Held (1), that the ordinance contemplates the expenditure of public funds for a public purpose only, and not for the purpose of aiding a private enterprise.

Held (2), that the ordinance does not constitute an abuse of discretion by the Board of Commissioners;

Held (3), that the Board of Commissioners had legal power to adopt the ordinance.

On certiorari, etc.

Before Justices Trenchard, Daly and Donges.

For the prosecutors, Herman W. Brams and Merritt Lane.

For the respondents, Frank A. Boettner, Frederick H. Groel, Alfred Hurrell and Charles B. Bradley.

The opinion of the Court was delivered by TRENCHARD, J.

On October 15, 1930, the Board of Commissioners of the City of Newark adopted an ordinance which authorizes the execution of a contract with the Prudential Insurance Company of America, which provides, as hereinafter more fully stated, for the acquisition by the company of two entire blocks in Newark, and the construction on a part thereof by the company of modern housing facilities, and for the purchase by the City from the company of the remaining land for the purpose of parks and playgrounds, pursuant to the provisions of Chapters 201 and 202 of the Laws of 1929.

Before the execution of the contract, the present writ of certiorari was allowed certain taxpayers of the City bringing up such ordinance for review. The reasons filed challenge the validity of the ordinance upon several grounds which may be restated as follows: (1) The ordinance contemplates the expenditure of public funds for a private purpose in aiding The Prudential to carry out the housing plan in question. (2) The ordinance constitutes an abuse of discretion by the commissioners because (a) the price to be paid by the City for the acquisition of the lands is greatly in excess of their true value, and because (b) the

lands to be acquired by the City are wholly unsuitable for the purpose of a public park and will not in fact be used as such. (3) The Board of Commissioners had no legal power to adopt an ordinance for the purchase of parks and playgrounds because under the governing statute all executive, legislative and judicial powers with respect to public parks are lodged solely in the commissioner assigned as Director to the Department of Parks and Public Property, who voted against the adoption of the ordinance.

We think that the ordinance contemplates the expenditure of public funds for a public purpose only, and not for the purpose of aiding a private enterprise.

The prosecutors argue that the real purpose of the ordinance is to authorize such expenditure to aid The Prudential in carrying out a housing plan, thereby depriving the prosecutors, as taxpayers, of their property without due process of law in violation of the Constitution of New Jersey and of the XIVth Amendment to the Constitution of the United States.

We think not. In passing we point out, as was said in North Baptist Church *vs.* Orange, 54 N. J. L. 111, (a somewhat similar case)

> "It is observable that it is no part of our functions to decide whether the scheme adopted in this instance was a wise one. We have no power to try the question whether the advantages that would accrue to the public by reason of this improvement would be greater or less than the burden which it would impose, nor whether the degree of public benefit is so small that it does not justify the taking of land against the will of its owner. These questions have been confided by the legislature in the common council. If it should

> appear that there could not inure to the public any advantage whatever, and that the scheme is designed solely for the benefit of private individuals, the Court could interpose in favor of the landowner whose property is menaced. But when it is perceived that there is a degree of public benefit likely to spring out of the enterprise, all questions of policy in executing it are devolved upon the common council."

Now Section 1 of the ordinance recites the desire of the City that "in the interest of the public health, safety and morals certain blocks of unsafe and unsanitary dwellings * * * should be replaced in part by new housing facilities constructed in accord with proper standards of sanitation and safety and provided with appropriate parks and playgrounds." Section 2 recites the willingness of The Prudential to acquire the tracts of land upon which the objectionable dwellings stand and to construct upon a part thereof such new housing facilities and to convey to the City certain other parts for the purpose of such parks and playgrounds. The succeeding sections authorize the execution of an agreement, fully set forth therein, between the City and The Prudential for carrying out the recited purposes and provide for financing the cost of the purchase by the City of that portion of the blocks in question which the City proposes to convert into parks and playgrounds. That agreement in substance is as follows: (1) The Prudential agrees to take all possible steps to acquire, pursuant to chapters 201 and 202 of the laws of 1929, the blocks in question at the lowest prices obtainable and to submit to the City a project for the construction thereon of the new housing facilities occupying strips 30 feet deep on two fronts, in such manner that there

shall be left vacant an interior strip 140 feet wide separating the housing facilities constructed on existing street fronts. (2) Upon approval by the City of the project, The Prudential contracts to carry the same to completion. (3) The City, in consideration of the acquisition of the blocks by The Prudential *and of The Prudential's contractual undertaking to construct the housing facilities,* agrees to purchase from The Prudential such part of the 140 foot strip as The Prudential may have acquired, "for the purpose of parks and playgrounds to be maintained by the City for the benefit of the public at large", and the City agrees to pay to The Prudential as the purchase price thereof such proportion of the total price paid by The Prudential for the lands acquired by it as the area of the land purchased from The Prudential bears to the total area acquired by The Prudential; and the City agrees to acquire for such park purpose, either by treaty or condemnation, such portions of the tracts as shall not have been acquired by The Prudential; *provided, however, that the price to be paid by the City for the 140 foot strip shall in no case exceed $1,200,000.*

It will be observed that the only money to be paid by the City pursuant to the contract consists of the purchase price of the 140 foot strip to be acquired for public parks and playgrounds, and that this price, the maximum of which is carefully limited in the interest of the City, is based upon the proportion that the area of the land purchased from The Prudential bears to the total area acquired by The Prudential. The City's obligation to purchase this land and to pay to The Prudential the contract price does not arise until the primary public purpose of the ordinance has been accomplished, namely, the submission to the City

of a housing project satisfactory to and approved by the City, raising the resultant obligation of The Prudential to complete the project and thereby eliminate two blocks of unsafe and unsanitary dwellings. Once that object has been attained the City is ready to provide for parks and playgrounds in the neighborhood which shall be available not only to the new housing facilities but are "to be maintained by the City for the benefit of the public at large." For the acquisition of land for the latter purpose and for that alone the City undertakes to expend public funds. Neither the ordinance nor the contract, therefore, bear upon their face any intrinsic evidence of a purpose to expend public money in aid of a private enterprise. On the contrary, both recite the purpose of the City to procure an improvement in the housing situation in the particular neighborhood, and in connection with that improvement to provide appropriate parks and playgrounds for the benefit of the public at large. These expressed objects and the provisions of the ordinance and contract appear to be in fact the true purpose of the ordinance even after a consideration of the extrinsic evidence introduced by the prosecutors, since, as we think, that evidence is inadequate to sustain the position of the prosecutors and is rebutted by evidence introduced on behalf of the City. Wide publicity preceded and attended the adoption of the ordinance. The objects sought to be attained were very fully discussed at public meetings of the Board of Commissioners. The facts disclosed are dispositive of the case upon the point now under consideration, being effective to supply that "rational basis" which the Courts have said is sufficient to justify the exercise of legislative action.

The prosecutors urge that, because the Commissioners admittedly were moved to their judgment to purchase the land in question for parks and playgrounds by a consideration of the incidental benefit to the public that would result from construction of the housing facilities, the motive for their action vitiates the legality of the purchase. But we think that this view confuses the motive for the action with the character of the action itself. The legality of legislative action directed towards an admittedly public purpose cannot depend upon whether or not particular benefit may result to property and individuals in the immediate neighborhood.

In support of the charge that the effect of the ordinance is to permit the use of public funds for other than a public purpose in violation of constitutional provisions the prosecutors cite, among other cases: *In re* Opinion of the Justices, 98 N. E. 611; *In re* Opinions of the Justices, 91 N. E. 405; City of Boston *vs.* Talbot, 91 N. E. 1015; Salisbury Land & Improvement Co. *vs.* Commonwealth, 102 N. E. 619.

But we think that none of these decisions are dispositive of the present case, for the reason that they are concerned only with the question whether a particular use is or is not a public use.

In this respect they resemble the well-known decision of our own Court of Errors and Appeals in The Tide-Water Company *vs.* Coster, 18 N. J. Eq. 518, in which the power of taxation had been exercised for reclaiming large tracts of meadow land. As to the purpose in view, Chief Justice Beasley said (p. 521):

> "To make this vast region fit for habitation and use, seems to me plainly within the legitimate province of legislation; and to

> effect such ends, I see no reason to doubt that both the prerogatives of taxation and of eminent domain may be resorted to * * *. It is the resulting general utility which gives such enterprises a kind of public aspect, and invests them with privileges which do not belong to mere private interests."

The Chief Justice then goes on to illustrate the nature and define the extent of the principle that empowers the legislature to determine what is a public use and to authorize the taking of private property for such use. He says (p. 521):

> "It is one of the legislative prerogatives to decide the important question, whether an enterprise or scheme of improvement be of such public utility as to justify a resort, for its furtherance, to the exercise of the power of taxation or eminent domain. Primarily, the judiciary has no concern in such matter. And not only this, but if the public interest be involved, to any substantial extent, and if the project contemplated can, in any fair sense, be said to be promotive of the welfare or convenience of the community, the legislative adoption of such project is a determination of the question, from which there is no appeal, and over which no other branch of the government has any supervision whatever."

And at page 523:

> "The object proposed, and for which provision is made in the statute under review, being, then, one tending to the benefit of the community at large, must be regarded, upon principles which are too valuable to social interests to be disturbed, as coming exclusively under legislative control."

It is of course conceded by the prosecutors that the devotion of lands to public parks and play-

grounds constitutes a public use. It is their contention that the true purposes of the ordinance under review is not to provide parks and playgrounds. In support of this position it is idle to cite decisions adjudicating upon the nature of a public use. The distinction that we point out is clearly taken in City of Boston *vs.* Talbot, *supra,* cited by the prosecutors. It was there said:

> "The question whether the use for which land is taken under the right of eminent domain is a public use is a judicial question, and the determination of the legislature upon it may be revised by the court. (Citing cases.) * * * *But if the use for which the taking is made public, the question whether the taking of a particular piece of real estate is necessary or expedient is a legislative question, upon which the decision of the Legislature, as a tribunal of fact, is conclusive.*"

In re Opinion of the Justices, 98 N. E. 611, upon which the prosecutors chiefly rely, is an illustration of precisely what the present case is not, namely, the expenditure of public funds, "for the agrandizement of individuals and only for the incidental benefit of the public." In that case the question related to the constitutionality of an act permitting a state agency financed by taxation to go into the business of buying, renting and selling real estate in order to provide homes "for mechanics, laborers, or other wage earners" and thereby to improve "the public health by providing homes in the more thinly populated areas of the state for those who might otherwise live in the most congested areas of the state."

Salisbury Land & Improvement Co. *vs.* Commonwealth, 102 N. E. 619, also relied upon by the prosecutors, denied the legislative power to au-

thorize the condemnation for park purposes of more lands than necessary and the resale to private owners of such excess lands.

We think that the action of the Board in enacting the ordinance is not an abuse of discretion.

The prosecutors specify two grounds upon which the abuse is predicated: (1) That the lands contemplated to be purchased for a public park are wholly unsuitable for such purpose, and (2) that the price of the lands to be purchased for a public park is greatly in excess of their true value for such purpose.

Both of these points must, of course, be considered in the light of the principles of law governing the scope of the judicial review of an ordinance enacted in accordance with prescribed procedure and in the exercise of lawful powers. Briefly stated, the rule is that this Court will not in such a case substitute its discretion for that of the Board of Commissioners if any rational basis can be found to support the propriety of the action taken.

Prosecutors' reason for setting aside the ordinance as an abuse of discretion is that the lands in question are not suitable for "a public park". The ordinance and the contract, however, contemplate the purchase of these lands for parks *and playgrounds*. We make no point of that except to say that the purpose that inspired the entire ordinance, no less than its express language, emphasizes playgrounds as an important feature of the plan, and contemplates that the lands shall be devoted in part to that object.

We believe that the evidence amply justifies the conclusion that the lands contemplated to be purchased for parks and playgrounds are suitable for such purposes.

The choice of the location of this particular project was determined by the City Commissioners after an intensive survey by the health and police authorities of the City.

The testimony tended to show that the district is a congested one and ill provided with park and playground facilities; that the area is reasonably large considering the neighborhood; that the proposed housing facilities, shutting in the area on two sides will be an advantage in sheltering the playground for the protection of small children, and measurably eliminates the hazard of street crossing; that, being open at both ends, it affords ready access to the general public for park as well as playground purposes. The weight of the evidence affords the "Rational basis" requisite to sustain the discretion exercised by the Board in authorizing the acquisition of these lands for park and playground purposes.

We think that the evidence justifies the inference that the maximum price to be paid by the City is not excessive. This question, like the last, is addressed to the discretion of the Board of Commissioners, and the objection cannot prevail if there is evidence of any rational basis to sustain the particular exercise of discretionary power. The sum of $1,200,000 represents the maximum sum which the City could be called upon to pay for the entire 140 foot strip whether acquired from The Prudential or from other owners.

It appears that the proportionate area method of fixing the price was adopted because the project was a joint one in the sense that The Prudential would not have entertained the housing project were it not for the City's undertaking to purchase the surplus land in the blocks for parks, and the City was moved to the latter undertaking only by

the agreement of The Prudential to construct the new housing facilities. Furthermore the boundary lines of the land to be acquired by the City pass through nearly every structure on the blocks in question, so that, were it not for The Prudential's purchase of the outside strips for the peculiar use contemplated, the City would have had to pay practically the entire value of the blocks for the inside area. In the light of these unusual circumstances, and in view of the protection afforded to the City's interests by the fixing of a maximum contract obligation on its part, we cannot say that the discretion exercised by the Board was wrongly exercised. The area of the land to be acquired by the City is approximately seventy per cent. of the total area. It is stipulated that the two blocks of land as a whole have a fair value of not less than $1,714,000, seventy percent. of which amounts to $1,200,000, the maximum price to be paid by the City. It follows: that if the method of apportionment fixed by the contract is sound, the maximum price to be paid by the City is fair. The prosecutors, however, insist that the price to be paid by the City should have been measured by arbitrary rules commonly employed in less complex situations for the ascertainment of the value of city lands having no existing street frontage. Both sides introduced testimony based upon an application of those conventional rules to the case in hand, and we have considered it, and conclude that, in view thereof, the maximum price to be paid is justified.

We think that the Board of Commissioners had power to adopt the ordinance in question.

The City of Newark is a municipal corporation originally organized under a special charter in 1836, revised in 1857. Thereunder the powers of

the city government were vested in a mayor and common council. The statute of 1911 (P. S., p. 706) authorized the common council by ordinance to purchase and condemn lands for park purposes. In 1917 the Home Rule Act (P. L., p. 319), which was in effect a revision of all existing laws conferring powers of municipal government, provided (Article XXXVI, Section 1) that "the governing body" of every municipality shall have power to acquire and maintain "parks" and "playgrounds" and for these purposes to take in fee or otherwise, by purchase or condemnation, any lands. Later the Act of 1911 was repealed. P. L. 1917, p. 635. The power to purchase and maintain parks and playgrounds so far as it is derived from that provision of the Home Rule Act resided in "the governing body" of the City, which is defined by Section 2 of Article 1 "as the board or body having control over the subject matter in connection with which such term is used, and having the power and authority to legislate thereon". It follows that by that Act the common council of the City was vested with the power to purchase and maintain parks and playgrounds.

On November 13, 1917, a few months after the Home Rule Act became effective, Newark duly adopted the Walsh Act (P. L. 1911, p. 462), thereby lodging all of the City's powers of government in a board of five commissioners. Section 4 of the Walsh Act last amended by P. L. 1930, p. 996, and in force at the date of the adoption of the ordinance now under review, provides that the Board of Commissioners shall have all executive, administrative, judicial and legislative powers and duties theretofore had by the Mayor and Common Council and all other executive or

legislative bodies in any municipality adopting the provisions of the act; that "said Board shall have complete control over the affairs of such municipality", and that such powers and duties shall be distributed into and among five departments, one of which is the "Department of parks and public property". The next succeeding paragraphs provide that the Board of Commissioners shall determine the powers and duties to be performed by each department and shall assign such powers and duties to such department as they in their judgment deem appropriate, and shall designate one commissioner to be director of each one of the several departments. Pursuant thereto the Board, on May 21, 1929, by resolution purported to distribute to the Department of Parks and Public Property all executive, administrative, judicial and legislative authority and duties relating to the public parks, and designated Commissioner Gillen to be Director of that Department, and he held that office at the time of the introduction and final passage by the Board of the ordinance under review, and opposed its adoption, and alone voted against it when it was adopted by the affirmative votes of all of the other four commissioners.

We think that the power invoked in the present instance by the Board of Commissioners as a body is derived not only from Article XXXVI, Section 1, of the Home Rule Act authorizing municipalities to acquire parks and playgrounds, but also from Article XIV, Section 2, of that Act which provides that every municipality shall have power to make such ordinances as they may deem necessary and proper for the good government, order, protection of person and property, *and for the preservation of the public health, safety and prosperity of the municipality;* and we also think that

the purpose in view could be accomplished only by ordinance, and that the requisite ordinance could not be adopted by a single commissioner, but must be adopted by the affirmative vote of a majority of the board of commissioners, as was done in the present case.

Article XIV, Section 2, of the Home Rule Act grants to every municipality power to make "such other ordinances as they may deem necessary and proper * * * for the preservation of the public health, safety and prosperity of the municipality and its inhabitants", and that power the City has invoked in the present case, and it has done so by ordinance, as expressly authorized, and moreover has done so by the procedure requisite under the Act to an exercise of the power to purchase land for parks and playgrounds as conferred by Article XXXVI, Section 1. Article XI, Section 6, of the Home Rule Act (P. L. 1918, p. 479) provides that: "No municipality shall enter into any contract whatsoever, the cost of which is to be met by funds other than those included in the budget of appropriations for the year, unless prior thereto there shall have been regularly adopted by the governing body of such municipality an ordinance authorizing an appropriation sufficient to meet the cost of carrying out the provisions of such contract; * * *." The ordinance under review bears in its title, and in its text, intrinsic evidence that the cost of the contract for the purchase of the lands in question is to be met by funds other than those included in the current appropriation, namely, by the proceeds of the sale of bonds. Consequently, an ordinance was an indispensable condition to the exercise of the power to purchase these lands.

It follows that the ordinance in question could be adopted only by the Board of Commissioners, as was done.

The prosecutors contend that because under the Walsh Act the legislative powers of the City were distributed, with respect to parks, into the Department of Parks and Public Property, it became competent for the Director of the Department of Parks and Public Property and for him alone to take the action necessary to effect a purchase of land for a public park and playground. This contention fails to take note of the fact that the distribution of legislative powers to the several departments must certainly be subject to other controlling provisions of law which, in certain cases, either expressly or impliedly reserve the legislative power to the board acting as a body.

Such a reservation is clearly implied in the instance in which the legislature has either prescribed or authorized the exercise of municipal powers by means of an ordinance. Section 3 of the Walsh Act as amended (P. L. 1916, p. 406) provides that "Every city * * * shall be governed by a board of commissioners consisting of five commissioners, * * * each of whom shall have the right to vote on all questions coming before the board of commissioners. A majority of the members of the board of commissioners shall constitute a quorum and the affirmative vote of a majority of all the members shall be necessary to adopt any motion, resolution or ordinance, or pass any measure unless otherwise provided for in this act. * * * The mayor shall have no power to veto any measure, but *every ordinance passed by the board of commissioners* shall be recorded and signed in the book in which it is recorded by a majority of all the commissioners before it shall

be in force." The Home Rule Act prescribes no different procedure, but by Article X, Section 1, defines the term "ordinance" as "*Any act* or regulation *of the governing body* of any municipality reduced to writing, and required to be read at more than one meeting thereof and published."

The quoted language of Section 3 of the Walsh Act and the subsequent language of that section clearly contemplates that, in some cases, at least, legislative action is to be taken by the Board of Commissioners acting as a body, for otherwise no effect could be given to the elaborate provisions for the procedure necessary to adopt an ordinance. Bearing in mind the strong implications arising from this language, it cannot reasonably be supposed that the legislature in distributing the powers of government amongst the several departments contemplated the enactment of *ordinances* by their respective directors. To postulate a delegation of power so extraordinary and so repugnant to our institutions would demand a clear and unqualified expression of the legislative will such as is wholly wanting in the Walsh Act or in any other legislation. On the contrary Section 4 of the Walsh Act provides that "The Board of Commissioners shall determine the powers and duties to be performed by each department and shall assign such powers and duties to such department as they in their judgment deem appropriate." There is no suggestion of a legislative purpose to denude the Board as a body of the power to adopt an ordinance where an ordinance is essential to the matter in hand. The contrary is clearly indicated by the various provisions of law to which we have alluded. Moreover this view is supported by the contemporaneous practical

construction that has been universally accorded to these provisions from the time of the first enactment of the Walsh Act to the present. We know of no case disclosing even an attempt on the part of a single commissioner assigned as director of a department to enact an ordinance. On the other hand, we find several cases in our Courts, discussing the powers of government granted by the Walsh Act, where the ordinances were enacted by the whole board of commissioners; for illustration; Loughran *vs.* Jersey City, 86 N. J. L. 442; Weber *vs.* Atlantic City, 102 N. J. L. 79.

The writ will be dismissed, with costs.

Rule for Judgment.

(Filed June 24, 1931.)

The writ of certiorari in this cause having been returned to this court, and the court having inspected an ordinance adopted by the Board of Commissioners of the City of Newark on October 15, 1930, entitled: "An Ordinance to authorize the acquirement of lands in the City of Newark for park use, and to authorize the execution of a contract with the Prudential Insurance Company of America for the acquisition of the same, and providing for the financing thereof", and having considered the depositions taken on behalf of the several parties hereto pursuant to rule heretofore entered, and having heard the arguments of counsel for the prosecutors and for the respondents, and having considered the same, and the court being of the opinion that the said ordinance was lawfully adopted by the said Board of Commissioners;

Rule for Judgment.

It is, on this Twenty-fourth day of June, 1931,

Ordered that the said ordinance heretofore adopted as aforesaid on the 15th day of October, 1930, be and the same hereby is affirmed, and the said writ of certiorari be and the same hereby is dismissed, and that the several respondents herein do recover from the prosecutors their costs of this cause to be taxed.

Entered June 24, 1931,

On motion of:

Frank A. Boettner and
Frederick H. Groel,
Attorneys for the Respondents,
Peter O'Toole, Clerk of the City of Newark, *et al.*,

and

Charles B. Bradley,
Attorney for The Prudential Insurance Company of America.

Notice and Grounds of Appeal.

NEW JERSEY SUPREME COURT.

SOLOMON SIMON, JACOB L. SOLOMON and PATRICK GALANTE, Prosecutors, *vs.* PETER O'TOOLE, Clerk of the City of Newark, New Jersey, BOARD OF COMMISSIONERS OF THE CITY OF NEWARK, NEW JERSEY and PRUDENTIAL INSURANCE COMPANY OF AMERICA, Respondents.	On Certiorari. Notice and Grounds of Appeal. Filed July 1, 1931.

To:

FRANK A. BOETTNER and
FREDERICK H. GROEL,
Attorneys for Peter O'Toole, Clerk of the City of Newark and Board of Commissioners of the City of Newark, N. J., and

CHARLES B. BRADLEY,
Attorney for Prudential Insurance Company of America.

Sirs:

PLEASE TAKE NOTICE that the prosecutors appeal from the whole and every part of the judgment entered in the above entitled cause to the New Jersey Court of Errors and Appeals in the last

resort in all causes upon the ground that the Supreme Court erred in granting a judgment dismissing the writ of certiorari and so affirmed the ordinance and proceedings brought up by the writ, whereas it should have set aside the said ordinance and proceedings brought up by the said writ for one or more of the reasons filed in the Supreme Court.

HERMAN W. BRAMS,
MERRITT LANE,
Attorneys for Prosecutors-Appellants.

Dated: June 27, 1931.

Service acknowledged June 30, 1931.

165-100 D OCT 1931

New Jersey Supreme Court

Solomon Simon, Jacob L. Solomon and Patrick Galante, Prosecutors, *vs.* Peter O'Toole, Clerk of the City of Newark, New Jersey, Board of Commissioners of the City of Newark, New Jersey, and Prudential Insurance Company of America, Respondents.	On Certiorari.

(Italics etc., ours, except where otherwise noted.)

BRIEF FOR PROSECUTORS.

Statement of the Record.

This is a certiorari allowed by the Chief Justice (p. 1), after argument, to review an ordinance passed by the Board of Commissioners of Newark on October 15th, 1930 (p. 3), approving an agreement between Newark and Prudential (p. 6), which agreement provides, in substance, that Prudential will acquire two blocks of land in the Third Ward, Newark, approximately 700 feet in length each and 200 feet in width and will, under powers granted to it by Chapters 201 and 202, of the laws of 1929, P. L. 1929, pp. 376, 380, Supp. to C. S. of N. J. 1925-1930, p. 1188, sections 136-3771 (B), etc., and p. 843, Secs. 99-16 (F), etc., construct upon strips extending the entire length of the two blocks, thirty feet in width, model tenements, to be rented at low rentals to

relieve housing conditions, and will convey to Newark the inside 140 feet in width "and separating the housing facilities erected on the respective streets fronts" (p. 8), and that Newark will thereafter develop the interior of said blocks for the purpose of play grounds and parks, the cost of the land to be apportioned between Prudential and Newark proportionately according to the areas to be occupied by each.

The return to the writ is found on p. 2. It contains: the ordinance (p. 3); the agreement (p. 6); the minutes of the meeting of the Board of Commissioners of April 23, 1930 (p. 10), at which the proposal was first formally made by Prudential, through its president, Mr. Duffield; the minutes of August 27, 1930, at which the ordinance was first introduced; the minutes of the meeting of September 3, 1930, at which the ordinance was considered and the various commissioners explained their positions, the Director of Parks and Public Property expressing his disapproval of the proposal (p. 37); the minutes of the meeting of September 17, 1930 (p. 46), at which two amendments to the ordinance were introduced and passed with the Director of Parks and Public Property voting "nay"; the minutes of the meeting of October 1, 1930, at which a letter was received from Prudential explaining its position (p. 49); the minutes of the meeting of October 15, 1930 (p. 52), at which statements were made by Commissioner Gillen (p. 53), Commissioner Howe (p. 57), Commissioner Murray (p. 60), Mayor Congleton (p. 62), Commissioner Egan (p. 64), and after which statements the ordinance was passed with Commissioner Gillen, Director of Parks and Public Property, voting "nay" (p. 70).

The reasons are printed at p. 72 and, while eight in number, will be argued under three heads:

First: The effect of the ordinance is to permit the use of public funds raised by taxation for other than a public purpose.

Second: The action of the Commissioners in authorizing the agreement to purchase is a gross abuse of the discretion of the Commissioners.

Third: The Commissioners were without legal authority to acquire the lands for public park purposes over the opposition of the Director of Parks and Public Property, the judicial, administrative, legislative and executive authority and duties with respect to public parks having been assigned to the Director of the Department of Parks and Public Property by resolution of the Commissioners adopted on May 14, 1929 (p. 484).

All of the reasons will be argued under these three heads, none being waived.

The seventh reason is relied upon.

The Expert Testimony for Respondents.

Much of the printed book, from p. 228 to p. 462 or some 234 pages, is taken up with expert testimony offered by respondents to show that the proportion of the entire purchase price which Newark is called upon to pay is a proper proportion. The land to be purchased is shown on a map, Ex. D-2, page 84, Ex. A, page 84, which are presented to the Court by photostatic copies. The maps and the testimony show that the property has buildings constructed upon it and that the line which divides that portion of the property to be retained by Prudential and that to be conveyed to Newark runs through many of these buildings. It is apparent that the buildings are irregularly constructed and that the major and important buildings and the major and important parts of

the buildings through which the dividing line runs are on the strips to be retained by Prudential.

Prosecutors concluded not to argue that the amount Prudential is to pay for the entire tract does not represent the value of the property as a whole. This figure is between $1,714,000 and $1,750,000 (p. 76) but for the purposes of this case is considered by both sides as $1,750,000. Of this amount, under the terms of the ordinance, Newark pays seventy per cent. but not exceeding $1,200,000. Newark will pay, in the light of the cost of the entire tracts to Prudential, the entire $1,200,000.

