

## INDEX

---

	PAGE
Stipulation .....	1
Rule for Judgment .....	2
Docket .....	4
Notice of Appeal and Grounds.....	5
Testimony .....	6
Herman W. Ordeman—Direct.....	9
Cross .....	49
Re-direct .....	73
Recalled—Direct—Cross .....	154
Re-direct—Re-cross .....	155
Re-re-direct .....	157
Edward B. Snell—Direct .....	75
Cross .....	76
Olaf Olson—Direct .....	77
Cross .....	78
Herman Lee—Direct .....	82
Cross .....	86
Frank C. Betts—Direct .....	88
Cross .....	90
Recalled—Cross .....	162
Eugene R. Makray—Direct—Cross.....	91
Direct .....	92
Re-cross .....	112
Re-direct .....	128
John H. Boesch—Direct .....	129
Cross .....	131
Re-direct .....	135
David Houston—Direct .....	135
Cross .....	142
Re-direct .....	154
William F. Moore—Direct .....	157
Cross .....	160

(i)

	PAGE
John E. Briggs—Direct .....	170
Cross .....	173
Re-direct .....	175
Joel L. Schlesinger—Direct .....	176
Cross .....	183
Re-direct .....	185
Re-cross .....	192
Re-re-direct .....	199
Frederick Dunham—Direct .....	201
Cross .....	204
Re-direct .....	214
Examination .....	223
Re-direct resumed .....	225
Re-cross .....	229
Re-re-direct .....	235
C. Alfred Burhorn—Direct—Cross.....	236
Thomas A. Rier—Direct.....	237
Cross .....	238
Re-direct .....	239
Harry R. Gabriel—Direct .....	240
Cross .....	247
Lewis Berman—Direct .....	248
Cross .....	262
Re-direct .....	274
Re-cross .....	276
Charge to Jury .....	279

# NEW JERSEY

## Court of Errors and Appeals

STATE HIGHWAY COMMISSION OF  
THE STATE OF NEW JERSEY,

*Appellant,*

*vs.*

LINCOLN TERMINAL CORPORA-  
TION, a corporation of New  
Jersey, *et als.*,

*Respondents.*

} On Appeal

### STIPULATION

In order to save unnecessary expense of printing and to prevent encumbering the record with much printed matter of no value in the full presentation of the issues involved on this appeal, it is stipulated by and between counsel for the parties respectively that the following papers, orders and steps in procedure are regular in form and substance and need not be set out at length in the State of the Case:

10

1. The original petition in condemnation;
2. Order fixing time and place for the appoint-  
ment of commissioners;
3. Order appointing commissioners;
4. Report of commissioners and award;
5. Notice of appeal to the Hudson County Cir-  
cuit Court;

20

6. Proof of service of notice of appeal;
7. Order framing issue and amendment and fixing time for striking jury and date for trial;
8. Order certifying struck jury panel;
9. Venire for jury and return.

WILLIAM A. STEVENS, *Attorney General*,  
 By GEORGE T. VICKERS,  
*Assistant Attorney General, and*

10

WALTER H. BACON, JR.,  
*Attorneys for and of counsel  
 with appellant.*

ARTHUR T. VANDERBILT,  
*Attorney for and of counsel  
 with respondent.*

20

---

HUDSON COUNTY CIRCUIT COURT.

LINCOLN TERMINAL CORPORA-  
 TION, A CORPORATION,

*Appellant,*

*vs.*

STATE HIGHWAY COMMISSION OF  
 NEW JERSEY,

30

*Respondent.*

In Condem-  
 nation.  
 On Appeal.

**RULE FOR JUDGMENT**

This case having been tried before the Honorable Thomas Brown, Judge of the Hudson County Circuit Court, with a jury, in the presence of counsel of the respective parties, from October 13, 1931, to October 16, 1931, inclusive, and the jury having returned a general verdict against the respondent,

State Highway Commission of New Jersey, and in favor of the appellant, Lincoln Terminal Corporation, for the sum of \$375,000.00:

It is ordered that judgment final be entered in favor of the appellant, Lincoln Terminal Corporation, and against the respondent, State Highway Commission of New Jersey, for the sum of \$375,000.00, together with interest thereon at the rate of six per cent per annum from the date of the taking of the lands and premises of the appellant, to wit, September 20, 1930, which amount of interest is \$24,124.00, or a total of \$399,124.88, appellant's costs to be taxed.

10

THOMAS BROWN,  
*Judge.*

On motion of attorney for appellant, Arthur T. Vanderbilt, Rule entered this 21st day of October, 1931.

Filed Clerk's Office Oct. 21, 1931.

20

Hudson County, N. J.

GUSTAV BACH,

*Clerk.*

## HUDSON COUNTY CIRCUIT COURT.

LINCOLN TERMINAL CORPORA-  
TION, A CORPORATION,

*Appellant,*

*vs.*

10 STATE HIGHWAY COMMISSION OF  
NEW JERSEY,

*Respondent.*

**DOCKET**

Judgment entered Oct. 21, 1931.

Damages, \$375,000.00.

Interest, \$24,124.88.

20 Costs, \$154.98.

Total, \$399,279.86.

30 Judgment on Verdict in the above entitled cause was entered in this court on the 21st day of October, in the year of our Lord, one thousand nine hundred and thirty-one in favor of the appellant, Lincoln Terminal Corporation, a corporation, and against the respondent, State Highway Commission of New Jersey, in a plea of action at law, for the sum of three hundred seventy-five thousand dollars damages; twenty-four thousand, one hundred twenty-four dollars eighty-eight cents, interest; and one hundred fifty-four dollars ninety-eight cents costs of suit.

Judgment entered and signed this 21st day of October, 1931.

THOMAS BROWN,  
*Judge.*

HUDSON COUNTY CIRCUIT COURT.

STATE HIGHWAY COMMISSION OF  
THE STATE OF NEW JERSEY,

*Condemnor-appellant.*

*vs.*

LINCOLN TERMINAL CORPORA-  
TION, a corporation of New  
Jersey,

*Property owner-respondent.*

10

**NOTICE OF APPEAL AND GROUNDS**

*To the foregoing named property owner-respondent and Arthur Vanderbilt and John Milton, Esqs., its Attorneys:*

20

Please take notice, that the condemnor-appellant in the above entitled cause appeals to the Court of Errors and Appeals in the State of New Jersey from the whole of the judgment entered in this cause; and

Please take further notice that the following are the reasons or grounds on which said appeal will be based, and which will be urged before the appellate court for a reversal of said judgment, viz.:

30

1. That there is no evidence in the case to support the verdict of the jury.
2. That the jury disregarded and rejected all of the testimony and evidence received in the case but nevertheless rendered a verdict.
3. Because the verdict is contrary to the charge of the court.

4. Because the trial court committed harmful error in charging the jury as follows:

“In considering your view, or applying it to this case, bear in mind that you are not to take that view as evidence in the case.”

Dated, April 26, 1932.

WILLIAM A. STEVENS,  
*Attorney General of New Jersey.*

10

WALTER H. BACON, JR.,  
*Counsel.*

GEORGE T. VICKERS,  
*Assistant Attorney General.*  
*Attorneys for Condemnor-appellant.*

---

HUDSON COUNTY CIRCUIT COURT.

20

LINCOLN TERMINAL CORPORATION,  
a corporation of New  
Jersey, *et als.*,

*vs.*

THE STATE HIGHWAY COMMISSION  
OF THE STATE OF NEW  
JERSEY.

30

**TESTIMONY**

JERSEY CITY, N. J., October 13, 1931.

Before Hon. THOMAS BROWN, J., and a struck jury.

Appearances:

JOHN MILTON, Esq., for the Property Owners.

ARTHUR T. VANDERBILT, Esq., for the Mortgagees.

GEORGE T. VICKERS, Esq., for the State Highway  
Commission.

A struck jury was duly empanelled; being found satisfactory, they were sworn.

(By consent, a photograph was introduced in evidence and marked as Exhibit P-1 of this date.)

Mr. Vickers—In order that there may be no dispute or doubt hereafter as to the right reserved to the property owner and the limitation upon the taking in question in this case, I move your Honor to amend the issue framed in this case by adding thereto the following:

10

That the property owner, its successors and assigns shall have free ingress and egress from and to each portion of its remainder lands, over the lands taken in this proceeding, except such as used for the permanent supports for the superstructure; and that such ingress and egress shall be unrestricted as to pedestrian, vehicular, railway and water transportation, except the land-owner, its successors and assigns, and servants and agents, shall be prohibited from erecting on any of said lands within the State's right of way any permanent buildings, or from maintaining thereon any permanent storage.

20

Mr. Vanderbilt—The mortgagee of a considerable portion of this land, the Newark Sites Company, has a very considerable interest in the award under arrangements made with the landowner, the Lincoln Terminal Corporation, and it takes the position that the owner has no right to consent to a modification by the State of the land which it originally sought to condemn.

30

I desire to place before the Court its position in the matter and say that, by reason of the agreement on behalf of the owner with us, we feel constrained to take a position in opposition to the motion.

The Court—The Court has no latitude in this matter, as the Court understands the law; the State of New Jersey has the right at any time before the trial of the case, and in fact, during the trial, to amend its issues, that is to say, to amend the rights which the State desires to acquire in the property under consideration.

10 It follows, therefore, that the motion of Colonel Vickers, representing the State Highway Commission, will be granted.

I would suggest to counsel, as long as there appears to be opposition to this motion, which is a little out of the ordinary, that the issue be framed in writing, and until that time, we may proceed upon the issue as framed and as now dictated to the stenographer.

(Counsel opened to the Jury.)

The Court—Gentlemen, what have you to say as to the date of the taking?

20 Mr. Milton—September 30, 1930.

The Court—What have you to say about the interference with the buildings on the place?

Mr. Vickers—I think it is so trivial—there is one small building affected, and that is all. We are practically in agreement as to that.

(After admonitions by the Court, the Jury left for a view of the property under consideration, and the hearing was adjourned, for the purpose of a  
30 view, until 2 P. M.)

(AFTER RECESS, 2 P. M.)

HERMAN W. ORDEMAN, called as a witness for the Property Owner, being first duly sworn, testified as follows:

*Direct Examination*—By Mr. Milton:

Mr. Milton—By consent, I offer in evidence map entitled “Lincoln Terminal Corporation, Kearney, N. J.,” scale 1 inch equals 60 feet, July, 1930, prepared by H. W. Ordeman.

10

(Accepted and marked as Plaintiff’s Exhibit P-2 of this date.)

The Court—I wonder whether counsel could agree as to ownership of the property owner in the stream, that is, to what degree; that is to say, bulkhead and pierhead lines and dock lines.

20

(After discussion)

It is agreed, then, in this case that the owner owns title to the land as will be shown that is upland, and also the riparian rights from the upland to the pierhead line.

Mr. Vickers—Together with the grant, your Honor.

Mr. Milton—To the United States pierhead line.

30

The Court—A grant from whom?

Mr. Milton—From the Board of Commerce and Navigation of the State of New Jersey, or its predecessor, the Riparian Commission.

The Court—That gives the property owner a vested property right to the riparian line.

Mr. Vickers—To the lands under water.

Mr. Milton—And extending westerly to the pierhead and bulkhead line as established by the War Department.

The Court—There are some limitations?

Mr. Milton—No limitation.

The Court—Absolute.

Mr. Vickers—Yes, sir.

Q. The map, P-2, was prepared by you?

A. Yes, sir.

10 Q. Will you be good enough to tell the jury what it portrays?

A. It shows all the facilities and appurtenances of the Lincoln Terminal Corporation, their track-age, their buildings, the roadways, methods of ingress and egress to and from the property; also the condemnation strip for Highway 25.

The Court—Which is marked?

The Witness—Which is marked in red.

20 Q. Just a minute; what is the strip?

A. From Second Street to the Passaic River.

Q. Across the map, from the right-hand upper part, across the map to the Passaic River?

A. Yes, sir.

Q. What are the little square marks on the top in deep red?

A. They are the locations of the bridge piers, the piers supporting the bridge.

30 Q. What is the oblong on the left-hand side of the map, marked in deep red?

A. That is a concrete mat for the caison and supports two bridge piers; also includes the fender system that has been placed around it for its protection.

Q. The line in red, running from the top to the bottom of the map represents what line?

A. The United States Government bulkhead and pierhead line.

Q. And the line in black paralleling the line in red and about three-quarters of an inch away?

A. That is the face of the present wharf.

Q. To what extent, if any, does the upper left-hand corner of the piers for the bridge extend out over the United States Government pierhead line?

A. At the north corner of the bridge pier, it encroaches two inches over the bulkhead line.

The Court—Is that north, or northwest?

The Witness—That is the northwesterly corner.

The Court—By the way, is this open dock line, or is that solid fill?

The Witness—There is solid fill to the rear of it, to the rear of the wooden wharf, and then there is what is known as a pile structure in front of it.

The Court—What is the distance between the pierhead line and the open dock line?

The Witness—Approximately forty feet.

The Court—Between the open dock line and the solid fill at the place of condemnation?

The Witness—I will have to look at the map for that; I don't have it right off-hand.

Q. Can you do it from this map?

A. Yes, sir; that is about 21 feet.

Q. On which side of the Passaic River is the channel north of the Lincoln Highway bridge?

A. The channel north of the Lincoln Highway Bridge is approximately—it is a little bit to the east of the center of the channel, that is the center between the bulkhead lines.

The Court—How near is it to your property line?

The Witness—At the south end of the property, the east line of the channel is 64 feet from the bulkhead line.

10

20

30

Q. And at the north?

A. 94 feet at the north end.

Q. That is the east line of the channel?

A. Yes, sir.

Q. That would be the line nearest to the property?

A. Yes, sir.

Q. The roadway which is at the bottom of the map is what road?

10 A. That is the Lincoln Highway, the old plank road.

Q. And the roadway which bisects the property of the Terminal, running north of the Lincoln Highway, is known as what?

A. Jacobus Avenue.

Q. What highway bounds the property on the east?

A. Central Avenue.

20 The Court—Does Second Street extend all the way along the northerly boundary line of the property?

The Witness—Yes, from Jacobus Avenue.

The Court—To the River?

The Witness—No, from Jacobus Avenue to Central Avenue only.

The Court—What is the remainder, on the northerly boundary line of your property; is that in private ownership?

30 The Witness—That is private ownership, yes, sir.

Q. How is the property line shown, by a heavy dotted black line?

A. By a dash with two dots between.

Mr. Milton—By consent, I offer six photographs in evidence.

(Accepted and marked as Plaintiff's Exhibits P-3 to P-8 respectively, of this date.)

Q. I show you Exhibit P-3 and ask you to state very briefly what that shows?

A. That is a photograph taken with the camera on the edge of the wharf of the property adjoining the Lincoln Terminal on the north with the lens facing southeast approximately.

Q. Is my pencil in about the right position?

A. Yes, sir.

Q. The camera was facing south?

A. Yes, and it shows the door of building 35 and the line of the wharf.

10

The Court—The southerly direction of the picture is looking from the bottom to the top?

The Witness—Southerly is from top to bottom.

The Court—I mean on the picture?

The Witness—Is looking from north to the south.

The Court—The picture itself; when you look from the bottom to the top you are looking from north to south?

20

The Witness—From north to south, yes, sir.

The Court—That is a view from north to south on the picture?

The Witness—Yes, sir.

Q. Exhibit P-4, please tell the jury what that is and what that shows?

A. P-4 is taken with the camera on the present Lincoln Highway bridge, on a line with the Government bulkhead line and looking north.

30

Q. And Exhibit P-5?

A. P-5 is taken from the roof of Building 35, approximately 100 feet south of the north corner.

The Court—Building 35; where is that, along the River?

The Witness—Yes, sir.

Q. That is a wharf building, is it?

A. Yes, sir.

Q. Just locate the camera again?

A. About 100 feet south of the north corner of the building, out on the edge towards the wharf, down a little further with your pencil—about there. With the camera facing almost due north.

Q. Now P-6?

A. In P-6 the camera was located on the private dock adjoining the Lincoln Terminal on the north, approximately on the line of the bulkhead line, facing south.

10

Q. And P-7?

A. The camera was located in the same position as the previous picture, facing the same way.

Q. P-8?

A. P-8 was taken from the roof of Building 35, the same location as the previous picture taken with the camera facing due north.

Q. Building 35 being a wharf building?

A. Yes, sir.

20

Q. How long have you had contact with the property of the Lincoln Terminal Corporation?

A. Since 1928.

Q. And what is your business, Mr. Ordeman?

A. Civil engineer, civil engineer.

Q. Where do you live?

A. 80 Harbor View Place, Rosebank, S. I.

Q. How long have you been practicing your profession?

30

The Court—Are the qualifications of this gentleman admitted?

Mr. Vickers—As an engineer, yes, sir.

The Witness—I have been in private practice five years.

Q. And prior to that?

A. I was employed for three years as Chief Engineer for the Harriman Lines; prior to that, eight years with the Baltimore & Ohio Railroad as Division Engineer; prior to that the Atchison, Topeka

and Santa Fe Railroad and prior to that four years in college.

Q. What experience have you had in tax appraisals and valuations of maintenance and construction work?

Mr. Vickers—I object to that as immaterial.

The Court—Tax appraisals is certainly objectionable.

Mr. Milton—I withdraw “tax appraisals.”

10

The Court—What about the remainder?

Mr. Vickers—I conceive that there is a field that does not apply—to which the Brokaw case does not apply. I can understand that an engineer in a situation of this kind may be an expert on values and valuations of terminal railroad property, so far as it relates to terminal activities. On that ground, I do not object to it.

The Court—The objectionable feature has been eliminated?

20

Mr. Vickers—Yes, at this point.

The Court—Very well: you may proceed to answer.

The Witness—I have valued properties, both for purchase and for sale, that is, the physical aspects in real estate. I have valued terminal properties. I have made appraisals on the development of terminal property. I have made appraisals of terminal properties as a going business.

30

Q. What contact have you had with terminals, marine and railroad terminals?

A. For fifteen years my work has been exclusively waterfront construction, appurtenances and development, and terminal work.

The Court—Where?

The Witness—Nearby for the Mercur Corporation.

The Court—Where, in New Jersey?

The Witness—New Jersey and New York.

Q. What is the business of the Mercur Corporation?

A. They are warehouse and terminal operators.

The Court—Suppose you describe in more detail what you mean by terminal operators?

10 The Witness—Well, terminal operator, a general description of it would be a terminal where there are both water and land facilities for the transportation and transfer of cargo. The warehousing is an adjunct of the terminal operation. As goods cannot always move out the same day they are received, a full cargo may come in that may require disposition and space must be provided for the storage or for the handling of these

20 cargoes, until such time as the consigner takes them away. On marine terminals, as a rule, there is, however, time allowed after the cargo is landed, but the time is not always sufficient, so that the terminal operator is forced to go into the warehouse business, to carry them for longer periods. That is about as good a general description as I can give you.

Q. How does the Lincoln Terminal compare in size with other terminals in the Newark area?

30 A. It is the second largest operating terminal in the Newark area.

Q. What one is the largest?

A. The Army Base, Port Newark; Mercur Corporation.

Q. What do you say about the desirability of the terminal having a combination of water facilities as well as rail?

A. Well, it makes it a terminal in the fullest sense of the word. It allows the receipt of full

cargoes on water-borne cargo, and at the same time allows their distribution by rail upon the tracks. On the other hand, it allows a consolidation of cargo by rail and by track for the making up of full cargo shipments, and it also has the warehouse facilities which allow this accumulation until such time as a full cargo is obtained.

Q. Of what advantage is the location of the Lincoln Terminal on the Lincoln Highway?

A. Well, the Lincoln Highway has always been a very heavy trucking road. It is directly connected with the Hudson Boulevard, which allows Jersey City and the contiguous territory to truck to and from the Lincoln Terminal very advantageously. The same applies to its proximity to Newark, where a large amount of manufacturing products are handled, not only for trans-Atlantic shipment, but for intercoastal and Pacific Coast shipments. It is located very advantageously for the class of business that they handle, with its trunk line railroad connections.

10

20

Q. What trunk lines?

A. Pennsylvania Railroad serves the property directly and through transfer with the other railroads, can give you delivery practically anywhere you want to send them to.

Q. How is that connection made or established?

A. Well, the Pennsylvania has what is known as a switching lead and a switch track down Jacobus Avenue.

30

Q. From the north?

A. Beginning at the north of the map, where you have your pencil, and extending down to within about 200 feet of the Lincoln Highway.

Q. In what manner are the tracks of the Terminal connected with the lead?

A. They diverge from the lead to the properties on both sides of Jacobus Avenue, and also one lead running down through the wharf building,

building 35, and with tracks between the other buildings serving them.

The Court—Doesn't this map show that?

Mr. Milton—I think so.

The Witness—Yes, sir.

The Court—Have you designated, or have you placed any measurements on the map as to which are tracks and which are not?

10 The Witness—The tracks are shown on the map.

Q. How are they indicated on the map?

The Court—Is there a legend on the side?

The Witness—No, sir; the tracks are shown as two parallel lines; the map does not show in the legend that they are tracks.

The Court—Isn't that a legend on the side, Mr. Milton?

The Witness—Yes, sir.

20 Mr. Milton—Yes.

The Witness—The tracks don't show in the legend.

The Court—So then, the winches and the parallel lines diverging from the lead that has been spoken of as the situation at Jacobus Avenue, are the tracks to which the witness refers, and the bluish or grayish marks are buildings; is that right?

The Witness—Yes, that is right.

30 Q. To what extent is the property owned by the Lincoln Terminal improved or developed?

A. The portion west of Jacobus Avenue is fully filled, and contains some warehouse buildings. The portion to the east of Jacobus Avenue is about 80 per cent filled, with a small portion of it, near Second Street, that requires a small amount of filling.

Q. Has it electric light, drainage and water?

A. It has every facility except gas; it has electricity, and is served with a high-pressure system

through the buildings, with the exception of a few small buildings, an approved type of sprinkler system. It has roadways, modern roadways constructed throughout the property.

The Court—What does that mean?

The Witness—That means that they are macadamized; railroad on the property. Some of the buildings have on their floor level accommodations for freight cars, with ramps on the west end of the buildings to facilitate traffic to and from the wharf.

10

Q. To what extent has the property been improved up to the present along the Lincoln Terminal property?

Mr. Vickers—Unless the witness knows that of his own knowledge, I shall object.

The Witness—Of my own knowledge, I know that the sprinkler system has been installed by the present tenant. I know that the bulkhead back of the present wharf was rebuilt by the present tenant.

20

Q. What do you mean “rebuilt by the present owner”?

A. I mean that the Lincoln Terminal Corporation has put it in first class condition, and has made many changes from the way it formerly was.

Q. What have you to say as to the trackage?

A. The westerly portion was overhauled in the vicinity of the buildings on the west side of Jacobus Avenue, and the trackage there was put in operating condition.

30

Q. The Jacobus Avenue to which you refer separates the two tracks of the Company?

A. Yes, sir.

Q. What have you to say as to whether or not the existence of Jacobus Avenue, in its present location, presents any difficulty in the operation of this plant?

A. None whatever.

Q. Are both properties, east and west, operating as a unit, or each separately?

A. They are operating as a unit.

Q. What physical connections are there between the two sides?

10 A. A rail connection through the lead and then there is a track at the southerly portion of the property that extends across Jacobus Avenue. The property is so arranged that you can go practically across the street as though the street did not exist.

Q. Have you any familiarity with any other terminals which operate under these conditions?

A. Yes, sir.

Q. What are they?

20 A. The New York Dock Company in Brooklyn. The situation there is similar to the Lincoln Terminal with respect to streets. It extends for approximately two miles along the Brooklyn water front, and in some cases it has to cross streets to reach their warehouse from the dock.

Q. What about the Sears Roebuck plant?

30 A. The Sears Roebuck plant at Port Newark, every piece of material that they take from the wharf to the factory has to cross Marsh Street, which is a situation approximately the same from the dock and the amount of dockage back from the wharf there is here. That is true in a number of cases along the Brooklyn water front, and entirely along the Manhattan water front from the piers; there are no warehouses adjacent to the piers, but they have to truck right across to the street.

Q. What equipment does the Lincoln Terminal have for operating on the railroad tracks?

A. They have two steam-operated cranes, locomotive cranes, which are operated on the tracks or kept on the tracks the same as a locomotive.

Q. What method is used to switch cars to the main tracks of the Pennsylvania Railroad?

A. When there is a car in the westerly portion of the yard, it does not necessarily switch out to the Pennsylvania; the locomotive simply runs in and fastens to the car and takes it out to the switch lead. If it is necessary to take it to the south side of Jacobus Avenue or from one side of Jacobus Avenue to another, it goes through the same procedure, takes it out on the lead and places it on whichever track the car is to be spotted. He simply switches the cars to the switch lead.

10

Q. Does the location of the bridge pier affect the storage tracks?

A. Yes, sir.

Q. In what way?

A. The storage tracks were laid out at approximately right angles, so as to allow the movement of storage cargo, that is, open storage cargo. It would come back in between the tracks, where it would be drilled by the locomotive cranes, or steered in any other manner. The position the bridge piers have been placed, it interferes with this movement in that the tracks could not be laid out in this manner. They are laid out so that there is a gore or triangular shaped plot of ground which makes it very hard to use for storage, and gives a lot of waste space, in the movement of long loads, long cargo like telephone poles, and steel, structural steel, where you get cargo 30 or 35 feet long. You are interfered with by the piers and it means backing back and forth to utilize that space at all. So that it materially decreases the amount of storage space that can be handled in safety.

20

30

Q. What effect did the bridge piers have upon the capacity?

A. They have cut down the capacity of the yard. You can see that on the map there that they have cut down the storage space and that the bridge piers interfere with the laying out of this cargo at right angles to the railroad track.

Mr. Vickers—I object to this as being speculative.

The Court—He also claims that you have a space there that they can't put parallel tracks upon.

Mr. Vickers—If that is what he means, all right.

The Court—Is that what you are driving at?

The Witness—Yes, sir.

10

The Court—Let him explain that more fully.

20

The Witness—Take for example the parallel tracks just south of the condemnation strip and west of Jacobus Avenue. Now, these tracks practically run right in to the bridge pier. If you bring this track over next to this one, to clear the bridge pier, you cannot operate a crane on it. If you throw this track up in between the bridge piers, to keep it back where it belongs, you have to put a kink that a locomotive or locomotive crane won't operate on, and you have effectively eliminated the use of the piece of property that way, that we did have the use of before.

The Court—That is the particular track that is now there?

30

The Witness—Yes, sir; take for example the track that originally came out of here. We are forced now to place that track in the roadway that now goes down in front of these buildings, because we cannot curve the track around; so that it goes from these bridge piers and then through to it and out again. We have to have a run-around track, with a locomotive switch on back, so that we are forced to put two tracks in the roadway, in between the bridge pier and those buildings. So we have practically cut out one track in that particular neighborhood.

The Court—You have been speaking of the tracks as they are now. What have you to say about the

use of the property that is not being condemned, for practical purposes?

The Witness—The use of the property? Well, we are curtailing its use for the same reason, that the distance is so short, in order to throw these tracks around, to get them into position where the storage space can be properly used. We can walk around a sharp curve, but we can't run a locomotive and cars around curves which we would have to put in to utilize that property. 10

Q. What effect, Mr. Witness, in the handling of freight cargo, has this reduction or loss in storage area because of the gore-shaped piece of property and the reduction of car capacity because of your inability to use the track?

A. Well, we used a car capacity of about seventeen cars and we are cut down to the use of the area adjacent to the condemnation strip. With a proper track lay out, as compared with what it is possible to get now. I would estimate that about 25 per cent of the storage capacity has been eliminated. 20

Q. Will the operations of this plant, as a result of the taking of this land and the construction of the bridge piers and supports for the elevated structure, result in more handling of freight?

A. Yes, it will. It means that where it was originally possible to carry your loading right up between your parallel tracks, with the roadway, or on cars, you now have to take into consideration the location of the bridge piers in making this movement, and it means practically the construction of an entirely new roadway in order to do it. 30

Q. In reference to the loading from ship to rail, what effect upon that does the location of the bridge piers, in their present position, have?

A. Well, at the wharf—

The Court—I don't think counsel has gotten to the wharf yet.

Q. I refer you to the position of the bridge piers, or bridge pier, what effect, if any, has the placing of that pier there had upon the ability to load from ship to rail?

A. It has simply eliminated any chance of loading.

Q. Why?

10 A. Well, you can't put the ship against the dock where the bridge pier now exists, and your railroad track, if it were possible to put a railroad track along the back, to the rear of it, you would have two or three car lengths that you could not make your transfer at all from your ship to your pier, or the ship to your cars, which would interfere for probably a greater distance on account of the—no, you could not. The swinging of the ship's gear for the loading would also be inter-

20 ferred with by the bridge pier, if it were possible to put a ship in a position to load.

Q. Can you demonstrate on the map why it is impossible to place a ship alongside of the wharf?

Mr. Vickers—Well, that is objected to on the ground that the witness is not qualified as a marine engineer, or stevedore or sea captain, or mariner of any kind.

Q. What experience have you had in the operation of ships at wharves and in supervising of loading and unloading?

30

A. In designing the lay-out of any terminal property, it is absolutely necessary to have knowledge of the method in which ships are docked, and loaded and handled, before you can intelligently lay it out. For three years I had charge of every pier of the Harriman Lines, which consisted of 84, 86, 90 North River, 4, 5 and 6 Brooklyn and pier 21 Staten Island, and piers in practically every

Atlantic port of any size from Boston down to Savannah, and on the West coast. I have constructed piers for the purpose of handling steamships. I rebuilt the Army Base in 1927, and rebuilt a four thousand foot wharf and made it available for the handling of trans-Atlantic tonnage, both inbound and outbound.

The Court—What has been your experience in operation? 10

The Witness—It has been absolutely necessary for me not only to be familiar with the operation but be able to operate it myself.

The Court—What have you had in the way of operation experience?

The Witness—Well, I have operated at the Army Base and also docked and undocked steamships at Pier 86 North River.

The Court—For how many years?

The Witness—I was three years at Pier 86. 20

The Court—What other experience have you had in navigation?

The Witness—In navigation?

The Court—Well, backing, as you might call it.

The Witness—My experience has been fifteen years' familiarity with this class of work, where I have to stand and see it done in order that I know how it was done, to know how to arrange.

The Court—As the Court sees the objection, it is comparable to a situation where an engineer constructs a waterfront project. He design it, and he actually sees that the materials are put in the construction, superintends that; that is a far different proposition than the operation of a plant. After the thing is designed and constructed, then it is operated. The contractor and the designer are through and the operator begins. This supervision that you had over the docks in question, did 30

that entail the actual observation of the operations and the direction of them?

The Witness—Absolutely.

The Court—From day to day?

The Witness—Yes, sir.

The Court—For how many years?

The Witness—For three solid years on that dock.

The Court—I think the witness is qualified.

10 Q. What have you to say?

A. I have a small piece of cardboard, cut to the scale of sixty feet to the inch, representing a steamer 450 feet long, with a 60-foot beam. I have another cardboard cut to represent 40 feet by 280 feet, a car float to scale, to the same scale as on the map, 60 feet to the inch.

Q. Will you put that on the map and move it up and down?

20 A. When a vessel comes up the Passaic River, it has to be tendered by tugs in order to get through the draw places.

Mr. Vickers—That is a matter of navigation as I anticipate what this witness is going to do.

The Court—Supposing you ask the witness that. Is it the common practice in operation on the Passaic River of boats of this size to come up under their own power or come otherwise?

30 The Witness—Come up tendered by one or two tugs, depending upon the loading of the vessel.

The Court—Invariably that happens?

The Witness—Yes, sir.

The Court—That doesn't require any observation; you can stand on a wharf and see that.

Mr. Vickers—If he places it from that standpoint, I don't object to it.

The Court—I suppose it is possible, nevertheless, for some of these seaboat captains, if they know the channel well enough, to navigate without a tug?

The Witness—Yes, under some conditions, but they have what is known as an Inland Pilots' Association, which takes care of the Passaic River. I think that is the proper name for it. Practically every boat that docks up on the Passaic River and at the Port of Newark they take care of.

The Court—That is now a new regulation?

10

The Witness—No, sir.

The Court—Cannot a steamship come up Newark Bay without having somebody bring it up, if the captain knows enough of the channel?

The Witness—I think he would have to slow up for the drawbridge, and may lose steerage way to the extent that the tide might take his boat out of the channel, so he plays safe and has a tug. He never knows whether he will be stuck or not.

The Court—So it is the common practice?

20

The Witness—Yes, sir.

The Court—Coming up Newark Bay with a tug on one side?

The Witness—When we come through the bridge at the Lincoln Highway, the first case I am going to assume is that he has a cargo of open storage. Before the bridge pier was built, he simply came up the river and he gradually laid his boat alongside and made it fast. After she was made fast, the shore crews or stevedores, in case they wanted to move her further north, or a little further over, could release the string of lines and move her up, and they tie her up at the wharf again, done by hand or maybe hooked up with a tractor on the dock, because it is very easy to move even a large vessel when it is alongside a dock. He gets ready to unload now this open storage. We will assume his vessel is in the Pacific coast trade. He has

30

three, four or five hatches to the vessel. All five hatches do not work at the same speed. It may be due to the way of packing it for storage, or the way the cargo is placed into the ship. Number one hatch forward may get a little accumulation and then they stop working at that; so they simply release the lines and drop back the steamer about the width of a hatch, and he continues with his operation, or he may move it further. Now, with 420  
10 feet between the northerly end of this pier and the private dock to the north, that extends out practically to the bulkhead line, he has no chance of moving that steamer back and forth that he had before. If he wants to utilize this open storage, he would have to leave his steamer in this position. (Indicating.)

Q. Mr. Witness, please, when you say this position and this open storage, indicate what you mean?

A. He would have to leave his steamer north of  
20 the bridge pier.

Mr. Milton—This open storage the witness refers to, is the area south of the right of way to be taken by the State.

Mr. Vickers—Between that and building No. 35.

Mr. Milton—Between that right of way and Building No. 6, and when he says this position, he refers to the ship remaining  
30 alongside of the upland wharf, north of the bridge pier. I do that for the sake of the record.

The Court—When you say “this” and “that” Mr. Witness, that means nothing when you see the record. You have to get it tied in with what that means.

The Witness—Then the cargo going out of the ship would have to be transferred from north of the bridge pier to the south, whereas, previous to the building of this bridge pier, the ship could be

dropped to the south, to cover all of the storage space.

The Court—Couldn't you drop enough, notwithstanding the pier; could you stop south of the pier?

The Witness—You could drop the steamer south of the pier but you only have a distance of 90 feet between Building 35, the wharf building, and the pier, which would only allow you to work one hatch of the steamer; the other hatches of the steamer would be down at Building 35 and would necessitate unloading at Building 35 and bringing it out of the building. 10

The Court—How does the movement compare, that you were obliged to move the vessel south of the present pier, as compared with your movement before the pier was there?

The Witness—It would be necessary to move it with the tugs—it could not be moved up near the bridge pier. It would be unsafe; it would be dangerous. 20

Mr. Vickers—I want to interpose an objection again. The witness has not been qualified as a navigator.

The Court—I will permit him to show from his experience. He may express an opinion. I think he is qualified.

Q. What effect, Mr. Witness, does the location of the bridge pier have upon the ability to load or unload a ship from the river side? 30

A. There is a distance of about 40 feet between the present wharf line and the Government bulkhead line and there is a distance of 94 feet from the bulkhead line to the east edge of the channel at the north end of the property. In working off shore, if that is the way I understand the question—in working off shore, which is working with a lighter or car floats or barge on the side of the

ship away from the dock, where the hatches have double booms, where it is possible to work on both sides of the ship at one operation from the same hatch, where you have two sets of booms at the hatch. It is common practice to do that in the harbor. You would have room enough from the present wharf line to place a lighter on the outside of the ship, on the off-shore portion of the ship and work it. You would be forced, however, to keep  
10 your ship in the one location. You could not move it back or forth.

Q. Why not?

A. Because the bridge pier interferes.

Q. Show us what would happen if you attempted it?

A. If you attempted to move that vessel, you would have to come out clear of the bridge pier and you would reach a point where you could foul the channel, where you would come across the east line  
20 of the channel. If the barge and the vessel were on the bulkhead line exactly, you would foul the channel with your barge. If you placed it parallel with the bridge pier, and put the stern of your vessel next to the wharf, you would probably foul with both the vessel and the barge.

Q. In other words, if you were working the rear hatch, and unloading under Building 35, trying to do it, you would foul the channel with both ship and  
30 barge?

A. Yes, sir, because you only have at that point, at the bridge pier, you have approximately 84 feet and with a 60-foot vessel and 40-foot car-float in there, you would have over 100 feet, and a 25-foot barge, which is a narrow barge, you would still foul the channel, but the angle at which the vessel would be placed throws the forward part of the vessel and the barge out in the channel, especially if you wanted to unload out of No. 1 hatch of the vessel on

to the rear of your barge or car-float. You would effectively foul the channel.

The Court—Mr. Witness, in your operation of wharves, have you ever come across a situation similar to this?

The Witness—From the standpoint of fouling the channel?

The Court—No, I mean from actual operation?

Mr. Vickers—Your Honor means a pier jutting out like this? 10

The Court—Yes, or nearly so.

Mr. Vickers—Or any obstruction?

The Court—Or is this only theory?

The Witness—No, it is not theory. The only place I can recall, one of the piers in Philadelphia, I think 56 or 57, in the Delaware River, where they constructed a series of clusters of piling along the side of the pier.

The Court—What about all these bridges that we have on the North and East River? 20

The Witness—No, sir. Take the Brooklyn Bridge, the piers on the north end of it, the ones for the Baltimore & Ohio Railroad, there the bridge pier is back of the bulkhead line, entirely back of the bulkhead line, and the pier sticks out in the river, and the end of the pier comes right back of the bulkhead line, so that a steamer there would not be interfered with. The same thing applies to pier 3 on the New York Dock, which is under the Brooklyn end of the Brooklyn Bridge. 30

The Court—Do you know of any situation comparable?

The Witness—The only one is in Philadelphia, where they put large clusters of piles.

The Court—You are expressing your opinion merely on a matter of what you conclude from a situation you saw there and applying the rule to it as you saw it?

The Witness—Except that they removed this obstruction in Philadelphia, to be effectively used as a pier. We had to remove the obstruction to properly dock a ship. It interfered with working on our ships.

Q. Could that bridge pier have been placed in position anywhere along here east of the wharf line?

10

Mr. Vickers—That is objected to.

Q. (continuing) without affecting the operation of this wharf or this property?

Mr. Vickers—Objected to on the ground the witness is not qualified, and furthermore, that the location of piers in navigable streams is under the control and direction of the War Department.

The Court—Doesn't that go without saying; put up on the land it is not in the way.

20

Mr. Vickers—He said "could it have been put there"?

The Court—Are we engaged in possibilities?

Mr. Milton—Well, perhaps not. I withdraw the question.

Q. Have you finished your illustration, Mr. Witness?

A. Yes, sir.

30

Q. With reference to the trackage. I don't know whether I covered that. What effect upon the operation of the wharf track does this bridge pier have, the wharf trackage along the wharf?

A. Well, it practically eliminates the use of the wharf track along the front of the wharf.

Q. Why?

A. First because of interference with the pier and the fact that the pier extends in on the wharf.

The Court—How much?

The Witness—It extends in at this point, over all, it affects about four feet.

The Court—The southeast corner?

The Witness—Yes, the southeast corner, that is the governing point for the trackage. You would have to clear that point and run your trackage parallel along the dock, in order to have the use of it, have the effective use of your track; you would have to run it parallel with your water front. Now the trackage cuts out the use of all the space of the condemnation strip, and would not allow us to use a portion of the trackage on account of moving a ship back and forth. If we were working cars out of one hatch, and we wanted to make a switch of the cars, we would have to stop all the other hatches working on the ship in order to switch the cars out. We would have to stop operations on the ship, whereas, if we had the ship near Building 35, it would be perfectly possible to put any cars over from the switch track at the other end, so that we could switch out one end or the other end of the ship and still keep on operating the hatches that were going into storage. When you move a car, you have to switch your track.

10

20

Q. How necessary is a track on the wharf to the proper, efficient operation of such plant?

A. It is necessary.

30

Q. For what reason?

A. A lot of the loading comes for movement in open type cars, gondola cars, and freight cars; still a lot of other commodities—

The Court—On the dock, you have a track there now?

The Witness—No, sir; there is no dock track there.

The Court—There is a track that runs parallel to the water front; what do you call that?

The Witness—Well, that is back of the bulkhead; that is about 20 feet away from the face of the dock.

The Court—How long has this place been in operation?

The Witness—The terminal?

The Court—Yes.

01 The Witness—I know during the war it was built as an engineer's base for the Government.

The Court—It has operated ever since?

The Witness—Yes, sir.

The Court—There was no dock track used?

The Witness—There has been a dock on there. I removed that when I built the dock.

The Court—It has been without a dock track?

02 The Witness—It has been without a dock track since about the time the Highway Department started in to locate the bridge, about two years or a little over two years to my knowledge that track has been without dock.

Q. Why didn't you have it put back?

A. It was not put back because we figured at the time——

30 Mr. Vickers—I object to the conclusion of this witness on behalf of the corporation by which he is employed, as not being competent.

The Court—He may know. What have you had to do with the restoration of the track?

The Witness—When I altered the dock, I asked if they wanted the track put back and they told me in view of the fact——

Mr. Vickers—In your opinion as an engineer could it or could it not be put back; whether it is advisable?

The Witness—I advised not putting the track back unless they intended to use it, as the maintenance of a track—of a dock of that kind is rather expensive. I advised them not to put the track back unless they were going to use it. Then I was instructed to leave the track out.

The Court—It comes back to the proposition; you say it interferes with the construction of the dock track. If this plant has not been using the track, why do you include that as interference by the obstruction?

10

The Witness—Well, at that time, it was a little bit undecided as to just where the bridge was to go, and it was pretty hard to get the business to come out there in steamers when you could not guarantee them a safe berth, or tell them where their berth would be, in anticipation of this bridge coming through. We knew that it would be impossible to handle a steamer during the construction of the bridge, because that space was taken up, the majority of the open space frontage was taken up with sand boats and stone boats, and concrete mixing equipment, and the sinking of caissons.

20

Mr. Vickers—That is objected to as an element of damage.

The Court—It is not being projected for that purpose. It is an answer to the Court's question, why did they get along without this dock so long and now they wish to have it, and he is explaining why they got along without it, because they didn't know the location and because of the operations there.

30

Mr. Vickers—My objection is that the operations are operations of the contractor and that is not chargeable to the condemnor in this case.

The Court—But it answers and explains the reason why they didn't have tracks there.

Q. Mr. Witness, what is the depth of the channel from the Lincoln Highway Bridge, the north channel of the Passaic River?

Mr. Vickers—If your Honor please, the best evidence of that is the Government chart.

Mr. Milton—I will have it here.

The Court—Your knowledge is from the Government chart?

10

The Witness—The Government charts.

Mr. Milton—I will produce them.

Mr. Vickers—No objection.

Mr. Milton—I offer chart of the Passaic River, N. J., "Condition of Improvement, U. S. Engineers Office, Second District, New York, April, 1930," showing the channel conditions at the location in question.

(Accepted and marked as Plaintiff's Exhibit P-9 of this date.)

20

The Court—Cannot you read off the depths?

Q. Read off the depths of the channel north of the Lincoln Highway bridge?

A. There are about two hundred of them.

The Court—Read the nearest.

The Witness—At the Lincoln Highway bridge the first recorded soundings north of the bridge read 26 feet, 20.4, 19.7, 21.0, 23.1, 21.0, 14.9.

30

Mr. Vickers—Where is that?

The Witness—That last one is right at the center of the bridge, up and down right opposite the bridge pier.

Q. The bridge pier?

A. The turning pier of the Lincoln Highway span. On the other side it was 20.8, 21.1, 21.4, 18.4 at the channel line. On the north end of the property at the edge of the channel 15.9, 17.8, 17.0, 18.0,

18.6, 18.3, 17.9, 18.2, 18.0, 17.7, 17.6, 17.0, 16.8. And on the westerly side of the channel 16.1, 15.6, 15.2, 13.9.

The Court—What is the average, about 18 or 19 feet?

Mr. Vickers—About 17.

The Witness—It is supposed to be 20-foot depth, the average through here.

The Court—Has someone figured the average up? 10

Mr. Milton—We will have it after recess.

The Court—What is the depth where the bridge piers are?

The Witness—20.4, 20.3, 18.2, 19.0.

The Court—And these are how far back?

The Witness—I cannot tell from this map. There is no way of telling. Probably they are about 15 or 20 feet, as near as I can tell. 20

The Court—That is enough.

Q. What improvement, if any, or change, is being made in the channel of the Passaic River now?

A. There is an authorization and work is now under way.

The Court—I don't suppose it is material.

Mr. Milton—I am going to develop that.

The Witness—The dredging of a 30-foot channel in the Passaic River from a point 3,000 feet north of the present Lincoln Highway Bridge. That work is now under way and has progressed as far as about 2,000 feet south of the plant. They are now working north up the river and bridge. 30

Q. And are at present located 2,000 feet where?

A. Two thousand feet south of the bridge.

The Court—Are you not concerned with the situation that existed on September 30?

Mr. Milton—This work was projected prior to the condemnation.

The Court—Will you get to that?

Q. When was this work projected?

Mr. Vickers—I object to that on the ground that the witness is not competent.

The Court—There should not be any dispute about that.

10

Mr. Vickers—I am perfectly willing to agree to that.

The Court—What is your evidence on that?

Mr. Milton—October, 1929.

The Court—Then that will be taken as coming from the witness or as a stipulation between counsel. Colonel Vickers agrees that is the situation.

20

Mr. Milton—That is not quite the situation but I think I can satisfy Colonel Vickers.

The Court—Was the thing projected before this condemnation?

Mr. Milton—Yes, and is actually being worked on now to a point 2,000 feet south of the plant.

Mr. Vickers—I will agree on the width of the channel and the depth of the channel and that at a time approximate with this proceeding it will be built.

30

Q. What effect, Mr. Witness, in your opinion, will the continuance of the bridge piers in their present position have with respect to the filling in the channel?

A. Well, the bridge pier offers an obstruction on the east side of the river bed, the side of the river that settled, and it will no doubt cause a silting directly in front of our wharf, the present wharf.

The Court—How do you know that? What experience have you had with the current in the Passaic River, and how the settlements are? Have you done any dredging there?

The Witness—I never did any dredging.

The Court—Well, if it goes along this property or along that side, have you noticed the natural flow?

The Witness—I have, and I have the government report with the tidal movements of the Passaic River, prepared by the Army engineers, which is used as a guide in the department.

10

Q. Showing all of the excretions?

A. All of the courses through there. You have the same condition up the river although the bridge pier has not been there long enough to take actual measurement on it.

The Court—Is there a record made by the government showing the excretions and the washouts and so on?

20

The Witness—Yes, that is in conjunction with this map of the Passaic River.

The Court—And have you got that or can you produce it?

The Witness—I can bring that tomorrow. I have a copy of it home.

Q. What is the method that this company can adopt to give it the same facilities with respect to wharfage and use of its docks as existed prior to the placing of the bridge piers in position?

30

Mr. Vickers—I object to that upon the ground that it is purely speculative, what the company can do. I have no objection to the witness testifying as to what has been done by reason of the acquisition of the land and

the building of the pier. What they can do I don't think has anything to do with it.

The Court—Do you mean that you come within these last decisions where if you were going to take into consideration the doing of a thing—

Mr. Vickers—Yes. I have reason to suspect that the witness' next answer—

The Court—You mean the cost of it?

10

Mr. Milton—Yes. I expect to offer proof by this witness in order to substitute for this company the same facility that it enjoyed, provide the company with the same facility that it enjoyed, or approximately so; we cannot ever have the same one hundred per cent degree of efficiency; it will require to build out the wharf to a line practically the same as the bridge pier. To do that will cost so much money and that we say is evidence of the damage which is resulting from the taking.

20

The Court—The Court is inclined to agree with the property owner because it seems to me, after all, the law is governed by reason and it does not seem to me to fall within the decisions where the property owner has speculated upon the idea of what he could do with the property. To make certain I would like to read the cases. I might say that the Court wants to be conscientious about this and would like you to keep yourself occupied for a few minutes before adjournment on some other line of examination.

30

Mr. Vickers—Subject of course to this line of testimony being stricken out if it is not allowed?

The Court—You can take that up again later.

Q. With respect to the railroad trackage, Mr. Witness, what damage, if any, has been done to the railroad tracks?

A. There has been a removal of some of the tracks made necessary, and alterations of others in order to get by the bridge piers where they interfere with the original location.

Q. Have you calculated that?

A. I have.

Mr. Vickers—It is not a matter of calculation. 010

Q. Have you remedied it?

Mr. Vickers—It is a matter of actual expenditure, as I understand it, because those tracks were put where the company wanted them and it is a question of expenditure if they have paid for it and then, if they have not paid for it, it is another thing.

Mr. Milton—I understand it has not been done. 020

Mr. Vickers—I know some of it has been done because it has been testified to.

Q. Has the work been done?

A. Not all of it, no, sir. The work is being held up pending construction of the steel work on the remainder of the bridge, as the contractor is utilizing temporary tracks between the bridge piers for the handling of his material, so that we cannot make final arrangements of the tracks until after the bridge is finished. 030

The Court—Cannot you permit the witness to express his opinion of what the estimate is, and then if there are actual figures for a portion of it, to have these spread on the record and express an opinion as to the unfinished portion?

Mr. Vickers—You see, your Honor, it involves this question, of the convenience of

the contractor and the owner. I understand that what has been done, and I understand according to the testimony previously given, done by the State.

Mr. Milton—I think you must be misinformed about that. We ought not to have any disagreement about that.

The Court—Suppose you confer about that.

10

Mr. Milton—Then I am practically at the end of this witness' testimony.

(Recess until October 14, 1931, 10 A. M.)

---

(Met pursuant to adjournment, October 14, 1931, at 10 A. M.)

20

HERMAN W. ORDEMAN resumed the stand.

*Direct Examination*—By Mr. Milton (continued):

The Court—What would be the difference in channel facilities, between the location of the present dock at its extreme edge and if extended out to the bulkhead line?

The Witness—It would be still at the channel line.

The Court—No; the depth of the water.

30

The Witness—Only up to what the owner dredged; only unless dredged in the channel.

The Court—Would the natural situation be the same?

The Witness—Approximately, yes, sir.

Mr. Vickers—It seems to me that in this exhibit it shows 15 feet as a part of the dock.

The Court—What does that exhibit show?

Mr. Vickers—What is the depth according to the exhibit?

The Witness—The depth along there, 17, 18½, that has not been dredged the last two or three years because there was no necessity.

The Court—I want the condition of the river bottom; the natural condition.

Mr. Vickers—As it was September 30, 1930?

The Witness—That would run a foot more possibly than the readings; that would give you 18, 19, 20 feet. Then you have the same condition which was at the edge of the channel, 19, 17 feet; next to the dock about 12 feet; practically no difference. 10

The Court—It seems to me, while the property owner is not entitled to enhance the value of his property, he is certainly entitled to establish what an improvement there would be so as to diminish the damages.

Mr. Vickers—He is entitled to the whole.

The Court—Yes, and how can the Court at this juncture, until the testimony is in, state whether or not the testimony that we were discussing yesterday is permissible. The Court suggests then that we receive the testimony for what it is worth at this point. If later on it is found beyond peradventure, or by a reasonable deduction that the result would be an enhancement, an improvement of the original value of the property, then it may be stricken. 20

Mr. Vickers—Does the property owner desire then to pursue that line? 30

Mr. Milton—Yes.

Q. Assuming that the wharf of the company were extended out to the pierhead line, would that or would it not give the company the same degree of facility in the handling of ships, in view of the fact that the bridge piers are in the position they are in?

Mr. Vickers—I object to that. It is not a question of whether it would give the com-

pany the same degree of facilities. The question is, would it place the company as near as possible into its previous situation.

The Court—Well, I suppose counsel is conducting the examination. He will have to get it little by little. You may have an exception to the Court's ruling if you wish.

Mr. Milton—I will adopt Colonel Vickers' language.

10

The Court—Would it mitigate the loss that would ensue if the pier were not extended?

Mr. Vickers—May I respectfully object that? It is not a question of mitigating; if it enhanced it ten thousand dollars, or ten thousand per cent, it would still mitigate it. Would it be equivalent.

The Court—Take the Colonel's proposition.

20

Q. You understand the question?

A. I wish you would put it again.

Q. Would the extension of the wharf from its present line to the pierhead and bulkhead line place the company in approximately the same position that it was prior to the construction of the bridge piers?

30

A. Approximately, yes, but it would not be in the same condition because you could not handle cargo off-shore and a vessel at the pier placed at the bulkhead line. You have not got the clearance between the bulkhead line and the easterly edge of the channel. You only have 64 feet at the south end and 94 at the north. That is not sufficient room to work off shore, so that you would lose that facility.

Q. Yesterday you had there a little ship and a barge model. I don't want to take more than a minute. Will you demonstrate to the jury, please, on the map?

A. This is on the north end of the property, from the bulkhead line, the easterly edge of the channel is 64 feet plus, and approximately 94 feet from the bulkhead to the west line, which is 134 feet total, which gives you ample footage to work a 60-foot boom vessel and a 40-foot car float. At the southerly end there is a total distance from the wharf edge of 104 feet. If you shove out 40 feet with your pier, you only have 94 feet at the north end for your vessel and float, which requires 100 feet. You only have 64 at the south end for a 100-foot requirement. So that your barge would foul the channel if you work off-shore and a vessel with 60-foot beam on the south end of the property, you only have 4-foot clearance between the side of the vessel and the edge of the channel.

10

Q. So that, as I understand your testimony, if the wharf were extended out to the pierhead and bulkhead line, it would not be possible to work a ship off-shore without fouling the channel?

20

A. No, sir.

Q. Have you estimated upon the cost of extending the wharf from its present line out to the pierhead and bulkhead line?

A. Yes, I have two estimates of it.

Q. Will you explain the cheaper of the estimates?

A. The cheapest of construction would be to extend the present wharf as is, which is a pile platform, a bulkhead wharf, there being a sheet pile bulkhead in the rear of the present wharf to prevent the flowing of any of the earth fill. That is substantially the same construction as exists today.

30

Q. And what would be the cost of that on September 30, 1930?

Mr. Vickers—That is subject to the objection.

A. \$179,330.00.

Q. What is the other type of construction that you have taken into consideration?

A. The other type of construction is known as a relieving type bulkhead, similar to the concrete bulkhead that the Port of Newark buy. It consists of piles driven at low water and cut off, and the concrete wharf placed on top to a height of from five to six feet above high water; then the entire portion in the rear of it filled.

10 The Court—Mr. Milton, wouldn't that be a little out of the ordinary for this situation? Wouldn't that enhance the type of construction?

Mr. Milton—I suppose it would be orderly for the next step, to ask the witness which type of construction would best serve in the extension of the wharf.

The Court—Very well; proceed.

20 The Witness—There is no doubt that the concrete retaining wall type is the best type, as after it is constructed it requires practically no maintenance cost; whereas an addition of a pile wharf means an addition in the maintenance cost of its upkeep and its depression is a much higher figure than the concrete bulkhead type.

The Court—Well, you would have to repair the inner wharf, wouldn't you, from time to time?

The Witness—Not if it is solid fill, no, sir.

30 The Court—Would you have to change that in order to have it match or be the same as this improved extension that you had?

The Witness—Just take the wooden dock off and fill in.

The Court—It seems to the Court that improvement is beyond the reasonable scope that you should go, to change the type of construction. Why should the State be required to improve it to that extent?

Mr. Milton—I won't pursue that type.

Q. Have you made any estimate of the cost of alleviating the condition with respect to the silting resulting from the pierhead?

A. Yes, sir.

Mr. Vickers—That is objected to on the ground that this is an obstruction in the navigable stream and the State is not responsible to the owner for the result of natural flow of water, where the obstruction is there and has to be of necessity for use. 10

The Court—Piers are being constructed on this owner's property. The State had the title to the bed of the stream and granted that right without limit to the owner. What the owner paid for it has not been disclosed. Nevertheless it is a probable right. Now the owner claims that you have placed obstructions on his property and the result of that is that he cannot use his wharf and property as he otherwise would, and he further says that it causes an accumulation of silt though it does not appear how much. 20

Mr. Milton—To save time, it is a very small element of damage and I withdraw it rather than waste time on it, subject to checking up on this railroad question.

*Cross Examination*—By Mr. Vickers:

Q. Mr. Ordeman, you have referred to other property in the metropolitan district. I ask you whether any of the property that you have referred to are limited to an improvement where there is a depth of fifteen feet at the wharf line? 30

A. Yes, sir.

Q. Where?

A. Between piers four and five and between five and six of the New York Dock.

Q. Where is that located?

A. That is located just south of the Brooklyn Bridge, of the Brooklyn terminals of the bridge; pier three is almost underneath the bridge.

Q. And what is the depth of water at these piers four and five, and five and six?

A. Well, the depth when I had charge of those piers ran from twelve to sixteen feet at the wharf line.

Q. And when was that?

10

A. 1923 to 1926.

Q. What was the length of the piers?

A. Well, off-hand, they ran approximately four hundred to six hundred feet. I don't believe I can state the exact length of each individual pier. They ran four hundred to six hundred feet, these piers.

Q. They are finger piers running out into the stream and not wharves?

A. No, they are not wharves.

20

Q. Seagoing vessels take on and discharge their cargoes there?

A. Yes, sir.

Q. And those piers have been in use for maritime commerce for fifty years past?

A. Well, they are pretty old; all through, these piers are pretty old piers.

The Court—What kind of ocean-going vessel can get into a depth of twelve or sixteen feet of water?

30

The Witness—None that I know of.

Q. Well, these piers that you have referred to were not piers for the docking, loading and unloading of ocean-going vessels, these piers four, five and six?

A. They were for ocean-going vessels.

The Court—What kind of ocean-going vessels can dock at a pier that has only twelve to sixteen feet of water?

The Witness—And you asked the depth of the water at the wharf line and I told you. The depth of water alongside the pier is an entirely different matter. You asked about the wharf line.

Q. Suppose you tell us the depth of water between piers four and five for the purpose of docking.

A. Beginning fifty feet from the wharf line, vessels of twenty-four and twenty-six and probably twenty-eight-foot draft could dock there. 10

Q. What was the depth of water?

A. The depth of water was approximately twenty-eight feet.

Q. You said beginning fifty feet from the wharf line.

A. Yes, sir.

Q. Say thirty feet from the wharf line, what was the depth?

A. It sloped from about twelve feet at the wharf line to the ruling depth of fifty feet. They were bulkhead type wharves. 20

Q. So that from twelve feet of water at the wharf line, the slope went to twenty-eight feet at the fifty-foot line; is that right?

A. Yes, about that.

Q. That gave a sufficient depth midway of the ship's width; that is to say, a sixty-foot vessel had thirty feet, is that right?

A. No, sir; you have it just at right angles. 30

Q. Certainly; I am comparing a ship alongside of the pier.

A. The depth alongside of the pier, where the ship berthed was twenty-eight feet and has nothing to do with the wharf depth of twelve feet.

Q. Will you tell us where the wharf depth that you are speaking of is?

A. I am illustrating it.

Q. Do it.

A. The three hatched portions of piers extending into the wharf, the line showing the connecting hatched portions is the wharf line. The depth at the wharf line is 12, 15 and 50 feet from the wharf line, it runs down to the ruling technical depth of approximately 50 feet. Steamers are docked alongside the pier.

10 Q. And what is the distance between the dock there?

A. I would have to give you that approximately. These are old docks and it is pretty narrow; runs around one hundred and fifty to probably two hundred and fifty feet between docks.

Q. Will you now take your little ship and show us whether you dock at the wharf line or whether you dock alongside of the pier?

A. You do not dock at the wharf line.

20 Q. Just take your little ship and show us whether you utilize the depth of water at the wharf line?

A. We utilize it alongside the pier.

Q. Now, what was the depth of water alongside of any of these piers that you have referred to?

A. Approximately twenty-eight feet.

Q. And fifty feet from the wharf line of the Lincoln Terminal property on the 20th of September, 1930, was there twenty-eight feet of water?

A. No, sir.

30 Q. And at the wharf line of the Lincoln Terminal at that time, there was a minimum depth along the wharf line of approximately fifteen feet; isn't that so?

A. Yes, sir; right at the wharf.

Q. Is it any indication; the minimum depth is the controlling depth as to the use of the wharf for docking purposes?

A. As far as a berth it is, of course it is, but the ruling depth is in the berth, in beside the edge of the pier.

Q. Was there on the 20th day of September, 1930, in the berth line extending thirty feet from the stringer of the dock a minimum depth of fifteen feet at any point?

A. Yes, I am pretty sure there was.

Q. Supposing you run out on that map exhibit P-9 a line thirty feet from parallel to the stringer base of the dock and tell us what the depths were along the twelve hundred and thirty feet of dock line.

10

A. Thirty feet from the dock line there runs 13.2, 15.3, 13.2, at the south end. 15.3, 15.0, 15.4, 15.6, 14.0, 15.3, 13.9 and 11.3 at the north end.

Q. So that from a minimum of 11.3 to a maximum of 15.3 was the controlling depth for the berthing of vessels at the dock; is that right?

A. No, sir.

Q. Well then, if those were the depths, how did you put a vessel of a greater depth in there without waiting for high tide; dropped her down in the mud?

20

A. That is only the silt depth.

Q. What you mean is that this particular dock, with this great facility, you are going to plough through the silt for the purpose of docking?

A. Absolutely.

Q. That is right, is it?

A. Yes, sir.

Q. And except you do that, no docking could be done in free water, of a vessel taking more than eleven point something feet, is that right?

30

A. No, sir; that is not right.

Q. Well, if you don't have free water, Mr. Ordeman, how else can you dock except you plugh through the silt?

A. Where a berth has been dredged and silt in and is dredged—what I mean dredged at regular intervals and the silt is soft, it is no difficult thing,

no danger, no trouble, to put a ship in the silt at the dredged depth because the silt is light. The dredging is always down two feet over the depth of the channel which allows two feet of hard silt to form with soft silt on top. It is done in practically every berth in New York Harbor. It is done with the Leviathan.

Q. To put her into the silt?

A. Yes, sir.

10 Q. How much does she draw?

A. She draws about forty feet. The channel is dredged forty-two feet and there is about 3.3 feet covering of silt to allow for her bouncing on the tide.

Q. The limit of silt safety is two feet?

A. No, runs to 3, 4 feet.

Q. Does it make any difference whether the limit is two feet or four feet in the Passaic river alongside the Lincoln Terminal property?

20 A. I don't understand your question.

Q. You say two feet of soft silting is laid over.

A. I said two feet of hard silting is laid over about two feet over depth of the dredging. That is what I said.

Q. Well then, let us see. Then the limit of berthing is running over four feet above the hard silting, and the part of soft silting, and if a vessel is drawing fifteen feet or fifteen something feet of water—is that right?

30 A. No, sir; you don't state it correctly.

The Court—You state it correctly.

The Witness—When the channel is described as a twenty foot ruling depth, when that channel is dredged, it is dredged two feet over depth to allow for a certain amount of silting. The deeper you go with the silting, the harder it packs. There is a limit, but it is customary to allow two feet on every harbor. Now that two feet, knowing you have that

for backing a vessel, when he comes up a twenty foot channel with a soft silt above that places no obstruction to the vessel in backing. You can push the vessel through it. Practically every vessel that goes up this river pushes over the shoals of soft silt. The settlement of water is very even in these rivers.

Mr. Vickers—I would like to move that the answer be stricken as not responsive.

The Court—Isn't the ultimate thing knowing just how it applies to this particular wharf?

10

The Witness—This wharf was dredged to approximately twenty-two feet at one time. The dredging was kept up at that wharf for a period, I cannot state the exact date of the last dredging, and the silting has been taking place to my knowledge for about three and a half years. But in taking soundings we found that the silt is soft down to the ruling depth.

20

The Court—How much silt is there now?

The Witness—Approximately as near as you can take with a sounder, about three and a half to four feet.

The Court—How much free water?

The Witness—It runs from the north end about eleven feet of free water above the silt to a maximum of about sixteen feet free water.

The Court—How deep a vessel would that take?

The Witness—You would not hesitate at all to put a twenty-foot vessel in there.

30

The Court—At the eleven foot free water?

The Witness—That is right at the extreme north end; the vessel would not touch that.

The Court—Is that what you want, Colonel?

Mr. Vickers—That is it exactly.

Q. Would you say although there is only eleven feet of free water according to the exhibit in the case here, in front of this wharf?

A. Up at the north end.

Q. At the point that you have named?

A. Yes, sir.

Q. Would you still put a vessel in there drawing twenty feet of water?

A. You would not hesitate to do that.

10 Q. Mr. Ordeman, does this map of yours correctly show the trackage usable for terminal purposes on or about the 20th day of September, 1930?

A. Approximately, yes, sir; there may be one or two differences.

The Court—Counsel is referring to exhibit P-2.

Q. When you say approximately and with two differences, can you point out where the differences are and what they are?

A. No, I don't believe I can, Mr. Vickers.

20 Q. Then you mean to say that you don't know now and cannot tell this jury whether this map gives an actual picture of the rail facilities at this point on the 20th day of September, 1930?

A. It gives it as accurately as I can make it.

The Court—Does that answer the question?

30 A. Well, you make a map in the morning and you may change that track in the afternoon, or make a report and when you tie down to the accurate figures, it means accurate; that is what I am trying to give you then.

The Court—When did you make that map?

The Witness—The date is on there.

Q. July, 1930?

A. And it has been revised.

Q. A month and twenty days before the period involved in this case?

A. Yes, it has been revised twice since.

The Court—Would you say that the map substantially represents the trackage location?

The Witness—It does substantially represent them.

Q. On the 20th day of September, 1930, was this laid at or near the corner of Second Street where it comes into Jacobus Avenue and which I point out to you on the map here, visible on the surface of the ground?

A. The portion across Second Street here?

Q. Cannot you answer that yes or no? That seems to be perfectly simple. That may be answered yes or no. 10

A. I cannot answer it.

Q. You don't know?

A. I don't know.

Q. Although you have drawn it into this map as an existing rail connection so laid in from the Pennsylvania Railroad into the easterly half of this property, you cannot say whether or not it was visible, in existence, on the ground, can you? 20

A. No, not across Second Street.

Q. Was it yesterday visible and in existence?

A. All except a small portion that was being struck over.

Q. Isn't it a fact that for a distance almost immediately north of the most easterly switch that I am indicating here—can you see it?

A. Yes, sir.

Q. (Continuing) —into the center of Second Street, there is no track whatever visible, is that true or isn't it? 30

A. I don't think that is true.

Q. Can you inspect the premises and let us know whether it is a fact, today?

A. I guess I could, yes, sir.

Q. To your knowledge has there been a train over that in the last two years?

A. Not since the construction started, I know.

Mr. Milton—You mean the construction of what?

The Witness—The construction of the highway; there has been no train over it since then.

Q. To your knowledge has there ever been a train over it since the Lincoln Terminal became the owner of the property?

A. I could not state that because I am not there every day.

10 Q. And though you have made this map and claim accurate and detailed knowledge of the transportation facilities of this land, you cannot now tell us, can you, whether this region east of Jacobus Avenue in the last three years was served or could be served without repairs from this lead?

A. It could be, because the switch that comes off the Pennsylvania, that has been there for four years to my knowledge, is still in there and is in working order. I looked at it yesterday.

20 Q. You mean the switch down here (indicating)?

A. Yes, sir.

Q. What is that, a switch to your property?

A. That was erected when they started construction because it interfered with that bank, through the construction to this building. They also built a road to go down to Second Avenue track, in and out of their property.

Q. When was that, Mr. Ordeman?

A. I don't know the exact date when they started.

30 Mr. Milton—Who are they?

The Witness—When they started, the contractor.

Mr. Milton—Whose contractor?

The Witness—The State Highway contractor.

Q. When was it?

A. It was about—

Q. It is over two years ago?

A. No, it was last June, May or June.

Q. When you drew this map, you knew that switches were not there, didn't you; if you knew that the contractor took them out?

A. No, it might have been later. I say approximately. I know they removed it when they started in the construction.

Q. All right, when you came here yesterday and produced this map as correctly portraying the situation of the property, you knew that switches had been taken out?

A. Absolutely.

Q. Why did you put them in?

A. Because they are only out temporarily during the construction. They will be placed back in there again.

Q. The fact is, is it not, that the ties are rotten, the switches are rotten, that you can pick them to pieces all through there, and that that is so now on the property; isn't that so?

A. No.

Q. You say that it is not so?

A. It is not generally so.

Q. I am not asking generally so. I am asking at that point is it so?

A. No, it is not.

Q. Do you know whether or not, whatever was done, with respect to the tracks at this place, was done by private arrangement between this corporation and the contractor, The Foundation Company?

A. Not all of it.

Q. So that you do know what was done by arrangement and what was not done?

A. No, I do not.

Q. Why do you say all of it was not done?

A. Because I know some was done by the Terminal forces under my supervision.

Q. You did?

A. Some of the Terminal forces, some of the rearrangement done on the west side of Jacobus Avenue was done under my supervision.

10

20

30

Q. Can you show us on this map what changes were made under your supervision?

A. Right here where the switch leads come out.

Q. You know I am talking of the east side.

A. You asked where I did it.

Q. You knew before I asked you to show it that I am talking about the east side of Jacobus Avenue?

A. You were speaking about the property and I took it as the property.

10

Q. Is it a fact that on the east side any changes that were made with regard to the tracks were made by the contractor through private arrangement with the owner?

A. That I don't know. I think most of it was so.

Q. Mr. Ordeman, does this map correctly show the track which leads in here between these buildings to the extreme north boundary line of the property west of Jacobus Avenue?

20

A. The reference is to buildings between 38 and 40?

Q. Yes, between 38 and 40. Does that plan correctly show that track?

A. Well, approximately; that track has been switched back and forth a little bit through the construction on account of water pumping through the caissons and making it soft. It may be as much as two or three feet in some out of its ordinary position due to the shifting of the surfacing up there that they have put down during the construction, but substantially it is in the same condition.

30

Q. Whatever shifting has been done, it has always been shifted in that area?

The Court—Between building 38 and 39?

The Witness—It is pretty well fixed in there, 39, if I remember correctly, was a building that was moved off the condemnation strip in two sections. It is pretty bad going through there with that track.

Q. I didn't ask you that. Has the track always been and the shifting done, whatever shifting was done between buildings 38 and 39?

A. No.

Q. Has the track ever been shifted east of the building 40 or west of building 38, or has it always gone between these two buildings?

A. No, to my knowledge it has never been shifted there.

Q. It has always gone between the two buildings? 10

A. It has not gone.

Q. Will you tell the court and jury what the difference is on this map between building 38 and building 39 at its most approximate point, where the tracks go between the buildings?

A. I can measure between the buildings; that scaled is approximately 12 feet.

Q. What is the distance between the piers indicated in the track red on this map?

A. I will have to scale those. 20

Q. Scale them?

A. This scales approximately sixteen feet, that is one scales approximately the same and the one next to the river scales about thirty-five feet.

Q. And on the track east of Jacobus Avenue it runs about sixteen feet?

A. It runs as near as I can scale it around here fifteen to sixteen feet. This one goes up to about fourteen feet and this one about fourteen feet.

Q. While you are here, Mr. Ordeman, this track, indicating the track which is the most southerly track and nearest the Lincoln Highway and in the section west of Jacobus Avenue, that is dead-ended, is it not, at or on Jacobus Avenue? 30

A. Yes, it is dead-ended.

Q. And the property which lies beyond the dead end is not property of the Lincoln Terminal?

A. No, sir.

Q. And these connections which are shown approximating Central Avenue and just west of it, are they in fact in existence now or are they in disrepair so as to be not usable?

A. Well, they are not, but some of them are covered, somebody dumped garbage on some of them and they cannot be seen at this time, but they are there.

10 Q. They are about anywhere from two to three feet under ground?

A. Yes, somebody dumped garbage off Central Avenue.

Q. The real fact is because of the condition of the soil and the sub-soil they have disappeared?

A. No, they have not.

Q. Can you tell us whether in the last five years any tracks have been available for use connecting along the line of the railway immediately west of Central Avenue?

20 A. No, I don't think that lead could be used down Central Avenue, no.

Q. Then the only lead or leads in use or usable in there, are where those coming from the Pennsylvania switch line; isn't that right, isn't that what you call it?

A. No, there are two more on there.

Q. Here is the Pennsylvania switch line that is only one, isn't it?

30 A. Yes, but three switches into the east side of the property.

Q. It is the Pennsylvania switch line which runs through the public highway of Jacobus Avenue; is that right?

A. Yes, that is right.

Q. Let me ask you this: on the 20th of September, 1930, was the property which is the most northwesterly served from the switch or lead passing through between buildings 38 and 39 or was it

served from a lead coming out of the Pennsylvania switch on the adjoining property to the north of you?

A. It was served by the lead just north of the Lincoln Terminal property line that is connected up with the lead leading to the Pennsylvania.

Q. Connected up off of your property?

A. Yes, sir.

Q. On the adjoining property?

A. Yes, sir, sure.

10

Q. And to your knowledge how long did that condition exist?

A. I know that was hooked up there three years ago; in fact they always used it into that portion of the property, as far as I know, but it came off the same switch lead.

Q. It came off the same switch lead in the public highway at Jacobus Avenue; that is right, isn't it?

A. Yes, sir.

Q. It didn't come off any switch lead on your property, did it?

20

A. No.

Q. Mr. Ordeman, with respect to this situation at the track at the east end of this property nearest Central Avenue, is it or is it not a fact that those tracks have been not only submerged by what you call dumping there, but that your company has built a road across them and is utilizing it for trucking purposes from Central Avenue?

30

A. Yes, there is a road put in at the end of building 43.

Q. Now can you tell us what percentage of the tracks on the east portion of this property, that is the property lying east of Jacobus Avenue, is in use or usable as of the 20th day of September, 1930?

A. There is about 20 per cent of them in use.

Q. Are there any tracks excepting those two respectively north and south of building 43 in use?

A. Yes, sir.

Q. Where?

A. The next one north can be used.

Q. That is to say the one immediately north of building 47, is that right?

A. Yes, that track there.

Q. Used in connection with building 47?

A. Can be used, yes, sir.

10 Q. To your knowledge, in the last three years has it been used?

A. I have not been there every day, but to my knowledge it has not; it can be used.

Q. And the two tracks that you say are in use are dead-ended at or near the end of building 43, is that right?

A. Yes, sir.

Q. These tracks on the easterly portion of this property were all laid during the war by the government, is that right?

20 A. Not all of them.

Q. Do you know of any track or tracks that have been laid there and shown on this map laid by the Foundation Company on the easterly portion of the property?

A. The Foundation Company had one track in there that they laid.

Q. The Terminal Company, I mean?

A. The track just north of building 43, between building 43 and 47 was placed by the tenant.

30 Q. Do you mean by the Lincoln Terminal?

A. Either the Lincoln Terminal or the predecessors; it was laid by the tenant and not by the government.

Q. I asked you whether you knew of any track on this easterly portion that was laid by the Lincoln Terminal Corporation?

A. Well no, I don't know whether it was laid by them or not. I know that the track was not laid by the government though.

Q. By the predecessor; do you mean the Shupe Terminal Corporation that took this property over after the war?

A. Yes, sir.

Q. That was an army base there for the storage of war materials.

A. It was built as an engineer's base for the storing of engineering material.

Q. And the ship's model which you used for illustration here, that is a six hundred foot ship?

10

A. Four hundred feet.

Q. Do you know of any four hundred foot ship that has been in there in the last three years?

A. No.

Q. Do you know when the last four hundred foot ship was there or any larger if there ever was one in there?

A. I have a list of them.

Q. By the way, tell us to what list you are referring.

20

A. No, I haven't that list.

Q. May I refer to page 798 of the testimony previously taken in this case and ask you whether that is the list you refer to?

A. Yes, that is the list.

Q. Now then, refer to it.

A. December, 1922, the Woonsocket, four hundred and nine and a half feet—wait a minute—here is one in May, 1925, the Philippine.

30

Q. The Philippine?

A. That was a real ship.

Q. According to the list, since 1922 and including the Woonsocket, how many ships have been in there and what was the last there according to the list?

A. There have been ten ships in there, and the last one on the 15th of July, 1930.

Q. You say one in July 1930?

A. That was the Brooklyn.

Q. What tonnage?

A. Gross tonnage 1,880 net tonnage 1,791.

Q. And it was two hundred and sixty-six feet long, is that right?

A. Yes, two sixty-six feet long.

Q. When you refer to the Woonsocket as December, 1922, that referred to her leaving date, did it not?

A. When it was last there, yes, sir.

10 Q. And she arrived there December, 1921; is that right?

A. Yes, sir.

Q. So that for a year this Woonsocket stayed there?

A. According to the list, yes, sir.

Q. And between December, 1921, and July 1924, no ship of any tonnage arrived there, is that right, according to this list?

A. According to this list, yes, sir.

20 Q. You are familiar with it; you have testified regarding the authenticity of this list before?

A. No I did not testify to that list.

Q. You know what it is?

A. Yes, I know what it is. I did not testify to it. I could not.

Q. It is taken from the harbor records, of the harbor, Port of New York?

A. I don't know. I don't think it was.

30 Q. When you referred to a twenty-five per cent loss of storage capacity, you did not refer to the entire property, did you?

A. If I remember correctly I testified at the time the storage capacity in open storage west of Jacobus Avenue.

Q. You limit it then?

A. To west of Jacobus Avenue.

Q. And that open storage eliminates all of the buildings that are shown on this tract west of Jacobus Avenue, doesn't it?

A. Yes, sir.

Q. And the buildings 6, 7, 8, 9 and 35 on September 20, 1930, were in use for storage purposes and served both by rail, water and truckage, as theretofore; is that right?

A. I could not state as to that I know some of the buildings had loading cargo in, but as to just what was in all of them on that date, it would be pretty hard for me to state.

10

The Court—Were they usable?

The Witness—They were usable, yes sir.

Q. On September 20, of 1930, as now, building 35 is used for storage in the space west of the railroad tracks running to the building and between the railroad tracks and the westerly end of the building, is that right?

A. No.

Q. Isn't that right?

20

A. No, sir.

Q. Isn't it a fact that the space on the platform, if it is a platform, west of the tracks was then and is now used for storage?

A. No, not all of them.

Q. What do you mean by "not all of them"; aren't there boxes and crates, isn't merchandise piled up there and piled against the doors, as a matter of fact?

30

A. No, there is space there of approximately two hundred feet that has been left clear to my knowledge, approximately in the southerly half of the building. It has been left clear to my knowledge for the last three or four years for the purpose of taking in loading from the wharf.

Q. That is to say that two hundred feet from this southwest corner of the building 35?

A. No, taken a little further north than that. There is a space begins approximately one hundred

feet north of the south end of the building, running from there up approximately two hundred feet, has been kept open at all times to my knowledge.

Q. Showing you exhibit P-4; that shows the building 35 from the southerly end looking through the partly raised door?

A. Yes, sir.

10 Q. Through which trains come from the north, passing through the building and out toward the Lincoln Highway?

A. There is a track through there, yes, sir.

Q. That photograph shows certain doors and they are on that building 35, sixteen or seventeen in number?

A. Yes, I think so.

Q. Will you point out on that photograph how much space was left free as you have said, on the southerly end of the building for storage or shipping to and from the water?

20 A. Beginning at approximately what would be the door from the south side of the building and running northerly for a space of approximately two hundred feet there is a clear open space in the building, west of the railroad tracks, west of the elevated portion or ramp that is kept open at all times.

30 Q. And the rest of the building so far as this appears, that shows to the water front, that was on the 20th day of September, and is now used for storage space and merchandise there, and is actually piled up with the platform against those piers?

A. Yes, used for storage and transit.

Q. And how long prior to the 20th day of September, 1930, had that condition existed?

A. I could not testify to that. I don't know when they came in with that cargo there.

Q. You have testified that since 1928 that you have been intimately connected with the affairs of this company?

A. Yes, sir.

Q. Since your intimate connection with the company, has that condition existed?

A. Not always.

Q. How was it interrupted?

A. Well, it was interrupted by the taking of some of the space in the north end of the building that had heretofore been kept open, when it was found that the highway was coming through and it could not be utilized for the docking of vessels, they allowed some of it to go into storage and transit, cargo that was put in there, loaded, that was put in there.

10

Q. When was that?

A. That was, if my recollection serves me right, some time around 1929—either the latter part of 1929 or the first part of 1930, as near as I can remember.

Q. And you say no vessels except this one vessel, the Brooklyn, was at the dock, no vessel of any length whatever, to avail itself of the facilities of storage during that period, isn't that so?

20

A. No, we could not take them.

Q. Well, the Brooklyn went there?

A. The Brooklyn went down at the lower end.

Q. I am talking of the lower end of this dock or anywhere along building 35.

A. I thought you were referring to building 35 where you were referring to the storage.

30

Q. Will you tell us why in 1927, 1928 or 1929, why you could not utilize any part of this wharf up to the northerly end of building 35?

A. During 1928 when the agitation for the highway started, it was undecided as to just where the highway was going and the Terminal could not definitely contract or make definitely any advices to steamers as to their berthing. It was not known at that time whether the highway was going to interfere with the open storage or whether it was

going to parallel the Lincoln Highway or whether it was going to cut off the property entirely.

Q. All right then, when was that location determined?

A. The location was determined some time later than 1928. If my mind serves me correctly on it, I don't know the exact date that the Highway Commission approved it, but I do know that in 1928, the first part of 1928, it was not decided.

10 Q. Well, the absence of vessels from December, 1921, to July, 1924, had nothing to do with the highway, did it?

A. I could not state that.

Q. You know it.

A. I only know from hearsay; whether it had anything to do with it or not, I was not at the terminal at the time.

20 Q. You were not at the terminal at the time the highway was first projected, were you; that is only hearsay on your part?

A. Not in 1928.

Q. Wasn't that first projected in 1927?

A. It might be 1927 when it was first projected. My relationship with the terminal began in 1928. I was familiar with the terminal, though, before that, but not with their business.

30 Q. And what you say is that because the location of the highway was uncertain, therefore contracts could not be made to berth vessels there; is that right?

A. Yes, some of the vessels, absolutely.

Q. There never was a time, was there, as far as you know, when any place north of its present location was in debate?

A. The location of the highway?

Q. North of it?

A. Yes; that was first projected seven hundred feet north of the Lincoln Highway bridge.

Q. That is off your property?

A. Yes, you said north of it.

Q. When was that?

A. I can't state exactly. I can hunt up the various dates. I appeared before the Highway Commission in Newark.

Q. That was in 1928 or later when you became connected with the Lincoln Terminal Corporation?

A. No, that was the first place they proposed it, seven hundred feet north of it.

10

Q. Do you understand my question?

(Question read as follows: "That was in 1928 or later when you became connected with the Lincoln Terminal Corporation".)

A. I am inclined to think it was the latter part of 1927.

Q. Now you say in the latter part of 1927, when you became connected with the affairs of the Lincoln Terminal Corporation?

A. No, I told you I appeared in 1927 in regard to the highway for the Chamber of Commerce at Newark.

20

Q. You did not contend, did you, at that time that the prospective location of the highway entirely off your property had anything to do with keeping ships away?

A. No, I did not contend that.

Q. Then the next place, am I right, where the highway was supposed to be laid, was alongside of the Lincoln Highway, is that right?

30

A. Well, about 400 feet from it, because you could not put it alongside on account of interference with the present draw-span, without removing the present Lincoln Highway bridge first, or it would not—it would be right opposite.

Q. I am not asking you what it would be. I am asking you as to the facts. Is it a fact that the next reported location of that highway was immediately

alongside and practically parallel with the Lincoln Highway?

A. It was approximately 400 feet north of the present Lincoln Highway bridge.

10 Q. Mr. Ordeman, in order for this company to avail itself of the same water depth facilities, which a dock would have built out to the United States Government pierhead line, it would be necessary for this company to dredge from the government channel to the appropriate distance from the present string piece?

A. Yes, they have always done it.

Q. But you say that at the United States Government pierhead line out here the channel was one hundred feet from the pierhead line?

A. No, sixty-four feet at the south end of the pierhead line and ninety-four feet at the north end.

Q. Are you referring to the center of the channel?

A. The east line of the channel.

20 Q. And that means the east line of the 30 foot depth, doesn't it?

A. It will in this case.

Q. Well that is what the line of the channel was, the side lines?

30 A. I take that back, because the present channel is three hundred feet width and the new thirty foot channel, as I understand, is only two hundred feet width. Now it depends on whether they set that channel against the east side or whether they set it against the west side of the river and the effect it would have on any dredging that the Terminal Corporation might have to do. I don't know whether that is to be set right in there.

Q. Well then, Mr. Ordeman, in determining the necessity for this new dock, you have not definite knowledge, and didn't have any definite knowledge as to just where the channel is going to be?

A. Only from the fact that the channel on the westerly side there would not serve anything be-

cause there is no development on the westerly side of the river. All I can do there would be to assume that the logical place to put it would be on the side where there is business, that is on the westerly side.

Q. That is where it is now. It sweeps around the bend and the natural channel is toward the east bank of the river.

A. I cannot state where the natural channel is there, I don't know that.

Q. Do you know from your own personal knowledge whether or not in about the month of June, 1928, the proposed location of the new highway in question in this case nearer to the Lincoln Highway and on the Lincoln Terminal Company's property, was objected to by the Lincoln Terminal Corporation. Now that can be answered yes or no.

10

A. No, I don't know that, because at that time, as I say, I appeared all through these hearings for the Chamber of Commerce and not for the Terminal Corporation.

20

Q. Well, didn't you know that when the hearings were on in June, 1928, and the United States Army engineers conducted hearings, that your corporation objected to the location of this highway at the projected point just north of the Lincoln Highway?

A. No, I don't know of my own knowledge that it did because I did not stay through all these hearings. I testified and got out.

Q. For the moment referring back again to the list, the ten boats that have been served or have been served by this Terminal Corporation in the last ten years, five of them came in in December, 1921, and were there over a year according to this list.

30

A. According to this list.

Q. The Plymouth, Woonsocket, West Rome, West Canfield, and Cornibus.

A. Yes, according to the list.

Q. Now, will you please tell this court and jury how these ten boats during that year were berthed alongside the dock?

A. I don't know.

Q. You don't know?

A. No, sir, I do not.

10 Q. From your experience, that you have given to us, you have no way of explaining the record of the berthing and remaining there of the ten ships during that entire year, have you?

A. I don't think there were ten.

Q. Five, I beg your pardon.

A. No, sir, I don't know how they were tied up there.

Q. You don't know whether they were tied, running along one behind the other along this dock, or whether tied to there side by side or how they were tied, do you?

A. No, I do not.

20 Q. And therefore you don't know during that entire period what shipping facilities either coming in or going out there were at this marine terminal when these five boats docked there?

A. No, I do not. I do know this, that there was an open wharf; that is all I know, there was an open wharf there.

Q. You say an open wharf; tell us how you mean?

30 A. I had seen an open wharf.

Q. Passing by?

A. Passing by.

Q. Well, five ships were there.

A. In fact I never took any notice whether there were ships there or not.

Q. You mean to say in 1921 and up to December, 1922, you knew from having seen that there was an open wharf there but you cannot tell us whether there were any ships there at the same time, can you?

A. No, I don't remember whether ships were there or not.

*Re-direct examination*—By Mr. Milton.

Q. You have testified with respect to the fact of the uncertainty as to the exact location of the right-of-way for the bridge, approach of the bridge, and the effect that would have on the program with respect to dredging around the wharf.

Mr. Vickers—I object to that as not binding on the state. 10

Mr. Milton—I withdraw the question.

Is there any doubt that the state highway went into possession earlier than May 21, 1930?

Mr. Vickers—I don't know. I can't dispute the date.

Mr. Milton—We offer the nine photographs in evidence.

(Accepted and marked Exhibit P-10 to 18 inclusive of this date.) 20

Q. With respect to the conditions shown in the photographs just offered in evidence, Mr. Witness, do they correctly describe the conditions prevailing in the company's yard after the contractor of the state highway came and had taken possession?

Mr. Vickers—At the point indicated on the photographs?

Mr. Milton—At the point indicated in the photographs. 30

Q. Or shown on these photographs to the east or west of Jacobus Avenue?

A. Some of them show both and there is two here that show east of Jacobus Avenue.

Q. Eliminate the ones west of Jacobus Avenue.

A. Eliminate the ones west of Jacobus Avenue—

The Court—Aren't there lines on the photograph to indicate what they show?

The Witness—These appear to be the ones, some of them do, and some do not.

Q. Which are west of Jacobus Avenue?

A. Those all appear to be west.

Q. The ones remaining?

10 A. Here is one shows both. This one is west.

Q. Which side of Jacobus Avenue is that?

A. That is east.

Q. Exhibits 10, 11, 12, 13 and 14 show the conditions prevailing in May, 1930, in this company's property east of Jacobus Avenue; the remaining exhibits 15, 16, 17 and 18 show the conditions west of Jacobus Avenue in May, 1930?

A. Yes, sir.

Q. After the Highway Commission contractor had taken possession?

20 A. Yes, sir.

*Re-cross Examination*—By Mr. Vickers.

Q. The conditions shown on these photographs, which have just been offered in evidence, relate to the construction of the present highway by the Foundation Company and other contractors for the State of New Jersey?

A. Yes, sir.

30 Q. And there was an occupancy and use of whatever facilities were used of the Lincoln Terminal Corporation in that construction, between the contractor and the Lincoln Terminal Corporation by agreement, isn't that so? I don't ask the terms or conditions, but whether the fact is so?

A. By arrangement with the contractor, predicated on arrangements with the State, to my knowledge.

Q. The conditions shown in the photographs are the result of amicable arrangements made between

the contractor and the Terminal Corporation for the building of this highway; is that right?

A. Yes, sir.

Q. In which operation some of the facilities of the Lincoln Terminal Corporation were used?

A. Yes, some of them were used.

(Witness excused.)

CAPTAIN EDWARD B. SNELL, called as a witness for the property owner, being sworn, was examined and testified as follows: 10

The Court—Will you state your qualifications?

The Witness—I am the first principal assistant engineer in the Second New York District for the United States Government and have responsible charge of the New York District, which includes the waterways of northern New Jersey.

The Court—And the Passaic River?

The Witness—Yes, sir.

The Court—The *locus in quo* here? 20

The Witness—Yes, sir.

The Court—And have been for how many years?

The Witness—Since 1916.

The Court—And you are familiar with all the governmental regulations, are you, pertaining to the property in question?

The Witness—Yes, sir.

*Direct Examination*—By Mr. Milton. 30

Q. Are you familiar, Captain Snell, with the dredging that is now going on in the Passaic River south of the Lincoln Highway Bridge?

A. Yes, sir.

Q. When was that authorized by Congress?

A. Authorized by Congress by the River and the Harbor Act July 3, 1930.

Q. It was recommended?

A. Recommended.

Q. And to what point is the improvement to be carried?

A. Three thousand feet.

Q. When was the work actually begun?

A. The latter part of June, 1931.

Q. When was the contract authorized?

A. Either the latter part of March or early part of April, 1931.

10 Q. And when was the appropriation had with respect to this work?

Q. The appropriation for this work, the money with which we are doing this work, was the Emergency Appropriation of December 20, 1930.

*Cross Examination*—By Mr. Vickers.

Q. The work that you have referred to, Captain, involves 200 feet of channel thirty feet deep passing the property in question in this case?

20 A. That is right.

The Court—How near this property?

The Witness—The channel line, as I recall it, is about fifty feet outside of the pierhead and bulkhead line.

The Court—By the channel line, that is the easterly line?

The Witness—The easterly line of the channel.

30 The Court—Does that come closer than the present channel?

The Witness—It follows the line of the present channel, on the easterly half, the present channel is a twenty foot channel three hundred feet wide. Our authorized channel is also three hundred feet wide but we are only doing two hundred feet of the authorization. Above the Lincoln Highway Bridge we are following the easterly channel in order to come closer to the industries. All the industries above the Lincoln Highway Bridge are on the east side of the river.

Mr. Milton—That is the side the Lincoln Terminal is on?

The Witness—Yes, sir.

Q. And eventually the east bank of the other side of the channel will be practically up against the government pierhead line, isn't that so?

A. No.

The Court—He said seventy-five feet away.

Mr. Vickers—Of the two hundred foot channel. Now I am asking about the three hundred foot channel. 10

Q. That will take fifty feet off the difference?

A. No, because our two hundred feet channel follows the existing channel line and we have over one hundred foot way to go west.

Q. Going west?

A. To go west, yes, sir.

Q. And when you say the easterly bank of the channel, is that measured at the 30 foot depth? 20

A. That is measured at the thirty foot depth.

Q. And what is the slope, degree of slope, from that depth inshore?

A. No, this material, where it is stopped, we are allowing three to one.

Q. One foot rise in every three feet?

A. That is right.

(Witness excused.)

OLAF OLSON, called as a witness for the property owners, being sworn, was examined and testified as follows: 30

*Direct Examination*—By Mr. Milton.

Q. What is your occupation?

A. General superintendent docks and wharves.

The Court—For whom?

The Witness—I was working for Frederick Snare at the time this building was going up.

Q. Where are you working now?

A. I am not working at all just now, at the present time.

Q. You are retired?

A. I was sick so I had to stop.

Q. You used to work for Snare and Triest?

A. Yes, sir.

Q. Do you know whether they built the wharf out at the Lincoln Terminal?

10 A. Yes, sir.

Q. Were you working for them then?

A. I was working for them then.

Q. What were you doing?

A. I was general foreman.

Q. Who supervised the driving of the piles?

A. Well, I looked after it as close as I could.

Then there was an inspector on every machine.

Q. Do you know what length of piles were used?

20 A. On the river side was forty to forty-five feet.

Q. How were they driven?

A. They were driven until they fetched up.

Q. What do you mean by "fetched up"?

A. Would not go any more.

Q. When you say forty to forty-five, I suppose you mean feet?

A. Feet; yes, sir.

Q. Do you recall when it was done?

A. It was in 1918.

30

*Cross Examination*—By Mr. Vickers.

Q. Mr. Olson were these piles driven below the high water mark or below the low water mark or driven until they fetched up and cut off, and if so, cut off where?

A. Cut off wherever they wanted the elevation, from the engineers.

The Court—Were they all cut above the high water mark?

The Witness—All cut above the high water mark.

Q. And cut above the high water mark how far below the present wharf level, if you know?

A. The outside row was about three feet.

Q. Three feet below?

A. I think so.

Q. And they fetched up, but they had varying depths? 10

A. Yes, sir.

Q. And you can't tell us, can you, at what depth the piles fetched up, which were driven in the space now occupied by this bridge abutment, which is shown in deep red on the map P-2. Won't you look at it to locate it yourself?

A. You mean how long they were?

Q. At that point.

A. I could not tell you that. 20

Q. They did not shrink from staying in the water, do they?

A. No.

Q. And whatever the length was of the piles piled up, in order to sink the foundation for this pier, those were the piles that went in originally under your supervision, is that right?

A. Yes, sir.

Q. And if piles 28 feet long were actually drawn out of this area for the building of the abutment, would that be consistent with having started forty-foot piles down there and then having fetched up at that depth? 30

Mr. Milton—That is objected to on the ground that it calls for a conclusion.

The Court—Well, this man is an expert. The question might be put in another way. Is it possible to drive a forty-five-foot pile in this situation

where these piles are and cut it off so as to leave twenty-eight feet remaining?

The Witness—No.

The Court—Was that done?

The Witness—We drove them until we could not get no more.

The Court—If you put a forty-five-foot pile under your machine and it ran down twenty-eight feet and struck hard bottom, whatever the obstruction was, then you cut it off?

The Witness—We cut them off where the engineer gave a level.

The Court—So that it could have only gone twenty-eight feet and you cut it off?

The Witness—Yes, sir.

The Court—And they could have gone thirty-eight feet and you cut them off?

The Witness—Yes, sir.

20 Q. You can't say, Mr. Olson, can you, that in fact in this area occupied by the present bridge abutment, the outside piles actually driven and remaining there before the abutment were put in water more than twenty-eight feet, can you?

A. No, they were more than twenty-eight feet.

Q. How do you know? I don't mean the original piles, but after being driven and being cut off.

30 The Court—The part that you left there, was that over twenty-eight feet?

Q. At this particular point?

A. At that particular point I could not exactly say, that particular point.

Q. Whatever they were, the piles that were pulled out, would tell the depth to which they were driven and at which they were cut off?

A. Yes, the bearing piles but not the fender piles. They were different lengths, they were just stuck in the mud. They were not driven, too.

Q. The fender piles are what?

A. The outside ones.

Q. The bearing piles are the ones that carry the wharf?

A. Yes, sir.

Q. How far are the fender piles driven?

A. They may be only twenty or thirty feet. 10

Q. They may have been loose?

A. I would not say.

Q. They are only there to protect the bearing piles, isn't that so?

A. That is all.

Q. They have got to be there to protect the bearing piles.

A. They have got to be to protect them.

Q. And if they were twenty-eight feet or less, new piles would have to be driven for a thirty-foot channel to have thirty feet of water there? 20

A. Well, to have thirty feet of water I guess they would.

Q. The bank would give way?

A. No, they would not give way.

Q. The mud?

A. At that time we drove them long enough for a twenty-two foot channel.

Q. And that was the limit, wasn't it? 30

A. Well, we drove them down as far as we could. Of course you would find them around forty foot or over now on the outside edge.