The attempt of respondents from pp. 228 to 462 of the record was, by the production of expert builders and real estate men, to show that, taking the value of the buildings upon the tracts as a whole and then dividing that value between the portion to be retained by Prudential and that to be conveyed to Newark in the proportion that the values of the buildings standing upon the two pieces bear to each other and taking the value of the vacant land as the difference between $1,750,000 (p. 281) and the value placed upon the buildings by the experts, the amount to be paid by Newark is not excessive (p. 282).

We do not intend to consider this testimony in any great detail for we do not believe that it is at all determinative.

All of it was obtained by respondents *after the passage of the ordinance and the institution of this litigation* and for the sole purpose of sustaining the amount to be paid by Newark as reasonable.

It is not suggested that *before* the ordinance was passed the Commissioners had figures before them which justified the seventy per cent. not exceeding $1,200,000 which they agreed to pay.

The only Commissioner who testified for respondents was the Mayor, Jerome T. Congleton

(p. 200). He stated that: negotiations with Prudential began in the winter of 1928 and 1929; the purpose of Newark was to induce Prudential to invest its funds *in a housing plan;* these negotiations resulted in the passage of chapters 201, 202 of the laws of 1929, P. L. 1929, pp. 376, 380; as early as November, 1929, he reported to the Prudential Housing Committee that Newark would take a part of the land for park and playground purposes "saying that we felt that the outside price that we should pay, should be for the proportion of the land that we took, as it bore to the whole tract" and he then testified (p. 202):

> "The question of that value was discussed back and forth. I discussed it with some of my colleagues and that decision was arrived at after I had talked with real estate men (*none of whom were produced by respondents*) based also upon my own experience of many years as corporation counsel, in the direction of cases before the Board of Local Assessment Commissioners for Local Improvements, on the basis that the line of taking went through practically every building upon the tract, and from that experience I knew that in condemnation or in the proceedings that I have described, where you cut through buildings, as they will be cut through in this case, that I would be called upon to pay practically the total value of the buildings upon the property, and that value plus the value of the inside land, and I don't care how you arrive at it, would justify, in my judgment, the price that we agreed to pay."

He was cross-examined at page 225. He conceded (p. 226) that he was not a real estate man.

The record indicates that there were no figures whatever before the Board of Commissioners and none obtained by any member of the Board indicating either the value of the buildings upon the land or the value of the land itself and no evidence or information upon which a judgment could

be based that the fair proportion of the entire purchase price which Newark should pay for the land which it was to receive was that portion which the area of the land bore to the area of the whole tract.

When this certiorari was obtained, *then,* Newark set out to justify the amount which Newark was to pay.

An inspection of the maps, Ex. D-2, page 84, and Ex. A, page 432, will indicate that the greater and most important portion of the structures were on the outside strips reserved to Prudential.

Nevertheless, the witness, McGee, a builder, (p. 228), when called for Newark, appraised the value of the buildings on the property which Newark is to acquire at $556,450, and the value of the improvements upon the strips to be retained by Prudential at $360,828 (p. 229), making a total value of $916,278 (p. 229). We ask the Court to read his testimony on cross-examination (p. 229, *et sequi*) for it will demonstrate the unreliability of his figures. His method was to appraise the value of the buildings by cubic foot, and then, in each instance in which the building extended both on the land to be retained by Prudential and the land to be conveyed to Newark, to take the total length of the building and divide the value upon the proportion of the length extending on land to be retained by Prudential and on land to be conveyed to Newark, that is to say, if the building were 70 feet deep, then 3/7 of the value would be apportioned to Prudential, because the width of the strip reserved by Prudential is 30 feet, and 4/7 of the value would be apportioned to Newark because the building extended 40 feet on land to be conveyed to Newark (p. 233). It clearly appeared that any such division was improper because, in many instances, the buildings narrowed toward the rear which would extend on

the land to be conveyed to Newark. He explained that in such instances he attempted to square the buildings up (pp. 239, 240). It was apparent that this supposed method was improper and that in many instances he did not follow it (pp. 240, 241). He made no distinction where the front of the building on the land retained by Prudential was of brick and that portion of the building on land to be conveyed to Newark was of frame (p. 243). He gave no consideration to the fact that the most valuable part of a building is in the front.

When asked when he was requested to do this work he equivocated (pp. 246, 247, 248), and it was necessary to call Mr. Groel, attorney for Newark, to prove that McGee was first asked to make an appraisal of the value of the buildings as a whole upon both tracts *after this proceeding was commenced* (p. 257) and that it was not until about a month later and after December 22nd, 1930 (the writ of certiorari having been allowed December 2, 1930), that he was asked to make the apportionment (p. 257).

Mayberry, another builder and contractor and appraiser, called by Newark (p. 259) co-operated with McGee and testified to the exact figures of McGee (p. 260). He said (p. 261):

> "Q. You have been appraising property for a number of years? A. Yes.
>
> Q. Have you ever known of a case where two contractors, or two real estate experts, ever identically agreed upon valuations? A. No, and Mr. McGee and I didn't agree at first, but we kind of got together on it and settled the differences and agreed on these prices.
>
> Q. So that this is not your independent judgment, but a judgment reached after consultation with Mr. McGee? A. Yes.
>
> Q. And vice versa? A. Yes."

This witness had made an affidavit on November 10, 1930, which was used before the Chief Justice on the application for a writ of certiorari and in that affidavit he had sworn that the present day value of the improvements was $993,735. He explained the figures he gave in his testimony in this case of $917,000 as follows (p. 261):

> "A. When I went back and made some checks, and took some buildings out which I thought had no value to them, and some changes in them, after Mr. McGee and I met and went over them together."

He was retained by Newark at the same time as McGee (p. 262).

McGee in his affidavit used before the Chief Justice had stated that the value of the improvements was $997,733 (pp. 262, 265), and that he had made a careful inspection "of each and every improvement, to determine the character and extent of each improvement" and that he had considered both workmanship and material and had arrived at a present day replacement value after deducting a reasonable amount for depreciation and that upon this basis he *confidently* rested his opinion that the sum of $950,000 represented a *low* present day value of the improvements. He can only explain his figure of $917,000 given in the testimony, a reduction of some $80,000, by saying that he had made a more careful investigation (pp. 266, 267).

Newark then called Charles F. Kraemer, as a real estate expert (p. 268), who testified in answer to a hypothetical question, which assumed that the value of the buildings and improvements located on both tracts was $917,217 and that the value of the improvements and buildings located on the strip to be conveyed to Newark was $556,450 (the figures of McGee and Mayberry),

that a price of $1,200,000 for the land, building and improvements to be conveyed to Newark was fair (p. 271). He reached this conclusion by assuming that *every square foot of the area, whether inside or outside land, was of equal value* (pp. 273, 274, 277). At page 277 he testified:

> "Q. Mr. Kraemer, do you say that each square foot of property in the interior of this tract is worth the same as each square foot of property on the exterior of the tract? A. Is that a question?
>
> Q. Yes. A. I say so, yes, sir.
>
> Q. And why do you say it? A. When purchasing a square area of five and one-half acres of land, that is the only fair equitable way that we can approach the value of such land.
>
> Q. Notwithstanding the fact that the front part of it can be used and a great deal of the interior part cannot be used at all? A. That isn't the fact; all of it can be used.
>
> Q. *With the same availability?* A. *I should say so.*
>
> Q. It certainly cannot be used with the same availability when it passes in separate ownerships, can it? A. *I should say it can.*
>
> Q. *So that even in separate ownerships, each square foot of this property is worth the same?* A. *That is my opinion.*
>
> Q. And the interior property, without street frontage, except through the outlets on the four streets, right to the center of the block is worth per square foot the same as the property on the corner of Waverly Avenue and Barclay Street, is that right? A. In approaching the interior area as one parcel.
>
> Q. Is it right? A. Yes.
>
> Q. There is no corner influence, no difference between the square foot which is on the corner of Waverly Avenue and Barclay Street and the square foot which is in the middle of the block? A. Not when you are approaching five and one-half acres as one parcel.

Q. I am not asking you that; I am asking in separate ownership? A. In separate ownership.

Q. Do you mean that, Doctor? A. I do."

Henry C. Beach, another real estate expert (p. 279), stated that, assuming the value of the whole property to be $1,750,000 and the value of the buildings $917,217.82, leaving a land value for the whole of $832,782.12, *each square foot of vacant land would be worth $2.9055,* and, inasmuch as there was to be conveyed to Newark 200,637.70 square feet, the land value would be $582,945.09, which, added to the value of the buildings upon the plot to be conveyed to Newark, would make a value of the land and buildings to be conveyed to Newark of $1,139,395.91. He took the position with Kraemer, that each square foot, whether inside or outside, was worth the same. He said that, if he used the Hoffman rule for depth, the value of the land and improvements would be $1,055,350.22 (p. 283). The weight of his testimony may be gathered from his examination (p. 285):

"Q. You have been asked questions about damage. Can't you answer my question in the same way in which you answered the question for the other side, and never mind what the result of your answer may be? Counsel on the other side asked you if the City came down and condemned the interior of these strips, whether or not there would be a damage to the remaining lands. You said there would. I am now asking you, if some buyer came down and condemned the exterior lands, whether there would be a damage to the interior lands? That can be answered yes or no. A. Why, sure; there would be.

Mr. Lane: Then, why didn't you say so a long time ago? I asked the question several times exactly in that form.

Witness: I didn't understand your question that way.

Q. Can you tell me what the damage to the interior lands would be?

* * * * * *

A. I cannot.

Q. Can you give me an estimate? A. No, offhand.

Q. It would be considerable, wouldn't it? A. To the interior lands?

Q. Yes, cutting off the frontage? A. Yes.

Q. Considerable; and yet, as I understand it, the interior lands are worth, per square foot, precisely the same as the exterior land? A. Let me answer one question at a time. You asked me if there would be a damage to inside land; there absolutely would.

Q. And it would be considerable? A. Yes.

Q. Now, you say that the value of the interior land per square foot is precisely the same as the value of the exterior land? A. In taking the whole thing in one ownership.

Q. You don't agree with Dr. Kraemer, that if it was in different ownerships, the value would be the same? A. I am appraising it myself. I am not appraising it for Dr. Kraemer or anybody else.

Q. That does not answer the question. I will put it in a different form. Assuming it to be in different ownerships, would the value of the interior per square foot be the same value as a square foot of the exterior?

* * * * * *

A. *Absolutely.*

Q. *The same?* A. *The same.*

Q. *So you mean to say that assuming that there are two separate ownerships of this property, the value per square foot on the corner of Waverly and Somerset Street, if that is the street, and the value of a square foot in the interior lands, is precisely the same?*

* * * * * *

A. *Absolutely the same.*"

Although this witness said (p. 287) that he agreed that $832,782.12 was the fair value of both tracts of land considered as vacant land (which statement he made after some equivocation, p. 287) he had made an affidavit on November 24, 1930 for use on the application for the writ in which he had said *that a fair value of the land comprised within the two tracts "is $721,740"* (note the odd dollars), and he can explain this discrepancy only by saying that he had made the first figures hastily from a map, although he had told the Court in his affidavit that he had reached his valuation of $721,740 "by considering recent sales of land in the immediate vicinity and of generally similar character, and by making an analysis of such sales and a comparison of the properties so sold, with the properties comprising the tracts above described."

We ask the Court to read his cross-examination at pages 291, 292, 293. After equivocating as to whether each square foot was worth the same, even if the two tracts were in separate ownership, the following occurred (p. 292):

> "Q. That is what you did say. I ask it again, so we may be certain about it. I asked you fifteen minutes ago distinctly, that if you assume that these two tracts are in separate ownerships, whether the square foot—each square foot in the interior would be worth precisely the same as a square foot in the exterior, and you said it would; and I even went to the extent of putting a square foot on the corner of Somerset Street and Waverly Avenue, and one in the interior of the lot, and you said it would be worth the same. A. *I say so yet.*
>
> Q. Can you say why you told the Court (in his affidavit) that in considering the value of this plot as a whole, you took into consideration and gave weight to—because I assume you gave weight to it, if you took it into consideration—the eight corners of the two tracts

in question, and the approximately 3,500 feet of frontage upon five different streets? Now, how do you square that with your statement now, that the interior, without frontage, per square foot is worth precisely the same as the exterior with the frontage? A. I didn't know at that time what the property on the interior was to be used for. *I didn't know what the contract between the Prudential and the City was, and I appraised that as it appeared to me at that time, without gaining that information that I ought to have had time to get and look into, and there was no other way for me to do it, except the way I did at that time. Later, when I was informed of what was doing there, and what was actually the conditions, it changed my views entirely, and I still say that the inside land is worth just as much per square foot as the land on the outside.''* (One of the fundamental rules in determining the value of property to be taken for a public use is that its value for the public use must not be considered.)

He testified (p. 294):

"Q. Are you considering that the whole piece is being taken as a public park? A. I am considering that the whole property is being taken by the Prudential.

Q. For public park purposes? A. For their housing plan.

Q. That is not a public park, is it; that is not a public purpose? A. *With the understanding with the City of Newark, which is in concrete form, in the form of a contract, that they are to take the inside portion for park and playground purposes.*

Q. You wouldn't say, Mr. Beach, that for sale purposes the interior of that land per square foot is worth as much as the exterior, will you? Never mind park purposes? A. *To the City of Newark, yes.*

Q. For sale purposes? A. *That is sale to the City of Newark.''* (A clearly erroneous standard of value.)

And (p. 295):

"Q. You also told the Court, 'I have always considered the elements of exceptional plottage and of such an unusual assembly by one owner of all the property comprised within these two tracts, with the resulting increase in the aggregate value of the many properties comprising the tracts.' You did that in arriving at your value of *seven hundred and twenty-one thousand plus,* did you not? A. Yes.

Q. *Now, you tell me that your fair value is not that at all, but is $832,700 plus; is that right?* A. *That is right.*

Q. Did you realize the fact that the $721,740 as the value of the land, plus the value of the buildings given by Mr. McGee in his affidavit, of nine hundred and some odd thousand dollars, would approximately result in the purchase price of $1,700,000; whereas, *now, by the decrease in the value of the buildings, to make the purchase price $1,700,000 the land has got to be increased? Have those figures any significance to you?* A. *The decrease of the value of the buildings throws a greater value into the land. There is no question about that.*

Q. Throws it into the land, is right, isn't it? A. Absolutely."

Is it not clear that these figures have been juggled? The figures of the builders given in their affidavits were higher than their figures given in their testimony. But the sum of the figures of the builders and the figures given by the real estate experts as the value of the land was $1,750,000. When the builders lowered their figures in their testimony there was nothing for the real estate experts to do save to raise their figures, for the sum had still to be $1,750,000.

The cross-examination of Beach from pages 297, 298, 299, 300, 301, indicates that he did not properly apply the Hoffman depth rule nor did he allow anything for corner influence.

James A. Berry, another real estate expert called by Newark (p. 306), upon the same assumptions as given to the previous real estate experts, reached the conclusion that the value of the plot to be conveyed to Newark was $1,139,395.91 (p. 310), *precisely the same figure as reached by the other experts.*

The price to be paid by Newark was fixed by the Commissioners and Prudential as that proportion of the entire purchase price, *which included lands and buildings,* as the area taken by Newark bears to the whole area and with that in mind, Berry was interrogated as follows (p. 316):

> "Q. Now, do you say that it would be a fair way to apportion that $1,750,000, *which includes both land and buildings,* to the two separate interests in the proportion that they are acquiring the land? A. Yes, sir, I do say it.
>
> Q. Upon what hypothesis can you say that when buildings on one part may be entirely different, or has been proven by experts, is entirely different in value than buildings on the other part? A. I think that would even up throughout. I think that where you find a good part of the buildings on the land in the City's strip, that it would be found in other places not to be so much—buildings not to have so much depth. And on the whole, from my own observations there, and disregarding the more precise figures, perhaps, of the competent building experts, my thought would be that it would be about as I have stated.
>
> Q. That would mean, if you used this average figure, that the same amount, or the same proportionate amount of buildings should be on each tract, two-thirds and one-third, wouldn't it? A. Two-thirds of the value of the plot would have to be on the interior and one-third of the value of the plotting would be on the exterior.
>
> Q. I used the term three and seven-tenths? A. Yes.

Q. Three-tenths of the value of the buildings would have to be on the exterior and seven-tenths of the value of the buildings would have to be on the interior?

* * * * * *

A. I think it comes back in the matter of buildings *to about fifty-fifty.*

Q. Come back to fifty-fifty in the matter of buildings? A. In and out.

Q. If it comes back to fifty-fifty, then your proportion of three-tenths and seven-tenths is out of the way? A. No, I wouldn't say that."

But it is obvious that his proportion would be wrong as is demonstrated by his further examination (pp. 317, 318, 319, 320, 321, 322).

There are three depth rules mentioned—one known as the Hoffman rule, another as the Hoffman Neill rule and the other as the City rule, a rule developed by the authorities of Newark (p. 346). If the City rule were applied the value of the tract to be conveyed to Newark would be greatly decreased, assuming the figures of the contractors produced by respondents to be correct as to the value of the improvements. If the Hoffman Neill rule were applied the value of the property to be conveyed to Newark would be considerably reduced. The Hoffman rule is more favorable to the position of respondents and the experts for respondents were asked by respondents to calculate upon the Hoffman rule and, by such method of calculation, a value of $1,055,350.22 for the property to be conveyed to Newark was reached (p. 283). No one of the experts for respondents, however, was asked to apply either the Hoffman Neill or the City rule, yet Berry, when he testified as an expert in *condemnation proceedings,* used the City rule (p. 322) and (p. 323):

"Q. Yes. Now, you are using the Hoffman rule? A. All right.

Q. Well, why? A. Well, I think the Hoffman Rule is just as good as the City rule, at least, as good.

Q. You used the Newark Rule when you were representing a property owner—retained by the property owner, because the Newark Rule gave you more money; and you are using the Hoffman Rule in this case, where you are retained by the Prudential Insurance Company, because the Hoffman Rule gives the City less money; that is right, isn't it? A. *No, I wouldn't say that.*

Q. If you wouldn't say it, then I would like to know why, in valuing property in the city, where in one instance you represent the property owner, you have a rule which happens to give you more money; and in another instance, in the City of Newark, you adopt another rule which will give the property owner less money; what is the explanation? A. That is a mere assumption on your part. I might have used the Hoffman-Neill Rule and given the Prudential more money, or vice versa.

Q. Wait a minute; the Hoffman Rule gives you how much? A. 44.

Q. And the Hoffman-Neill rule gives you 49? A. That is it.

Q. That isn't beneficial to the Prudential; the Hoffman is more beneficial than the Hoffman-Neill isn't it? A. *That would be more beneficial, perhaps, to the city by five points.*

Q. The Hoffman-Neill rule? A. Yes.

Q. Then you might not then have used the Hoffman-Neill rule and given more benefit to the Prudential?

* * * * * *

Q. Do you now discard the Newark rule? A. Yes, in this matter I made my calculation otherwise.

Q. Do you now discard the Newark rule and say that it is not a fair rule to use in valuing property in the City of Newark of a residential character? A. I would not cast any aspersions on the fairness of the Newark rule. I think they are all fair.

Q. Then you think that applied to the same conditions, a rule which gives to the front 30 feet 59 or some odd per cent. of the value— A. 56 would be more accurate.

Q. * * * 56 per cent. of the value, and also a rule which gives 44 per cent. to the front 30 feet, both rules are good? A. I think both rules are good, as I have stated, and that the average real estate man would not go wrong in accepting or dealing with either one.

Q. And then when you were asked by Mr. Groel, as I assume you were, to apply a depth rule and give your calculations based upon a depth rule, I am wondering why it was that you happened to select the Hoffman rule as the depth rule which you would apply. Will you tell me why? A. Because I think it was my privilege to have adopted any of the rules.

Q. Then I ask you again, why didn't you adopt the Newark rule, when you did adopt the Newark Rule when you were testifying for owners of property in the Mulberry Street improvement? A. I might answer that by interjecting a question, and saying why should I, when my judgment in this instance made me do the other things?

Q. Then there is no significance, of course, in the fact that when you were testifying for the property owners in the condemnation proceedings, the interests of the property owners required that a larger proportion of the value should be allotted upon the front, and when you are testifying here for the interest of the City and the Prudential Insurance Company, requires that a less proportion should be allotted on the front? There is no significance in that at all? A. No. I think you have unduly stressed a slight difference.

Q. Slight difference. Is 14-12 per cent. a slight difference? A. I think in a volume of $1,750,000 we are splitting hairs.

Q. The bigger the volume, the greater the difference in dollars and cents? A. Not in percentage.

Q. I am not talking about percentage. The greater the difference in dollars and cents—

> and after all, we are not using percentages. A. It is percentage applied to the whole in the last analysis. Figure it out, and figure the Newark rule, how much difference in dollars and cents there is."

The witness, then (pp. 325 to 339), attempted to figure, having all the base figures before him, what the value of the land to be conveyed to Newark would be, applying the City Rule, and lamentedly failed. *He could not figure.* The best he could do was to figure that the value of *all* the land, without the improvements, would be $436,139 or about one-half of the base value which the witness was obliged to assume in his calculations (p. 336). His explanation for his inability to figure is that—"I may not have studied my Euclid to perfection" (p. 338).

He indicated the method he used to reach his value at p. 335.

The next witness was Edward J. Maier, a real estate expert (p. 351). He reached his conclusion by assuming the inside tract, which is to be conveyed to Newark, developed with a street through it, at a cost of $25,000 and apartment houses erected on either side, which he says is the highest utility to which the land could be put, and by that method he reached a value of $1,116,075 for the land to be conveyed to Newark. He was asked to examine the property first in January, 1931 (p. 368). He says, in effect, that he knows nothing about the method by which he arrived at the value but that it was suggested to him by a Mr. Babcock, and p. 369:

> "A. He is a real estate expert, recognized throughout the country as such; a man who has written a book on the subject; he is very highly held by the National Association of Real Estate Boards; a man who has written many articles with relation to the technique

of the art of appraising, and a man who is held very highly by real estate men throughout the country as an authority on the subject of appraisals and as to the best methods.

Q. When did Mr. Babcock make this suggestion to you? A. He made this to me way back in December, I guess."

He approached Babcock on the subject and brought him to the attention of Newark and of Prudential as an expert (p. 371). He demonstrated (pp. 372, 373) *that no such apartments as proposed could be built.* His figures are pure guess work (pp. 376, 377). He again demonstrated that the proposed apartments which formed the basis of his opinion of value *could not be built* (pp. 378, 379, 381). He testified p. 383:

"Q. Have you computed the cost of erecting these apartments? A. No, I have not.

Q. Have you computed the rent you could get for them after you build them? A. No.

Q. How do you know it is practical? A. *I did not base this appraisal upon the fact that the valuation or that the sum of the cost given to me was the value of the property; the fact of the matter is that at this value I do not know that it would be practical.*

Q. If you don't know it would be practical on this valuation, what in the name of common sense is the use of considering it at all as the highest possible use, but impracticable use on this valuation? A. The valuation given to me of $1,750,000, was not an appraisal of mine. It was not a figure which had to do with the use or utility of this property. I based the value of the—the relative value of the two tracts, upon their relative utility, and then after having procured their relativity to one another, I distributed the given sum of $1,750,000 accordingly without regard as to whether that was $500,000 or $10,000,000. *To me it did not represent the value of this tract.*"

He said (p. 384):

"Q. Perhaps that is so; we will concede that. That means that you have got to pay $1,200,000. for this property, so it is worth $1,200,000. Now, what use would you make of the property? You say that you can use it in the way that you have indicated, but you say you don't know whether that is practical or not, because you don't know whether if you use it in that way you are going to be able to get any income on your investment. That is the effect of it? A. Yes.

Q. And no man is going to put it to this highest practical use unless he is going to get a profit on his investment, is he, or for philanthropic purposes? A. That would not in any way alter the highest and best use of this property. It might alter the pocket-book of the man who owned the property, but it wouldn't alter its highest and best use.

Q. It might affect the highest and best use of it? A. If it were the City, and they make a park of it, it may be worth ten million dollars.

Q. Ten million dollars it may be worth as a public park? A. To the City as a public park, in clearing away slums and improving a section like that, it may be of very, very great value, far beyond any other use that could be made of it.

Q. You are not talking about monetary value now? A. The result would be so."

Respondents then produced Frederick M. Babcock, who lives in Evanston, Illinois, and whose value as a witness appears from his cross-examination (p. 393):

"Q. You feel yourself qualified to express judgment of the valuation of property anywhere in the United States? A. Not off-hand opinions; no, sir.

* * * * * *

Q. *Methods of valuation in every part of the United States?* A. *Yes.*

Q. *I suppose in the whole world?* A. *Yes.*

Q. *I suppose methods of valuation to be used over the United States and over the world are the same, is that right?* A. *I think so, yes, sir.*

Q. They don't vary with conditions at all? A. I don't think so.

Q. One single method, and that method approved of and referred to in your book by you, is the method to be used in making valuations over the entire terrestrial globe? A. I don't say there was one method.

Q. The method which you have evolved? A. I haven't evolved any particular method.

Q. What have you done? You have written on methods evolved by others? A. In the most part, most of my contributions have been in finding other methods and describing the inadequacy of certain methods and bolstering up others. Outside of certain angles of technique I haven't invented any appraisal method.

Q. *So that you think and you repeat that you are sufficiently expert to determine in any place in the world what method of valuation should be adopted?* A. *Yes, sir.*

Q. How old are you? A. *Thirty-three years old.''*

And (p. 397):

''Q. You don't agree in the concept of value which is the law in this State, the value is that which a seller willing to sell, but not obliged to sell, will sell for, and a purchaser willing to buy, but not obliged to buy, will buy for? Now, I want to know whether that conception of value is your conception of value, or whether it is not. A. It is, provided the purchaser presupposed is an informed purchaser. That would be my concept of value, and that would be the value—difference, I would say.

Q. That makes an awful lot of difference, because you inject the informed purchaser; the informed purchaser may decline to buy,

or may buy, when the public wouldn't, and it is what the public would do, informed or uninformed, which makes value. Do you insist upon putting the proviso to the definition of value which I have given you, which is the value by which we in this State at least, are bound by, because the Court has said so? A. I am afraid I do.

Q. Value differs from day to day, doesn't it? A. Yes, sir.

Q. Value differs with density of population? A. Yes, sir.

Q. Value differs with accessibility to facilities? A. Yes, sir.

Q. *But you are so informed of the psychology of all the peoples in the world that you can determine what method is to be used in a particular case in this part of the world, in arriving at value; is that so?* A. *I will have to answer yes.*

Q. The psychology of Chinese as well as the psychology of the gentlemen from Malay, and the English in Australia, and the English men in England, the latter two, who differ, perhaps, in psychology, as much as the island next door to England differs from the English psychology,—but you still say that you can determine value which you have already stated depends on psychology?

Mr. Groel: I object to that question as improper examination.

Mr. Lane: Because I have indicated that the phychologies of different peoples differ?

Mr. Groel: No, the witness testified as to methods.

Mr. Lane: He said the methods differed with psychology. He may have misspoken, and wants to correct himself.

Witness: I didn't understand myself to say the methods. You said values—the city transportation and all these other things affected values, and I agreed.

Mr. Lane: Then I followed that up by a question, Mr. Babcock, in which I said, then the methods to be used in different places differ with the psychology, and you said

yes. If you want to correct yourself, on that, correct yourself, and when you do, I will ask you another question.

Witness: I do want to correct myself.

Q. Then you say that the methods to be employed in any given case does not differ with the psychology of the community? A. No.

Q. Although the value differs with the psychology of the person? A. Yes.

Q. But the method is the same? A. Yes."

He said that depth rules are to be disregarded and on his direct examination (p. 403):

"Q. Do you think that the way in which the experts for the prosecutors applied the depth methods in determining the relative values of the tracts in this case, is a proper method? A. I do not."

And on cross-examination (p. 405):

"Q. And this is the method that you would use in taking two blocks of land, whether located in the City of London or in the City of Newark? A. Yes, sir.

Q. Or Tokio? A. Yes, sir.

Q. The old-fashioned method of going out and finding out what the sales are of properties comparable in the immediate vicinity is all wrong? A. I haven't said that.

Q. Is it? A. As a complete method, it is wrong.

Q. Are you an engineer? A. No, sir.

Q. Aside from your real estate experience which you have gathered, what is your technical education? A. I am a graduate with a degree of Bachelor in Science with Northwestern University in the Department of Economics and the School of Commerce."