The Court—The fender piles?

The Witness—Not the fender, but the bearing piles.

Q. The court is asking you about the fender piles.

A. Oh, fender piles.

(Witness excused.)

HERMAN LEE, called as a witness on behalf of the property owners, being sworn, was examined and testified as follows:

10 *Direct examination*—By Mr. Milton.

Q. Mr. Lee, you are connected with the Lincoln Terminal Corporation?

A. Yes, sir.

Q. In what capacity?

A. President of the Lincoln Terminal Corporation.

Q. And since how long have you been president?

A. Since June, 1928.

20 Q. When did the Lincoln Terminal Corporation take over this property?

A. June, 1928.

Q. How soon after you took over the property did you learn of the possible taking of any part of it for state highway purposes for this bridge and bridge piers?

A. Why, practically simultaneously with when we took it over, the discussion with the highway was going on.

30 Q. Did you attend any meetings of the State Highway Commission?

A. No.

Q. Did you attend any meetings of the Board of Commerce and Navigation?

A. Yes, sir.

Q. In connection with the location of the bridge?

A. Yes, sir.

Q. Was it proposed at one time to put the bridge at the south end of your property?

A. Yes, sir.

Q. Whereabouts?

A. Right along the line of the Lincoln Highway, or within a few feet to the north of it.

Q. Did you object to that?

A. Yes, sir.

Q. Why?

A. Well, obviously property along Lincoln Highway was the most valuable property that we had and it seemed ridiculous to build right along that most valuable property what we thought was going to be an elevated roadway, instead of using the cheaper property. In addition to that, if they were going to build along the Lincoln Highway, they could have used the old Morris Canal which the State owned and were not using, instead of buying property from private owners. 10

Q. You didn't want that?

A. We preferred to see them along the line of the Morris and Essex Canal. 20

Q. Along the other side of the Lincoln Highway?

A. Yes, sir.

Q. What about the location of the bridge pier?

A. We thought it was in a very bad place and objected to it.

Q. Where did you want it placed?

A. In back of our bulkhead line, far enough back to run a railroad track and trains in front of it.

Q. If that had been done, would the use of the west have been interfered with? 30

A. Very slight.

Q. Have you made any sales of any part of the company's property?

A. Yes, sir.

Q. In what years?

A. Why in 1929 we sold the corner of Central Avenue and Lincoln Avenue.

Q. That is the corner piece, isn't it?

A. Yes, that piece right there.

Q. How big a piece was that?

A. I think it is marked right on the map, if I may read from the map; sixty feet at Lincoln by one hundred and eighty-five feet at Central, by one hundred and sixty feet west of that and eighty-five feet by one hundred by one hundred.

Q. In other words it was an L-shape piece of property?

A. Yes, sir.

10 Q. At the corner of Lincoln Highway and Central Avenue?

A. Yes, sir.

Q. How much did you sell it for?

Mr. Wickers—Can you state it?

Mr. Milton—\$25,000.

The Witness—Approximately that.

Q. Do you know the date of that sale you just told us about?

20 A. No, we have an accurate record on the books.

Mr. Milton—That sale was made October 1, 1928, and involved 19,600 square feet.

The Court—And the price was how much?

Mr. Milton—For \$25,000.

The Witness—Yes, sir.

Q. Did you sell a piece on November 1, 1929, fifty by one hundred, to Westbrook?

A. Yes, sir, we did.

Q. Where is that located?

30 A. That is immediately west of it—it is the most westerly line shown on the map.

Q. I have my pencil on it now (indicating)?

A. Yes, fifty by one hundred.

Q. And that sold for ten thousand dollars?

A. It did.

Q. In December, 1929, you sold a plot thirty by one hundred?

A. Yes, sir.

Q. For \$5,500?

A. Yes, sir.

Q. 3,000 square feet; where is that plot?

A. That is between the corner plot we sold, the one you just pointed out we sold to Mr. Westbrook.

Q. Where I have my pencil right now (indicating)?

A. Yes, sir.

Q. And Building 35, Mr. Lee, is under lease either wholly or in part?

A. I didn't hear you.

110

Q. I say Building 35 is under lease either in whole or in part?

A. In part.

Q. When does the lease expire?

A. December 31, 1931.

Q. Who is the tenant?

A. Western Electric Company.

Q. When was the lease made, approximately, with you?

A. You mean when they originally came in. They have been there as annual tenants.

120

Q. Leased by your company?

A. About December 26, 1930, for one year.

The Court—Cannot you state a lot of these matters on the record?

Q. Have you a summary of all of the leases of your company?

A. I have.

Q. Will you produce it, please?

130

A. Here is the summary and here is the recapitulation.

Mr. Milton—I will offer the summary if there is no objection to it.

(Accepted and marked as Plaintiff's Exhibit P-19 of this date.)

*Cross Examination—By Mr. Vickers.*

Q. How much of Building 35 has and had the Western Electric Company under lease from year to year since your corporation has been in possession of the property?

A. The actual square foot area is on that corner if you will give it back to me.

Q. I want to know how many square feet there is in Building 35?

10

A. There are approximately 44,000 square feet in Building 35, and the Western Electric Company occupies 21,184 square feet.

Q. And is the area, the 21,000 square feet, occupied by the Western Electric Company located so as to be continuous in one part of the building, or did it cover various parts of the building?

A. It covered the north end continuously.

20

Q. And when you say the north end of the building, do you mean from the most northerly part of the building throughout the building and going south?

A. I mean running from the north to the south, just as you move your pencil.

Q. And from the north side of Building 35, how far south does the 21,000 square feet of rented space by the Western Electric Company occupy?

A. Well, the building is eighty feet wide, so it must have been about two hundred and fifty feet; that would make 21,000 square feet.

30

Q. But that took the building from the ground to the roof, whatever space could be utilized for storage in that space occupied by the railroad track.

A. I would like to refer to the original lease to answer your question.

Mr. Vickers—It is not necessary to read the original lease.

The Court—Why not put the lease in evidence?

Mr. Milton—Mr. Betts knows about that.

Mr. Vickers—Well, when he comes on the witness stand I will ask him the question later.

Mr. Milton—Yes, you can do that.

Q. Do you know whether or not the material stored by the Western Electric Company in the 21,000 square feet came by way of land to the building and left by way of land, from the building?

10

A. I do not.

Q. Do you know whether or not the material stored in that property by the Western Electric Company came from its plant approximately across the Lincoln Highway from your property?

A. I do not.

Q. Do you know of anybody in your concern who does know?

A. I think Mr. Reeves, the general manager, does.

Mr. Milton—We can perhaps give you the information from Mr. Betts.

20

The Witness—I can give you information about some, some came from Chicago.

The Court—Perhaps this witness does know.

The Witness—I can assure you it did not come from across the street, if that is what you are getting at.

Q. And did any portion that was taken out by water, that went out by lighter, isn't that so?

30

A. I don't know.

Q. Have you just said it went out by water? Unless you know about it—do you know that it went by water?

A. Yes, I can answer that. Mr. Reeves has a list of some that came in by water.

The Court—If you have a witness, let him tell, have him produced.

Q. Can you tell us how much space included in all of these leases is occupied by the Western Electric Company for storage purposes?

The Court—Can you answer that question?

Mr. Vickers—To save time may I have an opportunity of analyzing this thing myself?

10 Mr. Milton—We have no further questions. He can step down and after the noon recess the Colonel can recall him.

(Witness excused.)

---

FRANK C. BETTS, called as a witness on behalf of the property owners, being sworn, was examined and testified as follows:

20 The Court—What is your position with this company?

The Witness—Assistant treasurer.

The Court—And have been so for how long?

The Witness—Since 1928, June 8th.

*Direct Examination*—By Mr. Milton.

30 Q. And were you connected with the Shupe Company before the Lincoln Terminal Corporation was the owner of the plant?

A. I was.

Q. Are you familiar with the leases that are in existence now?

A. I am.

Q. Are you familiar with the manner of transportation of the goods of the Western Electric Company which are in storage in Building 35?

A. I am.

Q. Will you tell us whether these goods come in over land or by water?

A. Part of the goods come in by water, part of it comes in by land, either by rail or truck.

Q. And have any goods been taken out in the past year or so?

A. Considerable.

Q. And have they left by land or water?

A. They have left by land.

Q. None by water?

A. Not to my knowledge.

Q. Those that came by water, in what type of vessel did they come? **10**

A. They came in lighters.

The Court—What was the question propounded to the last witness about the lease; what do you know about that question?

The Witness—I just don't recall about the Western Electric lease, about the height of the floors or something? **20**

Q. The amount of space involved or included in the lease to the Western Electric. The Colonel wanted to know whether the 21,000 feet is from floor to ceiling.

A. The 21,184 square feet occupied by the Western Electric Company consists of first floor space; there is a second floor space in the building which is not occupied by the Western Electric in this particular lease. They did occupy the second floor space in another lease. **30**

The Court—And do not now?

The Witness—They do not now.

Q. Have you made a tabulation of the amount of money expended from 1925 to 1930 in addition to tracks?

A. No, sir.

Q. Have you got it in gross?

A. No, sir; not tracks.

Q. Have you a tabulation of the money spent for dredging?

A. Yes, sir.

Q. What is that, please?

Mr. Vickers—Unless it is limited to this owner I object to it as being too remote.

10 The Court—That is what I understand it is for.

Mr. Milton—I don't think it will be limited to one owner.

*Cross Examination*—By Mr. Vickers.

Q. Mr. Betts, when you spoke of these goods coming into Building 35 by lighter, you mean on shallow draft boats approximately 35 feet wide, and anywhere from sixty to one hundred feet long?

20 A. A regular barge.

Q. Is that right?

A. A normal barge, yes, sir.

Q. As a matter of fact, since this corporation became the owner of this property in 1928, has any merchandise come to this terminal by water except by lighter?

A. A very small amount of it. I just can't recall any off hand.

30 Q. I show you a list which has previously been referred to by Mr. Ordeman. You are familiar with that and you have produced it originally, didn't you?

Mr. Milton—This is not cross examination.

The Court—Of course it is not. You are dealing with something he did not testify to at all.

(After argument, question withdrawn.)

(Witness excused.)

EUGENE R. MAKRAY, called as a witness for the property owners, being sworn, was examined and testified as follows:

Mr. Vickers—The qualifications are admitted.

The Court—What was the value of this property before the highway was projected across it?

The Witness—\$2,146,250.00.

The Court—What was the value afterwards?

The Witness—\$1,818,285.00.

The Court—And the damage for the taking and consequential damage amount to how much? 10

The Witness—Damages, exclusive of damages to marine facilities, \$327,965.00.

Mr. Milton—You may cross examine.

*Cross Examination*—By Mr. Vickers.

Q. You do not, Mr. Makray, accept as the measure of damages the difference between the before and after value of the property, is that right? 20

A. I do.

Q. Well, will you tell us, please, what the difference is between the before and after value as you have given those values?

A. The before and after value is predicated upon—

Q. I didn't ask you that.

Mr. Vickers—I move that that be stricken out.

A. The difference between the value before and the value after taking, as enumerated, is \$327,965.00. 30

Q. Then in your opinion the difference is in the difference between \$2,146,250.00 and \$1,818,285.00; is that right? That can be answered yes or no.

A. Yes, it is.

Q. And that is a mere matter of subtracting one figure from the other, isn't that so, yes or no?

A. Yes, sir.

Q. And the result is the difference in value before and after; is that right?

A. That is right.

The Court—You understand, Mr. Milton, I am not limiting you in your examination if you want to bring out any component part.

Mr. Milton—Yes, I propose to.

*Direct Examination*—By Mr. Milton.

10 Q. In arriving at the value before the taking, Mr. Makray, will you be good enough to tell the jury what method you pursued?

A. I examined the property very carefully and evaluated it, the pieces of property, as they appeared originally before any taking. I found a piece of property running west from Jacobus Avenue to the Passaic River measuring one thousand and three and a fraction feet on the Lincoln Highway, twelve hundred and thirty-eight and a fraction feet on Jacobus Avenue, thirteen hundred and thirty-two and a fraction feet on the Passaic River; containing 31.465 acres, which in my estimation is worth an average value of \$35,000 an acre for all, with all its facilities.

20

The Court—That is before the taking?

The Witness—Before the taking or \$1,101,275, for the portion lying between Jacobus Avenue and the river.

30 The parcel running east of Jacobus Avenue, having a frontage of 1,023 feet on the Lincoln Highway, approximately 992 feet on Jacobus Avenue, 1,461 feet on Second Street, and 1,225 feet on Central Avenue; containing 41.799 acres; I valued at \$25,000 an acre, or \$1,044,975.00, making a total value of \$2,146,250.00.

Q. And that is your total value of the whole plot before the taking and without reference to any marine or dock damage?

A. Before any disturbance.

Mr. Vickers—That is objected to.

The Court—That is what he said.

Mr. Vickers—He said with all its facilities.

The Witness—With all its road facilities, its connections with railroads; all the things that go to give it its value.

10

The Court—Does that include the dock?

The Witness—It includes the water front but does not include the value of the dock as constructed. It includes the fact that the property fronts on the water and has a riparian grant and can use the channel along the side of the property.

The Court—What does it exclude?

The Witness—It excludes any intrinsic value of any trackage or any wharfage on the property; that is merely the real estate, the land.

20

Q. Does it include or exclude any damage that may be claimed to arise through the location of the bridge pier at the point indicated on this map?

A. It does not include any damage for that.

The Court—Well, isn't it the test that you cannot segregate buildings from the land?

Mr. Milton—There is no question about that. The witness has thrown the buildings in the heap in his calculations.

30

The Court—You make no allowance for buildings?

The Witness—No, sir.

The Court—Or tracks?

The Witness—No.

The Court—Or dock?

The Witness—Or dock.

The Court—That is what you think that property was worth when you went out as a real estate man and saw it with everything on it?

The Witness—Yes, sir.

Q. Will you tell the jury how you arrived at the value of this land after the taking and what value you placed upon the respective parcels?

10 A. In the parcel east of Jacobus Avenue, running easterly from Jacobus Avenue, the taking involves an area of 1.8135 acres, which is represented by red.

Q. That is the area shown in red, east of Jacobus Avenue?

A. Running to Second Street.

Q. And it involves what?

20 A. 1.8135 acres; leaving the property in two separated pieces, one on the north side of the right-of-way, and the larger one on the southerly side of the right-of-way. I have valued these two pieces after the taking in the following manner:

The Court—Did you assign a value for the property actually taken that you have just mentioned?

The Witness—No, I didn't do that. I valued the property remaining and subtracted it. It can be done either way. It checks.

The Court—Proceed.

30 The Witness—The portion south of the highway that is remaining contains 38.6205 acres.

Q. That is the area from the red south to the property line of the company?

A. Yes, that is correct. Which, at \$25,000 an acre original value represents \$965,512.00, the value of that land.

Q. What if anything do you add to that?

A. I haven't added anything to it.

Mr. Milton—I should have said subtracted.

Mr. Vickers—He has not said subtracted. He said that is the value after the taking.

The Court—No, he says that is the value, after his unit of value before the taking of \$25,000 an acre for that piece.

The Witness—By reason of the taking and the various damages, the presence of the structure, the interruption of the continuity, and the natural development of the property, the irregular bias of the taking; I have damaged that portion five per cent of its value, which leaves the value of the property after the taking at \$917,237.00.

10

Mr. Vickers—May I have the sum of the five per cent?

The Witness—Five per cent to the amount of \$48,275.00.

Q. Turning your attention now to the area north of the structure of the right-of-way.

A. The area north of the right-of-way contained 1.365 acres, about one and a third acre. That property has been damaged by reason of its severance from the main piece by the presence of the structure and by reason of the fact that it is left in such a sharp angular piece, which is difficult of use in an efficient manner; I have damaged that to fifty per cent of its original value, that is to say if the original rate for that property at \$25,000 an acre, that was \$34,125.00 which I have damaged to the extent of \$17,062.00, leaving a value of \$17,063.00.

20

Q. And what is the total value of the pieces north and south of this strip?

A. \$984,300.

30

Q. And the original value, I think you said, was what?

A. \$1,044,975.00. The difference in value before and after in that piece lying easterly of Jacobus Avenue is \$110,675.00.

The Court—You did not make a computation showing the value of the property actually taken and then the consequential damage to the remainder?

The Witness—I did not. I can very easily. I haven't the figures here, but I can give them to you.  
(Recess to 2 o'clock P. M.)

AFTER RECESS, 2 P. M.

EUGENE R. MAKRAY resumes the stand.

10 *Direct examination*—By Mr. Milton (continued).

Q. Will you turn your attention now, Mr. Makray, to the parcel west of Jacobus Avenue?

A. Yes, sir.

Q. Will you be good enough to pursue the same method that you did before recess time and give us the value before and after the taking?

A. The original value of the property before any interference or any construction or taking, was \$1,101,275.00. After the taking, the one hundred  
20 foot right-of-way strip, left the property in two separated parcels; one on the north side of the parcel which is to the top of the map containing 6.162 acres which, at its original value of \$35,000 an acre, would be worth \$215,670.00. That I have damaged to the extent of twenty-five per cent by reason of plottage destruction, taking, severance, presence of construction and interference with continuity of development. I have damaged that \$53,915.00, leaving the net value of the remaining portion of that \$161,753.00. The property lying to the  
30 south of the superstructure containing 22.928 acres, which at its original value of \$35,000 an acre would be \$802,480.00, this I have damaged to the extent by reason of the taking, severance, presence of the structure, interruption of the natural continuity, and development of the property, and loss of approach, which amounts to \$80,248.00, or a net remaining value for the portion south of the superstructure of \$722,232.00.

Making the entire remaining value of the property west of Jacobus Avenue \$883,985.00, or a difference in the value before and after of \$217,290.00.

Q. That is a value of the land taken plus damage of \$110,000, using round figures east of Jacobus Avenue, and \$217,000 west of Jacobus Avenue, or a total of \$327,000. But, as I have said, you said without reference to any damages arising out of the presence of the bridge pier.

Mr. Vickers—That is objected to upon the ground that if that is the witness' method of procedure in arriving at the before and after value of this property and the assessment of the damages for the taking and consequential damage, that that is not in conformity with the law as prescribed by the courts of our state. He must take all of the real estate and he cannot construct for his own purposes a different piece of real estate.

10

20

The Court—As the court understood the witness' answer before the noon recess, that \$327,000 included his opinion of all the damage to this property, and that in making up that opinion he considered those other matters as being without value, that is to say the building and the construction on the place; isn't that true?

The Witness—The original value?

The Court—Yes.

The Witness—But the damages do not reflect any damage for the interrupted use of the water front?

30

The Court—I think, Colonel, that is of some evidential force, otherwise it would be impossible to get it. There may be a real estate expert that can assess the damages for the interruption of the use of the wharf. I don't know whether that requires an expert or not. But he can only testify to values, to the real estate values—

Mr. Vickers—As I understood the witness, and perhaps I have misunderstood him. He does not take into consideration the value of the wharf before or after. Well, the wharf is a part of the real estate.

The Court—That was not involved either way in these estimates; didn't you say that?

The Witness—No, I have not said that.

10

Q. (Question repeated as follows: "That is a value of the land taken plus damage of \$110,000, using round figures east of Jacobus Avenue, and \$217,000 west of Jacobus Avenue, or a total of \$327,000. But, as I have said, you said without reference to any damages arising out of the presence of the bridge pier.")

20

Mr. Vickers—That brings out clearly now that the witness predicates his entire testimony on a theory which is not permitted by the courts of this state.

The Court—What pier do you mean?

The Witness—I mean the pier that is obstructing the use of the water front, that was constructed about the behest of the state highway.

Q. The bridge pier?

A. The bridge pier.

30

Q. Does the figure of \$317,000 include or exclude any damage arising out of the existence in its present location of the bridge pier?

A. It does not include any damage for that.

Q. Addressing your attention now to the bridge pier. Can you say whether or not the existence of the bridge pier in its present location in your judgment causes damage to this real estate owned by the appellant?

Mr. Vickers—That is objected to upon the ground that the witness by no testimony that

he has given nor by any analysis of his figures that he has given, is either competent or qualified.

The Court—I thought you admitted his qualifications.

Mr. Vickers—As a real estate expert. On what he has formed his basis, he has eliminated expressly the dock and the marine facilities. How can he express an opinion as to whether something which affects the marine facilities is a damage or a benefit?

10

The Court—I don't know. He is not asking him that. He is asking him how it affects the land.

Mr. Milton—Exactly.

Mr. Vickers—Whether it creates a damage. If he has not considered the marine facilities—

The Court—He has not thus far got to that.

20

Mr. Milton—That is exactly what I am coming to.

The Court—As a real estate expert, can you say in what manner it has affected the land?

The Witness—It damages the remaining land behind the water.

Q. To what extent?

A. It damages the land around Jacobus Avenue and the river to the extent of \$5,000 an acre.

Q. And east of Jacobus Avenue?

A. East of Jacobus Avenue to the extent of about four or five per cent or \$1,000 an acre.

30

The Court—What do you add to that?

The Witness—The total figure, that is to say, if the dock is not extended to absorb the pier, the damage is \$512,035.

The Court—What is that you assign for the pier?

The Witness—On the portion east of Jacobus Avenue \$38,620; on the portion west of Jacobus Avenue, bordering the river, \$145,450.

The Court—That is \$184,070?

Mr. Milton—Yes, sir.

The Court—So that pier item alone is \$184,070; is that right?

10

The Witness—Yes, sir.

The Court—Or a total of \$512,035?

The Witness—Yes, sir.

Q. I want to direct your attention to a sale, Mr. Makray, in the area as shown upon Exhibit P-1, which is an aeroplane view; have you taken into consideration the sales of real estate?

20

A. In the entire immediate neighborhood of this property, that is, from a line at the northerly end of the photograph, that is to the left as you face it, from the Pennsylvania tracks south to the end of the peninsular which is beyond the corner and going out into Newark Bay, between the two rivers, the Passaic and Hackensack Rivers; also sales of property on the west bank of the Passaic River as shown in the lower left-hand corner of the photograph, and sales on the east bank of the Hackensack River which is shown toward the top background of the picture. I have examined all the sales in that immediate neighborhood within a period of the last ten years.

30

Mr. Vickers—That is objected to as an improper method of acquiring knowledge, examining the sales.

Mr. Milton—I don't quite understand the basis of the objection.

The Court—Well, the latter part of his answer may be stricken out.

Q. The sales which you have taken into consideration are those which have taken place within the past ten years?

A. They are.

Q. Is the area which you have included within your consideration composed of lands which are generally about the same physical characteristics?

Mr. Vickers—I object to that upon the ground that general comparability is not recognized as a proper standard of comparison.

10

The Court—Are they comparable?

Mr. Vickers—That is the point.

The Court—Are they comparable, those you took into consideration?

The Witness—Only in contrastability.

The Court—What do you mean?

The Witness—They are less valuable than the property under consideration, not having the same facilities, railroad, street frontage, sewer and water.

20

The Court—Are there any comparable properties?

The Witness—There are no properties distinctly comparable to this sold within a reasonable time of the condemnation.

The Court—Are they substantially comparable?

The Witness—They are substantially comparable to the degree that you can work from that base up.

30

Q. I direct your attention, Mr. Makray, to a plot of land on the west bank of the Passaic river immediately opposite the land in question here, opposite the Lincoln Terminal, and so that you may readily find it in your sales, I am referring to this property purchased by the Public Service Corporation. Will you describe the physical characteristics of that property?

A. Well, that property is located on the west bank of the Passaic river, fronting on the Passaic river, without any street or road frontage of any type, requiring from six to eight feet of fill when it was sold and without riparian grant at the time it was sold and no other improvements such as the Lincoln Terminal property possesses.

Q. For example drainage and sewer?

A. No sewerage.

10 Q. What access is there to it?

A. That property may be reached by a cinder road that runs alongside of the rear part of the Ledue plant which is contiguous to it on the south, it being about half a mile on the Lincoln Highway, that is if you were approaching the Lincoln Highway back in about a quarter of a mile to the property of the Public Service Company and down along the fence of the Public Service Corporation to within about one hundred yards of the river, from which  
20 point it has to be reached by walking along loose ground.

Q. Did you say whether it was filled or unfilled?

A. It is unfilled.

Q. When was that last sold, and by whom to whom?

Mr. Vickers—That is objected to upon the ground that the property is manifestly not comparable in any form or shape.

30 The Court—The witness said it was substantially comparable.

Mr. Vickers—Not this property. He says that the property would have to have about six or eight feet of fill and has no facilities such as the Lincoln Terminal, no streets except a cinder road, no sewer, none of the facilities whatever, and no riparian grant.

The Court—What do you include in order to make a comparison? You have to add all of these other items?

The Witness—You would have to add these other items.

The Court—How would you ascertain the cost of fill?

The Witness—That would have to be ascertained.

The Court—And the other cost?

The Witness—And the other cost. And the cost of the riparian grant and getting the street frontages unavailable.

10

The Court—Mr. Milton, doesn't that destroy the comparison?

Mr. Milton—I don't think so, sir. If the witness were endeavoring to establish the value of the property in question here, based upon a sale of this property at a higher figure, then I grant you that the same objection would be good.

20

The Court—How do you know it is not a higher figure. He has not said so yet.

The Court—The Court will ask a question. Does the value which you placed per acre upon the property in question exceed the value of the property you are just referring to without facilities?

The Witness—I am afraid I don't understand the question.

The Court—You have placed a unit value of \$25,000 an acre, haven't you, before the taking?

30

The Witness—\$35,000.

Mr. Milton—\$35,000 for the property west of Jacobus Avenue.

The Court—You mean that this property you are entitled to compare with your property, the Lincoln Terminal property?

Mr. Milton—I mean that the witness stated that the property of the company west of Jacobus Avenue was worth \$35,000 an acre.

The Court—Yes. Now, this property you are endeavoring to compare, taking it as is. What is the value or the unit value that you placed on that, would it be more or less than the value you placed on the Lincoln Terminal property?

10

A. As is, it would be much less.

The Court—Will you tell me, Mr. Milton, how do you get the comparison?

Mr. Milton—That is for the jury, the comparison is there; so far as location is concerned, general physical characteristics. I think the witness should have been, should be permitted to testify if they sold for less than the value he placed upon filled property with drainage, with water and fire protection, which had a higher value. I think the witness should be permitted to testify to that sale.

20

The Court (after further argument)—I will sustain the objection.

Mr. Milton—Your Honor will allow me an exception.

The Court—Yes.

30

Q. The area, Mr. Makray, between the Hackensack River on the east and the Passaic River on the west, the Lincoln Highway on the south and the tracks of the Pennsylvania Railroad north, will you say, please, what the trend has been in the real estate values in that general area in the past ten years?

A. Decidedly upward, especially since 1926 and 1927.

Q. What factor or what reason has there been in your opinion, for the decided increase since 1926 and 1927?

A. There are two major factors, the chief one being the construction of the Holland Tunnel in 1927, the opening of the tunnel, with its more immediate factor that on January 13, 1929, the connecting road between the approach to the tunnel and the Lincoln Highway, running from the foot of Communipaw Avenue to Newark Avenue where the tunnel approach ended was opened, greatly facilitating the traffic from that point on Newark Avenue to New York City; and also the completion in 1929 of the connecting links of route 25 running south from Lincoln Highway at a point about half a mile west of this property to Elizabeth and by way of Woodridge to points south and west. The second factor being that this entire peninsular which is pretty well supplied with railroads, river and roads that within the last seven years has been diminishing in the available amount of acreage. The Western Electric Company bought up considerable property and developed it. The Public Service has bought considerable property and taken it off the market.

Q. That is on the Hackensack River and in there?

A. Yes, the lots behind it running up to Jacobus Avenue. The Pennsylvania Railroad has bought up land alongside of its right-of-way. In other words there is there now or as of 1930 a very small amount of available acreage either for purchase or development. Of course, that decrease in the supply has had a natural tendency to make the remainder that is available very much more valuable than it has been previously.

Q. Are you able to say off hand, generally, approximately the extent of acreage between the Hackensack River on the east and the Passaic River

on the west, along the Pennsylvania Railroad on the north and the Lincoln Highway on the south?

A. I should say that there is between five hundred and five hundred and fifty acres in that area.

Q. What percentage of that area is available for purchase or improvement?

Mr. Vickers—That is objected to on the ground that it depends on a great many factors—

10

The Court—I will permit that.

Mr. Milton—I withdraw that.

Q. How much of this area, Mr. Witness, do you happen to know is owned by the Public Service Corporation? Can you off hand make up a table for us showing the ownership of the various pieces of land in that section?

A. Yes, sir.

20

Mr. Milton—All right, we won't waste your time or the time of the jury.

Q. Do you know of any land in that section I described between the Pennsylvania Railroad on the north, the Lincoln Highway on the South, the Hackensack River on the east and the Passaic River on the west for sale?

A. I do.

Q. How much is it and what is it?

30

A. Fifty-four acres belonging to the Hoboken Land and Improvement Company with a comparatively small frontage, I mean as to the total acreage, on the Lincoln Highway, a frontage of about 360 feet on the west bank of the Hackensack River, mostly inside land, the greater portion of it unfilled and without improvements, is on the market at the present time.

Mr. Vickers—I object to the witness stating the price.

Mr. Milton—I don't intend to ask him. He knows better.

Q. So that out of a total of 550 acres there are only approximately 54 that you know of for sale?

A. No, I would not say that. That is the only sizeable portion. There may be small portions that are for sale but that is the only sizable piece that is available for industrial development.

Q. What other sales other than the ones to the Public Service on the west bank of the river have you taken into consideration?

Mr. Vickers—I think that question should be limited to comparable property.

10

Q. I mean, of course, of comparable property.

A. The property sold in 1925 by George A. McIntosh to the Mexican Petroleum Company, a strip of 2.1 acres lying south of the Lincoln Highway, and with a frontage on Doremus Avenue on the Passaic Avenue; at the time that property was sold it had 205 feet frontage on the Passaic River with no riparian grant, and it was sold for \$34,000.

Mr. Vickers—I object to the witness stating the price until the question of comparability is decided.

20

The Court—What is the physical comparability?

The Witness—That property is comparable to this property, by that I mean similar in size except it was not quite filled to the extent that this was filled, but it had street frontage, water frontage, and it was—well, it was just a very short distance south of the Lincoln Terminal property.

30

The Court—The court will permit the question.

Mr. Vickers—May I pray an exception?

The Court—You may have an exception.

The Witness—The property in 1925 was sold for \$34,500 or two and one-tenth acres at a price of \$16,430 per acre. That was without the ripper.

Q. Is there an established price for ripper on the west side of the Passaic River?

A. At that point, yes, sir.

Q. What is it?

A. \$125 per running foot.

Q. And wasn't the frontage on the Passaic River?

A. Two hundred and five feet.

10 Q. And applying to that frontage the factor of price, what does it make the grant?

Mr. Vickers—That is objected to upon the ground that it violates the same principle of law, that the witness is now taking a piece of property not comparable because it is not filled and because it has not a ripper and he is now saying that he could get the ripper at \$125 a running foot on the property, and it would have been worth, at the time it was sold, so much money.

20

The Court—As the court understands it, the court is permitted to allow a witness to testify to lands if they are substantially comparable. You cannot get the same parcel of land, you cannot get the same land. Nature doesn't make land like that except out in the prairie. For the sake of convenience, at \$125 a foot, what would that bring?

The Witness—The cost of the ripper would be \$25,625, or a total cost of the property of \$42,055.

30

The Court—How much an acre?

The Witness—Roughly about \$19,000 an acre, with the land that is under water taken at the same average as the land above water.

Q. And that was in 1925?

A. 1925.

Q. What other sale have you taken into consideration of comparable property, of course, keeping that in mind?

A. The sale in January, 1930, by Carlin Miller to Gulf Refining Company of a piece of property about 200 feet north of the property just testified to, fronting on Doremus Avenue and running to the Passaic River, a plot of ground containing .67 of an acre, with no riparian grant that was sold for \$17,000. On that property was an old boathouse which had very little value, if any, and after examining the property I have allowed or calculated that the property could have been sold at the rate of \$21,000 per acre as reflected by the price of \$17,000 for the entire piece. That also is without riparian grant.

10

Q. What others?

A. Those were the only sales of comparable property that would come within the restriction of comparability.

Q. Within the past ten years have there been any sales of comparable property within the area of the Hackensack River on the east, and the Pennsylvania Lines on the north, the Passaic River on the west, and the Lincoln Highway on the south?

20

A. There have been some sales of property within the last ten years.

Q. Of comparable property?

A. Comparable property.

Q. What are they?

A. Starting in 1924, the Indian Refining Company sold a plot of ground containing six and a half acres running between Jacobus Avenue and the Passaic River to the Valentine Company for \$95,000, including some old buildings that were on the property. That ground possessed the riparian grant. In 1924 that was sold at the rate of \$14,530 per acre.

30

Q. What else?

A. In 1924 the Newark Factory Sites Corporation sold to the Valentine Company a plot of

ground in the same immediate neighborhood running from Jacobus Avenue to the river, containing 7.93 acres at \$100,000 without the grant.

Q. First establish the price for the ground.

A. There was at that time a grant, I believe, that they subsequently purchased. All of this I am not sure, but with the grant price that would come to a unit figure of \$11,200 per acre.

10 Mr. Vickers—The same objection to this line of testimony.

The Court—Yes. I understand it is just simply confined to the ground which appears to be established at a uniform price. There is no speculation about that because there is no occasion for one witness to go into it and then another.

Q. Any others, Mr. Makray?

20 A. Yes, the sale in 1923 by the Riverside Steel Casting Company to Cirra De Paseo Copper Company, a piece of property directly north of the Lincoln Terminal property, fronting on Jacobus Avenue without any water frontage, just running west of Jacobus Avenue and it was sold for \$25,500. This property at the time of the sale had on it some old buildings that had been built by the United States Government for an experimental station which the Riverside Steel Casting Company subsequently purchased direct from the government; so that that sale reflected a value of \$26,000 per  
30 acre without buildings.

Mr. Vickers—How much property?

A. That was .983 acres.

Q. That was February, 1923?

A. That is right; that property is contiguous or now is a portion of this property.

Q. Just let me indicate on the map where that is, will you? It is part of our property now?

A. Yes, sir.

Q. The north end of it?

A. I will point to it if you wish. It is this portion directly north of the super-structure (indicating).

Mr. Vickers—And west of Jacobus Avenue?

The Witness—Yes, sir.

Q. Without any water front?

A. No, sir. In 1924 the West Side Realty Company sold to the Community Realty Corporation a piece of ground on the southwest corner of Jacobus and Pennsylvania Avenue. Pennsylvania Avenue, for your information, is a street that is laid out parallel to the Pennsylvania tracks in the left hand side of the picture. The ground contained approximately one acre, 43,545 square feet, without a water frontage. It was sold for a price of \$17,500, which substantially reflects \$17,500 an acre. This is also in 1924. Those were the only two comparable sales that I have except the resale by the Riverside Steel Casting Corporation of the property mentioned previously to the Terminal Corporation, or rather it was made to the Lincoln Terminal Corporation at a price of \$30,000, but that sale conveyed also the buildings that had been purchased from the government for \$1,500.

10

20

Mr. Vickers—What is the date of that?

The Witness—That was in 1930. I haven't the exact date here. I think Mr. Lee could give it to us.

Q. How much acreage was involved in that?

30

A. About one acre, .983 acre.

Q. That sold for \$30,000, including buildings which had been purchased for \$1,500.

A. That is right.

Q. That was by the Riverside Steel Casting Company?

A. Yes, sir.

Q. Not by the Cirra De Pasco?

A. Yes, that is right.

Q. The Riverside sold to Cirra De Pasco and Cirra De Pasco sold to the Lincoln Terminal?

A. Yes, I have reversed the order.

Q. You have given us all of the sales that you think are comparable in that area. Are there any others south of the Lincoln Highway outside of this area which are comparable?

10 A. There are not. There is a sale of Ford to the Western Electric Company. That is the only sale that might be used as a comparable sale, but that included buildings and other appurtenances which would be figuring or segregating from the land value, I imagine, to show the fair land value.

*Re-cross Examination*—By Mr. Vickers.

Q. Why is it difficult, Mr. Makray, to give a comparative value between the land directly south of the land in question in this case and the land in question in this case?

20

Mr. Milton—I object to that upon the ground that it is based upon an unwarranted assumption of fact. The witness did not say that. The witness said that the sale to the Western Electric Company by Ford was complicated by the existence of buildings which makes it very difficult to compare. I don't remember his exact language, but he said it made it difficult to analyze.

30 The Witness—Yes, that is so. He said that affected its similarity, the buildings and the like of that.

Mr. Vickers—I withdraw the question.

Q. The land in question in this case had buildings on it? A. Yes, sir.

Q. And the land across the way that Ford sold to the Western Electric Company had buildings on it?

A. That is right.

Q. And other properties which you have mentioned had buildings on them, is that right?

A. Some.

Q. Well, in this case in question here, you were able to determine what to do with the buildings, were you not?

A. I gave it for you to see.

Q. I want to know whether you can give us——

A. I can.

Q. Wait a minute. I want to know whether you can give us the land value of the land sold by Ford to the Western Electric Company in 1920 if that is the correct date? 10

A. The land value reflected by that sale, as I have analyzed it for my own purposes runs to over \$40,000 an acre.

The Court—Isn't that this very thing you mention?

The Witness—Excluding the buildings.

The Court—You have objected to that. Didn't you say that the buildings, the Terminal buildings, did not make any difference? 20

The Witness—That is right.

The Court—The buildings would not change the value?

Mr. Vickers—He has treated it as intact.

The Court—No, he has taken the land as it was. He says the buildings are such in his estimation that they don't change the value one way or another. 30

(To the witness): Isn't that what you said?

The Witness—My value of \$2,000,000 is the bare land value of the property. The buildings are there but I don't feel that if the property was sold that the buildings as they exist today would enhance the price of the land considerably enough to make a difference.

The Court—Why cannot you do that with the Ford buildings?

The Witness—The buildings on the Ford property are of an altogether different type. They are very valuable. There is 700,000 square feet of building space on the Ford plant.

Q. How about the others?

10 A. I have not figured it exactly. I know off-hand that there is approximately 250,000 square feet of buildings, stated roughly, as I recall it. There may be more or a little less, but the buildings are an entirely different type than on the Ford plant.

Q. And how many acres are there in the Ford plant not occupied by any buildings?

A. The majority of the property is unoccupied.

Q. Unoccupied by any buildings. Can you point out any land value upon the land unoccupied by any buildings in the Ford plant?

20 A. You mean Ford's sales price?

Mr. Vickers—I withdraw the question.

Q. Analyzing the sale from Ford to Western Electric, can you distinguish between the value of the land with these valuable buildings upon it and the great proportion of land which has no building upon it?

30 A. Well the land in the Ford plant that is occupied by buildings would have the same value as the land not occupied by buildings?

Q. The same value?

A. Sure.

Q. So that in your opinion, in the Ford plant, despite the fact that these are very valuable buildings that are on it, you say that it is identical with the situation of the Lincoln Terminal and you disregard the buildings?

A. No, I say that in spite of the fact that there are buildings on some of the land in the Ford prop-

erty, the land upon which these buildings stand and the land value are not any different than the vacant land, that the value of the land is uniform.

Q. And what you say then is this: that the land unoccupied by any buildings in the Ford tract immediately across the way from the Lincoln Terminal property is worth \$40,000 an acre?

A. I didn't say that, no.

Q. What did you say it is worth?

A. I analyzed the sale as you asked me to do. I have allowed three dollars a square foot value for the buildings, or 700,000 square feet of buildings. I have valued the type and the value for the condition of the water front that is developed and kept usable; I have subtracted from the sales price that, and divided the remainder by 83 acres conveyed, and the result is over \$40,000 an acre.

10

Q. And does that contemplate these marine facilities as they existed at the time of the sale from Ford to Western Electric Company?

20

A. That contemplates every advantage the land had at the time of the sale.

Q. That is a piece of property, is it not, which is bulkheaded by stone or cement bulkhead and filled in property up to the channel?

A. That is correct.

Q. In the valuation which you have placed upon the land in question in this case, have you arrived at your basic value of \$35,000 an acre for the land west of Jacobus Avenue considering that it is land with marine facilities and a dock usable for wharfage?

30

A. I have.

Q. Then in your figure of value before anything was done by the Highway Commission, before any land was taken, before there was any abutment there, you took all of the facilities into consideration, didn't you?

A. I did.

Q. So that your value of \$2,146,250 was the value in your opinion of the entire tract of land with all its facilities as of the 20th day of September, 1930; is that correct?

A. That is correct.

Q. And then you gave an after-value of the property, that is to say after the taking and you said the same property was worth \$1,858,285; is that right?

10

A. Only if the dock is built out to absorb the pier, it will be worth that.

Q. So that you are not able to give this court and jury an opinion as to the after-value of the property, after the taking by the state, on the 20th day of September, are you?

A. Certainly I am.

Q. How much is it and how did you arrive at it?  
The Court—What is that?

20

The Witness—The value of the property if it is left with the pier sticking out in front of the dock line, will be \$1,634,215.

Q. You have just arrived at or compiled that by taking the same total of your damage and deducting it from the \$2,146,250; isn't that so?

A. That is correct—just a minute—surely.

30

Q. When you said on your direct examination originally that the before-taking value was \$2,146,250 and the after-value, after the taking was \$1,818,285, you did not mean that you had valued the same thing and nothing more after the taking than you did before, did you?

A. That is an awfully hard question. I am not sure that I understand that.

The Court—Do you understand that?

A. I am not sure.

Q. Mr. Makray, you know what the before and after value is, don't you?

A. Yes, sir.

Q. You have testified to it many times in court?

A. Yes, sir.

Q. And you gave on direct examination the before and after value and the two figures which I have quoted respectively are correct, are they not?

A. That is correct, I did give them.

Q. Now I am asking you whether the figures for the after value were the figures of the value of the remaining land after the state had taken out this strip, together with its consequential damages by reason of the taking? 10

A. No, as I said at the time I give that figure, that figure included only damage to the real estate without the damage by reason of interruption of the water front, because if the dock is built out to absorb the interruption, that resultant damage will be cancelled, the damage that I put on later.

Q. How do you know that?

A. Because the land on the water front will then be even around there and the natural use of the water front with the docking of vessels can once more be enjoyed by the property owners. 20

Q. And what do you know about the value of dockage for transportation facilities?

A. I have been in industrial property for the last twelve years and I have carefully noted the items that go to make up value in industrial valuations and I must know that as a man who now and then attempts to sell property of that type, definitely know that as a real estate man, to know the items that will make the value of the property, so that I can properly sell it. 30

Q. Have you ever had a piece of property that had 1,240 feet of wharfage on the Passaic River or on any river in the Port of New York?

A. You mean have I ever sold it?

Q. Have you ever had it to deal with except this piece of property, this particular property?

A. Not with the wharfage, no.

Q. And yet you have endeavored to eliminate from the after-value of the property something of which you, as a real estate man, have no knowledge whatsoever?

A. Oh no, not at all; it does not take a real estate expert to see that this damage is done. Why an ordinary layman can go and see that that is a very formidable obstruction.

10 Q. What do you know about the businesses that are carried on there?

A. I have negotiated with the Lincoln Terminal people.

Q. For what?

A. For sites that they had to rent.

Q. For marine facilities or for storage or land?

A. For all the facilities that they had.

Q. Won't you just please answer the question. Did it involve marine facilities or not; yes or no?

20 A. By direct mention, no.

Q. In other words you have negotiated for the kind of storage that for the last three years has been carried on there, which involved trackage into the plant and out of the plant and loading and unloading from lighters, isn't that so?

A. Yes, sir.

Q. Nothing else?

A. No.

30 Q. Can you or can you not give us from your knowledge and experience now and not from some hearsay, the before and after value of this property, taking the property as it was on the 20th day of September, 1930, with the taking by the state and the consequential damage in full to the remainder?

A. Yes. The value before the taking \$2,146,250. The value after the taking, immediately after the taking, with all its damage, \$1,634,215.

Q. You have just taken a figure that has been given to you as to the cost of putting a new dock out there?

A. I have done nothing of the sort.

Q. Then how do you arrive at the difference between \$1,834,215 and \$1,818,285?

A. If the marginal dock is not built out to the pierhead and bulkhead line so as to obliterate the obstruction to the water front use, in my estimation a property that lies between the Passaic River and Jacobus Avenue is damaged by reason of the restriction of marine facilities of the property to the extent of \$5,000 per acre. That is to say that the property will sell to a user for \$5,000 an acre less than it would if uninterrupted there, than it would if there was an uninterrupted water in there. The reflected damage by the same reason to the property east of Jacobus Avenue is one thousand dollars an acre, and that is the difference between those two figures.

Q. Have you ever bought or sold or do you know of any sale of any property similar in character, where the dock or pier facilities were interrupted as in this case after the taking?

A. I have not.

Q. So that you have nothing but a guess as to the percentage of damage to the remainder by reason of this interruption?

A. Insofar as any real estate man's appraisal is a guess, yes, sir.

Q. You know, do you not, Mr. Makray, that in forming a base value for an estimate or appraisal, only comparable properties under the rule are permitted to be used; is that right?

A. Yes, that is correct.

Q. All of these properties that you have named and which have been called sales by Mr. Milton, in them is there any property of either the size of the

two properties combined in the Lincoln Terminal case, treating it as one tract, or the westerly portion west of Jacobus Avenue with the rail facilities, bulkheaded and wharfed and having the street frontage that the Lincoln Terminal property has?

A. The only one that could come within that classification is the Ford to Western Electric sale.

Q. And that is the one you did not use?

10 A. That one I did not mention because I knew you would object to it. I did use it in forming my opinion.

Q. But it is the only comparable piece of property that you did not enumerate in those, either brought out by Mr. Milton or by yourself. Isn't that so, in forming your base value?

A. That is the only one I did not mention.

Q. That you did not use?

A. Yes, that is right.

20 Q. And none of the other properties, either in size, available utilities, street frontages, fill on the land, wharfage and dock, compare with the property on the west side of Jacobus Avenue and involved in this case; is that right?

A. Throw out the Ford?

Q. The Ford isn't in. It is out.

A. None of the others are as valuable as this property. None of the others compare in size nor value to this property.

30 Q. Nor have they the utilities combined as above mentioned, isn't that so?

A. That is correct.

Q. And the utilities that I have referred to, such as streets or road frontage, dockage facilities, riparian grant, gas, sewer, water, electric light, whatever it may be, those are elements that enter into a value of industrial property and are those which go to make up comparability; isn't that so, Mr. Makray?

A. Well, it depends on how you define comparability.

Q. Suppose you do it?

A. A comparability in my estimation, of course that is merely my humble opinion, and it may be wrong. It does not always mean two pieces that are exactly like here for the purpose of comparison. Comparison can be made by contrast. Now then, when you attempt to value a piece of property of small value by pointing to a piece of property of great value, that is obviously wrong. But, where there are no comparable sales to compare to a piece of property that has a good value and you can point to a piece of property that is somewhat similar, but obviously of a great deal less value than the property you are trying to appraise, although the two are not exactly similar and they may even be said not to be reasonably similar, there is a contrastability because you do take property of a low value and say, here is the most recent sale, when this property was sold at so much money. It lacks these facilities, and they would add so much more to it and would work up a value from there. That is a good indication and every real estate man, any real estate man, all of them use it. All of them.

Q. The fact is, under the definition you have given us, you arrived at your comparable properties by contrasting property with another?

A. Where it is proper to do it.

Q. Where they are in contrast, you use them as comparable property?

A. Only where there are no comparable sales to be had, in your sense of comparability.

Q. In the legal sense?

A. I am sure I don't know what the legal sense is.

Q. You say then, because there was no comparable property in the legal sense comparable, you have been obliged to use property by contrast in comparison.

Mr. Milton—The witness didn't say any such thing. And he gave a list of sales of comparable property piece by piece and said his value was based in part upon those.

The Court—Well, the witness did not say anything about legal comparability.

(To the witness)—Do you say in the legal sense comparable?

10 The Witness—No, I told him what I thought my idea of comparability was.

Mr. Vickers—I withdraw the question.

Q. How is it that you overlooked the sale of this identical property in the period that you have referred to?

Mr. Milton—Which identical property?

Mr. Vickers—This property in question.

20 Mr. Milton—I object to that upon the ground that it does not appear that the property in question was sold in that period.

Mr. Vickers—It certainly does appear in the testimony in this case that the Lincoln Terminal bought it in 1928. Your entire interrogation was directed to the last ten years.

Mr. Milton—It does not appear that the Lincoln Terminal Bought this property. I don't know how it acquired it. It may have been acquired by purchase of stock or in any other way.

30 The Court—Ask him if it was sold. Was there a sale of this property in the last ten years.

The Witness—There was a sale of a portion of it.