He demonstrated (pp. 406 to 411) the impracticability of all of his testimony. He said that he has never before appraised any property in New Jersey or testified in New Jersey (p. 413).

The plan for the proposed apartments, which was used by Maier, was the product of his office (p. 414). He said (p. 405):

> "Q. *Did you read the testimony of the experts for the Prudential and the City?* A. *Yes, sir.*
>
> Q. *Did they adopt the proper method of arriving at the valuations?* A. *No, sir.*
>
> Q. *Everybody is wrong, then, except Mr. Maier?* A. *Yes, sir.*
>
> Q. *And Mr. Maier was taught by you; is that right?* A. *We certainly had conferences about it, I don't know that I taught him the whole method.*
>
> Q. *He said that you suggested it; I am wondering whether you did agree with him. Is that right?* A. *Yes, that is true, of course.*"

McGee was recalled to the stand (p. 416) and said that the figures which he had given upon his previous examination were, in certain particulars, incorrect (pp. 416, 417, 418, 422, 423). Many of his errors consisted of putting amounts on the valuation of the land to be conveyed to Newark which should not have been so put but which should have been put on the valuation of the land to be retaianed by Prudential. His net difference reduces the value of the buildings upon the land to be conveyed to Newark from $556,450 to $515,821.

It is significant that, with respect to the errors which the witness made in apportionment, *he considered only the buildings which had been directed to his attention on cross-examination* (p. 426). Other errors that he found, three in number, were mere matters of mistake in putting figures in one column rather than in another.

He said, however (p. 427), that he had gone over the entire situation again and that he was *then* convinced that he was right. In other in-

stances, where it would appear by comparison with the map showing the area of the buildings and the depth of construction that he did not properly apply the method he used, he failed to remember what the facts were (p. 429).

William H. Kennedy, a builder produced by the prosecutors, *at random,* took fourteen buildings and checked the figures of McGee (p. 462) and found: in one case that McGee had erred in calculation so that his figure of $10,098 for the value of the whole should be actually $4,866 and that McGee's method of apportionment was entirely wrong due to his error in calculation (p. 465); in two instances that McGee had used a figure per cubic foot of thirty-five cents, whereas a building of similar type could be built for thirty cents per cubic foot; in another instance that McGee had erred in calculation of cubic footage, finding 36,000 cubic feet in the building, whereas, as matter of fact, there were but 31,380 cubic feet (p. 466); in another instance that McGee had made an error in calculation, finding 54,000 cubic feet in the building, whereas, as matter of fact, there were but 50,400 cubic feet (p. 467); in another instance, that the proper cubic footage was 18,460 cubic feet, whereas McGee figured 28,000 cubic feet; in another instance the proper cubic footage was 10,896 cubic feet, whereas McGee figured 14,580 cubic feet. In seven of the fourteen houses examined he found clear errors in calculation. He also testified as an expert that McGee was wrong as to the amount per cubic foot which should be allowed and that the value of the front of the buildings was greater than the value of the rear and that that fact should be given consideration.

The net change because of mistakes of McGee in calculation was from $78,711 as the value of these buildings reached by McGee (p. 482) to $70,145 (p. 481), which is approximately $1,000 a build-

ing. There are 142 buildings (p. 425). And if McGee is guilty of the similar errors in the same percentage of cases, it would mean a difference of $73,000 (p. 482).

This testimony of Kennedy was offered, not for the purpose of showing actual value of *all* of the buildings, *but for the purpose of showing that McGee's estimates were entitled to no consideration whatever.*

We have devoted more space than the testimony deserves to this attempt of respondents to indicate that Newark is not to pay more than the actual value of the lands to be conveyed to it. It is significant that, even on *this* testimony, assuming that the theory of the expert witnesses for Newark is correct and that every square foot of land, exterior or interior, is worth precisely the same, which is a manifest fallacy, and that the testimony of McGee and Mayberry, who was the other building expert called and whose testimony as to values stands or falls with that of McGee, both with respect to the value of the buildings and to the proper method of apportionment, is correct, which is another manifest fallacy, the highest value which can be placed upon the lands is $1,098,766.91, which figure is reached by deducting from Newark's estimate of $1,139,395.91 (p. 273) McGee's conceded error of $40,629 in the value of buildings on the lands to be conveyed to Newark (p. 426) or approximately $100,000 less than Newark is to pay. There is an additional $8,000 to be deducted from this figure because of errors of McGee discovered by Kennedy in his examination of fourteen buildings *taken at random* (p. 482), which would increase the difference between the price Newark is to pay and the value of the lands *fixed by its own experts* to approximately $110,000. *But these figures are manifestly incorrect.* It is obvious that, if, as to fourteen

buildings *taken at random,* after McGee had made at least three examinations of the premises and had made three reports, with differing results, each report indicating that he had placed too much value upon the buildings upon the lands to be conveyed to Newark in his preceding reports, Kennedy could discover errors in fifty per cent. of the cases, which errors meant about $1,000 a building, McGee's figures are entitled to precisely no consideration, and it is significant that *every error admitted by McGee and every error discovered by Kennedy was an error which meant that McGee had placed too much on Newark's part of the property.*

It is significant that McGee never erred in placing too much on the land to be retained by Prudential.

It is equally obvious that it is impossible that every square foot of land, inside and outside, should be worth precisely the same.

Doubt is thrown upon respondents' whole case when they produce the expert Babcock, who, although but thirty-three years of age, is so wise as that he can value property in any part of the world.

The Expert Testimony of Prosecutors As to Value.

Charles P. Gillen, who was a Board of Works Commissioner of Newark from 1912 to 1917, and from 1917 to the present time City Commissioner and Director of Parks and Public Property (p. 85) and who has been such Director for upwards of nine years, and who has negotiated sales of property for Newark for two public parks in the neighborhood of the property to be acquired by Newark under the present plan (p. 85), and who

has been in the real estate business for upwards of thirty-five years and has bought and sold property during that time in the neighborhood in which the proposed park is to be established (p. 86), said (p. 87) that the value of the lands to be conveyed to Newark if the ordinary rules for ascertaining value were applied would be $735,000 or $465,000 less than Newark is to pay, but he also said that, upon the market, the lands would not be worth more than between five and six hundred thousand dollars (pp. 87, 88) or upwards of $600,000 less than Newark is to pay, or, in other words, Newark is to pay 100 per cent. more than the value of the lands.

John A. Linnett, a dealer in real estate for upwards of twenty-five years (p. 93) said that, using the Hoffman Neil Rule for depth, the value of the lands to be acquired by Newark would be $981,303 or approximately $220,000 less than Newark is to pay. He has taken the value of the lands as if in one ownership and although, by applying this rule, he reaches this value, he knows of no use to which the land could be put except for factory purposes or garage (p. 95) and he says that if the land were considered in separate ownership it would not be worth, again applying the rule, more than $568,750 (p. 163).

George F. Hewson, who has been in the real estate business for upwards of nineteen years, testified that, applying the rule for depth and considering the lands in one ownership, the land to be conveyed to Newark would not be worth more than $735,000 (p. 99) or approximately $360,000 less than Newark is to pay, and he testified (p. 100):

> "Q. Leaving out of consideration any particular rule, what would you say that any willing purchaser would be willing to offer for those lands—inside lands? A. *I don't*

think that you would get a willing purchaser to purchase those inside lands separate and apart from the front on either one of those streets; if you did, the price would be considerably less than the price I have indicated here.''

Louis L. Bonda, who has been in the real estate business for upwards of eleven years (p. 152), testified that the value of the lands to be conveyed to Newark would be $635,000 (p. 155). This figure is reached by assuming the value of the whole land to be $1,750,000 and then applying the rule; but he says that (p. 156): ''A. At the present time, if a suitable purchaser could be gotten for the property, I would say between approximately *$400,000* and *$500,000.''*

Howard L. Hines, who has been in the real estate business in Newark for upwards of nine years, testified that, applying ordinary rules, the value of the lands to be conveyed to Newark would be $735,000 but that (p. 168):

> ''Q. Why is it worth so much less owned by a separate owner than if it were owned by a common owner? A. The interior lands are, as far as I see, only usable for the frontage—only useful to the owner of the front.''

This witness, as did the other witnesses for prosecutors, qualified by testifying to actual sales made by them in the immediate vicinity and also went into details as to how they arrived at their valuations. We point out that Hewson, who was first called (p. 97), further qualified at page 157.

The experts for prosecutors did not separate the values given by them into value of vacant land and value of improvements. They took the value of the whole, including land and improvements at $1,750,000, and then apportioned that value as if all vacant land which is the only fair method to

pursue, for, when the land is conveyed to Newark it will be vacant, and moreover it appears that an inspection of the map indicates that the greater part of the improvements is on the land to be retained by Prudential. And this was the method used by Newark and Prudential in arriving at the amount to be paid by Newark. They disregarded the buildings and apportioned the purchase price of $1,750,000 in the proportion that the areas taken by each bore to the whole.

A comparison of the testimony of the experts for prosecutors with that of the experts for respondents will indicate, we submit, that these lands which are to be conveyed to Newark, are not worth in the market more than, at the limit, $600,000, or one-half what Newark is to pay for them.

There could be no better expert than Gillen, who is the Commissioner charged with all administrative, executive, judicial and legislative matters as to parks and public property. He has been giving his personal attention to his duties and has negotiated sales of property to Newark for two parks in the immediate vicinity (p. 85). He not only has his experience as Director of Parks and Public Property, in which position he has acted for upwards of nine years, and his experience as Public Works Commissioner, in which position he served five years, but also his thirty-five years of experience as a real estate broker buying and selling property in the immediate vicinity (pp. 86, 87).

The Expert Testimony as to the Suitability of the Land for Public Park Purposes.

Here, again, too much attention will be paid to expert testimony, for it is obvious that, while *ostensibly* these lands are being purchased by Newark for *public* park purposes, they are *really*

being purchased *for the purpose of supplying back yards for Prudential's scheme of housing, to the end that Prudential may be able to charge low rentals and still make a profit upon its investment; and that is the crux of this case.*

The expert testimony is not of much importance because we submit that it is obvious from the circumstances that the lands are not to be purchased *really* for park purposes—nevertheless we will consider it.

Gillen, the Director of Parks and Public Property, stated, on page 89 of the record, that he does not want this property for a public park or playground and that he has consistently voted against the acquisition of the land for that purpose and he gives his reasons (p. 89):

> "Q. And will you tell me whether those lands are, in your opinion, unsuitable for park purposes? A. They are not sufficiently open to allow for a plentiful supply of air and sunlight. These strips would lie between two rows of tall buildings, and at certain times of the day there would be very little sunshine there, and these buildings would probably prevent the proper circulation of air which is a vital thing in public parks. Public Parks, as I understand it, are usually created for the purpose of giving people breathing places, particularly in crowded sections, and giving them an opportunity to enjoy the full benefit of the air and the sunlight, and in my opinion these long strips in between these tall rows of buildings would not serve that purpose. *Then, again, there being no back yards, anyway, which most houses usually have, no matter where they are constructed, those lands would become, to my mind, somewhat similar to back yards.* Anyway, as time rolled on, it would be difficult—in a large population in those long rows of houses located upon these lands, more or less as back yardland—to keep them in proper condition, or to maintain them in de-

sirable fashion. *They might be suitable for certain recreation or playground purposes for those that lived in those houses, but eventually the children living there would monopolize the use of them anyhow, and they could not be considered public parks for the use of the whole section generally, and would not eventually be suited for that purpose.*

Q. Would there be difficulty as to policing them? A. I think there would be more difficulty than if they were open block, with all four sides facing on the streets.

Q. Do you know whether there has been any plan developed for the improvement of these parks, as to what you are going to do with them after you get them? A. There has been no plan, inasmuch as I have expressly stated that I would having nothing to do with them as the Director of the Department of Public Parks, and so forth.

Q. Do you know just how you could start with a shovel to make them as a public park; what you would put in them? A. What you have to put in parks generally is make lawns and pathways and baseball diamonds and tennis courts, and plant shrubbery—beautiful shrubbery, flowers.

Q. How long do you think any of them would last down there? A. Not long.

Q. Is it an expensive proposition to convert a city block into a park? A. Yes, there is considerable expense attached to it.

Q. *Was there any thought or any suggestion by anybody as to the purchase of those lands for park purposes, those interior lands, before the Prudential sought aid in its housing plan?* A. *No.*''

James H. Walker, Forester of the City of Newark, connected with the Department of Parks and Public Property, since 1907, said that the property is unsuitable for park purposes (p. 170) as did William J. Coleman, connected with the Department of Parks and Public Property since 1908 (p. 173).

To meet that which is obvious to the ordinary man from a consideration of the physical conditions as described by Gillen (p. 89)—*i. e.*, that these comparatively narrow strips would lie between two rows of tall buildings occupied as tenement houses, with these buildings abutting on the strips, with no back yards, except the "park"—that the lands are wholly unsuitable for public park or for public playground or other recreational purposes, respondents called several expert witnesses, the testimony of whom we will consider shortly.

Lee F. Hammer, who has been director of the Russell Sage Foundation since 1912 (p. 101), said that the strips would be suitable for a municipal park and playground site "if it is designed for the younger children. It would not do for athletics, such as baseball, but it would make an excellent playground for children" (p. 103). Having stated as one of his reasons why he thought this property was peculiarly suited for playground purposes that "children would not be obliged to cross public streets" (p. 107), he was cross-examined (p. 107), and, while he declined to state that his assertion meant that the usefulness of the park would be confined to the residents of the houses on each side of the park, it is obvious that that is the fact so far as accessibility is concerned for any others would have to cross several public streets (p. 107). He had no idea as to what the population of the houses on the streets abutting the public park would be, and he did not think it necessary that he should know the character of the tenants in the neighborhood (p. 108) to make up his mind, and (p. 109):

> "Q. Did you know that these houses were going to occupy every foot of land up to the public park? A. So I understood.
>
> Q. And that they would have no back yards? A. Yes, that was my understanding.

Q. That is the inevitable result of that? A. I don't know quite what you mean.

Q. Isn't the inevitable result of that, that these parks will be the back yards of these houses, isn't that just as sure as night follows day? A. It would be where the children would be likely to want to play, I should think.

Q. That would be where the children would be likely to want to play, and it would be where the occupants of the houses would want to do what is ordinarily done in a back yard; isn't that true? A. I think that would depend on the construction of the houses.

Q. How would the construction of the houses, unless they were blank walls—(interrupted). A. If the services were provided for from the front, I don't see how there would be any need to have any back yards for that purpose."

He knew of no cases (p. 109) "where a public park has been constructed as here, between two rows of houses running the length of the block, and the houses built flush with the park line, and the backs of the houses facing the park." His cross examination from pages 110 to 115 indicates that his opinion is worthless.

Charles J. Storey, executive secretary of the City Recreation Committee of the Welfare Council of New York City since July, 1930, and for eight years theretofore with the Regional Plan of New York, connected with the Sage Foundation (p. 117) said (p. 119) that the site is fitted and suitable for park and playground facilities and he based his conclusion on "accessibility of the small children to it, *especially those which live in the houses right along by this playground; that is the principal reason which would be different from any other plot that you might have there, if it didn't have the buildings on it*" (p. 119) and (p. 121):

"Q. In other words, these two strips would make good strips for back yards? A. *I*

wouldn't say they were exactly back yards, in the sense of being used for back yards, because here they would really be parks and places for children to play.

Q. Wouldn't they be what we really mean by back yards? A. Some back yards are used for dumping grounds and all sorts of stuff.

Q. Quite likely that these back yards will be used for the same purpose. A. I think that would be a question of how they were managed, the administration of them.

Q. There would be a tendency that way, wouldn't there? A. Of course, there is a human tendency to throw things out of the window, but still as a matter of education, I don't think that is unsurmountable. *These people who would live here would have these playgrounds for their children,* under, I suppose, a play leader, so that they wouldn't be digging in places where they shouldn't be. *Unless it was administered properly, it would be a detriment, not only to those houses, but to the entire neighborhood.*

Q. Exactly. Will you tell me what leads you to believe that the residents of these houses—tenements, five stories high—who had no other back yard, wouldn't, at least, attempt to use this property, which is where a back yard ought to be, for the ordinary purposes a back yard is used for, including dumping and everything else? A. I can only reply to that, it would be a matter of park administration, whether that could be prevented or not.

Q. It would be a matter for the police, wouldn't it? A. It would be a matter of education.

Q. Education, plus a big stick in the hands of the policeman? A. We have that with playgrounds now; if they are not looked after carefully, they certainly get into an awful sight.

Q. Yes, but where you get in that physical condition that a back yard would be, the difficulty is a great deal greater, isn't it? A. I think if those buildings were there, and the park and playground were there, when the people came along to rent the houses, they

probably would sense that, and they could do it in two ways; they could rent it to the people that they thought would take care of those things—desirable tenements, the same as they do in any model housing scheme.

Q. You consider this part of a model housing scheme, don't you? A. *Of course, the houses have a good deal to do with it.*

Q. *The two go together?* A. *The two go together.*

Q. *You wouldn't think for a moment of putting a public park there, if the structures which are now on there were going to remain, would you?* A. *No.*

Q. Nobody else would, in your opinion, would they? A. Of course, unless it was going to be improved that way along the site, there wouldn't be much use of doing it.

Q. Hardly; one rests on the other, does it not? A. *Yes, that is my opinion.* As I understand it, this is not a proposition of leaving the ramshackle buildings there, and selling this center piece to the city, *but it is combined with the proposition to build on the other site, to an even line of 30 feet, and the other is going to be empty; it will be a public park.*"

And p. 123:

"Q. Do you know of any place in the United States, which has come to your attention, where there is a situation like this? A. *It is unique, as far as I know.* We haven't had a chance to look it up, whether there is anything like this."

The witness said (p. 124) that never in his experience has he advised against the placing of a public park at any place proposed.

Randall D. Warden, Director of Physical Education of Newark (p. 125), said, his qualifications being objected to (p. 127), that he thought that the site is a fit location for the establishement of a playground. He testified, page 130:

"Q. Do you know of any instance in the City of Newark, or elsewhere, where a public park serves as a back yard for a house? A. I cannot mention places, but there are places throughout the United States where they have developed backyards, and there have been treatises written upon the advisability of developing *backyard playgrounds.*

Q. Do you know of any instance? A. I am sorry; I cannot quote any instance.

Q. These instances which you have referred to in the City of Newark, the houses have their backyards? A. Yes.

Q. What is your remedy for preventing this public park being used for the purpose that backyards are usually used for? A. I take it that the ashes and coal and that sort of thing will be taken out the front. I understand that there will be no opportunity for gardens to be developed in the backyards, but my experience with playgrounds, gardens and backyards are a great detriment to the management of a playground.

Q. You would rather have the houses flush with the park, so that everything coming from the houses can be thrown down and land in the park, and the like of that? A. *I imagine that this will give an opportunity to make a great change in the slovenly way that tenements live.*

Q. You think that people who live there will be educated by the presence of the park not to do those things? A. *I can see that there will be difficulty. I can see that it will not be all a bed of roses.*"

He had no idea as to the number of people who are to live in the houses (p. 131) and (p. 133):

"Q. All these houses that you have referred to, on public parks, or bounding on public parks and playgrounds, have their own backyards, haven't they? A. Oh, yes, *I know of no case where the property abuts a playground that hasn't a back yard,* but I do know of cases where sides of apartments, per-

haps four-story apartments, are built up, and windows are directly on the playground, right in that neighborhood. The Prince Street playground has such an apartment, a tall apartment with windows, right on the line.

Q. But they have their own back yards? A. Yes."

Louis R. Barrett, Director of Recreation of Newark since April, 1929, and prior thereto Superintendent of Recreation for Des Moines, Iowa, stated that the land would be suitable for the establishment of a playground (p. 136). He demonstrated, on cross-examination (p. 138), that his whole idea was that the site, if developed for playground purposes, would make a fine back yard for the houses, although he calls it a *"front* yard." He said (p. 138):

"Q. According to your judgment, the fact that this public park is lined with the rear of these houses, is a betterment, not a detriment. You would rather have the houses there than have the plot open for playground and park purposes? A. *For a small playground, sure.*

Q. Do you know of anybody else who has expressed that view? A. I think it is quite generally recommended by city planners and recreation people throughout the country, *that in cases similar to this, that the area which is usually used for back yards be put together into one plot and used for playground or neighborhood park."*

And, again (p. 138):

"Q. What do they use, then, for the use to which they usually put the areas usually used for back yards? A. *They think of this as front yards.*

Q. Front yards? A. Certainly; the back yard is usually the street.

Q. And this is not going to be the back yard of those houses, but it will be the front yard of those houses? A. *Certainly; that is the way I would think of it.*

Q. *At any rate, it is a yard appurtenant to the house?* A. *It might be considered such.*

Q. It is not a question of what it might be considered; it is. A. *It would be, if it was a private development; when it is put into one large piece and developed as a neighborhood park, I question whether it is a back yard.*

Q. *Is it a neighborhood park or two block park?* A. *I think that would be generally accepted as a neighborhood park.*

Q. A two-block part in that location, a two-block part appurtenant to the rears, and forming the front yards, of the houses, that is a neighborhood park, is that right? A. Certainly."

He had not the least idea of how many tenements there were to be or how many people were going to live in the tenements (p. 140).

David I. Kelly, Secretary and Director of Recreation of the Essex County Park Commission since 1906, said that, in his opinion, the site is suitable for the establishment of a playground (p. 142). He thought that there would be about 600 families living in the tenements, but he did not know anything about what the minimum rent would be (p. 146). He testified (p. 147):

"Q. Do I understand that you prefer to have this property used for park purposes, with the buildings abutting, rather than to have it clear ground right out to the public street? A. The question wasn't put to me as a preference.

Q. I am putting it to you as a preference now. What is your answer? A. *If that entire area from Somerset to Barclay, and from Waverly to Montgomery, without any buildings at all, were made into a playground, it would be a very desirable thing to do.*

Q. A much more desirable thing than to serve as ornamental back yards, to those houses, wouldn't it? A. I don't like the

'ornamental' back yards, Mr. Lane, but it would be a very desirable, and perhaps give a very much broader and bigger, play area.''

He said (p. 149):

''What would the people living in those houses use as their back yards, for the purposes for which back yards are in this day used? A. As I understand it, the development of the new type houses and especially those that are built for a perhaps more fit class of people, they don't have back yards any more. The new apartments don't have back yards; they are facing them on the corners, and the service is so arranged that you don't have to have back yards.

Q. Does the City of Newark permit you to erect a house without leaving some of the space vacant? A. That is due to the tenement house laws, I understand, which provides for certain shafts and that sort of stuff, for light purposes; those are called courts. The courts that are used in these modern apartments are not back yards; they are courts.

Q. So the back yard, in your judgment, has been abolished? A. I hope so; that is, if we can carry them out.''

It is quite clear from his cross-examination (p. 145 to 149) that he *thinks of this playground only in connection with the abutting houses and as making it possible for Prudential to proceed with its model housing plan.*

The net effect of all of this testimony produced by respondents is that, considered in connection with the model housing plan of Prudential and to make *that* possible, the interior strips to be conveyed to Newark are suitable for back yard purposes.

The witness Barrett, at pp. 138 and 139, frankly conceded that, if it was a *private* development,

this interior strip would be considered as a yard "appurtenant to the house" (p. 138).

Except in connection with the building of the model tenements no one of the witnesses would think of establishing a public park or playground on interior strips such as are here involved.

Unless Newark acquired these lands, it would be impossible for Prudential to proceed with the erection of its model tenements as proposed because the City ordinances forbid constructing buildings over the entire plot (p. 149). *These interior strips developed for a playground or public park by Newark supply the light and air which any other private developer would be obliged to supply by leaving vacant a part of the plot upon which he was constructing his buildings.*

By the proposed plan Prudential, at the expense of all the taxpayers of Newark, is relieved from this necessity. No amount of expert testimony can overcome the obvious situation as disclosed by the physical conditions nor can it answer the objections to this site as a public park or playground as expressed by Gillen, Director of Parks and Public Property, to whom all judicial, executive, administrative and legislative matters pertaining to public parks is confided (p. 89).

The real question in this case is whether Newark proposes to purchase lands *actually* for *public* park or playground purposes or to aid and assist Prudential in its housing plans and *ostensibly* for *public* park and playground purposes. A very significant fact is that the amount which Newark is to pay was *not fixed upon any consideration of values but upon a consideration of the amount which Prudential needed to enable it to proceed with its housing plans.* At the time the Commissioners acted no figures as to values were before them and none had been obtained. All of the expert witnesses of respondents as to values were

obtained after the amount which Newark was to pay was fixed and in an attempt to sustain that amount. It is fair to assume that, had Newark been concerned *only* with the matter of playgrounds or public parks, its Commissioners would have obtained figures as to values before embarking upon the purchase.

This brings us to a discussion of the first two points which will be argued together:

First: The effect of the ordinance is to permit the use of public funds raised by taxation for other than a public purpose.

Second: The action of the Commissioners in authorizing the agreement to purchase is a gross abuse of the discretion of the Commissioners.

The Law.

It was conceded by respondents on the argument before the Chief Justice upon the application for the writ that Newark could not contribute to the housing plan of Prudential, and it is well settled that a municipality may not contribute, either *directly or indirectly,* to the cost and expense of a housing plan such as is here involved. The same principle applies as is applied in cases in which a city is taking property by eminent domain. The question is whether the taking of the property or the aid and assistance is for a *public* use. That aid or assistance rendered to a plan such as is involved in the Prudential housing plan is not for public use is, we submit, settled.

In *In re* Opinion of the Justices, 42 L. R. A. (N. S.) 221, 211 Mass. 624, 98 N. E. 611, certain of head notes are:

"(5) A statute providing for the taking of public money by a state commission to purchase land and build homes for resale to mechanics, laborers, or other wage earners is designed, primarily, for the aggrandizement of individuals and only for the incidental benefit of the public, and is invalid as a taking of public money for private use.

(6) And such statute is not valid as an exercise of the police power to mitigate the evils of overcrowded tenements and unhealthy slums, as these may be more properly reached by building ordinances and regulations, and inspection as to housing, light, and air, etc."

At p. 612, the Court said:

"The questions relate to the constitutionality of a bill entitled 'An Act to extend and define the duties of the Homestead Commission.' The general scheme embodied in the proposed bill is that the commonwealth shall purchase land, and develop, build upon, rent, manage, sell and re-purchase the same. The Homestead Commission is clothed with the fullest power to go into the business of buying, renting and selling real estate. As expressed in the bill, its purpose is to provide homes 'for mechanics, laborers, or other wage-earners,' or as suggested by the amendment set forth in the second question, to improve 'the public health by providing homes in the more thinly populated areas of the state for those who might otherwise live in the most congested areas of the state.' In a constitutional sense the difference between these two statements of purpose is not material in view of the actual provisions of the bill. The substance of it is that the commonwealth is to go into the business of furnishing homes for people who have money enough to pay rent and ultimately to become purchasers. It is not a plan for pauper relief. The question is whether this is a public use.

To this fundamental test must be brought all governmental activity in every system

based upon reason rather than force. *The dominating design of a statute requiring the use of public funds must be the promotion of public interests and not the furtherance of the advantage of individuals. However beneficial in a general or popular sense it may be that private interests should prosper and thus incidentally serve the public, the expenditure of public money to this end is not justified.* Government aid to manufacturing enterprises, the development of water powers and other natural resources by private persons or corporations with public funds, either through loans or by the more indirect method of exemption from taxation or taking of stock, have been universally condemned by courts throughout the country, although often attempted by legislation. The leading case is Lowell *v.* Boston, 111 Mass. 454, 15 Am. Rep. 39, where a statute was considered authorizing the city of Boston to issue bonds for the raising of money to be lent to owners of real estate whose buildings had been destroyed in the devastation wrought by the Boston fire of 1872. This statement of the law by Mr. Justice Wells, at page 461 of 111 Mass., 15 Am. Rep. 39, hardly can be surpassed for accuracy and clearness: '*The promotion of the interests of individuals, either in respect of property or business, although it may result incidentally in the advancement of the public welfare, is, in its essential character, a private and not a public object. However certain and great the resulting good to the general public, it does not, by reason of its comparative importance, cease to be incidental.* The incidental advantage to the public or to the state, which results from the promotion of private interests, and the prosperity of private enterprises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary. It is the essential character of the direct object of the expenditure which must determine its validity, as justifying a tax, and not the magnitude of the interests to be affected, nor

the degree to which the general advantage of the community and thus the public welfare may be ultimately benefited by their promotion.' This principle has been applied to a great variety of cases. It was amplified with a full citation of authorities in Opinion of the Justices, 204 Mass. 607, 91 N. E. 405, 27 L. R. A. (N. S.) 483.