Mr. Milton—By a receiver.

Mr. Vickers—Suppose you let me handle him.

Mr. Milton—Don't manhandle him.

Q. You don't know whether it was by a receiver?

A. I don't know.

Q. What portion of the property was sold and when was it sold?

A. A portion of the property, that now comprises the plot running between Jacobus Avenue and the river was sold to the company under an option made in 1921, that is, the property was under lease, a lease in 1921 by the Newark Plaster Company to Francis D. Schwaab, which lease contained an option that Schwaab could purchase this property for a price of \$750,000.

10

Q. Within what period of time?

A. Within a period of ten years.

Q. What is the date of the lease and option?

A. The lease was made in September, 1921.

The Court—How much would that be an acre?

The Witness—That would be at the rate, striking out the buildings—the buildings at that time were valued for insurance purposes at less than \$200,000.

20

The Court—How much an acre?

The Witness—For the land that would be \$17,-130 per acre.

The Court—Didn't that option include everything, buildings and land?

The Witness—Buildings and land.

The Court—And give us the option price per acre?

The Witness—That would be at a price of \$23,-400 per acre.

30

Q. Including how much acreage?

A. Including 32.106 acres.

The Court—Is that comparable to your \$35,000 an acre?

The Witness—Yes, as I said at the time.

Q. Is all of the property in question in that lease and option, property lying west of Jacobus Avenue?

A. Yes, correct.

Q. West of Jacobus Avenue?

A. Yes, sir.

Q. And taking in all of the buildings which are shown on this map in, too?

10 A. That is right.

Q. And any other property included lying east of Jacobus Avenue?

A. No, no property lying east. Total amount was thirty-two and a fraction acres.

Q. And the total was how much in money?

A. \$750,000.

Q. Do you know by the same token how much you have testified thus far, whether up to the twentieth day of September, 1930, the option in question was exercised?

20 A. I do not know the exact date upon which the option was exercised.

Q. And do you know how the Lincoln Terminal Corporation became the owner of the property that you have quoted throughout this case "our" property lying east of Jacobus Avenue?

A. Of my own knowledge I don't know that.

30 Q. Having searched ten years back and gotten all this information, don't you know whether there was a transfer or sale of the thirty acres lying east of Jacobus Avenue involved in this case?

The Court—It is only a little while ago that you objected to that question of the record being a competent source of information.

Mr. Vickers—The question comes on cross examination as to the accuracy.

The Court—Did you obtain this from other real estate brokers?

The Witness—Some from brokers, some from owners.

The Court—Did you then so obtain this as to easterly portion of the land?

The Witness—The easterly portion of the land from another broker and then in the last, the price, that is a matter of record.

The Court—Proceed; what is the answer?

10

The Witness—I know that the Lincoln Terminal succeeded the Schup Terminal Company in some process, I don't know how.

Q. You don't know anything about the purchase price?

A. Oh, no.

Q. You have made no inquiries from the owner, Schup Terminal Corporation, nor gotten any records as to when it was bought, how much land was bought or the price paid for it although this was in 1928 or after; is that right?

20

A. It was around 1928 I imagine. I don't know the details of the transfer.

Q. And have made no inquiry?

A. No, sir.

Q. Neither of the land owner in this case?

A. No.

The Court—The admissibility of this evidence is based upon the statutory enabling act of 1931 permitting an expert to inquire of purchaser or seller?

30

Mr. Vickers—Yes.

The Court—That does not cure the defect or objection as pointed out in the Brokaw case.

Mr. Vickers—It does not give any until the Court of Errors has passed upon it. We have got to take it as the law of the State,

that a man may in that manner get information.

Q. In your appraisal of this land as land have you or have you not taken into consideration that this was a going concern operating a storage warehouse and terminal.

A. I have considered it to the extent of reflecting in any value in the real estate for that reason.

10 Q. It is a well recognized principle, is it not, in your profession that where a piece of property is utilized by rental or otherwise, that the rentals are a criterion of values?

A. Where the property is a purely income producing property, yes, sir.

Q. Why do you say purely income producing property; what do you mean?

A. The income producing property that is being capitalized there through the leases. They may or  
20 may not be fully developed.

The Court—They may be fully developed, for instance say it was a gambling place.

Q. You of course have had access and knowledge of the leases in existence on this property as on the twentieth day of September, 1930?

A. I have.

Q. You have not taken into consideration, have you, the rental receipts of those leases in forming your basic estimate of values?

30 A. I have not used that as the sole basic estimate of my values.

Q. Have you used it at all?

A. I have considered rentals in it.

Q. Then, when you considered rentals, Mr. Makray, you did consider buildings?

A. No, sir.

Q. So you considered rentals and although you told us, for instance, in one instance about twenty-

one thousand feet of space on the first floor at the northern end of building thirty-five that was used, you have considered rentals but not the value of buildings, is that right?

A. I was about to finish my answer before to the question about the rentals and the vacant land; that was all.

Q. Have you considered the rentals of the buildings?

A. I have looked over the rentals of the buildings; yes, sir. 10

Q. And have you reflected in your land values then the rental value of the buildings?

A. No, sir; I have not.

Q. So that you know of them and discredited them for the purpose of your appraisal, is that right?

A. That is not my method of valuing industrial property.

Q. You discredited the rental value? 20

A. The rental values of the building; yes, sir.

Q. You have spoken with regard to this property of severance by the taking, have you considered that taking as severance, severing the parcels north of the highway from the parcels south of the new highway?

A. There is a severance; yes, sir.

Q. You have regarded that as a severance.

A. Yes, sir. 30

The Court—Absolutely.

The Witness—Not absolute, no. There is ingress and egress over the lands within the right of way but there is a one hundred foot strip dividing the title.

The Court—You did consider the means of ingress and egress?

The Witness—Yes, I gave full weight to that. The damage would have been higher had it not been for that.

Q. Would have been what?

A. Higher.

Q. Can you give a percentage of values to the right of ingress and egress over the lands in question in this case as against complete severance?

10

A. I don't believe I can do it off-hand because I have not valued as of a complete and stonewall severance.

Q. Can you approximate it?

A. I would not dare to do that, sir. I could figure it for you if I had time but I would not do it off-hand.

*Re-direct Examination*—By Mr. Milton.

20

Q. Has the property formerly of the Ford Company any frontage upon the Lincoln Highway?

A. It has not. It is separated from the Lincoln Highway by the old Morris Canal. It still has access over it at two points to a bridge running from the highway into the property over the canal bed but it does not actually front on the highway.

Q. It does not front upon the highway?

A. No.

30

Q. Do you know what type of buildings are on the Ford Plant, and on the Ford land?

A. Steel construction buildings of a high industrial type, a very latest construction.

Q. Why didn't you mention the Ford sale as one that you took into consideration in reaching the value?

A. Because there are lots of sales that real estate men can take into consideration in forming the value which will not be admitted usually in court, and my experience has been such that I was positive

that I would not dare to mention the Ford sale although it is a very governing factor.

Q. Because of the complication of the buildings, is that right?

A. That is right.

(Witness excused.)

---

CAPTAIN JOHN H. BOESCH, called as a witness for the property owners being first duly sworn, was examined and testified as follows:

10

*Direct Examination*—By Mr. Milton.

Q. What is your business?

A. My business at the present time, I am serving with the New York Board of Underwriters.

Q. And prior to that what did you do?

A. Prior to that I have been a master in the Naval Auxiliary Service for over six years. I hold an unlimited license. I have also been a superintendent at a lumber terminal for Yake and Company and I have been a superintendent of pier nine, pier twenty-two and pier twenty-three, Brooklyn.

20

Q. And what size vessels have you operated under your master's license?

A. Under my license up to twenty-one thousand tons displacement.

Q. And in length?

30

A. In length, the greatest length was five hundred and forty feet long.

Q. And what was her name?

A. U. S. S. Orion.

Q. And what other big vessel that was at the Lincoln Terminal?

A. One, the Amalianborg.

Q. What about the Essex?

A. I did not take her.

Q. Where was the Amalianborg berthed?

A. It was berthed at north of Building 35.

Q. And when was that?

A. That was in October, 1927.

Q. Did you or did you not have any difficulty in berthing or discharging the vessel?

A. No, sir.

Q. And when were you last at the Lincoln plant?

A. I was last there February 8th.

10

Q. Of this year?

A. Of this year.

Q. And what changes were there that you noticed since you took the Amalianborg there?

A. I was very much surprised—

Mr. Vickers—I object to the surprise.

The Court—Outside of the surprise?

The Witness—I noticed there were two concrete piers extending beyond the wharf line about, I should say, one hundred feet from Building 35.

20

Q. And would it be possible in your judgment to dock the Amalianborg there now?

A. You could not dock a vessel there. It would be more hazardous, you would not get the same operating conditions as you would before.

Q. What about discharging her?

A. Discharging, you could not possibly get the same operating conditions of discharging with the piers as they are.

30

The Court—What is the difference, Captain?

The Witness—The difference is in the vessel docking having the projection creating a hazard and a vessel coming alongside, would require more assistance in docking the vessel than otherwise.

The Court—It would use one or two more tugs?

The Witness—Outside of one or two more tugs, depending on the weather conditions—

The Court—What about unloading and loading?

The Witness—Unloading and loading, the piers are permanent projections which will not permit a vessel to be held along the pier. And that would be a hazard to the discharge of the vesesl which is considered a very necessary part when you have open cargo.

The Court—And what limitation has been placed on the operation by the construction of the piers?

The Witness—I don't quite understand.

10

The Court—You made a general statement about the difference. What is that difference, give us particulars of it.

The Witness—The main point is the vessel could not be held long in order to discharge the cargo.

The Court—He could not get in entirely?

The Witness—When she was in the berth, she would remain at the one berth and she would have to be completely discharged there. Attempting to discharge her, or take the vessel around on the other side, he would be unable to discharge all the hatches, which would also necesitate a longer discharge.

20

*Cross Examination*—By Mr. Vickers.

Q. Captain Boesch, you say that when she is once berthed she could stay where she is, and they would handle her?

A. Yes.

30

Q. That is the usual thing, when a vessel is unloaded or loaded here?

A. Absolutely not.

Q. It is not?

A. An open berth is more advantageous than a berth where a vessel cannot move at all.

The Court—An open berth is one where a boat can be moved back and forth?

The Witness—Yes, sir.

The Court—And when the length goes into her dock—

The Witness—That is an entirely different question of operation; yes, sir.

The Court—That is because of the way it goes back and forth?

The Witness—Yes, sir.

10

The Court—And without going up and down it would be more desirable to have it so that you have not to pull it up and down?

The Witness—Yes, sir.

Q. How far north of the north end of Building 35 did the Amalianborg berth when she came in?

A. When she came in, she was berthed, to my recollection, just about where the northern pier here would be, just about where the northern pier was which is at the present time there.

20

Q. Would that be up stream or down stream?

A. Here, down stream.

Q. And would her stern be up here?

A. Her stern would be north.

Q. Looking at exhibit P-2, this is Building 35 on here. She would be near the northerly end of the property, is that right?

A. Yes, sir.

30

Q. And you took up, when the vessel berthed there, approximately the entire space between the northerly end of Building 35 and the northerly property line, is that right?

A. We took up the space of the length of the vessel.

Q. And that is 540 feet, didn't you say?

A. No, sir; I didn't say that.

Mr. Milton—That was a different vessel.

The Witness—If I remember rightly she was only about 320 feet.

Q. Well as a mater of fact she was 330 feet long, is that right? Is that your record of it?

The Witness—Yes, sir.

Q. And your tonnage was 2,864, net 1,690 tons, is that right?

A. Yes, sir.

Q. That is the boat?

A. Yes, sir.

Q. She was approximately 47 feet wide?

A. Yes, sir.

10

Q. And you tell this court and jury now, will you, whether that boat could be berthed advantageously in four hundred some odd feet remaining north of the northerly line of the bridge pier?

A. That is the pier stands with these projections.

Q. With the remaining dock as in that area north of the pier that is in the river.

A. This vesel can be docked within 400 feet, as the vessel is only 330 feet. There is a great hazard of the bridge, in docking, that the vessel will have that hazard and it will necessitate extra precaution, more caution.

20

Q. What is the hazard?

A. The hazard is this projection here. You go up stream and you are working at that dock, you are 330 feet long and you have the boat in a distance of 400 feet, depending on your weather elements, you certainly will not attempt to put that vessel in here. With that great projection. It will be necessary for you to have other assistance. There is no man would attempt to dock a ship with that stone projection sticking out there, putting a 330 foot boat in the limited space of 400 feet.

30

Q. Would it make any difference if there was a fender on the pier?

A. You are diminishing the hazard very slightly.

Q. So that it makes little difference whether it is a solid span of concrete or is a pile or lumber fender?

A. I will admit a pile fender is softer than a concrete fender.

Q. That was a lumber ship?

A. That was a lumber ship; yes, sir.

Q. Did she come in on high tide?

A. She came in the afternoon, high water, I think so.

Q. And settled down in the mud?

10 A. Well, whether she settled down in the mud or not—she might have settled in the little silt.

Q. Silt is mud?

A. No, we don't term that as mud.

Q. How long was she there?

A. She was there, I don't know exactly. I forget the exact number of days according to the records, but you have the exact time there on the chart.

Q. Did you ever have to wait for high tide to come off the bottom?

A. No, sir.

20 Q. When you lightened her, how much water would she draw?

A. It was eighteen foot six, if I remember rightly as you came in shore, around eighteen feet six.

Q. And light how much?

A. I don't remember her light draft because they put in water ballasts when the cargo was coming out.

Q. You don't put the water cargo in?

30 A. It takes eighteen feet six when she is floating, otherwise they would not be able to dock her.

Q. When you say that, Captain, at the time you docked this vessel she was floating and had a draft of eighteen feet?

A. I think that is what her draft was.

Q. You were the master?

A. I was the master of the ship.

Q. And you piloted her?

A. I was superintending her for F. Yaka and Company.

*Re-direct Examination*—By Mr. Milton.

Q. And the ship was berthed between the north bridge here and the north end of the property?

The Witness—Yes, sir.

(Recess to October 15, 1931, 10 A. M.)

---

October 15, 1931, 10 A. M.

(Met pursuant to adjournment.)

10

(By stipulation of counsel it was agreed that the case proceed with eleven jurors, one juror not reporting.)

---

DAVID HOUSTON, called as a witness for the property owners, being first duly sworn, testified as follows:

20

*Direct Examination*—By Mr. Milton.

Mr. Milton—I assume Mr. Houston's qualifications are admitted?

Mr. Vickers—As a real estate expert.

Q. Mr. Houston, you have examined the property of the Lincoln Terminal Corporation?

A. Yes, sir.

Q. How long have you known that property?

A. For the last twelve or thirteen years.

Q. You examined it for the purpose of testifying here with respect to the value of the land taken and the damage resulting therefrom?

30

A. Yes, sir.

Q. Will you please state what figure you placed upon the land taken and the consequential damages therefrom, please, and state how you arrived at the figures?

A. First of all I will give you the value of the whole property of the Lincoln Terminal Corpora-

tion. \$2,292,975 I value the remainder after the taking at \$1,830,489, making the value of the part taken and the damage to the remainder \$462,486.

Q. How did you arrive at the value of the whole property?

10 A. I examined the property carefully. I found that the property is divided into two tracts, one on the east side of Jacobus Avenue, containing 41.79 acres and the other tract, on the west side of Jacobus Avenue with the frontage on the river containing 30.26 acres upland to the present dock line and 1.197 acres under water to the government pierhead line.

In arriving at my value, I considered carefully the location of the property. This location, at the Lincoln Highway and the Passaic River at that point is practically a central point, almost the center of the metropolitan area of northern New Jersey, Manhattan and Brooklyn.

20 The location is admirably adapted for the purpose for which the terminal is presently being used, namely warehousing, storage and distributing.

From a distributing point of view, it is about twenty minutes truck time to Manhattan and is accessible by reason of the State Highway in Jersey to all parts of Jersey, Route 25, the main route to Philadelphia adjoining the Lincoln Highway a short distance west of the Passaic River Bridge.

30 The property on both sides of Jacobus Avenue is laid out in a carefully planned method for the proper handling of merchandise by freight cars, either in buildings or by reason of outside storage.

There is throughout the property proper fire protection. There are fire lines, I think, on both lines with fire hydrants at various points in the property.

On the west side of Jacobus Avenue there are five transverse fire lines, water lines for fire protection and hydrants.

On the east side of Jacobus Avenue there are four transverse water lines all with hydrants.

This property, improved as it is with those facilities, should properly be appraised at a square foot basis, not an acreage basis. However I have adopted the acreage manner of appraising the property.

There is about 1,300 feet of dock front improved with a well constructed, well kept up dock. With all those improvements in view it was difficult and almost impossible to get property in this vicinity which could compare in any manner with this particular site, both from a transportation point of view and a point of view of the improvements that I have set forth.

10

From a consideration of the sales, which did not give me a great deal of assistance, the value I have placed, I have placed a value of \$2,500 per acre.

Q. You said \$2,500.

A. Pardon me. \$25,000 an acre; I beg your pardon.

20

I have treated it in this way. I have taken the frontage on the Lincoln Highway from Jacobus Avenue east, to the extent of 100 feet deep along the whole front. I find there is 2.34 acres in that frontage which I have valued at a dollar and a half per square foot, which gives me a value of that part of the property of \$153,459.

The remainder of the property, outside of the frontage, containing 39.41 acres, I have taken that at \$25,000 per acre, making \$986,275.

30

Making the total value of the property east of Jacobus Avenue before the taking \$1,139,734.

The parcel west of Jacobus Avenue, that is the water front property, containing 30.26 acres, I have taken out 2.34 acres for the frontage of the Lincoln Highway one hundred feet deep at a dollar and a half a square foot, \$150,561.

The remaining 27,974 acres I valued at \$35,000 per acre, or \$978,740; making a total of \$1,129,301 for the parcel west of Jacobus Avenue.

A total of \$2,269,035 for the both parcels.

I have then taken the 1.197 acres under water and I have put that in at \$20,000 an acre, making \$23,940 and that, added to the previous sum makes the total value \$2,292,975.

10 Q. Will you please state now how you arrive at the value of the land taken and the consequential damage.

A. In order to add the value of the land taken and the consequential damage, I value the remainder as follows:

East of Jacobus Avenue I valued the frontage on the Lincoln Highway, the same as in the whole at 2.34 acres, at a dollar and a half per square foot, \$153,489.

20 Thereafter I localized certain parcels of the property that are affected by the taking.

Q. Are you able to indicate them on Exhibit P-2 which is on the board?

A. I could indicate it on the board.

Q. Suppose you do it on the board.

A. I have taken first a triangle which I called "triangle A"; that is a plot at the corner of Second Street and Jacobus Avenue. I found in that triangle 1.365 acres.

30 Now I valued that first of all on the basis of \$25,000 an acre and it give me \$34,125, but being in a triangle I damaged that by reason of its shape one-third. In other words a rectangle with the same area as that would be worth one-third more than a triangle of that same area would be.

Making the total of that \$22,750 after deducting the one-third damage that I have given by reason of that.

Then I found by reason of there being another triangular form coming up following Second Street to a point where the southerly line of the proposed taking includes Second Street—

The Court—Gentlemen of the jury, you will find in this case, if you have not discovered it already that there will be a great amount of figures and there will be a great number of items which you will have to consider. The court feels that in some way you should keep in touch with the figures as given by the witnesses because it is humanly impossible to do it unless you have a record of it. If counsel does not object, the court will make this review of what has already passed generally.

10

Mr. Makray, the first witness called placed the value of the land, the entire tract before the taking, Mr. Makray this is, at \$2,146,250. After the taking he said the land was worth \$1,818,285 making a total damage to that point of \$327,965. He added as an additional item of damage the marine facilities or water front, whichever way you wish to determine it, the sum of \$84,070, making a total computation of damages by this witness of \$512,035. Is that right, gentlemen?

20

Mr. Milton—Those were the figures.

Mr. Vickers—Yes, sir.

30

The Court—The present witness, thus far, has given a value before the taking of \$2,292,975. After the taking \$1,830,489. Making a difference in his computation of the damage sustained by the property owner of \$462,486.

(The juror who was missing at the recess having entered the court room, all testimony previously given was there-

upon read for the benefit of such juror, and he resumed his seat, and the trial proceeded with twelve jurors.)

10 The Witness—May I take up this, what I call triangle B, beginning at a point where the southerly line of the highway intersects the westerly line of Jacobus Avenue and running parallel with Second Street, to a point opposite and at right angles to the southerly line of Second Street, where the southerly line of the highway intersects. I think that describes that plot there.

I found in that triangle which I call triangle B there are 3.09 acres.

20 On the basis of the area at \$25,000 per acre, the value would be \$77,250, but being a triangle, with the apex on the street and the base in the rear, I damaged that area two-thirds, making the value of this triangle B \$25,750.

The remainder of the acreage, exclusive of triangle A and triangle B, and exclusive of the Lincoln Highway frontage, containing 33.182 acres, at \$25,000 per acre, the amount would be \$829,550.

I damaged that in the following way: first, I take five per cent off that item for severance and light and air.

Mr. Vickers—What is that?

30 The Witness—Interference with air rights of the whole tract; the amount is \$41,477.

Mr. Vickers—I can't hear you.

The Witness—The amount of that severance damage is \$41,477.

The amount at this point of the value of the remainder is \$990,062.

I make a further deduction of five per cent on the 33.182 acres, which is the acreage exclusive of triangle A and B on the Lincoln Highway, and interference with the water front, that is the

amount \$41,477, making the total value of the remainder east of Jacobus Avenue \$948,585.

Q. Now, with respect to the area west of Jacobus Avenue?

A. There are 30.26 acres in the whole, 1,197 in the filled land area, that is under water, and the remainder I have taken the frontage on the Lincoln Highway at 2.304 acres as one parcel of the whole, at a dollar and a half a square foot, making \$150,561.

10

Then I have taken the triangle from this point here to the river which I call triangle C, consisting of .516 acres.

Mr. Vickers—Is that north or south of the right-of-way?

The Witness—North of the right-of-way, and at \$35,000 per acre, which is the base rate for the whole, I find the value of that parcel would be \$18,060, having the base, and I damaged that one-third, making the value of that triangle—

20

Mr. Vickers—Didn't the witness make a mistake?

The Witness—Damaged one-third, or \$12,040.

I took this triangle D which has a frontage on the west side of Jacobus Avenue running at right angles to a point where the southerly line of the highway intersects the river, I find the triangle has an area of 1,586 acres, which at \$35,000 per acre would amount to \$55,510. That triangle I damaged one-third, making the value of triangle D after the taking, damage \$37,006.

30

After deducting the Lincoln Avenue frontage, triangle C and triangle D, I have 23.577 acres which, at \$35,000 an acre, I would value at \$825,195. From this item I deduct first of all ten per cent for severance, light and interference with the aerial rights amounting to \$82,519.

The Court—What do you mean by aerial lights?

The Witness—Your Honor, for a distance of one hundred feet out from the highway the structure which is 138 feet in the air, the property in the immediate vicinity of that is damaged.

The Court—That is what is commonly known as light and air?

The Witness—Light and air.

10 Q. It interrupts the free flow of light?

The Witness—Of the light and air.

Then I make a further deduction of \$82,519 from the 23.577 acres for interference with the water front facilities by reason of the pierhead, the pier and the bridge jutting out into the channel and intersecting the dock and interfering with the proper handling of freight at the dock which is a considerable interference. I have taken that as a base for forming the damage that would be to the whole property by reason of that severance of the dock.

20

Mr. Vickers—What is that percentage?

Mr. Milton—Ten per cent.

Mr. Vickers—Another ten?

The Witness—By these figures I find that the value of the remainder west of Passaic Avenue is \$881,904.

30 Q. I think you did give a total of \$462,486 as the value of the land taken and the damage?

A. Yes, sir.

*Cross-examination*—By Mr. Vickers.

Q. Now, Mr. Houston, you have said on your direct examination that in your opinion this tract of land is admirably adopted for warehousing, storage and distribution, is that right?

A. Yes, sir.

Q. And you have said it is laid out in a carefully planned method; is that right?

A. Yes, sir.

Q. And by that carefully laid out method, you refer to the method represented on Exhibit P-2 which you have used in your testimony; is that right?

A. Yes, sir.

Q. One of the elements of value and utility to this property, you have stated, is the fire protection being five transverse water or fire lines on the west side and four transverse water lines on the east side?

10

A. One of the elements, yes, sir.

Q. As to the fire protection, has the taking and the construction of the highway in any way interfered with that?

A. No, it has not interfered to any great extent.

Q. Has it interfered to any extent or is the fire protection, the five transverse water lines still on the west side and the four transverse water lines still on the east side?

20

A. Yes, sir.

Q. You have stated that this property should be appraised on a square foot basis and not on an acreage basis, is that right?

A. Yes, I think it ought to be, being highly improved, and considering what is on either side and with the water facilities.

30

Q. And except for the Lincoln Highway frontage all of your figures that you have given us are on an acreage basis?

A. I made it up on acreage basis in order to make the figuring easier.

Q. The fact is except for the dollar and a half a square foot frontage on the Lincoln Highway, all of your computations given to us are on an average basis, yes or no?

A. Yes, sir.

Q. Where you have considered the carefully laid out plan, have you assumed that the facilities indicated by the railroad tracks, by the buildings, are actually there and usable as of the time, September 20, 1930?

A. Yes, sir.

10 Q. Then you have assumed, have you not, Mr. Houston, that the triangle which is your triangle A, if I recall correctly, serves its utility for switching purposes for the easterly portion of this property as indicated by the track connections on exhibit P-2?

A. To the extent of the westerly portion of that triangle.

Q. The westerly portion; well, how much?

A. It has not served all because one of the tracks has been elevated, taken up at that point.

20 Q. You mean you have a plan in your mind which is different from the plan which is in evidence in this case?

A. No, my theory is that in a piece of real estate, irrespective of how it is used at the particular time, any piece of real estate that is formed by reason of a taking into a triangle is a damage.

Mr. Vickers—I move that the answer be stricken out as not responsive.

The Court—That is so.

30 Q. (Read as follows: “You mean you have a plan in your mind which is different from the plan which is in evidence in this case?”)

The Court—You can answer that yes or no.

A. I have no definite plan in mind for the particular piece of property.

Q. When you say that particular piece of property, what piece do you mean?

A. The triangular piece.

Q. Have you considered triangle D as being a part of this perfect plan?

A. No.

Q. You have not?

A. No, not now.

Q. I don't mean now.

A. It is bisected; it is cut off from the main track by the highway.

Q. I didn't ask you that. For the purpose of appraising the value of this property before and after, have you in dealing with the after value of triangle A considered that the plan which is here in exhibit P-2 was in operatable condition on the 20th day of September, 1930? 10

A. It was operatable.

Q. Then I ask you again, on and before September 20, 1930, was the use of that triangle for the purpose of switching to the railroad tracks on Exhibit P-1 immediately north of building 43, yes or no? 20

A. Yes, sir.

Q. And after the taking, for the purpose of utilization of those tracks or any of them except one track north of building 43, that same switch and that same property was still necessary and served the same utilitarian purpose?

A. As at the present day laid out.

Q. As at the present time laid out, exactly. Is it or is it not a fact that for the purposes of this carefully planned method that you have referred to on your direct examination, the land in the remaining triangle here, A, served the same utilitarian purpose after the taking that it did before? 30

A. Yes, so long as it is maintained as a distributing yard.

Q. So long as what?

A. So long as the particular layout is adapted, the land is suitable for other purposes.

Q. I remind you of the fact that, if it is a fact, that you have testified as a basis for your appraisal of this property that you have considered a carefully planned method and have said that this is the carefully planned method that you considered; is that right?

A. Yes, sir.

10 Q. Now, arbitrarily you have erected another triangle B that would come in like this, with a right angle running south of Second Street and a right angle running east of Jacobus Avenue; is that right?

A. Yes, sir.

Q. And for that triangle thus constructed and allocating a special damage to that, created an apex at Jacobus Avenue and an apex on Second Street and you have additional damage to the remainder land in the rear to the east, haven't you?

A. Yes, sir.

20 Q. And that is the purpose of that artificial triangle you have created?

A. That is for the purpose of localizing the damage to a particular area of the property as composing the real estate.

30 Q. Have you allocated the damage of five per cent for severance, light, air, as I recall it, as I recall your language, and then an additional five per cent; have you taken both five per cents from the total value instead of the second five per cent from the remainder value after deducting the first five per cent?

A. The second five per cent is taken from the remainder.

Q. As a matter of fact is it or is it not; look at your figures for a moment, Mr. Witness.

A. The second five per cent is taken on the 33.182 acres which is exclusive of the triangles on the Lincoln Avenue frontage.

The Court—Now I think counsel wants to know, have you deducted the five per cent from your principal and then figured the second five per cent on the remainder?

The Witness—The second five per cent was figured on the remainder, also 33.182 acres.

Q. I didn't ask you about acres. Is it a fact that in the question where you took \$41,477 as a five per cent reduction because of interference, reflected interference of the water front property? 10

A. Yes, sir.

Q. And then you took another further five per cent that you again take, \$41,477, and instead of having first deducted the \$41,477, taken five per cent from the remainder; is that correct?

A. No, I have divided the triangle, taken ten per cent for these two items. I have divided it into two five per cents.

Q. In other words, although you say that they are separable and you took a further five per cent, what you really did is take ten per cent of the taking from the gross sum? 20

A. No, my reason for doing it that way was this—

Q. I asked you what you did?

A. I have taken ten per cent.

The Court—From the gross sum?

The Witness—From the value of the 33.182 acres. 30

The Court—And that is from the gross sum?

The Witness—Yes, sir.

Q. When you refer to severance, Mr. Houston, in your computation, it is understood that that is the separation of one piece of land from the remaining land; that is so, isn't it?

A. Yes, and no.

Q. Yes and no, mostly no?

A. It is more than that.

Q. Is it right? You say no; which is it?

A. It includes the actual severance; it includes the sales resistance that the remaining shape has; all these elements are included; or some of them are included in the severance.

10 The Court—Ask him this, Colonel; did you include the absolute severance or did you consider that there was accessibility or means of ingress or egress permitted under this superstructure from one part of the land to the other?

The Witness—I considered that.

20 Q. Then the only proper element to be taken into consideration under that stipulation of ingress and egress is the interference on September 20, 1930, and the approximate future to the portion indicated by this plan; is that right?

A. No.

Q. So you have taken into consideration, although you say there is not any other piece of property with the facilities of this property, that the layout as indicated on Exhibit P-2 and adapted for the purpose for which it is adapted, you still consider sales resistance as an element in this case?

A. You must consider sales resistance.

30 Q. I didn't ask you must; do you?

A. Yes, sir.

Q. In other words, Mr. Houston, you have not figured this damage to the continued operation of this wonderfully laid out and advantageously situated plant, but you have considered the possibility of its being sold and these elements make up the sales resistance, is that right?

A. Yes, and experience with the present development, in view of that experience.

Q. What percentage of sales resistance have you taken into consideration?

A. It is all included in my original percentage of severance.

Q. I didn't ask you that, Mr. Houston, and you know it. What is the percentage of sales resistance?

A. That is impossible to put in percentage.

Q. So it is impossible to tell what percentage?

10

A. Yes, sir.

Q. Less than one-half of one per cent?

A. Might be more, might be less.

Q. Then, it is a fair inference that the waterfront property—I will ask you whether your opinion of the interference is based upon the character of all these things actually conducted there on the water front in connection with the water front or upon some hypothetical period that you have of your own?

A. It is based on the testimony that I have heard in this case, the engineers and the fact that the waterfront is divided into two sections by reason of the pier jutting out into the river. I might say that my reason for dividing the percentage for interference in the part east of Jacobus Avenue, into five per cent, I will deduct that item if the pierhead, the dock around the building, out in the line, the pierhead line, if an allowance is made for that.

20

Q. Mr. Houston, reducing that to dollars and cents, the most that you will make an allowance is of \$41,477 if \$169,000 is allowed in view of it?

30

A. No, that is only one side.

Q. That is the testimony in this case.

A. That is only the east of Jacobus Avenue.

The Court—The cost of extending the dock was \$189,000.

Mr. Vickers—I am wrong; it is \$82,519.

The Witness—And \$41,477 on the other.

Mr. Vickers—That is not my memory. I am referring now to the testimony of Mr. Ordeman.

The Court—Mr. Makray gave an allowance for interference with navigation of \$184,000.

10 Mr. Milton—The witness is now being interrogated with respect to the damage on the east side of Jacobus Avenue only.

Mr. Vickers—If I was mistaken I will withdraw all these questions so as to make it clear.

Q. The sum of \$41,477 and the sum of \$82,519 being approximately \$123,000 total, you will take off providing the sum of \$169,000 is allowed in lieu thereof; is that right?

20 A. No, I will take it off provided the dock is built out.

The Court—Well, take the cost thus far, \$169,000.

Q. That is it.

A. It is my opinion of what I would allow off.

30 Q. And now may I ask you whether in putting in this \$123,000 you have taken into consideration and rely upon the testimony given in this case by Mr. Ordeman and the other witnesses, if there were other witnesses, that large vessels could not now be docked there, either advantageously or safely as the pier is sticking out there?

A. Not altogether.

Q. What other information have you got outside of that?

A. My own opinion and common sense, that a dock that is divided that normally was 1300 feet long and the pier is divided in the center by the

pier sticking out 45 feet, almost 50 feet out; that is a damage.

Q. Common sense will tell you it is a damage. What right have you to say it is \$123,000 worth?

A. I am putting that as my opinion of what the damage would be in this case or more; I may be wrong, but that is the percentage I am putting for the damage.

Q. So that although the engineer says he would put up a new dock coming out to the new line of the 30-foot channel for \$179,000, you take your own common sense against that and you say the damage done is \$123,000. 10

A. I am putting it up there from what we call a real estate point of view.

Q. Not a mariner's point of view?

A. Not an engineer's point of view.

Q. And in that view, have you taken into consideration the testimony given in this case that in the ten years last past there have been but two cargo ships, lumber vessels, one on July 24, 1924, and one August 24, 1924, came in, and the next one on October 7th, 1927—I am wrong; I withdraw the question. 20

Q. Have you taken into consideration that on July 14, 1925, and on October 17, 1927, the testimony in this case shows that those are the only cargo ships up to the present time that have come there for the purpose of either loading or unloading? 30

A. I heard that testimony, but it does not affect my opinion one bit.

Q. Not a bit. And have you also heard the testimony, I think by Mr. Betts, that with regard to the storage business done here on this westerly section, that it has been lighterage business, except for those two ships?

A. I have heard testimony to that extent.

Q. That does not affect you at all?

A. No.

Q. Notwithstanding that, you say one hundred and twenty-three odd thousand dollars?

A. Quite right.

Q. And you never sold a piece of property that big that had been interfered with, did you?

A. Not one that had been interfered with.

10 Q. You never sold one that had a dock 1200 feet in length, did you?

A. No, not 1200 feet.

Q. Well, more or less?

A. A little less, five hundred feet.

Q. And that is all north, what is left on the north end?

A. Yes, sir.

Q. And that is the limit of your sales experience?

A. Very few have sold any more.

20 Q. But I say that is the limit of your experience and you say that when this goes up it shuts off the light and air on another building?

A. No.

Q. You would not apply it in that case?

A. I would apply it. It is not altogether applied in that case.

Q. However, that refers to the shutting off of light and air?

A. And interference with the elements and the aerial rights for the property.

30 Q. The aerial rights, what are they?

A. You have the right to go up in the air.

Q. To go up in the air?

A. Alongside of it. It is interfering with your light in your upper floors and interfering with the draft of your chimneys and interferes with—the disturbances, and the elements coming from the bridge. It is a common knowledge and my own experience as a real estate man that it would be

very, very difficult to sell a piece of property right below one of these places, and you could sell a piece that was away from it.

Q. So that again, feature of your damage, is a percentage which goes into another \$123,000?

A. Yes, sir.

Q. And deals with a condition which might arise, not as this property is operated according to this plan, but some other use made of the property involving the erection of buildings or chimneys with which the superstructure might interfere.

10

A. Not altogether; this plan is a flexible plan that can be altered, the building could be wanted along the highway and it does not necessarily mean that you have got to get that exact plant. You have got to get it from the railroad siding or get it elevated and built up in there in the very place which would be affected by the structure. In other words, the interference with the full use and the full ownership of the property.

20

Q. Then, Mr. Houston, into this \$123,000 additional, of which light and air and aerial rights go, you are not taking this property as it was used or usable on the 20th of September, 1930, are you, but you are building up possible other uses, involving smoke stacks and chimneys and buildings?

A. No, I am predicating it on what the owner is entitled to have the use of his building, for any purpose for which he might desire to put it, for which it would be suitable.

30

Q. Why don't you answer the question. You are not considering the use to which this property was put at the time, but some other possible use which you say the owner is entitled to?

A. Yes, as an industrial property.

*Re-direct Examination—By Mr. Milton.*

Q. Mr. Houston, in the case of the Ford item, in the property east of Jacobus Avenue, namely, 33.182 acres, have you taken your second five per cent off the reduced amount; how much difference in damage would it have made if you did?

Mr. Vickers—That is a mere matter of calculation.

Mr. Milton—About \$2,000.

10     The Court—Tell us what it does amount to.

The Witness—I could do it exactly.

Q. \$2,070, isn't it?

A. Making a difference of about \$2,000.

(Witness excused.)

---

HERMAN W. ORDEMAN, recalled.

20     *Direct Examination—By Mr. Milton.*

Q. You were asked yesterday by Colonel Vickers to examine the property of the company after adjournment of court for the purpose of determining whether or not a certain switch was still on the ground, in existence; did you do so?

A. I went there and I found the switch there, as I testified.

Q. The one on the photograph?

A. Arrangements were being made this morning  
30     to have the switch photographed.

*Cross-examination—By Mr. Vickers.*

Q. What did you do to find out?

A. I didn't do anything to find out.

Q. Did you do anything down there so that you could find it?

A. Not me, nothing.

Q. Did anybody else for you?

A. I don't know that. When I got there this morning I found out that due to the fact that they are starting to develop Second street, which at the time that switch was put in was simply a paper street and had not been opened, that the switch in question, the points of the switch in question are in the street and a request had been made—

Mr. Vickers—I object to all this.

The Witness—When I got there this morning dirt that had been put on the top of the track in Second Street had been removed and arrangements were being made to set this switch point further ahead. I didn't stop there last night. It was dark, it was too late, so I got over there this morning, early. 10

*Re-direct Examination*—By Mr. Milton.

Q. And what about the switch on the company's property? 20

A. The switch is there just as I testified. That was not covered, the only portion covered was right at Second Street and about five feet south of Second Street, where the Foundation Company had constructed a roadway during the course of construction, adjacent to the bridge pier.

Q. The Foundation Company was the contractor for the State?

A. Was the contractor, yes, sir.

*Re-cross Examination*—By Mr. Vickers. 30

Q. Mr. Ordeman, with respect to this section of your property, right here at Second Street, didn't you say yesterday that it was covered up with roadway, dirt for the roadway being used?

A. I testified if I can show you on the map, when I pointed on the map to it, that the roadway was constructed by the contractor across a corner of this street and came down on our property. The

other road went right out Second Street, about at our property line and then a portion of the track just south of Second Street and a little part of Second Street was covered when this roadway was constructed by the contractor.

Q. Well, Mr. Ordeman, have you been connected with this company since 1928, and you can't tell this court and jury whether that switch was in operation at any time since you have been there?

10

A. That switch has always been in operation, that particular switch and it may be operated right now at this time.

Q. And is now in the condition in which it was when the jury went on the property; is that right?

A. Except that the dirt has been removed where this roadway was.

Q. How much dirt?

A. The width of the little roadway.

Q. How much?

20

A. I don't know offhand, but it is the width of an ordinary construction roadway, possibly twelve feet.

Q. How much dirt; I am not speaking about the width of the dirt, whether it was an inch or four inches or four feet.

A. I don't think there was probably over a foot at the highest place; six inches would be nearer, I guess.

Q. And has that been so since 1928?

A. No, sir; only since the contractor came in to build the bridge piers.

Q. Practically a year before the 20th of September, 1930?

A. No, not quite that long.

Q. Well tell us.

A. Since about June or July, 1930. He didn't need that until he got right out, dug out the dirt from his caissons at the time. When he built these

caissons, well, I couldn't give you the exact date.

Q. Can you tell us whether or not since the condemnation petition was filed in this case, that is to say, since the 20th of September, 1930, that switch has been connected or not, or whether it was disconnected before?

A. No, which particular switch do you want. There are five of them there.

Q. Will you tell us which one?

A. I am talking about the switch to the Pennsylvania lead, right here. 10

Q. Well you know I am not talking about that and have never referred to it, Mr. Ordeman.

A. No, sir; you did refer to it.

Mr. Vickers—I have no more questions to ask.

*Re-redirect Examination*—By Mr. Milton.

Q. Will you look at the photographs which I hand you and see if any of them represent the condition that you examined this morning? 20

A. No, sir; they are all too far to the south.

Q. Is there any possibility, Mr. Witness, that this morning you looked at any other switch other than the one that Colonel Vickers indicated on the map?

A. I looked for the switch on the map this morning, I looked for every one of them.

Q. And are they all there, in existence, on the street? 30

A. Yes, they are.

(Witness excused.)

---

WILLIAM F. MOORE, called as a witness for the property owners, being first duly sworn, testified as follows:

*Direct Examination*—By Mr. Milton.

Q. Mr. Moore, you are engaged in the real estate business?

A. Yes, sir.

Mr. Milton—Are his qualifications admitted?

Mr. Vickers—Yes, sir.

10 Q. As quickly as you can, give us the value that you placed upon the property in question before the taking.

A. I found 41.799 acres east of Jacobus Avenue which I valued at \$25,000 an acre or a total of \$1,044,975. The land west of Jacobus Avenue, exclusive of a portion under water, 30.268, which I valued at \$35,000 an acre, or a total of \$1,059,380.

Q. And the land under water?

A. The land under water, I found 1.197 acres which I valued at \$20,000 an acre or \$23,940.

Q. And what is the grand total?

20 A. The grand total before taking is \$2,128,295.

Q. After the taking now, please.

A. After the taking, if you want me to give the totals I will go into the details at this time.

Q. Yes, give them as quickly as you can without elaborating upon them.

A. The land west of Jacobus Avenue after the taking I valued at \$761,607.50; and the land east of Jacobus Avenue \$873,928.13.

30 Q. By the way, before the taking and after the taking what is the difference, how much?

A. \$492,759.37.

The Court—What did he say was the total value after the taking?

Mr. Milton—\$1,635,535.63.

The Witness—Yes, sir.

Q. Will you break that value down after the taking?

A. You mean explain how I arrive at the figures?

Q. Yes.

A. May I proceed to the board? I localized the damage as did the last witness by laying out a triangle here which I described as triangle C and also one here which I have designated as triangle D, and I found in triangle C that there is .516 acres, which at \$35,000 an acre was worth \$18,060. I have damaged that one-third on account of its shape and size or \$6,020 and I have a net result of \$12,040.

10

Q. Now, the next triangle.

A. Triangle D consists of 1.586 acres which at \$35,000 an acre is worth \$45,510 and I have damaged that twenty-five per cent or \$11,377.50 and the net result was \$34,132.50.

Q. And the balance of 25.881 acres?

A. The balance of 25.881 acres at \$35,000 is \$905,835.

Q. And from that you have deducted \$190,000 for severance and damage resulting from interference with the use of water front?

20

A. \$190,400, ten per cent for severance, ten per cent for interference and the net result of it is \$761,607.50.

Q. And the piece now, the property east of Jacobus Avenue?

A. And I have made a triangle here, next to triangle A, and one next triangle B.

Q. A is north of the structure?

A. Yes, north or northwest.

Q. And B is south or southeast?

30

A. Exactly.

Q. In triangle A there are 1.365 acres?

A. Yes, sir.

Q. And you placed a value of \$33,125 on that?

A. Yes, and I have damaged that twenty-five per cent or \$8,281.25.

Q. That is a net of \$24,843.75?

A. That is right.

Q. Now in triangle B, there are 3.09 acres?

A. Yes, sir.

Q. And you placed a value on that of \$77,250?

A. Yes, sir.

Q. And you valued it at seventy-five per cent of that?

A. Damaged it twenty-five per cent.

Q. I mean that, the damage being \$19,312.50.

A. Yes, sir.

10 Q. Leaving a net of \$59,937.

A. \$57,937.50. The balance of the acreage, 35.530 at \$25,000 an acre, the net result is \$882,250.

Q. That gives you a total after the taking of \$971,031.25, from which you have deducted for interference, damage resulting from interference with water front, et cetera, \$97,103.12?

A. Yes, sir.

Q. Making it \$873,928.13?

A. Correct.

20

*Cross Examination*—By Mr. Vickers.

Q. Mr. Moore, your acreage for the respective parcels and also for the land under water are the same acreage figures as those used by Mr. Houston, isn't that so?

A. Yes, sir.

Q. And your base value for the respective three parcels before the taking are the same?

A. Exactly.

30 Q. To wit \$35,000, \$25,000 and \$20,000?

A. Well, that's not exactly right, because Mr. Houston has taken off some of the Lincoln Highway front and has assessed it on a basis of a dollar and a half a front foot, which I have not done. I think the Lincoln Highway is a very important element in the value of this particular piece of property.

Q. For fixing a before taking value, is the acreage that you have taken at \$35,000 an acre and the acreage you have taken at \$25,000 an acre and the acreage that you have taken at \$20,000 an acre the same acreage which Mr. Houston took?

A. I don't understand so. I understand that his acreage is less because of the taking off of the Lincoln Highway front.

Mr. Vickers—That is what I am driving at.

The Court—Hasn't he already answered it twice? He says in substance that he has taken the same acreage for the reason that he runs his acreage all the way down to the Lincoln Highway, whereas the other witness segregated it along that highway and applied another unit value to it.

10

Mr. Vickers—And his figure for the greater acreage did not deduct the Lincoln Highway. I want to find out whether he made an error in his figures. Mr. Houston's total figures, if he used the same acreage at \$25,000, \$30,000 and \$20,000 an acre for the land under water, \$292,975. What I want to find out is if he used it on the same basis as Mr. Houston, using the same acreage.

20

The Witness—Well, I don't understand—I am not responsible for Mr. Houston's figures. My figures are correct.

Mr. Milton—We have agreed that the cost of removal of the building in this taking will be \$910 and that the cost of relocating certain tracks that will have to be relocated after the State Highway leaves our property is \$2,200.

30

Mr. Vickers—And that is the cost estimated by the company for relocating its tracks thus interfered with. That is right?

Mr. Milton—That is right.

Mr. Milton—We rest.

(Witness excused.)

Mr. Vickers—I would like to examine Mr. Betts.

FRANK C. BETTS, recalled.

*Cross-examination*—By Mr. Vickers.

Q. Mr. Betts, with reference to this exhibit P-19, can you tell us whether the square foot storage space on the first floor in building 35 is the same as the second floor storage space in the same building?

10

A. The square footage is.

Q. The storage space; I want to find out. To make myself clear, on the first floor are tracks and on the second floor there are not tracks.

A. That is right.

The Court—With that difference, is the storage space the same?

The Witness—The storage space would be the same if the party leasing the place required the use of that as such.

20

The Court—They cannot use the trackage that is occupied by tracks for storage?

The Witness—No, you cannot use it unless they desire to use it.

Q. You mean to say that if the Western Electric Company, for instance, having to operate from the northerly end of the storage place on the first floor desires that space with the track on it, they can have it?

30

A. They lease the place and can do with it whatever they have in mind to do. We have no jurisdiction.

The Court—You give them uninterrupted use of the tracks?

The Witness—Because the tracks can be right there, can be reached from both ends of the building.

The Court—Then it is an absolute lease?

The Witness—An absolute lease.

Q. That is all I recall. The figures given by Mr. Lee, 44,000 square feet, is the area of the first floor?

A. That is the approximate figure. If you want it exactly I think it is 42,150 feet. It is 85 by 531.

Q. And does that take in the track area?

A. That takes in the track area.

Q. As a matter of fact, can you tell us, at any time since you have been there, was the track area used for storage purposes on the first floor of building 35?

A. By who?

Q. By anybody? I don't care by whom.

10

A. No, it has been, as far as my knowledge—

Q. On that first floor, in the corner of exhibit 29, on that first floor the Western Electric occupied that storage space of 21,184 square feet?

A. Yes, sir.

Q. The Grinnell Company, 6823 feet; Jefferson Island Salt Company, 5176 square feet, making a total of 33,183 square feet of this building 35 out of twenty-two odd thousand square feet of the building, including tracks?

20

A. Out of 42,000.

Q. Forty-two thousand is what is meant.

Q. And that in fact occupied all of the space in that building except that space used for the running of the cars, didn't it?

A. No, there was space which was taken—there was space in that building on the first floor which is not occupied by the people mentioned by you.

Q. Whether occupied or not, is it leased?

30

A. It is not leased.

Q. In other words you say that this space occupied by these tracks and wide enough for running cars, does not make up the difference between 33,183 square feet and 42,000?

A. I didn't say that.

Q. Let us find out. I want to find out.

A. May I explain it to you? The first floor is made up of 42,150 square feet, of which 21,184

square feet, which includes the tracks and the Western Electric Company space, 5176 square feet of Jefferson Island Salt and the Grinnell Company 6823 square feet which is leased and does not include railroad tracks. The balance between that and 42,150 is idle space at the time this report was made.

10 Q. So there is 21,184 square feet in that building leased by the Western Electric Company and that includes their right to the tracks. Doesn't it?

The Court—He said so.

Mr. Vickers—I want to make sure.

The Court—He said it two or three times.

Q. Is there any space reserved along there for handling of cargo through building 35 to building 6, in building 35?

A. When you say reserved, do you refer to us?

Q. Open.

20 A. Yes, there is.

Q. And is that owned by the Western Electric Company?

A. At that time the Western Electric had building 6 under the lease.

Q. That space is leased?

A. That is a different building, yes, sir.

Q. It is a lease not taking any of the 21,000 square feet?

A. No.

30 Q. So that excepting for another lease likewise held by the Western Electric Company, the lease covering the 21,000 feet cut off that building number 5 completely from the dockage facilities in front of 35; isn't that right?

A. No, the north end of the building would give access to building number 6.

Q. The north end of 35?

A. The north end of 35.

Q. Well, you have said that that was occupied by the Western Electric Company.

A. Outside of the building at the north end, there is a dock there which would give access to the building number 6, if so desired.

The Court—How about building number 5; where do you get access there?

The Witness—Number 35.

Mr. Vickers—Six, seven, eight and nine.

The Court—Six he said is rented by the Western Electric Company under another lease. 10

The Witness—Yes, sir.

The Court—Do they get access to 7?

The Witness—Seven you could not get access from the corner.

The Court—Can you from any side? Can you get any dockage facilities at all to number 7?

The Witness—No, you would have to come through 35, or go all the way around the front of the building which would not be profitable.

The Court—You could use the tracks that are extended there to go around? 20

The Witness—Yes, sir.

The Court—So that if you want to get into 7, 8, 9—

The Witness—And 9, you would have to go to the south end of 35.

The Court—You would have access to 7 and 8, you would have to use the tracks?

The Witness—Would not have to do that; there is a door on 35 which you go straight into these buildings. 30

The Court—Is there space rented by others, that is occupants of 7 and 8?

The Witness—No, the door where number 7 comes up 35 is rented to the Western Electric so as to place number 7 the same way as it is in six.

The Court—So that you would have to go through the premises of the Western Electric

Company to accommodate areas 7 and 8 directly west?

The Witness—If there was other tenants in there, certainly; not at the present time, there is not any.

The Court—There is not any tenant there, so it will be understood from this witness that the Western Electric have an absolute lease to what they have, and that they could not get through there.

10 The Witness—No, that is leased property.

Q. If a ship docked along any part of this wharf on which the five buildings, 35, 6, 7, 8, and 9 front, except by the grace of the Western Electric Company, for Building number 6, and for Building number 7, and the Grinnell, the Jefferson Island Salt Company, they could not unload?

20 A. You are referring—you are wrong there. I have tried to explain about Building 6 and Building number 9 that they are accessible to the dock. Six being accessible at the north end of 35, outside the building, and the other, number 9, at the south end of number 35 on the outside of the building, there being a dock all along Building 35 in addition to the open space on both sides, both the north end and the south end.

Mr. Vickers—I don't think I make myself clear.

30 Q. For the purpose of unloading into buildings 6, 7, 8 and 9 from the river, through 35, can that be done excepting for the tenants' consent or by their grace; you can answer that yes or no.

A. I can't answer it yes or no.

The Court—Why can't you?

The Witness—Well, Building number 9, leased to the Jefferson Island Salt; they have the privilege of going and having the facilities to get into number 9—Building number 6 we have—

The Court—Through 35?

The Witness—Through 35. Building number 6, we have not got it for the simple reason that that is leased to the Western Electric.

The Court—You cannot get in by the grace of the company to number six?

The Witness—Yes, on the outside.

The Court—How about 7 and 8?

The Witness—Seven is the same way as 6. That is Western Electric all the way through. 10

The Court—How about number 8?

The Witness—Building number 8 was can reach through our own space which is idle, the Grinnell Company not taking, not having leased entirely up to the edge of the water front.

The Witness—Then it will be understood that the space is not leased in 35 renders 8 accessible?

Q. The second page of exhibit 19 is the total square footage of 357,430 square feet, is that right? 20

A. That is right.

Q. And outside of 35, 6, 7, 8, and 9, the buildings and the other buildings if any that are taken into square footage area—

A. Building number 43.

Q. That is this one (indicating)?

A. Right; that is all, 6, 7, 8, 9, 35, first and second floor and Building number 43.

Q. Making up that total area of 357,430 square feet? 30

A. Yes, sir.

Q. Can you tell us whether of that total area the Western Electric Company under this diagram had 249,940 square feet?

A. I can tell you, just give me a minute. That is correct.

Q. And the exhibit that you have before you, P-19, includes rentals for these business properties

used for automobile accessories, restaurant, and so forth, along the Lincoln Highway, that is to say buildings 10, 14, 15, 29, 17, 18, 34, 11?

A. Not all those you have mentioned; some of them.

Q. Are they named in there and correspond with the numbers found here in some of these?

10 A. Yes, the buildings mentioned on the schedule with the rentals and the leases for that triangular spot, correspond to the numbers on the plan.

Q. And is the last sheet of this exhibit open space?

A. That last sheet, building leased or on rental.

Q. There is not any way of identifying that unless it is so marked on this map?

A. No, there is no way unless it is all marked on the map.

20 Q. Do you know the date of the acquisition of this tract of land east of Jacobus Avenue by the Lincoln Terminal Corporation?

A. The date that they acquired it, June 7, 1928.

Q. And from whom?

A. A special master.

Q. Was it a receiver's sale or was it acquired from a purchaser or from the receiver; do you know?

The Court—Haven't you ascertained that?

30 Mr. Vickers—I don't know. I have been trying to find out.

Mr. Milton—It was a judicial sale, a sale carried out I imagine by bondholders.

Mr. Vickers—It was a sale under a federal equity receivership in which there was also a foreclosure on a first mortgage. The two causes were consolidated and a judgment of a Special Master was obtained, and before the sale there was a reorganization scheme which took care of the bondholders, creditors,

preferred and common stockholders and the bondholders' committee bid the property in and before the deed was made a transfer from the bidders to the new corporation was made and the securities were all deposited in accordance with the plan presented.

The Court—Then that would be more or less of a forced sale.

Mr. Milton—We rest.

Mr. Vickers—I now move to strike out the testimony of Mr. Ordeman about the cost or value of a new pier out to the United States Government pierhead line on the ground that there is no basis in law for such an improvement to this property and nothing is in the case to indicate whether or not there would be an increased value of this property by reason of this improvement and thereby enriching the owner.

10

(The court excused the jury.)

20

The Court—I don't get that last, where you say there is no evidence of enhancing the property in value and thereby enriching the owner. The testimony as the court remembers it was to the effect that this property, if left in its present position, there will be certain inconveniences.

The Court (after lengthy argument)—I will admit the evidence. I will permit it to stand and will deny your motion, but the court will certainly instruct the jury as to what use they can make of these figures.

30

Mr. Vickers—May I have an exception?

The Court—You may have your exception. I think that the whole thing would not harm it, but the court will certainly instruct the jury about these figures.

(The jury returned to the court room and the trial proceeded.)

CAPTAIN JOHN E. BRIGGS, called as a witness for the State Highway Commission, being first duly sworn, testified as follows:

*Direct Examination*—By Mr. Vickers.

Q. Captain Briggs, what is your occupation?

A. I am port captain, marine captain, Lackawanna Lighterage Division.

10 Q. How long were you connected with the Marine Department of the Lackawanna Railroad?

A. About 25 years.

Q. And before that what did you do?

A. I was master on vessels for different dock boats, docking steamers and transporting them on the Harbor of New York.

Q. In the harbor, that is coastwise or confined to the harbor?

A. I have been in the coast-wise, yes, sir.

20 Q. And for how many years have you been a mariner?

A. All my life.

Q. And that is at least 40 years?

A. Yes, sir.

Q. And you are now, are you, actually engaged as a mariner?

A. Yes, sir.

Q. In the Harbor of New York?

A. Yes, sir.

30 Q. Are you familiar with the Passaic River and navigation upon the Passaic River?

A. Yes, sir.

Q. And on the Hackensack River?

A. Yes, sir.

Q. In the twenty-five years of your association in the Marine Department of the Lackawanna Railroad, did you navigate the Passaic and Hackensack Rivers?

A. Yes, sir.

Q. Are you familiar with the Lincoln Terminal Company property on the Passaic River?

A. Yes, sir.

Q. Have you made an examination of this river front property for the purpose of expressing your opinion as to what interference, if any, with the character of shipping carried on on the Passaic River is done to this property by reason of the pier that juts out and the string piece of the wharf?

A. Yes, sir.

10

Q. I show you a photograph which represents a part of the Passaic River, represents the storage buildings on the Passaic River, and shows the bridge pier in question; the wharf in question before the pier was built was somewhat over 1200 feet in length, approximately 800 feet from the southerly end of the wharf this pier is located.

The Court—Well, he knows where the pier is located.

Q. The photograph I refer to is P-4. Would the kind of navigation carried on in the Passaic River at this vicinity up to and including the 20th day of September, 1930, in your opinion, is the pier an interference which prevents the docking and unloading of cargo boats?

20

A. No, sir.

Q. Can you tell the court and jury whether a boat, a steamer which were docked along here could be wharfed, with her bow or stern out to or extending beyond the pier and still be properly unloaded?

30

A. Yes, sir.

Q. In your experience as a mariner and in handling and docking steamers, is there a method employed of overlapping one boat over the other while unloading?

A. That is done wherever it is felt that the length of the two ships that lap, they lap them over, one laps outside the other.

Q. Is that done in the Harbor of New York?

A. Yes, I saw a case only yesterday.

Q. Sea-going vessels?

A. Yes, sir.

10 The Court—Well, Captain, will you please explain why this pier would not be an interference. For example, if they had a three or four hundred foot ship, or a ship three or four hundred feet in there being unloaded, they could, with the same winches, move the boat back and forth and turn the hatches?

The Witness—Could, if it is necessary.

The Court—But they could do that?

The Witness—It could be done.

The Court—How could they do that now if the pier is there?

20 The Witness—This vessel lays in here. Now, when you discharge a vessel—

The Court—Just go down and show the jury that.

Mr. Vickers—The witness is now referring to the photograph.

The Witness—This abutment comes on here. There is nothing to prevent a ship from lying in here and loading into here (indicating).

Mr. Milton—Put that up on the board and then tell the jury.

30 The Witness—You see a ship could lie in here and load off the cargo in here and this one over here. This abutment projects out, there, but it does not prevent the ship from working in here (indicating).

Juror Number Six—Suppose they wanted to unload the cargo at this end, with this abutment jutting out there?

The Witness—Well, there is a hundred-foot space between, between the ship and the abutment.

Juror Number Six—They would have to put a gangway.

The Witness—They would probably work one hatch there, they wouldn't have any trouble.

Q. Where a ship is loading from cars, running parallel to the ship on a dock, or the ship unloading on to cars running on tracks parallel with the dock, what is the custom; is the ship moved or are the cars moved?

A. The cars are moved.

10

*Cross-examination*—By Mr. Milton.

Q. How long have you been ashore?

A. I have been ashore about fourteen years.

Q. And you have not worked on a vessel or tug in the last fourteen years?

A. Yes, I have. I have been on very frequently.

Q. Your business, however, has kept you ashore for the past fourteen years?

A. Not entirely. During that fourteen years I had charge of a lumber ship for two years, mariner, I discharged her, and loaded her.

20

Q. Where?

A. For the Lackawanna Railroad.

Q. Where?

A. Hoboken, Jersey City.

Q. What docks?

A. Pier eight, Jersey Central Railroad at Jersey City.

Q. Did you berth the ship?

A. I did, yes, sir.

30

Q. You did not find a condition that existed as shown on exhibit P-4, did you?

A. What is that, sir?

Q. You didn't find the condition at pier 8 that existed in this exhibit P-4, did you?

A. No.

Q. Did you or did you not?

A. In reference to the abutment do you mean?

Q. Yes.

A. No.

Q. What beam did the ship have that you saw yesterday?

A. Had about fifty feet.

Q. Where was it?

A. At Gowanus.

Q. Where is Gowanus?

10 A. It is down between the Erie Station and Brooklyn Bay. It is along about 25th Street, Brooklyn.

Q. Would you recommend working ships that overlap; that is, one of the ships overlapping, wouldn't that foul the channel?

A. I would not recommend what?

Q. Working ships overlapping, and discharging a ship. Wouldn't that foul the channel?

A. Well, the outside ship would not foul the channel unless it was a very narrow channel.

20 Q. What channel are you talking about?

A. I am talking about in a slip.

The Court—What about the Passaic River at this dock? Could you overlap your ships without interfering with the channel?

The Witness—Yes, you could, sir. They overlap about 25 feet, 20 or 25 feet.

30 Q. What length of ship, Captain, could you work between the bridge pier and the property line of the company, overlapping; there is about 800 feet there.

Mr. Vickers—Just a minute. The ship cannot overlap unless there is another ship there. The witness is entitled to know what else is there.

Q. Will you tell the court and jury whether or not it would be possible between the pier and the south end of the company's property to work at the same time two four hundred foot ships, overlapping?

A. Nothing to prevent it. If you had the water for the ships, but if you haven't got the water, that is the only thing that you could not get the ships in there.

Q. That would not foul the channel?

A. No, sir.

Q. How wide is it from the pierhead line to the east line of the channel?

Mr. Vickers—That is objected to upon the ground that the pierhead line is not the wharf line in this case. 10

Mr. Milton—I know it is not. I want to know whether this witness knows what he is talking about. He says that the channel will not be fouled.

The Court—I will permit the question.

Q. (Question read as follows:) "How wide is it from the pierhead line to the east line of the channel?"

A. You mean where the pier is now or do you mean before? 20

Q. I mean the pierhead line. Don't you know what the pierhead line is?

A. About 300 feet.

Q. How far is it from the west line to the east line of the channel?

A. That is what I am talking about.

Q. So you think from the line of the company's wharf to the east line of the channel is 300 feet?

A. About that, I think; I never measured it. 30

*Re-direct Examination*—By Mr. Vickers.

Q. Captain, you are referring to the channel that you knew in existence on the Passaic River; is that right, at that point?

A. Yes, sir.

Q. Counsel asked you how long you had been ashore. Is it or is it not a fact that you are not

ashore except when you are in the court room. You are now navigating a boat?

A. Yes, sir.

Mr. Milton—I object to that. This witness said he was ashore.

Mr. Vickers—But he is actually on a boat. I took him off a boat to bring him here.

10

(The court admonished the jury not to discuss the case among themselves nor with anybody else until they returned after recess.)

(Recess until 2 p. m.)

After recess, 2 P. M.

20

---

JOEL L. SCHLESINGER, called as a witness for the State Highway Commission, being first duly sworn, testified as follows:

*Direct Examination*—By Mr. Vickers:

Q. You reside in Essex County?

A. I do.

Q. You are in the real estate business?

A. I am.

Q. And have been how long?

A. Continuously since 1914.

30

The Court—Are the qualifications admitted?

Mr. Milton—Yes, sir.

Q. Mr. Schlesinger, have you made an appraisal of the property in question in this case for the purpose of expressing your opinion as to the fair and reasonable market value of so much of this land as is taken and on the exhibit on the board indicated by the red line, or the red area traversing the exhibit?

A. I am.

Q. Together with consequential damage to the remainder by reason of the taking?

A. I have.

Q. And in forming that opinion, what classification did you put upon this property?

A. Industrial property with rail and water facilities similar to several other plots in the immediate neighborhood I have sold recently.

Q. Will you name those plots?

A. I have got a sale of the Factory Associates; this sale is in Newark on Lister Avenue.

10

Q. Where in Newark?

A. In Newark on the Passaic River. The property was sold August 26, 1929, by Factory Associates, a plot three and a quarter acres, having a frontage on the Passaic River, with a bulkhead pier built. The property owned riparian rights. It was improved with a large machine shop, foundry, fabricating plant. The property was sold with all the improvements for \$165,000, and deducting the value of the improvement which on the basis of the sale at the time were \$110,000 leaving \$55,000 for the value of the land; divided by three and a quarter, that gives \$17,000 per acre.

20

The Court—How can this witness segregate the value of the buildings from the land?

Mr. Vickers—On the same theory that Mr. Makray did.

The Court—Mr. Makray did not deduct the value of the buildings.

30

Mr. Vickers—He did with respect to the Ford sale.

Mr. Milton—That was brought out on cross examination and was not developed on direct. It formed no part of the basis of the witness' opinion as to value. He testified on re-direct that he had not used the sale,

had not referred to it because of his knowledge that he would not be permitted under the law to do it.

The Court—There was no objection raised.

Mr. Milton—I could not tell what was going to happen. I must address myself to the question and I must wait until the answer is finished before I move to strike out.

The Court—The question was proper.

10

Mr. Milton—I could not make any objection to that. Now it appears that this sale—

The Court—Let me ask this question. Mr. Schlesinger, can you give from that sale your opinion as to the value of the land per acre without a segregation?

20

The Witness—Well it would be pretty difficult to do that without placing some value on the improvements. The property was purchased to use those improvements and they are being used now.

The Court—Are the improvements comparable with the improvements of the land in question?

The Witness—They are a different type of improvements. They are comparable as to use. They are being used for industrial and warehouse purposes.

30

The Court—If they are comparable as to use, you may express your opinion as to the value. If they are not, you will have to venture into a computation that will include the value of buildings, whether a depreciated value or a replacement value or in what other criteria of determining value.

The Witness—That is what I have tried to do.

The Court—That is what is not admissible, because just as soon as you do that then it is a question of whether or not you are qualified as to the value of the buildings. You are not a contractor.

The Witness—It is a real estate value. I have been buying and selling industrial property for some years.

The Court—In arriving at your real estate value you have assumed the task of appraising buildings and improvements?

The Witness—You are obliged to do that many times in advising a client.

Q. Mr. Schlesinger, is there a recognized method in your profession of estimating values of buildings, first according to their classification and then according to their square foot area, cubic foot contents? 10

A. Usually industrial buildings—

Mr. Milton—Yes or no, please.

The Witness—Yes.

Q. Tell us what it is.

A. In industrial buildings, it is usually the square foot basis allowing for other depreciation or obsolescences, starting with different units for different types of buildings, four, three and a half, three, two and a half, and so forth, depending upon the type and style of building. 20

Q. And for how many years have you done that kind of analysis of properties, industrial properties similar or comparable to the Factory Associates property?

A. Continuously for the last ten years at least. 30

Q. Knowing the sales price of property as given by you and knowing the property and the character of business carried on, are you or are you not able to determine the land value of the property as of the time of the sale?

A. I think I am.

Q. And is the figure that you have given, \$17,000 per acre, that land value?

A. It is.

Q. Now, had that property at the time of the sale, road or street facilities comparable in character to the facilities of the Lincoln Terminal Company?

10 A. The property had a right-of-way, a twenty-foot right-of-way entrance from Lister Avenue. Lister Avenue is a paved street fifty feet in width containing all utility improvements, such as electricity, water, gas, telephone cables, all necessary  
10 improvements that go to make up a value.

Q. And in your opinion as a real estate operator, is that property comparable in character as to its utilitarian purposes to the property in question in this case?

A. I think it is.

20 Mr. Milton—I move to strike out the witness' testimony with reference to the value or alleged value of land involved in this sale because it has been reached in a manner prohibitive by law or contrary to law.

20 The Court (after argument)—The court has knowledge of the experience of the witness in the real estate field, and if the witness is able to make a comparison of the properties and give his opinion, why, the court will admit it, without making the deductions, but as soon as he goes into deductions, then he is going to get into a realm  
30 that he is not qualified to testify about.

Mr. Vickers—May I ask him this question? From your knowledge and experience of the Factory Associates property to which you have just referred and as of August, 1929, can you tell us what in your opinion was the value of that land, with the facilities, bulkhead, riparian grant, electric light, water, sewer, road facilities that it enjoyed per acre?

A. I think the answer would be the same, \$17,000.

Mr. Milton—The question was can you.

Q. Answer that yes or no.

A. Yes, sir.

Q. What is the value in your opinion?

Mr. Milton—That is objected to upon the ground, in the first place, that there is no proof in the case that the land has electric light, water and fire protection and the other elements that Colonel Vickers mentioned; secondly, on the ground that it has been proven already in the case that this land is encumbered by buildings which were on the property at the time the property was sold. The witness has already attributed to those buildings a value in his judgment and said that in order to arrive at the value of the land he must separate and divorce the buildings from the land and separately value that.

10

20

The Court—He has also said that the uses of the building and the purpose for which it can be used are about the same as the other. It is true there is no testimony thus far about the other improvements.

Mr. Vickers—I think the witness says so.

The Court—Are the improvements on both lands similar or substantially similar?

30

The Witness—Yes, the City of Newark has the improvements right at the entrance to the property and there is high-pressure fire hydrants, there is sewer, water and gas; twelve-inch high-pressure water and ten-inch sewer.

Q. And riparian grant and dock?

A. At the waterfront, yes, sir.

10 Mr. Milton—Now, it seems to me, if the court please, that the question is improper. The witness is asked what is the value of the land involved in the Associates' sale. That is not the point, what the value of the land was is of no consequence. This witness is called upon to put a value, a market value placed by him as of September, 1930, upon land taken and the consequential damage suffered by the remainder predicated on his judgment and which necessarily in turn is based upon a sale.

The Court—This is one of the elements upon which he based it.

Mr. Milton—In part.

20 Mr. Vickers—Isn't the jury entitled to know why this witness eventually puts a certain value on the land in question in this case? He says I must deduct a sale in August, 1929, of land in my opinion—

The Court—Are the lands comparable?

The Witness—I said that originally, yes, sir.

The Court—Can you take the lands as they are or as of the twentieth day of September, 1930, and say that they are comparable?

30 The Witness—Yes. I have taken all these sales to form my general opinion as to the Lincoln Terminal property.

The Court—Why do you say the lands are comparable?

The Witness—It is the same type of land. It has got a bulkhead. It has got a dock. It has riparian rights. It is fully improved and has buildings and utility improvements.

The Court—How about the comparability of the building?

The Witness—As I said before I don't think—yes, they are of the same type, yes, sir. The buildings on the Factory Associates' property, however, are of a foundry type, very high ceilings, monitor type roof, in good condition, and now being used.

The Court—How do they compare with the other buildings?

The Witness—Some possibly better.

The Court—I will permit the question.

Mr. Milton—Exception. May I cross examine upon the comparability of the property? 10

The Court—Yes.

*Cross Examination*—By Mr. Milton.

Q. The property of which you now speak, was sold by Factory Associates to the Industrial Products Corporation in August, 1929, and is located over a mile away from the property of the Lincoln Terminal Corporation. 20

A. It is.

Q. And beyond the second bridge on the Passaic River above the property of the Lincoln Terminal Corporation?

A. No, sir.

Q. Is there a bridge intervening?

A. No, sir.

Q. It is on the west bank?

A. Excuse me. I think there is Public Service spur bridge in between. 30

Q. On the west bank of the Passaic River?

A. Yes, sir.

Q. And the property of the Lincoln Terminal Corporation is on the east bank of the Passaic River?

A. Yes, sir.

Q. The property of which you speak is located in the City of Newark?

A. Yes, sir.

Q. And the City of Newark is the largest city in the State of New Jersey?

A. Yes, sir.

Q. And the property of the Factory Associates is beyond the zone to which the channel of the Passaic River is to be dredged by the government under the existing plan or program?

A. At the time they both had the 20-foot channel, September, 1930.

10 Q. I am speaking about the program of dredging a 30-foot channel.

Mr. Vickers—That is objected to because it takes something into account that was not in existence on the 20th day of September, 1930.

Mr. Milton—It was projected at that time according to the testimony in the case.

20 Mr. Vickers—Projected but not carried into execution, and that is not a proper element of comparison as to the comparability of the properties.

The Court—I shall permit it because it goes to weight rather than admissibility.

The Witness—So I heard in the testimony in the case, yes, sir.

Q. It is beyond that zone?

A. I haven't seen the map.

30 Q. Erected on the property is a one-story brick building?

A. A series of one-story brick buildings.

Q. How many buildings?

A. There is a fabricating shop, a machine shop, foundry.

Q. Three one-story brick buildings?

A. They are all connected.

Q. Was the foundry in existence at the time of the sale?

A. Yes, sir.

Q. Had it not been destroyed partially by fire?

A. That is not included; there was a fire provision to the sale. There was not a part of the buildings that were sold. That old part was on the front part, or rather north part of the property. Those buildings were torn down. There was a fire there, yes, sir.

Q. The sale then was a sale of a part of the tract?

A. Yes, it was a tract owned by Factory Associates. 10

Q. Was there a foundry upon this tract which had been partially destroyed by fire prior to your sale?

A. The piece sold was the whole property owned there by the Factory Associates.

Q. You don't answer my question. Was there a foundry upon it which was partially destroyed at the time of your sale?

A. That was taken away before the sale; there was a fire. 20

Q. There was a fire?

A. Yes, there was a fire.

Q. Was there any other foundry there?

A. This building is part of the foundry.

Q. Which building?

A. The buildings we have sold.

Q. Did you actually yourself sell this property?

A. Yes, sir. 30

Q. You, yourself?

A. Yes, sir.

Q. Why, wasn't it the office of Louis Schlesinger, your father?

A. Both of us, the office and myself.

Q. What did you have to do personally with the sale?

A. The purchaser of the industrial company, a subsidiary at the time of the Krupp Steel Company, we showed the property to them.

Q. Will you please forget the Lindbergh "We."

Mr. Vickers—He is cross examining as to the comparability and not as to the fact of whether the sale was made by the witness.

Mr. Milton—I certainly have a right to prove the witness' knowledge of the facts surrounding this property.

10 The Court—He has not requested that permission but the court will permit the examination.

Q. Did you yourself conduct the negotiations resulting or leading up to this sale?

A. Yes, sir.

Q. With whom?

A. Mr. Wallace Johnson.

Q. Representing what organization?

A. The Industrial.

20 Q. And with anyone else?

A. One of the salesmen.

Q. Did you actually conduct negotiations?

A. Yes, sir.

Q. And closed the transaction?

A. I drew the contract closing up the sale.

Q. Prior to that time or at that time did you participate in or did you effect any negotiations?

A. Yes, sir.

Q. With whom?

30 A. With Mr. Johnson and Mr. Gross representing the seller.

Q. What Mr. Gross?

A. Michael B. Gross.

Q. How old are the three buildings that you have spoken of?

A. They are quite old.

Q. Over thirty years, aren't they?

A. Yes, sir.

Q. And there is only a dirt floor?

A. In part there is brick and stone floor, in the south part where the track runs, the railroad siding.

Q. Wasn't that brick and stone floor all broken up?

A. It was not in the best of condition.

Q. And as a matter of fact, weren't these buildings practically rebuilt after the sale?

A. No, sir, they were repainted.

Q. Weren't they reconditioned and rehabilitated rather extensively? 10

A. No, they were not. They were repainted. That was the most job that was done.

The Court—Did you say that this property was a mile away on the Passaic River and it is comparable?

The Witness—Yes, and I think you can go farther than a mile.

The Court—The court will permit the witness to testify; you may have an exception. 20

Mr. Milton—Thank you.

The Court—It goes to the weight of the evidence, it seems to the court, rather than to its admissibility.

Mr. Vickers—The answer then is \$17,000 as before.

*Re-direct Examination*—By Mr. Vickers. 30

Q. Is that right, Mr. Witness?

A. Yes, sir.

Q. The next property?

A. The property sold by the American Agricultural Chemical Corporation on January 26, 1929, to Richard F. Greenwood, part on Lister Avenue facing Lockwood Street; two and three-quarter acres having a frontage on Lister Avenue, of approximately 780 feet; on the Passaic River 217

feet, running from the river to the street about 780 feet. The total area was two and three-quarter acres. That had a substantial concrete building on it which was one of the main reasons why Mr. Greenwood purchased the property.

Mr. Milton—I move that that be stricken out.

Mr. Vickers—I consent to it.

10

Q. Go ahead, give us the figure.

A. The purchase price was \$65,000.

Q. And is that in your opinion comparable in character?

A. Yes, had the same kind of improvements as the other property I have just referred to.

Q. And fire, electricity, sewer, water?

A. All the utility improvements, rail and water.

Q. The next property?

20

The Court—You have not given the value per acre.

Mr. Milton—If I might interrupt, I want to reserve the right, so I won't be too late to move to strike all of this witness' testimony out when he finishes. He gives a value as to the land and the upland that I want to move to strike that out upon the ground that his testimony and his values are based upon an illegal and invalid and improper consideration and factor.

30

The Court—All right; proceed.

The Witness—Where we sold that same property on April 4, 1930, to the M. A. T. Corporation, a year and four months later for \$60,000; that is, the two and three-quarter acres just referred to. Another sale on Lister Avenue for the American Agricultural Chemical Company.

Q. Is that the same company that sold number two?

A. The M. A. T. and the Greenwood are the same plot. Another sale in Lister Avenue, American Agricultural Chemical Company to Peerless Oil Company. This property did not front on the river but it did have the right, the Peerless Oil Company did have the right to tie up its boats at the American Agricultural Chemical Company's dock?

Mr. Milton—How can the witness testify to that?

The Witness—I negotiated the sale.

10

Mr. Milton—Does that right arise by virtue of some writing?

The Witness—Yes, sir.

Mr. Milton—I move to strike it out.

The Court—That will be stricken.

Q. Go ahead, Mr. Witness.

A. What part is stricken?

The Court—The part you testified about the tying up. I know that, I might have a copy of the contract.

20

Q. Go ahead.

A. One and a half acres with a brick building with a concrete floor containing ten thousand square feet, 1.54 acres sold for \$33,000. That was February 24, 1930. Then I have a sale of the American Agricultural Chemical Company to Swan Finch Oil Company, February 2, 1930, two and a half acres, fronting on the Passaic River, had a one-story building containing eight thousand square feet, brick, concrete floor. The total purchase price was \$60,000.

30

Q. By the way, let me ask you; just eliminate the sale on February 24, 1930, and as well as this sale of February 2, 1930; was that industrial property, used industrially?

A. Yes, sir.

Q. Comparable in character in your opinion?

A. Yes, sir.

Q. With the property in question?

A. Yes, both in the heavy industrial zone. That is all I have of waterfront properties that I have negotiated the sales of.

Q. Mr. Schlesinger, you have been here during the taking of testimony in this case and have heard the properties referred to by the other witnesses here, is that right?

A. Yes, sir.

10 Q. You are familiar with the properties you have heard testified to?

A. Some of them.

Q. Taking your experience as a real estate operator and your knowledge of the property in question, what in your opinion is the fair and reasonable market value of the land taken and the consequential damage to the remainder by reason of the taking as of the 20th day of September, 1930?

A. \$174,221.

20

The Court—Can you give me the value before the taking?

The Witness—I was going to do that next. The entire value before the taking of the two plots lying east of Jacobus Avenue, \$1,225,130.

The Court—And after the taking?

The Witness—After value, \$1,050,909; the difference being \$174,221.

30

The Court—That includes all the damage by reason of the taking and the consequential damage?

The Witness—Yes, sir.

Mr. Vickers—Take the witness.

Mr. Milton—I move to strike all of the witness' testimony, including the values placed by him upon the land of the upland, both as to the land taken and as to the consequential damage, and as to the value of the land be-

fore and after taking, upon the ground I previously stated, that his valuation and his estimation of the consequential damage is based upon illegal factors and bases; that the property sales used by him as a basis for his valuation are sales of property not comparable and in each instance the witness attempted to form a judgment of what the value of the land sold was, so as to compare it with the value of the land under consideration here, and he must have deducted, and would be required to deduct from the total sales price some value to be attributed by him arbitrarily to this construction upon the land in each case. 10

The Court—Well, it is not within the province of the court to say whether land is comparable or not. If the witness says that he is a real estate expert and gets on the stand and testifies to some features that are comparable or some foundation that is laid, that it is comparable, the court may exercise its discretion and permit the testimony; particularly in this case; the witness has testified as to what he terms comparable property, that is the situation on the river, the riparian rights, the improvement in some degree comparable, and there has been some testimony as to their description and the kind of buildings that they are and under that testimony that was the foundation upon which the witness based his opinion. There is some testimony given by this witness upon which he alleges that he based his opinion that might not be admissible; so that the position stands that you are asking to strike out testimony that is admissible together with that that is not. Furthermore, this 20 30

witness said that he took into consideration the testimony of your witnesses, the basis that they used in arriving at his value, some of it at least. So that if the omnibus offer is sustained, then the motion will affect both the good and the bad, and the court is inclined under the circumstances to deny your motion. If you desire to segregate your motion first as to the one that is admissible and the one part that is not, I will rule upon it for you.

10

Mr. Milton—No, I think I will let it stand as I made it. Your Honor will allow me an exception?

The Court—Yes.

*Re-cross Examination*—By Mr. Milton.

Q. Mr. Witness, am I correct in understanding that you have in part formulated your judgment as to the value of the property taken upon hearing testimony offered by witnesses for the Lincoln Terminal Corporation?

20

A. I heard the Judge say—I don't remember having said that. I am trying to get that myself.

(Testimony read as follows: "Mr. Schlesinger, you have been here during the taking of testimony in this case and have heard the properties referred to by the other witnesses here; is that right? A. Yes, sir.

30

Q. You are familiar with the properties you have heard testified to?

A. Some of them.

Q. Taking your experience as a real estate operator and your knowledge of the property in question, what in your opinion is the fair and reasonable market value of the land taken and the consequential damage to the remainder by reason of the taking as of the 20th day of September, 1930? A. \$174,221.")

Mr. Milton—Am I to understand that your Honor holds that a witness may sit in the court room and hear some other person sworn and give an opinion as to the value of property under consideration and then use that opinion as a basis, either in whole or in part for his own judgment as to the value of the land?

The Court—Maybe not entirely but he can use it in forming an opinion. He can consider it as knowledge as the court reads the Brokaw case in 150 Atlantic. Now, answer the question. 10

Q. (Question repeated as follows: “Mr. Witness, am I correct in understanding that you have in part formulated your judgment as to the value of the property taken upon hearing testimony offered by witnesses for the Lincoln Terminal Corporation?”)

The Court—Now answer the question. 20

The Witness—No.

Q. You say you were in court here during this trial?

A. Not all of it.

Q. What time of the day did you arrive for the first time in this court room?

A. Ten minutes to two.

Q. So that you heard none of the testimony that went on from ten o'clock until one? 30

A. No, sir.

Q. What time did you arrive yesterday for the first time?

A. I think about eleven thirty.

Q. What time did you leave yesterday?

A. When the court adjourned.

A. At one o'clock and at four.

Q. Did you return after the noon recess?

A. I was here the rest of the court day.

Q. And you have been floating back and forth between this court and some other condemnation hearing over in Newark?

A. Just this morning.

Mr. Vickers—I object to the floating part.

Mr. Milton—Perhaps I did not use the proper term.

10 Q. You have been trying to represent some clients over in Newark and at the same time keeping in touch with this case?

A. Yes, sir.

Q. And that has required your absence from this court room part of the time?

A. This morning.

Q. You were here yesterday all the time?

A. No.

Q. Were you here Tuesday afternoon all the time?

20 A. Yes, sir.

Q. What time did you get here?

A. Tuesday I think I came back at two o'clock after having had lunch with Mr. Rier.

Q. Did you stay here all the balance of the day?

A. Yes, sir.

The Court—What real estate expert did you hear testify?

The Witness—I only heard Mr. Makray.

30

Q. You heard only Mr. Makray?

A. Yes, sir.

Q. So you heard neither Mr. Houston nor Mr. Moore?

A. No, sir.

Q. The property whose sales you have testified to are all on the west bank of the Passaic River?

A. Yes, sir.

Q. The sale of the American Agricultural Chemical Company to Greenwood, you say that did not involve any riparian rights?

A. It had a freeholders' license.

Q. Do you know what a freeholders' license is; yes or no?

A. I think I do.

Q. How much waterfront on the Passaic River is there to the property of the Lincoln Terminal Company, do you know?

10

A. I want to tell you exactly.

Q. Well, approximately.

A. 1434.13 feet.

Q. How much waterfront was there to the property that was sold by the American Agricultural Chemical Company to Greenwood, 217 feet?

A. Yes, sir.

Q. And you represent to this jury that this property having a frontage of 217 feet on the Passaic River is comparable with a piece of land with a frontage of over 1400 feet?

20

A. I think it is for the proportionate number of acres included in the plot.

Q. What is the frontage of the land sold by the American Agricultural Chemical Company to Peerless Oil; none?

A. Had a right to tie up boats at all times at the American Agricultural dock.

Q. (Previous question read as follows: "What is the frontage of the land sold by the American Agricultural Chemical Company to Peerless Oil; none?")

30

A. Had a right of way to the waterfront, the use of the waterfront.

Mr. Milton—Will the court please instruct the witness with respect to the question?

(Question again read as follows: "What is the frontage of the land sold by the American Agri-

cultural Chemical Company to Peerless Oil; none?")

A. They do not own any fee on the river.

Q. So that this jury won't get the impression that you and I are sparring for words, did any of the land sold by the Chemical Company to the Peerless Oil front on the river?

A. No, sir.

10 Q. And you want the jury to understand that regarding that land as comparable with a piece of property having a frontage of 1400 feet on the Passaic River, you want them to so regard it?

A. I said they had a right to tie up boats at all times and had a right to have a pipe line from the dock to their property.

Mr. Milton—I move that that be stricken out.

20 The Witness—I have got to say that.

The Court—The answer will be stricken.

(Question read as follows: "And you want the jury to understand that regarding that land as comparable with a piece of property having a frontage of 1400 feet on the Passaic River, you want them to so regard it?")

A. In some respects, yes, sir.

30 Q. And the frontage on the Passaic River, the two and a half acres sold to the Swan Finch Oil Company, that had about 115 feet?

A. Might be. I have the blueprint with me but I haven't got it noted now.

Q. Mr. Houston says 115 feet. Do you think it is about that?

A. It might be. It runs quite deep, two and a half acres.

Q. And is that another riparian grant?

A. Freeholders' license.

Q. Freeholders' license?

A. With a bulkhead built.

Q. And you think that two and a half acres with a frontage of 115 feet with a freeholders' license is comparable, to be compared to use and other basis for establishing a value to land a mile away from it on the other side of the Passaic River?

A. My understanding of a freeholders' grant—

Q. Do you or do you not?

A. It is my understanding, a freeholders' grant—the answer is yes, sir.

Q. Well, the Industrial Allies Company which is the one you first mentioned, I think that was by Factory Associates, wasn't it? 10

A. Yes, sir.

Q. That property is one hundred feet back from Lister Street.

A. I said it originally had a right-of-way from Lister Avenue.

Q. Can you answer a question?

A. Yes, sir.

Q. And it has access to Lister Street by a 20-foot right-of-way? 20

A. Yes, sir.

Q. And in order to get a valuation of \$17,000 an acre you put what price per square foot on the building?

A. Two and a half dollars.

Mr. Vickers—Your Honor will recall that at the instance of my friend that I withdrew that question. But if counsel wants to open it— 30

Mr. Milton—I don't want to open it up, but my recollection is that after some colloquy between the court and counsel the witness was again asked the question by Mr. Vickers as to the value he got of \$17,000 an acre.

Mr. Vickers—That is correct.

Q. How did you get that value of \$17,000 an acre?

A. By my opinion of the value of the buildings at the time they were sold.

Q. And the value of the land is \$110,000?

A. Yes, sir.

Q. That would result in a net of \$2.50 a square foot, not a net of that, but about two dollars and seventy-five cents a square foot, wouldn't it be, almost exactly two seventy-five, isn't that what it would be?

A. That is 44,000 feet.

10 Q. I had it 40,000; at 44,000 feet you say two and a half dollars?

A. Yes, sir.

Q. And this building is over 30 years old?

A. Yes, sir.

Q. It is a one-story brick building?

A. Yes, sir.

Q. And as you testified before it is a partly dirt and a partly brick and stone floor, partly broken up?

20 A. Not in good condition.

The Court—Is that the first property you testified to?

The Witness—Yes, sir.

Q. Of the American Agricultural Chemical Company sale, all of those sales are above the bridge from the company's property, the second bridge?

A. Yes, sir.

30 Q. Is that right?

A. Yes, sir.

Q. And the other the first?

A. The first bridge.

Q. The first bridge above the company's property?

A. Yes, sir.

Q. Over a mile away from the company's property?

A. Yes, sir.

Q. On the west bank of the Passaic River?

A. Yes, sir.

Q. And some of them have only a freeholders' license?

A. All of the American Agricultural have a freeholders' license.

Q. And none of the American Agricultural sales had a riparian grant?

A. No, sir.

Q. None of them front upon a highway which can be compared to the Lincoln Highway? 10

A. No, sir.

Q. You have not taken into account any sales in Hudson County?

A. No, sir.

Q. How long does it take to get by truck from this property, these properties, to New York?

Mr. Vickers—Doesn't that depend on what the truck itself does? 20

Mr. Milton—An automobile truck in average condition.

The Court—The approximate time.

The Witness—The approximate minimum would be five minutes longer.

Q. Five minutes longer than going from the Lincoln Terminal?

A. Yes, sir.

*Re-re-direct Examination*—By Mr. Vickers. 30

Q. When you speak of a freeholders' license, is it an exercised right in your opinion?

Mr. Milton—Just a minute.

The Court—Objection will be sustained.

Mr. Vickers—I withdraw it.

Q. The properties in question that have been referred to as having, as you say, a freeholders' license, were there in effect bulkheads commercially

used in connection with the navigation of the Passaic River?

A. Yes, daily users.

10

The Court—On cross examination the witness has said that he has not relied on the testimony used by the other witnesses. He has reversed the position he first assumed of computing the value of the buildings and deducted that from the gross value of the land and buildings and that is in regard to the first property and in regard to the others. He has testified to matters which to the court's mind does not bring it within a comparable situation. Of course if there is no objection to it, it will stand, but I am pointing that out to counsel.

Mr. Milton—I press the motion.

20

Mr. Vickers—May I say this, in this case I am following the ruling of your Honor against my objection yesterday in the Makray case, in which your Honor ruled against me and permitted Mr. Makray to compare property which has no docks at all, which were not filled, on the theory that you cannot get two properties identically comparable.

The Court—That is true, but here is a witness who has destroyed by his method whatever comparability there was.

30

Mr. Milton—In the interest of saving time I am willing to withdraw my motion and let the testimony stand.

(Witness excused.)

FREDERICK DUNHAM, called as a witness for the State Highway Commission, being first duly sworn, testified as follows:

*Direct Examination*—By Mr. Vickers.

Mr. Vickers—Are the qualifications of Mr. Dunham admitted?

Mr. Milton—Yes.

Mr. Vickers—And that the witness for a period of years was harbor-master of the City of Jersey City?

Mr. Milton—No, harbor engineer.

The Witness—Harbor engineer.

Mr. Vickers—Is that so?

10

Mr. Milton—Yes, sir.

Q. Mr. Dunham, have you, as of the 20th day of September, 1930, made an appraisal of the property in question in this case for the purpose of expressing your opinion as to the fair and reasonable market value of so much of this land included within the area shown on Exhibit P-2 in the red line and the consequential damage to the remainder of the land by reason of the taking?

20

A. I have.

Q. Will you tell the court and jury what your opinion is as to the value of the entire property before the taking?

A. I have separated it into east and west of Jacobus Avenue.

Q. East; give us that.

A. The parcel east of Jacobus Avenue, eliminating the one hundred-foot strip along the Lincoln Highway, value before of 39.45 acres, \$591,750. Value after \$542,080.

30

Q. And the result?

A. The value of the land taken and damage to the remainder, \$49,670.

Q. And now, give us the westerly tract.

A. The westerly tract, running between Jacobus Avenue and the Passaic River, eliminating the one hundred-foot strip along the Lincoln Highway, 28.22 acres, \$705,500. Value of land after the tak-

ing \$597,000. Value of land taken and damage to the remainder \$108,500.

Q. And the grand total is what?

A. \$158,170.

The Court—Is that your total damage, everything?

The Witness—Total damage, everything.

10 The Court—Haven't you figured out the value of all the property, including the strip that you have reserved from the computation you have mentioned?

A. Including the strip?

The Court—The value before.

The Witness—No, I have not. I have left out the one hundred foot-strip in both instances. In other words, put it in and taken out the same value; I have eliminated it.

20 The Court—So your item of damage, your total, is \$158,170?

The Witness—Yes, sir.

Q. In your opinion is the one hundred foot-strip over on the west side or on the east side of Jacobus Avenue affected in the least by the taking and the building of the highway in question?

A. It is not.

30 Q. Mr. Dunham, you are an engineer by profession, are you not?

A. I am.

Q. And have been for how many years?

A. About forty years.

Q. Have you, since this trial began, and have you previous thereto, examined the premises with a view to determining the actual physical condition of these tracks and switches on the ground?

A. I have.

Q. Have you today examined the track or switch area along Jacobus Avenue toward the north and adjacent to or lying under the highway right-of-way?

A. I have.

Q. Prior to today, when did you last examine that property?

A. About a week ago.

Q. And prior to that, have you examined it this year? 10

A. Yes, sir.

Q. Earlier?

A. Earlier in the year.

Q. In the winter?

A. Yes, sir.

Q. Today, do you find the condition of the switches the same as it was a week ago and earlier in the year?

A. It is not the same. 20

Q. Describe what changes have taken place between the condition existing a week ago and a year ago and the condition as it is today.

A. Well, the switch tracks coming off Jacobus Avenue and crossing Second Street, has been uncovered and cleared from dirt and put in usable use. That has been done very recently.

Q. When you examined the property earlier in the year, can you tell what the condition, the situation was as to these leads and switches running from the beginning of the property of the company at the corner of Second Street and Jacobus Avenue? 30

A. Well, a great many of the tracks in there have been cleared of weeds and refuse.

Q. At the particular point, can you say whether there was this condition earlier in the year when you examined it?

A. That I could not tell, because some of the track was covered; it was not visible.

*Cross Examination*—By Mr. Milton.

Q. You made no examination, I assume, before the contractor went into possession in May, 1930?

A. Yes, I was down there. I have been there various times during the last two years.

The Court—Wasn't the petition filed September, 1930?

Mr. Milton—Yes.

10 The Court—How could they go into possession?

Mr. Milton—They do under the Act.

The Court—Before the filing of the petition?

Mr. Milton—Yes, at any time.

Q. You made no examination of these particular tracks before the contractor went into possession as far back as May, 1930?

A. Oh, yes, sir.

20 Q. What was their condition then?

A. The tracks to the east of Jacobus Avenue were disused.

Q. I am referring to the lead track from Jacobus Avenue crossing Second Street.

A. Crossing Second Street.

Q. Yes.

A. I could not say whether it was connected or not. It was covered.

30 Q. When you went down there about a year ago, were the conditions generally as they appear on the exhibits which I hand you, Exhibits 10, 11, 12, 13, 14, 15, 16, 17, and 18?

A. I went there, I can't tell you the exact time, when the contractor was on the ground. I went there several times before the contractor was on the ground at all.

The Court—Is there any question, Mr. Dunham, that the photographs show the condition that was

substantially the same as you saw when you were there, before the contractor went into possession?

Mr. Milton—No, after the contractor got there.

The Witness—I don't want to contradict photographs.

Q. About a year ago, when you were there, were the conditions in the plant, in the yard, generally as represented by these photographs—you heard Mr. Schlesinger testify? 10

A. Yes, sir.

Q. And did you know of the same sales on the west bank of the Passaic River that he told us about?

A. I know of them but I paid no attention to them.

Mr. Milton—I move that that be stricken out.

Mr. Vickers—I consent to it. 20

Mr. Milton—That is the latter part of the answer that he paid no attention to them.

The Court—Yes.

Q. You do know of them?

A. Yes, sir.

Q. Will you be good enough to give me the value per acre that you place upon the property of the company east of Jacobus Avenue?

A. \$15,000 an acre. 30

Q. And west of Jacobus Avenue?

A. \$25,000 an acre.

Q. You paid no attention to the sale by Factory Associates to the Industrial Allies Company?

Mr. Vickers—That is the very thing that counsel asked to be stricken out.

The Court—Now he is asking again.