The question, in its last analysis is one of taxation. Can the commonwealth raise money by taxation for the purposes set forth in the act?''

And at p. 613:

''Taxation is somewhat historical in its nature and can be most intelligently approached by comparison of those subjects which have been held to be a public use and those which have been held not to be a public use. It is not now open to question that the establishment and maintenance of water and sewerage systems and electric light and gas plants are public uses. They relate to commodities which are or have become universally necessary, and they cannot be procured by each individual or family acting separately, but require co-operation. As a practical matter provision for these necessities is monopolistic in character, and having due regard to the reasonable convenience of the public, there can be no competition respecting them. The permanently exclusive use of portions of the public ways is essential to the effective furnishing of these necessities. Highways are public in their nature, and their construction and repair are legitimate public expenses. Hence they cannot be appropriated to any use which is private. These necessities cannot be provided without the exercise of powers conferred only by the Legislature, and commonly require the exercise of eminent domain. Although water and artificial light are in a certain sense beneficial to individuals, their public functions are so overshadowing as to stamp them as proper subjects for state or

municipal ownership. Opinions of the Justices, 150 Mass. 592, 24 N. E. 1084, 8 L. R. A. 487.

On the other hand it was said in Opinions of the Justices, in 1893, 155 Mass. 598, 30 N. E. 1142, 15 L. R. A. 809, and again in 1903, 182 Mass. 605, 66 N. E. 25, that it was beyond the power of the Legislature to authorize cities and towns to engage in the business of furnishing coal or fuel to the public. The economic aspects of conducting business of this character through public instrumentalities are not for our consideration. Such a system is not possible under our Constitution. The grounds upon which these opinions were founded are that such enterprises are conducted by individuals. They are universally recognized as legitimate and proper fields for private and personal adventure. No legislative authority is required to engage in them, and no powers derived from that source are needed for their prosecution. It is a natural right subject only to regulation by the police power. A person lawfully engaged in such business cannot be driven out by taxation to support his rival even though that rival be an arm of government.

The questions of the present order are closely analogous to those raised by the order of the Honorable House considered in Opinion of the Justices, 204 Mass. 607, 91 N. E. 405, 27 L. R. A. (N. S.) 483. It was said there in substance that it was not within the power of the Legislature to authorize the taking of land outside the limits of streets for the purpose of being leased or sold under such restrictions as would insure proper development of industrial and commercial facilities. Such purpose was said to be primarily for the aggrandizement of individuals and only incidentally for the promotion of the public weal. We are unable to distinguish the purchase, development, rental and sale of land in the manner provided by the present bill from the principles announced in these decisions and opinions and many others col-

lected and somewhat reviewed in 204 Mass. 607, 91 N. E. 405, 27 L. R. A. (N. S.) 483.

Buying and selling land always has been freely exercised by all individuals who desired, under the Constitution. Proprietorship of his own home has been one of the chief elements of strength in the citizen, and widely diffused land ownership has conferred stability upon the state. It is matter of common knowledge that thousands of inhabitants of the commonwealth who are 'mechanics, laborers or other wage-earners' have become, through industry, temperance and frugality, owners of the homes in which they dwell. *These proprietors, however humble may be their houses, cannot be taxed for the purpose of enabling the state to aid others in acquiring a home whose temperament, environment or habits have heretofore prevented them from attaining a like position.* Although eminent domain differs from taxation in the occasion and manner of its exercise, it rests for its justification upon the same basic principle of public necessity. If this be held to be a public purpose, it would be lawful to authorize the commission to exercise the power of eminent domain. *This would mean that the home of one wage-earner might be taken by the power of the commonwealth for the purpose of handing it over to another wage-earner. Neither the power of taxation nor of eminent domain goes to this extent.* If the purpose is a public one, the property of every inhabitant, however improved or used, must yield to the superior right. *But if the end to be gained is not public, no one can be compelled to contribute under either form of governmental power.*

Ownership of a bit of land is one of the deep seated desires of mankind. The property resting on such proprietorship is among the dearest rights in the minds of many people secured by the Constitution. If the power exists in the Legislature to take a tract of land away from one owner for the pur-

pose of enabling another to get the same tract, the whole subject of such ownership becomes a matter of legislative determination and not of constitutional right.

Experiments in other lands, where the people have established either no bounds or fragile ones to the absolutism of governmental powers by a written constitution, afford no guide in the determination of what our Constitution permits.

It may be urged that the measure is aimed at mitigating the evils of overcrowded tenements and unhealthy slums. These evils are a proper subject for the exercise of the police power. Through the enactment of building ordinances, regulations and inspection as to housing and provision for light and air lies a broad field for the suppression of mischiefs of this kind.''

And see *In re* Opinion of the Justices, 204 Mass. 616, 91 N. E. 578, *City of Boston* v. *Talbot,* 206 Mass. 82, 91 N. E. 1015, in which case, at page 1016, the Court said:

"The question whether the use for which land is taken under the right of eminent domain is a public use is a judicial question, and the determination of the Legislature upon it may be revised by the court. Talbot *v.* Hudson, 16 Gray, 417; Moore *v.* Sandford, 151 Mass. 285-288, 24 N. E. 323, 7 L. R. A. 151; Lowell *v.* Boston, 111 Mass. 454, 15 Am. Rep. 39; Opinion of the Justices, 204 Mass. 607, 91 N. E. 405."

In *Salisbury Land & Improvement Co.* v. *Commonwealth,* 215 Mass. 371, 102 N. E. 619, the tenth head note is:

"(10) Private property cannot be taken *ostensibly for a public use and then diverted to a private use, and legislation so designed or framed as to permit this result is invalid.''*

At page 622 the Court said:

"(9) The acquisition of land under the power of eminent domain to be devoted to private uses has been recently considered and discussed somewhat at length. It has been said that the exercise of the power of the state, *either through taxation* or eminent domain, to take land from one person with the intent of handing it over to another person, is not a public purpose and is contrary to basic and essential principles of free government. Opinion of Justices, 204 Mass. 607, 91 N. E. 405, 27 L. R. A. (N. S.) 483. The underlying objection is that the main end of legislation for this purpose is a private utility rather than the general good. While *incidentally* it may be an advantage to the public that private persons prosper, if the essential character of the transaction in its direct object is private benefit to individuals, the purpose is not public. *In a general sense it is of public interest that the people be well housed, but this does not authorize the state to become the general landlord. That subject is a proper one for the exercise of the police power but not of eminent domain.* It was said by the court, speaking through Mr. Justice Harlan in Madisonville Traction Co. *v.* St. Bernard Mining Co., 196 U. S. 239, 251, 25 Sup. Ct. 251, 256 (49 L. Ed. 462): 'It is fundamental in American jurisprudence that private property cannot be taken by the government, national or state, except for purposes which are of a public character although such taking be accompanied by compensation to the owner. That principle grows out of the essential nature of all free governments.'

(10) Private property cannot be taken *directly or indirectly for a private end.* It cannot be seized ostensibly for a public use and then diverted to a private use. Legislation which is designed or which is so framed that it may be utilized to accomplish the ultimate result of placing property in the hands of one individual for private enjoyment after it

has been taken from another individual avowedly for a public purpose is unconstitutional. *It would enable that to be achieved by indirection which by plain statement would be impossible.* These principles have been expounded at length in early decisions and recent opinions of this court with affluent citation of authorities. It is not necessary to do more than refer to a few of them. The case at bar is indistinguishable from them. Lowell *v.* Boston, 111 Mass. 454, 15 Am. Rep. 39; Wilkins *v.* Jewett, 139 Mass. 29, 29 N. E. 214; Mead *v.* Acton, 139 Mass. 341, 1 N. E. 413; Opinion of Justices, 204 Mass. 607, 91 N. E. 405, 27 L. R. A. (N. S.) 483; Opinion of Justices, 204 Mass. 616, 91 N. E. 578; Opinion of Justices, 211 Mass. 624, 98 N. E. 611. See, also, Hairston *v.* Danville & Western Ry. Co., 208 U. S. 598, 28 Sup. Ct. 331, 52 L. Ed. 637, 13 Ann. Cas. 1008; Sanborn *v.* Van Duyne, 90 Minn. 215, 96 N. W. 41; Brown *v.* Gerald, 100 Me. 351, 61 Atl. 785, 70 L. R. A. 472, 109 Am. St. Rep. 526.''

And see:

In re Opinion of the Justices, 237 Mass. 598, 131 N. E., p. 25;

Los Angeles v. *Lewis,* 175 Cal. 777, 167 Pac. 390;

White Eagle Oil & Refining Co. v. *Ginderson,* 48 So. Dakota 608, 205 N. W. 614.

And the very important case of *In re* Opinion of the Justices, 204 Mass. 807, 91 N. E. 405; 27 L. R. A. (N. S.) 483.

In *Brown* v. *United States,* 263 U. S. 78, 68 L. Ed. 171, at p. 181, the Supreme Court of the United States said:

''Our conclusion is not in conflict with that class of cases with which the justices of the supreme judicial court of Massachusetts

dealt in Opinion of Justices, 204 Mass. 607, 27 L. R. A. (N. S.) 483, 91 N. E. 405. It was there proposed that the city of Boston, in building a street through a crowded part of the city, should be given power to condemn lots abutting on both sides of the proposed street with a view to sale of them, after the improvement was made, for the promotion of the erection of warehouses, mercantile establishments, and other buildings suited to the demands of trade and commerce. The justices were of the opinion that neither the development of the private commerce of the city nor the incidental profit which might enure to the city out of such procedure could constitute a public use authorizing condemnation. The distinction between that case and this is, that here we find that the removal of the town is a necessary step in the public improvement itself, *and is not sought to be justified only as a way for the United States to reduce the cost of the improvement by an outside land speculation.*''

Argument.

With this view of the law we will consider the facts.

By Chapter 201 of the Laws of 1929, P. L. 1929, p. 376, Supp. to Comp. Stat. of New Jersey, 1925-1930, Secs. 136-3771 (B), p. 1188, insurance companies were authorized to present to the governing body of any city of the first class an application for approval of a project for the acquisition of a tract of land ''occupied in whole or in part by unsanitary or unsafe structures used as dwellings and for the demolition of such existing structures and for the construction upon such tract of land of new housing facilities in accord with proper standards of sanitation and safety, at the expense of such applicant.'' Sec. 2, P. L. 1929, p. 376.

The governing body is authorized to examine the application and "determine whether the project set forth in such application be in the public interest and necessary for public use" (Sec. 3, P. L. 1929, p. 377) and to approve it, whereupon (Sec. 4, P. L. 1929), the applicant "may * * * undertake and proceed to acquire the lands required for the completion of such project as set forth in such application" and the municipality is given the right, if the applicant cannot acquire the land by treaty, to exercise the power of condemnation.

If condemnation is resorted to, then it becomes the duty of the Board of Commissioners to fix the *maximum* rental per room. The lands may not be disposed of except upon notice to the municipality, and there are other restrictions.

This act is clearly unconstitutional, under the cases above mentioned, so far as it attempts to give the municipality the right to exercise the power of condemnation.

Chapter 202 of the Laws of 1929, P. L. 1929, p. 380, is similar to Chapter 201 except that it does not declare that such a housing plan would be for a public use and does not authorize the municipality to exercise the power of condemnation. It does, however, give the Board of Commissioners the power to fix the *maximum* rental per room "to the tenants of such new housing facilities so completed upon such a scale that the net return to such insurance company from the rentals so fixed shall equal at least five per centum but shall not exceed six per centum upon the cost of the entire project as set forth in the estimate annexed to the application as provided by subsection (4) of section 2 of this act."

It would appear that Prudential has not complied with either act, for no application was filed with Newark in accordance with the terms of either.

Officially the matter was brought to the attention of Newark by Edward D. Duffield, President of Prudential, at a meeting of the Commissioners of April 23, 1930 (p. 10). He stated that Prudential had been engaged in a housing project for over a year, the matter having been originally brought to his attention through Mayor Congleton and Mr. Sinclair, a member of the Essex County Park Commission and, among other things, he said (p. 10):

> "We have felt throughout that it was possible to bring the project to a successful conclusion *only through the cooperation of the City.*"

And, p. 11:

> "The project has now reached a point where, it seems to us, that if it is carried to a successful conclusion, *we should have the cooperation of the City, at least in one particular, in rather a definite form.* I felt when we were first brought into the matter that there were certain factors which were necessarily controlling if there was to be the benefit which we all hoped would ensue in connection with the whole project. It was my thought then that the project, while of inestimable benefit to the City and to the people of the City, *if it were to be of the greatest benefit, should be kept on a business basis.* In fact, that was the only way in which the Prudential could cooperate in this matter.
>
> I represent the custodian of large sums of money, none of which belong to the Prudential, all of which are entrusted to the Prudential for investment, in order that we may be able to fulfill our contracts and safeguard the interests of those who have entrusted their needs to us for that purpose. *Under those circumstances, it was essential that there should be a fair return on any investment which we made in connection with the housing project;* but it has seemed to me that

> it was even more desirable from a broader aspect, because whatever the Prudential may be able to do in Newark or in any other City would be comparatively slight."

And, p. 12:

> "We have been informally assured *that we might count on the City's cooperation, but we have not been in a position until recently to suggest how far we feel it is essential that the City cooperate in connection with the whole project.* I come to you this morning with a rather definite program."

Referring then to a housing project in another district of Newark, he said, p. 12:

> "By the time we have completed our operations there, I imagine that there will be an investment on the part of the Prudential of over two million dollars. As I say, *without asking the City to join with us in partnership,* we will be able to invest this sum to provide accommodations for at least one thousand families and to furnish——"

Prudential proposed in these blocks in the Iron Bound District of Newark to be acquired by it, *to itself convert the interior of the blocks into parks and without the aid of the City,* and as to that he said, p. 13:

> "In one sense it will not be a community project, *in that those parks which occupy the center of the block will not be utilized in a general community way."*

He further said, referring to the project in the Third Ward which is the subject matter of this litigation, p. 15:

> "Now, I am sincerely desirous that that project should be carried out. I believe it would mean much to that community. I believe that there we can and should give con-

sideration to a community project, but it is essential, if that be done, that we *should have some cooperation with the City in connection with the financing of that project.* In other words we have acquired those two blocks, which we could utilize in their entirety without coming to the City, *but if we did so it would destroy the whole project for this reason: That the cost of acquisition of this land has been higher than in the other two cases that I have mentioned.* We propose that in every case we shall figure out in determining the cost for the rental of the various rooms that go into these buildings a mere return on the capital invested. *Of course, the more capital invested, the higher the cost of the building, the higher the cost of the acquisition of the land, the more necessary it will be to provide a higher rental in order to furnish a return which seems to me to be requisite that we should receive as trustee.* It will be a low return; it will be a fair return, one which will commend itself to the public and to your honorable body, but nevertheless, if you once adopt the principle that these buildings must yield a return at that minute you assume that the higher the cost of acquisition the higher the rentals necessarily must be. Therefore, if we want to carry out the main purpose of this whole project to go into this community and give the people there apartments at a low rental, *some method must be found to bring the cost down to a point where it can be done.* That can be done not by asking the City to bear any part of the cost of the housing project. That is the last thing in our mind. As I say, we do not purpose to ask cooperation on the Ironbound proposition or on the Frelinghuysen Avenue tract, but in the Third Ward we ask if the City could see its way clear to utilize such portion of these bolcks that we have acquired as will not be necessary for utilization by the Company for the erection of these houses. If the City will take the remaining part of that

tract and utilize it for parks in that ward we can carry out this plan successfully."

And he further said, p. 19:

"Now, assuming that you should not feel that you should cooperate in this matter; it seems to me that the project in the Third Ward is impossible from our standpoint. We could utilize that land. We could erect buildings there. We could proceed to rent this, *but the rents would probably be at a point at which those who are seeking relief would be unable to pay. Since that is the whole point in the subject, I think that we would inevitably be driven, as an essential proposition, to abandon that thickly settled area with its high price of land and be driven to a point where we would buy the land more cheaply and erect houses at a lower rental.* In other words, the acceptance of this suggestion is not essential to the housing program which we have undertaken. *I think it is essential if we are to attempt the housing experiment in this particular locality.*"

Remarks were then made by Commissioner Murray (p. 21), Commissioner Brennan (p. 23), Robert S. Sinclair, Essex County Park Commissioner (p. 24), which indicated that uppermost in the minds of all the speakers was the housing plan.

The ordinance was introduced at the meeting of August 27, 1930 (p. 29). Its recital indicates its purpose. It commences:

"That WHEREAS, The City desires that in the *interest of the public health, safety and morals certain blocks of unsafe and unsanitary dwellings, hereinafter described, in the City of Newark, should be replaced in part by new housing facilities constructed in accord with proper standards of sanitation and safety and provided with appropriate parks and playgrounds,* and

> "2. That WHEREAS, The Prudential Insurance Company of America is willing, pursuant to authority of law to acquire the tracts of *land upon which such unsafe and unsanitary dwellings now stand and to construct upon a part of such tracts such new housing facilities and to convey to the City certain other parts thereof for the purpose of such parks and playgrounds.*"

It then approves the agreement (p. 30) which is annexed to the ordinance as finally passed (p. 7).

The agreement provides that the purchase price to the City for the lands to be acquired by it shall be (p. 8):

> "such proportion of the total price paid by the Prudential for the said tracts as the area of the strip so purchased bears to the total area of said tracts acquired by the Prudential * * *"

but in no case is the sum to be paid by the City to exceed $1,200,000 (p. 8).

At a meeting of the Commissioners held September 3, 1930 (p. 33), Commissioner Gillen, the Director of Parks and Public Improvements, spoke against the project and gave his reasons. He said (p. 34):

> "It is proposed contrary to my opinion to buy *these backyard lands* and to hand them over to me for public park purposes. Hitherto I was under the impression that the Director of the Department of Parks and Public Property should first make the selection of any park or park sites."

He compared the price which was to be paid by Newark with the prices which he had paid for lands similarly situated, and he said (p. 34):

> "The backyard area of these two blocks would amount to 228,300 square feet which

at a cost of $1,200,000 to the City would have to pay at the rate of *$5.25* per square foot for this backyard land. Within the past two years I have purchased the block which is now Hayes Park West, having a frontage on three streets at the rate of *$3.65* per square foot."

He further said (p. 34):

"If the City ever desired to sell this property it would have valuable frontage on three streets, if the City ever desired to sell the backyard property of the Prudential blocks it would not be able to get any price because the property would not have any frontage to speak of. These long, narrow backyard strips shaded by two rows of buildings which would keep the sunlight out most of the time are to my mind undesirable for public parks. *They would be all right for the accommodation of the people who would live in the buildings to be erected but for the games that are played by children of all ages they would be entirely unsatisfactory, inadequate and undesirable in every respect and as Director of Parks, I will, of course, have nothing to do with them under any circumstances or conditions.*"

Mayor Congleton, among other things, said (p. 37):

"We must all view the situation as we find it. *The proper housing of colored people in the City of Newark is a vital question before us all.* We talk about good citizenship, yet there has been no real effort made to give the colored people proper *living conditions* in order to assist them in becoming the citizens that we all want them to be. The Prudential endeavors to buy this land. If they took it all they could not accomplish one of the main purposes, to wit: *Giving the colored people in that section proper living quarters at a low*

rental. And one of these entire blocks is to be set aside for colored people."

He quoted a letter which he had sent to Commissioner Gillen on May 29th, 1930 (p. 39), and the letter clearly indicates that his fundamental idea was to aid and assist Prudential so that it could proceed with its housing plan. Among other things he referred to a conference which had been held by the City Commissioners with Prudential officials on April 9, 1930, and as to that conference he said (p. 40):

> "At that conference, Mr. Duffield outlined to us the general plan, *stating that the price of lands in the Third Ward was so high that it would be impossible for his company to proceed with its program unless the City participated to the extent of purchasing the interior lands for park purposes.*"

Further in his letter he said (p. 41):

> "Recently, your colleagues issued a formal statement to the press endorsing the plan, which I submitted to you prior to its issuance. You did not sign it, but neither did you voice any protest as to our interfering in the matter of selecting a proposed site.
>
> "As a matter of fact, the selection of the site was not put up to the Board; *that question had already been decided by the Company behind the project, long before it came to our attention. We were called upon to determine the question of policy as to whether the City would participate with the Prudential in the development of this improvement. It was purely a question of policy and had nothing to do with the selection of any particular site.*"

Upon Commissioner Gillen replying to Mayor Congleton (p. 42) opposing the project and giving his reasons Mayor Congleton referred to the fact

that under a law of New York in that State the municipality "contributes directly and very substantially" which is a clear indication that the Mayor considered that the plan of having Newwark purchase the lands for park purposes *was a contribution to the project indirectly.*

Commissioner Murray said, p. 45:

> "I recall that meeting, (reference to the meeting of April 9th) Mr. Mayor. Mr. Duffield said the Prudential was capable of going ahead with the entire proposition itself, *except that if there were no participation by the municipality they could not set their rents at the low figure that it was their ambition to maintain in these premises, and that their concern was not so much on behalf of themselves as it was on behalf of those who would occupy the premises and would be able to live in sanitary modernized quarters which would not be the case if the City did not participate.*"

With that recollection of Commissioner Murray, Mayor Congleton concurred.

On October 1, 1930, a letter was received by the Commissioners from the President of Prudential (p. 49) in which, among other things, he said, p. 49:

> "The Prudential was not the moving party in this project, but engaged in the same at the request of yourself, representing the other commissioners. *It was your desire as well as ours that not only should the Prudential provide additional housing accommodations for citizens of Newark, but that in so doing they should remove buildings now used but unfit for human habitation.* In determining on our location we requested that a survey of the City should be made by the Police Department and by the Health Department in order that we might be advised as to what location from the standpoint of both health and social conditions would be

benefited by the improvements which we were proposing to make. As a result of these two surveys the two blocks in question were recommended to us for the purpose which we both had in mind. These conclusions were concurred in by the social and welfare agencies of the City.

"Thereupon we caused a careful investigation to be made as to the probable acquisition cost of the two blocks in question. *As a result thereof it soon became evident that if the existing buildings were demolished and new buildings erected in their place unless rentals were obtained on a scale which would be prohibitive to the people whom we were desiring to aid, a reasonable return on the invested funds would become impossible.* It was, of course, recognized throughout all our negotiations that the Prudential could not engage in an philanthropic enterprise, but must conduct the whole project upon a business basis as the funds used for that purpose were held by us in trust for our policy holders. *Under these circumstances if the rentals were to be kept at a low rate it was essential that a portion of the lands not needed for the buildings should be acquired by the City for park purposes.*"

He further said, p. 51:

"At that time I stated to them frankly our reasons for desiring to proceed on this particular site, but emphasizing the fact that it would be impossible for us to do so unless the City was prepared to utilize a part of the land for park purposes."

The ordinance came up for final passage on October 15, 1930. Each Commissioner gave his reasons for voting.

Commissioner Gillen voted "nay" and gave his reasons (p. 53).

Commissioner Howe voted "yea" and gave his reasons (p. 57).

Commissioner Murray voted "yea" and gave his reasons (p. 60).

Commissioner Murray laid great stress on the *dilapidated condition of the buildings* in the two blocks. Among other things, he said, p. 60:

> "I personally was in the buildings in those two blocks and I stood in the bathroom and looked out through the corner of the wall, and a nail had not been driven in the place for two years, according to the tenant, and he was paying $27 a month rent for living in a dump that was not fit to keep hogs in. In addition to the economic phase we have to consider the social features. You cannot raise a rabbit in a rat's nest and you cannot raise children to be model children where children of ten, twelve and fourteen years sleep in rooms where the sexes are mixed, adult ages, where the children see things that scandalize them and teach practices that are dangerous and teach habits that destroy them."

He further said:

> "* * * and it would be a crime for the City to sit by and see this continue any longer than we have to. It should be eradicated."

Mayor Congleton voted "yea" and gave his reasons (p. 62). Among other things, he said (p. 62):

> "The Prudential did not seek the legislation under which this project goes forward if it goes. The Prudential has not asked us to spend $1,200,000. We have asked the Prudential to go into this project and engage to carry it out in the section of the City where I feel it is most needed. We have agreed to pay for a part of the land to be devoted to park and recreational purposes.
>
> Some reference has been made to the fact that the Prudential intended to stand all of the expense of the project in the Third Ward

> and that it has come as a surprise to some that the City is going to participate in it. I am sorry if that misunderstanding exists. But I want to make clear that when the Prudential found what it would cost to purchase lands in the Third Ward in the localities where the health authorities and the police authorities said the new houses were most needed, *they reported to the Board of Commissioners, through me, that they could not go forward with the project and give the rents that we all wanted to see fixed.* I, in turn, reported that to my colleagues at a conference, and it was in that conference that the scheme *that is now before us was worked out, and I was told by a majority of the members of this Commission to so inform the Prudential Insurance Company;* * * *."

He again referred to the fact that, if Newark were in New York State, it might *directly* contribute to the project by exemption from taxes (p. 63). He further said (p. 63):

> "I say frankly that *I would not be in favor of going in and buying a strip of land such as we are buying, and paying the amount that we are paying, unless there are coupled with it the housing proposition.*"

Commissioner Eagen voted "yea" and gave his reasons (p. 64). After stating conditions of housing in the Third Ward and indicating that those conditions should be remedied, he said (p. 67):

> "Now, in so far as the operation of the plan is concerned, the Prudential in purchasing these plots found that if they were to give a rental within the means of the poorer person, they would have to have some help; and they felt—and I think properly so—*that the proper agency to appeal to was the City of Newark.*"

He said (p. 69):

> "There are some things in so far as the proposition is concerned that are quite new. Commissioner Gillen is justified, to a large extent, in saying that this should be left within the confines of his department, because after all the park system is one of the divisions of government that is charged to his supervision as a director. *There are new features in the fact that we are going into a park building proposition, tieing up closely with a housing problem. If I were to pass upon the more important matter for us to decide upon today for the benefit of Newark, I would say, 'Give us better housing first and better park facilities second'.*"

From this resumé of the proceedings before the Commissioners at the various times at which the project was brought forward, and the remarks made by each Commissioner at such times and at the time the ordinance was passed, it is clear that *no one of the Commissioners would have picked out this site for park purposes if it had not been tied up with the housing project of Prudential and that the fundamental purpose was to aid and assist the Prudential financially so that the investment of the Prudential would not be so great as to prevent Prudential obtaining a reasonable return upon its money and still keep down the rentals.*

We again refer to the fact that there were no figures before the Commissioners indicating what was the value of the land which Newark was to acquire. The amount which Newark was to pay was fixed *not upon any supposed value of the land but because the $1,200,000 was needed to reduce the investment of Prudential.*

There were but two witnesses called by respondents who testified as to the purpose of the plan.

Mr. Duffield, President of Prudential (p. 174) and Mayor Congleton (p. 200).

Mr. Gillen had testified for Prosecutors (p. 85) and had said at page 90:

"Q. Was there any thought or any suggestion by anybody as to the purchase of those lands for park purposes, those interior lands, before the Prudential sought aid in its housing plan? A. No."

* * * * * *

"Q. Were you present, Mr. Commissioner Gillen, at a luncheon given by Mr. Duffield, President of the Prudential Insurance Company, at which the purchase or the housing plans of the Prudential were discussed? A. I was, the first conference given to the Commissioners, I believe, by Mr. Duffield, if that is the one you refer to.

Q. During the course of the discussion, did Mr. Duffield say anything with respect to the Prudential Insurance desiring aid? A. He did.

Q. Will you tell me what he said, as nearly as you can recall? * * * A. Mr. Duffield spoke about the three sites that the Prudential had acquired, or was about to acquire, for the housing proposition. He said, in the case of the Twelfth Ward site, the Down Neck site, the Prudential could finance that itself fully, and in the case of the Waverly site, the Frelinghuysen Avenue site, the Prudential could finance that fully, but in the case of the Third Ward site they had made estimates of the cost of acquiring the properties, and *unless the City put in a certain sum of money, the Prudential could not go ahead with that improvement and keep the rents as low as he desired them to be kept.* That was about what he said."