Q. You paid no attention to that, I think you said.

A. None whatever.

Q. So thus far the inference you draw from that statement, a sale of land on the west bank of the Passaic River over a mile away from the property of the Lincoln Terminal Corporation, or about a mile away from the Lincoln Highway, sold in 1929 for \$17,000 an acre, you put only \$15,000 an acre on the land east of Jacobus Avenue; is that right?

A. It is not comparable.

10

Q. It is not comparable?

A. Not the \$17,000 and \$15,000 is not.

Q. You mean the land is not comparable?

A. The land is not comparable, the \$17,000 an acre that you mentioned, and the fifteen.

Q. I asked if the land was comparable?

A. One is waterfront and one is not.

Q. It is a fact that you put \$15,000 an acre on the land of this company east of Jacobus Avenue; that is right?

A. Right.

20

Q. And it is a fact that Mr. Schlesinger put a value of \$17,000 an acre upon the land sold to the Industrial Allies Company; you heard him, didn't you?

A. Between Doremus Avenue and the Passaic River.

Mr. Milton—I don't care where it is. He did it.

30

Q. Mr. Dunham, in the vast area between the Hackensack River on the west, the Passaic River on the east, the lines of the Pennsylvania Avenue on the north, and the Lincoln Highway on the south, there are about 500 acres?

A. I should judge about that.

Q. That land in the past few years passed into the ownership of comparatively few persons or corporations; that is right?

A. You mean by that ninety per cent of it has been sold; I will agree with you.

Q. Well, it is a fact, is it not, that the Pennsylvania Railroad Company subsidiary, the Manor Real Estate and Trust Company?

Mr. Vickers—I object to the injection of the Pennsylvania Railroad subsidiary. The question is unwarranted by any evidence in this case.

The Court—Wait until we see what happens. He is asking if conveyances were not made by these parties? 10

Mr. Vickers—That is what he is asking, a Pennsylvania Railroad subsidiary.

Mr. Milton—I have called it a subsidiary. I will change that.

Q. It is a fact, is it not, that the Manor Real Estate and Trust Company own this area approximately 134 acres?

A. Adjoining their right-of-way, yes, the northerly part of the area, north of Pennsylvania Avenue. 20

Q. And that the Public Service Corporation owns 135 acres in that area?

A. No, they don't own that much.

Q. How much do you think they own?

A. The first purchase was 112.96 acres running from the Hackensack River back.

Q. I just want the acreage.

A. And then they bought another small piece of about nine acres; about 122 acres. 30

Q. Didn't they buy there 92 from the Factory Sites?

A. Right.

Q. And 17 from Joseph Day, 17 from the Ford Real Estate Company and then from John Tracy, receiver, 108, making 135 all told?

A. I know what they bought. I surveyed it for them.

Q. Now, will you please—you expect to be here tomorrow?

A. If you need me.

Q. I surely will. I am going to ask you to estimate for me the amount of acreage owned by the Public Service.

A. I don't want to quarrel with you; if you say that is it, I will accept it.

10 Q. The Lincoln Terminal Corporation has taken out of its area about 73 acres.

A. About that.

Q. The town of Kearney has taken 10 acres?

A. Ten and a half.

Q. The United Railroad and Canal Company has taken 14 acres plus?

A. For a right-of-way.

Q. I don't care what it is for. The Valentine Company have 15 acres plus?

20 A. About that.

A. The Riverside Steel Casing occupy slightly over two acres?

A. Yes, sir?

Q. Therefore, it is a fact, is it not, that out of this 500 acres there, almost 385 have passed into the hands of persons or corporations that I mentioned; that is so, isn't it?

A. I should say so.

30 Q. How many acres does the Hoboken Land and Improvement Company own in this area?

The Court—Tell him; maybe he will agree.

Q. Fifty-four acres?

A. Fifty-four and a fraction.

Q. So that there are left the difference between 54 and 115, in small ownerships in this big area in here; is that so?

A. Well, there are two or three plots in there owned by the Newark Factory Sites.

Q. In addition to the one I mentioned?

A. No, they are owners practically all of the land that is left outside of the Hoboken Land and Improvement Company.

Q. And on the other side of the Lincoln Highway, between the Hackensack River on the east and the Passaic River on the west, the Lincoln Highway on the north and the bay on the south, do you know how many acres there are approximately?

A. I can't tell you off hand.

Q. Three hundred and fifty about?

10

A. I will accept your figure. Whatever you say, I am not going to contradict you without the exact figures in front of me.

Q. Would you say there would be about 334?

A. I accept your figures.

Q. You know of the dealings of the Western Electric Company in there?

A. Yes, sir. I surveyed that.

Q. I will change that from 334. It is 360. Do you know what they have; about 144 acres, approximately, isn't it?

20

A. About that.

Q. The Federal Shipbuilding Company own about 164 acres, the Boston Excelsior Company have 26 and a half, south of the Newark and New York Railroad Company.

Q. So that out of the 360 acres which lie between the Hackensack River on the east, the Passaic River on the west, the Lincoln Highway on the north and Newark Bay on the south, 334 are in the hands of three corporations?

30

A. Three corporations?

Q. Yes.

A. I could not check that here. I would have to have time to do that.

Q. You can check that tonight. What is the trend in the value of that land in that area, or what has it been, the trend in value, in the area between the Pennsylvania Railroad on the north, Newark

Bay on the south, the Passaic River on the west and Hackensack River on the east, in the past ten years?

Mr. Vickers—That is objected to on the ground that the ten year period is too remote and that it is the trend on the 20th of September, but to ask as to the trend in ten years seems to go too far back.

10 The Court—What is it you object to, the whole question?

Mr. Vickers—The whole question.

Q. Then seven years from 1930.

A. There is not any pronounced trend.

The Court—Objection overruled.

Mr. Vickers—I withdraw it then.

Q. So that you want the jury to believe that despite the acquisition on the south side of 334 acres out of 360 by three holders and the acquisition of over 430 acres out of 500 north of the highway,  
20 the land values have not increased in the seven years prior to 1930?

Mr. Vickers—That is objected to upon the ground that there is nothing that appears in the evidence in this case that the acquisitions were during that period of time, and have any effect or influence on the trend.

The Court—The question is objectionable for another reason, that the witness has not said that. He wants to check over every-  
30 thing.

Mr. Milton—I withdraw the question.

Q. Is it your conviction, Mr. Witness, that in the area north of the Lincoln Highway and between the two rivers there was not an increase in land values between 1923 and 1930?

A. In some spots, yes, and other spots, no.

Q. Which spot was there not an increase, which section?

A. Right in this particular section. There were sales made somewhat higher, some lower than the previous sales.

Q. Right in this very section?

A. Right in this very section; yes, sir.

The Court—Why can't we have those sales? Have they been mentioned?

Mr. Milton—They have been mentioned; they were mentioned by Mr. Makray.

The Court—The court will ask for those sales now. 10

The Witness—The sale mentioned, one sale that I have here is a sale in 1917 and 1918, and a resale in 1925, the same property.

Mr. Milton—I object to that.

The Court—You may testify to the sale in 1925.

A. The sale of Niles-Bement-Pond, to the Chester Security Company, of 54½ acres on the Hackensack River, Hackensack Avenue and Central Avenue, sold for \$362,500, or at the rate of \$6,650 an acre. 20

The Court—What has been the history of this particular property, outside of that forced sale has there been any sales within the last ten years?

The Witness—Yes, there have been sales, most of the sales during the war period and were sold at forced high prices. There has been some resales that have brought that price and some that have not. The Niles-Bement-Pond Company was a war sale in 1917 and 1918. They held the property until 1925, then let it go at a loss. 30

Mr. Milton—I ask that that be stricken out.

The Court—It will be stricken.

Mr. Milton—This witness knows better.

The Court—I am speaking about the property in question, the Terminal property.

The Witness—The Terminal property in question?

Mr. Milton—I want the court to please warn the witness not to give judicial sales. He will do it if he has half a chance.

Mr. Vickers—The witness is not attempting to do anything of the kind.

10

The Witness—Sales in 1923, 1924, and 1925; there were sales then, if you want them.

The Court—Anything but a sale that is in the nature of a judicial or forced sale, a free sale, that is a willing buyer and a willing seller.

The Witness—As far as a free sale, the Niles-Bement-Pond.

The Court—Were there any other sales?

20

The Witness—There has been a number of sales through there, probably ninety per cent of the area between Pennsylvania Railroad and the Lincoln Highway was sold between 1912 and 1924 or '25.

Mr. Milton—Object was made by counsel to my going back so far.

The Witness—I am trying to find a sale from the Newark Factory Sites to the Manor Real Estate Company. I am afraid that is too far back.

Q. I didn't mention any sale.

30

A. You have mentioned that sale.

Q. Let us get the record straight.

The Court—In the seven years, have you any sales that are of the property of the Lincoln Terminal, or the Lincoln Terminal property itself?

Mr. Vickers—In that area, the 400-acre area, or in other area, 500-acre area.

The Witness—July 9, 1922, that land that they sold right out. Do you want to admit that?

The Court—Proceed with your examination.

Q. How long is it since the Holland Tunnel was opened?

A. I don't remember the exact date.

Q. Approximately?

A. About three years now, I think.

Q. How long since is it that the road which connects the Lincoln Highway with the Holland Tunnel, I don't remember the right number of it, runs at right angles to the Lincoln Highway west of the Hudson County Park entrance; how long has that been there?

10

A. About two years.

Q. And those two means of connection have shortened the traveling time by automobile to New York City?

A. Yes, sir.

Q. Quite considerably?

A. Well, it eliminates the ferry, which saves time.

Q. Is it your opinion as a real estate expert that the establishment of these two means of connection would favorably or unfavorably affect the value of land in the location of this company's land?

20

A. I don't think it has had any effect on it.

Q. None at all; so that in your opinion land located on the Lincoln Highway in this section here would not be benefitted by a means of connection which would enable a manufacturer to dump his goods in New York City in less time than before?

30

Mr. Vickers—The witness has not said that the property in this case is not affected.

Counsel now puts that in the witness' mouth.

The Court—Objection sustained.

Q. Is it your opinion that land located on the Lincoln Highway in the vicinity of the property in question would not be affected by the opening of connections, the connecting roads to the Holland Tunnel and to New York City?

A. On the contrary, I think property has been hurt by congested traffic.

(Recess to 10 A. M., October 16, 1931.)

---

OCTOBER 16, 1931, 10 A. M.

---

10 FREDERICK DUNHAM resumes the stand.

Mr. Milton—I have no further cross-examination of Mr. Dunham.

*Re-direct Examination—By Mr. Vickers.*

20 Q. Mr. Dunham, you were interrogated concerning this area particularly indicated on the picture here and further described on cross-examination by the boundaries of the Passaic River, the Bay, the Hackensack River, the Lincoln Highway on the north and the other area lying north of the Lincoln Highway and between the highway and the Pennsylvania Railroad, and acreage was given to you. Does that area include the property which is known here as the Ford property directly across the way from the Lincoln Terminal?

A. Yes, sir.

30 Q. And have you made any inquiry from the owner to inform yourself as to the sale of that property in 1930, if that was the time when it was sold?

A. 1929.

Q. And from whom did you make your inquiry?

A. Mr. Holmes, the general manager of the Western Electric Company.

Q. The Western Electric Company, the purchaser?

A. Yes, sir.

Q. Do you know whether Mr. Holmes had the purchase of this property in charge?

A. Yes, sir, he did.

Q. From Mr. Holmes did you learn at what price per acre the land in question was bought?

A. I did.

Q. At what price?

Mr. Milton—That is objected to.

The Court—How is that admissible?

The Court (after argument)—I will sustain the objection and allow you an exception.

10

Mr. Vickers—Exception.

The Court (to the witness)—Mr. Witness, the information that you received was from a manager, you say, of this concern?

The Witness—Vice-president and general manager in charge of the plant.

The Court—Was there a contract in writing on the purchase of this property?

20

The Witness—Yes, sir.

The Court—And they are ascertainable or procurable, are they?

The Witness—Well, I cannot produce them.

The Court—Is the information that you obtained from the contract?

The Witness—No, from the general manager without showing me the contract.

The Court—And the information is about matters that preceded the making of the contract, that is the signing of it?

30

The Witness—Yes, sir.

The Court—I will sustain the objection.

Mr. Vickers—Then may I pray an exception?

The Court—Understand you will not be foreclosed from producing the final result of the negotiations.

Q. Mr. Dunham, in the area which has been described to you on cross-examination, have you sales of comparable land which you have taken into consideration for the forming of your opinion and the making of a basic price on these two parcels of land respectively?

10 Mr. Milton—That is objected to upon the ground first that no party is mentioned and the witness would be permitted to go back to some day which would be remote.

The Court—And the next ground?

Mr. Milton—Secondly upon the ground that it is not proper re-direct.

The Court—It is not, but the court will permit it provided counsel will bring it within a reasonable length of time.

Mr. Vickers—Certainly I will bring it down.

20 The Court—All right, proceed. Your answer is yes.

The Witness—Yes, sir.

Q. Over what period of time have you considered sales of land comparable in character to formulate your opinion?

A. Sales of the last ten years.

Q. Give us the sales.

30 Mr. Milton—That is objected to. Counsel himself objected to my going into that.

The Court—He put it in a certain year limit. What can the court pass on; the court cannot pass on it until he gives the date of the sale and then you may move to strike it out.

Mr. Milton—Will you first give the date of the sale?

The Witness—The sale of the Niles-Bement-Pond Company.

Mr. Milton—That is the one you mentioned yesterday. I move that it be stricken out on the ground that it has been asked and answered.

The Court—The reference was made to that yesterday and the court ruled upon its admissibility. You testified about that sale yesterday.

Mr. Vickers—On cross examination.

The Witness—On cross examination; I don't recall giving any exact figures. 10

The Court—Well, if it is admitted on cross examination it ought to be on re-direct.

Mr. Milton—I have no objection to it.

The Court—Proceed.

The Witness—You just want the American Copper Company to Town of Kearney and the Niles-Bement-Pond.

Q. How many acres? 20

A. Fifty-four and a half, 54.1.

The Court—How near that property in question?

The Witness—Directly across Central Avenue from the property in question.

The Court—You have given the date?

The Witness—The date is February 6, 1925.

The Court—And what price?

The Witness—The price was \$362,500 or at the rate of \$6,700 per acre, which included the land lying from Central Avenue to the Hackensack River. 30

The Court—Was that land sold afterwards?

The Witness—That was the last sale; it was sold previous to that, but this is the last sale. North American Copper Company to the town of Kearney, on June 3, 1924.

Mr. Milton—Isn't that a condemnation?

The Witness—There was a proceeding. It was a regular condemnation. The condemnors were the Town of Kearney and I was hired by the Assessment Commissioners to the Town of Kearney.

Mr. Milton—I tried the case myself in this very room.

10 Mr. Vickers—If you say it does not come within these cases I consent that it be excluded.

Mr. Milton—I say it does not.

Mr. Vickers—Leave it out.

The Witness—Newark Factory Sites to Valentine December 22, 1924, land on Jacobus Avenue extending to the Passaic River a short distance north of the Lincoln Terminal, consideration \$100,000, 8.93 acres, price per acre \$11,200. Indian Refinery to Valentine, March 26, 1924, land situated on Jacobus Avenue extending to the Passaic River  
20 a short distance north of the Lincoln Terminal, consideration \$95,000, the price paid; there were buildings on that and the price paid included the buildings.

Q. How much area?

A. 6.54 acres, consideration including buildings; that was \$14,530 an acre. Then the sale from—this may be objected to, John J. Treacy, Receiver.

Mr. Milton—It is objected to.

30 The Witness—This sale was mentioned on cross examination.

Mr. Milton—I did not.

The Court—Does it appear in this case that this was not a free sale?

Mr. Vickers—Not in this case. Your Honor means the property in question in this case, that was a quasi judicial sale.

The Court—The receiver is considered not as a free sale?

Mr. Milton—Not any doubt about that.

Mr. Vickers—If counsel brought it up he can't object to it.

Mr. Milton—I certainly did not bring it up.

The Witness—The next sale of property in the same category that was from the Receiver to the West Side Realty Company, adjoining property.

Mr. Milton—That is objected to upon the same ground.

Q. And then these two properties to the Town of Kearney, property in that area that has been referred to by Mr. Milton, this acreage of approximately 500 acres north of the Lincoln Terminal, three hundred and fifty odd acres; that is in that area? 10

A. Yes, sir.

Q. And these are all in there?

A. Yes, sir.

Q. And are there any others?

A. Well, Joseph C. Day to Western Electric Company, January 27, 1923, property located on Central Avenue and the Newark and New York Railroad, extends from Central Avenue to the Passaic River. 20

Q. Is that directly south of the Lincoln Highway?

A. Directly south of the Lincoln Highway. That is the property that was afterwards—that is now occupied by the Western Electric Plant.

Q. Is it directly across the street from the south-east end of this property included in this case? 30

A. No, this is the site of the original Ford plant; it is south of the Lincoln Highway.

Q. Is it directly south going down Central Avenue here?

A. Yes, and it is also directly across the river from the sale mentioned by Mr. Makray, in Newark.

Q. Let us have the details.

Mr. Milton—May I interrupt counsel; this land is not filled.

The Witness—Yes sir.

Mr. Milton—At the time of the sale?

The Witness—At the time of the sale it was only partly filled.

Mr. Milton—Very little of it was filled.

The Witness—Not very much.

Mr. Milton—It has no frontage upon the river?

The Witness—Oh, yes, sir.

Mr. Milton—It has no grant, rather?

10 The Witness—It had a partial grant and afterwards the grant was extended; added to.

Mr. Milton—At the time of the sale it did have a grant?

The Witness—Yes, sir.

Mr. Milton—A grant?

The Witness—Yes, a grant was afterwards extended by the Western Electric people. It contains 54—

20 Mr. Milton—I submit that this sale is not comparable, it is unfilled land and it has no highway frontage.

The Court—Does it compare with the land in this case?

Mr. Vickers—Partly; it has the identical situation as the back land. I think the percentage given was 80 per cent filled, the land that lies east of Jacobus Avenue and has no water front and has not been used—

The Court—What is this land situation?

30 The Witness—The land in question is the land now occupied by the Western Electric Plant, just north of the Newark and New York Railroad and the Passaic River.

The Court—And is partially filled?

The Witness—And it was partly filled at the time.

The Court—And the land in question is partly filled?

The Witness—You see—

The Court—The Lincoln Terminal.

The Witness—Back land is partly filled; the front land is fully filled.

The Court—And are the lands comparable?

The Witness—Yes, they are comparable.

The Court—I will permit the question.

Mr. Milton—Exception.

The Court—Proceed.

The Witness—Yes, I say that this land was partly so; it was previously occupied by a ship-building company in the building of wooden ships for the war.

Q. It had been an industrial site in actual use?

A. Yes, it was used for the building of wooden ships, I think by the Foundation Company during the war.

Q. And when was this sale that you refer to?

A. This sale was January 22, 1923, the consideration was \$425,000 and the acreage was 54.92 acres or at the rate of \$8,000 an acre, including the extension of the grant which took in about four acres of land under water.

Q. And about what date, the same year?

A. Yes, the same year, in March 1923, March 16, 1923, the pierhead line was extended out to as to meet the abutment of the bridge and including the cost of getting that grant, which was \$16,292.40, the acreage of this was then increased up to 58.994 acres and the average price per acre would be \$7,480.

Mr. Milton—When was the extension made?

The Witness—March 16, 1923. The State Board of Navigation to the Western Electric Company, and the consideration was \$16,292.40 for the extension. That added 4.074 acres.

Then June 29, 1922.

Mr. Milton—That is objected to upon the ground of remoteness.

Mr. Vickers—It is within ten years from the date of the taking.

Mr. Milton—Counsel himself objected to the ten-year period.

The Court—The test as the court understands the law must be within a reasonable time to make it comparable, and also the property must be physically comparable. Aren't those the tests?

10

Mr. Vickers—Yes. And still if no property has been sold within 15 years, wouldn't the last sale be a proper guide for a real estate expert?

The Court—I suppose it is within the discretion of the court. The court can exercise its discretion.

Mr. Vickers—I will withdraw that to save time.

20

Q. Take a sale, if you have one, that is within seven years from the 20th day of September, 1930.

A. I have one July 8th, July 23d, and September 17th, 1923, involving one piece of property sold to the Public Service Electric Company.

Q. Is that the property that has been referred to by any of the witnesses for the owner?

A. Yes, sir.

Q. Tell us about it.

30

A. That piece of property I can best show it on the map, if you will permit me.

Q. What is it on this map?

A. Just a map that I compiled. It has no figures on it. It has no price or anything of that sort. It is just a picture to show the location of the property.

Q. And it has dates?

A. It has the date of the sale. It has no acreage prices or anything on it.

Q. And with respect to the property that you have just mentioned, does it show on this map its relative location to the Lincoln Terminal property in this case?

A. It does.

Mr. Milton—I object to the use of these two sales until I have a chance to examine the witness as to their comparability.

*Examination—By Mr. Milton.*

10

Q. The sale on July 18th, 1923, from the Newark Factory Sites to the Public Service, a sale of unfilled land, wasn't it, running west from block seven to the east side of Jacobus Avenue?

A. Yes, sir.

Q. And had no riparian grant?

A. It had a lease convertible into a grant and the Public Service converted the lease. I have taken that into consideration in the price paid.

20

Q. You say it had no grant?

A. I say it had a lease.

Mr. Vickers—Isn't the rule that an expert is not compelled to answer yes or no, that he is entitled to make an explanation?

The Court—He will have a chance to explain. Your answer is what?

The Witness—What was that question?

The Court—Was it a grant?

The Witness—It was a lease convertible into a grant.

30

Q. It was unfilled meadowland?

A. Very largely.

Q. Not wholly?

A. Not entirely.

Q. It had a small irregular front on the Hackensack River?

A. It had a frontage on the Hackensack River, much larger—

Mr. Milton—Perhaps we are talking about different pieces.

Mr. Vickers—Quite likely.

Q. How much street frontage did it have?

A. It had much more street frontage than the Lincoln Terminal has.

Q. How much?

10 A. I will have to scale it for you.

Q. Was it on paper streets, or actual streets?

A. Actual streets; had a frontage on Hackensack Avenue and had a frontage on Jacobus Avenue, and then had a frontage on Fourth Street. It had frontage on the Hackensack River and had frontage on the Passaic River.

Q. Are you talking about the sale by the Newark Factory Sites?

20 A. I am talking not only about Newark Factory Sites but Joseph C. Day. I am combining the whole tract as now owned by the Public Service Electric Company.

Mr. Milton—I happen to have a license to practice law and have a right to have an answer to my question. I asked about a particular sale of a particular piece of property and I ask the court to instruct the witness to answer.

30 Mr. Vickers—I object to the statement. I was about to offer the map in evidence when counsel asked to cross examine the witness on the comparability of the sale.

The Witness—At the beginning I said July 18th, July 23rd and September 17, 1923.

Q. At this time I was examining you specifically and exclusively about the sale made on July 18, 1923.

A. Very good; what is it you want to know about it.

Q. Do you understand that now?

A. I do.

Q. And that tract is unfilled meadowland?

A. Yes, sir.

Q. Did it have a grant, a riparian grant?

A. It was inland. That particular tract did not border on the river.

Q. It had no frontage on the river?

A. No.

Q. And what sales were made in 1927; what dates did you mention? 10

A. July 23rd.

Mr. Milton—I submit if this testimony is to include a sale of unfilled meadowland, inland, without any frontage on the river, that it is not comparable.

The Court—Well, let us see; the land of the Lincoln Terminal, that was acquired through two sources, wasn't it, and some was inland and some was not? 20

Mr. Vickers—Yes.

The Court—I will permit it.

Mr. Milton—Exception.

Mr. Vickers—I offer the map in evidence showing the tract of land to which the witness has referred.

The Court—That may be admitted.

(Accepted and marked as Exhibit P-1 of this date.) 30

*Re-direct Examination*—By Mr. Vickers (resumed).

Q. Mr. Dunham, will you please come here now and point out on this map the property of the Lincoln Terminal Corporation with which we are concerned in this case?

A. It is outlined in yellow and marked Lincoln Terminal; these are the two plots.

Q. Will you mark them one and two with chalk on there.

(Witness complies.)

Now, will you indicate the property that you have referred to running through from the Hackensack River to the Passaic River?

A. The property of the Public Service?

Q. Yes, and isn't it in several parcels, mark them 3, 4, 5, and so forth.

10

A. 3, 4, 5.

Q. And except for the severance by Jacobus Avenue and by Hackensack Avenue, they are contiguous properties from the Passaic through to the Hackensack and lying directly north of the property in this case?

A. Yes, sir.

Q. Now, Mr. Dunham, on cross examination you said that in your opinion the number three property was sold by the receiver.

20

Q. Do you know that?

A. It would be material as to the price. It would not affect the average price any.

Mr. Milton—I object to that. The witness has now brought in this judicial sale by the receiver.

The Witness—Only as a matter of ownership.

Mr. Vickers—I am not asking about the price of it. I am asking about the property.

30

The Court—Refrain from expressing on the record any prices that were effective as to any judicial sale or administrator sale or receiver's sale.

The Witness—I have not mentioned the price.

Q. Now, Mr. Dunham, you said that in your opinion the property of the connecting link of the Lincoln Highway and east of the Passaic River and going toward the Holland Tunnel was injuriously or adversely affected by that highway.

Mr. Milton—That is objected to upon the ground it is not proper re-direct examination.

The Court—The question will be permitted. The objection will be overruled.

Mr. Milton—Exception.

A. You mean by connecting link, the highway?

Q. Yes.

A. Yes.

Q. That in effect is your testimony now. Now, will you explain to the Court and jury what you mean by adversely affected, how? 10

A. I don't quite get the drift of that.

The Court—Yesterday you testified in answer to Mr. Milton's question at the close of the day that this highway that they were mentioning adversely affected the property. I think you stated that the congestion was an adverse factor. Now counsel wants to know what you meant by an adverse factor. 20

Mr. Vickers—If he said that, I lost that.

The Witness—Do you mean by the connecting link, the link built in Jersey City connecting the highway with the tunnel?

Q. This Lincoln Highway that you referred to that adversely or injuriously affected or whatever the effect was on this property, on the conditions existing at present; is that right? 30

A. Yes, sir.

Q. The congestion, wasn't it?

A. Yes, congested traffic conditions.

Q. And that traffic that you have reference to, does that come in any part from the terminal, the Port of Newark section on Route 25?

A. Yes, it takes, well, the shore traffic and the Newark traffic.

Q. Where this road in question in this case, this new road will cut in and take the traffic to the tunnel; is that right?

A. It is built to relieve this condition.

Q. Now eliminating the Receiver's sale, will you give us the other two sales of the property that you have indicated as four and five or three and four?

10 A. Four and five. That constituted an area of 112.96 acres. That is by actual survey.

The Court—That is on the river.

The Witness—That extends from the Hackensack River back to Jacobus Avenue. The total price paid, including the grant from the State of New Jersey, that is the conversion of the lease, was \$542,528.50, or at the rate of approximately \$4,800 per acre.

20 Q. And is the scale to which this map D-1 is drawn on the map?

A. Yes, sir; it is on the north point there; I think it is one inch to two hundred feet.

The Court—What is the length of the water front, the aggregate lengths of these two parts four and five?

The Witness—There is 1653.75 feet of frontage on the Hackensack River.

30 The Court—And what is the condition of the water front; is it developed into piers there?

The Witness—No.

Q. Mr. Dunham, in your testimony yesterday you gave a sale of property, I think in 1924 or 1925, which you referred to as being a decrease from the previous price. Will you tell us where that property was?

A. That sale is on the map there and marked Chester Security Company.

Q. When was the last sale previous to the sale that you mentioned and of which you gave the prices?

A. 1918 was the prior sale. Sale of 1925 is the last sale made in that area except as to the Lincoln Highway frontage; there are one or two small lots.

Q. And has that property been since the sale in the same ownership or is it in the same ownership in which it was?

A. Well, the said Chester Security Company is really the Hoboken Land and Improvement Company and the property is now on the market for sale.

10

Q. It is still in the hands of the same owner who bought it at the time you referred to?

A. Yes, sir.

Q. And the last sale was in 1925 of that same property?

A. Yes, to the Niles-Bement Company.

Q. Was it sold in 1918 for a higher price than in 1925?

20

Mr. Milton—That is objected to.

The Court—He has already testified to that.

*Re-cross Examination*—By Mr. Milton.

Q. You testified to a purchase by the Public Service Corporation of a tract of land on the Hackensack River which included the conversion of a lease?

30

A. Yes, sir.

Q. And you have interpreted that—

The Court—Was that the Hackensack River or the Passaic River?

The Witness—It was the Hackensack.

Q. And you have included in that area a grant made by the State of New Jersey, that is plot number 5?

A. In front of plot number 5.

Q. And in arriving at the purchase price paid for that property and the acreage price, you have included the price paid for the conversion of the lease into the grant?

A. Yes, sir.

10 Q. When was the lease made?

A. The lease was made several years previous to that.

Q. 1918, isn't it?

A. It may have been; it was at the rate of fifty a front foot; whenever it was made it could be converted at that price.

The Court—The answer is there. He said a year or two before that time. The remainder will be  
20 stricken.

The Witness—Several years.

Q. Wasn't it 1918?

A. It may be.

Q. You have all the information about this sale but you cannot give me the date of the lease which was subsequently converted?

A. That didn't make any difference.

30 The Court—Please do not do that. You must not argue with counsel. Your position is to answer questions.

The Witness—I don't want to argue with him.

The Court—But you are doing it.

Q. Will you concede that the lease was made in 1918?

A. Whatever you say; I don't remember the date.

Q. You have not got in this data you assembled on the purchase by the Public Service, that information?

A. I had the lease at the time.

Q. Can't you tell me?

A. I have looked to see—I will look to see if I have my record here.

Q. And you have included in the purchase price by the Public Service the price that was fixed by the State of New Jersey in 1918 for the grant, haven't you? 10

The Court—He has.

The Witness—Certainly.

Q. You have done that?

A. Yes, sir.

Q. You said to Mr. Vickers that plot 3 except for the intervention of the Hackensack River and Jacobus Avenue it was contiguous to plots 4 and 5.

Mr. Vickers—I object to that. That is not what he said. He said that the two plots were contiguous except there was the interruption of Jacobus and Hackensack Avenues. 20

Q. How far is plot 3 from plot 4, the easterly line of plot 3 from—all right, I didn't understand it. My mistake.

Q. Your conception of the effect of the increase of traffic upon the property bordering upon the Lincoln Highway, is that the traffic congestion, and the connections with traffic have injured the property? 30

A. I think it has injured the sale of the property.

The Court—What do you mean by sale; that it has injured the value?

The Witness—Well, not necessarily. I cannot tell until a sale takes place.

The Court—What about the water front, what about the water front values?

The Witness—The last sale made in there was in 1925.

The Court—But as the court understood it, it affected the values of the property. Do you mean to say that?

10 The Witness I would not say that it reduced the values but I would say that the property, if there was a sale, that there might be a sale in the market, and unless conditions are changed, I think when conditions are changed and this new highway is put through, that likely the congestion of this property will be materially benefitted.

Mr. Milton—I didn't ask you about that. I asked you this: what you intended to convey to this jury yesterday and today when you said that traffic congestion on the Lincoln Highway had injured property located on that highway, isn't that what you intended to convey?

20 A. What I meant was it has injured the sale of the property. I would not say it injured the value of it. It may be that at a sale it would bring just as big a price but you can't sell it.

Q. You know that there are numerous instances throughout this county, particularly in Journal Square where congestion of traffic, increase in traffic, has had a marked effect upon the land?

30 Mr. Vickers—I object to that. It is not a question of whether congestion in Journal Square or anywhere else has affected property. It is in this location.

The Court—But counsel has got a right to interrogate the witness as to his theory. It may be that if the witness admits a condition in one part of the county he may ask why he has the theory about another.

Q. (Question read as follows: "You know that there are numerous instances throughout this county, particularly in Journal Square where congestion of traffic, increase in traffic, has had a marked effect upon the land?")

A. My answer to that is that the Journal Square property is worth less now than it was five years ago.

Q. Do you mean, Mr. Dunham, that Journal Square property is worth less now than it was before this new bridge was put there?

10

A. Well, just how long ago it is—

Q. You are a real estate expert?

A. I am also in the tax department of Jersey City and I have been all through this thing. I know. If you ask me I should say that congestion and traffic in Journal Square has hurt the value of the property.

Q. Pardon me. I asked you a few minutes ago if property in Journal Square is worth less now than it was before the new bridge was put through?

20

A. Well, tell me what that date was.

Q. Don't you know? I don't care what the date was.

A. Well, I think it has.

Q. You think it is worth less?

A. No, I know you can't get as much for it now as you could then.

Q. Mr. Dunham, you heard the testimony about the sales by the Lincoln Terminal Company of three plots right on the Lincoln Highway?

30

A. Yes, sir.

Q. Do you know when those sales were made?

A. Yes, sir.

Q. The first one was made October 1, 1928?

A. Yes, sir.

Q. Was the congestion in September, 1930, on the Lincoln Highway any worse than it was in October, 1928?

A. No.

Q. About the same. Was the connecting road open prior to 1930?

A. Yes, sir.

Q. When was it opened?

A. You are speaking of the connecting road?

Q. The road from the Lincoln Highway west of the County Park entrance?

A. Yes, sir.

Q. When was that opened?

10 A. That was opened about the early part of 1929, I think.

Q. 19,600 square feet were sold in this corner plot, were they not, at that time, October, 1928?

A. Yes, but pardon me, Mr. Milton, I excepted the Lincoln Highway frontage in my remarks before.

Q. Excepted it from what?

A. From the sales I mentioned.

20 Q. Now, Mr. Dunham, there you go again. I asked if the 19,600 square feet were included in that corner sale.

A. Yes, sir.

Mr. Vickers—Isn't it in the case?

The Court—I know, but we are taking it again. Proceed.

Q. And wasn't the sales price a dollar and thirty cents a square foot?

The Court—If that is the price?

30 The Witness—Yes, I believe it was.

Q. And on June 7, 1929, were there three thousand square feet sold in this plot at one dollar and eighty-six cents a square foot?

A. That may be.

Q. Or an increase of fifty-six cents a square foot; that is right, isn't it?

A. Yes, sir.

Q. The congestion hurt the value or sale of the property on the Lincoln Highway after the connecting road was open?

A. Not for a gas station.

Q. For any purpose?

A. Yes, sir.

Q. Despite this sale and the increase reflected in the value of the property, you insist that the congestion hurt it?

A. The purpose for which this property was purchased—do you or don't you? 10

A. Traffic helped this class of property.

Q. It did not hurt that property on the Lincoln Highway?

The Court—You mean that traffic is good for road stands and not good for industrial sites.

The Witness—That is just what I mean.

Q. December, 1929, the inside plot—no, the third plot fifty by one hundred, was sold again at an increase? 20

A. Yes, sir.

*Re-re-direct Examination—By Mr. Vickers.*

Q. Now Mr. Dunham, the one property was a gas station and the other was a lunch room?

A. Yes, sir.

Q. And the third sale added space to the lunch room site? 30

A. A small extension of the original.

Q. Say yes or no.

A. Yes, sir.

Q. And the congestion of traffic, Mr. Dunham, at least twice a day is caused by thousands of cars coming out of the Westinghouse property directly opposite this gas station and this lunch room?

A. Yes, sir.

Q. In your opinion is that cause for the rise in price?

A. Absolutely.

(Witness excused.)

10 C. ALFRED BURHORN, called as a witness on behalf of the State Highway Commission, being sworn, was examined and testified as follows:

*Direct Examination*—By Mr. Vickers.

Mr. Milton—Qualifications are admitted.

Q. You have made an appraisal of the property in question in this case, have you?

A. Yes, sir.

20 Q. As of the 20th day of September, 1930, will you tell the court and jury what in your opinion was the value of the property taken in fee by the State, represented by the red strip on P-2 and the consequential damage to the remainder of the property, if there was consequential damage by reason of the taking; give us the before-taking value and the after-taking value, if you will?

A. The value before the taking is \$1,297,250. After the taking, \$1,129,465.

Q. And the difference between the two?

A. The difference between the two is \$167,785.

30 The Court—Does that difference include all of the damage, both for the taking and the consequential damage?

The Witness—Yes, sir.

Q. One question there, Mr. Burhorn. In this case it has been stipulated that the value of a certain garage is \$900, and the cost or value of replacing a certain trackage hereafter to be done is \$2,200. Let me ask you is that included in your figures or has that amount that has been stipulated been omitted from your figures?

A. It is not included in my figures.

Q. Then, taking your figures, these two items of \$900 and \$2,200, they should be added?

A. Yes, sir.

Q. Will you tell the jury the price per acre that you have used on the westerly portion?

A. \$25,000 per acre.

Q. And on the easterly portion?

A. \$15,000 an acre.

Q. Did you place a value on the land under water in the strip that is taken? There is one point something acres of land under water that has been conceded in this case. Did you include that and did you put a base value on it? 10

A. That was included in the \$25,000 per acre value.

Q. And the acreage included in that is likewise included in your total?

A. Yes, sir. 20

*Cross Examination*—By Mr. Milton.

Q. Mr. Burhorn, how far is your office from this property?

A. My office is in Hoboken. Within a stone's throw of the Lackawanna Terminal and the Ferries in New York.

(Witness excused.)

30

THOMAS A. RIER, called as a witness for the State Highway Commission, being first duly sworn, testified as follows:

*Direct Examination*—By Mr. Vickers.

Mr. Vickers—Are Mr. Rier's qualifications admitted?

Mr. Milton—Yes, surely.

Q. As of the 20th day of September, 1930, have you appraised this property of the Lincoln Ter-

minal Corporation taken in for highway purposes, including the area taken in fee and the consequential damage to the remainder, if damage there be, by reason of the taking?

A. I have.

Q. Will you tell the court and jury your opinion of the value of the entire tract before the taking?

A. \$1,489,785.00.

10

Q. And after the taking how much?

A. \$1,314,615.00.

Q. And the difference, please?

A. \$175,170.

Q. And this figure of \$175,170 in your opinion includes the value of the land taken at its full market value and all consequential damage as to this entire property by reason of the taking?

A. It does.

Mr. Vickers—Take the witness.

20

*Cross Examination*—By Mr. Milton.

Q. Mr. Rier, you have testified before in this matter?

A. I did, sir.

Q. Do you mind telling me why your figures in damages now are only \$175,000 when you gave it before as \$178,000?

Mr. Vickers—That is objected to.

Mr. Milton—Strike it out.

30

Q. You did testify before in this matter?

A. Yes, sir.

Q. And you fixed a value before of the damage to this company's property at \$178,087?

A. I did.

Q. Do you mind telling me now why you made a difference of over \$3,000?

A. The areas. There has only been a change in the areas. We discovered a change in the condemnation area and we had it larger and it was

not correct. There was a small change in the areas and that is all.

Q. Where is that variation of area on the east or west side of Jacobus Avenue?

A. I think it is on both sides. I had 42.67 acres originally and now I have 41.80 on the east side of Jacobus Avenue and on the west side of Jacobus Avenue I had 30.289 and I now have 30.29. A very slight difference there.

Q. You are not able, are you, to give me any sales of property in the Journal Square section which will reflect a decrease in the value of the property as contrasted between the time before the erection of the bridge and the present time?

10

Mr. Vickers—That is objection to as not proper cross examination.

The Court—Sustained.

Q. Do you believe that traffic congestion injures property?

A. Not necessarily.

20

Q. Is it your contention that traffic congestion in the vicinity of the property of this company has injured its value?

A. It is not.

*Re-direct Examination*—By Mr. Vickers.

Q. Mr. Rier, does traffic congestion at this particular property interfere with the ingress and egress of vehicles coming from the west going eastwardly and entering over Jacobus Avenue or Central Avenue?

30

A. It does.

Q. And to leave either Jacobus or Central Avenue at this property and to go east, does traffic congestion as a result interfere with the transportation?

A. It does.

(Witness excused.)

MAJOR HARRY R. GABRIEL, called as a witness on behalf of the State Highway Commission, being first duly sworn, was examined and testified as follows:

*Direct Examination*—By Mr. Vickers.

Mr. Vickers—Are Major Gabriel's qualifications admitted?

10 Mr. Milton—The qualifications of this gentleman are admitted as an engineer.

Q. Can you give us the total area of the ground occupied by the piers or abutments placed by the State Highway Commission along this property indicated by the red strip on P-1?

A. I can.

Q. In square feet how much are they?

A. Between the easterly end of the property and the pier at the bulkhead line there are bents of piers. The total area occupied by these piers is  
20 3,008 square feet.

Q. And a bent is two or more?

A. A bent consists of two piers.

Q. And is it sometimes three?

A. A bent includes any number of piers. In this case it is two piers in each bent.

Q. That does not, does it, include the space occupied by the pier that is on the river?

A. It does not.

30 Q. Will you give us the area of that, the ground area?

A. My computation of the area occupied by that pier includes the fender in the two collars of the pier. That amounts to eighty-seven feet by thirty-one feet includes 2,697 square feet.

Q. Now, will you give us the total square foot area of the two strips, the one on the easterly section of the property and the one on the westerly section, in square feet?

A. The parcel on the east side, known as parcel number nine has an area of 79,000 square feet. The area on the west side of Jacobus Avenue known as parcels 10 and 11, being respectively, the area of parcel number 10, 90,771 square feet, and of 11, 12,595 square feet.

Q. Now, Major Gabriel, will you explain, if you can, why this strip here is divided into two parcels. It may be confusing; 10 and 11 as I understand it. It is so divided because there was a different ownership and proceedings began.

10

A. This table of ours so indicates.

Q. So that 10 and 11 constitute this strip and 9 is this?

A. They do.

Q. And except for the 3,008 square feet and the 2,697 square feet on the ground, is there anything else of the highway construction that occupies any other square footage in that entire area?

A. None whatsoever.

20

Q. Major, have you photographs that were taken under your direction of the condition of this property showing the terrain, region through which the highway now passes and as of the time just before the State went into possession?

A. I have.

Q. Will you produce them please.

(Photographs produced by witness.)

Q. You have produced the photographs. What do the photographs indicate as to the area of the right of way respectively that they represent. Make it short, sir. There are certain figures on there.

30

A. There are certain figures on the photograph indicating the stations. There is a certain broken dotted line which indicates the centre of the State Highway as now.

Q. The broken dotted line would be the line which is running right straight through the centre,

from the main easterly portion of this road all the way out to the Passaic River; is that right?

A. That is correct.

Q. Which is the lowest station number. Pick out the photographs beginning at the east of this lowest station number so that we can get the numbers fixed?

A. The most easterly station number shown on this 296 plus 00.

10

Mr. Vickers—I offer that in evidence.

(Accepted and marked as Exhibit D-2 of this date.)

Q. Can you tell us where the station is on D-2?

A. That station is between the first two sets of piers shown on the map, westwardly of that pier, somewhere in there where the pencil is now (indicating).

Q. Make a mark.

20

A. That is exactly where the center line crosses that track. That is it exactly, 296 plus 00. That is the first figure.

Q. Now, will you hand them to me in order, the order in which they proceed from east to west showing the terrain?

A. The next photograph has a station 298 plus 00.

Mr. Vickers—I offer that in evidence.

(Accepted and marked as Exhibit D-3 of this date.)

30

The Witness—The next photograph shows 300 plus 00.

Mr. Vickers—I offer that in evidence.

(Accepted and marked as Exhibit D-4 of this date.)

The Witness—The next 301 plus 00.

Mr. Vickers—I offer that in evidence.

(Accepted and marked as Exhibit D-5 of this date.)

The Witness—The next 302 plus 00.

Mr. Vickers—I offer that in evidence.

(Accepted and marked as Exhibit D-6  
of this date.)

The Witness—The next is 304 plus 00.

Mr. Vickers—I offer that in evidence.

(Accepted and marked as Exhibit D-7  
of this date.)

The Witness—The next is 308 plus 00.

Mr. Vickers—I offer that in evidence.

(Accepted and marked as Exhibit D-8  
of this date.)

10

The Witness—And the last 310 plus 00.

Mr. Vickers—I offer that in evidence.

(Accepted and marked as Exhibit D-9  
of this date.)

Q. Now Mr. Gabriel, where the figures at or near  
or intersecting the dash and dot line which you say  
is the center line of the highway before, is that the  
point on the ground of the station?

20

A. It is.

Q. So that between D-2 and D-3 there is two  
hundred feet in distance between the stations, is  
that right?

A. Between the stations shown on these photo-  
graphs; yes, sir.

Q. Now, one is 296 and the other 298?

A. That is right.

Q. Now, will you take these photographs and  
beginning with D-2 take them up successively up to  
D-9; by doing that you are traversing the center  
line of the property taken in this case and the  
photographs represent its condition as of  
November 6, 1929?

30

A. They do.

The Court—How wide is the right of way?

The Witness—The right of way is 100 feet.

Q. How wide is the roadway on top of the piers?

A. The roadway over all is about fifty-four feet wide.

Q. I show you two photographs and I ask you whether these were taken for the State Highway Department and whether they show a aerial view of the territory in question in this case and the super in position of the highway and a bridge now partly constructed and as planned to be constructed?

10 A. They do.

Q. Because of some suggestion that Mr. Dunham has made, I would like to ask this question. It is not intended thereby to indicate that so far as the measurement is concerned that there is an accuracy of scale as to the objection the ground. Is that so?

A. The accuracy of the scale is only such as would be contained by taking an aerial photograph and sketching the piers on as near as possible.

20 Q. So far as the piers then are concerned and the difference between the accuracy has been given as well as possible on the photograph; isn't that so?

A. Yes, sir.

Q. For instance if this is a wharf at this particular point, to which your attention was called, if this is a wharf, by comparison to the width of these piers or bents, where in effect they are nearer here apparently than those on the ground, the picture does not intend to represent any such accuracy?

30 A. No.

Mr. Vickers—I now offer them in evidence.  
(Accepted and marked as defendant's Exhibits D-10 and D-11 of this date.)

Q. Is it or is it not a fact that at the bridge pier or abutment in front of this property there is a clearance of 135 feet above mean high tide?

A. Both clearance of 135 feet, 50 feet from the center line of that pier.

The Court—Fifty feet west?

The Witness—Fifty feet west. That is the pole depth. I can give it to you at twenty-five feet.

Q. It is approximately somewhere between 135 and 130.

The Court—Over the walk?

Mr. Milton—Over the spur brace.

The Witness—Immediately over the center line of the pier there is a clearance of 99.3 feet above mean high water. Twenty-five feet west there is a clearance of 127.3 feet. Thirty-eight feet west, which is immediately perpendicular over the outside edge of the fender there is 131.3 feet clearance above mean high water. 10

The Court—When you say the fender; what do you mean?

The Witness—The fender that has been constructed around our pier eighty-five.

Q. Can you give us readily from the data you have on hand the clearances between the respective bents that is going from the bridge and now; will you give us the clearances between the bridge pier and the next bent? 20

A. Starting in with pier eighty-five, which is on the east bank of the Hackensack and the center line of pier eighty-four, 350 lineal feet. Eighty-four to eighty-three, 277; eighty-three to eighty-two, 285; eighty-two to eighty-one, 325; eighty-one to eighty, 285; eighty to seventy-nine, which is the last pier, 275 lineal feet. 30

The Court—He has asked the clearances.

The Witness—I thought the longitudinal distances between piers.

Q. Give us the clearances?

A. At pier eighty-four which is the first pier east of that pier eighty-five on the east bank of the Passaic River there is a clearance—you want from the ground line or the mean water line?

Q. Any way; the mean high water will do.

A. The clearance from the ground line to the steel is 68 feet. I will give you the other one. Pier eighty-three, 65 feet; pier eighty-two, 58 feet; pier eighty-one, 53 feet; pier eighty, 53 feet; pier seventy-nine, 52 feet which is the minimum clearance of the steel above the ground immediately over the piers midway between the piers and is the approximate rise of about 24 feet.

10 Q. So that from a minimum of 50 to 75 feet would be the minimum and maximum clearance between the span, is that right?

A. Fifty-two to ninety-five clearance.

Q. Now, when you say to the steel, does that mean there is anything below it, or is that the actual clearance?

A. That is the actual minimum clearance over steel.

20 Q. Will you give us the distance from the northerly wall of these bents to the southerly wall of the same bents?

(Question withdrawn.)

Q. What I want is how much clearance on the ground is there from the piers or bents north and south of it respectively on the State's right-of-way?

A. I don't know that I have that right here. Yes, I have. From pier seventy-nine to eighty-three.

Q. That is seventy-nine is it?

30 A. Yes, to eighty-three. The distance from the northerly side of the north pier to the southerly side of the south pier is 54 feet, leaving 48 feet clear.