* * * * * *

"Q. Up to that time had there been any suggestion of the City acquiring these lands for park purposes? A. No.

> Q. Who made the first suggestion that the lands be acquired for park purposes, and when? * * * A. Mr. Duffield."

This testimony was directed to Mr. Duffield's attention (p. 175) and he stated that Prudential had not sought Newark's aid. He said that: the matter had been first brought to his attention by Mr. Sinclair, who attempted to interest Prudential "in providing housing accommodations in the City" (p. 176); Mr. Duffield told Mr. Sinclair that, unless the law was changed, it could not invest its funds in that kind of security; Mr. Sinclair saw him again with Mayor Congleton and asked him if he would be interested if they would secure a change in the law, to which he replied that, if the law was changed, "I would certainly be interested myself" (p. 178).

Subsequently at a conference between Mr. Duffield and the Mayor, a housing expert retained by the Prudential "said that he felt that it would be impossible for us to pay demolition costs, acquire the property and erect the buildings thereon, *unless we charged a rental therefor, which would take it away from the poorer classes;* and the Mayor and I both said that one thing we hoped would be accomplished as a result of the Prudential's investment in housing, would be not only the erection of new buildings, *but the demolition of buildings which were unsanitary and of a crime-breeding character.* Mr. Veiller said that if that were done, he felt that the cost would *require in the way of rental a larger amount than the laboring classes would be able to pay,* and he outlined then as the *only feasible plan,* that which was subsequently adopted in connection with the Third Ward improvement, namely, that if the City would acquire land for parks and the Prudential take a

portion of the land which they had acquired for parks and erect the houses thereon, that under those conditions, *the demolition cost being borne partially by the Prudential, it might then be feasible to carry out what both the Mayor and I felt was quite an essential feature of the whole program.*"

Mr. Duffield testified further that he told the Mayor that:

> "We were the custodians and trustees of funds entrusted to us by our policy holders, and we must invest those funds so as to receive a fair return; that I felt that it could be done in this housing enterprise in a way which would be fair to the policy holders, and at the same time beneficial to the *solving of the problem with which the Mayor was disturbed, namely, inadequate housing facilities for the people of Newark.*"

He further said that the matter was considered from time to time, and page 182:

> "It was at that time assumed that any development which the Prudential made, would be made in the way in which it is now proposed to make in the Third Ward—both in the Ironbound District and the Third Ward, and wherever else we went, *because it was then assumed that if the rents were to be kept at a figure which would meet the needs of those whom we were seeking to relieve, this would be requisite.* He came back some time in the fall—I think it was some time in September or October, 1929—and at that time had plotted out the various pieces of property which had been determined upon, as a result of the survey which he had caused to be made, through the police department and the health department."

Mr. Duffield attempted to explain (p. 187) as to how the amount which Newark was to pay was arrived at and he says, p. 187:

> "I know I said at that luncheon that it seems to me that the fair method of division, instead of trying to arrive at an arbitrary figure, such as two-thirds or three-fifths, or three-fourths, *would be to treat the whole tract as one purchase, for a common purpose,* the City to utilize a portion, and the housing of the Prudential, a portion, and that it seemed to me that *a fairer method, one less liable to misconstruction, would be to have the Prudential pay that portion of the whole cost which the portion of the land is occupied bore to the whole land, and the City to do the same.*"

When, at a conference, Commissioner Gillen raised a question as to whether Mr. Duffield thought that that was fair "considering that the interior land was to be taken by the City as against the exterior land by the Company", his reply was (p. 188):

> "that I felt that it was a joint project to the extent *that each was doing something that they desired to have done; that we were doing this largely in the interest of the City, and certainly at the urgent request of the City, and that it should be a joint project in the apportionment of cost; and I had, what seems to have been a false impression, that the Commissioner acquiesced in that view. There was nothing definitely settled.*"

It is clear from this testimony, as it is from all of the testimony in the case, that the amount to be paid by Newark was *not fixed upon any basis of values but upon the theory that Prudential was going into the housing project "largely in the interests of the City * * * and that it should be a*

joint project in the apportionment of costs'' (p. 188), which is but another way of saying that the amount to be paid by Newark was fixed *at the amount which was required to reduce the investment of Prudential to an amount upon which it could make a reasonable return and still keep the rents down, which is but another way of saying that Newark was contributing directly to those who would rent the apartments.*

On cross-examination, he testified, page 195:

> ''Q. And was it your idea, Mr. Duffield, that the City would pay for the land which it acquired, in proportion to its area, and also in proportion to its costs? A. Yes.
>
> Q. And it was your idea that the Prudential was to pay for the land which it used in the proportion which it cost? A. Yes.
>
> Q. You know, do you not, Mr. Duffield, that the cost of land depends upon a number of factors, such as frontage on streets, corner influence, and things of that sort? A. I am not a real estate expert. I assume what you say is true.
>
> Q. Didn't it seem logical, as Commissioner Gillen suggested to you at that time, that in view of the fact that the Prudential was using the exterior, or street frontage lands, that the cost to the Prudential should be much greater than suggested? A. It certainly did not. *If this had been a proposition in which the Prudential had gone to the City and asked their aid in carrying out a project, what you say might be true;* but the contrary was the fact. The City had come to us, and asked us to carry out the project. *If the City had acquired this land for park purposes, and then had sought to have us erect buildings thereon, I don't think it would have been unfair to suggest to them to treat the matter as a whole, and each pay a portion of the acquired land, in the same relation to the total cost as the portion which they occupied bore to*

the total plottage. I thought it was a fair plan and I think it is a fair project now.''

He further said, page 197:

"A. We were engaged in what I thought was—as you quote me—*a joint enterprise.''*

Mayor Congleton corroborated Mr. Duffield (p. 200). He said that it was Newark which had sought the aid of Prudential and page 227:

"Q. You stated that the City sought the aid of the Prudential; for what? A. *To invest some of its funds in the erection of model apartment houses in the heavily congested sections of our city, so that they might be rented to the less fortunate of our citizens, so far as income is concerned, at the very lowest rents.''*

It is clear, we submit, from this testimony, coming from respondents, that, from the beginning, the purpose of Newark was *not to secure a public park or playground but to aid and assist Prudential in its housing project,* and that a public park or playground, situated as the one proposed, would never have been dreamed of *if it were not necessary for Newark to take over the property to supply the backyards, air and space for the tenements to be erected by Prudential at a cost not fixed upon the value of the ground but at an amount which was needed to reduce the investment of Prudential to a figure upon which it would make a fair return upon its investment.* The purport of the statements of all of the Commissioners who voted for the plan is that they never would have considered establishing a public park or playground in the middle of these two blocks if it had not been that such a public park or playground had to be established to induce Prudential to proceed with its housing plan.

Except in connection with the housing plan of Prudential, the objections to these lands as a public park or playground pointed out by Commissioner Gillen (p. 89) are unanswerable.

Let us assume, for a moment, that Prudential had improved the entire tract by building upon the exterior strips and developing the interior strips for light and air, would it be conceived for one moment that Newark would dream of *then* taking these lands by purchase or condemnation for public park or playground purposes? The answer is obvious.

Newark cannot, under the law, directly contribute to this housing project and we submit that it cannot indirectly do so in the manner proposed.

We have throughout spoken of *Newark* contributing to the expense of this housing plan. The fact is that the *taxpayers* of Newark are called upon to do the contributing. There are hundreds, perhaps thousands, of taxpayers of Newark who, after years of infinite labor and the practice of stringent economies, have acquired small homes for themselves, encumbered by mortgages, and many of these homeowners are now without employment. To these people taxes are a burden and a slight increase may cause them to lose their homes. It may be that other persons poorer than they should have better housing at a lower rental than would be possible without municipal assistance, or in any words better than their means will afford, but is it proper that these homeowners whom we have mentioned, who are struggling to keep their own homes, be called upon *forcibly* to contribute part of their slender income or savings for the benefit of those poorer, the poorness of those poorer being due, in many instances, to their own shiftlessness, thereby perhaps loosing their own homes?

Is it fair to other property owners in the neighborhood who depend upon the rentals of their properties to see their properties left vacant or with rentals reduced below a fair return on the investment because of a subsidized plan of housing to which subsidy they, as taxpayers, are obliged to contribute?

In each of these instances the property of one is taken for the private benefit of another, and without due process of law, and is offensive both to the provision of the State Constitution and the Fourteenth Amendment to the Constitution of the United States, being also a denial of the equal protection of the law.

The remedy for improper housing, as the courts have so often held, is to prescribe rules and regulations under the police power.

And what about other people who live in the same and other sections of Newark under housing conditions as that? It would be much to their advantage that they should obtain better accommodations than they now enjoy and better than they can afford to pay for, if the rental is based upon a reasonable return on an investment. And if better accommodations are to be supplied to *some* as a result of a subsidy of the public, are the others not entitled to equal consideration? If Newark once embarks upon this plan who is to determine the minimum housing condition which permits the intervention of the municipality by a subsidy contributed to by *all* taxpayers of the municipality, directly or indirectly? Who is to determine those who are to enjoy the bounty of the public? Where is the line to be drawn? If the right of Newark to engage in this enterprise be conceded a door will be opened which it will be impossible to close short of socialism. There is no room for municipal intervention in cases of this kind unless there is pauperism. The public

must intervene in *that* case, for the charge is one upon the public and must be borne by the public, but when individuals may support themselves, however poorly, so far as the public is concerned, they must be left to their own devices,—else individualism is destroyed and collectivism put in its place. We want no "dole" here. Better housing conditions is the reward of individual effort and better housing conditions *must* be due solely to individual effort—else shiftlessness is encouraged. If housing conditions become such in any congested territory as to be a menace to the public health and safety, then the municipality may step in through its police power and may condemn all buildings unfit for human habitation, in which event the owners of those buildings would be obliged, by individual effort, to construct buildings suitable to afford proper housing conditions. Unless housing conditions have become such as that the right of the municipality, by virtue of its police power, to step in has accrued, certainly, the municipality has no right to subsidize those who can afford no better housing conditions. If housing conditions have become such as to permit the exercise of the police power of the municipality, then *that* is the remedy and the only remedy. Otherwise, the property of "A" is taken for the benefit of "B". There has been in the last few years a tendency upon the part of municipalities to spend the public's—that is the taxpayers'—money like water. Our municipalities have been brought to a condition of financial distress. The public can stand but little more.

The words of Commissioner Gillen, pp. 36, 37, are entitled to earnest consideration. He said:

> "If this is a philanthropic plan, would it not be better for this great insurance company to take all the praise and glory of it and not have the taxpayers share in the cost? If the

Prudential Insurance Company is going to do something for the people why does it not bear the whole cost? There are scores of other citizens who have built rows of houses in Newark and who have made housing conditions better. These contractors and developers will build more rows of houses. Would they not have the same right to come in and ask the City to share in the cost of acquiring their grounds? How can the Prudential people say in one breath that they are doing a big thing for Newark and in another breath ask the City to pay nearly three-quarters of the cost of the land they are purchasing for this housing plan? *I am firmly convinced that Newark must now pause and take notice of the vast expenditures which may engulf us in a debt which we may not be able to shoulder. We are buying blocks and blocks of land for the Pennsylvania Railroad. We are rushing into millions of dollars for the acquisition of lands for the New State Highway along the Pennsylvania Railroad. We are rushing into millions of dollars for the acquisition of land for the building of the City Railway.''*

Third: The Commissioners were without legal authority to acquire the lands for public park purposes over the opposition of the Director of Parks and Public Property, the judicial, administrative, legislative and executive authority and duties with respect to public parks having been assigned to the Director of the Department of Public Parks and Public Property by resolution of the Commissioners adopted on May 14, 1929 (p. 484).

Section 4 of the Commission Government Act, 2 Cum. Supp. to C. S. of N. J., sec. 136-8, p. 2461, as amended by the laws of 1929, chapter 265, p. 623, provides:

"The board of commissioners shall have and possess *all executive, administrative, judicial and legislative powers,* and duties heretofore had, possessed and exercised by the mayor and city council and all other executive or legislative bodies in any municipality that has adopted or that may hereafter adopt the provisions of the act to which this act is an amendment, and said board shall have complete control over the affairs of such municipality. The *executive, administrative, judicial and legislative powers, authority and duties* in such municipality *shall be distributed into and among five departments,* * * *. The board of commissioners *shall determine the powers and duties to be performed by each department* and shall assign such powers and duties to such department *as they in their judgment deem appropriate,* and they shall prescribe the powers and duties of all officers and employees and they may assign particular officers and employees to one or more departments and may require any officer or employee to perform duties in two or more departments, provided the work required of such officer or employee in such different departments be similar in character and make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city."

The amendment of 1929 was brought about by the decision of the Court of Errors and Appeals in *Oliver* v. *Daly,* 103 N. J. L. 52 (Opinion of the Supreme Court, 4 N. J. Misc. 80), in which case the Court of Errors and Appeals held that the burden placed upon the Commissioners as a board by section 4 of the Commission Government Act was to distribute the different offices to the "appropriate department", and that the matter as to what was the "appropriate" department was subject to judicial review.

The Legislature changed the act by striking out the words in Section 4 mentioning the "appropri-

ate departments'' and inserting in lieu thereof the words ''to such department as they in their judgment deem appropriate''.

There may be other changes but if there are they are not important here.

The mandatory direction distributing the executive, administrative and legislative powers, authority and duties has been in the act since its inception, chapter 221, P. L. 1911, sec. 4, p. 465.

The direction to distribute the *judicial* powers was inserted by the amendment, P. L. 1915, p. 494.

Speaking of the direction to distribute these *judicial* powers the Court of Errors and Appeals in *Foley* v. *Orange,* 91 N. J. L. 554, said, at p. 555:

> ''The legislative will thus declared was imposed upon the municipal agent without regard to its concurrence or dissent, which would be as nugatory in the one case as it would be futile in the other. The statute being imperative and importing absolute obligation was self-executing, a rule that lies at the root of all legislative supremacy. 'The presumption,' said Mr. Justice Trenchard in Haythorne *v.* Van Keuren, 79 N. J. L. 101, 'is that the word 'shall' in a statute is used in an imperative and not in a directory sense. If a different interpretation is sought, it must rest upon something in the character of the legislation or in the context which will justify a different meaning.' In the present case the context is the declaration by the supreme legislative authority of a state that the governmental powers granted by it shall be exercised in a particular manner. Such a declaration from such a source upon such a subject, *ipso facto, distributed the judicial power in accordance with the legislative mandate.* The contention that thereafter the judicial power remained where it was before such distribution must rest upon

> the notion that words have no settled meaning or that language is powerless to express thought."

In *Sykes* v. *Heinzman*, 100 N. J. L. 12, the question involved was whether the power to appoint an officer rested in the director of the department or in the commissioners as a board, and, at p. 13, of 100 N. J. L., this Court said:

> "The determination of the question before us, therefore, depends upon whether the making of an appointment to a subordinate municipal office is the exercise of an executive or an administrative power. That the power to appoint a city comptroller was vested in the municipality of Passaic prior to its adoption of the Walsh Act, and that it was then exercised by the common council of the city, is conceded by the relator. *This power, therefore, was either transferred to the new board of commissioners, by the provision of section 4 of the statute above set out or it did not pass to the board at all.* In the latter event, the board had no authority to fill the office, and the relator, consequently, has no status to challenge the right of the respondent to hold it. It goes without saying that neither of the parties to this litigation suggests so absurd a construction of the act of 1911, *and the acknowledgment that this power was transferred to the board of commissioners carries with it, by necessary implication, the admission that it is either an executive or a legislative one. This being the effect of the statute, and these powers being required by the statute to be distributed among the several departments of the city government, we are of opinion that the power to appoint a city comptroller passed to the director of revenue and finance, and is, in the language of the Court of Errors and Appeals, to be exercised by him as the*

> *head of his department, and not by the board of commissioners as a body.''*

It further said, p. 14:

> ''But the statutory provision which is referred to only applies to first appointments, and does not, as we think, indicate a purpose on the part of the legislature that this power should not be subsequently distributed, together with all other executive and administrative powers, among the different departmental heads; *for the legislative mandate directing the distribution of these powers is general and without limitation, containing no suggestion that the power of appointment to subordinate offices should be segregated from all other executive and administrative powers and should not be included in the distribution of those powers.''*

The language of this Court in that case is particularly significant for the Court refers to the power which was being considered, *i. e.,* the power of appointment as being ''either an executive or a legislative one'', and the Court *makes no distinction* between the distribution of executive and legislative powers. The Court said: *''This power, therefore* (power of appointment), *was either transferred to the new board of commissioners by the provision of section 4 of the statute above set out or it did not pass to the board at all.''* In other words, this Court held that *no legislative, judicial, executive or administrative power* may be exercised by the Commissioners as a board for the instant it is conceded that the power sought to be exercised exists, by force of the statute, it is distributed into some department.

Of course, as will be hereafter pointed out, this general language must be taken in connection

with whatever express limitations there may be upon the exercise of a particular power or express provision with respect to how a particular power shall be exercised elsewhere contained in the act.

Sykes v. *Seinzman* was approved by the Court of Errors and Appeals in its decision in *Seaman* v. *Strollo,* 7 N. J. Advance Reports 800, reversing this Court, 6 N. J. Misc. 971, 143 Atl. 378, in which case the Court of Errors and Appeals held that the Commissioners as a board had power to make appointments to office at their *first* meeting, and the Commissioners, as a board, having at its first meeting made an appointment to office the director of the appropriate department could not thereafter make a new appointment, confining the operation of the *Sykes* case to appointments made after the first meeting of the Board of Commissioners.

In *Schmeidler* v. *Atlantic City,* 102 N. J. Law, page 121, the Court of Errors and Appeals held that, under the express language of the statute, the Board of Commissioners might, by ordinance, abolish an office created by the City charter. The Court in the course of its decision said:

> "By section 4 of the act under consideration the board of commissioners is clothed with all administrative, judicial and *legislative* powers and duties theretofore vested in the mayor, city council and other executive or legislative bodies, and is given 'complete control over the affairs of the cities adopting the provisions of this act'. *All these powers, executive, administrative and legislative, are to be distributed among five departments, each of which is to be under the control of one of the commissioners, and one of which departments is the 'department of revenue and finance'.* The statute requires the board of commissioners to determine the various powers of, and duties to, be performed by each department, and to assign the execution of

such powers and the performance of such duties to the appropriate department; and, further, 'to prescribe the powers and duties of all municipal officers and employees'. The board is further authorized and required in this same section, at their first meeting or as soon as may be after organization, to 'create such subordinate boards and appoint such officers as it may deem necessary for the proper and efficient conduct of the affairs of the city'. It is significant that this latter power is the appointment of all officers that the board may deem necessary for the proper and efficient conduct of the affairs of the city, and does not impose the duty of filling pre-existing offices, which, by an earlier provision of the Walsh act, had become vacant upon the adoption of the commission form of government. This power of appointment of such officers as the board may deem necessary *for the proper and efficient conduct of the affairs of the city carries with it,* in our opinion, by necessary implication, the power to abolish all pre-existing administrative offices, whether created by the legislature or the municipality, the performance of the duties of which has been assigned by the commission to a governmental department of which such office constitutes no part, and which has no place in the municipal machinery provided for the proper and efficient conduct of municipal affairs under the new scheme of government."

In *Hewson* v. *Newark,* 95 N. J. L. 28, affirmed 95 N. J. L. 544 the court held that the power was in the director to remove an officer for cause although the officer had been appointed by the commissioners as a board.

See also *Crane* v. *Jersey City,* 90 N. J. L. 109, affirmed 92 N. J. L. 248; *Brennan* v. *Jersey City,* 104 Atl. 90; *Apple* v. *Atlantic City,* 104 Atl. 89.

Acting under the direction of the statute the Board of Commissioners of Newark, at a meeting

held May 21, 1929 (p. 484), passed a resolution designating Charles P. Gillen as Director of the Department of Parks and Public Property. This resolution directed:

> "That *all* of the executive, administrative, judicial and *legislative* authority and duties relating to the *Public Parks,* Shade Tree Bureau, Smoke Abatement Bureau, Bureau of Weights and Measures, Dog Pound, Centre Market and Market Facilities, all public buildings, except those owned in the name of the City and devoted to the Department of Public Affairs, and Municipal Soldier's and Sailor's Aid Bureau, Printing and Stationery, be and the same are hereby distributed into the Department of Parks and Public Property; and the Director of the Department of Parks and Public Property is hereby vested *with all the powers, authority and rights now or heretofore vested in or given by any statute, charter or ordinance relating to the Public Parks,* Shade Tree Bureau, Smoke Abatement Bureau, Bureau of Weights and Measures, Dog Pound, Centre Market and Market Facilities, all public buildings, except those owned in the name of the City and devoted to the Department of Public Affairs and Municipal Soldier's and Sailor's Aid Bureau, Printing and Stationery, and shall perform all of the duties now or heretofore or hereafter imposed by law with respect thereto."

This resolution is in the broadest possible terms. The commissioners, as a board, have not attempted (if it were within their power) to retain anything or to circumscribe the powers of the director. They have distributed to *his* department and authorized *him* to exercise *all executive, administrative,* judicial and *legislative* powers appertain- to the subject-matter assigned to his department.

The power to acquire and maintain public parks and play grounds is found in Article 36 of the Home Rule Act 2 Cum. Sup. to Comp. Stat. of N.

J. secs. 136-3601, p. 2319 in the following language:

> "Parks, Playgrounds, beaches and resorts. 1. The *governing body* of every municipality shall have power to acquire, lay out, improve, embellish, maintain and make available to the public, such parks, open spaces, public squares, water fronts, beaches, play-grounds and other places for public resort and recreation, and boulevards leading thereto and connecting the same, as it may deem advisable, and to extend and enlarge the same, and for these purposes to take in fee or otherwise, by purchase, gift, devise or condemnation, any lands (whether improved or unimproved), rights, easements and interests in lands, within or without such municipality. (L. 1917, c. 152, p. 452)."

The Home Rule Act defines the words "governing body", 2 Cumm. Sup. to Comp. State of N. J. 1911-1924, p. 2071, Sec. 136-102, as follows:

> "The term 'governing body,' where used in this act, shall be construed to mean the board or body in each municipality designated by statute effective in such municipality, as the *board or body having control over the subject matter in connection with which such term is used, and having the power and authority to legislate thereon,* whether designated as 'board of aldermen,' 'common council,' 'borough council,' 'township committee,' 'village trustees,' 'improvement commission,' 'board of street and water commissioners,' 'board of public works,' 'board of finance,' 'board of health,' 'park commissioners,' 'recreation commissioners,' *or otherwise.*
>
> "No provision of this act *shall be construed to transfer from any officer, board or body in any municipality any power or authority which he or it may now have.* In case any additional power is conferred upon any municipality by this act, and by the statutes effective in such municipality no board or

> body is designated as the one to exercise such power, then the term 'governing body' *shall be construed to mean the board or body exercising general legislative power in such municipality.* (L. 1917, c. 152, p. 319,)''

This Act was first passed in 1917 after the Commission Government Act.

We are therefore referred to the Commission Government or Walsh Act to determine what board or body or officer has the power to exercise the authority conferred upon the municipality to acquire parks by section 136-3601, 2 Cum. Supp. to Comp. Stat. of N. J. 1911-1924, p. 2319, and we find that *all legislative, executive,* judicial and *administrative* powers and functions with respect to parks have been distributed by the Commissioners of Newark into the Department of Parks and Public Property. We submit that there is nothing in the Commission Government or Walsh Act which circumscribes the power of the Director.

We have not overlooked sec. 136-18, 2 Cum. Supp. to Comp. Stat. of N. J. 1911-1924, p. 2468, which provides:

> ''Every ordinance or resolution *appropriating money,* or ordering any street improvement or sewer, *or authorizing the making of any* contract or granting any franchises, or the right to occupy or use the streets, highways, bridges or public places of the city for any purpose, shall be complete in the form in which it is finally passed and remain on file with the city clerk for public inspection at least two weeks before the final passage or adoption thereof. No franchises, or right to occupy or use the streets, highways, bridges or public places in any city shall be granted, renewed or extended *except by ordinance;* and every such ordinance shall be published in said city before being finally passed upon and must receive the approval, by vote, of one more than a majority of all the members before being finally adopted.''

It will be noted, in considering this section, that only franchises, or rights to occupy or use the streets, highways, bridges or public places require an ordinance either to renew or extend. The section does not purport to prescribe a method by which contracts shall be made. It does require that every ordinance or resolution which may appropriate money or which may authorize the making of any contract must be passed in a certain way, but it does not prescribe that a contract must be made either by resolution or by ordinance.

So far as applicable, this section is superseded by Article 10 of the Home Rule Act, 2 Cum. Supp. to Comp. Stat. of N. J. 1911-1924, 2103, Sec. 136-1001, etc. *Ferretti* v. *Atlantic City,* 137 Atl. 217, 5 N. J. Misc. Rep. 479.

Assuming that it requires the action of the governing body as a whole to appropriate moneys to pay for land to be acquired for public park or playground purposes, it does *not* follow that the governing body may purchase lands for park purposes and appropriate moneys therefor *over the objection of the Director* to whom is confided *all executive, legislative,* judicial and *administrative powers* with respect to public parks. If the governing body can, over such objection, acquire land for public parks, then it is not clear what the delegation to the Director of Parks and Public Improvements of *all* powers of every conceivable nature as to public parks means.

The testimony shows that Commissioner Gillen, Director of the Department of Parks and Public Improvements, has opposed the acquisition of these lands for park purposes from the beginning and has stated that he would not accept the lands for public park purposes. He voted against the ordinance at each stage of the proceedings and publicly announced, p. 34:

"It is proposed contrary to my opinion to buy these backyard lands and to hand them over to me for public park purposes. Hitherto I was under the impression that the Director of the Department of Parks and Public Property should first make the selection of any park or park sites."

He further said, p. 35:

"* * * they (the lands) would be entirely unsatisfactory, inadequate and undesirable in every respect and as Director of Parks, *I will, of course, have nothing to do with them under any circumstances or conditions.*"

And he testified, p. 89:

"Q. *Do you as Commissioner of Public Parks, desire this property for park purposes?* A. *I do not.*

Q. And have you consistently voted against it, have you not? A. I have consistently voted against it and spoken against it before the agreement was finally reached between the City and the Prudential, and stated that the lands would not be suitable or proper for public park purposes."

It is respectfully submitted that the ordinance brought up should be set aside.

HERMAN W. BRAMS,
MERRITT LANE,
Of Counsel, Prosecutors.

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New Jersey Court of Errors and Appeals

SOLOMON SIMON, JACOB L. SOLOMON and PATRICK GALANTE, *Prosecutors-Appellants,* *v.* PETER O'TOOLE, Clerk of the City of Newark, New Jersey, BOARD OF COMMISSIONERS OF THE CITY OF NEWARK, NEW JERSEY, and PRUDENTIAL INSURANCE COMPANY OF AMERICA, *Respondents.*	**Appeal from Supreme Court.** **On Certiorari.** **Trenchard, Daly and Donges, J.J. Sitting Below.**

BRIEF FOR RESPONDENTS.

Statement of the Case.

The statement of the case contained in the brief of counsel for the appellants is substantially correct, but we prefer to present our own statement of the substance and effect of the ordinance the validity of which was affirmed by the judgment of the Supreme Court (Case p. 504).