Q. And equally divided?

A. Yes, sir.

Q. That is to say, twenty-four feet on each side?

A. Yes, sir. Pier eighty-four the distance is seventy-three feet which leaves twenty-seven feet clear.

Q. Likewise equally divided between north and south?

A. That is correct.

Q. And what is the distance between the southerly side of the pier seventy-nine and the northerly side of the pier in the same bent; how much space is there in there?

A. Twenty-two feet.

The Court—Is that the same distance, comparatively, for all the other bents except eighty-four? 10

Mr. Vickers—Approximately.

The Witness—Approximately it is.

Q. And is greater at eighty-four?

A. A little greater at eighty-four.

*Cross Examination*—By Mr. Milton.

Q. Mr. Gabriel, the inside clearance of the wharf line is what; give me that again.

A. From the mean high water? 20

Q. From mean high water, yes.

A. 99.3 feet immediately above the pier.

Q. That is the center line of the pier or inside of the pier?

A. That would be over the center line of the pier, up to the steel.

Q. So that if a ship attempted to be moored alongside the wharf, on the bias, it could not be so moored if it had masts which towered above that clearance without possibly interfering with that bridge; that is so, isn't it? 30

The Court—That speaks for itself.

Mr. Milton—It seems so to me but I want to take the conventional method of bringing it to the jury.

The Court—He says that the clearances are thus and so and he has given you the clearance over the wharf.

Mr. Milton—Well it would seem to be so. What is the clearance outside—131, I think he said.

The Court—The outside one you gave as what?

The Witness—131.3 feet.

The Court—Was that the distance from the high water line to the clearance at the top?

The Witness—Yes, sir.

10 The Court—And if a boat had a mast that exceeded that height, it would interfere.

Mr. Vickers—But if your Honor please, that wouldn't be so. The mast wouldn't come there. That height is at the fender.

The Court—The mast line is out in the center. It is higher there?

The Witness—Yes, increases to 135 feet.

The Court—What would it be in twenty-five feet, twenty-five feet further?

20 The Witness—At the pier it is 99.3; twenty-five feet out from the center of the pier is 127.3, and at thirty feet out on the line with the fender 131.33.

The Court—And he is giving us 30 feet out from the fender.

The Witness—Yes.

(Witness excused.)

---

30 LEWIS BERMAN, called as a witness on behalf of the State Highway Commission, being sworn, was examined and testified as follows:

*Direct Examination*—By Mr. Vickers.

Q. Mr. Berman, what is your occupation?

A. Engineering.

Q. Where were you graduated?

A. Yale University, the Sheffield Scientific School.

Q. When?

A. 1907.

Q. And since that time you have done what?

A. Well, I was first employed by the United States Coal and Cargo Company, a subsidiary of the United States Steel Company.

Mr. Milton—If he is called to give some engineering opinion, I have no objection.

Mr. Vickers—He is called as an engineer and as an expert on terminal property, rail and water, being what is called by title a general land attorney of the Lackawanna Railroad, where that comes under his supervision and has for years, and he has made valuations and appraisals of property and he has knowledge as to trackage and haulage. That is the purpose, not in the strict sense of a real estate expert, but I purpose to use him for more than that.

10

The Court—I suppose he is in much the same position as Mr. Ordeman. That is he is to testify about the same matters?

20

Mr. Vickers—Not with regard to any cost of dock or pier or anything like that.

Mr. Milton—Is he to put a value on this land?

Mr Vickers—Yes, as a railroad or marine terminal man.

The Court—I suppose you had better proceed with your examination and qualify him unless counsel will consent to the qualifications.

30

Mr. Milton—I am afraid I cannot.

Q. Continue.

A. I was employed by the United States Coal and Cargo Company, a subsidiary of the United States Steel Company at Gary, West Virginia. My next job was with the Pure Oil Company in the oil fields of West Virginia, Pennsylvania and Ohio. That

lasted two years. I was employed after that by the Cincinnati, and Dayton Railroad Company at East Toledo, Ohio, and then for the same company at Dayton. My next job was with the Mount Hope Rail, Light and Power in the vicinity of Portland, Oregon; and my next job was with the organization of an electric light plant and a new piece of railroad construction running from Salem, Oregon, down to Eugene, Oregon. My next employment was with the United States Commerce Commission in 1914, at the beginning of the railroad valuation work. In that work I was engaged for something like six years as engineer for the eastern district, the west being divided into five district territories for the United States.

10 Q. In connection with the railroad valuations?

A. Strictly that. I left that employment to take on a position as assistant to the Chief Land Attorney of the Lackawanna Railroad, whose work consisted in handling the land valuation matters for all of their property in connection with interstate commerce work. In about October, 1929, I took charge of the work. I am in charge at the present time except that as of the first of August, because of the present condition in the railroad business work has been temporarily suspended, at least so my notification informed me.

20 Q. For how many years have you been active with the Lackawanna Railroad Company in the matter of railroad valuations or supervision of railroad properties, marine and land, of the Lackawanna?

30 A. Eleven years.

Q. Located where?

A. At Hoboken, New Jersey.

Q. Has the Lackawanna Railroad marine terminals?

A. Yes, we have waterfront property in Hoboken continuing into Jersey City.

The Court—On what river?

The Witness—On the Hudson River, on either side of the river. New York side we have and lease piers; on the East River we lease piers; Harlem River we lease piers. We own a transfer terminal on the Harlem and Wallabout we own waterfront property, and at south Brooklyn in the vicinity of Gowanus, that was referred to yesterday, we own a piece of waterfront property. We own jointly a piece of waterfront property on Staten Island. We also own a part in connection with our crossing of the Hackensack and Passaic River, we own the necessary rights of way.

10

Q. The property that you referred to as owned and have pointed out, are they railroad properties, water and land respectively, that are in these terminal properties?

A. Well, they are all strictly properties used for transportation purposes.

20

Q. Land and water?

A. Land and water, yes, sir.

Q. And does that likewise include buildings on any of the property for storage purposes?

A. On all these properties except for the piers that are—in the storage, in the sense of warehousing, storage in the sense of goods that are being moved, in today and out tomorrow, or may stay a little longer.

30

Q. In the course of your employment covering these eleven years, has it been your duty and have you informed yourself regarding railroad values of land and waterfront property in the metropolitan area?

Mr. Milton—That is objected to. The witness' information with respect to the value of railroad land seems to me does not qualify him to testify to the value of warehousing, if the property were used exclusively for warehouse purposes.

The Court—He has testified and that might qualify him to say what his knowledge is. I will permit that.

Mr. Milton—An exception, if the court please.

10 Q. (Repeated by the stenographer). “In the course of your employment covering these eleven years, has it been your duty and have you informed yourself regarding railroad values of land and waterfront property in the metropolitan area?”

A. It has been my duty and I have.

Q. In connection with the operation of the Lackawanna Terminal in this metropolitan area, there is a warehouse property in Jersey City?

A. Yes, sir.

Q. And one of the finest in the country?

20 A. Yes. That is true, but I thought you were questioning me as to whether we had this warehouse on the waterfront itself.

Q. Now, will you tell as briefly as you can, what facilities you have had for familiarizing yourself with land values in the metropolitan area, as far as railroad and marine transportation is concerned for the Lackawanna?

30 A. Well, the facilities that any man has; we have an organization and simply make contacts and keep ourselves informed of any sales that go on, get a copy of the contract, keep records of them and find out all about the property that we can.

Q. So far as your own property, property of the Lackawanna Railroad is concerned in this area, have you familiarized yourself with the values and the real estate transactions respecting these properties?

A. You mean our own purchases and sales?

Q. Yes.

A. Yes, these records of course were always open to me.

Q. Whether they were open or not, did you avail yourselves of them.

A. I did, Colonel.

Q. Did you deal with them?

A. I dealt with them.

The Court—That is you were directly informed about them?

The Witness—Yes, sir.

10

Q. Now then, from your knowledge and experience is that a distinctive classification of property which is in itself used as terminal and storage property, using railroad, water and track haulage facilities?

A. I think so, Colonel.

Q. You are familiar, are you, with the premises and the property of the Lincoln Terminal Corporation?

A. Quite familiar with it.

20

Q. How long have you known the property?

A. Only in a general way up to the time that the previous hearings were held before the Commissioners, but since that time I imagine I have been on that property at least six times.

Q. For the purpose of investigation and an appraisal of its value as a terminal and storage property?

A. Yes, sir.

30

Q. And as an engineer and from your experience in the building of railroad trackage as you have testified to here and your experience with the Lackawanna Railroad and other roads, are you familiar with trackage and what constitutes proper trackage for railroad purposes and terminal and storage facilities?

A. I am.

Q. And have you examined the trackage in question in this case which is indicated either in whole or in part or over indicated on P-2?

A. I have.

Q. And by taking the map or a copy of it itself and going upon the property and inspecting the trackage?

A. I have.

10 Q. Can you fix the time when you first went upon this property for the purpose of making an appraisal of its value and the effect of this intersecting highway upon the property as a terminal property?

A. Why, I can fix the time. The first occasion was, I think, upon the opening of the hearings before the Commissioners, which if my memory serves me was late in January.

Q. Of this year?

A. Of this year.

20 Q. I want to ask you whether at that time you examined the area, these tracks, approaches and so forth in the northwest corner of the triangle that one of the witnesses has called triangle A, along in the easterly tract and east of Jacobus Avenue?

A. The corner at the time I was down there had—it was at noon, between the hearings and I didn't spend very much time there, but subsequent to that.

Q. At any time did you do it? I don't care whether it was then or not. I want to know when you went again.

30 A. You asked me about the time. Subsequent to that, on Lincoln's Birthday, which I think was February 12th, I went all over these tracts, and I did examine the trackage in that particular triangle.

Q. What did you find or not find in comparison with what is represented on P-2?

Mr. Milton—I want to object to the use of that by this witness, testifying to facts and conditions which he discovered. I think that it is as of September 20, 1930, that the witness should be examined.

The Court—I will permit this.

Mr. Milton—Exception.

(Question read: “What did you find or not find in comparison with what is represented on P-2?”)

A. Well, I did not find some of the trackage that is shown on P-2.

The Court—Tell us what it is you did not find.

The Witness—Well, part of the trackage shown on P-2 was torn up. The rails were piled up along-  
side and there was some rotted ties in the vicinity. 10

Q. I have directed your attention to certain trackage at this moment. Will you confine your answer to that? Do you mean that was torn up and piled up? If you don't, tell me.

A. You are talking about this triangle.

Q. This triangle and these switches.

A. Part of this trackage between my fingers there on this map was out at the time I first inspected it; just north of the boundary line of this property on  
Second Avenue, and let us say for twenty some odd  
feet south of it. 20

Q. Into the property?

A. Into the property.

The Court—Will you tell any other differences that exist?

Mr. Vickers—I don't want to lose sight of  
that point. 30

Q. How do you mean that it was out?

A. Because I saw what was left.

Q. In other words, the dead end of the rail?

A. Yes, sir.

Q. Not out because it was out of sight, buried?

A. No.

Q. Since then you have been there, have you?

A. Yes, sir.

Q. And have you been there since Mr. Ordeman was on the stand and testified regarding that?

A. I have, with you.

Mr. Vickers—By consent two photographs are to be admitted in evidence with the plaintiff's marking.

(Two photographs accepted and marked respectively Exhibits P-20 and P-21 of this date.)

10 Q. I show you two photographs which have just been offered in evidence on behalf of the property owner by consent, and I ask you if you recognize the area to which these photographs refer?

A. I do.

20 Q. And since Mr. Ordeman testified with regard to the condition of these tracks, can you point out on either of these photographs, calling your attention particularly to number 20, where the covered area was that has been referred to and where you saw a dead end rail in February, if that was the time, 1931?

A. Why, on this exhibit which is marked P-20, just coming around to the right on the photograph as you view it, of Jacobus Avenue, the street which is shown therein. That area was covered over when I saw it, on Tuesday evening, October—

Q. This week?

A. This week, after the close of court.

30 Q. Can you indicate on that photograph where the dead end rail or rails were that you have referred to that you found there in February, 1931?

A. Well, I would say slightly to the left center of the photograph.

Q. Can you indicate the area here on this map and the rail that is indicated there?

A. Right in the vicinity of the main northerly switch point shown on the east parcel, that is to say, the parcel east of Jacobus Avenue and being south of Second Street on this exhibit.

Q. Immediately south?

A. Immediately south.

Q. Of Second Street on the easterly portion of the property?

A. Yes, sir.

Q. Now, Mr. Berman, with respect to P-2, what other rails or conditions indicated thereon as through lines, did you find in existence in any of these inspections that you made?

A. Well, the trackage paralleling Central Avenue, which is the most easterly street shown on that exhibit. From a point approximately 40 feet south of what would be the southerly line of that warehouse if extended and on the track which immediately parallels Central Avenue and from the point previously mentioned up to and for a distance of several hundred feet, I found it covered, and there was no means of telling without digging, whether the track was there or not. In addition to that, I found a driveway clearly used in connection with the use of building 43, that is the warehouse previously referred to, which driveway has access both to Central and Jacobus Avenue, and that driveway was carried across the tracks. 10 20

Q. To Central?

A. At the Central Avenue side.

Q. That is the same driveway that Mr. Ordeman testified to previously; isn't that right?

A. Yes, sir. 30

Q. Is there any rail or are there rails that cross over Jacobus Avenue into the property on the easterly section from the west portion of the property? Do you understand that question exactly?

A. You are asking me are there any rails?

Q. Any rails, tracks, that cross over from the westerly portion of this property into the easterly portion.

The Court—Any rail connections?

Mr. Vickers—Crossing Jacobus Avenue.

Q. Can that property be reached by rail, by rail connection or are connections through the property?

A. There is no direct rail connection over from the property.

Q. In other words, Mr. Berman, are these rails——

Mr. Milton—We don't claim there is.

10

Mr. Vickers—That there is no direct rail connection by rail running across Jacobus Avenue into the property from the east side.

Mr. Mitlon—Directly from west to east?

Mr. Vickers—Yes.

Mr. Milton—Why, no.

Q. Mr. Berman, did you examine the rails, the ties, the contact if any between the rail and tie and the ballast condition of the property?

A. I did, very thoroughly.

20

Q. Tell the court and jury what that disclosed or showed.

Mr. Milton—What are you going to use now?

The Witness—Notes made at the time of this examination. If you prefer I don't I will not.

The Court—If you can testify without them you may proceed. If you cannot, you may use them to refresh your memory.

30

Q. Coming to that area in question, what was it?

A. Why, many of the tracks were torn up and not in usable condition; the cinder ballast had worked itself away into the dirt and especially I am now talking about the region of Jacobus Avenue and north of the warehouse building known as 43 on this property. All of these ties that I have tested by kicking with my heel, disclosed the fact that they were rotted through and through, spikes in most cases had come loose from the ties them-

selves, and going back towards Central Avenue on many of these tracks there was stagnant water and slime.

The Court—Were the tracks usable or not, in your estimation?

The Witness—These tracks were not usable.

The Court—What tracks were they, on the east?

The Witness—On the easterly portion, and outlined in the region north of Second, the northerly track north of Warehouse Building 43.

10

Q. Being these tracks that are where my pencil is now?

A. I can't tell you that.

Q. Just north, this one here?

A. That is true.

Q. And the next one is immediately north of Building 47?

A. I am not positive. I am not positive as to exactly how that is, but I can say as to the building. At that time it was being used by the contractor.

20

Q. And that used by the contractor was usable?

A. That is true.

The Court—Are there any tracks now, you haven't yet got in, in such shape, whether it is one to three or ten foot tracks, what kind of tracks?

The Witness—There is ten feet, all of these tracks, in the region described.

30

The Court—And other main tracks were being used by the contractor?

The Witness—Some of this trackage was being used. It was re-aligned. I did not make a survey.

The Court—How much on the westerly side?

The Witness—On the westerly side all of the tracks were serviceable. That is to say, west of Jacobus Avenue for the area south of the highway, taking through that switch lead and running on

of the same track in Jacobus Avenue and turni southerly and from which lead the other leads were taken off.

Q. The switch leads you have just referred to, Mr. Berman, is that this storage lead? Is it this one? I want to get it on the record.

10 A. It is the switch lead south of the one you have just had your pencil on.

Q. You point it out and describe it to us if you can, so that it may be identified.

A. According to how I made my notes on the map that I had which is the map based on this same survey and given to me by the State Highway Department, there have been changes in the trackage and without a great deal of detail work it would be difficult to move this switch point.

Mr. Vickers—I withdraw that question.

20 Mr. Milton—May I have the answer stricken out?

Mr. Vickers—I consent to it.

The Court—Strike it out.

30 Q. Can you tell us yes or no whether the property on the northerly end of this westerly track, at the time of your examination, was served by switch leads taken off of the Pennsylvania track in Jacobus Avenue beyond the property of this company and running through other property, or whether it was served from any such lead or tracks that originated within the boundary of this property?

A. It was served by a switch lead that came off the Pennsylvania tracks, then went over other property before it entered the property of this company.

Q. May I ask this: the prolongation of tracks which on this map run between buildings 38 and 40, and over to the fence; switch track; is that what you refer to?

The Court—That can't be, because they go over other people's land.

Q. The point is no interference of course, so far as switchability is concerned, in taking this land, where it crosses directly at these buildings. We had nothing to do with their rail facilities there.

The Witness—It was served by a continuation of the tracks which are parallel to the property line of this company on the westerly parcel, which is the north of buildings 36, 37, and 38, which track was carried out to the Pennsylvania track in Jacobus Avenue.

10

Mr. Vickers—I take it the answer is yes.

The Court—Well, why leave that answer. He describes it.

Q. Mr. Berman, from your experience and special familiarity with railroad properties and valuations, have you formed an opinion as to the influence of the taking out of this property, the land which is taken out for this highway as constructed?

20

A. I have formulated an opinion.

Q. For that purpose did you take a value of the land respectively east and west of Jacobus Avenue?

A. I do.

Q. And have you been here in this proceeding throughout the proceeding, and the taking of testimony in the case?

A. I have.

30

Q. And have you considered the value, basic land value per acre, testified to by the experts both for the owner and for the State thus far?

A. Yes, sir.

Q. Using that evidence to go with your knowledge of land values and computation of land values in the metropolitan area for terminal facilities and storage facilities, have you formed an opinion as to the effect of this taking in dollars and cents on

the value before the taking of this tract of land and the after value?

A. I have.

Q. Will you let us have that opinion?

Mr. Milton—That is objected to upon the ground that the witness is not qualified.

The Court—Well, he is relying upon the testimony heard in court.

10

Mr. Vickers—Together with his experience.

The Court—His experience if it rested upon that alone might not qualify him.

(Discussion off the record.)

The Court—I will permit the witness to answer the question.

Mr. Milton—Will your Honor grant me an exception?

The Court—You may have an exception.

20

Mr. Milton—It seems to me that I should be permitted to cross examine him.

The Court—You have not requested it, but you may have permission.

*Cross Examination*—By Mr. Milton.

Q. You said, Mr. Witness, that as part of your experience you had kept yourself informed of the purchases and sales by your own company?

30 A. That is true. I said that that information is something that I have used. I have on occasion made use of that. For example, if we sold a piece of property that we have owned, that is registered in my office and I may not use that, but it would be something that would come up in that vicinity and I have to make an appraisal, and that data is available for me the same as any other real estate man.

Q. What were you, the filing clerk?

A. Oh, no.

Q. What duty in connection with any transaction of the Lackawanna Railroad Company, purchase or sale, did you consult to prepare yourself for testifying here?

A. Well, only two sales which are slightly remote in distance.

Q. Where are they?

A. They are in Harrison.

Q. Harrison, New Jersey?

A. And I don't say that I am relying on these sales. You asked what I consulted.

10

Q. So that as far as sales or purchases by your company are concerned, you do not depend upon any information that you might have gotten out of the archives or the records of your own company?

A. No, only as it completes my experience and judgment.

Q. Let me find out how much you know about the transactions of your company. What did the land upon the warehouse in Jersey City cost?

20

A. Well, I think the total was around \$2,000,000.

Q. Do you know what it costs per lot?

A. It varied greatly. These lands were acquired over a long period of years and then wound up in a condemnation.

Q. You know that I represented your company on the condemnation?

A. Well, I so heard.

Q. Do you know upon what street the warehouse fronts?

30

A. Yes, I think it fronts on Jersey Avenue, between 16th and 18th Streets and crosses, I think, what is known as Erie, and that the other frontage is Grove Street.

Q. You are not sure?

A. I am not sure of the streets. I am sure that it runs between 16th and 18th and that it fronts on Jersey Avenue.

Q. Can you give us the price paid at private sale for any of the lots that your company purchased, which formed a part of the sale?

A. Off-hand?

Q. Yes.

10 A. Well, no, sir. The answer to that is that the acquisition, I imagine it covered purchases running into perhaps as many as a hundred, and for me to be able to tell to you off-hand the acquisition price of any one or more of these lots from memory is a little beyond me.

Q. You can't do it, in other words?

A. When I have any chance to.

Q. I asked you whether you can do it or not, can you?

A. I know——

Q. Can you?

A. How can I?

20 Q. What I asked was if you could tell.

A. Give you the price?

Q. Yes.

A. Well, they ran from a dollar a square foot.

Q. Do you know the specific price for any specific lot?

A. No.

Q. Do you know how many square feet are included in the area upon which the warehouse was built?

30 A. Well, no, not off-hand.

Q. Well, you understand that the warehouse is one of the finest in the country and one which you say you were familiar with as to a warehouse operation?

A. I do not.

Q. Well, does it, or did you gain your experience in warehousing——

A. I haven't made any such contention.

Q. You don't claim that you are experienced in warehousing?

A. I don't claim that I am experienced in warehousing.

Q. What railroad have you built in the last 11 years; any?

A. None.

Q. What dock have you built in the last eleven years; none?

A. Why, none.

10

Q. Have you any information to give this jury or the court as to any other purchase or sale by your company in Hudson County in the past five years except the two in Harrison you referred to?

A. Comparing with this property?

Q. Yes.

A. Well, I haven't got the figures before me.

Q. Figures I want.

A. No, I haven't got them with me.

20

Q. What are the two properties in Harrison, are they inland or waterfront?

A. No, they are inland properties.

Q. They were not, I assume, part of a warehouse terminal project?

A. No.

Q. What were they, banks?

A. No, industrial purchases.

Q. How far is Harrison away from the location in question, the land in question?

30

A. About two or three miles.

Q. Have you ever operated a warehouse terminal?

A. Never have.

Q. How long was it you were in the office of the general land attorney of the Lackawanna?

Mr. Vickers—He is the general land attorney, Mr. Milton.

Mr. Milton—I understand he is now. But he was formerly. How long since you have been connected with the Lackawanna Railroad?

The Witness—Since 1920.

Q. You are no longer connected with it?

A. My notice says that my work is temporarily suspended.

10 Q. You said you sat in court during all of the hearings?

A. Yes, sir.

Q. And that, I take it, means you were here from beginning to end?

A. Yes, sir.

Q. I presume that you accepted Mr. Makray's facts?

A. Accepted his values, no.

Q. The same witness is a witness for the owner?

20 A. Yes, I accept some of his sales.

Q. Do you accept, for instance, the sale at \$30,000 an acre, made by Cirra De Pasco Company to the Lincoln Terminal?

A. A very small piece of what is—

Q. Will you please answer me? Did you accept that sale?

A. I accepted the sale.

Mr. Milton—I think the witness is not qualified.

30

The Court—Objection has been made and the court has ruled the witness was qualified, and there has been nothing shown on the cross examination that changes that.

Q. You never bought and sold a piece of property in Hudson County?

A. No, sir.

Q. Nor in Essex County?

A. No, sir.

Q. Nor elsewhere in the State of New Jersey?

A. No.

Q. You have not in the past ten years, or since 1920, actually appraised property yourself by going out on the field?

A. During that whole period my work was partly in the office and partly in the field.

Q. Since how long have you done field work?

A. For that whole period. My work was partly in the office and partly in the field. 10

Q. What did the field work consist of?

A. It consisted of examination of sales that had been developed by the appraisers looking over the property and then using that data to give an offer, the data in the office, prepared from our appraisal.

Q. In other words, you would take the reports of some appraiser and go to the property and look at it and make up your own judgment as to whether or not the appraisal was a correct one? 20

A. Oh, no.

Q. What did you do?

A. Why, go to the property and study all of the sales in the general vicinity and talk the situation over with the appraiser and supervise making the appraisals up to be presented before the Interstate Commerce Commission.

Q. I am speaking of your work in the past ten years with the Delaware, Lackawanna and Western Railroad. 30

A. That is correct.

Q. Investigation of sales that you might so confirm the appraiser's statement about them?

A. Well, search or make a report is not everything I did.

Q. You did not go to the record in the Register's office?

A. Very rarely.

Q. Or the office of the County Clerk?

A. Very rarely.

Q. How much of that work involved work in Hudson County?

A. How much of the work? My own searching?

Q. Yes.

A. No, perhaps once or twice.

Mr. Vickers—You mean searching the clerk's office or the register's office?

10

Mr. Milton—That is what I mean.

The Witness—There were people to do that work, part of the office.

Q. How much of the work that you did in the ten years prior to 1930 in connection with getting up valuations for the Interstate Commerce Commission involved Hudson County property?

20 A. Well, I don't know as I quite get your thought. What do you mean by how much? We covered all of our land. We had to cover everything we had.

Q. You had to finish the job?

A. We have finished except that there is no final report as yet come through the Commission, and the re-appraisal work has been started in order to comply with the law.

Mr. Milton—Still I submit that this witness is not qualified.

30 The Court—It is a little bit different now. (To the witness)—What do you know about values of property in Hudson County within the last ten years?

The Witness—I have made appraisals of our property through the county and I am familiar with the appraisal data that we have.

The Court—It is railroad property. Does the railroad extend, or the rights-of-way of property of the company go anywhere near the Terminal property?

The Witness—We cross the Passaic River, perhaps, well, it would be at least two or three miles above.

The Court—Have you familiarized yourself with the value of land within the vicinity of the locality of the Lincoln Terminal Corporation?

The Witness—I have familiarized myself through the testimony in this court room.

The Court—I mean aside from that, have you?

The Witness—Well, your Honor, my own work has occasioned me to get that far away from the location of our own property. I did have a record.

10

The Court—Just one minute. Your investigation or your knowledge goes or comes from your own property in Hudson County?

The Witness—No, my knowledge comes from my general experience in this work.

The Court—Well, what property have you bought or sold or assessed, or your company bought or sold during the past ten years other than railroad property in the vicinity of the Lincoln Terminal land?

20

The Witness—Well, those that were testified to in relation—

The Court—You heard that from the testimony here?

The Witness—Yes, and I have been all around on some of this land.

The Court—When?

30

The Witness—Well, between last January and some time subsequent.

The Court—I am trying to find out what sales you know about before September, 1930, say, five years previous to that.

The Witness—In the vicinity or location of this property?

The Court—Yes.

The Witness—None.

The Court—What sales do you know of or have you knowledge of during the past five years?

The Witness—In the vicinity of this property?

The Court—Yes.

The Witness—The sales in this court room, the sales that I have heard of in this court room.

The Court—Well, Colonel, how is this witness qualified to testify?

10

(After argument)

The Court—How is this man otherwise qualified? Is there any testimony here to show how he appraised this property and what part he took, the Terminal property?

(To the witness)—You might describe in what manner you became acquainted or qualified to appraise the property, the Terminal property of the Lackawanna. For instance, or for example, have you appraised or did you appraise within the last ten years. Where did you get your values of the Terminal?

The Witness—By a collection of such sales as we could of as nearly similar property.

The Court—That has to do with property?

The Witness—Yes, sir.

The Court—But I mean the superstructure or the improvements on the property.

30 The Witness—No, my office dealt only with the land. It is strictly of the land itself, that is confined its activities entirely to the land.

The Court—You don't seem to be qualified to testify to the value of the terminal facilities outside of the land.

The Witness—I am not testifying to the values of the facilities.

Mr. Milton—I submit then the witness is not qualified.

The Court—In connection with your activities, you just appraised the land?

The Witness—I am appraising the land, the property, in itself, yes, as used at any point that it is being used.

The Court—Used to its best adaptability?

A. Yes.

The Court—That seems to put him in the same category, except that he had some knowledge and experience of evaluating land where the tracks were made and the tracks constructed in any of these localities, but take that thing away and he has just the value of this land.

10

(Further argument.)

The Court—The court feels because of his lack of familiarity with sales in the immediate vicinity that his opinion, even though it is based upon the testimony of other witnesses, given in court, would be of little or no value to the jury, particularly as within the last five or ten years he has not any direct knowledge of a sale of any kind made in the immediate vicinity nor does he come within the source of knowledge that is now permitted by statute. I will ask him this question again. Has there been any information that you have obtained regarding sales in the vicinity or locality of the property of the Lincoln Terminal Corporation, which knowledge was obtained from the owner of the property, the seller, purchaser, lessee or occupant?

20

30

The Witness—Was obtained directly by me, no, sir.

The Court—Did you obtain any information in regard to these sales, that is, of lands in the vicin-

ity, through the broker or brokers who negotiated the sales?

The Witness—No, sir.

The Court—At this time I don't see how I can let the testimony in.

(Recess to 2:00 P. M.)

---

(After recess, 2 P. M.)

10

LEWIS BERMAN, recalled.

The Court—If this witness' testimony is to be taken at all, as it appears now, it must be of his knowledge obtained from the testimony that has been already adduced from other experts.

Mr. Vickers—Applying to his experience and training.

20

The Court—You have testified, Mr. Witness, about hearing the testimony of other experts who have gone before you in this case.

The Witness—Yes, I have heard the testimony, and, of course, in the case before the Commissioners about the sales.

The Court—What comparable sales have you knowledge of upon which you propose to base your opinion if it is permitted?

30

The Witness—Well, there is the sale of Newark Factory Sites to Valentine Company. The Indian Refinery sale to Valentine. The sale to the Western Electric which is comparable to a great degree.

The Court—Have you information as to the date of the conveyance?

The Witness—Yes, sir.

The Court—And the character of the property?

The Witness—Yes, sir.

The Court—And the consideration paid?

A. Yes, sir, the book and page reference and the amount and the location of the property.

The Court—In your appraisals for the railroad company of the properties which you have mentioned, mention some of the property in Hudson County that you have had to do with, parcels—you say the warehouse is one.

The Witness—No, sir, not yet. The warehouse property—

The Court—Well, that is out. What else have you appraised and when? 10

The Witness—Two of our yard areas through Hudson County, used for storage tracks, on our terminal property at Hoboken and Jersey City, yards in Jersey City, in addition to the terminal property.

The Court—When did you make those appraisals?

The Witness—Well, those appraisals were made during the period, I should say, 1922 and 1923, and up to 1927. 20

The Court—How did you obtain the information to obtain the appraisals?

The Witness—By searches, communications with brokers in the territory; that is to say, we might go to a broker and if they knew the consideration of a certain transaction, we might get the whole transaction, if we did not get the consideration we might ask someone else and someone else communicated by letter. Many of our considerations have come by letter. 30

The Court—Was that done by you or someone else?

The Witness—Up to about October, 1929, it was done by the office where I was assistant to the man in charge, and since that time the work has been entirely under my charge and supervision.

The Court—Since 1929?

The Witness—Yes, sir.

The Court—What have you appraised since then?

The Witness—The work is continuous. We keep going over every sale we can so as to be prepared for the Interstate Commerce Commission.

The Court—Do you make these inquiries yourself, or someone else make them?

The Witness—Some I made myself and some were made by others.

10. The Court—I want you to get what is passing through the court's mind. The court would not have any trouble about deciding the question at all as to this witness if it were not for the Act of 1931 and the Brokaw case.

Mr. Milton—We have already consumed quite a bit of time on it, and I would like to get rid of it.

- 20 The Court—The court feels that it is serious enough to give both sides an opportunity to have a full discussion, not only as to the question itself, but this is the first time in this case that the witness, the qualifications of a witness, have been gainsayed.

Mr. Milton—In order to save time I am willing to consent that the witness' testimony go in.

- 30 *Re-direct Examination*—By Mr. Vickers.

Q. Will you tell us what is your opinion as to the effect of the taking of this strip of property indicated on P-1 and any consequential damage by reason of severance, dock interference or any other element, that in your judgment and experience enters into the highest facilities to which in your opinion this property was in September, 1930, adapted and used.

A. Consequential damages only?

Q. The percentage of damage by reason of the taking and that includes whatever in your opinion that piece of property by percentage is damaged in the taking of the land and the obstruction to its facilities, if any.

A. The triangle on the east of Jacobus Avenue to the north of the taking, I damaged that thirty-three and a third per cent.

Q. Of any value that may be accepted; is that right?

10

A. Yes, sir. The taking itself I damaged one hundred per cent.

Q. The market value of the property in other words?

A. That is correct. The area to the south of the taking, the parcel to the east of Jacobus Avenue I damaged it three and a third per cent.

Q. Does your opinion take in likewise the highway frontage?

A. It does not take in that—

20

Mr. Vickers—Wait a minute, please.

Q. Or does it eliminate, as the witnesses have done, the strip one hundred feet along the Lincoln Highway?

A. It eliminates the strip along the Lincoln Highway.

Q. All right, go across Jacobus Avenue now.

A. The area to the west of Jacobus Avenue and to the north of the taking I damaged twenty per cent. There again the taking on the west of Jacobus Avenue is damaged one hundred per cent and to the south of the taking and west of Jacobus Avenue and excluding the Lincoln Highway frontage, I damaged seven and a half per cent.

30

Q. And in the percentages that you have given us, do you or do you not take into consideration the fact that there is access, ingress and egress over the property of the acquisition which you damage one hundred per cent?

A. I did take that into consideration.

*Re-cross Examination*—By Mr. Milton.

Q. Mr. Berman, the day that you were out to look at this property in 1931, Lincoln's Birthday, you said you found stagnant water?

A. I said I found some switch rails stacked up.

Q. Did you say anything about stagnant water?

A. Yes, I didn't hear you previously; excuse me.

Q. What was the temperature on that day, do you know?

10 A. Well, I don't know the exact temperature. It must have been slightly below freezing, because there was just a little coating of ice still remaining on some of the water.

Q. Do you know the night before you were out there that it was as low as twelve degrees Fahrenheit?

A. Maybe it was.

Q. Had it snowed that day?

A. I think there was a little flurry on that day.

20 Q. The day you were out there?

A. I think so. I would not say positively. There may have been a little flurry.

Q. What hour of the day was it?

A. Around the noon period and thereafter.

Q. How long after the noon period?

A. Well, I spent quite a bit of time on the property that day. I imagine I must have been there up to three-thirty or four o'clock that day.

Q. The contractor was working there?

30 A. Well the plant was there. I don't remember observing whether they were in operation on that day.

Q. It was not too cold for them to work, was it?

A. I should not think so.

Q. Did you see a donkey engine running around on rails?

A. I didn't see any.

Q. You saw the plant there, the contractor's plant?

A. Yes, I saw that there was a construction on.

Q. And it was plain to you, wasn't it, that the contractor had been there working in this territory when you were there in February, 1931?

A. What territory.

Q. East of Jacobus Avenue or west?

A. In where I saw the stagnant water?

Q. Where did you see the stagnant water?

A. Would you like to have me show you on the map? 10

Q. If you please.

A. In the region through here. I walked on these tracks, at least four or five of them.

Q. Indicating more towards the northerly end on the map, rather than toward Jacobus?

A. Correct.

Q. But generally through the whole area east of Jacobus Avenue it was plain that somebody was doing construction work? 20

A. That the construction work was in progress.

Q. It was in course of being done?

A. Yes, sir.

Q. And that was true of the area west?

A. In the vicinity of the one hundred foot strip. Not in the vicinity—

Q. I don't mean to suggest that.

A. Not in the vicinity of these tracks that I say were in an unusable condition and covered with water.

Mr. Milton—I don't mean to suggest that at all. 30

Mr. Vickers—I desire to offer in evidence the schedule which has been referred to page 798 of the previous record dealing with the ships that dock at this wharf. I renew that offer, it has been testified to by the treasurer of the company and it comes out of the hands of the company.

Mr. Milton—I have no objection to it.

(Accepted and marked Exhibit D-12 of this date.)

The Court—I would like to ask this witness one or two questions before he leaves the stand. The court would like to know, in order to apply the testimony of this last witness to the others, what the acreage is that he gave the thirty-three and a third per cent depreciation to. Is that what is termed triangle A?

Mr. Milton—1.365 acres.

10 The Court—That is the part south of that, how much on the easterly tract?

Mr. Vickers—He eliminated the one hundred foot strip.

Mr. Milton—38.6205.

Mr. Vickers—That takes in the one hundred foot strip on the highway?

The Witness—I applied it on 36.16 acres.

20 The Court—And the twenty per cent, that is north?

The Witness—I applied that on 5.86 acres.

The Court—And the seven and a half per cent area?

The Witness—I applied that to the 19.97 acres.

The Court—Now, what is in the tract taken, how much?

The Witness—On the east 1.81 acres.

The Court—And on the west?

30 The Witness—2.37.

(Witness excused.)

(By agreement with counsel, the court handed the jury a tabulation of the figures of testimony given by the various expert witnesses, being a summary of the figures given in the testimony.)

(Counsel summed up to the jury.)

The Court then charged the Jury as follows:

THE COURT—GENTLEMEN OF THE JURY:

You have been listening with some patience since last Tuesday to the evidence in this case. You have heard able counsel sum their cases up to you. Your attention to the case has been so close, that the Court feels it unnecessary to refer to the testimony at great length, and if, during the Charge, the Court should refer to the testimony, please bear in mind that the Court's reference is not binding upon you, and that it is made to assist you in a proper determination of the case, because under the law you are the judges of the facts in this case.

10

Your duty is just as solemn as if you were sitting as a Judge who is sworn to do his duty. You have been sworn to do yours.

Now, it seems to the Court, that in venturing upon a consideration of this case, you should first have presented to your minds what are the issues.

20

Well, the 20th day of September, 1930, is the date that you are to fix your award upon. The item of interest or accumulation from that down to the present, if any, you have nothing to do with. You fix an award, if you do fix one, and the Court does not see why you should not fix something, on the value you arrive at, or the damages that you award as of the 20th day of September, 1930.

Now, on that particular date, this property owner, the Lincoln Terminal Corporation, was the owner of a tract of land and business situated in this county. That tract and business was in the possession of and owned absolutely, so far as this case is concerned, by the property owner mentioned. The State of New Jersey, through one of its political subdivisions, known as the State Highway Commission, in the administration of its business, concluded or determined that a part of the property of the Lincoln Terminal Corporation

30

was necessary for public use, and they proceeded to take that property.

10      Gentlemen, every piece of land in the State of New Jersey, whether owned by you or any other citizen, is subject to the superior power of the State; that is to say, it is subject to the right of the State to exercise its eminent power, its right of eminent domain, to take such part of your property as may be necessary for the public use and  
ostensibly, the public good. It is a case where the individual right must submerge itself to the right of the majority of the State, or as we understand it in our American form of government, the right of the people themselves.

20      So that here you have the State of New Jersey requiring this land for public purposes, and you have the owner demanding, and entitled under our Constitution, to be paid for the land that has been taken from him, or it, together with any damage that he has sustained because of the taking, and the issue is for you to determine what the value of the land taken, as well as the consequential damages that have followed because of the taking to this property.

Now, that is the issue that you are to try.

30      There has been a great deal of testimony submitted in this case, pro and con, as to the amount that should be awarded. You are not bound by all of the testimony that was submitted in this case. You are to be the judges of what the relevant testimony is, of what the truthful testimony is. You are to decide this case without passion, prejudice, or sympathy; and even though you may have a conviction one way or the other about cases of this character, you should not exercise that personal conviction; you are to decide this case according to the evidence you heard. Even though, gentlemen, a witness on the stand has given testimony that you believe to be true, but it conflicts with your convic-

tion as to what should be done in this class of cases, in conscience you are bound to take that truthful testimony if it is relevant to the issue, with all the binding force which should be given to relevant, truthful testimony.

The Court has cited the issues to you, and at the opening of the case the Court instructed you as to your view of the premises in question. In considering your view, or applying it to this case, bear in mind that you are not to take that view as evidence in the case. You are to use your view so that you will better understand the testimony that was given here under oath. Another thing, gentlemen: it may be that without the Court room you have heard that this case was tried before a Commission and that a certain amount was awarded. You will be disregarding your oaths if you, by any chance, either directly or indirectly, consider any information that you have received regarding that award, because you have sworn to decide this case upon the evidence that is produced before you in this court room. It is the same as if this case was never tried before. Therefore, disregard any information that you have received without this court room, and decide the case from the testimony of the witnesses who were sworn and what they have testified to before you.

The Court has said that you are to take this value as of the 20th day of September, 1930. What value? That is the big question. This property owner, under our Constitution and under our law, is entitled to be justly awarded and compensated for the injury and damages that he has sustained because of this public project across his property, and when I say damages, I mean that of the taking, the value of the property taken, as well as the consequential damages.

Now, what are those damages? Is it a matter of sentiment that is to be appraised? Is it a matter

10

20

30

of something that is going to happen five or ten years from now? No. What you are to appraise, in terms of dollars, is the value of the property that has been taken as well as the consequential damage to the remainder, as of the 20th day of September, 1930, or a time reasonably approximate thereto. In other words, as it has often been said, it is the fair value that you are to award, the fair and just value; and our Courts have defined what

10 fair and just value is.

A fair value is comparable to that of a fair sale, and a fair price, and a fair sale and a fair price is such a price as a purchaser, willing but not compelled to buy, and an owner, willing but not compelled to sell, would arrive at. So that, in arriving at a value that you are to assign to the property that is taken, as well as the consequential damages to the remainder, you are to consider, it seems to the Court, and the law so requires, what would be

20 a fair price on that date, the 20th day of September, 1930, and that fair price or fair value would be the price or value that a person who was willing to sell would sell for and a purchaser who was willing to pay, would pay for it. There is no compulsion about such a sale as that.

Now, you have been given a long range of prices and values, but there are two items upon which the parties agree, and for the sake of clarity, let the Court mention them at this juncture. One is the

30 damage to the building. According to the testimony, it has been agreed between the parties that that item is \$910. The damage to the tracks has been agreed as \$2,200.

It seems to the Court, though it is for you to determine, under all the testimony, the thing that you are concerned about primarily, at least, is the damage to the land and the remainder, as well as the value of the land that was taken, including, of course, if you come to the conclusion that there has

been damages, or damage done to the riparian rights or what is known as the marine facilities.

Something has been said in the case as to the cost of a dock that should be expended in order to give facilities and place this property back in the same semblance of usefulness as it was before this public project was put across the property, and the figures that has been assigned for such construction is that it would cost over \$179,000. Gentlemen, you can take that figure or not; you are the judges of the facts. But bear in mind, no matter what figure the witness testified to, whether it is this item of \$179,000 or any other item, this property owner is not entitled to have the value of the property enhanced, that is, the property that remains, above what it was before the taking took place. In other words, your sole proposition, if you take a figure of that kind, is to allow the property owner, if it is necessary to consider such a figure, what would be an equivalent cost, or what would be the cost or the equivalent of putting him back where he was before. When I say "him", I mean "it", the corporation.

Then, again, you have figures, particularly in the testimony of Mr. Makray, although I am not singling this witness out for any particular reason except by way of illustration, and also Mr. Houston, as to the figures of damages for marine interference. I think that Mr. Makray allowed, although your recollection must govern, the sum of \$184,070 for this marine damage, or marine intervention. In other words, Mr. Makray's figures, that is, the value for the part taken and the damage to the remainder, the sum of \$327,965 and then he adds for the marine disturbance \$184,070.

Mr. Houston, as the Court remembers it, gives a figure of \$123,000 which he includes for the marine disturbance or inconvenience, or damage, and that is included in his total of \$462,486.

10

20

30

Now, gentlemen, if perchance you are giving any consideration to these proposed items, and accepting this picture, bear in mind that this property owner is not entitled to something that he did not have in the way of anything more valuable, or more than the equivalent to what he had before, and in considering that item also, remember that you are not to forget that other witnesses, in their computations, have made allowances for the same item; in other words, you are not to double an item of that character.

I want to impress on you so that you will understand that the Court does not intend to take away from you the fact that you may make an allowance as you think just, for whatever it would cost this company to put its facilities in the same position, or substantially the same as they were before. Or you may leave this company as it is, in the way of its facilities, and approach the allowance from another direction; that is to say, an allowance for the land that is actually taken, and the consequential damage to the remainder, including the wharf, making your figure one whole sum.

As the Court said at the opening, the great big proposition is, what was this property worth before this thing happened; what is it worth after? The difference is what you allow. After all, it may be said that the property taken, and the wharf, and the consequential damages, together, is the sole big proposition, and, in fact, the only one for you to determine. But there are other contingencies, or other propositions that have been mentioned, and may be of course considered by you, and should be considered by you, but the big proposition, the major proposition is, what was the value of this property on the 20th day of September, 1930, before this thing happened, and what was the value immediately after that date.

Now, for example, taking the property that was taken, the absolute taking, the property that is shown in color; as the Court figures it, though the figures are for you, there is a little over four acres. Well, if you take the figure of one of the State's experts, \$25,000 an acre, there is over \$100,000 if you make an allowance for the absolute taking on that basis. On the other side, it would be \$140,000. But bear in mind, when you are considering the property that is taken, the State has, by the issues in this case, bound itself to permit the use of the property that is actually taken, by the property owner, that is to say, between these piers and the land that is available and not occupied by the piers; that is, the property owner has the right of ingress and egress, to go from one part of its remaining property to the other and under this super-structure, and as the Court sees it, that right extends all the way down, as colored on that Exhibit P-2. It even goes back where there is no interference, as the Court sees it, though it is for you, not including of course, the pier that is out in the water.

10

20

The Court makes reference to this item of the absolute taking of the property, to put your minds, if the Court can, in the way to appreciate the different figures that have been given in the way of value.

Now, if you take these figures of \$25,000 and \$35,000, and those are units that have been mentioned, the units per acre; \$35,000 per acre amounts to something like over \$2,000 for a city lot as the Court figures it, though it is for you. \$25,000 is about \$1,400 for a lot 25 by 100, and allow about seventeen and a fraction lots to an acre. In other words, there is 43,560 square feet in an acre and if you divide your unit price per acre into that, you will find just what you are getting at.

30

You are to take into consideration comparable property, if you find such were the sales that have

been made, near the area and near the time, as it will help you in this particular connection. Take all the factors into consideration and arrive at a just result.

10 The Court has mentioned the fact that you are to consider the property taken, and the Court has heretofore explained to you what is meant by consequential damage, and it is not necessary to again repeat that explanation. You are to allow this property owner for the consequential damage to the remainder of the property, and that means just what it says. Your award is to be a just award. This is the last time that this property owner comes into court. It is the last time that this case is to be decided, as far as you are concerned, and your award is to be final, and your award should be just.

20 The law is so careful about the rights of a citizen as to his property, that it does not require a jury in passing upon a case of this kind, to allow the minimum of value. You are permitted to allow the maximum, and when I say the maximum, I mean a value that will represent the maximum adaptability of this property. For example, if this property as a dump is only worth \$2,000, but as a going industrial site, or as an industrial site, was worth \$20,000 an acre, if you in your judgment think that, it would be just to make the higher award, and you under the law can do it. In other words, the award has got to be just and just means to be fair, to be  
30 honest between both parties.

The mere fact that the State of New Jersey has or has not a lot of money, has nothing to do with the case. The mere fact that this company is poor or rich, or that it is a corporation, that it is engaged in a certain line of endeavor or not, whether it is fortunate in locating here or not, whether it bought this property from the Indians for a dollar or not, you are not concerned with that.

What you are to determine and the only thing you are to determine is the just award that should be made to this property owner, as of the 20th day of September, 1930.

Gentlemen, the Court feels it unnecessary to remind you that your duty is a serious one. In this case, as the Court pointed out to you in the beginning there is a little difference between a case of this character, and the ordinary case between two private individuals, who come into Court to have their disputes settled. For example, an automobile case, where one claims that through the negligence of another he sustained damages. There there has got to be established first the liability before the jury can proceed to the question of award. In this case, you don't have to consider the question of liability, because it is admitted. All that you have got to do is to determine what the award should be.

10

Now, men, after the labors that you have gone through, and the Court and counsel and the parties have gone through, since last Tuesday, as reasonable men, try and agree upon what should be a just award in this case; make an honest effort, and when I say an honest effort, I mean an effort that coincides with the oath that you have taken. You have taken an oath and sworn to your Ever Living God, that you are going to do what is right in this case. That is a very solemn bargain, and the Court feels that you are men who are fully capable of carrying out that contract.

20

30

Are there any exceptions to the Court's Charge?

Mr. Vickers—I desire to take an exception to that part of your Honor's Charge where you said "you are not to take that view", referring to the view of the property, "as evidence in the case". My contention, and I take the exception respectfully, is because the Upper Court has never directly passed on that. It is really evidence in my opinion.