On October 15, 1930, the Board of Commissioners of the City of Newark by a vote of four to one adopted an ordinance which "in the interest of the public health, safety and morals," as recited in the preamble thereof, authorizes the execution of a certain contract with The Prudential Insurance Company of America and provides for the financ-

ing of the expenditure thereby required to be made by the City (pp. 3-9 and p. 72). The proposed contract, fully set forth in the body of the ordinance (pp. 6-9), provides, first, for the acquisition by The Prudential of two entire blocks adjacent to each other (see Map, p. 510), situated in the Third Ward of the City of Newark, and the construction thereon by The Prudential of modern sanitary housing facilities in such manner as to utilize only two strips thirty feet deep running north and south on the east and west street frontages of both blocks, leaving vacant a strip approximately one hundred and forty feet wide running north and south through the interior of each of the blocks. The contract then provides for the purchase by the City from The Prudential of this latter interior strip for the purpose of parks and playgrounds, to be maintained by the City for the benefit of the public at large, at a price bearing such proportion to the total price paid by The Prudential for the whole of the blocks as the area of the one hundred and forty foot strip bears to the total area, but in no event in excess of $1,200,000. The contractual obligation of the City to purchase this strip does not arise until it shall have approved a housing project submitted to it by The Prudential pursuant to the provisions of Chapters 201 and 202 of the Laws of 1929, thereby imposing upon The Prudential a reciprocal contractual obligation to carry such project to completion (see Sections 2 and 3 of the Contract, p. 8). The cost of the acquisition by the City is to be met by the sale of an issue of temporary loan bonds.

The Reasons filed in the Supreme Court (pp. 72-74), and relied upon by the appellants in this Court as grounds of appeal, challenge the validity of the ordinance upon nine several counts which, for

convenience, may be grouped under three general heads and restated as follows:

1. The ordinance contemplates the expenditure of public funds for a private purpose in aiding The Prudential to carry out the housing plan in question.

2. The ordinance constitutes an abuse of discretion by the commissioners because (a) the price to be paid by the City for the acquisition of the lands is greatly in excess of their true value, and because (b) the lands to be acquired by the City are wholly unsuitable for the purpose of a public park and will not in fact be used as such.

3. The Board of Commissioners had no legal power to adopt an ordinance for the purchase of parks and playgrounds because under the governing statute all executive, legislative and judicial powers with respect to public parks are lodged solely in the commissioner assigned as Director of the Department of Parks and Public Property, who voted against the adoption of the ordinance.

As to the grounds of appeal set forth in the above paragraphs numbered 1 and 2, the respondents contend that they involve pure questions of fact the adjudication of which by the Supreme Court is conclusive. As to all of the grounds of appeal, the respondents contend that the judgment of the Supreme Court is well founded in law and should be affirmed.

POINT I.

The adjudication by the Supreme Court upon the questions of fact before that Court is not open to review.

It has long been settled that on *certiorari* the adjudication of the Supreme Court on disputed

questions of fact is not open to review in this Court, if there were before the Supreme Court any facts upon which its adjudication could rest.

> *Suburban Land Improvement Company* v. *Vailsburg,* 68 N. J. L. 311.

This principle is so firmly established in the jurisprudence of this State that it would be idle to multiply citations of authority or to treat the matter as open to argument. It remains only to indicate the questions thus closed to review by brief reference to relevant portions of the opinion and judgment of the Supreme Court.

(a) The Supreme Court found as a fact that the ordinance contemplates the expenditure of public funds for a public purpose only.

The opinion of the Supreme Court, in discussing the contention of the appellants that the real purpose of the ordinance is to authorize an expenditure of public funds to aid The Prudential in carrying out a housing plan, first states the conclusion of the Court on this point as follows (p. 489, ll. 16-20):

> "We think that the ordinance contemplates the expenditure of public funds for a public purpose only, and not for the purpose of aiding a private enterprise."

After considering the text of the ordinance and contract the Court then concludes as follows (p. 492, ll. 17-33):

> "Neither the ordinance nor the contract, therefore, bear upon their face any intrinsic evidence of a purpose to expend public money in aid of a private enterprise. On the contrary, both recite the purpose of the City to procure an improvement in the housing situation in the particular neighborhood, and in

> connection with that improvement to provide appropriate parks and playgrounds for the benefit of the public at large. **These expressed objects and the provisions of the ordinance and contract appear to be in fact the true purpose of the ordinance even after a consideration of the extrinsic evidence introduced by the prosecutors, since, as we think, that evidence is inadequate to sustain the position of the prosecutors and is rebutted by evidence introduced on behalf of the City.* * * The facts disclosed are dispositive of the case upon the point now under consideration,* * *."

It follows that the Supreme Court, after considering the evidence introduced on both sides, found *as a fact* that the true purpose of the ordinance was to authorize the expenditure of public funds for a public purpose only, and not for the purpose of aiding a private enterprise.

(b) The Supreme Court found as a fact that the action of the Board of Commissioners of the City of Newark in enacting the ordinance was not an abuse of discretion.

The prosecutors in the Court below, in contending that the ordinance constituted a gross abuse of discretion, based their charge upon two grounds: (1) that the lands contemplated to be purchased for a public park and playground are wholly unsuitable for such purpose, and (2) that the price to be paid by the City is greatly in excess of the true value of the lands for park and playground purposes. It is obvious that each of these grounds raises a pure question of fact, and each was so treated by the Supreme Court.

As to the suitability of the lands for the purposes in view, the Supreme Court said (p. 496, ll. 37-40):

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* Italics are ours.

> "We believe that the evidence amply justifies the conclusion that the lands contemplated to be purchased for parks and playgrounds are suitable for such purposes."

The Court then discusses the testimony on this point (p. 497, ll. 9-23) and concludes:

> "The weight of the evidence affords the 'rational basis' requisite to sustain the discretion exercised by the Board in authorizing the acquisition of these lands for park and playground purposes."

With regard to the question of price the Supreme Court said (p. 497, l. 24):

> "We think that the evidence justifies the inference that the maximum price to be paid by the City is not excessive."

After discussing the testimony relating to the peculiar circumstances of the case and the resultant method adopted for fixing the price, the opinion continues as follows (p. 498, l. 13):

> "In the light of these unusual circumstances, and in view of the protection afforded to the City's interests by the fixing of a maximum contract obligation on its part, we cannot say that the discretion exercised by the Board was wrongly exercised."

The opinion then refers to the expert testimony based on conventional rules of valuation, and concludes as follows (p. 498, l. 32):

> "Both sides introduced testimony based upon an application of those conventional rules to the case in hand, and we have considered it, and conclude that, in view thereof, the maximum price to be paid is justified."

The quoted excerpts from the opinion of the Supreme Court render it clear that the question of abuse of discretion was determined by that court

as one of fact, after considering and weighing all the relevant testimony.

(c) The Judgment of the Supreme Court.

The rule for judgment (p. 504, l. 20) recites, among other things, that the Court "having considered the depositions taken on behalf of the several parties hereto" was of the opinion "that the said ordinance was lawfully adopted." The judgment, therefore, rests upon the effect given by the Court to the depositions, as indicated in the opinion, and to that extent constitutes an adjudication upon issues of fact. It follows that the several grounds of appeal relied upon by the appellants in this Court, so far as they relate to the lawful purpose and effect of the ordinance and to the alleged abuse of discretion by the Board of Commissioners, are directed to those very questions of fact upon which the adjudication of the Supreme Court is a finality if there was any evidence before that Court upon which its judgment could rest. It remains, therefore, to point out the substantial and persuasive character of the evidence before the Court below upon which its judgment was predicated.

POINT II.

The evidence in the Supreme Court showed that the ordinance contemplates the expenditure of public funds for a public purpose only, and not for the purpose of aiding a private enterprise.

Reasons 1 and 2 (p. 73) filed by the prosecutors in the Court below charged that the purpose recited by the ordinance, *i. e.*, to authorize the expenditure of public funds for the purchase of land

for public parks and playgrounds is illusory, and that the real purpose is to authorize such expenditure to aid The Prudential in carrying out a housing plan. Reason 7 (p. 74), addressed to the same objection, charged that the effect of the ordinance would be to deprive the prosecutors, as taxpayers, of their property without due process of law in violation of the Constitution of New Jersey and of the Fourteenth Amendment to the Constitution of the United States. We shall in due course demonstrate that such is not the character, purpose or effect of the ordinance and that the charge is groundless. Before proceeding to that discussion, however, we shall examine the law governing judicial review of an ordinance lawfully adopted in the exercise of a power conferred by the legislature.

In *North Baptist Church* v. *Orange*, 54 N. J. L. 111, a writ of certiorari brought up for review an ordinance to open a street in the City of Orange. It was insisted that the land of the prosecutor was to be taken not for the benefit of the public, but to subserve the interests of private individuals. On this point the Court said (p. 112):

> "It is observable that it is no part of our functions to decide whether the scheme adopted in this instance was a wise one. We have no power to try the question whether the advantages that would accrue to the public by reason of this improvement would be greater or less than the burden which it would impose, nor whether the degree of public benefit is so small that it does not justify the taking of land against the will of its owner.
>
> "These questions have been confided by the legislature in the common council. If it should appear that there could not inure to the public any advantage whatever, and that the scheme is designed solely for the benefit of private individuals, the Court could interpose

> in favor of the landowner whose property is menaced but when it is perceived that there is a degree of public benefit likely to spring out of the enterprise, all questions of policy in executing it are devolved upon the common council."

In *McGovern* v. *Trenton,* 57 N. J. L. 580, a writ brought up for review the award of a contract by the Board of Public Works of the City of Trenton. The Court said (p. 587):

> "The evidence or facts may be disputed or conflicting, but that would not be sufficient for a reversal. * * * If there was a dispute upon the evidence, upon the question left to the determination of the board, it would not be within the province of this court upon certiorari to try that question over again and determine such disputed question of facts, and to consider its weight or sufficiency so as to review the determination of the board, especially where there is any evidence to support it. If there was evidence or facts before the board, whether weak or strong, which formed a rational basis for the determination, it cannot be reversed. * * * The court on certiorari will not weigh the evidence. It is sufficient if there is a legal and substantial basis for the determination on which the board acted within their authority."

See also *Schefbauer* v. *Kearney,* 57 N. J. L. 588, and *VanReipen* v. *Jersey City,* 58 N. J. L. 262, 268.

In *Oakley* v. *Atlantic City,* 63 N. J. L. 127, an ordinance was attacked on the ground that it authorized the award of a city lighting contract to other than the lowest bidder. The Court laid down the governing principle in the following language (p. 137):

> "In the absence of fraud or palpable abuse of discretion on the part of the municipal authorities in the exercise of power granted by

> the legislature, the only question for judicial cognizance is whether there has been any violation of legal principles or neglect of prescribed formalities in entering into the engagement which is the subject of controversy."

In *Suburban Land Co.* v. *Vailsburg,* 67 N. J. L. 461, the Supreme Court again invoked the principle of the cases cited, quoting the rule as stated in *Oakley* v. *Atlantic City, supra,* and the decision was affirmed by this Court (68 N. J. L. 311), thus approving the principle of the cases cited.

More recently the Supreme Court in *Campbell* v. *Teaneck,* 101 N. J. L. 461, applied the rule to a state of facts closely approximating the facts in the present case. Under the provisions of the Home Rule Act the township committee of Teaneck adopted an ordinance for the acquisition of land for municipal buildings and for suitable grounds surrounding the same. The ordinance was attacked on certiorari on the ground that it provided for the acquisition of more lands than reasonably necessary. The Court said (p. 467):

> "I cannot say from aught that appears in the record that seven acres of land is or is not reasonably necessary for municipal purposes. The township committee by its action thinks that it is, and has so declared. Its judgment in this respect is not reviewable, unless it is made to appear that the committee in arriving at its decision proceeded upon some erroneous legal principle or was actuated by fraud, and as no such claim has been made, its official action cannot be properly disturbed."

The Board of Commissioners of the City of Newark adopted the ordinance under review acting not upon any erroneous legal principle but in the exercise of discretionary legislative powers lawfully delegated to them. It has not been charged

or even suggested that any element of fraud entered into the action of the Board. The enactment of the ordinance is attacked as an abuse of discretion resulting in the diversion of public funds to private purposes. The authorities cited, however, are conclusive to the effect that judicial review of an exercise of legislative discretion will not lie if any rational basis can be found to support the action taken. We shall proceed to show by reference to the record that the action of the Board in this case rests upon the substantial and rational basis of public policy and public benefit and that the Supreme Court therefore properly refused to disturb it. To that end we shall examine, first, the ordinance and contract, and, secondly, the proofs relating thereto.

(a) The Ordinance and Contract.

Section 1 of the ordinance (p. 3) recites the desire of the City that "in the interest of the public health, safety and morals certain blocks of unsafe and unsanitary dwellings * * * should be replaced in part by new housing facilities constructed in accord with proper standards of sanitation and safety and provided with appropriate parks and playgrounds." Section 2 recites the willingness of The Prudential to acquire the tracts of land upon which the objectionable dwellings stand and to construct upon a part thereof such new housing facilities and to convey to the City certain other parts for the purpose of such parks and playgrounds. The succeeding sections authorize the execution of an agreement between the City and The Prudential for carrying out the recited purposes and provide for financing the cost of the purchase by the City of that portion of the blocks in question which the City proposes to convert into parks and playgrounds. The agreement author-

ized by the ordinance is set out in the body thereof (pp. 6-9). An examination of the agreement, the authorization of which is the essence of the ordinance, suffices to refute the charge that it would effect a diversion of public funds in aid of a private project. The following brief summary of the substance of the agreement will render this clear:

1. The Prudential agrees to take all possible steps to acquire the blocks in question at the lowest prices obtainable and to submit to the City a project for the construction thereon of the new housing facilities desired by the City in such manner that there shall be left vacant an interior strip one hundred and forty feet wide separating the housing facilities constructed on the existing street fronts.

2. Upon approval by the City of the project, The Prudential contracts to carry the same to completion.

3. The City, in consideration of the acquisition of the blocks by The Prudential and *of The Prudential's contractual undertaking to construct the housing facilities,* agrees to purchase from The Prudential such part of the one hundred and forty foot strip as The Prudential may have acquired "for the purpose of parks and playgrounds to be maintained by the City for the benefit of the public at large," and the City agrees to pay to The Prudential as the purchase price thereof such proportion of the total price paid by The Prudential for the lands acquired by it as the area of the land purchased from The Prudential bears to the total area acquired by The Prudential; and the City agrees to acquire for such park purposes, either by treaty or condemnation, such portions of the tracts as have not been acquired by The Prudential; provided, however, that the price to be paid by the City for the one hundred and forty foot strip shall in no case exceed one million, two hundred thousand dollars ($1,200,000).

The opinion of the Supreme Court very clearly stated the true effect of the contract in the following language (p. 491, l. 28):

> "It will be observed that the only money to be paid by the City pursuant to the contract consists of the purchase price of the one hundred and forty foot strip to be acquired for public parks and playgrounds, and that this price, the maximum of which is carefully limited in the interest of the City, is based upon the proportion that the area of the land purchased from The Prudential bears to the total area acquired by The Prudential. The City's obligation to purchase this land and to pay to The Prudential the contract price does not arise until the primary public purpose of the ordinance has been accomplished, namely, the submission to the City of a housing project satisfactory to and approved by the City, raising the resultant obligation of The Prudential to complete the project and thereby eliminate two blocks of unsafe and unsanitary dwellings. Once that object has been attained the City is ready to provide for parks and playgrounds in the neighborhood which shall be available not only to the new housing facilities but are 'to be maintained by the City for the benefit of the public at large.' For the acquisition of land for the latter purpose and for that alone the City undertakes to expend public funds. Neither the ordinance nor the contract, therefore, bear upon their face any intrinsic evidence of a purpose to expend public money in aid of a private enterprise. On the contrary, both recite the purpose of the City to procure an improvement in the housing situation in the particular neighborhood, and in connection with that improvement to provide appropriate parks and playgrounds for the benefit of the public at large. These expressed objects and the provisions of the ordinance and contract appear to be in fact the true purpose of the ordinance even after a consideration of the extrinsic evidence introduced by

> the prosecutors, since, as we think, that evidence is inadequate to sustain the position of the prosecutors and is rebutted by evidence introduced on behalf of the City."

We shall now consider the extrinsic evidence referred to by the Supreme Court.

(b) The Evidence Relating to the Purpose of the Ordinance.

Wide publicity preceded and attended the adoption of the ordinance (pp. 192-193). The objects sought to be attained were very fully discussed, first, at a public meeting of the Board of Commissioners held April 23, 1930 (Return, pp. 10-29), and, again (after the introduction of the ordinance on August 27, 1930), at a meeting of the Board on September 3, 1930, when Commissioner Gillen, Director of Parks and Public Property, first expressed his opposition (Return, pp. 33-46). On September 17, 1930, the ordinance was brought up and a public hearing was held at which various persons were heard speaking both for and against the proposal and an amendment was offered and adopted. On October 1, 1930, a further public hearing was held by the Board, at which was read a letter from Edward D. Duffield, President of The Prudential, expressing the Company's attitude in the matter (pp. 49-52). On October 15, 1930, the ordinance came up for final consideration and a further public hearing was held, after which the ordinance was adopted by a vote of four to one, Commissioner Gillen voting "nay" (pp. 52-72).

A transcript of the proceedings at the several hearings formed a part of the return to the writ and counsel stipulated that the return in this respect correctly sets forth the proceedings, and that the various commissioners in fact made the re-

marks therein attributed to them (p. 84). The remarks made by Commissioner Gillen at the meeting on September 3, 1930, contain the first intimation from any source that the expenditure authorized by the ordinance was in aid of The Prudential's enterprise. The Commissioner said (p. 36):

> "If the Prudential Insurance Company is going to do something for the people why does it not bear the whole cost? There are scores of other citizens who have built rows of houses in Newark and who have made housing conditions better. These contractors and developers will build more rows of houses. Would they not have the same right to come in and ask the City to share in the cost of acquiring their grounds?"
>
> "How can the Prudential people say in one breath that they are doing a big thing for Newark and in another breath ask the City to pay nearly three-quarters of the cost of the land they are purchasing for this housing plan?"

And later (p. 42):

> "I dare say that in the beginning of this whole matter when Mr. Sinclair first came down before the Board and spoke about the Prudential taking up this housing plan, that there was no one in this City had in mind that the City would be asked to participate in the cost of this project, and I say that we should not participate in it. This Prudential Insurance Company either ought to go ahead with it itself or abandon it."

Again at the final hearing on October 15th Commissioner Gillen said (p. 53):

> "The Prudential then decided to buy two blocks in the Third Ward. After they made a survey of this property they asked the City to share the cost. The City could not do this legally, so some representative of the City in-

> geniously proposed that the Prudential could build on the frontages of these plots and the City could buy backyard lands and have them devoted to park purposes."

Without adverting for the moment to the complete refutation of this charge to be found in the statements made at the several hearings by Mr. Duffield, the Mayor and the other commissioners, it is to be observed that Commissioner Gillen's remarks present nothing more substantial than his own characterization of the nature and purpose of the ordinance and suggest no facts upon which his charge may justly be predicated. Indeed the Commissioner himself conceded (p. 34) that:

> "It is proposed contrary to my opinion to buy these backyard lands and to hand them over to me for *public park purposes.*"*

And his final and formal objection, voiced at the time of the adoption of the ordinance (pp. 56-57), was that the Commission

> "has no right to *purchase those lands for parks** without the consent and approval of the Director of the Department of Parks and Public Property."

Here is the real nub of the matter. The whole tenor of the Commissioner's remarks inevitably suggests that his unfounded charge is but the reflection of his displeasure at the action taken by the Board of Commissioners in opposition to his views and wishes.

Turning now to the depositions, Commissioner Gillen, called for the prosecutors, testified as follows (pp. 91-92):

> "Q. Were you present, Mr. Commissioner Gillen, at a luncheon given by Mr. Duffield,

* Italics ours.

President of the Prudential Insurance Company, at which the purchase or the housing plans of the Prudential were discussed? A. I was, the first conference given to the Commissioners, I believe, by Mr. Duffield, if that is the one you refer to.

"Q. During the course of the discussion, did Mr. Duffield say anything with respect to the Prudential Insurance desiring aid? A. He did.

"Q. Will you tell me what he said, as nearly as you can recall? A. He spoke about—

"Mr. Groel: I object to that, and I think it is immaterial what Mr. Duffield said at a luncheon.

"Q. Who were present, by the way? A. The five City Commissioners, Mr. Duffield and Mr. Hurrell.

"Q. The five commissioners were there? A. Yes.

"Q. What did Mr. Duffield say?

"Mr. Groel: I object to that.

"A. Mr. Duffield spoke about the three sites that the Prudential had acquired, or was about to acquire, for the housing proposition. He said in the case of the Twelfth Ward site, the Down Neck site, the Prudential could finance that itself fully, and in the case of the Waverly site, the Frelinghuysen Avenue site, the Prudential could finance that fully, but in the case of the Third Ward site they had made estimates of the cost of acquiring the properties, and unless the City put in a certain sum of money, the Prudential could not go ahead with that improvement and keep the rents as low as he desired them to be kept. That was about what he said.

"Mr. Groel: I renew my objection on the ground that most of this is in the return, and I don't think it is the best evidence.

"Mr. Bradley: Do I understand the Commissioner is testifying to what was said at a luncheon?

"Mr. Lane: He is testifying to what was said by Mr. Duffield at a luncheon attended by all five Commissioners.

"Mr. Groel: Can I repeat my objection on the ground that it is not binding on the City?

"Q. Up to that time had there been any suggestion of the City acquiring these lands for park purposes? A. No.

"Q. Who made the first suggestion that the lands be acquired for park purposes, and when?

"Mr. Bradley: I object to that question, on the ground that it is incompetent as well as irrelevant.

"A. Mr. Duffield.

"Q. And when? A. At that luncheon."

The greater part of this testimony was objected to on various grounds. Assuming that it was admissible at all, it constitutes the only testimony in the case even tending to support Commissioner Gillen's charge that The Prudential sought the aid of the City in carrying out its housing project, and that the ordinance is but the instrument for rendering that aid. This testimony was not only specifically denied, but completely rebutted by the circumstantial account of the matter given in the testimony of Mr. Edward D. Duffield, President of The Prudential, and of Hon. Jerome T. Congleton, Mayor of Newark.

The quoted excerpts from the testimony of Commissioner Gillen were read to Mr. Duffield (pp. 175-176), a witness called on behalf of respondents, who testified as follows (p. 176):

"Q. Mr. Duffield, will you state what you know of the matters testified to by Mr. Gillen, and state what took place at the luncheon to which the Commissioner refers, and specifically, I ask you, did the Prudential seek the City's aid? A. They did not."

And again (p. 189) Mr. Duffield testified:

"Q. Then, Mr. Duffield, you contradict Commissioner Gillen in his statement, that the Pru-

dential sought the City's aid, and nothing had been said before, or up to the time of that luncheon, as to the method of apportioning the cost of acquiring the property?

"Mr. Clancy: I object to the question, because it calls for a conclusion on the part of the witness.

"A. I repeat, I wouldn't like to contradict the Commissioner, but I think his memory is bad. At no time did I ask the aid of the City in connection with this matter. The City was constantly asking the aid of the Prudential, etc."

On cross examination Mr. Duffield testified as follows (p. 194):

"I had never taken the matter up with anyone in an official way, except through the Mayor, who had shown an interest in it, who had come asking our aid, and whom I was seeking to co-operate with."

(p. 196):

"Q. Did you ever suggest to Mayor Congleton that the City buy the land for park purposes and sell so much to the Prudential? A. I did, and in fact, had it not been for the necessity of future legislation, I am inclined to think that that might have been carried out."

(p. 198):

"Q. And it was in your opinion a joint project or joint enterprise to the extent that you were being aided by the City? A. I have never stated that we were being aided by the City in any way. It is contrary to the facts. We are not being aided. Whether this matter goes through or whether it doesn't, we are not being aided in the least, and we have never sought the City's aid in connection with it."

Mayor Congleton, likewise called as a witness on behalf of respondents, stated (p. 200) that Mr.

Duffield had testified to the circumstances of the matter "very accurately." The Mayor's testimony presented a full and consecutive account of the circumstances that led up to the introduction and adoption of the ordinance. It is not necessary to quote it at length. Suffice it to say that the Mayor made it clear that the City was anxious to procure The Prudential's co-operation in providing housing facilities on blocks of land a part of which would be acquired by the City for park and playground purposes (pp. 202, *et seq.*). The Mayor also confirmed Mr. Duffield's testimony as to what took place at the luncheon referred to by Commissioner Gillen (p. 217). Asked whether The Prudential at any time sought the City's aid, the Mayor testified (p. 218) as follows:

> "They did not, and on the contrary, we sought their aid and were delighted when we found that we could get a company like the Prudential, which was willing to invest a part of their trust funds in a project of this kind; and I have a very distinct recollection of hearing Commissioner Gillen say, on that December 24, 1928, when I made the announcement, that he was glad that there were some corporations left that still had a soul."

Referring now to the proceedings at the several public hearings before the Board of Commissioners and particularly to the introductory statement of Mr. Duffield at the meeting of April 23, 1930 (p. 10), we find that the latter made the following statement (p. 15, after explaining that the cost of acquiring and demolishing the buildings on the Third Ward tracts must be brought down to a point where the new housing facilities could be rented reasonably):

> "That can be done not by asking the City to bear any part of the cost of the housing

> project. That is the last thing in our mind. As I say, we do not propose to ask co-operation on the Ironbound proposition or on the Frelinghuysen Avenue tract, but in the Third Ward we ask if the City could see its way clear to utilize such portion of these blocks that we have acquired as will not be necessary for utilization by the Company for the erection of these houses. If the City will take the remaining part of that tract and utilize it for parks in that ward we can carry out this plan successfully."

And at the same meeting Mayor Congleton said in reply to Mr. Duffield (p. 20):

> "It just so happens that the people of the Third Ward are very anxious for parks in their ward. They have been after us for a long, long time. It seems to me that the proposition that you have put before us today meets that situation very nicely."

And at the final hearing the Mayor said (p. 62):

> "The Prudential did not seek the legislation under which this project goes forward if it goes. The Prudential has not asked us to spend $1,200,000. We have asked the Prudential to go into this project and engage to carry it out in the section of the City where I feel it is most needed. We have agreed to pay for a part of the land to be devoted to park and recreational purposes. * * * But I want to make clear that when the Prudential found what it would cost to purchase lands in the Third Ward in the localities where the health authorities and the police authorities said the new houses were most needed, they reported to the Board of Commissioners, through me, that they could not go forward with the project and give the rents that we all wanted to see fixed. I, in turn, reported that to my colleagues at a conference and it was in that conference that the scheme that is now before us was worked out, * * * and it was only after

> they had the assurance of the majority of the members of this Commission that we would take this land for park purposes, provided they would build the houses, * * * that they went ahead and invested their money."

The clear and definite statements made both by the Mayor and by Mr. Duffield at the several hearings, and their equally clear and convincing testimony, completely refute the unfounded charge of Commissioner Gillen that the true purpose of the ordinance is to render financial aid to The Prudential in the carrying out of the housing project. There is an element of absurdity in the suggestion upon which we do not dwell. We rest upon the facts disclosed which not only are dispositive of the charge made, but are also effective to supply that "rational basis" which the courts have said is sufficient to bar judicial review of the exercise of legislative discretion. Such is the evidence supporting the factual determination by the Supreme Court that the true purpose and effect of the ordinance coincide with its expressed object to expend public money for a public purpose only. It is submitted that this Court will not disturb that finding.

Counsel for the appellants argues (p. 71 of his brief) that, because the Commissioners admittedly were moved to the purchase by a consideration of the incidental benefit to the public that would result from construction of the housing facilities, the motive for their action vitiates its legality. In answer to this suggestion we can do no better than quote from the opinion of the Supreme Court as follows (p. 493, l. 11):

> "But we think that this view confuses the motive for the action with the character of the action itself. The legality of legislative action directed towards an admittedly public

> purpose cannot depend upon whether or not particular benefit may result to property and individuals in the immediate neighborhood."

In support of the charge that the effect of the ordinance is to permit the use of public funds for other than a public purpose in violation of constitutional provisions, counsel for the appellants has cited and quoted from a number of decisions of the Supreme Judicial Court of Massachusetts as follows: *In re Opinion of the Justices,* 42 L. R. A. (N. S.) 221, 98 N. E. 611; *In re Opinion of the Justices,* 91 N. E. 405; *City of Boston* v. *Talbot,* 91 N. E. 1015; *Salisbury Land & Improvement Co.* v. *Commonwealth,* 102 N. E. 619. He also cites (p. 51 of his brief) a case from California, one from South Dakota and one from the Supreme Court of the United States. With respect to these decisions we again quote at length from the opinion of the Supreme Court, as follows (p. 493, l. 27):

> "But we think that none of these decisions are dispositive of the present case, for the reason that they are concerned only with the question whether a particular use is or is not a public use.
>
> "In this respect they resemble the well-known decision of our own Court of Errors and Appeals in *The Tide-Water Company* v. *Coster,* 18 N. J. Eq. 518, in which the power of taxation had been exercised for reclaiming large tracts of meadow land. As to the purpose in view, Chief Justice BEASLEY said (p. 521):
>
> > 'To make this vast region fit for habitation and use, seems to me plainly within the legitimate province of legislation; and to effect such ends, I see no reason to doubt that both the prerogatives of taxation and of eminent domain may be resorted to * * *. It is the resulting general utility which gives such enterprises a kind of public aspect, and

> invests them with privileges which do not belong to mere private interests.'

"The Chief Justice then goes on to illustrate the nature and define the extent of the principle that empowers the legislature to determine what is a public use and to authorize the taking of private property for such use. He says (p. 521):

> 'It is one of the legislative prerogatives to decide the important question, whether an enterprise or scheme of improvement be of such public utility as to justify a resort, for its furtherance, to the exercise of the power of taxation or eminent domain. Primarily, the judiciary has no concern in such matter. And not only this, but if the public interest be involved, to any substantial extent, and if the project contemplated can, in any fair sense, be said to be promotive of the welfare or convenience of the community, the legislative adoption of such project is a determination of the question, from which there is no appeal, and over which no other branch of the government has any supervision whatever.'

"And at page 523:

> 'The object proposed, and for which provision is made in the statute under review, being, then, one tending to the benefit of the community at large, must be regarded, upon principles which are too valuable to social interests to be disturbed, as coming exclusively under legislative control.'

"It is of course conceded by the prosecutors that the devotion of lands to public parks and playgrounds constitutes a public use. It is their contention that the true purpose of the ordinance under review is not to provide parks and playgrounds. In support of this position it is idle to cite decisions adjudicating upon the nature of a public use. The distinction that we point out is clearly taken in *City of*

Boston v. *Talbot, supra,* cited by the prosecutors. It was there said:

> 'The question whether the use for which land is taken under the right of eminent domain is a public use is a judicial question, and the determination of the legislature upon it may be revised by the court. (Citing cases.) * * * *But if the use for which the taking is made is public, the question whether the taking of a particular piece of real estate is necessary or expedient is a legislative question, upon which the decision of the Legislature, as a tribunal of fact, is conclusive.*'

"*In re Opinion of the Justices,* 98 N. E. 611, upon which the prosecutors chiefly rely, is an illustration of precisely what the present case is not, namely, the expenditure of public funds, 'for the agrandizement of individuals and only for the incidental benefit of the public.' In that case the question related to the constitutionality of an act permitting a state agency financed by taxation to go into the business of buying, renting and selling real estate in order to provide homes 'for mechanics, laborers, or other wage earners' and thereby to improve 'the public health by providing homes in the more thinly populated areas of the state for those who might otherwise live in the most congested areas of the state.'

"*Salisbury Land & Improvement Co.* v. *Commonwealth,* 102 N. E. 619, also relied upon by the prosecutors, denied the legislative power to authorize the condemnation for park purposes of more lands than necessary and the resale to private owners of such excess lands."

All of the other cases cited in behalf of the appellants, and not mentioned in the opinion of the Supreme Court, are likewise readily distinguishable from the present case.

In re Opinion of the Justices, 131 N. E. 25, upheld the constitutionality of a statute authorizing the condemnation of water powers.

Los Angeles v. *Lewis* (*Cal.*), 167 Pac. 390, denied the legislative power to authorize county supervisors financed by taxation to operate a cement manufacturing plant.

White Eagle Oil & Refining Co. v. *Ginderson* (*South Dakota*), 205 N. W. 614, held that the state could not levy and collect taxes to conduct the business of selling gasoline.

Brown v. *United States,* 263 U. S. 79, 68 L. Ed., held that where a reclamation project involved flooding part of a town the government has constitutional power to condemn other private land nearby in the only practicable place for a new town site to which the buildings affected could be moved.

We take no exception to the statements of principle contained in the decisions cited. In fact they go far to support the views that we have expressed. We call to the particular attention of the Court the expressions in *City of Boston* v. *Talbot,* quoted in the opinion of the Supreme Court, which harmonize with our contention that the choice of these particular lands for devotion to park and playground purposes was wholly within the discretion of the Board of Commissioners and is not a matter subject to judicial review. In this respect the Massachusetts decision is in full accord with the New Jersey cases upon which we rely.

It seems clear, then, that the Supreme Court rightly refused to substitute its judgment for that of the body to whose discretion the matter was committed by the legislature, since a rational basis of facts existed to justify the particular exercise of discretion. It necessarily follows that the constitutional grounds urged upon the Supreme Court for setting aside the ordinance were without foundation in fact, and the appeal must, on this ground, fall.

POINT III.

The evidence in the Supreme Court showed that the action of the Board in enacting the ordinance was not an abuse of discretion.

The reasons filed on behalf of the prosecutors in the Court below charged that the passage of the ordinance was a gross abuse of the discretion of the Board of Commissioners and specified two grounds upon which the alleged abuse was predicated (Reasons 3, 4 and 8, pp. 73-74), as follows: (1) That the lands contemplated to be purchased for a public park are wholly unsuitable for such purpose, and (2) that the price of the lands to be purchased for a public park is greatly in excess of their true value for such purpose.

Both of these points of objection directed to an alleged abuse of the legislative discretion vested in the Board of Commissioners must, of course, be considered in the light of the principles of law already discussed governing the scope of the judicial review of an ordinance enacted in accordance with prescribed procedure and in the exercise of lawful powers. Briefly stated, the rule is that a court reviewing the ordinance will not in such a case substitute its discretion for that of the Board of Commissioners if any rational basis can be found to support the propriety of the action taken. We shall now examine the proofs relating to these objections and, in answer to each of them, shall demonstrate that ample evidence was before the Supreme Court to justify the finding that the discretion of the Board was properly exercised.

(a) The evidence showing that the lands contemplated to be purchased for parks and playgrounds are suitable for such purposes.

Reason 3 assigned by the prosecutors in the Court below for the setting aside of the ordinance complains that the lands in question are not suitable for "a public park." As pointed out by the Supreme Court (p. 496, l. 30), the ordinance and the contract contemplate the purchase of these lands for parks *and playgrounds.* The social purpose that inspires the entire ordinance, no less than its express language, emphasizes playgrounds as an important feature of the plan, and contemplates that the lands shall be devoted in part to that object. Thus, Section 1 of the ordinance (p. 3) recites the City's desire that the new housing facilities be "provided with proper parks and playgrounds" and the same recital is repeated in the preamble of the contract (p. 6). Likewise, Section 3 of the contract provides that the City will purchase the lands in question "for the purpose of parks and playgrounds to be maintained by the City for the benefit of the public at large." To form a correct judgment upon the fitness of the lands to serve the declared municipal purposes, we must ascertain the full scope of those purposes. It is to be remembered that they embrace not only parks but also playgrounds.

The plan for utilizing the interior of the two blocks as recreational parks and playgrounds in connection with the housing project was first proposed by Mr. Veiller, Secretary of the American Housing Association, an expert on the subject, employed by The Prudential (Testimony of Mr. Duffield, p. 178). At an early stage in the development of the project a conference was held between the Mayor, Mr. Duffield and Mr. Veiller at which the cost of the demolition of buildings of an un-

sanitary and crime-breeding character was discussed (p. 179). Mr. Duffield testified that:

> "Mr. Veiller said that if that were done he felt that the cost would require in the way of rental a larger amount than the laboring classes would be able to pay, and he outlined then, as the only feasible plan, that which was subsequently adopted in connection with the Third Ward improvement, namely, that if the City would acquire land for parks and the Prudential take a portion of the land which they had acquired for parks and erect the houses thereon, that under those conditions, the demolition cost being borne partially by the City and partially by the Prudential, it might then be feasible to carry out what both the Mayor and I felt was quite an essential feature of the whole program.
>
> "Q. And that suggestion he made was, as you say, the one that is under discussion in the Third Ward; that is, having the whole interior strips of the blocks open at both ends, and buildings being on the sides? A. Exactly."

And further (pp. 180-181):

> "Mr. Veiller outlined this as a plan which could accomplish a fair return to the Prudential on its invested funds and give the City what they wanted in the way of a park with playgrounds and housing as an adjunct thereto. In other words, he outlined a single plan, which involved the erection of houses on the strips, on the side, and a playground, or park, in the middle."

The choice of the location of this particular project in the Third Ward was determined by the City Commissioners after an intensive survey by the health and police authorities made at the instance of the Mayor. (See Mayor Congleton's testimony, pp. 203, *et seq.*) In a statement issued by four commissioners May 6, 1930, explaining the plan

to the public (pp. 219-224), the park and playground feature was described as follows (p. 222):

> "Under the scheme now proposed, the City would purchase the strip of land through the center of these two blocks, running north and south, approximately 140 feet in width, for the length of the blocks—about 1400 feet, or more than a quarter of a mile. * * * The park would be open at both ends of the two blocks and there would be access to it through passageways on Barclay and Somerset Streets, thus affording opportunity not only for the children living in the apartments but also for those in the neighborhood to play in safety off the streets, which would be of great benefit to the entire section."

The same purpose is manifest whenever the plan was mentioned in the proceedings at the several hearings before the Board of Commissioners. It would be superfluous to repeat the pertinent portions of those statements. We now turn to the testimony relating to the fitness of the lands in question for the object in view.

Commissioner Gillen testifying for the prosecutors (p. 89) stated his opinion that the lands were not suitable for park purposes because not sufficiently open to allow for a plentiful supply of air and sunlight. He conceded, however, that "they might be suitable for certain recreation or playground purposes for those that live in those houses, but eventually the children living there would monopolize the use of them anyhow, and they could not be considered public parks for the use of the whole section generally, and would not eventually be suited for that purpose." The Commissioner suggested no facts upon which he based the latter opinion.

The only other witnesses called on behalf of the prosecutors to testify in the matter of the fitness

of the lands for the proposed park and playground uses were James H. Walker and William J. Coleman (pp. 169-173). The former is a forester in the employ of the Department of Parks and Public Property, and the latter an arboriculturist in the employ of the same department, of which Commissioner Gillen is Director. The testimony of these two witnesses, which was wholly an expression of opinion, was largely directed to the point that it would be more difficult to grow trees on the land in question, if enclosed on the east and west sides by houses 45 to 60 feet in height, than in an open space. They conceded that trees and shrubbery might be grown there and that in any case they are not necessary for playgrounds. It must be noted that the record discloses no plan indicating the height or any other feature of the proposed housing facilities. Furthermore, not only the governing statute (Chapter 202, Laws of 1929), but also the terms of the proposed contract itself (Section 2, p. 8), leave the City in complete control of the housing plans. The testimony of these witnesses is therefore negligible.

On the other hand, the respondents called as witnesses Lee F. Hanmer, Director of the Department of Recreation of the Russell Sage Foundation (p. 101), Charles J. Storey, Secretary of the City Recreation Committee of the Welfare Council of New York City (p. 117), Randell D. Warden, Director of Physical Education of the City of Newark (p. 125), Lewis R. Barrett, Director of Recreation of the City of Newark (p. 134), and David J. Kelly, Secretary and Director of Recreation of the Essex County Park Commission (p. 141). All of these disinterested witnesses testified to the desirable character of the lands in question for park and playground purposes, particularly under the conditions to be created by the housing project.

Severe cross examination failed to shake any of them in the conclusions and opinions to which they testified, which may be summarized as follows:

> The lands in question in respect to area, location and surrounding conditions are fit, proper and desirable for the establishment of parks and playgrounds because—
>
> 1. The district is a congested one and ill provided with park and playground facilities (Mr. Kelly, pp. 142-144).
>
> 2. The area is unusually large for a city of the size of Newark (Mr. Barrett, p. 136, and Mr. Warden, p. 128).
>
> 3. The proposed housing facilities shutting in the area on two sides will be an advantage in sheltering the playground for the protection of small children (Mr. Barrett, pp. 136-137, and Mr. Warden, p. 128).
>
> 4. The interior land used as a playground eliminates the hazard of children living on the block crossing the streets (Mr. Hanmer, pp. 103-104).
>
> 5. There will be ample light and air notwithstanding the construction of the housing facilities (Mr. Hanmer, p. 106).
>
> 6. Being open at both ends and in the middle the general public will readily have access to the site (Mr. Hanmer, p. 107).
>
> 7. The site will be available for park as well as playground purposes and suitable not only for children in the daytime but for older people in the evenings, especially in warm weather (Mr. Storey, pp. 120-121).

To sum up, then, the evidence in the Court below showed that the fitness of the lands for parks and playgrounds was first suggested by Mr. Veiller, an expert on projects of this character, and that his proposal, adopted by the Board of Commissioners, has the enthusiastic support of five authorities on the subject of parks and recreational facilities

upon numerous grounds of social policy and expediency. The only evidence even tending to contradict this array of qualified opinion was the unsupported statement of opinion by Commissioner Gillen that the lands are not suitable for the purposes in question. The evidence in favor of the proposal was such that it clearly afforded the "rational basis" requisite to sustain the discretion exercised by the Board in authorizing the acquisition of these lands for park and playground purposes, and justified the resultant adjudication by the Supreme Court. It follows that this Court will not, upon this ground, disturb the judgment of the Court below.

(b) The evidence showing that the maximum price to be paid by the City is not excessive.

The prosecutors in the Court below charged (Reason 4, p. 73) that the ordinance authorizing the purchase by the City of the lands in question was a gross abuse of the discretion of the Commissioners because the price to be paid by the City is greatly in excess of the true value of the lands. This objection, like the last, was addressed to an exercise of discretion by the Board of Commissioners and, in the language of the Supreme Court (p. 497, l. 27), "cannot prevail if there is evidence of any rational basis to sustain the particular exercise of discretionary power." The Supreme Court found such evidence and we shall now refer to it, first discussing the circumstances under which the contract price was fixed by the parties, and the method adopted for ascertaining the price and the reasons therefor, and, secondly, discussing the expert testimony relating to the value of the lands.

Turning first to paragraph 3 of the proposed contract (p. 8) we find that the price to be paid by

the City is fixed at a sum bearing such proportion to the total price paid by The Prudential for the whole of the land acquired by it, as the area of the land to be purchased by the City shall bear to the total area acquired by The Prudential, but in no event in excess of $1,200,000 inclusive of the cost of any lands within the one hundred and forty foot strip which the City might itself directly acquire by purchase or condemnation. The sum of $1,200,000 is therefore the maximum sum which the City could be called upon to pay for the entire one hundred and forty foot strip whether acquired from The Prudential or from other owners. We concede that in view of the cost of purchases already made by The Prudential (see Affidavit of W. I. Hamilton, pp. 77-83) the City will under the terms of the contract be called upon to pay the maximum price so fixed. The method employed in ascertaining the price and in fixing the maximum price and the reasons for adopting that method are fully discussed in the testimony of Mr. Duffield (pp. 187-189) as follows:

> "Q. What was the theory upon which the maximum amount of $1,200,000 was arrived at as the City's portion? A. At this luncheon to which I have referred, we discussed not the question of the City acquiring for park and playground purposes this interior strip, but what would be a fair division of the total cost of acquiring those two blocks, between the City using a portion for park and playground purposes and the Prudential using a portion for housing purposes. Prior to that time the Mayor had suggested a limit of two-thirds of the total cost of any tract acquired, as the limit which the City ought to be expected to take and utilize. * * * I know I said at that luncheon that it seems to me that the fair method of division, instead of trying to arrive at an arbitrary figure, such as two-thirds or

three-fifths, or three-fourths, would be to treat the whole tract as one purchase, for a common purpose, the City to utilize a portion, and the housing of the Prudential, a portion, and that it seemed to me that a fairer method, one less liable to misconstruction, would be to have the Prudential pay that portion of the whole cost which the portion of the land it occupied bore to the whole land, and the City to do the same.

* * * * * * *

"Q. In relation to the $1,200,000 as the maximum, how was that arrived at? A. Subsequent to that meeting, and possibly subsequent to the public meeting at the City Hall, I had a talk with the Commissioner while, I think, the Mayor was present; in fact, I am sure he was, and that Commissioner Howe said to me that he felt a maximum should be placed as to the amount that the City could invest. At that time we had substantially determined what the cost would be, but there were still some tracts left to be acquired, and Commissioner Howe felt that there should be a maximum placed of $1,200,000 to carry out the plan, which seemed to me to be a fair division. I was entirely willing, after consultation with Mr. Hamilton, and believing that it would not interfere with the object I had in view, of low rentals, to agree that that should be the maximum that the City should pay for the land which it was expected to acquire.

"Q. That $1,200,000 representing, then, as I understand your answer, about seventy per cent. of what you supposed, from the best figures you could get, would be the— A. Entire cost. I understood that the City would take approximately seventy per cent. of the tract, and as you say, that represented seventy per cent. of the cost.

"Q. And represented also seventy per cent. of the area? A. Yes.

"Q. If you succeeded in getting the total cost down, the City was to benefit under the con-

> tract? A. Yes. The real purpose of putting that in there, was to assure Commissioner Howe, and through him to assure the Commission, that if in finally assembling these tracts, we were forced to pay an exhorbitant sum for one or two tracts, or we had to pay a sum which would carry it beyond that, that the Prudential would pay it, and not the City."

Mayor Congleton testified (pp. 202-203) to the same effect and on cross examination (p. 226) further explained the reasons that moved the City to adopt the proportionate area basis in fixing the price, as follows:

> "If we went in there to buy that property, we would have to pay, in my judgment, practically the full value of the two blocks, by reason of the owners claiming a damage to the remainder, * * *."

Mr. Duffield and the Mayor made statements of similar purport and effect at the hearing before the Board of Commissioners on April 23, 1930 (pp. 20-21); and it is significant that at the close of that hearing the entire Board of Commissioners, including Commissioner Gillen, unanimously adopted a motion (p. 28) "that the Commission endorse the proposition submitted by Mr. Duffield and that this body be empowered to go into conference with the proper officials of the Prudential Company in relation to anything else on the proposition."

After considering this evidence the Supreme Court concluded (p. 497, l. 35):

> "that the proportionate area method of fixing the price was adopted because the project was a joint one in the sense that The Prudential would not have entertained the housing project were it not for the City's undertaking to purchase the surplus land in the blocks for parks, and the City was moved to the latter

undertaking only by the agreement of The Prudential to construct the new housing facilities. Furthermore, the boundary lines of the land to be acquired by the City pass through nearly every structure on the blocks in question,* so that, were it not for The Prudential's purchase of the outside strips for the peculiar use contemplated, the City would have had to pay practically the entire value of the blocks for the inside area. In the light of these unusual circumstances, and in view of the protection afforded to the City's interests by the fixing of a maximum contract obligation on its part, we cannot say that the discretion exercised by the Board was wrongly exercised."

The rational basis for the particular exercise of discretion of course is found in the inherent justice of an apportionment of cost between two parties engaged in a common social purpose. The prosecutors on the other hand insisted in the Court below that the price to be paid by the City should have been measured by arbitrary rules commonly employed in less complex situations for the ascertainment of the value of city lands having no existing street frontages. They accordingly introduced testimony based upon an application of those conventional rules to the case in hand, and the respondents, although rejecting the theory, met this attack with testimony similar in character but very different in effect. The ensuing battle of the experts must now be reviewed.

The area of the land to be acquired by the City is approximately seventy per cent. of the total area (Map, p. 510). Counsel stipulated (p. 76) that the two blocks of land as a whole have a fair value of not less than $1,714,000, seventy per cent. of which amounts to $1,200,000, the maximum price to be paid by the City, so that the Supreme Court

* See Map, page 510.

concluded (p. 498, l. 25) "that if the method of apportionment fixed by the contract is sound, the maximum price to be paid by the City is fair." The objection raised by the prosecutors in the Court below touched not the fairness of the price paid by The Prudential upon which the maximum price to be paid by the City is based, but was addressed to the *apportionment* of the total price between the City and The Prudential.

Counsel stipulated also (p. 84) that the buildings and improvements on the two blocks have a present value of at least $900,000 and that the map offered in evidence by the City (Exhibit D-2, p. 510) correctly indicates the number, character and location of such structures and the boundaries of the land to be acquired by the City, from which it appears that the latter embrace either the whole or a portion of nearly every structure on the two blocks.

Commissioner Gillen, in the character of a real estate expert, testified on behalf of the prosecutors below (p. 87) that the lands to be acquired by the City have a value of $735,000, computed by applying the Newark City tax rule (for ascertaining the relative value of front and rear lands), to an assumed valuation of $1,750,000 for the whole of the two blocks. He thought, however (p. 88), that after the construction of the housing facilities on the adjacent strips the necessity of leaving space for light and air on the City strip would reduce its availability for building purposes, and consequently would reduce its value to less than $600,000.

Four other dealers in real estate, called as witnesses on behalf of the prosecutors, whose competency as experts was and is challenged, testified to their opinion of the value of these lands. The testimony of each is based wholly upon the

application of some so-called depth rule for the ascertainment of the relative value of the front and rear portions of a city lot, and ignores the peculiar situation to be created in the present instance by the proposed severance of ownership, resulting in the transfer to the City of acreage rather than plottage, and also ignores the value of the improvements on the respective strips. For convenience their testimony and that of Commissioner Gillen is summarized in the following table:

Name of Witness	Opinion of Value of City Strip	Depth Rule Used	Opinion on Value in Separate Ownerships
Gillen (p. 87)	$735,000	Newark City Tax Rule	$600,000
Linnett (p. 94)	981,303	Hoffman-Neil Rule	568,750 (p. 163)
Hewson (p. 99)	735,000	Newark City Tax Rule	500,000 (p. 162)
Bonda (p. 155)	635,000	Newark City Tax Rule	400,000 to 500,000 (p. 156)
Hines (p. 167)	735,000	Newark City Tax Rule	250,000 (p. 168)

Without at this time pausing to comment on the wide divergence in the testimony of these witnesses, or to point out the ineptitude of applying a conventional depth rule to the situation in hand, we proceed to consider the testimony on value introduced on behalf of the respondents.

Daniel W. McGee (p. 229) and George B. Mayberry (p. 259), practical builders engaged in business for thirty years or more, who together (p. 261) inspected and appraised the improvements on the premises, testified that the value of all of the buildings and improvements upon the entire two blocks is $917,278. The improvements located on the property which the City is to acquire account for $556,450 of this sum, and those located on the strips to be retained by The Prudential account for $360,828. Upon searching cross examination Mr. McGee revised his apportionment (p.

461) so that the City's share became $515,821 and The Prudential's share $401,457. Further cross examination failed to shake Mr. McGee's adherence to these latter figures.

Doctor Charles F. Kraemer, for thirty-five years in the real estate business, an appraiser of real estate for the City of Newark and an expert upon property values in the neighborhood (pp. 268-270), rejected the Newark City Tax Rule and every so-called depth rule as inapplicable to the peculiar circumstances of this case (p. 270) and found the total value of the land and buildings to be acquired by the City to be $1,139,395 (p. 273). He reached this result by taking the total value of the two blocks at $1,750,000 and deducting the value of the improvements, $917,217, leaving a naked land value of $832,782 for the whole, or a value per square foot of $2.9055. Applying this square foot value to the apportionment of land area between the City and The Prudential and adding Mr. McGee's apportionment of building values, he produced the following result:

> "Land acquired by the City of Newark ... $ 582,945.09;
> buildings and improvements as testified to
> by the experts 556,450.82;
>
> making a total value of the City's land and
> buildings about to be taken ..... $1,139,395.91."

If we reduce Doctor Kraemer's total figure by $40,629, as indicated by Mr. McGee's final revision, we still have a valuation of nearly $1,100,000. By reason of the high value of the *improvements* on the City's lands, to which depth rules are in any case inapplicable, Doctor Kraemer found that even if the depth rules were applied to the *land*, the City's portion according to his method would show a total valuation of $1,055,350 (p. 274). Doctor Kraemer's testimony, including the grounds upon

which he rejected the depth rules and applied the square foot method of valuation, was corroborated by the testimony of Henry C. Beach, a real estate man in business for twenty-seven years and an expert familiar with the neighborhood (pp. 281-283). Both of these witnesses testified that if the City were to acquire the lands in question from the individual owners, thereby rendering useless a large part of the improvements not acquired, the resultant damages would amount to a large sum, in Doctor Kraemer's opinion $200,000 (p. 275), which would bring the value of the City's acquisition to a sum in excess of $1,200,000. James A. Berry, another real estate expert, testified in substantially the same manner (p. 310).

The severe cross examination to which all of these witnesses were subjected served principally to emphasize the futility of attempting to apply any of the various arbitrary depth rules to a situation such as the present which concerns a tract of six and one-half acres, over four of which are to be acquired by the City. A depth rule at best is but a rule of thumb for determining the value of the rear portion of a lot having an established front foot value. Front foot values are not applicable to cases of acreage (Doctor Kraemer, p. 273, and on cross examination, p. 277). Doctor Kraemer testified also that the Newark Tax Rule relied upon by the prosecutors' witnesses was used only by the Tax Department of the city government (p. 346) and was not applicable to real estate valuations or appraisals (p. 346).

Mr. Edward J. Maier, a real estate expert with an experience of twenty-five years (p. 351), called on behalf of the respondents, presented an opinion on the proper method of apportionment, resting on a basis radically different from that employed by any other witness on either side. Mr.

Maier's opinion, formed in the light of the particular conditions created by the proposed severance of ownerships and the resulting relative utility of the several strips to be retained respectively by the City and The Prudential, appears to us the most weighty, as it is certainly the most thoroughly considered, of all the opinion testimony in the case (see pp. 362-368). Mr. Maier's theory is based first upon the admitted valuation of $1,750,000 for the entire two blocks, including the proven value of $917,278 for the buildings, leaving a bare land value of $832,722. He stated (p. 363):

> "For the purpose of properly apportioning or distributing the cost of acquiring these tracts over the several parcels, it is necessary to establish a relative value of each parcel to the other. The highest utility of each of these parcels must therefore be ascertained, if a correct basis of valuation to determine the ratio of such apportionment is to be employed."

And (p. 365):

> "The two strips each having 140 feet of frontage at each end, and a length of 700 feet through the blocks, can be put to the highest utilization by cutting through the entire length of the two blocks a 40 foot street having lots of 50 feet in depth on each side. The length of these 50 foot strips would be the same length as the 30 foot strips on the outside, and would have all the same facilities and uses."

He then went on to show (pp. 365-366) that by reason of the greater depth (50 feet) of the lots on the new street, they would have an actual advantage over the lots 30 feet deep on the existing streets, which, in terms of square foot value, would represent at least ten per cent. Having found the highest utility of the parcels to be identical and having

made due allowance for plottage and for the cost of constructing the new street, he found the proportionate value of the inside and outside strips to be respectively 64.7 per cent. and 35.3 per cent. of the whole (p. 366). Applying these percentages to the assumed valuations of the whole tract, including buildings, produced an apportionment of $1,116,075 to the City's inside strip and $633,925 to The Prudential's outside strips (p. 367). Mr. Maier added several reasons (pp. 367-368) why the inside strip might be considered in even a greater degree relatively more valuable than the outside strips and therefore concluded that "an apportionment to the inside tract of $1,200,000 of the cost of acquiring the property is reasonable."

Mr. Maier's testimony was supported by that of Mr. Frederick M. Babcock, who is not only a practical appraiser of real estate, but a writer, teacher and nationally known authority on the science of real estate appraisal (pp. 390-393). Mr. Babcock did not pretend to qualify as an expert on Newark real estate values, but was called as an expert in determining the correct *method* of ascertaining value. In answer to a hypothetical question, he testified, as he was well qualified to do, that he would determine the relative values of several strips such as are here in question upon the principle employed by Mr. Maier (pp. 399-401). He also condemned, in such a case, the use of the depth tables relied upon by witnesses for the prosecutors (p. 402) as wholly inapplicable under the conditions created by the severance of ownership.