The Court—The Court feels that the Upper Court has clearly decided that proposition to the effect that a Jury has the right to view a property and what they learn by that view is to be used and applied to a better understanding, or an understanding of the evidence that is adduced, and the view by the Jury is not testimony in the sense that testimony is adduced in Court.

10 The Jurors act in the capacity of jurors; and not as witnesses, to go out and see the property and form an opinion.

Mr. Vickers—I don't object that it is not testimony. But it is my contention that it is evidence.

The Court—The Court has made the amendment that has just been pronounced in answer to your objection, and the Court will stand on that.

Mr. Vickers—May I pray an exception.

The Court—You may have it.

(The Jury retired.)

20

---

**NEW JERSEY**  
**Court of Errors and Appeals**

---

STATE HIGHWAY COMMISSION OF  
THE STATE OF NEW JERSEY,

*Appellant,*

*vs.*

LINCOLN TERMINAL CORPORA-  
TION,

*Respondent.*

} On Appeal  
from Hudson  
County  
Circuit  
Court

---

**BRIEF FOR APPELLANT**

---

This case is on appeal in condemnation proceedings from a judgment obtained in the Hudson County Circuit Court. The verdict was for \$375,000 and interest and costs, bringing the judgment to \$399,279.86.

Grounds of appeal are the following:

1. That there is no evidence in the case to support the verdict of the jury.
2. That the jury disregarded and rejected all of the testimony and evidence received in the case but nevertheless rendered a verdict.
3. Because the verdict is contrary to the charge of the Court.

4. Because the trial court committed harmful error in charging the jury as follows:

“In considering your view, or applying it to this case, bear in mind that you are not to take that view as evidence in the case.”

### POINT I

**The first ground of appeal raises a pure question of law cognizable in this Court.**

In the case of *Ratz vs. Hillside Bus Owners Association*, 103 N. J. L., 502, the identical question was assigned as a ground of appeal, being number five in that case. With respect to that ground this Court in that case said:

“The fifth ground of appeal, that there was no evidence to support the verdict of the jury which is cognizable in this Court was not argued at all.”

It is because of the recognized propriety of raising that question as a matter of law in this Court that the appellant seeks an adjudication here. It is because this Court said that the ground of appeal is cognizable in this Court, and because the point was not decided for the only reason given that it was not argued, the appellant in the instant case is before this Court to argue the point and have the rule of law definitely settled.

The question which the appeal now brings before this Court, is whether a verdict for just compensation in the condemnation of lands for public use is good as a matter of law when no basis for it can be found in any testimony adduced at the trial and no controversial question could have been settled by the view of the land had by the jury.

Concededly there is no way of arriving at the market value of land not agreed upon between vendor and vendee except from the opinion evidence of those qualified to speak on the subject. Under very rigid rules laid down by our courts certain persons may, from knowledge and experience, be permitted to express opinions as to the market value of land taken and also reduce to dollars and cents consequential damages to remainder land by reason of the taking.

It has been repeatedly held that general experience, academic training, ability to appraise land values generally, and the widest knowledge of land values generally will not qualify a witness to express an opinion as to the value of a particular piece of land. His knowledge must be knowledge which the law recognizes and his ability and experience must pertain to comparable property.

*Ross vs. Palisades Interstate Park*, 90  
N. J. L. 461.

*Essex County Park Commission vs. Brokaw*, 107 N. J. L. 110.

Thus a jury charged with the duty of fixing just compensation can receive no competent evidence which is not based on the kind of knowledge coming within the definitions laid down by this Court.

Except for the view by the jury there is no evidence in a condemnation case except the opinions of the respective witnesses. The right to accept or reject the opinion of a witness, in whole or in part, is exclusively a prerogative of the jury. It is however urged that the jury may not substitute its own opinion of value in conflict with all of the opinions in evidence and set an arbitrary figure which cannot be reconciled with any of the evidence submitted.

In *Somerville, etc., R. R. Co. vs. Doughty*, 22 N. J. L., 495, the Supreme Court discharged a rule to show cause why the verdict should not be set aside and a new trial granted. An examination of that case will disclose that the grounds urged were that the verdict was exorbitant and excessive and that "the verdict is wrong" because the jury were either influenced by passion, prejudice, ignorance or corruption, or were misled and misinstructed by the Court.

The point not touched on by the Supreme Court in that case is that if as a matter of fact the verdict could not be reconciled with any of the evidence in the case, it meant as a matter of law that the jury was in disagreement on the evidence and should not have reached an arbitrary figure for the sake of rendering some verdict, but should have reported to the Court such inability to agree.

Notwithstanding that the figures set out in the opinion might indicate that there was no evidence to support the verdict, the verdict was not attacked on the ground urged under this point in the instant case.

The theory upon which the Supreme Court discharged the rule is plainly expressed in the opinion that the reviewing tribunal if called upon to render a verdict might not give a more equitable and just verdict or one more consistent with the evidence; or that it might not be able to agree upon a verdict at all.

We submit that this does not meet the fundamental proposition that a verdict in a condemnation case must be reconcilable with the evidence in the case. If a jury may be permitted to disregard the opinion of every witness and strike some arbitrary figure, founded neither on the testimony of the case nor demonstrably arising out of the view of the land, it necessarily follows that the

stringent rules for introducing the opinion evidence of market value and consequential damages are utterly meaningless.

It is not insisted upon by the appellant that a jury has not some leeway; and that it is obliged to accept the exact figure of any one witness, if there are several; but we do urge that as a matter of law a jury may not take some arbitrary figure founded on no evidence and call that just compensation.

This point is graphically illustrated by a suppositious case with but one witness for the land-owner and one witness for the State. If the witness for the State testified to the value of the land and consequential damages being \$50,000, and the witness for the land-owner gave it as his opinion that the land value and consequential damages amounted to \$150,000, a verdict by the jury for \$100,000, would be unsupported by any evidence in the case. It is our contention that such a verdict as a matter of law demonstrates that the jury rejected all of the evidence and substituted the aggregate of its individual opinions as experts. Both parties under those conditions are wholly in the dark as to what elements of value, if any, entered into the award. *Mauvaisterre Drainage & Levee District vs. Wabash Railway Co.*, 299 Ill. 299—22 A. L. R., 944-955.

This proposition is of course to be qualified where the view by the jury properly settled some controverted point in the evidence. For example, if buildings were described as dilapidated when in fact they were in good condition; if land were described as upland when in fact it was a marsh; such matters would be evidence in the case and properly considered by the jury as affecting the figures respectively given by the witnesses. This, in turn, would not however justify the jury in arbitrarily making an addition or subtraction from

the figures in evidence unless the testimony disclosed respective values on the controverted point.

In addition to what the trial court said to the jury as to specific figures given by various witnesses, there was submitted to the jury, by consent of counsel, a written list of the figures given. This list contained the before and after value as given by the various witnesses and the net result of the value of the property taken and damage to remainder as testified to by each witness, and as follows:

*For the Land-owner:*

Makray .....	\$327,965.00
plus damage because of marine interference, \$184,070. Total damages .....	\$512,035.00
Houston .....	\$462,483.00
Moore .....	\$492,759.37

*For the Highway Commission:*

Dunham .....	\$158,170.00
Burhorn .....	\$167,785.00
Ryer .....	\$175,170.00

This evidence presents the picture of a hiatus of \$287,316 between the lowest figure given for the property-owner and the highest figure given for the State.

On behalf of the appellant it is urged that this sum of \$287,316, represents a realm which the jury may not be permitted to invade; for the reason that there is not a scintilla of evidence in the entire record to justify a finding within the range covered by this figure above \$175,170, and lower than \$462,486. Against this argument on the figures as submitted by the Court to the jury no objection can be advanced unless it be said that the jury might have properly taken the figure of the witness

Makray of \$327,965 and disregarded his added damage for marine interference of \$184,070. Obviously the jury did not do that.

Summarizing the contention made on behalf of the appellant we say; that the jury for a proper verdict in this case was necessarily confined under the figures to some figure within the range given on behalf of the property-owner between \$462,483 and \$512,035, or else within the range of the figures given on behalf of the State between \$158,170 and \$175,170. It is further urged on behalf of the appellant that any figure arrived at within these ranges respectively must be reconcilable on some theory arising out of the evidence submitted.

## POINT II

**It is self-evident that the jury rejected all of the testimony and the view in itself could not have supplied evidence to support the verdict.**

The second ground of appeal is:

“That the jury disregarded and rejected all of the testimony and evidence received in the case, but nevertheless rendered a verdict.”

The argument and figures set out hereinabove under Point I are relied upon to support this ground of appeal, and the argument will not be further elaborated except to point out to the Court that the exhibits in the case, together with the explanatory testimony as to them, demonstrate conclusively that the view had by the jury could have settled no controverted point except as to what has been called the marine interference. By that, in the instant case, is meant the obstruction on the waterfront of the Passaic River caused by the building of an abutment slightly projecting beyond

the string-piece of the dock and interrupting the full use of the dock frontage as theretofore.

So far as this alleged damage is concerned, the jury was at liberty to adopt one of two propositions under the evidence. The figure given by the witness Ordeman of \$179,330, or that given by Makray \$184,070, or that given by Houston \$123,000, might have been accepted by the jury; or in the alternative the figures given by each of the State's witnesses could have been accepted which included payment for the land on which the abutment stood and the damage to the ripa.

Much testimony was submitted on this phase of the case. Under the evidence however the jury was compelled to adopt one or the other of the damage figures given on behalf of the property-owner or reject them in toto. Comparing the verdict with all of these figures it is self-evident that none of the above figures for so-called marine interference was accepted by the jury.

As to the basic land values used by either side there is no room for any great discrepancy. As the trial court correctly points out in the charge to the jury, the differences there are between \$25,000 and \$35,000 per acre and four acres is the amount of the taking on the assumption that the owner is deprived of the entire area within those four acres which, of course, was not the fact under the stipulation entered into as a part of the issue framed.

### POINT III

#### **The verdict of the jury is contrary to the charge of the Court.**

The Court charged the jury (Case, page 280, lines 26, etc.):

“There has been a great deal of testimony submitted in this case, pro and con, as to the

amount that should be awarded. You are not bound by all of the testimony that was submitted in this case. You are to be the judges of what the relevant testimony is, of what the truthful testimony is. You are to decide this case without passion, prejudice or sympathy; and even though you may have a conviction one way or the other about cases of this character, you should not exercise that personal conviction; you are to decide this case according to the evidence you heard. Even though, gentlemen, a witness on the stand has given testimony that you believe to be true, but it conflicts with your conviction as to what should be done in this class of cases, in conscience you are bound to take that truthful testimony if it is relevant to the issue, with all the binding force which should be given to relevant, truthful testimony."

Thereby the Court confined the jury to the testimony submitted. Further we think that the Court erroneously instructed the jury that they were the judges of the relevancy of the testimony; and having said that they were not bound by all of the testimony the jury was permitted to disregard testimony on a basis of irrelevancy.

No exception was taken to this part of the charge and cannot therefore be urged as a ground for reversal. It is adventent to under this point to show that the jury disregarded the Court's instructions.

Where the Court charged the jury as above quoted, that if a witness on the stand had given testimony believed to be true such testimony must be accepted with all the binding force of relevant, truthful testimony, notwithstanding any conflict with the conviction of the jury as to what should be done; the verdict is proof of one of two of the

following alternatives. Either there was no witness whose testimony the jury believed to be true, or if the jury believed the testimony of any witness to be true and *relevant* they did not give that testimony the binding force of relevant, truthful testimony.

Irrespective of the legal accuracy of the Court's instruction as to the evidential character of the view, presumptively the verdict does not reflect any evidence gathered from the view and must be confined within the testimony.

This is further emphasized by the following language in the charge (Case page 281, lines 23-27):

“Therefore, disregard any information that you have received without this courtroom, and decide the case from the testimony of the witnesses who were sworn and what they have testified to before you.”

Thus if the evidence cannot be reconciled with the testimony of the witnesses the jury has disregarded the instructions given by the Court.

#### POINT IV

#### **The trial court committed harmful error in its charge to the jury.**

The particular portion of the charge upon which the fourth ground of appeal rests is as follows:

“In considering your view, or applying it to this case, bear in mind that you are not to take that view as evidence in the case.” (Case page 281.)

We submit that this is an erroneous statement of the law and was highly prejudicial to the correct solution of the problem before the jury.

The Legislature has provided for a view as a jurisdictional essential to a proper trial of the feigned issue in a condemnation appeal. The view provides the jury with what is known in the law as *real* evidence. One may properly ask if the view does not supply the jury with real evidence, what is this view in the case.

In *Hinners vs. Edgewater and Fort Lee R. R. Co.*, 75 N. J. L., 514, this Court dealt with the use to be made by the jury of the view of the premises. The language of the trial court was objected to by the plaintiff-in-error on the theory that under the charge of the Court the jury were instructed that they might "bring in a verdict in accordance with their own opinions irrespective of the evidence." The defendant-in-error contended that this instruction did not give any such probative force to their view independently of or without due regard to the evidence, but that they were, on the contrary, expressly told to use their view in forming their judgment of the evidence and in reaching an opinion with reference thereto. This Court approved the latter interpretation of the charge.

While we think that the learned trial judge in the instant case intended to instruct the jury along the lines approved by this Court in the *Hinners* case, we submit that the language and effect of the charge in the instant case differs widely from what this Court approved of in the *Hinners* case.

Reading the charge of the Court below in the *Hinners* case it is quite apparent that the Court used the words "evidence" and "testimony" interchangeably. In that case the Court could not have been misunderstood because the language is that the jury "listened" to all the evidence in this case. Likewise the reference to "the evidence which has been presented," read in conjunction with reference to the testimony both before and

after must have conveyed to the minds of the jury that the Court was referring only to testimony presented in court and was dealing only with the *use* to be made of the view by the jury.

This Court in the Hinnars case did not decide a question there pointed out at the foot of page 518, i. e., the distinction between the limited function of an ordinary jury of view under the then 31st Section of the Jury Act and that view had under the express direction of the Condemnation Act. The necessity for such determination did not there arise. The trial judge had not there charged the jury that the view was not evidence in the case.

That the learned trial judge in the instant case did not use the word "evidence" as a synonym of testimony is not only apparent from what immediately follows in the charge itself but what followed when the Court's attention was called to it by the exception to the particular language.

In dealing with the duty of the jury to disregard any information received regarding any award made by the condemnation commissioners the Court says (Case page 281):

"You have sworn to decide this case upon the evidence that is produced before you in this courtroom."

Again:

"Therefore disregard any information that you have received without this courtroom, and decide the case from the testimony of the witnesses who were sworn and what they have testified to before you."

While these latter instructions may have been intended to apply only to improper information obtained by the jury outside of the courtroom, the instruction is so drastic and specific as to limit the evidence in the case to "the testimony of the wit-

nesses who were sworn and what they have testified to before you." At the conclusion of the charge the attention of the trial court was called to the specific language objected to.

In the printed case (page 287, line 40) there is a scribner's error. The transcript says "it is *really* evidence in my opinion"; obviously this should have read "real". We beg this Court to accept this as a correction in the state of the case.

Then follows what the Court calls the amendment.

We are not in conflict with the trial court that the upper court has decided that the view of the jury is to be used and applied to a better understanding of the testimony adduced in court. We do insist that the upper court has neither decided nor even indicated that the view by the jury is not evidence in the case. The amendment not only did not correct the language excepted to but emphasized the harmful error. The jury were deprived of the right to use as evidence what was evident to them from their view. By this we do not intend to argue that the jury had a right to form an opinion of the value of the land in conflict with the testimony and other evidence adduced. On the contrary, we emphatically urge that the view could not serve that purpose; but with equal insistence urge that the jury could not lawfully be deprived of the objective evidence presented to them by such view.

This Court in *Garland vs. Furst Store*, 93 N. J. L., 127, has dealt with objections pertinent to but not dispositive of the question raised in the instant case under this point. Dealing with the effect of an inspection or examination under the Evidence Act and a view under the Jury Act this Court there concluded:

“In our opinion the question presented to a court of review should be decided on what appears in the record brought up to the appellate tribunal, notwithstanding that a view was had by the jury.”

This Court in that case intimates that there is no substantial difference between “a jury of view” under the Jury Act and an inspection or examination by the jury under the Evidence Act. As this is by way of *obiter* in that case we do not deem it necessary in the instant case to deal with that suggestion expressed by the Court.

We do, however, urge that neither of the statutory provisions there discussed is by itself applicable to a condemnation proceeding; for the reason that the view under the Jury Act shall be ordered by the judge only *if such view is necessary to enable the jury better to understand the evidence given in the case*; while under the Evidence Act the inspection or examination is to be ordered *when it shall appear that such proceeding would aid in ascertaining the truth of any matter in dispute between the parties to the action*. Regarding the force of such inspection or examination this Court in the Garland case says:

“Not that it should be conclusive of anything or even evidence *in and of itself*.”  
(Italics ours.)

The Eminent Domain Act is neither an amendment nor a supplement to either the Evidence Act or the Jury Act. In providing for a view by a jury in a condemnation proceeding the Legislature has made such a view mandatory as a part of a proper trial to ascertain the quantum of compensation. Under the Evidence Act the function to be performed by the jury is called an inspection or exam-

ination; and the purpose expressed in the Statute is to "aid in ascertaining the truth of any matter in dispute between the parties to an action." Under the Jury Act it is provided that the Court may order that the jury shall view any place if such view is necessary to enable the jury better to understand the evidence given in the case.

To ascertain the Legislative intent in providing for a view by the jury on an appeal in condemnation cases, other parts of the same Act relating to the object to be accomplished must be considered. That object is to fix just compensation. To that end, where no agreement under negotiations can be reached, the Act provides how commissioners shall arrive at an assessment of the amount to be paid to a land-owner for property and damages.

Section 6 under the caption of Duty of Commissioners provides that:

"The commissioners, having first taken and subscribed an oath or affirmation to faithfully and impartially examine the matter in question and to make a true report according to the best of their skill and understanding, shall meet at the time and place appointed and proceed to view and examine the land or other property and make a just and equitable appraisal of the value of the same, and an assessment of the amount to be paid by the petitioner for such land or other property and damage aforesaid \* \* \*"

It is obvious that the essential statutory requirements under this section for the ascertainment of just compensation are:

- a. First to take and subscribe an oath or affirmation faithfully and impartially to examine the matter in question.

- b. To make a true report according to the best of their skill and understanding.
- c. They shall meet at the time and place appointed and proceed to view and examine the land and other property.
- d. To make a just and equitable appraisalment of the value of the land and other property.
- e. To make an assessment of the amount to be paid for the property and damage.

No procedure is provided for taking any testimony; and any faithful and impartial examination to the best of the skill and understanding of the commissioners if they shall have met and viewed and examined the land covers a method of procedure and the quantum of evidence upon which to base the compensation to which the land-owner is entitled under the Constitution when his land is taken for public use.

In connection with this it must be considered that the commissioners must be impartial resident freeholders in the county wherein the lands to be taken lie. We thus have impartial resident land-owners who upon a *view and examination* of the land produce the identical result required of a jury on appeal.

There seems no escape from the conclusion that the award of the commissioners as a matter of law reflects the *real evidence* established by a view of the land, and that the *examination* may properly and legally be confined to their skill and understanding as freeholders in the same county.

If this interpretation of the legislative purpose in providing for a view and examination of the land is correct, we urge that neither this view nor the examination can be logically put into the same classification as the view and examination respectively provided for in the Evidence Act and the Jury Act.

The object to be accomplished by an appeal is identical. The means of arriving at the objective however differ in certain essentials relating to the point under discussion.

- a. The jurors need not be freeholders.
- b. The value of the land or other property may not be determined by the jurors from a view and examination of the land based on their skill and understanding.
- c. The evidence which they may receive and consider is under the rigid supervision of the trial judge according to well established rules.
- d. Presumptively they are controlled by the charge of the court in matters of law.

We thus find that the Legislature in a proceeding on appeal has still provided for the *view* of the land and other property but has eliminated the *examination*. The testimony taken in court and other evidence there produced takes the place of the *examination* made by the commissioners.

It follows as a logical sequitur that the trial jury may not make its own examination of the value of the land based on the skill and understanding as freeholders in the county, but that the Legislature has nevertheless preserved the full evidential force of the view of the land in conjunction with the examination as to value produced before the jury in open court by testimony or other evidence.

Therefore we urge that under this statute the view of the land by the jury remains *real evidence* which they must be permitted to use, and are obliged to use, as such in conjunction with all of the testimony and other evidence in the case.

To deny the jurors the right to consider their view as part of the evidence in the case is tanta-

mount to asking them to repudiate the evidence of their own senses.

*Hartman vs. Reading & P. R. R. Co.*, 130  
Atl. 774.

The Legislature in this Act has not said to the commissioners that they may inspect or examine the land if it would *aid in ascertaining the truth of any matter in dispute between the parties to the action*, nor that they may view the land *if such view is necessary to enable the jury better to understand the evidence given in the case*, and the want of any such provisos in the Eminent Domain Act demonstrates the distinction in the statutory enactments.

This Court respecting view or inspection under the Evidence Act or the Jury Act has held, that failure to have such a view even though ordered by the Court will not reverse the proceedings had. No one will seriously urge that this Court would sustain either an award or a verdict if a view of the land by commissioners or by the trial jury had not taken place.

### CONCLUSIONS

We respectfully submit that there is no evidence in the case to support the verdict of the jury. This point does not address itself to the weight of the evidence, nor to the question as to whether the verdict is excessive or inadequate. It rests upon the proposition that as a matter of law a verdict for which no support can be found in the evidence cannot be sustained.

The record shows that the jury disregarded and rejected all of the testimony and evidence received in the case and returned a verdict upon knowledge not found in the case, not testified to by them in court and upon their private opinions; depriving

the appellant of the right of cross-examination and the benefit of all the tests of credibility which the law affords.

A review of the evidence and applying thereto the charge of the Court demonstrates that the verdict is contrary to the charge of the Court.

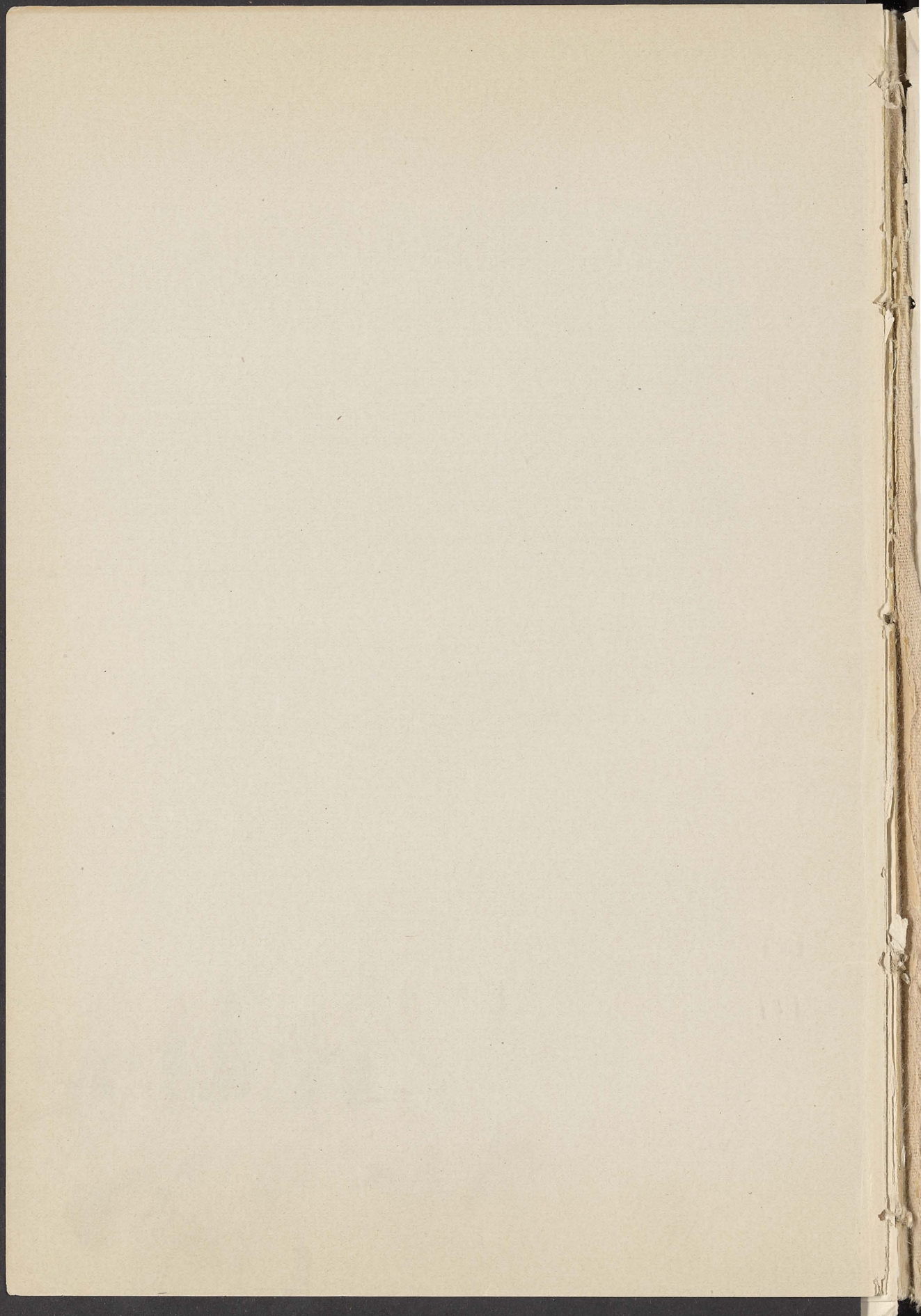
The appellant suffered harmful error through the instructions to the jury as to the legal effect of the view.

For the reasons given we respectfully submit that the verdict of the jury and judgment thereon should be set aside and a *venire de novo* ordered.

WILLIAM A. STEVENS,  
Attorney-General of New Jersey,

WALTER H. BACON, JR.,  
Chief Counsel,

GEORGE T. VICKERS,  
Assistant Attorney-General,  
*Attorneys for and of Counsel*  
*Appellant.*



112 OCT. 1. 1932

New Jersey Court of Errors and Appeals

STATE HIGHWAY COMMISSION OF  
THE STATE OF NEW JERSEY,  
Appellant,

*vs.*

LINCOLN TERMINAL CORPORATION,  
Respondent.

On Appeal from  
Hudson County  
Circuit Court.

BRIEF FOR RESPONDENT.

Statement of Facts.

This case was tried before Judge Thomas Brown and a jury in the Hudson County Circuit Court on an appeal from a report and award of commissioners on condemnation. After the jury viewed the premises a considerable amount of evidence was introduced as to the value of the property taken by appellant. Mr. Ordeman testified at length as to the nature and extent of the damage suffered by respondent (S. C., pp. 9-75); several witnesses testified as to sales of comparable land (S. C., pp. 84, 107, 110); leases showing the amount of rent received were introduced in evidence (S. C., p. 85) and a considerable amount of other evidence bearing on the value of the land taken by appellant was introduced (S. C., pp. 16, 17, 19, 104, 105).

In addition to the foregoing, expert testimony as to the value of the property taken by appellant was introduced on behalf of both the appellant and the respondent. Messrs. Makray, Houston and Moore, each of whose qualifications was ad-

mitted (S. C., pp. 91, 135, 158), testified as experts on behalf of respondent. Mr. Makray testified as to the value of respondent's property before and after appellant took a portion thereof, placing the damage to respondent at \$327,965.00, plus \$184,070.00 for interference with marine facilities, making a total of \$512,035.00 (S. C., p. 99). Mr. Houston likewise testified as to the value of respondent's property before and after the taking and placed respondent's damages at \$462,486.00 (S. C., p. 139). Mr. Moore fixed respondent's damage at \$492,759.37 (S. C., p. 158). The experts produced by appellant fixed the damages of respondent between \$158,000.00 and \$175,000.00 (S. C., pp. 190, 202, 236).

The property in this suit consists of two parcels which were operated as a unit. As to the parcel west of Jacobus Avenue, the experts produced by respondent used a base figure of \$35,000.00 an acre as compared with a base figure of \$25,000.00 an acre used by the experts produced by appellant (S. C., pp. 158, 205). As to the parcel east of Jacobus Avenue, the experts produced by respondent used as a base figure the sum of \$25,000.00 an acre as compared with a base figure of \$15,000.00 an acre used by the experts produced by appellant (S. C., pp. 158, 205).

The Trial Court submitted the determination of the value of the property taken by appellant to the jury, which rendered a verdict in favor of respondent in the sum of \$375,000.00. Appellant thereafter filed notice and grounds of appeal, and has filed a brief in support of its appeal.

## ARGUMENT.

## POINT I.

**Ground of appeal number 1 is improper and should be dismissed; the evidence in the case fully supports the verdict of the jury.**

Appellant's first ground of appeal, which is argued under Point I of its brief, is "that there is no evidence in the case to support the verdict of the jury." It is entirely clear that this ground of appeal is improper and furnishes no basis for review. In *Klein v. Shryer*, 106 N. J. L. 432, 434 (E. & A., 1929), an identical ground of appeal was held improper, this Court saying:

"#9 is that there was no legal evidence to support the judgment and such a reason points to no judicial action to be reviewed."

See also *Mangone v. Paterson*, 104 N. J. L. 132 (E. & A., 1927). The cases without exception state that it is only judicial action which is the subject of grounds of appeal. *Meyer v. Lagervelt*, 9 N. J. Misc. 503 (Sup. Ct., 1931); *Booth v. Keegan*, 108 N. J. L. 538 (E. & A., 1931). In the *Meyer* case the Court said:

"It has been repeatedly held that the only matters properly coming before an appellate tribunal for determination are alleged errors committed by the court during the trial of the case. *Van Sciver v. Public Service Railway Co.*, 96 N. J. L. 14; *Ratz v. Hillside Bus Owners' Assn.*, 103 *id.* 502. It is strange that counsel should so often disregard this elementary legal rule and particularly that phase of it which relates to the weight of evidence. *Osburn v. DeYoung*, 99 *id.* 204."

Appellant's first ground of appeal can in no sense be said to refer to any alleged error committed by the Court during the trial of the case. Although it is impossible from the ground of appeal itself to ascertain what the nature of appellant's objection is, its argument under Point I of its brief is directed towards the action of the jury as distinguished from any action by the lower court. It is too clear to warrant extended discussion that while such an objection may be urged on a rule to show cause, it has no proper place on appeal.

Assuming, however, that appellant may properly raise in this Court the matters included in Point I of its brief, it is apparent that they are without merit. Appellant's contention is that since the experts produced by appellant testified that respondent's damages were less than \$375,000.00 and respondent's experts testified that its damages were more than \$375,000.00, the jury's action in rendering a verdict of \$375,000.00 was contrary to law. This contention seems to be so obviously unsound as hardly to require refutation.

First, it is not true, as stated at page 3 of appellant's brief, that the jury in a condemnation case has no evidence except the opinions of the experts. In our case there was evidence of rental values (S. C., p. 85); there was evidence of sales of comparable land (S. C., pp. 84, 107, 110); there was considerable testimony describing the nature and extent of respondent's damage (S. C., pp. 9-75); and there was testimony of various other types bearing on the value of the property taken by appellant (S. C., pp. 16, 17, 19, 104, 105).

Secondly, in addition to all of the foregoing, there were several experts produced by respondent and several by appellant and each of the experts testified as to the items which caused him to arrive at his ultimate figure.

From all of the evidence introduced, considered in the light of their view of the premises, the jury determined that respondent was entitled to \$375,000.00 and accordingly rendered a verdict in that amount.

Appellant concedes in its brief (p. 3) that the jury had "the right to accept or reject the opinion of a witness in whole or in part." Just what evidence the jury accepted and what evidence it disbelieved is impossible to ascertain; surely, there can be no serious question that there was ample evidence in the case from which it could have and did reach the conclusion that respondent was entitled to \$375,000.00 as compensation for the land taken by appellant.

The contention advanced by appellant under Point I of its brief that the jury had no right to reject the expert testimony of both the appellant's and the respondent's witnesses has been uniformly overruled by our courts and by courts generally throughout the United States.

In *State Highway Commission v. The Mayor and Board of Aldermen*, 109 N. J. L. 303, 307 (E. & A., 1932), the appellant, State Highway Commission, in a condemnation case, advanced the identical argument which it advances here. This Court summarily disposed of appellant's contention in the following language:

"The appellant next contends that because real estate experts valued the lands in question at various figures from \$22,498.28 to \$31,200, there is no evidence to sustain the verdict for \$7,500. But this is not necessarily true. Expert testimony is not necessarily binding upon the jury. The jury may adopt so much of it as appears sound, reject all of it, or adopt all of it. 10 *R. C. L.*, 218; *Hinners v. Edgewater and Fort Lee Railroad Co.*, 75 N. J. L. 514. The verdict represents the judgment of the jury, after viewing the

premises and considering all of the evidence with respect to the value of the land.”

In *Somerville and Easton Railroad Co. v. Doughty*, 22 N. J. L. 495 (Sup. Ct. 1850), a condemnation case which is cited at page 4 of appellant's brief, the jury rendered a verdict for \$6,800.00. The experts on behalf of the landowner placed the value of the land taken at approximately \$10,000.00, while the experts on behalf of the railroad placed its value at between \$2,500.00 and \$3,700.00. The railroad obtained a rule to show cause why the verdict should not be set aside. The Supreme Court discharged the rule, saying:

“From this discordant testimony, it will be readily perceived, if the witnesses were equally intelligent and candid, and had equal opportunities of forming a correct judgment, that the duty of deciding between them would be no easy task for the jury. If the jury had attached implicit faith to the truth and soundness of the opinions expressed by the plaintiff's witnesses, their verdict must have been for a much larger sum; if they had taken the testimony of the defendants' witnesses as their guide, it would have been for a less sum. It seems that they did neither, but rendered a verdict for a sum intermediate these several estimates; and can we say, from this testimony, that they were wrong, and that their verdict is excessive?”

See also:

*Hart v. Denise*, 75 N. J. L. 82 (Sup. Ct., 1907).

The cases in other jurisdictions in support of the proposition that a jury may disregard the expert testimony of both parties as to damages and render a verdict in a different amount are legion.

*Gouch v. Republic Storage Co., Inc.*, 211 N. Y. Supp. 433 (1925), aff'd 219 N. Y. Supp. 46 (1926); *Head v. Hargrave*, 105 U. S. 45, 26 L. Ed. 1028 (1881); *Whalen v. Grant*, 129 Mich. 178, 88 N. W. 401 (1901); *Commonwealth v. Anderson*, 14 S. W. (2d) 392, 228 Ky. 90 (1929); *Niemi v. Brady*, 203 N. W. 124, 230 Mich. 217 (1925); *Adams v. Ginn*, 107 S. E. 608, 27 Ga. App. 222 (1921) and cases collected in 45 *L. R. A.* (N. S.) 181; 42 *L. R. A.* 767.

In *Gouch v. Republic Storage Co., Inc.*, *supra*, the Court said:

“Two witnesses gave evidence as to value. They testified as experts. The jury did not adopt the figures of either. They appear to have believed that it was worth less than the value placed upon it by the plaintiff and more than that placed upon it by defendant’s witness, Traitel. It was competent for the jury to determine the value, and their verdict cannot be set aside as the result of an unlawful compromise.”

In *Guyon v. Brooklyn Heights R. R. Co.*, 97 N. Y. Supp. 1038 (1906), the Court said:

“The charge of the justice relative to the value of physician’s services was, in effect, an instruction to the jury that they must be governed by his opinion as to the value of such services. This was clearly erroneous, as the opinion of an expert as to the value of services is not conclusive, such testimony being merely advisory, and the weight of it is for the determination of the jury. *Head v. Hargrave*, 105 U. S. 45, 26 L. Ed. 1028; *Lawlor v. French*, 14 Misc. Rep. 497, 35 N. Y. Supp. 1077; *Hull v. St. Louis*, 138 Mo. 618, 40 S. W. 89, 42 L. R. A. 753.”

Accord *Dunphy v. Thompson*, 3 N. J. Misc. 1086 (Sup. Ct., 1925).

Appellant fails to cite any case which is in any wise contrary to the foregoing authorities; the case of *Mauvaisterre Drainage & Levee District v. Wabash R. R. Co.*, 299 Ill. 299 (1921), which is cited at page 5 of appellant's brief, does not in any sense support appellant's position.

In addition to the authorities, pertinent considerations of reason and policy require that verdicts of juries such as that here involved be sustained. The consequences resulting from a doctrine requiring juries to accept the values testified to by either the plaintiff's or defendant's experts would be disastrous and far-reaching and would invariably result in injustice.

It is respectfully submitted that ground of appeal Number 1 is improper and should be dismissed and that the evidence in the case fully supports the verdict of the jury.

## POINT II.

**Ground of appeal number 2 is improper and should be dismissed; the jury did not disregard the testimony in the case.**

Appellant's second ground of appeal, which is argued under Point II of its brief is "That the jury disregarded and rejected all of the testimony and evidence received in the case but nevertheless rendered a verdict." Our Courts have repeatedly condemned similar grounds of appeal. In *Paladino v. Raio*, 6 N. J. Misc. 372 (Sup. Ct., 1928), aff'd in 105 N. J. L. 246 (E. & A., 1929), the Court held that the following ground of appeal was improper:

"That the judgment is not supported by the proofs in the case."

Appellant advances, in support of Point II of its brief, the same contention as that advanced under Point I of its brief. Since appellant rests entirely upon its argument under Point I to support Point II, it is unnecessary to do more than refer to the authorities and argument contained in the preceding point of this brief.

It is respectfully submitted that ground of appeal number 2 is improper and should be dismissed and that the jury did not disregard the testimony in the case.

### POINT III.

**Ground of appeal number 3 is improper and should be dismissed; the verdict of the jury is not contrary to the charge of the Court.**

Appellant's third ground of appeal, which is argued under Point III of its brief, is "Because the verdict is contrary to the charge of the Court." The impropriety of this ground of appeal is obvious. It does not point to any judicial action to be reviewed and fails to refer to the portion of the charge with which the verdict is alleged to be inconsistent. In *Meyer v. Wagervelt*, 9 N. J. Misc. 503 (Sup. Ct., 1931) the Court held that the following ground of appeal was improper and furnished no basis for review:

"That the verdict is contrary to, and inconsistent with, the charge of the Court, the issue raised by the pleading, and the evidence adduced in support of the allegations or issue."

The portion of the charge which appellant contends was disregarded instructed the jury that they were to render a verdict upon the relevant,

truthful testimony in the case. Appellant contends that since the jury rendered a verdict which did not coincide with the figure of any one expert, it disregarded the Court's direction that it render a verdict upon the testimony in the case. Elsewhere in its brief appellant admits that "the right to accept or reject the opinion of a witness, in whole or in part, is entirely a prerogative of the jury." And the authorities and arguments contained in Point I of this brief fully dispose of appellant's suggestion that the jury was under a duty to accept the figure of any one of the experts. Under the law and under the Trial Court's charge the jury had the right to reject the opinion of any expert in whole or in part and had the right to render a verdict, as they did in this case, upon all of the testimony, considered in the light of their view. Since the argument of appellant under Point III is based entirely upon the validity of its contention set forth under Point I of its brief, we need do no more than refer to the authorities and arguments contained in Point I of this brief.

At page 9 appellant refers to the portion of the charge in which the Court said: "You are to be the judge of what the relevant testimony is, of what the truthful testimony is." No exception was taken to this instruction, it is not asserted as a ground of appeal, and appellant admits (p. 9) that it is not before this Court for review. Furthermore, the instruction is obviously correct. A jury must necessarily determine what testimony is truthful and relevant to the issue being considered before it can reach a verdict in any case.

It is respectfully submitted that ground of appeal number 3 is improper and should be dismissed and that the verdict of the jury is not contrary to the charge of the Court.

## POINT IV.

**Ground of appeal number 4 is improper and should be dismissed; the Trial Court committed no error in its charge.**

Appellant's fourth ground of appeal, which is argued under Point IV of its brief, is:

“Because the Trial Court committed harmful error in charging the jury as follows:

“In considering your view or applying it to this case bear in mind that you are not to take that view as evidence in the case.”

During the course of its charge the lower Court charged the jury as follows:

“The Court has cited the issues to you, and at the opening of the case the Court instructed you as to your view of the premises in question. In considering your view, or applying it to this case, bear in mind that you are not to take that view as evidence in the case. You are to use your view so that you will better understand the testimony that was given here under oath.”

At the end of the Trial Court's charge and before the jury retired the following took place:

“Are there any exceptions to the Court's Charge?

“Mr. Vickers—I desire to take an exception to that part of your Honor's Charge where you said ‘you are not to take that view,’ referring to the view of the property, ‘as evidence in the case.’ My contention, and I take the exception respectfully, is because the Upper Court has never directly passed on that. It is really evidence, in my opinion.

“The Court—The Court feels that the Upper Court has clearly decided that proposition to the effect that a Jury has the right

to view a property and what they learn by that view is to be used and applied to a better understanding, or an understanding of the evidence that is adduced, and the view by the Jury is not testimony in the sense that testimony is adduced in Court.

“The Jurors act in the capacity of jurors; and not as witnesses, to go out and see the property and form an opinion.

“Mr. Vickers—I don’t object that it is not testimony. But it is my contention that it is evidence.

“The Court—The Court has made the amendment that has just been pronounced in answer to your objection, and the Court will stand on that.

“Mr. Vickers—May I pray an exception?

“The Court—You may have it.”

Appellant’s fourth ground of appeal makes no reference whatsoever to the Court’s enlargement of the charge objected to by appellant, but merely quotes a sentence from the charge as originally given. Clearly, therefore, it is improper and in direct violation of the requirement that the instruction complained of must be specifically and fully set forth. See *Dunn v. Hely*, 104 N. J. L. 84 (E. & A., 1927).

Furthermore, the charge of the Trial Court was entirely correct. The decision of this Court in *Hinnors v. Edgewater and Ft. Lee R. R. Co.*, 75 N. J. L. 514 (E. & A., 1907), expressly disposes of appellant’s contention. There this Court said:

“In effect the jury were told that they might make use of their view of the premises in forming their judgment of the testimony and in reaching an opinion upon its consideration, and that their opinion upon the questions they were to decide should be based upon the testimony as thus understood by them and applied to what they had seen. This, I think, is a correct charge.”

A mere reading of the charge in our case discloses that it follows implicitly the views of this Court as expressed in the *Hinners* case. The Trial Court, in effect, instructed the jury that they could use their view in forming their judgment of the testimony and that they were to decide the case upon the testimony as understood by them in the light of their view.

In *Garland v. Furst Store*, 93 N. J. L. 127 (E. & A., 1919), an action at law for alleged negligence resulting from personal injuries, the jury viewed the premises and ultimately rendered a verdict for the plaintiff. An appeal was then taken to the Supreme Court, which held that since the jury had viewed the premises there could be no reversal even though the record disclosed no evidence of negligence. On appeal to this Court the decision of the Supreme Court was reversed, Chancellor Walker, speaking for the Court and referring to the decision of the Supreme Court, said:

“This was, in effect, a ruling that what the jury saw amounted to mute evidence tending to establish defendant’s negligence, and for that reason, in addition to the other one given, namely, that there was evidence of an unusually slippery floor, stated *arguendo*, the judgment was affirmed, apparently upon the theory that because the extent to which the view afforded evidence could not be known, the verdict could not be overridden even if the proofs to be found in the record were not in and of themselves sufficient to sustain the jury’s finding. This we deem to be error. In our opinion, for reasons to be presently stated, a judgment should be reversed if legally unsupported in and by the record under review, notwithstanding a view of the premises by the jury.”

In *DeGray v. N. Y. & N. J. Telephone Co.*, 68 N. J. L. 454, 458 (Sup. Ct., 1902), the Supreme

Court (Gummere, C. J. and Van Syckel, Fort and Garretson, J. J.), expressly approved the doctrine of *Close v. Samm*, 27 Iowa 503, 507, where the Court held:

“It seems to us that it [the purpose of the statutory view] was to enable the jury, by the view of the premises or place, to better understand and comprehend the testimony of the witnesses respecting the same, and thereby the more intelligently to apply the testimony to the issues on trial before them, and not to make them silent witnesses in the case, burdened with testimony unknown to both parties and in respect to which no opportunity for cross-examination or correction of error, if any, could be afforded either party. \* \* \* It is a general rule, certainly, if not universal, that the jury must base their verdict upon the evidence delivered to them in open Court, and they may not take into consideration facts known to them personally but outside of the evidence produced before them in Court; if a party would avail himself of the facts known to a juror, he must have him sworn and examined as other witnesses.”

See also *Zanesville R. R. v. Balen*, 76 Oh. St. 376, 81 N. E. 681 (1907); *Brakken v. Minneapolis R. Co.*, 29 Minn. 41, 11 N. W. 124 (1821); *Seefeld v. Chicago Ry. Co.*, 67 Wis. 96, 29 N. W. 904 (1886).

In *Zanesville Ry. Co. v. Balen*, *supra*, a condemnation case, the Court reached the same conclusion arrived at by this Court in the *Garland* case, saying:

“Counsel is surely right in assuming that if the impressions obtained by the jury from the view are themselves evidence in the case, there is no way by which that evidence can be carried into the bill of exception, and hence it inevitably follows that there is not power in a reviewing court to pass on the weight

of the evidence. \* \* \* Is it not plain that the jurors if the view be evidence would become silent witnesses? That the verdict might be based wholly on their own inspection of the premises, in which situation the cause would be determined not upon evidence given in court, but upon personal inspection? If the impressions of the jury thus obtained are evidence then the taking of that evidence becomes a part of the trial. \* \* \* If the testimony is to be taken in part out of court, and as to that part in utter silence, how can the parties cross-examine? How can they offer rebutting or explanatory testimony? How can the counsel intelligently argue the questions of fact? In short, how is it possible to have a fair trial? Again, jurors are selected partly because of their general intelligence and general knowledge of affairs, but not because of their supposed particular knowledge of the particular subject. The body may be made up of tradesmen, professional men, merchants, carpenters, shoemakers, tailors, men with little, if any, knowledge of real estate values and yet it is proposed to allow them to substitute their judgment for that of men who before they are permitted to testify must qualify and show expert knowledge. The proposition contended for seems untenable from every point of view."

It is interesting to note that Point II of appellant's brief (p. 7) concedes that "the view in itself could not have supplied evidence to support the verdict."

At page 14 of its brief appellant suggests that in condemnation cases the jury's view has a different effect than in ordinary cases. The *Himmers* and *DeGray* cases were condemnation cases; and the Court in the *Garland* case makes no distinction between condemnation cases and other cases. See 93 *N. J. L.* 127, at 134.

It is indeed difficult to follow appellant's argument that the jury's view has a different effect in

condemnation cases than in other cases. Section 12 of the Eminent Domain Act (C. S., p. 2186) merely states that the Circuit Court shall "frame the issue between the parties and direct a jury to be struck and a view of the premises and property to be had." And section 13 provides (C. S., 2187) that: "The issue shall be tried in the same manner as other issues in said court are tried, and the jury shall assess the value of the said land or other property and the damages sustained."

The act contains no provision whatsoever as to what effect the jury's view shall have and it seems too clear for argument that the ordinary principles are consequently applicable. Appellant refers to the statutory provisions relating to the procedure by the condemnation commissioners. Those provisions do not in any wise lend any support to appellant's contentions; furthermore, they have no bearing on the proceedings before the Circuit Court. Those proceedings are entirely independent and displace any earlier proceedings or findings.

Appellant's attempted distinctions between the evidence and jury acts and the Eminent Domain Act are obviously without merit. None of the acts contains any provision as to what effect the jury's view shall have; the evidence act is exceedingly broad in permitting views where they will aid "in ascertaining the truth of any matter in dispute" and the Eminent Domain Act merely provides that a "view of the premises" shall be had. In the absence of any statutory provision it is clear that the general principles as set forth by this Court in the *Himmers*, *De Gray* and *Garland* cases apply. Under those cases the Trial Court's charge was entirely accurate.

Finally, it is evident that even if the sentence objected to by appellant were improper appellant

was not prejudiced thereby. The photographs which were introduced in evidence and the remaining exhibits are admittedly accurate representations of the premises. The exhibits, together with the testimony, were submitted to the jury, who were instructed to consider them in the light of their view of the premises. Clearly appellant could not have been harmed by the sentence objected to even if it were erroneous. It is, of course settled that in the absence of a showing of prejudice no ground of reversal exists. See *In re Board of Recreation Commissioners*, 103 N. J. L. 419, 136 Atl. 176 (E. & A., 1927).

It is respectfully submitted that ground of appeal Number 4 is improper and should be dismissed and that the Trial Court committed no error in its charge.

#### Conclusion.

It is respectfully submitted that the judgment rendered upon the verdict of the jury should be affirmed.

Respectfully submitted,

JOHN MILTON  
ARTHUR T. VANDERBILT,  
Attorneys for and of Counsel with  
Respondent.