The opinion testimony on value given by the group of witnesses for the prosecutors below was of course irreconcilable with the answering testimony offered on behalf of the respondents. The Supreme Court weighed this conflicting mass of testimony, and in reference thereto the opinion

states (p. 498, l. 33): "we have considered it, and conclude that, in view thereof, the maximum price to be paid is justified." It is submitted that this Court will not weigh this testimony, but, in view of the ample evidence of the fairness of the maximum price to be paid by the City, will hold itself bound by the determination of the Supreme Court on that point. In any case the opinion testimony given by respondents' witnesses, derived from reasoned judgments as it is, supplies beyond all doubt a "rational basis" to sustain the discretion of the Board in authorizing a contract to pay a maximum price of $1,200,000 for the land in question. In the light of this evidence and of the considerations already discussed that moved the Board to fix such a maximum price, the municipal action is so clearly justified that this Court will not disturb it.

We have now pointed out that there was before the Supreme Court ample evidence to justify the adjudication of that Court to the effect that:

(1) The ordinance contemplates the expenditure of public funds for a public purpose only, and not for the purpose of aiding a private enterprise.

(2) The lands contemplated to be purchased for parks and playgrounds are suitable for such purposes.

(3) The maximum price to be paid by the City for the lands in question is not excessive.

It remains only to deal with the objection urged on behalf of the appellants addressed to an alleged lack of power in the Board of Commissioners to adopt the ordinance.

POINT IV.

The Board of Commissioners had power to adopt the ordinance in question.

The appellants contended in the Court below that the Board of Commissioners had no power to adopt the ordinance in question on the theory that, under the governing statute, all executive, legislative and judicial powers with respect to public parks is exercisable only by the particular commissioner assigned as director to the Department of Parks and Public Property, who, in this instance, voted against the adoption of the ordinance (Reasons 5 and 6, p. 73). The Supreme Court rejected this theory and affirmed the power of the Board in the premises (p. 498, l. 36). The appellants now urge this objection as a ground for reversing the judgment.

Upon this point the opinion of Mr. Justice TRENCHARD in the Supreme Court so thoroughly exhausts the subject that we do not presume to paraphrase his clear demonstration of the error of the appellants' contention, but quote his language at length, as follows (p. 498, l. 36; p. 504, l. 16):

> "We think that the Board of Commissioners had power to adopt the ordinance in question.
>
> "The City of Newark is a municipal corporation originally organized under a special charter in 1836, revised in 1857. Thereunder the powers of the city government were vested in a mayor and common council. The statute of 1911 (P. L., p. 706) authorized the common council by ordinance to purchase and condemn lands for park purposes. In 1917 the Home Rule Act (P. L., p. 319), which was in effect a revision of all existing laws conferring powers of municipal government, provided (Article XXXVI, Section 1) that 'the governing body'

of every municipality shall have power to acquire and maintain 'parks' and 'playgrounds' and for these purposes to take in fee or otherwise, by purchase or condemnation, any lands. Later the Act of 1911 was repealed. P. L. 1917, p. 635. The power to purchase and maintain parks and playgrounds so far as it is derived from that provision of the Home Rule Act resided in 'the governing body' of the City, which is defined by Section 2 of Article I 'as the board or body having control over the subject matter in connection with which such term is used, and having the power and authority to legislate thereon.' It follows that by that Act the common council of the City was vested with the power to purchase and maintain parks and playgrounds.

"On November 13, 1917, a few months after the Home Rule Act became effective, Newark duly adopted the Walsh Act (P. L. 1911, p. 462), thereby lodging all of the City's powers of government in a board of five commissioners. Section 4 of the Walsh Act last amended by P. L. 1930, p. 996, and in force at the date of the adoption of the ordinance now under review, provides that the Board of Commissioners shall have all executive, administrative, judicial and legislative powers and duties theretofore had by the Mayor and Common Council and all other executive or legislative bodies in any municipality adopting the provisions of the act; that 'said Board shall have complete control over the affairs of such municipality,' and that such powers and duties shall be distributed into and among five departments, one of which is the 'Department of parks and public property.' The next succeeding paragraphs provide that the Board of Commissioners shall determine the powers and duties to be performed by each department and shall assign such powers and duties to such department as they in their judgment deem appropriate, and shall designate one commissioner to be director of each one of the several departments. Pursuant thereto the

Board, on May 21, 1929, by resolution purported to distribute to the Department of Parks and Public Property all executive, administrative, judicial and legislative authority and duties relating to the public parks, and designated Commissioner Gillen to be Director of that Department, and he held that office at the time of the introduction and final passage by the Board of the ordinance under review, and opposed its adoption, and alone voted against it when it was adopted by the affirmative votes of all of the other four commissioners.

"We think that the power invoked in the present instance by the Board of Commissioners as a body is derived not only from Article XXXVI, Section 1, of the Home Rule Act authorizing municipalities to acquire parks and playgrounds, but also from Article XIV, Section 2, of that Act which provides that every municipality shall have power to make such ordinances as they may deem necessary and proper for the good government, order, protection of person and property, *and for the preservation of the public health, safety and prosperity of the municipality;* and we also think that the purpose in view could be accomplished only by ordinance, and that the requisite ordinance could not be adopted by a single commissioner, but must be adopted by the affirmative vote of a majority of the board of commissioners, as was done in the present case.

"Article XIV, Section 2, of the Home Rule Act grants to every municipality power to make 'such other ordinances as they may deem necessary and proper * * * for the preservation of the public health, safety and prosperity of the municipality and its inhabitants,' and that power the City has invoked in the present case, and it has done so by ordinance, as expressly authorized, and moreover has done so by the procedure requisite under the Act to an exercise of the power to purchase land for parks and playgrounds as conferred

by Article XXXVI, Section 1. Article XI, Section 6, of the Home Rule Act (P. L. 1918, p. 479) provides that: 'No municipality shall enter into any contract whatsoever, the cost of which is to be met by funds other than those included in the budget of appropriations for the year, unless prior thereto there shall have been regularly adopted by the governing body of such municipality an ordinance authorizing an appropriation sufficient to meet the cost of carrying out the provisions of such contract; * * *.' The ordinance under review bears in its title, and in its text, intrinsic evidence that the cost of the contract for the purchase of the lands in question is to be met by funds other than those included in the current appropriation, namely, by the proceeds of the sale of bonds. Consequently, an ordinance was an indispensable condition to the exercise of the power to purchase these lands.

"It follows that the ordinance in question could be adopted only by the Board of Commissioners, as was done.

"The prosecutors contend that because under the Walsh Act the legislative powers of the City were distributed, with respect to parks, into the Department of Parks and Public Property, it became competent for the Director of the Department of Parks and Public Property and for him alone to take the action necessary to effect a purchase of land for a public park and playground. This contention fails to take note of the fact that the distribution of legislative powers to the several departments must certainly be subject to other controlling provisions of law which, in certain cases, either expressly or impliedly reserve the legislative power to the board acting as a body.

"Such a reservation is clearly implied in the instance in which the legislature has either prescribed or authorized the exercise of municipal powers by means of an ordinance. Section 3 of the Walsh Act as amended (P. L. 1916, p. 406) provides that 'Every city * * * shall be governed by a board of commissioners

consisting of five commissioners, * * * each of whom shall have the right to vote on all questions coming before the board of commissioners. A majority of the members of the board of commissioners shall constitute a quorum and the affirmative vote of a majority of all the members shall be necessary to adopt any motion, resolution or ordinance, or pass any measure unless otherwise provided for in this act. * * * The mayor shall have no power to veto any measure, but *every ordinance passed by the board of commissioners* shall be recorded and signed in the book in which it is recorded by a majority of all the commissioners before it shall be in force.' The Home Rule Act prescribes no different procedure, but by Article X, Section 1, defines the term 'ordinance' as '*Any act* or regulation *of the governing body* of any municipality reduced to writing, and required to be read at more than one meeting thereof and published.'

"The quoted language of Section 3 of the Walsh Act and the subsequent language of that section clearly contemplates that, in some cases, at least, legislative action is to be taken by the Board of Commissioners acting as a body, for otherwise no effect could be given to the elaborate provisions for the procedure necessary to adopt an ordinance. Bearing in mind the strong implications arising from this language, it cannot reasonably be supposed that the legislature in distributing the powers of government amongst the several departments contemplated the enactment of *ordinances* by their respective directors. To postulate a delegation of power so extraordinary and so repugnant to our institutions would demand a clear and unqualified expression of the legislative will such as is wholly wanting in the Walsh Act or in any other legislation. On the contrary Section 4 of the Walsh Act provides that 'The Board of Commissioners shall determine the powers and duties to be performed by each department and shall assign such powers and duties to such depart-

> ment as they in their judgment deem appropriate.' There is no suggestion of a legislative purpose to denude the Board as a body of the power to adopt an ordinance where an ordinance is essential to the matter in hand. The contrary is clearly indicated by the various provisions of law to which we have alluded. Moreover this view is supported by the contemporaneous practical construction that has been universally accorded to these provisions from the time of the first enactment of the Walsh Act to the present. We know of no case disclosing even an attempt on the part of a single commissioner assigned as director of a department to enact an ordinance. On the other hand, we find several cases in our Courts, discussing the powers of government granted by the Walsh Act, where the ordinances were enacted by the whole board of commissioners; for illustration; *Loughran* v. *Jersey City,* 86 N. J. L. 442; *Weber* v. *Atlantic City,* 102 N. J. L. 79."

Resting upon this exposition by the Supreme Court, we make only a few observations by way of further argument.

It may be pointed out that the Walsh Act is not a legislative grant of municipal power, but merely sets up the framework of a structure of municipal government. On the other hand, the Home Rule Act furnishes a full and complete scheme for the governing of municipalities, defining their powers and the procedure and method of enforcing them, and would govern in the present instance even if its provisions were inconsistent with those of the Walsh Act. *Public Service Ry. Co.* v. *General Omnibus Co.,* 93 N. J. L. 344.

We also point out that the Walsh Act confers no express powers upon the several directors as such, but merely requires the board to designate one commissioner to be director of each of the five departments. It rests then with the board to "deter-

mine the powers and duties to be performed by each department." It follows that the several directors, to whom no powers are granted by the act itself, derive such powers as they may possess wholly from the board. When the board itself exercised by majority vote a power theretofore assigned to a particular department, it thereby determined that the power in question should not be performed by that department. In so doing the board in the present case acted wholly within its statutory powers, and since the particular action here in question could be taken only by ordinance, the board proceeded to enact the same as a body in the only manner sanctioned by common law and by the governing statute, viz., by majority vote "at more than one meeting." If there were any doubt of the soundness of this view it would be resolved by the provisions of Article X, Section 1, of the Home Rule Act defining an ordinance. It will be noted that an ordinance is not only an act or regulation of "the governing body" but that it must be read "at more than one meeting thereof." Even if the Director of the Department of Parks and Public Property could be considered the "governing body" of the City of Newark within the sphere of his department, he is certainly not capable of complying with the legislative prescription by purporting to hold meetings with himself.

Furthermore, in the present instance an express provision of law limits the distribution of the legislative powers of the city government and prescribes that the power here in question shall be exercised only by the Board of Commissioners as a body. Turning again to Article X, Section 1, of the Home Rule Act, we find that the term "ordinance" as used in the act is defined as "an act or regulation of the governing body of any municipality." Likewise the power to purchase parks

contained in Article XXXVI, Section 1, relied upon by the appellants is vested in "the governing body of every municipality." We are, therefore, remitted to the definition of "governing body" contained in the Home Rule Act itself (Article I, Section 2), as follows:

> "The board or body in each municipality designated by statute effective in such municipality, as the board or body having control over the subject matter in connection with which such term is used, and having the power and authority to legislate thereon, whether designated as 'board of aldermen,' 'common council,' 'borough council,' 'township committee,' 'village trustees,' 'improvement commission,' 'board of street and water commissioners,' 'board of public works,' 'board of finance,' 'board of health,' 'park commissioners,' 'recreation commissioners,' or otherwise."

It will be observed that "governing body" is defined as a "board or body" having control over the subject-matter and having the power and authority to legislate thereon. The definition does not include an individual officer and the series of examples given of the kind of boards or bodies contemplated necessarily imply plurality of membership. In other words, the governing body of a New Jersey municipality, to which the important powers of the Home Rule Act are committed, may not be an individual functioning as a species of corporation sole. It is not to be forgotten that the provisions of the Home Rule Act, if in this regard they conflict with the Walsh Act, are controlling. (*Public Service Ry. Co.* v. *General Omnibus Co., supra,* and *Reade* v. *Asbury Park,* 101 N. J. L. 319, Affirmed 102 N. J. L. 221.)

If our contention is sound (and the Supreme Court thought it was), what is the meaning of the

prescribed distribution of legislative powers into and among the several departments? In the light of the provisions of law discussed, it would seem that the language of the Walsh Act distributing legislative powers must be construed to embrace only those powers which are not directed or permitted to be exercised by the board of commissioners as a whole, such as the making of rules and regulations not required to be made by ordinance. Indeed, if it were otherwise, what functions could the board as a body perform? Yet it is clear that the board as a body is vested with powers and functions of a legislative nature that are not distributed into any department. *Reade* v. *Asbury Park, supra.* In that case this Court held that the power to lease beach front property did not reside in the director of the department of parks and public property but in the board of commissioners as a whole, because the control of such property prior to the adoption of the Walsh Act had been vested in a board the powers of which, upon the adoption of the Walsh Act, vested in the board of commissioners and were not distributed to any department. If all municipal powers of every character were fully distributed into the several departments, to be exercised only by the respective directors, how could we explain Section 5 of the Walsh Act as amended (P. L. 1928, p. 675) which prescribes regular meetings of the board to be held "at least twice monthly" and special meetings as called from time to time by the mayor or by two commissioners; and what can be the meaning of the second paragraph of that section which requires the mayor at meetings of the board to "report to the board *for its action* all matters requiring the attention of the board on any department"? These provisions cannot be meaningless, and yet, to give them effect, we must insist upon

the theory, adopted by the Supreme Court, that the distribution of legislative powers is limited by other provisions of law.

The only case cited by counsel for the appellants that gives even the appearance of questioning such limitations upon the distribution of powers to the several departments is *Foley* v. *Orange*, 91 N. J. L. 554, in which this Court (divided eight to three) held that the phrase "shall be distributed" was used in an imperative and not a directory sense and was self-executing. But that case concerned the judicial and not the legislative power and no inconsistent provisions of law were cited as imposing any limitation upon the distribution of that particular power, and it would appear that the Home Rule Act was not in force when the case arose. The legislative power is not even mentioned in the opinion. The decision, therefore, is not relevant to the present issue and throws no light upon the construction to be accorded the same phrase used in relation to legislative powers as to which the legislature has itself imposed the limitations already discussed.

Sykes v. *Heinzman*, 100 N. J. L. 12, also is relied upon by counsel for the appellants on the theory that the language of that decision makes no distinction between the distribution of executive and legislative powers. But the case concerned only the making of an appointment to a subordinate office, a function clearly not legislative but executive or administrative in character and if the opinion of the Supreme Court in that case could be construed to assert the complete distribution of *legislative* powers its expressions in this regard were purely *obiter*, and, in any case, the decision is of course not binding on this Court.

Counsel for the appellants concedes that the general language of the two decisions mentioned

"must be taken in connection with whatever express limitations there may be upon the exercise of a particular power or express provision with respect to how a particular power shall be exercised elsewhere contained in the act." He omits to point out, however, what those limitations are and we submit that with respect to the particular power to enact ordinances we have supplied that omission.

Other cases cited by counsel for the appellants concern the power to appoint or remove officers and since they deal only with executive, administrative or judicial powers they are not in point.

As to this ground of appeal then, our conclusion is that the Board of Commissioners had power to adopt the ordinance in question because the particular municipal power invoked could be exercised only by ordinance and because an ordinance may be adopted only by the Board as the governing body of the City acting by majority vote and at more than one meeting, and for that reason the particular power could not have been and was not distributed to the Director of Parks and Public Property.

POINT V.

CONCLUSION.

We have demonstrated—

1. That the evidence before the Supreme Court justified the finding by that Court as a fact

(a) That the ordinance contemplates the expenditure of public funds for a public purpose only and not for the purpose of aiding a private enterprise;

(b) That the enactment of the ordinance did not constitute an abuse of discretion;

2. That the Supreme Court rightly held, as a matter of law, that the Board of Commissioners of the City of Newark had power to enact the ordinance under review in that Court.

We have thus disposed of the grounds of appeal specified by the appellants. The judgment of the Supreme Court should therefore be affirmed, with costs to the respondents.

Respectfully submitted,

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CHARLES B. BRADLEY,
Of Counsel with Respondents.

165-100D Oct 1931

New Jersey Court of Errors and Appeals

SOLOMON SIMON, JACOB L. SOLOMON and PATRICK GALANTE, Prosecutors-Appellants, *and* PETER O'TOOLE, Clerk of the City of Newark, New Jersey, BOARD OF COMMISSIONERS OF THE CITY OF NEWARK, NEW JERSEY, and PRUDENTIAL INSURANCE COMPANY OF AMERICA, Respondents.	Appeal from Supreme Court. On Certiorari.

REPLY BRIEF FOR APPELLANTS.

(Italics, etc., ours, except where otherwise noted.)

I.

Respondents, under Point I, insist that "The adjudication by the Supreme Court upon the questions of fact before that court is not open to review".

Generally speaking, the proposition of law stated is correct, but it has no application to the situation here presented.

The Supreme Court in the case at bar did more than find the *facts*. It drew certain inferences from the basic facts which were, in effect, inferences of law. So far as the *facts* in the instant case are concerned, there is little dispute except that arising from the conflict in the expert testimony as to the value of the lands intended to be purchased by the city. With respect to the other

matters involved in the case the question really is as to whether, upon the *conceded* facts, the expenditure was for a public purpose. There is no conflict in the testimony as to the motive actuating the city in embarking upon the enterprise. The matters which are mentioned in the brief of respondents (pp. 4, 5) are not really matters of fact, but matters of conclusion. This case involves the power of the municipality to expend the moneys of A., *i. e.*, of the taxpayers in the municipality, for the benefit of B., *i. e.*, one of the taxpayers of the municipality building apartment houses, and C., the group of residents who may rent the apartments to be constructed by Prudential. It involves the right of the municipality to perform the act, and the right of the State under the constitution to permit the municipality to perform the act, which it did.

In such cases no appellate Court is bound by what are in fact the conclusions of the lower Court rather than its findings of fact, nor, indeed, is the appellate Court bound by what is, in fact, a finding of fact. No Court is more restricted in its right to review facts as an appellate tribunal than the Supreme Court of the United States, and there are found decision after decision of that Court in which it is stated that it would not review findings of fact. Yet Mr. Chief Justice Taft, in *Truax* v. *Corrigan,* 257 U. S. 312, 66 L. Ed. 254, said, at page 259:

> "In cases brought to this court from state courts for review, on the ground that a Federal right set up in the state court has been wrongly denied, and in which the state court has put its decision on a finding that the asserted Federal right has no basis in point of fact, or has been waived or lost, this court, as an incident of its power to determine whether a Federal right has been wrongly denied, may go behind the finding to see whether it is with-

> out substantial support. If the rule were otherwise, it almost always would be within the power of a state court practically to prevent a review here. Kansas City Southern R. R. Co. *v.* H. Albers Commission Co., 223 U. S. 573, 593, 56 L. Ed. 556, 566, 32 Sup. Ct. Rep. 316; Cedar Rapids Gaslight Co. *v.* Cedar Rapids, 223 U. S. 655, 668, 669, 56 L. Ed. 594, 604, 32 Sup. Ct. Rep. 389; Southern P. Co. *v.* Schuyler, 227 U. S. 601, 611, 57 L. Ed. 662, 669, 43 L. R. A. (N. S.) 901, 33 Sup. Ct. Rep. 277. Another class of cases in which this court will review the finding of the court as to the facts is when the conclusion of law and findings of fact are so intermingled as to make it necessary, in order to pass upon the question, to analyze the facts. Northern P. R. Co. *v.* North Dakota, 236 U. S. 585, 593, 59 L. Ed. 735, 740, L. R. A. 1917F, 1148, P. U. R. 1915C, 277, 35 Sup. Ct. Rep. 429, Ann. Cas. 1916 A 1; Jones Nat. Bank *v.* Yates, 240 U. S. 541, 552, 553, 60 L. Ed. 788, 797, 798, 36 Sup. Ct. Rep. 429. In view of these decisions and the grounds upon which they proceed, it is clear that in a case like the present, where the issue is whether a state statute, in its application to facts which are set out in detail in the pleadings and are admitted by demurrer, violates the Federal Constitution, this court must analyze the facts as averred and draw its own inferences as to their ultimate effect, and is not bound by the conclusion of the state Supreme Court in this regard. The only respect in such a case in which this court is bound by the judgment of the state Supreme Court is in the construction which that court puts upon the statute."

So, here, if this Court is bound by any such conclusions as the respondents claim it is bound by in the instant case it would always be within the power of the Supreme Court practically to prevent a review in this Court of questions such as are here presented of the utmost importance by a finding of conclusions which would bind this

Court and indeed the Supreme Court would be *obliged,* in order to reach its own decision, to make conclusions of fact or mixed fact and law which would of necessity prevent a review by this Court. To the same effect as the *Truax* case is *Postal Telegraph Co.* v. *Newport,* 247 U. S. 464, 62 L. Ed. 1215; *Carlson* v. *Washington,* 234 U. S. 103, 58 L. Ed. 1237; *Davis* v. *Wechsler,* 263 U. S. 22, 68 L. Ed. 143; *Creswill* v. *Grand Lodge,* 225 U. S. 246, 56 L. Ed. 1074. And in *Steamship Britannia v. Cleugh,* 153 U. S. 130, 38 L. Ed. 660, the fourth headnote is:

> "The judge, who is to find the facts for this court, *cannot shut this court off from a consideration of the legal effect of the other facts found, by a conclusive finding that, in his opinion, a particular inference is or is not warranted by the facts so found.*"

And the Court said, page 662:

> "Of course, this court must accept the facts as found for us by the circuit court, but we do not observe any substantial difference in the facts as understood by the respective courts. Their diversity in opinion arose from a difference in their application of the rules of navigation to the admitted or established facts."

So, here, the facts were not so much in dispute in the Supreme Court, as the application of the law to those facts and the inferences to be drawn therefrom. The difference between the two is clear. A finding of fact that a man struck another would be conclusive in this Court but an inference therefrom, based upon this and other admitted facts—that the man who did the striking was guilty of assault and battery—would in no wise be binding upon this Court. So, here, a finding of fact—that the city intended to spend the money of

its taxpayers for a specific purpose—would be binding upon this Court under ordinary circumstances, but a conclusion based also upon this and other admitted facts—that the moneys were to be expended for a public purpose—would, in no wise, be binding upon this Court. And, so, in this case, the findings of *fact* upon which the Supreme Court based its conclusion that there was not an abuse of discretion upon the part of the Commissioners of the city might be binding upon this Court, but the conclusion that the Commissioners did not abuse their discretion would not be binding upon this Court for such a conclusion calls for an application of rules of law as applied to either admitted or found facts.

Assuming that the determination of the Supreme Court that the city did not intend to expend for the purchase of the property more than it was worth is binding upon this Court, if there is sufficient evidence to support it, we insist that, in this case, there was no evidence worthy to be called such to support the conclusion of the Supreme Court.

But we submit that any conclusion of the Supreme Court as to the value of the property is not binding upon this Court in this case for this Court is here asked to consider the restriction imposed by the constitution upon governmental agencies with respect to the expenditure of public funds raised by taxation, and, where a constitutional limitation of power is so involved, this Court, as has the Supreme Court of the United States, has the right to find its own facts.

In Reason 7 assigned in the Supreme Court (p. 74) both the provisions of the constitutions of the United States and of this State are relied upon, and it was urged below and it is urged here that to permit the City to use moneys of taxpayers, among others, prosecutors, for the pur-

pose contemplated would be to deprive them of their rights secured by each constitution for it would be taking their money for private rather than for public purposes.

To apply the rule to the extent urged by respondents would have resulted, we submit, in this Court being unable to have rendered the decision which it did render in the case of *The State, ex rel. McCarthy, et als., Relators* vs. *Klessman, et als.*, decided October 19, 1931.

While this Court in *Sisters of Charity* v. *Cory, Collector,* 73 N. J. L. 699 recognized the rule that the facts should be found by the Supreme Court, it said (p. 705):

> "The determination of this court that a use such as that which has been described was a charitable one, being the determination of a matter of law involved in the case, was binding upon the Supreme Court; but the determination that the building was being used for the purposes described, being the finding of a matter of fact, which it was the province of the Supreme Court to determine, is not binding upon the lower tribunal for the reason already stated. This court having determined as matter of law that a use of the kind which has been described was a charitable one, should have remitted to the Supreme Court for its determination, the question whether the use to which the building was being put was in fact of the described character."

So, here, there is involved the question as to whether the purpose for which the moneys of the city were to be expended was a public purpose and the determination of the Supreme Court that it *was* a public purpose is no more binding upon this Court than would a determination of the Supreme Court be that a certain use was a charitable use, the matter involved in *Sisters of Charity* v. *Cory, Collector,* 73 N. J. L. 699.

II.

Under their point 3, at page 37, in discussing the evidence as to value of the lands and the method by which the cost of all of the lands was to be divided between the respective parties, and after reciting the conclusion of the Supreme Court, page 497, line 35, respondents say (p. 37):

> "The *rational basis* for the particular exercise of discretion of course *is found in the inherent justice of an apportionment of cost between two parties engaged in a common social purpose.* The prosecutors on the other hand insisted in the court below that the price to be paid by the City should have been measured by arbitrary rules commonly employed *in less complex situations* for the ascertainment of the value of city lands having no existing street frontages. They accordingly introduced testimony based upon an application of those conventional rules to the case in hand, and the respondents, although rejecting the theory, met this attack with testimony similar in character but very different in effect. The ensuing battle of the experts must now be reviewed."

If respondents are right in this statement as to the *rational* basis of the division of the cost of this property, to wit—"inherent justice of an apportionment of cost *between two parties engaged in a common social purpose*", then we submit, the ordinance cannot stand for the mere statement of this proposition indicates that the rational basis of the division of cost was not the actual value of the lands taken by each but the "inherent justice of an apportionment of *cost* between the two parties *engaged in a common social purpose*".

The Prudential Insurance Company was engaged in a *strictly private enterprise.* It is not contended otherwise. True, that private enterprise might result in incidental benefit to the community and in that sense the Prudential may be said to be engaged in a "social purpose", but it is as much and no more a "social purpose" than the ordinary business of Prudential, which is to provide insurance for the benefit of those who are left by wage earners who may die. It has not yet been contended that, because Prudential is engaged in this line of business, it may be *subsidized by public monies.* It cannot be contended that, because it has engaged in this particular instance, in a housing plan, it may be *subsidized by public moneys.* If that is so, then what right had the City, in determining the price to be paid for these lands, to consider that it and Prudential were engaged in a *"common social purpose"?* If the common social purpose had any effect upon the price which the City was to pay for the land, the result is that the City is contributing "money" to Prudential so that Prudential may be able to rent these apartments at such rentals as the City may determine and so that it may, at the same time, receive a reasonable return upon its investment.

And the statement contained on page 37 of the brief is an admission by respondents that it is the fact, which fact stands out in this case, almost we would say, without contradiction, *i. e.,* that the price was *not* fixed upon the value of the land but *was* fixed upon the amount which Prudential must have.

It must be remembered that, at the time the City Commissioners determined that they would pay this amount of money to Prudential, they did not have before them the *expert* testimony which was produced by respondents in an attempt to

justify the amount which the Commissioners had *already* determined to pay. All of this testimony was obtained *after* the action of the Commissioners and for the sole purpose of trying to make it appear that the price was reasonable. It is a striking coincidence that, without expert assistance, the Commissioners should have happened to strike what was the reasonable value of these lands and that that reasonable value of the lands should happen to be (1) that proportion of the value of the whole lands as the area of the lands to be purchased by the city bore to the area of the whole land, although the lands to be purchased by the city were inside strips, and (2) the precise amount which Prudential needed to accomplish the purpose of the city, *i. e.*, low rents and the purpose of the Prudential, *i. e.*, reasonable returns upon its investment.

The expert testimony offered by the respondents is of such a nature as that we submit that, whatever the rule may be as to be binding force and effect of a finding of the Supreme Court on the facts in this Court, this Court is not bound by the conclusions of the Supreme Court.

Respectfully submitted,

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MERRITT LANE,
Of Counsel with Appellants.